

and Family Services (“CCDCFS” or “the agency”) and terminated her parental rights. Upon review, we affirm.

Background

{¶ 2} On July 20, 2018, CCDCFS filed a complaint alleging P.J. was neglected and seeking a disposition of temporary custody. The juvenile court granted predispositional temporary custody of P.J. to CCDCFS. In May 2019, Mother stipulated to an amended complaint and the child was adjudicated neglected. The child was placed in the temporary custody of CCDCFS. On December 31, 2019, CCDCFS filed a motion to modify temporary custody to permanent custody. The case proceeded to trial in October 2020. The testimony and evidence revealed the following facts.

{¶ 3} P.J. is autistic, has cerebral palsy and related developmental delays, has limited verbal ability, and uses a wheelchair. She requires 24-hour supervision and care. At the time of the trial, P.J. had been in the agency’s temporary custody for over 24 months. No paternity was established for P.J. C.A. is the father of Mother’s five other children, and the juvenile court referred to him as P.J.’s stepfather. Another individual was alleged to be P.J.’s father. Mother’s five other children are in the legal custody of their paternal aunt, who is C.A.’s sister. Mother withdrew a prior motion for legal custody of P.J. to C.A.’s sister. Mother asked as an alternative to permanent custody that legal custody be awarded to the child’s current caretaker. The foster mother testified she was not interested in legal

custody, but would be interested in adopting the child if permanent custody were granted.

{¶ 4} There is a history of repeated neglect of P.J. by Mother. P.J. had previously been removed from Mother's care in 2015 upon an adjudication of neglect and was in the temporary custody of CCDCFS for approximately 18 months before being reunified with Mother. P.J. was again removed from the home in 2018 for recurring neglect, including an untreated third-degree burn to the lower part of her back. She also had head lice and her scalp was cracking and bleeding in parts.

{¶ 5} It is uncertain how the burn happened, but the injury occurred while P.J. was under Mother's care. Mother did not seek medical attention immediately. The next day, she sent P.J. to school, where the burn, which was painful and red, was discovered. The injury required ongoing medical treatment.

{¶ 6} Mother did provide her version of what happened, but it was questionable. The social worker testified as follows:

Q. What was her explanation?

A. She said that she was giving the children a bath that evening, the water tank had just been replaced and she was giving the children a bath and she took the younger children out of the bathtub and she took them into the bedroom and laid them on the bed. Within a couple seconds she heard a loud scream, so she ran back to the bathroom and the water had been turned on and Patty's back was facing the faucet and she had been burned by the [scalding] water.

Q. Has that always been her story?

A. Yes.

Q. Has it ever been believed by Children & Family Services?

A. It wasn't in conjunction with the hospital staff when they saw [P.J.].

Q. Was it a productive visit that you had with mom?

A. No.

Q. Why not?

A. Because at that time it was just a lot of blaming. She was very angry.

{¶ 7} Mother also claimed that part of the water system was repaired and it increased the temperature for the hot water. However, there was testimony that the hospital records indicated the burn was not consistent with a water burn. In any event, Mother accepted no responsibility for her neglect or for CCDCFs being involved with the child. The current social worker on the case testified that Mother maintained CCDCFs had "lied on her" about the incident.

{¶ 8} Mother was compliant with case plan services. She completed individual counseling, engaged in ongoing services for psychotherapy and for anger management, previously completed domestic violence classes, and completed a substance-abuse assessment and was not recommended for further treatment. Mother also furnished the home and made renovations to improve the home. Mother had virtual-visitation with P.J. because of the pandemic.

{¶ 9} Although Mother substantially complied with case plan services, concerns remained. The social worker did not believe Mother benefited from case plan services. The social worker visited Mother's home and was not allowed into the home at some visits. At two of the visits, C.A. was present. Mother had a history of domestic violence with him. The social worker conceded that Mother was making

efforts to make the house suitable, but safety concerns remained for the bathroom and the lack of ramps to the home. The social worker believed that Mother's anger management remained an issue and believed Mother had not benefited from counseling services. She explained "since I've met [Mother] she's been angry with everything that's happened concerning this case and that's been her focus. * * * It is understandable that someone would be angry, but how you deal with that anger is what's concerning * * *." The social worker further expressed "the multitude of care that [P.J.] needs just leads me to believe that there might be trouble in that care being maintained." It also appeared that Mother's employment had ceased, albeit this was during the COVID-19 pandemic. The social worker expressed concern for [P.J.'s] safety and well-being if returned to Mother's care. The social worker acknowledged that Mother was going through the steps of completing her case plan, but the social worker stated she was "not seeing the results of that changed behavior due to the steps taken in the case plan." Therefore, concerns remained for repeated neglect with regard to the special needs of the child. It was apparent that Mother loves the child, but the social worker believed her "other frustrations cloud that."

{¶ 10} The foster mother has a specialized foster home that deals with kids with special needs, disabilities, or behavioral issues. There were six children in the foster home and the foster mother's adult children helped with the younger children. The foster mother has extensive experience with individuals with special needs and developmental disabilities. P.J. previously was in the foster home in 2015-2016. P.J. was again placed in the foster home in 2018 and has remained in the foster

home throughout the pendency of this case. P.J. receives occupational therapy, speech therapy, and physical therapy, and she is in a special school. P.J. is familiar with the foster home, gets along well with others in the home, and is doing very well in the foster mother's care. All of her safety and basic needs are being met. P.J. was described as "[a] cheerful, loving, happy 13-year-old."

{¶ 11} The child's guardian ad litem ("GAL") testified that P.J. was "a changed person since going to the foster home" and noted the positive changes he had observed in her behavior. He testified that Mother accepted no responsibility for what happened and had an attitude of "[t]here's almost an everyone is against me, this is a conspiracy, the Agency must be defeated." He testified that Mother attempted to have him removed from the case. He had concerns about what Mother had learned from case plan compliance, noting there still appeared to be anger management issues and she did not accept any responsibility. The GAL also expressed concern for the continued presence of C.A., with whom he had grave concerns regarding his volatile behavior and the history of domestic violence. There were reports of him being violent with the children, including a report of him whipping P.J. with a belt. The burn to P.J. occurred the same day that the GAL had conducted a home visit in the morning, during which he observed anger in C.A. The GAL did not believe Mother was willing to make the changes necessary to ensure a better future for herself and her children.

{¶ 12} The GAL recommended an award of permanent custody to CCDCFS. He explained that his recommendation was "due to the level of care [P.J.] needs, the

ability of [her caregiver] to provide for those needs and the concerns I still have about the family from which she was removed.” He also expressed that the child deserved permanency and he believed the remainder of her childhood should be “as stable and safe and happy as possible” and he believed “she has that with [the foster mother].” The GAL indicated that P.J. is incapable of expressing herself sufficiently to voice an opinion on the proceedings.

{¶ 13} On October 28, 2020, the juvenile court issued a decision granting permanent custody to CCDCFS and terminating all parental rights. The juvenile court set forth detailed findings of material fact that are consistent with the record, made the relevant considerations and found a number of factors to exist, and determined an award of permanent custody to CCDCFS was in the best interest of the child. Mother timely filed this appeal.

Law and Analysis

{¶ 14} Mother raises two assignments of error for our review. Mother claims the juvenile court’s decision to deny Mother’s request for legal custody and to grant CCDCFS’s motion for permanent custody was against the manifest weight of the evidence. Mother also claims CCDCFS failed to meet its burden under R.C. 2151.414.

{¶ 15} It is well recognized that “[t]he right to parent one’s child is a fundamental right.” *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 28, citing *Troxel v. Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000); *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997). However, the government has broad authority to intervene to protect a child from abuse and

neglect. *In re C.F.* at ¶ 28, citing R.C. 2151.01. “Overall, Ohio’s child-welfare laws are designed to care for and protect children, ‘whenever possible, in a family environment, separating the child from the child’s parents only when necessary for the child’s welfare or in the interests of public safety.’” *Id.* at ¶ 29, quoting R.C. 2151.01(A). Ultimately, the natural rights of a parent are always subject to the ultimate welfare of the child, which is the controlling principle to be observed. *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, ¶ 20, citing *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979). Because of the fundamental interests involved, the authority to terminate parental rights is carefully circumscribed by statute in Ohio. *See In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 41-42.

{¶ 16} In this case, CCDCFS filed a motion for permanent custody pursuant to R.C. 2151.413. Pursuant to R.C. 2151.414(B), permanent custody of a child may be awarded to a children services agency if the court finds, by clear and convincing evidence, that (1) it is in the best interest of the child to grant permanent custody of the child to the agency, and (2) any of the grounds listed in R.C. 2151.414(B)(1)(a)-(e) apply. This court will not reverse a juvenile court’s award of permanent custody as being against the manifest weight of the evidence when the record contains competent, credible evidence by which the court could have found that the essential statutory elements for an award of permanent custody have been established. *In re E.M.B.T.*, 8th Dist. Cuyahoga No. 109479, 2020-Ohio-4308, ¶ 20, citing *In re B.P.*, 8th Dist. Cuyahoga Nos. 107732 and 107735, 2019-Ohio-2919, ¶ 22.

{¶ 17} The juvenile court found “the allegations of CCDCFS’s motion for permanent custody had been proven by clear and convincing evidence.” The court specifically found that the condition under R.C. 2151.414(B)(1)(d) was met when it determined that “[t]he child has been in temporary custody of a public children services agency or private child placing agency for twelve or more months of a consecutive twenty-two-month period.” This finding, which is not disputed by the parties, is supported by the record. Permanent custody may be granted to an agency where R.C. 2151.414(B)(1)(d) is met and permanent custody is in the best interest of the child. *In re N.M.P.*, 160 Ohio St.3d 472, 2020-Ohio-1458, 159 N.E.3d 241, ¶ 22. Although no further grounds were required under R.C. 2151.414(B)(1), the juvenile court additionally found that the child “cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent,” and the court made findings in relation to R.C. 2151.414(E), which we find are supported by competent, credible evidence in the record.

{¶ 18} Next, the juvenile court weighed all relevant best-interest factors set forth under R.C. 2151.414(D)(1), and the court also found the factors under R.C. 2151.414(D)(2) applied. Under subsection (D)(1), in determining the best interest of a child in a permanent-custody hearing a juvenile court is to consider all relevant factors, including, but not limited to, the factors specifically listed under that subsection. Under subsection (D)(2), a court is required to grant permanent custody to the agency if it finds all of the factors set forth thereunder apply.

{¶ 19} In conducting a best-interest analysis under R.C. 2151.414(D)(1), “[t]he court must consider all of the elements in R.C. 2151.414(D) as well as other relevant factors. There is not one element that is given greater weight than the others pursuant to the statute.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Moreover, “[R.C. 2151.414(D)(1)] requires a weighing of all the relevant factors * * * [and] requires the court to find the best option for the child * * *.” *Id.* at ¶ 64. “Although family unity is an important factor to consider, the paramount consideration is the best interest of the child.” *In re E.M.B.T.*, 8th Dist. Cuyahoga No. 109479, 2020-Ohio-4308, at ¶ 32, quoting *In re J.S.*, 8th Dist. Cuyahoga No. 108406, 2019-Ohio-4467, ¶ 14. As this court has repeatedly explained, “[a] child’s best interests require permanency and a safe and secure environment.” *In re A.R.*, 8th Dist. Cuyahoga No. 103450, 2016-Ohio-1229, ¶ 22, quoting *In re Holyak*, 8th Dist. Cuyahoga No. 78890, 2001 Ohio App. LEXIS 3105 (July 12, 2001).

{¶ 20} In this case, in determining whether a grant of permanent custody to CCDCFS was in the best interest of P.J., the juvenile court considered the relevant factors under R.C. 2151.414(D)(1), which were listed in the juvenile court’s decision. The juvenile court’s review of the material facts further demonstrates all relevant factors were considered. The juvenile court addressed the child’s interactions and interrelations with Mother, the foster mother, and others. The juvenile court recognized that P.J. is not able to express her feelings about placement. The juvenile court considered the testimony of the social worker, who did not believe Mother

benefited from case plan services, and the GAL, who recommended that permanent custody be given to CCDCFS. The juvenile court reviewed the custodial history of the child, and recognized the child had been in temporary custody for 12 or more months of a consecutive 22-month period. The juvenile court considered P.J.'s need for safety and a legally secure permanent placement.

{¶ 21} The juvenile court also considered other relevant factors. The juvenile court recognized that Mother participated in case plan services, made improvements to her home, had appropriate visitation, and took positive steps toward reunification. However, valid concerns remained. The juvenile court found that Mother offered an illogical explanation for P.J.'s injury, and at a minimum she was neglectful for leaving P.J. alone in a bathtub knowing that the water system had been repaired and caused the water to be scalding hot. Additionally, Mother did not seek medical attention for P.J. with regard to the burn or provide any treatment for her head lice. The testimony reflected Mother's ongoing anger issues and her failure to accept responsibility for her neglect. The juvenile court also was troubled by the fact that Mother, who completed a domestic violence program and claimed to have ended her relationship with C.A., was still in contact with him and allowed him to come to her home. The court recognized the potential for harm to P.J. Also, Mother had failed to install a secure apparatus in the bathroom to prevent a similar or worse injury from occurring to P.J. The juvenile court recognized how well P.J. was doing in her foster home, the need for P.J. to receive proper care as she grows older, and the foster mother's ability to provide the proper care and needed permanency.

{¶ 22} The juvenile court determined CCDCFS “has made reasonable efforts to finalize the permanency plan for the child. These efforts were completion of case plan services of individual counseling, Psycho Therapy, Domestic Violence, counseling, basic needs and appropriate housing.” However, the juvenile court found that “the child’s continued residence or return to the home of [Mother] will be contrary to the child’s best interest,” and that “Mother failed to benefit from those case plan services.” Insofar as Mother claims that legal custody should have been awarded, “[R.C. 2151.414(B)] does not make the availability of a placement that would not require a termination of parental rights an all-controlling factor. The statute does not even require the court to weigh that factor more heavily than other factors.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, at ¶ 64. Additionally, there was no alternative caregiver available to be considered for legal custody of the child.

{¶ 23} After considering all relevant factors pursuant to R.C. 2151.414(D)(1), the juvenile court determined by clear and convincing evidence that “a grant of permanent custody is in the best interests of the child[.]” Our review reflects that this determination was supported by competent, credible evidence in the record.

{¶ 24} Additionally, the juvenile court found all of the factors under R.C. 2151.414(D)(2)(a)-(d) applied in this case. When all those factors apply, R.C. 2151.414(D)(2) necessitates a determination that “permanent custody is in the best interest of the child” and requires that the court “shall commit the child to the

permanent custody of a public children services agency * * *.” The juvenile court found as follows:

The Court further finds that the child has been in the agency’s custody for two years and no longer qualifies for temporary custody pursuant to division (b) of section 2151.415 of the Revised Code;

That one or more of the factors in division (E) of section 2151.414 of the Revised Code exist and the child cannot be placed with one of the child’s parents within a reasonable period of time or should not be placed with either parent;

The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code and that prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in a motion for legal custody of the child[.]

{¶ 25} The juvenile court included explicit findings under R.C. 2151.414(E) and determined by clear and convincing evidence that “the child cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent.” Specifically, the juvenile court found as follows:

Following the placement of the child outside the child’s home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home.

The parent has repeatedly withheld medical treatment from the child when the parent has the means to provide the treatment.

The parent has committed abuse against the child or caused or allowed the child to suffer neglect and the Court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child’s placement with the child’s parent a threat to the child’s safety.

{¶ 26} Our review reflects that all of the juvenile court's findings were supported by competent, credible evidence in the record. Because all the factors under R.C. 2151.414(D)(2) apply, permanent custody was necessarily in the best interest of the child and the juvenile court was required to grant permanent custody to CCDCFS.

Conclusion

{¶ 27} Upon review, we conclude the record contains competent, credible evidence from which the court could have found the essential statutory elements for an award of permanent custody were established, and the juvenile court's decision to grant permanent custody to CCDCFS and the termination of Mother's parental rights is not against the manifest weight of the evidence. We overrule both assignments of error.

{¶ 28} Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court, 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
EMANUELLA D. GROVES, J., CONCUR