



were called to appellant's Clinton County apartment where they found D.D., who was just five months old at that time, without parental supervision, lying in his soiled crib located in the hallway next to a broken window. The following day, CCCS was granted emergency temporary custody of the child who was then placed in the care of foster caregivers.

{¶3} On November 12, 2008, the trial court adjudicated D.D. a dependent child. The trial court's order granting CCCS's emergency temporary custody remained in place pending a disposition hearing. On December 5, 2008, following the disposition hearing, CCCS was granted temporary custody of D.D.

{¶4} On August 26, 2010, after twice extending CCCS's temporary custody, CCCS filed a motion to modify temporary custody to permanent custody. On January 20, 2011, following a two-part hearing that concluded on November 18, 2010, the trial court granted CCCS permanent custody of the child. Throughout the pendency of this matter, D.D. remained in the continuous care of his original foster caregivers.

{¶5} Appellant now appeals from the trial court's decision granting permanent custody to CCCS, raising a single assignment of error for review.

{¶6} "THE TRIAL COURT ERRED AS THERE EXISTED INSUFFICIENT CLEAR AND CONVINCING EVIDENCE THAT IT WAS IN THE BEST INTEREST OF [D.D.] TO GRANT PERMANENT CUSTODY TO THE AGENCY."

{¶7} In her single assignment of error, appellant argues that the trial court erred by granting permanent custody of D.D. to CCCS. We disagree.

{¶8} Before a natural parent's constitutionally protected liberty interest in the care and custody of her 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. *Santosky v. Kramer* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. An appellate

court's review of a trial court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the trial court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. As an appellate court reviewing a decision granting permanent custody, we neither weigh the evidence nor assess the credibility of the witnesses, but instead determine whether there is sufficient clear and convincing evidence to support the trial court's decision. *In re H.P.*, Preble App. No. CA2010-07-010, 2011-Ohio-1148, ¶23.

{¶9} Pursuant to R.C. 2151.414(B)(1), a court may terminate parental rights and award permanent custody to a children services agency if it makes findings pursuant to a two-part test. *In re E.M.D.R.E.*, Butler App. No. CA2010-08-207, 2011-Ohio-669, ¶8. First, the court must find that the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D). *In re I.H.*, Butler App. No. CA2010-07-157, 2011-Ohio-412, ¶8. Second, the court must find that any of the following apply: the child is abandoned; the child is orphaned; the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; or where the preceding three factors do not apply, the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re E.B.*, Warren App. Nos. CA2009-10-139, CA2009-11-146, 2010-Ohio-1122, ¶22.

{¶10} In this case, the trial court found, and appellant does not dispute, that D.D. has been in the temporary custody of CCCS for 12 months of a consecutive 22-month period as of the date of CCCS's permanent custody motion. Appellant, however, does dispute the trial court's finding that granting permanent custody of D.D. to CCCS was in the child's best interest.

{¶11} 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:

{¶12} "(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;

{¶13} "(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;

{¶14} "(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 ending on or after March 18, 1999;

{¶15} "(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;

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

{¶17} With respect to R.C. 2151.414(D)(1)(a), which requires the court to consider the interaction and interrelationship of the child with, among others, the child's parents, siblings, relatives, and foster caregivers, the trial court noted that there was testimony indicating D.D. returned from an overnight visitation with appellant suffering from "severe diaper rash," as well as a "bite mark, scratches, and a pinched ear," neither of which appellant was able to explain. The trial court also noted that although there was evidence indicating D.D. called appellant "mommy," the child was oftentimes distant from appellant during her supervised visitation and he was reluctant to go into the visitation room with her. In addition, the trial court noted that there was testimony

indicating appellant failed to implement the parenting techniques she had learned in her parenting class, and that she had fallen asleep during her supervised visitation time on at least one occasion.

{¶18} Furthermore, while the trial court did note that there was testimony indicating D.D. bonded to appellant, there was also evidence indicating the child was emotionally attached to his foster caregivers, looked to them for comfort, and referred to his foster mother as "mom." There was also testimony indicating D.D. had gone on vacations and spent holidays with his foster caregivers and their family. The trial court also noted that there was evidence D.D. had never mentioned his older brother to his foster mother.

{¶19} With respect to R.C. 2151.414(D)(1)(b), which requires the court to consider the wishes of the child, as expressed directly by the child or through the child's guardian ad litem, the trial court found D.D., who was approximately two-and-one-half years old at the time, did not exhibit sufficient maturity to express his wishes. The trial court, however, did note that the child's guardian ad litem recommended the child be placed in the permanent custody of CCCS.

{¶20} With respect to R.C. 2151.414(D)(1)(c), which requires the court to consider the custodial history of the child, the trial court found that D.D. had continuously remained in CCCS's custody, as well as in the care of his original foster caregivers, since September 18, 2008.

{¶21} With respect to R.C. 2151.414(D)(1)(d), which requires the court to consider 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, the trial court found that a legally secure placement could not be assured without granting permanent custody to CCCS.

{¶22} With respect to R.C. 2151.414(D)(1)(e), which requires the court to consider whether any of the factors listed in R.C. 2151.414(E)(7) to (11) apply, the court found that J.D., the child's father, has had no contact with his son since January 26, 2010, and therefore, D.D. had been abandoned by his father.<sup>1</sup>

{¶23} The trial court also noted that there was evidence indicating appellant had moved at least six times since D.D. was placed in CCCS's custody, that her residence was described as "unclean," and that there were ongoing "safety concerns" with the home environment. In addition, the trial court noted evidence indicating appellant's failed attempts at completing drug and alcohol treatment, as well as her unsuccessful efforts with residential rehabilitation treatment. The trial court also noted evidence indicating appellant's sporadic attendance at her scheduled visitation, her failure to satisfactorily complete any portion of her case plan, her previous diagnosis of bipolar disorder and depression, as well as her recent diagnosis of Type I diabetes.<sup>2</sup>

{¶24} Based on this evidence, and upon consideration of the statutory factors, the trial court found that it was in D.D.'s best interest to be placed in the permanent custody of CCCS.

{¶25} Despite these findings, however, appellant argues that the trial court erred in its best interest analysis because it "directed only nominal consideration to the interaction and interrelationship" of D.D. with that of the child's older brother. However, while it may be true that the trial court's decision only specifically noted the testimony of R.C., D.D.'s foster mother, who testified that the child never mentioned his brother, there is nothing in the record to indicate the trial court failed to properly consider any of the

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1. There was also evidence indicating the child's father was deported to Mexico in June of 2010 after he was convicted of a felony.

2. Specifically, since January of 2010, appellant attended only 35 of the 84 scheduled visits, which equates to an attendance rate of just over 40 percent.

other testimony, which, in this case, was extremely limited, regarding the child's interaction and interrelationship with his older sibling.<sup>3</sup>

{¶26} Appellant also argues that the trial court erred in its best interest analysis by failing to take into account her "recent diagnosis of Type I diabetes," which, according to her, contributed to her ongoing parental difficulties. Appellant, therefore, argues that because "her actions following that diagnosis are distinctly contrary to those preceding her diagnosis," she now "deserves a chance to show she can provide [D.D.] with a legally secure placement."

{¶27} As it relates to her recent diagnosis of Type I diabetes, as well as her previous diagnosis of bipolar disorder and depression, the trial court found that "[s]uccessful management of each of these conditions will require a commitment by [appellant] to her own wellness, which she has failed to demonstrate at this point." In turn, because of her numerous medical conditions, as well as her failure to demonstrate any serious effort to successfully deal with these issues during the time D.D. had been in CCCS's temporary custody, the trial court found that "[i]t is not reasonable or in the best interest of the child to leave him in limbo" while appellant attempts to overcome her own significant health problems. We find sufficient credible evidence exists to support the trial court's determination.

{¶28} As noted above, D.D. has continuously remained in CCCS's custody, as well as in the care of his original foster caregivers, since September 18, 2008. During this time, appellant moved at least six times, repeatedly failed to complete her drug and

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3. In its best interest analysis, and as it specifically relates to D.D.'s interaction and interrelationship with his older brother, the trial court noted that R.C., D.D.'s foster mother, "testified that the child does not mention his brother." The only other evidence presented at the hearing regarding D.D.'s interaction and interrelationship with his older brother came from M.F., appellant's mother and D.D.'s grandmother, who testified that D.D. referred to his older sibling as "brother," that D.D. "knows his brother," and that "they will hug each other."

alcohol treatment, as well as several attempts with residential rehabilitation treatment, returned the child from unsupervised visitation with a variety of unexplained injuries, attended her scheduled supervised visitation time on a sporadic basis, and was unable to satisfactorily complete any portion of her assigned case plan. In addition, although she was only recently diagnosed with Type I diabetes, the evidence presented at the hearing clearly indicates that her significant health problems, which also include bipolar disorder, depression, arthritis, and migraines, greatly impact her ability to appropriately care for the child.<sup>4</sup> Therefore, just as the trial court found, and for which we agree, waiting to determine if appellant would be able to provide a safe, stable home is simply not in the child's best interest.

{¶29} In light of the foregoing, because sufficient credible evidence exists to support the trial court's decision granting CCCS permanent custody of D.D., appellant's sole assignment of error is overruled.

{¶30} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.

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4. At the hearing, M.F., appellant's mother and D.D.'s grandmother, testified that appellant's diabetes is so severe that her "kidneys are likely shot" and her "pancreas is non-functioning pretty much." M.F. also testified that appellant has "arthritis in her back," suffers from "migraines," is "extremely tired," and recently "[threw] up blood." In addition, at the hearing, appellant stated: "I'm dying, and I'm trying to fight for my kid."