

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE J.D., ET AL.

Minor Children

[Appeal by M.D., Mother]

:
:
:
:
:

No. 108464

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: November 21, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD17902069 and AD17902070

Appearances:

Thomas A. Rein, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Rachel Eisenberg and Barbara Martincic,
Assistant Prosecuting Attorneys, *for appellee.*

FRANK D. CELEBREZZE, JR., P.J.:

{¶ 1} Appellant, M.D. (“Mother”), brings the instant appeal challenging the trial court’s judgment granting permanent custody of her two minor children, J.D. and A.D., to appellee, Cuyahoga County Department of Children and Family Services (“CCDCFS” or the “agency”). Specifically, Mother argues that the trial court abused its discretion in awarding permanent custody because the agency did not

present sufficient, clear and convincing evidence necessary for the order granting permanent custody. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶ 2} The instant matter pertains to the trial court’s custody determination with respect to two minor children: J.D. (born on September 9, 2012) and A.D. (born on April 20, 2014) who were six and four years old at the time of the permanent-custody hearing in March 2019. The children’s father is D.M. (“Father”). Mother and Father are married.

{¶ 3} The agency originally became involved with the family in November 2016 after the agency learned that the family did not have heat in their home. The agency provided the family assistance with the home’s utilities through the Home Energy Assistance Program (“HEAP”).¹

{¶ 4} A few months later, the agency filed a complaint and sought protective supervision of the children because of other issues, such as cleanliness of the home, and the parents’ mental health and substance abuse issues. On February 1, 2017, the agency filed a complaint alleging the children to be neglected and dependent. Specifically, the complaint alleged that “Mother has [a] substance abuse problem, specifically cocaine, which interferes with her ability to provide appropriate care for the children” and “has mental health issues which interfere with her ability to

¹ HEAP is a federally funded program that provides families assistance with their home energy bills.

provide a stable home for the children.” The complaint also alleged that “Mother has an anger management problem which interferes with her ability to provide a stable home for children,” noting that “Mother is verbally aggressive toward [F]ather in the presence of the children and her behavior is erratic.” With regard to Father, the complaint alleged that he “has been diagnosed as marijuana and alcohol dependent and recommended for intensive out-patient treatment. Father has not yet started treatment.” In addition, the complaint noted that “Father has mental health issues which require ongoing medication and counseling. Father is compliant with medication but has not yet started counseling.” Further, “Father minimizes the effect that [Mother’s] aggressive behavior has on the children. Father continues to reside with Mother and the children despite [Mother’s] erratic behavior.”

{¶ 5} After the complaint was filed, the trial court, on its own motion, scheduled the matter for a predispositional emergency temporary-custody hearing on February 14, 2017. A hearing was held on the court’s motion on February 14, 2017. After hearing testimony on the motion, the trial court held its own motion in abeyance and issued orders to Mother and Father and ordered the children to remain in the parents’ custody.

{¶ 6} The trial court found that “Father has been referred for a substance abuse assessment and a mental health assessment. Father has engaged in services. Mother has been referred for a mental health assessment and a substance abuse assessment. Mother has not engaged in services and continues to use cocaine.” The trial court further ordered Mother “to complete a substance abuse and mental health

assessment. Mother may not miss any appointments for these services. If [M]other misses an appointment this case is to be brought before the [c]ourt immediately.” The trial court then continued the matter for a final pretrial on April 13, 2017, and trial on April 26, 2017.

{¶ 7} On March 14, 2017, the trial court held a hearing on a notice of a violation of a court order. Mother had previously submitted drug screens on February 24 and February 27, 2017. Mother tested positive for cocaine on both drug screens. Mother had also submitted a drug screen on March 10, but the results were pending as of the date of the hearing on March 14. As a result of the February 24 and 27 positive drug screens, the trial court found Mother to be in violation of its February 14, 2017 order. The trial court again held its predispositional emergency temporary-custody motion in abeyance.

{¶ 8} A final pretrial hearing was held on April 13, 2017, and the matter was continued for trial on April 26, 2017. At trial, the magistrate adjudicated the children to be neglected and dependent. As a result, the magistrate awarded Mother legal custody of the children and ordered the children to be placed in the protective supervision of the agency. The magistrate also ordered that the trial court be notified immediately if Mother tested positive for drugs or if Mother missed treatment or service appointments. This order was adopted by the trial court on May 15, 2017.

{¶ 9} Thereafter, on June 9, 2017, the agency filed a notice of violation of court order stating that Mother had left her substance abuse treatment program as

of May 16, 2017. On June 12, 2017, the agency filed a motion to modify the trial court's May 15, 2017 order and sought predispositional emergency temporary custody to Father.

{¶ 10} On June 23, 2017, the trial court held a hearing on the agency's motion. The trial court granted the agency's motion and ordered predispositional temporary custody of the children to Father. The trial court ordered Mother to move out of the family home and issued a no-contact order between Mother and the children.

{¶ 11} The agency then, on October 11, 2017, filed a motion to modify protective supervision to temporary custody to the agency, and a motion for predispositional temporary custody to the agency. The agency filed this motion because Father had tested positive for cocaine and marijuana.

{¶ 12} On November 7, 2017, the trial court held a hearing on the agency's motion for predispositional temporary custody. The trial court granted the agency's motion and placed the children with their paternal grandmother.

{¶ 13} The trial court then held a dispositional hearing on January 30, 2018, on the agency's motion to modify protective supervision to temporary custody and granted the agency's motion. The trial court found that "[t]here has not been significant progress on the case plan by [M]other or by [F]ather and progress has not been made in alleviating the cause for the removal of the child[ren] from the home." The trial court terminated protective supervision and ordered the children

committed to the temporary custody of the agency. The children remained in the care of their paternal grandmother.

{¶ 14} On April 30, 2018, the agency filed a motion to modify temporary custody to permanent custody. A hearing on the agency's motion was continued on several occasions. On one occasion, on September 20, 2018, the matter was continued because Mother was removed from the courthouse by deputies because Mother had a verbal outburst directed toward the paternal grandmother.

{¶ 15} Then, on November 27, 2018, the magistrate conducted an annual review. At the annual review, the magistrate issued a decision continuing the children in the temporary custody of the agency. On December 13, 2018, the trial court issued a judgment entry adopting the magistrate's decision. The matter was continued to February 6, 2019, for trial on the agency's motion to modify temporary custody to permanent custody. However, Mother and Father failed to appear on February 6, 2019, and the matter was continued to March 13, 2019.

{¶ 16} A hearing was held on the agency's motion on March 13, 2019. Prior to hearing testimony on the agency's motion, Father, represented by counsel, agreed to the agency's motion to modify temporary custody to permanent custody, voluntarily relinquishing his parental rights. CCDCFs social worker Halli Martin and the paternal grandmother testified at the permanent-custody hearing on behalf of the agency. Mother testified on her own behalf. Mother's counsel, at the close of testimony, made an oral motion seeking the trial court to consider granting legal custody to the paternal grandmother.

{¶ 17} On March 19, 2019, the trial court issued separate journal entries for each child granting the agency's motion to modify temporary custody to permanent custody. The trial court's journal entries also denied Mother's oral motion for legal custody to the paternal grandmother. In granting the agency's motion, the trial court made the following findings:

Upon due consideration of the evidence and testimony presented, as well as the report from the Guardian ad Litem, the Court finds by clear and convincing evidence that the child[ren] cannot be placed with [M]other or [F]ather within a reasonable time or should not be placed with [M]other or [F]ather for the following reasons:

The child[ren] ha[ve] been in temporary custody of the Cuyahoga County Division of Children and Family Services which is for twelve (12) or more months of a consecutive twenty-two (22) month period. The child[ren] ha[ve] been [in] temporary custody since November 8, 2017.

The Court further finds:

Following the placement of the child[ren] outside the child[ren'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[ren] to be placed outside the home, [M]other and [F]ather failed continuously and repeatedly to substantially remedy the conditions causing the child[ren] to be placed outside the child[ren's] home.

Mother has a chronic mental illness, chronic emotional illness, intellectual disability, and chemical dependency that is so severe that it makes the parent unable to provide an adequate, permanent home for the child[ren] at the present time and, as anticipated, within one (1) year after the Court holds the hearing in this matter.

Mother has neglected the child[ren] between the date the original complaint was filed and the date of the filing of this motion by the failure to regularly visit, communicate, and support the child[ren].

Mother has demonstrated a lack of commitment towards the child[ren] by failing to regularly support, visit, communicate when able to do so,

or by her other actions, has shown an unwillingness to provide an adequate, permanent home for the child[ren].

Mother is unwilling to provide food, clothing, shelter, and other necessities for the child[ren] or to prevent the child[ren] from suffering emotional or mental neglect as evidenced by her unwillingness to successfully complete a case plan so she can provide care for the child[ren].

Father, with the assistance of counsel and the guardian ad litem, has agreed to permanent custody of the child[ren].

{¶ 18} It is from this judgment that Mother filed the instant appeal. Mother assigns two errors for review:

I. The trial court's decision to deprive legal custody to Mother and to grant the [a]gency's [motion to modify temporary custody to permanent custody] was against the manifest weight of the evidence and was not clearly and convincingly supported by the evidence.

II. The trial court erred by granting the [a]gency's motion [to modify temporary custody to] permanent custody against [M]other, as the [a]gency failed to meet its burden as required under R.C. 2151.414.

II. Law and Analysis

{¶ 19} Although presented in two separate assignments of error, Mother's assignments of error present the same argument — that the trial court abused its discretion in awarding permanent custody because the agency did not present sufficient, clear and convincing evidence necessary for the order granting permanent custody. As such, we will address these assignments of error together.

A. Standard of Review

{¶ 20} “Parents have a constitutionally protected interest in ‘the care, custody, and management of their child[ren].’” *In re M.J.M.*, 8th Dist. Cuyahoga No. 94130, 2010-Ohio-1674, ¶ 15, quoting *Santosky v. Kramer*, 455 U.S. 745, 753,

102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). However, that interest must “always [be] subject to the ultimate welfare of the child.” *Id.*, quoting *In re B.L.*, 10th Dist. Franklin No. 04AP-1108, 2005-Ohio-1151, ¶ 7.

{¶ 21} A juvenile court’s termination of parental rights and award of permanent custody to an agency shall not be reversed unless the judgment is not supported by clear and convincing evidence. *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 48, citing *In re M.J.*, 8th Dist. Cuyahoga No. 100071, 2013-Ohio-5440, ¶ 24. “‘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).

{¶ 22} R.C. 2151.414 provides a two-prong analysis to be applied by a juvenile court in adjudicating a motion for permanent custody. *In re S.C.*, 2018-Ohio-2523, 115 N.E.3d 813, ¶ 20 (8th Dist.), citing R.C. 2151.414(B). The first prong of this statute 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 following 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. *Id.*, citing R.C. 2151.414(B)(1)(a)-(e). “Only one of the factors must be present for the first prong of the permanent custody analysis to be satisfied.” *Id.*, citing *In re L.W.*, 8th Dist. Cuyahoga No. 104881, 2017-Ohio-657, ¶ 28.

{¶ 23} In accordance with the second prong of R.C. 2151.414, 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.* at ¶ 21, citing *In re L.W.*

B. R.C. 2151.414(B) Factors

{¶ 24} In the instant matter, although Mother contests the trial court’s findings relative to R.C. 2151.414(B), Mother does not present any argument as to how the trial court failed to make the requisite R.C. 2151.414(B) findings. Nevertheless, we note that the trial court determined that the conditions set forth in R.C. 2151.414(B)(1)(d) were satisfied.

{¶ 25} We find that the record clearly and convincingly supports the trial court’s determination under R.C. 2151.414(B)(1)(d) that the children have 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.

Regarding both children, the trial court found that the children have been in temporary custody since November 8, 2017. The hearing on the agency's motion to modify temporary custody to permanent custody was held on March 13, 2019, and thus, the children had been in the temporary custody of the agency for approximately 16 months. The trial court determined that the children had been in the temporary custody of a public children services agency for 12 or more months of a consecutive 22-month period. *See* R.C. 2151.414(B)(1)(d). Mother does not challenge this finding on appeal. Nevertheless, this finding is supported by the record.

{¶ 26} If the trial court determines that R.C. 2151.414(B)(1)(d) applies, the trial court need not also find that the child cannot or should not be placed with either parent within a reasonable time. *In re L.W.*, 8th Dist. Cuyahoga No. 107648, 2019-Ohio-1344, at ¶ 15, citing *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, ¶ 21. Therefore, because the trial court found clear and convincing evidence to support a finding under R.C. 2151.414(B)(1)(d), it was not required to make any other finding under R.C. 2151.414(B). *Id.*

{¶ 27} However, in our review of the trial court's journal entries, we note that the trial court made an alternative finding pursuant to R.C. 2151.414(B)(1)(a) and found by clear and convincing evidence that "the child[ren] cannot be placed with one of the child[ren's] parents within a reasonable period of time and should not be placed with either parent." Mother challenges this determination.

{¶ 28} Mother argues that the trial court “did not specifically reference at any time during the hearings or in its journal entr[ies]” which R.C. 2131.414(B)(1) findings it made. This argument is not supported by the record. In its journal entries granting the agency’s motion to modify temporary custody to permanent custody, the trial court found that

[M]other and [F]ather failed continuously and repeatedly to substantially remedy the conditions causing the child[ren] to be placed outside the child[ren’s] home.

Mother has a chronic mental illness, chronic emotional illness, intellectual disability, and chemical dependency that is so severe that it makes the parent unable to provide an adequate, permanent home for the child[ren] at the present time and, as anticipated, within one (1) year after the Court holds the hearing in this matter.

Mother has neglected the child[ren] between the date the original complaint was filed and the date of the filing of this motion by the failure to regularly visit, communicate, and support the child[ren].

Mother has demonstrated a lack of commitment towards the child[ren] by failing to regularly support, visit, communicate when able to do so, or by her other actions, has shown an unwillingness to provide an adequate, permanent home for the child[ren].

Mother is unwilling to provide food, clothing, shelter, and other necessities for the child[ren] or to prevent the child[ren] from suffering emotional or mental neglect as evidenced by her unwillingness to successfully complete a case plan so she can provide care for the child[ren].

It appears from the plain reading of the trial court’s journal entries that the trial court found that these findings supported its conclusion that the children could not be placed with either parent within a reasonable time or should not be placed with the children’s parents in accordance with R.C. 2151.414(B)(1)(a). The record reflects that Mother failed to complete portions of her case plan, had substance abuse issues,

and was not able to obtain housing. Therefore, we find the trial court's determination with regard to R.C. 2151.414(B)(1)(a) is supported by competent, credible evidence in the record. Further, the trial court found that subsection (d) was satisfied as discussed above. As we noted above, only one of the R.C. 2151.414(B)(1) factors must be present. *See In re S.C.*, 2018-Ohio-2523, 115 N.E.3d 813, at ¶ 20, citing *In re L.W.*, 8th Dist. Cuyahoga No. 104881, 2017-Ohio-657, at ¶ 28.

{¶ 29} Accordingly, we find that the first prong of the permanent-custody analysis has been satisfied.

C. Best Interest of the Children

{¶ 30} Mother also challenges the trial court's judgment as to the second R.C. 2151.414 prong. Mother argues that the trial court abused its discretion in awarding permanent custody because the agency did not present sufficient, clear and convincing evidence necessary for the order granting permanent custody.

{¶ 31} If the juvenile court determines that one of the factors listed in R.C. 2151.414(B)(1) applies, then it must determine, by clear and convincing evidence, whether permanent custody is in the best interest of the child. *In re I.S.*, 8th Dist. Cuyahoga No. 107472, 2019-Ohio-638, ¶ 21, citing *In re E.C.*, 8th Dist. Cuyahoga No. 103968, 2016-Ohio-4870, ¶ 29.

{¶ 32} This court reviews a trial court's best-interest determination under R.C. 2151.414(D) for an abuse of discretion. *In re J.F.*, 2018-Ohio-96, 102 N.E.3d 1264, ¶ 55 (8th Dist.), citing *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-

5618, ¶ 47. In this regard, “[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, at ¶ 60.

{¶ 33} In considering the best-interest determination, 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.

{¶ 34} The juvenile court has considerable discretion in weighing these factors. We review a juvenile court’s determination of a child’s best interest for abuse of that discretion. *In re D.A.* at ¶ 47. Although the juvenile court is required to consider each factor listed in R.C. 2151.414(D)(1), no one factor is to be given greater weight than the others. *In re T.H.*, 8th Dist. Cuyahoga No. 100852, 2014-

Ohio-2985, ¶ 23, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Only *one* of the factors set forth in R.C. 2151.414(D)(1) needs to be resolved in favor of permanent custody. *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17.

{¶ 35} However, “the best interest determination focuses on the child, not the parent.” *In re K.Z.*, 8th Dist. Cuyahoga No. 107269, 2019-Ohio-707, ¶ 85, citing *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, at ¶ 59. “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 N.B.* at ¶ 60, citing *In re T.W.*, 8th Dist. Cuyahoga No. 85845, 2005-Ohio-5446, ¶ 27, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 574 N.E.2d 1055 (1991).

{¶ 36} In the instant matter, we find that the trial court considered the relevant statutory factors. The trial court’s journal entries granting permanent custody of the children to the agency provides, in relevant part,

[M]other and [F]ather failed continuously and repeatedly to substantially remedy the conditions causing the child[ren] to be placed outside the child[ren’s] home.

Mother has a chronic mental illness, chronic emotional illness, intellectual disability, and chemical dependency that is so severe that it makes the parent unable to provide an adequate, permanent home for the child[ren] at the present time and, as anticipated, within one (1) year after the Court holds the hearing in this matter.

Mother has neglected the child[ren] between the date of the original complaint was filed and the date of the filing of this motion by the failure to regularly visit, communicate, and support the child[ren].

Mother has demonstrated a lack of commitment towards the child[ren] by failing to regularly support, visit, communicate when able to do so,

or by her other actions, has shown an unwillingness to provide an adequate, permanent home for the child.

Mother is unwilling to provide food, clothing, shelter, and other necessities for the child[ren] or to prevent the child[ren] from suffering emotional or mental neglect as evidenced by her unwillingness to successfully complete a case plan so she can provide care for the child[ren].

{¶ 37} Mother argues that the trial court ignored the best-interest determination and “failed to undertake a meaningful review of the evidence from the hearing.” We disagree.

{¶ 38} CCDCFS social worker Halli Martin and the paternal grandmother testified at the permanent-custody hearing on behalf of the agency. Martin testified that she was the second social worker on the case, but had effectively been assigned to the case for its duration, having been assigned when the complaint was filed on February 1, 2017.

{¶ 39} CCDCFS developed a case plan for Mother that included objectives for substance abuse, mental health, parenting, anger management, and housing. Martin outlined Mother’s and Father’s case plan objectives as follows:

The case plan for [Mother] was mental health services and substance abuse services and parenting. And for [Father] was parenting, mental health services, and physical health services. [Father], at the time, had reported that he was in remission from cancer, so he was still needing to follow up with his medical doctor to maintain that.

We were wanting them to get stable, either with their mental health or their substance — for [Mother] for substance abuse and her mental health prior to putting in an additional service so that she wouldn’t be overwhelmed. The same with [Father].

(Tr. 47-48.)

{¶ 40} Martin testified that the case plan components were put into place in February and March 2017. At that time, Mother and Father had mental health services set up, and Mother was engaging in intensive outpatient treatment for her substance abuse issues. The agency then sought and was awarded protective supervision. Martin testified that in May 2017, after having been awarded protective supervision, “[a]lmost immediately, [Mother] went missing for about five days. No one could find her.” (Tr. 49.) For the next few months, Mother’s whereabouts were unknown, and Mother refused to provide a drug screen to the agency. It was at this time, in June 2017, that the agency sought predispositional emergency temporary custody to Father, and Mother was ordered to be removed from the family home.

{¶ 41} Then later on in September 2017, Father tested positive for marijuana and cocaine, and the agency then withdrew its motion for predispositional emergency temporary custody to Father and instead sought temporary custody to the agency. At this juncture, a visitation schedule was established with Mother and Father attending the visits together. Mother and Father’s attendance at the visits was sporadic, and Mother and Father would often get into arguments at the visits. On many occasions, Mother and Father canceled the visits at the last moment. When Mother and Father attended the visits, Mother’s behavior was “volatile” and the agency changed the visits to allow Mother and Father to attend the visits separately.

{¶ 42} Martin testified that once the visits were separated, Mother attended the visits regularly. Martin added that Mother “was interacting with her children,

she was attentive. She would play with them. She would paint A.D.'s nails. She would bring them toys or gifts at the visits. They were happy to see her. She was happy to see them." (Tr. 56.) Martin testified that Mother continued to attend the visits regularly from December 2017 through June 2018. However, during this time frame, although Mother was engaged in mental health services, she was not engaged in any substance abuse services and continued to test positive for cocaine.

{¶ 43} Mother and Father were residing in the family home until they were evicted from the home in March 2018. Martin testified that they were "evicted by the Cleveland Housing Network due to nonpayment of rent and the hot water tank and the furnace being stolen from the home." (Tr. 59.) After being evicted, Mother and Father were living in homeless shelters. As of the date of the permanent-custody hearing in March 2018, Mother was still residing in a homeless shelter.

{¶ 44} Mother did begin engaging in substance abuse treatment in March and April 2018. Martin testified that Mother eventually completed an inpatient substance abuse program. After completing the inpatient program, Mother then moved back to the homeless shelter. Mother then completed an intensive outpatient and aftercare program in November 2018. In this time frame, Martin testified that Mother was testing negative when asked to provide drug screens to the agency and was attending all visits with the children in this time frame, approximately from September 2018 through November 2018. In all, Martin stated that Mother "was doing really, really well." (Tr. 62.)

{¶ 45} The magistrate then held an annual review in November 2018. On November 27, 2018, the magistrate issued a decision which continued temporary custody of the children to the agency. On December 13, 2018, the trial court issued a judgment entry adopting the magistrate's decision. The matter was continued to February 6, 2019, for trial on the agency's motion to modify temporary custody to permanent custody. However, Mother and Father failed to appear on February 6, 2019, and the matter was continued for March 13, 2019.

{¶ 46} Martin testified that Mother "absolutely loves her children." (Tr. 71.) Martin added that Mother's visits were going well through December 2018. Martin noted

[Mother] would still bring a ton of stuff for the kids. It is very clear that [Mother] loves her children. She would bring [the children] gifts at every visit. She had a birthday party for herself during one visit because she — [Mother's] birthday came, so she had a birthday party with her kids for herself. But she brought them gifts. So those visits were going well.

(Tr. 71.)

{¶ 47} However, Mother failed to obtain housing. From November 2018 through the date of the permanent-custody hearing on March 13, 2019, Mother was attempting to obtain housing with the assistance of her mental health services provider. As of March 13, 2019, Mother had not successfully obtained housing.

{¶ 48} In addition, Martin testified that "just recently, in the last 30 days or so, she has not done any visits. I did get a call from her stating that she missed court the last time because she was in the psych ward. She didn't have any meds." (Tr.

63.) Martin added that then “[Mother] called me again two weeks later and said she missed the visit because she was [again] in the psych[iatric] ward and she didn’t have any meds.” (Tr. 63.) Martin testified that Mother’s recent behavior was concerning. Martin specifically noted in the past, Mother would ask Martin to provide a drug screen. Martin added that Mother was “very connected to me. I would talk to her regularly. And I have not heard from her in a very long time, in 30 days or more, and that is concerning to me based on our history.” (Tr. 69-70.)

{¶ 49} Martin recommended permanent custody be granted to the agency. Martin noted that “[c]urrently, [Mother] is homeless and she does not have stable housing or any source of income to care for the children. And we don’t know if she’s still using substances. And she was just in the psych[iatric] ward twice, apparently, in February [2019], so her mental health is not yet stable.” (Tr. 75.)

{¶ 50} It is undisputed that Mother complied with the substance abuse objective of her case plan. However, as Martin noted, Mother’s mental health is still not stable. Mother has been diagnosed with depression, bipolar disorder, schizoaffective disorder, and post-traumatic stress disorder. Further, Martin expressed concerns as to Mother’s sobriety.

{¶ 51} With regard to the other case plan objectives, Martin noted that the parenting objective had not been set up. In addition, there was an anger management objective to Mother’s case plan as well. However, Mother testified that she was told by a counselor that parenting classes were not needed. Regardless, the parenting and anger management objectives did not appear to be of a major concern

at the permanent-custody hearing. The major concern was Mother's housing, mental health, and substance abuse case plan objectives. In its journal entry granting the agency's motion, the trial court noted that Mother had not completed or benefited from the substance abuse, mental health, parenting, and housing services.

{¶ 52} However, Mother now on appeal is essentially arguing that she substantially complied with the case plan services.

A parent's 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 A.G.*, 8th Dist. Cuyahoga No. 105254, 2017-Ohio-6892, ¶ 39; *In re J.M.*, 8th Dist. Cuyahoga No. 104030, 2016-Ohio-7307, ¶ 49. The crucial issue is whether the parent has remedied the conditions that caused the child's removal. *Id.*

In re K.W., 8th Dist. Cuyahoga No. 106700, 2018-Ohio-3314, ¶ 27.

{¶ 53} To the extent that Mother argues that the trial court "failed to undertake a meaningful review of the evidence from the hearing," we do not agree.

{¶ 54} As an initial matter, "R.C. 2151.414 does not require the court to specifically discuss each factor it found applicable before making its determination that permanent custody is not in the child's best interest." *In re A.P.*, 8th Dist. Cuyahoga No. 104130, 2016-Ohio-5849, ¶ 28, citing *In re J.B.*, 8th Dist. Cuyahoga No. 97995, 2012-Ohio-3087, ¶ 21. Indeed, "[a] child's best interests require permanency and a safe and secure environment." *In re Holyak*, 8th Dist. Cuyahoga No. 78890, 2001 Ohio App. LEXIS 3105 (July 12, 2001).

{¶ 55} Consequently, we note that this is not the case where despite diligent efforts by Mother to engage in and benefit from case plan services, the statutory time frame was not sufficient to remediate the problems leading to the children's removal from her custody. On the contrary, this is a case where Mother simply failed to utilize the time afforded to her to make any substantial progress toward reunification. *In re AsF(F)*, 12th Dist. Madison Nos. CA2016-05-020 and CA2016-05-021, 2016-Ohio-7836, ¶ 16.

{¶ 56} It is clear in our review of the record that Mother understands the importance of caring for the children. However, it is also clear that Mother does not have the ability to care for the children. Mother is currently homeless. Weeks prior to the permanent-custody hearing, Mother had two separate stays in the psychiatric ward. Although we find it commendable that Mother voluntarily submitted herself to the psychiatric ward, her mental health is still unstable. As of the date of the permanent-custody hearing, Mother had been without housing for more than one year. Mother had not demonstrated any history of stable housing, nor did she identify any prospective housing arrangements. Mother testified that she had been "approved" for housing through the Emerald Development and Economic Network, Inc. ("EDEN")² but was awaiting availability for a three-bedroom apartment. However, Mother provided no sound reason for why she had not yet obtained housing.

² EDEN is nonprofit organization that works in tandem with the Alcohol Drug Addiction and Mental Health Services Board of Cuyahoga County providing housing assistance for the homeless or housing insecure.

{¶ 57} It appears that Mother is arguing that the trial court should have continued temporary custody to allow her an extended opportunity to secure housing. In this way, Mother appears to argue that an extension of temporary custody, rather than granting permanent custody to CCDCFS, was in the children's best interest. We disagree and note that the best-interest determination focuses upon the child, not the parent. "[A] juvenile court is not required to extend temporary custody if it finds that a child's best interest would not be served by an extension[.]" *In re Da.B.*, 8th Dist. Cuyahoga No. 105886, 2018-Ohio-689, ¶ 17. "[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, ¶ 11, citing *In re Adoption of Ridenour*, 61 Ohio St.3d at 324, 574 N.E.2d 1055.

{¶ 58} Importantly, the children's GAL recommended permanent custody with the agency. In her report, the GAL noted that the paternal grandmother indicated that the children were doing well in her home and have been doing well since they were placed with her in November 2017. The GAL further noted that "[b]oth children are able to follow the rules of the home and their behaviors are not a barrier to being maintained in the home." According to the GAL, both parents expressed a desire to parent the children "on a full time basis," but "neither parent has been able to secure independent housing."

{¶ 59} Further, at the permanent-custody hearing, the GAL opined that "the children know who their parents are" and "have expressed love for their parents. I

do not believe they understand this process and what it entails as to custody and desires of where they want to live.” (Tr. 134-135.) The GAL added “[b]ut I don’t believe these children can continue to wait. They need to be in a stable permanent home. They do well [when they have a routine.] And I believe that that can be maintained with permanent custody being granted, so I believe that is in their best interest.” (Tr. 136.)

{¶ 60} Lastly, we note that Martin testified that the paternal grandmother is able to meet the children’s basic needs. More specifically, Martin testified that the paternal grandmother is able to meet J.D.’s special needs because J.D. has been diagnosed with autism and ADHD. J.D. is in special education classes and has an individualized education program. With regard to the paternal grandmother’s care for J.D., Martin testified that the paternal grandmother

has done really well with [J.D.] [J.D.] used to have these outbursts where he was uncontrollable or inconsolable, and grandma worked with the [Cuyahoga County Board of Developmental Disabilities] to learn techniques to help him calm himself down, to help her calm him down, and now she can just kind of redirect him. In fact, the other day when I was there, [J.D.] was climbing on the furniture and she just redirected him and he got down and went and did something else. Whereas before, he would have just kept doing it and not follow directions.

(Tr. 74-75.)

{¶ 61} After reviewing the record, we find that the trial court’s factual findings and best-interest determination are supported by competent and credible evidence in the record. The trial court made a number of factual findings pertaining to Mother that were supported by the record. The children are in need of a legally

secure placement. The children were receiving appropriate care with their paternal grandmother and were by all accounts thriving. The record before this court contains competent, credible evidence supporting the trial court's best-interest determination.

{¶ 62} For all of these reasons, we cannot conclude that the trial court's judgment awarding permanent custody of the children to CCDCFS was unreasonable, arbitrary, or unconscionable.

{¶ 63} Mother's first and second assignments of error are overruled.

{¶ 64} Judgment 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 common pleas court, juvenile division, 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.

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

EILEEN A. GALLAGHER, J., and
MICHELLE J. SHEEHAN, J., CONCUR