[Cite as *In re D.M. Children*, 2004-Ohio-6369.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

IN RE: D. M. CHILDREN

C.A. No. 22206

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. DN02-03-0185
DN02-03-0186
DN02-03-0187
DN02-03-0188
DN02-03-0189

DECISION AND JOURNAL ENTRY

Dated: December 1, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

BATCHELDER, Judge.

{¶1} Appellant, Terrilyn Micochero, appeals from the judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights to five of her minor children, and placed the children in the permanent custody of the Summit County Children Services Board ("CSB"). We affirm.

I.

{¶2} Appellant is the mother of six children, the first five of whom are the subject of this appeal. These five children were fathered by three different men, none of whom are parties to the present appeal. The sixth child, C.H., born June 6, 1998, has been placed in the legal custody of his father, Charles Hatfield. Mr. Hatfield and Appellant were not married at the time the children were initially removed from the home, but are presently married and living together with C.H. This Court typically identifies minor children in permanent custody cases by their initials, but the five children whose custody is at issue in this case share the same initials. The children are, therefore, identified by their gender and dates of birth: a boy, born August 17, 1990; a boy, born September 13, 1991; a girl, born July 3, 1993; a girl, born June 2, 1994; and a boy, born June 27, 1996.

{¶3} CSB has a long history with Appellant and her children. The four oldest children were in CSB's temporary custody for 14 months from July 1994 until September 1995 and again for 11 months from February 1995 until January 1996. In February 2002, CSB received a referral about a suicide attempt by the second oldest boy.

{¶4} The current intervention began on March 2, 2002. At that time, all six children were removed from the home, pursuant to Juv.R. 6 because Appellant ingested pills and alcohol, and stated that she wanted to go to sleep and not wake

up. Pursuant to a subsequent complaint filed by CSB, alleging that the children lacked adequate parental care and stating concerns regarding Appellant's mental stability, the children were placed in emergency temporary custody on March 4, 2002,

{¶5} The matter proceeded to adjudication, and the parties stipulated to findings that the five oldest children were neglected and dependent. Mr. Hatfield and Appellant also stipulated to a finding that the sixth child was dependent.

{¶6} On June 6, 2002, following a dispositional hearing, the juvenile court placed all six children in the temporary custody of CSB, and adopted a case plan developed by the agency. The case plan addressed the following concerns regarding Appellant: (1) mental instability, based upon diagnoses of clinical depression, bipolar disorder, and attempted suicide; (2) a lack of parenting skills and positive family interaction; (3) no stable housing; and (4) substance abuse inhibiting Appellant's ability to provide for the basic needs of her children.

{¶7} On January 6, 2003, CSB sought a first six-month extension of temporary custody as to the five children, noting that Appellant had re-involved herself with counseling at Portage Path and the Community Health Center and had also obtained appropriate employment. See R.C. 2151.415(D). At the same time, CSB noted that Appellant had not yet secured appropriate housing, addressed relationship issues with Mr. Hatfield, or become more consistent with substance abuse treatment. Nevertheless, CSB stated that it reasonably believed

reunification would occur within the extension period. The motion was granted on February 5, 2003.

{¶8} In a separate proceeding, CSB moved to place C.H., Appellant's sixth child, in the legal custody of Mr. Hatfield, his father, and that was accomplished on February 5, 2003.

{¶9} On June 2, 2003, CSB moved to place the children with Appellant under protective supervision. In so doing, CSB noted that Appellant had substantially complied with the case plan. The agency reported that she was receiving mental health services at Portage Path, and was making progress towards developing coping skills and addressing depression. Appellant provided random urine screens since the last hearing and all had been negative. She was attending counseling with her children at Child Guidance and reports from the counselor were positive. She was said to have maintained appropriate housing and employment and had been transporting the children to counseling. Mr. Hatfield was residing in the home and providing appropriate care for C.H., the only child currently in the home. Extensive unsupervised visits between the five removed children, Appellant and Mr. Hatfield had taken place. The visits reportedly went well and the children's needs were consistently being met.

{¶10} The juvenile court granted this request and returned the children to the legal custody of Appellant with protective supervision, effective June 10, 2003. In its order, however, the court noted that Appellant had not been attending

Alcoholics Anonymous ("AA") meetings as requested because of transportation and scheduling problems and had not completed the recommended parenting classes. Appellant was currently on house arrest for an unspecified matter. Mr. Hatfield failed to attend appointments with providers in March, but had been attending since then. He disputed one positive test for marijuana on April 4, but has had all negative tests since then. The guardian ad litem joined in the recommendation to return the children to the care of Appellant under protective supervision. She agreed that Appellant had made great strides in addressing the multiple issues before her, and the children needed to see that progress.

{¶11} On August 11, 2003, CSB moved for a second six-month extension. In its motion, CSB noted that Mr. Hatfield and the children had been in an automobile accident in June 2003, shortly after the children returned home. Until the accident, Mr. Hatfield had been providing primary care for the children while Appellant worked six days a week. The accident resulted in a total loss of the automobile and required Mr. Hatfield to have hip surgery. Despite the fact that CSB gave them 40 bus passes, the family of eight was unable to attend all of the individual counseling sessions for the children. Nevertheless, CSB reported that the children were said to be adjusting to their return to home. The guardian ad litem expressed concern that Appellant was not adequately addressing her case plan objectives, but agreed with another extension. CSB again expressed its view

that protective supervision could be terminated within the extension period. The juvenile court granted the motion for a second extension. See R.C. 2151.415(D).

{¶12} Within one month, on September 5, 2003, CSB sought to remove the two oldest boys from the home and return them to temporary custody. During this time period, Mr. Hatfield was recuperating from his surgery and was having difficulty supervising the children while Appellant worked. The boys were said to be constantly fighting with each other. On one occasion, the oldest boy pulled a knife on the second oldest boy. In addition, the second oldest boy overheard a conversation indicating that he might be returned to foster care, and thereupon took an overdose of pills – his second such suicide attempt. He was admitted to a hospital psychiatric unit. The guardian ad litem agreed with CSB's efforts to return the two boys to temporary custody.

{¶13} In its motion to remove the two boys from the home and place them in temporary custody again, the agency asserted that Appellant had not been adequately addressing her case plan objectives since the time of the automobile accident. Specifically, Appellant was reportedly not following through with counseling for herself or her children, with parenting classes, and might be abusing alcohol again. Mr. Hatfield and Appellant were also said to be having difficulty controlling the children or providing for their needs.

{¶14} The juvenile court agreed that the two oldest boys should be returned to the temporary custody of CSB, but found that Appellant was meeting the basic

needs of the other children at this time. Although the guardian ad litem had been conflicted about Appellant's ability to care for the other children in the home, she opposed their removal because the children were very bonded to each other and to Appellant. At the time, Appellant quit her job to assist Mr. Hatfield in providing for the care of the children.

{¶15} Upon the urging of the guardian ad litem, however, the juvenile court ordered Appellant to enter an intensive outpatient substance abuse program through the Community Health Center and to insure that counseling occur on a regular basis. Appellant began the intensive outpatient substance abuse program, but eventually was terminated for lack of compliance. Her attendance at counseling sessions also became inconsistent.

{¶16} On October 15, 2003, CSB sought the return of the remaining four children to temporary custody. CSB's motion was brought because Appellant was willing to begin an inpatient substance abuse treatment program, and would then be unable to provide care for the children at home. Mr. Hatfield was also unable to care for the children alone. The court granted the motion, placing the remaining four children in temporary custody.

{¶17} Appellant was in the inpatient substance abuse program from November 3, 2003 until January 29, 2004. During that time, on December 2, 2003, C.H. was returned to the legal custody of his father, Mr. Hatfield, under protective supervision.

{¶18} On February 19, 2004, CSB moved for permanent custody of Appellant's five children. Appellant moved for legal custody. Following a hearing, the juvenile court issued an order finding that the children had been in the temporary custody of CSB for more than 12 months, and also found that permanent custody was in the best interest of the children. The juvenile court, therefore, terminated Appellant's parental rights to the five children and placed them in the permanent custody of CSB.

{¶19} Appellant has timely appealed and raised two errors for review. The assignments of error will be considered together because they are related.

II.

ASSIGNMENT OF ERROR ONE

> "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY GRANTING PERMANENT CUSTODY WHERE PERMANENT CUSTODY WAS CONTRARY TO THE BEST INTERESTS OF THE CHILDREN."

ASSIGNMENT OF ERROR TWO

> "THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY THAT WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE AND NOT SUPPORTED BY CLEAR AND CONVINCING PROOF, WHERE THE COURT SHOULD HAVE GRANTED LEGAL CUSTODY TO MOTHER OF [THE THREE YOUNGEST CHILDREN] AND THE COURT SHOULD HAVE GRANTED PLANNED PERMANENT LIVING ARRANGEMENT FOR [THE TWO OLDEST CHILDREN]."

{¶20} Appellant asserts that the weight of the evidence does not support the finding that permanent custody was in the best interest of the children, and instead

that the trial court should have granted her legal custody of the three children youngest children and placed the two older children in a planned permanent living arrangement ("PPLA"). We disagree. For the reasons set forth below, we conclude that permanent custody was properly granted and the motions for legal custody and PPLA were properly denied.

{¶21} Before a juvenile court can terminate parental rights and award to a proper moving agency permanent custody of a child, it must find clear and convincing evidence of both prongs of the permanent custody test: (1) that the child is abandoned, orphaned, has been in the temporary custody of the agency for at least 12 months of the prior 22 months, or that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent based on an analysis under R.C. 2151.414(E); and (2) that the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under R.C. 2151.414(D). See R.C. 2151.414(B)(1) and 2151.414(B)(2); see, also, *In re William S.* (1996), 75 Ohio St.3d 95, 99. The trial court found that the first prong of the test was satisfied because the children had been in the temporary custody of CSB for at least 12 of the prior 22 months and Appellant does not challenge that finding. Appellant challenges only the finding that it was in the best interest of the children to be placed in the permanent custody of CSB.

{¶22} When determining whether a grant of permanent custody is in the children's best interest, the juvenile court must consider the following factors:

> "(1) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
>
> "(2) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
>
> "(3) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999; [and]
>
> "(4) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency[.]" R.C. 2151.414(D)(1)-(4).1

"Although the trial court is not precluded from considering other relevant factors, the statute explicitly requires the court to consider all of the enumerated factors." *In re Smith* (Jan. 2, 2002), 9th Dist. No. 20711, at 6. See, also, *In re Palladino*, 11th Dist. No. 2002-G-2445, 2002-Ohio-5606, at ¶24.

{¶23} The best interest prong of the permanent custody test requires the agency to prove by clear and convincing evidence that permanent custody is in the best interest of the children. Clear and convincing evidence is that which will produce in the trier of fact "'a firm belief or conviction as to the facts sought to be established.'" *In re Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 368, quoting *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

[1] The factor set forth in R.C. 2151.14(D)(5) is not relevant in this case.

{¶24} When evaluating whether a judgment is against the manifest weight of the evidence in a juvenile court, the standard of review is the same as that in the criminal context. *In re Ozmun* (Apr. 14, 1999), 9th Dist. No. 18983. In determining whether a criminal conviction is against the manifest weight of the evidence:

> "The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [trier of fact] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." State v. Thompkins (1997), 78 Ohio St.3d 380, 387, quoting State v. Martin (1983), 20 Ohio App.3d 172, 175.

Accordingly, before an appellate court will reverse a judgment as being against the manifest weight of the evidence in this context, the court must determine whether the trier of fact, in resolving evidentiary conflicts and making credibility determinations, clearly lost its way and created a manifest miscarriage of justice.

{¶25} A review of the evidence presented at the permanent custody hearing reveals that CSB established by clear and convincing evidence that permanent custody was in the best interest of the children.

1. Interaction and interrelationship of the children

{¶26} The first best interest factor, the interaction and interrelationship of the children, is "highly significant" and "focuses on a critical component of the permanent custody test: whether there is a family relationship that should be

preserved." *In re Smith*, (Jan. 2, 2002), 9th Dist. No. 20711; *In re C.M.*, 9th Dist. No. 21372, 2003-Ohio-5040, at ¶11.

{¶27} Caseworker Karen Annis testified that there was a definite bond between Appellant and her children. Annis stated that they love her and are attached to her. However, Annis also expressed concern with a role reversal between the children and their mother. The children had taken over a great deal of the parenting role in the family and actually tried to take care of their mother. Annis noted that during early visits, the second oldest child would sit close to his mother and inquire of her situation. At later visits, after he had had an opportunity to experience a foster home, he would sit further away and participate more as a child.

{¶28} Kimberly Nelson, the guardian ad litem, expressed a similar view. She stated that while the children are very bonded to each other and love their mother, they feel responsible for her and want to take care of her. The guardian ad litem explained that this is not a normal, healthy parent-child relationship, but rather is a dysfunctional bond. Nelson also testified that when the children are in supervised and functional settings, they are very bonded and nurturing, but after they have been in their home for extended periods, their relationships fall apart and they turn on each other. In addition, Nelson pointed out that the children have now received more appropriate parenting in their foster homes, so that they have higher

expectations. They have been allowed to be children and are comfortable with that.

{¶29} Cindy Howard, Appellant's addiction counselor from the inpatient substance abuse program, testified that she believes that Appellant's children are, in fact, one of the triggers that cause her to relapse.

{¶30} Tony Graziano, clinical counselor of the two oldest boys, also testified. Graziano testified that the two oldest boys had the greatest needs. The oldest boy had anger management issues and needed to learn to cope with the family changes. Graziano testified that this child was very "parentified" and frequently gave direction to the second child, who then reacted negatively. He recommended that the oldest child attend individual counseling twice a month.

{¶31} The second boy had more severe problems and had been diagnosed with bi-polar disorder and attention deficit hyperactivity disorder ("ADHD"). He was emotional and anxious, and his outbursts were often triggered by court hearings or family issues. He was aggressive and dangerous at times. He had been hospitalized three or four times, with at least two of the hospitalizations being for suicide attempts. He was scheduled to have one individual session and two group sessions weekly.

{¶32} Graziano testified that consistent treatment needs to be a priority for both boys and that Appellant had not been consistent in keeping appointments. He said that gaps in treatment caused problems for the second boy, in particular,

because his medicines need to be monitored and he requires consistency in counseling. Graziano further testified that while the second oldest boy was in foster care, his grades went up and he was less disruptive. He had been cooperative in his foster placement and less irritable with the counselor. Graziano reported that the second oldest boy even told him that he believed he was doing better since he had been in foster care. Both boys admitted to him that they are angry with their mother and tired of her drinking.

{¶33} Graziano admitted that the two boys have a close bond with their mother and would need counseling if there were a severing of the relationship. He believed the older boys needed to maintain contact with their younger siblings, and knowing they were safe would be in their best interest. However, he testified that he believed the two boys would be more harmed by another removal from their mother's home than by an order of permanent custody. He concluded that the two boys would be all right in permanent custody as long as they were assured their mother was safe.

{¶34} Appellant was consistent in attending visitations. Appellant testified that she believed visitations went better when the family was permitted to go off-site. The caseworker testified that the visits were often rather chaotic and without structure. Obviously, the visitations went well enough for CSB to decrease the degree of supervision and to return the children to the home in June 2003. Problems began to develop, however, when all the children were returned to the

home and they were not getting the consistency and counseling sessions they required.

{¶35} Nelson, the guardian ad litem, also stated that she was troubled by Appellant's continued relationship with Mr. Hatfield because the relationship had been traumatic and included domestic violence. She believed that Appellant and Mr. Hatfield enabled each other into substance abuse relapses. Nelson also voiced concern with Mr. Hatfield providing child care because he had previously stated that he was only attached to his own child - the sixth child. Mr. Hatfield had stated that it was too chaotic and stressful with the other five children in the home and he did not want to risk losing his own child again.

{¶36} It appears to this court that despite the close bond between Appellant and her children, the relationship between them appears to be more dysfunctional than healthy. On the other hand, the children are generally doing well in their foster placements, and the foster parents have affirmed that they would continue to encourage contact between the children, as recommended by Graziano. Notwithstanding efforts by CSB to give Appellant as much time as possible to resolve her problems, Appellant is not presently able to assure consistency or to provide a stable and secure home for the children. The two older children, in particular, require consistency in their environment and their treatment.

{¶37} Furthermore, Appellant has married and is dependent upon a man that she admits has a substance abuse problem, and who has stated that he does not feel

attached to these five children and does not want them in his home. Appellant even concealed the marriage from CSB, knowing that they discouraged the relationship. Although Mr. Hatfield's mother testified that her son is now willing to provide care for the children, she admitted that he is even more ill now than in the summer of 2003 when he was unable to properly supervise the children. Since Appellant is married to Mr. Hatfield, and because she testified that she would rely on Mr. Hatfield to provide child care while she is working and to provide transportation because she has no driver's license, it is significant that Mr. Hatfield did not testify himself during the permanent custody hearing.

{¶38} Based on these facts, the interactions and interrelationships of Appellant and the children do not weigh against the termination of parental rights.

2. The wishes of the children.

{¶39} The second best interest factor requires consideration of the wishes of the children. R.C. 2151.414(D)(2) states that the court shall consider "the wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child[.]" Consistent with the statute, this court has also indicated that, while the caseworker's testimony may be considered as evidence of the interaction and interrelationship of the child, it may not be considered as an expression of the child's wishes in lieu of the guardian ad litem's report. *In re Smith*, (Jan. 2, 2002), 9th Dist. No. 20711.

{¶40} Regrettably, the record on this factor is weak. First, none of the children testified to their wishes as to custody despite the fact that the children ranged in age from seven to 13 at the time of the permanent custody hearing. The Eleventh District has indicated that an eight-year-old child was "clearly of an age when he might possess the maturity to express a meaningful opinion regarding custody." *In re Ridenour*, 11th Dist. Nos. 2003-L-146, 2003-L-147, and 2003-L-148, 2004-Ohio-1958, at ¶44. We would assume similarly that, some, if not all, of the children whose custody is at issue in this case could have expressed an opinion regarding custody directly to the court. It is unfortunate that the trial court did not obtain such direct input.

{¶41} Second, the guardian ad litem's written report does not appear in the record before this court. Testimony suggests that the guardian ad litem did provide a written report to the trial court before the permanent custody hearing. However, that report has not made its way into the record of this appeal. Thus, we have only the testimony of the guardian ad litem during the permanent custody hearing upon which to assess this best interest factor.

{¶42} When the guardian ad litem was asked to express the wishes of the child, she stated: "if the kids could go back to a functioning household they would like to live with their mother, but the kids are also concerned for, you know, what does the future hold for them." She also stated that the children's preference is to "be with their mother *** [i]f it could be safe and stable." The guardian ad litem

also testified that after the children were returned to their home, they continued to call their foster homes to ensure that their places would be kept for them.[2]

{¶43} In her judgment entry, the trial judge reported the guardian ad litem's opinion that it is in the children's best interest to be placed in permanent custody and the judge also found that the "children have also expressed the desire to be adopted into their current foster placements[.]"

{¶44} The wishes of children are, of course, not always consonant with their best interests. Nevertheless, the second factor of the so-called "best interest" test requires that the trial court consider "the wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child[.]" R.C. 2151.414(D)(2).

{¶45} The testimony by the guardian ad litem does not explicitly reflect that the children wished to be adopted. However, the trial court was entitled to consider that the children's desire to return to their home, as expressed by the guardian ad litem, was contingent upon the home being functioning, safe and stable. With other evidence fully supporting a conclusion that the home was not

[2] The only other witness to address the question of the desires of the children was Tony Graziano, a clinical counselor for the two oldest children. Although Graziano's testimony cannot be used to satisfy R.C. 2151.414(D)(2), he did state that the oldest boy "does not want to be adopted." However, it must also be noted that Graziano ultimately concluded that the two oldest children would be harmed more by another removal from their mother's home than by an order of permanent custody. He also stated that these two children would be all right in a permanent custody situation if they were assured that their mother was safe.

functioning, safe, and stable, the juvenile court's finding on this point – that the children wished to be adopted – fairly reflects an implicit interpretation of the children's wishes. Accordingly, this court does not conclude that the weight of the evidence is contrary to the finding of the trial court.

3. The custodial history of the children.

{¶46} The third best interest factor is the custodial history of the children. In the present case the children were initially removed from the home on March 2, 2002 and, after gradual decreases in the amount of supervision, were returned to the home in June 2003. The two oldest boys were removed again in September 2003 after a crisis situation. The remaining children were removed by November 2003. All of the children then remained in foster care until the time of the permanent custody hearing.

{¶47} In addition, the four oldest children had been in the temporary custody of CSB on two separate occasions totaling 25 months from 1994 to 1996. Therefore, during the course of the last ten years, the children had been in the temporary custody of CSB four times, for a total of nearly four years.

{¶48} The custodial history of the children does not weigh against the termination of parental rights.

4. The children's need for a legally secure permanent placement.

{¶49} The final factor that the trial court must consider is the children's need for a legally secure permanent placement and whether that type of placement could be achieved without a grant of permanent custody to CSB.

{¶50} Despite her belief that the Appellant and her children were well bonded, and that there were "some positive interactions," Caseworker Annis testified that she believed permanent custody was in the best interest of the children because the children have a long history of instability due to Appellant's alcoholism. The children have been neglected and improperly supervised. This situation has taken an emotional toll on the children and created problems for them, especially for the second oldest boy who has mimicked Appellant's behavior in at least two suicide attempts.

{¶51} Annis testified that Appellant can function satisfactorily without the children, but lacks the parenting skills and emotional stability to handle the children in her home. The caseworker explained that, in the past, the situation would escalate until Appellant would begin to drink or use illegal substances. The children would then become neglected or grow out of control, until another intervention by CSB would be necessitated.

{¶52} The record indicates several areas of case plan non-compliance by Appellant. First, the record indicates that Appellant failed to complete her parenting classes, and, when CSB permitted her to complete the requirement

through family counseling, that was not completed either. The guardian ad litem expressed concern about the level of structure Appellant and Mr. Hatfield were providing to the children.

{¶53} Second, Appellant was terminated from two substance abuse programs for non-compliance, and Howard, her addiction counselor at the inpatient program, concluded that Appellant had a high risk of relapsing because she continued to blame others for CSB involvement and was not attending AA meetings at the recommended rate.[3] The guardian ad litem did not believe there was enough of a positive history to believe there would be no further relapses.

{¶54} Third, counselor Tony Graziano testified that the family was not consistent in attending family counseling and did not notify providers when they were not able to attend. He did not believe there had been sufficient progress in family counseling to facilitate a return.

{¶55} Fourth, while Appellant's counselor, Sheri Walters, testified that Appellant was compliant and making progress in her mental health treatment plan, Walters did not attend joint meetings with other service providers, was not aware of the recommendations in the psychological evaluation, and assumed compliance

[3] Howard recommended that Appellant attend three to five AA meetings per week, but believed she attended only about two per week. AA records, admitted as exhibits by Appellant, established that Appellant attended 64 sessions during a six month period from November 25, 2003 until May 23, 2004, which resulted in an average of 2.66 meetings per week.

based only on Appellant's self-reporting. Appellant had attended only 11 monthly sessions with Walters over the course of two years. Caseworker Annis opined that this record was neither consistent nor sufficient to address the many problems Appellant faced, including alcoholism, bi-polar disorder, depression, and suicide attempts, with one such attempt resulting in the initiation of the present proceeding.

{¶56} Fifth, the CSB caseworker and the guardian ad litem both testified that they do not believe Appellant can provide for the basic needs of her children. Appellant testified to her plans to move from a two-bedroom apartment, described by CSB as "minimally sufficient," to AMHA housing, and claimed she was recently approved for such housing. Her previous application was turned down because she had failed to reveal a prior conviction. Appellant plans to leave the children with her current husband, Mr. Hatfield, while she works. Appellant testified that the family now has a vehicle and, because she does not have a driver's license, will depend on Mr. Hatfield to drive the family to appointments. Mr. Hatfield's mother testified that her son is more ill now than in 2003 when he was unable to properly supervise the children. Mr. Hatfield was not present to testify at the permanent custody hearing for himself.

{¶57} The guardian ad litem testified that it would be very detrimental to the children to be returned to their mother only to be removed again. She believed the poor behavior of the two older children stemmed from the environment in the

home – Appellant's drinking and the adults arguing. Counselor Graziano testified similarly that he believed Appellant's alcohol relapses contributed to the decline in behavior of the two oldest boys. He also testified that the boys had benefited from being in predictable, safe, secure environments during foster care. Graziano also expressed concern that if the children were returned to Appellant, the role reversals would be re-established and result in problems. Graziano concluded that he was more concerned with the effects on the children of another removal than with a termination of parental rights.

{¶58} On the other hand, the children were said to be functioning well and making progress with the stability that their foster placements were providing them.

{¶59} Regarding the question of whether the trial court erred in not granting a PPLA, the judgment entry of the trial court suggests that such motion was pending before the court at the conclusion of the permanent custody hearing and that it was denied. However, the record indicates that Appellant's request for a PPLA was withdrawn at the beginning of the hearing on the motion for permanent custody and no request for such an arrangement or evidence in support of such request was presented by CSB, as statutorily required. See R.C. 2151.415(A) and (C). See, also, R.C. 2151.353(A)(5). In any event, a finding that the best interest of the children requires them to be placed in the permanent custody of the agency resolves the question. R.C. 2151.415(C)(1).

{¶60} In the present case, there were two six-month extensions, awarded pursuant to R.C. 2151.415(D). While Appellant was purportedly making some progress, the record documents surrounding the extensions also indicated continuing problems in the home, and reflected merely a hope that Appellant might overcome the remaining obstacles. The extensions attest to a sincere effort by CSB and the guardian ad litem to permit Appellant sufficient time to succeed, but to no avail. The present action lasted two years. Agency interventions have been a part of these children's lives for ten years. As this court has previously observed, children "ha[ve] needs that cannot wait." *In re Hederson* (1986), 30 Ohio App.3d 187, 189.

{¶61} Based upon the evidence before the trial court on each of the best interest factors, this court concludes that the weight of the evidence supports the judgment of the trial court. The first and second assignments of error are overruled.

III.

{¶62} Appellant's two assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

Exceptions.

WILLIAM G. BATCHELDER
FOR THE COURT

SLABY, J.
CONCURS

CARR, P. J.
DISSENTS, SAYING:

{¶63} Respectfully, I dissent from the opinion of the majority. In my view, the two older boys, at 13 and 14, are good candidates for PPLA. They are not likely to be adopted. They have a close bond with their mother and their siblings. Their counselor recommended that the two boys have some continued contact with their mother and their siblings, and that their mental health would be better protected by contact with their younger siblings.

{¶64} I am also concerned that there was no in camera interview with these children. Children of these ages, especially the two teen-aged boys, should be able to be heard personally by the trial court as to their desires and concerns unless it would be detrimental to their psychological well-being. There is no such indication in this case.

{¶65} Furthermore, several unfortunate situations coalesced in time in this case which compel me to conclude that this situation is not to the point where parental rights must be terminated. First, appellant testified that she entered an inpatient substance abuse program in November 2003 because she was told that it was the only way to get her children back. Appellant did enter the program, complete it, and yet CSB moved for permanent custody just three weeks after the program was concluded. Moreover, at the time appellant entered the program, the children had already been returned to the home and the youngest three were returned to CSB solely in order to permit appellant to attend the inpatient program.

{¶66} Second, appellant was said to be fairly consistent in keeping appointments except for the period following the automobile accident when the family was without transportation. It was unfortunate timing that the car accident occurred shortly after the children were returned to the home. The accident left Chuck Hatfield in the hospital and seriously injured, and left the family without transportation.

{¶67} Third, and adding to the difficulty of this situation, is the fact that the CSB work stoppage coincided with these events. Supervisors and stand-ins attended review hearings and such events for this family. However, no regularly assigned caseworker was on this case from July 13, 2003 – approximately the time of the automobile accident – until January 1, 2004 – shortly before Appellant was released from inpatient treatment. In other words, it appears that the family was left largely to fend for itself at a time when support was most critical. CSB did provide 40 or 50 bus passes per month, claiming that to be the maximum permitted. With six children, Chuck Hatfield in the hospital or bedridden, and multiple services to attend, 50 passes would be consumed rather quickly. The type of personal help that a caseworker could provide may have made a difference to this family.

{¶68} We must do more for families before we become convinced that the permanent termination of parental rights is the only solution. Accordingly, I would reverse the judgment of the trial court.

APPEARANCES:

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