

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: :
[B.B.H.] P.R.S., : No. 14AP-882
(T.S., : (C.P.C. No. 11JU-8273)
Appellant). : (REGULAR CALENDAR)

D E C I S I O N

Rendered on June 16, 2015

Aker Law, LLC, and Paul Aker, for appellant.

Robert J. McClaren, for appellee.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch

HORTON, J.

{¶ 1} Appellant, T.S. ("father"), appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, which terminated his parental rights and granted appellee's, Franklin County Children Services ("FCCS"), motion for permanent custody of B.B.H. (or, "the child"). Because the judgment of the trial court granting permanent custody of the child to FCCS is not against the manifest weight of the evidence, is supported by clear and convincing evidence, and is in the best interest of the child, we affirm.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} B.B.H. was born on June 11, 2011. At the time of birth, both mother and child tested positive for opiates. On June 14, 2011, FCCS filed a complaint alleging that the child was an abused child, a neglected child, and a dependent child. That same day, the trial court entered an emergency-care order which granted FCCS temporary custody of the child.

{¶ 3} Effective July 28, 2011, the trial court found B.B.H. to be an abused and dependent minor, and granted FCCS temporary court commitment, pursuant to R.C. 2151.353(A)(2). The court also approved and adopted a case plan for mother that was previously filed with the court. On September 12, 2012, FCCS filed a motion for permanent custody, asserting that it was obligated to file the motion because the child had been in the agency's custody for 12 or more months of a consecutive 22-month period. The motion further stated that mother had failed to make significant progress on her case plan objectives, and noted that genetic testing had revealed that B.B.H.'s legal father, R.H., who was mother's husband at the time of the birth, was not B.B.H.'s biological father. The putative father, T.S., had not established paternity of B.B.H. and had never made contact with the child.

{¶ 4} On January 28, 2013, the guardian ad litem ("GAL") reported that the child was "very comfortable in foster mother's home and clearly has a bond with foster mother." (Jan. 28, 2013 GAL Report, 1.) The GAL also reported that "[f]oster mother has voiced a desire to all involved that she intends to attempt to adopt the child based on the outcome of these proceedings." (Jan. 28, 2013 GAL Report, 2.) The foster home is licensed for adoption.

{¶ 5} On August 27, 2013, FCCS filed an amended case plan, indicating that genetic testing had revealed that T.S. was the biological father of B.B.H. Father explained that he and mother had dated in 2007 for about four months, but the relationship ended. They ran into each other in 2010 and they "started seeing each other again for about a month and then just lost contact * * * again." (June 2, 2014 Tr. 79.) In March 2013, mother contacted father's sister on Facebook, and sent a message saying "she had a son and there was a possibility that [T.S.] was the father." (June 2, 2014 Tr. 79.) The following day, father and mother met in a park, she showed him some pictures of the child, and told him to contact FCCS to set up a paternity test. Father reported that he was "surprised and happy" to discover that he had a son, as he already had "two teenage daughters, [and] wasn't planning on having any more kids but always wanted a little boy." (June 2, 2014 Tr. 80-81.) Father called FCCS caseworker Brooks Brooks the following day to set up a paternity test. After FCCS obtained the results of the paternity test, a case plan was developed for father, which the court approved and adopted.

{¶ 6} The amended case plan noted that father had a history with FCCS, "as he was in FCCS custody as an adolescent due to unruly/delinquency, and [was] an adult perpetrator in a substantiated neglect that involved dirty/unsafe home conditions." (Aug. 27, 2013 Amended Case Plan, 10.) The case plan also noted father's criminal history, which includes a conviction for sexual imposition from 1998, two convictions for non-support/contributing to non-support of dependents from 2009, and two convictions for non-support/contributing to non-support of dependents from 2012. Father's case plan, which had the stated goal of reunification with the child, obligated father to accomplish the following: complete a psychological evaluation and follow all recommendations; complete parenting education classes; not be involved in any further criminal acts; ensure that he is paying any dependent support that is currently ordered; not be involved in any further acts of child abuse/neglect; complete any requested urine drug screens; not abuse drugs or alcohol; obtain and maintain legal and stable income, as well as safe and stable independent housing; and to sign all necessary releases of information. Father was granted supervised visitation with the child for one hour per week.

{¶ 7} The court held eight hearings on the PCC motion between March and July 2014. At these hearings, evidence was presented regarding father's and B.B.H.'s interactions during their visitations. During their initial visits, B.B.H. would cry for foster mom when she left. Caseworker Brooks noted that, during one early visit, B.B.H. was "so distressed that [she] asked [father] if we could terminate the visit," as B.B.H. was "screaming and was completely inconsolable," his cries could be heard "throughout [the] building." (Mar. 31, 2014 Tr. 102-03.) However, father suggested that they wait and B.B.H. did calm down. Brooks noted that she has heard B.B.H. "verbalize * * * that he doesn't want to visit and * * * verbalize that he doesn't want foster mom to leave." (Mar. 31, 2014 Tr. 104.) However, B.B.H. has also stated that he "has fun in his visit" with father, and has said that "he likes [father]." (Apr. 10, 2014 Tr. 111.) The GAL noted that in the last visit he attended, the child went to father and started playing with him immediately. He observed that B.B.H. and father have a "friendly bond" and that the child is now "very comfortable" with father. (Apr. 10, 2014 Tr. 110.)

{¶ 8} Father attended nearly all of his scheduled visitations with the child, except for the visits scheduled between January 28 and March 27, 2014, because father was incarcerated during that time. Father explained that, as a result of his June 2012 convictions for non-support, he was placed on probation and was obligated to make complete support payments. Father stated that he "wasn't able to make full payments every time so when [he] went back to court" for a contempt hearing for failing to make the payments as required. (June 2, 2014 Tr. 92.) The court found father to be in contempt and sentenced him to 45 days in the county jail. Father admitted that he "wasn't able to make full payment most of the time." (June 2, 2014 Tr. 105.).

{¶ 9} Because father sought custody of B.B.H., a home study was conducted in September 2013 of father's residence. Father lives in a home with his mother, and his sister lives in the house next door. Father's aunt helps to support both residences financially. Beth Earl, a kinship worker at FCCS, conducted the home study. She noted that, at the time of the home study, father's only sources of income were food stamps and loaned money from his aunt. Earl observed that the house had a "very strong odor of animals," that the carpet had been ripped up and that there were "tack strips around the outside with the nails and the staples in it, they were still sharp." (Apr. 16, 2014 Tr. 13.) Earl observed that there was "something all over the bathroom ceiling that was really thick and dark." (Apr. 16, 2014 Tr. 14.) Earl was also concerned over the "number of people who seemed to be" residing in the house, noting that "there really [wasn't] a lot of living space in the home." (Apr. 16, 2014 Tr. 36.)

{¶ 10} Ultimately, the home study was denied "due to multiple concerns," including that "there [was] no income in the household and" because "the household overall was not appropriate for [B.B.H.'s] age." (Mar. 31, 2014 Tr. 109-110; Apr. 1, 2014 Tr. 21.) The GAL, who also visited the home, found that "the current condition of the home * * * is not adequately appropriate for this child to be placed into that home with the occupants that are in the home and the way that the bedrooms are set up." (Apr. 11, 2014 Tr. 30.)

{¶ 11} Following the hearings, the trial court issued a permanent custody judgment entry granting FCCS's motion for PCC. The court noted that, although father became involved in the child's life after paternity was established, "to grant [father]

custody at this stage, would be to upset the apple cart of this child's first three years of life that is proven stable and permanent." (PCC Judgment Entry, 3.) The court noted that "[p]lacement out of the home for over twelve of twenty-two months, i.e. thirty-nine (39) months allows limiting this decision solely to the child's best interest." (PCC Judgment Entry, 4.) The court then analyzed all of the factors under R.C. 2151.414(D)(1), noted that the GAL supported the motion for PCC, and noted father's progress on his case plan objectives. The court concluded that the child's "placement in the home of father would be contrary to the child's best interests and welfare," and that it was in the best interests of the child to permanently commit the custody of the child to FCCS for purposes of adoption. (PCC Judgment Entry, 9.)

II. ASSIGNMENTS OF ERROR

{¶ 12} Father appeals, assigning the following errors:

I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY FINDING THAT THE APPELLANT ABANDONED HIS CHILD, BECAUSE IT FAILED TO RECOGNIZE THAT A PARENT CAN REBUT THE PRESUMPTION OF ABANDONMENT.

II. THE TRIAL COURT'S FINDING THAT THE CHILD'S BEST INTEREST WAS SERVED BY AWARDED THE APPELLEE PERMANENT CUSTODY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE BECAUSE APPELLEE FAILED TO PRESENT COMPETENT, CREDIBLE EVIDENCE SUFFICIENT TO SATISFY THE CLEAR AND CONVINCING STANDARD.

{¶ 13} Because father's assignments of error both relate to the court's analysis under R.C. 2151.414(D)(1), we address them jointly.

III. STANDARD OF REVIEW

{¶ 14} "In reviewing a judgment granting permanent custody to FCCS, an appellate court 'must make every reasonable presumption in favor of the judgment and the trial court's findings of facts.' " *In re J.T.*, 10th Dist. No. 11AP-1056, 2012-Ohio-2818, ¶ 8, quoting *In re P.G.*, 10th Dist. No. 11AP-574, 2012-Ohio-469, ¶ 37. " '[I]f the evidence is susceptible of more than one construction, we must give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the [juvenile]

court's verdict and judgment.' " *In re Brooks*, 10th Dist. No. 04AP-164, 2004-Ohio-3887, ¶ 59, quoting *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19 (1988). A trial court's determination in a PCC case will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Andy-Jones*, 10th Dist. No. 03AP-1167, 2004-Ohio-3312, ¶ 28.

{¶ 15} R.C. 2151.414 governs the procedure for granting permanent custody of a child to a public agency such as FCCS. "A decision to award permanent custody requires the trial court to take a two-step approach." *In re K.L.*, 10th Dist. No. 13AP-218, 2013-Ohio-3499, ¶ 18. Pursuant to R.C. 2151.414(B)(1), a trial court may grant permanent custody if, after a hearing, it determines by clear and convincing evidence, that (1) any of the circumstances in R.C. 2151.414(B)(1)(a) through (d) exist, and (2) such relief is in the best interest of the child. Clear and convincing evidence means the measure of proof that produces " '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, ¶ 42, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. "Judgments are not against the manifest weight of the evidence when all material elements are supported by competent, credible evidence." *In re J.T.* at ¶ 8.

{¶ 16} Parents have a constitutionally-protected fundamental interest in the care, custody, and management of their children. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The Supreme Court of Ohio has recognized the essential and basic rights of a parent to raise his or her child. *In re Murray*, 52 Ohio St.3d 155, 157 (1990); *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, ¶ 28. These rights, however, are not absolute, and a parent's natural rights are always subject to the ultimate welfare of the child. *In re Cunningham*, 59 Ohio St.2d 100, 106 (1979). Because the termination of parental rights has been described as the " 'the family law equivalent of the death penalty in a criminal case,' " parents "must be afforded every procedural and substantive protection the law allows." *In re Hayes*, 79 Ohio St.3d 46, 48 (1997), quoting *In re Smith*, 77 Ohio App.3d 1, 16 (6th Dist.1991).

IV. PCC PROPERLY GRANTED

{¶ 17} In his second assignment of error, father asserts that the manifest weight of the evidence does not support the trial court's determination that granting FCCS

permanent custody of B.B.H. was in B.B.H.'s best interests. Father specifically contends that the trial court erred in finding that the child's need for legally secure permanent placement, under R.C. 2151.414(D)(1)(d), could only be satisfied by granting FCCS permanent custody. In his first assignment of error, father asserts that the trial court erred as a matter of law in finding that father abandoned B.B.H. under R.C. 2151.414(E)(10).

{¶ 18} As noted above, the first step under the R.C. 2151.414 analysis requires the court to find that any one of the R.C. 2151.414(B)(1) factors have been satisfied by clear and convincing evidence. A trial court need only make one of the findings under R.C. 2151.414(B)(1). *In re R.L.*, 10th Dist. No. 07AP-36, 2007-Ohio-3553, ¶ 11; *In re Stafford*, 9th Dist. No. 2006 CA 00307, 2007-Ohio-928, ¶ 20. R.C. 2151.414(B)(1)(d) provides as follows:

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.

{¶ 19} The trial court noted in its decision that B.B.H. was placed in FCCS's care three days after his birth, and was committed to the temporary custody of FCCS on July 28, 2011. B.B.H. has remained in the custody of FCCS to date, and has resided in the same foster home his entire life. As such, clear and convincing evidence supports the trial court's determination that B.B.H. has been in the custody of FCCS for 12 or more months out of a consecutive 22-month period. Father does not dispute that B.B.H. has been in the custody of FCCS for the requisite R.C. 2151.414(B)(1)(d) time period.

{¶ 20} Because one of the factors in R.C. 2151.414(B)(1) applies to this case, we next turn to the best interests of B.B.H. *K.L.* at ¶ 20. Notably, the focus of the best interest determination is upon the child, not the parent, as R.C. 2151.414(C) specifically

prohibits the court from considering the effect a grant of permanent custody would have upon the parents. *In re Awkal*, 95 Ohio App.3d 309, 315 (8th Dist.1994).

{¶ 21} In determining the child's best interest, the trial court must 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;

(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.

R.C. 2151.414(D)(1).

{¶ 22} The factors set forth in R.C. 2151.414(E)(7) through (11) include: (1) whether the parents have been convicted of or pled guilty to various crimes; (2) whether medical treatment or food has been withheld from the child; (3) whether the parent has placed the child at a substantial risk of harm due to alcohol or drug abuse; (4) whether the parent has abandoned the child; and (5) whether the parent has had parental rights terminated with respect to a sibling of the child.

{¶ 23} In granting permanent custody to FCCS, the trial court found each of the above factors weighed in favor of finding permanent custody to be in B.B.H.'s best interest. Notably, R.C. 2151.414(D) does not give any one factor "greater relevance than the others." *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, ¶ 56. Additionally, it has been held that " 'only one of the factors set forth 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.Q.*, 2d Dist. No. 25428, 2013-Ohio-3176, ¶ 71, quoting *In re Z.T.*, 8th Dist. No. 88009, 2007-Ohio-827, ¶ 56.

{¶ 24} Under R.C. 2151.414(D)(1)(a), the court must consider the interactions and relationships between the child and the individuals in the child's life. Here, the court noted that B.B.H. was "very bonded" to his foster parents, and was "now acquainted through visitation" with father. (PCC Judgment Entry, 5.) The record readily supports that B.B.H. is very bonded to his foster parents. B.B.H. goes to "foster mom and dad when he needs or wants something. He goes to them for affection and comfort." (Apr. 1, 2014 Tr. 16.) B.B.H. has spent his entire life with his foster parents. B.B.H. refers to father as "Dad Thomas," but refers to his foster parents as "[m]om and dad." (Apr. 1, 2014 Tr. 15.) Although B.B.H. has a "friendly bond" with father, and is "comfortable playing" with him, he is not strongly bonded to father in the way that he is to his foster parents. (Apr. 11, 2014 Tr. 110.)

{¶ 25} Under R.C. 2151.414(D)(1)(b), the court must consider the wishes of the child. The court noted that B.B.H. is too young to express his wishes. The GAL's opinion was that the court should grant the agency's motion. Under R.C. 2151.414(D)(1)(c), the court must consider the custodial history of the child and determine whether the child has been in the temporary custody of a child-placing agency for 12 or more months in a consecutive 22-month period. As discussed above, this factor is satisfied as the child has been in the custody of FCCS since 3 days after his birth.

{¶ 26} Father asserts that the record does not support the trial court's finding under R.C. 2151.414(D)(1)(d), regarding the child's need for legally secure permanent placement. This factor "involves whether the child needs a legally secure permanent placement and whether this can be achieved without a grant of permanent custody to the agency." *In re D.P.*, 10th Dist. No. 06AP-780, 2007-Ohio-1703, ¶ 16. The trial court

concluded that legally secure permanent placement could not "be achieved without a grant of permanent custody to Franklin County Children Services." (PCC Judgment Entry, 5.) The record supports the trial court's conclusion.

{¶ 27} The GAL testified that legally secure permanent placement could not be achieved with father, noting that "[w]e recently had a period of incarceration for non-payment of support, we don't have employment, I don't have any information regarding a legal source of income, so when I look at just those factors * * * those are the issues that I don't see that have been fixed at this case since its initiation." (Apr. 11, 2014 Tr. 37.) The GAL further noted that "the current condition of the home although meeting state standards is not adequately appropriate for this child to be placed into that home with the occupants that are in the home and the way that the bedrooms are set up." (Apr. 11, 2014 Tr. 30.)

{¶ 28} Father asserts that he could provide the child with legally secure permanent placement because the "trial court found that he completed nearly every one of his case plan objectives." (Appellant's Brief, 24.) Father's assertion misconstrues the trial court's findings. The court found, regarding the case plan, that father attended weekly visitations, completed a mental health evaluation and counseling, established housing with his mother and sister, and that "[p]arenting classes were completed, father alleges without a certificate." (PCC Judgment Entry 8.) Although father had housing, he relied on relatives to support the household financially, and the GAL found that the home was not appropriate for the child.

{¶ 29} Regarding the case plan, the court further found that "[e]mployment was sporadic," and that father had admitted that he was unemployed from "December, 2013 to the time of trial." (PCC Judgment Entry, 8.) Father testified that he worked during the summer of 2013 for "Constellation Energy Group," but asserted that he "wasn't able to stay on there because it was a first shift job only and when all this starting [sic] coming up," i.e. his obligations related to this case, "it took a lot of time away from work." (June 2, 2014 Tr. 88.) Father asserted that he also had seasonal employment from October to December 2013 working in a "distribution warehouse for Victoria Secret." (June 2, 2014 Tr. 88.) At trial, father stated that he had just "recently got hired on at Burger King" and that he would begin working there that week. (June 2, 2014 Tr.

88.) However, father's case plan required that he obtain and maintain stable income. Father's sporadic and inconsistent employment history was insufficient to satisfy his case plan objective. Furthermore, father's case plan required that he pay his child support. Father failed to accomplish this case plan objective, and served time in prison as a result. Father is currently \$15,000 in arrears on his child support payments.

{¶ 30} As father has only demonstrated sporadic employment, is not financially able to support his other two children, and as the home study on father's house was denied, placing B.B.H. with father would not amount to legally secure permanent placement. In contrast, B.B.H. has legally secure permanent placement with his foster family. He is very bonded with his foster family and his foster family wishes to adopt him. Accordingly, we find competent, credible evidence in the record to support the trial court's conclusion that legally secure permanent placement can only be achieved by granting permanent custody to FCCS.

{¶ 31} The trial court also found that father had abandoned the child under R.C. 2151.414(E)(10), which simply asks whether the "parent has abandoned the child." The trial court determined that the parents had abandoned the child, noting that "mother failed to visit for over 90 days" and that "father, although unaware of parentage until June 2013, did not visit the child until May or June 2013, which is not obviated by later visitation." (PCC Judgment Entry, 7.)

{¶ 32} Regarding abandonment, R.C. 2151.011(C) provides that "a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days." "[S]ome courts have held that R.C. 2151.011(C) merely creates a presumption of abandonment, which a parent may rebut." *In re D.P.* at ¶ 8, citing *In re Cornell*, 11th Dist. No.2003-P-0054, 2003-Ohio-5007, fn. 2. *See also In re Phillips*, 11th Dist. No. 2005-A-0020, 2005-Ohio-3774, ¶ 32.

{¶ 33} Father asserts that he rebutted the presumption of abandonment because, as he was unaware of the child's existence until 2013, he never intended to abandon the child. In *In re C.E.*, 2d Dist. No. 2005-CA-11, 2005-Ohio-5913 the court noted that "'[a]bandonment' of a child has been defined as any conduct on the part of the parent

which evinces a settled purpose to forego all parental duties and relinquish all parental claims to the child.' " *Id.* at ¶ 12, quoting *Baker v. Rose*, 28 Ohio Misc. 200, 203 (1970), citing *In re Masters*, 165 Ohio St. 503, 505-06 (1956). In *In re C.E.*, the court concluded that, "although the presumption of abandonment established by R.C. 2151.011(C) was triggered when the mother failed to visit or maintain contact with the children for a period exceeding ninety days, the trial court could reasonably find * * * that the mother successfully rebutted that presumption." *Id.* at ¶ 2. The court found the presumption of abandonment rebutted, as the evidence demonstrated that mother and her husband had issues of domestic violence, mother left Ohio to avoid contact with her husband, and that mother "avoided contact with the children for a period of about four months solely because she wanted to avoid the possibility that her husband would be able to locate her." *Id.* at ¶ 15.

{¶ 34} In *In re C.E.*, the Second District Court of Appeals concluded that abandonment, "as used in Chapter 2151, requires proof of intent to relinquish parental rights of custody permanently, not just temporarily." *Id.* This court, however, has held that "R.C. 2151.011(C) does not contain a requirement of any particular 'intent' on behalf of the parent; rather, the provision defines 'abandonment' solely in terms of the time between contacts." *In re D.P.* at ¶ 7. *See also In re A.E.*, 10th Dist. No. 07AP-685, 2008-Ohio-1375, ¶ 26. Accordingly, father's contentions regarding his lack of intent to abandon the child are irrelevant.

{¶ 35} Father continues, asserting that, if the only relevant inquiry is "the time between contacts," because father never had an initial contact with B.B.H. prior to 2013, there is no point from which to measure the time between his contacts, until his initial contact with the child occurred in May or June 2013. *In re D.P.* at ¶ 7. Following his initial contact in 2013, father did not fail to visit the child for more than 90 days.

{¶ 36} While father's argument is novel, the issue is moot. Even if the trial court had concluded that father rebutted the presumption of abandonment, for the reasons noted above, the evidence on the remaining factors supports the trial court's decision to grant FCCS permanent custody of the child. *See In re D.K.*, 3d Dist. No. 1-09-16, 2009-Ohio-5438, ¶ 34 (noting that "even if the trial court's finding under R.C. 2151.414(E)(10) was in error, we believe that the other findings were certainly sufficient to support the

trial court's permanent custody decision"). *See also In re C.E.* at ¶ 18 (finding that "no other evidence had been presented warranting the termination of [mother's] parental rights" aside from the abandonment issue in that case). Here, the R.C. 2151.414(D)(1) factors noted above, coupled with father's inability to complete the objectives of his case plan, supported the trial court's decision to grant permanent custody of the child to FCCS. *See In re Bowers*, 10th Dist. No. 02AP-347, 2002-Ohio-5084, ¶ 85; *In re Brofford*, 83 Ohio App.3d 869, 878 (10th Dist.1992) (noting that "[n]oncompliance with the case plan is a ground for termination of parental rights").

{¶ 37} Reviewing the record as a whole, we cannot say the trial court clearly lost its way, or that the evidence weighs heavily against the trial court's best interest finding. We find clear and convincing evidence supports the trial court's finding that it was in the child's best interest to grant FCCS permanent custody. The trial court's judgment awarding FCCS permanent custody is not against the manifest weight of the evidence.

{¶ 38} We lastly observe that, although granting FCCS permanent custody is in the child's best interest, father has clearly demonstrated a desire to be involved in his son's life throughout these proceedings. Foster mother, who also cared for B.B.H.'s biological siblings until those children were placed with their biological father, has been "facilitating contact with [B.B.H.'s] older siblings." (June 2, 2014 Tr. 47.) Foster mother maintains these contacts "voluntar[il]y," and there is no court order obligating her to do so. (Apr. 1, 2014 Tr. 40.) Accordingly, it is our hope that foster mother will continue to encourage the relationship between B.B.H. and father, as long as such relationship remains a healthy, positive influence in B.B.H.'s life.

V. DISPOSITION

{¶ 39} Based on the foregoing, we overrule father's second assignment of error, and find father's first assignment of error to be rendered moot. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgment affirmed.

TYACK and KLATT, JJ., concur.
