[Cite as *In re L.G.*, 2020-Ohio-6831.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

IN RE: L.G. AND K.G.,

DEPENDENT CHILDREN.

OPINION AND JUDGMENT ENTRY
Case No. 20 BE 0006

Civil Appeal from the
Court of Common Pleas, Juvenile Division of Belmont County, Ohio
Case No. 18 JC 613, 18 JC 614

BEFORE:
Carol Ann Robb, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Mary G. Warlop, Abney Law Office, LLC, 116 Cleveland Avenue. NW, Suite 500, Canton, Ohio 44702 for Appellant and

Atty. Daniel P. Fry, Belmont County Prosecutor*, Atty. Rhonda L. Greenwood*, Assistant Prosecutor, 147 A West Main Street, St. Clairsville, Ohio 43950, for Appellee.

Dated: December 4, 2020

Robb, J.

{¶1} Appellant (the mother) appeals the decision of the Belmont County Common Pleas Court, Juvenile Division, which granted permanent custody of two children to Appellee Belmont County Department of Job and Family Services (the agency). The mother contends the court erred in finding there was clear and convincing evidence showing the children could not be placed with her within a reasonable time or should not be placed with her. The mother also argues the court erred in finding there was clear and convincing evidence showing a grant of permanent custody was in the children's best interests. For the following reasons, the trial court's judgment is affirmed.

STATEMENT OF THE CASE

{¶2} On November 3, 2018, two Belmont County children were placed in emergency shelter care after their parents were arrested in Pennsylvania. Child A had recently turned five years old, and Child B was just under two years old. Upon the agency's November 5, 2018 dependency complaint, the court granted emergency shelter care to the agency. The children were placed in foster care with foster parents who wished to adopt them.

{¶3} At the January 30, 2019 adjudicatory hearing, the court found the children dependent. The court granted temporary custody to the agency after finding reasonable efforts were made to eliminate the need for removal from the children's home. (1/31/19 J.E.). The case plan initially had a reunification goal and required the mother to obtain safe housing and employment, enroll in certain parenting classes, receive an evaluation at a named psychological provider, comply with any resulting recommendations such as counseling, and cooperate with any services provided to the children. The case plan, however, noted the mother was in jail and was prohibited by a criminal court order from contacting the children if released on bail. (She was not released on bail and remained in jail throughout the criminal proceedings.)

{¶4} On May 20, 2019, the father pled guilty to two second-degree felony charges of pandering sexually oriented matter involving a minor in violation of R.C. 2907.322(A)(1); he was sentenced to two consecutive eight-year sentences. On June 4, 2019, the mother pled guilty to an amended charge of attempted obstruction of justice, a fourth-degree felony, and was sentenced to eighteen months in prison.

{¶5} On September 17, 2019, the agency filed a motion for permanent custody on the grounds the children cannot be placed with either parent within a reasonable time or should not be placed with either parent, citing R.C. 2151.414(B)(1)(a). The court heard the matter on December 23, 2019. The mother was transported from prison for the hearing. The father declined to participate in any of the juvenile court proceedings.

{¶6} A detective testified about receiving a report from Facebook that child pornography was being shared on a related website. This led the police on a hunt for John Garwon who was living with the mother, the father, and the children at their residence in Belmont County. On October 11, 2018, the police executed a search warrant and seized evidence at that residence, while the children and their father were present. (Tr. 30, 34).

{¶7} As the police waited for Garwon to get off work, they began reviewing the seized computers and realized the children's father was also involved in committing child pornography offenses. (Tr. 31). The police returned to the residence 20 to 30 minutes after their initial visit, but the father had fled with the children.

{¶8} When the police attempted to locate the mother, they learned she abruptly left the group home where she worked (leaving clients unsupervised) after the father appeared there. (Tr. 32-33, 38). The detective called and texted her cell phone. The last time her phone communicated with a cell tower was in Washington County, Pennsylvania; it was then powered off. (Tr. 34). The news outlets began issuing alerts that day. (Tr. 39).

{¶9} Three weeks later, using the mother's bank records, the United States Marshals Service located the mother, the father, and the children at a hotel in Washington County, Pennsylvania. The room was rented in the mother's name. (Tr. 36). During an interview, the mother told the detective there was a video camera in the hotel room which contained a video of Garwon sexually assaulting her son. (Tr. 43).

{¶10} The agency's intake caseworker testified the children were taken to the hospital for examinations. Child B had an orange hue which was eventually attributed to eating too much orange baby food; this testimony was confirmed by the children's physician. (Tr. 18, 51). This intake caseworker met with the mother twice in the county

jail (reviewing the children's medical history in November 2018 and reviewing the case plan in January 2019). (Tr. 55).

{¶11} The mother told this caseworker she watched the video of her son being sexually assaulted. She initially claimed the father showed her the video on the day of their arrest before the Marshals arrived. (Tr. 58). She said the father had cameras set up in their house because he was suspicious of Garwon. She then admitted she knew the video was filmed for about a year. When asked why they continued to let Garwon live in the home, she said they needed Garwon's rent money. (Tr. 59-60, 65).

{¶12} The mother seemed nervous and suggested she had a further piece of information to share. She eventually told the caseworker she blacked out a year ago after the father gave her a pill while she was drinking and smoking marijuana. She said she was afraid something may have happened while she was in this altered state. The caseworker asked if she meant that she may be on video doing something to the children, and the mother responded by saying she was not sure and she was afraid. (Tr. 41-41). The mother reported: she was not afraid of the father; she did not feel threatened when she fled with him; and she financially supported the family by working while the father stayed home with the children. (Tr. 63-64).

{¶13} The caseworker assigned after the intake caseworker's function was complete in January 2019 met the mother after a court hearing and did not thereafter visit the mother in jail or in prison. She said there was no point to monitor her case plan progress as the specific items on the case plan could not be completed while incarcerated. (Tr. 115). It was noted that the agency was approaching the one year temporary custody deadline when the permanent custody motion was filed and the mother had to be making substantial progress on the case plan in order for the agency to seek a six-month extension of temporary custody. (Tr. 116, 139). The caseworker indicated the jail had no classes and did not know what classes the prison offered. (Tr. 115, 124). The caseworker visited the foster home every month. (Tr. 120). She said the foster parents had custody of the children since their second night in agency custody and wished to adopt both children. (Tr. 119).

{¶14} The guardian ad litem filed a report and testified at trial. She exchanged letters with the mother and spoke to her on the phone. The guardian ad litem opined

permanent custody should be granted to the agency based on: the facts surrounding the mother's conviction; the mother's imprisonment for at least another three months (if she received a month of good behavior time), after which it would take her potentially a year to work on the case plan; the children's improvement in foster care; and the children's need for permanency. The guardian ad litem pointed to the mother's failure to protect the children from the father and her failure to ensure needed services were maintained (while she was in hiding). (Tr. 132).

{¶15} The guardian ad litem testified the mother knew the father was a sex offender but the mother rationalized that his prior conviction resulted from a misunderstanding. (Tr. 131). As for his most recent sex offenses, the mother said she had no knowledge of what the father and Garwon were doing until she saw the video of her son. (Tr. 133). The mother claimed father was very controlling of her. (Tr. 137). The guardian ad litem believed the caseworker should have kept the mother informed about the children but did not believe there would have been a reason to visit the mother in prison. (Tr. 138).

{¶16} The children's physician testified she first saw the children on June 5, 2018. Child A was reported by the father to be hyperactive and acted in such manner in the office; he also seemed socially delayed. (Tr. 9-10). Child B was delayed in development and had poor muscle tone; she could barely sit up and weighed only 19 pounds when she was more than 18 months old. (Tr. 8). Referrals for therapy were provided to the parents.

{¶17} Two weeks later, the father reported Child B's refusal to eat or drink, and the physician requested an immediate appointment or an emergency room visit due to dehydration concerns. The child was not seen until July 16, by which point she had lost a significant amount of weight. (Tr. 10). The child was directly admitted to the hospital by the physician after the parents again failed to bring the child to the emergency room as requested. (Tr. 13). The child was evaluated and found to have severe constipation. A test showed the child had a chromosomal problem which could have contributed to poor muscle tone and delayed development. (Tr. 16).

{¶18} The next time the physician saw the children was soon after they were placed in foster care in November 2018. Child B could not pull herself to stand at nearly two years old. A month after that, the child's orange hue was gone, she was eating solid

foods, she had improved motor development, and she could stand on her own. (Tr. 19). Child B regularly attended therapy services since placed in foster care and would continue to require these services more than once a week. (Tr. 21).

{¶19} At a February 2019 visit, Child A seemed less hyperactive than at prior visits and had improved social development. (Tr. 19). The physician emphasized the rapid improvement in both children after leaving their parents' care and expressed a regression concern for the children if they were placed into a home with a barrier to ensuring the children attended all appointments. (Tr. 27-28).

{¶20} The children's counselor testified the children have progressed and need continued therapy. (Tr. 100-102). When she first saw Child A at age five, it did not appear he knew his last name. (Tr. 106). He refused to speak about any history prior to life with the foster family. (Tr. 104). An occupational therapy assistant testified she worked with each child once per week. (Tr. 73). Child B began therapy in July 2018, when the father brought the child upon referral for eating and motor issues. Child A started occupational therapy to work on fine motor and food/texture issues. (Tr. 76). Both children were expected to continue with these sessions. (Tr. 75-76).

{¶21} A physical therapist began treating Child B for gross motor delay in November 2018. (Tr. 81, 83). She testified the child was making great progress but needed to continue her therapy. (Tr. 82-85). The foster mother regularly completed the exercises sent home with the child. (Tr. 85). The speech therapist for Child B met the child in October 2018 and said she seemed like a different child weeks later when she arrived with the foster mother. (Tr. 89-90). The foster mother ensured the child attended her weekly speech therapy. (Tr. 90). An early intervention specialist testified to her weekly visits with Child B in the foster home until the child turned three. She witnessed great social and motor progress and said the foster mother followed through with all requests. (Tr. 95).

{¶22} After the agency rested its case, the mother testified she pled guilty to an amended attempt charge in order to avoid a higher sentence for obstruction of justice. (Tr. 143). She said she worked 60 to 70 hours per week because the father said they needed money and he could not obtain a job due to his felony conviction. (Tr. 144-145).

The mother acknowledged she knew about the father's prior felony conviction for unlawful sexual conduct with a minor. (Tr. 150); (5/20/19 Sent. J.E.).

{¶23} She said the father was controlling. She confirmed leaving her workplace when the father arrived and said she had to leave for an emergency. (Tr. 145). She claimed she was unaware of the news reports on her family while staying at the hotel for three weeks. (Tr. 152). The mother noted she was lying on the bed when the Marshals knocked and the Marshals broke open the door when they refused to answer the knock. (Tr. 146, 152). She said she was afraid of the father at that particular time. (Tr. 153).

{¶24} The mother attempted to explain away what she told the intake caseworker. The mother testified the father showed her the video of their son only "an hour or so before" the Marshals arrived at the hotel. (Tr. 146). She said she asked the father why he failed to show her the video earlier and he responded by saying they needed Garwon's rent money. (Tr. 147). She knew the father set up cameras in their house but claimed she thought he used them to record any potential intruder. She then testified the father suspected Garwon acted inappropriately with the children. When asked why she did not worry about leaving her children there while she worked all day, she said the father told her to go to work. (Tr. 154).

{¶25} In the more than six months she had been in prison, she completed web design classes. She said she was on a waiting list for a family class and a money management class and was waiting for a response to her request for a mental evaluation so she could start counseling. (Tr. 147-148). She claimed she did not write to the children from prison because she believed she was not permitted to do so. (Tr. 148). She anticipated being released from prison in April 2020 and planned to get a job and a residence and to complete her case plan. (Tr. 149).

{¶26} After trial, the court allowed written summations to be filed. The mother's summation set forth an argument on whether the agency used reasonable efforts to prevent the continued removal of the children from their home, citing R.C. 2151.419(A)(1). She complained about the second caseworker's failure to visit her while she was incarcerated, citing administrative provisions requiring a personal meeting once a month to monitor progress on the case plan objectives.

{¶27} The agency replied by noting there was no point to meet if the case plan was not being worked on due to incarceration and cited R.C. 2151.414(C), which provides: "The court shall not deny an agency's motion for permanent custody solely because the agency failed to implement any particular aspect of the child's case plan." The agency then reiterated its basis for permanent custody under R.C. 2151.414(B)(1)(a): the children cannot be placed with either parent within a reasonable time or should not be placed with either parent. In support of this ground, the agency cited divisions (E)(5) (parent incarcerated for an offense committed against the child) and (16) (any other factor the court finds relevant).

{¶28} On February 19, 2020, the juvenile court granted permanent custody to the agency in a judgment containing findings of fact and conclusions of law. In response to the mother's argument on the adequacy of the agency's efforts, the court criticized the second caseworker but found the agency's efforts were reasonable under the circumstances. In any event, the court pointed to its prior finding of reasonable efforts to prevent removal (in the temporary custody order) and noted R.C. 2151.419(A)(1) does not apply to a permanent custody hearing. *See In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 41, 43 (the agency generally need not establish reasonable efforts at the permanent custody hearing if the court already found the efforts were reasonable and the court was not relying on certain grounds). The juvenile court pointed out it was *not* relying on (E)(1) (the parent repeatedly and continuously failed to substantially remedy the condition causing the placement after the agency's reasonable case planning and diligent efforts). *See id.* at ¶ 42 ("To the extent that the trial court relies on R.C. 2151.414(E)(1) at a permanency hearing, the court must examine the reasonable case planning and diligent efforts by the agency to assist the parents").[1] Upon the trial court's explanation and in accordance with the cited law, this particular argument was not maintained on appeal.

[1] It is also notable the agency did not rely on the ground applicable when the children have been in temporary custody for 12 of 22 consecutive months when the permanent custody motion is filed. *See In the Matter of A.L.F.*, 7th Dist. Columbiana No. 18 CO 0024, 2019-Ohio-937, ¶ 45-49 (applying *In re C.F.*), citing R.C. 2151.413(D)(3)(b) (an agency may not file under the 12 of 22 rule if reasonable efforts are still required under R.C. 2151.419 and the agency has not provided the services in the case plan).

{¶29} In granting permanent custody, the juvenile court found the ground in R.C. 2151.414(B)(1)(a) was applicable as the children cannot be placed with the parents within a reasonable time or should not be placed with a parent. As to the father of the children, the court pointed out his two new convictions were specifically listed in R.C. 2151.414(E)(6), which required the court to find the children cannot nor should be placed with him if one of the offenses was committed against the child or the child's sibling.

{¶30} As to the mother, the court found the children cannot be placed with her within a reasonable time nor should be so placed with her because her conviction was essentially an offense she committed against the children under R.C. 2151.414(E)(5) or the situation called for the application of (E)(16) (any other relevant factor). The court emphasized: "the law does not require the Court to experiment with the children's welfare to see if they will suffer great detriment or harm." Lastly, the court concluded there was clear and convincing evidence that permanent custody was in the children's best interests.

{¶31} Soon after the mother's timely notice of appeal, the pandemic tolling rule was issued by the Ohio Supreme Court. Appellant thereafter received a briefing extension, as did the agency. The briefing schedule closed on November 6, 2020, when the time for filing a reply brief expired. At that time, the case was submitted to the court for the issuance of a judgment within 30 days. *See* App.R. 11.2(C)(4)-(5).

ASSIGNMENT OF ERROR ONE: GROUNDS FOR PERMANENT CUSTODY

{¶32} The mother sets forth two assignments of error on appeal. Her first assignment of error alleges:

"THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY TO THE BELMONT COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES [AS THE AGENCY] FAILED TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT GROUNDS EXISTED FOR PERMANENT CUSTODY AND SUCH DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶33} As the mother emphasizes, a parent's right to raise his or her child is a fundamental right. *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990), citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). However,

the government has authority to enact laws allowing an agency to intervene to protect children. *See In re C.F.*, 113 Ohio St.3d 73 at ¶ 28.

{¶34} An appellate court reviews the juvenile court's decision on a motion for permanent custody under an abuse of discretion standard of review. *Id.* at ¶ 48. An abuse of discretion occurs if the court's decision is unreasonable, arbitrary or unconscionable; it involves more than an error of judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983). The trial court is best able to judge the credibility of the witnesses and to weigh the evidence. *Davis v. Flickinger*, 77 Ohio St.3d 415, 418-419, 674 N.E.2d 1159 (1997) (the court does not abuse its discretion if there was competent, credible evidence to support the decision).

{¶35} Clear and convincing evidence is that amount of proof which can "produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. The standard "does not mean clear and unequivocal." *Cross*, 161 Ohio St. at 477. The clear and convincing standard requires more than the preponderance of the evidence standard but less than the beyond a reasonable doubt standard applicable to criminal cases. *Id.*

{¶36} Where a child is not orphaned or abandoned and has not been in temporary custody for 12 months of a 22-month period at the time the permanent custody motion is filed, the court can grant permanent custody to the agency if it finds by clear and convincing evidence: (1) the child cannot be placed with either parent within a reasonable time or should not be placed with the parents and (2) it is in the child's best interest to grant permanent custody to the agency. R.C. 2151.414(B)(1)(a). The mother's first assignment of error corresponds to the first prong of the test, and her second assignment of error corresponds to the second prong.

{¶37} In determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. R.C. 2151.414(E). 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" if the court finds by clear and convincing evidence the existence of any factor on the list of sixteen statutory factors. R.C. 2151.414(E)(1)-(16).

{¶38} For instance, as the juvenile court pointed out with regard to the father, division (E)(6) applied as the father was convicted of a statute specified in that division and the child or the child's sibling was a victim. *See* R.C. 2151.414(E)(6), citing R.C. 2907.322. As another example, division (E)(1) can be applied when "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." R.C. 2151.414(E)(1). The court's judgment specifically explained it was not relying on this division.

{¶39} Rather, the juvenile court agreed with the agency's arguments on the applicability of divisions (E)(5) and (E)(16). Pursuant to division (E)(5), the court "shall find the child cannot be placed with either parent within a reasonable time or should not be placed with either parent" if the court finds by clear and convincing evidence: "(5) The parent is incarcerated for an offense committed against the child or a sibling of the child." R.C. 2151.414(E)(5). Division (E)(16) adds to the list: "Any other factor the court considers relevant." R.C. 2151.414(E)(16).

{¶40} The mother states that although she was incarcerated for attempted obstruction of justice for her acts while the police were attempting to arrest the father for pandering child pornography, division (E)(5) did not apply as she was not the party who committed a sex offense against the children. Essentially, she argues she did not commit the offense of attempting to obstruct justice "against" the children when she fled with them and their father and rented a hotel room in which to hide while law enforcement searched for the father for pandering child pornography and searched for the children to ensure their safety. (While in hiding, the father possessed a video recorder containing a video showing Garwon sexually assaulting her son, and he showed the video to the mother.)

{¶41} After the father pled to two second-degree felonies, the mother pled guilty to attempted obstruction of justice in violation of R.C. 2921.32(A)(2),(C)(4) and R.C. 2923.02, amended from obstruction of justice. The obstruction of justice charge had the following elements: with purpose to hinder the discovery, apprehension, prosecution,

conviction, or punishment of another for a crime or to assist another to benefit from the commission of a crime, the defendant provided the other person with money, transportation, a weapon, a disguise, or other means of avoiding discovery or apprehension. R.C. 2921.32(A)(2).

{¶42} The mother's original offense would have been a third-degree felony because the crime committed by the person aided was a second-degree felony and the mother knew or had reason to believe the crime committed by the person aided was such an offense. R.C. 2921.32(C)(4). This division (C)(4) enhancement was part of the mother's guilty plea. By pleading to attempt, the degree of the felony was statutorily reduced to a fourth-degree felony. R.C. 2923.02(E)(1) (an attempt to commit an offense is an offense of the next lesser degree than the offense attempted, with certain exceptions).

{¶43} The agency attached the parents' sentencing entries to the motion for permanent custody, and the court's judgment memorialized the parties' agreement allowing the court to take notice of the convictions. The mother's sentencing entry said prison was necessary as the harm to the victims was so great. The juvenile court found the father's offenses were committed against a child or sibling, and this is not contested. The mother's offense was based on attempting to assist him from being apprehended for his offenses for which one of the subject children (who was the sibling of the other child) was a victim. (And, the children were with them while she was attempting this.)

{¶44} In any event, the juvenile court found the entirety of the situation called for the application of division (E)(16), which can be used when the court's decision is based on "[a]ny other factor the court considers relevant." *See* R.C. 2151.414(E)(16). The court concluded the totality of the circumstances showed the children could not be placed with either parent within a reasonable time or should not be placed with either parent.

{¶45} The mother argues the placement of the children with her within a reasonable time was not out of reach. She notes her anticipated release date was three months after the hearing (and a month later if she did not get credit for good time). She suggests she could complete her case plan within six months of her release and characterizes this additional time of nine or ten months as reasonable. Yet, the children had already been out of her care for over a year. It was within the court's discretion to

find by clear and convincing evidence that her estimated timeline would not constitute a reasonable time and that she was unlikely to complete her case plan this soon after release from prison.

{¶46} Regardless, the test asks whether the children cannot be placed with the mother within a reasonable time *or should not be placed with her* (without regard to the timing of any future consideration of placement). That is, the latter option does not refer to a reasonable time in the future but essentially states: regardless of what she may accomplish within a reasonable time, the children should not be placed with her due to an event or the entirety of the situation. *See* R.C. 2151.414(B)(1)(a),(E).

{¶47} The mother entered a relationship with a known sex offender who previously committed a felony offense against a minor. She then had two children with him. She left her children home with him as the primary caretaker while she was the breadwinner. She let another man (Garwon) move into the residence and stay with her children alone at times. This man eventually sexually assaulted her four-year-old son. The mother knew there were cameras set up inside her house. There was child pornography on computers in her house. She saw a video showing Garwon sexually assaulting her son. The mother made reference to needing the rent money Garwon paid to live at her house, while also claiming she worked 60 to 70 hours per week. The father possessed the video for a year. The intake caseworker received the impression from the mother's changing statements that she knew about the video long before she claimed. This witness also relayed the mother's extremely disturbing statement, wherein she fearfully pondered whether there may exist an inappropriate video featuring herself with the children, which may have been filmed when she was under the influence of some unknown pill.

{¶48} A reasonable trier of fact could easily conclude the mother's testimony claiming she only learned of the video an hour before the Marshals arrived at the hotel (where the family had been hiding for three weeks) was not credible. Credibility is a question for the trier of fact who occupies the best position from which to judge demeanor, voice inflection, gestures, eye movements, nervousness, and other signs of untruthfulness as a witness is testifying. *Davis*, 77 Ohio St.3d at 418-419 (these indicators do not translate well onto the written page).

{¶49} Furthermore, with the police at her residence seeking to arrest the father and to protect the children, the mother abruptly left her workplace because the father said it was an emergency. She then drove with him to a location in another state which was more than an hour away from their residence. Witnesses saw the bulletin on the news asking for assistance in locating the family. The police called and texted the mother. She turned her phone off, rented a hotel room, and supported the family from her bank account while in hiding. The mother lacked credibility when she testified she did not know she was hiding from law enforcement officers for three weeks, who were seeking to arrest the father for child sex offenses and who wanted to ensure the children's safety.

{¶50} Then, when the Marshals knocked on her hotel room door, the mother did not let them in, resulting in them breaking open the hotel door in the children's presence. Additionally, she knew her youngest child had medical issues and was missing important services while they were in hiding. Apparently during the hotel stay, this child, who was only weeks from her second birthday, was being fed mainly orange baby food, so much that her skin turned an orange hue. The child could not even bring herself to a standing position.

{¶51} However, this child quickly learned new skills after removal from the parents. Both children had issues which began to rapidly diminish after the foster family intervened in their lives, provided them a nurturing home, and ensured they received regular therapy of various types. The children continue to need a committed guardian who can ensure the children attend their appointments and practice their skills at home. There is no indication the mother could properly execute this role for children with these needs. The father was the children's primary caretaker during their unsatisfactory early upbringing, and the mother failed to protect the children in many ways.

{¶52} In sum, the trial court reasonably found the facts surrounding the children's lives, the fleeing, and the mother's conviction and imprisonment combined to establish a relevant factor under R.C. 2151.414(E)(16). Accordingly, there was sufficient evidence to support the agency's position that the children could not be placed with either parent within a reasonable time or should not be placed with a parent. The trial court could reasonably weigh the proof to find by clear and convincing evidence that this prong of the test was satisfied. The mother's first assignment of error is therefore overruled.

ASSIGNMENT OF ERROR TWO: BEST INTERESTS

{¶53} The mother's second assignment of error, corresponding to the second part of the permanent custody test, provides:

"THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY TO THE BELMONT COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES [AS THE AGENCY] FAILED TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT IT IS IN THE BEST INTERESTS OF THE MINOR CHILDREN TO GRANT PERMANENT CUSTODY AND SUCH DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶54} Upon finding a child cannot be placed with either parent within a reasonable time or should not be placed with a parent, the court cannot grant permanent custody to the agency unless it also finds by clear and convincing evidence that it is in the child's best interest. R.C. 2151.414(B)(1)(a). In determining the best interest of a child, the court shall consider all relevant factors, including but not limited to: (a) the interaction and interrelationship of the child with parents, siblings, relatives, foster caregivers, and any person who may significantly affect the child; (b) the child's wishes, expressed directly or through the guardian ad litem, with due regard for the child's maturity; (c) the child's custodial history, including whether the child has been in temporary custody for 12 months (of a 22-month period); (d) the child's need for a legally secure permanent placement and whether this can be achieved without granting permanent custody to the agency; and (e) the applicability of any factors in divisions (E)(7) to (11). R.C. 2151.414(D)(1)(a)-(e).

{¶55} This is a non-exhaustive list of factors the court must consider. *In re A.M.*, __ Ohio St.3d __, 2020-Ohio-5102, __ N.E.3d __, ¶ 19. The court is encouraged but not required to expressly discuss each of these best interest factors. *Id.* at ¶ 31-32. Here, the juvenile court discussed the relevant factors in its judgment granting permanent custody to the agency.

{¶56} As for the significant relationships in the children's lives, the father was considered to be the children's primary caretaker prior to the arrest of the parents. The mother was viewed as someone who was unable to protect her children. She had no contact with her children after her arrest. There was a no contact order when her criminal case was pending, and she claimed she thought she was still prohibited from sending

cards or letters after she entered her plea and was sent to prison. The children subsequently lived together in a home with committed foster parents who ensured they regularly attended their various appointments and who were interested in adopting the children. *See* R.C. 2151.414(D)(1)(a). The children progressed rapidly after being removed from the parents and raised by the foster family.

{¶57} Although the children had not yet been in the agency's temporary custody for 12 months when the September 17, 2019 motion for permanent custody was filed (and this ground was not used under the first prong of the test), the children had been out of the mother's care for almost 14 months by the time of the December 23, 2019 hearing. They were with the same foster parents the entire time (after the first night). *See* R.C. 2151.414(D)(1)(c).

{¶58} The children were still young: Child A was six years old at the time of the hearing, and Child B was three years old. At the time of removal from the parents' care, Child A was five years old, and Child B was under two years old. They did not see their mother thereafter. Their guardian ad litem believed permanent custody was in the children's best interests for various reasons. *See* R.C. 2151.414(D)(1)(b).

{¶59} The children were clearly in need of a legally secure placement, and it was not unreasonable to find that a legally secure placement could only be achieved by granting permanent custody to the agency. *See* R.C. 2151.414(D)(1)(d). The mother was incarcerated, as she had been for over a year by the time of the hearing. The mother's future release from prison three or four months after the hearing (depending on good behavior) would not resolve the other concerns. The mother had not received a psychological evaluation, counseling, or parenting classes; she was on a waiting list at the prison for these services. There was no indication her failure to receive these services was due to the lack of prison visits by the agency's caseworker while the mother was imprisoned in Marysville during the six months before the hearing. And, there is no indication the county jail had such services (when she was incarcerated prior to being transported to prison) or that jail visits by a caseworker after the first two visits would have changed her level of progress.

{¶60} As the trial court indicated, the children had a traumatic experience, and at least one of the children experienced a "horrific" life in the year before removal. The

children had medical, psychological, physical, and/or social needs that required more care and attention than typical children. The court reasonably expressed a concern that any future placement with their mother could cause regression. The court also reasonably questioned her ability to keep her children safe. We incorporate the recitation of the testimony in our Statement of the Case and the observations made in analyzing the first assignment of error, which show what the children's best interests require and what acts or omissions by the mother negatively affected the children's best interests. Finally, the last best interest factor is not alleged to be applicable here as divisions (E)(7) through (11) are not said to apply. *See* R.C. 2151.414(D)(1)(e).

{¶61} Considering all of the relevant factors, there was sufficient evidence presented to allow the trial court to clearly and convincingly find that the grant of permanent custody to the agency was in the children's best interests, and the court's decision was not contrary to the manifest weight of the evidence. Accordingly, this assignment of error is overruled.

{¶62} For the foregoing reasons, the trial court's judgment granting permanent custody to the agency is affirmed.

Donofrio, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Juvenile Division of Belmont County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.