[Cite as *In re K.R.*, 2009-Ohio-4350.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
IN THE MATTER OF:	:	W. Scott Gwin, P.J.
	:	John W. Wise, J.
K.R.	:	Julie A. Edwards, J.
	:	
Minor Child(ren)	:	Case No. 2009 CA 00061
	:	
	:	
	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from Stark County Court of Common Pleas, Family Court Division, Case No. 2003 JCV 126790
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	August 24, 2009
APPEARANCES:	
For Plaintiff-Appellee	For Defendant-Appellant
LISA A. LOUY Stark County Department Job & Family Services 221 Third Street, S.E. Canton, Ohio 44702	KIMBERLY L. STOUT Stark County Public Defender's Office 200 West Tuscarawas Street Suite 200 Canton, Ohio 44702

Edwards, J.

{¶1} Appellant, Bobbi Jo Root, appeals from the February 11, 2009, Judgment Entry of the Stark County Court of Common Pleas, Family Court Division terminating her parental rights and granting permanent custody of K.R. to the Stark County Department of Job and Family Services.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant is the biological mother of K.R., who was born on April 4, 1996. On April 18, 2003, Stark County Department of Job and Family Services (SCDJFS) filed a complaint alleging that K.R. was dependent, neglected and/or abused and seeking temporary custody of K.R. On May 19, 2003, K.R. was found to be an abused child and temporary custody was granted to SCDJFS.

{¶3} On March 4, 2004, SCDJFS filed a Motion to Extend Temporary Custody of K.R. Pursuant to an April 15, 2004, Magistrate's Decision that was adopted by the trial court, temporary custody was extended to October 17, 2004. On August 31, 2004, SCDFJS filed another Motion to Extend Temporary Custody. The parties stipulated that temporary custody would be extended to April 17, 2005.

{¶4} Thereafter, on March 17, 2005, SCDJFS filed a Motion for Planned Permanent Living Arrangement (PPLA). On or about July 7, 2005, K.R. was placed into planned permanent living arrangement status. A review hearing was scheduled for August 2, 2005. The Magistrate, in an Order filed on August 2, 2005, noted that "[K.R.] back home on extended visit and not doing well." The Magistrate ordered that the PPLA continue. Following another review hearing which was held on January 26, 2006, K.R.'s status of PPLA continued.

{¶5} Thereafter, on June 30, 2006, SCDJFS filed a Motion for Permanent Custody. On August 31, 2006, SCDJFS's motion to withdraw such motion was granted. PPLA status continued.

{¶6} On December 4, 2008, SCDJFS filed a Motion for Permanent Custody pursuant to R.C. 2151.414. A hearing on such motion was held on February 10, 2009.

{¶7} At the hearing, Anita Young, a case worker with SCDJFS who was assigned to K.R., testified that she had been involved with the case since 2003. Young testified that since PPLA was granted, SCDJFS had attempted to unify K.R. with appellant. She testified that SCDJFS put programs into place in an attempt to get K.R. home. The following testimony was adduced when Young was asked what programs were put into place:

{¶8} "A. In the beginning I believe in the first transition, [K.R.] went in, back into Mom's home. It was August of 2005. Um…we begin the trans, we began the transition then, ah…to doing weekends. And at that time, we ah…facilitated a wrap around service, which include child and adolescence. The therapist, case ah…manager, myself and another worker, ah…what we would do, what we closely worked with the family. Ah…after that time I believe in March and April of 2006, we enlisted the help of MST. Ah…I felt that the only difference with MST ah…provided, was that, they would work with the family on weekends as well. Ah…I would try my lessons basically we would work with that family during the week. But we are try, we were tempted to ah…transition him into the home. Providing services for, for mom, due to his ah…mental health and his behaviors." Transcript at 6.

{¶9} Young testified that K.R. was placed back into appellant's home in the summer of 2005 and that, in May of 2006, it was decided that it was not in K.R.'s best interest to reside in appellant's home. According to Young, at the time, appellant agreed that she could not provide for K.R. and did not want him in her home. Young further testified that from April of 2003 forward, K.R. had always been in the agency's custody in some form or another.

{¶10} Young testified that after K.R. was removed from appellant's home in May of 2006, she would attempt to contact appellant to arrange visits with K.R. She testified that throughout the entire case, appellant's visitation had been sporadic at times. Young stopped initiating contact with appellant for visitation in September of 2007 because she decided that "at that time, that it made mom's responsibility to make contact. I actually wanted to see what she would do." Transcript at 9. Young testified that, throughout the case, she instructed appellant to contact her to arrange for visitation, but that the last time appellant visited with K.R. was on September 21, 2007. According to Young, appellant did not call her, write her or contact her requesting visitation with K.R. after such time. She further testified that despite the fact that the trial court had reviews every six months, appellant had not appeared for a court hearing within at least the last two years.

{¶11} Prior to the granting of PPLA, appellant was given a case plan to complete. The following testimony was adduced when Young was asked if appellant had completed the services on the case plan:

{¶12} "Q. And did she complete those?

{¶13} "A. Um…you know, it, it was, it took her probably about two (2) years to, to totally complete and reduce the risk of him being in the home. I would say, yes, she, she did. Um…you know, individual therapy, ah…domestic violence was very important. Maintaining housing was very important. Um…financially she was not employed but her paramour provided and at that time, I think she was eligible for services. So, that is what enabled us after a period of time, to reconsider um…you know, ah…reunification. Transition of (inaudible) got to go home.

{¶14} "Q. So mother had, in your opinion completed the case plan services and then you attempted to reintegrate [K.R.] into the home?

{¶15} "A. Yes. But there was one, one ah…there was one, one um…concern or recommendation that would have had to have on-going and it related to mother and paramour ah…engaging in therapy, with a therapist and working together with that therapist and working on ah…better ways to address his [K.R.'s] behaviors as a result of his disorder. And for a period of time, before we put um…reunited ah…a place, actually placed [K.R.] into the home, they, they were engaged in on-going ah…sessions with the, with his current therapist. Ah…but at some point, that began to decline. And I started taking [K.R.] to therapy." Transcript at 10-11.

{¶16} On cross-examination, Young testified that appellant moved to Medina in late 2003 or early 2004 and that appellant eventually engaged in therapy there. She testified that in October of 2003, appellant was not following through with recommendations from Renew, but that after appellant moved to Medina, appellant was connected with an agency that could provide her with essentially the same services. According to Young, "sometime her participation was sporadic but according to the

therapist, she did engage." Transcript at 17. While appellant was released from the Medina agency because she had complied, the agency strongly recommended that she engage in therapy or education with K.R. to address his behaviors as a result of his disorders, which include attention deficit disorder and oppositional defiant disorder. K.R. and appellant engaged in therapy before K.R. was placed in appellant's home. The following is an excerpt from Young's testimony: "Um…you know, it…she [appellant] expressed that she needed help. That she was struggling with him and his behaviors and at the time, at that time, we've always had…a child and adolescents. We had a case manager, myself, um…another worker, that I work with, ah…to help me transport [K.R.]. And we all attempted to help mom. That also, included the therapist. And the therapist was on call at any time that there was an outbreak, crisis or a problem with [K.R.]. Ah…all we had to do was contact the therapist and we could get him in, ah…within a short notice. So, for, she had help." Transcript at 17-18.

{¶17} Young testified that appellant felt K.R. needed to be institutionalized and that, at the time K.R. was removed from appellant's home, appellant was no longer engaging in therapy with K.R.

{¶18} At the hearing, appellant testified that she had not seen K.R. since September 22, 2007, which was approximately seventeen (17) months earlier. She testified that, since such time, she had called Young numerous times to arrange to visit K.R. Appellant testified that she stopped contacting Young in December of 2007, because she started having bad anxiety attacks and depression and her doctors told her to stop. Appellant, however, did not have any documentation from her doctors. Appellant testified that she was receiving treatment for depression and general anxiety

disorder, but that she had not contacted Anita Young and told her that she was receiving such treatment. She admitted that, in the last year, she had not made any attempts to contact Young.

{¶19} At the best interest portion of the hearing, Georgine Voros, a licensed professional clinical counselor with Child and Adolescent Behavioral Health, testified that she had had contact with K.R. since 2002 when K.R. presented to her with behavior and gender identity issues. Voros testified that K.R., who has had multiple foster placements, had many disruptive behaviors, was impulsive and destructive and had been receiving psychiatric services for a number of years. She testified that when he was younger, K.R. would urinate and smear feces when he got angry.

{¶20} Voros was questioned about the last time when K.R. was in appellant's home. The following is an excerpt from her testimony:

{¶21} "A. They were having a difficult time with the parent/child relationship. Um…mom was having a difficult time controlling his behaviors. [K.R.] was destructive in the home. Um…he would spill food. He would leave without telling her where he was going. Um…also, [K.R.] always had a gender identity issues. He wants to be a girl. Um…and there was, there's always been a lot of, a lot of problems surrounding that, where they didn't' want him to wear nail polish and do all the things that he wanted to do. And he would become very angry about those things and then retaliate and act out and that, that's always been a source of concern.

{¶22} "Q. Okay. Um…did you provide any behavior modification modules or any suggestions interventions to the parents on how to deal with [K.R.], at this point?

{¶23} "A. Absolutely. Both myself and the case manager had gone into the home. Um…mom and her boyfriend, Shannon, at the time, um…would come into the office and we'd talk about parenting skills. Um…I believe that Shannon is, had been physically abusive. I know that Shannon had been physical [sic] abusive to [K.R.] and we talked about ah…not using corporal punishment and physical abuse, there's better ways to handle his behaviors. Um…and improve the relationship between he and his mom.

{¶24} "Q. Okay. While [K.R.] was still in the home, ah…did you see any implementation of the interventions, which you sug, suggested?

{¶25} "A. Some effort.

{¶26} "Q. Okay. How would you characterize some efforts?

{¶27} "A. Um…abundant excuses, some effort.

{¶28} "Q. Okay. More excuses than effort?

{¶29} "A. Quite a bit so, yes." Transcript at 35-36.

{¶30} Voros also testified that, when appellant was living with "John," there was sexual abuse from John and allegations of sexual abuse with someone who she believed was John's son.

{¶31} According to Voros, when K.R. was in foster homes, he would be made fun of because of his gender identity issues and would become angry and start acting out, causing his foster parents to have problems managing him. She testified that K.R. had been in his most recent foster placement for close to two years and was doing fairly well. Voros testified that K.R.'s foster mother was accepting of him and helped him deal with his personal feelings. K.R., according to Voros, had been diagnosed with attention

deficit disorder, oppositional defiant disorder, gender identity disorder, borderline intellectual function and was extraordinarily impulsive. She also testified that he was very destructive, but that his destructive behaviors had become further apart since his home environment stabilized and he became less angry. While K.R.'s destructive incidences used to occur daily or weekly, Voros testified that he could go for a couple of months without a major incident.

{¶32} Voros testified that K.R. always wanted to go back to appellant, but that in the last year and a half, he had not asked for visits with her and that he did not talk much about appellant anymore. She testified that he needed a loving, stable home and that, if he were supported, his behavior could be controlled. When asked if K.R. was getting that support from appellant and with relatives, Voros testified that there was a lot of yelling, blaming and physical abuse.

{¶33} On cross-examination, Voros testified that K.R. had had four or five home placements and that his foster home was more tolerant of him than others had been. She testified that while, in some foster homes, he was made fun of and teased, in his current home, he was accepted and not made fun of or abused in any way and that his foster mother was trying to help him act appropriately. She testified that while he was in his current home, he poured cooking oil on the floor, put oxyclean in his brother's drink and tore shingles off the roof.

{¶34} At the best interest portion of the hearing, Anita Young testified that, between 2001 and 2009, except for maybe one year, the agency had been involved in K.R.s life. She testified that K.R. was doing well in school and that he had a total of at least nine placements, not including his placement in 2005 with appellant. Young

testified that K.R.'s behavior had improved since he was placed in his current foster home but that his current home was not willing to adopt him. When asked if K.R. was adoptable, Young testified that she did not know but wanted to give him a chance and that she knew of three children with the same behavior as K.R. who were adopted. According to Young, "[i]f we don't' do anything, then nothing's going to change for [K.R.]." Transcript at 55. Young also testified that K.R. did not talk about appellant as much as he used to although he always loved her.

{¶35} Young also testified that she contacted K.R.'s maternal grandmother about possible placement and that, after talking with Young a few times, the maternal grandmother stated that she had talked with appellant and would not talk to Young anymore. Young also testified that appellant mentioned that there was a third party who might consider taking custody of K.R. , but that appellant never provided her with the relevant information so that she could contact such person.

{¶36} At the hearing, the Guardian Ad Litem stated that she believed that it was in K.R.'s best interest for permanent custody to be granted to SCDJFS.

{¶37} Pursuant to a Judgment Entry filed on February 11, 2009, the trial court terminated appellant's parental rights and granted permanent custody of K.R. to SCDJFS. The trial court filed Findings of Fact and Conclusions of Law on the same date.

{¶38} Appellant now raises the following assignments of error on appeal:

{¶39} "I. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF K.R. TO THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES BECAUSE ITS DETERMINATION THAT THE REASONABLE EFFORTS TO ASSIST

THE PARENT TO COMPLETE THE CASE PLAN AND THE DEPARTMENT USED REASONABLE EFFORTS TO PREVENT THE REMOVAL OF THE CHILDREN WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶40} "II. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF K.R. TO THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES BECAUSE ITS DETERMINATION THAT THE MINOR CHILDREN CANNOT OR SHOULD NOT BE PLACED WITH APPELLANT WITHIN A REASONABLE TIME WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶41} "III. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF K.R. TO THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES BECAUSE ITS DETERMINATION THAT THE BEST INTERESTS OF THE MINOR CHILD WOULD BE SERVED BY GRANTING OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WIEGHT [SIC] AND SUFFICIENCY OF THE EVIDENCE."

I

{¶42} Appellant, in her first assignment of error, argues that the trial court erred by granting permanent custody of K.R. to SCDJFS because its determination that the agency used reasonable efforts to assist appellant to complete the case plan and reasonable efforts to prevent the removal of K.R. were against the manifest weight of the evidence.

{¶43} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment.

Cross Truck v. Jeffries (Feb. 10, 1982), Stark App. No. CA5758, 1982 WL 2911. Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *C.E. Morris Co. v. Foley Constr.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578.

{¶44} In the case judice, SCDJFS filed its Motion for Permanent Custody pursuant to R.C. 2151.414. Pursuant to R.C. 2151.419, the agency which removed the child from the home must have made reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the home, or make it possible for the child to return home safely. The statute assigns the burden of proof to the agency to demonstrate it has made reasonable efforts.

{¶45} However, R.C. 2151.419 does not apply in a hearing on a motion for permanent custody filed pursuant to R.C. 2151.413 and 2151.414. *In re C.F.,* 113 Ohio St.3d 73, 81, 2007-Ohio-1104, 862 N.E.2d 816, (Citation omitted). Therefore, the trial court was not required to make a specific finding that SCDJFS had made reasonable efforts to reunify the family.

{¶46} In *In re C.F.,* supra, the court also stated that this does not mean that the agency is relieved of the duty to make reasonable efforts. “At various stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification. To the extent that the trial court relies on 2151.414(E)(1) at a permanent custody hearing, the court must examine the reasonable case planning and diligent efforts by the agency to assist the

parents' when considering whether the child cannot and should not be placed with the parent within a reasonable time." Id. at paragraph 42.

{¶47} R.C. 2151.414.(E)(1) requires proof that the SCDJFS engaged in reasonable case planning and made "diligent" efforts to assist the parents in remedying the problems which caused the removal of the children.

{¶48} At the hearing in this case, testimony was adduced that the agency attempted to transition K.R. back into appellant's home. Young testified that the agency put programs into the home in attempt to get K.R. home. The following is an excerpt from her testimony:

{¶49} "A. In the beginning I believe in the first transition, [K.R.] went into, back into Mom's home. It was August of 2005. Um…we begin the trans, we began the transition then, ah…to doing weekends. And at that time, we ah…facilitated a wrap around services, which include child and adolescence. The therapist, case ah…manager, myself and another worker, ah…what we would do, what we closely worked with the family. Ah…after that time, I believe in March and April of 2006, we enlisted the help of MST. Ah…I felt that the only difference with MST ah…provided, was that, they would work with the family on weekends as well. Ah…I would try my lessons basically we could work with that family during the week. But we are try, (sic) we were tempted to ah…transition him into the home. Providing services, for, for mom, due to his ah…mental health and his behaviors." Transcript at 6.

{¶50} Starting in the summer of 2005, K.R. was placed back into his mother's home. However, in May of 2006, appellant agreed that she could not care for K.R. and did not want him in her home. Young testified that while appellant continued having

sporadic contact with K.R. after such time, no visits occurred after September 21, 2007. Young testified that up until September of 2007, she had initiated contact with appellant and scheduled the visits. While Young informed appellant that appellant had to contact her for visitations, appellant never did so.

{¶51} We find that the evidence established that SCDJFS did provide services designed to alleviate the problem which led to K.R.'s removal and did make diligent efforts to assist appellant in remedying the problem.

{¶52} Appellant's first assignment of error is, therefore, overruled.

II, III

{¶53} Appellant, in her second and third assignments of error, argues that the trial court's judgment was against the manifest weight of the evidence. In her second assignment of error, appellant argues that the trial court's finding that K.R. could not be placed with her within a reasonable amount of time was against the manifest weight of the evidence. In her final assignment of error, appellant argues that the trial court's finding that K.R.'s best interest would be served by granting permanent custody to SCDJFS was against the manifest weight of the evidence.

{¶54} "Permanent Custody" is defined as "[a] legal status that vests in a public children services agency or private child placing agency, all parental rights, duties and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of all parental rights, privileges, and obligations, including all residual rights and obligations." R.C. Section 2151 .011.

{¶55} A trial court's decision to grant permanent custody of a child must be supported by clear and convincing evidence. The Ohio Supreme Court has defined

"clear and convincing evidence" as "[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty, as required beyond a reasonable doubt, as in criminal cases." *Cross v. Ledford* (1954), 161 Ohio St. 469, 120 N.E.2d 118; *In re: Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 481 N.E.2d 613.

{¶56} In reviewing whether the trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54, 60; See also, *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. If the trial court's judgment is "supported by some competent, credible evidence going to all the essential elements of the case," a reviewing court may not reverse that judgment. *Schiebel,* 55 Ohio St.3d at 74, 564 N .E.2d 54.

{¶57} Moreover, "an appellate court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the findings of fact and conclusions of law." *Id.* Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273: "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony."

{¶58} Deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." *Davis v. Flickinger* (1997), 77 Ohio St.3d 415, 419, 674 N.E.2d 1159; see, also, *In re: Christian,* Athens App. No. 04CA10, 2004-Ohio-3146; *In re: C. W.,* Montgomery App. No. 20140, 2004-Ohio-2040.

{¶59} Pursuant to 2151.414(B)(1), the court may grant permanent custody of a child to the movant if the court determines "that it is in the best interest of the child to grant permanent custody to the agency that filed the motion for permanent custody and that any of the following apply:

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

{¶61} "(b) The child is abandoned."

{¶62} Abandonment is defined by R.C. 2151.011(C): "For the purposes of this chapter, a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days."

{¶63} In the case sub judice, the court made a finding that appellant abandoned K.R. by virtue of a lack of contact with him for a period greater than 90 days. Appellant argues that this finding is against the manifest weight of the evidence.

{¶64} There was testimony that appellant had not visited with K.R. since September 21, 2007. While appellant notes that she testified that she had called Anita Young, the case worker, on numerous occasions after such time, on cross-examination she admitted that it was fair to say that, in the last year, she had made no attempts to contact Young. Moreover, as noted by the trial court, while appellant alleged her failure to call Young or to arrange visitation with K.R. was due to medical problems, no evidence of the same was presented to the trial court. As the statute defines "abandonment" as failure to make contact for more than ninety days, the court's finding that appellant abandoned K.R. is not against the manifest weight of the evidence.

{¶65} Appellant also takes issue with the trial court's finding that K.R. could not or should not be placed with appellant within a reasonable time. Revised Code 2151.414(E) sets forth the factors a trial court must consider in determining whether a child cannot or should not be placed with a parent within a reasonable time. If the court finds, by clear and convincing evidence, the existence of any one of the following factors, "the court shall enter a finding that the child cannot be placed with [the] parent within a reasonable time or should not be placed with either parent":

{¶66} "(1) 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 parent to remedy the problem that initially caused the child to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the

conditions that caused the child to be placed outside the child's home. In determining whether the parents have substantially remedied the conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties. * * *

{¶67} "(16) Any other factors the court considers relevant."

{¶68} A trial court may base its decision that a child cannot or should not be placed with a parent within a reasonable time upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with the parent within a reasonable time. See *In re: William S.* (1996), 75 Ohio St.3d 95, 661 N.E.2d 738; *In re: Hurlow* (Sept. 21, 1998), Gallia App. No. 98 CA 6, 1998 WL 655414; *In re: Butcher* (Apr. 10, 1991), Athens App. No. 1470, 1991 WL 62145.

{¶69} As noted by the trial court, programs were put into effect at appellant's home, but appellant agreed that subsequent removal of K.R. was appropriate. The trial court further noted that while appellant had made progress towards the goals of her case plan, she had not visited with K.R. since September of 2007. Based on the foregoing, we find that the trial court's finding that K.R. cannot and should not be placed with appellant within a reasonable time was not against the manifest weight of the evidence.

{¶70} Appellant also contends that the trial court's finding that it was in K.R.'s best interest that permanent custody be granted to SCDJFS was against the manifest

weight of the evidence. Pursuant to R.C. 2151.414(D), in determining the best interest of a child, the court shall consider all relevant factors, including but not limited to the following:

{¶71} "(1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster care givers and out-of-home providers, and any other person who may significantly affect the child;

{¶72} "(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;

{¶73} "(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;

{¶74} "(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;* * * "

{¶75} In the case sub judice, testimony was adduced that while K.R. loved his mother and would talk about wanting to contact her and live with her, he, in the past year and a half, had rarely spoken about her and really had not asked for visits with her. As is stated above, K.R. had not seen his mother since September 21, 2007. There also was testimony that K.R. had been in the same foster home for nearly two years and that he was doing fairly well because his foster mother was accepting of him. Anita Young testified that K.R. was in need of permanency and that as long as he remained in PPLA status, he was stuck.

{¶76} At the hearing, the Guardian Ad Litem stated as follows on the record:

{¶77} "ATTY DAVIES: Thank you, Your Honor. Your Honor, as I've had the opportunity to listen to the testimony today, I believe that there are some pieces of information that I have elicited from the professional involved that were not necessarily um…provided through testimony.

{¶78} "Um…in meeting with [K.R.] and in speaking with both Ms. Young and Mrs. Voros, um…what I've become to believe is that over the last seventeen (17) months, um…[K.R.] has begun to stabilize and that in part is incidental to his no contact with either of his parents. That, that has allowed him to not have that constant um…pain or suffering that, that contact brought on for him.

{¶79} "When I have asked them, if in fact, permanency is a, a better option, what they have both said to me, um…unequivac, unequivocably is that in fact, um…that it would further his treatment. It would further his well being. It would further his ability to stabilize. That…that is one of the last pieces um…that has occurred for him. That leaving him in a PPLA status has in fact, left the wound open.

{¶80} "He has not been able to close that particular um…part of his mental health and he always wonders whether or not this will be the day where mom or dad contact me and if so, how am I expected to respond to that. Um…I believe that the greatest gift that this Court can give to [K.R.] today, is permanent custody, Your Honor. If the opportunity to allow him to further stabilize and whether or not that stabilization would allow this foster parent to consider adoption, or allow the Agency to recruit for him.

{¶81} "He has stated that he wants to be adopted. He wants to be adopted by this family but I think that, that give hope to the idea that he could be adopted by a different family. The Agency has significant resources available that recruit for children with mental health issues. Certainly, I think [K.R.] needs a family that is open to his gender issues and that isn't for everyone, Your Honor. But I think if you can find a family that takes that issue off the table, that the rest of it is manageable. Um…I believe clearly that it is in his best interest today, um…to give permanent custody to the Agency. Thank you." Transcript at 66-67.

{¶82} Based on the foregoing, we find that the court's finding that permanent custody was in K.R.'s best interest was not against the manifest weight of the evidence.

{¶83} Appellant's second and third assignments of error are, therefore, overruled.

{¶84} Accordingly, the judgment of the Stark County Court of Common Pleas, Family Court Division, is affirmed.

By: Edwards, J.

Gwin, P.J. and

Wise, J. concur

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JUDGES

JAE/d0806

[Cite as *In re K.R.*, 2009-Ohio-4350.]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	
	:	
K.R.	:	
	:	
Minor Child(ren)	:	JUDGMENT ENTRY
	:	
	:	
	:	
	:	CASE NO. 2009 CA 00061

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas, Family Court Division, is affirmed. Costs assessed to appellant.

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JUDGES