

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

IN RE JA.S., ET AL.	:	
	:	No. 108713
Minor Children	:	
	:	
[Appeal by T.S., Mother]	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: January 16, 2020**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD16902386, AD16902387, and AD16902388

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***Appearances:***

Zukowsky Law, L.L.C., and Amichai Eitan Zukowsky, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Anthony R. Beery, Assistant Prosecuting Attorney, *for appellee* C.C.D.C.F.S.

RAYMOND C. HEADEN, J.:

{¶ 1} Appellant T.S. (“Mother”) appeals an order of the Cuyahoga County Juvenile Court (“juvenile court”) that granted permanent custody of her children, Ja.S., A.S., and Jo.S., to the Cuyahoga County Division of Child and Family Services (“CCDCFS” or “the agency”). For the reasons that follow, we affirm the judgment.

## **I. Factual and Procedural History**

**{¶ 2}** T.S. is the mother of Ja.S., A.S., and Jo.S., three minor children. The father of the children died prior to the pendency of CCDCFS's action.

**{¶ 3}** On January 23, 2018, a house raid at T.S.'s home resulted in an indictment against T.S. for possession of drugs and a firearm. The agency was initially granted emergency temporary custody of Ja.S. on January 23, 2018, and A.S. and Jo.S. on January 25, 2018. The juvenile court subsequently modified the order to temporary custody to CCDCFS.<sup>1</sup>

**{¶ 4}** An amended case plan dated February 22, 2018, required T.S. to address her legal issues stemming from the raid and her pending charges as well as substance abuse concerns and her ability to provide for her children's basic needs. T.S. was to obtain consistent mental health and psychiatric care and take medications as prescribed. T.S. was to obtain and maintain appropriate housing. T.S. and Ja.S. were to fully participate in drug and mental health assessments and follow the recommended services.

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<sup>1</sup> On February 19, 2016, prior to the January 2018 house raid, CCDCFS filed a complaint for dependency and temporary custody, along with a motion for emergency custody, regarding the three children. The 2016 complaint alleged the children were neglected and dependent because of T.S.'s mental health; the children's infrequent school attendance; the children's mental and behavioral health; and T.S.'s lack of adequate housing. On May 31, 2016, the court amended the dispositional prayer from temporary custody to protective supervision that was still in effect when the January 2018 house raid occurred. The agency's disposition of legal custody of the children to T.S. with protective supervision by CCDCFS was modified to an order of temporary custody to CCDCFS on April 3, 2018.

{¶ 5} As of March 1, 2018, T.S. was recently released from a short jail stay and her whereabouts were unknown. T.S. was noted as bipolar with possible anxiety. T.S. would not “engage without an attorney” and the agency had not secured T.S.’s signature on the amended case plan. As of March 1, 2018, T.S. and her mother had visited the children twice since the agency received custody. CCDCFS had not yet made referrals for T.S.’s substance abuse and mental health services and counseling for her children.

{¶ 6} On April 3, 2018, T.S. stipulated to temporary custody to CCDCFS. The three children, Ja.S., age 14, and A.S. and Jo.S., twins aged 13, were placed in foster care.<sup>2</sup>

{¶ 7} A semiannual administrative review (“SAR”) meeting was held on August 23, 2018. T.S. did not attend the meeting in person, but the twins were present. T.S. participated in the meeting by texting information to the twins’ telephone. T.S. had not demonstrated sobriety and denied substance abuse issues but was engaged in counseling services. Further, T.S. denied knowing the amended case plan required her to submit to an alcohol or drug assessment but stated her willingness to submit to those services and provide a urine screen. T.S. was not receiving mental health services or medication due to lack of insurance. T.S. had

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<sup>2</sup> Ja.S. did not remain with the foster parent and is currently AWOL. The twin boys, A.S. and Jo.S., continue with the foster parent and are happy with the placement but have always maintained their preference to be placed with T.S. The twins speak with T.S. daily and wish to be under her care. The twins refused much-needed dental treatment unless T.S. accompanied them to the dentist. The foster parent is willing to continue care for the twins but has not committed to adopting the boys.

been in her own housing for approximately five months and was employed as a cleaner at a hotel. T.S. had weekly visitation with the twins. The agency was to provide a referral for a drug assessment and screening within 24 hours of the August 23, 2018 meeting. T.S. completed an alcohol and drug assessment in the summer of 2018.

**{¶ 8}** Based upon the criminal charges stemming from the January 2018 raid, T.S. pleaded guilty on September 6, 2018, to (1) drug possession, a fifth-degree felony, with forfeiture specifications, and (2) having weapons while under disability, a third-degree felony, with forfeiture specifications.<sup>3</sup> T.S. tested positive for drugs on September 11, 2018, and a capias was issued. T.S. returned for sentencing on October 16, 2018, where she was (1) sentenced to one and one-half years of community control on each count, and (2) was required to complete an inpatient drug-treatment program starting on October 16, 2018, at Nora House and continue with vivitrol shots.

**{¶ 9}** On October 23, 2018, CCDCCFS filed a motion to modify temporary custody to permanent custody.

**{¶ 10}** Following completion of the court-ordered inpatient drug-treatment program, T.S. enrolled in an intensive outpatient treatment program at Stella Maris in November 2018. T.S. was discharged due to lack of attendance. Stella Maris

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<sup>3</sup> T.S. maintains the drugs and gun that were confiscated during the house raid belonged to her oldest son, Ja.S. T.S. claims she pleaded guilty to the charges rather than have her son charged with the offenses.

recommended T.S. attend AA meetings, obtain a sponsor, identify a home group, and refrain from using mind- or mood-altering substances.

**{¶ 11}** In February 2019, CCDCFS was unable to document T.S.'s compliance with mental health initiatives and her housing and employment situation. T.S.'s visits with the children were inconsistent, although she saw the twins on Thanksgiving and Christmas and CCDCFS noted that T.S. was "appropriately engaged with her children." The twins were very attentive to T.S. and regularly stated their desire to be home with T.S. to support and protect her. Ja.S. remained AWOL.

**{¶ 12}** During a February 28, 2019 SAR meeting, T.S. texted Jo.S. and A.S. to relay information to the agency but refused to participate in the meeting or speak with a CCDCFS worker due to her frustration with "the course of the case." T.S. believed she had completed the case plan and had paperwork to document her compliance. While T.S. reported completion of an inpatient alcohol and drug treatment program as well as an outpatient treatment at Stella Maris in November 2018, T.S. did not reveal that she was discharged from Stella Maris due to lack of attendance. T.S. refused to perform an updated assessment.

**{¶ 13}** When T.S. failed to report to the probation department on March 1, 2019, a capias was issued. The court ordered T.S. to return to Stella Maris. In March 2019, T.S. completed Stella Maris's inpatient drug-treatment program and enrolled in outpatient therapy. The previously issued capias was recalled on April 10, 2019.

{¶ 14} As of April 25, 2019 — the date of the custody trial — T.S. was engaged with Stella Maris’s outpatient program and sober for 17 days after completing a two and one-half-week inpatient program. T.S.’s attitude was improved in comparison to when she previously underwent substance abuse treatment at Stella Maris in the fall of 2018. T.S. received treatment for her mental health at the same time that she received substance abuse treatment.

{¶ 15} A custody trial was held on April 29, 2019. T.S. was present at the trial, but did not testify. The court heard testimony from CCDCFS extended services social worker, Alia Neal, and the children’s GAL. Based upon the trial testimony, the juvenile court granted permanent custody of the children to CCDCFS on May 28, 2019, rather than extend the agency’s temporary custody as requested by T.S.

{¶ 16} T.S. appeals, presenting the following assignment of error for our review:

Assignment of Error 1: 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.

## **II. Law and Argument**

{¶ 17} In her assignment of error, T.S. argues that the trial court’s granting permanent custody to CCDCFS was against the manifest weight of the evidence.

{¶ 18} A parent has a fundamental interest in the care and custody of her children. *In re L.W.*, 8th Dist. Cuyahoga No. 107708, 2019-Ohio-1343, ¶ 20. However, parental rights are not absolute: “The natural rights of a parent are always subject to the ultimate welfare of the child, which is the polestar or

controlling principle to be observed.” *In re L.D.*, 2017-Ohio-1037, 86 N.E.3d 1012, ¶ 29 (8th Dist.), quoting *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979). “By terminating parental rights, the goal is to create ‘a more stable life’ for dependent children and to ‘facilitate adoption to foster permanency for children.” *In re R.G.*, 8th Dist. Cuyahoga No. 104434, 2016-Ohio-7897, ¶ 21, quoting *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, 5 (Aug. 1, 1986).

**{¶ 19}** A juvenile court must satisfy the two-prong test set forth in R.C. 2151.414 before it can terminate parental rights and grant permanent custody to CCDCFS. The juvenile court must find by clear and convincing evidence that any one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) applies and that it is in the best interest of the child to grant permanent custody to the agency. *In re L.W.* at ¶ 22.

**{¶ 20}** Clear and convincing evidence has been defined as “that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 42, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 21} We examine the record to determine whether the juvenile court had sufficient evidence to meet the required degree of proof. ““Judgments supported by competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence.”” *In re L.W.*, 8th Dist. Cuyahoga No. 107708, 2019-Ohio-1343, at ¶ 24, quoting *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 24, quoting *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990).

**A. First Prong – R.C. 2151.414(B)(1)**

{¶ 22} The juvenile court must find by clear and convincing evidence that one of the following conditions applies:

(a) The child is not abandoned or orphaned, has not 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, or has not 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 if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child’s parents 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 twelve or more months of a consecutive twenty-two-month period, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was



previously in the temporary custody of an equivalent agency in another state.

(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).

**{¶ 23}** Where R.C. 2151.414(B)(1)(a) applies, the trial court then determines whether any of the factors delineated in R.C. 2151.414(E) are present to demonstrate that the child cannot or should not be placed with the parent within a reasonable time. Only one of the R.C. 2151.414(E) factors is required to support the juvenile court's finding. *In re L. W.* at ¶ 29.

**{¶ 24}** Here, the juvenile court found, pursuant to R.C. 2151.414(B)(1)(a), that the three minor children could not or should not be placed with T.S. within a reasonable time. The juvenile court indicated the relevant R.C. 2151.414(E) factors were as follows:

(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 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.

(2) Chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate

permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

**{¶ 25}** T.S. experiences ongoing challenges with her substance abuse and mental health. Although T.S.'s case plan required her to undergo an alcohol and drug assessment and pursue any recommendations, T.S. did not submit to an assessment until late summer 2018. T.S. did not enter substance abuse treatment until it was court-ordered — both in October 2018, and March 2019. T.S. failed to regularly attend the outpatient intensive treatment in the fall of 2018 and was removed from the program. T.S. had just begun outpatient treatment at the time of the trial and failed to establish sobriety beyond 17 days.<sup>4</sup> T.S. had long-standing mental-health issues. T.S. never actively sought mental health care although services were provided when T.S. participated in court-ordered substance abuse treatment. At the time of trial, T.S. had not successfully addressed either her substance abuse or mental-health issues for longer than a two-or- three-month period — October 2018 through either December 2018, or January 2019. T.S. had housing from May through August 2018 and claimed to have housing again in April

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<sup>4</sup> When a juvenile court's custody decision is appealed, a lag of several months typically occurs between the juvenile court's custody hearing and decision and the scheduled oral argument before this court. While current legislation and law do not allow it, this court would have benefitted from an update on T.S.'s progress during those intervening months.

2019. Yet, T.S. was unemployed and unable to provide basic necessities for her children. There is clear and convincing evidence to support the juvenile court's findings under R.C. 2151.414(E) that the children could not, and should not, be placed with T.S. within a reasonable time. R.C. 2151.414(B)(1)(a).

### **B. Second Prong – Best Interest of the Children**

{¶ 26} Once the trial court finds that one of the enumerated factors in R.C. 2151.414(B)(1) is present, the court then conducts an analysis of the children's best interest. The juvenile court was required to find by clear and convincing evidence that it is in the children's best interest to grant permanent custody to the agency. *In re L.W.*, 8th Dist. Cuyahoga No. 107708, 2019-Ohio-1343, at ¶ 36.

{¶ 27} On appeal, the court reviews a trial court's best interest analysis under R.C. 2151.414(D) for an abuse of discretion. *In re L.W.* at ¶ 37. Further,

[a]n abuse of discretion is more than a mere error of law or judgment; it implies that the court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 5 Ohio B. 481, 450 N.E.2d 1140 (1983). While a trial court's discretion in a custody proceeding is broad, it is not absolute. '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.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 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).

*In re R.G.*, 8th Dist. Cuyahoga No. 104434, 2016-Ohio-7897, at ¶ 27.

{¶ 28} To determine the best interests of the children, the trial court considers all relevant factors including, but not limited to, those listed in R.C. 151.414(D)(1)(a)-(e):

- (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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;
- (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.

Not one factor listed in R.C. 2151.414(D)(1) is given greater weight than any other factor. *In re L.W.* at ¶ 39. Only one of the statutory factors needs to be found in favor of the award of permanent custody. *Id.* The focus of a best interest determination is the children, not the parent. *In re R.G.* at ¶ 28.

**{¶ 29}** The record reflects that T.S. has a strong bond with the twins. This relationship has continued throughout the twins' placement in foster care and we hope that the juvenile court continues to facilitate those relationships. Due to Ja.S.'s AWOL status, no evidence was presented regarding his relationship with T.S.

**{¶ 30}** While having a strong connection with the twins and speaking with them regularly by telephone, T.S.'s visitation with the twins has been sporadic

during their placement in the agency's temporary custody. Although the twins voiced their desire to live with T.S., they also indicated that if they were placed outside of T.S.'s custody, they would be comfortable remaining with their foster parent. The twins have resided with the same foster parent since April 2018. The boys' GAL recommended that the juvenile court grant permanent custody of the children to CCDCFS.

**{¶ 31}** The twins experience anxiety regarding the outcome of their custody and the agency proposes a permanent placement will help alleviate that anxiety. While the foster parent declined interest in adopting the twins at this time, he indicated his willingness to continue as a foster parent. The twins have occasional disciplinary issues at school, but they attend school regularly under the foster parent's care.

**{¶ 32}** No relatives are appropriate or willing to assume custody of the children.

**{¶ 33}** The assigned CCDCFS case worker testified it was in the best interests of the boys to be placed with the agency. While the case worker acknowledged T.S. could have been granted an extension of temporary custody, she felt (1) T.S. had demonstrated her inability to comply with the case plan, and (2) the boys needed a final decision regarding their custody in order to eliminate the stress they experience regarding this issue.

**{¶ 34}** The record demonstrates that the juvenile court complied with the requirements of R.C. 2151.414 to determine it was in the best interests of the boys to

place them in the permanent custody of CCDCFS. The juvenile court's findings are supported by clear and convincing evidence.

**{¶ 35}** T.S.'s first assignment of error is overruled.

**{¶ 36}** Judgment affirmed.

It is ordered that appellee recover of appellant the 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.

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RAYMOND C. HEADEN, JUDGE

ANITA LASTER MAYS, P.J., and  
EILEEN A. GALLAGHER, J., CONCUR