

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

In the Matter of: E.P.

Court of Appeals No. WD-09-070

Trial Court No. 2007 JC 1242

DECISION AND JUDGMENT

Decided: July 30, 2010

* * * * *

Mollie B. Hojnicky, for appellant.

Paul A. Dobson, Wood County Prosecuting Attorney, and
Charles S. Bergman, Assistant Prosecuting Attorney, for appellee.

* * * * *

COSME, J.

I. INTRODUCTION

{¶ 1} This is an appeal from a judgment issued by the Wood County Court of Common Pleas, Juvenile Division, terminating appellant's parental rights and granting permanent custody of the minor child, E.P, to Wood County Department of Job and

Family Services ("WCDJFS"). Because we conclude that the trial court properly granted permanent custody to the WCDJFS, we affirm.

II. PROCEDURAL BACKGROUND

{¶ 2} Appellant, W.P. ("father"), is the biological father of E.P., a girl born in 1998.¹ On August 24, 2007, WCDJFS was granted emergency temporary custody of E.P., when father was admitted to the local hospital after allegedly attempting suicide by taking an overdose of prescription medications. E.P., then eight years old, was placed in foster care. On October 16, 2007, the trial court adjudicated E.P. to be a dependent child, continued temporary custody to WCDJFS, and ordered two-hour weekly supervised visits to be provided to the father.

{¶ 3} On November 26, 2007, the trial court conducted a dispositional hearing. At the conclusion, the court granted temporary custody to WCDJFS. Father was ordered to comply with mental health and drug/alcohol abuse services at Behavioral Connections, a mental health treatment provider, and attend E.P.'s counseling at Children's Resource Center ("CRC"). Father's fiancée, R.R., was added as a party and to the case plan, and was also ordered to obtain a mental health assessment and follow the recommendations.

{¶ 4} Over the next 16 months, father sporadically engaged in some of the services recommended by the case plan. The court ordered visitations between father and

¹E.P.'s biological mother, who allegedly abandoned the child and father prior to the agency's involvement, has never appeared for any of the court proceedings and is not a party to this appeal.

E.P., first on a supervised basis, then unsupervised, but again returned to supervised visits in June 2008, due to father's violations of the visitation rules.

{¶ 5} On March 9, 2009, WCDJFS filed a motion for permanent custody, which alleged that: (1) E.P. had been in temporary custody of the agency for 12 out of the prior 22 months; (2) father had failed to substantially remedy the conditions causing her placement outside the home; (3) she was abandoned by her mother; (4) and that father had failed to comply with the court ordered case plan. A permanent custody hearing was then held on August 10, 11, and 12, 2009.

III. THE RECORD BELOW

{¶ 6} The parties presented the following witnesses' testimony at the hearing.

A. Witnesses' Testimony - The Agency

1. Angela Moore

{¶ 7} Angela Moore, a Behavioral Connections social worker and program manager, testified that she supervised father's Assertive Community Treatment ("ACT") program. The ACT program consisted of a team of clinicians who provided more intensive services to shared clients with a dual diagnosis of a substance abuse disorder and a major mental illness. Father's main goals were to access community resources for housing, employment, and counseling services, as well as benefits, such as Social Security Disability, Medicaid, and food stamps.

{¶ 8} Moore testified that during her two years of involvement in father's case, his attendance at scheduled appointments for various services was sporadic at best. From

January 2008 to June 2009, father had 38 "no shows" out of 103 appointments for services. He had initially attended individual counseling and the dual-diagnosis group to learn to deal with his mental health issues without abusing drugs or alcohol. Eventually he was discharged from both individual and dual-diagnosis group counseling.

{¶ 9} Moore testified that father was expected to see a psychiatrist every four to six weeks to receive the necessary prescription medications. He was also to meet with a psychiatric nurse between visits, to address any medication problems. Moore said that from his initial contact with Behavioral Connections in 2006 until the permanent custody hearing, father had been hospitalized eight times. The length of each hospitalization averaged four to five days. Ultimately, because of his multiple hospitalizations and need to be more closely monitored and prompted to take his medications, father was placed in a residential mental health center/group home in October 2008. Moore said that father was eventually discharged from the group home in February 2009, for violations of house rules, including upsetting the other residents and allegations that he had stolen from residents and brought his girlfriend into the home.

2. Melissa Tokar

{¶ 10} Melissa Tokar, then the current WCDJFS caseworker, testified that the agency initially became involved with father and E.P. in 2005, with referrals for sexual abuse and neglect due to homelessness. Additional referrals in July 2005 were made concerning E.P.'s severe underweight, malnourishment, chronic head lice, homelessness, and sexual abuse. At that time, the agency and the family entered into a voluntary

agreement for assistance and treatment. Additional referrals were made over the next year, but were not investigated.

{¶ 11} In August 2007, as a result of father's suicide attempt, and E.P.'s removal and adjudication as dependent, a case plan was put in place with reunification as the goal. Among the areas of concern were father's multiple hospitalizations, inability to manage mental health symptoms, and reports of alcohol abuse. Also of concern was the family's unstable housing which had resulted in E.P.'s attendance at several different elementary schools and father's leaving E.P. with unreliable and inappropriate caregivers.

{¶ 12} Counseling for E.P. was also part of the case plan. In addition, E.P. had been diagnosed with failure to thrive and was consulting with a specialist for her medical condition. Father's and R.R.'s goals under the case plan included mental health treatment, staying on prescribed medications, and working on a family budget to meet E.P.'s basic needs for stable housing, food, and clothing.

{¶ 13} Tokar corroborated much of the other witnesses' testimony. She noted that in February 2008, father had begun to be compliant and made significant progress with his psychiatric services and his visits with E.P. were increased in frequency and were also unsupervised. Father, however, did not attend the counseling services for E.P. at CRC or his own individual counseling services at Behavioral Connections. Father was also still struggling to find employment, R.R. was not compliant with mental health services, and the family had been evicted from two residences.

{¶ 14} In June 2008, as a result of father's rule violations, the agency returned to supervised visitations, which positively impacted E.P.'s emotional stability and reduced her stress. She was also diagnosed with a profound hormone deficiency, requiring the foster mother to administer daily, consistent hormone shots to E.P.

{¶ 15} By the end of July 2008, father had begun attending individual counseling and case management appointments, but failed to comply with the remaining required case plan services. In October 2008, however, father told Tokar he wanted to voluntarily surrender his parental rights, and felt that adoption by the foster family was in E.P.'s best interest. Tokar advised him that, despite the foster mother's alleged offer to continue his visits, after adoption, she would not be legally obligated to allow said contact. Tokar directed father to seek legal advice.

{¶ 16} During the February 2009 semi-annual review, the agency found that father had failed to consistently work towards achieving his case plan services. As of the date of the permanent custody hearing, Tokar stated that father was still non-compliant with the case management services and dual group counseling, individual counseling, employment services, and CRC services. Father was still unemployed and had only a temporary residence with his girlfriend. Father's temporary residence, however, was unsanitary, with large amounts of trash and left-over food found throughout the home.

{¶ 17} From 2005 until the present time, Tokar testified that the father had moved 23 different times. Between September 2007 to August 2009, he had received 41 gasoline cards totaling \$950 to facilitate transportation. The agency also provided

emergency service assistance in the form of rent payments, security deposits, and utility payments. While E.P. had been in temporary custody, she had no contact with her biological mother. In November 2008, Tokar initially received written confirmation that mother was not interested in placement of E.P.

{¶ 18} Mother contacted Tokar by phone in March 2009, however, inquiring about parental rights. Since mother's last contact with E.P. had been long ago in 2005, Tokar suggested that mother initiate contact with E.P. by writing her a letter, followed by phone calls and visitations, as approved by E.P.'s therapist. Tokar also sent mother a photo of E.P. and an initial Inter-State Home Study Request for mother and her friend to complete and return. In April 2009, referral forms were also sent to the state of North Carolina, where mother was residing. Since the March 2009 phone call, however, mother had not responded or contacted Tokar.

{¶ 19} Tokar also investigated possible other relatives for placement, but none was available or suitable. A home study was approved for a family friend who had initially expressed interest in custody of E.P., but later decided that placement was not possible. E.P.'s current foster mother does wish to adopt her.

{¶ 20} From August 2007 to August 2009, E.P. has been in the same foster home. She has been regularly attending counseling at CRC and has made significant progress in her services. She continues to receive the hormone shots and has grown. E.P. did not express a desire to live with father, but wants to maintain a relationship with him, even if she is adopted.

3. Dr. Zick

{¶ 21} Dr. David Zick, a psychiatrist employed by Behavioral Connections, testified that father had been under his care since 2007, when father attempted to commit suicide. Prior to this incident, Dr. Zick acknowledged that father's treatment at the center began sometime in 2006. Father was diagnosed with depressive syndrome and post-traumatic stress disorder with depressive symptoms, including variable, intrusive hallucinations. His treatment included prescription medications, Stelazine and Seroquel, antipsychotic and mood stabilizer drugs for hallucinations, and Zoloft, an antidepressant. Dr. Zick usually saw father every four to six weeks, until May 2009, when father ceased treatment. Dr. Zick cancelled the July 2009 appointment, but still expected father at a scheduled follow-up appointment in September 2009.

{¶ 22} Dr. Zick opined that father's mental health issues had a serious impact on his life, although his symptoms did not prevent him from performing ordinary daily living functions. According to Dr. Zick, father's failure to follow through was the result of personality traits which were not generally amenable to change or therapy, rather than the result of any severe mental health disorder. In aid of father's conditions, he was referred to counseling for chemical dependency and life management skills under the ACT Team at Behavioral Connections.

{¶ 23} Father's recurring homelessness affected his attendance at services, until he was moved into the Behavioral Connections residential group home. In that facility, father was semi-supervised and in close proximity to the therapy services. Nevertheless,

even while living in the residential setting and receiving more consistent treatment, father showed little success in developing life-coping skills and the necessary community relationships. Over the prior three years, father had not shown a willingness to commit to treatment on a consistent basis. Dr. Zick testified that father's personality and way of dealing with life's problems was unlikely to change, unless he actively engaged in therapy for mental illness and alcohol abuse, stayed on his medications, and managed his stress.

4. Corey Beard

{¶ 24} The next witness, Corey Beard, a case manager specializing in employment services, worked with father at Behavioral Connections' psychosocial rehabilitation program. This was an outreach program for individuals with mental illness. Beard began working with father on May 30, 2008, offering him job training services. Although father was at first very excited and interested in finding employment, his attendance was sporadic, attending four out of nine scheduled appointments.

{¶ 25} Following a missed appointment on January 26, 2009, Beard called father. Father said he was no longer interested in pursuing employment services. Beard again attempted contact a couple weeks later to confirm that father did not want further services. Beard officially closed father's case on February 6, 2009, but offered to re-engage father if he wished. In March 2009, father was referred to the agency for employment services but had to be put on a waiting list. At the time of the hearing, the agency's attempts to contact father to re-open his case and re-enroll him in services had been unsuccessful.

5. *Deborah Bonaguro*

{¶ 26} Another witness, Deborah Bonaguro, testified that she provided outpatient psychological therapy for E.P. at CRC. Bonaguro stated that WCDJFS had tried to get E.P. into counseling services in October 2004, shortly after she witnessed the murder of her aunt. E.P.'s parents declined services. In August 2005, after WCJFS again recommended counseling, E.P. was assessed and diagnosed with post-traumatic stress disorder. The assessment recommended individual and family counseling, home-based community psychiatric support treatment ("C.P.S.T."), and speech services.

{¶ 27} Family counseling, C.P.S.T., and speech services were not engaged at that time. E.P. sporadically attended individual therapy with Bonaguro for about two years. E.P. was transported from school by the agency to the weekly individual trauma group sessions and then taken home. Contacting the family was difficult because they did not have a telephone. When the family moved to North Baltimore, Ohio, E.P. dropped out of services. Bonaguro's last contact with her while in her father's care, was on May 3, 2007.

{¶ 28} According to Bonaguro, the parents reported during the initial assessment that E.P. had been kidnapped when she was two years old. The parents also admitted to having involvement with other children's services agencies in several states. Father and E.P. both reported neglect and physical abuse of E.P. by the biological mother. E.P. also suffered from significant, unresolved trauma issues after she witnessed her aunt's murder.

{¶ 29} In June 2006, E.P., then age seven, reported that she was sexually molested by a ten-year-old neighbor boy. In response to the counselor's report and follow up on

the incident, Bonaguro testified about allegations that the boy's father went to E.P.'s home and engaged in abusive behavior. Allegedly, his actions included screaming at E.P. with the use of profanity and calling her names, including "slut." Understandably, E.P. was distressed about this incident. Bonaguro had no independent verification of that information. In spite of this occurrence, just three months later, E.P. and her father moved in with the perpetrator's family for a short period of time.

{¶ 30} Bonaguro testified that other traumatic incidents also adversely impacted E.P.'s well-being, including her exposure to domestic violence between father and his girlfriend, homelessness or unsanitary living conditions, and a general lack of adequate food. According to Bonaguro, until E.P.'s placement in foster care, the family's frequent moves, the constant school transfers, and various other changes, were the source of continued stress and trauma delaying the healing of her emotional damage.

{¶ 31} In early 2008, E.P. acknowledged her father's violations of the visitation rules, such as visiting her father's apartment and being placed in the care of his girlfriend. She also reported playing outside without any supervision, being transported by persons she was not to have contact with, and going "dumpster diving." Understandably, E.P. was torn between wanting to protect her father and wanting to do the "right thing." This conflict often caused E.P. to have physical illness, including stomachaches and vomiting. Once she would confide that the violations had occurred, her physical and emotional symptoms would subside.

{¶ 32} E.P.'s overall view of the foster home was positive, despite minor conflicts with the other three girls in the foster home. She told Bonaguro that she wished to live with her dad or maintain contact with him, but felt comfortable in her foster family and did not want to lose that relationship. Bonaguro and E.P. worked on the issue of adoption, in the event that father would lose custody. Bonaguro testified that E.P. understood that permanent custody and adoption would likely result in not seeing her father until she turns 18 years of age. The counselor agreed that, under either outcome, E.P. would have stressors that would require support and counseling to help her cope.

6. *Dan Billings*

{¶ 33} The next witness, Dan Billings, a WCDJFS foster care specialist, testified that a "voluntary case" had been opened with the family on July 15, 2005, to start routine dental and medical services, and trauma counseling for E.P. Father and R.R. received financial assistance to help pay for temporary housing. At that time, father was employed at Bob Evans restaurant and R.R. was receiving S.S.I. benefits in the amount of \$542 per month.

{¶ 34} Father and R.R. were also encouraged to enroll with Section 8, government subsidized housing, which they did. In the meantime, the agency paid \$1,400 for the deposit and first month's rent on a home on Baldwin Avenue in Bowling Green. The agency also paid over \$200 for electric and water bills, and helped them get on the HEAP program. Under the "voluntary" case plan, all family members were to receive mental health assessments, E.P. at CRC and father and R.R. at Behavioral Connections.

{¶ 35} In February 2006, the family had met the case plan goals except for getting dental care. They had apparently missed prior appointments due to father's hospitalizations. Because of transportation problems, Billings also transported the family twice to a dentist in Grand Rapids, Ohio, for treatment.

{¶ 36} At the time Billings was first assigned to the case, father's four day hospitalization for heart problems caused him to lose his job at Bob Evans. The family was getting evicted from the Baldwin Avenue house and were moving into a cheaper apartment on Grove Street. They were almost \$2,000 behind in rent, but had a large-screen TV, computer, and computer desk from "Rent-to-Own." When Billings tried to talk about budgeting and priorities in paying bills, father and R.R. became upset, stating that they did not want to be told what to do by a young caseworker.

{¶ 37} According to Billings, by the time the agency closed the case in May 2006, E.P. was attending most of her individual counseling sessions. Although the family was missing group therapy appointments, they were otherwise in substantial compliance with the voluntary agreement. Father and R.R. were also on call with Job One, an employment agency.

B. Witnesses' Testimony - Father

1. Brooke Harrison

{¶ 38} Brooke Harrison, E.P.'s court appointed special advocate ("CASA"), testified that she had observed father and E.P. together on several visitations and that they appeared to bond well. According to Harrison, although E.P.'s first choice was to live

with her father, she was agreeable with her current living arrangement in her foster home. Harrison acknowledged that father had been a consistent part of E.P.'s life, but noted that the instability of their relationship, brought about by father's mental health issues and his inability to provide for basic living necessities, was detrimental to E.P.'s well-being. Harrison's ultimate recommendation was that permanent custody be granted to the agency because father had failed to comply with the case plan goals, including failure to engage in mental health services, failure to maintain stable housing, and failure to provide adequate support for E.P.

2. *Father*

{¶ 39} Father's testimony centered around his efforts to provide for E.P.'s basic needs. He testified that his mental health issues and other medical conditions, including diabetes, high blood pressure, and heart problems, hindered his ability to fulfill the goals set forth in the case plan. Father further acknowledged that his hospitalization in the psychiatric unit and treatment for bronchitis were among the medical conditions that kept him from completing the case plan. Father also stated that his medications also cause adverse side effects, including upset stomach, drowsiness, sexual dysfunction, dizziness, lightheadness, and blurred vision. Father opined that the combination of some or all these medical issues made it difficult to obtain employment.

{¶ 40} Transportation was also a problem because father does not own a vehicle or have a driver's license. Father testified that he rode his bike to visitations, but the bike often had mechanical problems which prevented him from consistently attending. On the

day of the permanent custody hearing, father stated that he had ridden four and a half hours from his current residence in North Baltimore, Ohio, to attend the hearing.

{¶ 41} Father stated that he was compliant with his psychiatric and employment services and denied consuming alcohol since his suicide attempt in 2007. He acknowledged that during the pendency of the case, he heard voices, had hallucinations, and had suicidal thoughts. He stated that he had sought treatment at the hospital, however, rather than act on those thoughts. He also indicated that he had been taking his medications on a regular basis and always attempting to cooperate with the agency and caseworker.

{¶ 42} Father's testimony also included admissions that: (1) he was on a waiting list for Section 8 subsidized housing, but did not provide any documentation in support; (2) he was approved for food stamps, but could not get Medicaid since E.P. was not living with him; (3) he worked at the meat packing company for three weeks, but lost the job when his car broke down and he did not have transportation; (4) he tried to earn "pocket" money by having yard sales, scrapping, mowing lawns, and helping people move, but had found no permanent employment; (5) he applied for Social Security disability benefits about three times, but has been denied.

{¶ 43} Father agreed that over the previous two years, it had been a real struggle to try to obtain and keep employment, to maintain housing, and to try to keep all the medical and psychiatric appointments. He also agreed that there were times when he missed appointments and it was not due to transportation or illness, but that he did not

feel he needed to attend certain programs. Father acknowledged that he could not take care of E.P., but that he would prefer an arrangement where E.P. would stay in foster care, and he could continue to visit her sporadically. He agreed, however, that arrangement was not fair to E.P.

C. Juvenile Court's Decision

{¶ 44} The court ultimately concluded that the agency presented clear and convincing evidence that, following E.P.'s removal from father's custody, notwithstanding reasonable case planning and diligent agency efforts to assist father, father failed continually and repeatedly to substantially remedy the conditions causing E.P. to be placed outside her home. In reaching its decision, the court reasoned that, despite "years of more than reasonable efforts by service providers," father: (1) had been unable to maintain employment or an appropriate home; (2) continued to exhibit noticeable signs of significant mental health issues leading to multiple hospitalizations; (4) continued to be inconsistent with treatment efforts; (4) and was resistant to or unable to take advantage of the offered services aimed at addressing the deficiencies leading to E.P.'s removal.

{¶ 45} The court specifically found that the factor in R.C. 2151.414(E)(2) had been proven and that E.P.'s placement with her father within a reasonable time was not possible. Father's chronic mental illness and/or emotional illness was so severe that it was impossible for him to provide an adequate permanent home for E.P. at the present time or, as anticipated, within one year of the permanent custody hearing.

{¶ 46} The court then found, by clear and convincing evidence, that E.P. was not abandoned by both parents or orphaned and that E.P. could not be placed with mother or father within a reasonable time or should not be placed with mother or father. In the alternative, the court found by clear and convincing evidence that E.P. had been in the temporary custody of WCDJFS for 12 or more months of a consecutive 22 month period. Finally, the court found that the grant of permanent custody of E.P. to WCDJFS was in her best interest.

IV. PERMANENT CUSTODY ISSUES ON APPEAL

{¶ 47} Father now appeals from the trial court's findings of fact, conclusions of law and judgment entry. In his sole assignment of error, appellant argues that:

{¶ 48} "The trial court abused its discretion in awarding permanent custody of [E.P.] to the Wood County Department of Job and Family Services in that the State of Ohio failed to prove by clear and convincing evidence that the child could not be placed with father in a reasonable period of time, and that the award of permanent custody was in the child's best interest."

We disagree.

A. Permanent Custody Standard

{¶ 49} A juvenile court may grant permanent custody of a child to a public services agency if the court finds, by clear and convincing evidence, two statutory prongs: (1) the existence of at least one of the four factors enumerated in R.C. 2151.414(B)(1) and (2) that the child's best interest is served by a grant of permanent

custody to the children's services agency. *In re M.B.*, 10th Dist. No. 04AP-755, 2005-Ohio-986, ¶ 6. Clear and convincing evidence requires that the proof "produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus.

B. First Prong - R.C. 2151.414(B)(1)

{¶ 50} Under the first prong, the four factors under R.C. 2151.414(B)(1) are, in pertinent part, as follows:

{¶ 51} "(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period * * * 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.

{¶ 52} "(b) The child is abandoned.

{¶ 53} "(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶ 54} "(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 * * *."

{¶ 55} In this case, the trial court found that the factors under both R.C. 2151.414(B)(1)(a) and (d)² were met. We will address these findings individually.

1. Trial Court's R.C. 2151.414(B)(1)(d) Finding

{¶ 56} We note, that "[b]efore a public children-services agency or private child-placing agency *can move* for permanent custody of a child on R.C. 2151.414(B)(1)(d) grounds, the child must have been in the temporary custody of an agency for at least 12 months of a consecutive 22-month period." *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, syllabus. (Emphasis added.) Thus, an agency may not utilize the statutory provision dealing with children in temporary custody for 12 months of a 22 month period where its motion is filed prior to the required statutory time period. See *In re Bowers*, 7th Dist. No. 04 MA 216, 2005-Ohio-4376, ¶ 41, citing R.C. 2151.413(D)(1) (which statutorily defines temporary custody as beginning the earlier of the date the child is adjudicated or 60 days after the child is removed from the home) and *In re C.W.*, supra, ¶ 26 (12 month time period must be satisfied as of the date the agency files the motion).

{¶ 57} Although appellant has not challenged the trial court's finding under R.C. 2151.414(B)(1)(d), we will address this issue sua sponte under the plain error doctrine. See *In re McCain*, 4th Dist. No. 06CA654, 2007-Ohio-1429. We are aware that plain error in civil cases is "applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously

²Whether the statutory scheme contemplates that these two sections should be mutually exclusive or may be found in the alternative is a question that begs clarification by the Ohio legislature, but need not be determined under the facts of this case.

affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116, syllabus. Nevertheless, the termination of parental rights is "the family law equivalent of the death penalty" which mandates that the trial court fully comply with the permanent custody statutes. See *In re McCain*, supra, ¶ 25, citing to *In re Hayes* (1997), 79 Ohio St.3d 46, 48. Therefore, a juvenile court's failure to enter an appropriate R.C. 2151.414(B)(1) finding may constitute plain error. *In re McCain*, supra.

{¶ 58} In this case, E.P. was adjudicated to be dependent on October 16, 2007, which is the date when the agency's temporary custody began. The agency filed its motion for permanent custody on March 9, 2009, just under 17 months later. Consequently, although E.P. was in temporary custody for at least 12 months, the 22 month consecutive time period was not complete at the time the agency filed its permanent custody motion. Thus, the trial court incorrectly determined that the child had been in the agency's temporary custody for 12 or more of the prior 22 consecutive months and its alternative finding under R.C. 2151.414(B)(1)(d) is not supported by clear and convincing evidence.

{¶ 59} This error is not fatal, however, to the permanent custody motion filed by WCDJFS. "If a ground other than R.C. 2151.414(B)(1)(d) exists to support a grant of permanent custody, the agency may move for permanent custody on that other ground."

In re C.W., supra, ¶ 27. We will now address appellant's arguments regarding the trial court's alternative finding under R.C. 2151.414(B)(1)(a).

2. Trial Court's R.C. 2151.414(B)(1)(a) Finding

{¶ 60} In making a finding under R.C. 2151.414(B)(1)(a), that the child cannot be placed with his parents within a reasonable time or should not be placed with his parents, the court need find, by clear and convincing evidence, that only one of the eight factors enumerated in R.C. 2151.414(E) exists. The first two factors under that section are that:

{¶ 61} "(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

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

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

Nevertheless, substantial compliance with a case plan, in and of itself, does not prove that a grant of permanent custody to an agency is erroneous. *In re Watkins v. Harris* (Aug. 30, 1995), 9th Dist. No. 17068.

{¶ 63} In this case, the record indicates that despite numerous agency services and assistance, appellant did not comply with the orders of the court or his case plan and mental health services. The juvenile court specifically took note of: (1) appellant's voluntary discharge from job services opportunities; (2) the number of sessions appellant missed with his Assertive Community Management Team ("ACT"), including his subsequent discharge from that program; (3) appellant's inability to comply with the rules at a mental health residential treatment home; (4) appellant's failure to utilize counseling services for E.P. at CRC; (5) appellant's sporadic attendance at counseling sessions with Dr. Zick; (6) Dr. Zick's opinion that appellant is unable to cope with daily tasks; and (7) the number of times appellant has been hospitalized, including the reasons - suicidal thoughts, housing concerns, and relationship difficulties.

{¶ 64} Appellant argues that he has substantially complied with mental health services and efforts to seek employment, and that he allegedly has approval for subsidized housing. Even if appellant were to obtain housing, the record supports the trial court's findings that appellant did not take advantage of the numerous services offered to him in an effort to help him remedy the problems that led to E.P.'s removal

from the home. Father's inability to stabilize his mental health issues or thought processes directly hindered his ability to successfully maintain employment and stable housing. As a result, there was abundant evidence presented that appellant's behavior demonstrated a pattern that was unlikely to change.

{¶ 65} Consequently, we conclude that the court's findings under R.C. 2151.414(E)(1) and (2) were supported by clear and convincing evidence that father had failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the home and that his chronic mental or emotional illness was so severe that he was unable to provide an adequate permanent home for E.P. within a year. As a result, the trial court's finding under R.C. 2151.414(B)(1)(a), that E.P. could not be placed with appellant within a reasonable time or should not be placed with appellant, was also supported by clear and convincing evidence.

C. Second Prong - Best Interest of the Child Finding

{¶ 66} Once the trial court makes a finding satisfying one of the factors enumerated in R.C. 2151.414(B)(1), its analysis turns to the second prong, the best interest of the child. In making this determination, R.C. 2151.414(D) provides that the court "shall consider all relevant factors, including, but not limited to, the following:

{¶ 67} "(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;

{¶ 68} "(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;

{¶ 69} "(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;

{¶ 70} "(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;

"(5) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶ 71} The factors set forth in R.C. 2151.414(E)(7) through (11) include:
(1) whether the parents have been convicted of or pled guilty to various crimes;
(2) whether medical treatment or food has been withheld from the child; (3) whether the parent has placed the child at a substantial risk of harm due to alcohol or drug abuse;
(4) whether the parent has abandoned the child; and (5) whether the parent has had parental rights terminated with respect to a sibling of the child.

{¶ 72} A trial court is not required to specifically enumerate each factor under R.C. 2151.414(D) in its decision. *In re Heyman* (Aug. 13, 1996), 10th Dist. No. 96APF02-194. However, there must be some indication on the record that all of the necessary factors were considered. *Id.*; *In re Hershberger*, 3d Dist. Nos. 1-04-55,

1-004-61, 2005-Ohio-429, ¶ 28. No one factor is given greater weight or heightened significance. *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, ¶ 56.

{¶ 73} In this case, evidence was presented regarding E.P.'s close relationship with her foster mother, her own wishes regarding placement as expressed to both the caseworker and the CASA, her need for stability in placement, and the history of her temporary custody with the agency. The trial court's findings regarding these factors and father's inability to stabilize his mental health, employment, and housing issues were consistent with the evidence presented. Therefore, we conclude that the trial court considered the factors in R.C. 2151.414(D) and are satisfied that the record contains clear and convincing evidence that it was in E.P.'s best interest to grant permanent custody to WCDJFS.

V. CONCLUSION

{¶ 74} Upon our complete and thorough review of the record, we conclude that there was clear and convincing evidence presented to support the juvenile court's findings under R.C.2151(B)(1)(a) and that permanent custody to the agency was in E.P.'s best interest. Therefore, the trial court did not err in granting permanent custody of E.P. to WCDJFS and terminating appellant's parental rights.

{¶ 75} Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 76} The judgment of the Wood County Court of Common Please, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.