

[Cite as *In re B.H.*, 2010-Ohio-1371.]

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
ATHENS COUNTY

IN THE MATTER OF: :  
: CASE NO. 09CA47  
B.H., Jr., L.H. :  
and K.H. :  
Adjudicated Dependent : DECISION AND JUDGMENT ENTRY  
Children.

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APPEARANCES:

COUNSEL FOR APPELLANT: Sierra L. Meek, 55 West Washington Street,  
Nelsonville, Ohio 45764  
COUNSEL FOR APPELLEE: C. David Warren, Athens County Prosecuting  
Attorney, and George J. Reitmeier, Athens County  
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45701

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CIVIL APPEAL FROM COMMON PLEAS COURT  
DATE JOURNALIZED: 3-22-10

ABELE, J.

{¶ 1} This is an appeal from an Athens County Common Pleas Court, Juvenile Division, judgment that awarded Athens County Children Services (ACCS) permanent custody of B.H., Jr. (born August 23, 1999), L.H. (born January 12, 2001), and K.H. (born December 20, 2002).

{¶ 2} Appellant Danielle Hunter, the children's natural mother, raises the following assignment of error for review:

“THE TRIAL COURT’S DECISION TO GRANT PERMANENT CUSTODY OF B.H., JR., L.H., AND K.H. TO THE ATHENS COUNTY CHILDREN SERVICES AGENCY WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND WAS NOT IN THE BEST INTERESTS OF THE CHILDREN.”

{¶ 3} On October 11, 2007, ACCS filed complaints that alleged the aforementioned children to be neglected and dependent. ACCS also requested emergency custody and the trial court granted this request.

{¶ 4} At the November 6, 2007 hearing, appellant admitted to the dependency allegations and agreed to place the children in ACCS’s temporary custody. ACCS also agreed to dismiss the neglect allegation. Additionally, ACCS caseworker Kira Schumm explained that ACCS became involved when the children’s father contacted ACCS and stated that he could not handle the children. He signed a voluntary agreement for custody and advised ACCS that appellant would be able to assume custody of the children within thirty days. When the thirty days expired, however, appellant was not ready to take the children. Schumm contacted the father on multiple occasions, but he did not respond. She stated that the father is aware of the current proceedings, but has chosen not to participate.

{¶ 5} On November 15, 2007, the trial court adjudicated the children dependent and granted ACCS temporary custody. On December 3, 2008, ACCS filed a motion to modify the disposition to permanent custody.

{¶ 6} On January 7, 2009, the guardian ad litem filed her report. She stated that the children are doing well in foster care, appear happy when visiting appellant “and

normally greet her with numerous hugs and kisses. During visits Court Appointed Special Advocates has observed [appellant] engage the children in outdoor activities as well as bring such things as homemade baked goods or other items of affection to the visits for the children.” The guardian ad litem stated that B.H. and L.H. expressed a desire to live with appellant:

“CASA feels that the children will be extremely disappointed if they are unable to return to [appellant’s] care and that it would definitely be in their best interest to continue with counseling treatment to address the emotional concerns that are likely in the event that reunification does not occur.”

{¶ 7} The guardian ad litem stated that appellant “has not made adequate progress regarding her case plan objectives,” she has not obtained employment, and she “does not have adequate resources to provide for her children.” The guardian ad litem explained that appellant is homeless and lives with her mother, but appellant has advised CASA that she has a home where she and the children would reside if returned to her. She has not, however, been able to verify her statement. The guardian ad litem stated that appellant did not comply with the case plan requirement to complete assessments and counseling, and that she is not currently receiving treatment for her drug addiction or mental health issues. The guardian ad litem stated that appellant showed some improvement by maintaining contact with ACCS and in making scheduled visits, but asserted that transportation remains an issue for appellant. The guardian ad litem recognized that a strong bond exists between appellant and the children, but she believes that “it is in the best interest of the children to be in a safe, permanent home.” The guardian ad litem stated that appellant “remains unable to provide for the basic needs of the children and is not in compliance with case plan

objectives.” Thus, the guardian ad litem recommended that the court grant permanent custody to ACCS.

{¶ 8} On March 11, 2009, the trial court held a hearing to consider ACCS’s permanent custody motion. At the start of the hearing, the court noted that the father was not present, has not participated throughout the proceedings, and has not sought counsel. The court further noted that appellant did not appear.

{¶ 9} Anne Wilson, an employee at Good Works Timothy House, a homeless shelter, testified that appellant’s most recent stay at the shelter began in October 2007 and continued on an intermittent basis until June 2008.

{¶ 10} Tri-County Mental Health and Counseling Services (TCMH) licensed professional counselor Carla Colbert testified that the three children were referred to her for counseling. She explained that all three children have been diagnosed with “adjustment disorder with mixed disturbance of emotion and conduct,” which means “there is something wrong in the child[ren]’s environment to which they are reacting to and the way they react is through extreme emotions and extreme displays of inappropriate conduct.” Colbert stated that it is not unusual for a foster care child to have this adjustment disorder, but she does not know whether the children had this disorder before her initial evaluation. She also stated that one of the children was diagnosed with ADHD. She believes that L.H. and K.H. have made progress and appear to be adjusting to home life in their foster home, but stated that B.H. appears “to be having more difficulty in his foster care and with just his ongoing living situation.”

{¶ 11} ACCS caseworker Schumm testified that she became involved in the

children's case in September 2007. She stated that the children currently reside in a foster home and that the children have been with the same family since September 11, 2007. Schumm explained that she sent letters to the father and left notes at his last known address, but he has not contacted her and has not visited the children.

Schumm stated that neither the father nor appellant appeared at the January 14, 2008, or April 7, 2008 review hearings.

{¶ 12} Schumm explained that ACCS's concern resulted from appellant's homelessness, drug addiction, and history of addiction. Schumm testified that ACCS's case plan, which she discussed with appellant, required appellant to: (1) obtain stable housing; (2) find a job; (3) have an assessment with TCMH; and (4) attend all visits with children. Schumm explained that appellant did not comply with the case plan:

"[Appellant] was not able to secure and maintain stable housing. She did not visit her children consistently and in fact she went for about six months and did not visit the children at all and she had left the Timothy House and did not keep me informed as to where she was. When I finally located her in Perry County in February of '08 she said that she had not been visiting the kids because she had been going through withdraw[al] and she didn't want the kids to see her going through withdraw[al]. She had told me that she was working with Rural Women's to get into Rural Women's so that she could overcome her addiction. I contacted Rural Women's and she had not done any of the things that she said she had done. She never went to Tri-County Mental Health for an assessment."

{¶ 13} Schumm stated that ACCS: (1) provided appellant with referrals to TCMH, Health Recovery Services, the Timothy House, and Rural Women's Recovery Program; (2) gave her an unlimited three-month bus pass, gas cards, and cab rides; (3) provided appellant with a clothing voucher for New to You; and (4) provided case management services. She testified that appellant did not demonstrate a willingness to provide a

stable home for the children: “She went from place to place \* \* \*.” She believes that awarding ACCS permanent custody would be in the children’s best interests.

{¶ 14} ACCS caseworker June Safranek testified that she became involved in the children’s case in August 2008. She believes that the children are doing well in foster care and testified that they get along well with the other children in the home, i.e., “like brothers and sisters.” Safranek stated that appellant has not had stable housing at any point throughout the proceedings. However, on cross-examination she explained that between September 2008 and January 2009, appellant lived in a house with her mother. Safranek visited this home and found it to be adequate for the children. Safranek further testified that appellant and her mother were unable to pay the rent and in late December 2009, were \$1,100 behind in rent payments. She explained that appellant requested ACCS’s assistance in paying the rent, but because appellant was not listed on the lease, ACCS denied her request. Safranek additionally explained that even if ACCS helped with rent, appellant did not have any means to be able to pay the rent. She stated: “[W]hen we assist people they need a way of showing that the next month they are going to be able to pay it, and she was not able to show that.” Safranek stated that she checked with the Ohio Department of Jobs and Family Services to inquire whether appellant qualified for other means of assistance, but was told that there was no assistance. Safranek stated that as of the time of hearing, appellant was living at My Sister’s Place, a battered women’s shelter.

{¶ 15} Safranek stated that appellant does not have any source of income, has not obtained employment, did not go to TCMH, and has not been consistent with her visitations. Safranek testified that appellant attended forty-nine scheduled visitations

and missed eighty-seven. She stated that ACCS eventually required appellant to call one hour before the scheduled visitation time “[b]ecause she ha[d] missed so many visits with out [sic] calling ahead and letting anyone know. The children have gotten there and have waited for her and then it just causes them a lot of anxiety. They are upset when she doesn’t come \* \* \*.” Safranek testified that she observed some of appellant’s visitations and believed that the children were bonded to her and that she acted appropriately during the visits.

{¶ 16} Safranek testified that appellant has “not done anything to provide for the basic needs [so] that we could even consider getting them back to her and she was not taking care of them when they came into care.” Safranek thus stated that she believes granting ACCS permanent custody is in the children’s best interests. She explained that over the course of one year, appellant failed to demonstrate “that she is progressing in any way to be able to take over the care and the needs of those children.”

{¶ 17} Tiffany Hill-Smith, the children’s guardian ad litem testified that the children have a “very good relationship” with the foster parents and that they also have a “very good relationship” with appellant. She believes the children share a “strong bond” with appellant and that they would like to return to appellant’s care. The guardian ad litem explained, however, that she believes the court should award permanent custody to ACCS:

“the kids need a sense of permanency. That there [sic] mom has been sporadic at best in visitation with them and just maintaining the case plan and doing the requirements to get them back and I feel the kids definitely do want to be with mom but I don’t think it’s in their best interests given the experience that I’ve had with mom and her relationship with the

agency and the case plan objectives.”

{¶ 18} ACCS family support worker Kimberly Smith stated that between August 14, 2008 through early March 2009, appellant attended twenty-four of thirty-six scheduled visitations. Smith testified that appellant’s reasons for failing to attend the twelve visitations varied. Smith explained that on some of those missed visits, appellant simply failed to show; for others, appellant canceled due to inclement weather or because her youngest child (who was not in ACCS’s custody) was ill. She testified that of the twenty-four sessions that appellant did attend, appellant ended two early because (1) on one occasion, appellant stated that she was not feeling well; and (2) on the other occasion, appellant stated that she had an appointment. Smith explained that appellant visited the children most frequently when appellant’s mother transported her.

{¶ 19} On March 13, 2009, the trial court appointed counsel for the children. On July 17, 2009, the children’s attorney filed a report that requested the trial court to deny ACCS’s motion for permanent custody. He asserted that “foster placement has not provided stability as there have been several placements. LH and KH remain together but BH is in a separate foster placement.” He stated that he met with the children and did not find it necessary to present any further evidence.

{¶ 20} On August 18, 2009, the trial court found that ACCS made reasonable efforts.

{¶ 21} On November 6, 2009, the trial court granted ACCS permanent custody of the three children. The court noted that appellant did not attend the hearing and that

the father has not participated in the case or otherwise been involved in reunification efforts. The court further observed that the guardian ad litem's recommendation conflicted with at least two of the children's wishes. In determining that awarding ACCS permanent custody would serve the children's best interests, the court considered all of the relevant R.C. 2151.414 factors.

{¶ 22} In considering the children's interaction and interrelationships, the court stated:

"These children are now 10, 8, and 6 years old. They came into emergency agency care in October of 2007 and have been there continuously since that time. Since removal, the siblings have been able to live in the same foster home. Father had no contact after this case began. Mother's visits were sporadic, including a period of six months where she failed to exercise even one visit. All three of these children already have mental health diagnoses, and it is difficult to evaluate the level of functioning and the depth of any relationships. They are all receiving counseling."

{¶ 23} In evaluating the children's wishes, the court explained: "During this lengthy proceeding the older two children have periodically expressed a desire to live with their mother. This expressed desire has proven unrealistic even if it may have been sincere. Mother has never maintained a home for the children to live in."

{¶ 24} The court next considered the children's custodial history and found:

"The first two children were born before [the parents] married. The youngest was born during the marriage which lasted from 2001 to 2004. These children were placed in the emergency temporary custody of ACCS in October 2007. Adjudication and disposition occurred on November 6, 2007. This motion was filed on December 3, 2008. The children have been in the continuous temporary custody of ACCS throughout, and as of the day of this hearing they were still living together in the same foster home."

{¶ 25} The court additionally reviewed the children's need for a legally secure

placement and whether that type of placement can be achieved without a grant of permanent custody to the agency. The court found:

“These children need and deserve a legally secure placement that can only be achieved through a grant of permanent custody to ACCS. Father will have nothing to do with them and mother has repeatedly failed to remedy the conditions that make this action necessary. Homelessness, unemployment, drug abuse, mental illness and over all [sic] instability are contributing to mother’s pli[ght]. Her credibility is suspect and she has worn out welcomes with various social service and related organizations.

These children will be challenging even for parents with none of the issues recited above. Their only hope for stability will be in carefully chosen placements with the potential for adoption.”

{¶ 26} The court further found that the children had been in ACCS’s temporary custody for twelve or more months of a consecutive twenty-two month period. The court noted that it had already determined ACCS made reasonable efforts at reunification and did not enter a new reasonable efforts finding. This appeal followed.

I.

{¶ 27} In her sole assignment of error, appellant asserts, in essence, that the trial court’s decision to award ACCS permanent custody is against the manifest weight of the evidence. In particular, she argues that clear and convincing evidence does not support the trial court’s determination that awarding ACCS permanent custody of the children is in their best interests. Appellant further contends that the trial court based its decision on “factual inaccuracies and evidence not in the record.”

A

STANDARD OF REVIEW

{¶ 28} Generally, an appellate court will not reverse a trial court’s permanent custody decision if some competent and credible evidence supports the judgment. In

re Perry, Vinton App. Nos. 06CA648 and 06CA649, 2006-Ohio-6128, at ¶40, citing State v. Schiebel (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54. Thus, our review of a trial court's permanent custody decision is deferential. See In re Hilyard, Vinton App. Nos. 05CA600, 05CA601, 05CA602, 05CA603, 05CA604, 05CA606, 05CA607, 05CA608, 05CA609, at ¶17. Moreover, "an appellate court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the findings of fact and conclusion of law." Schiebel, 55 Ohio St.3d at 74, 564 N.E.2d 54. Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in Seasons Coal Co. v. Cleveland (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273: "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." Moreover, deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." Davis v. Flickinger (1997), 77 Ohio St.3d 415, 419, 674 N.E.2d 1159; see, also, In re Christian, Athens App. No. 04CA10, 2004-Ohio-3146.

## B

### STANDARD FOR GRANTING PERMANENT CUSTODY

{¶ 29} A trial court may not grant a request for permanent custody absent clear

and convincing evidence to support the judgment. The Ohio Supreme Court has defined “clear and convincing evidence” as:

“The measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.”

In re Estate of Haynes (1986), 25 Ohio St.3d 101, 103-04, 495 N.E.2d 23; see, also, Schiebel, 55 Ohio St.3d at 74, 564 N.E.2d 54. In reviewing whether a trial court based its decision upon clear and convincing evidence, “a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof.” Schiebel, 55 Ohio St.3d at 74, 564 N.E.2d 54.

## C

### PERMANENT CUSTODY PRINCIPLES

{¶ 30} A parent has a “fundamental liberty interest” in the care, custody, and management of his or her child and an “essential” and “basic civil right” to raise his or her children. Santosky v. Kramer (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599; In re Murray (1990), 52 Ohio St.3d 155, 156, 556 N.E.2d 1169; see also, In re D.A., 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829. A parent’s rights, however, are not absolute. See D.A., at ¶11. Rather, “it is plain that the natural rights of a parent \* \* \* are always subject to the ultimate welfare of the child, which is the pole star or controlling principle to be observed.” In re Cunningham (1979), 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (quoting In re R.J.C. (Fla.App.1974), 300 So.2d 54, 58). Thus, the state may terminate parental rights when a child's best interest demands such termination. D.A., at ¶11.

{¶ 31} Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. See R.C. 2151.414(A)(1). Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying principles of R.C. Chapter 2151:

(A) To provide for the care, protection, and mental and physical development of children \* \* \*;  
\* \* \*

(B) To achieve the foregoing purpose[ ], whenever possible, in a family environment, separating the child from its parents only when necessary for his welfare or in the interests of public safety.

## D

### PERMANENT CUSTODY FRAMEWORK

{¶ 32} R.C. 2151.414(B)(1) permits a trial court to grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and that:

(a) The child is not abandoned or orphaned or 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 ending on or after March 18, 1999, 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 children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶ 33} Thus, before a trial court may award a children services agency permanent custody, it must find: (1) that one of the circumstances described in R.C. 2151.414(B)(1) applies; and (2) that awarding the children services agency permanent custody would further the child's best interests.

{¶ 34} Pursuant to the plain language of R.C. 2151.414(B)(1)(d), when a child has been in a children services agency's temporary custody for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999, a trial court need not find that the child cannot or should not be placed with either parent within a reasonable time. See, e.g., In re T.F., Pickaway App. No. 07CA34, 2008-Ohio-1238, at ¶23; In re Williams, Franklin App. No. 02AP-924, 2002-Ohio-7205; In re Dyal (Aug. 9, 2001), Hocking App. No. 01 CA11. Consequently, when considering a R.C. 2151.414(B)(1)(d) permanent custody motion, the only other consideration becomes the child's best interests. A trial court need not conduct an R.C. 2151.414(B)(1)(a) analysis of whether the child cannot or should not be placed with either parent within a reasonable time. Dyal; see, also, In re Berkley, Pickaway App. Nos. 04CA12, 04CA13, and 04CA14, 2004-Ohio-4797, at ¶61.

{¶ 35} In interpreting R.C. 2151.414(B)(1), the Ohio Supreme Court held that the child must have been in the custody of the agency for at least twelve of the previous twenty-two months before the agency files a permanent custody motion in order for the trial court to grant permanent custody based on R.C. 2151.414(B)(1)(d) grounds. In re C.W., 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, at ¶26. "In other words,

the time that passes between the filing of a motion for permanent custody and the permanent-custody hearing does not count toward the 12-month period set forth in R.C. 2151.414(B)(1)(d).” Id.

{¶ 36} In the case at bar, appellant does not dispute the trial court’s finding that R.C. 2151.414(B)(1)(d) applies. We, therefore, do not review this finding. Instead, we focus on whether competent and credible evidence supports the trial court’s finding that awarding ACCS permanent custody will serve the children’s best interests.

E

BEST INTERESTS

{¶ 37} R.C. 2151.414(D) requires a trial court to consider specific factors to determine whether a child’s best interests will be served by granting a children services agency permanent custody. The factors include: (1) the interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) 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; (3) the custodial history of the child; (4) 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; and (5) whether any factors listed under R.C. 2151.414(E)(7) to (11) apply.<sup>1</sup>

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<sup>1</sup> R.C. 2151.414(E)(7) to (11) provide as follows:

(7) The parent has been convicted of or pleaded guilty to one of the following:

(a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other

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state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;

(b) An offense under section 2903.11, 2903.12, or 2903.13 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 an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(c) An offense under division (B)(2) of section 2919.22 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 the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;

(d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(e) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a) or (d) of this section.

(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 [2151.41.2] of the Revised Code.

(10) The parent has abandoned the child.

(11) The parent has had parental rights involuntarily terminated pursuant to this section or section 2151.353 [2151.35.3] or 2151.415 [2151.41.5] of the Revised Code with respect to a sibling of the child. that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense[.]

{¶ 38} In the case at bar, competent and credible evidence supports the trial court's finding that awarding ACCS permanent custody would serve the children's best interests. Regarding the first best interest factor (the child's interaction and interrelationships), some evidence exists that the children have adjusted well to their foster home and that they interact appropriately with the foster children. The evidence also reveals, however, that at least one of the children has had difficulty adjusting to his surroundings. The evidence shows that the children and appellant have an appropriate relationship and that the children are bonded to appellant. The evidence further demonstrates, however, that appellant did not consistently visit with the children, despite the opportunity to do so. Moreover, she failed to appear at two review hearings and failed to appear at the most critical of all hearings – the permanent custody hearing.

{¶ 39} With respect to the next best interest factor (the child's wishes), the evidence establishes that at least two of the children have expressed a desire to live with their mother. However, the guardian ad litem recommended that the court award ACCS permanent custody.

{¶ 40} Regarding the third best interest factor (the child's custodial history), the evidence shows that the children first entered ACCS's custody in September 2007, and have so remained since that time.

{¶ 41} Some evidence further supports the trial court's examination of the fourth best interest factor (the child's need for a legally secure permanent placement). The evidence indisputably shows that the father has not had any involvement in the

children's lives since he relinquished custody in September 2007. Appellant has also failed to secure a safe, stable, and permanent residence in which the children could live. Thus, neither parent can provide the children with a legally secure permanent placement. Unfortunately, the record does not contain any evidence to indicate that anyone other than ACCS can provide the children with a legally secure permanent placement.

{¶ 42} Thus, after we consider the evidence, we believe that some competent and credible evidence supports the trial court's ultimate conclusion regarding the children's best interests. The trial court's decision also shows that it was well-aware of the children's wishes and appellant's love for her children, yet when weighing of the best interest factors the evidence demonstrated that awarding ACCS permanent custody would serve the children's best interests. Although the evidence indicates that appellant and the children do share a strong bond, the evidence also demonstrates that appellant has been unable or unwilling to maintain an adequate home for the children. Consequently, we disagree with appellant that the evidence does not support the trial court's decision that awarding ACCS serves the children's best interests.

{¶ 43} We observe that appellant challenges some of the trial court's factual findings as being contrary to the evidence. However, even if some of appellant's points are arguably correct, the great weight of the evidence presented at the hearing supports the trial court's decision. Therefore, assuming, arguendo, that the trial court entered some inaccurate factual findings, it nonetheless reached the right conclusion. See, e.g., State ex rel. McGrath v. Ohio Adult Parole Auth., 100 Ohio St.3d 72, 796 N.E.2d 526, 2003-Ohio-5062, at ¶8 ("Reviewing courts are not authorized to reverse a correct

judgment on the basis that some or all of the lower court's reasons are erroneous.”).

{¶ 44} Additionally, while we recognize that the evidence reveals that appellant partially attempted to obtain a safe, secure, and stable home for the children, she could only maintain that home for five months. Furthermore, during that five-month time period she was unable to keep up with the rent. Additionally, even though appellant appeared to increase her compliance with the visitations, she did so only after the children had been in ACCS's custody for nearly one year. Until that point, she was not consistent with her visitations.

{¶ 45} While we greatly sympathize with appellant and understand the love she feels for her children, the evidence shows that the children need and deserve more than she has been willing or able to provide. Appellant has had ample opportunity to modify her behaviour, but has failed to do so.

{¶ 46} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

#### JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

BY: \_\_\_\_\_  
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.