[Cite as *In re Janson*, 2005-Ohio-6712.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

IN THE MATTER OF:	:	**O P I N I O N**
ASHLYNN & AUSTIN JANSON, NEGLECTED AND DEPENDENT CHILDREN	:	**CASE NO. 2005-G-2656**
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	:	

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 04 JN 000238.

Judgment: Reversed and remanded.

R. Robert Umholtz, Geauga County Public Defender, 211 Main Street, Chardon, OH 44024 (For Appellant, Jade Janson).

David P. Joyce, Geauga County Prosecutor and *Brian M. Richter*, Assistant Prosecutor, 231 Main Street, Chardon, OH 44024 (For Appellee, Geauga County Job and Family Services).

Cindy Gazley, Court Appointed Special Advocate, 470 Center Street, Bldg. 6-C, Chardon, OH 44024 (Guardian ad litem).

Pamela W. Makowski, May Valley Building, #6-B, 8228 Mayfield Road, Chesterland, OH 44026 (Counsel for the Minor Children).

CYNTHIA WESTCOTT RICE, J.

{¶1} This is an appeal from the Geauga County Court of Common Pleas, Juvenile Division, terminating a mother's parental rights and granting permanent

custody of her two children to a county department of job and family services. Because we hold the record fails to reveal clear and convincing evidence in support of the trial court's decision, we reverse.

{¶2} In the summer of 2001, Geauga County Job and Family Services ("GCJFS" or "agency") received a dependency referral pertaining to Ashlynn and Austin Janson ("children"), born on January 1, 2001. This initial case was closed after thirty days. Some two months later, a second case was opened alleging physical abuse. After investigation, the allegations were found unsubstantiated and no complaint was filed. The agency maintained an open file on the Janson family through April 1, 2004 when their case file was closed. During the pendency of this second case, the court issued a no contact order between Jeff Janson, Jr., ("Janson, Jr.") the children's father, and the children. Although the record does not reflect Janson, Jr., ever physically harmed the children, the order was a result of two prior domestic violence charges of which Jade Fulop-Janson ("appellant") was the victim.

{¶3} Approximately twelve days after GCJFS closed the second case, the agency received another referral regarding the Janson children. On April 19, 2004, Tricia Dunlap, a caseworker for the agency visited appellant's residence and discovered Jeff Janson, Jr. at the house with appellant and the children. As a result of Dunlap's visit, GCJFS filed a complaint on April 26, 2004 alleging the children to be neglected pursuant to R.C. 2151.03(A)(2) and (3) and dependent pursuant to R.C. 2151.04(B) and (C). The complaint contained allegations that (1) the home was cluttered with beer bottles and cigarette ashes littering the floor; (2) appellant admitted to using crystal methamphetamine, and (3) appellant "indicated" she allowed unsupervised contact

between the children and their father. Appellant initially entered a plea of "not true" and on April 30, 2004, the trial court ordered the children placed in the temporary custody of GCJFS.

{¶4} On June 11, 2004, GCJFS amended the complaint by deleting its allegation that appellant allowed the children to have unsupervised contact with their father. Appellant subsequently entered a plea of "true" and the court found the children to be neglected and dependent pursuant to the foregoing statutory provisions. In the order, the court permitted appellant two hours supervised weekly visitation. The juvenile court further adopted the case plan filed on May 17, 2004 and continued the no contact order between Jeff Janson, Jr. and the children.

{¶5} Pursuant to her case plan, appellant was to: (1) obtain and maintain stable employment and a stable and clean residence; (2) allow no contact between Jeff Janson, Jr. and the children; (3) complete a psychiatric evaluation and attend all scheduled sessions and follow all recommendations of the evaluation; (4) complete a drug and alcohol assessment and follow all recommendations of her counselor.

{¶6} A review hearing was held on October 25, 2004 during which a second review hearing was scheduled for January 24, 2005. However, prior to the second review hearing, on January 7, 2005, GCJFS filed a motion for permanent custody. A hearing on the motion was scheduled for March 10, 2005. The hearing was ultimately continued. In the interim, appellant filed a motion for custody on April 13, 2005 and the paternal grandparents filed the same on May 2, 2005. The permanent custody hearing commenced on May 5, 2005 and lasted four days.

{¶7} At trial, the agency first called Benjamin Rosen, Ph.D., a licensed professional counselor with the American Association of Christian Therapists with doctorates in ministries and biblical counseling. Dr. Rosen testified he met appellant and Janson, Jr., at a yard sale in the summer of 2002. He commenced counseling the parties utilizing a "faith based" counseling model. While Rosen indicated there was little unity between the couple at first, after a period of counseling he noticed a great deal of progress, particularly with appellant. Eventually, on March 26, 2004, Rosen recommended GCJFS close the Janson case and "that Jade and the children be given full autonomy to grow as a family."[1] On April 1, 2004, appellant was awarded custody of the children. After having custody returned, appellant stopped her counseling sessions with Rosen and, in his words, "fell off the face of the earth."

{¶8} Richard Hill, M.D., Ph.D., Medical Director and Staff Psychiatrist at Ravenwood Mental Heath Center, testified next. Dr. Hill testified he met appellant in September 2004, for a psychiatric evaluation. During the evaluation, appellant reported she took crystal methamphetamine which was provided by Janson, Jr.; however, she related she stopped taking the drug on April 27, 2004 due to the problems it caused in her life. Appellant further described her home life as a child as "a pleasurable experience." However, evidence ultimately indicated appellant's childhood was somewhat dysfunctional and less than idyllic.[2] Dr. Hill testified psychotherapy "would not be an acute recommendation" but appellant "might consider" psychotherapy in the

1. Rosen communicated with GCJFS, via letter, three times between July 2, 2003 and March 26, 2004. Rosen's correspondences included his general concerns and evaluations of the couple and their problems as well as the recommended goals for their counseling relationship.

2. Appellant's mother was a purported alcoholic who was married five times.

future, *after* her more immediate needs, viz., getting her children back, are addressed. Dr. Hill concluded appellant exhibited no acute psychological disorders and had no chemical dependencies.

{¶9} Cheryl Breen was GCJFS' next witness. Breen is an employee with Champion Personnel, a job placement agency. On November 23, 2004, appellant submitted her application to Breen who obtained employment for her at Dillen Products on December 9, 2004. According to Breen, appellant stated Jeff Janson, Jr., was her ex-husband; Breen testified appellant referred Janson, Jr., to Champion for employment and came to Champion with him on one occasion.

{¶10} Alisha Mitten, Staffing Coordinator at Champion, testified she spoke with appellant regarding her referral of Janson, Jr. With respect to this referral, Mitten was instructed by appellant to call her cell phone if she wished to contact Janson, Jr. Nonetheless, Mitten testified appellant stated she would prefer not working with Janson, Jr., because "her parents wouldn't be happy." Appellant was eventually released from Dillen Products on January 5, 2005 for "packing bad parts" and "a bad attitude."

{¶11} In February 2005, appellant began work at a factory known as New Methods. According to Laurie Hauser, Officer Manager for New Methods, appellant was hired as a press operator. Hauser further testified that Janson, Jr., was hired by New Methods on or about March 1, 2005. In his application, Janson, Jr., listed appellant as a reference. Hauser approached appellant regarding Janson, Jr., and his work habits. Appellant acknowledged she had a good relationship with Janson, Jr., and related she saw no reason why Janson, Jr., could not work at New Methods. Janson, Jr., was eventually hired but quit after about four weeks. With respect to appellant's and

Janson, Jr.'s relationship, Hauser testified she had no knowledge regarding whether the parties lived together and received no reports that Janson, Jr., was around the children.

{¶12} After becoming employed at New Methods, appellant leased an apartment, with her mother Mary Hess-Fulop, at Middlefield Apartments. Kassandra Lehman, the Officer Manager for Middlefield Apartments, testified she knew Janson, Jr., and had observed him entering and leaving appellant's apartment building. However, Lehman testified she was unaware Janson, Jr., had children and never saw him with children. Lehman further noted she had not observed Janson, Jr., in appellant's building since a noise complaint on April 8, 2005. At the time of the hearing, appellant was still employed at New Methods[3] and, despite falling behind one month on rent, still resided at Middlefield Apartments.[4]

{¶13} Tracy Olszowy, a child support case manager for GCJFS, testified that appellant's child support obligation for Austin is $162.83 per month. As of April 30, 2005, her arrearages are $1,188.70. Appellant's support obligation for Ashlynn is also $162.83 per month. As of April 30, 2005, the arrearage was $1066.30. Although these are the technical existing arrearages for the children, Olszowy conceded appellant did not have sufficient income to pay the support obligations as they were ordered.

3. Appellee states in its brief that, as of the hearing, appellant had been terminated from New Methods. The record does not support this claim. Laurie Hauser testified that appellant was on a "leave of absence" from work due to an injury to her finger on her left hand which occurred on April 15, 2005. Appellant sent documentation from her physician that she would return to work on April 19, 2005. Appellant did not attend work on that date. However, Hauser spoke personally with appellant who stated she was referred to a specialist and the doctor's office had faxed the documentation to support her absence. Although Hauser had not received the fax, she testified New Methods would "work" with appellant because the doctor made the mistake. Hauser testified "as long as [appellant] brought the paperwork in, she could come back to work."

4. Appellant had fallen behind on her rent due to her inability to work after her hand injury. On June 7, 2005, Middlefield filed an eviction notice. However, Middlefield accepted a partial payment of appellant's back rent and had not filed a new notice. Accordingly, appellant is still a standing resident of Middlefield.

According to Olszowy, when an obligor encounters this problem, the employer receives a wage withholding order and garnishes 60% of the obligor's net income towards the support obligation. At the time of the hearing, Olszowy testified that the agency was "processing" appellant's case pursuant to this scheme.

{¶14} Next, "Sandra," the children's foster mother, testified the children were placed with her on April 20, 2004 and visited their mother consistently. Early in this placement, Sandra testified the children complained of stomach upsets before visiting their mother. When Sandra would arrive to retrieve the children, they would "scream and cry and hang onto their mom and not want to leave." According to Sandra, after visitations, the children "used to be just bouncing off the walls and just going crazy because they would be with their mom." As of the hearing, Sandra testified appellant had been working with the children and ever since the children have been "coming home really well."

{¶15} Sandra emphasized she was working with the agency and with appellant towards the goal of reunifying the children with their mother. Sandra testified the children love their mother very much and become sad after their visit with appellant ends. Sandra underscored that she and appellant have occasion to communicate via e-mail regarding, inter alia, the children's behavior and routines. Sandra testified appellant asks about the children "all the time."

{¶16} Gina Schultz, a GCJFS social worker and clinical supervisor of the "Help Me Grow" Program, testified she had worked with the Janson family on a voluntary basis in an earlier case and with appellant in the current case. When the instant case was opened, appellant was living and working in New York. According to Schultz,

appellant stated she had been staying with Janson, Jr.'s father, who helped her get the job. However, evidence revealed Janson, Jr.'s father did not live in New York with her and, in fact, Janson, Jr., was the individual with whom she lived. Schultz testified appellant adamantly denied living with Janson, Jr. Appellant further maintained she had no contact with him from January, 2005 through the hearing. In Schultz's view, contact with Janson, Jr., was not necessarily a problem. Rather, the issue was appellant's lack of honesty in relation to her association with Janson, Jr. Schultz also testified she did not believe appellant was honest about certain features of her employment and details pertaining to her residence, i.e., according to Schultz, appellant lied to her about how she lost her job at Dillen Products and misrepresented to GCJFS that her mother was a "guarantor" on her apartment rather than a tenant.

{¶17} With respect to appellant's case plan objectives, Schultz testified appellant still exhibited instability: Although appellant had been working at New Methods since February of 2005, Schultz noted appellant had numerous other jobs before her current employment. Moreover, Schultz testified appellant's residential status had ostensibly stabilized since January 2005, she had lived in a variety of places before this. However, Schultz conceded appellant had completed the requisite psychological evaluation with Dr. Hill and had attended counseling. Further, Schultz noted appellant had submitted to a drug and alcohol assessment and all drug tests since the opening of the case had been negative.

{¶18} Michelle Laurin, a social worker for GCJFS assigned to appellant's case on June 23, 2004 testified appellant had lived in six residences while she was involved

in the case and had four jobs.[5] According to Laurin, GCJFS made certain changes to appellant's caseplan in October of 2004. The changes required appellant to participate in counseling twice a month and address her issues with deception. Laurin underscored, however, appellant did not attend counseling from "sometime in October until late December." However, with respect to her absence, Laurin testified:

{¶19} "[Jade] said that she talked to [her counselor] and she said that [her counselor] said to her that she didn't need to be in counseling.

{¶20} "Jade made an appointment with her counselor. She then told me that she apologized and misunderstood what her counselor had said. That her counselor said that she didn't need to see her, that she could see someone else. And from then on after Jade was back in counseling."[6]

{¶21} Michelle Rutti, a former social worker with GCJFS who worked on appellant's case until May 18, 2005, testified she observed between eight and ten visits between appellant and the children. Rutti testified she was initially concerned because, in her view, appellant did not have significant interaction with the children. However, Rutti also testified, as the visits progressed, the children responded well to appellant, sought to please her, would sing songs for and with her, and were sad at the end of their visits. Moreover, Rutti testified appellant made big improvements regarding the "appropriateness" of her interaction with the children.

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5. Although Ms. Laurin stated her belief that appellant had six residences since June 23, 2004, a review of the record indicates she only lists five residences.

6. Fran Zamore, appellant's counselor was unavailable for counseling during some of the period of appellant's absence. Zamore indicated she told appellant she did not have to see her, but could see another counselor in the meantime.

{¶22} Kathy Briggs, guardian ad litem for the children, had several occasions to observe appellant and the children interact. Briggs testified the children were always happy to see appellant, but appellant had difficulty controlling them during visits. While this concerned Briggs, she noted supervised visitations are "unnatural" and fundamentally affect the interaction of the parties being observed. In this respect, Briggs believed unsupervised visitation should have been explored as early as January of 2005 and testified, at the time of the hearing, she did not believe visitations would "necessarily have to remain supervised."

{¶23} In general, Briggs acknowledged appellant has made progress in her case plan and has created and maintained a stable living and occupational environment since January, 2005. Nonetheless, Briggs believed appellant was unable to offer the children financial stability and consistency. Briggs also expressed concern regarding Janson, Jr.'s role, if any, in appellant's life. Accordingly, Briggs recommended permanent custody be granted to GCJFS.[7]

{¶24} Fran Zamore, appellant's counselor since August 2, 2004, testified their therapy sessions were focused on accomplishing the goals of the case plan in order for appellant to have custody of the children returned to her. Zamore stated appellant made good progress toward the goals of her case plan and believed appellant has learned lessons from her experiences and would not repeat the same mistakes. Zamore lauded appellant for "moving in the right direction" stating appellant was making "terrific strides." In Zamore's view, appellant's progress entitled her to the opportunity to

7. Cindy Glazley, Briggs's supervisor and guardian ad litem, testified she agreed with Briggs's assessment regarding the children's need for stability and similarly concluded that permanent custody should be granted to the agency.

have unsupervised visits with the children. Zamore believed the agency's failure to move in this direction was destructive and belied the purported goal of re-unification. Zamore testified: "you have a woman who has not had reasonable access to her children from my perspective who has done what she's needed to do in order to have access to her children. Kids, as I understand, kids were taken away from her because she was using drugs. She's not using drugs and she still doesn't have her kids." Zamore continued:

{¶25} "I am very distressed that the visitation is still supervised, and that it is so limited. ***I really think that we set people up to fail, if we keep such a tight fist on them and then all of a sudden everything's open."

{¶26} Zamore testified appellant is able to parent her children, is highly motivated by her children, has made numerous changes, and has greater foresight with respect to her own decision-making. Under the circumstances, Zamore believed appellant should receive more time and less supervision during her visitation sessions.

{¶27} Zamore further challenged the messages the agency was sending by involving so many individuals in appellant's case. Pursuant to her case plan, GCJFS emphasized consistency in appellant's lifestyle and behavior. However, the agency involved no less than six social workers to observe and assess appellant. With so many case workers involved, each with her own particular assessment practices and unique perspective as to the propriety of appellant's behavior and interaction, appellant had no foundation upon which she might build consistency.

{¶28} Zamore additionally testified she did not believe appellant was a "liar;" although one goal of her amended case plan indicated she needed to work on being

more honest, Zamore believed appellant's lack of technical honesty was a coping strategy, i.e., appellant tended to minimize negatives in order to be accepted, under the circumstances, by the agency and the various case workers and professionals involved in her case. In Zamore's view, GCJFS placed too much emphasis on comparatively insignificant issues (such as the type of food appellant brought to her visitations and her failure to be completely forthright regarding her contact with Janson, Jr.) and too little emphasis on the significant issues of parenting and her ability to parent.

{¶29} The hearing concluded on June 27, 2005. On July 11, 2005, after considering the evidence, the juvenile court filed its judgment entry granting permanent custody to GCJFS. In its judgment entry the court found the children had been in the custody of the agency for twelve of twenty-two consecutive months and that granted permanent custody to the agency was in the children's best interests. Appellant now appeals and asserts the following assignment of error:

{¶30} "Whether the trial court erred in granting JFS' motion for permanent custody when the required specific findings of fact relied on by the court are against the manifest weight of the evidence."

{¶31} Before a court can terminate a parent's rights, it must find, by clear and convincing evidence, both prongs of the permanent custody test. First, the court must find one of the following: That the child is abandoned, orphaned, has been in the temporary custody of the agency for at least twelve months of the prior twenty-two months, or that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, based on an examination of the factors under

R.C. 2151.414(E). See R.C. 2151.414(B)(1)(a)-(d). See, also, *In Re Smith,* 11th Dist. No. 2002-A-0098, 2003-Ohio-800, at ¶8.

{¶32} If the juvenile court determines that one of the four circumstances in R.C. 2151.414(B)(1)(a) through (d) is present, then the court continues with an analysis of the child's best interest. In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) requires that the trial court consider all relevant factors, including but not limited to: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) 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; (3) the custodial history of the child; (4) 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; and (5) whether any factor in R.C. 2151.414(E)(7) to (11) is applicable.[8] *Smith*, supra, at ¶10. See, also, *In Re Litz,* (Nov. 5, 2001) 11th Dist. No. 2001-G-2367, 2001 Ohio App. LEXIS 8903, at 11.

8 . R.C. 2151.414(E)(7)-(11) state:

"(7) The parent has been convicted of or pleaded guilty to one of the following:

"(a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

"(b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

"(c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the

{¶33} If both prongs of the foregoing test are met by clear and convincing evidence, the trial court may terminate the rights of a natural parent and grant custody of the child to the moving party. Clear and convincing evidence is more than a mere preponderance of evidence. Instead, it is evidence sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *In re Holcomb* (1985), 18 Ohio St.3d 361, 368. A reviewing court will not overturn a trial court's finding on a manifest weight challenge if the record contains competent, credible evidence supporting the trial court's factual findings. *In re S.* (1995), 102 Ohio App.3d 338, 344-345.

{¶34} Appellant first argues the agency failed to demonstrate and the court failed to provide a clear basis for a determination of her "unfitness." "The Ohio General

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offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

"(d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

"(e) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a) or (d) of this section.

"(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

"(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

"(10) The parent has abandoned the child.

Assembly most recently has defined parental unfitness for a child who is not abandoned or orphaned as a finding that 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.' R.C. 2151.414(B)(1)(a)." *In the Matter of Alexis and Brysten K.*, 160 Ohio App.3d 32, 2005-Ohio-1380, ¶24. To enter such a finding, a juvenile court must conclude the evidence adduced at trial clearly and convincingly demonstrates that the parent is unsuitable for one of the reasons set forth in R.C. 2151.414(E). *In re William S.* (1996), 75 Ohio St.3d 95, 1996-Ohio-182, syllabus. As the right to raise and nurture one's children is fundamental, statutory conditions which serve to overcome that right must be strictly construed. *In re Cunningham* (1979), 59 Ohio St.2d 100, 104-105.

{¶35} Appellant's argument regarding the court's determination of unfitness is a challenge to its findings under the first prong of the permanent custody test, i.e., its finding(s) under R.C. 2151.414(B)(1). However, R.C. 2151.414(B)(1) does not require a trial court to make a finding of unfitness under R.C. 2151.414(B)(1)(a) before moving forward with its analysis of the child's best interests. *In re Stillman*, 155 Ohio App.3d 333, 2003-Ohio-6228, ¶52; see also, *In re Workman*, 4th Dist. No. 02CA574, 2003-Ohio-2220, ¶39-40. So long as the trial court finds, by clear and convincing evidence, one of the four factors under R.C. 2151.414(B)(1), its conclusion under the first prong of the permanent custody analysis will not be disturbed. See, *Stillman*, supra.

{¶36} With respect to this analysis, the court made two findings: (1) "the children can not be place [sic] with their mother within a reasonable period of time and should not be placed with their mother." See, R.C. 2151.414(B)(1)(a); and (2) the children

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"(11) The parent has had parental rights involuntarily terminated pursuant to this section or

"have been in the temporary custody of GCJFS for more than twelve months of the twenty-two months immediately preceding the filing of the permanent custody motion." See R.C. 2151.414(B)(1)(d).

{¶37} Although the court did make a finding of "unfitness" pursuant to R.C. 2151.414(B)(1)(a), we need not engage in a thorough analysis of this finding because it's finding under R.C. 2151.414(B)(1)(d) is supported by clear and convincing evidence.

{¶38} Because the court did not have to engage in an explicit finding of unfitness, the court was not required to consider the R.C. 2151.414(E) factors. Accordingly, we need not address appellant's argument that the trial court erred in finding GCJFS used reasonable efforts to return the children to appellant pursuant to R.C. 2151.414(E)(1).

{¶39} That said, we shall next review the juvenile court's conclusion that awarding permanent custody to GCJFS is in the children's best interests. As noted supra, when considering children's best interest, the juvenile court must consider all relevant factors including, but not limited to those specified in R.C. 2151.414(D). We have previously held that the provisions under R.C. 2151.414(D) are mandatory and "must be scrupulously observed." *In re Smith*, supra, at ¶13; see, also, *In re Litz,* supra, at 5; *In re Hommes* (Dec. 6, 1996), 11th Dist. No. 96-A-0017, 1996 Ohio App. LEXIS 5613, at 4. The failure to discuss each of the factors set forth in R.C. 2151.414(D)(1) through (5) when arriving at a conclusion concerning the best interest of the child is prejudicial error. *Smith*, supra; see, also, *In re Jacobs* (Aug. 25, 2000), 11th Dist. No. 99-G-2231, 2000 Ohio App. LEXIS 3859, at 12-13.

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section 2151.353 or 2151.415 of the Revised Code with respect to a sibling of the child.

{¶40} The July 11, 2004 judgment entry reveals the trial court considered each of the factors under R.C. 2151.414(D)(1) through (5). However, under the circumstances, an analysis of each factor in question is warranted.

{¶41} With respect to R.C. 2151.414(D)(1), the interaction and interrelationship of the children with appellant, the court engaged in a limited discussion of the nature of appellant's supervised visitation with the children. However, other than making the unremarkable factual finding that appellant's visitation was consistently supervised, the court failed to discuss the children's interaction and interrelationship with appellant.

{¶42} However, there was ample testimony from the agency's witnesses regarding the strong bond between children and appellant: Sandra, the children's foster parent, testified the children "love mom very much." She further testified appellant, through e-mails, asks about the children "all the time" and asks Sandra to tell the children she loves them. Further, Michelle Warren, a social worker at GCJFS who worked on appellant's case testified the children's interaction with appellant was "appropriate" and, in her observations, appellant was able to control the children's behavior properly. Kathy Briggs, the guardian ad litem for the children, testified the children were always happy to see appellant during the visitations she observed. Moreover, Briggs noted the children had occasions to "throw temper tantrums" at day care; however, during her observations of the supervised visitations, she never observed the children acting out in this fashion. As a result, both Briggs and Fran Zamore, appellant's counselor, testified they believed unsupervised visits should be explored. None of this evidence is mentioned by the trial court.

{¶43} With respect to R.C. 2151.414(D)(2), the wishes of the children, the court considered those wishes expressed through the guardian ad litem in her report, i.e. Austin stated "he was happy living with the foster parents and that he could continue to live there." While Ashlynn "communicated *** that she liked living with the foster family, but that she would like to live with her mom 'when the Judge lets her.'" The court considered this evidence, however, failed to consider Sandra's testimony that Austin stated he wanted "to live with Mommy."

{¶44} Next, the court gave a detailed summary of the children's custodial history pursuant to R.C. 2151.414(D)(3). However, during its discussion of how the children were brought into the agency's custody in the instant matter, it stated:

{¶45} "Within weeks of the Court terminating GCJFS [sic] involvement, the children were again placed in the temporary custody of GCJFS when it was determined that the mother was consuming illegal drugs, *allowing the children to have unauthorized contact with their father*; and that the children were again being exposed to unsanitary living conditions." (Emphasis added).

{¶46} There is no evidence in the record to support the court's finding that appellant "allowed" Janson, Jr., to have contact with the children. To the contrary, the agency amended its complaint to omit this allegation. Furthermore, Tricia Dunlap, an agency case worker, testified she witnessed Janson, Jr., at appellant's residence with the children; however, appellant "had kept asking him to leave and that he wouldn't do it. And when [I] confronted Mr. Janson about it, he said these are my children. I have every right to see them." Moreover, Michelle Warren, another agency caseworker, testified she was privy to an incident where Janson, Jr., showed up at appellant's

residence desiring to see the children. According to Warren, Janson, Jr., had threatened to kill himself and said "it was going to be the last time he ever saw the children." As a result, appellant called the police and an ambulance which Warren had confirmed via a police report.

{¶47} As for R.C. 2151.414(D)(4), the court found the children had a strong need for a legally secure permanent placement in a "stable home with loving, nurturing adults." The court noted that permanent placement could be achieved through placing them in the home of their paternal grandfather and paternal step-grandmother; however, it concluded the children would be better served by placing them in a home where both of the prospective caretakers are committed to raising them as their own.

{¶48} While the rights being terminated belonged to appellant, the court made no finding as to why placement with her could not be achieved. Evidence at trial indicated that appellant loves her children and the children love her. Moreover, appellant had maintained stable employment and housing for some six months prior to the hearing. Appellant maintained a regular visitation schedule pursuant to her case plan and there was no evidence indicating appellant ever "allowed" Janson, Jr., around the children. Appellant had progressed in, if not met, each of her case plan goals.

{¶49} While the trial court nominally followed the statutory machinery of the best interest analysis, it failed to make specific, meaningful findings under R.C. 2151.414(D)(1). Moreover, the court failed to consider relevant evidence pertaining to R.C. 2151.414(D)(1), (2), and (4) adduced at trial by the agency's witnesses and made a finding unsupported by the evidence under R.C. 2151.414(D)(3). In effect, we believe the trial court's "factual" conclusions are unsupported by clear and convincing evidence.

"[B]ecause the factors set forth in R.C. 2151.414(D) are all relevant to the question of whether a parent should be stripped of permanent custody[,] every one needs to be given *proper* consideration." *Smith,* supra, ¶18; see, also, *In re Alexander* (Dec. 19, 1997), 11th Dist. No. 96-T-5510, 1997 Ohio App. LEXIS 5742, at 7-8. (Emphasis added). As we are permitted to engage in a limited weighing of the evidence on review, we believe the trial court lost its way in concluding, by clear and convincing evidence, an award of permanent custody to GCJFS is in the children's best interests. For these reasons, we sustain appellant's sole assignment of error.

{¶50} For the foregoing reasons, appellant's sole assignment of error is sustained and the judgment of the Geauga County Court of Common Pleas, Juvenile Division is hereby reversed and this matter is remanded to the trial court for proceedings consistent with this opinion.

COLLEEN M. O'TOOLE, J., concurs,

DIANE V. GRENDELL, J., concurs with Concurring Opinion.

DIANE V. GRENDELL, J., concurs with a Concurring Opinion.

{¶51} I concur in the well reasoned opinion of the majority.

{¶52} The decision to award permanent custody to the state is the parental rights equivalent to the death penalty. *In re Hayes* (1997), 79 Ohio St.3d 46, 48 (citation omitted). "Out of respect for maintaining the natural parental relationship, the Ohio

Legislature requires that this relationship cannot be judicially terminated unless the termination is supported by the highest civil evidentiary standard - clear and convincing evidence." *In re Williams*, 11th Dist. Nos. 2003-G-2498 and 2003-G-2499, 2003-Ohio-3550, at ¶35 (citations omitted).

{¶53} The evidence in the record demonstrates that the mother is attempting to change her lifestyle and establish a parental relationship with her children. While the mother certainly has her issues, the evidence that this situation has progressed to the point that at this time she should permanently forfeit her right of parenthood is not clear and convincing. See *Williams*, 2003-Ohio-3550, at ¶43 ("[g]iven that appellant had substantially remedied the conditions within her power that led to the removal of the children ***, the juvenile court erred in finding that the children could not be placed with their mother within a reasonable time").