[Cite as *In re M.H.*, 2017-Ohio-7365.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PIKE COUNTY

IN RE: M.H.	:	Case No. 17CA882
	:	
K.H.	:	DECISION AND JUDGMENT
	:	ENTRY
ADJUDICATED DEPENDENT	:	
CHILDREN.	:	**Released: 08/10/17**

APPEARANCES:

Matthew P. Brady, Chillicothe, Ohio, for Appellant M.K.

Chase B. Bunstine, Chillicothe, Ohio, for Appellant R.H.

Rob Junk, Pike County Prosecuting Attorney, and Elisabeth M. Howard, Pike County Assistant Prosecuting Attorney, Waverly, Ohio, for Appellee.

McFarland, J.

{¶1} Appellants M.K. and R.H. appeal the trial court's judgment that awarded Appellee, Pike County Children's Services Board, permanent custody of their two biological children: five-year-old M.H.; and two-year-old K.H. The parents essentially argue that the trial court's decision to award Appellee permanent custody of the children is against the manifest weight of the evidence. More specifically, the mother asserts that clear and convincing evidence fails to support the trial court's findings that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent and that permanent custody is in the

children's best interest. The father challenges the trial court's finding that the children cannot achieve a legally secure permanent placement without granting Appellee permanent custody.

{¶2} Clear and convincing evidence supports the trial court's decision to grant Appellee permanent custody of the children. The evidence shows that the parents' intellectual disabilities are so severe that they prevent them from providing an adequate permanent home for the children now and in the future. Therefore, under R.C. 2151.414(E)(2), the children cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶3} Additionally, placing the children in Appellee's permanent custody is in their best interest. Although the children share a strong bond with their parents, the children's foster family provides them with the interactions and interrelationships necessary for their health, safety, and welfare. The children are too young to directly express their wishes, but the guardian ad litem recommended that the trial court place the children in Appellee's permanent custody. At the time Appellee filed its permanent custody motion, the children had been in Appellee's continuous temporary custody for approximately nine months, and as of the date of the final permanent custody hearing, the children had been in Appellee's continuous

temporary custody for approximately sixteen months. The children need a legally secure permanent placement and cannot achieve this type of placement without granting Appellee permanent custody. Neither parent can provide the children with an adequate permanent home. Furthermore, the trial court did not believe that the parents' proposed relative placement would be in the children's best interest. The totality of the circumstances supports the trial court's determination that placing the children in Appellee's permanent custody is in their best interest.

{¶4} The father also argues that the trial court erred by granting Appellee permanent custody when Appellee failed to show that it used reasonable efforts to reunify the family. Because the trial court entered reasonable efforts findings before Appellee filed its permanent custody motion, the trial court was not required to address reasonable efforts during the permanent custody proceeding.

{¶5} Accordingly, we overrule all of the parents' assignments of error and affirm the trial court's judgment.

I. FACTS

A. Background

{¶6} Appellee first became involved with the parents three months after M.H.'s birth. In 2012, Appellee removed then-three-month-old M.H.

due to concerns that the child was not gaining weight. Appellee questioned whether the parents were properly feeding the child. After M.H.'s removal, she gained weight.

{¶7} Over the course of the next year, the parents engaged in parenting classes, received in-home parent mentoring, and underwent psychological evaluations. The psychological evaluations indicated that both parents evidence cognitive delays, with intelligence quotients that place them in the extremely low range of intelligence. After approximately one year, appellee returned M.H. to the parents.

{¶8} In August 2015, Appellee received a report that the parents, M.H., and eleven-month-old K.H. were living on the property of the maternal grandmother "in a tent next to chicken coop." When Appellee investigated, the caseworker found that the parents had "rigged electric cords throughout the tent." Additionally, M.H. had "severe head lice," both children were filthy, M.H. was not wearing pants, and K.H. had "a large boil on her bottom." Appellee sought and obtained temporary emergency custody of the children.

{¶9} Shortly thereafter, Appellee filed a complaint alleging that the children are neglected and dependent. Appellee requested the court to grant it temporary custody of the children.

{¶10} On September 28, 2015, the court adjudicated the children dependent, and Appellee withdrew the neglect allegation. The court later continued the children in Appellee's temporary custody while the parents worked with Appellee to try to remedy the conditions that led to the children's removal.

{¶11} Appellee developed a case plan for the family. The case plan required the parents (1) to complete parenting classes to assist them with developing solid parenting and coping skills, (2) to complete psychological and cognitive evaluations and to comply with any treatment recommendations, (3) to use the skills they acquired during parenting classes, and (4) to find and maintain appropriate housing.

{¶12} At a February 2016 review hearing, the court found that the parents completed psychological evaluations, obtained new housing, took parenting classes, and consistently visited the children.

{¶13} A May 2016 case review indicated that the parents had maintained a stable home for several months, completed psychological evaluations, completed parenting classes, and chose to continue individual and group sessions at Pike County Recovery Council. Appellee nevertheless expressed continued concerns regarding the parents' mental capacities, their abilities to learn new parenting skills, and their abilities to properly care for

and understand the children's needs. The case review further stated that the parents' psychological evaluations suggest that the parents likely would never be able to learn proper parenting tasks and would not be able to care for the children on their own. Appellee thus reported that "[c]ontinued out-of-home placement is necessary at this time to ensure the children's safety. While [the parents] have been compliant with their case plans, their psychological evaluations have revealed that they will likely repeat the pattern of neglecting their children should they be returned, due to their mental capacities and their abilities to protect the children appropriately."

B. Permanent Custody Proceedings

{¶14} On June 28, 2016, Appellee filed a motion to modify the disposition to permanent custody. Appellee alleged that the children cannot be returned to either parent within a reasonable time or should not be placed with either parent and that awarding Appellee permanent custody is in the children's best interests. On that same date, Appellee filed an amended case plan. The case plan indicated that the children "have thrived in the foster home," that they are "attached" to the foster parents, and that the foster parents asked about adopting the children if the court grants Appellee permanent custody.

1. Permanent Custody Hearing

{¶15} At the permanent custody hearing, Appellee first presented testimony from Dr. Robin Rippeth, who conducted the parents' 2012 and 2016 psychological evaluations. Dr. Rippeth's testimony and psychological evaluations, which were admitted into evidence, reveal the following. Dr. Rippeth first evaluated the parents during the 2012 proceeding involving M.H. At the time, both parents exhibited cognitive delays and their intelligence quotients placed them in the "extremely low range of intellectual functioning." In her 2012 evaluations, Dr. Rippeth reported that the parents need "intensive, ongoing support" in order to "acquire a working knowledge of childcare concepts." Her evaluation indicates that the parents are "likely to easily forget concepts learned and have difficulty identifying situations" to which concepts apply. She recommended the "use of visual cues, reminders in the home environment, and support from family" to help the parents provide for M.H. Dr. Rippeth further stated that the parents appear unable "to induce responses on [their] own that are not previously provided to" them. She thus reported that the parents' inability to independently induce responses likely will "make responding to emergency situations and generalizing parenting skills from one situation to another extremely difficult for" the parents.

{¶16} Dr. Rippeth recommended that the parents use an in-home parent mentor or coach "to model appropriate parenting skills and help [the parents] apply these skills in [a] natural environment." She explained that if a parent mentor is unable to help the parents increase their parenting skills, then concerns would remain regarding their ability to independently parent M.H. Conversely, if the parents showed progress after the use of a parent mentor, then "concerns would be minimized." Dr. Rippeth rated both parents' prognosis to effectively parent M.H. over time as "poor," but stated that their prognosis likely will improve if they comply "with treatment recommendations and evidence[] ability to acquire and implement the tasks being modeled and taught to" them.

{¶17} When Dr. Rippeth evaluated the parents in 2016, she found that their cognitive abilities had not changed and that they presented with similar patterns of behavior. She asked both parents the normal temperature range for a child, but neither correctly identified it.

{¶18} Dr. Rippeth indicated that neither parent responded well to the in-home parent mentoring service and parenting classes provided during the 2012 children services proceeding and that their cognitive delays likely inhibited any progress. She stated that even after the parents received in-home parent mentoring and completed parenting classes, neither has been

able "to consistently provide a stable living environment for [the] children. She noted that the mother "appears to have a strong desire to parent" the children, but "cognitively [she] is not likely to be able to engage in appropriate decision making regarding parental activities."

{¶19} Dr. Rippeth stated that because "cognitive ability changes little after one reaches adulthood, [the parents] will continue to struggle to implement the necessary parental skills and apply basic knowledge to parenting tasks necessary to meet the needs of [their] young children." She reported that outpatient counseling will not improve the parents' intellectual functioning, but both may "benefit from treatment aimed at teaching [them] a wide variety of positive coping skills." Dr. Rippeth also indicated that the father may benefit from treatment aimed at "improving prosocial behaviors" and that the mother may benefit from treatment aimed at "increasing her independence skills" and "improving her social skills." However, she cautioned that "[s]ignificant improvements are not likely to be seen with ongoing treatment." Instead, "ongoing treatment may allow [the parents] to maintain [their] current level of functioning.

{¶20} Dr. Rippeth stated that the father's prognosis "to serve effectively in a primary parental role with his young children is limited" and that the mother's prognosis is "poor." She reported that "[e]ven if [the

parents] compl[y] with all recommendations provided in the current evaluation, [they] would still likely require ongoing assistance to ensure that [they] meet the basic health and safety needs of [their] children consistently over time."

{¶21} During her testimony, Dr. Rippeth indicated that as long as the parents have ongoing assistance, they could meet the basic health and safety needs of the children. She explained that "ongoing assistance" means that the parents would need "daily helpers" in the home, "[d]aily reminders or visual cues of actions to take in certain events," and "[o]ngoing counseling to improve [the] level of independent functioning." Dr. Rippeth stated that an example of a "daily reminder" might be "a written reminder of * * * what if my child does have a temperature, what number do I look for? How do I respond if that's the number?" She related that the parents would need to have a person in their home on a daily basis for "a significant period of time."

{¶22} Dr. Rippeth also testified that the parents would need ongoing counseling, which she explained as "mental health counseling to continue to try to further improve their independent functioning. So their ability to maintain the household. Their ability to manage finances. Their ability to maintain personal hygiene and parental tasks involved on a daily basis."

{¶23} PCCS caseworker Ashley Leasure testified that in April of 2012, Appellee took emergency custody of M.H. due to the child's failure to thrive. Ms. Leasure stated that M.H. "was basically starving through a non-medical issue since she was not being fed properly while in [the parents'] care." She explained that during the time of M.H.'s removal, the parents took parenting classes and received parent mentoring in the home twice per week. She further testified that "Help Me Grow" provided services twice a month. Ms. Leasure explained that these services continued for approximately one year, and M.H. was returned to the parents.

{¶24} Ms. Leasure related that appellee next encountered the family in August 2015. She testified that at the time, the parents, M.H., and eleven-month-old K.H. were living in a tent surrounded by a chicken coop. She stated that "the children were filthy head to toe" and had "a pretty significant lice infestation." Ms. Leasure reported that "the caseworker actually spent at least an hour trying to comb through the lice and was still not able to even make a dent." She additionally explained that K.H. "had a large boil-like cyst on her bottom and there was food [sic] in her diaper." Ms. Leasure further related that K.H. "was severely * * * developmentally delayed." Ms. Leasure stated that at the time of the August 2015 removal, K.H. was eleven months old and she "could not sit up on her own for a long period of time,"

she "had trouble holding her head up," and she "could not walk, crawl, [or] roll over."

{¶25} She explained that Appellee prepared a case plan for the family, and the case plan required the parents to maintain housing, complete parenting classes, receive a mental health evaluation, and visit the children regularly. Ms. Leasure stated that the parents have complied with the case plan. She reported that the parents obtained appropriate housing, completed parenting classes, obtained psychological evaluations, and regularly visited the children. Ms. Leasure additionally related that she did not notice any issues regarding the parents' care of the children during the supervised visits at the agency or during the four-hour home visits that M.K.'s sister, M.L., supervised. She further testified that the parents seem to share a strong bond with the children.

{¶26} Ms. Leasure stated that Appellee requested permanent custody of the two children due to "a concern that [the parents] would not be able to maintain the children in their care by themselves long term." Ms. Leasure believes that the parents "would do okay in a short-term situation, but * * * the pattern and their history with Children's Services is when they have a life-changing decision to make such as moving or, or something of that nature, [o]ftentimes the decision is not the correct one and the children are

put at risk. * * * [A]nd there's many times where they're not able to retain some parenting advice that's given to them through the parent mentor or the classes or even the caseworker. * * * [S]o there's just a lot of concern that they would * * * not be able to properly parent the children on their own."

{¶27} Ms. Leasure stated that the children "have made remarkable changes" since their removal from the parents. She testified that after Appellee removed the children, M.H. "had a very hard time adjusting * * *. Um, she had some hoarding going on. She actually would take food from the foster parents' pantry and hide them under her pillow and state that she needed to save them for her daddy." Ms. Leasure related that M.H. no longer hoards in her foster care placement and further reported that "within a few weeks they both gained a lot of weight," and K.H. "was able to crawl across the floor." Ms. Leasure indicated that K.H. now "seems to be normal functioning." She further related that M.H.'s preschool teacher reported that M.H. "is most likely cognitively delayed" and will "most likely require special needs throughout school." She also stated that M.H. has progressed in her speech and socially. Ms. Leasure explained: "She's a social butterfly."

{¶28} She testified that the two children are placed in the same foster home and are bonded to one another. She stated that Appellee would try to

keep them together, if the court grants Appellee permanent custody of the children.

{¶29} Ms. Leasure explained that Appellee investigated placing the children with M.L., their maternal aunt, and completed a home study. She stated that on June 23, 2016, Appellee notified M.L. of the home improvements she needed to make before Appellee would approve her home for placement. For instance, Appellee requested M.L. to repair or install a new stove, repair or install new smoke alarms, and obtain a fire extinguisher. Appellee also advised M.L. that she needed to (1) clean up and prepare the spare bedroom for the children, (2) remove an old, unsafe tree house and tire swing, (3) place tools and equipment in an area that is inaccessible to children, (4) make appropriate child care arrangements during M.L.'s work hours, and (5) obtain a mental health assessment. Appellee further requested M.L.'s roommate to complete a background check. Ms. Leasure testified that Appellee also advised M.L. that M.L.'s and M.K.'s mother (E.K.), who had a long history with children services, could not live in M.L.'s home and asked M.L. to remove E.K.'s belongings from the home.

{¶30} And, Ms. Leasure stated that in addition to the foregoing, Appellee had concerns regarding M.L.'s ability to protect the children. She

related that M.L.'s now-deceased paramour sexually abused M.K., and M.L. did not and does not believe the accusations.

{¶31} Following a three-month recess, Caseworker Julie Lundy testified that she completed M.L.'s home study and compiled a list of improvements M.L. needed to make before Appellee could approve her home for placement. Ms. Lundy explained that she initially had concerns regarding the safety of M.L.'s home. She stated that M.L. used a hot plate instead of functioning stove, M.L. did not have a fire extinguisher, and the smoke alarms did not work. Ms. Lundy further related that M.L. did not have a room prepared for the children and that the outdoor area had several safety hazards, including old play equipment, lawnmowers, and "random tanks." She also stated that M.L. did not have childcare arranged for the times when M.L. would be working.

{¶32} Ms. Lundy explained that the day before she testified, she followed up with M.L. She stated that M.L. still was using a hot plate, but she had obtained a fire extinguisher and fixed the smoke alarms. Additionally, M.L. had set up two beds for the children. She testified that one bed was located in the middle of the living room and did not have any safety rails. The second bed was located in a bedroom "and it's extremely high for a child * * * and there are no safety rails." Ms. Lundy further stated

that M.L. did not remove all of the hazards from the outdoor area and did not complete a mental health assessment.

{¶33} Ms. Lundy indicated that she had concerns about placing the children with M.L., because M.L. does not have many people who could provide support, she does not have childcare experience, and she has not had a visit alone with the children. She explained that she "asked [M.L.] over and over again to try to explain her bond with the children and she was unable to verbalize that she loves the children, that she cared for the children."

{¶34} And, Ms. Lundy explained that Appellee continued to have concerns regarding whether M.L. would permit M.L.'s mother (E.K.) to reside in the home. She testified that she had been E.K.'s caseworker for over seven years, and E.K. "had substantiated neglect issues and * * * extreme hoarding issues."

{¶35} Following Ms. Lundy's testimony, Appellee re-called Ms. Leasure. She stated that during the three-month recess, she had approximately six interactions with M.L. Ms. Leasure explained that she continued to remind M.L. of the home improvements she needed to make in order for Appellee to approve her home for placement. She testified that the previous Monday, M.L. finally called to schedule a mental health evaluation.

Ms. Leasure indicated that she has "deep concerns about [M.L.]'s bond with the children" and "really fear[s] them being in [M.L.]'s care."

{¶36} Ms. Leasure additionally explained an incident that occurred during the three-month recess. On October 26, 2016, the parents had a home visit with the children that M.L. supervised. When the parents returned the children to the agency at the end of the visit, Ms. Leasure learned that K.H. "was not acting right." She found the child unresponsive, with her eyes "rolled in the back of her head." She shook her leg and called her name, but K.H. did not respond. The foster parents took K.H. to the emergency room. K.H. was later transported to Nationwide Children's Hospital in Columbus and admitted to the intensive care unit.

{¶37} Next, Ms. Leasure asked the parents what happened to K.H., and the mother stated that K.H. "just laid around and did not want to play with anybody and was sleepy" during the visit. The mother explained that the parents took K.H.'s temperature and it registered at 103 degrees. The mother stated that the parents gave K.H. "a little teaspoon" of "baby Tylenol." The mother claimed that after they gave K.H. the medicine, "she turned right around, was running around and was fine." She asked the mother at what point K.H. became tired and unresponsive. The mother

stated that K.H. "was fine until they got into the car and headed to the agency." The mother stated K.H. fell asleep during the ride to the agency.

{¶38} Then, Ms. Leasure later informed the parents that the hospital reported that K.H. tested positive for Sudafed. The mother stated that she had not given K.H. Sudafed. She asked the mother what the thermometer read when she took K.H.'s temperature, and the mother responded, "one point zero, zero, zero point zero, zero." She became concerned that the mother may not know how to read a thermometer and she further questioned the parents about their October 26th visit. The mother stated that on the way to the agency on the date of the incident, the parents detected that K.H. was hot, so they stopped and bought Motrin. She noted that this statement contradicted the mother's earlier statement. She additionally indicated that the parents presented a receipt for the medication that they gave K.H., and the receipt shows that they purchased the medication at 1:45 pm, which would have been at the beginning of their visit, and not at the end.

{¶39} Ms. Leasure stated that she examined the parents' home to look for Sudafed or any medication containing the active ingredient in Sudafed, but she did not find any. As she was leaving, the mother informed Ms. Leasure that the mother had received a prescription for a cold. Ms. Leasure learned that the active ingredient in the prescription was

pseudoephedrine, the same active ingredient in Sudafed. The mother advised Ms. Leasure that she did not have that prescription at the time of the incident, and Ms. Leasure noted that the prescription was dated November 3, 2016. Ms. Leasure was unable to determine how the child obtained Sudafed.

{¶40} The parents presented testimony from Recovery Council Supervisor Cynthia Brushart. Ms. Brushart testified that the parents have been attending Recovery Council for over one year. She stated that the parents have "done everything we've asked them to do;" they have completed parenting courses (which included CPR and first aid training), as well as alcohol and drug classes. Ms. Brushart indicated that the parents appear to enjoy the social aspects and have continued to attend parenting classes. Ms. Brushart explained that even though the parents attend regularly, she could not attest whether the parents have learned proper parenting techniques. She related that she has not observed the parents with the children.

{¶41} Next, M.L. testified on the parents' behalf. She explained that she is willing and able to take custody of the children, if the court decides that the children should not be placed with their parents. M.L. stated that she has remedied the problems Appellee identified in her home study. M.L. explained that her smoke alarms work and that she obtained a fire

extinguisher. She related that she has a new stove, but she is waiting for someone to install it. M.L. stated that both she and her roommate completed background checks. She indicated that she has prepared two beds for the children and that, if needed, she could obtain bedrails for the children's beds. M.L. stated that her mother is in a nursing home but trying to locate a residence. M.L. asserted that she would protect the children from E.K. and not allow E.K. to live in M.L.'s home.

{¶42} M.L. stated that she has worked at Dairy Queen for approximately nine years. She explained that she works both day and night shifts, but if she had custody of the children, she could try to change her schedule in order to provide proper care for the children. M.L. indicated that she contacted Community Action to discuss childcare during her working hours, but she learned that she would be unable to receive assistance unless the children were in her custody.

{¶43} M.L. explained her "bond" with the children: "[W]hen [K.H.] was little," she "would hold my hand and try to walk." She stated that K.H. "always put her hands out wanting me to hold her." M.H. "would run at [her] and call [her] Aunt Snacky." M.L. explained that she "would kind of have like little candy cakes or something like that in [her] purse [that M.H.] always wanted." M.L. stated that sometimes she surprised M.H. "with a

small blizzard from work." She explained that when the supervised visits started, M.H. "knew [her] right away," but K.H. "stayed away from a distance but she will come to [M.L.]."

{¶44} M.L. stated that the parents love their children and that during the time she supervised their visits, the parents engaged appropriately with the children. M.L. did not observe anything concerning.

{¶45} M.L. described what a typical day would be like, if the children lived with her. She would "get up, get dressed, have breakfast, [and] see what the weather is outside. If it's cold, if it's hot. If it's cold, then limit them to the outside so they won't get any sickness [sic]. Um, see what kind of activities I have at the house. Uh, I got some education shows I can show them. From kid shows and stuff like that. Uh, don't have any hard toys or rolly [sic] toys. I just have stuffed bears." M.L. stated that she does not "know much" about M.H.'s learning disabilities, but she has "some learning books and go through with her [sic]."

{¶46} M.L. stated that she "had no idea," at the time of the allegations, that her now-deceased boyfriend possibly sexually abused M.K. M.L. explained that M.K. "never told [her] anything," and that her boyfriend denied the allegations. M.L. stated that when she learned of the allegations, she did not break up with him.

{¶47} M.L. testified that she had a mental health assessment scheduled for December 20, 2016. When appellee's attorney questioned M.L. why she waited six months to schedule a mental health assessment, M.L. stated that she did not know how to make the appointment and that she "thought someone was supposed to help [her] go by it. [sic]" Appellee's attorney asked her whether she has ever made a doctor's appointment before and how making a mental health assessment appointment differed. M.L. admitted that both processes started by making a phone call, but stated that she had to call the mental health office and had to answer "all kinds of questions."

{¶48} M.L. explained the October 26, 2016 incident as follows. K.H. touched the mother's hand, and K.H. "was burning up." M.L. drove to the store and the mother purchased children's ibuprofen. When they arrived at home, they took K.H.'s temperature. M.L. did not recall what the thermometer read, because "it was Celsius." M.L. stated that they went to the neighbors who informed M.L. and the mother that the child had a fever.

{¶49} M.L. testified that before administering the ibuprofen to K.H., M.L. and the mother looked at the medication box to ascertain the correct dosage. M.L. poured the medicine into the cup and handed the cup to the father. The father gave K.H. the medicine, but K.H. spit it out. M.L. stated

that they did not attempt to give K.H. any more medicine. After they attempted to administer the medication, K.H. "wanted to lay down and she wanted to sleep." "[A]fter about an hour to an hour and a half, [her fever] seemed to have broke and she got up and started playing."

{¶50} M.L. drove the parents and the children back to the agency at the end of the visit. Two blocks before they arrived at the agency, K.H. fell asleep. M.L. did not notice anything concerning, except that K.H. appeared sick and tired. M.L. does not know how the child would have obtained Sudafed.

{¶51} When they returned to the agency, M.L. informed the foster mother that K.H. had a fever and that she is sick, so they had given K.H. "Tylenol."

{¶52} The mother testified that she and the father currently live in a three-bedroom townhouse. She stated that (1) they have maintained the same home since January 2016, (2) appellee has not identified any concerns with their present home, (3) she completed a psychological evaluation, (4) she took parenting classes, and (5) she did "everything [appellee] asked for." The mother related that she loves her children and has "great" interaction with them. She believes that she can care for the children and that when she needs help, she can ask M.L. or a family friend.

{¶53} The mother explained that she and the father receive transportation assistance from Recovery Council or M.L. If neither is available, the mother uses public transportation. She stated that if the children needed transportation to a doctor in Columbus, she would talk to her sister and ask her sister to take the day off from work. The mother additionally testified that an uncle has helped her in the past when she has found herself in a "jam."

{¶54} The mother stated that if the court does not return the children to her and the father, then she would like the children to be placed with M.L. She related that M.L. "loves" the children, that they are "just like two peas in a pod," and that they are "happy" and "outgoing." She later indicated that the children have never been to M.L.'s house.

{¶55} The mother explained the October 26 incident as follows. When she picked up the children, she noticed that K.H.'s "little hand was on fire." The mother touched K.H.'s leg and discovered "the same thing." She asked M.L. to drive to the store. The mother asked a store employee for help choosing the right medicine and purchased children's ibuprofen.

{¶56} When they arrived home, M.L. took K.H. to the father. K.H. did not want to do anything. The mother looked at the box of medicine and handed it to M.L. M.L. measured it, and the mother handed the medicine to

the father. The father set the medicine on the desk and took K.H.'s temperature "[u]nder the armpit." They could not "figure out what the thermometer [read]," so they "went to the neighbor." The neighbor checked it and told the parents that K.H. had a fever. They returned to the house and the father gave K.H. "a little taste of [the medicine]. She took about a little tiny, not even a whole tablespoon and most of it she spit out on [the father]." The mother stated that they did not give the child any other medicine that day. After they gave K.H. the medicine, she laid on the couch for at least an hour and then she got up and started playing around a little bit. About two blocks away from the agency, K.H. fell asleep.

{¶57} The mother testified that after this incident, she was prescribed medication containing pseudoephedrine—the active ingredient in Sudafed. The mother stated that she did not have this medication on October 26 and had not been prescribed it before November 3.

{¶58} On cross-examination, the mother admitted that she was involved with the agency when M.H. was around three months old. The mother recognized that the agency claimed that the parents neglected M.H., but the mother believed that "W.I.C. stuck [M.H.] on the wrong formula." The mother stated that she and the father worked with the agency for approximately one year. She took parenting classes, and Help Me Grow

provided services. The mother denied that a parent mentor provided services in the home.

{¶59} The mother denied that the family was living in a tent when the agency removed the children in August 2015. Instead, she claimed that the family was living on "Waldren Hill." The mother stated that she complied with the case plan. She indicated that she knows how to keep the children away from "harmful things." She stated that she was not taught to keep harmful things out of the children's reach the first time she took parenting classes, when M.H. was removed.

{¶60} When questioned whether M.L.'s now-deceased boyfriend sexually abused her, the mother responded affirmatively, but stated that he was not able to "hurt" her. The mother testified that she is not concerned whether M.L. would protect the children from "something like that." The mother explained that she "never did bring [the abuse] to [M.L.'s] attention [so] it's not [M.L.'s] fault." The mother stated that M.L. knew about the allegations, but M.L. did not "know my side because I always hid." She indicated that she hid because she did not want anyone "to know."

{¶61} When asked what the thermometer read on October 26, the mother responded that she did not remember, but she thinks it stated "one zero three." The mother explained that she showed the thermometer to

M.L., and M.L. "couldn't make it out," so they went to the ask their neighbors. The mother stated that the neighbors informed them that K.H. had a fever.

{¶62} The father testified that he does not completely understand why the children were removed in August 2015. He explained that he has complied with the case plan. He stated that he and the mother have maintained their current home for the past year; he completed parenting classes; he obtained a psychological evaluation; and he regularly visited the children. The father related that he interacts with the children during the visits and that M.H. "cries and stuff" when it is time to leave.

{¶63} The father indicated that he has four other children from prior relationships who range in age from eighteen to twenty-four. One is a teacher, one is in a Christian academy and preparing to be a nun, one is a "gamer," and one works as an emergency medical technician. The father stated that he has good relationships with these children.

{¶64} The father testified that he has an adequate support system in place that would enable him to provide proper care for the children. He believes he would find help if the children needed to go to the doctor. He additionally related that he could call upon his daughter who is a teacher to help with any learning disabilities the children might display.

{¶65} The father stated that if the court does not return the children to the parents, then he would like M.L. to have custody of them. He testified that the children "love" M.L.

{¶66} The father explained his version of the October 26 incident as follows. M.L. brought K.H. into the house and placed her on his lap. K.H. "burnt" him. He stated that they needed "to take her tests" and he retrieved a thermometer. Her temperature was "a hundred point two." M.L. poured some medicine and handed it to him. He gave K.H. a taste and she spit it out. Afterwards, K.H. "laid around for a little bit." Later, she got up, went outside, and "just laid there and kept closing her eyes." He held her for a "long time." K.H. fell asleep on the drive to the agency and woke up when he removed her from the car. She "opened her eyes and looked at me and closed her eyes and went back to sleep." He did not give K.H. any other medicine that day and he did not see anyone else give her medicine.

{¶67} On cross-examination, the father denied that he took parenting classes in 2012, when M.H. was removed. He agreed that he obtained a psychological evaluation, but then later stated that he did not "even know who [Dr. Rippeth] is." The father related that he does not believe that he cooperated with the psychological evaluation, because he did not "understand what she was trying to do" and he "was sick at the time." He

explained that he felt "light-headed and dizzy" and was unable to cooperate. The transcript further reflects the father speaking an "unknown language," and he stated that he does not "understand most of" the English Language.

2. Trial Court's Decision

{¶68} On January 17, 2017, the trial court granted Appellee permanent custody of M.H. and K.H. The court determined that that the children cannot be returned to either parent within a reasonable time or should not be returned to either parent and that placing the children in Appellee's permanent custody is in their best interest.

{¶69} In concluding that the children cannot be returned to either parent within a reasonable time or should not be returned to either parent, the court found that the "parents are unable to care for the minor children." The court stated that the parents' "intellectual disabilities are so severe that it makes them unable to provide consistent and adequate care for the children now and in the future." The court noted that the parents had prior involvement with children services in 2012 with respect to M.H.'s failure to gain weight. The court found that despite the extensive services provided throughout the 2012 case, the parents failed to perceive the danger that their 2015 living conditions posed to M.H., a toddler, and K.H., an infant. The court explained:

> "The crux of this case is the parents' extremely low intelligence level and the effect that has on their ability to provide a safe and appropriate home for their girls. [Appellee] provided undisputed, uncontested expert testimony that [the] parents, due to their extremely low intellectual functioning, are unable to care for their children and that there isn't any chance their parenting skills will improve in the future."

{¶70} The court also noted that Dr. Rippeth's updated psychological evaluations indicated that the probability of the parents safely caring for the children was low. In her January 20, 2016 evaluation, Dr. Rippeth stated that "cognitively [the mother] is not likely to be able to engage in appropriate decision making regarding parental activities; further stating, 'Even following the participation and completion of parenting classes and in-home parent mentoring services, [the mother] has been unable to consistently provide a stable living environment for her children.' " Dr. Rippeth's 2012 evaluation concerning the father states that "it doesn't appear that [the father] has the critical thinking skills and problem solving skills to respond to various parental concerns and therefore, is likely to have difficulty meeting his child's daily living needs." The father "is likely to easily forget concepts learned and have difficulty identifying situations that concepts apply to." The court stated: "Unfortunately, it doesn't matter how many parenting classes [the father] takes, he is likely unable to apply those skills to daily parenting of M.H. and K.H. [The f]ather's testimony on

December 15, 2016 included testimony spoken in gibberish that he identified as 'apache' which clearly demonstrates his tenuous hold on reality."

{¶71} The court also observed that Dr. Rippeth testified that neither parent could tell her the normal temperature range for a child. The mother could not identify the difference between a mild fever requiring medication and a severe fever requiring immediate medical attention. Dr. Rippeth testified that the parents' inability to competently take their children's temperature is indicative of how their low intelligence directly affects their ability to care for the children.

{¶72} The court found that the parents displayed Dr. Rippeth's prediction on October 26, 2016, when the parents thought that K.H. was burning up with a fever after touching her skin while the child was wearing her coat. The court noted that the testimony was unclear as to what the child's actual temperature was when the parents administered the medicine and that the parents reported the child's temperature "anywhere from 100.2 to 103.2 to 10.3 [sic] and 1.000.00 [sic]." The maternal aunt seemed to think the thermometer gave a Celsius temperature. The court determined that "[i]t was clear from the parties' testimony that they were very confused over the very simple parenting function of taking their child's temperature." The court noted that the end-result was that the child ended up in the hospital and

Sudafed was discovered in her system. The court found the October 26 incident to be "of great concern," noting that the "parents were severely confused over a simple fever." The court believed that the October 26 incident "is clearly indicative of [the] parents' inability to care for these girls."

{¶73} The court did not question the parents' love for the children. The court noted that the parents completed all requirements of the case plan and have visited with the children "religiously." However, the court determined that "the safety and best interest of the minor children are paramount."

{¶74} The court also considered the best interest factors. With respect to the children's interactions and interrelationships, the court found that the children are very bonded to each other, to the foster family, and to their parents, but that the children have had limited contact with their maternal aunt and do not share a bond with her. Regarding the children's wishes, the court determined that the children are too young to directly express their wishes but recognized that the guardian ad litem recommended that the court award Appellee permanent custody.

{¶75} The court next reviewed the children's custodial history. The court noted that the children initially were removed from the home on

August 7, 2015 and have remained in Appellee's temporary custody since that time. The court further observed that M.H. was in Appellee's temporary custody from April 2012 through the middle of 2013 and has spent nearly half of her life in foster care.

{¶76} The court also considered the children's need for a legally secure permanent placement and whether they could achieve that type of placement without awarding Appellee permanent custody. The court determined that the parents cannot provide the children with a legally secure permanent placement. The court explained:

> "After extensive parenting classes, case management services and agency support, [the parents] are not able to care for the minor children long term. Based upon the testimony and report of Dr. Rippeth, parents do not have the cognitive capabilities to care for the children on a long term basis, and cannot develop the skills necessary to do so."

{¶77} The court additionally determined that the maternal aunt cannot provide the children with a legally secure permanent placement. The court noted that Ms. Lundy testified M.L.'s home is not appropriate for the children. The court also observed that M.L. had six months to prepare her home for placement and to complete a mental health assessment, but she did not schedule the mental health assessment until the week before the final permanent custody hearing. The court further pointed to the following circumstances to support its determination that M.L. cannot provide the

children with a legally secure permanent placement: (1) M.L. was present during the temperature-taking incident and could not properly take K.H.'s temperature; (2) M.L.'s former boyfriend sexually abused the mother when she was a minor, and M.L. continued her relationship with the boyfriend even after the allegations came to light; (3) Ms. Lundy stated that she had concerns that M.L. would not be able to provide appropriate care for the children and was deeply concerned about her judgment considering the sexual abuse against the mother; (4) Ms. Lundy expressed concern that M.L.'s roommate would not support M.L. having custody of two young children; and (5) Appellee did not approve placement with M.L., and the guardian ad litem likewise concurred.

{¶78} The court thus concluded that the children cannot and should not be returned to their parents within a reasonable time and that placing the children in Appellee's permanent custody is in their best interest. Therefore, the court granted Appellee permanent custody of the two children.

II. ASSIGNMENTS OF ERROR

{¶79} M.K. raises two assignments of error:

> I. The trial court committed reversible error in finding by clear and convincing evidence that the children cannot be placed with either of the children's parents within a reasonable time or should not be placed with the children's parents when such a finding was against the manifest weight of the evidence.

> II. The trial court committed reversible error in finding that permanent custody was in the best interests of the minor children when such a finding was against the manifest weight of the evidence.

{¶80} The father raises two assignments of error:

> I. The trial court erred in terminating appellant's parental rights as Children Services did not make reasonable efforts to permit the children to return home.
>
> II. The trial court erred in terminating appellant's parental rights as placement with a relative could have been achieved without a grant of permanent custody to Children Services[.]

III. ANALYSIS

{¶81} In their assignments of error, the parents essentially argue that the trial court's decision to award Appellee permanent custody of the children is against the manifest weight of the evidence.

{¶82} In her first assignment of error, the mother asserts that clear and convincing evidence fails to support the trial court's finding that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent. In her second assignment of error, the mother argues that the evidence fails to support the trial court's finding that permanent custody is in the children's best interest.

{¶83} In his first assignment of error, appellant argues that Appellee failed to use reasonable efforts to reunify the family and, thus, that the trial court erred by granting Appellee permanent custody. In his second

assignment of error, appellant challenges the trial court's finding that the children could not achieve a legally secure permanent placement without granting Appellee permanent custody.

A. STANDARD OF REVIEW

{¶84} A reviewing court generally will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *In re B.E.*, 4th Dist. Highland No. 13CA26, 2014-Ohio-3178, ¶ 27; *In re R.S.*, 4th Dist. Highland No. 13CA22, 2013-Ohio-5569, ¶ 29.

> "Weight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.' " *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting Black's Law Dictionary 1594 (6th Ed.1990).

When an appellate court reviews whether a trial court's permanent custody decision is against the manifest weight of the evidence, the court " ' "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage

of justice that the [judgment] must be reversed and a new trial ordered." ' " *Eastley* at ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). *Accord In re Pittman*, 9th Dist. Summit No. 20894, 2002-Ohio-2208, ¶ 23-24. The question that we must resolve when reviewing a permanent custody decision under the manifest weight of the evidence standard is "whether the juvenile court's findings * * * were supported by clear and convincing evidence." *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶43.[1] "Clear and convincing evidence" means: "[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*, 25 Ohio St.3d 101, 103-04, 495 N.E.2d 23 (1986). In determining whether a trial court based its

[1] We recognize that the Supreme Court of Ohio recently stated that "a trial court's decision in a custody proceeding is subject to reversal only upon a showing of abuse of discretion." *In re A.J.*, 148 Ohio St.3d 218, 2016-Ohio-8196, 69 N.E.3d 733, ¶ 27, citing *Davis v. Flickinger*, 77 Ohio St.3d 415, 417, 674 N.E.2d 1159 (1997). However, the issue in *A.J.* concerned a "narrow issue," i.e., "the agency's decision not to place [the child] in [a relative's] care as a substitute caregiver." The court thus did not review "the court's decision to terminate [the mother]'s parental rights and grant permanent custody to the agency." *Id*. at ¶ 18. Moreover, the *A.J.* court did not overrule its prior holding in *K.H.* that the essential question is whether clear and convincing evidence supports the court's findings. *K.H.* at 43. At this point, we will continue to apply the manifest-weight-of-the-evidence standard. *See In re R.M.*, 997 N.E.2d 169, 2013-Ohio-3588 (4th Dist.), ¶ 62 and fn.5.

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*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). *Accord In re Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954) ("Once the clear and convincing standard has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof."); *In re Adoption of Lay*, 25 Ohio St.3d 41, 4243, 495 N.E.2d 9 (1986). *Cf. In re Adoption of Masa*, 23 Ohio St.3d 163, 165, 492, 12 N.E.2d 140 (1986) (stating that whether a fact has been "proven by clear and convincing evidence in a particular case is a determination for the [trial] court and will not be disturbed on appeal unless such determination is against the manifest weight of the evidence"). Thus, if the children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court's decision is not against the manifest weight of the evidence. *In re R.M.*, 4th Dist. Athens Nos. 12CA43 and 12CA44, 2013-Ohio-3588, ¶62; *In re R.L.*, 2nd Dist. Greene Nos. 2012CA32 and 2012CA33, 2012-Ohio-6049, ¶ 17; quoting *In re A.U.*, 2nd

Dist. Montgomery No. 22287, 2008-Ohio-187, ¶ 9 ("A reviewing court will not overturn a court's grant of permanent custody to the state as being contrary to the manifest weight of the evidence 'if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements * * * have been established.'"). Once the reviewing court finishes its examination, the court may reverse the judgment only if it appears that the fact-finder, when resolving the conflicts in evidence, " 'clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.' " *Thompkins,* 78 Ohio St.3d at 387, quoting *Martin,* 20 Ohio Highland App. No. 16CA25 13 App.3d at 175. A reviewing court should find a trial court's permanent custody decision against the manifest weight of the evidence only in the " 'exceptional case in which the evidence weighs heavily against the [decision].' " *Id.*; *accord State v. Lindsey*, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000). Furthermore, when reviewing evidence under the manifest weight of the evidence standard, an appellate court generally must defer to the factfinder's credibility determinations. *Eastley* at ¶ 21. As the *Eastley* court explained:

> " '[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. * * * If the evidence is susceptible of more than one construction, the reviewing

> court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.' " *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191-192 (1978).

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*, 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997). *Accord In re Christian*, 4th Dist. Athens No. 04CA10, 2004-Ohio-3146, ¶ 7. As the Supreme Court of Ohio long-ago explained: "In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and observation of the parties and through independent investigation cannot be conveyed to a reviewing court by printed record." *Trickey v. Trickey*, 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952).

{¶85} Additionally, unlike an ordinary civil proceeding in which a jury has no contact with the parties before a trial, in a permanent custody case a trial court judge may have significant contact with the parties before a permanent custody motion is even filed. In such a situation, it is not unreasonable to presume that the trial court judge had far more opportunities to evaluate the credibility, demeanor, attitude, etc., of the parties than this

Court ever could from a mere reading of the permanent custody hearing transcript.

B. PERMANENT CUSTODY PRINCIPLES

{¶86} A parent has a "fundamental liberty interest" in the care, custody, and management of his or her child and an "essential" and "basic civil right" to raise his or her children. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388 (1982); *In re Murray*, 52 Ohio St.3d 155, 156, 556 N.E.2d 1169 (1990); *accord In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829. A parent's rights, however, are not absolute. *D.A.* at ¶ 11. Rather, " 'it is plain that the natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the pole star or controlling principle to be observed.' " *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979), quoting *In re R.J.C.*, 300 So.2d 54, 58 (Fla.App.1974). Thus, the state may terminate parental rights when a child's best interest demands such termination. *D.A.* at ¶ 11. Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. R.C.

2151.414(A)(1). Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying principles of R.C. Chapter 2151:

> "To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code, whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety; * * *." R.C. 2151.01(A).

C. PERMANENT CUSTODY FRAMEWORK

{¶87} A children services agency may obtain permanent custody of a child by (1) requesting it in the abuse, neglect or dependency complaint under R.C. 2151.353, or (2) filing a motion under R.C. 2151.413 after obtaining temporary custody. In this case, the agency sought permanent custody of the children by filing a motion under R.C. 2151.413. When an agency files a permanent custody motion under R.C. 2151.413, R.C. 2151.414 applies. R.C. 2151.414(A).

{¶88} R.C. 2151.414(B)(1) permits a trial court to grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and that any of the following apply:

> "(a) The child is not abandoned or orphaned 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 ending on or after March 18,

> 1999, 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.
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
> (d) 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.
> (e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state."

{¶89} Thus, before a trial court may award a children services agency permanent custody, it must find (1) that one of the circumstances described in R.C. 2151.414(B)(1) applies, and (2) that awarding the children services agency permanent custody would further the child's best interests.

1. R.C. 2151.414(B)(1)

{¶90} The mother's first assignment of error challenges the trial court's R.C. 2151.414(B)(1)(a) finding. The mother argues that she completely complied with the case plan, and thus, the children can be placed with her within a reasonable time. She additionally challenges the court's finding under R.C. 2151.414(E)(2). The mother contends that the evidence does not show that "she is so severely intellectually impaired that reunification cannot or should not be conducted within one year."

{¶91} In determining whether a child cannot be placed with either parent within a reasonable time or should not be placed with either parent, R.C. 2151.414(E) requires the trial court to consider "all relevant evidence" and outlines the factors a trial court "shall consider." If a court finds, by clear and convincing evidence, the existence of any one of the listed factors, "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." As relevant in the case at bar, R.C. 2151.414(E)(2) states:

> "(2) Chronic mental illness, chronic emotional illness, intellectual disability, 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."

A trial court may base its decision that a child cannot be placed with either parent within a reasonable time or should not be placed with either parent upon the existence of any one of the statutory factors. The existence of a single factor will support a finding that a child cannot be placed with either parent within a reasonable time or should not be placed with either parent. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 50, citing *In re William S.* (1996), 75 Ohio St.3d 95, 661 N.E.2d 738, syllabus.

{¶92} We believe that competent clear and convincing evidence supports the trial court's finding that the mother's intellectual disability is so severe that it renders her unable to provide an adequate permanent home for the children at the time of the permanent custody hearing and, as anticipated, within one year after the permanent custody hearing.[2] Dr. Rippeth expressed her concerns regarding the mother's inability to provide proper care for the children both now and in the future. She explained that the mother displays cognitive delays and extremely low intelligence that will not change with time. Dr. Rippeth indicated that even after the mother received extensive in-home parent mentoring services for a one-year period, she was unable to recognize that living in a tent next to a chicken coop and rigged with electrical cords posed a danger to the young children.

{¶93} Additionally, during the permanent custody hearing recess, the mother displayed an inability to provide proper basic care for a sick child. The mother, even with assistance from the maternal aunt, was unable to correctly read the child's body temperature. True, the mother sought the neighbors' assistance in reading the thermometer and requested assistance when purchasing medication, but this incident shows that her intellectual disabilities is so severe that she cannot provide an adequate permanent home

[2] Because the father has not challenged the trial court's R.C. 2151.414(E)(2) finding, we consider it only in relation to the mother.

for her children without significant external support. Despite the mother's extensive participation in in-home parent mentoring and completion of parenting classes, she could not perform the basic task of correctly reading a child's temperature. This incident illustrates that the children would be left extremely vulnerable to unintended harm if placed in their mother's care and custody and if the mother lacked external support or assistance upon which to rely at every moment of the day. Thus, clear and convincing evidence supports the court's finding children cannot be placed with either parent within a reasonable time or should not be placed with either parent.[3] *See In re N.L.*, 9th Dist. Summit No. 27784, 2015-Ohio-4165, ¶ 31, 37 (determining that parents' inability "to provide safe and appropriate care for their child without consistently relying on the assistance and judgments of others" created "significant health and safety risk" to child and supported trial court's R.C. 2151.414(E)(1) finding that the parents failed to continuously and repeatedly substantially remedy conditions causing child's removal); *In re J.M.-R.*, 8th Dist. Cuyahoga No. 98902, 2013-Ohio-1560, 2013 WL 1697356, ¶33 (upholding trial court's determination that child cannot be placed with parent within a reasonable time or should not be placed with

[3] We again note that the father has not challenged this finding. Therefore, we do not question the court's finding as it relates to the father.

parent when mother had "borderline intellectual capacity" and would be unable to care for child without support).

{¶94} Moreover, we disagree with the mother that *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, mandates a different conclusion. In *D.A.*, the Supreme Court of Ohio held: "When determining the best interest of a child under R.C. 2151.414(D) at a permanent-custody hearing, a trial court may not base its decision solely on the limited cognitive abilities of the parents." *Id.* at syllabus. The court stated that the trial court should not have focused upon the parents' intellectual disability when evaluating the child's best interest. *Id.* at ¶ 35. "Instead, the court should have considered factors such as their relationship with their child, whether they had ever harmed him, and where the child wishes to live." *Id.*

{¶95} The court also considered whether a parent's limited cognitive ability satisfies R.C. 2151.414(E)(2). *Id.* at ¶¶ 20-33. The court noted that the trial court entered "several findings regarding the parents' limited cognitive abilities" but "did not find that [the parents] were unable to provide an adequate home for [the child] due to their [intellectual disability], a finding that is required to satisfy R.C. 2151.414(E)(2)." *Id.* at ¶ 33. The court determined that the evidence failed to support a finding that the parents failed to provide the child with an adequate permanent home. The court

observed that the evidence did not show that the child "lacked adequate clothing, food, shelter, or care," but it did show that the child "performed well in school and displayed appropriate behavior." *Id.* The court noted that cases upholding parental-rights termination decisions involving intellectually disabled parents found "objective evidence" to satisfy R.C. 2151.41414(E)(1) or (2). *Id.* at ¶ 37, citing *In re C.E.*, 12th Dist. Butler Nos. CA2006–01–015 and CA2006–02–024, 2006-Ohio-4827, 2006 WL 2663464 (noting that the mother needed constant supervision and prompting to meet child's basic needs and had inadequate housing); *In re King*, 5th Dist. Fairfield No. 05CA77, 2006-Ohio-781, 2006 WL 401598 (finding that the mother consistently relied on others to meet many of her basic needs and lost her housing).

{¶96} The *D.A.* court thus concluded that R.C. 2151.414 "does not permit a parent's fundamental right to raise his or her child to be terminated based on [intellectual disability] alone." *Id.* at ¶ 37. Instead, "clear and convincing evidence" must demonstrate that a parent's intellectual disability "caused or threatened to cause harm to [the child]." *Id.* at ¶ 39; *accord In re K.H.* at ¶ 50 (distinguishing *D.A.* and determining that chronic mental illness proper grounds for terminating parental rights when the record "contains specific clear and convincing evidence of a threat of harm to the children").

{¶97} Unlike the trial court in *D.A.*, the trial court in the case at bar did find that "[the mother was] unable to provide an adequate home for [the child] due to [her intellectual disability], a finding that is required to satisfy R.C. 2151.414(E)(2)." *Id.* at ¶ 33. The trial court focused upon the mother's limited cognitive abilities when determining whether she could provide an adequate permanent home for the children under R.C. 2151.414(E)(2), and not when determining the children's best interest under R.C. 2151.414(D). *See N.L.* at ¶ 21 (upholding permanent custody decision when evidence showed "a link" between the parents' limited cognitive abilities and "their abilities to remedy the problems identify by [the agency] and to provide an adequate permanent home for the child").

{¶98} To the extent *D.A.* also requires a finding of harm or threat of harm to a child under R.C. 2151.414(E)(2), the evidence supports a finding that the mother's intellectual disabilities harmed or threatened to harm the children. The court found that the mother was unable to correctly ascertain her child's body temperature, and later that day, she returned the child to the agency in an unconscious or semi-conscious state. It is unclear how the child ended up in that state, but the hospital reportedly found Sudafed in the child's system, even though the parents stated that they had only given the child ibuprofen. Additionally, when the children were initially removed in

August 2015, the mother failed to realize that living with two young children in a tent rigged with electrical cords posed a danger to the children. At the time of the permanent custody hearing, the mother had maintained a physically appropriate home for nearly one year, but her actions on the date she attempted to ascertain the child's temperature show that her intellectual disability harms or threatens to harm the children.

{¶99} Moreover, when Appellee removed the children in August 2015, both children displayed clear signs of inadequate care. M.H. had a severe lice infestation. K.H. was severely developmentally delayed and had a large boil-like cyst on her bottom. This objective evidence indicates that the mother's intellectual disability left her unable to properly care for the children, resulting in unintentional harm to the children.

{¶100} Furthermore, the trial court relied upon the parents' past case history with Appellee. The court observed that the agency removed three-month-old M.H. from the parents' custody due to her failure to thrive. Shortly after M.H.'s removal, she started gaining weight. The court noted that during the approximately one-year period that M.H. was removed, the parents received in-home parent mentoring services and completed parenting classes. While the agency ultimately returned M.H. to the parents, the agency later intervened when it learned that the family was living in a tent.

The court thus determined that despite the extensive services the mother received during M.H.'s removal, she failed to demonstrate that she could perceive conditions that posed a danger to the young children.

{¶101} Consequently, because the trial court did not focus solely upon the mother's limited cognitive abilities when terminating her parental rights and when ascertaining the children's best interest, *D.A.* does not mandate a reversal of the trial court's judgment.

{¶102} Additionally, we do not agree with the mother that her case plan compliance necessarily proves that the children can be placed with her within a reasonable time or should be placed with her. As we have often noted, a parent's case plan compliance may be a relevant, but not necessarily conclusive, factor when a court considers a permanent custody motion. *In re W.C.J.*, 4th Dist. Jackson No. 14CA3, 2014-Ohio-5841, ¶ 46 ("[s]ubstantial compliance with a case plan is not necessarily dispositive on the issue of reunification and does not preclude a grant of permanent custody to a children's services agency."); *see In re S.S.*, 4th Dist. Jackson No. 16CA7 and 16CA8, 2017-Ohio-2938, ¶164; *In re M.B.*, 4th Dist. Highland No. 15CA19, 2016-Ohio-793, ¶ 59; *In re N.L.*, 9th Dist. Summit No. 27784, 2015–Ohio–4165, ¶35 (stating that substantial compliance with a case plan, in and of itself, does not establish that a grant of permanent custody to an

agency is erroneous"); *In re S.C.*, 8th Dist. Cuyahoga No. 102349, 2015–Ohio–2280, ¶ 40 ("Compliance with a case plan is not, in and of itself, dispositive of the issue of reunification."); *In re West*, 4th Dist. Athens No. 03CA20, 2003–Ohio–6299, ¶ 19. While the mother clearly showed dedication to completing the case plan activities, her case plan compliance does not, by itself, prove that her intellectual disability permits her to provide an adequate permanent home for the children within one year from the date of the permanent custody hearing. The mother's case plan compliance reveals her willingness and ability to complete the activities the agency requested, but it does not, by itself, demonstrate that she is able to provide the children with an adequate permanent home. Thus, under the facts present in the case at bar, her case plan compliance does not negate the court's R.C. 2151.414(E)(2) finding.

{¶103} Accordingly, based upon the foregoing reasons, we overrule the mother's first assignment of error.

2. BEST INTEREST

{¶104} In her second assignment of error, the mother asserts that the evidence fails to support the trial court's finding that permanent custody is in the children's best interest. In particular, she contends that the evidence shows that either the parents or M.L. could have provided the children with a

legally secure permanent placement. The mother further points to the strong bond that the parents share with their children and argues that the overall circumstances fail to support the court's finding that placing the children in appellee's permanent custody is in their best interest.

{¶105} In his second assignment of error, the father also challenges the trial court's best interest determination, but on a more limited basis than the mother. Instead of disputing the trial court's application of the totality of the best interest factor, the father contests only the trial court's R.C. 2151.414(D)(1)(d) finding that the children could not achieve a legally secure permanent placement without granting appellee permanent custody. The father claims that either the maternal aunt or another relative could have provided the children with a legally secure permanent placement.

{¶106} R.C. 2151.414(D) requires a trial court to consider specific factors to determine whether a child's best interest will be served by granting a children services agency permanent custody. The factors include: (1) the child's interaction and interrelationship 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 child's wishes, as expressed directly by the child or through the child's guardian ad litem, with due regard for the child's maturity; (3) the child's custodial history; (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 factors listed under R.C. 2151.414(E)(7) to (11) apply.[4]

[4] R.C. 2151.414(E)(7) to (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 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) An offense under section 2905.32, 2907.21, or 2907.22 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 offense described in that section 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;
> (f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a), (d), or (e) 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.
> (11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section Highland App. No. 16CA25 19 2151.353 or 2151.415 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 those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the

{¶107} Determining whether granting permanent custody to a children services agency will promote a child's best interest involves a delicate balancing of "all relevant [best interest] factors," as well as the "five enumerated statutory factors." *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 57, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56; *accord In re C.G.*, 9th Dist. Summit Nos. 24097 and 24099, 2008-Ohio-3773, ¶ 28; *In re N.W.*, 10th Dist. Franklin Nos. 07AP-590 and 07AP-591, 2008-Ohio-297, 2008 WL 224356, ¶ 19. However, none of the best interest factors requires a court to give it "greater weight or heightened significance." *C.F.* at ¶ 57. Instead, the trial court considers the totality of the circumstances when making its best interest determination. *In re K.M.S.*, 3rd Dist. Marion Nos. 9-15-37, 9-15-38, and 9-15-39, 2017-Ohio-142, 2017 WL 168864, ¶24; *In re A.C.*, 9th Dist. Summit No. 27328, 2014–Ohio–4918, ¶46. In general, "[a] child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security." *In re C.B.C.*, 4th Dist. Lawrence Nos. 15CA18 and 15CA19, 2016-Ohio-916, 2016 WL 915012, ¶66, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991).

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parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

a. Children's Interactions and Interrelationships

{¶108} The children share a bond with their parents, and the parents clearly love their children. However, according to Dr. Rippeth, the parents lack the cognitive ability to effectively parent the children. The record contains objective evidence to support Dr. Rippeth's opinion. At eleven months of age, K.H. was so developmentally delayed that she was unable to sit on her own or crawl. Within weeks of her placement in the foster home, she was achieving age-appropriate milestones. K.H. also had a large boil-like cyst on her bottom, and M.H. had a severe lice infestation. In 2012, appellee removed M.H. from the parents' custody due to the then-three-month-old's failure to thrive. Shortly after M.H.'s removal, she gained weight. The children's physical manifestations at the time of the removals show that they had not been receiving adequate care.

{¶109} Furthermore, the parents' decision to live in a tent rigged with electrical cords shows that they fail to recognize conditions that create safety hazards for the children. Additionally, the incident involving the parents' attempt to ascertain K.H.'s body temperature illustrates that they are unable, without assistance, to provide basic medical care for their children. Thus, while on the surface, the parents and the children share a loving relationship, the parents' intellectual disabilities place the children in harm's way and

leave them unable to independently understand the basic necessities required to provide for their children.

{¶110} The children share a bond with each other and with the foster family. The record indicates that the children have thrived in foster care and that the foster parents have expressed interest in adopting the children. While we cannot discount the loving family bond that exists between the biological parents and their children, the foster family environment provides the children with the interactions and interrelationships needed to provide for their health, safety, and welfare.

b. Children's Wishes

{¶111} The children are too young to directly express their wishes, but the guardian ad litem recommended that the trial court grant appellee permanent custody. *In re S.M.*, 4th Dist. Highland No. 14CA4, 2014–Ohio–2961, ¶ 32 (noting that R.C. 2151.414 permits court to consider child's wishes as child directly expresses or through the guardian ad litem).

c. Custodial History

{¶112} M.H. was removed from her parents' custody when she was three months old and remained in Appellee's temporary custody for approximately one year. Less than two years later, M.H. again was removed from her parents' custody and placed in Appellee's temporary custody. She

has remained in Appellee's temporary custody since that time. As of the date of the final permanent custody hearing, M.H. had been in Appellee's temporary custody for more than twenty-four non-consecutive months.

{¶113} K.H. was removed from her parents' custody when she was eleven months old. She has been in Appellee's continuous temporary custody since that time. As of the date of the final permanent custody hearing, K.H. had spent approximately sixteen consecutive months in Appellee's temporary custody.

d. Legally Secure Permanent Placement

{¶114} "Although the Ohio Revised Code does not define the term, 'legally secure permanent placement,' this court and others have generally interpreted the phrase to mean a safe, stable, consistent environment where a child's needs will be met." *In re M.B.*, 4th Dist. Highland No. 15CA19, 2016–Ohio–793, ¶ 56, citing *In re Dyal*, 4th Dist. Hocking No. 01CA12, 2001 WL 925423, *9 (Aug. 9, 2001) (implying that "legally secure permanent placement" means a "stable, safe, and nurturing environment"); *see also In re K.M.*, 10th Dist. Franklin Nos. 15AP–64 and 15AP–66, 2015–Ohio–4682, ¶ 28 (observing that legally secure permanent placement requires more than stable home and income but also requires environment that will provide for child's needs); *In re J.H.*, 11th Dist. Lake

No. 2012–L–126, 2013–Ohio–1293, ¶ 95 (stating that mother unable to provide legally secure permanent placement when she lacked physical and emotional stability and that father unable to do so when he lacked grasp of parenting concepts); *In re J.W.*, 171 Ohio App.3d 248, 2007–Ohio–2007, 870 N.E.2d 245, ¶ 34 (10th Dist.) (Sadler, J., dissenting) (stating that a legally secure permanent placement means "a placement that is stable and consistent"); Black's Law Dictionary 1354 (6th Ed. 1990) (defining "secure" to mean, in part, "not exposed to danger; safe; so strong, stable or firm as to insure safety"); *Id.* at 1139 (defining "permanent" to mean, in part, "[c]ontinuing or enduring in the same state, status, place, or the like without fundamental or marked change, not subject to fluctuation, or alteration, fixed or intended to be fixed; lasting; abiding; stable; not temporary or transient"). Thus, "[a] legally secure permanent placement is more than a house with four walls. Rather, it generally encompasses a stable environment where a child will live in safety with one or more dependable adults who will provide for the child's needs." *M.B.* at ¶ 56. Furthermore, a trial court that is evaluating a child's need for a legally secure permanent placement and whether the child can achieve that type of placement need not determine that terminating parental rights is "not only a necessary option, but also the only option." *Schaefer*, *supra*, at ¶ 64. Rather, once the court finds the existence

of any one of the R.C. 2151.414(B)(1)(a)-(e) factors, R.C. 2151.414(D)(1) requires the court to weigh "all the relevant factors * * * to find the best option for the child." *Id.*

{¶115} Here, clear and convincing evidence supports the trial court's finding that the children need a legally secure permanent placement and that they cannot achieve this type of placement without granting appellee permanent custody. As we have already detailed, the parents' intellectual disabilities leave them unable to provide the children with an adequate permanent home. Their intellectual disabilities affect their abilities to make healthy parenting decisions and leave the children vulnerable to harm. The parents have shown that they might be able to provide the children with an adequate permanent home, if they have "ongoing assistance," meaning in-home, daily assistance from an individual who would be present in the home for a "significant" period of time. The parents did not show that they have such "ongoing assistance" in place. Moreover, even if the parents had "ongoing assistance" from an in-home provider, it is not clear that this provider would assist the parents twenty-four hours per day, seven days per week. Without constant supervision, the children would remain at risk. Thus, clear and convincing evidence supports the court's finding that the

parents are unable to provide the children with a legally secure permanent placement.

{¶116} Additionally, we disagree with the parents that M.L. could provide the children with a legally secure permanent placement. A trial court that is evaluating a child's best interest need not determine no suitable person is available for placement. *In re Schaefer*, *supra*, ¶ 64. Moreover, courts are not required to favor relative placement if, after considering all the factors, it is in the child's best interest for the agency to be granted permanent custody. *Id.*; *accord In re T.G.*, 4th Dist. Athens No. 15CA24, 2015–Ohio–5330, ¶ 24; *In re V.C.*, 8th Dist. Cuyahoga No. 102903, 2015–Ohio–4991, ¶ 61 (stating that relative's positive relationship with child and willingness to provide an appropriate home did not trump child's best interest). Additionally, we observe that "[i]f permanent custody is in the child's best interest, legal custody or placement with [a parent or other relative] necessarily is not." *In re K.M.*, 9th Dist. Medina No. 14CA0025–M, 2014–Ohio–4268, ¶ 9.

{¶117} Accordingly, the trial court was not required to determine that placement with M.L. was impossible before it could grant appellee permanent custody of the children. Furthermore, the evidence supports a finding that M.L. would not provide the children with a legally secure

permanent placement. M.L. did not promptly remedy the conditions appellee identified as barriers to placing the children in her home. Indeed, she waited until approximately six months elapsed before calling to schedule a mental health assessment. Moreover, while the parents claim that M.L. has a bond with the children, the trial court found that she did not. We have no reason to question the trial court's factual determination. In addition, M.L. was present during the temperature-taking debacle and could not assist the mother in reading the thermometer. In fact, M.L. believed the thermometer had registered a Celsius reading. However, the parents' neighbors had no trouble looking at the thermometer and detecting that the child had a fever. Appellee also expressed concerns about M.L.'s ability to protect the children from harm based upon M.L.'s failure to acknowledge that her former boyfriend sexually abused the children's mother. Additionally, Appellee had concerns that M.L. would allow her mother, E.K., who had her own extensive involvement with children services, to interpose. The evidence shows that E.K. had been living in M.L.'s home, but later checked herself into a nursing home. At the time of the permanent custody hearing, E.K. was looking for a place to live. Based upon all of these circumstances, the trial court could have formed a firm belief that M.L. could not provide the children with a legally secure permanent placement.

e. Balancing

{¶118} We believe that based upon a consideration of all of the evidence presented during the permanent custody hearing, as well as the trial court's unique position to observe the parties throughout the pendency of the case, the trial court reasonably could have formed a firm belief that permanent custody is in the children's best interest. We therefore do not believe that the trial court's finding that awarding Appellee permanent custody is in the children's best interests is against the manifest weight of the evidence.

D. REASONABLE EFFORTS

{¶119} In his first assignment of error, the father argues that the trial court erred by granting Appellee permanent custody of the children when Appellee did not use reasonable efforts to reunify the family. The father claims that Appellee did not give the parents sufficient time to attempt reunification, but instead, sought permanent custody only nine months after the date the court adjudicated the children dependent.

{¶120} R.C. 2151.419(A)(1) requires a trial court to determine whether a children services agency "made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the

child to return safely home." However, this statute applies only at "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children * * *." *C.F.*, *supra*, at ¶ 41; *accord C.B.C.*, *supra*, at ¶ 72. Thus, " '[b]y its plain terms, the statute does not apply to motions for permanent custody brought pursuant to R.C. 2151.413, or to hearings held on such motions pursuant to R.C. 2151.414.' " *C.F.* at ¶ 41, quoting *In re A.C.*, 12th Dist. Clermont No. CA2004–05–041, 2004–Ohio–5531, ¶ 30. Nonetheless, "[t]his does not mean that the agency is relieved of the duty to make reasonable efforts" before seeking permanent custody. *Id.* at ¶ 42. Instead, at prior "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." *Id.* Additionally, "[if] the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time." *Id.* at ¶ 43.

{¶121} Here, the father's appeal does not originate from one of the types of hearings specifically listed in R.C. 2151.419(A): "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children." Therefore, Appellee

was not required to prove at the permanent custody hearing that it used reasonable efforts to reunify the family, unless it had not previously done so. The record reflects that the trial court made previous reasonable efforts findings before Appellee filed its permanent custody motion. Thus, the court did not need to again find that Appellee used reasonable efforts before granting Appellee permanent custody of the children.

{¶122} Accordingly, based upon the foregoing reasons, we overrule the father's first assignment of error.

E. CONCLUSION

{¶113} Having overruled all of the parents' assignments of error, we affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed equally to each Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J.: Concurs in Judgment and Opinion.
Harsha, J.: Concurs in Judgment Only.

For the Court,

BY: _____
Matthew W. McFarland, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.