

the judgment of the Butler County Juvenile Court as the decision was not solely based on father's immigration status, and the record supports the grant of permanent custody.

{¶2} Two boys, J.L., dob 12/29/06, and C.L., dob 1/1/08, and their minor half-brother were removed from their mother's custody and placed in foster care in late 2008. Mother was reportedly charged with a crime for events involving the half-brother. We note there were references in the transcript that mother was convicted of child endangering, but this court could locate no judgment entry in the record. The half-brother was subsequently placed in the legal custody of his biological father and is not part of this appeal.

{¶3} J.L. and C.L. were adjudicated dependent children. The agency filed for permanent custody in late March 2010 and a hearing was held before a juvenile court magistrate. Both parents were present during the two days of testimony. The magistrate issued a decision granting permanent custody to the agency. The juvenile court overruled father's objections and adopted the magistrate's decision as the judgment of the court. Father appeals, presenting a single assignment of error for our review.

{¶4} Assignment of Error:

{¶5} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT WHEN PLACED [SIC] HIS MINOR CHILDREN IN THE PERMANENT CUSTODY OF THE BUTLER COUNTY DEPARTMENT OF JOBS AND FAMILY SERVICES [CHILDREN'S SERVICES AGENCY]."

{¶6} Father argues that the grant of permanent custody was error because he has formed a bond with his children, he is willing and able to care for them, he completed any case plan services, and the juvenile court erroneously based its decision on his immigration status as an undocumented person. Mother did not file objections to the

magistrate's decision; nor did mother appeal the judgment. Therefore, we will focus our discussion of this case on the evidence as it relates to father.

{¶7} Before a natural parent's constitutionally protected liberty interest in the care and custody of his child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody have been met. See *Santosky v. Kramer* (1982), 455 U.S. 745, 102 S.Ct. 1388. An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 519-520.

{¶8} R.C. 2151.414(B)(1) sets forth the requirements for granting permanent custody, stating that a court may grant permanent custody if it finds by clear and convincing evidence that it is in the best interest of the child and one of four other requirements described in subsections (a) to (d) are met, as follows:

{¶9} "(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period * * *, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

{¶10} "(b) The child is abandoned.

{¶11} "(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶12} "(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state."

{¶13} Turning first to the second part of the two-part requirements under R.C. 2151.414(B)(1), the juvenile court found the children had been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period under R.C. 2151.414(B)(1)(d).

{¶14} A child shall be considered to have entered the temporary custody of an agency on the *earlier* of the date the child is adjudicated [abused, neglected or dependent] or the date that is 60 days after the child's removal from the home. R.C. 2151.414(B)(1)(d). The juvenile court found the children were removed on December 1, 2008, adjudicated dependent on August 3, 2009, and the permanent custody motion was filed on March 31, 2010. Father concedes the criterion for this requirement was met. Considering the date 60 days after the children's removal, the boys were in the agency's custody for 12 or more months of a consecutive 22-month period.

{¶15} The juvenile court also made a finding under R.C. 2151.414(B)(1)(b) that the children were abandoned by their father. R.C. 2151.01(C) states that a child is presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than 90 days, regardless of whether the parents resume contact with the child after that period of 90 days. The juvenile court found that father failed to visit or

maintain contact with the children from at least December 1, 2008 until December 2, 2009, which is well beyond a 90-day period.

{¶16} After reviewing the applicable statutes, there is clear and convincing evidence in the record that both R.C. 2151.414(B)(1)(b) and (B)(1)(d) requirements were met.

{¶17} Father directs his challenge on appeal to the first part of the R.C. 2151.414(B)(1) requirement, which is the best interest of the children determination.

{¶18} R.C. 2151.414(D)(1) 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:

{¶19} "(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;

{¶20} "(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;

{¶21} "(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 ***;

{¶22} "(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;

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

{¶24} With respect to R.C. 2151.414(D)(1), (2) and (3), the juvenile court found the

children have been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period. And again, focusing on the father for this appeal, the juvenile court found that father had no contact with the children for the first year they were in foster care and his first supervised visit occurred in December 2009. That visit was the first time father met C.L. because father was deported back to Mexico before C.L. was born.

{¶25} The children developed a bond with father during the subsequent supervised visits and there is no concern stated about the interaction between father and the children. The paternal grandfather attended some of the supervised visits with the children during the pendency of this case, and he has a bond with the children, as well.

{¶26} The two boys are very close to their older half-brother and enjoy visiting with him when he is brought to supervised visits. J.L. and C.L. are bonded with their foster family and the foster parents expressed a desire to adopt the children should they become available for adoption. They have also indicated a willingness to permit the boys some continued contact with their biological family. The children's guardian ad litem (GAL) recommended both children be placed in the permanent custody of the agency. See R.C. 2151.414(D)(1), (2) and (3).

{¶27} R.C. 2151.414(D)(4) requires the juvenile court to consider the children's need for a legally secure placement and whether that type of placement can be achieved without a grant of permanent custody to the agency.

{¶28} The juvenile court found the children could not be placed with mother, detailing mother's issues related to her mental health, her parenting skills, her inability to meet her own needs as to housing, employment, etc., as well as the impact of her criminal conviction on her attempts to obtain immigration documents to remain in this country.

{¶29} The juvenile court likewise found that father could not provide a stable environment for the children. Father was deported from this country in December 2007. He said he reentered the United States, without approved immigration documents, in January 2009. Father was reportedly working in Norman, Oklahoma, while his children were in foster care through most of 2009.

{¶30} The juvenile court indicated that father currently has two jobs in Ohio. His employment appears sufficient to meet the financial needs of his children, but his employment was secured with a fictitious social security number. The court also noted that father has claimed he is married with dependent children in order to have fewer taxes withdrawn from his paycheck. Father admitted he could be deported at any time if immigration officials learned of his whereabouts. He has been informed that receiving permission to stay in this country would be difficult, given his prior deportation.

{¶31} The juvenile court reiterated that father abandoned his children earlier in the case, even though he knew they had been removed from mother in late 2008. See R.C. 2151.414(E)(10).

{¶32} The juvenile court found that the children's GAL voiced her concerns that father had little appreciation for his children's ties in Ohio and the impact on the children of severing those ties. Father was unable to outline a specific plan for his children, should he again be deported. Father discussed possibly moving back to Oklahoma with the children should he gain custody, or, if deported, taking the children to Mexico.

{¶33} The juvenile court also considered possible placements mentioned by the parents, but found no other appropriate relatives or persons available to parent the children.

{¶34} The juvenile court further made findings under R.C. 2151.414(E), that the

parents failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside the home, as well as findings as previously noted in reference to abandonment and agency custody for 12 or more months of a consecutive 22-month period.

{¶35} Specifically, in reference to father, the juvenile court noted that father knew his children were placed in foster care in December 2008. However, he again entered the country in January 2009 and did not travel to Ohio until late 2009. His first court appearance was February 2010, and his children had been in foster care for 15 months at that time. The juvenile court found this fact evidenced a lack of commitment toward the children. See R.C. 2151.414(E)(4), (10).

{¶36} The juvenile court expressed its concern over the tenuous nature of father's status in this country and what would happen to the children should he be deported again. It noted that father has "little recourse to obtain a legal status in this country." Id.

{¶37} Mother testified she was physically abused by father during their relationship. Father denied any domestic violence incidents occurred between them, and stressed that a court-ordered domestic violence assessment produced no recommendations. Father acknowledged that he was arrested in late 2007 after an alleged domestic violence incident with mother, but asserts the charge was dismissed when mother did not appear for court. The status of the domestic violence charge is not clear from the record.

{¶38} The juvenile court stated that the two children have "languished in foster care long enough and deserve to have permanency and stability in their young lives now." The children's GAL stated that removing the children from the foster family would be "devastating emotionally," given the bond between the children and the foster family.

{¶39} The juvenile court found by clear and convincing evidence that J.L. and C.L. cannot and should not be placed with their parents within a reasonable amount of time, that permanent custody to the agency provides each child with his "best hope of permanency," and granting the motion is in each child's best interest.

{¶40} Having reviewed the record and the juvenile court's decision, we do not agree with father's assertion that this grant of permanent custody was erroneously based on his status as an undocumented person. Father's precarious status in this country is but one factor to consider in determining how to achieve a legally secure permanent placement for these children.

{¶41} We find that sufficient credible evidence exists to support the juvenile court's determination to grant permanent custody to the agency. *In re Starkey*, 2002-Ohio-6892 at ¶16. Father's arguments are not well taken, and his single assignment of error is overruled.

{¶42} Judgment affirmed.

RINGLAND and HUTZEL, JJ., concur.

[Cite as *In re C.L.*, 2011-Ohio-1633.]