[Cite as *In re Ki. B.*, 2019-Ohio-999.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107692

IN RE: Ki.B., ET AL.

[Appeal by Mother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD17904475, AD17904476, AD17904477,
and AD17904478, and AD17914451

BEFORE: Sheehan, J., Blackmon, P.J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: March 21, 2019

ATTORNEYS FOR APPELLANT

Mark A. Stanton
Cuyahoga County Public Defender

By: Britta M. Barthol
Assistant Public Defender
310 Lakeside Ave., Suite 200
Cleveland, OH 44113

ATTORNEYS FOR APPELLEE

For CCDCFS

Michael C. O'Malley
Cuyahoga County Prosecutor

Michelle A. Myers
Cheryl Rice
Timothy D. Smanik
Assistant County Prosecutors
3955 Euclid Ave., Room 313-E
Cleveland, OH 44115

ALSO LISTED:

For J.B. (Father)

J.B., pro se
1710 Prospect Avenue, East
Harbor Light
Cleveland, OH 44115

Guardian Ad Litem for Children

James H. Schulz
55 Public Square, Suite 1700
Cleveland, OH 44113

MICHELLE J. SHEEHAN, J.:

{¶1} Appellant mother appeals from a judgment of the juvenile court awarding permanent custody of her five children to the Cuyahoga County Department of Children and Family Services ("CCDCFS" or "agency" hereafter). Our review reflects that the juvenile court properly engaged in the two-prong analysis prescribed by R.C. 2151.414 and that clear and convincing evidence supports the court's decision granting permanent custody of the children to the agency. Accordingly, we affirm the juvenile court's decision.

Procedural Background

{¶2} Appellant mother has seven children with her husband ("the father" hereafter). Multiple domestic violence incidents in the family led to appellant's loss of parental rights of her two oldest children in the state of Michigan. The instant permanent custody case concerns her five other children: Ki.B. (a daughter born in 2007), J.B. (a daughter born in 2009), S.B. (a daughter born in 2014), Ka.B. (a son born in 2015), and a baby boy born in September 2017.

{¶3} After the family moved to Ohio, CCDCFS was granted temporary custody of the couple's three daughters in May 2015, again due to domestic violence. (Their son Ka.B. was born two months later in July that year.)

{¶4} In October 2016, the children were reunited with appellant mother because she completed the prescribed services. In March 2017, however, another incident of domestic violence occurred in the home. As a result, the agency removed the four children from the home and the court granted emergency custody of the children after a hearing. In that month, CCDCFS filed a complaint alleging abuse and dependency and sought permanent custody for the four children.

{¶5} While the custody matter regarding the couple's four children was pending, appellant mother gave birth to a baby boy in September 2017. The agency immediately filed a

complaint alleging dependency for the permanent custody of the baby. The agency also filed a motion for emergency custody of the baby. After a hearing, however, the trial court denied the motion and allowed the baby to remain with appellant during the pendency of the permanent custody matter.

{¶6} On January 9, 2018, appellant mother admitted to an amended complaint regarding the four older children and the trial court adjudicated the children as abused and dependent. On the same day, appellant admitted to an amended complaint regarding the baby and the baby was adjudicated dependent.

{¶7} The dispositional hearing for permanent custody regarding all five children was scheduled for January 16, 2018, but it was continued for several months. On July 17, 2018, and August 14, 2018, the trial court held the dispositional hearing and, following the hearing, it granted permanent custody of all five children to CCDCFS.

{¶8} At the dispositional hearing, the agency called three witnesses: (1) the agency's social worker on the case; (2) a clinical therapist treating the two younger children (four-year-old S.B. and three-year-old Ka.B.); and (3) a school therapist treating the two older children (ten-year-old Ki.B. and eight-year-old J.B.). Appellant mother called two mental health counselors at Ohio Guidestone to testify on her behalf

Testimony for CCDCFS

{¶9} CCDCFS's witnesses testified about the agency's involvement with the family, the trauma the children suffered from experiencing domestic violence in the home, and the children's relationship with their mother and foster family.

a. Social Worker's Testimony

{¶10} Selina Agee is the social worker at CCDCFS assigned to the family. She started working with the family in November 2016, when the children were returned to appellant mother. She testified that, over the period of nine years since the couple married, appellant had been referred to a domestic violence program three times and completed the program each time, yet she did not appear to benefit from the program.

{¶11} Appellant was first referred to a domestic violence program in Michigan. Despite her participation in the program, she lost permanent custody of the two oldest children while in Michigan due to domestic violence issues.

{¶12} When the family moved to Ohio, CCDCFS was granted temporary custody of her children due to domestic violence in the family and appellant was again referred to a domestic violence program. After she completed the required domestic violence program, the children were reunified with her in October 2016. Although the children were returned to appellant under protective supervision by the agency and appellant was required to have no contact with the father, appellant later admitted to the agency that the father had resided in the home since October 2016 despite the no-contact order.

{¶13} The reunification proved to be short-lived. Five month after appellant was reunified with the children, a serious domestic violence incident occurred in the home in March 2017 and all her children were removed from the home. Although the police report for the March 2017 domestic incident stated that the father broke into the house, the father was never convicted of burglary or breaking and entering, which the trial court concluded was an indication that the father's entry into the home was not forcible. The latest domestic violence incident raised grave concerns as to whether appellant had benefitted from the two domestic violence programs she had earlier completed.

{¶14} The social worker also testified that after appellant's children were removed from her in March 2017, an amended case plan was developed to address mental health, counseling, domestic violence, housing, and employment issues. Appellant was unemployed, but was able to maintain housing through public assistance. She received counseling from Ohio Guidestone consistently, but the social worker did not think she benefitted from the counseling because of her extensive contact with the father while he was incarcerated following the March 2017 domestic violence incident. For the same reason, the social worker did not believe appellant benefitted from the domestic violence program she was referred to after the March 2017 incident, which she subsequently completed.

{¶15} The social worker testified the safety of the mother and the children remained a concern for the agency because appellant has not changed her residence or her telephone number since March 2017.

{¶16} The social worker testified that an existing protective order failed to prevent appellant from being in contact with the father even after the March 2017 incident and the removal of the children. The social worker testified that although appellant recently obtained a new protection order against the father pertaining to the baby boy, the agency had doubts about its effectiveness due to violations of past protection orders.

{¶17} Regarding the children, the social worker testified that the two older girls were in one foster home and the two middle children in another. The latter is a foster-to-adopt home. The social worker explained that the younger children's foster family had considered taking the two older girls as well but eventually decided it was more than they could handle because of their behavior issues. The baby boy has remained in appellant's care since birth.

{¶18} The social worker described a bond between the older girls and their mother. They were always happy to see appellant, although they had to be reminded to respect her. They have expressed a wish to return to appellant, even though the social worker did not believe it is in the children's best interest. The two middle children, on the other hand, have expressed a wish to stay with their foster parents.

{¶19} Regarding the baby boy, the social worker expressed concerns with his safety due to uncertainty about appellant's ability to stay away from the father.

b. Clinical Therapist's Testimony

{¶20} Nichole Beitzel, a clinical therapist for appellant's four-year-old daughter and three-year-old son, testified about her therapy work with these two children. She saw these children weekly since they were referred to her in 2017. She testified about her therapy sessions with the two children and also about the two children's visitations with appellant mother. She also testified about the children' foster family and their relationship with the foster family.

I. Four-Year-Old Girl

{¶21} Regarding the four-year-old girl, the therapist started seeing her in June 2017. She had frequent and intense meltdowns and outbursts and would wake up at night hourly, screaming for help and covering her eyes. The girl also displayed symptoms of distress when she saw an adult male and female showing affection toward each other. The therapist explained these were symptoms of posttraumatic stress. Through therapy sessions, the therapist identified the girl's stressors as having witnessed her mother being hurt by an adult man. As a result, the girl had attachment issues and would avoid eye contact and communication with adults.

{¶22} When the girl was asked to draw a picture of "her family" in an art therapy session, she drew herself, her three-year-old brother, her foster parents and foster siblings.

{¶23} When drawing pictures of her and appellant, she also drew "two monsters that would sometimes come to the home"; "one monster was there a lot and the one monster lived there sometimes." One of the monsters was "a big man" and he would "hit mommy and I'd have to watch mommy and I'd be scared because I thought he'd want to eat her." Also, some sexual themes emerged from the girl's drawing — she drew a line from the monster's belly and referred to it as the monster's "sword" and then drew what appeared to be a penis to further illustrate the "sword." The girl stated that "the monster would use his sword to poke into their bellies, and that it hurt." She was afraid "the monster would eat her like he wanted to eat mommy." The therapist testified the girl's drawing showed a developmentally inappropriate theme about male genitalia and it can be a sign of "exposure to stressors sexually."

{¶24} The therapist testified the girl has developed an attachment to her foster parents. She has also shown great progress in decreasing the severity and frequency of her meltdowns and outbursts. She was now able to sleep through the night without crying or screaming.

ii. Three-Year-Old Son

{¶25} The therapist started seeing appellant's three-year-old son when he was two. She testified that when he first went to foster care at 18 months old, he displayed developmentally inappropriate behaviors such as not knowing how to eat solid food and would show aggression beyond what was appropriate for his age. The boy also had frequent meltdowns and outbursts as well and would similarly become distressed when he saw an adult male and female showing affection toward each other. He did not want to receive affection from adults or be held, which the therapist explained was a symptom of "reactive attachment disorder" and typically a sign of neglect.

{¶26} The boy made significant progress with counseling. His aggressive behaviors have decreased in frequency and intensity and he was more able to connect with people. He now shows affection toward his foster mother and wanted to be held by her during the therapy sessions.

iii. Visitations and Foster Family

{¶27} The therapist was not present during the visitations but she was able to observe the two children before and after the visitations. In the last four months, the four-year-old girl began to express her wish of not wanting to go to the visitations and would display anger and frustration before the visitations. The three-year-old boy showed no difference in behaviors before the visitations. Neither of them, however, has communicated to the therapist anything positive about the visits with appellant.

{¶28} Both children referred to the foster mother as "mommy." Both children wanted to be around the foster mother as much as possible, becoming distressed whenever the foster mother left the therapy room. The boy would cry screaming for mommy if the foster mother had to leave the sessions to run an errand. The therapist testified both children have developed a healthy attachment to their foster home and if they were to be removed from the foster home she would be concerned with "attachment trauma."

{¶29} The therapist did not treat the children's two older sisters but has seen them interacting positively with their older sisters. The four-year-old girl has also verbalized that she likes her sisters and likes to see them.

c. The School Therapist's Testimony

{¶30} Andrea Wilson, a school-based therapist from Beech Brook, testified about her work with appellant's two older girls. The agency referred the girls to her because of the trauma they experienced from witnessing domestic violence in their home.

{¶31} The ten-year-old girl was frequently suspended for fighting and being loud and disrespectful in school. She displayed symptoms of anger, stress, and frustrations as result of the trauma she had experienced. Through counseling, she was learning to verbalize her feelings instead of acting out through fighting.

{¶32} The 8-year-old was disruptive, defiant, and disrespectful in the classroom as well. She would walk out of a class and refused to follow the teachers' directions. Through counseling, she was learning anger management and developing skills to cope with stressful situations.

{¶33} As to the girls' interaction with appellant, the therapist testified they loved their mother and wanted to be with her, but the interaction was more a friendship than a parent-child relationship. The school therapist testified both girls were stable in their foster home.

Testimony on Behalf of Appellant Mother

{¶34} Appellant mother presented two witnesses to testify on her behalf: Dr. Cheryl Kim, her therapist from Ohio Guidestone, and Delores Crosby, her mental health manager from Ohio Guidestone.

a. Appellant's Therapist

{¶35} Dr. Kim from Ohio Guidestone has counseled appellant since September 2015. Appellant was initially referred to her when appellant was at a homeless shelter. A treatment plan was developed to reduce her symptoms of depression, anxiety, and impulsive behavior.

{¶36} Appellant subsequently found housing, and the therapy sessions took place in her home. Dr. Kim was able to observe her interactions with the children and found the interactions to be appropriate.

{¶37} Regarding domestic violence and the children's father, appellant told Dr. Kim "she's moving on." A safety plan was developed to protect her from the children's father. The plan consisted of having a support system close by, including her mother and one or two neighbors, having an exit route out of the house, and contacting 911.

{¶38} Dr. Kim acknowledged that in March 2017, there had also been a safety plan in place but, on the day of the incident, appellant was unable to remove herself because her husband had his hand around her neck against the wall. Appellant had to tell one of her children to get out of the house to call 911. Dr. Kim acknowledged that appellant's husband had a propensity for violence and her children were at risk during the domestic violence incident.

{¶39} Dr. Kim testified that she was aware appellant was in telephone contact with her husband "dozens and dozens" of times while he was incarcerated for the March 2017 incident. Dr. Kim confronted appellant and asked her: "[W]hat the hell are you doing? Are you picking him over your children? * * * [W]hat is your motivation in this entire ordeal with being involved with [CCDCFS]?" Dr. Kim told appellant: "You need to make priority. Is it your children that you want back or is it Joel [appellant's husband] that you want back? You can't have both." Dr. Kim stated that appellant chose her kids.

{¶40} Dr. Kim also testified she was aware appellant had two children permanently removed from her in Michigan due to domestic violence, but Dr. Kim believed appellant now truly appreciated the level of violence her husband was capable of since March 2017, even though she was in frequent contact with him while he was incarcerated. Dr. Kim, however,

testified that appellant has finally broken the cycle of domestic violence because she filed a restraining order against her husband in May 2018 regarding her baby boy.

{¶41} The children's guardian ad litem ("GAL") cross-examined Dr. Kim regarding the long history of domestic violence in the family and the repeated removal of appellant's children. During the cross-examination, it was revealed appellant lost permanent custody of two children while in Michigan because of the following incidents: in September 2009, appellant was arrested for domestic violence against the father; sometime in 2010, the children's services agency was involved due to a domestic violence incident between the couple; in January 2011, the father was incarcerated for holding a knife against appellant's throat; in July 2011, appellant herself was incarcerated for domestic violence against the father; in October 2011, there was another domestic violence incident between appellant and the father; in March 2012, appellant suffered facial bruises caused by the father; and in April 2012, the father was again arrested for domestic violence against the mother.

{¶42} The GAL also cross-examined Dr. Kim concerning the effectiveness and adequacy of the safety plan. Dr. Kim acknowledged that although there was a safety plan in effect in March 2017 when the last domestic violence incident occurred, appellant could not call 911 as required by the plan because the father had his hands around her neck. The ten-year-old girl ran out of the house to seek help and came upon a police officer in a cruiser.

{¶43} Dr. Kim also acknowledged that, although appellant had talked about moving to a new address, changing her phone number, and deleting her social media accounts so that the father could not locate her or return to the home, appellant has not done so.

{¶44} The record reflects that Dr. Kim also testified earlier at an emergency custody hearing on September 25, 2017, regarding the baby boy several days after he was born. She

testified that she had been counseling appellant regarding domestic violence since September 2015 and that, through counseling, appellant understood domestic violence and the "ramifications of being a victim," and she has come a long way in self-advocacy, empowerment, and self-esteem.

b. Appellant's Mental Health Manager

{¶45} Delores Crosby, a mental health case manager at Ohio Guidestone, also testified on appellant's behalf. She would meet with appellant at appellant's home. She testified appellant took proper care of the baby boy. In her opinion, appellant was a good mother. She was "stunned" that the agency removed the children after the domestic violence incident in March 2017, because the police were contacted for the incident as required by the safety plan.

{¶46} Crosby testified that with therapy, appellant now understands that her children should come first and she has resolved to have her children with her. Crosby helped appellant obtain a civil protection order against the father regarding the baby. Crosby also testified about the safety plan in place — if appellant or the children run into the father, they should seek help from people nearby. She testified she believed appellant can protect the children from their father.

{¶47} On cross-examination by CCDCFS's counsel, Crosby acknowledged appellant had telephone contact with the father on over 80 occasions while he was incarcerated after the March 2017 incident. Regarding whether appellant had benefitted from the domestic violence program, Crosby acknowledged that she and Dr. Kim had both been working with appellant on domestic violence issues when the March 2017 incident occurred.

{¶48} Expressing his doubt whether appellant could adequately protect the children, the children's GAL questioned Crosby as to the details of the safety plan in place. Crosby stated

that under the safety plan, if appellant was to run into the father, she should seek help from the nearest person or neighbor; if the children were to run into him, they should go to a nearby neighbor, library, or police station. If the father comes to the house, appellant should call the police. Crosby did not know how the father got inside the house in the March 2017 incident. She added the safety plan was amended after the incident, requiring appellant to call the police as soon as the father was at the door.

{¶49} During cross-examination, the GAL read from a decision of a Michigan court that summarized the eight domestic violence incidents between the couple while the family was in Michigan and the court mentioned that the father moved into appellant's home despite a no-contact order. Crosby apparently was unaware of these incidents in Michigan and acknowledged that she would be concerned with future domestic violence between the couple.

The GAL's Recommendation

{¶50} In a written report, the GAL recommended the granting of permanent custody of all five children to the agency. At the dispositional hearing, the GAL opined that although appellant completed the case plan services, she has not benefitted from them. The GAL pointed out that appellant continued to have contact with the father despite the domestic violence programs — there were 80 telephone calls between appellant and the father after he was incarcerated for the March 2017 incident. The GAL noted that the baby boy was born in September 2017, which indicated the father went back to the home around the beginning of 2017, only a few months after the children were returned to appellant's home. The GAL emphasized the children were exposed to domestic violence whenever they were in appellant's home. He believed there was a serious risk of safety for the children, including the baby boy, due to the likelihood of future domestic violence incidents. He did not believe the safety plan could

safeguard the children. Based on the extensive history of domestic violence in the home, the GAL recommended granting of permanent custody to the agency, in the best interest of the children.

The Trial Court's Decision and Appeal

{¶51} After trial, the juvenile court granted permanent custody of all five children to CCDCFS. On appeal, appellant mother raises the following assignment of error:

> I. The trial court's decision to award permanent custody to CCDCFS was against the manifest weight of the evidence as it was not supported by clear and convincing evidence.

Permanent Custody Analysis: The Two-Prong Test

{¶52} R.C. 2151.414 sets forth a two-prong analysis for the juvenile court in adjudicating a motion for permanent custody. The first prong focuses on the parent while the second prong focuses on the child. Under the first prong, the trial court is authorized 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 these five 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) whether the child or a sibling has been adjudicated as abused, neglected, or dependent on three occasions. R.C. 2151.414(B)(1)(a)-(e). Only one of the five factors must be present for this first prong of the permanent custody analysis to be satisfied. *In re L.W.*, 8th Dist. Cuyahoga No. 104881, 2017-Ohio-657, ¶ 28.

{¶53} If any of these five factors under R.C. 2151.414(B) exists, the trial court proceeds to analyze the second prong — whether, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency. R.C. 2151.414(D).

Standard of Review

{¶54} R.C. 2151.414 requires the trial court to find, by clear and convincing evidence, (1) one of the factors enumerated in R.C. 2151.414(B)(1)(a)-(d), and (2) an award of permanent custody is in the best interest of the child. Clear and convincing evidence is that which will produce in the trier of fact "'a firm belief or conviction as to the facts sought to be established.'" *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 481 N.E.2d 613,(1985), quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. While requiring a greater standard of proof than a preponderance of the evidence, clear and convincing evidence requires less than proof beyond a reasonable doubt. *In re Awkal*, 95 Ohio App.3d 309, 642 N.E.2d 424 (8th Dist.1994).

{¶55} We will not reverse a juvenile court's termination of parental rights and award of permanent custody to an agency unless the judgment is not supported by clear and convincing evidence. *See, e.g., In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 48; and *In re M.J.*, 8th Dist. Cuyahoga No. 100071, 2013-Ohio-5440, ¶ 24.

First Prong: Possibility of Reunification

{¶56} Under the first prong of the permanent custody analysis, the juvenile court determined the R.C. 2151.414(B)(1)(a) factor existed, i.e., the children cannot be placed with appellant mother within a reasonable time or should not be placed with her.[1]

[1]Regarding the first prong, the trial court also made a finding under R.C. 2151.414(B)(1)(e) that "the child or another child in the custody of the parent * * * has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state." Appellant claims this finding lacks evidentiary

{¶57} Regarding the R.C. 2151.414(B)(1)(a) reunification factor, R.C. 2151.414(E) enumerates 15 factors for the trial court to consider. These factors examine the parent and, if one or more of the factors exists, the court shall enter the finding that the child cannot be placed with the parent within a reasonable time or should not be placed with the parent. Only one of the enumerated factors under R.C. 2151.414(E) is required to exist for the court to make that finding. *In re Glenn*, 139 Ohio App.3d 105, 113, 742 N.E.2d 1210 (8th Dist.2000).

{¶58} These 15 factors include, among others, whether the parent failed to substantially remedy the conditions causing the removal of the child despite reasonable case planning and diligent efforts by the agency; whether the parent demonstrated a lack of commitment toward the child; whether the parent has been convicted of certain offenses; whether the parent has had parental rights of other children terminated; or whether the parent has committed child abuse or allowed the child to suffer neglect and the abuse or neglect poses a threat to the child's safety. In addition to the 15 enumerated factors, the statute also permits the trial court to consider any other factors the court deems relevant. R.C. 2151.414(E)(16).

{¶59} Here, the trial court found the existence of three enumerated factors under R.C. 2151.414(E): (E)(1), (E)(11) and (E)(15). These subsections state, respectively:

> (1) 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 substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and

---

support. While appellant is correct that the record does not contain evidence regarding the children's custodial history in Michigan (except for the permanent custody of the two oldest children) for the trial court to make this finding, only one finding under R.C. 2151.414(B)(1) is required to satisfy the first prong of a permanent custody analysis. Here, the court here also found the presence of the factor under R.C. 2151.414(B)(1)(a).

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.

* * *

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, 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.

* * *

(15) The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

{¶60} Regarding the (E)(1) factor, the trial court found:

[f]ollowing 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 benefit from the services, despite completion of mental health recommendations, parenting and domestic violence programs, and has thus not remedied the conditions causing the child to be placed outside the child's home.

{¶61} Regarding the (E)(11) factor, the court found:

[t]he parent 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.

{¶62} Regarding the (E)(15) factor, the court found that "[t]he parent has committed abuse against the child or caused or allowed the child to suffer neglect and the Court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety."

{¶63} Our review of the record reflects the family had a significant and extensive history with CCDCFS and the juvenile court and the family's domestic violence existed before the family moved to Ohio. Appellant mother had lost permanent custody of two children while the family resided in Michigan due to numerous domestic violence incidents in the home and due to her continuous contact with the father despite a no-contact order. While in Michigan, appellant mother had also lost custody of the ten-year-old girl (Ki.B.) and the eight-year-old girl (J.B.) temporarily to a relative.

{¶64} The domestic violence problem continued after the family moved to Ohio with their two daughters. In 2014, another daughter (S.B.) was born; in May 2015, the agency obtained temporary custody of all three daughters. In July 2015, appellant mother gave birth to the couple's first boy (Ka.B.). In October 2016, appellant's three daughters were reunited with her after she made progress in her case plan and completed all domestic violence classes. Appellant was not to have contact with the father after her daughters were returned. The father was apparently in the home sometime after October 2016 despite the no-contact order and despite the mother's ongoing domestic violence program, because a baby boy was born to the couple in September 2017. Less than five months after appellant's three daughters were reunified with her, in March 2017, another serious incident of domestic violence took place in the home. The

father choked appellant's neck against the wall and the ten-year-old girl had to run out the house to get help from the police. Despite the removal of her children due to this latest incident of domestic violence perpetrated by the father, appellant had telephone contact with the father on over 80 occasions while he was incarcerated for the offense.

{¶65} Appellant mother argues on appeal that she has completed the domestic violence program required of her and, therefore, the trial court's finding under R.C. 2151.414(B)(1)(a) was not supported by the evidence. As the court has always recognized, a successful completion of a case plan is not dispositive in and of itself on the issue of reunification and it does not preclude a grant of permanent custody to the agency. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 149, citing *In re C.C.*, 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360, ¶ 25 (8th Dist.). "'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).

{¶66} As the record reflects, despite the assistance from the agency and her ongoing participation in the domestic violence program, appellant failed to remedy the conditions that caused the children's removal — the children were returned to appellant in October 2016 after her completion of domestic violence classes, yet a serious domestic violence occurred in the home within six months without any indication that the father forcibly entered the home. After the children were removed from her home due to the threat posed by the father, she was found to be in telephone contact with the father over 80 times.

{¶67} Based on the extensive history of domestic violence in the home and the dynamics of the relationship between appellant and the father, we agree with the trial court that

appellant's conduct did not demonstrate that she would be able to protect her children from the risk of physical or emotional harm posed by the domestic violence between her and the father and did not benefit from the domestic violence programs prescribed for her. Although both her therapists Dr. Kim and Delores Crosby testified appellant has resolved to choose her children over the father, appellant had extensive telephone contact with the father, apparently as late as January 2018. Crosby herself testified she would be concerned with the children's safety after being made aware of the history of domestic violence in the home. The children's GAL strongly opposed returning the children to appellant because the potential harm to the children is too real and too great. As such, clear and convincing evidence supports the finding made by the trial court under R.C. 2151.414(B)(1)(a) in the first-prong of the permanent custody analysis.[2]

Second Prong: Best Interest of the Children

{¶68} Once the juvenile court ascertains that one of the five factors listed in R.C. 2151.414(B)(1) is present, the court proceeds to an analysis of the child's best interest. The court undertakes this analysis with the recognition that although parents have a constitutionally protected interest in raising their children, that interest is not absolute and is always subject to the ultimate welfare of the child. *In re B.L.*, 10th Dist. Franklin No. 04AP-1108, 2005-Ohio-1151, ¶ 7. *See also In re N.M.*, 8th Dist. Cuyahoga No. 106131, 2018-Ohio-1100.

{¶69} In determining the best interest of the child, R.C. 2151.414(D) mandates that the juvenile court consider all relevant factors, including, but not limited to, the following:

> (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

[2]We note that although the (E)(1) factor does not exist regarding the baby boy because the baby had not been placed outside the home, at least one of the factors — the (E)(11) factor — is supported by clear and convincing evidence in the record.

> (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.

{¶70} When analyzing the best interest of the child, "[t]here is not one element that is given greater weight than the others pursuant to the statute." *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Also, only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re S.C.*, 8th Dist. Cuyahoga No. 102350, 2015-Ohio-2410, ¶ 30, citing *In re Moore*, 8th Dist. Cuyahoga No. 76942, 2000 Ohio App. LEXIS 3958 (Aug. 31, 2000).

{¶71} Here, the trial court stated it found permanent custody of the children to be in the their best interest after its consideration of (1) their interaction and relationship with their parents, siblings, and foster parents, (2) the wishes expressed by the children or through their GAL, (3) their custodial history, (4) their need for a legally secure placement, and (5) the report of the GAL, who recommend permanent custody to the agency. Our review shows the trial court's decision is supported by clear and convincing evidence in the record.

{¶72} Regarding the children's custodial history and the possibility of a legally secure permanent placement without permanent custody, the record shows appellant mother had previously lost permanent custody of two children to an agency in a different state and, after the

family moved to Ohio, all three children appellant had at the time were removed from her home in 2015 and placed under the temporary custody of CCDCSF. The three children were returned to appellant in 2016 but removed again six months later due to another serious incident of domestic violence. The removals of her children had not appeared to motivate appellant toward placing her children's safety over her relationship with the father, neither were the various no-contact orders and protective orders effective in preventing appellant's continuing and voluntary relationship with him. The children's custodial history clearly shows a legally secure permanent placement could not be achieved without a grant of permanent custody to the agency.

{¶73} Regarding the children's wishes and their relationship with their family, the agency's witnesses testified to the severe psychological effects suffered by the four older children, all of whom showed symptoms of trauma from the domestic violence in the home. Under the care of their foster-to-adopt family, the four-year-old (S.B.) and three-year-old (Ka.B.) have been provided a stable and nurturing environment and these two children consider the foster mother as their mother. Although the two older children (Ki.B. and J.B.) appear to have a stronger bond with appellant and expressed a wish to return to her, and the baby boy has been in appellant's care since birth, the GAL's grave concern with all five children's safety and his recommendation of permanent custody weighed heavily with the juvenile court, and it does with this court as well.

{¶74} In affirming the trial court's judgment granting permanent custody, we are very mindful that "[i]n proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and observation of the parties and through independent investigation cannot be conveyed to

a reviewing court by printed record." *In re V.M.*, 4th Dist. Athens No. 18CA15, 2018-Ohio-4974, ¶ 62, citing *Trickey v. Trickey*, 158 Ohio St. 9, 106 N.E.2d 772 (1952). "'The discretion that the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned.'" *In re Ch. O.*, 8th Dist. Cuyahoga No. 84943, 2005-Ohio-1013, ¶ 29, quoting *In re Awkal*, 95 Ohio App.3d at 316, 642 N.E.2d 424.

{¶75} For all the foregoing reasons, we affirm the judgment of the juvenile court granting appellant mother's children to CCDCFS.

{¶76} 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 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.

_____

MICHELLE J. SHEEHAN, JUDGE

EILEEN A. GALLAGHER, J., CONCURS;
PATRICIA ANN BLACKMON, P.J., CONCURS IN JUDGMENT ONLY