



that A.L. was born on May 25, 2013, and that N.L. has “developmental delays as shown by her long history with the agency.” The complaint provides that N.L. “does not have custody of her [five] other children \* \* \*. Four of mother’s children were placed in the Permanent Custody of MCCA and the other one was in the Legal Custody of Maternal Grandmother but is now in the Temporary Custody of MCCA.” According to the complaint, N.L. failed to inform MCCA about the birth of A.L. despite the presence of an open case plan. The complaint provides that in 2012, N.L. was diagnosed with depression disorder, mild “mental retardation,” antisocial personality traits, and a personality disorder. The complaint alleges that N.L. lacks independent housing and resides with her mother.

**{¶ 3}** On June 25, 2013, the juvenile court granted ex parte interim custody of A.L. to MCCA. After a shelter care hearing on June 26, 2013, the Magistrate granted interim temporary custody to the agency. The order provides in part:

The agency received a referral regarding this child due to concerns from health care providers that the mother was not meeting [her] basic needs and was unable to understand [her] needs. The agency caseworker and the police went to the mother’s residence where she lives with her mother who also has cognitive delays. The mother and police became embroiled in a serious altercation resulting in the mother smacking the police officer and threatening the caseworker. The mother was then jailed and she is currently in jail with charges pending.

The agency has serious concerns about the child’s welfare when in the mother’s care. The bottle of formula the child was drinking had black flakes of an unknown substance in the bottle. Moreover, the child suffers

from arm and leg tremors which health care officials believe are due to lack of proper nutrition. The child's diaper was also very soiled and was disintegrating.

{¶ 4} On August 14, 2013, the Guardian Ad Litem ("GAL") that was appointed for A.L. issued a recommendation that it is in the best interest of the child for MCCS to be awarded temporary custody. On October 7, 2013, MCCS filed a "Motion and Memorandum for Reasonable Efforts By-Pass," pursuant to R.C. 2151.419(A)(2)(e).<sup>1</sup> On October 25, 2013, the GAL issued another report recommending that MCCS receive temporary custody, and that N.L. receive supervised parenting time and obtain an updated parenting and psychological assessment.

{¶ 5} On November 6, 2013, the "Magistrate's Decision and Judge's Order of Adjudication and Disposition of Temporary Custody" was issued following a hearing. It provides that MCCS "has established the grounds for a reasonable efforts bypass because the mother has had four children placed in the permanent custody of [MCCS] per the certified copies of the entries admitted into evidence by [MCCS]." The Order further provides in part as follows:

A case plan has been established for the mother and contains the same objectives as all prior cases given that the Agency has remained involved with the mother since 2010. The Court finds that the mother has

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<sup>1</sup> "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 \* \* \*." R.C. 2151.419(A)(2)(e).

failed to address any of her case plan objectives despite multiple referrals from the Agency. Mother has not addressed her mental health issues which are severe and limit her ability to care for herself. She does not have suitable housing and has not appeared for any visits with the child at the Agency since the removal. Mother has clearly not demonstrated that she has remedied the concerns that resulted in the removal of the child.

**{¶ 6}** On April 23, 2014, MCCS filed a “Motion and Affidavit for Commitment to the Permanent Custody of MCCS,” pursuant to R.C. 2151.413, R.C. 2151.414(B)(1) and/or(2), and R.C. 2151.414(E)(1, 2, 4, 10, 11, 12, 14, and 16).

**{¶ 7}** On July 22, 2014, N.L. filed a “Motion for Alternative Disposition of First Extension of Temporary Custody to MCCS.” According to the motion, “Mother has completed the 13 week Seasons Parenting Program; a Day-Mont BHC anger management program; and is compliant with her felony probation. Mother has income from social security for her learning disability and is trying to obtain independent housing.” The motion provides that based upon “mother’s progress, a first extension to MCCS is appropriate.”

**{¶ 8}** On August 21, 2014, a trial was held. At the start thereof, the parties stipulated to the admission of an adult psychological report and a consultation report provided to MCCS by Dr. Julia King, in lieu of her testimony. M.S. (hereinafter “S.”) testified that she and her husband are a licensed foster family and that A.L. was placed in their foster home on June 25, 2013. S. stated that her 15 year old daughter, as well as her four sons, ages 12, 10, five and two, also reside in the home with A.L. She stated that the home has four bedrooms, and that her two oldest boys share a room with their

youngest brother, that A.L. and their daughter share a room, and that her five year old has his own room. S. stated that she has been an elementary school teacher for 20 years, and that she is currently on sabbatical leave, “completing a research fellowship with Cincinnati Children’s Hospital in their \* \* \* neurodevelopmental disabilities department.” S. testified that she works on Tuesdays and Thursdays, and that A.L. is cared for at a child care center during that time.

{¶ 9} S. stated that A.L. sees a pediatric surgeon for an umbilical hernia, and an ENT specialist for problems with her ears. S. stated that A.L. required tubes in her ears after multiple ear infections, and “upon testing, it was realized her eardrums weren’t functioning, so the tubes were inserted to \* \* \* try to ease that for her.” S. stated that A.L. was recently assessed at Samaritan Behavioral Health because she “has a little bit of trouble with her anger. She just has a quick temper, and started pulling out her hair, and so we were given some strategies to use to help her and to monitor that.”

{¶ 10} When asked about A.L.’s relationships with the other children in the home, S. replied that A.L. is “accepted as a baby sister,” and that she “has a very strong personality amongst the group.” S. stated that her children have a loving bond with A.L. S. stated that she and her husband expect “that when a child is in our home, that they are treated as if they were a natural sibling, that they have always been there. Our children have responded as such and \* \* \* treat her as such.” S. stated that she and her husband have fostered 14 children, but that they do not plan to foster any additional children.

{¶ 11} S. stated that A.L.’s relationship with her husband is playful, that he coaches their five-year old son’s soccer team, and that A.L. loves to play with the soccer ball with him. She stated that A.L. runs to the door to greet “Daddy” every night when he comes

home. S. stated that she has a sister in Cincinnati, and her husband has some family in Mason and Cincinnati, and that they also interact with A.L. She testified that she had a birthday party for A.L. and her two youngest boys, whose birthdays are all in the same week, and that “all of our family came from everywhere to celebrate the three youngest kids.”

{¶ 12} S. testified as follows regarding her relationship with A.L.: “I would say that [A.L.] and I are very closely bonded just because she was so young when she arrived in our home. I was her primary caregiver, and it was summertime, so I was home full time, and so she and I are very, very closely bonded. \* \* \*.” S. stated that A.L. is verbal and identifies her and her husband as Mommy and Daddy. S. stated that she taught A.L. some sign language and “she does a few signs that she uses consistently.” S. stated that A.L. is affectionate and “loves to get hugs, loves to be held.”

{¶ 13} S. testified that she and her husband have discussed adopting A.L. at length and would like to do so “because we feel like she’s been in our home almost her whole life, outside of those first four weeks,” and “she definitely is considered part of our home and our family.” S. stated that her two youngest sons are adopted, and that having been previously approved for adoption, she does not foresee any obstacles in adopting A.L. S. stated that A.L. has not had any visitation with her biological family. On cross-examination, S. testified that A.L. is developmentally on target.

{¶ 14} Jeffrey Allen Johnson testified that he is employed by MCCS as “an alternative response worker,” and that he is A.L.’s caseworker. Johnson testified that he has been working with N.L. since 2010 “through two other children, [D.L.], that we received permanent custody on (sic) in June of 2013; and then [A.L.2], that we received

PPLA of - - -I want to say it was in September of 2013 \* \* \*.” Johnson identified, as Exhibits 1 - 4, certified copies of court decisions granting permanent custody of four of N.L.’s children to MCCS.

**{¶ 15}** Johnson stated N.L.’s case plan objectives from 2010 are “completely similar” to her current case plan objectives, and that N.L., “through 2010 all the way - - all the way up until [A.L.’s] birth was very resistant to case management.” Johnson stated that N.L. “never indicated that she was pregnant [with A.L.], \* \* \* nor did I ever know that she was pregnant until after the birth. Once we got the new referral, then that’s when we found out she was pregnant.” Upon learning of A.L.’s birth, Johnson testified that MCCS removed her from N.L.’s home and placed her with the foster family. Johnson stated that A.L. is doing “[e]xtremely well” there, and that A.L. is “very bonded” to the foster family. When asked to describe A.L.’s interaction with the other children in the home, he responded, “I would say it’s very loving interaction, very playful. All of them try to carry her around. All of them dote on her.”

**{¶ 16}** Johnson stated that A.L. “is going to have to have the umbilical hernia surgically closed at one point. Children’s has been monitoring that since birth, and they wanted her to get a little older prior to that surgery.” Johnson testified that A.L. is “on target developmentally.”

**{¶ 17}** Johnson stated that N.L. “went to jail as a result of threatening the caseworker that did the removal and assaulting the officer,” and that she was incarcerated from the date of removal until mid-August. Johnson stated that he met with N.L. in mid-September and “went over at length the case plan.” The case plan objectives required N.L. to complete an anger management program and follow any recommendations,

submit to an updated parenting and psychological evaluation “to determine changes in cognitive and mental health,” complete a mental health evaluation and follow any recommendations, complete an “infant-based parenting program,” make herself “available to community support agencies regarding her cognitive issues, specifically DDS, for an evaluation,” maintain “independent, stable income and housing,” meet with her caseworker regularly, make known to MCCA any relatives that might serve as potential placements for A.L., and identify A.L.’s biological father. Johnson stated that visitation with A.L. was not a case plan objective.

**{¶ 18}** Johnson stated that N.L. was initially evaluated by Dr. Reginald Jones in 2004. He stated that she was referred to Dr. Julia King in 2010, and that from July until November of that year, N.L. refused to cooperate, missing four appointments with Dr. King. Johnson stated that he received a completed evaluation from Dr. King on October 11, 2011. Johnson stated that he referred N.L. to Developmental Disabilities Services based upon Dr. King’s report, and that she “was extremely resistant to completing anything through DDS.” Johnson stated that he was subsequently “informed that Mother isn’t eligible for DDS services.” Johnson stated that N.L. receives services at Day-Mont West, and that “Ms. Gay,” who is her mental health therapist there, advised him that “there is an issue with Mother’s motivation. She indicated that Mother keeps telling her \* \* \* that she really doesn’t need the services and that she should give that slot to somebody who does need it.” Johnson stated that N.L. has been seeing Ms. Gay for six and a half months.

**{¶ 19}** Johnson testified that N.L. completed “Seasons,” a twelve-week parenting program that her parole officer referred her to, but that the program is not “that individual,

one-on-one teaching program that Dr. King thinks would be beneficial to Mother.” Johnson stated that the infant-based parenting objective is not completed. Johnson stated that N.L. did complete an anger management program on April 1, 2014, and that “from 2010 all the way up until the completion, we had been referring her to that program.” Johnson testified that he “met with Mother in May of 2014, after she completed the program, \* \* \* and Mother became explosive at the appointment and asked me verbatim \* \* \* why the f\*\*\* do you keep coming here; I didn’t do anything to the child \* \* \*.” Johnson stated that he has “had a lot of difficulty redirecting appointments to get past the anger in order to really focus \* \* \* on case planning.” According to Johnson, “there’s a lot of belief by [N.L.] \* \* \* that the Agency is conspiring against her to take her children and that Obama created a law, this shouldn’t be happening. [N.L.] has been very adamant \* \* \* that we are involved with her illegally anyway, and she doesn’t really even have a case plan.” Johnson testified that “the appointments are riddled with that kind of conversation, \* \* \* and I spend a whole hour there on the conspiracy theories and trying to redirect more than I do actually talking to them about their case, or her case.”

**{¶ 20}** Johnson stated that he met with N.L. on August 7, 2014, “and that’s probably the calmest I’ve ever seen Mother. The \* \* \* appointment was explosive, but only because of [N.L.’s] mother.” According to Johnson, N.L.’s mother was cursing at him “to the point where I had to end the meeting because it was so volatile.” Johnson stated that in the course of MCCS’ involvement with N.L., “Grandmother has been extremely explosive.” Johnson stated that he does not consider the anger management objective to be completed because N.L. “has not been able to demonstrate that she has her anger management issues under control.”

{¶ 21} Johnson stated that since July of 2010, N.L. “has never been able to provide stable housing,” and that she resides with her mother in a small one-bedroom apartment. Johnson stated that N.L. sleeps in the living room. He stated that there is not a bed for A.L. in the apartment. Johnson stated that he has discussed housing with N.L. since July, 2010. He stated that she is not eligible for DMHA housing due to “an assault charge while she had DMHA housing in the past.” Johnson stated that “we discussed low-income housing, and based on her past criminal history, she’s not eligible for that either.” Johnson testified that he has “been referring mother for months to St. Vincent de Paul. They have a Homefull program there, which is a wonderful program. They’re getting people residences typically within a couple of months. But Mother’s been extremely resistant \* \* \* to working that program” because doing so would require her to “stay at St. Vincent for a period of time in order to get a residence.” Johnson stated that N.L.’s low income “impedes her ability to get other housing” at market rates. Johnson stated that N.L.’s housing objective is not complete.

{¶ 22} Johnson stated that N.L. receives Social Security income in the amount of \$722.00 a month. He stated that he has discussed employment with N.L. repeatedly, and that he has referred her to the Job Center, but she failed to follow through. Johnson testified that N.L.’s income is insufficient to provide for A.L., and that the income objective is not completed.

{¶ 23} Johnson stated that N.L. did not meet with him regularly as required by her case plan. He stated that she has only met with her five or six times since A.L.’s birth. He stated that N.L. did not provide the names of other relatives as potential placements for A.L., and that N.L. “really only has her mother.” Johnson stated that while N.L.’s

mother had custody of one of N.L.'s children at one time, the child was removed from her care, and she would not pass a home study. According to Johnson, N.L. provided the name of A.L.'s father, B.G., whom he described as "nomadic." Johnson stated that he was unable to locate B.G. after a diligent search, and that his paternity has not been established.

**{¶ 24}** Johnson testified that when N.L. was released from jail, he established a visitation schedule for her in August. He stated that N.L. missed three visitations in a row, and he then required N.L. to "come an hour early prior to her visit in order for the baby to be transported." Johnson stated that N.L. never arrived an hour early. Johnson stated that N.L. subsequently disappeared from October to February, and he removed her from the visitation roster. He stated that in February, N.L. indicated to him that she wanted to resume the visitation schedule, and that he informed her of the new schedule and provided her with bus tokens. He stated that she failed to attend and was removed from the roster in March. He stated that visitation was again scheduled in May, and that N.L. "disappeared on me from May to August." Johnson stated that for the 14 months since A.L. was removed from N.L.'s care, she has not visited the child. Johnson recommended that the court not order visitation pending a decision on the Agency's motion for custody since A.L. "does not know Mother at all." Johnson stated that he "can never remember a conversation with Mother where she ever asked me anything about the child."

**{¶ 25}** Johnson stated that the foster parents are a prospective adoptive placement for A.L., and that he is not aware of any obstacles to their adoption of her. Johnson stated that reunification with N.L. is not possible in the foreseeable future based upon N.L.'s "past mental history," and upon "the continued delusional thinking; based on her

housing situation; and the fact that \* \* \* she can't seem to get independent from her mother." The following exchange occurred:

Q. \* \* \* And \* \* \* these are the same things that you've seen since 2010?

A. Since 2010.

Q. And, arguably, the things that were existing even prior to you becoming involved, correct?

A. That's correct.

Q. And does - - has Mother committed - - exhibited to you that she's committed to working this case plan and - - and getting this child back?

A. Well, that's the odd thing about this case plan. I will make the referral for Mother. She won't follow through with it. But then the probation department will make a referral, and, bam, she does it.

\* \* \* I've always believed that Mother's main motivation in this case plan is not to go to jail. She's afraid of getting incarcerated by the probation department. If Mother wasn't on probation, I don't think we would have had as much progress as we do.

Q. And she's on probation for the assault of - -

A. Well, she's on probation for an F-4 felonious assault on an officer. She's on probation for an F-5 agg menace (sic) for threatening to kill Cathie Stokes.

Q. And Cathie Stokes was the prior caseworker?

A. She was the worker that actually did the removal of [A.L.],

correct.

Q. \* \* \* And she had prior convictions before that as well?

A. Of assault. That's why she had her housing issue right now.

Johnson stated that he believes that permanent custody of A.L. is in the child's best interest.

{¶ 26} On cross-examination by counsel for N.L., Johnson acknowledged that Dr. King did not recommend an additional parenting and psychological evaluation of N.L., and that she was receiving mental health services at Day-Mont and keeping all of her appointments there. Johnson stated that although N.L. completed her anger management program, she failed to demonstrate learned behavior. Johnson acknowledged that if an extension of temporary custody were to be granted, and N.L. agreed to reside at St. Vincent, she could conceivably obtain housing during the period of the extension in the Homefull program. Johnson stated that N.L.'s parole officer has advised him that she is in compliance with her probation. Johnson stated that A.L. has visited with one of her siblings, D.L., about 12 times and that a bond exists between them. Johnson stated that D.L.'s adopted mother "will put in for a match, [S.] will put in for a match, and then it's going to be up to the adoption department to find out who would be a better candidate."

{¶ 27} N.L. testified that four of her children are in Agency custody and that a fifth child is in a permanent planned living arrangement through MCCA. N.L. stated that she resides with her mother and that "we've been in different houses." N.L. asked the court to grant an extension of temporary custody "to give me enough time to get myself together." Regarding housing, N.L. stated that she "would go find me some that's basically on my income." She stated if she is unable to find housing on her own, she will go to St.

Vincent de Paul. N.L. stated that she receives \$721.00 a month in Social Security income "for learning disability." N.L. denied ever being diagnosed as "mentally retarded." She stated that she began attending Day-Mont on October 25, 2013 and that she "went faithful." She stated that she attended a 16 week anger management class and obtained a certificate of completion. She stated, "since after I left the anger management, I ain't went off - - I ain't cussed nobody off since."

**{¶ 28}** When asked if she met with her caseworker regularly as required by her case plan objective, N.L. responded, "I have some issues about that. I ain't going to lie about that. There was a couple times I - - I did not meet no caseworker." N.L. testified that she will meet with Johnson if the extension is granted. N.L. denied discussing a statute with Johnson that allegedly prohibits MCCS's involvement with A.L, and she stated that Johnson "was talking about my mother." N.L. stated that she did not qualify for the Family Works parenting class, but that she did a twelve-week parenting class through the probation department and obtained a certificate. According to N.L., "Mr. Johnson said it was all right I get in there." N.L. stated that she is willing to complete another parenting class. When asked about visitation, N.L. responded, "\* \* \* I ain't visit the baby" due to problems with transportation. N.L. acknowledged that if she fails to comply with her probation, "I'm going to get locked up," and that if she does not complete her case plan objectives, she cannot regain custody of A.L.

**{¶ 29}** On cross-examination by the State, N.L. stated that Donte Beavers was her MCCS caseworker in 2004 when she lost custody of three of her children, and that she "did mental health, got my own place, and I did a parenting class back then." N.L. denied being depressed. She stated that she completed the eleventh grade, and that at

that time she was “[s]kipping school, fighting a lot, getting in trouble.” N.L. testified that she has been “in and out of jail since juvenile.” She stated she has been to jail “about twenty-three times,” and that she “went to prison for drug traffic” in 1997. She stated that she sold drugs but never used them herself. N.L. stated that she is not eligible for DMHA housing because “that’s where I did my crime at. That’s where I caught the drug traffic.” She stated that based upon her criminal history, she “can’t get Section Eight.” When asked why she did not participate in the Homefull program at St. Vincent, N.L. responded, “\* \* \* I don’t want to live in no shelter,” and “I’m better off going out there and find my own.”

**{¶ 30}** When asked to provide A.L.’s middle name, N.L. provided one name and then changed her mind, identifying another name that she was unable to spell when asked to do so by the Magistrate. In response to further questions from the Magistrate, N.L. was unable to spell A.L.’s first name. At the conclusion of the hearing, A.L.’s GAL opined that MCCS should receive permanent custody of A.L., and N.L.’s GAL requested that an extension of time be granted.

**{¶ 31}** In granting custody to MCCS on October 20, 2014, the Magistrate found in relevant part that MCCS “did prove by clear and convincing evidence that the child had been abandoned by the mother pursuant to O.R.C. 2151.414(B)(1)(b). The caseworker’s testimony was unrefuted that the mother failed to have any contact with the child since late August/early September, 2013, a period well exceeding the 90 days as required by statute.” The Magistrate further found that MCCS “established by clear and convincing evidence that the child cannot be placed with the mother within a reasonable time or should not be placed with her pursuant to O.R.C. 2151.414(B)(1)(a).” The Magistrate then considered R.C. 2151.414(E) which enumerates factors pertaining to

“whether a child cannot be placed with either parent within a reasonable time or should not be placed with the parents.” The Magistrate finally determined, after analyzing the best interest factors in R.C. 2151.414(D), that a grant of permanent custody to MCCS is in the best interest of the child.

**{¶ 32}** N.L. filed objections to the magistrate’s decision on October 29, 2014, and supplemental objections on April 27, 2015. In relevant part, N.L. objected to the Magistrate’s findings “1) that placement of the child with mother is not possible within a reasonable period of time; 2) that it is in the child’s best interest to be placed in the permanent custody of MCCS.” N.L. asserted that the “trial testimony was unequivocal that mother had made substantial progress on her case plan objectives.”

**{¶ 33}** MCCS responded to the objections on November 3, 2014 and May 26, 2015. On July 7, 2015, the trial court issued its decision on N.L.’s objections. The court concluded that R.C. 2151.414(B)(1)(a) applies, and in determining whether or not A.L. could be placed with N.L. within a reasonable period of time, or should not be placed with N.L., the court found by clear and convincing evidence that several factors enumerated in R.C. 2151.414(E) were applicable. For example, the court found, pursuant to R.C. 2151.414(E)(1), that N.L. failed to “remedy the conditions causing the child to be placed outside the home,” and that, pursuant to R.C. 2151.414(E)(2), N.L. is unable to provide for A.L. due to her serious mental health impairments. The court further found that R.C. 2151.414(E)(10) and (11), set forth below, were applicable.

**{¶ 34}** The court alternatively found that R.C. 2151.414(B)(1)(b) is applicable; “the Court has determined that Mother has abandoned the child and while Mother has provided the Court with the name of the possible biological father of the child, MCCS has

been unable to make contact. \* \* \* The alleged Father has never contacted MCCS, has never established paternity and is not listed on the child's birth certificate."

**{¶ 35}** The court next analyzed if it is A.L.'s best interest to permanently terminate N.L.'s parental rights and grant permanent custody of the child to MCCS, pursuant to R.C. 2151.414(D)(1). A.L.'s loving bond to her foster family, as related by S., as well as by Jeffery Johnson, was significant to the court, as was the lack of a bond between A.L. and N.L. The court noted that A.L. is too young to express her wishes regarding custody. When considering A.L.'s custodial history, it was significant to the court that N.L. "has failed to take the appropriate action to regain custody of her child for almost twenty-four months."

**{¶ 36}** In considering A.L.'s need for a legally secure permanent placement, the court determined as follows:

The child has spent all but one month of her life in the custody of MCCS and over twenty-four months in foster care. Considering the length of time the child has been removed from the home, and the fact that a reasonable efforts bypass was granted, the Court finds that the child is in desperate need of a legally secure, permanent placement. Mark Fisher, Guardian ad Litem for the child, recommended permanent custody to MCCS \* \* \* .

**{¶ 37}** The court further noted that MCCS developed a case plan for N.L., the most recent one having been adopted by the court on November 6, 2013. The court noted that Johnson reviewed the case plan with N.L., indicated that he believed N.L. understood the plan, and that N.L. indicated that she understood her case plan objectives.

The court noted that N.L.'s "case plan was essentially identical to Mother's previous case plan in regard to her other children who were previously given over to the permanent custody of MCCS."

**{¶ 38}** The court concluded that N.L. "failed to meet all her case plan objectives." The court noted that Dr. King determined that N.L. "did not need to submit to an updated parenting and psychological evaluation," and that "this objective is moot." The court found that, although N.L. completed an anger management program, she "has been unable to demonstrate that she has her anger issues under control." The court noted that N.L. was arrested upon the removal of A.L. from her care for assaulting a police officer and threatening a caseworker. The court further noted Johnson's testimony regarding N.L.'s "very volatile and explosive" conduct towards him. It was significant to the court that N.L. testified that she has been arrested 23 times "for offenses such as assault."

**{¶ 39}** The court noted that N.L. has been receiving therapy at Day-Mont since January of 2014, and while "Dr. King has referred Mother to a psychiatrist, Day-Mont has not yet done so and Day-Mont is currently in charge of Mother's psychiatric treatment. \* \* \* Thus this objective is complete." The court found that while N.L. completed the Seasons parenting program, "the program was more of a group session setting, rather than the one on one setting desired by MCCS and recommended by Dr. King.," and the court concluded that "this objective is not complete."

**{¶ 40}** The court noted that the objective for N.L. "to make herself available to community based services was based on the belief that [Montgomery County Developmental Disabilities Services] could assist Mother. However, Mother is unable to

participate in DDS due to her not having been diagnosed before she reached the age of eighteen. This objective is moot.” The court noted that N.L. “has failed to maintain independent, stable income and housing.” The court noted N.L.’s refusal to participate in the Homefull Program. While N.L. receives Social Security income, as the court noted, it is insufficient to support her and A.L., and the court further noted that N.L. “has not had a job since Mr. Johnson first became involved with Mother’s cases,” despite referrals to the Job Center since 2010. The court noted that N.L.’s income and housing objective “has not been met.”

**{¶ 41}** The court found that N.L. failed to meet regularly with Johnson and that she “will regularly disappear for months at a time,” such that she “has failed to meet this objective.” The court further found that N.L. did not provide MCCA “with any relatives who might be suitable to take the child. \* \* \* This objective has not been met.” Finally, the court found that while N.L. “has provided MCCA with the name of a possible biological father \* \* \* she was unable to provide any contact information. \* \* \* This objective has not been met.” The court concluded that “a legally secure, permanent placement cannot be achieved without granting permanent custody to MCCA.”

**{¶ 42}** The court noted that R.C. 2151.414(E)(10), “in regard to abandonment,” and R.C. 2151.414(E)(11) “in regard to involuntary termination of parental rights as to other children apply in the present case.” The court concluded as follows:

After considering all relevant factors, the Court finds that permanent custody to MCCA is in the best interest of the child. Mother has not completed her case plan and is not suitable for custody of the child. While Mother indicates that she is now willing to do what needs to be done to

regain custody of the child, this is unfortunately an example of too little too late. \* \* \* Mother has had years to address the concerns of MCCC.

The Court finds that a legally secure, permanent placement for the child cannot be achieved without granting permanent custody to MCCC. In light of the foregoing, the Court finds that clear and convincing evidence was presented showing that permanent custody to MCCC is in the best interest of the children.

IN CONCLUSION, the Court (1) finds that the child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent, (2) alternatively finds that the child has been abandoned, and (3) finds that permanent custody to MCCC is in the best interest of the child. Accordingly, the motion for permanent custody to MCCC is **GRANTED.** \* \* \*

{¶ 43} N.L. asserts one assignment of error herein as follows:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN GRANTING PERMANENT CUSTODY TO MONTGOMERY COUNTY CHILDREN SERVICES, AS THE AGENCY FAILED TO PROVE BY CLEAR AND CONVINCING EVIDENCE THAT PERMANENT CUSTODY WAS IN THE BEST INTEREST OF THE CHILD AND THAT THE CHILD COULD NOT BE PLACED WITH MOTHER WITHIN A REASONABLE PERIOD OF TIME OR SHOULD NOT BE PLACED WITH MOTHER.

{¶ 44} N.L. asserts that the trial court erred in determining that several factors in R.C. 2151.414(E) are applicable to support the conclusion, pursuant to the condition set

forth in R.C. 2151.414(B)(1)(a), that A.L. cannot be placed with N.L. within a reasonable time or should not be placed with N.L., and that the court “erred when it found clear and convincing evidence that permanent custody to MCCS was in the best interest of the child.” Regarding A.L.’s best interest, N.L. asserts that the court incorrectly found that there was no bond between A.L. and any other member of her family, citing Johnson’s testimony that A.L. is bonded to one sibling. N.L. asserts that the trial court erred in finding that N.L. failed to take appropriate actions to regain custody of A.L. for almost 24 months, citing Johnson’s testimony that N.L. had completed “several of her case plan objectives and was working on some of the other objectives.” Finally, as to A.L.’s need for a legally secure placement, N.L. asserts that while the court “recognized that Mother had completed an anger management program \* \* \* it overlooked the fact - - corroborated by Mr. Johnson’s testimony - - that Mother was calmer and less volatile in meetings after she had completed the program.”

{¶ 45} MCCS responds that “the court’s findings are amply supported by the record.” Regarding the court’s application of R.C. 2151.414(B)(1)(a), MCCS asserts in part that R.C. 2151.414(E)(1, 2, 4, 10, and 11) are present to support a conclusion that A.L. cannot be placed with N.L. within a reasonable time or should not be placed with N.L. MCCSS asserts that the trial court correctly found that A.L. was abandoned. Regarding A.L.’s best interest, MCCS asserts that A.L. “had been living with the same foster family continuously since her removal. \* \* \* That family was extremely bonded with her, loved her, and provided for all of her needs. \* \* \* They wished to adopt A.L. if permanent custody was granted. \* \* \* Permanent custody to MCCS was in A.L.’s best interest to provide her with a legally secure placement.”

{¶ 46} As this Court has noted:

A children services agency that has been awarded temporary custody of a child may move for permanent custody. R.C. 2151.413(A). Before the court may award the agency permanent custody of a child, the court must conduct a hearing. R.C. 2151.414(A)(1).

A trial court may not grant a permanent custody motion unless the court determines that (1) it is in the best interest of the child to grant the agency permanent custody, and (2) *one* of the conditions set forth in R.C. 2151.414(B)(1)(a) –(d) exists.

*In re J.E.*, 2d Dist. Clark No. 07-CA-68, 2008-Ohio-1308, ¶ 8-9 (emphasis added).

{¶ 47} R.C. 2151.414 provides in relevant part:

(B)(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

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

(b) The child is abandoned.

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

(d) The child has been in the temporary custody of one or more public services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period \* \* \*.

**{¶ 48}** R.C. 2151.011(C) provides that “a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.”

**{¶ 49}** R.C. 2151.414 further 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 \* \* \*;

(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 of the child.

**{¶ 50}** R.C. 2151.414(E) provides in relevant part:

\* \* \*

(10) The parent has abandoned the child.

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child \* \* \* 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.

\* \* \*

**{¶ 51}** As this Court has previously noted:

Not every statutory condition must be met before a determination regarding best interest may be made. See *In re K.H.*, 2d Dist. Clark No. 2009-CA-80, 2010-Ohio-1609, at ¶ 57; *In re A.M.L.B.*, 9th Dist. Wayne No. 08CA0028, 2008-Ohio-4944, at ¶ 8 (holding that “[t]he trial court did not err by failing to discuss an irrelevant best interest factor”). And no one statutory factor is more important than any other. See *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, at ¶ 56.

*In re R.L.*, 2d Dist. Greene Nos. 2012CA32, 2012CA33, 2012-Ohio-6049, ¶ 18.

**{¶ 52}** As this Court has previously noted:

“Clear and convincing evidence is that level of proof which would

cause the trier of fact to develop a firm belief or conviction as to the facts sought to be proven.” \* \* \* “An appellate court will not reverse a trial court’s determination concerning parental rights and child custody unless the determination is not supported by sufficient evidence to meet the clear and convincing standard of proof.” \* \* \*

(Citations omitted). *In re Rishforth*, 2d Dist. Montgomery No. 20915, 2005-Ohio-5007, ¶ 11.

{¶ 53} As noted above, the Magistrate determined that MCCS established the conditions for permanent custody set forth in R.C. 2151.414(B)(1)(a) and, alternatively, R.C. 2151.414(B)(1)(b). MCCS was only required to establish one condition under R.C. 2151.414(B)(1), N.L. did not object to the Magistrate’s finding that A.L. is abandoned, and the record reflects that Johnson’s testimony regarding N.L.’s abandonment of A.L. is unrefuted. Accordingly, we conclude that we need only address N.L.’s assertion that MCCS failed to prove, by clear and convincing evidence, that permanent custody in favor of the agency is in A.L.’s best interest, pursuant to R.C. 2151.414(D). In other words, analysis of N.L.’s arguments regarding the application of the factors set forth in R.C. 2151.414(E), which pertain to whether A.L. cannot be placed with N.L. within a reasonable time or should not be placed with N.L., pursuant to the condition set forth in R.C. 2151.414(B)(1)(a), is not required, since A.L. is an abandoned child, pursuant to R.C. 2151.414(B)(1)(b).

{¶ 54} S.’s and Johnson’s testimony about A.L.’s interaction and interrelationship with her foster caregivers and family support a finding that a grant of permanent custody to MCCS is in A.L.’s best interest. S. testified that A.L. has resided in her family’s home

for fourteen months since her removal from N.L.'s care, that there is a loving bond between A.L. and the entire (and extended) family, and that she and her husband desire to adopt A.L. A.L.'s lack of a bond with N.L. further supports this conclusion. We agree with the court that A.L. is too young to express any wishes as to custody. As the trial court noted, N.L.'s ongoing failure to meet her case plan objectives characterized A.L.'s custodial history with the foster family. In considering A.L.'s need for a legally secure placement, as the court noted, MCCS obtained a "reasonable efforts by-pass" based upon the termination of N.L.'s parental rights as to her other children. The court correctly noted that pursuant to R.C. 2151.414(D)(1)(e), the factors in R.C. 2151.414(E) (10) and (11), namely that N.L. abandoned A.L. and has had her parental rights terminated with respect to A.L.'s siblings, and has failed to demonstrate that she can provide a legally secure placement and adequate care despite the prior terminations, further support a determination that a grant of permanent custody is in A.L.'s best interest.

**{¶ 55}** Having concluded that A.L. is an abandoned child, and that clear and convincing evidence supports a finding that a grant of custody in favor of MCCS is in A.L.'s best interest, N.L.'s assigned error is overruled, and the judgment of the trial court is affirmed.

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FROELICH, J. and WELBAUM, J., concur.

Copies mailed to:

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