[Cite as *In re O.D.B.*, 2017-Ohio-5764.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

IN THE MATTER OF:	:	Case No. 17CA4
	:	
O.D.B.	:	
M.L.B.	:	DECISION AND JUDGMENT
A.D.B.	:	ENTRY
I.A.B.	:	
	:	
ADJUDICATED DEPENDENT AND:		
NEGLECTED CHILDREN.	:	**Released: 06/29/17**

APPEARANCES:

Randall Lambert, Ironton, Ohio, for Appellant.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and Kevin J. Waldo, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for Appellee.

McFarland, J.

{¶1} Appellant, P.D.B., appeals the trial court's judgment that awarded Appellee, Lawrence County Department of Job and Family Services, Children Services Division, permanent custody of his four biological children: thirteen-year-old I.A.B.; twelve-year-old A.D.B.; almost five-year-old M.L.B.; and one-and-one-half-year-old O.D.B. Appellant contends that the trial court's judgment is against the manifest weight of the evidence, because clear and convincing evidence does not support the court's finding that the children cannot be placed with him within a

reasonable time or should not be placed with him. We do not agree. The record contains ample clear and convincing evidence that Appellant's children suffered years of neglect—they lacked adequate food, sanitary living conditions, and other basic necessities. Appellant's actions display a lack of commitment to the children or an unwillingness to provide the children with an adequate permanent home. His actions clearly and convincingly show that the children cannot be placed with him within a reasonable time, and more pertinently, should not be placed with him. Consequently, we overrule Appellant's sole assignment of error and affirm the trial court's judgment.

I. FACTS

{¶2} The present case arose following an April 29, 2016 report alleging "drug activity in the home," M.L.B. "playing unsupervised across the street," and "the condition of the home." On May 10, 2016, a children services caseworker, Melissa Evans, went to the home to investigate. When Ms. Evans arrived, she discovered that the mother—an admitted heroin addict—had been left unsupervised with the two youngest children, which contravened a prior agreement entered between Appellee and Appellant. Appellant previously had agreed not to leave the children unsupervised with their mother due to her drug abuse.

{¶3} Ms. Evans further found the home in a deplorable condition:

> "clothing thrown everywhere; a large puddle of dog urine in the living room; dog feces in the kitchen; dishes in the sink full of mold; dishes on the counter; crockpots full of food and mold; powder everywhere from what appeared to be powdered milk; there was a syringe cap on the mantle in the kitchen which was in reaching distance of the two oldest children."

She also noticed:

> "[c]ut off cigarette filters beside of the needle caps; a sharp knife beside of the needle cap that the children have access to. A large puddle of dog urine in the kitchen on the floor that was so large it looked like a water leak. Several piles of dog feces in there; trash everywhere, trash bags full [and] overflowing; old food left out; empty pizza boxes, little food * * *; no running water; a bag of potatoes, some bags of dried milk and a can of open peanut butter with a spoon in it and a couple of packages of Kool-Aid; there may have been a few other food items but there was no stove in the home and no [re]fridgerator [sic] to keep cold and no cooler * * *. The children's bedroom the odor was so bad that it could knock you off your feet almost. * * * [T]he bathtub was full of trash; the toilet was full of urine[,] toilet paper[,] and human feces almost to the top of the toilet. Just junk scattered everywhere. In the parents' bedroom the child playpen was so full of clothing and stuffed animals, toys, that no infant should be sleeping in there; clothing everywhere piled up; trash everywhere. Dog feces in the childrens [sic] bedroom near the bathroom; cat feces."

{¶4} As a result of these observations, Appellee sought and received ex parte temporary custody of the four children. Appellee also filed

dependency and neglect complaints concerning the four children and requested temporary custody.[1]

{¶5} On July 28, 2016, the court, upon the parents' admissions, adjudicated the children neglected and dependent. The court continued the children in Appellee's temporary custody and adopted a case plan as part of its dispositional order.

{¶6} The case plan identified the following concerns. The parents had prior involvement with Appellee and had agreed not to leave the children unsupervised with the mother due to her substance abuse issues and her non-compliance with the agency. The mother admitted to twice-weekly heroin use and tested positive for opiates on May 10, 2016. Additionally:

> "the home was in deplorable conditions as evidenced by trash all throughout the home, dog feces, cat feces, and dog urine on the floor in the living room, kitchen, and children's bedroom. No running water in the home. The toilet was full of human feces and urine. Minimal food for the children and [M.L.B.] reported the last time he'd eaten was on 5/09/2016 from his brother's book bag. Dishes with mold growing on them in the kitchen. Drug paraphernalia lying on the kitchen mantel that was in reach of the three youngest children. [Appellant] admitted on 5/11/2016 that he had taken unprescribed Vicodin. [M.L.B.] described his mother using needles in her arms. [I.A.B.] and [A.D.B.] reported they have seen hypodermic needles all throughout their home, knew the dog didn't need that many flu shots, but denied seeing their mother 'shoot up.' [I.A.B.] and [A.D.B.] reported that they eat at least once a day on the weekends when not in

[1] Appellee filed four separate complaints, one for each child, and each complaint was assigned a case number. We did not locate a consolidation entry in the record transmitted to this court. However, it appears that at some point, the trial court consolidated the cases. Neither party has questioned the propriety of the apparent consolidation, and therefore, we do not address it.

> school. * * * [The mother] denies trafficking drugs; however, IPD is working a case on [the mother] for the trafficking and have witnessed transactions occurring at the [family's] home * * *."

{¶7} The case plan stated that the parents would need to make the following changes:

> "[The parents] will need to maintain a safe and stable home that is furnished and has all utilities and food. [The parents] will need to be evaluated for Mental Health issues and follow all recommendations. [The parents] will need to exhibit learned parenting behaviors and incorporate them in their daily routine. [The parents] will need to properly supervise the children at all times. [The mother] will need to be clean and free of drugs and alcohol. [The parents] will need to have stable jobs in order to provide for their children's daily needs."

{¶8} The case plan required Appellant to "submit to random drug screens within 1 hour after requested by agency worker," and if he tested positive, then he would "need to schedule, attend and complete a substance abuse assessment with a certified facility and follow all recommendations." The case plan also required Appellant to (1) complete a mental health assessment and follow any recommendations, (2) complete parenting classes, (3) not allow any convicted felons to live at the house, (4) not allow any illegal substances, or anyone who uses illegal substances, in the home, (5) "maintain a safe, clean and stable home," (6) "keep an ample food supply at all times," (7) maintain a home with all utilities, (8) seek work or a steady source of income, and (9) work towards self-sufficiency so that he does not

need to rely on others to meet the children's basic needs. The case plan outlined similar requirements for the mother.[2]

{¶9} On September 2, 2016, the court filed a review hearing entry indicating that Appellee advised the court that the parents are not complying with their case plan and have made "[m]inimal efforts" to remedy the issues. The court continued the children in Appellee's temporary custody.

{¶10} Appellee filed an October 3, 2016 "Update Report" that explained Appellant visited the children on May 27, 2016 and "exhibited poor parenting skills." The report indicated that Appellant "cussed numerous times." He also asked the children "where they would be for the Memorial Day Parade after he'd already been told he could not visit with the children on Memorial Day." The report additionally related that I.A.B. and A.D.B. asked about their mother, and Appellant "told them that he thought she was with 'John' and he didn't know why [the mother] wouldn't come to the visit other than, 'Your mom is your mom.' " When they asked why their mother did not visit, Appellant responded, "She won't go take a drug test. Period." The two oldest children told Appellant that he needs "to stay away from mom to get us back. You have to stay away from mom and you know

[2] Because the mother is not involved in this appeal, we do not detail her case plan requirements.

you can't." The report further stated that caseworkers observed Appellant "texting several times throughout the visitation."

{¶11} The report additionally noted that during Appellant's May 27 visit, the caseworker located the mother outside the agency in a vehicle and learned that the mother and her friend, John, brought Appellant to the visit. When the caseworker asked Appellant about the mother transporting him to the agency, Appellant denied it. Appellant later told the children, "It shouldn't even be no concern [sic] to them who fucking brought me here and who picks me up. It's no body's [sic] business." After hearing Appellant's comment, the caseworker stopped the visit. Appellant argued that his visitation should not end and that he should be allowed to enjoy the last ten minutes of his visitation. The caseworkers had to "escort[] [Appellant] out of the building. [Appellant] kept talking about how he was sorry and didn't realize he'd been inappropriate in front of the kids and to please give him another chance. He also continued to deny that [the mother] brought him to the visit."

{¶12} The report indicated that on June 2, 2016, both parents visited the children with no issues, and that on June 23, 2016, Appellant visited the children. Between June 23, 2016, and July 19, 2016, the parents did not have any contact with the caseworker. At a July 19, 2016 hearing, the

parents asked to visit with the children. The caseworker informed them that they would need to provide clean drug screens, and the caseworker gave the parents referral forms. The next day, the caseworker called to see whether the parents obtained drug screens and learned that neither of them had submitted to a drug screen. The report stated that on August 9, 2016, the parents provided clean drug screens and visited the children. Between August 9 and October 3, the parents did not have any visits "due to the parents' refusal to take a drug screen."

{¶13} On October 24, 2016, Appellee filed a permanent custody motion. Appellee alleged that the parents have a history with substance abuse, that neither parent has made any progress toward completing the case plan goals, and that the children reported that they do not want to return to their parents. Appellee also asserted that placing the children in its permanent custody would serve their best interests.

{¶14} On January 17, 2017, the court held a hearing to consider Appellee's permanent custody motions. Caseworker Randy Thompson testified that his initial involvement with the family occurred in October 2010. Thomas stated that in October 2010, he responded to the family's home after Appellee received a report that the children were "left home alone, there was no food in the house, there was dog feces all in the house,

the house wasn't fit to live in, [and] the dog was starving." Thompson stated that the family's home was "[n]asty and deplorable" and that the children were "filthy." He further indicated that the children reported that they did not "get to eat much." Thompson explained that Appellee asked the parents to either clean the home or not return. He stated that the parents attempted to resolve the issues by moving out of the home and in with relatives. However, three months later, the parents had returned to the home, and Appellee received another report.

{¶15} In January 2011, Thompson responded to the home and found it to be in "worse" condition. He related that a person could not "walk through the house," but instead "had to climb over stuff in every room." Thompson testified that the home had "fecal matter," dog poop," "hazardous electrical boxes," a "broken out window to a bedroom," and that the ceiling was falling in." Thompson indicated that the kitchen had "debris and trash all over the place." Thompson stated that inside the refrigerator was "a little bit of milk, some Mountain Dew, quite a few Bud Lights, and a[n] Uncle Mike's Hard Lemonade." He explained that he was not certain "what else was in [the refrigerator] because [he] didn't really want to touch it because it was contaminated with fecal. [sic] Roaches and what appeared to be roach feces all over the refrigerator. [sic]" Thompson explained that Appellee

again asked the parents to clean up the house, but they were not cooperative. Thompson stated that the parents "would say that they were going to do stuff but they never did really * * * anything that we would ask them to do." He indicated that Appellant claimed that they did not have the time to clean up the house.

{¶16} Thompson testified that Appellee did not seek to remove the children at the time because the parents "got out of the home and someone else stepped in to care for them." He further explained, however, that the parents still did not "do what we asked them to do which was to clean up their home."

{¶17} Caseworker Shanna Aliff stated that she encountered the family in May 2015 when the mother gave birth to O.D.B., who was "born addicted." Ms. Aliff related that the mother tested positive for "Opiates and Oxycodone" at the time of O.D.B.'s birth. She indicated that the mother had broken her ankle in February 2015 and had been prescribed pain medications. She explained that the mother presented valid prescriptions, and thus, Appellee did not seek to remove the children at this time. Ms. Aliff further testified that the family was living with the mother's father at the time. She stated that the mother's father's house was "messy," but she did not describe it as uninhabitable for the children.

{¶18} Ms. Aliff testified that on July 27, 2015, Appellee received a report that the family was living in a hotel room, that the children were not being supervised, that the hotel room was trashed, and that the children did not have any food. She explained that to remedy these concerns, the children's paternal grandmother and the mother agreed to an out-of-home safety plan. The plan stated that the paternal grandmother would take the children until a full investigation was conducted, that the parents would be allowed only supervised visits, and that the parents would need to provide clean drug screens, to sign up for food stamps and "WIC" (the Special Supplemental Nutrition Program for Women, Infants and Children), and to work on finding a home. She stated that Appellant did not agree to this plan.

{¶19} Further, Ms. Aliff explained that two days after the safety plan became effective, the paternal grandmother returned the children to the parents. Aliff testified that when she discovered that the paternal grandmother had returned the children to the parents, she immediately asked the parents for drug screens. She stated that Appellant's drug screen was clean, but the mother did not complete one until September 22, at which point it was clean. Ms. Aliff related that the parents had signed up for food stamps and WIC, so Appellee did not seek to remove the children at that time.

{¶20} Ms. Aliff testified that in October 2015, she went to the hotel room and found it to be a "pig sty": "clothes were laying everywhere," and there was "no food." Aliff explained that the parents cleaned up the room and obtained food, so Appellee did not seek to remove the children at that time.

{¶21} Caseworker Evans testified that when she went to the family's home on May 10, 2016, she found the children "unkempt, dirty in appearance," and with "bug bites on their skin." She further related that M.L.B.'s clothing "was too big," and that he "talked about seeing mommy putting a needle in her arm." Evan additionally stated that the house was deplorable: the "kitchen table [was] covered in trash[,] including pop cans, powdered milk all over the place, dirty pots, [and] dirty dishes."

{¶22} Ms. Evans explained that Appellee had prior involvement with the family, and in an earlier case, had reached an agreement with Appellant that Appellant would not leave the children unsupervised with the mother due to her admitted drug abuse. She stated that when she went to the home on May 10, 2016, the children were left unsupervised with the mother. Ms. Evans testified that the mother's father agreed to pick up the children and take them to his house. She then attempted to contact Appellant, but was not successful at the time. Ms. Evans stated that a short time later, the mother's

father called to state that he could not care for the children because he had to work and he lacked the financial resources to care for the children. Evans again attempted to contact Appellant, but was not successful. She indicated that Appellee decided to request ex parte temporary custody of the children.

{¶23} Caseworker Whitney Reynolds testified that she and Ms. Evans had a case plan meeting with the parents to discuss what the parents "felt they would need in order to return the children to their home and what [Appellee] thought they would need." Ms. Reynolds explained that the case plan required the mother to undergo a substance abuse assessment and follow any recommended treatment. She stated that the mother did not undergo any substance abuse counseling until November 2016. Reynolds explained that the mother attended counseling for approximately one week and "then just kind of fell out of the program."

{¶24} Ms. Reynolds stated that the case plan did not require Appellant to obtain a substance abuse assessment unless he tested positive for illegal substances. She related that the case plan required Appellant to submit to random drug screens within one hour after requested, and if he tested positive, then he would need to undergo a substance abuse assessment and follow any recommended treatment. Ms. Reynolds testified that she requested Appellant to complete random drug screens sixteen times, but he

complied only once. She indicated that Appellant had provided four other clean drug screens, but explained that they were not random. Instead, Appellant had called her to ask if he could "screen today." She further related that she set up an appointment for Appellant at Riverside Recovery, but he did not attend the appointment.

{¶25} Ms. Reynolds stated that the case plan also required the parents to complete parenting classes and required Appellant to complete a mental health assessment. She explained that on the date of the permanent custody hearing, she learned that (1) Appellant completed a twenty-hour parenting class during the weekend immediately before the permanent custody hearing, and (2) Appellant completed a mental health assessment in October 2016. Ms. Reynolds testified, however, that when Appellee filed its October 24, 2016 permanent custody motion, she did not believe that either parent had complied with any aspect of the case plan. She further related that even though Appellant may have completed a parenting course, he did not demonstrate that he would be able to incorporate those concepts into his daily life.

{¶26} Ms. Reynolds additionally explained that the week before the permanent custody hearing, Spectrum Outreach Services called her and advised her that Appellant "was in there asking, telling them that that

[Reynolds] needed [Appellant] to bring [her] a copy saying that [Spectrum] could not provide [Appellant] with parenting classes. * * * Jerry Thomas [of Spectrum] had called [Reynolds] at that time and asked [her] if [she] sent [Appellant] down there to get the letter and [Reynolds] told him no [she] did not, explain[ed] to him that there was a permanent custody in which he had been subpoenaed to, so he knew about that. And he said that he would not be giv[ing Appellant] a letter stating that."

{¶27} Ms. Reynolds indicated that the case plan also required the parents to maintain a safe and clean home. She related that she has not been able to evaluate the status of the parents' home, because she has not been able to access the home since June 2016. And, she explained that she "made at least three attempts a month and no one answers the door." She stated that on multiple occasions, she believed that someone was home "because you can hear noise, there [are] lights on," and her co-workers stated "that * * * they could see someone peeping through the little blind but no one has answered the door." Ms. Reynolds explained that Appellant spoke with her on November 22, 2016 and asked her to come to the house the following week in order to allow him some time to clean the house. Ms. Reynolds stated that when she went to the house on the designated day, no one answered the door.

{¶28} Ms. Reynolds testified that she last attempted to make contact at the parents' home the week before the permanent custody hearing. The mother's counsel asked Ms. Reynolds whether she had noticed a condemnation sign on the door to the parents' house, and Ms. Reynolds stated that she did not notice any signs indicating that the house had been condemned. Ms. Reynolds additionally related that the parents never contacted her to inform her that they had relocated.

{¶29} Also, Ms. Reynolds explained that the case plan allowed the parents to visit the children on a weekly basis, if they provided clean drug screens. She stated that Appellant visited the children five times, and the mother visited two times. Appellant's counsel asked Ms. Reynolds if Appellant could have complied with the one-hour drug-screen requirement if he was working in Charleston on the date of the request, and she agreed that he could not. Reynolds indicated that the case plan included the random, one-hour drug-screen requirement because "there are drugs that you can buy over the counter that can alter your urine and it takes one hour for it to get in your system."

{¶30} Further, Ms. Reynolds stated that although Appellant talked to M.L.B. and O.D.B. during the visits, "the two older boys provide most of the care during the visitation." She related that during one of the visits, I.A.B.

was "very upset, crying throughout most of the visit," and Appellant "kept harassing him," asking him why he was crying. Reynolds indicated that she had to inform Appellant that I.A.B. "had a right to feel the way that he wanted" and that Appellant's reaction "was inappropriate." She testified that I.A.B. was upset because Appellant gave him "[a] lot of false hope * * * , false promises," and was "very upset because Dad wasn't doing what he needed to and very upset because Dad wouldn't leave Mom so he could do what he needed to." Reynolds stated that A.D.B. did not attend the following visit "because he said that he did not want to see his dad."

{¶31} Lastly, Ms. Reynolds testified that she does not believe that either parent could complete the case plan if given more time: "They have had over six months and they wait until the weekend before [the permanent custody hearing] before they even attempt to do anything."

{¶32} Necco Counselor Alyssa Finner-Harwood testified that she helps I.A.B. and A.D.B. address the trauma they experienced while living with the parents. Ms. Harwood related that one issue she has discussed with I.A.B. concerns his "reliving situations of endangerment, in which he has gone on drug deals with his mother." She testified that I.A.B. experiences nightmares, anxieties, and flashbacks. Ms. Harwood stated that I.A.B. believes that he "has grown up to[o] fast and has had to help raise his

younger siblings as well as he has been exposed to a lot of things that [are] age inappropriate." She indicated that in addition to substance abuse, I.A.B. has been exposed to domestic violence, endangerment, neglect, lack of food in the home, and lack of electricity. She explained that her discussions with the children reveal that the problems in the family's home—domestic violence, drug abuse, and neglect—were not short-term problems but had been ongoing for "[s]everal years."

{¶33} Ms. Harwood stated that she sees I.A.B. every week and A.D.B. every three weeks. She related that although I.A.B. discusses his "trauma history," A.D.B. "doesn't like to go there." She also explained that A.D.B. "said his peace about it and he doesn't really want to address it much further." She additionally stated that the children "have glorified [Appellant] at times, but, at times they do go back to domestic violence and buying drugs for the mother."

{¶34} Spectrum Outreach Services Counselor Jerry Thomas testified that Appellant came to Spectrum several times for drug screens and tested negative. Mr. Thomas further explained that in July 2016, Appellant asked about a parenting class. He told Appellant the class cost $250.00, and Appellant indicated that he would need to make payments on it. And, he informed Appellant that a payment plan would be acceptable, but that he

could not start the class until Appellant made a first payment. Mr. Thomas stated Appellant "never came back." He explained that they had set an appointment, "but for some reason [Appellant] didn't show up." Mr. Thomas testified that Appellant called a second time to inquire about parenting classes, and he relayed the same information as he had the first time, but they did not set an appointment. He related that Appellant asked a third time about parenting classes the week before the permanent custody hearing and explained the urgency. He stated that by this point, Spectrum had secured additional funding and no longer needed to charge Appellant for the parenting class. He also testified that the weekend before the permanent custody hearing, Appellant completed a twenty-hour parenting course.

{¶35} Mr. Thomas explained that on January 13, 2017, the mother presented to Spectrum and took a drug screen, which was positive. He testified that the mother completed the same parenting course as Appellant, even though she appeared to be under the influence for part of the course. He stated that Spectrum recommended residential treatment for the mother, but she declined. He indicated that he nevertheless secured a residential treatment spot for the mother, and that Spectrum scheduled the mother for intensive, outpatient treatment. And, he related that the mother was

scheduled to report to Spectrum at 8:00 am on the Monday after she completed the parenting course, but she did not.

{¶36} The foster mother testified that the children have lived in her home since their removal. She indicated that when the children first entered her care, she had to buy them new clothes. She stated that some of the children did not "even have a pair of underwear on when [she] picked them up."

{¶37} The foster mother testified that all of the children have made significant progress since entering her care. She explained that I.A.B. initially was "reserved" and "not very confident," but that since being in her care, he "has really changed" and grown "more self-confident." She stated that I.A.B.'s physical, social, and emotional growth "has really been a surprise." The foster mother explained that I.A.B. "grew about five inches and gained about sixty pounds" in just "a few months." She stated that he is "healthy." She additionally related that I.A.B. is earning "good grades" at school.

{¶38} The foster mother indicated that A.D.B. "has really excelled in school," and that he received all As, except for one B, on his most recent report card. She stated that A.D.B. "is a hard worker," "will volunteer to do anything around the house," and enjoys staying "busy and active." The

foster mother testified that A.D.B. "joined a basketball team and he is really the star player."

{¶39} The foster mother explained that M.L.B. was four when he entered her care and "very thin." She related that she bought size 4T clothing for M.L.B., but when he tried on the clothes, she "realized that they were still going to fall off of him," so she "had to just kind of sew the back of the pants together." She stated that M.L.B. "was just always looking in the kitchen cabinets at all the food" and would "like touch the fridge and ask what that was because he said that he didn't know what that was." The foster mother testified that M.L.B. now "is healthier," having gained approximately ten to fifteen pounds, and tries "all kinds of new foods." The foster mother also explained that she took M.L.B. for immunizations, because "none of those were done."

{¶40} The foster mother additionally indicated that when she first tried to give M.L.B. a bath, "he was scared to death of the bath water" and "was worried that he would be burned by the water." She testified that "for a full week he was scared to death of a bath regardless of how many toys that we put in there it was always a challenge to get him cleaned up and the bath water was dirty for days." The foster mother stated that M.L.B. now "loves bath time."

{¶41} The foster mother explained that when M.L.B. first entered her care, he "had trouble like grabbing hold of a crayon," and she "would try to get him to write a M for his name and he didn't have any idea" what she meant. She indicated that M.L.B. now is in pre-school and that his learning has advanced significantly. She stated that he "can now write any letter of the alphabet."

{¶42} The foster mother testified that O.D.B. was one year old when she entered the foster family's care and "was very thin," weighing approximately fourteen pounds. The foster mother stated that she initially was "really worried" that O.D.B. had "a neurological problem." The foster mother explained that O.D.B. did not appear very active, but instead "just wanted to lean against something or lay down." She stated that O.D.B. did not "make a peep for several days, not a single cry[,] not a grunt[,] not [anything]." The foster mother testified that after approximately five days, O.D.B. became verbal and her appetite increased. The foster mother stated that one time, she worried that O.D.B. would "eat until she was sick."

{¶43} The foster mother explained that O.D.B. now weighs thirty-four pounds and has grown at least five inches. The foster mother also took O.D.B. to the doctor for immunizations.

{¶44} The foster mother stated that she has three other children, and all of the children "love each other." She testified that she would adopt the children, if the opportunity arose.

{¶45} Appellant testified that he currently lives in his mother's home, which he described as a "huge three bedroom house," with "a game room" and a "pool table." Appellant stated that he has been at his mother's house "off and on" for the "last couple of months." He claimed that the house he previously lived in has been condemned and that the condemnation notice has been on the door since November 30, 2016. Appellant claimed that he had been at the house the Tuesday before the permanent custody hearing, and the condemnation notice was still there.

{¶46} Appellant stated that he did not inform Appellee of his relocation because he "was dealing with the housing and [his] work and trying to help [the children's mother] and * * * [he] didn't see a real necessity to." Appellant explained: "Because I didn't know for sure, I didn't want to say I'm here, I'm here. I want it to be something permanent."

{¶47} Appellant recognized that some of his past homes were not clean and that Appellee had prior involvement with the family. He conceded that it "was wrong and the kids did not deserve" to live in those conditions. Appellant claimed that he tried to make the mother take responsibility for

the household so he could work. He further believed that Appellee's involvement "has not ever been on [his] part really. It has always been about her, my wife."

{¶48} Appellant stated that he was unaware of the extent of the mother's drug problem until a few days before May 10, 2016. He testified that he was unaware because the mother was "hardly ever [home]. She would leave." Appellant additionally stated that he has taken steps to remove the children from the mother, but she would get better. He indicated that the mother gave him false hopes, but he no longer has any hope. Appellant testified that although he still is married to the mother, "[t]here is nothing left for me and her."

{¶49} Appellant admitted that he last visited his children on November 22, 2016. He stated that he has not visited with them since that time because he has "been trying to finish this job that I'm at because I'm trying to finish that up and the same thing though is with [A.D.B.] not being at the last visit I mean it is kind of upsetting and I'm trying to make myself better for him. I didn't feel like I deserved to see him until I did what was asked of me."

{¶50} After Appellant's testimony, Appellee presented Reynolds as a rebuttal witness. Reynolds stated that she and other agency workers went to

the house Appellant claimed had been condemned and they did not notice any condemnation notice on the door. She further testified that she had stopped at the house at least three times per month during the past three months, and never noticed a condemnation notice on the door.

{¶51} On January 30, 2017, the trial court granted Appellee permanent custody of the four children. The court found that R.C. 2151.414(E)(1), (2), and (4) apply and, thus, that the children cannot be placed with either parent within a reasonable time and should not be placed with either parent.

{¶52} The court concluded that under R.C. 2151.414(E)(1), the parents continuously and repeatedly failed to substantially remedy the conditions that led to the children's removal. The court determined that the parents failed to use any services available to assist them in changing their conduct in order to allow them to resume and maintain parental duties. The court recognized that the weekend before the permanent custody hearing, the parents started and completed a twenty-hour parenting and family values program, but no evidence was presented regarding the impact of the program on their parenting ability.

{¶53} The court found that R.C. 2151.414(E)(2) applies to the mother. The court determined that the mother's chemical dependency is so

severe that it makes her unable to provide an adequate permanent home for the children at the present time, and, as anticipated, within one year from the hearing date. The court observed that the mother has not complied with drug addiction treatment recommendations, failed to provide random drug screens, failed to appear for scheduled outpatient treatment opportunities, and refused recommended in-patient treatment.

{¶54} The court additionally concluded that R.C. 2151.414(E)(4) applies.[3] The court determined that the parents demonstrated a lack of commitment toward the children by failing to regularly visit or communicate with them when able to do so and have shown an unwillingness to provide an adequate permanent home for the children. The court found that Appellee allotted the parents thirty-five visitation opportunities, but Appellant only visited five times, and the mother only visited two times. The court also determined that the parents have not demonstrated that they have made "any efforts to remedy the inappropriate, unhealthy, unsanitary home conditions," or "to remedy the lack of food for the children." The court noted that Appellant claimed that he recently moved into his mother's home and that he now has appropriate housing for the children. However, the court further observed that Appellant did not inform Appellee before the

[3] We note that the trial court's decision cites R.C. 2151.414(E)(3), but quotes and applies the language contained in R.C. 2151.414(E)(4).

January 17, 2017 hearing of the move and he did not offer any witnesses or other evidence to support his claim.

{¶55} The court next concluded that placing the children in Appellee's permanent custody is in their best interests. The court considered the children's interactions and interrelationships with their parents and found them difficult to assess due to the limited number of visits that occurred. However, the court noted that the "[i]nformation presented does not indicate the current interactions and interrelations to be positive between the parents and the children." The court found that the children have been in the same foster home throughout the case, interact well with each other in the foster home, and have "a very positive relationship" with the foster parents. The court determined that since Appellee placed the children in the foster home, the children have shown "significant improvement in their health" and are flourishing. The court found that the foster parents meet the children's medical, educational, and social needs, and that the children now are well-fed, groomed, and clothed.

{¶56} The court indicated that it considered the two oldest children's wishes as expressed directly to the court, but the court's decision does not reveal the content of the children's wishes.

{¶57} The court further concluded that the children need a legally secure permanent placement and cannot achieve it without granting permanent custody to Appellee. The court found that "[t]he parents individually or together are either unwilling or unable to provide a nurturing, safe, and stable environment, which would provide for the children's best interest." The court determined that no suitable relative placement exists. The court additionally observed that the children likely will be adopted and remain together. The court thus granted Appellee permanent custody of the four children.

II. ASSIGNMENT OF ERROR

{¶58} Appellant raises one assignment of error:

> "The trial court abused its discretion in granting Lawrence County Children Services request [sic] for permanent custody and placing each child into the permanent custody of the Lawrence County Department of Job and Family Services, Children Services Division."

III. ANALYSIS

{¶59} In his sole assignment of error, Appellant argues that the trial court abused its discretion by granting Appellee permanent custody of the children. In particular, Appellant asserts that the evidence does not support the court's finding that the children cannot be placed with him within a reasonable time. Appellant contends that Appellee did not afford him a

reasonable amount of time to demonstrate that he could and would provide the children with a safe, stable, and secure placement. He further claims that he "made every possible effort to comply with the case plan." Appellant asserts that he currently lives in an appropriate home, completed a parenting course, underwent a mental health assessment, and did not display signs of a substance abuse problem (even though he did not comply with all requested drug screens). Appellant recognizes that he did not visit with the children on a frequent basis. He contends that he did not exercise more frequent visitation with the children, because "he had been trying to finish a job," "he did not want [to] make the children emotional by visiting," and the random drug-screen requirement made visiting "near[ly] impossible."

{¶60} Although Appellant's assignment of error states that the court abused its discretion, the text of his argument refers to the manifest-weight-of-the evidence standard of review that this court applies to permanent custody decisions. We therefore construe his assignment of error to mean that the trial court's permanent custody decision is against the manifest weight of the evidence.

A. STANDARD OF REVIEW

{¶61} A reviewing court generally will not disturb a trial court's permanent custody decision unless the decision is against the manifest

weight of the evidence. *In re B.E.*, 4th Dist. Highland No. 13CA26, 2014-Ohio-3178, ¶ 27; *In re R.S.*, 4th Dist. Highland No. 13CA22, 2013-Ohio-5569, ¶ 29.

> "Weight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.' " *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting Black's Law Dictionary 1594 (6th Ed.1990).

When an appellate court reviews whether a trial court's permanent custody decision is against the manifest weight of the evidence, the court " ' "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered." ' " *Eastley* at ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). *Accord In re Pittman*, 9th Dist. Summit No. 20894, 2002-Ohio-2208, ¶ 23-24. The question that we must resolve when reviewing a permanent custody decision

under the manifest weight of the evidence standard is "whether the juvenile court's findings * * * were supported by clear and convincing evidence." *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 43.[4] "Clear and convincing evidence" means: "[t]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal." *In re Estate of Haynes*, 25 Ohio St.3d 101, 103-04, 495 N.E.2d 23 (1986). In determining whether a trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). *Accord In re Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954) ("Once the clear and convincing standard

[4] We recognize that the Ohio Supreme Court recently stated that "a trial court's decision in a custody proceeding is subject to reversal only upon a showing of abuse of discretion." *In re A.J.*, 148 Ohio St.3d 218, 2016-Ohio-8196, 69 N.E.3d 733, ¶ 27, citing *Davis v. Flickinger*, 77 Ohio St.3d 415, 417, 674 N.E.2d 1159 (1997). However, the issue in *A.J.* concerned a "narrow issue," i.e., "the agency's decision not to place [the child] in [a relative's] care as a substitute caregiver." The court thus did not review "the court's decision to terminate [the mother]'s parental rights and grant permanent custody to the agency." *Id*. at ¶ 18. Moreover, the *A.J.* court did not overrule its prior holding in *K.H.* that the essential question is whether clear and convincing evidence supports the court's findings. *K.H.* at 43. At this point, we will continue to apply the manifest-weight-of-the-evidence standard. *See In re R.M.*, 997 N.E.2d 169, 2013-Ohio-3588 (4th Dist.), ¶ 62 and fn.5.

has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof."); *In re Adoption of Lay,* 25 Ohio St.3d 41, 4243, 495 N.E.2d 9 (1986). *Cf. In re Adoption of Masa*, 23 Ohio St.3d 163, 165, 492, 12 N.E.2d 140 (1986) (stating that whether a fact has been "proven by clear and convincing evidence in a particular case is a determination for the [trial] court and will not be disturbed on appeal unless such determination is against the manifest weight of the evidence"). Thus, if the children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court's decision is not against the manifest weight of the evidence. *In re R.M.*, 4th Dist. Athens Nos. 12CA43 and 12CA44, 2013- Ohio-3588, ¶ 62; *In re R.L.*, 2nd Dist. Greene Nos. 2012CA32 and 2012CA33, 2012-Ohio-6049, ¶ 17; quoting *In re A.U.*, 2nd Dist. Montgomery No. 22287, 2008-Ohio-187, ¶ 9 ("A reviewing court will not overturn a court's grant of permanent custody to the state as being contrary to the manifest weight of the evidence 'if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements * * * have been established.'"). Once the reviewing court finishes its examination, the court

may reverse the judgment only if it appears that the fact-finder, when resolving the conflicts in evidence, " 'clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.' " *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio Highland App. No. 16CA25 13 App.3d at 175. A reviewing court should find a trial court's permanent custody decision against the manifest weight of the evidence only in the " 'exceptional case in which the evidence weighs heavily against the [decision].' " *Id.*; *accord State v. Lindsey*, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000). Furthermore, when reviewing evidence under the manifest weight of the evidence standard, an appellate court generally must defer to the factfinder's credibility determinations. *Eastley* at ¶ 21. As the *Eastley* court explained:

> " '[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. * * * If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.' " *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191-192 (1978).

Deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." *Davis v. Flickinger*, 77

Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997). *Accord In re Christian*, 4th Dist. Athens No. 04CA10, 2004-Ohio-3146, ¶ 7. As the Ohio Supreme Court long-ago explained: "In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and observation of the parties and through independent investigation cannot be conveyed to a reviewing court by printed record." *Trickey v. Trickey*, 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952).

{¶62} Additionally, unlike an ordinary civil proceeding in which a jury has no contact with the parties before a trial, in a permanent custody case a trial court judge may have significant contact with the parties before a permanent custody motion is even filed. In such a situation, it is not unreasonable to presume that the trial court judge had far more opportunities to evaluate the credibility, demeanor, attitude, etc., of the parties than this Court ever could from a mere reading of the permanent custody hearing transcript.

B. PERMANENT CUSTODY PRINCIPLES

{¶63} A parent has a "fundamental liberty interest" in the care, custody, and management of his or her child and an "essential" and "basic civil right" to raise his or her children. *Santosky v. Kramer*, 455 U.S. 745,

753, 102 S.Ct. 1388 (1982); *In re Murray*, 52 Ohio St.3d 155, 156, 556 N.E.2d 1169 (1990); *accord In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829. A parent's rights, however, are not absolute. *D.A.* at ¶ 11. Rather, " 'it is plain that the natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the pole star or controlling principle to be observed.' " *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979), quoting *In re R.J.C.*, 300 So.2d 54, 58 (Fla.App.1974). Thus, the state may terminate parental rights when a child's best interest demands such termination. *D.A.* at ¶ 11. Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. R.C. 2151.414(A)(1). Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying principles of R.C. Chapter 2151:

> "To provide for the care, protection, and mental and physical development of children subject to Chapter 2151. of the Revised Code, whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety; * * *." R.C. 2151.01(A).

C. PERMANENT CUSTODY FRAMEWORK

{¶64} A children services agency may obtain permanent custody of a child by (1) requesting it in the abuse, neglect or dependency complaint under R.C. 2151.353, or (2) filing a motion under R.C. 2151.413 after obtaining temporary custody. In this case, the agency sought permanent custody of the children by filing a motion under R.C. 2151.413. When an agency files a permanent custody motion under R.C. 2151.413, R.C. 2151.414 applies. R.C. 2151.414(A).

{¶65} R.C. 2151.414(B)(1) permits a trial court to grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and that any of the following apply:

> "(a) The child is not abandoned or orphaned or 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 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.
> (b) The child is abandoned.
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
> (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 ending on or after March 18, 1999.
> (e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated

> an abused, neglected, or dependent child on three separate occasions by any court in this state or another state."

{¶66} Thus, before a trial court may award a children services agency permanent custody, it must find (1) that one of the circumstances described in R.C. 2151.414(B)(1) applies, and (2) that awarding the children services agency permanent custody would further the child's best interests.

1. R.C. 2151.414(B)(1)

{¶67} Here, the trial court found that the children could not be placed with either parent within a reasonable time or should not be placed with either parent, and thus, that R.C. 2151.414(B)(1)(a) applies. In determining whether a child cannot be placed with either parent within a reasonable time or should not be placed with either parent, R.C. 2151.414(E) requires the trial court to consider "all relevant evidence" and outlines the factors a trial court "shall consider." If a court finds, by clear and convincing evidence, the existence of any one of the listed factors, "the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent." As relevant in the case at bar, R.C. 2151.414(E)(1), (2), and (4) state:

> "(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.
> (2) Chronic mental illness, chronic emotional illness, intellectual disability, 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;
> * * *
> (4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child."

A trial court may base its decision that a child cannot be placed with either parent within a reasonable time or should not be placed with either parent upon the existence of any one of the above factors. The existence of a single factor will support a finding that a child cannot be placed with either parent within a reasonable time or should not be placed with either parent. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 50, citing *In re William S.* (1996), 75 Ohio St.3d 95, 661 N.E.2d 738, syllabus.

{¶68} In the case at bar, we believe that competent clear and convincing evidence supports the trial court's finding that the children cannot be placed with either parent within a reasonable time or should not be

placed with either parent. First, we note that Appellant has not argued that the children could or should be placed with the mother. Accordingly, we do not question the trial court's R.C. 2151.414(E) findings as they pertain to the mother.

{¶69} Appellant objects to the court's R.C. 2151.414(E)(1) finding as it relates to him. He complains that Appellee did not afford him nearly enough time to comply with the case plan, and thus, the evidence fails to show that the children cannot be placed with him within a reasonable time. Appellant observes that Appellee filed its permanent custody motion approximately three months after the court adopted the case plan and that the court held the permanent custody hearing a mere six months after adopting the case plan. Appellant essentially contends that a parent cannot be found to have repeatedly and continuously failed to substantially remedy the conditions that caused a child's removal when the parent was afforded a mere three months to comply with the case plan before the children services agency filed a permanent custody motion. While we do find this an interesting issue,[5] we note that the court also found that R.C. 2151.414(E)(4) applied.

[5] *See In re M.P.*, 9th Dist. Lorain No. 14CA010678, 2015-Ohio-2226, 2015 WL 3544524, ¶ 30, 45-49. In *M.P.*, the court observed:

{¶70} The evidence supports the trial court's R.C. 2151.414(E)(4) finding that Appellant demonstrated a lack of commitment to the children by failing to support, visit, or communicate with the children when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the children. Appellant visited the children only five times. He tried to excuse his failure to visit the children by claiming that it was impossible for him to comply with the random drug screen requirement. However, the trial court was not required to accept this explanation and, instead, may have determined that Appellant was not credible. Furthermore, we note that none of the witnesses testified that Appellant spoke to the caseworkers about his purported inability to comply with the random drug

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> R.C. 2151.414(E)(1) requires that children services agencies engage in reasonable case planning and diligent efforts to remedy the concerns at issue. In addition to setting appropriate case plan goals for parents engaged in custody actions, children services agencies must, in good faith, provide services and engage in efforts that are reasonably calculated to succeed in reunifying parents and their children. *See, e.g., In re C.E.*, 3d Dist. Hancock Nos. 509–02, 5–09–03, 2009-Ohio-6027, ¶ 23, ¶ 33. "These plans must take into consideration the individual circumstances of each case [.]" *Id.* at ¶ 15. In addition, it is fundamental that parents must be afforded a reasonable amount of time to accomplish their goals.
>
> * * * *
>
> We conclude that Mother was not afforded a reasonable length of time in which to accomplish the tasks that she had been given. LCCS moved for permanent custody less than six months after the case plan was adopted, and the permanent custody hearing was conducted three months later. We recognize that Ohio law no longer provides a minimum length of time as a prerequisite to the filing of a motion for permanent custody, with the exception of reliance on R.C. 2151.414(B)(1)(d). *See In re Brenna E.*, 124 Ohio App.3d 143, (6th Dist.1997). Nevertheless, six months is an exceedingly short time in which to accomplish all of the goals set forth here, whereas custody cases are frequently extended to the maximum of two years. *See* R.C. 2151.415(D)(4). The record provides no indication of why this proceeding was cut short by the early filing of a motion for permanent custody. This case does not involve the sort of extreme behaviors that call for such expedited treatment, nor does it involve a reasonable efforts bypass procedure. *See, e.g.,* R.C. 2151.419(A)(2).

Id. at ¶ 30 and 45.

screen requirement or otherwise mentioned that he felt Appellee imposed impossible barriers to visitation. Instead, Appellant claimed that it was "implied" that if he was working in West Virginia, it would have been impossible for him to comply with the random, one-hour drug screen requirement.

{¶71} Appellant also tried to excuse his failure to visit by claiming that he tried to minimize the emotional impact the visits seemed to have on the children. While certainly not an invalid concern, the trial court, again, was not required to accept Appellant's explanation. Instead, the trial court could have determined that Appellant's failure to visit displayed a lack of commitment to the children, rather than any desire to avoid upsetting the children.

{¶72} Furthermore, even if Appellant's failure to visit the children more frequently does not support the court's R.C. 2151.414(E)(4) finding, the trial court could have determined that Appellant's actions (or lack thereof) when he and the children lived together in the same household demonstrated a lack of commitment to them or an unwillingness to provide them with an adequate permanent home. All of the children were dirty and lived in deplorable conditions. Appellant even admits that the home was "bad." The two youngest children were not current with their

immunizations. The foster mother stated that both were underweight when they came into her care. O.D.B., who was twelve months old, weighed only fourteen pounds. According to the Center for Disease Control and Prevention growth chart, that placed O.D.B. well-below the third percentile line.[6] In fact, a fourteen-pound, twelve-month old is not even plotted on the chart. Size 4T clothing did not fit M.L.B., and the foster mother had to sew the clothing together so that it would not fall off of him.

{¶73} None of the children had a consistent supply of adequate food when living in Appellant's home. M.L.B. seemed particularly fascinated by the amount of food in the foster home. M.L.B. did not even know what a refrigerator was when he entered the foster parents' home.

{¶74} Appellant attempted to blame the mother for the state of the house and for the children's lack of basic necessities, but the court reasonably could have determined that Appellant shared equal responsibility for the children's poor living conditions. Even if the mother's drug addiction fueled the family's troubles, Appellant cannot simply turn a blind eye and do nothing to improve the children's situation. The children's horrible living conditions and lack of food, basic necessities, and proper emotional, educational, medical, and physical care over the course of their

[6] *See* https://www.cdc.gov/growthcharts/data/set1/chart02.pdf.

lives amply shows that Appellant lacked a commitment to the children and an unwillingness to provide them with an adequate permanent home. While Appellant may sincerely love his children, he sadly demonstrated that he lacked a commitment to the children and an unwillingness to provide them with an adequate permanent home. Consequently, clear and convincing evidence supports the trial court's finding that the children cannot be placed with Appellant within a reasonable time or should not be placed with Appellant.

{¶75} We further note that R.C. 2151.414(B)(1)(a) is written in the alternative, i.e., "cannot be placed with either of the child's parents within a reasonable time *or* should not be placed with the child's parents." (Emphasis added). The statute thus contemplates situations when a child simply should not be placed with a parent, even if the parent suggests that an additional, reasonable amount of time to comply with case plan goals would lead to reunification. The statute permits a trial court to make either of the R.C. 2151.414(B)(1)(a) alternative findings if any of the R.C. 2151.414(E) factors exists. *E.g.*, *C.F.* at ¶ 50. As we explained above, the record amply illustrates that Appellant displayed a lack of commitment to his children and an unwillingness to provide them with an adequate permanent home. This

evidence supports a finding that the children should not be placed with Appellant.

{¶76} We recognize that Appellant made some steps to comply with the case plan. However, his case plan compliance does not necessarily disprove the court's finding that the children cannot be placed him within a reasonable time or that they should not be placed with him. Substantial compliance with a case plan is not necessarily dispositive on the issue of reunification and does not preclude a grant of permanent custody to a children's services agency. *In re C.C.,* 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360, ¶ 25 (8th Dist.); *In re West,* 4th Dist. Athens No. 03CA20, 2003-Ohio-6299, ¶ 19. Indeed, because the trial court's primary focus in a permanent custody proceeding is the child's best interest, "it is entirely possible that a parent could complete all of his/her case plan goals and the trial court still appropriately terminate his/her parental rights." *In re Gomer,* 3rd Dist. Wyandot Nos. 16–03–19, 16–03–20, and 16–03–21, 2004-Ohio-1723, ¶ 36; *accord In re A.S.,* 8th Dist. Cuyahoga No. 100530 and 100531, 2014-Ohio-3035, ¶ 32. Consequently, even if Appellant complied with the case plan by completing a parenting course, by obtaining a mental health assessment, and by purportedly relocating his residence to his mother's home, these actions do not necessarily demonstrate that the

children can be returned to him within a reasonable time or should be returned to him. *See In re W.A.J.*, 8th Dist. Cuyahoga No. 99813, 2014-Ohio-604, ¶ 21 (observing that "mother's completion of parenting skills courses did not mean that she proved her competency to parent").

{¶77} Therefore, we disagree with Appellant that the trial court's finding that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent is against the manifest weight of the evidence.

2. BEST INTEREST

{¶78} R.C. 2151.414(D) requires a trial court to consider specific factors to determine whether a child's best interest will be served by granting a children services agency permanent custody. The factors include: (1) the child's interaction and interrelationship with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) the child's wishes, as expressed directly by the child or through the child's guardian ad litem, with due regard for the child's maturity; (3) the child's custodial history; (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; and (5) whether any factors listed under R.C. 2151.414(E)(7) to (11) apply.[7]

{¶79} Determining whether granting permanent custody to a children services agency will promote a child's best interest involves a delicate

[7] R.C. 2151.414(E)(7) to (11) states:

> "(7) The parent has been convicted of or pleaded guilty to one of the following:
> (a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;
> (b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
> (c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;
> (d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
> (e) An offense under section 2905.32, 2907.21, or 2907.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
> (f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a), (d), or (e) of this section.
> (8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.
> (9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.
> (10) The parent has abandoned the child.
> (11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section Highland App. No. 16CA25 19 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can

balancing of "all relevant [best interest] factors," as well as the "five enumerated statutory factors." *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 57, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56; *accord In re C.G.*, 9th Dist. Summit Nos. 24097 and 24099, 2008-Ohio-3773, ¶28; *In re N.W.*, 10th Dist. Franklin Nos. 07AP-590 and 07AP-591, 2008-Ohio-297, 2008 WL 224356, ¶ 19. However, none of the best interest factors requires a court to give it "greater weight or heightened significance." *C.F.* at ¶ 57. Instead, the trial court considers the totality of the circumstances when making its best interest determination. *In re K.M.S.*, 3rd Dist. Marion Nos. 9-15-37, 9-15-38, and 9-15-39, 2017-Ohio-142, 2017 WL 168864, ¶ 24; *In re A.C.*, 9th Dist. Summit No. 27328, 2014-Ohio-4918, ¶ 46. In general, "[a] child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security." *In re C.B.C.*, 4th Dist. Lawrence Nos. 15CA18 and 15CA19, 2016-Ohio-916, 2016 WL 915012, ¶ 66, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991).

{¶80} Here, Appellant does not argue that the trial court's best interest finding is against the manifest weight of the evidence. Thus, we need not address the court's best interest finding in any detail. Rather, we

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provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child."

simply note that the record contains ample clear and convincing evidence to support the trial court's finding that placing the children in Appellee's permanent custody is in their best interests.

{¶81} Accordingly, based upon the foregoing reasons, we overrule Appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. & Hoover, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.