[Cite as *In re J.R.*, 2015-Ohio-643.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY

IN RE:

J.R., **CASE NO. 1-14-22**

ADJUDICATED DEPENDENT CHILD.

O P I N I O N

[DAVID REYNOLDS - APPELLANT].

Appeal from Allen County Common Pleas Court
Juvenile Division
Trial Court No. 2013 JG 30406

Judgment Affirmed

Date of Decision: February 23, 2015

APPEARANCES:

Michael J. Short **for Appellant**

Mariah Cunningham **for Appellee**

PRESTON, J.

{¶1} Father-appellant, David Reynolds ("David"), appeals the April 4, 2014 decision of the Allen County Court of Common Pleas, Juvenile Division granting legal custody of his minor child, J.R., to the child's paternal grandmother, Eva R. ("Eva"). For the reasons that follow, we affirm.

{¶2} On March 7, 2013, the Allen County Children Services Board ("ACCSB") filed a complaint alleging that J.R. was a dependent and neglected child under R.C. 2151.04(C) and 2151.03(A)(3). (Doc. No. 2). The complaint stemmed from numerous scratches and bruising observed on J.R, which were allegedly caused by the family dog after David left J.R. alone with the dog. (*Id.*).

{¶3} That same day, the trial court held a shelter-care hearing, placing J.R. in the temporary custody of Eva. (Doc. No. 5). At the time the complaint was filed, J.R.'s mother, Ashley N., was incarcerated. (Doc. No. 2).[1] On March 11, 2013, the magistrate appointed a guardian ad litem ("GAL"). (Doc. No. 9).

{¶4} The ACCSB filed its case plan on April 5, 2013. (Doc. No. 22).

{¶5} After an adjudicatory hearing on April 22, 2013, the magistrate issued a decision concluding that J.R. was a dependent child, but that the ACCSB failed to prove by clear and convincing evidence that J.R. was a neglected child. (Apr.

[1] The record reflects that, during the course of the proceedings, Ashley N. was released from her incarceration. (*See* Doc. No. 8). However, she did not actively participate in the trial court proceedings, despite being properly served with notice. (*See, e.g.*, Doc. Nos. 37, 40, 41, 47, 57, 64, 71, 72, 79, 88, 89, 101, 102).

26, 2013 JE, Doc. No. 37). The magistrate recommended that J.R. remain in Eva's temporary custody. (*Id.*). The trial court adopted the magistrate's decision as its own on June 18, 2013 and dismissed the neglect allegation. (June 18, 2013 JE, Doc. No. 46).

{¶6} After a dispositional hearing on May 16, 2013, the magistrate issued a decision recommending that J.R. be placed in the ACCSB's temporary custody to allow J.R. to attend a specific school. (May 20, 2013 JE, Doc. No. 41). The magistrate further concluded that David required additional time to complete the goals and objectives of the case plan and ordered him to submit to a forensic psychological evaluation to determine his ability to parent J.R. and his level of cognition. (*Id.*). As a result of the magistrate's order, the ACCSB filed an amended case plan on June 3, 2013, which included a supervised-visitation plan for David and J.R. (Doc. No. 43). The amended case plan provided that J.R. would continue to reside with Eva because, in part, she agreed to transport J.R. to school. (*Id.*). The trial court adopted the magistrate's decision as its own on June 18, 2013. (June 18, 2013 JE, Doc. No. 47).

{¶7} After a shelter-care hearing on July 18, 2013, the trial court granted Eva temporary custody of J.R. because better educational opportunities became available for J.R. where Eva resides. (July 19, 2013 JE, Doc. No. 48). As a result

of the magistrate's order, the ACCSB filed an amended case plan on July 26, 2013. (Doc. No. 52).

{¶8} On August 26, 2013, the ACCSB filed its semiannual administrative review. (Doc. No. 55). In its review, the ACCSB noted that David completed a parenting class and a mental-health assessment and was undergoing the court-ordered psychological evaluation with Frederick Ferri, Ph.D. ("Dr. Ferri"). (*Id.*). The review noted that David was meeting with his assigned caseworker, but that he did not meet with the caseworker that month and that he did not respond to any attempts to contact him regarding his failure to meet with the caseworker that month. (*Id.*). The review observed that David made "some progress" in addressing his parenting abilities for J.R. (*Id.*). Also, the review documented that David's visits with J.R. were relocated to the agency because of David's inappropriate behavior during his visits with J.R. at Eva's house. (*Id.*). In the review's risk reassessment scale, the ACCSB remarked that David displayed "[m]oderate participation in pursuing case plan objectives; occasionally demonstrat[ing] desired behavior." (*Id.*).

{¶9} The GAL filed reports on December 10, 2013 and February 17, 2014 recommending that J.R. be placed in the legal custody of Eva.[2] (Doc. Nos. 78, 95).

{¶10} On January 31, 2014, the State filed a motion requesting a dispositional hearing to terminate the temporary-custody order and grant Eva legal custody of J.R. (Doc. No. 82). That same day, the ACCSB filed an amended case plan. (Doc. No. 83). The amended case plan reflected that David completed his psychological evaluation, which recommended "intense therapy," but also reflected that "the state timelines do not allow enough time for David to complete the intense counseling that is needed." (*Id.*).

{¶11} The ACCSB filed its semiannual administrative review on February 12, 2014, which requested that, because David required intense ongoing counseling, Eva be granted legal custody of J.R. (Doc. No. 93). Moreover, the review observed that David was complying with counseling and expressed a willingness to do whatever it takes to regain the care and custody of J.R., "but continue[d] to bring up the past a lot." (*Id.*).

{¶12} After a hearing on February 19, 2014, the magistrate ordered that legal custody of J.R. be granted to Eva. (Mar. 24, 2014 JE, Doc. No. 101).

[2] The GAL revised her recommendation that Eva be awarded legal custody of J.R. at the February 19, 2014 hearing and recommended that David be provided additional time to address the case-plan objectives. (Feb. 19, 2014 Tr. at 86).

{¶13} On April 4, 2014, David objected to the magistrate's decision, arguing that the decision was not supported by the weight of the evidence, that the ACCSB did not make reasonable efforts to reunite him with J.R. because the ACCSB did not provide him sufficient time to complete counseling and begin medication therapy, and that the magistrate did not give sufficient weight to the GAL's revised recommendation. (Doc. No. 103).

{¶14} On May 21, 2014, the trial court overruled David's objections and adopted the magistrate's March 24, 2014 order as its own. (May 21, 2014 JE, Doc. No. 108).

{¶15} David filed his notice of appeal on June 13, 2014. (Doc. No. 109). He raises two assignments of error for our review. Because David combined his assignments of error in his brief, we will also address them together.

Assignment of Error No. I

The trial court erred in finding that the Allen County Children Services Board made reasonable efforts to prevent the removal of the child from the father's home.

Assignment of Error No. II

The trial court abused its discretion in granting legal custody to the child's grandmother.

{¶16} In his assignments of error, David argues that the trial court abused its discretion in awarding legal custody of J.R. to Eva because it was not in J.R.'s best interest and because the ACCSB did not make reasonable efforts to reunite

him with J.R. since it did not give him "enough time" to comply with the case plan's objectives.

{¶17} "After a child has been adjudicated as dependent, the juvenile court can make an order of disposition as set forth in R.C. 2151.353(A)." *In re M.D.*, 10th Dist. Franklin No. 07AP-954, 2008-Ohio-4259, ¶ 20. "The choice among dispositional alternatives is left to the sound discretion of the juvenile court." *Id.* at ¶ 20. *See also In re L.P.*, 3d Dist. Seneca Nos. 13-12-60 and 13-12-61, 2013-Ohio-2607, ¶ 20. Among the trial court's dispositional options is granting legal custody of the minor child to a person identified in the complaint or in a motion filed prior to the dispositional hearing. *In re M.H.*, 3d Dist. Seneca Nos. 13-13-45 and 13-13-46, 2014-Ohio-1485, ¶ 12, citing R.C. 2151.353(A)(3). Because legal custody is a "statutorily permitted dispositional alternative, we must find that the trial court abused its discretion in order to reverse its determination." *In re A.J.*, 10th Dist. Franklin Nos. 14AP-284, 14AP-285, 14AP-286, and 14AP-287, 2014-Ohio-5046, ¶ 35, citing *In re M.D.* at ¶ 22. "The term 'abuse of discretion' connotes more than an error of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable." *In re N.L.*, 3d Dist. Hancock Nos. 5-12-38 and 5-12-39, 2013-Ohio-3983, ¶ 9, citing *In re T.J.*, 10th Dist. Franklin Nos. 10AP-201 and 10AP-202, 2010-Ohio-4191, ¶ 14, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶18} Because David challenges only the trial court's best-interest and reasonable-efforts-toward-reunification determinations, we address only those two issues in this opinion. We will first address the best-interest requirement. Whether the trial court is issuing its first disposition or modifying its disposition, the best interest of the child is the primary consideration. *In re M.H.* at ¶ 12, citing *In re C.W.*, 3d Dist. Wyandot No. 1-09-26, 2010-Ohio-2157, ¶ 11 and R.C. 2151.42(A). As we previously stated, we must find that the trial court abused its discretion in order to reverse its determination. *In re A.J.* at ¶ 35, citing *In re M.D.* at ¶ 22. "If there is not competent, credible evidence to support a juvenile court's decision regarding a child's best interest, then it is unreasonable and may be reversed." *Id.* *See also In re A.M.A.*, 3d Dist. Crawford No. 3-13-02, 2013-Ohio-3779, ¶ 28.

{¶19} The trial court made the necessary best-interest finding under R.C. 2151.42(A). The trial court heard testimony from three witnesses—Eva, Jan Waltmire ("Waltmire"), ACCSB Ongoing Family Stability Caseworker, and Shelly Conrad ("Conrad"), ACCSB Family Stability Unit Supervisor—that it is in J.R.'s best interest for Eva to be granted legal custody of J.R.. (Feb. 19, 2014 Tr. at 14, 34, 46). J.R. is a special-needs child, having been diagnosed with Rett Syndrome, which rendered her non-verbal and immobile. (Doc. No. 22).

{¶20} Relating to J.R.'s specialized needs, Eva testified that, because J.R. cannot do anything for herself, she feeds her, dispenses her medication, dresses her, bathes her, works with her on the exercises that she is learning in therapy, and takes her to school because she does not think it is safe for J.R. to ride the school bus. (Feb. 19, 2014 Tr. at 7-8). Eva described the medical, physical, and developmental improvements she observed about J.R. since she was granted temporary custody of her. Specifically, Eva explained that J.R. receives physical and speech therapy, which has trained her to "say two or three words," wave, and sit up; that she sees a dietician; and that she had surgery on her feet to allow her to stand. (*Id.* at 4-5, 8-9). She testified that J.R. has significant dental-health issues because of the sugary diet that David provided her, which will require the removal of her teeth. (*Id.* at 6, 21). Eva also testified that J.R. did not experience any seizures since she was in her care. (*Id.* at 12, 18).

{¶21} Eva related her concerns about David's ability to care for J.R. by stating that David would not administer J.R.'s medication to her because he thought she was dying, take her leg braces off, and speak inappropriately to her. (*Id.* at 11-13). According to Eva, she knew that David was not giving J.R. her medication because of an instance where J.R. was hospitalized and the hospital confirmed that J.R. did not have any medication in her system and because "the drug store said [J.R.'s prescriptions] sat there for two months and nobody picked it

up." (*Id.* at 17-18). However, Eva testified that she wants David to regain custody of J.R. if he is able to overcome his obstacles and properly care for J.R. (*Id.* at 16-17).

{¶22} The trial court also relied on the testimony of Waltmire who described J.R.'s progress that she observed while J.R. was in Eva's care. (*Id.* at 26-27, 29). Waltmire testified that she has been involved in J.R.'s case for approximately one year and expressed J.R.'s improvements that she noted, including that she can now make eye contact and recognize Waltmire, wave, sit up, roll over, and move to music. (*Id.* at 27-28).

{¶23} In addition to relating J.R.'s progress, Waltmire discussed David's progress with the case plan that she developed. Waltmire stated that David completed parenting classes and a psychological evaluation. (*Id.* at 30-31). However, she described that David did not show any improvement toward the case plan's goals because he continued to "not focus[] on the positives with [J.R.] during his parenting time" or "understand that his mother is not the enemy in this situation," and she indicated that David is not taking medication as recommended by Dr. Ferri. (*Id.* at 31-33). Likewise, Waltmire testified that she spoke with David's counselor who conveyed to her that she would not opine whether David was making any progress in counseling, but stated that David "remind[s] her every visit that he's attending, because he has to be there." (*Id.* at 32).

{¶24} Waltmire's supervisor, Conrad, who became involved in the case because David requested a new caseworker, also observed that David did not make any progress with the case plan, and even regressed in some areas. (*Id.* at 41-42, 47) Conrad indicated that she reviewed Dr. Ferri's report regarding David's risk factors and discerned that David exhibited those risk factors and that he did not show any improvement toward overcoming those risk factors. (*Id.* at 42-43). Specifically, she testified that David exhibited concerning behavior during his supervised visits with J.R., including talking with J.R. about inappropriate matters, taking her braces off, and delaying changing her diaper. (*Id.* at 43-44). She indicated that she did not see any improvement in David's behavior though he was corrected during each supervised visit. (*Id.*). Likewise, she testified that David told her that he would not take any medications as recommended by Dr. Ferri because he did not believe in taking medication and that he refused to accept the agency's referrals to support groups for parents with children with Rett Syndrome. (*Id.* at 44, 56-57). Lastly, Conrad averred that she did not think granting legal custody to Eva was premature because the ACCSB "worked with the family for a year, and we've not seen the progress" and because "[i]t's going to take a long time to break down some of those barriers that David has." (*Id.* at 47). According to Conrad, although David showed some progress by starting

counseling, she did not "think another six months or a year is going to be any different." (*Id.* at 51).

{¶25} The trial court also heard David's testimony. David repeatedly testified that he loved J.R. and would "do whatever it takes to get [her] back home." (*See, e.g.*, *id.* at 60-61, 63, 65-66). David testified to his strained relationship with Eva and his brother; however, he expressed a willingness to "work with" Eva if that meant that he could regain custody of J.R. (*Id.* at 62-63, 65-67, 69). David testified that he always provided J.R. her medication and agreed to leave J.R.'s braces on her legs. (*Id.* at 62). David denied that he told J.R. during his supervised visits with her that Eva was "crazy," that the ACCSB would not care if J.R. died, that "these monsters" will pay if he did not get J.R. back, and that he did not need to take medication. (*Id.* at 68-71). David further conveyed that he had a hard time understanding the ACCSB's requirements and that the ACCSB did not indicate to him that he needed to take any medication. (*Id.* at 60-61, 63). David indicated that, at the time of the hearing, he recently began counseling and attended two sessions, and that his counselor did not indicate to him that he needed to take medication. (*Id.* at 77, 80-81).

{¶26} The GAL filed reports on December 10, 2013 and February 17, 2014 recommending that Eva be granted legal custody of J.R. (Doc. Nos. 78, 95). However, at the dispositional hearing, the GAL revised her recommendation and

articulated, "I'm sure that David is very hard to work with, but I do believe that he should be given a little bit more time, especially since there was [sic] only two counseling sessions." (Feb. 19, 2014 Tr. at 86).

{¶27} There is competent, credible evidence that it is in J.R.'s best interest that Eva be awarded legal custody of J.R. Evidence in the record illustrates that J.R. physically, medically, and developmentally thrived in Eva's care. In construing the purpose of the statute, "we are mindful of the fact that 'Chapter 2151 of the Revised Code is to be liberally interpreted and construed so as to effectuate * * * the care, protection, and mental and physical development of children." *In re R.A.*, 172 Ohio App.3d 53, 2007-Ohio-2997, ¶ 15 (3d Dist.), citing R.C. 2151.01(A). Eva ensures J.R. receives the proper nutrition and medication, ensures that she attends school, and works with her on her cognitive abilities and motor skills. In addition, Eva saw to it that J.R. received surgery on her feet to allow her to stand and testified that J.R. would be receiving dental care to remove her rotten teeth.

{¶28} Although the GAL revoked her prior recommendation that Eva be granted legal custody of J.R., Waltmire and Conrad testified that they believed it was in J.R.'s best interest to be in the legal custody of Eva. Indeed, Waltmire testified regarding the progress that she witnessed J.R. make in Eva's care, and

Waltmire and Conrad testified regarding David's lack of progress in overcoming his identified obstacles to being able to properly care for J.R.

{¶29} Moreover, the GAL indicated that she did not think that Eva should be granted legal custody because she thought David "should be given a little bit more time." Permitting David "a little bit more time" is not the standard by which a trial court bases its best-interest determination in granting legal custody to a non-parent. *See In re A.M.A.*, 2013-Ohio-3779, at ¶ 26, citing *In re N.F.*, 10th Dist. Franklin No. 08AP-1038, 2009-Ohio-2986, ¶ 9. Rather, there is competent, credible evidence supporting the trial court's decision that awarding legal custody of J.R. to Eva is in J.R.'s best interest.

{¶30} Second, the trial court made the requisite reasonable-efforts-toward-reunification finding under R.C. 2151.419. When the trial court is issuing its first disposition or modifying its disposition under R.C. 2151.353(A), it must also comply with R.C. 2151.419. *See* R.C. 2151.353(I). R.C. 2151.419 "imposes a duty on the part of children services agencies to make reasonable efforts to reunite parents with their children where the agency has removed the children from the home." *In re A.M.A.* at ¶ 29, citing R.C. 2151.419 and *In re Brown*, 98 Ohio App.3d 337, 344 (3d Dist.1994). The agency bears the burden of showing that it made reasonable efforts. *Id.*, citing R.C. 2151.419(A)(1).

{¶31} "'Reasonable efforts means that a children's services agency must act diligently and provide services appropriate to the family's need to prevent the child's removal or as a predicate to reunification.'" *In re H.M.K.*, 3d Dist. Wyandot Nos. 16-12-15 and 16-12-16, 2013-Ohio-4317, ¶ 95, quoting *In re D.A.*, 6th Dist. Lucas No. L-11-1197, 2012-Ohio-1104, ¶ 30. "'Reasonable efforts' does not mean all available efforts. Otherwise, there would always be an argument that one more additional service, no matter how remote, may have made reunification possible." *Id.*, quoting *In re M.A.P.*, 12th Dist. Butler Nos. CA2012-08-164 and CA2012-08-165, 2013-Ohio-655, ¶ 47, citing *In re K.L.*, 12th Dist. Clermont No. CA2012-08-062, 2013-Ohio-12, ¶ 18. "'Nevertheless, the issue is not whether there was anything more that [the agency] could have done, but whether the [agency's] case planning and efforts were reasonable and diligent under the circumstances of this case.'" *In re A.M.A.* at ¶ 29, quoting *In re Leveck*, 3d Dist. Hancock Nos. 5-02-52, 5-02-53, and 5-02-54, 2003-Ohio-1269, ¶ 10. "We also note that the statute provides that in determining whether reasonable efforts were made, the child's health and safety is paramount." *Id.*, citing R.C. 2151.419(A)(1).

{¶32} David argues that the trial court erred in granting legal custody of J.R. to Eva because the record reflects that the ACCSB did not fulfil its duties under the case plan since David attended only two counseling sessions, was not

referred for a psychiatric evaluation despite Dr. Ferri's recommendation, and was not referred for medication. In particular, David contends that he should have been provided additional time to obtain the counseling services recommended by the case plan prior to the trial court amending its dispositional order. In support of his argument, David relies on *In re Evans* and *In re Brown*.

{¶33} David's reliance on *In re Evans* and *In re Brown* is erroneous because those cases involved permanent-custody determinations. 3d Dist. Allen No. 1-01-75, 2001 WL 1333979 (Oct. 30, 2001); 98 Ohio App.3d 337. Unlike the permanent-custody determinations in *In re Evans* and *In re Brown*, David is not foreclosed from petitioning the court for a modification of the custody order due to the impermanent nature of a legal-custody disposition. *In re A.M.A.* at ¶ 31. If David chooses to take the appropriate steps to demonstrate that he is capable of providing for J.R.'s basic needs, he will increase the chances his petition is successful. *Id.* Accordingly, *In re Evans* and *In re Brown* are inapplicable to this case.

{¶34} Next, David's argument that the ACCSB did not make reasonable efforts to reunite him with J.R. is meritless because reasonable efforts does not mean all available efforts. Rather, the statute requires a trial court to consider the child's health and safety when considering whether reasonable efforts were made.

Indeed, as we determined in our best-interest analysis, J.R. has physically, medically, and developmentally thrived in Eva's care.

{¶35} In addition, when considering whether reasonable efforts were made, trial courts consider whether a children's services agency's efforts were reasonable and diligent under the circumstances of the case. *In re A.M.A.* at ¶ 29. *See also In re H.M.K.*, 2013-Ohio-4317, ¶ 95. "R.C. 2151.412 requires the agency to develop case plans with the general goal of reunification." *In re H.M.K.* at ¶ 95. "[C]ase plans establish individualized concerns and goals, along with steps that the parties can take to achieve reunification." *In re Jo.S.*, 3d Dist. Hancock Nos. 5-11-16 and 5-11-17, 2011-Ohio-6017, ¶ 29, citing *In re Evans* at *3, citing R.C. 2151.412.

{¶36} After the trial court removed J.R. from David's care, the ACCSB prepared a case plan with the goal of reunification. (Feb. 19, 2014 Tr. at 29). David signed the case plan on April 3, 2013 along with Waltmire, Conrad, and the GAL. (Doc. No. 22). Notably, the case plan documented two concerns with expected changes—that is, David's comprehension of J.R.'s special needs and his ability to care for her. (*Id.*). To address those concerns, the case plan mapped out the necessary steps that David and the ACCSB would jointly take. For instance, the ACCSB was to "provide general counseling, case management and referrals for service" while maintaining frequent contact with all parties to the case. (*Id.*). In addition, David was to complete a mental-health screening and follow all

recommendations from that assessment; attend and successfully complete a parenting-education course; follow-up with medical professionals regarding any long-term injuries he may have sustained from a motorcycle accident; and meet with the caseworker at least one time each month. (*Id.*). David's progress was to be measured through home visits, telephone contacts with the family and service providers, and collateral reports from service providers. (*Id.*). Specifically, David's progress regarding his understanding of J.R.'s condition was to be measured through the caseworker's conversations with David and her observation of David's interaction with J.R. (*Id.*). David's progress regarding his ability to care for J.R. was to be measured through the results of his mental-health screening, progress from his participation in parenting classes, and his compliance in following through with the recommendations of his medical providers. (*Id.*). Reunification efforts were to be measured by David's ability to meet the basic needs of J.R. (*Id.*).

{¶37} The case plan was amended three times and the ACCSB conducted two semiannual administrative reviews of the case plan. (Doc. Nos. 43, 52, 55, 83, 93). After the third amendment and second semiannual administrative review of the case plan, the ACCSB recommended that Eva be granted legal custody of J.R. even though David showed "some progress" in addressing the two areas of concern. (*See* Doc. Nos. 83, 93). The ACCSB documented, in part:

> David is complying with counseling but continues to bring up the past a lot. He has issues moving past it. He still does not understand [J.R.'s] diagnosis and the "life expectancy". David will need continued on-going counseling and due to this the agency is asking for [J.R.] to go to the legal custody of [Eva].

(Doc. No. 93).

{¶38} The record reflects that the ACCSB made reasonable efforts to reunite J.R. with David because it acted diligently and provided services to reunification—namely, it provided David with case management and one-on-one, specialized-parenting classes tailored toward J.R.'s special needs and referred David for counseling services. (Feb. 19, 2014 Tr. at 30). In addition, the ACCSB substituted David's initial caseworker, Waltmire, with Conrad when David requested that he be assigned a new caseworker. (*Id.* at 42). When David's visitation with J.R. became strained at Eva's residence, the ACCSB also agreed to supervise David's visits with J.R. at its facility. (*Id.* at 11-12, 43). While it was recommended that David take medication, the ACCSB did not provide David with a referral to a psychiatrist to obtain such medication because David indicated that he would not take medication. (*See id.* at 31-33, 44).

{¶39} Although not part of the ACCSB's reasonable-efforts-toward-reunification analysis, David's progress toward meeting the case plan's objectives

is relevant to our discussion. As we discussed above, Waltmire and Conrad relayed their observations at the dispositional hearing concerning David's progress toward meeting the case plan's objectives. Specifically, Waltmire and Conrad observed that David continued to demonstrate an inability to care for J.R. or understand J.R.'s diagnosis because he continued to "bring up the past," speak inappropriately to J.R., remove her braces, and delay in changing her diaper, even though he was provided with correction at each supervised visit. David also refused to work or communicate with Eva, take his recommended medication, or accept the ACCSB's referral to a support group for parents of children with Rett Syndrome. Further, while Waltmire relayed that David's counselor would not state whether he made any progress through counseling, David's counselor shared with Waltmire that David continually reminded her that he was only attending counseling because he was required to attend.

{¶40} Though David testified that he would do "whatever it took" to regain custody of J.R., including working with Eva, taking his medication, attending counseling, and leaving J.R.'s braces on, the trial court had the opportunity to observe the witnesses and weigh their credibility. *In re N.L.*, 2013-Ohio-3983, at ¶ 18, citing *In re K.R.*, 2d Dist. Clark No. 2011 CA 39, 2011-Ohio-5694, ¶ 14. "[D]eferring to the trial court on matters of credibility is 'even more crucial in a child custody case, where there may be much evidence in the parties' demeanor

and attitude that does *not* translate to the record well.'" (Emphasis sic.) *In re Tolbert v. McDonald*, 3d Dist. Allen No. 1-05-47, 2006-Ohio-2377, ¶ 23, quoting *Davis v. Flickinger*, 77 Ohio St.3d 415, 419 (1997). Likewise, that David attended only two counseling sessions is inconsequential. Rather, the record reflects that David requires intense counseling to overcome his obstacles in properly caring for J.R. and, according to Waltmire and Conrad, he did not make progress addressing the case plan's objectives, even regressing in some areas. Indeed, Conrad testified that she did not think granting legal custody of J.R. to Eva was premature since he attended only two counseling sessions because "[i]t's going to take a long time to break down some of those barriers David has" and that she did not think there would be any significant progress in "another six months or a year." (Feb. 19, 2014 Tr. at 47, 51).

{¶41} Accordingly, we conclude that the ACCSB's case-planning efforts were reasonable and diligent under the circumstances of this case. Thus, the trial court did not err in determining that the ACCSB made reasonable efforts toward reunification.

{¶42} Therefore, the trial court did not abuse its discretion in awarding legal custody of J.R. to Eva.

{¶43} David's assignments of error are overruled.

{¶44} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed

ROGERS, P.J. and WILLAMOWSKI, J., concur.

/jlr