

Court, alleging that L.J., who was approximately two and one-half months old, was an "abused child," as defined in R.C. 2151.031(C), and a "dependent child," as defined in R.C. 2151.04(C), and requesting that the agency be granted temporary custody of L.J. The complaint alleged that L.J. was taken to Liberty Children's Hospital on August 16, 2012, with concerns of a possible urinary tract infection. While there, L.J. began having a seizure. The child was ultimately diagnosed with a skull fracture, several broken ribs, and several fractures in his legs. L.J. was transported to Cincinnati Children's Hospital where he was admitted to the Pediatric Intensive Care Unit and placed in a medically-induced coma. L.J. came out of the coma but had to be given medication to control his seizures. Additional testing on L.J. revealed retinal hemorrhaging. Medical personnel determined that L.J.'s rib fractures occurred approximately seven to ten days prior to his hospitalization and that L.J.'s skull fracture occurred within a day of his hospitalization, based on the parents' statements.

{¶ 3} The complaint further alleged that at the time of his injuries, L.J. lived with his parents, Father and A.H. (Mother). The complaint further alleged that Tilynn Cornes also lived in the home and provided care for L.J. The parents reported that only they and Cornes had contact with L.J. The parents stated that L.J. cried throughout the night several days before they took him to the hospital and that they took L.J. to the hospital after Cornes reported that the child had blood in his urine and had vomited. The parents and Cornes had no explanation for L.J.'s injuries, and none of them have been charged with any crime in connection with the child's injuries. Mother reported that she, Father, and Cornes have all smoked marijuana in the home while L.J. was sleeping.

{¶ 4} On the same day WCCS filed its abuse/dependency complaint regarding L.J., the juvenile court held an emergency shelter care hearing and placed L.J. in the agency's care. The agency then placed L.J. in a foster home in Urbana, Ohio. Neither Father nor Mother was present for the shelter-care hearing. On October 26, 2012, the juvenile court

found by clear and convincing evidence that L.J. was an abused child under R.C. 2151.031(C) in that L.J. "exhibited evidence of physical injury inflicted other than by accidental means, or an injury which is at variance with the history given of it," and a dependent child under R.C. 2151.04(C) in that L.J. "was in a condition or environment such as to warrant the state, in the interests of the child, in assuming his guardianship."

{¶ 5} WCCS issued a case plan to the parents with the goal of reunifying L.J. with his parents. The case plan required the parents to submit to substance abuse evaluations and follow all recommendations; to submit to mental health assessments and follow all recommendations; to submit to random drug screens by the agency or other approved provider; to attend and participate in a child abuse prevention, educational and support program; to attend a parenting education course; to actively participate in and successfully complete an anger management program and to demonstrate effective coping skills in dealing with parenting stressors; and to participate in individual therapy and follow all recommendations. The case plan also required the parents to attend L.J.'s physician appointments and his therapy appointments, some of which took place in Urbana or Springfield. The parents were given contact information for all of L.J.'s healthcare providers so they could be in contact with the providers themselves. The case plan was subsequently modified to require the parents to demonstrate the ability to provide financially for L.J.'s basic needs and to secure and maintain stable and appropriate housing.

{¶ 6} In November 2012, WCCS placed L.J. with Mother's cousins. Within three months of the start of the case, Father had completed his substance abuse evaluation, and no follow-up counseling was recommended. Visitation was occurring and no major concerns were identified. L.J.'s placement with Mother's cousins had to be discontinued in April 2013 due to personal issues the cousins experienced that were independent of L.J. being placed with them. L.J. was returned to the Urbana foster home.

{¶ 7} By May 2013, the case was approximately nine months old, and while L.J. was showing progress, it was extremely slow. L.J.'s injuries were so substantial that they required a heightened level of care, and therefore, L.J. underwent therapy at the Liberty campus and in Urbana. L.J.'s parents were encouraged to attend those appointments. WCCS believed it was crucial to educate the parents about how to help L.J. therapeutically. However, Father told L.J.'s main caseworker, Jennifer Harpur, that he was unable to attend L.J.'s therapy sessions for a variety of reasons, including that he did not have a license, he had to rely on Mother for transportation, his relationship with Mother was "on again-off again," and he did not have money for gas.

{¶ 8} In September 2013, another amended case plan was developed for Father and Mother with respect to L.J. Father made an effort to attend L.J.'s therapy session at Liberty campus, but eventually all of L.J.'s therapy occurred in Urbana, which was further away from him. Father relied on the same excuses on which he had relied in the past for not coming to L.J.'s therapy appointments. By this time, Father had completed a parenting education course and was visiting L.J. However, Father still had not completed his anger management counseling, individual counseling, and financial budgeting classes. Additionally, caseworker Harpur noted that while Mother was actively involved in some of the visitations, Father merely observed. Nevertheless, the case plan was extended because Father was seeking employment at this time and was showing some progress in completing his case plan objectives.

{¶ 9} In November 2013, another amended case plan was developed and implemented for the parents, and L.J.'s younger sister, A.J., who is a year younger than L.J., was added to the case plan. Despite the agency encouraging Father and Mother to participate in all of L.J.'s and A.J.'s medical appointments, therapy, and specialized education, the parents failed to do so. Shortly thereafter, WCCS decided to change its case

plan objective for L.J. and his parents from reunification to permanent custody.

{¶ 10} In December 2013, Father was diagnosed with testicular cancer. He underwent surgery immediately, and, soon thereafter, underwent chemotherapy for a 12-week period, from Monday through Friday, four to six hours per day, every other week (to allow him to recover during the "off" weeks). As a result of his cancer diagnosis, surgery, and treatment, Father was unemployed for eight months from December 2013 to August 2014. Caseworker Harpur would later testify at the permanent custody hearing that the agency decided to seek permanent custody of L.J. *before* the agency learned that Father had been diagnosed with cancer.

{¶ 11} On March 3, 2014, WCCS filed a motion for permanent custody of L.J. On June 2, 2014, the guardian ad litem appointed for L.J. filed a report recommending that L.J. be placed in the permanent custody of WCCS. The juvenile court held a hearing on WCCS's permanent custody motion over three days in September 2014. L.J.'s pediatrician, Dr. Gene Bramel, testified that L.J. has been diagnosed with cerebral palsy and is heavily involved with physical and occupational therapy. Dr. Bramel testified that L.J. has progressed during the time he has been in therapeutic foster care. For example, L.J. is now able to roll over, he babbles, he has made visual progress in that his eyes can track a voice, and he is more responsive to his environment. Dr. Bramel testified that L.J.'s therapies are critical and if such therapy did not happen, it is likely that he will be in a stroller or in a bed for the rest of his life, without any ability to walk or talk. Dr. Bramel testified that L.J. is growing, that his caregivers are now focusing on his weight and utilizing a dietician, and that his "gross" and "fine" motor skills are improving. Dr. Bramel testified that L.J. is getting proper care in the foster home and that he has no concerns about the foster parents' abilities to provide the care necessary for L.J., as they are knowledgeable and insightful about L.J.'s needs. Dr. Bramel testified that he is only the "gatekeeper" and that it is L.J.'s caregiver that will

accomplish most of the targeted goals for L.J.

{¶ 12} Father testified that he has completed most of the case plan tasks assigned to him other than taking a budgeting class and undergoing individual therapy or counseling. Father testified that he did not complete the financial budgeting class requirement because he has no job and therefore no income to budget. Father also testified that caseworker Harpur told him that WCCS did not approve of the agency at which he had intended to fulfill the individual therapy or counseling requirement, i.e., "Access Counseling." However, caseworker Harpur testified that she told Father that WCCS *did* approve Access Counseling for individual counseling. She also testified that Father wanted to attend his anger management counseling at Access Counseling but that Access Counseling does not offer anger management counseling.

{¶ 13} Father also presented the testimony of his mother, who testified that Father and L.J. were allowed to live with her, rent-free, in her three-bedroom house and that she would not charge Father any rent until his employment situation changed. Father's mother also testified that she is an L.P.N. However, Father's mother acknowledged that she has seen Father interact with L.J. only twice over the last two years; that she has attended only one of L.J.'s medical appointments; and that much of what she knows about L.J.'s special needs comes from Father and what Father does not know about L.J.'s special needs, she too will not know.

{¶ 14} The evidence in the record shows that Mother has failed to complete any of the case plan services and that she tested positive for cocaine in February 2014. This was the last contact the agency had with her.

{¶ 15} The juvenile court granted WCCS's motion for permanent custody of L.J. The juvenile court determined that under R.C. 2151.414(B)(1)(d), L.J. had been in the temporary custody of WCCS for 12 or more months of a consecutive 22-month period. In the

alternative, the juvenile court determined that under R.C. 2151.414(B)(1)(a), L.J. cannot be placed with Mother or Father within a reasonable time and should not be placed with either parent "because, notwithstanding reasonable case planning and diligent efforts by the agency, Mother and Father have failed continuously and repeatedly to substantially remedy the conditions" that required L.J. to be placed outside the home.¹ The juvenile court also determined that WCCS had proved by clear and convincing evidence that granting the agency permanent custody of L.J. was in the child's best interest under the factors in R.C. 2151.414(D)(1)(a)-(e).

{¶ 16} Father now appeals,² assigning the following as error:

{¶ 17} Assignment of Error No. 1:

{¶ 18} THE TRIAL COURT ERRED IN GRANTING THE STATE'S MOTION FOR PERMANENT CUSTODY.

{¶ 19} Assignment of Error No. 2:

{¶ 20} APPELLANT WAS DENIED EFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

{¶ 21} In his first assignment of error, Father contends that the juvenile court erred in granting WCCS permanent custody of L.J.

{¶ 22} "Before a natural parent's constitutionally protected liberty interest in the care and custody of [his or] her child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards of permanent custody have been met." *In re: C.Y.*, 12th Dist. Butler Nos. CA2014-11-231, CA2014-11-236, CA2014-11-237, CA2014-11-238, 2015-Ohio-1343, ¶ 21, citing *Santosky v. Kramer*, 455 U.S. 745, 759, 102 S.Ct. 1388 (1982). "Clear and convincing evidence" is evidence that produces in the mind of

1. As will be discussed within Father's first assignment of error, the juvenile court's alternative finding was unnecessary given its determination that the child was in the agency's custody for 12 of 22 months.

2. Mother is not a party to this appeal.

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. When the degree of proof required to sustain an issue is "clear and convincing," a reviewing court must 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: C.Y.*, citing *In re Z.C.*, 12th Dist. Butler Nos. CA2014-02-049 and CA2014-02-050, 2014-Ohio-3290, ¶ 17.

{¶ 23} R.C. 2151.414(B)(1) provides that a court may grant permanent custody of a child to a children services agency if it determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the circumstances listed in R.C. 2151.414(B)(1)(a)-(e) applies. These circumstances include that "[t]he child is abandoned[,]" R.C. 2151.414(B)(1)(b); "[t]he child is orphaned, and there are no relatives of the child who are able to take permanent custody of the child[,]" R.C. 2151.414(B)(1)(c); "[t]he child has been in the temporary custody of one or more public children services agencies or private placing agencies for twelve or more months of a consecutive twenty-two-month period[,]" R.C. 2151.414(B)(1)(d); and where the three preceding circumstances do not apply, "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[,]" R.C. 2151.414(B)(1)(a). *In re: C.Y.* at ¶ 22, citing *In re Z.C.* at ¶ 18. As long as a child meets the "12 of 22" requirement, an agency is not required to prove that a child cannot be returned to the parents within a reasonable time or should not be returned to the parents. *In re C.W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, ¶ 21.

{¶ 24} The juvenile court first determined that there was clear and convincing evidence to show that L.J. had been in the temporary custody of WCCS for 12 or more months of a consecutive 22-month period. The evidence in the record supports the juvenile court's determination, and Father does not challenge it. Instead, Father claims the juvenile court erred in finding by clear and convincing evidence that L.J. could not be placed with him within a reasonable time, and therefore, erred in granting WCCS permanent custody of L.J. However, and because the juvenile court made the "12 of 22" determination pursuant to R.C. 2151.414(B)(1)(d), it was not necessary for the juvenile court to address whether L.J. could be placed with Father within a reasonable time pursuant to R.C. 2151.414(B)(1)(a).³ See *In re E.B.*, 12th Dist. Warren Nos. CA2009-10-139 and CA2009-11-146, 2010-Ohio-1122, ¶ 26 (holding that a trial court's finding that a "child has been in custody for 12 of 22 months completely obviates consideration of whether the child can be placed with [his] parents within a reasonable time").

{¶ 25} Father also argues the trial court erred in finding that WCCS made reasonable efforts to reunify the family during the child custody proceedings. This argument lacks merit.

{¶ 26} In *In re C.F.*, 113 Ohio St. 3d 73, 81, 2007-Ohio-1104, ¶ 43, the Ohio Supreme Court held, in pertinent part, that

except for some narrowly defined statutory exceptions, the state must * * * make reasonable efforts to reunify the family during the child-custody proceedings prior to the termination of parental rights. If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time.

{¶ 27} In determining whether the agency made reasonable efforts to reunify the

3. Although it was superfluous for the juvenile court to make findings regarding the ability to place L.J. with Father within a reasonable time, we nonetheless note that the juvenile court's findings were well-supported by the record and would have formed the necessary basis for WCCS to prevail on its motion even if the child had not been in the agency's custody for 12 of 22 months.

family during the child-custody proceedings prior to the termination of parental rights "the issue is not whether the agency could have done more, but whether it did enough to satisfy the reasonableness standard under the statute." *In re S.U.*, 12th Dist. Clermont No. CA2014-07-055, 2014-Ohio-5748, ¶ 16, citing *In re A.D.*, 12th Dist. Fayette No. CA2014-06-014, 2014-Ohio-5083. "Reasonable efforts' does not mean all available efforts. Otherwise, there would always be an argument that one more additional service, no matter how remote, may have made reunification possible." *In re S.U.*, citing *In re K.L.*, 12th Dist. Clermont No. CA2012-08-062, 2013-Ohio-12, ¶ 18.

{¶ 28} Here, the evidence in the record establishes that WCCS met its burden of establishing that it made reasonable efforts to reunify the family during the child-custody proceedings prior to the termination of parental rights, and it fully supports the juvenile court's finding that WCCS engaged in "reasonable case planning" and made "diligent efforts" to reunify L.J. with his parents. WCCS made multiple amendments to the case plan, in order to provide Father with the counseling that would give him the necessary skills to parent L.J. competently in light of L.J.'s challenging medical conditions. The record establishes that the agency encouraged Father to attend, and made clear to him the necessity of attending, all of L.J.'s medical appointments and his therapy sessions so that Father could learn the necessary therapeutic skills to care for L.J. The agency even arranged to provide Father with a steady source of gas cards so that Father could attend these medical appointments and therapy sessions. However, the record shows that even before he contracted cancer in December 2013, Father refused to attend these appointments and sessions.

{¶ 29} Father contends that since he did not have a driver's license or a vehicle, providing him with gas cards "was not a reasonable or helpful solution to the problem." He also contends that he received only one gas card. However, Caseworker Harper testified that "Help Me Grow," which is one of the agencies that provided L.J. with therapeutic care,

offered to send Father and Mother gas cards to allow them to attend L.J.'s therapy sessions. Mother received one of the gas cards but there was a delay in sending her a second gas card since Help Me Grow wanted receipts. Harpur testified that both Father and Mother assured her that they would provide Help Me Grow whatever was required, in order for them to continue to receive gas cards from that agency, but to Harper's knowledge, Father never followed through on it.

{¶ 30} In light of the foregoing, we conclude that there is ample evidence in the record to support the juvenile court's determinations that WCCS proved by clear and convincing evidence that by the time of the permanent custody hearing, L.J. had been in the temporary custody of WCCS for 12 or more months of a consecutive 22-month period; that WCCS made reasonable efforts to reunify the family during the child-custody proceedings prior to the termination of parental rights; and that it is in L.J.'s best interest to grant the agency permanent custody of him.

{¶ 31} Therefore, Father's first assignment of error is overruled.

{¶ 32} In his second assignment of error, Father argues he was denied the effective assistance of counsel in defending against the agency's motion for permanent custody of L.J. He contends that his counsel's performance was deficient in that counsel should have requested an extension of temporary custody prior to the agency's filing a motion for permanent custody. Father contends that had his counsel filed such a motion, the juvenile court would have had to hold a hearing on whether to extend temporary custody, and this, in turn, would have given him "extra time to finish his remaining case plan services." We find this argument unpersuasive.

{¶ 33} A parent is entitled to the effective assistance of counsel in cases involving the involuntary termination of his or her parental rights. *In re G.W.*, 12th Dist., Butler, No. CA2013-12-246, 2014-Ohio-2579, ¶ 12. When determining whether counsel was ineffective

in representing a parent in a permanent custody hearing, a reviewing court must apply the two-pronged test of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). *In re G.W.* The parent must show that his counsel's performance was outside the wide range of professionally competent assistance *and* that his counsel's deficient performance prejudiced the parent. *Id.* A strong presumption exists that licensed attorneys are competent and that counsel's challenged conduct is the product of sound trial strategy and thus falls within the wide range of competent professional assistance. *Id.* To show that he or she was prejudiced by counsel's deficient performance, the parent must show there is a reasonable probability that but for his or her counsel's alleged errors, the result of the proceedings would have been different. *Id.* A "reasonable probability" is one sufficient to undermine confidence in the outcome of the proceedings. *Id.*

{¶ 34} Here, the record does not support Father's contentions that he nearly completed the tasks assigned to him in the case plan or that he could have completed those tasks had he been given more time to do so. At the time of the permanent custody hearing in September 2014, which was nearly two years after the implementation of the original case plan, Father had failed to complete a financial budgeting class or individual therapy or counseling, and failed to attend many of L.J.'s medical appointments and therapy sessions. Thus, Father has failed to establish a reasonable probability of a different outcome but for his counsel's alleged error in not requesting an extension of temporary custody.

{¶ 35} Accordingly, Father's second assignment of error is overruled.

{¶ 36} Judgment affirmed.

S. POWELL and M. POWELL, JJ., concur.