

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

IN RE: :
C.Y., et al. : CASE NOS. CA2014-11-231
: CA2014-11-236
: CA2014-11-237
: CA2014-11-238
: OPINION
: 4/6/2015
:

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case Nos. JN2011-0470, JN2011-0471, JN2011-0472

Debra Rothstein, 10 Journal Square, 3rd Floor, Hamilton, Ohio 45011, Guardian Ad Litem

Garrett Law Offices, Dawn Garrett, 9435 Waterstone Boulevard, Suite 140, Mason, Ohio 45249, for appellant, A.S.

Scott Blauvelt, 246 High Street, Hamilton, Ohio 45011, for appellant, Ch.Y.

Michael T. Gmoser, Butler County Prosecuting Attorney, Lina N. Alkamdawi, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for appellee

M. POWELL, J.

{¶ 1} This is an appeal of multiple decisions by the Butler County Court of Common Pleas, Juvenile Division, granting permanent custody to the Butler County Department of Jobs and Family Services (the Agency), terminating parental rights, and denying legal custody to a family member.

I. FACTS

{¶ 2} Appellants, A.S. (Mother) and Ch.Y. (Father), are the biological parents of C.Y. and A.Y. Mother also has a daughter, K.Y.¹ In this case, Father appeals the juvenile court's decisions denying legal custody to maternal grandmother and granting permanent custody of his two sons, C.Y. and A.Y., to the Agency.² In addition, Mother also appeals the juvenile court's decisions denying legal custody to maternal grandmother and granting permanent custody of C.Y., A.Y., and K.Y. to the Agency.³

{¶ 3} On November 1, 2011, the Agency filed a complaint alleging C.Y. (born 2009) and A.Y. (born 2006) were neglected and dependent children, and that K.Y. (born 2010) was an abused, neglected, and dependent child. Temporary custody was granted to the agency and the children were placed in foster care. On February 21, 2012, the children were adjudicated dependent by stipulation. The Agency filed a motion for permanent custody on January 7, 2013. Thereafter, the proceedings occurred in somewhat of an unusual manner.

{¶ 4} A few days before the hearing on the Agency's permanent custody motion, S.J., maternal grandmother (grandmother), moved for legal custody of all three children. However, grandmother failed to serve any of the parties with the motion. On May 13, 2013, the permanent custody hearing proceeded as scheduled, the juvenile court caused grandmother's motion for legal custody to be served on the various parties, and a pre-trial on the motion for legal custody was set for a later date.

{¶ 5} At the permanent custody hearing, Ayesha French, a social worker with the

1. The biological father of K.Y. did not participate in the proceedings below and is not a party to this appeal.

2. In Case No. CA2014-11-231, Father appeals the juvenile court's decisions as to C.Y. and A.Y.

3. In Case Nos. CA2014-11-236, CA2014-11-237, and CA2014-11-238, Mother appeals the juvenile court's decisions as to C.Y., A.Y., and K.Y.

Agency, was the only witness to testify. According to French, the Agency became involved in November 2011 when Mother and Father were suspected of shoplifting; Mother was initially arrested, while Father fled the scene. K.Y. was with Mother and Father when the theft occurred. At the time of the Agency's involvement, the main concerns included Mother's and Father's criminal charges, their substance abuse and parenting, and their lack of stable housing. A case plan was therefore generated to address these concerns. According to French, neither Mother nor Father was compliant with the case plan. Moreover, at the time of the hearing, both Mother and Father were incarcerated. French also stated that Father had ceased all contact with the children as of April 2012 and Mother's last contact with the children was in August 2012.

{¶ 6} French also testified regarding the health and well-being of the children. French explained that all three children suffer from behavioral issues, including "having temper tantrums." In addition, both C.Y. and A.Y. have language and speech problems, and are now on individual education plans (I.E.P.) to address these issues. According to French, since the children's placement in foster care, their behavioral issues have become more typical for children their age and the children appear to be responding to counseling. Finally, French testified that in her opinion, it was in the children's best interests to be placed in the permanent custody of the Agency. In making this recommendation, French also testified regarding other possible placements for the children, including placement with grandmother. French explained that a home study was completed and revealed multiple concerns with placing the children in grandmother's care. Accordingly, grandmother was not considered to be an appropriate placement for the children and no other appropriate relative requested custody of the children. In support of its motion for permanent custody, the Agency also entered into evidence several exhibits including grandmother's home study.

{¶ 7} The children's guardian ad litem (GAL) also supported the Agency's motion for permanent custody. Specifically, the GAL recommended in her post-hearing report that permanent custody be granted to the Agency.

{¶ 8} On June 27, 2013, the magistrate issued a decision recommending the Agency's motion for permanent custody be granted. The magistrate found by clear and convincing evidence that C.Y., A.Y., and K.Y. were abandoned, that the children had been in the temporary custody of the Agency for 12 of the 22 months preceding the filing of the motion for permanent custody, and that it was in the best interests of the children to grant permanent custody to the Agency. That same day, the judge adopted the magistrate's decision as the order of the court.⁴ Mother and Father both filed objections to the magistrate's decision. However, the court ordered the objections to be held in abeyance pending a hearing on grandmother's motion for legal custody.

{¶ 9} An evidentiary hearing on grandmother's motion for legal custody was held on June 10, 2014. Grandmother, Mother, and Megan LeFevers, a family friend, all testified in support of grandmother's motion. All three witnesses testified that grandmother loved the children and had a good relationship with them. Grandmother testified about her ability and willingness to take custody of the three children. According to grandmother, she lives in Manchester, Kentucky, approximately four hours from Butler County, where she owns her own mobile home and has sufficient space for the children to live with her. Grandmother also testified that she had researched local physicians and dentists, as well as the schools the children would attend.

4. Mother then filed an appeal as to all three children but this court dismissed the appeal as the order appealed from was not a final appealable order. *In re C.Y., et al.*, 12th Dist. Butler Nos. CA2013-08-139 and CA2013-08-144 (Oct. 10, 2013) (Entry of Dismissal); *In re. K.Y.*, 12th Dist. Butler No. CA2013-08-143 (Nov. 20, 2013) (Entry of Dismissal).

{¶ 10} The magistrate also heard evidence from French. French reiterated that she did not believe grandmother was an appropriate custodian as grandmother lacked the skills or the ability to care for the children. Specifically, French testified that based on grandmother's history of contact with the Agency related to her own children, she did not believe grandmother could protect C.Y., A.Y., and K.Y. In addition, French stated that she did not believe grandmother had the financial resources to care for the children. Finally, French testified that there is no evidence that grandmother had visited the children since they were placed in the Agency's temporary custody in November 2011.

{¶ 11} After considering the testimony as well as the findings of fact and conclusions of law from the magistrate's June 27, 2013 permanent custody decision, the magistrate issued a decision denying grandmother's motion for legal custody. That same day, the judge adopted the magistrate's decision as the order of the court. No objections were filed.

{¶ 12} On October 21, 2014, the trial court held a hearing on Mother and Father's objections to the magistrate's June 27, 2013 permanent custody decision. The judge overruled the objections and adopted the magistrate's decision on October 22, 2014. Mother and Father now appeal the court's decision to grant permanent custody to the Agency and each raise a separate assignment of error. For ease of discussion, we will address Mother's and Father's assignments of error together.

II. ANALYSIS

{¶ 13} Mother's assignment of error:

{¶ 14} THE COURT'S DISPOSITIONAL ORDERS OF PERMANENT CUSTODY DENYING LEGAL CUSTODY TO THE MATERNAL GRANDMOTHER WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, WAS BASED ON INSUFFICIENT EVIDENCE TO SUPPORT THE TRIAL COURT'S FINDINGS AND THE EVIDENCE PRESENTED FAILED

TO MEET THE REQUISITE CLEAR AND CONVINCING STANDARD.

{¶ 15} Father's assignment of error:

{¶ 16} THE TRIAL COURT'S DECISION AND ORDER DENYING MATERNAL GRANDMOTHER'S MOTION FOR LEGAL CUSTODY AND GRANTING PERMANENT CUSTODY OF C.Y. AND A.Y. TO THE BUTLER COUNTY DEPARTMENT OF JOBS AND FAMILY SERVICES WAS NOT SUPPORTED BY SUFFICIENT, CREDIBLE EVIDENCE AND WAS CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 17} The assignments of error set forth by Mother and Father essentially argue the juvenile court erred in denying grandmother legal custody and awarding the Agency permanent custody as the decisions were not supported by the sufficiency or weight of the evidence. Mother further argues that the evidence failed to establish by clear and convincing evidence that permanent custody with the Agency was proper.

A. Legal Custody

{¶ 18} As an initial matter, we find Mother and Father have waived any challenge to the trial court's decision on grandmother's legal custody motion. Juv.R. 40(D)(3)(b)(iv) provides, "a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b)." The waiver under Juv.R. 40(D)(3)(b)(iv) embodies the well-established principle that the failure to draw the trial court's attention to possible error, by objection or otherwise, when the error could have been corrected, results in a waiver of the issue for purposes of appeal. *In re G. Children*, 12th Dist. Butler No. CA2004-12-300, 2005-Ohio-4745, ¶ 4; *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122 (1997).

{¶ 19} Although Mother and Father filed objections to the magistrate's decision granting the Agency permanent custody, they failed to file objections to the magistrate's

decision denying grandmother's legal custody motion. Mother and Father's failure to advise the trial court of any alleged error in finding it was not in the best interests of the children to award grandmother legal custody results in a waiver of any arguments related to the court's legal custody determination. Furthermore, a review of the record reveals no plain error in the trial court's best interest determination. See *In re G. Children* at ¶ 5. It is apparent that although grandmother, Mother, and Father all wanted the children to be placed in the custody of a relative and that grandmother had made strides to create a suitable place for the children to live, the record demonstrates that grandmother simply did not have the skills or ability to act as an appropriate custodian. Grandmother had a history with the Agency involving her own children where grandmother used physical violence as a means of discipline and on multiple occasions failed to protect the children in her care. There was also evidence that grandmother did not have the financial ability to provide for the three children. Given such evidence, we find the trial court did not commit plain error in denying grandmother's motion for legal custody. Accordingly, to the extent Mother and Father's assignments of error challenge the trial court's decision to deny grandmother legal custody, the assignments of error are overruled.

{¶ 20} In turning to Mother and Father's arguments with regard to the decision to grant permanent custody, we note that much of the evidence Mother and Father rely on in challenging the court's decision was presented at the hearing on grandmother's legal custody motion. As the issue of legal custody is not properly before us, the evidence presented at the June 10, 2014 legal custody hearing is irrelevant to our review of the juvenile court's permanent custody decision. As such, our inquiry is limited to whether the evidence presented at the permanent custody hearing supports the juvenile court's findings.

B. Permanent Custody

1. Standard of Review

{¶ 21} 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*, 455 U.S. 745, 759, 102 S.Ct. 1388 (1982). "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." *In re McCann*, 12th Dist. Clermont No. CA2003-02-017, 2004-Ohio-283, ¶ 11, citing *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. "Where the degree of proof required to sustain an issue must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *Cross* at 477. Accordingly, an appellate court's review of a decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Z.C.*, 12th Dist. Butler Nos. CA2014-02-049 and CA2014-02-050, 2014-Ohio-3290, ¶ 17.

2. Permanent Custody Statutory Framework

{¶ 22} 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. 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). 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 Z.C.* at ¶ 18.

{¶ 23} Here, the juvenile court found by clear and convincing evidence, and Mother and Father do not dispute, that the children were abandoned and had been in the temporary custody of the Agency for 12 of the 22 months preceding the filing of the motion for permanent custody. See R.C. 2151.414(B)(1)(b) and (d). Further, the record supports these findings. The second prong of the permanent custody test is therefore satisfied. However, Mother and Father dispute the juvenile court's finding that granting permanent custody of the children to the Agency is in the children's best interests. Mother and Father assert that the juvenile court's best interest finding was against the manifest weight of the evidence.

3. Best Interests of C.Y., A.Y., and K.Y.

{¶ 24} R.C. 2151.414(D)(1) provides that in considering the best interest of a child in a permanent custody hearing:

[T]he court shall 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 * * *;
- (d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶ 25} In determining whether a permanent custody decision is against the manifest weight of the evidence, the appellate court "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 20; see also *In re C.G., et al.*, 10th Dist. Franklin Nos. 13AP-632 and 13AP-653, 2014-Ohio-279, ¶ 31-32. In weighing the evidence, we are always mindful of the presumption in favor of the finder of fact, especially in custody cases. *Eastley* at ¶ 21; *Morrison v. Robinson*, 12th Dist. Fayette No. CA2012-06-019, 2013-Ohio-453, ¶ 35 ("Credibility issues are critical in custody cases, and the demeanor and attitude of the witnesses may not translate into the record"). "If the evidence is susceptible to more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment." *Eastley* at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984) fn. 3.

{¶ 26} In the instant case, Mother and Father do not dispute the court's findings with respect to the factors set forth in R.C. 2151.414(D)(1)(b), (c), and (e), and upon a review of the record, the evidence supports the court's findings as to these factors. Specifically, although the juvenile court did not conduct an in camera interview of the children, the court noted the GAL's recommendation that permanent custody be granted to the Agency. As to the custodial history of the children, the court found that C.Y., A.Y., and K.Y. have been in the temporary custody of the Agency for more than 12 months of a consecutive 22-month period. In addition, Mother and Father do not dispute and the trial court correctly found that R.C. 2151.414(E)(10) and R.C. 2151.414(E)(11) apply in this case as Mother has previously

had her parental rights terminated with respect to an older sibling of the children, and Mother and Father have abandoned the three children. However, in challenging the court's best interest finding, Mother and Father specifically dispute the juvenile's court's findings related to the factors under R.C. 2151.414(D)(1)(a) and R.C. 2151.414(D)(1)(d).

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

{¶ 27} Pursuant to R.C. 2151.414(D)(1)(a), the juvenile court was to consider the children's interaction and interrelationships with relatives or any other person who may significantly affect the child. In considering such relationships, the juvenile court found that the children have remained in foster care since they were removed from their home in November 2011, and that they are currently in their second foster home.⁵ The court indicated the children are doing well in foster care and the negative behaviors previously exhibited by the children have abated since placement in foster care. In particular, French testified that the children's tantrums are now similar to those exhibited by children their age. In addition, according to French's testimony, the children are responding positively to counseling and are "communicating better." As to Father, the court found that he was incarcerated and would not be released for several months. The court also noted that during the pendency of the case, a period of approximately 18 months, Father only visited C.Y. and A.Y. five times, with his last visit occurring in April 2012.

{¶ 28} The court also noted Mother's absence since the initiation of the proceedings in this case. Like Father, Mother was also incarcerated at the time of the permanent custody hearing. Prior to being incarcerated, Mother only visited the children nine times, with her last visit occurring in August 2012. The trial court also indicated that although the children have

5. The initial foster family relocated to another state.

grandparents on both sides, none of the grandparents have seen the children in well over a year. At the hearing, French testified that grandmother was permitted to have visitation with the children during Mother's supervised visits. However, as Mother had not visited the children since August 2012, grandmother also had not seen the children since that time.

{¶ 29} Father challenges the juvenile court's findings claiming that the trial court did not adequately consider C.Y. and A.Y.'s relationships with several family members. Specifically, Father argues that the court failed to "give adequate weight to the wishes of [him and Mother] as parents." Father contends that although it is not an enumerated factor of R.C. 2151.414(D), it is a relevant factor. Father further asserts that the court failed to give adequate weight to the evidence presented by grandmother and Mother at the legal custody hearing regarding grandmother's strong bond with the children, or the children's "significant relationship" with other family members such as cousins of the children.

{¶ 30} After a review of the record, we find no merit to Father's arguments. The record demonstrates that the juvenile court appropriately considered all relationships which may significantly affect the children. The evidence further demonstrates that the children are thriving in foster care, are bonded to one another, and have also bonded to members of the foster family. As to Father's specific arguments, we again reiterate that Father's failure to object to the magistrate's decision denying grandmother's motion for legal custody has waived the issue on appeal. Further, this evidence—grandmother's bond and the children's relationship with their cousins—was not before the court when it made its permanent custody determination. Nevertheless, even if this court were to consider the evidence from the legal custody hearing, we still do not find the court erred in its consideration of this factor. Although grandmother and Mother provided some testimony regarding the children's relationship with other maternal family members, including the aunt and cousins of C.Y., A.Y.,

and K.Y., the record demonstrates that the children have not had any contact with any family member in well over a year. Moreover, the children are doing well in foster care and have formed relationships with members of the foster family. As to Mother's and Father's wishes, although Father's counsel and Mother represented at the legal custody hearing that they wanted the children to be placed in the legal custody of grandmother, the concern here is the best interests of the children.

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

{¶ 31} As to R.C. 2151.414(D)(1)(d), the juvenile court was required to consider C.Y., A.Y., and K.Y.'s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody. In considering this factor, we note that the juvenile court was not required to determine that granting permanent custody is the only way a child's need for a legally secure placement can be achieved. *In re H.P.*, 12th Dist. Preble No. CA2010-07-010, 2011-Ohio-1148, ¶ 39, citing *In re M.M.*, 122 Ohio St.3d 541, 2009-Ohio-4048.

{¶ 32} The juvenile court found that the children were in need of a legally secure placement. The record supports this finding. As noted by the juvenile court, at the time of the hearing, the children had been in substitute care for approximately 18 months. The children were removed from the custody of their parents based on concerns regarding Mother and Father's criminal conduct in the presence of the children, the parents' criminal and substance abuse history, and the lack of stable housing. Although the Agency prepared a case plan to address these issues, the evidence demonstrated that Mother and Father failed to complete any of the services recommended by the case plan or remedy the issues which led to the children's removal. In addition, as Mother and Father were currently incarcerated at the time of hearing and would not be released for several months, neither

parent was in a position to care for the children. Accordingly, the evidence demonstrated that the children were in need of a legally secure permanent placement.

{¶ 33} As the parents were not in a position to care for the children, the juvenile court proceeded to discuss whether any relative could provide a legally secure permanent placement. The court considered whether the children could be placed with any of their grandparents, including grandmother. The court noted that grandmother's home study had been denied and was therefore not an appropriate placement. The court reviewed the reasons for the denial stating the following:

This home study was denied for a variety of reasons, including: the lack of cooperation of the maternal grandmother's spouse in completing a background check, and his unwillingness to have the children reside with him in the home; physical issues with the condition of the mobile home in which the children would reside; the history of child abuse in [grandmother]'s home, and her apparent inability to protect children in her custody in the past; and the lack of financial ability to care for the children.

{¶ 34} Based on the foregoing, the court found that neither the parents nor grandmother could provide a legally secure permanent placement for the children. The court further found that the necessary legally secure permanent placement could not be achieved without a grant of permanent custody to the Agency.

{¶ 35} Mother specifically challenges this finding by the juvenile court. Mother contends the evidence demonstrated that permanent custody was not necessary to achieve permanence as grandmother is able to provide a legally secure permanent home. Father similarly argues that the trial court failed to give adequate consideration to grandmother's efforts to remedy the Agency's concerns with placement.

{¶ 36} After a review of the record, we find that the court's finding that grandmother could not provide a legally secure permanent placement is supported by the evidence. As

noted by the court, although grandmother filed for legal custody prior to the permanent custody hearing, she did not submit an approved home study or address the reasons why the initial study was denied. More importantly, the record reveals that the court's primary reason for finding grandmother to be an inappropriate placement was the history of child abuse in her home and her apparent inability to protect children in her custody. Specifically, the home study indicated that grandmother has a history of substantiated physical abuse and child neglect.

{¶ 37} During the home study, grandmother revealed that Mother had been sexually abused by grandmother's husband, who was also Mother's father, while under grandmother's care. According to the report, Mother gave birth to a son who was a product of this incestuous relationship, and it was only after DNA confirmed the identity of the boy's father that grandmother believed Mother had been sexually abused. Grandmother also indicated during the home study that her three youngest children and Mother's oldest son (who was in grandmother's physical custody) were placed in foster care when grandmother punched her then-14-year-old daughter in the face for cussing.⁶ In addition, the home study revealed that grandmother "did not appear to take any responsibility for the previous incidents of abuse and neglect that her children experienced while in her custody." A relative's past history is certainly a relevant factor for a court to consider in deciding whether to place a child with the relative. See *In re S.L.*, 12th Dist. Butler Nos. CA2012-07-137 through CA2012-07-142, CA2012-07-148, and CA2012-07-149, 2013-Ohio-781, ¶ 59.

{¶ 38} Father argues the juvenile court failed to give appropriate consideration to grandmother's "successful efforts" to remedy the Agency's concerns with placing the children

6. Mother's oldest son who was a product of her father's sexual abuse is the older sibling of C.Y., A.Y., and K.Y. As alluded to previously, Mother's rights to this child have been previously terminated, and he was placed in the permanent custody of the Agency and subsequently adopted.

in her care. In making this argument, Father again relies on evidence presented at the legal custody hearing. As such, his argument is waived. *In re G. Children*, 2005-Ohio-4745 at ¶ 4. However, even if we were to consider the evidence relied upon by Father, this evidence does not establish that grandmother had resolved all issues noted by the Agency or that it was appropriate to place the children in her care. Grandmother's testimony from the legal custody hearing only demonstrated that she had ameliorated one of the concerns of the Agency; specifically she had divorced her husband.⁷ Grandmother, however, failed to demonstrate that she had learned from her past or that she had gained the skills and ability to exercise good judgment and protect the children if they were placed in her care. In fact, when asked about punching her daughter, grandmother indicated that she would do it again if "they stand in my face and cuss." In addition, the record does not demonstrate that grandmother has sufficient funds to care for the children. When asked whether she could financially support the children, grandmother stated, "I hope that I get a support if they got a support order in. So hopefully I get money from that." Finally, at the time of the legal custody hearing, grandmother had not seen the children in two years and was unfamiliar with their current needs.

{¶ 39} Based on the evidence before the juvenile court, we find the trial court appropriately considered such evidence and determined grandmother was unable to provide a legally secure permanent placement and that legally secure permanent placement could be achieved by granting permanent custody to the Agency.

{¶ 40} After considering the foregoing factors, the trial court found by clear and convincing evidence that granting permanent custody of the children to the Agency was in

7. This was grandmother's second husband. Grandmother had previously divorced Mother's father when the sexual abuse came to light.

the children's best interest. After reviewing the record as a whole, we find that there is sufficient evidence to support the findings of the juvenile court. Moreover, in reviewing the evidence presented regarding the best interest factors under R.C. 2151.414(D)(1), the juvenile court did not clearly lose its way nor does the evidence weigh heavily against the court's best interest findings. The juvenile court's decision is supported by the manifest weight of the evidence.

III. Conclusion

{¶ 41} On review of the record, we find that the juvenile court's determinations are supported by clear and convincing evidence. The evidence established that C.Y., A.Y., and K.Y. were abandoned, have been in the temporary custody of the Agency for at least 12 months of a consecutive 22-month period, and it is in the best interests of the children to be placed in the permanent custody of the Agency. Accordingly, the trial court did not err in granting permanent custody of C.Y., A.Y., and K.Y. to the Agency. Mother and Father's assignments of error are overruled.

{¶ 42} Judgment affirmed.

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