

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

IN THE MATTER OF:

V.J.L.,

Adjudicated Dependent Child.

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Case No. 16CA27

DECISION AND  
JUDGMENT ENTRY

RELEASED: 12/20/2016

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**APPEARANCES:**

Robert Henry, Law Office of Robert Henry, LLC, Marietta, Ohio, for appellant.

Kevin Rings, Washington County Prosecuting Attorney, and Amy Graham, Washington County Assistant Prosecuting Attorney, Marietta, Ohio, for appellee.

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Hoover, J.

{¶1} Appellant, A.L., appeals the trial court’s judgment that terminated her parental rights to her minor child, V.J.L., and placed the child in the permanent custody of appellee, Washington County Children Services (“WCCS”). For the reasons that follow, we affirm the trial court’s judgment.

**I. Facts**

{¶2} Appellant is the mother of V.J.L., born February 29, 2008, in Bloomington, New York. The biological father of V.J.L. did not participate in the proceedings below and is not a party to the present appeal. Appellant has indicated that the father has had minimal involvement in V.J.L.’s life.

{¶3} On May 15, 2014, appellant was arrested in Zanesville, Ohio, for receiving stolen property. During her arrest, appellant requested that V.J.L. be placed in the care of her friend and ex-paramour who lived in Marietta, Ohio. The next day the friend called WCCS and asked that the agency take temporary custody of V.J.L. Thereafter, WCCS obtained an ex parte emergency telephone order and took custody of the child on May 16, 2014. It was initially reported to WCCS that appellant had a history of mental health issues and substance abuse issues, and that she was prescribed Suboxone. It was also reported that appellant lived a transient lifestyle, often travelling the country to sell magazines door-to-door.

{¶4} WCCS filed a complaint alleging that V.J.L. was a dependent and neglected child on May 19, 2014. A shelter care hearing was held that same day and the child remained in the temporary custody of WCCS. At the shelter care hearing, appellant stated that she was addicted to heroin.

{¶5} Appellant filed a written denial of the allegations set forth in the complaint and a motion for custody of V.J.L. on May 27, 2014. On July 14, 2014, an adjudicatory hearing was held and the child was found to be dependent pursuant to R.C. 2151.04(A) and (C). At the time of the adjudicatory hearing appellant was incarcerated in Muskingum County, Ohio, and was not present for the hearing. As a result, WCCS retained temporary custody of V.J.L. The order of temporary custody was extended on several occasions.

{¶6} A case plan was filed with the trial court on June 23, 2014. The case plan was developed with the goal of reunification and required appellant to (1) attend and complete parenting classes, (2) complete a drug and alcohol assessment and follow all

recommendations of the provider, (3) complete a mental health evaluation and follow all recommendations of the provider, (4) sign all releases of information for case management purposes, (5) submit to random urine drug screens, (6) refrain from further criminal activity and address current legal issues, (7) follow all rules and requirements of visitation when visiting V.J.L., and (8) find appropriate and safe housing for herself and V.J.L.

{¶7} On January 6, 2016, WCCS filed a motion requesting permanent custody of V.J.L. WCCS asserted that V.J.L. had been in its temporary custody for more than twelve of the past twenty-two months and that awarding it permanent custody would serve the child's best interest.

{¶8} The trial court held a hearing to consider WCCS's permanent custody motion on June 27, 2016. Following the hearing, the trial court issued an order granting WCCS's motion and awarding it permanent custody of V.J.L. The trial court found that the child had been in WCCS's temporary custody for at least twelve out of the past twenty-two months. The trial court also determined that awarding WCCS permanent custody of V.J.L. would serve the child's best interest.

{¶9} This appeal followed.

## **II. Assignment of Error**

{¶10} Appellant raises one assignment of error.

The juvenile court abused its discretion, and its judgment was against the weight of the evidence, when it found that it was in the best interest of the child to permanently terminate the parental rights of the mother and award Appellee permanent custody.

## **III. Law and Analysis**

{¶11} In her sole assignment of error, appellant contends that the trial court erred by determining that awarding WCCS permanent custody was in the child's best interest. Specifically, appellant claims that "V.J.L. was actually a healthier and more stable child when in the care of [appellant] than she was in the care of [WCCS]." Appellant points to testimony indicating that V.J.L. exhibited behavioral difficulties while in foster care and argues that "every negative effect \* \* \* manifested *after* V.J.L. was removed [from appellant] and placed with various foster families." (Emphasis sic.) Appellant asserts that a review of the child's interaction and interrelationships with the child's parents, foster parents, and out-of-home providers show that V.J.L. "was doing significantly better with her mother than with [WCCS]."

#### **A. Standard of Review**

{¶12} A reviewing court generally will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *In re R.M.*, 2013–Ohio–3588, 997 N.E.2d 169, ¶ 53 (4th Dist.).

"Weight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.' "

*Eastley v. Volkman*, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *Black’s Law Dictionary* 1594 (6th Ed.1990).

{¶13} When an appellate court reviews whether a trial court’s permanent custody decision is against the manifest weight of the evidence, the court “ ‘ “weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.” ’ ” *Eastley* at ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). *Accord In re Pittman*, 9th Dist. Summit No. 20894, 2002–Ohio–2208, ¶¶ 23–24.

{¶14} In a permanent custody case, the ultimate question for a reviewing court is “whether the juvenile court’s findings \* \* \* were supported by clear and convincing evidence.” *In re K.H.*, 119 Ohio St.3d 538, 2008–Ohio–4825, 895 N.E.2d 809, ¶ 43. “Clear and convincing evidence” is: “[T]he 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*, 25 Ohio St.3d 101, 104, 495 N.E.2d 23 (1986). In determining 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.” *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). *Accord In re Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954) (“Once the clear and convincing standard has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof.”). “Thus, if the children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court’s decision is not against the manifest weight of the evidence.” *R.M.* at ¶ 55.

{¶15} Once the reviewing court finishes its examination, the court may reverse the judgment only if it appears that the fact-finder, when resolving the conflicts in evidence, “ ‘clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.’ ” *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *Martin* at 175. A reviewing court should find a trial court’s permanent custody decision against the manifest weight of the evidence only in the “ ‘exceptional case in which the evidence weighs heavily against the [decision].’ ” *Id.*, quoting *Martin* at 175; *accord State v. Lindsey*, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000).

{¶16} Furthermore, when reviewing evidence under the manifest weight of the evidence standard, an appellate court generally must defer to the fact-finder’s credibility determinations. As the *Eastley* court explained:

“[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable

presumption must be made in favor of the judgment and the finding of facts. \* \* \*

If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.”

*Eastley*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978).

### **B. Permanent Custody Principles**

{¶17} 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*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990); accord *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. *In re 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 polestar or controlling principle to be observed.’ ” *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979), quoting *In re R.J.C.*, 300 So.2d 54, 58 (Fla.App.1974). Thus, the State may terminate parental rights when a child’s best interest demands such termination. *In re D.A.* at ¶ 11.

{¶18} 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. *Id.* Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying purposes of R.C. Chapter 2151, as set forth in R.C. 2151.01:

- (A) To provide for the care, protection, and mental and physical development of children \* \* \* whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;
- (B) To provide judicial procedures through which Chapters 2151. and 2152. of the Revised Code are executed and enforced, and in which the parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.

### **C. Permanent Custody Framework**

{¶19} 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 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, 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 if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, 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, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

{¶20} R.C. 2151.414(D) requires a trial court to consider specific factors to determine whether a child's best interest will be served by granting a children services

agency permanent custody. The factors include: (1) the child's interaction and interrelationship 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 child's wishes, as expressed directly by the child or through the child's guardian ad litem, with due regard for the child's maturity; (3) the child's custodial history; (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.

{¶21} 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.

{¶22} In the case at bar, appellant does not challenge the trial court's R.C. 2151.414(B)(1) finding. Therefore, we do not address it. Instead, appellant focuses her argument on the trial court's best interest determination.

#### **D. Best Interest**

{¶23} Here, the only best interest factor appellant challenges is the court's finding regarding the child's interaction and interrelationship with the child's parents, foster parents, and out-of-home providers. Appellant contends that the evidence shows that V.J.L. displayed behavioral difficulties while in foster care including anger issues, manipulative behavior, sexually inappropriate behavior towards adults and peers, and behavioral problems in school. She further argues that V.J.L. was well behaved prior to removal and that all of the child's behavioral issues surfaced while she was in the care of

WCCS. Appellant thus contends that the trial court should not have awarded WCCS permanent custody of V.J.L.

{¶24} Appellant testified in her own behalf that she loves V.J.L. very much, and that she can take proper care of the child. Carla Archer, the WCCS caseworker assigned to this case, agreed that appellant had indicated intent to regain custody of V.J.L. However, despite appellant's desires, Archer indicated that appellant has demonstrated a lack of commitment to remedy the conditions that brought V.J.L. into care. For instance, appellant has failed to supply the agency with a certificate of completion indicating she has completed parenting classes. Appellant did partake in a drug and alcohol assessment and a mental health assessment, but she never followed through with recommended counseling. Appellant also submitted to some random drug screens, but on other occasions she either refused the drug screen or claimed that she was unable to provide a urine sample. In April 2016, her urine sample tested positive for opiates and cocaine. Appellant has also been incarcerated several times since this case was opened: from May 15, 2014 to May 19, 2014, for the receiving stolen property arrest that is the genesis of this case; from May 24, 2014 to May 29, 2014, following indictment on the arrest; from June 11, 2014 to on or around September 4, 2014, for a probation violation; from on or around September 4, 2014 to March 4, 2015, for her conviction and prison sentence related to the initial arrest; from May 20, 2015 to June 25, 2015, on a charge of selling magazines illegally and without a permit; and from March 25, 2016 to on or around April 6, 2016, for a theft arrest. Appellant also does not have stable housing, and has reported living in Columbus, Ohio; Toledo, Ohio; Celina, Ohio; and Parkersburg, West Virginia, during the pendency of this case. In addition, appellant's visitation with the child was

very inconsistent – attending only 1/32 visits in 2014, 21/39 visits in 2015, and 5/14 visits in 2016. Some of the missed visits can be attributed to times that appellant was incarcerated and others because appellant had moved far away and could not make it to the visits on time.

{¶25} While the caseworker reported that appellant generally interacted well with V.J.L. at visitations, used appropriate discipline, and showed adequate parenting skills, evidence also existed that the continued missed visits “upset the child”. Appellant denied that V.J.L. exhibited sexual behavior while under her care. Appellant also testified that she was going to settle in Toledo, Ohio, and not move around any more if she regained custody of V.J.L.

{¶26} There was little evidence of a continuing positive relationship between V.J.L. and other relatives. As discussed above, V.J.L.’s father has had little to no involvement in her life and not much is known with regards to his whereabouts and living arrangements. There was indication that the father is currently on parole and not interested in custody. A relative placement option with V.J.L.’s grandmother in New York was explored but ultimately denied. No other relatives have come forward or been mentioned as possible placements.

{¶27} Evidence was also presented as to the relationship of V.J.L. with the various foster families. When V.J.L. first came into foster care, she demonstrated inappropriate behaviors for her age, including provocative dressing and sexual behaviors. She also displayed manipulative behaviors and anger, and was angry about being placed in foster care. V.J.L. worked with a counselor and her foster family and saw progress in behavior. She understood that her mother was incarcerated but seemed to accept her

mother's incarceration. She was interacting well with peers at school and appropriately with other members of the foster family. However, V.J.L.'s behavior began to deteriorate. The downward trend in behavior began when V.J.L. was informed that her mother had been released from jail and visits started up again. At that time, V.J.L. started presenting sexually aggressive behavior and cruel behavior towards other members of her foster family. She also exhibited manipulative behavior and abusive behavior towards the family pet. V.J.L.'s behavior deteriorated to the point that she required 24-hour supervision and the transfer of foster homes. One of V.J.L.'s foster mothers<sup>1</sup> specifically testified that: "[A]fter visits started, it just seemed like no kind of discipline, no kind of talking to her, it just seemed like nothing we did could get through to her after that."

{¶28} V.J.L.'s current foster mother also testified at trial. According to the current foster mother, V.J.L. is highly intelligent and very mature for her age, but does crave attention and can be "pretty sassy at times". She agreed that V.J.L. likes to pick on people and mess with people to the point of provocation. While V.J.L. makes good grades at school, she had been suspended "at least three times". V.J.L. inappropriately touched another child at school resulting in one of the suspensions. The current foster mother also agreed that V.J.L. is manipulative. The foster mother takes privileges away to discipline V.J.L., and V.J.L. also does counseling to work on her behaviors. The foster mother testified that she does not see a change in V.J.L.'s behavior after visits with appellant; however, when visits are cancelled, V.J.L.'s behavior at school worsens. She also indicated that V.J.L. imitates behaviors, and that V.J.L. "can see those bad influences better than she sees the good traits." The current foster mother indicated that V.J.L. does well with the family pet, and helps with feeding the animal. Overall, the foster mother

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<sup>1</sup> V.J.L. has been placed in five different foster homes during the pendency of this case.

stated that she has seen some improvements in V.J.L., and that V.J.L. “has a whole support team” that is not willing to give up on V.J.L.

{¶29} The guardian ad litem also testified at trial. The guardian ad litem indicated that V.J.L. expressed a desire to live with appellant because she wished to see her grandmother and cousins in New York. However, the guardian ad litem expressed concern with the negative effect that appellant’s transient lifestyle had on V.J.L.’s development. He emphasized that the child needed stability and that he was concerned that appellant could not stay out of jail; maintain a job; secure a household; and adequately work the case plan. The guardian ad litem concluded that it would be in V.J.L.’s best interest to be placed in the permanent custody of WCCS.

{¶30} Given the record evidence cited above, there is no doubt that V.J.L. has exhibited behavioral concerns while in foster care. However, despite appellant’s arguments to the contrary, the evidence also indicates that these behavioral concerns existed even before the child was placed in the care of WCCS. For instance, there was testimony that V.J.L. received counseling for the troubled behavior almost immediately upon being placed in foster care. V.J.L.’s behavior actually improved while in foster care until appellant was released from prison and visitations resumed. The foster parents and the caseworker indicated that the inconsistent visits by appellant led, at least for some time, to regression in the child’s behavior. The current foster mother continues to report behavioral issues, but also indicated that she has seen recent improvements by the child. She indicated that V.J.L. has a team of individuals working to help V.J.L.; and that in the proper environment, V.J.L. has the potential to succeed. On the other hand, appellant has not demonstrated a commitment to V.J.L. or followed through with efforts to rectify

concerns expressed by WCCS. While it seems that appellant loves V.J.L., at the time of the permanent custody hearing, legitimate concerns remained regarding appellant's ability to care and provide for the child. Specifically troubling are the appellant's apparently unaddressed substance abuse and mental health issues, appellant's failure to abstain from criminal activity, and the appellant's failure to prove the existence of a safe and secure permanent household.

{¶31} Upon review, we disagree with appellant that the trial court wrongly determined or weighed the personal interactions and interrelationships of V.J.L. We further conclude that consideration of the record and remaining factors demonstrates that there was ample evidence before the trial court from which it could conclude that permanent custody was in the child's best interest. *See In re N.S.N.*, 4th Dist. Washington Nos. 15CA6, 15CA7, 15CA8, 15CA9, 2015-Ohio-2486, ¶ 33, quoting *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 57 (In best interest analysis, "[n]o one element is given greater weight or heightened significance.' "). This is not a case that supports a conclusion that the trial court clearly lost its way and created a manifest miscarriage of justice.

#### **IV. Conclusion**

{¶32} Based upon the foregoing reasons, we conclude that the trial court did not err in terminating appellant's parental rights and placing V.J.L. in the permanent custody of WCCS. Accordingly, appellant's sole assignment of error is overruled and the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the 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 Washington County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to [Rule 27 of the Rules of Appellate Procedure](#).

Harsha, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

By: \_\_\_\_\_  
Marie Hoover, 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.