[Cite as *In re C.S.*, 2015-Ohio-618.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

In Re: C.S. & M.S.	:	
	:	
	:	C.A. CASE NO. 26083
	:	
	:	T.C. NO. 2009-3775/2009-3778
	:	
	:	(Civil appeal from Common Pleas
	:	Court, Juvenile Division)
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O P I N I O N

Rendered on the ___13th___ day of ____February____, 2015.

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DONOVAN, J.

{¶ 1} This matter is before the Court on the February 10, 2014 Notice of Appeal of M.Y. M.Y. appeals from the January 23, 2014 decision of the juvenile court that overruled her objections to the Magistrate's decision awarding permanent custody of her children, C.S. and M.S., to Montgomery County Children's Services ("MCCS"). We hereby affirm

the judgment of the trial court.

{¶ 2} On April 30, 2009, MCCS filed a Dependency Complaint in juvenile court regarding M.S., whose date of birth is August 22, 2005, and MCCS also filed a Neglect and Dependency Complaint regarding C.S., whose date of birth is August 1, 2002. The affidavits of caseworker Sherree Spence in support of the complaints provide that MCCS has been involved with M.Y. since March of 2009, and that M.Y. placed the children with C.S.1, the children's father, in late 2008, due to M.Y.'s inability to care for them. The affidavits provide that C.S.1 was currently being held in the Montgomery County Jail, and that M.Y., who has mental health issues, lacked stable housing and income. MCCS was granted ex parte temporary custody on April 30, 2009, and the Magistrate issued orders of interim temporary custody on May 6, 2009, after a shelter care hearing.

{¶ 3} On June 25, 2009, at a hearing regarding the allegations in the complaints, M.Y. and C.S.1 stipulated to the facts in the complaints, and MCCS withdrew the allegation that C.S. was a neglected child. The court found that it was in the children's best interest to grant temporary custody to MCCS, to expire on April 30, 2010. On July 29, 2010, the court extended the order of temporary custody to October 30, 2010. On September 9, 2010, MCCS filed motions for permanent custody of the children. The attached affidavit of Sherree Spence provides as follows:

> Permanent custody is in the child's best interest because: Mother and Father have not completed their case plan objectives and are not in a position to care for the children. Mother is currently homeless. She had been staying at St. Vincent's but was not compliant with their program and had to leave. Mother is not employed but is working. BVR reported that

they will not work with her until she drops a clean urine through MCCS which she refuses. Mother did complete a parenting and psychological assessment and a visitation assessment. Mother however has not demonstrated an ability to care for the children. Mother had difficulty allowing the children to be children and at times has become upset that the children were not doing specifically what she wanted, when she wanted. Mother has admitted marijuana usage and was referred to CAM. Mother began the program but later stopped attending and was terminated. Mother has a personality disorder and is not currently receiving any mental health medication therapy and has as needed counseling sessions. Father is currently residing with a girlfriend and her children. He reports that he is moving again however. Father also reports working for a Temporary Agency which recently laid him off. MCCS has not seen any paystubs. Father was referred for a parenting and psychological assessment and he was eventually scheduled for four appointments. The last appointment was with the Agency arranging to pick him up for the appointment to ensure his attendance. When MCCS went to pick father up for the appointment he was not present; therefore, no assessment has occurred. Father was referred for a substance abuse assessment however he has only attended an assessment recommending treatment. He was referred to CADAS and Nova House. He has not followed through. It has been noted that during visitation the Father spends a good portion of time on his cell phone or interacting with other people and not interacting

with the children.

* * *

No relatives are able, willing and appropriate to care for the [children].

{¶ 4} On October 15, 2010, M.Y. filed a "Motion of Mother for Custody, or in the alternative for a Second Extension of Temporary Custody to Agency." On December 8, a hearing regarding the motion for permanent custody was held, and on December 14, 2010, the court issued an order providing that the motion for permanent custody was withdrawn "as all parties are in agreement with a second extension of temporary custody to [MCCS] as requested in mother's motion filed on October 15, 2010."

{¶ 5} On February 18, 2011, MCCS moved for permanent custody of the children. The attached affidavit of Sherree Spence provides in part that "on December 8, 2010, [M.Y.] tested positive for THC." The affidavit further provides that "C.S. is a special needs child. He has been diagnosed with ADHD, OCD and Aspergers. He attends bi-weekly therapy and monthly medication evaluations."

{¶ 6} On March 8, 2011, M.Y. filed motions for custody of the children. A trial was held on August 24, and 25, 2011, November 28, 2011, and February 1, 2012, which C.S.1 did not attend. Bruce Ladle, Ph.D., testified that he is a psychologist employed at Premier Health Partners in the Health Psychology Associates division. He testified that M.Y. was referred to him from the Bureau of Vocational Rehabilitation ("BVR") for a neuropsychological evaluation that he performed on September 1, 2009, using tests typically used in the field of neuropsychology. He testified that he met with M.Y. for four or five hours for the evaluation, the purpose of which was to determine her "strengths and

limitations and to look at what possible types of employment opportunity there would be for [M.Y.] based upon her cognitive or emotional abilities." In terms of M.Y.'s verbal comprehension abilities, Ladle testified that "they were more in the low average to mildly impaired range." Ladle testified that "there were a number of strengths that she had that were more visually based that could be utilized" in terms of M.Y.'s ability to comprehend instructions. Ladle testified that M.Y.'s reading comprehension was at a fifth-grade level, which he described as "mildly impaired." Ladle stated that it would be "more difficult" for M.Y. to understand information provided in a written form.

{¶ 7} Regarding M.Y.'s hypothetical reasoning skills, Ladle testified that he administered the "Wisconsin Card Sort" test, and he stated that M.Y. "had quite a bit of difficulty with this test." According to Ladle, "it would be wise for [M.Y.] to work in some type of structured environment, one that doesn't change on a regular basis, that there be some structure and repetitive nature to the work environment." Regarding M.Y.'s visual comprehension and reasoning, Ladle testified that on "those tests she demonstrated some pretty good strengths. * * * They were in the average to high average range."

{¶ 8} Regarding M.Y.'s emotional health, Ladle testified that she was in the mild to moderate range for depression and the mild range for anxiety. Ladle testified that M.Y.'s emotional concerns "appear to be more situational in nature, that the fact that she was not able to be employed, that there was some financial difficulties and the fact that she did not have custody of her children were bringing about a lot of the emotional concerns at that time." In terms of her physical health, Ladle testified that M.Y. reported that she had painful scoliosis and arthritis in her kneecaps, and that she was unable to stand for very long periods. Ladle testified that M.Y.'s pain may limit the type of

employment that she is able to seek.

{¶ 9} Ladle testified that M.Y. was diagnosed with "a learning disorder NOS, which means that she had a learning disorder in a variety of areas but were not otherwise specified because it was hard to determine exactly where it was. She also had a diagnosis of adjustment disorder with anxiety and depressed mood, which * * * appeared to be chronic." Ladle testified that he encouraged M.Y. to continue the counseling that she was receiving.

{¶ 10} On cross-examination, Ladle testified that M.Y. is a visual learner, and he "strongly encourage[s] that [information] be presented to [M.Y.] in a visual format, and if there's anything that needs to be taught to her that it be more of a hand-over-hand process to where it's demonstrated to her, so she'd be able to comprehend, because she had some relative significant strengths with more the visual memory, and she would pick up on it pretty quickly when visually presented." Ladle stated that M.Y. has a reduced ability to focus in a distracting environment, and that "if she was able to have a quieter environment and not many distractions, it might be a little bit easier * * * for her to comprehend and concentrate on things." Ladle stated that it would be difficult for M.Y. to complete complex forms on her own. Ladle testified that M.Y.'s case plan and semi-annual review would be difficult for her to understand. He testified that "anything that she wouldn't understand, it would be important for someone with her to look through it and go through this together and have her be able to have that person explain exactly what is asked." Under those circumstances, according to Ladle, M.Y. would "be able to understand * * * what is being requested of her better."

{¶ 11} On redirect examination, regarding the semi-annual review and case plan,

Ladle was asked, "would it help her to understand if it was over a period, say, every month or so, reviewed again with her? Would that help her comprehend?" Ladle responded, "That would help anyone."

{¶ 12} Kelly Fox Callahan testified that she is a clinical psychologist, and that she is the clinical director at Family Solutions Center, which is the youth division of TCN, a Community Mental Health Center in Greene County. She stated that she met M.Y. in July, 2009, to conduct a psychological evaluation and parenting assessment. She testified that the process involves three separate meetings in which an extensive clinical interview is initially conducted, which includes a mental status examination, followed by testing and observation of the client and her children. Callahan stated M.Y. missed the first meeting at the end of April, 2009, and it was rescheduled. She stated that M.Y. attended the second meeting, in July, 2009, and that she did not attend the next appointment set for August, 2009. Callahan stated that M.Y. then came to the office on a date that she did not have an appointment, believing that she did, and that the final appointment was then scheduled at that time for the end of August. M.Y. attended the final appointment.

{¶ 13} In the interview, Callahan stated that M.Y. reported that she had another child when she was much younger, and that the child had been adopted. Callahan stated that M.Y. was unemployed at the time of the interview. Callahan stated that she administered the Millon Clinical Multiaxial Inventory III test, which is an accepted standard personality test composed of true and false questions. She testified that the results indicated that M.Y. "was exhibiting some significant depressive symptomology," which "is not necessarily sadness and suicidal ideation, * * *. It can be chronic moodiness and

extreme irritability." Callahan stated that the results further indicated "that there was anxiety present, particularly in the form of difficulty with attention and concentration." Finally, Callahan stated that M.Y. "did not receive a diagnosis of being paranoid, but there is a style where people tend to be * * * very suspicious regarding sometimes the motives of others, and that did come up * * * as a finding on the test."

{¶ 14} Callahan stated that she administered a Parenting Stress Index, and that the results indicated "no significant stress associated with parenting her children." Finally, Callahan stated that she asked M.Y. a series of nonstandardized questions, and that Callahan wrote down M.Y.'s responses because M.Y. indicated that she was having difficulty with comprehension. Callahan stated that she observed M.Y. with her children for about an hour at the visitation center, and she described M.Y.'s demeanor as "somewhat inconsistent; somewhat harsh at times * * *. So at one point she did indicate that she was proud of something that her son had done, but then that was followed with, now do this, that and the other thing."

{¶ 15} Callahan stated that M.Y. indicated to her that she had "suicidal thoughts back in the day," and that she had "some sort of difficulty with recalling verbal information or information that's presented auditorially. That would kind of get lost, so that leads to comprehension difficulties." According to Callahan, "it would be unlikely that [M.Y.'s difficulties] would just spontaneously remit, particularly since she led a more solitary life style than getting out with other people."

{¶ 16} Callahan testified that she recommended a medication evaluation for M.Y. She stated that she believed M.Y.'s parenting issue "was one of * * * kind of ineffectiveness and that * * * Celebrating Families or somebody that could come into the

agency during her visit and do some modeling of ways to deal might be very helpful." She recommended that M.Y. not be given a lot of information in a place of distraction, and that information should be written down for her due to her problem of retaining verbal information. Callahan stated that she recommended that M.Y.'s children "should be contacted regarding how they were doing as an important piece of all this."

{¶ 17} Callahan stated that M.Y. "was very good at acknowledging that she was loud and * * * that was a main problem. She had some difficulty, I think, seeing her own part, * * * how that might have kind of added to these difficulties." Callahan testified that M.Y. "needed to kind of get some help for ongoing difficulties, because parental mood does affect how children are, and perhaps that with some assistance her mood might improve, so then perhaps a secondary gain would be a better * * * relationship with her own children." Callahan concluded that reunification with the children should be contingent upon M.Y.'s following through with her recommendations. On cross-examination, Callahan stated that she completed her report in January, 2010.

{¶ 18} Deborah Nagel testified that she is a mental health therapist at Day-Mont Behavioral Health. She stated that MCCS referred M.Y. to her, and she did a full assessment of M.Y., including her environment, history, symptoms and function. Based upon the assessment, Nagel testified that she developed a treatment plan, initially "to learn the skills to better manage her anxiety." She stated that M.Y was supposed to report twice a month for an hour, and that M.Y.'s attendance was sporadic. From July, 2010, to December, 2010, Nagel stated that M.Y. kept five appointments and missed three. Nagel stated that at M.Y.'s initial appointment, M.Y. indicated that she was not involved with any other services, but then Nagel learned that M.Y. was involved with CAM

("Consumer Advocacy Model"), a treatment program for people with mental health and substance abuse problems. Nagel stated that M.Y. "admitted that she wasn't honest with me at the initial assessment." Nagel stated that M.Y.'s attendance was also sporadic from January, 2011 to April, 2011. She stated that in May of 2011, M.Y. saw the psychiatrist at Day-Mont for an initial evaluation for medications, on Nagel's referral, and that she was supposed to follow-up with Nagel after that appointment and failed to do so. Nagel stated that she saw M.Y. at the end of July, 2011 and that Nagel cancelled an appointment scheduled for August, 2011, due to illness.

{¶ 19} Nagel stated that M.Y was given a 10-day prescription for anxiety and depression after the medication evaluation, and that M.Y. was required to return to Day-Mont to refill the prescription, but that she did not do so. Nagel stated M.Y reported to her "about being overwhelmed, stressed and angry." Nagel stated that M.Y indicated to her that she has violent thoughts, "not towards any specific person," and that she copes with them by playing violent video games and walking. Nagel stated that M.Y. indicated to her that her children were in the custody of MCCS because of "something the father had done." According to Nagel, when she discussed with M.Y. the fact that C.S. had been diagnosed with Asperger's, M.Y. "told me that when she had her children, she had no evidence, there was nothing wrong with them, they were doing fine in school, so she didn't understand the diagnosis." Nagel stated that in terms of M.Y.'s coping skills, she has not "seen much change or progress" since July, 2010.

{¶ 20} Heather Stevens testified that she is a therapist with the CAM program. She stated that M.Y. was referred to her by MCCS for an alcohol and drug assessment in March, 2011. Stevens stated that the goal of the program was for M.Y. to abstain from

drugs and alcohol. In addition to individual sessions with Stevens twice a month, Stevens stated that M.Y. was also in weekly group sessions, known as "Aware I," which is a ten-week "psychoeducational group" that provides information on drugs and alcohol. Stevens testified that M.Y.'s attendance in the program "has been poor up until July" of 2011. According to Stevens, M.Y. had 15 appointments scheduled and attended eight of them. Stevens testified that she sent M.Y. a "14-day letter" at the end of June or beginning of July after "30 days with no face-to-face contact" with her. Stevens stated that M.Y. did not complete the ten-week program. She stated that M.Y. attended one meeting on March 21, 2011, and then did not return until July 25, 2011.

{¶ 21} Stevens testified that in therapy, "[w]e talk a lot about what we call psychological stressors and triggers for use, and we try to come up with other ways to manage those stressors and triggers." Stevens stated that M.Y. reported to her "chronic pain being a major trigger. She doesn't have access to health insurance, which make it difficult for her to get treatment. She also reported financial stress, * * * just basically not having the things she needs, transportation, those items."

{¶ 22} Stevens testified that she administered drug screens to M.Y., and that the first screen that was done on her initial assessment in March was positive for THC. She stated that M.Y. was again tested in March, and that the results indicated that "there was too much water in the urine. They can't get an accurate reading." Stevens stated that she screened M.Y. again on July 25, 2011, and the result was positive for THC. Finally, Stevens stated that M.Y. was tested on August 22, 2011, and that she did not yet have the test results for that screen. Stevens stated that M.Y. refused to be tested on August 15, 2011, stating that she "was on her menstrual cycle and she was uncomfortable giving a

screen at that time." Stevens stated that the amount of THC in M.Y.'s system in July, 2011, was greater than the amount in her system in March, 2011, which indicates "[m]ore use." Stevens stated that M.Y. indicated to her that she "was quitting, she was working on quitting." Stevens testified that the last time she met with M.Y., she asked her, if there was a negative outcome to the hearing, if there was anything M.Y. could have done differently, and Stevens testified that Mother "reported there was nothing she could have done differently." Stevens further testified that M.Y. told her that if she lost custody of the children, "that she would probably commit suicide."

{¶ 23} On cross-examination by counsel for M.Y., Stevens stated that there was no evidence that M.Y. abused alcohol or any other kinds of drugs. She stated that the level of THC on the first screen in March was between 65 and 80, a level which Stevens stated she does not consider high use. She stated that the level of THC on the July screen was between 120 and 150, which she also stated is not a high result. Stevens acknowledged that M.Y. indicated to her that she used marijuana to relieve her chronic pain, and that she has never observed or heard reports of M.Y. being intoxicated or unable to function. Stevens stated that M.Y. reengaged in services in July, 2011, and that she has been attending the group sessions since then. Stevens stated that M.Y. was diagnosed with "cannabis abuse," and that there "has been some talk about ruling out dependence for her," but that she "hadn't seen her enough to really make a decision."

{¶ 24} Sherree Spence testified that she is a case-worker at MCCS, and that she has known C.S. and M.S. since March, 2009. She stated that at the time of the hearing, C.S. was nine years old and M.S. was six. Spence stated that the children have been in the care of MCCS since April, 2009, and that she has been M.Y.'s exclusive caseworker

since then. Spence stated that MCCS previously obtained permanent custody of T.Y., M.Y.'s son.

{¶ 25} Spence stated that when the case plan for M.Y. was developed, she went over the objectives of the plan with her, and that she has done so face to face with M.Y. since then approximately 20 to 25 times. According to Spence, she and M.Y. "sit down and review the case plan point by point and discuss what has been completed, what has not been completed, what's still expected and how she can go about working on her objectives." Spence stated that M.Y. also has been provided written copies of her case plan. When asked if M.Y. asked questions about her case plan, Spence responded, that she "has on a few occasions. The majority of the occasions that we discuss it or that I attempt to discuss it with her, she will not respond to me in any way." Spence stated that she answered any questions that M.Y. asked to "the best of my ability." Spence further stated that she has met with M.Y. and her attorney together to go over the objectives of her plan, having most recently done so on July 20, 2011, to "clarify any misunderstandings and provide any information that has been unclear."

{¶ 26} Spence stated M.Y.'s case plan objectives are to "obtain and maintain income and housing on a stable basis, to complete a parenting and psychological evaluation and follow all recommendations, to have positive interactions with her children during the visits." She stated that M.Y.'s case plan was later amended based upon concerns about drug abuse. Spence stated that since March of 2009, M.Y. obtained employment through a temp agency and worked one day as a janitor at Welcome Stadium, and that she worked four to seven days at the Great Steak Escape at the Dayton Mall. Spence testified that M.Y. reported that she lost the job at the Dayton Mall "because

she was too slow." Spence stated that she referred M.Y. to the Job Center around 20 times, and also to BVR "to assist with her employment and income." Spence stated that M.Y. did not follow through with the referral to the Job Center, and that her last referral was in May, 2011. Spence stated that M.Y. was involved with BVR for less than six months. According to Spence, "BVR became aware of her drug use and had reported that they would quit working with her unless she was able to submit and produce a clean urine screen." Spence stated that M.Y.'s involvement with BVR ceased a year before the hearing. Spence stated that M.Y. has not applied for any benefits, and that BVR would have assisted her with the Social Security applications. Spence stated that M.Y. has reported income from babysitting, house cleaning, and "doing hair," although M.Y. has not provided any documentation to verify any such income. Spence testified that M.Y.'s income case plan objective is not complete.

{¶ 27} Spence testified that she has been able to verify two addresses for M.Y. in the course of her involvement with MCCS. She stated that M.Y.'s current address is on Vernon Drive, and that she has previously stayed at the St. Vincent homeless shelter for three months. She stated that M.Y. has been at the Vernon Drive address for the last two and half years, and that prior to St. Vincent, M.Y. "reported she was staying with a variety of friends, but those addresses were never provided."

{¶ 28} Spence testified that she has been inside the Vernon Drive address twice, and that M.Y. resides there with S., who is a friend of hers. Spence stated that M.Y. is not on the lease, and that M.Y "reported that she assists with bills as she's able to based on her income." According to Spence, S. has a criminal background, including convictions for child endangering in June, 2007, disorderly conduct stemming from domestic violence

in July, 2002, and burglary in September, 2001. She stated that the Vernon Drive home is not suitable for the children. Spence stated that she expressed concerns to M.Y. about her housing, and she stated that "I don't recall getting a response to [S.'s] presence or housing."

{¶ 29} Spence stated that she was inside the home in April, 2011, along with the G.A.L. for the children at the time, Lisa Wray. She stated that M.Y. and S. were present. According to Spence, there "were doors which were missing and had blankets up. There was also sections, especially in the kitchen, where plaster and chunks of the wall were missing." Spence stated that the home had three bedrooms. Spence stated that M.Y. told her that S. "has allowed herself as well as other adults who have been homeless to live there while they try to get back on their feet." Spence further stated that she visited the home on August 23, 2011, and that M.Y. was not home at the time, but that a man who identified himself as S.'s brother arrived and indicated that he resided there. Spence stated that she referred M.Y. to St. Vincent, "which assists with housing. She was also given the information for DMHA and Section Eight and other subsidized locations." Spence stated that M.Y. did not follow through with the referrals, which Spence testified that she provided "[s]everal times over the last few years." According to Spence, M.Y. "typically stated that she would remain where she was," even after Spence made clear to M.Y. that her current residence was not suitable. Spence stated that the case plan objective for housing is not complete.

{¶ 30} Spence stated that she initially referred M.Y. to the parenting and psychological assessment in May of 2009. Consistent with Callahan's testimony, Spence testified that it was recommended that M.Y. participate in therapy, the children participate

in therapy if they were not already doing so, and that M.Y. become involved with Celebrating Families. Spence testified that she did not refer M.Y. to Celebrating Families because "[t]hey are an in-home program that works with children that are placed in the home of their parents. They don't work with children that are in care." Spence stated that she referred M.Y. to Crisis Care for mental health treatment initially in April, 2009. According to Spence, M.Y. "was ultimately referred to Day-Mont. Prior to Day-Mont, I will say that she had been on and off again involved with Family Services with Annie Kraft, and that was the one that she had been involved with on her own." Spence stated that M.Y. began treatment at Day-Mont in July, 2010, with Nagel. Spence testified that Nagel is M.Y.'s current therapist. Spence stated that M.Y.'s follow through with the referral to Day-Mont is sporadic. Spence stated that M.Y. had no involvement in therapy from April until the end of July, 2011, but that she "has reengaged in the last month." Spence stated that she referred M.Y. for "an updated parenting and psychological" in the summer of 2011, and that M.Y. was "approved for a new start date" at that time, but that M.Y. responded that "she was not doing any further testing" because she "didn't want to."

{¶ 31} Spence stated that substance abuse treatment became a case plan objective in the fall of 2009, and that she made M.Y. aware of the additional objective. Spence testified that she explained to M.Y. what was required to complete the objective and that M.Y. appeared to understand. Spence stated that M.Y. admitted using marijuana, and that M.Y. stated in March, 2010, while she was staying at St. Vincent, that "she had been using and was going to continue using and had no intentions to quit." According to Spence, M.Y. "said that her gallbladder had been taken out and she needed it in order to maintain regularity." Spence stated that in April, 2011, M.Y. "reported that

she would be clean," and that "[e]very other time we've discussed it, she said she'd be dirty." Spence stated that M.Y. most recently indicated that she would be "dirty" in May, 2011. Spence stated that M.Y.'s follow through with her substance abuse treatment at CAM is "sporadic," and that her case plan objective regarding substance abuse treatment is not deemed complete.

{¶ 32} Spence testified that M.Y. initially had scheduled visitation with her children on Tuesday from 4:00 to 6:00 p.m., and that it was recently changed to 5:00 to 7:00 p.m., because it was difficult for M.Y. to walk to MCCS from the bus stop to sign in and then walk to North Riverdale Church, the place of visitation. Spence stated that there is a monitor present at the visitations. Regarding M.Y.'s attendance, Spence stated that she "has periods where she's very consistent and then will have other periods where she misses several." Spence stated that she has been present and observed M.Y. interact with her children about 12 times. When asked to describe M.Y.'s interaction with the children, Spence responded, "Some of them have been appropriate. They've been playing games or having a snack. Several that I was required to supervise came about because there were a lot of concerns from agency staff as well as other parents that she was yelling and being very derogatory towards the children." Spence stated that she has observed M.Y. use demeaning and derogatory language towards the children. Spence indicated however that the children appear to be bonded to M.Y. Spence stated that visitation was moved to attempt to accommodate M.Y. and her schedule as needed, and that MCCS provided bus tokens "when she's consistent" in her use of services.

{¶ 33} Spence testified that MCCS investigated a maternal aunt of M.Y.'s as a possible placement for the children, but that her background check failed due to "some

fairly recent welfare fraud convictions." She stated that C.S.1 recommended his girlfriend as a possible placement, but that she did not have the bedroom space and "she had a history with Children Services." Spence testified that C.S.1 also recommended his sister who "also was ruled out" due to insufficient bedroom space, a history with MCCS, and a son who was recently engaged in criminal activity. Spence stated that she was also provided with the names of a "former babysitter and her husband," but that they were excluded because the husband "had multiple criminal charges."

{¶ 34} Spence testified that M.Y. advised her that she placed the children with C.S.1 because she "was not in a position at the time to provide for herself and her kids. She wanted them to be cared for and be able to visit with them." Spence stated that in the first six months of the MCCS' involvement that M.Y. "would say that her main goal was to visit with the children and know that they were cared for." Spence testified that she explained to M.Y. the nature of MCCS' motion for permanent custody.

{¶ 35} Spence testified that C.S. has been in his current placement since May, 2011, and that he has been in a total of six placements. She stated that C.S. and M.S. were initially placed together, and that within 24 hours, C.S. was removed to another placement for hitting and kicking M.S. C.S. was removed from his second placement because MCCS found a two-parent home that was willing to work with both children, and they were again placed together, according to Spence. Spence testified that after "approximately a year [C.S.] was removed from that home, this past November, again for assaulting [M.S.] on a regular basis." Spence stated that she removed C.S. from his fourth home due to "concerns about the foster parent." Spence stated that C.S. remained in his fifth home from November, 2010 until May, 2011, and that he was

removed because foster care is no longer provided at the home.

{¶ 36} Spence stated that C.S. has special needs, namely that he "is diagnosed with Asperger's, ADHD and obsessive compulsive disorder," and that his needs affect the agency's ability to place him in foster care. Spence stated that C.S.'s current placement is a "treatment foster home." She stated that C.S is on three medications for ADHD, and that he is "doing very well there. He likes it, and the foster parents have no concerns to report." Spence stated that C.S. attends a school where the teachers are trained "specifically to deal with children with Asperger's and ADHD." She stated that C.S. also receives therapy and medication management at South Community, having done so for two years. She stated that his attendance is consistent. According to Spence, it is "[v]ery important" for C.S. to continue his therapy.

{¶ 37} Spence testified that M.S. has been in two foster homes, and that she has been in her current placement for a year. Spence testified that she was removed from her first placement to be unified with C.S., and that she has remained in that home. When asked how M.S. is doing in her current placement, Spence responded, "She's maintaining. She does have behavior issues. She has a lot of trouble getting along with other children, following directions. I guess trying to be calm is a very large challenge for her." Spence stated that M.S. is also enrolled at the same school C.S. attends, noting that she "was eligible since [C.S.] is enrolled there, and given that she also had some similar behaviors with the hyperactivity, that seemed like a very good placement for her." Spence testified that M.S. also receives therapy at Good Samaritan and that she completed a summer program of group sessions there. Spence stated that continued treatment for M.S. is necessary because she "has difficulty coping in school with her

behaviors. She can be very aggressive, * * * refuse to stay in her room * * *."

{¶ 38} Spence stated that MCCS has a potential adoptive home for C.S., and that she met with the potential parents near the end of the summer. Spence stated that the family is also interested in adopting M.S., although they have not yet met either child. Spence stated that if MCCS is awarded custody, she will "continue to explore the potential home that's been identified for" the children, and "to make sure that [M.S.'s] services as well as [C.S.'s] continue."

{¶ 39} Spence stated that she discussed C.S.'s special needs with M.Y., to ascertain her willingness to learn to accommodate them, and that M.Y.'s "response was that there was nothing that she needed to learn; he was with her and she knows how to take care of him." Spence stated that she has observed C.S. both on and off his medications, and that there is a "[v]ery large difference," namely that when "he's on his medication, he is able to stay in school. He's able to stay on task. His aggression is not nearly as bad as it was prior to the medication. He's able to follow directions from teachers and from foster parents as well and parents. * * * His story-telling is not as extensive."

{¶ 40} Spence testified reunification of C.S. and M.S. with either parent was not appropriate because they both "have continued to struggle with maintaining stability for themselves, not only with these children but with the children prior to. It's not something that seems to be within their realm to fix quickly or within the foreseeable future." Spence stated that a grant of custody to MCCS is in best interest of C.S. and M.S.

{¶ 41} On cross-examination, Spence testified that she presented M.Y.'s case plan objectives to her verbally and in writing, and that she "did keep it prior(sic) to a

fifth-grade reading level," but that she did not present the objectives visually. Spence stated that she "did make certain that any written information I provided to her was presented in an elementary level. She has copies of those so that should she need to review them later, she was more than welcome to do that. We also discussed her case plan verbally, and she was free to ask any questions until she made sure that she understood everything we discussed."

{¶ 42} Spence stated that she provided written and verbal referrals for Section Eight, DMHA and subsidized housing to M.Y., and that M.Y. needed to pick up the applications, and that a support worker from MCCS would have helped her fill them out. Spence stated M.Y. has met the support worker multiple times, and that in her most recent conversation with her, on the Tuesday before the hearing, M.Y. indicated to Spence that she had not picked up any applications. Spence stated that M.Y. asked for help in obtaining her children's birth certificates to apply for housing, and Spence testified, "I'm not permitted to provide those," pursuant to MCCS regulations.

{¶ 43} Spence stated that she referred M.Y. to the Job Center in verbal and written form, and that Job Center "can assist her with developing a resume and also working on getting her GED and notifying her of different applications or different opportunities that are available." Spence stated that M.Y. indicated to her that she knew the location of the Job Center.

{¶ 44} Spence stated that MCCS's position that M.Y. did not comply with the recommendations in Callahan's report was due to her inconsistent attendance at her appointments with Nagel. The following exchange occurred:

Q. Ms. Spence, do you have any specific training in working with

people with cognitive disabilities?

A. No.

Q. Did you seek any additional information or training when you were presented with a client that had cognitive disabilities?

A. No.

Q. And the doctor suggested that you present case plan information visually to maximize [M.Y.'s] rentention; is that correct?

A. Yes.

Q. And what was your understanding of presenting information visually?

A. In a form that she can look at it.

Q. * * * is it fair to say that you believe writing it down was sufficient?

A. I think writing it down in combination with discussing [it] with her was sufficient.

Q. * * * Yet you heard Dr. Ladle's testimony that said that wouldn't be sufficient; is that correct?

A. That it would be difficult for her, not impossible.

* * *

Q. * * * Did you refer her to any parenting classes?

A. I did not refer her to any parenting class, no.

Q. You never referred her to a parenting class, but you had issues with how she dealt with her children; is that correct?

A. We did refer her for the parenting visitation assessment. Some

of those issues were addressed in there, and she did take a parenting class on her own.

{¶ 45} On cross-examination by counsel for the children, Spence stated that at "[a]ny meetings with [M.Y.], I will review * * * the information until she can say that she no longer has any questions." On cross-examination by counsel for the children's G.A.L., Spence testified that M.Y. initially just wanted to be able to visit the children, and that she did not express a desire to be reunified with them until the spring of 2010. Regarding the potential adoptive family, Spence stated that it is the best fit she has found because the "adoptive father to be has Asperger's as well and is a very functioning teacher. The mother is a functioning teacher, and they've experienced Asperger's with one of their children, so they have been very successful in getting services and helping their children to grow up successfully."

{¶ 46} In response to questioning from the court, Spence indicated that she did not know if the child that was the subject of S.'s 2007 child endangering conviction resided with him at the time. She stated that she believed S. was the father of the child and that the child was subsequently adopted. Spence stated that the maternal aunt she investigated as a possible placement did not have a relationship with the children. Spence testified that she recalled seeing the certificate from the parenting program that M.Y. completed.

{¶ 47} Lisa Wray testified that she is the children's G.A.L., and that she filed a report with the court on June 8, 2009. She stated that she found nothing inappropriate with M.Y.'s interactions with her children at the time of the report, and she testified that M.Y. expressed a desire to be reunified with her children. Wray stated that she

completed a second report on March 23, 2010, and she testified that at that time, M.Y. indicated to her "that it was difficult for her to control the children and that she was disappointed when they were taken away from [C.S.1] because when he had them, she was allowed to visit them." Wray stated that she "understood our conversation" to mean that M.Y. could not take care of her children. Wray acknowledged that she reported in the March report that M.Y. was unwilling to discuss her substance abuse, but that she obtained that information from Spence and not M.Y. She stated that she did not speak to M.Y. about how she felt about attending substance abuse classes, and that she did not talk to her substance abuse therapist. Wray testified that she did not know how much marijuana M.Y. was using, and she stated that in her view any use of marijuana is grounds for the removal of the children.

{¶ 48} Regarding C.S.'s diagnosis of Asperger's, Wray testified that C.S. "was having trouble at school and expelled all the time, so there was evidence that there was an underlying issue. It was not formally diagnosed at that time." She testified that M.Y. told her that C.S. was fine when he came into care. Wray stated that she did not review C.S.'s medical records or speak to any of his teachers. She stated that she reported that M.Y. did not understand the diagnosis of Asperger's, and she testified that she was not aware of whether M.Y. was allowed to speak to C.S.'s doctors about the diagnosis or attend his appointments. She stated that as of her March report, she recommended custody be granted to the MCCS.

{¶ 49} Wray testified that she completed a third report on June 18, 2010, and that at that time she reported that M.Y. lacked stable housing. Wray stated that she reported at that time that M.Y had mental health issues, namely a learning disability and a

personality disorder. She testified that in her view a learning disability is a mental health issue. Regarding the personality disorder, she testified that it "was my understanding that it could not be exactly defined, whether it was borderline personality disorder, bipolar, etc." Wray testified that she does not know what a chronic adjustment disorder is or how it affects M.Y.'s ability to parent.

{¶ 50} Wray testified that she completed a fourth report on October 18, 2010, in which she indicated that M.Y. "would yell at children during the visits." Wray testified that M.Y.'s conduct "was reported to the caseworker from visitation," and Wray acknowledged that she had never observed M.Y. yell at her children but that she was informed by Spence that M.Y. did so. Wray stated that she wrote a fifth report on March 31, 2011. She acknowledged that she visited M.Y.'s home for the first time in order to prepare the March report, even though she had been recommending permanent custody in favor of MCCS for over a year. Wray identified her most recent report, dated August 17, 2011.

{¶ 51} In response to questions by counsel for Wray, Wray stated that she concluded that M.Y. was not meeting her case plan objectives based on her inconsistent attendance at drug treatment and mental health counseling. When asked why she did not visit M.Y.'s home sooner, Wray responded that M.Y. "does not have a formal rental or lease agreement nor does not own the property, and in my opinion that is not considered a stable home environment." Wray recommended that permanent custody be awarded to MCCS.

{¶ 52} On cross-examination by counsel for the children, Wray indicated that she is familiar with Rule 48 of the Ohio Rules of Superintendence and its requirement that she interview individuals with relevant information about issues in the case, as well as

relevant documents and records. She testified that since her involvement herein in May, 2009 she did not speak with Ladle, Stevens, Nagel or Annie Kraft, nor did she review C.S.'s or M.S.'s medical or school records. Counsel for the children moved "to disregard the GAL report for purposes of disposition for failure to comply with Rule 48 of the Ohio Rules of Superintendence." At the close of the hearing, the court indicated that it would take counsel's motion under advisement. The court did not rule upon the motion, and it is accordingly deemed overruled.

{¶ 53} The record reflects that on September 9, 2011, Jeffery Rezabek was appointed to replace Wray. On November 22, 2011, Rezabek filed a "Gal Report to the Court" for each child, motions to continue the matter, and a "Motion for Planned Permanent Living Arrangement" for each child. In his reports, Rezabek asserted that "it is in the best interest of the Children to not grant permanent custody. It would be in the Children's best interest to be placed into Planned Permanent Living Arrangement."

{¶ 54} The hearing resumed on November 28, 2011, at which time the court granted Rezabek's motion for a continuance and reset the matter for February 1, 2012. On that date, Sherree Spence again testified to update the court on M.Y.'s and C.S.1's progress on their case plan objectives since August 25, 2011. Spence testified that as the ongoing caseworker, she receives monthly information from M.Y.'s service providers regarding her attendance and compliance with the case plan objectives. In terms of M.Y.'s mental health, Spence stated that M.Y. was to continue therapy with Nagel at Day-Mont as part of her case plan objectives, and that there "has not been any information that she completed the program," and that her "attendance has been inconsistent." Regarding M.Y.'s substance abuse treatment, Spence stated that Sarah

Kennedy is currently M.Y.'s service provider at CAM, having replaced Heather Stevens in November, 2011. Spence stated that M.Y. was to "be attending [CAM] twice a week, once for therapy and once for group," and that shortly after the beginning of September, 2011, "she completed phase one" and began phase two, which again required her to attend twice a week. According to Spence, M.Y.'s "attendance has been very poor with the CAM program." Spence stated that it has been so "especially in the last month, six weeks." Specifically, Spence stated that M.Y's last therapy session was at the beginning of November, and that M.Y. "attended a group in December, the 29th, and has not been back to CAM since." According to Spence, M.Y. had two drug screens since the last hearing, one in November and one in December, 2011, and that results for both were positive for marijuana. Spence stated that no additional referrals were made for mental health or substance abuse treatment. She stated that she considers M.Y.'s case plan objectives for mental health treatment and substance abuse treatment to be incomplete.

{¶ 55} Regarding M.Y.'s income, Spence testified that M.Y. "has again been referred to the Job Center as well as BVR." Spence stated that she had face-to face meetings with M.Y. monthly since the last hearing, with the exception of January. Spence stated that M.Y. "has a copy of the case plan. The updates were written on a face-to-face sheet which she gets a copy of." Spence stated M.Y. never indicated to her that she did not understand her case plan objectives. According to Spence, in terms of the JobCenter, M.Y.'s "primary goal * * * was addressing her food stamps and her medical coverage." Spence stated that M.Y. receives no benefits, but that she has applied for food stamps and medical benefits. Spence stated that M.Y. informed her since the last hearing that she was no longer cleaning homes for income "because it was too cold."

Spence stated that M.Y. "did share that she had applied for Social Security and was working with an attorney to work through that process," but Spence stated that she has "no documentation." Spence testified that to her knowledge, M.Y. presently has no source of income. Spence testified that she discussed M.Y.'s lack of income with her, and that M.Y.'s response was that she "was still working on the Social Security." Spence stated that M.Y.'s case plan objective regarding income is incomplete.

{¶ 56} Regarding M.Y.'s housing objective, Spence stated M.Y.'s home visit for January 10, 2012 was cancelled by M.Y.'s GAL, and that on January 10, 2012, M.Y. informed her by phone that "she was kicked out [of the Vernon Drive address] and was staying with a friend while she was working to get in the shelter." According to Spence, M.Y. did not provide her temporary address but stated that she was living "on the east side somewhere." Spence stated that she and M.Y had a semi-annual review a week before the current hearing, and that at that time, M.Y. was still residing with a friend, whose name and address she did not provide. Spence stated that M.Y. had applied for housing at Eagle Ridge and two other locations, and that she was on the "housing list" at Eagle Ridge, but that she currently lacked housing. Spence stated that M.Y.'s housing objective was incomplete.

{¶ 57} Spence stated that M.Y.'s visitation was scheduled at North Riverside Church on Tuesdays from 5:00 to 7:00 p.m. Spence stated that overall, M.Y. has "been fairly consistent" and improved since August, 2011. Spence stated that she has not supervised the visits, and that she has not received any concerns from the staff that monitors visits that occur at the church. Spence also stated that she has not received any reports from the children's foster parents regarding their behavior after visiting M.Y. "in

the last several months." Spence stated that since August, 2011, MCCS has not made any changes with respect to C.S.'s care providers to handle his special needs. She stated that he "is involved in therapy as well as medication treatment for his diagnoses, which overall works very well for [C.S.] He has little lapses here and there where he has trouble taking things that don't belong to him, things like that, but overall he does very well."

{¶ 58} Spence stated that M.S. has been diagnosed with oppositional defiant disorder and ADHD since August, 2011, and that she has been prescribed medication since November, 2011. Spence stated that after she turned six, M.S. was referred to South Community where she received the diagnoses. Spence stated that M.S. had her intake assessment at South Community in September, 2011. According to Spence, M.S. has therapy there every two weeks and then a medical evaluation once a month, and her foster parents take her to the appointments. Spence stated that she last observed M.S. two weeks prior to the current hearing, and that M.S. "was calmer. She wasn't running around and getting into things like she frequently had been doing. She was able to have a conversation. She was still in a mood that day. She said she didn't feel good, but she was able to recover a little bit quicker than she had been before even if she was not feeling well and able to answer questions that I had asked her." Spence stated that M.S was "able to kind of sit still and pay attention to what we were doing."

{¶ 59} Spence stated that she has seen C.S. and M.S. monthly for the last three years. She stated that there is a prospective adoptive home for M.S. Spence testified, "[d]epending on how [M.S.'s] medications go, placing [C.S.] and [M.S.] together may or may not be the best for them." Spence stated that in November, 2011, M.S began to

have day visits with the prospective adoptive family, and that she had weekend visitations over Christmas break and in January. According to Spence, the visits "overall went very well." Spence testified that MCCS has not proceeded with the potential adoption pending the outcome of the permanent custody proceeding. Regarding C.S., Spence testified that he and M.S. had two visits together with the potential adoptive parents, and that "the interaction between the two of them * * * was a concern, that they would like some more time to decide whether they would want them both together in the home or whether it might be too much."

{¶ 60} Spence testified that she does not believe that it is in the children's best interest to be in a Planned Permanent Living Arrangement. She stated that she believes that it is in their best interest for permanent custody to be granted to MCCS so the children can be transferred to the adoption unit for adoption.

{¶ 61} On cross-examination from counsel for M.Y., Spence testified that since September, 2011, when she meets with M.Y., her GAL, Julia Kolber is present. Spence stated that she was aware that M.Y.'s purse, containing her Social Security card, state ID and birth certificate had been stolen. She stated that MCCS did not help M.Y. replace her birth certificate or state ID, and she stated that she was aware that M.Y. needed those documents to obtain suitable housing.

{¶ 62} On cross-examination by Kolber, Spence stated that she dropped M.Y. off to submit a housing application one time since August, 2011, but that she did not refer her to any housing programs since then. Spence stated that she "did go over the application to make sure that it was complete and correct before it was turned in."

{¶ 63} On cross-examination by Rezabek, Spence indicated that she currently

has no concerns regarding "the actual parenting that [M.Y.] is doing" in the course of her visitations.

{¶ 64} On redirect, Spence stated that she checked with MCCS after M.Y. asked for help in paying for new identification, and that MCCS does not have funding to replace identification. Spence stated that M.Y. knew where to obtain the replacements, but that she could not pay for them. Spence stated that while MCCS makes referrals to clients, the clients "are required to actually do the work to get the housing and get the income." Spence stated that M.Y. never indicated to her that she did not know how to go about getting housing, nor did she ask for transportation to a specific housing complex for the purpose of applying. Spence stated that M.Y. never brought housing applications to her.

{¶ 65} At the conclusion of Spence's testimony, Rezabek and counsel for M.Y. moved for a directed verdict, which the court denied.

{¶ 66} M.Y. testified that she resides on Vernon Drive, and that she has lived there for two to three years. She stated that S. also resides there. M.Y. stated that she has completed ninth grade, and that she has a learning disability. According to M.Y., "It just a difficult time for me to understand things." M.Y. stated that in April, 2009, C.S. and M.S. were living with C.S.1., because she "had lost my apartment, and I didn't want the kids on the street for the kids' benefit." While the kids were with C.S.1, M.Y. stated that she saw them every weekend, but that she did not see them during the week because they were in school. M.Y. testified that she did not help to support the children when they were with C.S.1. M.Y. testified that she was living on Vernon Drive when the kids were taken into MCCS's custody.

{¶ 67} M.Y. testified that her relationship with Spence is "[n]ot very good,"

because "I'm not getting the help that I need." Specifically, M.Y. testified that she requested transportation assistance, and that Spence only provided assistance twice. When asked if she was familiar with her case plan objectives, M.Y. responded, "Not really." M.Y. then acknowledged that pursuant to her case plan, she is to obtain stable income, and she stated that she babysits, cleans houses, and "sometimes I donate plasma." M.Y. further stated that she occasionally collects cans or asks for help. M.Y. stated that she receives food stamps.

{¶ 68} M.Y. testified that when the children lived with her, she supported them with "[b]enefits through the welfare system." She stated that she worked at Arby's for two months during that time, but that she stopped because "they said I work too slow." M.Y. stated that she worked at McDonalds for three months and stopped again "because I work too slow." M.Y. testified that she applied for Social Security for the first time in 2002, and that her application was denied. She stated that she applied again in 2004, and that she received help from "Brian Focht from the Job Center." She testified that her application was again denied. M.Y. stated that she again applied since the children came into care, but she could not remember when. According to M.Y., she asked Spence for help in completing her Social Security application, but that Spence did not help her. She stated that "Ms. Kim," Kolber's assistant, helped her with the application. She stated that she is currently getting help from her attorney.

{¶ 69} Regarding the Vernon Drive address, M.Y. stated that the house belongs to S., "but I help put food as my rent," and "I just clean when I have to." She stated that if granted custody, she and M.S. could share a room, and that C.S. could have his own room. M.Y. stated that S. is a "really good friend." M.Y. stated that she is on the waiting

list at Eagle Ridge Apartments in Vandalia as well as Meadowlark on Shiloh Springs. M.Y. testified that she had to complete a HUD application for Eagle Ridge that is four or five pages, and that she could not have done so without help. According to M.Y., she told Spence that she needed help, and that Spence did not help her. She stated that she again received help from "Ms. Kim."

{¶ 70} M.Y. testified that her purse and all her identification were stolen, and that she needed that documentation to complete the application at Eagle Ridge. She stated that she so advised Spence, and that Spence did not help her replace her identification or advise her where to obtain assistance. M.Y. stated that "two days ago," S. "helped me pay for" replacement identification, and that she is "kind of in the middle of the list" at Eagle Ridge. M.Y. stated that she did not know her position on the waiting list at Meadowlark. M.Y. stated that she needed copies of her children's birth certificates when she submitted her HUD and also a DMHA application for housing, and that she asked Spence for copies, and that Spence did not provide them. M.Y. stated that she got the documents through her lawyer. M.Y. stated that a calendar that she received from her attorney was also taken with her purse, and that it contained all "my appointments scheduled that I had done and kept up with, and now since it's gone, I try to keep up with everything the best way I can."

{¶ 71} M.Y. testified that she herself came into foster care at the age of 16, and that she delivered a baby while in care at that age. She stated that she and the baby "were separated," and that the baby was adopted and her parental rights were terminated. M.Y. stated that she does not trust the MCCS caseworkers.

{¶ 72} M.Y. acknowledged that she is not permitted to smoke marijuana pursuant

to her case plan objectives, but that she still does so "[m]aybe twice out of a month" for "severe pain in my back and I have severe pain in my knees." M.Y. stated that she receives treatment for her marijuana usage at CAM, and that she completed "Aware I" but not "Aware II."

{¶ 73} Regarding C.S., M.Y. stated that she was aware that he had behavior issues at school, but that she did not believe his diagnosis of Asperger's initially because "he was just normal to me." She stated that she asked Spence to explain the diagnosis to her and for some information about it, but that she did not receive anything from Spence or MCCS. M.Y. testified that she can take care of C.S. and understand his doctor's instructions. The following exchange occurred:

> Q. If you can't understand something, what would you do?
>
> A. Ask a question.
>
> Q. * * * Do you know people you can ask for help?
>
> A. Yes.
>
> Q. Who can you ask for help?
>
> A. My cousin, she can pull something off the computer, or I'll call United Way to get information to where I can go, or there's classes that I can go into it, so * * * .

{¶ 74} M.Y. stated that M.S. "has ADHD and something else," and that she can take care of her. M.Y. further stated that she can take care of her children together because "I took care of my kids before together, and I miss being their mom."

{¶ 75} The following exchange occurred on cross-examination by counsel for MCCS:

Q. Isn't it true that you know that you have four basic objectives on your case Plan; that you needed housing, income, that you had to go to substance abuse treatment for your marijuana use, and you have to continue on * * * with your mental health services that you're getting at Day-Mont?

A. And I'm doing all that.

Q. * * * So you know that those are the four things for you to do generally?

A. Yeah, it's the same thing. They ain't changed.

Q. Who told you you had to do all those things?

A. Ms. [Sherree] did.

{¶ 76} M.Y. acknowledged that she "was homeless for two weeks in January, 2012," because S. asked her to leave his residence on January 9, 2012. When asked for her contingency plan if S. again asks her to leave the residence, the following exchange occurred:

A. * * * if he tells me to leave, that's what I'm going to do. Okay. That's his house. He can do whatever he want to in that house. It's not my house. It if was my house, it would be different, but it's not. It's his, and he can do whatever he want to to it. He could destroy it for all I care, but right now, I got a roof over my head. I got a place that I can call my home. * * ** So that's my permanent residence. It doesn't matter what happens. And anyway, my kids can't go to that house anyway, so it really wouldn't matter.

Q. Why can't your kids go to that house?

A. Because of the simple fact of [S.'s] background, that's why. Other than that, I'm cool until I get my place of my own.

Q. What's [S.'s] background that the kids can't go there?

A. I don't know.

{¶ 77} M.Y. testified that she lost her housing and turned the children over to C.S.1 after C.S.1 "stole my rent money, made me lose my rent - - my place." M.Y. stated that she owes DMHA $600, and that she is not eligible for housing through DMHA until she repays the money.

{¶ 78} The following exchange occurred regarding the special needs of M.Y.'s children:

Q. * * * You've been told that [C.S.] has been diagnosed with Asperger's syndrome and that he has special needs as it relates to that diagnosis and ADHD. What does Asperger's mean to you, ma'am?

A. I don't know.

Q. Do you know what [C.S.] needs because of his Asperger's diagnosis?

A. No, I don't.

Q. Do you know if he's going to need any follow-up medical care?

A. He probably will, but right now I don't know anything about nothing because nobody tells me nothing.

Q. * * * Did you ask your cousin to look it up on the Internet?

A. Yeah, but there ain't - - I mean, it's not really - -

Q. Did she provide you with any information if she looked it up on the Internet?

A. She gives me some information. Most of the time I go to the library and look it up for myself.

Q. And what does it mean to you?

A. It's - - I know it's a disorder. That's all I know.

Q. What is your plan for caring for [C.S.'s] special needs with respect to the diagnosis of Asperger's?

A. Take him to his doctor, wherever his doctor's at. I don't know where his doctor's at. Like I said, I don't know anything about nothing. I don't know about their doctors, who they talk to, their psychiatrists. I don't know - - I don't know nothing. Only thing I know is about me right now. My kids, I don't know nothing about them.

Q. Isn't it true that Ms. Spence has had conversations with you with respect to [C.S.'s] diagnosis and explained to you what it – what Asperger's meant?

A. No, she has not explained nothing to me.

Q. And isn't it true that she explained to you that you could not attend any of [C.S.'s] therapy sessions until his - - [C.S.'s] therapist deemed it to be appropriate or said it's okay?

A. I guess. I don't know. I don't know.

Q. Did you talk to anyone at the United Way for help in determining what [C.S.'s] diagnosis meant?

A. No, but I called HelpLink to see if I can get information on where I - -where I can go for Asperger's class.

A. Where is that?

A. I don't know, because I - - even though - - these little side streets - - even though I'm from Dayton - - but I'm on a bus and it's going to be hard for me to find information on a bus line.

Q. Did they give you information about where the Asperger's class is?

A. No, because I haven't - - I don't know where to go yet. I got to find out the - - the roads first and I got to mark it down on a bus, like I said. If it was a car or somebody knew something about it, they'll tell me where I need to go or they'll take me to it, but until then, I'm finding out all this information by myself.

Q. If you were awarded legal custody by this Court today of your children, isn't it true that you would still have to find this information out for yourself to care for them?

A. Well, yeah.

Q. So when you called Helplink, were you able to find out where an Asperger's class was offered?

A. I written (sic) them down, but now I have to rewrite them again because things change over the years. So they could still be in the same place or it could be in a different building. I don't know. I got to find out more information about it.

Q. So I'm going to take that to mean that you haven't been able to find one yet.

A. Nope. I just found out the information where I need to go.

Q. What about [M.S.'s] diagnosis, isn't it true that Ms. Spence had a conversation with you to tell you about her diagnosis of ADHD?

A. No. I already knew my kids had ADHD because they get it from their father, so I already knew they had it.

Q. When did you know that?

A. It was because they act - -how they act differently. * * *

Q. What do you mean they act differently? What does that mean?

A. Because it's - - hard to say. I mean, it's like, I seen his family. I know how his sister is. I know how his nieces and nephews are. It's their actions, how their actions - - there's - - like they say, actions speak louder than words.

* * *

Q. And you knew that they were ADHD before anyone told you they were diagnosed - -

A. Yep.

Q. - - with that?

A. I sure did. It's a mom's tuition (sic).

Q. And you knew that - - that based upon your children's behaviors, [C.S.'s] behavior - -

A. Yep.

Q. - - and [M.S.'s] behavior?

A. Yep.

Q. And that was based upon your parenting of them prior to them going to live with their father in '08 or '09, whenever that happened?

A. Yep.

Q. Did you ever take them to a doctor to talk about those behaviors that you were seeing?

A. I already knew about it, and that's why I was trying to get help before it, so it really wouldn't matter.

THE COURT: So is that a no? Because you didn't answer her question.

* * *

THE COURT: Did you take her to a medical appointment - -

THE WITNESS: No, I did not, but - -

* * *

THE WITNESS: - - I was working on it.

{¶ 79} Jeff Rezabek testified that that he has observed M.Y. with the children four times, and that "she dealt with the kids' behaviors appropriately." He testified that the children indicated that they want to reside with M.Y.

{¶ 80} At the conclusion of the hearing, the court ordered "all counsel to provide the Court within the next 14 days with a trial brief considering the relevant caselaw, does the guardian ad litem have the authority to file for PPLA, and I'd ask the parties to specifically consider two cases: [*In re C.T.*], 2008 Ohio 4570, * * * as well as [*In re A.B.*],

which is 2006 Ohio 4359." The court further directed counsel to "indicate in the brief in a permanent custody case filed under 2151.414(C)(2) and (B)(3), in essence a 12 in 22 case, must the Court make a determination whether the agency has made reasonable efforts for reunification."

{¶ 81} The Magistrate issued her decision on March 12, 2012. Her decision provides in part as follows:

> [M.Y.] has not completed the case plan objectives and has made very little progress. She does not have housing and income and has not been compliant with mental health and substance abuse treatment. These concerns were all present in April 2009 when the children were removed from Father and placed in foster care. [M.Y.] was not an option for placement in April 2009 because of these issues and she has failed to remedy these concerns despite reasonable case planning.

{¶ 82} The Magistrate further determined "by clear and convincing evidence all of the factors in 2151.414(D)(2) apply in this case. Pursuant to that division, if all of the following apply, permanent custody IS in the children's best interest and the Court SHALL commit the children to the permanent custody of [MCCS]."

{¶ 83} On March 21, 2012, "Mother's Objections to the Magistrate's Decision of March 12, 2012 and Request for Extension of Time in which to File her Supplemental Objections" were filed. On May 15, 2012, MCCS filed a "Reply to Initial Objections" and a "Request for Additional Time to Supplement Reply to Initial Objections."

{¶ 84} On June 29, 2012, MCCS filed a "Motion and Memorandum to Suspend Mother's Visitation with an Interim Order Requested" in each case. According to

Spence's attached affidavit, M.Y., who had brought two of her nieces to visitation on June 26, 2012, left the premises with the children and went to McDonalds, returning at the conclusion of the visitation. The affidavit provides that the police were called, and that M.Y. was "charged with Interference of Custody." According to the affidavit, M.Y. has been informed that she may not leave the premises during visitation or bring other people with her, and Spence asserted that "MCCS feels that [M.Y.] has put [the children's] safety at risk and cannot be trusted to exercise visitation with the children." The court granted the interim order, and an "agreed Entry and Order Regarding Visitation of Mother" was issued on August 3, 2012, which provides that M.Y. shall have monitored parenting time.

{¶ 85} On September 24, 2012, M.Y. filed her supplemental objections to the Magistrate's decision. They are as follows: 1) "The Magistrate erred in relying on the reports and recommendations of Lisa Wray, CASA/Guardian ad Litem because Lisa Wray filed to perform her duties as a Guardian ad Litem," 2) "The Court erred when it found that the Agency made reasonable efforts," 3) "The Guardian ad Litem has the authority to file a motion for Planned Permanent Living Arrangement," and 4) "A grant of permanent custody is not in the children's best interest."

{¶ 86} On October 15, 2012, MCCS responded to M.Y.'s supplemental objections. On November 26, 2012, M.Y.'s GAL filed a "Response to Mother's Objections to the Magistrate's Decision of March 14, 2012," in which she asserted that she "concurs with the content and analysis of" M.Y.'s objections regarding the court's reliance upon Lisa Wray's report.

{¶ 87} In its decision overruling M.Y.'s objections, the juvenile court initially determined that "First, in regards to [M.Y.'s] objection and argument that the Magistrate

erred in finding [M.Y.] had failed to make significant progress in her efforts to secure the permanent placement of her [children] with her, the Court hereby overrules the same." The court noted that "MCCS has been working with the family for purposes of reunification and/or permanency since March 2009. * * * A case plan was developed for the parents and the children, which was adopted by this Court on June 25, 2009. * * *." After reviewing M.Y.'s performance on her individual case plan objectives, the court determined that M.Y. "failed to make significant pro[gress] on her case plan objectives. [M.Y.] has failed to maintain stable income and appropriate housing. A parenting and psychological assessment in August 2009 revealed that [M.Y.] has some psychological issues that need to be resolved, and she later refused a second assessment in July 2011." The court noted that M.Y. "completed phase I of CAM, AWARE I, but she continues to abuse marijuana, even testing positive for marijuana twice during the pendency of this trial. Accordingly, [M.Y.'s] objection is overruled."

{¶ 88} The court noted, "Second, in regards to [M.Y.'s] objection and argument the Magistrate erred in finding MCCS made reasonable efforts in facilitating a reunification between the children and [M.Y.], the Court hereby overrules the same." The court determined as follows:

> * * * [M.Y.'s] contention * * * is flawed in that it fails to take into account the fact that R.C. §2151.419(A)(1) is subject to R.C. §2151.419(A)(2). Pursuant to R.C. §2151.419(A)(2), a Court shall make a determination that the agency is not required to make reasonable efforts if, *inter alia*, the parent from whom the child was removed has had parental rights involuntarily terminated with respect to a sibling of the child. In the present

> case, the Court notes both [M.Y.] and [C.S.1] have had parental rights involuntarily terminated with respect to a sibling of [C.S. and M.S.] * * * Thus, the Court finds that MCCS was not required to make reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home.

The court determined, "*arguendo*," if it were "required to determine whether MCCS has made such reasonable efforts, the Court finds MCCS made reasonable efforts to prevent the removal" of the children from their home, to eliminate the need for continued removal or to make it safe for the children to return home.

{¶ 89} The court further noted as follows:

> Third, in regards to [M.Y.'s] objections and arguments that the Magistrate's Decision was not supported by clear and convincing evidence, that the Magistrate erred in relying upon the initial GAL report by Lisa Wray, that the Magistrate failed to properly consider the interrelationship between [M.Y.] and her children, and that the Magistrate erred in granting permanent custody of the children to MCCS as it was not in the best interest of the children, the Court hereby overrules the same.

{¶ 90} The court determined as follows:

> In this case, the children were removed from the home on or about April 30, 2009, and were adjudicated dependent on June 25, 2009. For the purposes of R.C. § 2151.414(B)(1)(d), the Court considers the children to have entered the temporary custody of MCCS on or about June 25, 2009.

> MCCS filed a motion for permanent custody of the children on February 18, 2011. The Court finds the children have been in the custody of MCCS for over twelve (12) months of a consecutive twenty-two (22) month period. As R.C. § 2151.414(B)(1)(d) is satisfied, the Court shall determine if it is in the best interest of the children to grant permanent custody to MCCS.

{¶ 91} The court then proceeded to consider each of the enumerated factors set forth in R.C. 2151.414(D)(1) and determined that "the State presented clear and convincing evidence that permanent custody with MCCS is in the best interest of the children."

{¶ 92} The court concluded as follows:

> Finally, in regards to [M.Y.'s] objections and argument the Magistrate erred in denying the GAL's motion for PPLA, the Court overrules the same. The court noted Mr. Rezabek, GAL for the child[ren], believes PPLA to be in the children's best interest. * * * The Court also notes M.S. Kolber, GAL for [M.Y.], believes PPLA to be in the children's best interest, assuming [M.Y.] is not granted legal custody of the children. * * * The Court has considered the objections to the denial of PPLA and finds them not well taken. A juvenile court does not have the authority to order PPLA unless an agency requests such an arrangement. *In re A.B.*, 110 Ohio St.3d 230, 2006-Ohio-4359 (2006). That decision is unambiguous and controlling upon this Court. Accordingly, [M.Y.'s] objection is OVERRULED.

{¶ 93} M.Y. asserts five assignments of error herein. Her first assigned error is as follows:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THAT THE CHILDREN COULD NOT BE PLACED WITH [M.Y.] WITHIN A REASONABLE PERIOD OF TIME.

{¶ 94} As this Court has previously noted:

The United States Supreme Court has recognized that parents' interest in the care, custody, and control of their children "is perhaps the oldest of the fundamental liberty interests recognized" by the court. *Troxel v. Granville* (2000), 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49. Parents who are suitable persons have a "paramount" right to the custody of their minor children. *In re Perales* (1977), 52 Ohio St.2d 89, 97, 6 O.O.3d 293, 369 N.E.2d 1047.

In a proceeding for the termination of parental rights, all the court's findings must be supported by clear and convincing evidence. R.C. 2151.414(E); *In re J.R*., Montgomery App. No. 21749, 2007-Ohio-186, 2007 WL 127729, at ¶ 9. However, the court's decision to terminate parental rights will not be overturned as against the manifest weight of the evidence if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established*. In re Forrest S*. (1995), 102 Ohio App.3d 338, 344–345, 657 N.E.2d 307. We review the trial court's judgment for an abuse of discretion. See *In re C.F*., 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, at ¶ 48 (applying abuse-of-discretion standard to trial court's findings under R.C. 2151.414).

In re K.W., 185 Ohio App. 3d 629, 2010-Ohio-29, 925 N.E.2d 181, ¶ 14-15 (2d Dist.)

{¶ 95} As this Court has further noted:

> "Abuse of discretion" has been defined as an attitude that is unreasonable, arbitrary, or unconscionable. *Huffman v. Hair Surgeons, Inc.*, 19 Ohio St.3d 83, 482 N.E.2d 1248 (1985). A decision is unreasonable if there is no sound reasoning process that would support that decision. *AAAA Enterprises, Inc. v. River Place Community Urban Redevelopment Corp*., 50 Ohio St.3d 157, 553 N.E.2d 597 (1990).

Feldmiller v. Feldmiller, 2d Dist. Montgomery No. 24989, 2012-Ohio-4621, ¶ 7.

{¶ 96} R.C. 2151.414 provides as follows:

> * * *
>
> (E) In determining at a hearing held pursuant to division (A) of this section * * * whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section * * * that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:
>
> (1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the

child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

* * *

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child:

* * *

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section

> 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, * * * and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.
>
> * * *
>
> (14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child * * *.
>
> * * *
>
> (16) Any other factor the court considers relevant.

{¶ 97} We agree with the trial court that the children could not be placed with M.Y. within a reasonable period of time. It is clear from the record that M.Y. "failed continuously and repeatedly to substantially remedy the conditions causing the child[ren] to be placed outside the child[ren's] home." R.C. 2151.414(E)(1). We note that M.Y. was thoroughly evaluated by multiple service providers and objectives were established for the purpose of changing M.Y.'s parental conduct; Bruce Ladle performed a neuropsychological evaluation on M.Y. in September, 2009, and he determined that she has a learning disability, as well as adjustment disorder with anxiety and depressed mood; Kelly Callahan performed a psychological evaluation and parenting assessment in July, 2009; Deborah Nagel performed a full assessment of M.Y. at Day-Mont. and developed a treatment plan for her; and Heather Stevens performed an alcohol and drug assessment.

{¶ 98} Regarding M.Y.'s case plan objective that she obtain and maintain stable

employment and income, Spence testified that since March, 2009, M.Y. worked one day as a janitor and a week or less at the Great Steak Escape at the Dayton Mall. While M.Y. asserted that she earned income by babysitting, house cleaning, and "doing hair," Spence testified that she did not provide any documentation to verify this income, and in February, 2012, M.Y. informed Spence that she was no longer cleaning houses "because it was too cold." To assist M.Y., Spence testified that she referred her to the Job Center in verbal and written form around 20 times, and that personnel there "can assist her with developing a resume and also working on getting her GED and notifying her of different applications or different opportunities that are available." Spence testified that although M.Y. indicated to her that she knew the location of the Job Center, M.Y. did not follow through with the referrals. Additionally, Spence testified that M.Y. was referred to BVR "to assist her with employment and income," as well as obtaining social security income, but that M.Y.'s participation was terminated due to her unwillingness to produce a clean urine screen. At the hearing in February, 2012, Spence stated that while M.Y. indicated to her that she was applying for Social Security with her lawyer, Spence had not seen any documentation. We note that M.Y. acknowledged that when the children were in the care of C.S.1, she did not help support them.

{¶ 99} Regarding M.Y.'s case plan objective that she obtain and maintain housing, Spence stated that she was able to verify two addresses for M.Y. in the course of MCCS' involvement herein, namely Vernon Drive, the home of S., and the St. Vincent homeless shelter. Spence stated that S.'s home is inappropriate for the children due to missing doors and missing chunks of plaster from the wall, and due to the presence of other transient occupants; M.Y. informed Spence that S. "has allowed herself as well as

other adults who have been homeless to live there while they try to get back on their feet." M.Y. acknowledged that she was homeless for two weeks in January, 2012, when S. asked her to leave, and she further acknowledged that he has a right to terminate her occupancy at any time. Most significantly, S. had a documented criminal history. To assist M.Y. find suitable housing, Spence stated that she referred M.Y. to St. Vincent, and provided information for DMHA, Section Eight, and other subsidized housing locations but that M.Y. indicated that she would remain at the Vernon Drive address, even after Spence informed her that the address was not suitable for her children. Spence stated that M.Y. failed to pick up housing applications, and that had she done so, a support worker at MCCS would have helped her complete them. M.Y. acknowledged that she is not eligible for DMHA housing until she pays a balance due for past rent.

{¶ 100} Regarding M.Y.'s case plan objective that she complete a parenting and psychological evaluation and follow all recommendations, Callahan testified that the evaluation process consists of three meetings, and that M.Y. missed the first meeting in April, 2009, and that it was rescheduled. She stated that M.Y. attended the second meeting in July, 2009, but that she did not attend the meeting set in August, 2009. The final appointment was set after M.Y. appeared on a date when she was not scheduled to attend, and M.Y. completed the final appointment in August, 2010, over a year after the initial meeting was scheduled. Callahan recommended a medication evaluation, and that M.Y. should be provided information in an environment free of distraction and that information should be provided in a written as well as verbal form. As noted above, Spence testified that she thoroughly went over all information with M.Y.

{¶ 101} To assist M.Y., she was also referred to Nagel at Day-Mont, who

developed a treatment plan for her to address her anxiety. Nagel stated that M.Y.'s attendance was "sporadic," and that between July, 2010 and December, 2010, M.Y. kept five appointments and missed three. Nagel further stated that M.Y.'s attendance was also sporadic between January, 2011 and April, 2011. M.Y. was not truthful to Nagel, denying that she was receiving other services, when in fact she was receiving treatment from CAM. Nagel stated that in May, 2011, following an initial medication evaluation, M.Y. failed to follow-up with Nagel as instructed. Nagel further stated that after the medication evaluation, M.Y. received a 10-day prescription for anxiety and depression, and that she was required to return to Day-Mont for a refill, but that she failed to do so. Nagel stated that in terms of M.Y.'s ability to cope with her anxiety, she continued to report the same feelings, and Nagel accordingly testified that she had not seen much change or progress since July, 2010.

{¶ 102} Regarding M.Y.'s amended case plan objective that she obtain substance abuse treatment, Spence stated that she explained the objective to M.Y., and that M.Y. appeared to understand. Spence stated that in March, 2010, M.Y. indicated to her that she intended to continue to use marijuana. Spence further stated that BVR dropped M.Y. from its program in May, 2010 due to her refusal to submit a clean urine screen. Heather Stevens testified that MCCS referred M.Y. to her for an alcohol and drug assessment in March, 2011. Stevens stated that M.Y. was diagnosed with "cannabis abuse." She stated that in the course of her treatment, M.Y. was to attend individual sessions with Stevens twice a week as well as weekly group sessions, known as "Aware I." Stevens stated the goal of the program was abstinence from drugs and alcohol. Stevens stated that M.Y.'s attendance in the Aware I program was "poor" until

July, 2011, having attended eight out of 15 scheduled appointments, although her attendance has improved since them. Stevens stated that M.Y.'s initial drug screen in March, 2011 was positive for THC, as well as her drug screen in July, 2011, and that the amount in her system in July was greater than the amount in March, indicating increased abuse. Stevens stated that M.Y. refused to be tested in August, 2011. When the hearing resumed in February, 2012, Spence testified that M.Y.'s attendance in the Cam program was "very poor" in the last six weeks, and that she tested positive for marijuana in the two drug screens since the last hearing. Spence stated that she considers the substance abuse case plan objective to be incomplete.

{¶ 103} In addition to failing to meet her case plan objectives, the record reflects that M.Y. previously had her parental rights terminated with respect to T.Y., a sibling of C.S. and M.S., and we cannot conclude, based upon the above analysis, that M.Y., notwithstanding the prior termination, has provided clear and convincing evidence that she can provide a legally secure permanent placement and adequate care for C.S.'s and M.S.'s health, welfare, and safety.

{¶ 104} Regarding any other relevant factor indicating that the children cannot be placed with M.Y. within a reasonable time, as MCCS asserts, both children have serious behavioral issues and special needs. C.S. was diagnosed with Asperger's, ADHD and obsessive compulsive disorder, and he is on three medications. He receives therapy and medication management at South Community. M.Y. initially denied that C.S. has Asperger's, and she indicated that there was nothing that she needed to learn to accommodate his needs. M.S. has been diagnosed with oppositional defiant disorder and ADHD, and she also receives therapy and medication management at South

Community. She has problems with aggression. Both children attend the same school, where the staff is trained to manage their special needs. The school does not provide transportation. Finally, when the children have been placed together, C.S. exhibits violence toward M.S. We agree with MCCS that M.Y. has failed to demonstrate an ability to address and meet the special needs of her children.

{¶ 105} For the foregoing reasons, we conclude that the trial court did not abuse its discretion in finding that placement with M.Y. is not possible within a reasonable time. M.Y.'s first assigned error is overruled.

{¶ 106} M.Y.'s second assigned error is as follows:

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY FINDING THAT PERMANENT CUSTODY TO MONTGOMERY COUNTY CHILDREN SERVICES WAS IN THE BEST INTEREST OF THE CHILDREN AS SAID FINDING IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 107} R.C. 2151.414 provides as follows:

> * * *
>
> (D)(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section * * *, the 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, 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;

(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.

* * *

(2) If all of the following apply, permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency:

(a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist and the child cannot be placed with one of the child's parents within a reasonable time or should

not be placed with either parent.

(b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.

(c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.

(d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

{¶ 108} Regarding the children's relationships with those who significantly affect them, we note that while M.Y. visits the children and a bond exits between them, the children have not resided with M.Y. since she placed them with C.S.1 in late 2008, having resided in foster care since the spring of 2009, and MCCS has expressed concerns regarding the fact that M.Y. sometimes yells at her children and speaks to them in a derogatory manner in the course of visitation. The children's relationship with each other has been characterized by violence directed at M.S. by C.S. While M.Y. and C.S.1 recommended relatives to care for the children, M.Y.'s maternal aunt failed the background check, and C.S.1's sister had insufficient bedroom space, a history with MCCS, and a son who was recently engaged in criminal activity. There is nothing in the record to suggest that the children had a relationship with or were bonded to these relatives.

{¶ 109} Spence stated that M.S.'s current foster parents take her to her

appointments for therapy and medical evaluations, and that there was a prospective adoptive home for M.S. She stated that the home may be willing to adopt C.S. as well, if M.S. continues to respond to medication and placing the children together is best for them. M.S. visited the prospective family beginning in November, 2011, and she had weekend visitations over Christmas break and in January, and Spence testified that the visits "overall went very well." C.S. has been in a total of six placements, and his current placement is a treatment foster home where he is doing very well, according to Spence. Spence stated that it is very important that C.S. continue his therapy, and she stated that while at his current placement, C.S.'s attendance at his therapy has been consistent, as well as his attendance at school.

{¶ 110} Regarding the wishes of the children, both of them indicated to Rezabek that they wish to be in the care and custody of M.Y.

{¶ 111} Regarding the children's custodial history, as noted above, the children have been in the temporary custody of MCCS since April, 2009; C.S. has been in six foster placements, while M.S. has been in two. While the children were initially placed together, C.S. was removed to a second home for being violent to M.S. C.S. was again removed and reunification with M.S. was attempted at a third home, but after year, he was again removed to another home for assaulting M.S. C.S. was removed from the fourth home due to concerns by Spence regarding the foster parents. C.S. was again removed from his fifth placement after the caregivers ceased being foster parents. In his sixth placement, as noted above, C.S. is doing very well and the foster parents have no concerns to report. M.S. remains in her second placement where reunification with C.S. was attempted.

{¶ 112} Regarding the children's needs for a legally secure placement, we note that both children have behavioral problems and require medication and ongoing therapy, and they are both in enrolled at a school where the staff is specifically trained to meet their special needs. Given the length of time this matter has remained pending, we agree with the trial court that the children are in need of a legally secure placement. As discussed above, M.Y. has failed to complete or make substantial progress on her case plan objectives, and we accordingly conclude that a legally secure placement cannot be achieved without a grant of permanent custody to MCCS.

{¶ 113} Finally, as discussed above, pursuant to R.C. 2151.414(E)(11), M.Y. has previously had her parental rights terminated with respect to a sibling of the children, and M.Y. has failed to provide clear and convincing evidence that she can provide a legally secure placement and adequate care for the health, welfare, and safety of the children.

{¶ 114} Since the trial court did not abuse its discretion in determining that permanent custody is in the best interest of the children, M.Y.'s second assigned error is overruled.

{¶ 115} M.Y.'s third assignment of error is as follows:

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THAT THE AGENCY MADE REASONABLE EFFORTS TO PREVENT THE CONTINUED REMOVAL OF THE CHILDREN AS SUCH A FINDING IS AGAINST THE MANIFIEST WEIGHHT OF THE EVIDENCE.

{¶ 116} We note that the trial court did not conclude that MCCS made reasonable efforts to prevent the continued removal of the children but rather determined that "MCCS was not required to make reasonable efforts to prevent the removal of the child from the

child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home." R.C. 2151.419(A)(1) provides as follows:

> Except as provided in division (A)(2) of this section, at any hearing held pursuant to section 2151.28, division (E) of section 2151.31, or section 2151.314, 2151.33, or 2151.353 of the Revised Code at which the court removes a child from the child's home or continues the removal of a child from the child's home, the court shall determine whether the public children services agency or private child placing agency that filed the complaint in the case, removed the child from home, has custody of the child, or will be given custody of the child has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home. The agency shall have the burden of proving that it has made those reasonable efforts.

{¶ 117} R.C. 2151.419(A)(2), however, provides as follows:

> If any of the following apply, the court shall make a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child's home, eliminate the continued removal of the child from the child's home, and return the child to the child's home:
>
> * * *
>
> (e) The parent from whom the child was removed has had parental rights involuntarily terminated with respect to a sibling of the child pursuant

> to section 2151.353, 21151.414, or 2151.415 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections.

{¶ 118} Since M.Y. has had parental rights terminated with respect to a sibling of M.S. and C.S., M.Y.'s third assigned error lacks merit and it overruled.

{¶ 119} M.Y.'s fourth assignment of error is as follows:

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN RELYING ON THE RECOMMENDATIONS OF CASA/GAL LISA WRAY AS MS. WRAY DID NOT PERFORM HER DUTIES AS REUQIRED OF A GUARDIAN AD LITEM.

{¶ 120} We agree with MCCS that the trial court made detailed findings of fact to support its decision based upon the evidence presented by multiple witnesses, and we note there is no suggestion in the court's thorough decision that it relied upon the report of Lisa Wray; the court cited only to the testimony and report of Jeff Rezabek as follows:

> * * * Both the caseworker and the GAL for the children described structural defects in the home including missing chunks of plaster and multiple homes in the walls. (Tr. 221, 730). The GAL classified the home as marginal and not well-maintained. (Tr. 730). The GAL reported the children should not be placed in the Vernon Drive home without improvements. (Gal Report, November 22, 2011; Tr. 730). * * *.

{¶ 121} Since the trial court's decision is supported by a combination of the evidence presented, an analysis of Ms. Wray's performance pursuant to the Rules of Superintendence is moot. M.Y.'s fourth assigned error is overruled.

{¶ 122} M.Y.'s fifth assignment of error is as follows:

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THAT A GUARDIAN AD LITEM DOES NOT HAVE THE AUTHORITY TO FILE FOR PLANNED PERMANENT LIVING ARRANGMENT.

{¶ 123} The trial court determined that the "juvenile court does not have the authority to order PPLA unless an agency requests such an arrangement." We agree. R.C. 2151.353 provides:

> (A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:
>
> (1) Place the child in protective supervision;
>
> (2) Commit the child to the temporary custody of a public children services agency, a private child placing agency, either parent, a relative residing within or outside the state, or a probation officer for placement in a certified foster home, or in any other home approved by the court;
>
> (3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. * * *
>
> * * *
>
> (4) Commit the child to the permanent custody of a public children services agency or private child placing agency * * *

(5) Place the child in a planned permanent living arrangement with a public children services agency or private child placing agency*, if a public children services agency or private child placing agency requests the court to place the child in a planned permanent living arrangement* and if the court finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.

(b) The child is sixteen years of age or older, the parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative.

(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, and is unwilling to accept or unable to adapt to a permanent placement.

{¶ 124} R.C. 2151.415(C)(1) provides in part that "[i]f an agency pursuant to division (A) of this section requests the court to place a child into a planned permanent

living arrangement, the agency shall present evidence to indicate why a planned permanent living arrangement is appropriate for the child, including, but not limited to, evidence that the agency has tried or considered all other possible dispositions for the child. * * * "

{¶ 125} The Ohio Supreme Court applied R.C. 2151.353(A)(5) in *In re A.B.*, 110 Ohio St.3d 230, 2006-Ohio-4359, 852 N.E.2d 1187, at syllabus, and determined that "after a public children services agency or private child placing agency is granted temporary custody of a child and files a motion for permanent custody, a juvenile court does not have the authority to place the child in a planned permanent living arrangement when the agency does not request this disposition." In *In re A.B.*, the "Supreme Court of Ohio explained at great length the undesirability of a planned permanent living arrangement and the importance of limitation on this disposition for a child adjudicated abused, neglected, or dependent." *In re H.R.*, 11th Dist. Geauga No. 2008-G-2866, 2009-Ohio-922, ¶ 106. Quoting *In re M.W.*, 8th Dist. Cuyahoga No. 83390, 2005-Ohio-1302, the Eleventh District noted as follows:

> "The wording of R.C. 2151.353(A)(5) is so unambiguous that we would be hard-pressed to find a clearer indication of intent. The statute states in no uncertain terms that the court may order a planned permanent living arrangement if (1) the county requests it, (2) [if] the planned permanent living arrangement would be in the best interests of the child, and (3) [if] one of the factors in subsections (A)(5)(a)-(c) exist[s]. While we understand that the best interests of the child are paramount in any custody case and that we are to liberally interpret the statutes to provide for the care

and protection of the child, R.C. 2151.01(A), we cannot override unambiguous statutory language. Indeed, the juvenile courts derive their jurisdiction solely by grant from the General Assembly; thus, they do not have inherent equitable jurisdiction to determine a child's best interests. See *In re Gibson* (1991), 61 Ohio St.3d 168, 172, 573 N.E.2d 1074. We therefore restate the law in this district to be that a court may not order a planned permanent living arrangement unless it is requested by a 'public children services agency or private child placing agency..' " *A.B.*, at ¶ 32, * * *.

The Supreme Court of Ohio explained at great length the undesirability of a planned permanent living arrangement and the importance of limitation on this disposition for a child adjudicated abused, neglected, or dependent. It stated:

"A planned permanent living arrangement places a child in limbo, which can delay placement in a permanent home. Because the General Assembly intended to encourage speedy placement, R.C. 2151.353 places limitations upon the use of planned permanent living arrangements." *Id.*, at ¶ 33, 573 N.E.2d 1074.

A foster relationship "lacks the permanency envisioned by the legislature." *Id.* at ¶ 35, 573 N.E.2d 1074. "Even assuming that the children would be able to live with the foster mother until they reach the age of majority, they will 'age out' of foster care. Children who age out of foster care lack the emotional support system and the financial stability of a

permanent custody or adoptive relationship. Children who age out of foster care have no place to return for holidays, no permanent family to lean on as they enter the adult world. Thus, the General Assembly's grant of authority to request a planned permanent living arrangement, a temporary fix for foster children, solely to the [children services board] is in line with creating permanency and stability for these children." *Id*., ¶ 35, 573 N.E.2d 1074.

The court also cited the provision of R.C. 2151.415(C)(1) to explain why only an agency can request such a disposition:

"In addition, if the juvenile court were able to place the children in a planned permanent living arrangement without a request from the [children services board] then R.C. 2151.415(C)(1) would be meaningless. R.C. 2151.415(C)(1) states that if an agency requests that the court place the child in a planned permanent living arrangement, the agency 'shall present evidence to indicate why a planned permanent living arrangement is appropriate for the child, including, but not limited to, evidence that the agency has tried or considered all other possible dispositions for the child.' This language indicates that a planned permanent living arrangement is to be considered as a last resort for the child, more evidence that the General Assembly's goal is to avoid allowing children to languish indefinitely in foster care." *A.B.* at ¶ 36.

The court concluded that R.C. 2151.353(A)(5) is unambiguous and "does not authorize the trial court do consider a planned permanent living

> arrangement *unless* the children's services agency has filed a motion requesting such a disposition." (Emphasis added.) *Id*. at ¶ 37, 852 N.E.2d 1187.

In re H.R., ¶ 105-111.

{¶ 126} Given the unambiguous wording of R.C. 2151.353(A)(5), we conclude that M.Y.'s fifth assignment of error lacks merit, and it is overruled. The judgment of the trial court is affirmed.

. . . . . .

FROELICH, P.J. and HALL, J., concur.

Copies mailed to:

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