

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN RE: X.G. : JUDGES:
: Hon. Patricia A. Delaney, P.J.
: Hon. W.Scott Gwin, J.
: Hon. Craig R. Baldwin, J.
:
:
: Case No. 17CA007
:
:
: OPINION

CHARACTER OF PROCEEDING: Civil appeal from the Holmes County
Common Pleas Court, Juvenile Division,
Case No. 14N102

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: December 28, 2017

APPEARANCES:

For Appellee

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Gwin, J.

{¶1} Appellant C.G. and appellant R.G. appeal from the May 18, 2017 judgment entry of the Holmes County Court of Common Pleas, Juvenile Division, terminating their parental rights and granting permanent custody of S.G. and X.G. to the Holmes County Department of Job and Family Services (“HCCS”).

Facts & Procedural History

{¶2} C.G. is the mother (“Mother”) of S.G., born July 19, 2011, and X.G., born December 30, 2013. R.G. is the father (“Father”) of S.G. and X.G. On June 11, 2014, HCCS filed a neglect, abuse, and dependency complaint with regards to S.G. and X.G. The complaint alleged, in part, that there was a lack of supervision in the home, the children were dirty and wearing dirty clothing, X.G. was very small for his age and appeared non-responsive with grey-colored skin, X.G. had a rash on his face and neck, S.G. was extremely dirty, S.G. appeared to have a speech delay, the family slept until the afternoon each day, there was no observable structure in the home, there was a lack of formula in the home, and while the parents slept, X.G. was propped in front of the television or left to sleep on the couch. The complaint further stated a doctor who saw the children was concerned about X.G.’s failure to thrive and S.G.’s developmental delays.

{¶3} On June 11, 2014, the trial court issued an ex parte order. On June 13, 2014, the trial court found it was in the best interest of the children to grant temporary custody to HCCS.

{¶4} A case plan for both parents was established on July 8, 2014. The case plan required as follows: Mother and Father both complete a mental health assessment

through Anazao and follow all recommendations made in that assessment; Mother and Father both complete parenting classes through Anazao and follow all recommendations; Mother and Father both complete Home-Based Therapy through Anazao and follow all recommendations; Mother and Father both complete individual counseling on a weekly basis through the Family Life Center and follow all recommendations; and Mother and Father both obtain and maintain stable housing and employment.

{¶5} An adjudicatory hearing was held on September 8, 2014. At the hearing, both Mother and Father stipulated to a finding of dependency; however, the abuse and neglect portions of the complaint were dismissed. Thus, the trial court found both S.G. and X.G. to be dependent pursuant to R.C. 2151.04(C) and ordered temporary custody to remain with HCCS. The trial court also adopted the July 8, 2014 case plan. On September 9, 2014, the case plan was amended to add that both Mother and Father complete a psychological assessment.

{¶6} In October of 2014, pursuant to a motion filed by the guardian ad litem (“GAL”) and a judgment entry by the trial court, the supervised visitation between the children and parents was moved to their home. In March of 2015, the supervised visits increased to week-ends from 8:00 a.m. Saturday morning to 4:00 p.m. Sunday afternoon.

{¶7} In May of 2015, HCCS filed a motion to extend temporary custody for six months to allow the parents to continue case plan services. The trial court granted the motion on May 26, 2015. In November of 2015, HCCS filed another motion to extend temporary custody for six months to allow the parents to continue case plan services. The trial court granted the motion on December 4, 2015. An amended case plan was filed on November 25, 2015 that provided the parents will work with S.G.’s play therapist,

follow any recommendations, work with S.G.'s speech therapist and follow any recommendations, and will work with S.G.'s preschool and follow any recommendations.

{¶8} After a review hearing in January of 2016, the trial court issued a judgment entry stating that if Mother's relative wanted custody of the children, she needs to file a request with the trial court. Further, the trial court cautioned the parents that the children have been in the temporary custody of HCCS for such a long time it is important they make significant progress on their case plan requirements very soon.

{¶9} In February of 2016, visitation between the parents and children was increased and was from Saturday morning to Wednesday evening.

{¶10} In April of 2016, an amended case plan was filed, adding protective daycare to the requirements. On June 6, 2016, HCCS filed a motion for permanent custody of S.G. and X.G. The motion states the parents have participated in the case plan, but there is still a significant risk of a safety threat to the children. Further, that the parents cannot meet the children's basic needs or provide supervision. Finally, the motion alleges the additional visits increased concerns about the children's well-being due to lack of structure, inability to maintain a consistent daily routine, and the inability to maintain nutrition and attend medical appointments. Also in June of 2016, Mother and Father filed a motion to modify disposition to return custody.

{¶11} In July of 2016, HCCS filed a motion for temporary suspension of visitation due to a report by S.G. that another adult male sleeps in her bed. The motion was denied by the trial court.

{¶12} Rachel Hoffee ("Hoffee"), the GAL, filed her report and recommendation on August 5, 2016. Hoffee stated she does not believe the parents can adequately parent

on a full-time, permanent basis without significant support. Further, that the parents have only been able to maintain the children for five-day visitation due largely to all service care providers frequently and consistently involved in their lives. Hoffee stated the parents love the children and are bonded with the children, but sometimes demonstrate poor decision-making and thus, the risk of future neglect is not completely eliminated. Hoffee recommended returning custody to the parents only on the following conditions: when not at school, the children attend daycare all day, three to five days per week, all year long; the parents continue to participate in individual and marriage counseling; the parents continue to take the children to all medical and therapy appointments; and Mother continues to utilize case management services.

{¶13} In October of 2016, HCCS filed a motion to modify visitation. The trial court denied the motion.

{¶14} Hoffee filed a supplemental GAL report on January 12, 2017. Hoffee again stated she does not believe the parents can adequately parent on a full-time, permanent basis, even with significant support in place. Further, that over the last several months, the children are struggling emotionally, struggling behaviorally, struggling developmentally, and are regressing back to their old, concerning behaviors. Hoffee stated the parents continue to demonstrate poor decision-making, as they allowed an adult male friend to sleep with S.G. in a twin bed and invited Mother's friend and boyfriend, who had a concerning criminal history, had just been charged with drug trafficking, and whose children were removed from their care, to live in their home for a time. Hoffee found the parents make parenting decisions that frequently put the children's safety at risk. Hoffee does not believe the parents will continue on their own or the children's

services after this case closes. Hoffee stated the children need permanency, structure, and stability; and reunification with the parents will not result in permanency. Hoffee recommended the trial court grant HCCS' motion for permanent custody.

{¶15} A trial on the agency's motion for permanent custody and parents' motion for return of custody was held on January 18, January 19, March 6, March 7, and March 9 of 2017. Tara Gerber ("Gerber"), an intake worker with HCCS, testified the concerns in June of 2014 with the parents included: the home was dirty; X.G. was limp, had gray skin, and a red rash when she visited the home; S.G. was dirty and her feet were black; and Dr. McFadden had concerns with Mother's ability to care for the children. Gerber stated she decided to request removal of the children from the home because of the condition of the home, the condition of the children, and the concern expressed by the doctor about X.G.

{¶16} Dr. Dwight McFadden ("McFadden") was the primary care provider for X.G. and S.G. McFadden had concerns about X.G.'s failure to thrive. McFadden discussed this with Mother and Father prior to HCCS involvement, but the situation did not improve. McFadden felt the parents had difficulty in understanding what he was trying to say. McFadden has no concerns with the foster parents. McFadden has less concerns today with Mother and Father than before, but he still has concerns.

{¶17} Dr. Steven Burggraf ("Burggraf") is the Executive Director of Family Life Counseling and Psychiatric Services. Burggraf conducted Mother's psychological evaluation. He testified that Mother has an intellectual disability and her low level of cognitive functioning impacts her ability to process information, problem-solve, plan, judgment, and ability to learn through experience. This impacts her ability to parent, as

there have been significant efforts to teach Mother parenting skills, but they are difficult for her to implement. Burggraf stated Mother's prognosis for change is poor. There is a greater likelihood that Mother's depression can improve to some degree through medication and counseling. Burggraf concluded Mother's intellectual disability is a significant issue in her ability to parent and this prognosis is unlikely to improve. Burggraf also concluded Mother's depression, along with her intellectual disability, is problematic because it creates a situation where she is sleeping long periods of time and not tending to her own personal needs and the needs of the children. Burggraf testified Mother demonstrated she is incompetent to independently parent her children and the prognosis is poor that she can become competent through instruction or treatment.

{¶18} Burggraf testified that Exhibit 1 is his report of the mental health evaluation of Mother. Exhibit 1 is consistent with Burggraf's testimony, as the report provides he diagnosed Mother with an intellectual disability that has a profound negative impact on her competency to parent her children, as she cannot execute the parenting skills she is taught. Burggraf classified the effects of this diagnosis as "pervasive" and concluded that Mother is incompetent to independently parent and the prognosis is poor that she can become competent through instruction or treatment. Burggraf also diagnosed Mother with major depressive disorder, whose symptoms cause clinically significant impairment in important areas of functioning, including parenting. Burggraf concluded that while this depression negatively impacts her ability to parent, she could improve through medication and counseling.

{¶19} Milton Ledford ("Ledford") is a licensed professional clinical counselor who is the individual counselor for Father. Ledford testified he and Father worked on priority

and responsibility and there was not much progress by Father on these goals in the first year. Ledford then saw Mother and Father together and noticed a disturbing turn of events with blame-shifting and not following through.

{¶20} Robert Hull (“Hull”) is a developmental behavioral pediatrician who completed an evaluation on S.G. Hull diagnosed S.G. with speech apraxia. Due to the speech apraxia and some developmental delays, Hull gave the family an occupational therapy request, a physical therapy request, and a speech therapy request for S.G. Hull testified if S.G. receives services, there is hope for improvement and it is very important she receives services on a regular and consistent basis. Kathryn Hodkinson, the speech therapist for S.G., testified S.G.’s attendance at speech therapy when with the foster parents is good and her attendance when with Mother and Father is fair.

{¶21} Patricia Troyer (“Troyer”) is a licensed professional counselor and is a therapist for S.G. Troyer testified she is teaching Mother and Father how to implement principles to help S.G. with oppositional defiant disorder and to decrease disruptive behaviors. Troyer started working with S.G. in May of 2015 and with Mother and Father in November of 2015. Troyer stated S.G. had consistent attendance with the foster parents and there was some difficulty in attendance with Mother and Father. Troyer testified when the appointments are consistently attended, she has seen slow progress with S.G. In a September 2016 note, Troyer stated it was her recommendation that Mother and Father “re-assess their commitment to the filial therapy progress in the home. If this commitment is made, then further education, training, and observation will be provided by this counselor.”

{¶22} On cross-examination, Troyer stated S.G. made progress in 2015 and 2016. Troyer testified Mother and Father were trying and she believed they were committed, but they missed the last two appointments without calling her, which is a problem they have had in the past. Troyer stated S.G.'s progress in therapy depends on continued efforts by Mother and Father and she is not certain if they have learned skills and applied them. Troyer has concerns the parents have difficulty understanding and implementing these skills. Troyer stated Mother and Father go through the cycle of making an effort and keeping appointments, but then not making an effort or keeping appointments.

{¶23} Jeannie Cutlip ("Cutlip") is a case manager at Anazao. She testified the strengths of the family is that Mother and Father have love and devotion for the children and they are bonded with the children. The weakness is the lack of importance Mother and Father have for S.G.'s therapy and schedule for the children. Cutlip testified that most times when she visited, she arrived at 10:00 a.m. or 11:00 a.m. and the children had been in front of the television, the house is dark, which creates a lack of development. When visitation first increased, Cutlip did not see much of a problem, but she then had increasing concerns.

{¶24} M.B., the foster father of X.G. and S.G., testified the children enjoy playing outside. M.B. stated when Mother and Father had week-end visitation, the children were very tired, aggressive, and took a few days to correct and calm down. When the extended visits started, M.B. testified X.G. started having emotional problems. M.B. stated he would like to adopt both X.G. and S.G.

{¶25} J.B., the foster mother of X.G. and S.G., testified the biggest issue when they first got the children was getting S.G. to sleep in a bed. After the week-end visits

began, J.B. noticed the children had sleep issues and were tired. When the extended visits began, J.B. did not notice any issues at first, but then noticed sleep issues and an increase in aggression in the children. J.B. testified she is bonded with both S.G. and X.G. J.B. has seen regression in the children's communication and verbal skills over the past few months and X.G. has been eating off the floor.

{¶26} Heather Hawkins ("Hawkins") is S.G.'s preschool teacher. Hawkins testified S.G. has an IEP for speech development and also goes to physical and occupational therapy. Hawkins has not seen significant progress on S.G.'s social issues, as she is easily upset, is still struggling, picks up food off the floor, and uses her hands instead of silverware. Hawkins stated when work goes home to the foster parents, it is returned; however, the folder that goes home to Mother and Father is not completed and is returned blank. Hawkins testified that, with S.G.'s level of need, she would expect to see more involvement by the parents. Hawkins stated that S.G. frequently "shuts down" and this has worsened over this school year.

{¶27} Michelle Budzinski ("Budzinski") conducted a forensic interview of S.G. after there was a concern about sexual abuse. Budzinski testified S.G. disclosed an incident of sexual touching by "Ian" in the bed she sleeps in and S.G. said "Ian" always slept in bed with her.

{¶28} Luella Gilbert ("Gilbert") is the ongoing caseworker for the family. Gilbert testified to the requirements of the parents pursuant to the case plan and stated there were several amendments to the case plan throughout the case. Gilbert stated the initial concerns the case plan was to address are as follows: supervision level in the home, condition of the home, parents not following through ensuring the health and safety of the

children, S.G.'s developmental delays, medical needs and appointments not being met, no structure in the home, and the parents not following recommendations.

{¶29} Gilbert testified the portions of the case plan Mother has not completed are: individual counseling, continued case management services, home-based therapy, and following through with protective day care services and the services recommended for S.G. The portions of the case plan Father has not completed are individual counseling, home-based therapy, following through with protective day care service and the services recommended for S.G. Gilbert stated home-based therapy was discontinued because there was no progress being made. Gilbert also testified the follow-up to S.G.'s occupational therapy, physical therapy, play therapy, and speech therapy were not done in the home.

{¶30} Gilbert stated when visitation was increased in 2016, it was because the parents were doing well and the providers wanted the parents to have the ability to participate more in S.G.'s case plan services to see if the parents could handle the increased time with the children. Gilbert's concerns after these extended visits started included the condition of the home (food on the floor the children were eating), and Father was sleeping while Mother appeared overwhelmed with three children. Further, sometimes when she visited, the home was ok, and sometimes it was in disarray. X.G. was acting out, both children appeared tired, and both children were eating with their hands.

{¶31} Gilbert also had concerns about an adult male sleeping in the same bed as S.G. Because of these concerns, Gilbert requested a decrease in visitation, but her request was denied by the trial court.

{¶32} Gilbert went through notes on her visits. In November 2015, X.G. had a large burn mark on his hand. Mother and Father told Gilbert S.G. was running the sweeper and ran over X.G.'s hand. During an April 2016 visit, Mother told Gilbert she did not need a baby-sitter and could manage on her own. At a May 2016 visit and Help Me Grow assessment, Father had to sweep the floor before the workers could sit down and Gilbert stated Father was distracting during the assessment with X.G. During a July 2016 visit, X.G. threw chunks of bread on the floor and ate them like a dog.

{¶33} Gilbert testified that since the increased visitation started, her biggest concern is the supervision level. Further, when she visits, she notices both children are acting out more, are more aggressive, more tired, and S.G.'s speech is worse. Gilbert is also concerned because an adult male friend ("Ian") was in the home and, during an unannounced visit, two individuals were living in the home who had criminal backgrounds.

{¶34} Gilbert asked both Mother and Father's mothers to help out and they pledged to do so. However, they did not do so. Gilbert testified Father works nights, so he sleeps during the day, and Mother sometimes appears like she just woke up and is very tired.

{¶35} Gilbert stated the foster home is clean and she has no concerns about supervision in the foster home. Gilbert testified the foster parents are bonded to the children, as are both Mother and Father.

{¶36} Gilbert stated she believes permanent custody to the agency is in the children's best interest because the initial concerns present at the beginning of the case are still there. Gilbert testified the supervision levels are a "huge concern," Mother and Father had minimized these concerns, and the children's health and safety are still at risk.

{¶37} On cross-examination, Gilbert stated Mother completed her mental health assessment, parenting classes, and enrolled in individual counseling, but stopped going. Father completed parenting classes, is employed, and completed his psychological assessment. On re-direct, Gilbert testified she believes the agency gave Mother and Father every opportunity to satisfactorily complete their case plans and reduce the risk to the children.

{¶38} Michelle Kelly (“Kelly”) is a licensed social worker and home-based therapy provider. Kelly worked with the family as a home-based therapist and was Mother’s individual counselor. Kelly started working with the family in August of 2014 and the initial issues she addressed included neglect, lack of supervision, failure to thrive, and medical issues that were not addressed by the parents. Initially, Mother and Father had supervised visitation at the agency. These sessions went well, so the visitation moved to their home. In May of 2015, Kelly began to notice Mother being overwhelmed and Mother expressed concern that Father was faking doing well with his case plan services. In Fall of 2015, Kelly stated things remained the same, there were still concerns, but the parents were trying to get better with services. Kelly felt like visitation should be increased to five days a week to put services around the parents to see how they would do.

{¶39} Kelly stated things were ok in the Fall of 2015, but in March or April of 2016, there was a very big change in terms of the cleanliness of the home, lack of supervision, and everyone being tired. Kelly testified this is when Mother and Father’s support system fell off, as Mother did not want Father’s mom around and Mother’s mother was not around. Kelly stated when Mother and Father’s support system falls off, things deteriorate. Kelly

had repeated conversations with Mother and Father about her concerns, but neither Mother nor Father addressed these concerns.

{¶40} Kelly testified that in June of 2016, Mother and Father disengaged from services, minimized her concerns, their ability to receive feedback changed, and the tone of the visits drastically changed. Kelly agreed that HCCS should file the motion for permanent custody.

{¶41} As to her observations in the home after the increased visitation, Kelly stated she noted a lack of supervision, food on the floor, the children eating off the floor, and the children pulling an electrical socket out of the wall and carrying it around while Father was sleeping and Mother was cooking dinner.

{¶42} Kelly wanted Mother and Father to re-do parenting classes, but they did not. Kelly testified the risk factors that were present at the beginning of the case are still present over two years later. Kelly testified Mother and Father disengaged with services when they felt confident, after a discussion with their attorney, the motion for permanent custody would be denied, as Mother and Father did not see the value in completing the services anymore.

{¶43} Kelly testified in August and September of 2016, things continued to deteriorate, as the parents' support system was gone and they were not using case management services. Kelly had concerns about the condition of the home, Mother and Father were not following the schedule, Mother and Father were in denial about their problems, when she arrived for home-based therapy at 11:00 a.m., it was dark and the children were contained to one area of the home, and Kelly's suggestions were met with

resistance. Kelly testified the family needs a schedule because children function on routine and schedules and this allows them to feel safe.

{¶44} As to visits from September 2016 to January 2017, Kelly testified Mother and Father's lack of involvement got worse and reverted to the same patterns as when the initial referral came in. Kelly stated Mother and Father did not implement the practices she talked about with them. Kelly testified that in two-and-a-half years, Mother and Father displayed a consistent pattern; in a very limited, structured parenting role, they are able to manage. However, as visitation increases, there is inconsistency and regression. Kelly does not believe the home-based therapy for the past two years has reduced the risk to the children. Kelly also does not believe it is a secure placement for the children to have court involvement until the children are eighteen and it is not beneficial for the children to continue in the current schedule between the foster parents and Mother and Father.

{¶45} As to the individual counseling of Mother, Kelly testified Mother stopped coming to individual counseling appointments.

{¶46} Hoffee testified to her reports and also testified it was her recommendation that the trial court grant HCCS' motion for permanent custody.

{¶47} Hoffee filed one final supplemental report on April 17, 2017, but the trial court struck the portion of her report covering the time period after the permanent custody trial. However, the remaining portion of the report provides that the argument that Mother and Father are able to parent because they had the children five days a week is deceiving because the parents still minimize the concerns that continue to put the children at risk. Hoffee stated Mother's low functioning and Father's periods of "willful neglect" affects their ability to adequately parent, prevents them from progressing, and remains an

impediment to their ability to adequately parent. Hoffee noted there were periods of improvement when the parents had significant support, but she observed a lack of sustained improvement over time and her concerns were never alleviated. Hoffee stated the children require a stable and routine environment that will always be lacking with the parents. Hoffee believes Mother lacks the parenting skills to balance keeping the children safe while playing with the children. Hoffee stated the concerns of HCCS, the service providers, the foster parents, and daycare are valid and the risk of neglect to the children remains high. Hoffee recommended the trial court consider granting the motion for permanent custody and any return to the parents should only be considered if there are measures in place to ensure the safety of the children.

{¶48} The trial court issued a judgment entry on May 18, 2017, terminating Mother's and Father's parental rights and granting permanent custody of S.G. and X.G. to HCCS. The trial court first considered the factors in R.C. 2151.414(D)(1). As to the first factor, the trial court found the children are bonded with Mother and Father and also bonded to the foster parents. As to the second factor, the trial court stated the children are too young to determine their wishes and it is not clear what the GAL recommends. Third, the trial court found both S.G. and X.G. have been in the temporary custody of HCCS for thirty-three consecutive months.

{¶49} Regarding the fourth factor, the trial court stated the only options as to placement are Mother and Father or HCCS, as there are no other family members willing or able to provide a secure placement. Further, that both S.G. and X.G. are still in temporary custody after two-and-a-half years. The trial court examined whether Mother and Father have demonstrated an ability as of the time of trial to provide a legally secure

permanent placement for S.G. and X.G. The trial court first examined the GAL's report and noted her concern that both Mother and Father continue to minimize the concerns that led to the initial involvement of HCCS and also noted the ongoing concern of Father's lethargy and unwillingness to parent and Mother's cognitive challenges. The trial court agreed with the conclusion of the GAL in regards to the effect of these two deficiencies and expressed its belief that these issues will remain problematic in the future. The trial court also agreed with the GAL's conclusion that these two children, because of their various issues and diagnoses, place more strain upon their caretakers. Further, that due to these special needs, the children require a stable and routine environment to function and thrive, and they require sustained and meaningful effort by Mother and Father on a daily basis. The trial court concurred with the GAL's conclusion that this type of environment will always be lacking in Mother's and Father's home.

{¶50} The trial court next detailed the testimony of Gilbert and highlighted her testimony that the same conditions were still present in the home as when HCCS initially began its involvement, including lack of supervision of the children, uncleanliness of the children, the children eating off the floor, and Mother and Father minimizing such concerns. Further, that when the parenting time of Mother and Father increased, the conditions in the home quickly deteriorated.

{¶51} The trial court also detailed the portions of Kelly's testimony it found relevant. The trial court specifically noted Kelly's testimony that the risk factors present at the beginning of her involvement were still present at the time of trial, even though the family began to work on the case plan in July of 2014. Further, that Kelly told the trial court she saw consistent patterns in the family where Mother and Father are able to

manage having S.G. and X.G. in their home for a small amount of time, but as the visits increase, Mother and Father revert to their original unhealthy parenting patterns. The trial court also found relevant Kelly's testimony regarding the regression of the children.

{¶52} The trial court also considered the factors in R.C. 2151.414(B)(1). The trial court found that S.G. and X.G. have been in the temporary custody of HCCS for a period of thirty-three consecutive months and thus R.C. 2151.414(B)(1)(d) applies.

{¶53} The trial court stated it considered all properly-admitted evidence in its analysis of R.C. 2151.414(D)(1) and R.C. 2151.414(B)(1). Further, based on that analysis and by clear and convincing evidence, the trial court found it is in the best interest of S.G. and X.G. to grant permanent custody to HCCS. The trial court also found R.C. 2151.414(B)(1)(d) applies in this case.

{¶54} Both Mother and Father appeal the May 18, 2017 judgment entry of the Holmes County Court of Common Pleas, Juvenile Division. Mother assigns the following as error:

{¶55} "I. THE TRIAL COURT ERRED IN GRANTING JOB AND FAMILY SERVICES PERMANENT CUSTODY AS SAID DECISION WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AS REQUIRED BY O.R.C. 2151.414 AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶56} Father assigns the following as error:

{¶57} "I. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF BOTH CHILDREN TO THE HOLMES COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES AS THE BEST INTEREST FINDING IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶58} Because Mother and Father’s assignments of error are the same, we will address them together.

Permanent Custody

{¶59} “[T]he right to raise a child is an ‘essential’ and ‘basic’ civil right.” *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990), quoting *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). An award of permanent custody must be based on clear and convincing evidence. R.C. 2151.414(B)(1).

{¶60} Clear and convincing evidence is that evidence “which will provide in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954). “Where the degree of proof required to sustain an issue must be clear and convincing, 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.” *Id.* at 477. If some competent, credible evidence going to all the essential elements of the case supports the trial court’s judgment, an appellate court must affirm the judgment and not substitute its judgment for that of the trial court. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978).

{¶61} Issues relating to the credibility of witnesses and the weight to be given to the evidence are primarily for the trier of fact. *Seasons Coal v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). Deferring to the trial court on matters of credibility is “crucial in a child custody case, where there may be much evidence 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).

{¶62} R.C. 2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. 2151.414(A)(1) mandates the trial court schedule a hearing and provide notice upon the filing of a motion for permanent custody of a child by a public children services agency.

{¶63} Following the hearing, R.C. 2151.414(B) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply: (a) the child is not abandoned or orphaned, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents; (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; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶64} Therefore, R.C. 2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, a trial court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

R.C. 2151.414(B)(1)(a) through (d)

{¶65} In this case, the trial court found, by clear and convincing evidence, that both S.G. and X.G. have been in the temporary custody of a public children services

agency for twelve or more months of a consecutive twenty-two month period, pursuant to R.C. 2151.414(B)(1)(d). Neither Mother nor Father challenge the trial court's finding as to the first prong of the permanent custody analysis. This finding, in conjunction with a best-interest finding, is sufficient to support a grant of permanent custody. *In re Calhoun*, 5th Dist. Stark No. 2008CA00118, 2008-Ohio-5458.

Best Interest

{¶66} In their assignments of error, both Mother and Father argue the trial court erred in finding an award of permanent custody was in S.G. and X.G.'s best interest. Mother specifically argues the witnesses testified to the improvement of the children and the parents and that the parents were making progress on their case plan. Father specifically contends the parents are bonded with the children and the visitation went well and the visits were allowed to continue despite any issues.

{¶67} We have frequently noted, “[t]he discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court’s determination will have on the lives of the parties concerned.” *In re Mauzy Children*, 5th Dist. Stark No. 2000CA00244, 2000 WL 1700073 (Nov. 13, 2000), citing *In re Awkal*, 85 Ohio App.3d 309, 316, 642 N.E.2d 424 (8th Dist. 1994).

{¶68} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D)(1) mandates the trial court consider all relevant factors, including, but not limited to, the following: (a) the interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (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; (c) the custodial history of the child; (d) the child's need for a legally secure placement and whether that type of placement can be achieved without a grant of permanent custody; and (e) whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and the child. No one element is given greater weight or heightened significance. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816.

{¶69} A child's best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security. The willingness of a relative to care for the child does not alter what a court considers in determining permanent custody. *In re Patterson*, 134 Ohio App.3d 119, 730 N.E.2d 439 (9th Dist. 1999); *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 574 N.E.2d 1055 (1991). Accordingly, a court is not required to favor a relative if, after considering all the factors, it is in the child's best interest for the agency be granted permanent custody. *In re R.P. and I.S.*, 5th Dist. Tuscarawas No. 2011AP050024, 2011-Ohio-5378.

{¶70} The court must consider all of the elements in R.C. 2151.414(D) as well as other relevant factors. There is not one element that is given greater weight than the others pursuant to the statute. *In re Schafer*, 11 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532. R.C. 2151.414 "requires the court to find the best option for the child once a determination has been made pursuant to R.C. 2151.414(B)(1)(a) through (d)." *Id.* The focus of the "best interest" determination is upon the children, not the parent, as R.C. 2151.414(C) specifically prohibits the court from considering the effect a grant of

permanent custody would have upon the parents. *In re Awkal*, 95 Ohio App.3d 309, 642 N.E.2d 424 (8th Dist. 1994).

{¶71} Father argues the trial court erred in its determination of best interest because the children are bonded with him and Mother and because the providers in the case allowed him and Mother to have visitation for five days a week, and this decision demonstrates they can adequately parent. First, as noted above, there is not one element that is given greater weight or heightened significance than others. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816. The bond between the parents and the children is only one of the factors the trial court must take into consideration when making its best interest determination.

{¶72} Further, simply because Mother and Father had visitation five days per week does not demonstrate they can adequately parent, as witnesses testified when the visitation increased, the concerns also increased. Hoffee calls this argument “deceiving,” as both Mother and Father still minimize concerns that continue to put the children at risk. Gilbert and Kelly testified the increased visitation to five days per week was a trial to see if Mother and Father could handle this increased time with the children. However, multiple witnesses testified that as the visitation increased, so did their concerns.

{¶73} Cutlip testified she had increasing concerns as the visitation increased. Hawkins stated S.G.’s behavior worsened over the school year. Gilbert testified that when the visits increased, her concerns about the condition of the home, supervision level, the children acting out, and S.G. regressing also increased. Kelly stated that after the visits increased, she saw a big change in the home conditions, saw an increased lack of supervision, and found Mother and Father did not address her concerns despite her

talking to them. Kelly also testified the parents disengaged from services after the visitation increased. Kelly stated after the visitation increased, there was a lack of supervision by the parents, the children were eating food off the floor, and the children pulled an electrical socket out of the wall while Father was sleeping and Mother was cooking dinner.

{¶74} Mother argues the trial court's determination as to best interest is not supported by clear and convincing evidence because she and Father were making progress with their case plan. Though Mother and Father did complete portions of their case plans, there was testimony as to portions of their case plans that they did not complete. Gilbert testified Mother did not complete her case plan because she: failed to continue going to individual counseling; failed to continue case management services; failed to complete home-based therapy due to non-progression; did not take the children to protective daycare; and did not continue services for S.G. Gilbert testified Father did not complete his case plan because he: failed to continue going to individual counseling; failed to complete home-based therapy due to non-progression; did not take the children to protective daycare; and did not continue services for S.G. Gilbert believes the agency gave Mother and Father every opportunity to complete their case plans and reduce the risk to the children.

{¶75} Additionally, Dr. Hull testified to the importance of continuing S.G.'s services to her improvement. Troyer, S.G.'s therapist, testified she had some difficulty with S.G.'s attendance when she was with Mother and Father. Cutlip stated Mother and Father do not view S.G.'s therapy and schedule as important. Gilbert testified that follow-up to S.G.'s therapy was not done in the home by Mother or Father.

{¶76} Mother also contends the trial court's determination with regards to best interest is not supported by clear and convincing evidence because witnesses testified to the improvement of her, Father, and the children. While some of the witnesses did testify to some improvement in Mother, Father, and the children, these witnesses also testified that they saw a consistent pattern or cycle that the parents could handle the children for shorter periods of time with help from their case management services, but the problems increased and the parents and children regressed as the visitation time increased. Troyer testified Mother and Father were in a cycle where they would make appointments and make an effort to keep them, but then would not make an effort or keep their appointments. Kelly stated she saw a consistent pattern with Mother and Father over two-and-a-half years; in a very limited parenting role they can manage, but as visitation increased, the inconsistency and regression increased. Hoffee testified that Mother, Father, and the children had periods of improvement with significant support, but there was a lack of sustained improvement over time, and her concerns were never alleviated. Given this history, the trial court could have reasonably concluded Mother and Father would be unlikely to provide the children with a permanent and stable home. Courts have recognized that, "* * * [A] child should not have to endure the inevitable to its great detriment and harm in order to give the * * * parent an opportunity to prove [their] suitability. * * * The law does not require the court to experiment with the child's welfare to see if he will suffer great detriment or harm." *In re P.S.*, 5th Dist. Licking No. 16-CA-11, 2016-Ohio-3489, quoting *In the Matter of Lilley*, 4th Dist. Lawrence No. 04CA22, 2004-Ohio-6156.

{¶77} We find the trial court did not err in finding that granting permanent custody to HCCS was in the best interest of S.G. and X.G. In her report, Hoffee stated that since visitation with Mother and Father increased, both S.G. and X.G. are struggling emotionally, behaviorally, developmentally, and are regressing back to old behaviors. She notes that poor decision-making by Mother and Father put S.G. and X.G.'s safety at risk. These poor decisions include allowing an adult male friend to sleep in a twin bed with S.G. and allowing friends with criminal charges pending and a criminal history stay at their house. Hoffee stated in her report that she does not believe Mother and Father can give S.G. and X.G. permanency, structure, or stability, and the stable routine the children need will always be lacking with Mother and Father. Dr. McFadden testified that while his concerns are less than before, he still has concerns regarding Mother and Father and their understanding of X.G.'s medical care. Dr. Burggraf stated Mother is incompetent to parent the children and the prognosis is poor that she can become competent through instruction or treatment. While both parents did complete some of the case plan, Gilbert testified neither Mother nor Father was able to complete their case plan, despite the agency's giving them every opportunity to complete the case plan and reduce the risk to the children.

{¶78} Gilbert testified that granting permanent custody to the agency is in both S.G. and X.G.'s best interest because the initial concerns present at the beginning of the case are still there. She stated the supervision level is still a "huge" concern and the children's health and safety is still at risk. Kelly testified the risk factors present at the beginning of the case are still present over two years later. Further, that the home-based therapy for two years has not reduced the risk to the children and it is not beneficial to the

children to continue in the current pattern. Multiple witnesses testified to regression of Mother, Father, and the children as visitation with Mother and Father increased.

{¶79} We find the trial court properly considered and weighed the factors in R.C. 2151.414(D) and the trial court's conclusion that granting permanent custody to HCCS is in the best interest of S.G. and X.G. is supported by competent and credible evidence.

{¶80} Based on the foregoing, we find the trial court did not abuse its discretion in granting permanent custody of S.G. and X.G. to HCCS. Mother's and Father's assignments of error are overruled and the May 18, 2017 judgment entry of the Holmes County Court of Common Pleas, Juvenile Division, is affirmed.

By Gwin, J.,

Delaney, P.J., and

Baldwin, Craig, J., concur