

On that date, police were called due to an altercation between E.B.'s mother and E.B.'s paternal grandmother. Police officers observed the child's mother in a state of intoxication and she was charged with assault and child endangerment as a result of the incident. A voluntary case was opened and a safety plan prepared. The case plan indicated that the father had a significant criminal history, including violent behavior and that the agency had received several reports of intoxication of the mother while she was caring for the child.

{¶3} On October 12, 2007, the mother took the child to the hospital due to concern over tainted Tylenol. Emergency personnel at the hospital were concerned with the mother's demeanor and she was transferred to the hospital where testing showed a blood-alcohol level of .243. In late October, the mother left the child in the care of a baby-sitter. The babysitter was concerned when the mother returned to get the child and appeared intoxicated. The baby-sitter would not let the mother leave with the child, so the mother called police and issued an Amber alert. When police arrived, they noticed the mother was intoxicated and she was arrested for a probation violation. The child was removed from the home and on October 29, 2009, and the agency was granted emergency custody. The first week of November, after a home study was completed, the child was placed in foster care with a paternal aunt and uncle.

{¶4} E.B. was adjudicated neglected and dependent on December 19, 2007 and a case plan was prepared with reunification as the goal. The case plan required the parents to complete drug and alcohol assessments and mental health assessments, combined with job and family services. The parents' progress on the case plan appeared to be going well until March 28, 2008 when unsupervised visitation was changed to supervised visitation after the agency received information that there had

been another probation violation by the mother.

{¶15} In May 2008, it was discovered that the father had a black eye and the mother was intoxicated at the time of the incident. As a result, the mother was charged with another probation violation. On her release, the mother was required to wear an alcohol monitoring bracelet and again asked to complete an alcohol treatment program. The mother wore an alcohol monitoring bracelet from May 2008 to November 2008. An agency caseworker stated that although there were no violations during this time, the agency wanted the mother to be off the bracelet for a period of time while remaining sober before they attempted reunification.

{¶16} In January 2009, the agency caseworker felt that things appeared to be going well on the case plan. The case plan services were completed by both parties and no further incidents had occurred. Overnight visits were allowed, and then the child was placed with the parents for an extended visit later in January.

{¶17} On February 15, another altercation occurred between the mother and father involving violence and the mother's intoxication. The child was removed from the extended home visit and placed in the temporary custody of the agency, which then returned her to foster care with her aunt and uncle. A new case plan was prepared that included drug and alcohol assessment for the father, along with Batterer's Intervention classes. The mother was also required to submit to random drug testing and to attend Women Who Resort to Violence classes. The caseworker testified that father is on probation and was charged with violating a civil protection order and public intoxication for an incident on February 23. As a condition of probation on these charges, the father was ordered to wear an alcohol monitoring bracelet and to complete drug and alcohol assessments.

{¶18} On April 3, the mother attended a supervised visit. An hour after the visit ended, the mother completed a drug screen at the probation department and tested positive with a .141 blood alcohol level. On April 30, the agency conducted a Semi-Annual Review (SAR). The mother arrived at 9:00 and at 9:30 an agency supervisor noticed an odor of alcohol on the mother. The supervisor scheduled a drug screen and the mother went directly after the meeting. The mother tested positive for alcohol, with a .08 blood alcohol level. The agency also submitted the results of a drug test on June 3, 2009 which indicates that the mother again tested positive for alcohol with a .04 level at 11:15 in the morning.

{¶19} On June 17, 2009, the agency filed a motion for permanent custody of E.B. The caseworker indicated that the agency did not immediately file for permanent custody after the February incident but prepared an amended case plan because it wanted to wait for court decisions involving the parents before making any decisions. The agency began discussing permanent custody after the SAR incident. The caseworker stated that the agency took into consideration the time the child had been in foster care, recent events and that the events in the entire case factored into the decision to file the motion. The caseworker also testified that the child began exhibiting behavior problems, including biting the inside of her arm, biting others, throwing things and saying "shut-up" frequently after her return to the foster home.

{¶110} After the child was removed from the extended visit in February 2009, the agency also became aware that on January 4, 2009 the mother alleged that the father choked her to a point where she blacked out. The caseworker testified that the agency would not have placed the child back in the home for an extended stay if they had known about this incident at the time.

{¶11} On July 29, 2009, the agency worker who investigated the February incident received a phone call from the mother around 11:45 in the morning. He stated that she was confused regarding whom she had called, and her speech was slow and slurred. She was argumentative with him, insisting that he had testified against her when the worker had never testified in court. Based on a report from this caseworker, a drug screen was requested. The mother refused to comply with the request for a drug screen, telling the caseworker that she "was not a police officer."

{¶12} The trial court held a hearing on the permanent custody motion on August 31, 2009 and issued a decision granting permanent custody of E.B. to the agency on October 8, 2009. The mother and father now appeal the decision, each raising two assignments of error.

{¶13} Before a natural parent's constitutionally protected liberty interest in the care and custody of her child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. *Santosky v. Kramer* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 520.

{¶14} In their first assignments of error, both parents argue that the trial court incorrectly applied R.C. 2151.414 in granting permanent custody. R.C. 2151.414(B)(1) sets forth the requirements for granting permanent custody and states that a court may

grant permanent custody if it finds it is in the best interest of the child and one of four other requirements described in subsections (a) to (d) are met. Subsection (b) requires a finding that the child is abandoned, while subsection (c) requires finding the child is orphaned and there are no relatives who are able to take permanent custody. Under subsection (d) a court must determine that the child has been in the temporary custody of one or more public services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period.

{¶15} In this case, the trial court used subsection (a) in its decision to grant permanent custody. This section requires a finding that "[t]he child is not abandoned or orphaned or has not been in the temporary custody of one or more public services agencies or private child placing agencies for 12 or more months of a consecutive 22-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." R.C. 2141.414

{¶16} The father argues that the trial court erred in granting permanent custody based on this section without finding any of the factors cited in the section applied to the case. Specifically, he argues that the trial court failed to make findings that the child was not abandoned, was not orphaned or was not in the custody for 12 of the preceding 22 months. Instead, the trial court stated only that the child "cannot be placed with either of her parents within a reasonable time or should not be placed with either of her parents."

{¶17} The court did not make any specific findings related to whether the child was abandoned or orphaned. However, there was no allegation that the child was abandoned or orphaned, nor was there any evidence presented on the presence or

absence of these conditions. Therefore, the failure of the court to affirmatively state these findings was not prejudicial. See *In re Layne Children*, March 5, 2001, Stark App. No 2000CA00344. 2001 WL 246430 at *4.

{¶18} With regard to the failure of the court to state that the child had not been in the temporary custody of the agency for 12 of 22 months, the court stated in its decision that the agency's motion alleged that permanent custody was in the child's best interest and "the parents have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home." The juvenile court indicated that the above finding is one of the statutory factors found in R.C. 2151.414(E)(1) which can be used in making a determination that the child cannot be placed with either parent within a reasonable time or should not be placed with the parents. The court noted that although it appeared that the child had been in the temporary custody of the agency for 12 of 22 months, making a finding under R.C. 2151.414(B)(1)(d) did not apply, because this subsection was not alleged as a basis for granting permanent custody, and the court would not consider it except as relevant to the child's best interest.

{¶19} The addition of the "12 of 22" finding was part of significant revisions to the permanent custody statutes in March 1999. Prior to these amendments, a court could grant permanent custody based on a finding that it was in the child's best interest and one of three findings: 1) the child was abandoned; 2) the child was orphaned; or 3) the child could not or should not be placed with his parents within a reasonable time. Former R.C. 2151.414(B), Sub.H.B. No. 274, 146 Ohio Laws, Part II, 3246, 3306; see, also, *In re Brock* (Oct. 5, 1998), Warren App. No CA98-03-027.

{¶20} The object of this addition to the permanent custody statute was to limit

the amount of time children spent in foster care, by providing an additional ground for granting permanent custody in which parents were given 12 months to work towards reunification with their child. See *In re K.G.*, Wayne App. Nos. 03CA0066, 03CA0067, 03CA0068, 2004-Ohio-1421, ¶19. After the addition of the "12 of 22" grounds for granting permanent custody, as long as a child meets the "12 of 22" requirement, an agency is no longer required to prove that a child cannot be returned to the parents within a reasonable time or should not be returned to the parents. *In re C.W.* 104 Ohio St.3d 163, 2004-Ohio-6411, ¶21. The provision balances "the importance of reuniting a child with the child's parents against the speedy resolution of the custody of a child." *Id* at ¶22.

{¶21} Prior to the revisions, the section involving whether a child could be placed with the child's parents within a reasonable time read: "[t]he child is not abandoned or orphaned and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents." This section was revised to add the requirement that the child was not in custody for "12 of 22" months, so that it now reads: "[t]he child is not abandoned or orphaned or has not been in the temporary custody of one or more public 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." R.C. 2141.414(B)(1)(a).

{¶22} When the four subsections are read in *pari materia* it appears the legislature's intent was to provide four independent bases for granting permanent custody in conjunction with a finding that permanent custody is in the child's best

interest: a child is orphaned; the child is abandoned; a child meets the "12 of 22" requirement; and where these three subsections do not apply, when the child cannot be placed with the child's parents within a reasonable time or should not be placed with either parent. The plain language of the statute evidences a finding that the "cannot be placed with the child's parent" only applies when "[t]he child is not abandoned or orphaned or has not been in the temporary custody of one or more public services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ***."

{¶23} As discussed above, the court used this finding to grant permanent custody as it was the ground alleged by the agency in its motion for permanent custody, but indicated that the "12 of 22" ground appeared to apply. The father argues that the court could not use this subsection to grant permanent custody because the court did not make the finding that the child had not been in the custody of the agency for 12 of 22 months, as the plain language of the statute states.

{¶24} While, as discussed above, these four subsections provide distinct and separate findings a court may make in granting permanent custody, and the plain language makes it clear that the "cannot be placed with either parent" finding only applies when the child is not abandoned, not orphaned and has not been in agency custody for 12 of 22 months, we find the court's reliance on this section to grant permanent custody was not prejudicial to the parents.

{¶25} First, although not relied on in granting permanent custody, as noted by the trial court, the "12 of 22" finding appears to have been met in this case. Although not specifically alleged in the motion for permanent custody, the motion does allege that the child was in the temporary custody of the agency at the emergency shelter care

hearing on October 30, 2007 and disposition was on December 19, 2007. Although not specifically alleging "12 of 22" this statement was sufficient to put the parents on notice that the time the child was in agency custody was a factor in the request for permanent custody.

{¶26} Second, as discussed above, the "12 of 22" provision was added to allow parents 12 months to work towards reunification before an agency filed permanent custody. This gives the parent 12 months to demonstrate that "the parent is able, suitable or fit to care for the child." See *In re K.G.*, 2004-Ohio-1421 at ¶20, quoting *In re Workman*, Vinton App. No. 02CA574, 2003-Ohio-2220. In fact, when a child has been in agency custody for 12 of 22 months, unless certain exceptions apply, the agency must file for permanent custody of the child. See R.C. 2151.413(D)(1). The finding that a child has been in custody for 12 of 22 months completely obviates consideration of whether the child can be placed with her parents within a reasonable time. *In re T.T.*, Butler App. Nos. CA2004-07-075, CA2004-08-198, 2005-Ohio-240.

{¶27} The agency has a greater burden when showing by clear and convincing evidence that a child cannot be placed with her parents within a reasonable time than it does when proceeding under the "12 of 22" section. See *In re Kessinger*, Defiance App. Nos. 4-07-17, 4-07-18, 2008-Ohio-158, ¶36 (facts in case regarding whether children could be placed with the parents within a reasonable time were weak and would likely have not met burden, but discussion was unnecessary because "12 of 22" requirement was met); *In re K.G.* at ¶21 (the "12 of 22" is a "presumption that a parent is unfit" based on a passage of time). In this case, although failing to make a finding regarding the "12 of 22" provision, the agency met the greater burden of establishing that the child could not be placed with either parent within a reasonable time. Therefore, we find no

prejudicial error in the court's finding that E.B. could not be placed with her parents within a reasonable time.

{¶28} In the first assignment of error, the mother and father both argue that the juvenile court erred in failing to find that the agency provided reasonable case planning and made diligent efforts to assist the parents in remedying the problems that caused E.B. to be removed from the home as required by section 2151.414(E)(1). Specifically, this section states: "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 that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties."

{¶29} The parents argue that the court did not make findings regarding the "reasonable case planning and diligent efforts of the agency to assist the parents" and that even if the findings had been made, the parents substantially complied with case plan services. In reviewing this factor, the trial court's decision, however, states that "[t]he court has noted at various times throughout this case the reasonable efforts undertaken by WSA to prevent the removal of [the child] from [] her home, to eliminate [the child's] continued removal [] from her home, or to make it possible for [the child] to return safely home." The record supports this finding, as the trial court made numerous findings throughout the case regarding the reasonable efforts of the agency.

{¶30} The parents further argue that the trial court's decision was in error since they substantially completed case plan services. However, it is well-settled that the completion of case plan services alone does not equate to, or necessitate a finding that the parents have substantially remedied the conditions that caused the removal of the child from the home. *In re Mraz*, Brown App. Nos. CA2002-05-011, CA2002-07-014, 2002-Ohio-7278, ¶13. A parent can successfully complete the requirements of a case plan, but not substantially remedy the conditions that caused the children to be removed, as the case plan is "simply a means to a goal, but not the goal itself." *In re C.C.*, Cuyahoga App. Nos. 94013, 94014, 2010-Ohio-780, ¶25.

{¶31} In this case, despite completing alcohol treatment and other case plan services, issues of intoxication and violence remained. While an agency must provide services for parents to remedy conditions that caused removal, it is ultimately the parents' responsibility to utilize those services and to in fact, remedy the conditions. Accordingly, we find no merit to the parents' first assignments of error.

{¶32} In their second assignments of error, the parents argue that the grant of permanent custody to the agency was against the manifest weight of the evidence. R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to the following:

{¶33} "(a) 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;

{¶34} "(b) 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;

{¶35} "(c) 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;

{¶36} "(d) 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;

{¶37} "(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶38} With respect to R.C. 2151.414 (D)(1)(a) and (c), the juvenile court found that the child has been placed in foster care since November 2007, with the exception of about three weeks from January to February 2009. The court found the child will be three in December 2009 and is well adjusted and bonded to the foster parents. The court further found that the child enjoys visits with mother and father and that the parents and child love one another. The court found that the parents have missed some visits and that the child displayed some atypical behavior after returning from the extended visit with her parents.

{¶39} With respect to R.C. 2151.414(D)(1)(b), the juvenile court indicated that the guardian ad litem favors granting permanent custody to the agency. With respect to R.C. 2151.414(D)(1)(d), the juvenile court found that the child has been in custodial limbo since October 2007 and is in need of a legally secure placement. The court further found that the foster parents have expressed a desire to adopt the child and permanent custody would facilitate a legally secure placement.

{¶40} The court also found that the mother has been convicted of child

endangering in violation of R.C. 2919.22 and that the child was the victim in that case, as set forth in R.C. 2151.414(E)(7)(c). Finally, the court found that the mother is in poor health, and claims transportation has been an issue with drug screens and other case plan services, which raises a question about her ability to obtain transportation for the child's needs if reunified. The court also found that the father did not have independent housing at the time of the hearing and was residing with his mother.

{¶41} As discussed above, the court also found that the parents have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the home. The court found that despite the provision of remedial services by the agency, the parents have failed to remedy their problems with alcohol abuse/addiction and domestic violence. The court discussed the mother's efforts in engaging in several substance abuse treatment programs, and the fact that notwithstanding those efforts, she continues to abuse alcohol, and denies this abuse despite unequivocal evidence to the contrary. The father was also ordered to wear an alcohol monitoring bracelet.

{¶42} The court also discussed the ongoing domestic violence between the parents which had occurred throughout the case, including arrests and protection orders, and described their relationship as "volatile." Although the parents stated that they were not living together, the court found that they testified that they are at least living together on a part-time basis and the mother has dismissed the restraining order she had against the father.

{¶43} The parents argue that the court's determination that it was in the child's best interest to grant permanent custody and the finding that the parents failed to remedy the conditions that caused the child to be removed from the home were not

supported by the evidence. As discussed above, the court's finding that the parents failed to remedy the conditions that led to the removal of the child from the home is supported by the evidence.

{¶44} In addition, the court's findings regarding the child's best interest are also supported by the record. The court noted that the mother and father are both taking efforts to address their alcohol addiction, but was cognizant of the fact that past efforts in that regard proved unsuccessful, despite the parents' awareness of what was at stake regarding their child. The court found that the child unquestionably could not be reunified with the parents at the current time, and considering the time she has been in custody and need for permanency it was not in her best interest to continue in the temporary custody of the agency. We find no error in the trial court's determination that it was in the child's best interest to grant permanent custody. Appellants' second assignments of error are overruled.

{¶45} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.