



children whose custody is at issue in this case: A.C., C.C., and M.E. East is the father of M.E. A.C.'s and C.C.'s fathers are not parties to the present appeal.

{¶2} East and Kearns live together in a two-bedroom apartment and intend to marry. The Fayette County Department of Job and Family Services ("FCDJFS") has been involved with this family since 1998. Two of the children, M.E. and A.C., have special needs. M.E. is a "failure to thrive" child and A.C. has been diagnosed with ADD, behavioral issues, and a translocated chromosome which requires genetic counseling.

{¶3} In December 2001, FCDJFS filed complaints alleging that the children were neglected and dependent children and all three children were removed from the home on January 3, 2002. The complaints stemmed from the children's living conditions. A caseworker visiting the parties' home discovered that the parents were heating the apartment by setting the oven at 500 degrees and leaving the door open. Kearns informed the caseworker that she could not use the baseboard heating units until she had time to rearrange some furniture. The apartment was roach infested; there were mice in the living room; there was a lack of food in the home; medicine was lying on the floor; the children had head lice; a fan was left running in M.E.'s crib; and M.E. was found sitting on a wet spot on the couch, eating what appeared to be an old French fry.

{¶4} With the assistance of FCDJFS, M.E. had been enrolled in a day care facility located in the same building as her

physical therapists so that she could regularly attend her appointments. However, East was dissatisfied with the day care and withdrew M.E. from the program. He failed to make alternate arrangements for her therapy and instead testified that he or his mother provided the therapy she required.

{¶5} In April 2002 the children were adjudicated neglected and dependent, and no appeal was taken from that decision. The children were committed to the temporary custody of FCDJFS and placed with a foster family. All three children have thrived physically and emotionally in the care of the foster parents. M.E. in particular has made great developmental strides while in foster care, as she is regularly taken to medical appointments and therapy.

{¶6} A case plan was put into place which required the parties to take parenting courses and demonstrate knowledge of the skills learned; take M.E. to developmental therapy and attend other medical appointments; meet minimum housekeeping standards; keep the children free of lice; attend individual and family counseling; and exercise adequate supervision of the children. Kearns was also required to obtain a driver's license and employment and the parties were to present FCDJFS with receipts verifying that their rent and utilities were paid.

{¶7} Later inspections of the home revealed that cleanliness remained an issue and the apartment remained roach infested. A caseworker found that while the apartment was at

times clean, appellants' housekeeping was not consistent.

Appellants' landlord did spray for bugs, however, the children's guardian ad litem observed that the parties did not clean up the dead bugs, but left them scattered throughout the apartment.

{¶8} As well, appellants only partially complied with other case plan requirements. Although both eventually completed parenting courses after the motion for permanent custody was filed, neither demonstrated an ability to utilize the skills learned. Kearns did not obtain a driver's license or employment as required by the case plan. Appellants only sporadically provided FCDJFS with receipts verifying that their rent and utilities were paid.

{¶9} Both parents completed psychological evaluations and attended individual therapy which included anger management counseling. The psychologist working with the parties testified that she knew of no psychological impediment which would prevent either from caring for the children.

{¶10} Appellants were initially granted visitation for one hour each week, with minimal supervision. Because the visits were sometimes contentious, visitation was reduced to once a month, and were supervised. On one occasion East engaged the director of the visitation center in a verbal altercation requiring police intervention. When the visits were modified to require monitoring, East threatened not to visit again, and missed six subsequent visits. The parties brought gifts for

one child, not the others, in violation of visitation center policy; other gifts were brought to visitation without permission of the center. The parties displayed blatant favoritism during visits, at times virtually ignoring A.C.

{¶11} In November 2002 FCDJFS moved for permanent custody of all three children, citing the length of time the children had been in temporary custody and the children's best interests. The motion was supported by the children's guardian ad litem. After a hearing on the motion, the trial court granted permanent custody of all three children to the agency in a decision and entry filed January 13, 2004. Kearns and East have both appealed the trial court's decision.

{¶12} Kearns raises five assignments of error alleging as follows: 1.) the trial court erred in finding that Kearns had withheld medical treatment; 2.) the trial court erred in finding that the children could not, or should not, be placed with Kearns; 3.) the trial court erred in concluding that granting permanent custody was in the children's best interest; 4.) the trial court erred by terminating Kearns' parental rights; and, 5.) the trial court's decision was contrary to the manifest weight of the evidence and not supported by clear and convincing evidence.

{¶13} In a single assignment of error, East alleges that FCDJFS failed to present clear and convincing evidence that granting the permanent custody motion was in M.E.'s best interest. In this same assignment of error he also challenges

the conclusion that the child could not be placed with him within a reasonable amount of time, or should not be placed with him. Because the parties' assignments of error are closely related, we consider them together.

{¶14} Before severing a parent's constitutionally protected liberty interest in the care and custody of his or her children, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. Santosky v. Kramer (1982), 455 U.S. 745, 759, 769, 102 S.Ct. 1388. Clear and convincing evidence requires that the proof produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. Cross v. Ledford (1954), 161 Ohio St. 469, paragraph three of the syllabus. Appellate review of a trial court's decision finding clear and convincing evidence is limited to determining whether "sufficient credible evidence" exists to support the trial court's determination. In re Ament (2001), 142 Ohio App.3d 302, 307; In re Starkey, 150 Ohio App.3d 612, 2002-Ohio-6892, at ¶16.

{¶15} R.C. 2151.414(B) requires the juvenile court to apply a two-part test when terminating parental rights and awarding permanent custody to a public or private children services agency. Specifically, the trial court must find that: 1) the grant of permanent custody to the agency is in the best interest of the children, utilizing, in part, the factors of R.C. 2151.414(D); and, 2) any of the following apply: the child

cannot be placed with either parent within a reasonable time or should not be placed with either parent; the child is abandoned; the child is orphaned; or the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a), (b), (c) and (d); In re Ebenschweiger, Butler App. No. CA2003-04-080, 2003-Ohio-5990, at ¶12.

{¶16} In the present case, the juvenile court found that it was in the children's best interest to grant the motion for permanent custody, and that two of the R.C. 2151.414(B)(1) requisites were applicable. First, the trial court found that pursuant to R.C. 2151.414(B)(1)(a), the children could not be placed with either parent within a reasonable amount of time. And second, the trial court found that the children had been in the custody of FCDJFS for more than 12 months of a consecutive 22-month period, satisfying R.C. 2151.414(B)(1)(d).

{¶17} Under R.C. 2151.414(B)(1), when a child has been in temporary custody for at least 12 months of a consecutive 22-month period, a juvenile court is only required to find by clear and convincing evidence that permanent custody is in the child's best interest. In re L.D., Clinton App. No. CA2004-03-007, 2004-Ohio-4000, ¶14-15. The finding that the children have been in temporary custody for this period precludes the determination of whether the parents have remedied the conditions which caused the removal of the children, and whether the children could not, or should not be placed with

the parents. Id., citing In re Nice, 141 Ohio App.3d 445, 459, 751, 2001-Ohio-3214.

{¶18} In the present case, clear and convincing evidence established that the children were in the temporary custody of FCDJFS for 12 or more months of a consecutive 22-month period.

The children were placed in the temporary custody of FCDJFS on January 3, 2002, and had been in the temporary custody of FCDJFS for 19 months at the time of the permanent custody hearing. Consequently, even though the juvenile court addressed the fact that the children could not be placed with appellants within a reasonable time or should not be placed with appellants, and, in doing so, discussed the question of reasonable case planning and efforts by the agency to remedy the conditions that caused the removal of the children from appellants' home, it was unnecessary to the resolution of this case. See In re K.M., Butler App. No. CA2004-02-052, 2004-Ohio-4152, ¶51, citing Nice, 141 Ohio App.3d at 449, 2001-Ohio-3214. See, also, In re C.N., Cuyahoga App. No. 81813, 2003-Ohio-2048, ¶22; In re Sarah S., Erie App. Nos. E-02-052, E-02-053, E-02-054; 2003-Ohio-4730, ¶13.

{¶19} We are thus left to review whether there was clear and convincing evidence that granting the motion for permanent custody was in the children's best interest. R.C. 2151.414(D) provides that in considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to the following:

{¶20} "(1) 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;

{¶21} "(2) 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;

{¶22} "(3) 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 ending on or after March 18, 1999;

{¶23} "(4) 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;

{¶24} "(5) Whether any of the factors in divisions (E) (7) to (11) of this section apply in relation to the parents and child."

{¶25} Viewing the facts of this case in light of the above factors, it is clear that, although East and Kearns appear to love their children, it is in the children's best interest that FCDJFS be granted permanent custody. The children are bonded with one another and have a good relationship with their foster parents. M.E. has a good relationship with her parents, however East and Kearns' interaction with the other two children varies. Their relationship with A.C. in particular is

poor. While the children are too young to express their wishes regarding custody, the guardian ad litem recommended granting permanent custody to FCDJFS. The children had been in the custody of FCDJFS for more than 12 months and require a legally secure placement to ensure that their medical, educational, developmental and emotional needs are met. East and Kearns failed to ensure that M.E. received the appropriate therapy and medical treatment, and failed to ensure that the parties' home was clean and safe for the children. East and Kearns ultimately failed to remedy the conditions which caused the children's removal from the home.

{¶26} The statute further requires consideration of whether any of the factors in R.C. 2151.414(E)(7)-(11) apply. In its decision, the trial court cited R.C. 2151.414(E)(8) which requires consideration of whether a parent has withheld medical treatment. The trial court noted that East withdrew M.E. from her day care which resulted in M.E. missing her physical and occupational therapy appointments in the same building. Kearns did not make any effort to see that M.E. attended therapy or make alternate arrangements for treatment, and the record reveals multiple instances where medical appointments were missed. While East testified that he and his mother provided therapy at home, his mother's testimony did not confirm this. Consequently, we conclude that the record supports the trial court's finding that Kearns withheld medical treatment from M.E.

{¶27} East further contends that the trial court

inappropriately considered evidence related to Kearns' parenting skills. However, East and Kearns reside together as a family. Any child placed in East's custody will necessarily be parented by Kearns as well, particularly considering East's role as the breadwinner and Kearns' role as a homemaker. Consideration of Kearns' parenting skills was consequently appropriate. While consideration of A.C.'s father's parenting skills would have been inappropriate when terminating East's parental rights, East's assertion in this regard is misplaced.

{¶28} Having thoroughly reviewed the record, we find that sufficient credible evidence supports the trial court's conclusion that it is in the children's best interest to grant permanent custody to FCDJFS. We consequently overrule Kearns' first, second, third, fourth, and fifth assignments of error, and East's sole assignment of error.

{¶29} Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.