

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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| IN RE A.S. | : | |
| | : | Nos. 110422 and 110472 |
| Minor Child | : | |
| | : | |
| [Appeal by Mother S.S. and Father A.S.] | : | |

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 28, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-18914897

Appearances:

Edward F. Borkowski, Jr., *for appellant* S.S.; Christopher R. Fortunato, *for appellant* A.S.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Joseph C. Young, Assistant Prosecuting Attorney, *for appellee*.

MARY J. BOYLE, A.J.:

{¶ 1} Mother-appellant and Father-appellant individually appeal the juvenile court's decision to grant permanent custody of A.S. to the Cuyahoga County Division of Children and Family Services ("CCDCFS"). Mother also

challenges the trial court's denial of her motion for legal custody. Finding no merit to the appeals, we affirm.

{¶ 2} A.S. was born on September 18, 2018. Shortly after the child's birth, the family was referred to CCDCFS as the result of concerns over Mother's mental health; Mother had attempted suicide while pregnant with the child. In December 2018, the agency filed a complaint alleging that A.S. was neglected and dependent and requested temporary custody. The agency developed a case plan for both Mother and Father. A.S. has severe medical and dietary issues and was placed with a foster family when he was four months old.

{¶ 3} In November 2019, the agency moved to modify temporary custody to permanent custody, and the matter proceeded to a hearing on the agency's motion.

{¶ 4} CCDCFS social worker Mary Blue ("Blue") was the first social worker assigned to the case and was assigned to the family from January 2019 until December 2020. Blue testified that the agency developed separate case plans for Mother and Father that included substance abuse, mental health, domestic violence, parenting, and anger management.

{¶ 5} Blue testified that Mother received assistance for housing and remained involved with a local social services agency to maintain that housing and assistance with transportation. According to Blue, Mother had a history of psychiatric hospitalizations and had previously attempted suicide, both when she was pregnant with A.S. and after he was removed from her care. Blue testified that

Mother initially refused to comply with recommended mental health services and was noncompliant in taking her prescribed medication. When Blue confronted Mother about her medication, Mother admitted she was not taking her medication and stated that she did not like the way the medication made her feel. Mother began to take her medication in the fall of 2020 and Blue saw an immediate improvement in Mother's mental health.

{¶ 6} The agency referred Mother to two agencies to complete the domestic violence component of her case plan. The first agency told Mother she could not return because Mother attended the class with her current boyfriend and the staff relayed that they felt unsafe. Mother was unable to complete the program at the second agency "due to her outbursts and behavior toward staff." Blue testified that she "gave [Mother] additional information about another [domestic violence] class in Cleveland and she ripped that up and tore it up. She said she wasn't going." With regard to the last referral, "she ripped [that] up in a staffing and threw the paper at me and security had to take her out."

{¶ 7} As part of her case plan, Mother was ordered to submit to random drug screens, but only took "two or three" out of the 12 ordered tests. The tests Mother did take came back negative but the agency continued to order tests because Mother self-reported that she smoked marijuana.

{¶ 8} Mother gave birth to another child while A.S. was in agency custody. A.S.'s half-sibling was also placed in agency custody, but with a different foster family. According to Blue, Mother "continued to be involved in domestic violent

relationships,” including her most recent relationship that was with a registered sex offender, who was currently in prison. The agency was also concerned that Mother was unable to provide appropriate care for A.S., noting that “[w]e talked to her about the special foods that [A.S.] has to have and in spite of knowing that, she’s still gonna bring what she wanted to bring [to visits] and she knew she was putting him at risk.” For example, on A.S.’s birthday, Mother “brought two big cupcakes, two cakes, and in the cakes was ingredients that would send [A.S.] straight to the hospital.”

{¶ 9} After an incident occurred between Mother and Father at a visit with A.S., Mother and Father were no longer allowed to visit A.S. together. At subsequent visits, Mother would lay on the floor with the child and fall asleep. According to Blue, Mother fell asleep at every visit, even though A.S. remained awake. Although Mother was happy to see A.S. during visits and A.S. would engage with Mother, “after about 60 minutes [he] was on his own” and Blue had to ensure the young child’s safety.

{¶ 10} Mother completed a parenting class, but, according to Blue, Mother was unable to demonstrate that she benefitted from the program. Mother was also unemployed, had no known source of income, and was unable to meet the child’s basic needs.

{¶ 11} Blue testified that Father was referred to two different programs for domestic-violence services while Blue had the case, and although he attended some classes, he did not complete a program. Father completed an assessment for the

mental-health portion of his case plan. He was prescribed medication that he took as directed. Blue testified that Father was referred for substance abuse services, and while he engaged in the program, his “cognitive ability impacted his ability to understand what was requested of him” and he failed to complete the program while she was assigned to the case. Father also did not submit to court-ordered drug screens.

{¶ 12} Father began a parenting program but failed to consistently attend and or complete the program. Blue testified that Father “has difficulty in being consistent and [A.S.’s] medical condition if not [taken] care of could be fatal.” Blue related an incident that had occurred during a visit where A.S. “was struggling to breathe” and that Father “had no indication something was wrong. He continued to talk on his phone. I had to immediately go get staff, call 911, call foster dad and get the child out of there to the hospital.”

{¶ 13} At the time the case was transferred out of her unit, Blue remained concerned over Father’s “cognitive ability to provide the special needs services for [A.S.] in that [Father] struggles with retaining information and following through guidelines on how to keep [A.S.] safe. * * * Definitely more than anything it would be [the child]’s health and [Father’s] ability to make sure [A.S.] has the proper food.”

{¶ 14} Blue testified that when Father visited A.S., he would call numerous relatives on his phone to talk to A.S., and “would also leave his visits quite fast. He never stayed the whole time, and he couldn’t really engage with [A.S.]” Blue

indicated that there “really wasn’t a bond” between Father and A.S., that Father seemed “always ready to go. Like he could not stay even 30 minutes, sometimes 45 minutes.” Blue described one incident that occurred during visitation in 2019 where Father left the building with the Mother’s boyfriend to smoke marijuana directly “in front of [the agency] building.”

{¶ 15} Blue testified that she did not believe the child could be reunified with Mother or Father based on A.S.’s “significant” medical needs “that could be fatal if not treated quickly.” Blue further testified that despite agency efforts, no family members of either Mother or Father could be located that were able to take custody of the child.

{¶ 16} Dr. Lynn Williams (“Dr. Williams”), a forensic psychologist with the Cuyahoga County Juvenile Court, testified that she conducted psychological evaluations on both Mother and Father. Her evaluations focused on Mother and Father’s “mental health status, cognitive issues, possible substance abuse issues.”

{¶ 17} Dr. Williams testified that Mother had been diagnosed with “attention deficit hyperactivity disorder, oppositional defiant disorder, bipolar disorder, mood disorder[], schizoaffective, and intellectual disability.” Mother was not compliant with medication, had past psychiatric hospitalizations, and reported “previous episodes of suicidal ideation or overtures.” Dr. Williams testified that Mother’s “full-scale IQ was 61 and verbal comprehension and perceptual reasoning were similarly low.”

{¶ 18} Dr. Williams testified that Mother reported that she had been “homeless on and off throughout her life,” with limited family support, has issues with transportation to services and visitation, and she “lives alone and relies on her caseworker and case managers for support.” According to Dr. Williams, Mother currently lived in a one-bedroom apartment at the YWCA and her housing and utilities were paid for by a social-services agency. Mother indicated that she was in a relationship with her other child’s father, who is a registered sex offender and was incarcerated, and that Mother planned to reunite with this man upon his release from prison. Mother also acknowledged she had been in previous violent relationships. Further, according to Dr. Williams, “[b]ecause of the history of domestic violence disputes between [Mother] and [Father] this evaluation supports restrictions that have already been put in place such as the no-contact order between [Mother] and [Father] and separate visitations.” Dr. Williams opined that Mother “[h]as had great difficulty managing basic expectations related to her case plan such as attending required appointments and being able to communicate effectively with some professionals.”

{¶ 19} In relation to A.S.’s specific medical needs, Dr. Williams testified that Mother “appears to understand some of the child’s specialized diet needs, but due to her cognitive limitations may have difficulty retaining all of the requirements related to all the specifications of the extensive diet and precautions and may need frequent reminders.” Dr. Williams concluded that Mother’s “cognitive deficits, explosive behaviors and inconsistent compliance * * * suggests that [Mother] would

have great difficulty interacting, [caring] for and managing a child with special medical needs.”

{¶ 20} As to Father, Dr. Williams testified that Father had been diagnosed with attention deficit hyperactivity disorder, oppositional defiant disorder, mild cannabis use, an unspecified intellectual disability, intellectual developmental disorder, and major depressive disorder. During their interview, Father was often on his phone and distracted.

{¶ 21} Father initially told Dr. Williams that the child “has learning issues and uses sign language.” When Dr. Williams asked Father what medical problems his child has, Father said he “forgot,” and only after specific prompting did Father state that A.S. had a “seafood allergy” and “asthma.” Dr. Williams testified that when she asked Father what type of treatment and precautions his son needed for these conditions, Father said the child needed to avoid seafood, even though records document A.S.’s extensive allergies to smoke and “relating the importance of Father refraining from smoking or wearing clothes with the smoke smell during visitations with his son” as well as the child’s allergies “to a whole host of foods including dairy and types of meat” for which the child “needs a highly specialized diet.” In relation to Father’s visits with the child, Father admitted to falling asleep at one visit. When asked what he learned at the medical visits to help care for his son’s medical issues, Father relayed that he should not be on his phone or fall asleep.

{¶ 22} Dr. Williams testified that “[a]t the end of the interview, despite this examiner discussing his child’s breathing issue, severe allergy to smoke and court-ordered restrictions related to visitation, [Father] was asked what he needed to do to help his son’s medical needs if in his care, and he said, not give him seafood.”

{¶ 23} Father acknowledged that he had been discharged from a substance abuse program in 2019 “because he tested positive for marijuana and alcohol” and records indicated that Father “was discharged due to difficulties in adjusting to a group setting, unable to understand the seriousness of his substance use, and would frequently be on his phone and did not want to stay for the required time for the class.” Dr. Williams noted that Father “was in the parenting classes, but he couldn’t elaborate on his learnings so it was unclear how much he retained, and that he has significant cognitive delays so it might be hard for him to understand the extent of the child’s medical issues and comport his behavior[.]”

{¶ 24} Dr. Williams testified that both Mother and Father fell within the lowest two percent of the population for their IQ scores, and that this ranking would not change even if they were able to complete their case-plan services. Dr. Williams concluded that Mother’s “cognitive deficits, explosive behaviors and inconsistent compliance * * * suggests that [Mother] would have great difficulty interacting, car[ing] for and managing a child with special medical needs.” As to Father, Dr. Williams concluded that Father’s “cognitive deficits along with the lack of compliance * * * suggests that [he] would have great difficulty interacting, caring for, managing a child with special medical needs.”

{¶ 25} Ohio Guidestone psychotherapist and counselor Halle Kish (“Kish”) testified that she had been working for a little over a year with A.S. to address his behaviors and trauma. Kish performed a diagnostic evaluation of A.S. and testified that A.S. has all of the symptoms of post-traumatic stress disorder. Kish testified that A.S. “really struggles with emotional regulation” and that after visits with Mother or Father A.S. has “a lot of night terrors, aggression, * * * and he has a difficult time with transitions.” Kish acknowledged during cross-examination that the child “was having some behavior issues and [she was] helping him address these behavior concerns that include insomnia and some aggressive behaviors that are related to his diagnoses[.]”

{¶ 26} A.S.’s foster mother testified that she has cared for A.S. since he was four months old. A.S. lives in her home with her husband and two biological children and is “just like a part of our family unit.” A.S. has a strong bond to her two children; he is just six months older than the foster mother’s son and the two boys share a bedroom and go to daycare together. The foster mother described A.S.’s various special needs, explaining that A.S. has

significant food allergies. He is allergic to all dairy including casein, whey, and lactose. He’s also allergic to soy. He’s allergic to eggs, both raw and cooked or baked into things, including the yolks and the whites. He’s allergic to peanuts, [tree nuts], including coconut, finfish and shellfish. He also has sensory processing challenges which require him to have a really, what they call at therapy, a balanced diet, a sensory diet, so we do a variety of different techniques to help him basically find his body and space. And then he has some mental health challenges that we work through with his therapist from Ohio Guidestone.

{¶ 27} The foster mother explained that A.S. suffers from asthma, and is severely allergic to cigarette smoke and allergic to trees, weed, grass, and other environmental allergens. She explained the extensive precautions she has to take and treatments she provides to A.S. to manage his medical conditions and extensive food allergies. According to the foster mother, A.S. has a pulmonologist, an allergist, a pediatrician, and multiple therapists. The foster mother also elaborated on A.S.'s sensory processing disorder, explaining that the child "has a lot of trouble finding his body and space. He has trouble with impulse control." The foster mother testified to breathing issues the child has had that have been exacerbated during in-person visits with Mother and Father due to their smelling like smoke. In 2019, when the child was twice hospitalized with breathing issues, Mother and Father had to wear gowns and masks while visiting the child due to their smelling strongly of smoke, after which A.S.'s doctor advised that A.S. "not be close to anybody who had cigarette smoke on them or marijuana smoke because it would exacerbate his reactive airway[.]" According to the foster mother, visitation was restricted between the child and his parents after this incident.

{¶ 28} In April 2020, in-person visits were halted due to the COVID-19 pandemic. Father was provided with a phone number so that he could contact foster mother to arrange for video visits with A.S., but did not contact the foster mother until August 2020. Beginning in August 2020, Father had weekly video visits with the child. According to the foster mother, Mother has been less

consistent in maintaining video visits, going as long as six to seven weeks without appearing for virtual visits.

{¶ 29} Foster mother testified to some negative behaviors that the child exhibited after in-person visits with Mother and Father, including aggression, sleep issues, and regressions in his eating habits. Foster mother testified she did not see the same issues when the child's visits were virtual.

{¶ 30} Foster mother testified that Father attended a well-check medical appointment for the child, and attended some of the child's occupational therapy sessions. Foster mother observed that during the sessions Father was "on his phone a lot and taking video calls and being somewhat distracting," that foster mother observed "wasn't productive and we were losing ground in the work we were doing [with A.S.]." According to foster mother, Mother never attended the child's appointments.¹

{¶ 31} CCDCFS worker Jessica Sanchez ("Sanchez") testified that she was assigned to the case in January 2021. Sanchez asked Mother to submit to drug screens after noticing that Mother did not have a recent screen but Mother failed to do so. Sanchez indicated that she had received verbal notification that Mother was engaging in mental-health services, but was unable to verify compliance because Mother did not provide a signed release. Sanchez testified that, as of the time of trial, Mother had still not completed a domestic-violence class. Sanchez testified

¹Blue testified that at one point the agency told Mother she could no longer attend A.S.'s appointments due to Mother's inability to control her outbursts.

that she did not feel the child could be reunified with Mother “based on case plan services and the home environment.” According to Sanchez, Mother was still involved with a boyfriend who was violent towards her; therefore, “it doesn’t seem like [Mother] has benefited much from those past [domestic violence] referrals or services * * *.”

{¶ 32} Sanchez testified that due to the COVID-19 pandemic there had been only one in-person visit between Mother and A.S. in 2021. During that visit, the child was very reserved and “it was 45 minutes into the visit until the child had actually sat on [Mother’s] lap” and that “it appeared that the child was slightly not comfortable in the setting.” Father visited with A.S. on the same day, during which it took a while for Father to engage with A.S.; instead he talked on his phone.

{¶ 33} Sanchez testified that Father completed the domestic-violence portion of his case plan.

{¶ 34} The child’s guardian ad litem (“GAL”) filed a written report with the court prior to the hearing and supplemented his recommendation at the hearing. In both the report and at the hearing, the GAL recommended that the child be placed in the permanent custody of CCDCFS. The GAL detailed in his written report the concerns he had with Mother and Father, noting they each had persisting issues that remained barriers to placement of A.S. with either of them, and that neither Mother nor Father had sufficiently engaged in services to demonstrate the ability to provide for the child’s needs. The GAL noted at the conclusion of trial that “after listening to Dr. Williams’ testimony regarding the psychological evaluations

of both parents, [I have even more concerns] regarding [A.S.'s] safety should he be reunified with either of the parents at this time.” The GAL concluded, “I think putting him at home * * * would put him at great risk including the possibility that it could be a fatal decision.”

{¶ 35} The trial court subsequently granted the agency’s motion for permanent custody and denied Mother and Father’s motions for legal custody.

{¶ 36} Mother and Father filed separate notices of appeal. *See In re A.S.*, 8th Dist. Cuyahoga No. 110472 (Father’s appeal). Sua sponte, this court consolidated the appeals for review and disposition.

Mother’s Assignments of Error

- I. The Trial Court Abused its Discretion by Granting Permanent Custody of Appellant’s Children [sic] to CCDCFS against the Manifest Weight of the Evidence.
- II. The Trial Court Abused its Discretion by Denying Appellant’s Motion for Legal Custody.

Father’s Assignment of Error

- I. The Trial Court Abused its Discretion by Granting Permanent Custody of the Appellant’s Child to the Appellee Cuyahoga County Department of Children and Family Services.

Permanent Custody Determination

{¶ 37} In Mother’s first assignment of error and Father’s sole assignment of error, Mother and Father argue that the trial court erred in granting permanent custody of A.S. to CCDDFS.

{¶ 38} In addressing this assignment of error, we initially note that a parent has a “fundamental liberty interest” in the care, custody, and management of his or her child and an “essential” and “basic civil right” to raise his or her child. *In re Murray*, 52 Ohio St.3d 155, 156, 556 N.E.2d 1169 (1990). A parent’s right is not absolute, however. “The natural rights of a parent are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.” *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979).

{¶ 39} In a permanent custody case, “the ultimate question for a reviewing court is whether the juvenile court’s findings are supported by clear and convincing evidence.” *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 43. This is because a juvenile court’s decision to grant permanent custody will not be reversed as being against the manifest weight of the evidence “if the record contains some competent, credible evidence from which the court could have found that the essential statutory elements for permanent custody had been established by clear and convincing evidence.” *In re A.P.*, 8th Dist. Cuyahoga No. 104130, 2016-Ohio-5849, ¶ 16.

{¶ 40} R.C. 2151.414 sets out specific findings a juvenile court must make before granting an agency’s motion for permanent custody of a child. *In re A.M.*, Slip Opinion No. 2020-Ohio-5102, ¶ 18, citing *In re C.F.*, 113 Ohio St.3d 73, 2007-

Ohio-1104, 862 N.E.2d 816, ¶ 22. As is relevant here, the juvenile court must find by clear and convincing evidence (1) that one or more of the conditions in R.C. 2151.414(B)(1)(a) through (e) applies and (2) that a grant of permanent custody is in the child's best interest. R.C. 2151.414(B)(1). This court will not overturn a decision by the trial court to grant permanent custody so long as there is competent, credible evidence in the record to support the trial court's finding, by clear and convincing evidence, that the statutory factors in R.C. 2151.414 have been met.

{¶ 41} Here, the trial court made a finding under R.C. 2151.414(B)(1)(d) that the child had been in the temporary custody of one or more public children- services agencies or private child-placing agencies for 12 or more months of a consecutive 22-month period. Neither Mother nor Father challenge the juvenile court's determination pursuant to R.C. 2151.414(B)(1)(d) that A.S. had been in the temporary custody of one or more public children-services agencies or private-child placing agencies for 12 or more months of a consecutive 22-month period. We are therefore concerned only with the juvenile court's determination that a grant of permanent custody to CCDCFS was in A.S.'s best interest.

{¶ 42} The court expressed that it considered the relevant factors set forth under R.C. 2151.414(D)(1) and (D)(2) when assessing A.S.'s best interest. Father contends that the juvenile court erred when it found that granting permanent custody of A.S. was in his best interest under R.C. 2151.414(D)(1). We do not need to determine if the trial court correctly applied the R.C. 2151.414(D)(1) factors, however, because the trial court also found that it was in A.S.'s best interest to be

placed in the permanent custody of the agency under R.C. 2151.414(D)(2). A finding under section (D)(2) of R.C. 2151.414 mandates that the trial court find it is in a child's best interest to be placed in the agency's permanent custody. *In re G.A.*, 8th Dist. Cuyahoga No. 108932, 2020-Ohio-2949, ¶ 59.

{¶ 43} R.C. 2151.414(D)(2) states:

If all of the following apply, permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency:

(a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist 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.

(b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.

(c) 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.

(d) 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.

{¶ 44} Under R.C. 2151.414(D)(2), if the juvenile court makes the four enumerated findings, permanent custody is per se in the child's best interest and the court "shall" commit the child to the permanent custody of the agency. *In re G.A.* at ¶ 61, citing *In re J.R.*, 10th Dist. Franklin No. 17AP-698, 2018-Ohio-1474, ¶ 41.

{¶ 45} To ascertain whether R.C. 2151.414(D)(2)(a) applies, we must look to R.C. 2151.414(E) because determining “that a child cannot be placed with the parents within a reasonable time or should not be placed with them, the court must find, by clear and convincing evidence, that at least one of the factors in R.C. 2151.414(E)(1)-(16) is present.” *In re G.A.* at ¶ 62, citing *In re S.C.*, 8th Dist. Cuyahoga No. 108036, 2019-Ohio-3664, citing *In re S.W.*, 11th Dist. Ashtabula No. 2017-A-0089, 2018-Ohio-1672. Here, the juvenile court made findings with respect to Mother and Father under R.C. 2151.414(E)(1), (2), (4) and (16). It is these findings that Mother challenges, arguing that the record does not support the trial court’s findings.

{¶ 46} The court found pursuant to R.C. 2151.414(E)(1) that Mother and Father failed to substantially remedy the conditions causing the child to be placed outside the home; pursuant to R.C. 2151.414(E)(2) that Mother and Father’s chronic mental illness, emotional illness, and intellectual disability is so severe that they are unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court held the permanent-custody hearing; pursuant to R.C. 2151.414(E)(4) that Mother and Father demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with him when able to do so; and, under R.C. 2151.414(E)(16) “any other factor the court deems relevant,” the court found that Mother and Father have failed to take an interest to properly educate themselves on the child’s severe medical needs.

{¶ 47} CCDCFS presented evidence in this case that Mother and Father were unable to successfully complete multiple components of their case plans, are hindered by their intellectual disabilities and, in Mother's case, by her mental illness and limited compliance with medication and mental health services, and in Father's case, by his substance abuse. The agency presented evidence that both Mother and Father failed to regularly visit with the child and that when they visited or attended his medical or therapy appointments, Mother and Father often behaved inappropriately. Finally, the agency presented ample evidence that Mother and Father did not or were unable to properly educate themselves on A.S.'s severe medical and dietary needs. Thus, we find that the record clearly and convincingly supports the trial court's findings.

{¶ 48} Further, R.C. 2151.414(D)(2)(b), (c), and (d) also apply. A.S. had been in the agency's custody more than two years and no longer qualified for temporary custody. The child did not meet the requirements for a planned permanent living arrangement (to do so, a child must be at least 16 years old) and the agency was unable to identify any relatives who could take legal custody of him. Therefore, no matter the juvenile court's best-interest findings under R.C. 2151.414(D)(1), section (D)(2) mandates that permanent custody was in A.S.'s best interest and that the court "shall commit the child to the permanent custody of a public children services agency or private child placing agency[.]" *See In Re G.A.* at ¶ 68.

{¶ 49} Briefly addressing, however, Father’s arguments with respect to the court’s best-interest findings pursuant to R.C. 2151.414(D)(1), the court found that A.S. has a bond with Mother, but not with Father, and was bonded with foster parents and foster siblings (R.C. 2151.414(D)(1)(a)); A.S. is too young to express his wishes and the GAL recommended permanent custody (R.C. 2151.414(D)(1)(b)); A.S. has been in agency custody for over two years (R.C. 2151.414(D)(1)(c)); and, A.S. deserves a safe, stable, and consistent environment where his basic needs and medical needs are met and he can thrive; the parents have failed to engage in, complete, or benefit from case-plan services; do not have a full understanding or appreciation of A.S.’s medical needs; and cannot properly care for him so that he can remain safe and healthy (R.C. 2151.414(D)(1)(d)).

{¶ 50}The record clearly and convincingly supports the juvenile court’s best-interest factors under R.C. 2151.414(D)(1). When considering the best-interest factors under R.C. 2151.414(D)(1), “[t]here 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. This court has stated that only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re Moore*, 8th Dist. Cuyahoga No. 76942, 2000 Ohio App. LEXIS 3958 (Aug. 31, 2000), citing *In re Shaeffer*, 85 Ohio App.3d 683, 621 N.E.2d 426 (3d Dist.1993).

{¶ 51} Again, the court was provided with extensive testimony showing Mother and Father’s inconsistent relationship with and commitment towards A.S.,

the child's custodial history, his need for permanency, and his strong bond with his current foster family. Moreover, the court was guided by the recommendation of the GAL, who spoke on behalf of A.S. and recommended that it was in A.S.'s best interest to grant permanent custody to the agency. The testimony elicited at trial conclusively demonstrated that neither Mother nor Father have been able to fully satisfy the objectives of their case plans, have not proven that either can provide a permanently stable environment for A.S., and have not shown that they fully comprehend or can care for their child's medical and dietary needs.

{¶ 52} Accordingly, Mother and Father's first assignments of error are overruled.

{¶ 53} In Mother's second assignment of error, she contends that the trial court erred in denying her motion for legal custody.

{¶ 54} R.C. 2151.353(A)(3) provides that "[i]f a child is adjudicated an abused, neglected, or dependent child, the court may * * * [a]ward legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child * * *." When presented with a motion for legal custody, the juvenile court "must determine the appropriateness of legal custody in accordance with the best interest of the child as supported by a preponderance of the evidence presented at the dispositional hearing." *In re S.D.T.*, 8th Dist. Cuyahoga No. 109996, 2021-Ohio-2106, ¶ 17. "A 'preponderance of the evidence' is 'evidence that's more probable, more persuasive, or of greater probative value.'" *Id.* citing *In re D.P.*, 10th Dist. Franklin No. 05AP-

117, 2005-Ohio-5097, ¶ 52. Thus, when deciding whether to grant legal custody to a parent, a “court must comply with R.C. 2151.42 that requires the court to consider the best interest of the child in making the custody determination.” *In re Bixler*, 3d Dist. Seneca Nos. 13-05-41 and 13-05-42, 2006-Ohio-3533, ¶ 23.

{¶ 55} For the same reasons as cited under the first assignment of error, the trial court did not err in denying Mother’s motion for legal custody. Mother was unable to successfully complete her case plan or demonstrate that she can provide a safe and stable home for A.S. Mother cannot provide for the basic needs of the child, is unemployed and has no source of income, is unable to ensure the safety of the child given the child’s severe medical and dietary issues, and the agency remained concerned with Mother’s mental health.

{¶ 56} In light of the above, Mother’s second assignment of error is overruled.

{¶ 57} The trial court did not err in granting the agency’s motion for permanent custody or in overruling Mother’s motion for legal custody.

{¶ 58} Judgment affirmed.

It is ordered that appellee recover from appellants 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.

MARY J. BOYLE, ADMINISTRATIVE JUDGE

LISA B. FORBES, J., and
EILEEN T. GALLAGHER, J., CONCUR

KEYWORDS:

Parental rights; permanent custody; clear and convincing evidence; R.C. 2151.414(D)(1) and (D)(2)/best interest of the child; R.C. 2151.414(B)(1)(d)/temporary placement; R.C. 2151.414 (E)(1), (2), (4) and (16)/placement of child within a reasonable time; R.C. 2151.353(A)(3)/legal custody; manifest weight.

It was not against the manifest weight of the evidence where the trial court granted appellee's motion for permanent custody. Mother and Father were unable to successfully complete multiple components of the case plan. Sufficient evidence of mental illness, intellectual disabilities, failure to regularly visit the child, inappropriate behavior during visits, and Mother and Father's inability to properly educate themselves on the child's severe medical and dietary needs is documented in the record.

Mother's motion for legal custody was properly denied by the trial court. Mother was not able to successfully complete her case plan, and concerns remained regarding Mother's mental health.