

Services Division ("the Agency").¹ For the reasons discussed below, we affirm the decision of the juvenile court.

{¶2} On December 9, 2008, Mother's four children, C.W., N.K., M.K. and H.K., were taken into temporary custody by the Agency after it received a referral from a school official that the children, who did not have proper adult supervision at the end of the school day, were being permitted to roam the streets of Eaton until Mother got off of work. C.W. was placed in his father's temporary custody. The other three children were adjudicated dependent on February 25, 2009, and were placed in foster care. M.K., then eight years old, and H.K., then five years old, were placed in the same foster home.

{¶3} A case plan to reunify Mother with her children was established by the Agency. The case plan required that Mother attend a parenting class, maintain employment and stable housing, submit to random drug screenings, and ensure her children attended school on a regular basis and were provided for at the end of the school day. Mother's case plan was later modified to include a provision that Mother not allow her boyfriend to have contact with the children after it was discovered that the boyfriend had a history of drug and alcohol abuse.

{¶4} In June 2010, the Agency moved for permanent custody of N.K., believing that Mother would not be able to meet the needs of the child.² However, the Agency believed Mother had made sufficient progress to warrant a trial visitation with M.K. and H.K. On June 28, 2010, H.K. and M.K. were placed in Mother's physical custody for a 30-day trial visitation. Less than a month later, the Agency independently discovered that Mother had lost her job and was being evicted from her apartment in Eaton, Ohio. Thereafter, Mother

1. The fathers of M.K. and H.K. did not appeal the juvenile court's decision and therefore are not parties to the present appeal.

2. N.K. is a special needs child with cognitive and behavioral health issues.

secured Agency-approved housing on Boyer Street in Richmond, Indiana. Mother's new housing was located near her own mother ("Grandmother") and brothers. The initial 30-day trial visitation was extended to see how Mother and the children would adapt to their new environment.

{¶15} On August 17, 2010, a hearing was held on the Agency's motion for permanent custody of N.K. At this hearing, Mother consented to the Agency's motion for permanent custody of N.K., and an agreement was reached between Mother and the Agency regarding M.K. and H.K. The parties agreed on the record that M.K. and H.K. would remain in Mother's physical custody and the Agency's temporary custody would be modified to protective supervision. The Agency's protective supervision was to last up to 60 days. On September 8, 2011, the juvenile court ordered M.K. and H.K. into Mother's legal custody and modified the Agency's temporary custody to protective supervision.

{¶16} Through an independent investigation, the Agency discovered in October 2010 that Mother was being evicted from the Boyer Street residence. During an unannounced home visit to Mother's residence, the Agency discovered that Mother had begun breeding puppies for money inside the home and that living conditions were less than ideal. On October 28, 2010, the Agency removed M.K. and H.K. from Mother's custody pursuant to an ex parte order. The following day, the Agency moved to modify its protective supervision of M.K. and H.K. to temporary custody.

{¶17} On November 12, 2010, the Agency filed a motion for permanent custody of M.K. and H.K. A hearing on the Agency's permanent custody motion took place on April 20 and April 27, 2011. On July 8, 2011, the juvenile court granted the Agency's motion for permanent custody of M.K. and H.K, finding that permanent custody was in the children's best interests, the children had been in the Agency's temporary custody for 12 or more

months of the preceding 22-month period, and the children could not be placed with either parent within a reasonable time or should not be placed with either parent.

{¶18} Mother appeals the juvenile court's decision, raising two assignments of error.

{¶19} Assignment of Error No. 1:

{¶110} "THE TRIAL COURT ERRED IN THAT IT FAILED TO GIVE FORCE AND EFFECT TO THE AUGUST 17, 2010 AGREEMENT BETWEEN THE PARTIES."

{¶111} In her first assignment of error Mother argues that pursuant to the August 17, 2010 agreement reached between the parties, the Agency lacked the legal status to remove the children from her custody on October 28, 2010. Mother contends that pursuant to the parties' agreement, the Agency's protective supervision of the children should have ended on October 17, 2010, 60 days after the agreement was placed on record.

{¶112} The following agreement was entered into by the parties at the August 17, 2010 hearing on the Agency's motion for permanent custody of N.K.:

{¶113} "PROSECUTOR: Your Honor we're here in the matter of [N.K.]. * * * I would also place of record [sic] with an amendment which will follow that I believe in exchange for pleas of consent to [N.K.'s permanent custody] that the Agency who has already placed the girls, [M.K. and H.K], back with [Mother] in a trial visit, would be moving to a transform [sic] the Agency's order of temporary custody to protective supervision and restore custody of the girls to [Mother].

{¶114} "* * *

{¶115} "COURT: And a Mr. Bennett, on behalf of your client, is that your understanding of the status?"

{¶116} "[MOTHER'S ATTORNEY]: It is your Honor with one additional piece of information that we should put o[n] record. In that we, my client anticipates as do I, from talking to the prosecuting attorney that the protective supervision, if all goes well would be for

a relatively short period of time. * * * I identified that period of time as 30 to 60 days. The Prosecuting Attorney concurs I believe in that.

{¶17} "PROSECUTOR: Correct.

{¶18} "COURT: Okay, and that's assuming there's no change in circumstances in the care and co, control of the children.

{¶19} "PROSECUTOR: Correct.

{¶20} "COURT: Is that correct?

{¶21} "[MOTHER'S ATTORNEY]: Yes your Honor.

{¶22} "COURT: Okay, well with that understanding, * * * I need to go through a certain litany of a, a of [sic] understandings with * * * the parents. * * *

{¶23} "** * *

{¶24} "COURT: [MOTHER] you understand that I've been advised you wish to change your plea in this matter. * * * [T]hat you are giving up certain constitutional rights when you are changing your plea in a permanent custody like this. Do you understand that?

{¶25} "[MOTHER]: Yes, sir.

{¶26} "** * *

{¶27} "COURT: [Y]ou're doing this voluntarily? No body's [sic] made any promises or threats other than the fact that Children Services is changing their position from one of temporary custody to one of a protective supervision on your other two children who are already with you on an extended thirty day trial visit as I understand it. Do you understand that?

{¶28} "[MOTHER]: Yes.

{¶29} "COURT: And that's the only promise and that their going to protective supervision and that their estimate of the su, protective supervision is 30 to 60 days. You understand that?

{¶30} "[MOTHER]: Yes.

{¶31} "COURT: Okay. That does not mean in any way that you can s, not, stop taking care of your kids and still get to keep them. You have to maintain the situation that you've, followed the case plan and got them back and maintained their health and welfare. Do you understand that?

{¶32} "[MOTHER]: Yes, sir."

{¶33} R.C. 2151.353(A)(1) provides that a child who has been adjudicated abused, neglected, or dependent may be placed in protective supervision. M.K. and H.K., who had previously been adjudicated dependent, were placed in the Agency's protective supervision on September 8, 2010. No subsequent motion seeking to terminate the Agency's protective supervision was filed by either party. Furthermore, the court did not journalize an entry terminating the Agency's protective supervision. It is "a basic tenant of Ohio jurisprudence * * * that a court speaks only through its journal [entries]." *Brackmann Communications, Inc. v. Ritter* (1987), 38 Ohio App.3d 107, 109. Accordingly, the children were still under the Agency's protective supervision when they were removed from Mother's care on October 28, 2010. Moreover, because a juvenile court retains jurisdiction over any child it finds abused, neglected, or dependent until the child reaches 18 years of age or is adopted, the juvenile court did not exceed its authority or jurisdiction in ordering the children returned to the Agency's temporary custody. See R.C. 2151.353(E)(1).

{¶34} The record also demonstrates that there was cause for the Agency's removal of the children. During an unannounced visit to Mother's home in October 2010, the Agency discovered that Mother had begun breeding dogs within the house, and she failed to properly clean or dispose of the animals' waste. The Agency also discovered that Mother was financially unstable as she was being evicted from her apartment, recently had her vehicle repossessed, and was unable to provide proof of employment. The children's attitudes and

behaviors had changed for the worse, and their school attendance records had declined. Given that these changes occurred while the agency retained protective supervision of the children, we find that the Agency acted appropriately in removing the children from Mother's care and filing a motion to reinstate its temporary custody of the children.

{¶35} Mother's first assignment of error is therefore overruled.

{¶36} Assignment of Error No. 2:

{¶37} "THE TRIAL COURT ERRED WHEN IT FAILED TO PROPERLY APPLY THE CLEAR AND CONVINCING STANDARD REQUIRED IN PERMANENT CUSTODY PROCEEDINGS."

{¶38} Before natural parents' constitutionally protected liberty interest in the care and custody of their 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, 519-520.

{¶39} 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.

{¶40} In her appeal, Mother challenges the court's finding that permanent custody of M.K. and H.K. is in the children's best interest. She further challenges the juvenile court's finding that the children had been in the agency's custody for 12 months of a consecutive 22-month period.

{¶41} When considering the best interest of the child in a permanent custody hearing, R.C. 2151.414(D)(1) provides that, "the court shall consider all relevant factors, including, but not limited to the following:

{¶42} "(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;

{¶43} "(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;

{¶44} "(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 * * *;

{¶45} "(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;

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

{¶47} With regard to R.C. 2151.414(D)(1)(a), the juvenile court found that H.K. and M.K. are very bonded with each other, their foster parents, and their foster parents' children. Within their foster-to-adopt family, the girls have flourished. In contrast, although they have a

strong bond with Mother, the children have not thrived while under Mother's care. The court specifically found that M.K. has developed an unhealthy child-parent relationship when dealing with Mother, and H.K. has anger issues when dealing with Mother.

{¶48} With regard to R.C. 2151.414(D)(1)(b), the court found that the court appointed special advocate (CASA) assigned to the case recommended permanent custody be granted to the Agency. After conducting an in camera interview, the court found that H.K. and M.K. were "okay" staying "forever" with their foster parents.

{¶49} In considering the custodial history of the children under R.C. 2151.414(D)(1)(c), the court found that the children had been in the temporary custody of the Agency for 12 or more months of a consecutive 22-month period. Specifically, the court found that the Agency had custody of M.K. and H.K. for 19 months at the time the motion for permanent custody was filed.

{¶50} With regard to R.C. 2151.414(D)(1)(d), the court found that the children were in need of a legally secure permanent placement and that such placement could not be achieved without a grant of permanent custody.

{¶51} The juvenile court found the factors in divisions (e)(7) to (e)(11) of R.C. 2151.414(D)(1) did not apply.

{¶52} We find no error in the juvenile court's determination that permanent custody is in the children's best interest. The court properly considered the above factors and applied the correct legal standard in reaching its determination that the grant of permanent custody was in both children's best interest. The record demonstrates that the children are well provided for and thrive when in the care of their foster parents. M.K. and H.K. have lived with the same foster family since the case began in 2008. They refer to their foster parents as "mom" and "dad" and their foster parent's four sons as their "brothers." M.K. and H.K. have a loving relationship with their foster family. The children's foster parents indicated they are

interested in adopting the children, and M.K. and H.K. have stated that they would be "okay" staying with their foster parents forever.

{¶53} While in their foster parents' care, the children regularly receive medical care. The children's foster mother testified that she takes the children to their medical and dental appointments. The foster mother also testified that after the children were returned to her care in October 2010, she and her husband arranged for the children to undergo counseling.

{¶54} Beyond meeting the medical needs of the children, the evidence presented at the permanency hearing demonstrated that the children's foster parents have taken an active role in the children's schooling and extracurricular activities. The foster mother testified that M.K. is getting As and Bs in school and that H.K.'s grades are improving as well. The foster father testified that he regularly helps the children with their homework, and encourages the children's involvement in softball, cheerleading, and soccer.

{¶55} In contrast, although the record indicates that the children are bonded to Mother, the children do not thrive while in Mother's care. Rather, the children's relationship with Mother has had unhealthy consequences. Both Leslie Thomas, the Agency caseworker assigned to work with M.K. and H.K., and Judy Mancy, the children's therapist, testified that while in Mother's care, M.K. exhibited parentified behaviors,³ including caring for H.K., apologizing and acting responsible for the disorganized state of Mother's home, and taking on worries and concerns atypical of a child of less than ten years. Thomas and the foster mother also expressed concerns about H.K.'s growing anger issues. Both women testified that H.K., after having lived with Mother from June 2010 to October 2010, had

3. Thomas defined "parentified behavior" as that which occurs when a child worries and wants to take care of her mother. The child feels as if she must be the parent in the home and take responsibility for younger siblings as well as household chores and concerns.

developed anger issues which caused her to act out. H.K. started kicking, screaming, and banging doors and other items whenever she was frustrated or angry. These behaviors had not manifested prior to H.K.'s placement with her Mother.

{¶56} In addition to the behavior issues each child is facing, both the CASA and Thomas noted that while in Mother's care the children's academic attendance began slipping. At the time the Agency took temporary custody of the children in December 2008, M.K.'s school attendance records were poor. M.K., who was in the first grade, had been tardy 25 times, had 16 unexcused absences, and 10 excused absences. While in foster care, M.K.'s attendance record dramatically improved. After being returned to Mother in 2010, both girls began to have attendance issues. Mother testified that M.K.'s absences had led to a discussion with a school official where Mother had been warned that M.K. needed to be at school the next day "no matter what."

{¶57} The record also demonstrates that Mother is unable to provide financial security and a permanent, stable home for the children. Mother testified that since the Agency's involvement in 2008, she has lived in at least five different residences, two of which she was evicted from for non-payment of rent. Further, although Mother testified she held around 30 different jobs throughout the pendency of this case, Mother failed to provide proof of employment for almost all of these alleged jobs. At the time of the permanent custody hearing, Mother was not employed but had taken out a sizeable school loan, which she used to pay her rent and other bills. Mother testified that she was either going to get a two-year or four-year degree and become employed in human resources or as an ombudsman. There was also testimony that at one point in time, Mother had attempted to earn an income by breeding and selling puppies out of her home. This activity led to an unclean and unhygienic house as Mother did not always timely dispose of the animals' waste.

{¶58} In addition to the concern caused by Mother's inability to maintain employment and stable housing, Mother's romantic life also creates concern for the safety of the children. Mother was romantically involved for a significant period of time with a man who had a history of drug and alcohol abuse. This man was also physically and emotionally abusive towards Mother. Nancy Horn, a clinical counselor who treated Mother from February to October 2009, testified that although Mother knew she would have to choose between remaining involved with her abusive boyfriend or ending the relationship in order to get back custody of her children, Mother was hesitant to end the relationship as her boyfriend provided her with money and a place to live. Mother testified that she did eventually end this relationship. Mother then engaged in a secretive relationship with another man, which she intentionally hid from Grandmother and other family members. Throughout the course of these two relationships, Mother testified that she dated "on-and-off" a Columbus police officer who she has been seeing for nearly 18 years.

{¶59} Mother's counselor testified that Mother has difficulty with the issue of personal responsibility and that she tends to place blame on others when negative events occur in her life. There was also testimony that Mother was intentionally evasive when dealing with the Agency. Thomas testified that Mother failed to communicate with the Agency on a regular basis regarding her employment and housing situations. On two different occasions, the Agency learned of Mother's pending evictions through independent investigations, rather than learning of the evictions from Mother. Further, although Mother claimed she was voluntarily undergoing counseling from two different providers, Mother failed to provide the name of the counselors or facilities that purportedly provided the services.

{¶60} As the juvenile court appropriately noted in its judgment entry, Mother's evasiveness and uncooperativeness creates concern about her judgment and ability to handle responsibility. Although Mother appears to have made sporadic progress on her case

plan, Mother has ultimately proved that she is unable to care for the children. Mother's questionable romantic relationships, her inability to accept personal responsibility, her continued evasiveness in dealing with the Agency and with her own family, and her inability to maintain stable employment and housing demonstrate that Mother is unable to provide secure placement for the children.

{¶61} The children have been in the custody of the Agency since December 2008. Testimony by the CASA and Mancy demonstrate that the children are in need of a stable environment where they are provided with social, emotional, and academic support. These needs cannot be met without the grant of permanent custody. Accordingly, we find no error in the juvenile court's determination that permanent custody is in the children's best interest.

{¶62} We further do not find error with the juvenile court's determination that the children had been in the Agency's custody for 12 or more months of a consecutive 22-month period. Mother contends that because custody of the children was returned back to her for some period of time during the course of the case, the court could not rely on the "12 months of a consecutive 22-month period" as a statutory basis for its permanent custody motion. However, a review of the record reveals that Mother did not contest the length of time the Agency had temporary custody of H.K. and M.K. during the course of the permanent custody hearing, even though the Agency's motion indicated it was relying on the "12 of 22" provision as a basis for permanent custody. In fact, Mother's counsel specifically stated in his closing argument that "[c]ounsel admits that the children were in the temporary custody of the Preble County Children's Services Division for almost 17 months of a 22-month period, thus bringing them within the provisions of R.C. 2151.414." Mother's counsel further stated the following in response to the Agency's closing argument: "The State and Agency, in making the points made in its closing argument crystallizes the position taken by Natural Mother throughout this process — [if] '12 of 22' provision is the only thing that matters then the State should prevail.

* * * [T]he Natural Mother has never denied that [M.K.] and [H.K.] were in the custody of the Agency for more than 12 months of any 22-month period." Because Mother did not challenge the "12 of 22" provision at the trial court level, and in fact did affirmatively admit that the children had been in the Agency's custody for more than the required 12 months of a consecutive 22-month period, we find Mother's arguments waived on appeal. See *In re Roberts*, Guernsey App. No. 04 CA 29, 2005-Ohio-2843, ¶5 (appellant's arguments waived on appeal where appellant failed to challenge 12 of 22 provision at trial court level.)

{¶63} Even considering Mother's argument, we find it to be without merit on the basis of *In re S.R.*, Franklin App. Nos. 05AP-1356, 05AP-1366, 05AP-1367, 05AP-1373, 2006-Ohio-4983. In *In re S.R.*, a mother lost physical custody of her two children after they were adjudicated dependent on October 13, 2000. On April 22, 2003, the children were returned to their mother's care, but Franklin County Children Services' retained protective supervision. On December 5, 2003, the trial court, pursuant to a motion filed by Children Services, removed the children from their mother's custody, terminated Children Services' protective supervision, and reinstated Children Services' temporary custody of the children. Children Services moved for permanent custody on December 19, 2003. The children's mother argued that the children had not been in the Agency's temporary custody for twelve months at the time the permanent custody motion had been filed. The Tenth District expressly rejected this argument, holding that there is nothing that prohibits a court from looking back to the period of time that passed prior to the date the children were temporarily returned to a parent's care. *Id.* at ¶23. "Further, the plain language of R.C. 2151.413(D)(1) allows an agency to calculate the period of time a child has been in the temporary custody using any period of a consecutive 22-month period, calculated from the time the child was adjudicated or 60 days after removal of the child from the home." *Id.*

{¶64} Furthermore, the juvenile court found that the children had been in the Agency's temporary custody for at least 12 months of a consecutive 22-month period *and* the children could not be placed with either parent within a reasonable time or should not be placed with either parent. A finding of either one of these, in combination with the finding that permanent custody is in the children's best interests, is sufficient to award permanent custody to the Agency. In her present appeal, Mother does not challenge the court's finding that the children cannot and should not be placed with either her or the children's fathers. Accordingly, the juvenile court's finding that M.K. and H.K. cannot be placed with Mother in a reasonable amount of time or should not be placed with Mother is another statutory basis on which the juvenile court appropriately awarded permanent custody to the Agency. We therefore find that the juvenile court applied the proper standard in determining that the Agency was entitled to permanent custody of M.K. and H.K.

{¶65} Mother's second assignment of error is overruled.

{¶66} Judgment affirmed.

POWELL, P.J. and RINGLAND, J., concur