

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

IN RE D.F., ET AL. :  
 : No. 108055  
Minor Children :  
 :  
[Appeal by S.F., Mother] :

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JOURNAL ENTRY AND OPINION

**JUDGMENT:** REVERSED AND REMANDED  
**RELEASED AND JOURNALIZED:** July 25, 2019

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD-15901514, AD-15901515, AD-15901516, AD-15901517,  
AD-15901518, AD-15901519, AD-15901520

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***Appearances:***

Rick L. Ferrara, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Anthony R. Beery, Assistant Prosecuting  
Attorney, *for appellee.*

EILEEN A. GALLAGHER, J.:

{¶ 1} Appellant-mother, S.F., (“Mother”) appeals from the decision of the Juvenile Division of the Cuyahoga County Court of Common Pleas (the “juvenile court”) terminating her parental rights and granting permanent custody of seven of her minor children to appellee, the Cuyahoga County Division of Children and

Family Services (“CCDCFS” or “the agency”). For the reasons that follow, we reverse the juvenile court’s decision.

### **Factual Background and Procedural History**

{¶ 2} This case involves seven of Mother’s nine minor children — her daughter D.F. (born on July 24, 2003), twin sons An.B. and Ar.B. (born on April 5, 2004), son D.B. (born on June 20, 2005), twin daughters Ti.B. and Ta.B. (born on February 15, 2008) and son J.F. (born on June 22, 2013).<sup>1</sup> M.B. is the father of An.B., Ar.B., D.B., Ti.B. and Ta.B. L.S. is the father of J.F. The paternity of D.F. has not been established.

### **Adjudication and Temporary Custody to CCDCFS**

{¶ 3} On February 3, 2015, CCDCFS filed a complaint alleging that D.F. and J.F. were abused and that all of the seven children at issue were neglected. Specifically, the complaint alleged that Mother had left D.F. and J.F. alone overnight without supervision, that Mother had been arrested and charged with child endangering as a result of the incident and that Mother did not have appropriate housing for the children, i.e., there was not a sufficient number of beds for the children and the home was “observed to be dirty and in disarray.” On February 24, 2015, the agency filed an amended complaint, seeking a disposition of temporary custody of all seven children to CCDCFS, and asserting new allegations. In its

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<sup>1</sup> Mother has two other minor children, E. and Z., who are not the subject of this case. These children were born after the complaint was filed. Mother currently has custody of both of these children.

amended complaint, in addition to the prior allegations, the agency alleged that Mother had failed to ensure that the children attended school and that J.F. attended medical appointments and received immunizations.<sup>2</sup> CCDCFS also filed a motion for predispositional temporary custody of the children. The juvenile court granted the motion and, on March 5, 2015, all seven children were placed in the predispositional temporary custody of the agency.

{¶ 4} CCDCFS filed a case plan that required Mother to (1) complete a psychological assessment and follow any recommendations for mental health services, (2) attend parenting classes and (3) address the needs of her children, including education, medical and safety needs. The permanency goal was reunification of the children with Mother. The juvenile court approved the agency's case plan but ordered that an amended case plan be filed "to include housing."

{¶ 5} In May 2015, Mother admitted the allegations of a further amended complaint.<sup>3</sup> The juvenile court adjudicated D.F. and J.F. to be abused and all of the

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<sup>2</sup> With respect to the children's fathers, the amended complaint alleged that C.G., D.F.'s alleged father, had failed to establish paternity and was incarcerated and ineligible for release until 2023; that M.B., father of An.B., Ar.B., D.B., Ti.B. and Ta.B., has daily contact with his children but has a "recent history of drug related criminal offenses" and failed to engage in intensive outpatient substance abuse treatment as required under the terms of his probation for an OVI conviction; and that L.S., father of J.F., had failed to visit consistently with his son since birth.

<sup>3</sup> As it related to Mother, the further amended complaint alleged:

1. On or about January 18, 2015, mother left D.F. and J.F. alone overnight without parental supervision in the home. Mother was subsequently arrested and charged with child endangering. \* \* \*

children to be neglected and committed the children to the temporary custody of CCDCFS.

### **Extension of Temporary Custody**

{¶ 6} On December 24, 2015, the agency filed a motion for an extension of temporary custody. The agency acknowledged Mother had made progress with her case plan, having “completed parenting education and a psychological evaluation,” but that she still needed to obtain appropriate housing for the children. The juvenile court granted the motion, extending temporary custody to August 3, 2016.

{¶ 7} On July 20, 2016, CCDCFS filed a second motion to extend temporary custody. The agency asserted that “[a]lthough there has been substantial additional progress made on the case plan since the first extension of temporary custody, because all of the objectives have not yet been completed, the risk to the children has not been sufficiently reduced.” CCDCFS stated that Mother was “engaged in substance abuse treatment and needs to demonstrate that she can maintain sobriety” and that she was “working with a parenting coach to learn to meet all of the children’s needs in a structured environment.”

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2. The parents have failed to ensure that the children regularly attend school. In the 2014-2015 school year, the children have missed a significant amount of school.
  3. Mother and father of J.F. \* \* \* need to ensure that the child regularly makes medical appointments.
  4. Mother needs to acquire appropriate housing in which to provide for the children.

{¶ 8} Mother opposed a second extension of temporary custody. She filed a motion to terminate temporary custody and requested that she be granted legal custody of the children.

{¶ 9} In October 2016, the guardian ad litem filed a report in which he indicated that Mother had moved into a six-bedroom townhouse in January 2016 that was fully furnished with beds for all of the children and that she had given birth to another child, E.F., in September 2015, who remained in her custody with protective supervision. He further reported that Mother was “cooperating with the case plan objectives,” that weekend visits with Mother were “going well,” that “[t]he children all seemed to be managed appropriately” during visits and that all of the children who were old enough to do so had expressed a desire to live with their mother. He recommended that Mother be given custody of the oldest children first with protective supervision and stated that if “things go well for several months,” “reunification of all the children will be appropriate.”

{¶ 10} On December 29, 2016, the juvenile court granted the agency’s motion to extend temporary custody and denied Mother’s motion, concluding that “there has not been significant progress on the case plan and that progress had not been made in alleviating the cause of removal of the child from the home.”<sup>4</sup> The custody plan remained reunification. February 3, 2017 was the “projected date for the safe return of the child[ren]” to Mother’s home.

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<sup>4</sup> The juvenile court’s December 29, 2016 journal entry states that the magistrate “heard testimony” on the motions on October 19, 2016 and November 19, 2016. There is no transcript from these hearings in the record.

## **CCDCFS' Motions to Terminate Temporary Custody**

{¶ 11} On January 27, 2017, CCDCFS filed a motion to terminate temporary custody and to return all of the children to Mother with six months of protective supervision by the agency. In support of its motion, CCDCFS stated:

In its efforts to facilitate reunification, CCDCFS developed a case plan for the family. CCDCFS states that it is in the best interest of the children to be returned home to the mother, because she has substantially complied with the case plan and has reduced the risk that caused the children to be removed. Specifically, the mother has completed parenting education and continues to engage in mental health services. Mother has also maintained her sobriety since February 2016 and has obtained stable housing. Furthermore mother has engaged in overnight visits with the children and has demonstrated an ability to properly parent and supervise the children.

Although the mother has made substantial progress on the case plan since the original order of temporary custody, as the family adjusts to being reunified, the family would benefit from continued involvement and support from CCDCFS.

{¶ 12} A hearing on the motion was scheduled for March 30, 2017. Before the hearing date, an issue allegedly arose with respect to Mother's supervision of the children. In a report filed on March 27, 2017, the guardian ad litem stated that he had been "informed of recent incidents involving [Mother] leaving the children outside in the neighborhood without proper adult supervision \* \* \* or \* \* \* with inappropriate care givers." He did not provide any details in his report regarding these incidents, including when or where the incidents occurred or which of the children were involved. However, notwithstanding these incidents, the guardian ad litem recommended that overnight visits continue and that Mother first be given custody of the boys who were then in foster care with an order of protective

supervision. He reiterated that “[i]f things go well for several months, reunification of all the children may be appropriate.” On March 30, 2017, the magistrate suspended all visitation between Mother and her children. No reasons were provided in the record why visitation was suspended.

{¶ 13} CCDCFS then reversed course. On April 28, 2017, the agency withdrew its prior motion to return the children to Mother and filed a motion seeking permanent custody of all seven children. The agency asserted that “[d]espite Mother’s compliance and completion of case plan services, Mother has failed to benefit from the services, specifically parenting,” and “has failed continuously and repeatedly to remedy the conditions causing the children to be placed outside the home.” The agency claimed that although Ta.B., An.B. and Ar.B. were “cognitively delayed,” Mother had allowed Ti.B., Ta.B., An.B. and Ar.B. to be “in the community, unsupervised” when visiting her and had “failed to ensure that D.F. attended school.” The agency further alleged that Mother was “unemployed and has no source of stable income with which to provide for the basic needs of the children.”

{¶ 14} In the summer of 2017, the agency once again reversed course and filed motions requesting that legal custody of the children (except J.F.) be granted to several different relatives. The agency asserted that this would be “an appropriate disposition for the children” because

the mother, despite compliance and completion of case plan services, has been unable to show that she has benefited from said services and has been unable to reduce the risks that led to the removal of the

children so that the children can safely return home. Specifically, CCDCFS referred mother to mental health services, parenting education, including a supportive parenting coach, and housing. Mother has not demonstrated an ability to supervise the children, nor an ability to identify and address the younger children's special needs.

The agency indicated that the relatives at issue were willing and able to meet the children's needs and to provide permanent homes for them.

{¶ 15} Mother, in turn, filed another motion to terminate temporary custody and requesting that legal custody of all seven children be returned to her. In support of her motion, Mother argued that she is "deeply bonded" with the children, that she has "appropriate, stable housing and the means to provide for her children's basic needs," that she had "complied with all case plan objectives," that she had "successfully completed months of overnight, weekend visits with all of her children," that she had "continually produced negative urine screens," that she had engaged in Frontline Services for additional support and that she has demonstrated that she is "well prepared for her children's return." At Mother's request, the magistrate appointed counsel for the children and conducted in camera interviews of the children.

{¶ 16} In December 2017, the guardian ad litem filed an updated report. He stated that he believed that it would be in children's best interest if unsupervised visits were re-initiated and the children were transitioned to Mother's custody with an order of protective supervision.

{¶ 17} The juvenile court judge held a hearing on CCDCFS' motion to modify temporary custody to permanent custody as to J.F. and Mother's motion seeking



legal custody of J.F. The magistrate held a hearing on the pending motions relating to the other children. Transcripts from these hearings are not in the record.

{¶ 18} In February 2018, the juvenile court denied all of the pending motions, concluding that neither the agency nor Mother had presented sufficient evidence establishing that modification of temporary custody was in the children's best interest. The juvenile court found that Mother had substantially complied with the objectives of the case plan but that progress had not been made in alleviating the cause for the removal of the children from Mother's home. The juvenile court ordered that temporary custody be continued and that CCDCFS refer Mother to in-home parenting supportive services. The custody plan remained reunification.

{¶ 19} Several months later, CCDCFS once again sought permanent custody of all seven children, filing new motions to modify temporary custody to permanent custody. In support of its request for permanent custody, the agency asserted

Mother has engaged in case plan services but has failed to demonstrate any appreciable benefit from the services. \* \* \* Mother lacks appropriate judgment and parenting skills. Mother is unable to manage the child's behavior during visits. Mother also discusses age inappropriate things with the child. \* \* \* Mother has been referred to an additional in-home parenting class as ordered by the Court. Mother failed to cooperate with the parenting coach and, as a result, the service provider has terminate[d] mother from their program.

## **Permanent Custody Hearing**

{¶ 20} In October 2018, the juvenile court held a hearing on the agency's motions to modify temporary custody to permanent custody. Shortly before the hearing, the guardian ad litem filed an updated report in which he recommended that the juvenile court grant permanent custody of all seven children to CCDCFS. The guardian ad litem indicated that although Mother had completed case plan services and all of the children continued to express a desire to live with Mother, she had had no unsupervised visits with the children since concerns had been raised "[i]n early 2017 \* \* \* about the mother leaving her children unsupervised outside." He further reported that "Beech Brook provided a parenting/visitation coach who notes that the mother 'has not made much progress \* \* \* [she] was \* \* \* unable to follow through or utilize services and assistance that were being provided to her.'"

{¶ 21} Three witnesses testified on behalf of CCDCFS at the permanent custody hearing — (1) April Palidar, a CCDCFS social worker, (2) Jori Beams-Baker, a Beech Brook visitation coach, and (3) Kamilah Cunningham, the supervisor of Beech Brook's supportive visitation program. Palidar, who began working with the family in May 2018, testified that she believed an award of permanent custody was appropriate because she did not "think mom has demonstrated the ability to provide for the kids based on their special needs and their mental health issues." Beams-Baker, who assisted the family with supportive visitation in the spring and summer of 2018, testified regarding Mother's "lack of progress" during supportive visitation.

Cunningham testified regarding the goals of the supportive visitation program and the history of Mother's participation in the supportive visitation program.

{¶ 22} At the permanent custody hearing, the juvenile court also heard from the guardian ad litem regarding his report and recommendation and the children's counsel regarding the children's desire to be reunified with Mother. The children's counsel requested that if the juvenile court found it was not appropriate to return the children to their Mother that the agency be required to "look at [other] relatives and consider whether legal custody [with those relatives] was an option" rather than "having the right to their mother terminated."

{¶ 23} Mother did not testify and did not present any witnesses at the permanent custody hearing. She requested that the court return all of the children to her with protective supervision.

### **The Trial Court's Decision to Grant Permanent Custody to CCDCFS**

{¶ 24} On December 14, 2018, the trial court granted CCDCFS' motion to modify temporary custody to permanent custody, terminating the parental rights of Mother and the children's fathers and awarding permanent custody of all seven children to CCDCFS. Based on the evidence presented at the hearing and the recommendation of the guardian ad litem, the juvenile court found that "the allegations" of the agency's motion to modify temporary custody to permanent custody "have been proven by clear and convincing evidence." The juvenile court further found, with respect to Mother, that (1) CCDCFS had made reasonable efforts

to reunify the children with Mother, (2) notwithstanding reasonable case planning and diligent efforts by the agency to assist Mother to remedy the problems that caused the children to be placed outside Mother's home, Mother had failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside Mother's home and (3) it was in the children's best interest to grant permanent custody to the agency. The juvenile court also found that the children were not members of a federally recognized Indian tribe, were not eligible for membership in a federally recognized Indian tribe as the biological child of a member of a federally recognized tribe and were not in the custody of an Indian custodian.

{¶ 25} Mother appealed, raising the following sole assignment of error for review:

The trial court abused its discretion in awarding permanent custody because the [agency] did not present sufficient, clear and convincing evidence necessary for the order granting permanent custody.

## **Law and Analysis**

### **The Juvenile Court's Decision to Grant Permanent Custody of the Children to CCDCFS**

{¶ 26} The right to raise one's own child is "an essential and basic civil right." *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67, quoting *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997); *see also In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990) (a parent has a "fundamental liberty interest' in the care, custody, and management" of his or her child), quoting

*Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). However, this right is not absolute. It is “always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.” *In re L.D.*, 2017-Ohio-1037, 86 N.E.3d 1012, ¶ 29 (8th Dist.), quoting *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979).

{¶ 27} Because termination of parental rights is “the family law equivalent of the death penalty in a criminal case,” *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14, it is “an alternative of last resort,” *In re Gill*, 8th Dist. Cuyahoga No. 79640, 2002-Ohio-3242, ¶ 21. It is, however, “sanctioned when necessary for the welfare of a child.” *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 7, citing *In re Wise*, 96 Ohio App.3d 619, 624, 645 N.E.2d 812 (9th Dist.1994). “All children have the right, if possible, to parenting from either natural or adoptive parents which provides support, care, discipline, protection and motivation.” *In re J.B.*, 2013-Ohio-1704, at ¶ 66, quoting *In re Hitchcock*, 120 Ohio App.3d 88, 102, 696 N.E.2d 1090 (8th Dist.1996). Where parental rights are terminated, the goal is to create “a more stable life for the dependent children” and to “facilitate adoption to foster permanency for children.” *In re N.B.* at ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, 5 (Aug. 1, 1986).

## **Standard for Terminating Parental Rights and Granting Permanent Custody to CCDCFS**

{¶ 28} Before a juvenile court can terminate parental rights and grant permanent custody of a child to CCDCFS, it must satisfy the two-prong test set forth in R.C. 2151.414. First, the juvenile court must find by clear and convincing evidence that one of the following conditions set forth in R.C. 2151.414(B)(1)(a) through (e) exists:

(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

**{¶ 29}** Second, the juvenile court must find by clear and convincing evidence that granting permanent custody to the agency is in the best interest of the child. R.C. 2151.414(B)(1). “Clear and convincing evidence” is that “measure or degree of proof” that “produce[s] in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *In re M.S.*, 2015-Ohio-1028, at ¶ 8.

**{¶ 30}** On appeal, Mother does not dispute that CCDCFS established the first prong, i.e., that one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) exists.<sup>5</sup> Mother challenges only the juvenile court’s finding that an award of permanent custody is in the best interest of her children. Mother argues that the agency failed to present “sufficient, clear and convincing evidence” that it was in the best interest of the children to be taken from her “given that [she] had complied with all major, substantive aspects of her supervision and the government only alleged technical failures to support its conclusion that permanent custody was necessary.” Accordingly, we must consider whether the juvenile court’s finding that it was in the children’s best interest to award permanent custody to CCDCFS is supported by clear and convincing evidence.

**{¶ 31}** The best interest determination focuses on the child, not the parent. *In re N.B.*, 2015-Ohio-314, at ¶ 59. In determining whether permanent custody is in

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<sup>5</sup> In this case, CCDCFS moved for permanent custody under R.C. 2151.414(B)(1)(d) and the juvenile court found that R.C. 2151.414(B)(1)(d) was satisfied.

the best interest of the child, the juvenile court consider must consider “all relevant factors,” including, but not limited to, the following:

(a) The interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) The wishes of the child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;

(c) The custodial history of the child \* \* \*;

(d) The child’s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(e) Whether any of the factors in [R.C. 2151.414(E)(7) to (11)] apply in relation to the parents and child.<sup>6</sup>

R.C. 2151.414(D)(1).

**{¶ 32}** The juvenile court has considerable discretion in weighing these factors. We review a juvenile court’s determination of a child’s best interest for abuse of that discretion. *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47. Although the juvenile court is required to consider each factor listed in R.C. 2151.414(D)(1), no one factor is to be given greater weight than the others. *In re T.H.*, 8th Dist. Cuyahoga No. 100852, 2014-Ohio-2985, ¶ 23, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Only one of the factors set forth in R.C. 2151.414(D)(1) needs to be resolved in favor of permanent custody. *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17; *In re N.B.* at ¶ 53.

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<sup>6</sup> It is undisputed that none of the factors in R.C. 2151.414(E)(7) to (11) apply with respect to Mother in this case.



**{¶ 33}** In its December 14, 2018 journal entries awarding permanent custody of the children to CCDCFS, the juvenile court identified the factors it considered in determining that an award of permanent custody to the agency was in the best interest of the children as follows:

Upon considering the interaction and interrelationship of the child with the child's parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period; the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody; and the report of the Guardian ad litem, the court finds by clear and convincing evidence that a grant of permanent custody is in the best interest of the child and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

**{¶ 34}** The juvenile court did not specifically explain its evaluation of these factors or how its evaluation of these factors led the juvenile court to conclude that termination of Mother's parental rights and granting permanent custody to the agency was in the best interest of the children. However, the juvenile court set forth various factual findings in support of its decision, including the following:

- A case plan was filed with the court which requires mother to complete a mental health assessment, be able to meet the children's basic needs, and successfully complete and benefit from parenting classes.
- Mother is compliant with mental health services and can meet the basic needs of the children.
- Mother has participated in multiple parenting classes but has failed to demonstrate a benefit and remains unable to demonstrate appropriate parenting practices and [is] unable to appropriately supervise the children.

- The Agency received negative feedback from the supported visitation coach and supervisor regarding Mother's progress.
- Supported visitation sessions occurred primarily in Mother's home. During these visits, Mother failed to appropriate[ly] supervise the children and was often unaware of where the children were. Mother has to be reminded by the visitation coach to check on the children.
- During supported visitation sessions, Mother was unable to facilitate activities involving all of the children in order to demonstrate that she could appropriately manage all of the children at once.
- Mother failed to follow through with scheduled supported visits at community locations such as the library and park which were designed to help her learn to provide activities for the children to engage in outside of the home.
- As part of the supported parenting program, Mother was provided with information on schools and programs near her home to assist her in preparing for the eventual return of the children to her home. Mother was also provided with a document to complete and provide to Beech Brook workers to verify that she was following through with this. Mother failed to complete this document.
- Mother's final assessment from the supportive visitation program was that despite participation in the program, she made no progress with the program goals and had not truly engaged in the program.
- Assigned CCDCFS case worker April Palidar observed the same difficulties in [M]other's ability to manage all of the children at once during visits that she attended in Mother's home.
- All of the children except for Ti.B. have special needs and developmental delays.<sup>7</sup>

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<sup>7</sup> With respect to the children's fathers, the juvenile court found:

- Fathers M.B. and L.S. failed to appear for the permanent custody trial. Neither father is engaged with case plan services.

{¶ 35} Upon careful consideration of the record in this case, we cannot say that the record contains competent, credible, clear and convincing evidence that it is in the best interest of these children to terminate Mother’s parental rights and grant permanent custody of the children to CCDCFS.

{¶ 36} First, with respect to the guardian ad litem’s recommendation, although the guardian ad litem recommended in his October 2018 report that permanent custody of all seven children be granted to CCDCFS, at the permanent custody hearing, he clarified that it was not permanent custody he recommended so much as that he recommended that the children — at least the children other than D.F. — remain in their current situations because of the length of time they had been out of their mother’s custody and their “special needs.” He stated:

I might want to rephrase that. I would recommend that the children remain in placement where they are. I don’t care if it’s legal custody. I don’t care if we call it permanent custody. \* \* \*

However, because of their special needs, because of the fact that they’ve been out of the mom’s custody for now – the boys, they’ve been with their foster parent for three years, \* \* \* the twin girls \* \* \* have been with their foster parent who is actually a relative now for four years. That’s a long time when we’re talking about young kids. So I’m recommending permanent custody at this point.

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- M.B. fails to visit or support his children. L.S. visits with but fails to support his child.
  - L.S. is in support of permanent custody of J.F. as stated to assigned case worker April Palidar.

**{¶ 37}** The guardian ad litem did not identify the “special needs” to which he was referring or explain why he believed these “special needs” supported an award of permanent custody of all seven children to the agency.

**{¶ 38}** Second, with respect to the statutory factors considered by the juvenile court, the only factor that could have conceivably weighed in favor of permanent custody is R.C. 2151.414(D)(1)(c) — the custodial history of the children. In this case, the children had been in the temporary custody of the agency for more than three years by the time of the permanent custody hearing. However, this is not a case in which the children were at any point out of contact with their mother. To the contrary, all of the children have had regular contact with Mother and their other siblings.

**{¶ 39}** R.C. 2151.414(D)(1)(a) — the interaction and interrelationship of the children with the children’s parents, siblings, relatives, foster caregivers and any person who may significantly affect the child — and R.C. 2151.414(D)(1)(b) — the children’s wishes — clearly weigh in favor of preserving the children’s relationship with their Mother and one another and against permanent custody. There is no question that each of the children has a strong and loving relationship with Mother and his or her siblings. When she was permitted to do so, for nearly a year, Mother had overnight, unsupervised visits with all her children. Before those unsupervised visits commenced and after those visits were terminated, Mother had regular, supervised visits with her children, maintaining a strong and loving bond with each of them. There is no evidence that Mother ever physically abused her children,

maltreated them or otherwise caused them any harm. All of the children have expressed a strong, consistent desire to be reunited with Mother.

{¶ 40} According to Palidar, the agency’s plan, if it were to be granted permanent custody of the children, was to permanently split up the siblings. All seven of the children involved in this case were placed in the temporary custody of CCDCFS in March 2015. The seven children were not placed together. At the time of the permanent custody hearing, the oldest child, D.F., then age 15, was in a group home in Youngstown, Ohio. Fourteen-year-old twins, An.B. and Ar.B., and 13-year-old D.B. were placed together in foster care. Ten-year-old twins, Ti.B. and Ta.B., were placed with paternal relatives as was 5-year-old J.F., albeit with different relatives. These placements were fluid and the children had been moved to different homes during their temporary custody. The permanency goal at that time and throughout this case has always been reunification.

{¶ 41} At the permanent custody hearing, Palidar testified that the current foster parents of An.B., Ar.B. and D.B. had indicated that they were willing to adopt them and that a paternal aunt had indicated that she was willing to adopt J.F. With respect to Ti.B. and Ta.B., Palidar testified that the agency’s current placement is not an adoptive situation. She stated that the paternal relatives with whom Ti.B. and Ta.B. had been placed were unable to adopt them because there had been sexual abuse allegations against one of the relatives in the past. Accordingly, if permanent custody were to be granted to the agency, Ti.B. and Ta.B. would be “put up for adoption.” Likewise, with respect to then-15-year-old D.F., the agency’s plan was to

try and find someone to adopt her because “the group home would not be interested in adopting her” and “there’s been no place for her to go.”

**{¶ 42}** With respect to the fourth factor, R.C. 2151.414(D)(1)(d) — whether a legally secure placement could be achieved without a grant of permanent custody — CCDCFS’ arguments center around (1) Mother’s perceived failure to “benefit” from the parenting services she received, including Mother’s alleged inability to “manage all of the children during visits” and her alleged lack of attention to the children when they visit, and (2) Mother’s failure to acknowledge and make responsible parenting decisions in light of her children’s “special needs,” “behavioral issues” and “developmental delays,” including her “poor judgment” in allowing the children “to go into the community alone.” CCDCFS’ arguments are based on the testimony of Palidar and Beams-Baker.

**{¶ 43}** Palidar, the CCDCFS social worker who had been working with the family since May 2018, testified that, at the time of the hearing, the case plan for Mother was “just parenting” but that it had previously included services for housing, drug treatment and mental health. She testified that Mother had successfully completed all programs except for the parenting component. Specifically, she related that Mother had maintained sobriety since February 2016 and that she had completed a psych evaluation at the court clinic and was recommended for no services. She further indicated that Mother had obtained stable housing which was appropriately maintained and that there was sufficient room in the home for the

seven children involved in this case as well as her two other children (ages 3 and 1), who are not subject to any court intervention.

{¶ 44} With respect to the parenting component, Palidar testified that Mother had completed parenting classes and the supportive visitation program “more than once.” She explained that the supportive visitation program is “where somebody actually comes to your house while you’re there with your children to observe you and to work on parenting issues hands-on.” According to Palidar, Mother “kept all of the appointments, kept all the visits, [and] allowed the lady to come over.” The program was aborted at one point because Mother had planned to take driver education classes that conflicted with the program, but she never actually took the classes.<sup>8</sup> Mother then began the supportive visitation program anew and completed the program, at which point Palidar began to monitor biweekly, two-hour supervised visits of the children with their mother, in Mother’s home. Mother participated in all of the visits.

{¶ 45} According to Palidar, on a positive note, Mother cooked for the children, talked to the children and sometimes watched movies with the children during their visits. However, her assessment of Mother’s negative behaviors, i.e., Mother’s alleged failure to interact with and properly supervise the children, was based on the following observation:

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<sup>8</sup> The record reflects that Mother asked if she could switch her scheduled visitation day so that she could complete driver education and engage in supportive visitation at the same time but was told that her request could not be accommodated because there was no supportive visitation coach available for the day Mother had requested to switch her visitation.

Sometimes [Mother] is upstairs in the kitchen cooking when the kids are all downstairs in the living room watching TV. She doesn't come in and check on the kids. She doesn't holler down to them. Like the last visit she was up in the kitchen with [D.F.] for probably over an hour. The other kids are running around the house. Some of them are going up and down, but no real interaction with the kids while she was upstairs cooking.

{¶ 46} Let us dissect this observation. Mother has a two-hour opportunity to be with her children, every other week. D.F. is a 15-year-old girl who is living in a group home in Youngstown, Ohio without any siblings sharing that placement. She is a 15-year-old girl who needs to spend time with her mother. Mother, multitasking, was preparing food for nine children, eight of whom were elsewhere in the house. There is no indication from Palidar that they were in any danger or injuring each other. In fact, Palidar testified, with respect to the children: "They all seemed to be fine. They joke around. They all pass [Z.] around. They interact with [E.]. They all interact with each other. \* \* \*" Palidar could not explain why the agency did not follow the guardian ad litem's recommendation in December 2017 that visitation be increased and the unsupervised visitation be re-initiated in order to facilitate reunification other than to say that "there could have been concerns."

{¶ 47} Palidar also testified that she was concerned because Mother wanted to allow the children "to go out into the community alone." This was based on an incident in which Mother had wanted "to let the boys walk to the store." Palidar indicated to Mother that she did not think that it was appropriate for the boys to walk by themselves "due to their developmental delays." Palidar testified that Mother said she "doesn't view the kids as having developmental disabilities" and



“didn’t feel that their delays impacted their ability to be out in the community by themselves.” We do not know the ages of the male children who wanted to walk to the store, the time of the day when they wanted to do so and/or the distance to the store at issue. We have no evidence as to what alleged “developmental delays” exist that allegedly impacted the children’s ability to walk to the store, what child(ren) is/are affected by any such delays and how Palidar is qualified to discuss same.

**{¶ 48}** Although the juvenile court and CCDCFS repeatedly refer to the children as having “special needs” and “developmental delays” — and criticize Mother for failing to acknowledge this fact — these are not children with severe mental or physical disabilities. It is undisputed that Ti.B. has no “special needs” or other developmental issues. Further, only Ta.B. was known to have a low or “borderline” IQ.<sup>9</sup>

**{¶ 49}** When asked to identify the children’s “special needs,” Palidar stated that D.F. has an IEP for “a learning disability,” is in counseling and has behavioral issues that have been “getting worse” since she moved to the group home; that An.B. and Ar.B. have IEPs for “learning disabilities” and see a counselor for adjustment disorder; that D.B. has an IEP for “learning disabilities” and sees a counselor for general anxiety disorder; that Ta.B. has an IEP for “learning disabilities,” sees a counselor and has some “significant behavior problems”; and that a referral had been made for J.F. to early childhood mental health services for evaluation due to

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<sup>9</sup> Palidar testified that some of the other children could have possibly had low IQs but that she did not know whether this was the case. She stated that Ta.B. was the only child with a “significant” IQ issue.

his behavior problems. Although most of the children have IEPs, the purpose of an IEP is to give a child the specialized instruction and accommodation the child needs to be successful in school; it does not mean that a child is incapable of engaging in age-appropriate activities in the community. Palidar stated that all of the children are in regular schools, that all of the children had passed to the next grade and that none of the children had been excluded from any type of extracurricular activities. No other evidence — beyond Palidar’s testimony — was offered at the hearing as to how the children’s “special needs” impacted their ability (or, specifically, the teenagers’ ability) to be “out in the community.”

{¶ 50} Palidar also claimed that Mother failed to properly discipline the children based on (1) an incident involving J.F. in which she informed Mother that J.F., who had just started kindergarten, had been throwing tables, pushing kids down stairs and not listening to his teacher at school and (2) an incident in which one of the boys allegedly hit D.F. in the face. Palidar claimed that Mother’s parenting was deficient because she did not discipline J.F. or talk to J.F. about his negative behaviors at school, other than to state that “he behaves that way because he doesn’t live with me,” and said, “I didn’t see that,” when D.F. told her that one of the boys had hit her in the face rather than disciplining that child or talking to that child about not hitting D.F. Palidar indicated that that was the only incident of which she was aware involving any hitting among the siblings. She testified that none of the children exhibited any significant behavioral issues when they were under Mother’s

supervision. She further testified that no behavioral issues arose when the children returned to their placements after visiting with Mother.

{¶ 51} Beams-Baker became a Beech Brook visitation coach in March 2018. She worked with Mother as a visitation coach for a few weeks in March or April 2018 and then again in June and July 2018. Beams-Baker claimed that Mother did not “make much progress” during the supportive visitation program and did not appear to be fully engaged in the program. Specifically, Beams-Baker was critical of Mother because Mother had failed to complete a form that Beech Brook had requested identifying the specific school each child would be attending during the upcoming school year, transportation information, information regarding the after-school activities the children would be attending and copies of the IEPs for the children. Beams-Baker testified that Mother’s failure to complete the form was a cause for concern because it “doesn’t show her involvement with the school, with the kids going to school.”

{¶ 52} Beams-Baker was also critical of Mother because although Mother had been asked to “branch out” and become “familiar with her community and the neighborhood that she lives in,” Mother did not “follow through” and “made excuses,” such as cancelling a scheduled supervised visit at a nearby library at the last minute in favor of an in-home visit because “her back was hurting.” Beams-Baker also noted that, during visitation, the children were “rarely in the same space together” and claimed that Mother did not seem to understand the importance of

IEP reviews, school meetings and doctor's appointments and the need to be organized with respect to these matters.

**{¶ 53}** These criticisms of Mother's parenting do not support a finding that termination of Mother's parental rights is in the best interest of the children. It cannot reasonably be expected that all nine children would be in the same room all the time during visitation, particularly, where, as here, visitation was during dinner time, from 5:00 p.m. to 7:00 p.m. Beams-Baker acknowledged that, during visitation, the family all ate together and, at times, all watched movies together. At other times, the children were interacting with one another in other rooms of the house. Beams-Baker testified that there no areas of Mother's engagement with the children where she felt there were any concerns and that Mother appropriately managed the children's behaviors during visitation. Although Mother did not complete the form Beech Brook requested (and assuming she had or could have obtained the necessary information, should have done so), Beams-Baker acknowledged that she had had conversations with Mother regarding area schools that might be suitable for the children.

**{¶ 54}** Mother has completed the programming required of her. She has secured suitable housing that will accommodate herself and her nine children — ages 1 through 15. Although questioning her ability to appropriately parent and supervise her children, the agency has allowed her to maintain custody of her two youngest children — ages 1 and 3. The seven children not now in her custody are living in a variety of placements and see each other for only two hours every two

weeks. The issues that social worker Palidar and visitation coach Beams-Baker have raised are akin to a grain of sand in the desert. This family unit, when in Mother's care, is safe, happy and enjoys the company of one another.

**{¶ 55}** The value of having a biological parent who cares for and loves a child cannot be underestimated. Familial bonds are not easily replaced, if ever, and they should not be permanently severed without careful consideration of all of the potential costs. We appreciate that “[a] child’s best interests require permanency and a safe and secure environment,” *In re E.W.*, 8th Dist. Cuyahoga Nos. 100473 and 100474, 2014-Ohio-2534, ¶ 29, and that “[t]o protect the child’s interest,” neither the existence of a biological relationship or a “good relationship” is controlling in and of itself. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 163, citing *In re T.W.*, 8th Dist. Cuyahoga Nos. 86084, 86109 and 86110, 2005-Ohio-6633, ¶ 15. However, preservation of “family unity and blood relationship are vital factors to carefully and fully consider” when determining what is in the best interest of the child. *In re J.F.*, 2018-Ohio-96, 102 N.E.3d 1264, ¶ 65 (8th Dist.). The plan here was always reunification. Mother has done all the work to have her children returned to her. This family should be together.

**{¶ 56}** This is not a case in which the “remedy of last resort” — termination of Mother’s parental rights and granting permanent custody to CCDCFS — has been shown by clear and convincing evidence to be in the best interest of these children.

Accordingly, the juvenile court abused its discretion in granting the agency's motion to modify temporary custody to permanent custody. Mother's assignment of error is sustained.

{¶ 57} Judgment reversed; case remanded for further proceedings consistent with this decision.

It is ordered that appellant recover from appellee the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EILEEN A. GALLAGHER, JUDGE

MICHELLE J. SHEEHAN, J., CONCURS;  
FRANK D. CELEBREZZE, JR., P.J., DISSENTS WITH SEPARATE OPINION

FRANK D. CELEBREZZE, JR., P.J., DISSENTING:

{¶ 58} I respectfully dissent from the majority's disposition of this appeal. After reviewing the record before this court, I cannot find that the juvenile court abused its discretion when it determined that an award of permanent custody to CCDCFS was in the children's best interests.

{¶ 59} I begin by emphasizing that “the best interest determination *focuses on the child[ren], and not the parent.*” (Emphasis added.) *In re K.Z.*, 8th Dist. Cuyahoga No. 107269, 2019-Ohio-707, ¶ 85, citing *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 59. Given the nature of the custody proceedings and the impact that the trial court’s determination will have on the lives of the parents and children involved, the discretion that the juvenile court enjoys in ruling on a permanent custody motion and making a best interest determination should be accorded the utmost respect. *In re Awkal*, 95 Ohio App.3d 309, 316, 642 N.E.2d 424 (8th Dist.1994).

{¶ 60} Regarding the first prong of the R.C. 2151.414 analysis, the trial court determined that the conditions set forth in R.C. 2151.414(B)(1)(d) were satisfied. Regarding all seven children, the trial court found “the children were committed to the pre-dispositional temporary custody of CCDCFS on March 6, 2015, over three and a half years ago” and that “the children were committed to the temporary custody of the [a]gency on May 18, 2015.” Mother does not dispute the trial court’s finding under R.C. 2151.414(B), and the majority concedes that this requirement was met.

{¶ 61} Regarding the best interest of the children, the children’s GAL recommended granting permanent custody to CCDCFS, such that the children could remain in their current placements. The GAL confirmed that all of the children’s needs were being adequately addressed in their respective placements.

**{¶ 62}** The GAL testified that twin boys, An.B. and Ar.B., and D.B. had been together with the same foster family for three years and that the foster family indicated a desire to adopt the three boys. The GAL explained that the boys' foster mother indicated that if she was able to adopt the boys, "she would allow and encourage their continued relationship with their biological family, [Mother] and the rest of their biological family." (Tr. 183.) The GAL asserted that twin girls, Ti.B. and Ta.B., had been together with the same foster family, paternal relatives. J.F. was also placed with a paternal aunt that expressed a desire to adopt him. The children's GAL recommended permanent custody to CCDCFS, concluding permanent custody was in the children's best interests.

**{¶ 63}** Mother's case plan included services for housing, substance abuse treatment, mental health, and parenting. Mother was required to complete a mental health assessment, demonstrate that she could meet the children's basic needs, and successfully complete and benefit from parenting classes.

**{¶ 64}** It is undisputed that Mother participated in case plan services and completed some of the objectives set forth in her case plan. For instance, Mother complied with the housing and mental health objectives, and demonstrated that she was able to provide for the children's basic needs. Mother's efforts and progress on her case plan are undoubtedly commendable.

**{¶ 65}** Mother's compliance with her case plan's housing, substance abuse, and mental health objectives does not, in my view, warrant reversal of the trial court's permanent custody award.



Substantial compliance with a case plan is not dispositive in and of itself on the issue of reunification and does not preclude a grant of permanent custody to a social services agency. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 139. “The issue is not whether the parent has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child’s removal.” *Id.*, quoting *In re McKenzie*, 9th Dist. Wayne No. 95CA0015, 1995 Ohio App. LEXIS 4618 (Oct. 18, 1995).

*In re N.M.*, 8th Dist. Cuyahoga No. 106131, 2018-Ohio-1100, ¶ 35; *see also In re J.H.*, 8th Dist. Cuyahoga No. 105078, 2017-Ohio-7070, ¶ 46 (recognizing that a case plan is not a means to an end, and that “[s]imply because a parent complies with the requirements of his or her case plan does not mean that the parent has sufficiently remedied the conditions that caused the child to be removed from the parent’s custody.”).

{¶ 66} The evidence presented by CCDCFS demonstrated that Mother failed to comply with the case plan’s parenting objective and services that had been in place for her since March 2015. Although Mother completed a supportive visitation program, the evidence presented at the permanent custody hearing indicated that she did not benefit therefrom.

{¶ 67} Aside from the case plan objectives and services, the evidence presented by CCDCFS demonstrated that Mother had not alleviated the cause based upon which the children were initially removed from the home — supervision and parenting.

{¶ 68} The primary issue in this case, and the cause based upon which the children were initially removed from the home, was parenting, particularly Mother’s

ability to supervise the seven children. CCDCFS social worker Linda Yeldell testified that when she received the case in February 2015, “[o]ne of the main concerns was the *supervision* of the kids and mother’s *ability to parent them*.” (Emphasis added.) (Tr. 23.)

{¶ 69} Although Mother had made progress on her case plan and completed the case plan’s housing and mental health objectives, the record reflects that she had not alleviated the supervision and parenting conditions that caused the children’s removal from the home. CCDCFS’ primary concern in early 2015 was Mother’s ability to supervise the seven children, and the agency’s supervision and parenting concerns had not been alleviated more than three years later at the time of the October 2018 permanent custody hearing.<sup>10</sup> Accordingly, the evidence presented by CCDCFS established that Mother continuously and repeatedly failed to substantially remedy the parenting and supervision concerns that originally caused the children to be removed from the home.

{¶ 70} The trial court’s judgment entries granting permanent custody reflect that the trial court focused on Mother’s failure to demonstrate a benefit from the supportive visitation program. Specifically, the trial court concluded that Mother “has failed to demonstrate a benefit [from the supportive visitation program] and remains unable to demonstrate appropriate parenting practices and [is] unable to appropriately supervise the children.”

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<sup>10</sup> CCDCFS was also concerned about Mother’s ability to supervise two other minor children, ages 1 and 3, that were born after the agency filed its complaint and are not involved in the instant appeal. (Tr. 36.)

{¶ 71} By the time of the permanent custody hearing, Mother had more than three years to correct the parenting and supervision conditions that caused the children to be removed in the first place. Despite the services and support CCDCFS provided to Mother, she failed to do so. As noted above, the best interest determination focuses on the children, not on Mother, as the parent, or the progress she made on her case plan. In my view, the children's best interests will be served by permanent placement in a safe and secure environment.

{¶ 72} For all of the foregoing reasons, I would affirm the trial court's judgment granting permanent custody to CCDCFS. The trial court's best interest determination is supported by clear and convincing evidence in the record. I find no basis upon which to conclude that the juvenile court's judgment was unreasonable, arbitrary, or unconscionable, nor any basis upon which to substitute this court's judgment for the judgment of the juvenile court.