

complaint indicated that the agency had a history with appellant dating back to 2004 when appellant attempted suicide. At that time, C.I. was removed from appellant's home and he returned home in May 2005 after appellant completed case plan services. C.I. was again removed from appellant's home in February 2006 when appellant was admitted to an in-patient treatment program for heroin abuse. Appellant again completed case plan services and C.I. was returned home in the fall of 2007, shortly after R.S. was born.

{¶3} The current neglect and dependency complaint stated that appellant had been hospitalized in March 2009, when she relapsed on heroin and expressed suicidal ideation. The complaint also indicated that appellant had a history of depression and of being overwhelmed with the children.

{¶4} The children were removed from the home and were initially placed with their maternal grandmother. They were removed from the grandmother's home and placed in foster care in April 2009 and on May 6, 2009, were placed with their current foster parents. The agency explored placement with a maternal aunt, but the home study was denied due to the fact that the aunt's husband had an extensive criminal history which included domestic violence convictions. Both a guardian ad litem and a CASA were appointed for the children and the mother began working on case plan services. Appellant stipulated to a finding of dependency on May 28, 2009. Both of the children's fathers were found in default at that time.

{¶5} At the hearing, evidence was presented to establish that appellant has a drug addiction, mental illness, seizures and hepatitis C. The case plan required the mother to attend programs and counseling to address these issues. Although appellant attended intensive inpatient treatment, she did not complete the aftercare part of her treatment. The mother began working with Transitional Living Inc. to address her mental health and addiction issues and made some progress, but the agency caseworker explained there were

still concerns regarding appellant's sobriety, her mental health, and her ability to take care of the children. The agency was also concerned regarding appellant's choices in boyfriends, as she consistently chose men with domestic violence issues and/or drug use problems. In addition, appellant became pregnant while this case was pending and the father of her unborn baby is a convicted drug addict. Numerous treatment records, reports and documentary evidence were submitted documenting appellant's treatment and level of progress.

{¶6} Evidence was also presented that C.I. was diagnosed with ADHD and adjustment disorder and that there were problems with the mother taking him to programs and getting his medication before removal from the home. At the time of his removal, C.I. was scared and anxious, had aggressive behavior, nightmares and temper tantrums. Evidence was presented that he has made great progress while in the care of his foster parents.

{¶7} At the time of removal, R.S. was whiny and pale, had ear infections, was behind on her immunizations and, although she was almost two years old, could not speak. After removal, she participated in various services, received immunizations, had tubes placed in her ears and has now been determined to be developmentally on target.

{¶8} At the hearing, evidence was presented that visitations were chaotic and the mother often had trouble controlling the children and attending to both of them at the same time. Some progress was shown when the mother began working with the Development of Living Skills program, although the evidence indicated that once the instructor left, visits would often return to their chaotic nature. The mother was supposed to bring a dinner to visits, but there were also problems with the mother bringing inappropriate food or no food to many of the visits, although at the latest visits, the mother was bringing appropriate food.

{¶9} The agency filed for permanent custody of the children on June 1, 2010.

Hearings on the motions were held on multiple dates from September 29, 2010 to October 27, 2010. C.I.'s father did not appear at the hearings. Despite the scheduling of the permanent custody hearings for a date after R.S.'s father was released from prison, he failed to appear at any of the hearing dates until the final date of testimony. The magistrate issued a decision granting the motion for permanent custody on December 1, 2010. Appellant filed objections to the magistrate's hearing which were overruled by the trial court.

{¶10} Appellant now appeals the trial court's decision to grant permanent custody of the children to the agency. She raises the following three assignments of error for our review:

{¶11} "THE COURT ERRED AS A MATTER OF FACT AND LAW AND ABUSED ITS DISCRETION WHEN IT REFUSED TO CONTINUE THE HEARING AND/OR TO ORDER AN UPDATED HOME STUDY ON THE MATERNAL AUNT.

{¶12} "THE COURT ERRED AS A MATTER OF FACT AND LAW AND ABUSED ITS DISCRETION WHEN IT TERMINATED THE PARENTAL RIGHTS OF APPELLANT (1) BECAUSE SUCH WAS NOT THE ONLY MEANS OF OBTAINING A LEGALLY SECURE PLACEMENT FOR THE CHILDREN AND/OR (2) BECAUSE PERMANENT CUSTODY WAS NOT IN THE CHILDREN'S BEST INTERESTS.

{¶13} "THE COURT'S DECISION AND ORDER OF PERMANENT CUSTODY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDINGS AND THE EVIDENCE PRESENTED FAILED TO MEET THE REQUISITE CLEAR AND CONVINCING STANDARD."

{¶14} In her first assignment of error, appellant argues that the trial court erred in failing to grant a continuance or order a new home study on the children's aunt. At the start of the permanent custody hearing, the children's aunt appeared and requested that the

agency perform another home study to determine if the children could be placed with her because her husband had moved out of the home. The agency indicated that it would take some amount of time to perform an additional home study and to determine if the aunt's home was a viable placement. The trial court indicated it was concerned by the fact that the aunt waited until the day of the permanent custody hearing to make a request, but indicated that it would listen to testimony on the issue and determine if it was in the best interest of the children.

{¶15} During the hearing, the aunt testified that she and her husband have been living separately for almost a year, but it is not a legal separation. She testified that he now lives with his mother and watches their children while she is in school full-time. She stated she did not have any concerns with having the children around her husband, but indicated she would follow a court order to do so. At the end of the permanent custody hearings, the court denied the request for an additional home study.

{¶16} A court is not required to delay permanent custody proceedings due to a request by a family member for custody. *In re Boggs*, (Dec. 20, 2001), Butler App. Nos. CA2001-04-091, CA2001-05-123. The decision to grant or deny a continuance is within the sound discretion of the trial court. *State v. Unger* (1981), 67 Ohio St.2d 65; *In re C.P.*, Butler App. No. CA2004-10-259, 2005-Ohio-3888. Absent an abuse of discretion, a trial court's denial of a motion for continuance will not be reversed. *Id.* In ruling upon a motion for a continuance, "the trial court balances the court's interest in controlling its docket and the public's interest in an efficient judicial system with the possibility of prejudice to the defendant." *In re Eskins* (July 13, 1998), Butler App. No. CA97-10-199, at 3-4. The trial court may consider factors such as the length of the delay requested, prior requests for continuances, the inconvenience to the parties, witnesses, counsel, and the court, whether the movant contributed to the circumstances giving rise to the request for a continuance, and

other relevant factors depending on the facts of the case. *State v. Landrum* (1990), 53 Ohio St.3d 107.

{¶17} In this case, the trial court denied the request for a home study, finding the request was not timely. The court stated that although she had almost a year after her husband moved out, the aunt did not ask for another home study when her circumstances changed, nor did she file a motion for legal custody. At the time of the permanent custody hearing, the children had been in temporary custody for 18 months. The court found it was not in the children's best interest to prolong the decision on the permanent custody motion any longer while a home study was performed. We find that the court did not abuse its discretion in denying the request for a home study. The aunt waited a considerable amount of time before taking any type of action in regards to the children and the children had already been in foster care for 18 months at the time the permanent custody hearing began. Moreover, there was evidence presented that the aunt had temporary custody of C.I. during one of his earlier removals from appellant's home and had to be removed from her home after a month due to feeling overwhelmed. In addition, she still has regular contact with her husband and lives in a three-bedroom apartment where, if granted custody, she would have six children living with her. Accordingly, appellant's first assignment of error is overruled.

{¶18} In her second and third assignments of error, appellant challenges the legal determination by the trial court that permanent custody was in the children's best interest and argues that there was insufficient evidence to support the court's determinations.

{¶19} 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.

{¶20} Pursuant to R.C. 2151.414(B)(1), a court may terminate parental rights and award permanent custody to a children services agency if it makes findings pursuant to a two-part test. First, the court must find that the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D). Second, the court must find that any of the following apply: the child is abandoned; the child is orphaned; the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; or where the preceding three factors do not apply, the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re E.B.*, Warren App. Nos. CA2009-10-139, CA2009-11-146, 2010-Ohio-1122, ¶ 22.

{¶21} The juvenile court found by clear and convincing evidence, and appellant does not dispute, that the children are dependent, and have been in the temporary custody of BCDJFS for more than 12 months of a consecutive 22-month period as of the date the agency filed the permanent custody motion. However, as mentioned above, appellant does dispute the juvenile court's finding that granting permanent custody of the children to the agency is in the children's best interest.

{¶22} 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:

{¶23} "(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;

{¶24} "(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;

{¶25} "(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;

{¶26} "(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;

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

{¶28} With respect to R.C. 2151.414 (D)(1)(a), the juvenile court found that there is a bond between the children and their mother and that she consistently attended the scheduled visits. However, the court also found that visits have remained supervised at Level One, which is the most stringent level of visitation, due to the mother's difficulty managing the children's behaviors during the majority of the visits. The court found that the agency worker supervising visits described the visits as "never a dull moment" and she never felt appellant could handle the visits in a less supervised setting because she would usually need support in handling the children's behaviors. The court further found that the Development of Living Skills program began working with appellant and the mother began to bring more nutritious food to visits and was beginning to implement some better disciplinary techniques to manage the children's behavior. The CASA testified that she has seen some improvement in the mother's ability to handle the children, but that the visits begin to decompensate when the DLS instructor leaves the session.

{¶29} The court further found that R.S.'s father was in prison when the complaint was

filed and he sent the caseworker one letter, but after his release from prison, did not appear at any hearings until the end of the permanent custody hearings. The court found there has been no contact between R.S. and her father while the case was pending. The court also found that C.I.'s father did not appear at any of the hearings and in the fall of 2009 contacted the agency to inform them that he was not in a position to pursue custody.

{¶30} With respect to R.C. 2151.414(D)(1)(b), the juvenile court indicated that C.I. informed his therapist he wanted to stay with his foster parents. Both the guardian ad litem and CASA recommended that the children be placed in the permanent custody of the agency.

{¶31} With respect to R.C. 2151.414(D)(1)(c), the juvenile court found that the children were removed from their home on March 17, 2009, and initially placed with the maternal grandmother, and placed into the agency's temporary custody on April 28, 2009. The court indicated the children had been in agency custody for approximately 18 months while the case was pending. With regard to C.I., the court indicated that this is the third case the agency has filed on his behalf and that he was initially removed from his mother's home from December 2004 to May 2005. He was again removed from appellant's home in February 2006 until August 2007.

{¶32} With respect to R.C. 2151.414 (D)(1)(d), the juvenile court found that the children are in need of a legally secure placement as they have been in foster care for 18 months while the case was pending. The court found C.I. has already spent approximately half of his life in alternative care due to his mother's pattern of periodically mentally destabilizing and using illegal drugs. The court further indicated that while appellant has participated in case plan services, the evidence demonstrates that she has not rectified the problems that existed when the agency initiated the case in March 2009, and as late as the summer of 2010 had to seek respite care at Transitional Living to address her mental health

issues. The court indicated appellant has been diagnosed with schizoaffective disorder and depression and suffers from two types of seizures. She has been prescribed different medications to address her mental health issues, but her current pregnancy has complicated her ability to take all of the medication she needs. The mother's treating psychiatrist testified that because of the mother's pregnancy, her mental status has decomposed, she entered respite care because her level of psychosis was more severe and the TLC providers had concerns whether she could meet her own basic needs. The psychiatrist testified that it would be a challenge for appellant to parent because she is in only partial remission.

{¶33} The court indicated that it also had concerns about appellant's ability to independently manage her own needs, much less the needs of her children. The court found appellant was clearly dependent on her case manager at TLC to help her obtain medication and to coordinate medical appointments and to be a liaison with her medical providers. Appellant receives Social Security Supplemental Income, and has a payee who manages her money, but case progress notes indicate problems managing her money throughout the month. The court also found ample evidence of a pattern of erratic compliance with attending drug therapy and drug treatment and that although appellant's seizures have decreased with medication, the seizures still occur. The court further found that the mother admitted to relapsing on heroin in May 2010, and she did not consistently attend individual and group sessions.

{¶34} The court also found an additional concern regarding the mother's history with men who either have a history of domestic violence and/or substance abuse. The court indicated that it had previously issued no contact orders between the children and R.S.'s father and also between the children and mother's boyfriend at the time the agency filed the complaint. The father of appellant's unborn baby is a man on felony probation for the possession of heroin and he was arrested at appellant's home during the case for failure to

appear at mandatory testing. The boyfriend's probation officer obtained a no contact order between the boyfriend and appellant, but appellant contacted the probation officer to question the need for the order, was told the order was still in effect, but mother appeared to have violated the no contact order as she became pregnant during that time.

{¶35} The trial court also found that the maternal aunt appeared on the first day of trial and requested an updated home study because she was now separated from her husband. The court found that the aunt still has considerable contact with her husband because of their children and also noted that in the first case involving C.I., the child was placed with the aunt, but had to be removed from her care after one month because the aunt was reported feeling overwhelmed. The court stated that no relatives have filed a motion for legal custody of either child.

{¶36} Finally, the court addressed the progress made by the children after the removal from appellant's home. The court found that when removed from appellant's home, C.I. was described as anxious, fearful, scared and aggressive and had nightmares, temper tantrums and would urinate on himself. The court explained that C.I. has made great strides in addressing his psychological issues. The child was diagnosed with ADHD and Post Traumatic Stress Disorder and is in regular therapy. While in his mother's care, there were attendance issues with the child's therapeutic program and also problems in the child receiving his medication. Likewise, on removal, R.S. had developmental delays and lacked immunizations but is now developmentally on target.

{¶37} We find no error in the trial court's determination that granting permanent custody is in the children's best interest. We also find that the decision supported by sufficient, credible evidence to meet a clear and convincing standard is not against the manifest weight of the evidence. In both her second and third assignments of error, appellant argues that the mother substantially complied with case plan services, is bonded to

the children, is sober and has a stable income and home and that the aunt is an appropriate placement alternative.

{¶38} However, while the mother made some level of progress during this case, she lacks consistency in addressing her mental health and drug dependency, and despite being warned by the trial court, she continues to make poor choices in boyfriends. Appellant has a previous pattern of making changes, then returning to former habits as shown in the previous cases with C.I. and her progress in this case. She is not currently in a position to care for her children, nor is there any indication that she will be able to do so in the near future. Appellant's second and third assignments of error are overruled.

{¶39} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.