[Cite as *In re O.W.*, 2010-Ohio-5100.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
IN THE MATTER OF O.W. AND L.G.,	:	Hon. Julie A. Edwards, P.J.
MINOR CHILDREN	:	Hon. W. Scott Gwin, J.
	:	Hon. Patricia A. Delaney, J.
	:	
	:	
	:	Case No. 2010-CA-00191
	:	
	:	
	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil appeal from the Stark County Court of Common Pleas, Family Court Division, Case No. 2008JCV00940
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	October 18, 2010

APPEARANCES:

For – Appellee	For - Appellant
JERRY A. COLEMAN STARK COUNTY JFS 221 Third Street S.E. Canton, OH 44702	CORINNE HOOVER SIX 527 Portage Trail Cuyahoga Falls, OH 44221

Gwin, J.,

{¶1} Appellant-father Reginald G.[1] appeals the June 21, 2010, judgment entry of the Stark County Court of Common Pleas, Family Court Division, which terminated his parental rights with respect to his minor children, O.W. and L.G.[2] and granted permanent custody of the child to appellee, the Stark County Department of Jobs and Family Services (hereinafter SCDJFS).

I. Procedural History

{¶2} On August 20, 2008, the SCDJFS filed a complaint in 2008 JCV 000940 seeking temporary custody of O.W. DOB, 8/06/2005 and L.G. DOB, 6/06/2007, alleging the children to be dependent or neglected. On September 17, 2008, the children were found dependent and temporary custody was placed with the SCDJFS. A case plan was adopted and made an order of the court. The case plan included, but was not limited to, assessments for parenting abilities and substance abuse, as well as following the recommendations of the assessment.

{¶3} On February 13, 2009, the Court conducted a dispositional review. At that time, the parents were required to attend Goodwill Parenting and receive mental health services. The children remained in the temporary custody of the SCDJFS.

{¶4} On July 16, 2009, the SCDJFS filed a motion for permanent custody of O.W. and L.G. On October 30, 2009 the paternal grandmother, French F.[3] filed a motion for intervention and a motion for legal custody. On November 6, 2009, mother filed a motion for legal custody to be granted to the paternal grandmother. No party or

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[1] For purposes of anonymity, initials designate appellant's name only. See, e.g., *In re C.C.,* Franklin App. No. 07-AP-993, 2008-Ohio-2803 at ¶ 1, n.1. .

[2] See, Rule 45(D) of the Rules of Supt. for Courts of Ohio concerning disclosure of personal identifiers.

[3] See note 1 supra.

interested person filed motions requesting legal custody be granted to a paternal aunt, Iris G.[4]

{¶5} The trial on the motions was held on September 3, 2009 (hereinafter "1T."), November 9, 2009 (hereinafter "2T.") and March 29, 2010 (hereinafter "3T"). On February 4, 2010, the Court issued its decision that the children cannot and should not be placed with either parent at this time or within a reasonable time. On June 21, 2010, the Court issued its decision that the best interest of the children would be served by the granting of permanent custody of the children to the SCDJFS.

{¶6} It is from this entry that the appellant-father has appealed.

II. Assignments of Error

{¶7} On appeal, father asserts the following assignments of error:

{¶8} "I. THE DECISION OF THE TRIAL COURT FINDING THAT A GRANT OF PERMANENT CUSTODY TO THE STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES WAS NOT SUPPORTED BY COMPETENT, CREDIBLE EVIDENCE, AS THE RECORD DOES NOT CONTAIN CLEAR AND CONVINCING EVIDENCE THAT PERMANENT CUSTODY WAS IN THE CHILDREN'S BEST INTEREST AND THAT THE CHILDREN CANNOT BE PLACED WITH EITHER PARENT WITHIN A REASONABLE TIME.

{¶9} "II. THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY TO STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES WHEN A LESS RESTRICTIVE OPTION, NAMELY, LEGAL CUSTODY TO PATERNAL GRANDMOTHER WAS AVAILABLE, THEREBY IMPACTING THE RESIDUAL PARENTAL RIGHTS OF REGINALD GIBSON.

[4] See note 1, supra.

{¶10} "III. THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY TO STARK COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES WHEN A LESS RESTRICTIVE OPTION, NAMELY, LEGAL CUSTODY TO PATERNAL AUNT WAS AVAILABLE, THEREBY IMPACTING THE RESIDUAL PARENTAL RIGHTS OF REGINALD GIBSON."

{¶11} A. Burden Of Proof.

{¶12} "[T]he right to raise a child is an 'essential' and 'basic' civil right." *In re Murray* (1990), 52 Ohio St.3d 155, 157, 556 N.E.2d 1169, quoting *Stanley v. Illinois* (1972), 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551. A parent's interest in the care, custody and management of his or her child is "fundamental." Id.; *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599. The permanent termination of a parent's rights has been described as, "* * * the family law equivalent to the death penalty in a criminal case." In re Smith (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45. Therefore, parents "must be afforded every procedural and substantive protection the law allows." Id.

{¶13} An award of permanent custody must be based upon clear and convincing evidence. R.C. 2151.414(B) (1). 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. It does not mean clear and unequivocal." *In re Estate of Haynes* (1986), 25 Ohio St.3d 101, 103-104, 495 N.E.2d 23.

{¶14} B. Standard of Review.

{¶15} Even under the clear and convincing standard, our review is deferential. If some competent, credible evidence going to all the essential elements of the case supports the trial court's judgment, an appellate court must affirm the judgment and not substitute its judgment for that of the trial court. *In re Myers III*, Athens App. No. 03CA23, 2004-Ohio-657, ¶ 7, citing *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54. The credibility of witnesses and weight of the evidence are issues primarily for the trial court, as the Trier of fact. *In re Ohler*, Hocking App. No. 04CA8, 2005-Ohio-1583, ¶ 15, citing *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

III. Requirements for Permanent Custody Awards

{¶16} R.C. 2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court must schedule a hearing, and provide notice, upon filing of a motion for permanent custody of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

{¶17} Following the hearing, R.C. 2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (a) the child is not abandoned or orphaned, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents; (b) the child is abandoned and the parents cannot be located; (c) the child is orphaned and

there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶18} Therefore, R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B) (1) (a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶19} A. Parental Placement within a Reasonable Time- R.C. 2151.414(B) (1) (a).

{¶20} The court must consider all relevant evidence before determining the child cannot be placed with either parent within a reasonable time or should not be placed with the parents. R.C. 2151.414(E). The statute also indicates that if the court makes a finding under R.C. 2151.414(E) (1) – (15), the court shall determine the children cannot or should not be placed with the parent. A trial court may base its decision that a child cannot be placed with a parent within a reasonable time or should not be placed with a parent 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*., 75 Ohio St.3d 95, 1996-Ohio-182, 661 N.E.2d 738; *In re: Hurlow* (Sept. 21, 1998), Gallia App. No. 98 CA 6, 1997 WL 701328; *In re: Butcher* (Apr. 10, 1991), Athens App. No. 1470, 1991 WL 62145.

{¶21} Specifically, R.C.2151.414 (E) provides, in pertinent part, as follows:

{¶22} "(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

{¶23} "(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 parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those 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 changing parental conduct to allow them to resume and maintain parental duties.

{¶24} "(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to

division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

{¶25} "***

{¶26} "(16) Any other factor the court considers relevant."

{¶27} R.C. 2151.414(D) requires the trial court to consider all relevant factors in determining whether the child's best interests would be served by granting the permanent custody motion. These factors include but are not limited to: (1) the interrelationship of the child with others; (2) the wishes of the child; (3) the custodial history of the child; (4) the child's need for a legally secure placement and whether such a placement can be achieved without permanent custody; and (5) whether any of the factors in divisions (E) (7) to (11) apply.

{¶28} In this case, the trial court made its permanent custody findings pursuant to R.C. 2151.414(B) (1) (a). The trial court found that the evidence established that O.W. and L.G. could not be placed with appellant-father within a reasonable period and should not be placed with him.

{¶29} Appellant completed his parenting assessment at Northeast Ohio Behavioral Health in October 2008. (1T. at 21). The evaluator found him to be grandiose and questioned his ability to follow through with necessary services. (Id. at 21) The report indicated appellant claimed to be a multi-millionaire who worked for a record producing company. (1T. at 21). Appellant did sporadically attend individual counseling sessions but never acknowledged any problems or needs to be addressed in counseling. (Id. at 29).

{¶30} Appellant did complete an assessment for substance abuse at Quest. (1T. at 21). As Appellant denied any substance use, no treatment was initially recommended. (1T. at 21). Upon learning he was charged with possession of marijuana, it was recommended he complete an educational course and submit to urine screens to confirm his abstinence. (1T. at 21). After a course of continued positive urine screens and non-compliance with graduated treatment recommendations, appellant was terminated from Quest unsuccessfully. (1T. at 21-23).

{¶31} Appellant was given the opportunity to complete various parenting educational programs including Stark Social Workers Network, Goodwill home based parenting and Goodwill parenting classes. (1T. at 23).

{¶32} Goodwill home based parenting was attempted and was to include unsupervised visitation time. (1T. at 24 – 25). Prior to the unsupervised time, appellant agreed not to allow mother to be alone with the children as her parenting assessment indicated she was unable to parent independently. (1T. at 25). During the first session of unsupervised parenting time, appellant left one of the children alone with mother. (1T. at 25 – 26) Mother took the child to the emergency room claiming the child had been sexually abused, became belligerent and proceeded to yell at the hospital staff. (Id. at 26). Mother then disappeared with the child and had to be tracked down by the foster mother. (1T. at 26). At that time, the home parenting instruction was terminated with appellant being court ordered to the traditional Goodwill parenting program. (Id. at 27). Appellant was unable to begin the program until he addressed his substance abuse. 1T. at 27). As stated prior, appellant never completed substance abuse treatment. (Id.). Appellant did not successfully complete the parenting education objective of his case

plan. Appellant did attend individual counseling sporadically. (1T. at 29). When appellant did attend counseling sessions, he did not acknowledge any problems or areas of concern. (Id.).

{¶33} Testimony was presented that the children have made tremendous great strides since coming into SCDJFS care. They are "doing extremely well" and placed together in a licensed foster to adopt foster home. (3T. at 5). The children are very bonded to their foster family. (Id. at 6). L.G. came into custody "extremely delayed." (Id. at 6). She was 14 months old, was unable to sit up, and had not received basic medical care. She is diagnosed with "mix cerebral palsy with global developmental delays," has "transient hearing loss" and was born with "retinopathy of prematurity." (3T. at 6). She is receiving occupational, speech and physical therapy. With the help of the foster parents and professionals, she is now walking and talking. (3T. at 7). O.W. has developmental delays, speech delays and has an IEP through the Canton City schools where he is receiving speech therapy through their pre-school programs. (Id.). The foster parents had participated in the services and worked with the children to improve their delays.

{¶34} The parents have been invited to attend Friday evening outings with the foster family and to meet the foster family at a restaurant for additional weekly visitations. (3T. at 8). Appellant refused this additional contact and opportunity to bond with the children. (Id.) Appellant attended few of the children's' therapy or doctor appointments. The worker indicated there does not appear to be a reciprocal bond between the children and appellant.

{¶35} In the case of *In re: Summerfield,* Stark App. No. 2005CA00139, 2005-Ohio-5523, this court found where, despite marginal compliance with some aspects of

the case plan, the exact problems that led to the initial removal remained in existence, a court does not err in finding the child cannot be placed with the parent within a reasonable time.

{¶36} Based upon the foregoing, as well as the entire record in this case, the Court properly found the children could not or should not be returned to the appellant-father within a reasonable time. Despite offering numerous services, the appellant-father was unable to mitigate the concerns that led to the child's removal.

{¶37} B. Best Interest of the Children

{¶38} The juvenile court next had to determine whether granting permanent custody to the agency was in the child's best interest. It is in that aspect of the juvenile court's decision that the appellant claims the trial court erred.

{¶39} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates the trial court must consider all relevant factors, including, but not limited to, the following: (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; and (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.

{¶40} The focus of the "best interest" determination is upon the child, not the parent, as R.C. 2151.414(C) specifically prohibits the court from considering the effect a grant of permanent custody would have upon the parents. *In re: Awkal* (1994), 95 Ohio

App.3d 309, 315. A finding that it is in the best interest of a child to terminate the parental rights of one parent is not dependent upon the court making a similar finding with respect to the other parent. The trial court would necessarily make a separate determination concerning the best interest of the child with respect to the rights of the mother and the rights of the father.

{¶41} The trial court made findings of fact regarding the child's best interest. It is well-established that "[t]he discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned." *In re Mauzy Children* (Nov. 13, 2000), Stark App. No. 2000CA00244, quoting *In re Awkal* (1994), 95 Ohio App.3d 309, 316, 642 N.E.2d 424.

{¶42} As an appellate court, we neither weigh the evidence nor judge the credibility of 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* (February 10, 1982), Stark App. No. CA-5758. "A fundamental premise of our criminal trial system is that 'the [Trier of fact] is the lie detector.' *United States v. Barnard*, 490 F.2d 907, 912 (C.A.9 1973) (emphasis added), cert. denied, 416 U.S. 959, 94 S.Ct. 1976, 40 L.Ed.2d 310 (1974). Determining the weight and credibility of witness testimony, therefore, has long been held to be the 'part of every case [that] belongs to the [Trier of fact], who [is] presumed to be fitted for it by [his or her] natural intelligence and their practical knowledge of men and the ways of men.' *Aetna Life Ins. Co. v. Ward*, 140 U.S. 76, 88, 11 S.Ct. 720, 724-725, 35 L.Ed. 371 (1891)". *United States v. Scheffer*

(1997), 523 U.S. 303, 313, 118 S.Ct. 1261, 1266-1267. Reviewing courts should accord deference to the trial court's decision because the trial court has had the opportunity to observe the witnesses' demeanor, gestures, and voice inflections that cannot be conveyed to us through the written record, *Miller v. Miller* (1988), 37 Ohio St. 3d 71.

{¶43} C. Efforts to Identify Appropriate Relative Placement.

{¶44} Appellant-father argues that the trial court erred by not placing O.W. and L.G. in the legal custody of their relatives, namely their paternal grandmother, French F., or their paternal aunt, Iris G. We note no motion was filed by the paternal aunt or by any interested party asking for legal custody to be vested in the paternal aunt.

{¶45} R.C. 2151.412(G), in relevant part, states:

{¶46} "In the agency's development of a case plan and the court's review of the case plan, the child's health and safety shall be the paramount concern. The agency and the court shall be guided by the following general priorities:

{¶47} "(5) If the child cannot be placed with either of the child's parents within a reasonable period of time or should not be placed with either, if no suitable member of the child's extended family or suitable non-relative is willing to accept legal custody of the child, and if the agency has a reasonable expectation of placing the child for adoption, the child should be committed to the permanent custody of the public children services agency or private child placing agency."

{¶48} The child's best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security. *In re Adoption of Ridenour* (1991), 61 Ohio St.3d 319, 324, 574 N.E.2d 1055. Accordingly, a court is not required to favor a relative if, after considering all the factors, it is in the child's best

interest for the agency to be granted permanent custody. *In re A.C*., 12th Dist. No. CA 2006-12-105, 2007-Ohio-3350 at ¶17; *In re Dylan B., Luna B*, Stark App. No. 2007-CA-00362, 2008-Ohio-2283 at ¶66; *In re Turner*, 5th Dist. No. 2006CA00062, 2006-Ohio-4906 at ¶ 35; *In re Perry*, 4th Dist. Nos. 06 CA 648, 06 CA 649, 2006-Ohio-6128 at ¶62.

{¶49} The court must consider all of the elements in R.C. 2151.414(D) as well as other relevant factors. There is not one element that is given greater weight than the others pursuant to the statute. *In re Schafer*, 11 Ohio St.3d 498, 2006-Ohio- 5513 at ¶ 56. *Schafer* made it clear that a trial court's statutory duty, when determining whether it is in the best interest of a child to grant permanent custody to an agency, did not include finding by clear and convincing evidence that no suitable relative was available for placement. "The statute requires a weighing of all relevant factors, and the trial court did that in this case. R.C. 2151.414 requires the court to find the best option for the child once a determination has been made pursuant to R.C. 2151.414(B)(1)(a) through (d). The statute does not make the availability of a placement that would not require a termination of parental rights an all-controlling factor. The statute does not even require the court to weigh that factor more heavily than other factors." *Schaeffe*r at 111 Ohio St.3d, 498, 2006-Ohio-5513, at ¶ 64; *In Re Dylan B., Luna B*, supra at ¶ 67; *In re Avon*, 5th Dist. No. 2006-AP-09-0051, 2007-Ohio-1431 at ¶26.

{¶50} During the best interest phase of the permanent custody hearing, the court received testimony from the ongoing caseworker, Vicki Mitchell, the appellant-father and from the paternal grandmother, French F. who had requested custody of the children.

{¶51} Paternal grandmother testified that she is 74 years old. She stated she has adequate income to support the children. She testified that she has sufficient

housing to accommodate the addition of the children. She stated that if she received custody, she would rely on assistance from her sister, Laura D. and her daughter, Iris G. in raising the children.

{¶52} The ICPC home study of Laura D. was admitted into evidence as State's Exhibit 4 without objection. Ms. Mitchell testified that [Laura D]'s ICPC home study was denied, as Laura D. indicated she was unable to care for the children after she was fully informed of the needs of the children and the nature of the commitment she would be making as legal custodian. [Laura D.] also withdrew her request for placement/custody of the children and previously testified that she did not want custody of the children.

{¶53} Both the paternal grandmother and appellant testified that if legal custody were granted to the paternal grandmother, the appellant's sister, Iris G. would assist her in caring for the children. Appellant testified the Iris G. works with special needs children at a school in Chicago. He stated that she has worked at the school for over 20 years.

{¶54} The ICPC home study of Iris G. was admitted into evidence as State's Exhibit 3 without objection.

{¶55} Ms. Mitchell testified at the "very beginning" of the case, the paternal grandmother was given the opportunity to be considered for placement, but she declined. (3T. at 37). The paternal grandmother later came forward requesting consideration for care or custody of the children. Pursuant to her request and in compliance with R.C. 2151.56 to 2151.61, an Interstate Compact on Juveniles was completed. (3T. at 12). Her home study was denied by the children services agency in Cook County, Illinois, the home county of the paternal grandmother. (3T. at 13, 23). The denial was based upon lack of understanding of the children's needs, denial that the

children were special needs children, and denial of any problems with the parents. (3T. at 14, 23 – 24). Paternal grandmother "Seemed to you know be more interested in a temporary placement versus a long term placement." (3T. at 14).

{¶56} SCDJFS attempted to facilitate an extended visitation in the parents' home. The plan included the paternal grandmother residing in the home. (3T. at 22). Prior to placing the children in the home, SCDJFS requested a four to six month commitment from the paternal grandmother to stay in the home of the parents. (3T. at 11). The paternal grandmother indicated her agreement and commitment to the children and the plan. (Id.). Three days later, the paternal grandmother informed the foster parents she was leaving town. Ms. Mitchell, the ongoing worker from SCDJFS, went to the home to speak with the paternal grandmother. (3T at 42). The paternal grandmother was unable to explain why she was leaving after only three days and she did not know when or if she would return. (3T. at 11 - 12, 42).

{¶57} A home study was also completed on the paternal aunt. (3T. at 17). The home study indicated a "guarded recommendation" for placement with the paternal aunt. The guarded recommendation was based upon lack of contact and bond with the children, understanding of the children's needs, denial that the children were special needs children, and denial of any problems with the parents. A letter was sent to the paternal aunt offering her the ability to visit with the children, to learn about the children's medical needs and to be part of the process. She "has not made any effort to visit." (3T at 17). She did attend one visit with the parents, but did not seek any additional time with the children and "hadn't seen the children but you know for a very long time prior to that." (Id.). There is no bond between the aunt and the children.

{¶58} According to the Cook County, Illinois officials who conducted the home study, placement should not occur until "she should first demonstrate that she understands that the parent's pose a risk to the children as [paternal aunt] had stated that she did not believe that there was a problem and believed that the children should be returned home to the parents and in fact stated that in Court the last time she was here I believe." (3T. at 18). The paternal aunt testified "I know there's nothing wrong with my brother" and the children should be returned to his custody. (2T. at 47).

{¶59} Ms. Mitchell opined that a grant of permanent custody would be in the best interest of the children. (3T. at 19). Ms. Mitchell indicated that in the year and a half the children have been in custody, no party, other than the foster family, has demonstrated an ability to meet the specific needs of these children. (3T. at 20).

{¶60} Based upon the testimony, the court properly denied the motion for a change of legal custody. There was sufficient evidence submitted at the hearing to call into question, the relatives' ability to provide a long term, stable placement for the children.

IV. Conclusion

{¶61} For these reasons, we find that the trial court’s determination that appellant-father had failed to remedy the issues that caused the initial removal and therefore the children could not be placed with him within a reasonable time or should not be placed with him, was not against the manifest weight or sufficiency of the evidence. The trial court did not abuse its discretion in denying the paternal grandmother’s motion for custody. The trial court did not abuse its discretion by not placing the children with the paternal aunt.

{¶62} We further find that the trial court's decision that permanent custody be granted to the SCDJFS was in the children's best interest and was not against the manifest weight or sufficiency of the evidence.

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

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

By Gwin, J.,

Edwards, P.J., and

Delaney, J., concur

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HON. W. SCOTT GWIN

_____
HON. JULIE A. EDWARDS

_____
HON. PATRICIA A. DELANEY

WSG:clw 0924

[Cite as *In re O.W.*, 2010-Ohio-5100.]

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO

FIFTH APPELLATE DISTRICT

IN THE MATTER OF O.W. AND L.G., MINOR CHILDREN	:	
	:	JUDGMENT ENTRY
	:	CASE NO. 2010-CA-00191

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

_____
HON. W. SCOTT GWIN

_____
HON. JULIE A. EDWARDS

_____
HON. PATRICIA A. DELANEY