

[Cite as *In re N.M.*, 2018-Ohio-1100.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106131

IN RE: N.M., ET AL.
Minor Children

[Appeal by J.A.M., Father]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 14915620 and AD 14915621

BEFORE: McCormack, P.J., Celebrezze, J., and Jones, J.

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TIM McCORMACK, P.J.:

{¶1} Appellant, J.A.M. (“Father”), appeals from an order of the common pleas court, juvenile division, terminating his parental rights and placing his two minor children, N.M. and R.M., in the permanent custody of appellee, Cuyahoga County Department of Children and Family Services (“CCDCFS” or the “agency”).¹

{¶2} After a thorough review of the record, we affirm the judgment of the juvenile court.

I. Procedural and Substantive History

{¶3} On December 16, 2014, the CCDCFS filed a complaint for dependency and emergency temporary custody regarding N.M. and R.M. The court held a hearing on the motion on January 9, 2015. At the hearing, the social worker testified that N.M. and R.M. had a history with the agency dating back to when each child tested positive for drugs at birth; the children’s mother was arrested in August 2014 for child endangerment for leaving the children “unsupervised out in the street for a lengthy period of time, and mother was asleep in the basement”; the children’s mother tested positive for drugs at the time; and the children’s mother and father have substance abuse problems and had not complied with the agency’s drug screen requests. After the hearing, the court granted emergency temporary custody of the two minor children to the agency.

{¶4} Thereafter, Grandfather filed a motion to intervene and a motion to set an emergency hearing, seeking custody of the children, which the trial court denied.

¹ J.H.M. (“Grandfather”) filed his own appeal of the decision of the juvenile court denying his motion for legal custody of N.M. and R.M. in the companion case, *In re N.M.*, 8th Dist. Cuyahoga No. 106130.

{¶5} On March 3, 2015, the parents stipulated to an adjudication of dependency regarding N.M. and R.M., and the court held a dispositional hearing on March 5, 2015. At this hearing, the social worker, the prosecutor, and the children’s guardian ad litem (“GAL”) recommended that temporary custody with the agency was in the best interest of the children, due to concerns with the parents’ substance abuse. The social worker testified that both parents had tested positive for opiates and Father had tested positive for marijuana. The social worker also testified that the agency did not recommend Grandfather for placement of the children because the parents lived with Grandfather, the agency did not believe Grandfather shared the agency’s concerns, and Grandfather’s health was at issue. The court granted CCDCFS’s motion for temporary custody and placed the children in foster care. Approximately two months later, Grandfather filed another motion to intervene, which the trial court again denied.

{¶6} On November 16, 2015, the agency filed a motion to modify temporary custody to permanent custody. Thereafter, Father filed a motion for legal custody to Grandfather. Grandfather also filed a third motion to intervene and his own motion for legal custody. On April 27, 2016, the trial court summarily denied Grandfather’s motion to intervene, which Grandfather appealed to this court. On appeal, we reversed the trial court, finding the trial court erred in denying Grandfather’s motion without a hearing. *See In re N.M.*, 2016-Ohio-7967, 74 N.E.3d 852 (8th Dist.). On remand, the trial court granted Grandfather’s motion to intervene.

{¶7} On July 14, 2017, Susan Jankite, GAL for the children, filed an updated guardian ad litem report in which she stated that although Father reports that he is receiving treatment from a doctor, Father has made “very little progress” on case plan objectives, and Father has spent the past two years being resistant or evasive. Jankite also noted that she has not been able to determine where Father was residing.

{¶8} Relating to Grandfather, Jankite reported as follows:

The paternal grandfather is interested, but his behaviors at the in camera interview, the recent pretrial, and during the pendency of this case are disturbing. The guardian preemptively contacted counsel for the grandfather and requested the civil protection order is observed when the children were brought for the in camera interview, but the grandfather placed himself in front of the judge's door and then confronted the guardian ad litem, demanding to know why he can't have his grandchildren. This is his pattern of demanding answers, then refusing to listen to them. He displays no empathy for these children and their losses but processes the events of the last two years in terms of how they affected him. If these children were placed with him, the guardian has no confidence any of the services they are receiving would continue or their previous connections with others be encouraged to continue. He will take no direction as demonstrated by his uninvited appearances at the foster care placement despite being told not to. The guardian ad litem wrote to the grandfather's counsel on or about June 19, 2017, offering to make a home visit but requested the attorney attend also. Despite his attorney's diligent efforts to make arrangements, the grandfather has not responded as of this writing. Thus, the guardian had no opportunity to see the grandfather's home or the father's current residence. She is without direct knowledge either has appropriate accommodations and is reluctant to accept their assurances due to their past conduct.

{¶9} The GAL concluded in her report that she continues to opine that permanent custody is in the children's best interest.

{¶10} On July 20, 2017, the court held a dispositional hearing on the agency's motion for permanent custody. At the hearing, Ian Sewolich, ongoing social worker for CCDCFS, Susan Jankite, and Grandfather testified.

{¶11} Ian Sewolich testified that the agency had established a case plan for the parents with the ultimate goal of reunification. When Sewolich received the case from the initial social worker in September 2015, the children's mother was in rehab for substance abuse and Father was not participating in any agency-referred services. The children's mother passed away in February 2016 due to a drug overdose.

{¶12} The social worker testified that Father's case plan addressed Father's substance abuse, anger management, and housing. Regarding substance abuse, the social worker testified that Father has a history of substance abuse. He has admitted to using heroin and marijuana, and he has been "in and out of treatment" programs since Sewolich has been assigned the case but has never successfully completed a treatment program. Father was discharged from at least one program due to his repeated "dirty" urine screens. Part of the case plan included submitting to random drug tests. The agency has repeatedly requested Father to submit to random drug screens, and Father has repeatedly refused to submit to the testing, with the exception of the hair follicle test, which resulted in a positive screen for opiates. Although Father claims to have had "clean" screens, the testing from his most recent drug treatment program has not been randomly conducted; rather, they are scheduled appointments, which do not meet the case plan requirements.

{¶13} Sewolich explained that Father's case plan included services for anger management due to incidents that occurred with the original social worker. Sewolich testified that to his knowledge, Father has never completed anger management services.

{¶14} Sewolich testified concerning Father's housing. Part of the case plan included improving housing conditions. At the time Sewolich became involved, the parents' housing was "very cluttered * * * a broken window, * * * beyond a mess," the children's toys were "thrown everywhere," to the point where it was difficult to move around the house, and the refrigerator and stove were not working. The city also had cited the parents for various housing code violations concerning the exterior of the house. According to Sewolich, although Father claimed to have made repairs, and was "working on it, trying to get it into a livable condition," when Sewolich asked for permission to visit the home for inspection, Father declined.

Moreover, at the time of the hearing, it was not entirely clear where Father lived. Sewolich testified that Father told him he is “staying between his mother’s house and his father’s house.” When Sewolich asked Father if he could complete a home visit at his mother’s house, Father advised him that his mother “is funny about people coming into the home” and Sewolich was not granted permission to visit. Grandfather testified at the hearing that Father was not staying with him and he, in fact, did not know where Father was living at that time.

{¶15} Sewolich testified that the agency has investigated different placement options for the children, including maternal and paternal relatives. The children were initially placed with a family that was close to Father and Grandfather for an extended visit, or a “brief stay,” to which the agency was not opposed.² Although this family considered legal custody of the children, due to arguments between Father and Grandfather during visits, the family decided that they could not “handle all the family interference when they were just trying to take care of the kids.” Placement was no longer an option with that family. Sewolich further testified that although the children had visitations and an ongoing relationship with certain maternal relatives in Streetsboro, the relatives were not found to be an appropriate placement.

{¶16} At the time of the removal of the children, the agency considered Grandfather for placement; however, the agency determined placement with Grandfather was not appropriate. Sewolich testified that Grandfather demonstrated inappropriate behavior concerning the children and the court process. Grandfather initially refused to produce the children after the trial court had ordered the children to be placed in the agency’s temporary custody, and he was once physically escorted out of the building where the agency held family visitation with the children,

² Although at trial, the social worker refers to this family as “paternal relatives,” this family was not related by blood or marriage to Father or Grandfather. Rather, Grandfather testified that he raised the patriarch of this family “like my son” from aged four or five years.

following Grandfather's volatile outburst. The social worker also testified that the children's foster mother had obtained a civil protection order against Grandfather, which is in effect until October 2021, prohibiting him from having contact with the children. Finally, despite Grandfather's assurances that he "was getting [his] house ready," the children's GAL testified that Grandfather has not permitted her to visit his home.

{¶17} Sewolich testified concerning Father's visits with his children. Sewolich provided that Father visited with the children every other week. Although the visits were initially going well, at the time of the trial, they "ha[dn't] been going too well." The social worker stated that Father's interactions with his children "seemed a bit off." Sewolich also explained that Father has been arriving late for every visit and the reason given is that Father has transportation problems. On one particular visit on R.M.'s birthday, Father arrived late, immediately left the visit to purchase birthday candles for his son, and then left after two hours, despite having requested an extended visit.

{¶18} At the time of the trial, N.M. and R.M. were staying with their foster mother, with whom they had been living since April 2015. Sewolich testified that the children were doing well with the foster mother, and the agency has never had any concerns with the foster mother. The social worker also testified that the children have a very good relationship with paternal relatives in Michigan. These relatives live approximately three hours from Cleveland, they visit family in the Cleveland area, they have been approved by the agency, and they wish to adopt the children. Sewolich stated that the children enjoy spending time with their Michigan relatives, they listen to both parents, and they are sad when they have to leave.

{¶19} Jankite, the children's GAL, testified that permanent custody is in the children's best interest. She does not believe Father or Grandfather would meet the children's needs.

She stated that Father failed to complete his case plan services and she believed that Grandfather would cooperate with the agency for only as long as he wished to, citing to examples where the Grandfather did exactly what he was told not to do, such as going to the foster mother's home after she advised Grandfather not to go. Jankite stated that the children "need people who are going to be appropriate, who are going to be committed to them, and who are going to follow through, and who they can count on." She explained how the children's needs are currently being met:

R.M. and N.M. do not stop growing and they'll need some form of guidance and structure in their lives, and I feel that those needs have been met now, at least the past two and a half years, and the transition, I think, with the relatives in Michigan [has] been going very, very well.

I went up [to Michigan]. * * * I drove up there and visited the home. I saw [N.M. and R.M.] with these paternal relatives. It was a very, very good fit. Very positive.

There [are] four other children in that home. The children got along all very well together.

I've seen an amazing transformation with R.M. and N.M. They are much different children than when I first met them two and a half years ago on my birthday, much, much different, and different in many good ways. Behavior-wise. They look healthy.

I remember going to the first foster home right after I got this case and asking the foster mother what had happened to N.M.'s teeth, because they were in very, very bad shape.

These kids now, they're so healthy, they are bright, they have wonderful manners.

You know, they have just grown and flourished, and just based on my experience to date and my most recent visit over a month ago meeting these relative caregivers, I think it's a wonderful fit, and I would support the agency's motion to convert the temporary custody to permanent custody.

* * * It is a very, very good fit up there, and I do think it is in the children's best interest.

{¶20} Jankite continued to note that she believed N.M. was mature enough to express her wishes, and during an in camera interview with the children, N.M. stated that she would like to remain with her relatives in Michigan. The GAL also stated that she found no conflict between what she believes is in the children’s best interest and “what I’m seeing and what I’m hearing are their wishes.”

{¶21} Grandfather testified that he was close with N.M. and R.M. and he helped care for the children when they were younger. He stated that he would cooperate with the agency if granted legal custody. However, on cross-examination, Grandfather admitted that on two occasions, he had to be physically escorted out of a building and away from the children, explaining that he was escorted out “probably because I didn’t agree with what they were doing, and I voiced my concern.” He conceded that he should have handled matters differently. Additionally, Grandfather testified that he was aware that the GAL had requested a home visit through Grandfather’s attorney, and he “was getting [the] house ready so [the GAL] could come and see it.” But when asked why the GAL did not get a visit, Grandfather replied that he was “waiting for an appointment with [the GAL].”

{¶22} Following the hearing, the trial court granted the agency’s motion for permanent custody. The court found clear and convincing evidence that the children cannot be placed with Father within a reasonable time or should not be placed with Father, citing numerous reasons under R.C. 2151.414(E) in support. The court further found, based upon the evidence presented and the GAL’s recommendation, and after considering all relevant factors, including those factors enumerated in R.C. 2151.414(D), that permanent custody is in the children’s best interest.

In its order, the court also denied Grandfather’s motion for legal custody. Father appeals from this decision of the trial court, raising two assignments of error.

II. Assignments of Error

I. The juvenile court abused its discretion in denying the father's and the grandfather's motions for legal custody of the children to the grandfather.

II. The juvenile court erred in granting permanent custody of the children to the agency.

III. Law and Analysis

{¶23} Father contends that the court erred in denying Father's and Grandfather's motions for legal custody to Grandfather. However, "[a] parent has no standing to assert that the court abused its discretion by failing to give the [paternal grandfather] legal custody; rather, the challenge is limited to whether the court's decision to terminate parental rights was proper." *In re L.W.*, 8th Dist. Cuyahoga No. 104881, 2017-Ohio-657, ¶ 23, quoting *In re S.G.*, 3d Dist. Defiance No. 4-16-13, 2016-Ohio-8403, ¶ 52, citing *In re Pittman*, 9th Dist. Summit No. 20894, 2002-Ohio-2208, ¶ 70. If permanent custody to the agency is in the children's best interests, legal custody to a relative necessarily is not. *In re V.C.*, 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991, ¶ 61, citing *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 11.

{¶24} This court has stated that "a child's best interests are served by the child being placed in a permanent situation that fosters growth, stability, and security." *In re M.S.* at ¶ 11, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991). The willingness of a relative to care for a child does not alter what a court considers in determining whether to grant permanent custody. *Id.*, citing *In re A.D.*, 8th Dist. Cuyahoga No. 85648, 2005-Ohio-5441, ¶ 12. And the court is not required to favor a relative if, after considering all of the statutory factors outlined in R.C. 2151.414(D), the court finds it is in the child's best

interest for the agency to be granted permanent custody. *Id.*, citing *In the Matter of B.H.*, 5th Dist. Fairfield No. 14-CA-53, 2014-Ohio-5790, ¶ 72. As the Ohio Supreme Court has instructed, in deciding what is in a child's best interests, R.C. 2151.414 does not make the availability of a relative placement an all-controlling factor; the statute does not even require the court to weigh that factor more heavily than other factors. *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 63.

{¶25} Thus, Father's challenge to the trial court's judgment granting the agency permanent custody is limited to whether the trial court properly terminated his parental rights. We therefore now review the trial court's judgment awarding CCDCFS permanent custody and terminating Father's parental rights.

{¶26} Father contends that the court erred in granting permanent custody of the children to the agency. He argues that the court's finding that the children cannot or should not be placed with Father is not supported by clear and convincing evidence. Likewise, he argues that the juvenile court's finding that permanent custody was in the best interest of the children is not supported by clear and convincing evidence, particularly in light of Grandfather's availability as a legal custodian.

{¶27} We note, initially, that parents have a constitutionally protected interest in raising their children. *In re M.J.M.*, 8th Dist. Cuyahoga No. 94130, 2010-Ohio-1674, ¶ 15, citing *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). That interest, however, is "always subject to the ultimate welfare of the child." *Id.*, quoting *In re B.L.*, 10th Dist. Franklin No. 04AP-1108, 2005-Ohio-1151, ¶ 7.

{¶28} A juvenile court's termination of parental rights and award of permanent custody to an agency is not reversed unless the judgment is unsupported by clear and convincing evidence.

In re Dylan C., 121 Ohio App.3d 115, 121, 699 N.E.2d 107 (6th Dist.1997); *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 48. “‘Clear and convincing evidence’ is evidence that ‘will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.’” *In re T.B.*, 8th Dist. Cuyahoga No. 99931, 2014-Ohio-2051, ¶ 28, quoting *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954). The evidence must be more than a preponderance, but it does not rise to the level of certainty that is required beyond a reasonable doubt in criminal cases. *Cross*.

{¶29} R.C. 2151.414 sets forth a two-prong analysis to be applied by a juvenile court in adjudicating a motion for permanent custody. R.C. 2151.414(B). First, it authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that any of the factors apply: (a) the child is not abandoned or orphaned, but the child cannot be placed with either parent 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 12 or more months of a consecutive 22-month period; or (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. R.C. 2151.414(B)(1)(a)-(e). *In re J.G.*, 8th Dist. Cuyahoga No. 100681, 2014-Ohio-2652, ¶ 41. Only one of the factors must be present for the first prong of the permanent custody analysis to be satisfied. *In re L.W.*, 8th Dist. Cuyahoga No. 104881, 2017-Ohio-657, at ¶ 28.

{¶30} Second, when any one of the above factors exists, the trial court must analyze whether, by clear and convincing evidence, it is in the best interest of the children to grant permanent custody to the agency pursuant to R.C. 2151.414(D). *Id.*

A. R.C. 2151.414(B) Factors

{¶31} The trial court in this case determined that the condition set forth in R.C. 2151.414(B)(1)(a) was satisfied. Regarding both minor children, the court found that “the child cannot be placed with the father * * * within a reasonable time or should not be placed with the parent” in accordance with the reasons outlined in R.C. 2151.414(E).³

{¶32} In determining whether a child cannot be placed with his or her parents within a reasonable period of time or should not be placed with his or her parents, courts look to R.C. 2151.414(E) for guidance. Under R.C. 2151.414(E), if the trial court determines, by clear and convincing evidence, that one or more of the factors specified in R.C. 2151.414(E)(1) through (16) exists as to the child’s parents, then the trial 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.”

In re V.C., 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991, at ¶ 42.

{¶33} In this case, the trial court found by clear and convincing evidence that both children could not be placed with Father within a reasonable time or should not be placed with Father. The court relied on at least four factors outlined in R.C. 2151.414(E) that applied to Father and concerned both children when the court stated in its journal entry:

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

³ Placement with the mother was not considered at the time of the court’s decision because she had passed away prior to the court’s hearing.

substantially remedy the conditions causing the child to be placed outside the child's home.

* * *

Father has a chemical dependency 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 in this matter. This is further evidence[d] by the father's refusal to submit to random urine screens.

Father is unwilling to provide shelter or to prevent the child from suffering emotional, mental neglect as evidenced by his unwillingness to successfully complete the case plan so he can provide care for the child.

Father has demonstrated a lack of commitment towards the child by failing to provide an adequate permanent home for the child.

R.C. 2151.414(E)(1), (2), (4), and (14).

{¶34} The statute also provides that the court may consider other "relevant" factors.

R.C. 2151.414(E)(16). Here, the court found relevant the following: (1) Grandfather has a protection order against him that include the names of his minor grandchildren, N.M. and R.M., as protected persons, which remains in effect until October 13, 2021; and (2) Grandfather has failed to allow the guardian ad litem to inspect his home, "thus failing to present sufficient evidence that paternal grandfather's home is an adequate permanent home for the child."

{¶35} Substantial compliance with a case plan is not dispositive in and of itself on the issue of reunification and does not preclude a grant of permanent custody to a social services agency. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 139. "The issue is not whether the parent has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child's removal." *Id.*, quoting *In re McKenzie*, 9th Dist. Wayne No. 95CA0015, 1995 Ohio App. LEXIS 4618 (Oct. 18, 1995).

{¶36} In determining whether the parent has substantially remedied the conditions that initially caused the child to be placed outside the home, under the first “E” factor, the court must 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.” R.C. 2151.414(E)(1).

{¶37} We find the record supports the court’s determination that the children could not be placed with Father within a reasonable time or should not be placed with Father. Here, the evidence shows that Father has failed continuously and repeatedly to substantially remedy the conditions causing the children to be removed from the home. The children were initially removed from the home due to the mother’s and Father’s drug abuse. The drug use continued. The mother eventually died from a drug overdose during the pendency of this matter, and Father has admitted to using heroin and marijuana following the children’s removal. And despite having initially participated in some drug treatment programs, he has never successfully completed a treatment program. In fact, as the evidence shows, Father was discharged from at least one program due to repeatedly failing the drug tests. Thereafter, Father has refused to submit to random drug testing, as the case plan mandated, with the exception of the hair follicle test, which resulted in a positive screen for opiates.

{¶38} Father also failed to engage in anger management services and resolve his housing situation, as mandated by the case plan. The evidence demonstrated that Father declined any home inspections, stating that he was still “working on it, trying to get it into a livable condition.” And at the time of trial, it was unclear where Father was living. While Father told

the social worker he was “staying between his mother’s house and his father’s house,” Grandfather testified that he did not know where Father lived.

{¶39} Despite Father’s knowledge of his case plan requirements, very little has changed with respect to Father’s issues more than two and a half years after the children’s removal. Father’s continued failure to complete his case plan services and his inability or unwillingness to provide an adequate home for his children demonstrate his lack of commitment to the children.

{¶40} Accordingly, the record clearly and convincingly supports the trial court’s determination that the children cannot be placed with Father within a reasonable time or should not be placed with Father. Thus, the first prong of the permanent custody analysis has been satisfied.

B. Best Interest of the Children

{¶41} Once the juvenile court determines that one of the factors listed in R.C. 2151.414(B)(1) applies, then the court must determine, by clear and convincing evidence, whether permanent custody is in the best interest of the child. *In re E.C.*, 8th Dist. Cuyahoga No. 103968, 2016-Ohio-4870, ¶ 29.

{¶42} We review a trial court’s determination of a child’s best interest under R.C. 2151.414(D) for abuse of discretion. *In re J.F.*, 8th Dist. Cuyahoga No. 105504, 2018-Ohio-96, ¶ 55, citing *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47. ““A trial court’s failure to base its decision on a consideration of the best interests of the child constitutes an abuse of discretion.”” *In re J.F.*, quoting *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 60.

{¶43} In determining the best interest of a child at a permanent custody hearing, R.C. 2151.414(D)(1) mandates that the juvenile court consider all relevant factors, including the following:

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (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, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period * * *;
- (d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency * * *.
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶44} While the trial court must consider all best-interest factors, only one of the factors enumerated in R.C. 2151.414(D) needs to be resolved in favor of the award of permanent custody in order for the court to terminate parental rights. *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 53; *In re Z.T.*, 8th Dist. Cuyahoga No. 88009, 2007-Ohio-827, ¶ 56.

{¶45} We find in this case that the trial court considered the relevant statutory factors. The court's journal entries granting permanent custody of N.M. and R.M. to the agency state as follows:

The court finds that the continued residence of [N.M. and R.M.] in the home will be contrary to the child[ren]'s best interest and welfare.

The court further finds, based upon evidence presented and the recommendation of the guardian ad litem for the child[ren], and after considering all relevant

factors * * * listed at R.C. 2151.414(D)(a)-(e), that an order of permanent custody is in the child[ren's] best interest.

The court further finds that reasonable efforts were made to prevent the removal of the child[ren] from the father's home or return the child[ren] to the home and to finalize the permanency plan, to wit: reunification. Relevant services provided to the family were: drug and alcohol assessment, substance abuse treatment, anger management, housing, [and] random drug screens. The reason the services were not successful: Father failed to submit to random drug screens and provide stable housing.

Upon considering the interaction and interrelationship of the child[ren] with the child[ren's] parent(s), and foster parents; the custodial history of the child[ren], including whether the child[ren] ha[ve] been in temporary custody of a public children services agency or private child placing agency under one or more months of a consecutive twenty-two (22) month period; the child[ren's] need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody; and the report of the Guardian ad Litem, the court finds by clear and convincing evidence that a grant of permanent custody is in the best interest of the child[ren] * * *.

{¶46} We also find that the evidence supports the trial court's reliance upon the factors outlined in R.C. 2151.414(D) and the court's determination that permanent custody with CCDCFS is in the best interest of the children.

{¶47} The evidence established that although Father regularly visited with the children, the recent visits were not going well, Father's interactions with the children "seemed a bit off," and Father repeatedly arrived late for visits. The evidence also established that the children have a very good relationship with paternal relatives in Michigan and that these relatives have been approved by the agency and they wish to adopt the children. The social worker testified that the children enjoy spending time with their Michigan relatives, they listen to both parents, and they are sad when they have to leave. The GAL testified that the children are doing well with the Michigan relatives and they are a "wonderful fit," as the children's needs are now being met, including providing guidance and structure. She stated that upon visiting with the children

in Michigan, she has witnessed an “amazing transformation” in the children, she has found them “so healthy” and “bright,” and they have “grown and flourished” with these relatives.

{¶48} The evidence further established that the GAL found N.M. mature enough to express her wishes concerning placement, and during an in camera interview, N.M. stated that she would like to remain with her relatives in Michigan. The GAL testified that she found no conflict between what she believes is in the children’s best interest and “what I’m seeing and what I’m hearing are [the children’s] wishes.” The GAL opined that permanent custody, and placement with the Michigan relatives, is in the children’s best interest.

{¶49} The record also demonstrates that the children have been in the agency’s custody for more than two years. They were initially removed from the home on January 9, 2015. The court then granted the agency’s motion for temporary custody on March 5, 2015, and the children have been residing with the same foster mother since April 2015.

{¶50} Finally, as it relates to the children’s need for a legally secure permanent placement, Father essentially argues that a legally secure placement of the children could be achieved by granting legal custody to Grandfather. In support of legal custody to Grandfather, Father contends that Grandfather is a productive member of society, is employed, has housing for the children, and loves his grandchildren.

{¶51} We note, however, the trial court found Grandfather not to be a suitable permanent legal custodian for the children. While a trial court must find by clear and convincing evidence that the parents are not suitable placement options, the court is not required to invoke the same standard with regard to a grandparent. *In re A.D.*, 8th Dist. Cuyahoga No. 85648, 2005-Ohio-5441, at ¶ 12.

{¶52} Here, the trial court noted that Grandfather has an order of protection against him that names N.M. and R.M. as the protected persons. The order, effective until October 2021, requires that Grandfather have no contact with the children. Father argues that the protection order was issued due to Grandfather's alleged "misstep" in going to the foster mother's home and the juvenile court could have terminated this protection order. However, the protection order against Grandfather was issued by the Cuyahoga County Court of Common Pleas, General Division, and Father has failed to show that the juvenile court had the authority to modify or terminate a civil protection order issued by another judge in another division of the Cuyahoga County Common Pleas Court. See *In re J.H.*, 9th Dist. Wayne No. 07CA0018, 2007-Ohio-4214, ¶ 16.

{¶53} The court also noted that Grandfather has failed to present sufficient evidence that his home is an adequate permanent home for the children. Grandfather testified that he had been working on getting his home ready for a home visit. However, the GAL never received such a visit. When asked why the GAL did not get a visit, Grandfather replied that he was "waiting for an appointment with [the GAL]."

{¶54} We are mindful of the Grandfather's willingness to be granted legal custody of his two minor grandchildren. However, we must reiterate that a child's best interest is served by being placed in "a permanent situation that fosters growth, stability, and security." *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, at ¶ 11, citing *In re Adoption of Ridenour*, 61 Ohio St.3d at 324, 574 N.E.2d 1055. And the willingness of a relative to care for a child does not alter what a court considers in determining whether to grant permanent custody. *In re M.S.* at ¶ 11, citing *In re A.D.*, 8th Dist. Cuyahoga No. 85688, 2005-Ohio-5441, at ¶ 12.

{¶55} Here, the trial court considered all relevant statutory factors, and despite the willingness of Grandfather to assume legal custody of the children, clear and convincing evidence supports the trial court's determination that permanent custody is in the best interest of the children. Because permanent custody to the agency is in the children's best interests, legal custody to the paternal grandfather necessarily is not.

{¶56} Father's assignments of error are overruled.

{¶57} The trial court's judgment granting permanent custody to the agency is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the juvenile court to carry this judgment into execution.

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

TIM McCORMACK, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
LARRY A. JONES, SR., J., CONCUR