

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re [G.E.H., G.S.H., and M.H.],	:	No. 15AP-966
[C.A.,	:	(C.P.C. No. 11JU-10000)
Appellant].	:	(ACCELERATED CALENDAR)
In re [I.O.],	:	No. 15AP-967
[C.A.,	:	(C.P.C. No. 12JU-8835)
Appellant].	:	(ACCELERATED CALENDAR)
In re [S.L.O.],	:	No. 15AP-969
[C.A.,	:	(C.P.C. No. 11JU-10001)
Appellant].	:	(ACCELERATED CALENDAR)

D E C I S I O N

Rendered on June 21, 2016

On brief: *John T. Ryerson*, for appellant.

On brief: *Robert J. McClaren*, for Franklin County Children Services.

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

LUPER SCHUSTER, J.

{¶ 1} Appellant, C.A., mother of G.E.H., G.S.H., M.H., S.L.O., and I.O. (collectively "the children" or "the five children"), appeals from judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, terminating her parental rights and placing the children in the permanent custody of

appellee, Franklin County Children Services ("FCCS"). For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} This case involves FCCS's request for permanent custody of G.E.H., born April 11, 2006; G.S.H., born August 7, 2007; M.H., born March 3, 2009; S.L.O., born October 1, 2010; and I.O., born March 15, 2012. H.H., father of G.E.H., G.S.H., and M.H., expressed through counsel he was not contesting the permanent custody hearing. S.O., the father of S.L.O. and I.O., is incarcerated and has no interest in participating and no potential for custody of S.L.O. and I.O.

{¶ 3} Though this case has been continuously open since July 2011, FCCS originally opened its case with this family in 2004 regarding an allegation of neglect of a sibling. The 2004 case was substantiated in 2006 and resulted in the court awarding custody of mother's oldest child to the father.

{¶ 4} On July 25, 2011, FCCS filed two complaints, one for G.E.H., G.S.H., and M.H., and one for S.L.O., alleging those four children to be neglected and dependent minors. At that date G.E.H. was five years old, G.S.H. was three years old, M.H. was two years old, and S.L.O. was nine months old. FCCS filed the neglect and dependency actions after receiving information that mother had locked the three oldest children in their bedroom and left the residence for two and one-half hours. The complaints alleged mother had acted similarly in the past, and the children would urinate and defecate on themselves, break windows in their bedroom, injure each other with scissors left in the room, and punch holes in the wall. At the time of the complaints, all four children resided with mother and S.O., and the complaints further alleged S.O. would lock the children in the bedroom so that mother and S.O. could sleep uninterrupted. The complaints alleged mother and S.O. would argue over who would have to change M.H.'s diapers, and as a result neither parent would change her diapers. Additionally, the complaints alleged mother and S.O. would leave S.L.O. in her swing, car seat, or portable crib for extended periods of time, and that they would leave M.H. in her crib for an entire day. The complaints alleged that there is domestic violence between mother and S.O. and that mother abuses prescription pain medication. The complaints further noted that both H.H. and S.O. have lengthy criminal histories and that S.O. is a registered sex offender.

{¶ 5} The trial court granted FCCS court ordered protective supervision of G.E.H., G.S.H., M.H., and S.L.O., and the children remained in the care of mother and S.O. Eventually, the trial court dismissed the neglect causes of action and proceeded as to the dependency causes of action. The trial court found G.E.H., G.S.H., M.H., and S.L.O. to be dependent children on October 12, 2011, making them wards of the court under the court ordered protective supervision of FCCS.

{¶ 6} On March 8, 2012, FCCS moved for an extension of court ordered protective supervision for the four children, stating that since the last court date, mother has completed random urine screens which have been negative, regularly met with the caseworker, and completed a mental health assessment. In its motion, FCCS noted mother had not yet linked with counseling and had not yet completed parenting classes. The trial court granted FCCS's motion for an extension of court ordered protective supervision.

{¶ 7} After the two initial complaints were filed, mother gave birth to I.O. on March 15, 2012. In a report dated April 5, 2012, the guardian ad litem for the four children stated that S.O. no longer lived with mother and the children. The guardian ad litem noted mother needed to participate in mental health counseling.

{¶ 8} On June 25, 2012, the trial court issued two emergency custody orders granting FCCS emergency temporary custody of G.E.H., G.S.H., M.H., and S.O. The next day, June 26, 2012, FCCS filed a complaint alleging I.O. was a dependent and neglected child. The complaint stated mother was evicted from her home on June 5, 2012 and has not found stable housing since that time. Additionally, the complaint stated that on June 24, 2012, police responded to the home where mother was staying and found mother unconscious in the backyard, urinating blood. Police arranged for mother's transport to the hospital and transported the five children to FCCS. Mother left the hospital and was not answering any telephone calls. On June 26, 2012, the trial court granted FCCS temporary custody of all five children.

{¶ 9} In a September 13, 2012 report, the guardian ad litem for all five children noted that FCCS placed all five children in the home of a relative of S.L.O. and I.O.'s father, and they appeared to be thriving in their new home. The guardian ad litem

reported she had been unable to contact mother, and noted that mother had not been attending psychological counseling.

{¶ 10} FCCS moved for, and the juvenile court granted, two extensions of temporary court commitment. FCCS then filed three separate motions on March 14, 2014 requesting permanent court commitment ("PCC"), also known as permanent custody, of all five children. The juvenile court combined the motions into a single trial. The court continued the matter several times.

{¶ 11} At the March 11, 2015 trial, mother testified that she has seven children, none of whom currently live with her. Though agreeing children services had investigated her 37 times since 2004, mother testified she has "never" had an understanding as to why her children were removed from her care. (Mar. 11, 2015 Tr. at 16.) She stated she did not agree with various FCCS reports beginning in 2008 that she had no running water in her home, that she allowed dog feces to cover the floor, that she did not seek appropriate medical care for her children, or that she at one time shoved her children at law enforcement officers and stated she could no longer care for them.

{¶ 12} Mother testified that her relationship with H.H. was an abusive relationship, and she remembered an October 2008 incident in which one of her sons sustained a cut lip and bruise on his thigh mother attributed to H.H., as well as a July 2009 incident in which mother had bruises on her face after an altercation with H.H. Even though she would call police and file for restraining orders against H.H., mother agreed that she stayed in a relationship with H.H. despite the abuse at least through July 2009.

{¶ 13} When asked about a June 2010 incident in which she allegedly locked G.E.H. and G.S.H. in their room so she could go visit friends down the street, mother blamed S.O. for locking the children in their room. Mother testified her relationship with S.O. was also an abusive relationship but that she would still leave her children in S.O.'s care. When asked about another incident in March 2011 when she allegedly locked her children in their room and the children urinated and defecated on themselves and then smeared it around the room, mother again stated that it was S.O. who had locked the children in their room. Mother testified she had no memory of saying in March 2011 that

she could not handle the children, that she took pills so she could handle them, and that if she did not have her pills, she would murder the children.

{¶ 14} Mother also disagreed with an October 2011 report stating there were dirty diapers covering the roof of her porch, so much feces inside the house that it could be seen through the windows, and that S.L.O. seldom received baths and smelled like urine most of the time. Mother said S.L.O. "was bathed all the time," and she agreed that there were dirty diapers covering the porch roof but again blamed S.O. for putting the diapers there instead of throwing them away with the garbage. (Mar. 11, 2015 Tr. at 26.) Another report from January 2012 said there was feces smeared all over the bedroom walls and roaches all over the house, but mother blamed the living conditions on her landlord for being "a slum lord." (Mar. 11, 2015 Tr. at 27.) A report from March 2012 said the home was still infested with roaches, fleas, and bed bugs and that mother had numerous animals living in the home and would hide the animals in the clothes dryer when someone would visit.

{¶ 15} Another report from May 2012 stated G.E.H. was suspended from school and when he returned home mother beat him in the front yard. Mother disagreed with that report and said instead she took her belt off and smacked him with her belt. She denied bragging to her neighbors after the fact that she "beat his ass." (Mar. 11, 2015 Tr. at 30.) However, mother said that at that time, she had a "severe anger problem." (Mar. 11, 2015 Tr. at 29.) Mother testified her neighbors were constantly "calling Children Services for no reason." (Mar. 11, 2015 Tr. at 30.)

{¶ 16} Mother agreed with another report from May 2012 stating M.H. had a red mark on her leg that resembled three fingers, but mother could not remember whether she had either smacked M.H. or grabbed her. Mother said she "had to" either smack or grab M.H. because M.H. had called mother a bitch. (Mar. 11, 2015 Tr. at 31.) M.H. was three years old in May 2012. Mother did not remember a May 2012 report indicating she called her children "little bastards and that [she] hated them." (Mar. 11, 2015 Tr. at 31.) She agreed that she said she was "[t]ired of [her] kids" in May 2012, but she denied saying her children "got on [her] nerves." (Mar. 11, 2015 Tr. at 32.) Mother blamed all of those previous incidents on her "anger issues," and she stated people would only call children services because of "personal vendettas against" her. (Mar. 11, 2015 Tr. at 33.)

{¶ 17} When asked if she understood what she needed to do in order to regain custody of her children, mother testified she needed to have clean drug tests, stable employment and housing, obtain her GED, and participate in mental health counseling. She acknowledged she had issues with anger management and "heavy drug use." (Mar. 11, 2015 Tr. at 34.) Mother testified she "put [herself] in rehab twice," though she did not complete the first program and she described herself as still going through the "process" of the second drug rehabilitation program. (Mar. 11, 2015 Tr. at 34, 35.) However, mother then agreed the second drug rehabilitation program terminated her enrollment for lack of participation.

{¶ 18} Mother testified regarding her drug problem, namely opiates in the form of pain pills. She said she does not always have a prescription for the pills, but she is often able to obtain a prescription from an emergency room, her dentist, or a pain management specialist she saw after a car accident. Mother said her caseworker told her she needed to stop seeking prescriptions for pain pills and to stop using the pills even if she had prescriptions for them, but mother said she has continued to get the prescriptions from multiple sources even after being cautioned against it. Mother further testified she had stopped completing drug screens. She blamed her failure to attend the drug screens on not having bus passes, though she acknowledged she could have obtained bus passes from her caseworker if she had asked for them, and on it being too cold outside to wait for a bus.

{¶ 19} Mother said she has been working on her anger issues "[f]or about the past year and a half" and that she has learned how to control her temper. (Mar. 11, 2015 Tr. at 43.) She acknowledged, however, that at a pre-trial conference she started yelling profanities at H.H. because she was surprised and upset to see him. Mother denied that she screams or yells at her children, but she agreed she told M.H. and G.S.H. at a supervised visit that she would "pop them in the mouth" because she does not know "what else to do" in order to discipline them. (Mar. 11, 2015 Tr. at 45, 46.) Mother said that if the children were to return to her care, she would try other techniques to discipline the children, including time-outs, taking away toys, and separating the children. Mother testified she did not attend any visits with her children in January 2015 but said it was because she had been sick.

{¶ 20} Though she completed a course of parenting classes, mother testified her caseworker told her she needed to participate in additional counseling to address the "stressors" that interfere with her ability to parent her children. (Mar. 11, 2015 Tr. at 49.) Despite that recommendation, however, mother has not attended further counseling because she has "never been the one to talk to a counselor." (Mar. 11, 2015 Tr. at 49.)

{¶ 21} Mother said her name is on the lease of the current residence of her fiancé but that she has not been allowed to live there since her fiancé was granted custody of their son, J.M., due to her failure to complete her drug screens. She testified that she has been living with a friend identified as Amy "off and on for almost six months," but that her name was not on the lease. (Mar. 11, 2015 Tr. at 15.) Mother said she had spent some time living at her fiancé's parents' house but that she had "an issue with a person in that household" and her fiancé's "mother kicked [her] out," so she has been living with Amy consistently for the past two months. (Mar. 11, 2015 Tr. at 51.) Mother said her living situation would be stable if she were permitted to live with her fiancé again, but she acknowledged she still was not participating in drug screens and thus was not allowed to live there.

{¶ 22} Mother testified she felt she "[has] what [she] need[s]" to take care of her children again. (Mar. 11, 2015 Tr. at 54.) Even though she agreed she had not finished her recommended counseling and drug treatment, she said "that has nothing to do with how [she] take[s] care of [her] kids though because [addiction] classes where [she] go[es] and listen[s] to heroin addicts and other people bitch and complain about their drug abuse for three times a week has nothing to do with how [she] raise[s] [her] children." (Mar. 11, 2015 Tr. at 54-55.)

{¶ 23} Following her testimony, mother indicated to the trial court that although H.H. was listed as the father on G.E.H.'s birth certificate, she was not certain H.H. was actually G.E.H.'s father. The trial court ordered a recess until September 2015 to allow for establishment of paternity. Subsequent DNA testing showed H.H. to be the father of G.E.H.

{¶ 24} After the six month recess, Mervat Saa, a child protection specialist with Permanent Family Solutions Network ("PFSN"), testified she has been assigned to this case since May 2013. Saa testified the five children had been in FCCS custody for over 37

months and that the children are currently all placed together in a foster-to-adopt home. G.E.H. and G.S.H. have been in their current foster home since August 2013, and M.H., S.L.O., and I.O. joined them in that same foster home in January 2014.

{¶ 25} Saa described mother's case plan, which outlined the goals she needed to achieve in order to be reunified with her children. The case plan required mother to obtain stable housing and employment, complete a domestic violence assessment, complete a mental health assessment, complete an alcohol and other drug ("AOD") assessment, and complete parenting classes. The goal of the case plan was reunification with the children. Saa testified that mother completed the domestic violence portion of the case plan. However, Saa testified that although FCCS referred mother for several mental health assessments and several AOD assessments, she completed only one AOD assessment and never completed AOD treatment. Saa testified FCCS most recently linked mother with drug treatment at Southeast Mental Health and Recovery Services ("Southeast") in March 2015 but that Southeast terminated her for lack of participation.

{¶ 26} Saa said mother's drug of choice is Percocet and that mother has admitted to her that she does not always have a prescription for the drug but would obtain the pills from other people. When mother gave birth to her youngest son, J.M., both mother and the baby tested positive for Percocet. Saa said she has had multiple conversations with mother expressing concern about the amount of prescriptions mother obtains for Percocet, the number of different doctors she sees to get the prescriptions, and her history of abuse of this drug. Of the 379 drug screens Saa had asked mother to complete during this case, mother missed 254 drug screens and tested positive 102 times. Based on mother's drug screen performance and failure to complete AOD treatment, Saa testified mother did not complete that portion of the case plan.

{¶ 27} Mother completed a psychological assessment in July 2014. Following the psychological assessment, FCCS updated mother's case plan to reflect mother's need for additional parenting classes, AOD treatment, and anger management. Though Saa referred mother for help with anger management, Saa testified that mother started to attend but then stopped, and she has not completed that portion of her case plan.

{¶ 28} Pursuant to the case plan, mother was to attend weekly supervised visits with the children. Saa testified mother has been more consistent with this portion of the

case plan than any other, missing 20 visits out of the more than 130 that FCCS offered. Saa described the visits as "very chaotic," and said that mother tries to calm the children down but is unsuccessful. (Sept. 8, 2015 Tr. at 42.) The children have to be asked to stay in the room with their mother, and they run to the foster mother as soon as the visits are over. Often, the caseworker has to redirect mother and ask her not to use curse words, and even the children remind mother not to use curse words. Saa testified that during some visits, mother would threaten to "pop the kids in their mouth" or spank them, and the children would tell her "[y]ou can't do that to us." (Sept. 8, 2015 Tr. at 43.)

{¶ 29} Because of mother's history with FCCS and the different reports of neglect and abuse throughout the years, FCCS made completing parenting classes a part of mother's case plan. Saa testified that FCCS made multiple referrals for mother to attend parenting classes both through The Buckeye Ranch and Guidestone but that she is not currently attending parenting classes. Though Saa testified mother did complete one parenting class in July 2013, Saa said that based on her visits with both mother and the children, mother was not able to demonstrate the skills learned in the parenting class needed to parent five children. Saa described mother as overwhelmed and unable to handle the children. FCCS referred mother for parenting classes again in October 2014, but mother did not complete that parenting class. According to Saa, mother did not complete the parenting portion of the case plan.

{¶ 30} When asked about what kind of bond mother has with her children, Saa described both G.E.H. and G.S.H. as "very indifferent" towards mother. (Sept. 8, 2015 Tr. at 49.) G.E.H. reported multiple times that he did not want to visit with his mother and only wanted to attend the visits in order to spend time with his new baby brother who did not live with the foster parents. Saa said M.H. is "very attached" to mother and will seek out her attention during visits. (Sept. 8, 2015 Tr. at 50.) S.L.O. and I.O. spend their time during the visits coloring, but Saa said S.L.O. would seek out mother's attention "at times." (Sept. 8, 2015 Tr. at 50.) Saa said she "[does not] know that [I.O.] is bonded with [mother] at all" because "[h]e's been in [FCCS] custody since he's been born." (Sept. 8, 2015 Tr. at 50.) Saa said I.O. will go to mother if he sees his siblings go to her but he does not show that he is bonded to mother.

{¶ 31} Part of mother's case plan was to obtain safe and stable housing, and Saa testified that mother has not had stable housing at any time since she became involved in this case. Saa said mother had been staying with her fiancé's family but that the family expressed to Saa that they did not want mother to live there. Though mother said she is currently living with a friend, mother never provided Saa with that friend's address and Saa said she did not know where mother currently lived. Thus, Saa said mother did not complete the portion of her case plan requiring her to obtain stable housing.

{¶ 32} Saa visited many times at the home of mother's fiancé, E.M., and said it met the minimum standards of suitable housing but that mother was not permitted to live there because of her noncompliance with the case plan goals. Mother's fiancé lived in the home with J.M., mother's youngest son. Though Saa said E.M. would be an adequate supervisor for the children, she was concerned that E.M. was allowing mother to be unsupervised with J.M.

{¶ 33} Mother's case plan also required mother to obtain an income to care for the children. Saa testified that mother is not employed and that, during the pendency of the case, mother's only employment had been a job at McDonald's that lasted only one week. Saa said mother was fired after one week because mother would not show up to work on time.

{¶ 34} Saa testified regarding the various placements the children have had since FCCS opened its case. Initially, before I.O. was born, G.E.H., G.S.H., M.H., and S.L.O. were placed together in foster care for a short time while FCCS conducted an in-home study. The four children were then placed together with paternal relatives. When that placement disrupted, S.L.O. and M.H. went to one relative placement and G.E.H. and G.S.H. went to another relative placement. The relative caregiver had difficulty with G.E.H.'s and G.S.H.'s behavior, so those two then went into foster care. Around that time, I.O. was born, and he joined S.L.O. and M.H. at their relative placement. When that disrupted, in January 2014, M.H., S.L.O., and I.O. went to the same foster home as G.E.H. and G.S.H., and all five children currently remain in that home.

{¶ 35} Saa further testified that a maternal aunt who lives in Texas reported interest in obtaining custody of G.E.H. and G.S.H., and that FCCS completed and approved an Interstate Compact on the Placement of Children assessment for the aunt.

However, when the aunt came to visit the children, she informed FCCS that the children were bonded with the foster mother and bonded with each other, and she did not want to separate G.E.H. and G.S.H. from their foster parents or their siblings.

{¶ 36} Saa said the five children are all bonded to each other and that the foster family has indicated a willingness to adopt all five children. Saa said there is a "difference" between the way the children interact with mother and the way they interact with their foster mother, saying they "are very loving towards foster mom." (Sept. 8, 2015 Tr. at 65.) S.L.O. and I.O. spend most of the supervised visits sitting in their foster mom's lap and telling her they love her. All five children call their foster mother "mom" and their foster father "dad." (Sept. 8, 2015 Tr. at 65.) Saa said that since the children have been with their current foster family, "they're just very different than the children [she's] worked with for the past three years. They're calmer, they're more regulated, * * * they have a sense of security in that foster home, and it's probably because it's the most stability they've had since they've been born." (Sept. 8, 2015 Tr. at 65.) Saa testified the children are "[a]bsolutely" bonded to the foster parents and are "very attached to foster mom." (Sept. 8, 2015 Tr. at 65, 66.)

{¶ 37} Some of the children have special needs. G.E.H. has been diagnosed with attention deficit hyperactivity disorder ("ADHD") and with oppositional defiance disorder. G.S.H. has ADHD and an attachment disorder, and there were concerns M.H. may have an attachment disorder. G.E.H., G.S.H., and M.H. are now receiving mental health treatment through The Buckeye Ranch. S.L.O. had some physical problems with the development of her muscles caused by not being held as a baby and being left in her playpen or crib for extended periods of time.

{¶ 38} Ultimately, Saa testified it was her recommendation that the court grant FCCS's motion for permanent custody with the purpose of adoption for the five children.

{¶ 39} A.H., paternal aunt of G.E.H., G.S.H., and M.H., testified she still has a relationship with the children even though they are in foster care, and she visits with them regularly. A.H. testified that when G.E.H. was born, she received a phone call from H.H. and mother while they were still at the hospital and they told her they were not ready to care for a baby, so she cared for G.E.H. for the first two months of his life. A.H. stated that when she would observe the children with mother, the environment "wasn't the best,"

that mother would lock the children in their rooms, and that the children always seemed hungry. (Sept. 8, 2015 Tr. at 158.) When she has observed the children since their placement with their current foster family, A.H. said the children "seem like they're getting more of a family unit," the children do not fight as much, that G.E.H. does not seem as angry as he used to be, and that the children are generally happy. (Sept. 8, 2015 Tr. at 159.) A.H. described the children's relationship with the foster parents as "a family unit," and said "[y]ou can see that" the children "[are] loved." (Sept. 8, 2015 Tr. at 160.)

{¶ 40} Christine St. Clair, a support services supervisor at The Buckeye Ranch, testified she worked with mother as a caseworker starting in 2011. St. Clair testified that mother was always polite and friendly but that she did not follow through with the various services St. Clair attempted to arrange for her. St. Clair said mother "lacked follow through" with the assistance she was provided for finding employment and was unsuccessfully discharged from the program. (Sept. 8, 2015 Tr. at 177.) When St. Clair became the supervisor for the Family Support Services program, she said mother linked with her program but that St. Clair had to unsuccessfully discharge mother for having "no follow through" with the program. (Sept. 8, 2015 Tr. at 178.) St. Clair testified mother had made no progress from 2011 to 2015.

{¶ 41} St. Clair described an interaction with mother at a Nurturing Parent meeting in 2013 in which one of the children dropped his or her pizza and mother "stormed out of the room" and told the children "I'm leaving." (Sept. 8, 2015 Tr. at 180.) When St. Clair tried to convince mother to come back in the room because the children were crying and asking for her to return, St. Clair said mother "wasn't able to get over herself" and said she needed her medication. (Sept. 8, 2015 Tr. at 180.) St. Clair said mother reentered the room, dropped off a gift, and then left her children again and did not return.

{¶ 42} Jon Klein, the current guardian ad litem for the five children, testified that it was his recommendation that the court grant FCCS's motion for permanent custody of the children. Klein said his biggest reason for recommending permanent custody to FCCS is mother's failure to complete drug screens, leaving him no way of knowing if mother is "clean off of drugs." (Sept. 8, 2015 Tr. at 189.) In the six months that had elapsed from mother's testimony to when the trial resumed after the recess, mother had not completed

a single drug screen for the agency. Klein said the other "big issues" are the fact that mother has had no employment for three years since FCCS has had temporary custody of the children and mother's failure to obtain stable housing. (Sept. 8, 2015 Tr. at 190.) Additionally, Klein said that E.M. has a suitable house for J.M., mother's youngest child, but that E.M. on his own was not an option for the five children. He also noted that E.M. has custody of J.M. on the condition that E.M. is not allowed to have mother live with him and J.M., but that mother has represented to some people that she is currently living with E.M. despite that condition of his custody.

{¶ 43} Klein testified that he does not think the children are old enough to understand the concept of permanent custody, but that both G.E.H. and G.S.H. said they wanted to live with mother, though Klein said he was unsure if either of them were truly capable of competently expressing their wishes in that regard. Additionally, Klein said the children also refer to their foster mother as "mommy," so it was "possible" G.E.H. and G.S.H. were referring to their foster mother in expressing their wishes. (Sept. 8, 2015 Tr. at 211.) Klein said he did not ask the other three children what their wishes were because they are too young to express their wishes. Klein has observed the children with mother and said he "can tell the kids love mom." (Sept. 8, 2015 Tr. at 200.) On cross-examination, Klein said it would ease his concerns regarding mother's drug use if he knew all of her use of Percocet occurred when she had a valid prescription.

{¶ 44} Douglas Pawlarczyk, a clinical psychologist, testified he evaluated mother on September 19, 2014, three days after she gave birth to J.M., after mother's caseworker at The Buckeye Ranch referred mother for a psychological evaluation. He said she was very nonchalant for someone who had just delivered a baby that tested positive for opiates. Pawlarczyk testified mother had "demonstrated symptoms" of Post-traumatic Stress Disorder ("PTSD") but that she had not been adequately treated for those symptoms. (Sept. 9, 2015 Tr. at 11.) Pawlarczyk said he diagnosed mother as having an Antisocial Personality Disorder "which would involve bluntly expressing emotions, which could include anger and not being concerned about long-term consequences of that behavior." (Sept. 9, 2015 Tr. at 12.) Because of her Antisocial Personality Disorder, Pawlarczyk testified mother may have a difficulty bonding with her children. Pawlarczyk testified he recommended mother complete random drug screens and participate in a

drug and alcohol program to its completion, and it caused him concern that she had not done either of those things. In addition to diagnosing mother with chronic PTSD and Antisocial Personality Disorder, Pawlarczyk also diagnosed mother with opioid abuse and borderline intellectual functioning. Pawlarczyk recommended mother participate in a residential drug treatment program and participate in a parenting group, and he expressed concern that she had not done those things.

{¶ 45} Jackie Raye Blosser, a friend and former neighbor of mother, testified she has employed mother as a babysitter for her children beginning in 2013. Blosser said she initially paid mother \$75 a week and then eventually paid her \$200 a week. Additionally, Blosser said she had observed mother interact with her own children and that mother was "great" and "did everything appropriately." (Sept. 9, 2015 Tr. at 51.) Blosser has since moved to Lancaster, Ohio, but she said she intends to maintain her relationship with mother by using her as a babysitter.

{¶ 46} E.M., mother's fiancé, testified he has known mother since 2011 and became romantically involved with her about one and one-half years ago. E.M. testified that when mother gave birth to their child, J.M. had opiates in his system and mother was not allowed to be around J.M. without supervision. He said he obtained a judgment entry granting him legal custody of J.M., which mother did not contest, and that there is not a visitation order for mother. E.M. said mother is in the process of moving into his home to live with him and J.M.

{¶ 47} E.M. further testified that he administers his own drug tests to mother "randomly." (Sept. 9, 2015 Tr. at 90.) According to E.M.'s testimony, mother has not had any positive drug tests on the tests he administers to her at home. However, E.M. did not have proof of these drug tests because he said the instructions on the drug testing kit said that results are "unreadable" after 15 minutes have passed. (Sept. 9, 2015 Tr. at 106.) E.M. testified it was his hope that all five children would be returned to mother and that they would all live together in his house. On cross-examination, E.M. said he is still concerned that mother will "go back to using drugs," and that he does not want anyone who uses drugs to be around his children. (Sept. 9, 2015 Tr. at 104.) He also testified mother hid her drug abuse from him. E.M. said he has not filed a motion to obtain custody of the five children.

{¶ 48} Mother testified that she had just recently moved in with E.M. Mother said she is currently attending Narcotics Anonymous meetings and that she is seeking a sobriety sponsor. Mother testified she has a variety of medical problems necessitating her prescription pain medication, but she said she does not have a regular treating physician. Mother testified E.M. has sole custody of J.M. and that she does not have a visitation order to see him. Mother testified she wants her children to return to her care. Though mother said she has held various jobs at temporary agencies and fast food restaurants, she agreed she has not provided the court with any documentation of those jobs. Mother also admitted she sometimes uses drugs without a prescription.

{¶ 49} Following trial, both parties submitted closing briefs. In three separate decisions, the trial court granted FCCS's motions for permanent custody of the five children. The trial court considered the factors in R.C. 2151.414(D) and determined there was clear and convincing evidence that it was in the children's best interest to grant the motion for permanent custody. The court journalized its decision in three decision and judgment entries dated September 24, 2015. Mother timely appeals.

II. Assignment of Error

{¶ 50} Mother assigns the following error for our review:

The Court below erred in granting the motion for Franklin County Children Services (FCCS) for permanent custody, as FCCS failed to establish by clear and convincing evidence that permanent custody was in the best interest of the minor children.

III. Standard of Review

{¶ 51} "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).

{¶ 52} "Judgments are not against the manifest weight of the evidence when all material elements are supported by competent, credible evidence." *J.T.* at ¶ 8. "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 * * * such relief is in the best interest of the child." *Id.* at ¶ 9. "Clear and convincing evidence is that degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the facts to be established." *In re K.L.*, 10th Dist. No. 13AP-218, 2013-Ohio-3499, ¶ 14. "It is more than a mere preponderance of the evidence but does not require proof beyond a reasonable doubt." *Id.*

IV. Discussion

{¶ 53} In her sole assignment of error, mother asserts the juvenile court erred in granting permanent custody to FCCS. More specifically, mother argues the juvenile court erred when it determined the termination of her parental rights was in the best interest of the children.

{¶ 54} "Parents have a constitutionally-protected fundamental interest in the care, custody, and management of their children." *In re H.D.*, 10th Dist. No. 13AP-707, 2014-Ohio-228, ¶ 10, citing *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The Supreme Court of Ohio recognizes the essential and basic rights of a parent to raise his or her child. *In re Murray*, 52 Ohio St.3d 155, 157 (1990). However, these rights are not absolute, and a parent's natural rights are subject to the ultimate welfare of the child. *In re Cunningham*, 59 Ohio St.2d 100, 106 (1979). In certain circumstances, therefore, the state may terminate the parental rights of natural parents when such termination is in the best interest of the child. *H.D.* at ¶ 10, citing *In re E.G.*, 10th Dist. No. 07AP-26, 2007-Ohio-3658, ¶ 8, citing *In re Harmon*, 4th Dist. No. 00 CA 2694 (Sept. 25, 2000); *In re Wise*, 96 Ohio App.3d 619, 624 (9th Dist.1994).

{¶ 55} In deciding to award permanent custody, the trial court must take a two-step approach. *K.L.* at ¶ 18. The court must first determine if any of the factors set forth in R.C. 2151.414(B)(1) apply. *Id.* Here, there is no dispute that the children were in the temporary custody of one or more public children service agencies or private child placing agencies for 12 or more months of a consecutive 22-month period, satisfying R.C. 2151.414(B)(1)(d).

{¶ 56} Once the trial court determines that one of the circumstances in R.C. 2151.414(B)(1) applies, the trial court must then determine whether a grant of permanent custody is in the best interest of the child. *In re A.J.*, 10th Dist. No. 13AP-864, 2014-Ohio-2734, ¶ 16; R.C. 2151.414(B)(1). In determining the best interest of a child, R.C. 2151.414(D)(1) directs that 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 [R.C. 2151.413(D)(1)], 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 [R.C. 2151.414(E)(7) to (11)] apply in relation to the parents and child.

R.C. 2151.414(D)(1)(a) through (e).

{¶ 57} The juvenile court considered all of the above statutory factors with respect to each of the five children and concluded that an award of permanent custody was in the best interest of the children. Mother's argument is essentially a disagreement with the juvenile court's conclusions. We will address mother's argument with respect to each of the statutory factors.

A. R.C. 2151.414(D)(1)(a) – Parent, Child, and Sibling Interrelationships

{¶ 58} In its decision and entry, the juvenile court noted the testimony was conflicting regarding the interaction of the children and mother. E.M., Blosser, and the children's guardian ad litem all characterized mother's interaction with the children as appropriate. Klein also testified it was clear to him the children love mother. Mother consistently attended her scheduled visitations, and she would sometimes bring gifts and snacks to celebrate birthdays.

{¶ 59} However, Saa, the caseworker, testified that G.E.H. and G.S.H. were disengaged with their mother and indifferent towards her and that G.E.H. would sometimes refuse to attend visits. The children would sometimes have to be asked to remain in the visit and not run to the foster parents. Saa also recounted instances during the supervised visits where mother would tell the children she was going to "pop them in the mouth" or would use curse words in their presence. Saa said M.H. is very attached to her mother but that I.O. has no real bond with her because he was so young when he was removed from her care. Additionally, S.L.O. was removed from mother's care when she was only one year old and has spent most of her life away from mother.

{¶ 60} St. Clair also described an instance in which mother stormed out of a parenting group, leaving her children crying in the room and refusing to return to comfort them. Pawlarczyk testified mother's diagnosis of Antisocial Personality Disorder may make it difficult for her to bond with her children.

{¶ 61} Saa also testified the children are very bonded to one another. They have all lived together in the same foster home since January 2014, and they are a strong family unit. Saa testified the children are very bonded to their foster parents. Saa testified the children are thriving in the environment with their foster parents. The paternal aunt who had expressed interest in custody of G.E.H. and G.S.H. decided not to pursue custody once she saw how well the children were doing all together and noticed how much all five children had bonded with their foster parents.

B. R.C. 2151.414(D)(1)(b) – The Children's Wishes

{¶ 62} The juvenile court noted no party requested the court to interview the children due to their young ages. G.S.H. expressed his desire to Klein to be reunited with

mother. G.E.H. also expressed a desire to be reunited with his mother, though the juvenile court noted there was some confusion as to whether G.E.H. was referring to his biological mother or his foster mother. Both in his testimony at trial and in his final report and recommendation, the guardian ad litem recommended it was in the children's best interest to grant FCCS's motion for permanent custody

C. R.C. 2151.414(D)(1)(c) – Custodial History of the Children

{¶ 63} At the time FCCS filed for permanent custody, all five children had been in the temporary custody of FCCS for over 18 months, which is more than 12 of a consecutive 22-month period. Further, by the time trial commenced in March 2015, all five children had been in FCCS custody for nearly 30 months. Mother does not raise any argument with respect to this factor.

D. R.C. 2151.414(D)(1)(d) – Need for Legally Secure Placement

{¶ 64} Finally, mother argues the juvenile court erred in determining the children cannot achieve a legally secure permanent placement without a grant of permanent custody to FCCS. Mother argues the juvenile court ignored the progress she made on her case plan and did not place enough emphasis on the evidence of her plans to live with E.M. and have a stable home for the children with him.

{¶ 65} By the time of trial, the children had been living together as a family unit with the same foster parents for 20 months, and by all accounts the children are thriving in their new environment. As the trial court noted, G.E.H., G.S.H., and M.H. receive treatment at The Buckeye Ranch, and S.L.O. was treated for physical development problems related to spending too much time alone in a crib as an infant. I.O. does not have any reported special needs, but he has been in foster care for most of his life. All five of the children have a great need for a legally secure permanent placement.

{¶ 66} Though mother argues she "substantially complied" with her case plan, the evidence at trial undermines her argument. (Mother's Brief at 17.) Mother stated she understood the components of her case plan, yet Saa testified mother did not complete the portions of her case plan related to drug testing and treatment, psychological counseling, obtaining stable housing, and maintaining employment. As the evidence demonstrated, for the more than three years this case was pending, mother's only documented employment was a job at McDonald's from which she was fired after only

one week. Though mother testified she had been and was going to continue to babysit for a friend, mother never mentioned babysitting as a means of employment to her caseworker during the entire pendency of the case, and she told the psychologist during her September 2014 evaluation that her only employment was the McDonald's job and previous fast food restaurant jobs.

{¶ 67} Further, the evidence was overwhelming that mother, at no time during the pendency of this case, obtained stable housing. By the time of trial, Saa testified mother had not even provided Saa with her most current address. Though mother argues she plans to move in with E.M. and that his house would qualify as stable housing for the children, Klein testified that while E.M.'s home was suitable for J.M., it was not an option for the five children. Additionally, mother has been informed she cannot be alone with J.M. until she is completing drug screens, something she admittedly has not been doing since at least March 2015. Mother did not explain how she would be able to take all five children to live at E.M.'s house when she has not been completing her drug screens.

{¶ 68} One of the most important requirements of her case plan was that mother complete an alcohol and drug assessment and follow through on any subsequent recommendations. Though mother completed the initial assessment, she has never completed any recommended drug treatment and she has demonstrated a near complete failure to complete her drug screens. Saa testified that mother did not complete the alcohol and drug portion of her case plan, and Klein testified that mother's failure to complete drugs screens was one of the biggest problems with her ability to care for her children. Of the 379 drug screens offered to mother, mother missed 254 screens and had a positive result on 102. E.M. testified he has been drug testing mother at home, but he did not provide any documented proof of her results. Mother's stated reasons for skipping drug screens were that she did not want to ask for bus passes or she did not want to wait outside for a bus when it was cold.

{¶ 69} Mother argues the court placed too great of an emphasis on the drug treatment portion of her case plan because she often had a prescription for the painkillers she would take. However, by her own testimony, mother did not always have a prescription, and Saa testified she repeatedly expressed concern to mother about the number of different doctors mother would seek out to get a prescription and the number

of prescriptions she would obtain at one time. Additionally, when J.M. was born, he tested positive for opiates.

{¶ 70} When the trial court had to recess for six months to sort out the paternity issue, Saa testified she explained to mother that she should view this as her last chance to make things right. Despite getting an extension of time to complete the requirements of her case plan, mother has not completed a single drug screen since March 2015. She also did not utilize that time to find employment, obtain stable housing, or successfully complete any of the recommended drug treatment programs.

{¶ 71} FCCS referred mother for anger management therapy following the recommendations of the psychologist. Although she obtained a referral to Southeast in October 2014, mother never completed this requirement of the case plan. Though mother did complete a parenting skills class, mother failed to improve her parenting skills even after completing the class. Following her psychological assessment, it was recommended mother complete additional parenting training, which mother failed to do.

{¶ 72} Despite the many referrals and assistance offered to mother by FCCS, mother demonstrated a consistent failure to complete important parts of her case plan or to even make a meaningful effort. As the trial court noted, after more than three years of active case plans, mother has not shown she is ready or able to be a suitable caregiver for her children. M.H., S.L.O., and I.O. have spent the majority of their young lives in FCCS custody. G.E.H. and G.S.H. were observed as being indifferent towards their mother but have formed a very strong bond with their siblings and foster parents. The foster family has expressed its desire to adopt all five children together.

{¶ 73} Mother argues it would be inconsistent for FCCS to move for termination of her parental rights with respect to the five children but not to do the same for her youngest child, J.M. We note, however, that J.M.'s case is not before this court. Further, the evidence in this record is that J.M. was placed in the legal custody of his father, E.M., who is not the father of any of the five children. E.M. completed the requirements of his case plan to retain custody of J.M.; mother did not. E.M. has not filed a motion for custody of the five children. Thus, we do not agree with mother that this represents an inconsistent approach by FCCS.

{¶ 74} Based on all the testimony and evidence presented, including the entire case file, the trial court determined permanent custody is in the best interest of the five children. Having reviewed the entire record, we conclude the trial court had clear and convincing evidence to conclude permanent court commitment was in the best interest of the children. Accordingly, we overrule mother's sole assignment of error.

{¶ 75} We note, however, that the decision and entry in Franklin C.P. No. 11JU-10000 (case No. 15AP-966) contains a clerical error. That case number relates to G.E.H., G.S.H., and M.H. Though the decision and entry correctly identifies H.H. as the father of these three children on pages one through three, the entry then states in the second to last paragraph "[t]his Decision and Judgment Entry divests the mother, [C.A.], and the father [S.O.] of any and all parental rights, privileges, and obligations." (15AP-966, Sept. 24, 2015 Decision and Entry at 18.) S.O. is not the father of these three children. We find this is a clerical error, and we therefore remand to the juvenile court for the limited purpose of issuing a nunc pro tunc entry reflecting that the decision and entry divests father H.H. of any and all parental rights, privileges, and obligations.

V. Disposition

{¶ 76} Based on the foregoing reasons, clear and convincing evidence supports the award of permanent custody to FCCS. Having overruled mother's sole assignment of error, we affirm the judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, and we remand this matter to that court for the limited purpose of entering a nunc pro tunc entry correcting the clerical error it made in its decision and judgment entry in Franklin C.P. No. 11JU-10000 (case No. 15AP-966).

*Judgments affirmed;
cause remanded with instructions.*

TYACK and BRUNNER, JJ., concur.
