

[Cite as *In re I.S.*, 2019-Ohio-638.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107472

IN RE: I.S., ET AL.
Minor Children

[Appeal By A.S., Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 15912444, AD 15912445, and AD 15912446

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

RELEASED AND JOURNALIZED: February 21, 2019

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

{¶1} Appellant, A.S. (“appellant”), brings the instant appeal challenging the trial court’s judgment granting permanent custody of her three minor children, I.S., L.S., and Ad.S., to appellee, Cuyahoga County Department of Children and Family Services (“CCDCFS” or the “agency”). Specifically, appellant argues that the trial court’s judgment awarding permanent custody to CCDCFS was against the manifest weight of the evidence. 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 three minor children: I.S. (born on February 5, 2013); L.S. (born on November 9, 2011); and Ad.S. (born on July 7, 2014). Appellant is the children’s mother.

{¶3} On May 11, 2015, CCDCFS filed a complaint alleging that the children were abused, neglected, and/or dependent, and requesting that the children be placed in the agency’s temporary custody. The children were placed in the predispositional temporary custody of the agency on June 23, 2015. A disposition could not be reached within 90 days, and as a result, the case was dismissed without prejudice on September 8, 2015.

{¶4} CCDCFS refiled its complaint on September 10, 2015, again alleging that the children were abused, neglected, and/or dependent, and requesting temporary custody. The trial court placed the children in the predispositional temporary custody of CCDCFS on September 10, 2015.

{¶5} CCDCFS filed an amended complaint on November 15, 2015. The following day, the trial court held a hearing on CCDCFS's complaint. On November 16, 2015, the trial court adjudicated the children to be neglected and dependent.

{¶6} A dispositional hearing was held on December 7, 2015. Following the hearing, the trial court granted temporary custody of the children to CCDCFS. The trial court's order was journalized on January 5, 2016.

{¶7} CCDCFS filed a motion for an extension of temporary custody on May 9, 2016. The motion was granted on August 1, 2016.

{¶8} On October 26, 2016, CCDCFS filed a motion to modify temporary custody to permanent custody. A hearing on the permanent custody motion was scheduled for September 22, 2017. The agency requested a continuance during the hearing based on the fact that the children's foster parent expressed a desire to obtain legal custody of two of the three children. The agency requested additional time to inquire about the foster parent's desire to have legal custody. The trial court denied the agency's request for a continuance and dismissed the permanent custody motion for want of prosecution.

{¶9} On December 19, 2017, CCDCFS filed a new motion to modify temporary custody to permanent custody. The trial court held a hearing on the agency's permanent custody motion on May 17, 2018. The following parties were present for the permanent custody hearing: (1) CCDCFS social worker Shamatee White; (2) appellant and her attorney; (3) the children's guardian ad litem ("GAL") Amy Habinski; and (4) an assistant prosecuting attorney.

{¶10} On June 18, 2018, the trial court granted CCDCFS's motion for permanent custody. It is from this judgment that appellant filed the instant appeal on July 23, 2018. Appellant assigns one error for review:

I. The termination of appellant's parental rights and the award of permanent custody to the agency is against the manifest weight of the evidence and constitutes a denial of due process of law. Fourteenth Amendment, Constitution of the United States; Article I, [Section] 16, Constitution of the State of Ohio.

II. Law and Analysis

{¶11} In her sole assignment of error, appellant argues that the trial court's judgment granting permanent custody of the children to CCDCFS is against the manifest weight of the evidence.

A. Standard of Review

{¶12} 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.’” *In re M.J.M.* at *id.*, quoting *In re B.L.*, 10th Dist. Franklin No. 04AP-1108, 2005-Ohio-1151, ¶ 7.

{¶13} 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* at *id.*

{¶14} 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 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. 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, ¶ 28.

{¶15} 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.*

B. R.C. 2151.414(B) Factors

{¶16} The trial court determined that the conditions set forth in R.C. 2151.414(B)(1)(a), (b), (c), and (d) were satisfied. Regarding all three children, the trial court found,

That one or more of the factors in division (E) of section 2151.414 of the Revised Code exist and the child cannot be placed with one of the child's parents within a reasonable period of time or should not be placed with either parent;

* * *

The Court finds that:

The child is not orphaned.

The child is abandoned by the alleged father(s).

There are no relatives of the child who are able to take permanent custody.

The child has been in temporary custody of a public children services agency or private child placing agency for twelve or more months of a consecutive twenty-two month period.

Trial court's journal entry, filed June 18, 2018.

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, ¶ 42.

In re N.M., 8th Dist. Cuyahoga No. 106130, 2018-Ohio-1099, ¶ 24.

{¶17} In this case, the trial court found by clear and convincing evidence that the factors set forth in R.C. 2151.414(E)(2), (4), (9), (10), (11), (14), and (15) applied. Regarding the R.C. 2151.414(E) factors that applied to appellant, the trial court's journal entries provide, in relevant part:

The Court further finds:

The chronic alcohol use disorder of the mother 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.

* * *

The mother has placed the child at substantial risk of harm due to alcohol or drug abuse and has refused to participate in treatment as recommended two or more times after a case plan issued requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

* * *

The mother has had parental rights terminated with respect to a sibling of the child and the parent has failed to provide clear and convincing evidence to prove, that notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare and safety of the child.

* * *

The parent(s) has caused or allowed the child to suffer neglect and the Court determines that the seriousness, nature, or likelihood of recurrence of the neglect makes the child's placement with the child's parent a threat to the child's safety.

{¶18} Furthermore, the trial court determined that R.C. 2151.414(E)(16) applied, which provides that a trial court may consider "[a]ny other factor the court considers relevant." The court found that the following factors were relevant:

Mother does not acknowledge or admit the severity of her disorder. The GAL cited in her report that in the years that the GAL has known her, mother "has rarely shown insight into how this keeps happening." Mother's engagement with the child and the child's siblings is predictable and superficial during visitation.

{¶19} After review, we find that the record clearly and convincingly supports the trial court's determination under R.C. 2151.414(B) that the children could not be placed with appellant or the children's fathers within a reasonable time or should not be placed with either parent. Accordingly, we find that the first prong of the permanent custody analysis has been satisfied.

C. Best Interest of the Children

{¶20} Appellant's challenge to the trial court's judgment pertains to the second R.C. 2151.414 prong. Appellant argues that the trial court's finding that permanent custody was in the best interest of the children was against the manifest weight of the evidence.

{¶21} 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.

{¶22} We review a trial court's determination of a child's best interest under R.C. 2151.414(D) for an 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, at ¶ 60.

{¶23} 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.

{¶24} 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.* at ¶ 53; *In re Z.T.*, 8th Dist. Cuyahoga No. 88009, 2007-Ohio-827, ¶ 56.

{¶25} 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 CCDCFS provide, in relevant part,

Upon considering the interaction and interrelationship of the child with the child's parents, siblings, relatives, and foster parents; the age of the child; the custodial history of the child, including whether the child has been in temporary custody of public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of consecutive twenty-two month period; the child's need for legally secure permanent placement and whether that type of placement can be achieved without grant of permanent custody; and, the report of the Guardian ad Litem, the Court finds by clear and convincing evidence that grant of permanent custody is in the best interests of the child and the child cannot be placed with one of the child's parents within reasonable time or should not be placed with either parent.

* * *

The Court finds that the child's return to the home of [mother] will be contrary to the child's best interest.

The Court further finds that reasonable efforts were made to prevent the removal of the child from her home, or to return the child to the home, and to finalize the permanency plan, to wit: reunification.

{¶26} After reviewing the record, we find that the evidence supports the trial court's reliance on the factors set forth in R.C. 2151.414(D) and determination that permanent custody with CCDCFS is in the best interest of the children.

{¶27} CCDCFS child protection specialist Shamatee White testified during the permanent custody hearing. White was assigned to appellant's case in December 2015.

{¶28} When CCDCFS obtained temporary custody of the children, the agency's plan for the children was reunification. CCDCFS developed a case plan for appellant. Appellant's case plan included services for substance abuse, mental health, anger management, basic needs, and community support.

{¶29} White testified that appellant has a history of substance abuse. Appellant's drug of choice is alcohol, and she has been diagnosed with alcohol use disorder and cannabis use disorder. White asserted that appellant had "four prior children removed [from her custody] and her parental rights terminated due to her substance use." (Tr. 20.)

{¶30} Regarding the case plan's substance abuse objective, White testified that appellant was required to complete a substance abuse assessment, attend three Alcoholics Anonymous ("AA") meetings per week, and submit to random drug and alcohol screening. White explained that appellant was not consistent with her substance abuse services: "[Appellant] was not

consistent with her [substance abuse] services. She took an assessment, but did not follow up and complete the services. [Appellant's] been to numerous different providers for her substance abuse." (Tr. 22.) White testified that appellant completed an intensive outpatient treatment program in February 2018 and finished an aftercare program in May 2018.

{¶31} White testified that appellant had not verified that she attended three AA meetings per week, as required under her case plan, and that her attendance was "sporadic." White explained that some of appellant's sporadic attendance was attributable to weather conditions and transportation issues because appellant does not drive. White acknowledged, however, that appellant did participate in "group sessions" through her provider, Orca House.

{¶32} At the time of the May 2018 permanent custody hearing, the last urine screen that appellant completed was in December 2017. This urine screen was negative for all substances. However, CCDCFS also requested a hair screen, and appellant refused to provide a sample for analysis. White testified that the CCDCFS considers a refusal to provide a sample as a positive test. White explained that appellant did not complete all of the random drug tests within 24 hours, as required by the agency's policy.

{¶33} White testified that appellant completed her case plan's mental health objectives. Appellant completed a psychological assessment in January 2016, and she completed two anger management programs. Although appellant completed the mental health and anger management objectives, White explained that the agency had "some concerns" regarding whether appellant benefitted from the services.

{¶34} White testified that she did not see any changes in appellant after she completed the two anger management classes. White explained that appellant became easily frustrated and irritated with the children during visitations: "[s]ometimes [appellant will] raise her voice, yell,

but not scream-yell, but raise her voice, threaten [the children].” (Tr. 38.) With respect to the threats, White asserted that appellant will “say that she’s gonna pop them or smack them or whoop them.” (Tr. 38.) White observed appellant “hit the children on the hand and grab the children” during visitations. (Tr. 68.)

{¶35} White acknowledged that the visitations between appellant and the children had “mostly” been appropriate. Furthermore, appellant’s service providers informed White that appellant did well in her anger management classes.

{¶36} White testified that appellant did not complete the case plan’s basic needs objectives. Appellant lives in a one-bedroom apartment. White opined that the apartment would not be appropriate for the three children:

The home is literally one bedroom. When you enter into the home, it’s the dining room where the kitchen table is included with the kitchen, and then the bathroom and then another room which is the bedroom, which is mother’s bedroom.

And it’s a very tight-fitting place just for visitation. There’s no bedding for the children. There’s no beds for the children. There is only mother’s sleeping arrangements.

(Tr. 41.) Appellant informed White that she was going to move into an apartment across the hall with more rooms. However, appellant had not done so.

{¶37} White was unable to verify appellant’s employment and income situation. Appellant informed White that she works for her landlord and also works for a temporary agency. White was not aware of any other source of income.

{¶38} White testified that appellant did not complete the “medical portion” of the case plan’s basic needs objective. White explained that all three children have special needs and

individualized education programs. One of the children, L.S., has rheumatoid arthritis. Appellant was notified of L.S.'s doctor's appointments. However, she missed "mostly all" of L.S.'s appointments, and only attended "a couple" of them. (Tr. 69.) Appellant did not explain to White why she failed to attend her child's appointments on a regular or consistent basis.

{¶39} White testified that CCDCFS was concerned that appellant would not follow up with L.S.'s medical needs: "[L.S.] is on numerous medications, steroids, injections, medications that she takes daily, a lot of doctor's appointments, therapy, so it is concerning, and she will have this health issue her entire life." (Tr. 72.) White explained that appellant "minimized" L.S.'s medical condition, and she has stated in the past that the medical condition "wasn't anything serious, that pretty much [L.S.'s] rheumatoid arthritis was just something seasonal, [and] it didn't affect [L.S.]" (Tr. 72.)

{¶40} The children have been in a foster home since 2015. White testified that the foster parent does "very well" in providing care for the children, and that the children are doing very well in school.

{¶41} White testified that the agency was unable to find any maternal relatives that were appropriate for placement. CCDCFS investigated placement with the maternal grandmother, but determined that this relative was not appropriate. (Tr. 49.) The agency also investigated placement with a maternal aunt, T.S. The agency determined that this relative was appropriate, however, T.S. indicated that she "want[ed] to adopt, not [obtain] legal custody." (Tr. 49.)

{¶42} White testified that the agency was unable to find any paternal relatives that were appropriate for placement. A paternal grandmother initially indicated that she was interested in obtaining legal custody of L.S. However, this relative changed her mind due to health issues.

White contacted out-of-town paternal relatives, but these relatives were not interested in being considered as placement options.

{¶43} With respect to non-relative placement options, White testified that in early 2018, appellant gave her the name of an individual, C.M., who was interested in obtaining custody of all three children. After receiving the information from appellant, White initiated the investigative process. C.M. completed the background check and home inspection.

{¶44} The children had not had much interaction with C.M., and White was unsure what relationship, if any, C.M. had with the children. As a result, at the time of the permanent custody hearing, White was unable to determine whether C.M. would be an appropriate candidate for obtaining legal custody.

{¶45} White observed one visitation between C.M. and the children at appellant's home. White arranged for additional supervised visitations between the foster parent, C.M., and the children, but they had not taken place at the time of the permanent custody hearing due to the children's school schedule and White's work schedule. The agency was not comfortable with unsupervised visitation between C.M. and the children.

{¶46} White's testimony regarding appellant's substance abuse issues, lack of appropriate housing, and inability to provide for L.S.'s medical needs was supported by the testimony of the children's GAL, Amy Habinski. First, Habinski testified that although appellant's apartment is "adequate," there is not enough space in the apartment for appellant and the three children. Habinski explained that during unannounced visits at appellant's apartment, she observed no food in the fridge, garbage bags "leaking out," and that appellant did not maintain the apartment in a manner that would be appropriate if children were around.

{¶47} Second, regarding appellant’s substance abuse issues, Habinski opined that appellant was “[r]eally not owning up to substance abuse issues here, not owning up to any bad decisions[.]” (Tr. 111.) The trial court asked Habinski whether appellant’s substance abuse treatment had been effective. Habinski reiterated her concern that appellant had not “owned up” to her substance abuse issues. Habinski suggested that appellant did not appear to consider herself to be an alcoholic or fully commit to or engage in sobriety and AA. Habinski was concerned that appellant’s attitude in this regard would “get [her] into trouble again.” (Tr. 113.)

{¶48} Third, regarding L.S.’s medical needs, Habinski testified that appellant was “not really on top of [L.S.’s] special needs.” (Tr. 111.) Habinski explained that L.S. has serious medical and behavioral issues and, as a result, she is not an easy child to manage. Habinski opined, “I don’t think [appellant] is going to be on top of [L.S.] medically or behaviorally.” (Tr. 111-112.) Finally, Habinski testified that permanent custody is in the children’s best interest, and that it is not in the children’s best interest to return to appellant’s custody.

{¶49} Based on the foregoing analysis, we cannot say that the trial court abused its discretion in determining that permanent custody was in the children’s best interest.

{¶50} In support of her challenge to the trial court’s judgment, appellants contends that (1) CCDCFS failed to make reasonable efforts to assist appellant in achieving the case plan’s objective of reunification, (2) appellant substantially completed all case plan requirements and remedied the conditions that led to the children’s removal, (3) the agency did not pursue placement with C.M. as an alternative to permanent custody, and (4) CCDCFS’s entire case was based on the testimony of White, and White’s testimony demonstrated that she was incompetent and biased.

{¶51} First, regarding CCDCFS's purported failure to make reasonable efforts to assist appellant with her case plan and reunify the family, appellant argues that the agency failed to provide bus passes to her to enable her to attend AA meetings and L.S.'s doctor's appointments.

{¶52} White testified that CCDCFS can, under certain circumstances, provide bus tickets to agency clients. For instance, if a client needs a bus ticket in order to complete a drug screen, the agency can provide a bus ticket to the client to enable him or her to do so. However, White explained that CCDCFS needs advanced notice in order to arrange bus tickets for a client, and that the agency is unable to provide bus tickets on a regular or even a weekly basis. Finally, White testified that the first time appellant requested a bus ticket from CCDCFS was in May 2018. Appellant had not previously requested that the agency provide her with bus tickets. At the time that appellant made this request, it had been five months since she had completed a drug screen.

{¶53} Appellant further asserts in support of her reasonable efforts argument that the agency failed to provide her with vouchers for beds and bedding for the children. Appellant's argument is misplaced.

{¶54} As noted above, the lack of beds or bedding for the children was not the only concern regarding appellant's housing. Both White and Habinski testified that there was simply not enough room for appellant and the three children in appellant's one-bedroom apartment.

{¶55} Finally, appellant contends that CCDCFS failed to make reasonable efforts to assist her because "[t]he [a]gency made absolutely no effort to coordinate medical appointments with [her] schedule, thereby making it difficult and often impossible for [her] to attend those appointments." Appellant's brief at 19. Appellant is presumably referencing L.S.'s doctor's appointments.

{¶56} Appellant's argument is again misplaced. In fact, we find that appellant's argument supports Habinski's concern as to whether appellant would "be on top of [L.S.] medically or behaviorally," and CCDCFS's concern that appellant minimized L.S.'s medical condition and would not follow up with L.S.'s medical needs.

{¶57} As noted above, L.S. has serious medical and behavioral issues. As such, L.S.'s medical treatment should be a priority, and her appointments should be scheduled and attended accordingly. The child's medical treatment and appointments should not, as appellant suggests, be coordinated around appellant's schedule or at appellant's convenience.

{¶58} Appellant's argument that CCDCFS failed to make reasonable efforts to assist her is misplaced. The reasonable efforts finding set forth in R.C. 2151.419 is inapplicable in this case because CCDCFS filed its motion for permanent custody pursuant to R.C. 2151.413. *See In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 41 (R.C. 2151.419 does not apply to motions for permanent custody filed pursuant to R.C. 2151.413, or permanent custody hearings held pursuant to R.C. 2151.414); *In re Baby Boy M.*, 8th Dist. Cuyahoga No. 91312, 2008-Ohio-5271, ¶ 41 (trial court did not need to make a reasonable efforts determination because it was ruling on a motion for permanent custody).

{¶59} Although the trial court was not required to do so, the record reflects that the trial court did, in fact, make a reasonable efforts finding in its judgment entries granting CCDCFS permanent custody of the children. The trial court's June 18, 2018 judgment entries provide, in relevant part, "The Court further finds that reasonable efforts were made to prevent the removal of the child from her home, or to return the child to the home, and to finalize the permanency plan, to wit: reunification." The trial court's reasonable efforts determination is supported by clear and convincing evidence in the record. White testified that CCDCFS established a case

plan for appellant with the ultimate goal of reunification. White detailed the objective set forth in appellant's case plan and the services that were provided to her to address the objectives.

{¶60} Second, regarding appellant's argument that she substantially complied with her case plan,

[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.*

(Emphasis added.) *In re K.W.*, 8th Dist. Cuyahoga No. 106700, 2018-Ohio-3314, ¶ 27.

{¶61} In this case, it is undisputed that appellant did comply with and/or complete some of the objectives and services set forth in her case plan. Nevertheless, as noted above, the record supports the court's determination that the children could not be placed with appellant within a reasonable time or should not be placed with appellant. The evidence presented during the permanent custody hearing demonstrated that appellant was not able to provide for the children's basic needs, including the children's specialized educational and medical needs. Furthermore, both White and Habinski expressed concerns regarding whether appellant did, in fact, benefit from the substance abuse and mental health services provided to her.

{¶62} Third, appellant's argument that CCDCFS failed to consider placement with C.M. as an alternative to permanent custody is misplaced and unsupported by the record. As an initial matter, we note that C.M. is not a relative or a family member of appellant or the children. Furthermore, as noted above, White testified that the agency did consider C.M. as a placement

option. In fact, White acknowledged that based on the information the agency received regarding C.M., C.M. would be a viable candidate for legal custody. (Tr. 71.)

{¶63} At the time of the permanent custody hearing, however, White had only observed C.M. interact with the children on one occasion. As a result, although C.M. was a viable *candidate* for legal custody, CCDCFS had not yet determined whether placement with C.M. was, in fact, appropriate and in the children’s best interest.

{¶64} To the extent that appellant suggests that CCDCFS should have requested an extension of temporary custody in order to facilitate additional visitations with the children and further investigate C.M. as a placement option, the record reflects that the two-year time limit for extending temporary custody had expired. The trial court’s judgment entry provides, in relevant part, “The Court further finds that the child has been in the agency’s custody for two years and no longer qualifies for temporary custody pursuant to division (b) of section 2151.415 of the Revised Code.”

{¶65} This court has recognized the general rule that “[a] parent has no standing to assert that the court abused its discretion by failing to give [a relative] 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, at ¶ 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. *Accord In re N.M.*, 8th Dist. Cuyahoga No. 106131, 2018-Ohio-1100, ¶ 23. If permanent custody to CCDCFS 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, at ¶ 61, citing *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694,

2015-Ohio-1028, ¶ 11. Although C.M. is not a relative, we find that the same rationale applies in this case. Accordingly, we find no merit to appellant’s arguments pertaining to C.M.

{¶66} Fourth, regarding the credibility of White’s testimony, appellant appears to suggest that White and CCDCFS had an “agenda” and a “goal” to obtain permanent custody of the children. Appellant’s brief at 24. This assertion is entirely unsupported by the record.

{¶67} The record before this court does not contain any evidence supporting appellant’s assertion that White was a biased and incompetent witness. White testified that when appellant’s case was assigned to her in December 2015 and CCDCFS obtained temporary custody of the children, the agency’s plan for the children was reunification. Furthermore, the trial court’s April 18, 2018 judgment entries acknowledged the permanency plan for the children was reunification.

{¶68} Nevertheless, the trial court, as the factfinder, was in the best position to determine the credibility of White’s testimony during the permanent custody hearing. In *Davis v. Flickinger*, 77 Ohio St.3d 415, 674 N.E.2d 1159 (1997), the Ohio Supreme Court explained,

“Where an award of custody is supported by a substantial amount of credible and competent evidence, such an award will not be reversed as being against the weight of the evidence by a reviewing court.”

The reason for this standard of review is that the trial judge has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page. * * *

“The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.[”]

“ * * * A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and

evidence is not. The determination of credibility of testimony and evidence must not be encroached upon by a reviewing tribunal, especially to the extent where the appellate court relies on unchallenged, excluded evidence in order to justify its reversal.”

This is even more crucial in a child custody case, where there may be much evident in the parties’ demeanor and attitude that does not translate to the record well.

(Citations omitted.) *Id.* at 418-419.

{¶69} In this case, as noted above, White’s testimony was supported by the testimony of Habinski. The trial court was in the best position to determine the credibility of White and her proffered testimony during the permanent custody hearing. In awarding permanent custody to CCDCFS, the trial court evidently determined that White’s testimony was, in fact, credible.

{¶70} For all of the foregoing reasons, we find no basis upon which to conclude that the trial court abused its discretion in awarding permanent custody to CCDCFS.

III. Conclusion

{¶71} After thoroughly reviewing the record, we affirm the trial court’s judgment granting permanent custody of the children to CCDCFS. The trial court considered all relevant statutory factors, and the trial court’s determination that permanent custody is in the children’s best interest is supported by clear and convincing evidence in the record.

{¶72} Judgment affirmed.

It is ordered that appellee recover from 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

LARRY A. JONES, SR., J., and
KATHLEEN ANN KEOUGH, J., CONCUR