[Cite as *In re I.W.*, 2020-Ohio-3112.]

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

	:	
IN THE MATTER OF:	:	
I.W. and A.W.	:	Case No. 19CA902
Adjudicated Abused, Neglected and Dependent Children.	:	DECISION AND JUDGMENT ENTRY
	:	

APPEARANCES:

Karen Justice, Portsmouth, Ohio, for Appellant.[1]

Elizabeth M. Howard, Waverly, Ohio, for Appellee.

CIVIL CASE FROM COMMON PLEAS COURT, JUVENILE DIVISION
DATE JOURNALIZED: 5-18-20
ABELE, J.

{¶ 1} This is an appeal of a Pike County Common Pleas Court, Juvenile Division, judgment that granted Pike County Children Services, appellee herein, permanent custody of I.W. and A.W., the biological children of Raymont Willis, appellant herein. Appellant assigns one error for review:

> THE TRIAL COURT'S DECISION TO AWARD PERMANENT CUSTODY OF I.W. and A.W. TO THE PCCSB WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

[1] Different counsel represented appellant during the trial court proceedings.

{¶ 2} On April 6, 2018, appellee filed a complaint and alleged I.W. and A.W. to be neglected, abused, and dependent children. The complaint averred that appellee received a report in April 2018 concerning a drug investigation at appellant's home and the home of the children's biological mother, L.B. The complaint alleged that both parents had been arrested and charged with felony obstruction of official business and misdemeanor child endangerment. Also, L.B. had an active warrant for her failure to appear for a court hearing. The complaint additionally alleged that L.B. admitted that she had taken heroin and methamphetamine on the date in question and that she had been addicted to crack cocaine for approximately 10 years. Appellee attempted to place the children with the maternal grandmother, but later learned that other children had been removed from her care through permanent custody proceedings and that she had an extensive history with children services agencies. The complaint did note however, that appellee would continue to seek a family placement.

{¶ 3} On April 9, 2018, the trial court issued an order for emergency care, appointed counsel and appointed a guardian ad litem (GAL) for both children. On April 19, 2018, the court determined that the children's best interest required the court to grant appellee temporary custody. The June 7, 2018 GAL's report noted that during the drug investigation that led to the children's removal from the home, appellant hid in the attic with A.W. and "threw her down from the attic." The GAL recommended that the children remain in appellee's temporary custody and that appellant and L.B. comply with the case plan and work with the GAL. On June 7, 2018, the trial court held a dispositional hearing and concluded that the best interest of the children required them to remain in the appellee's temporary custody. The court also granted supervised parenting for two hours per week to both parents.

{¶ 4} On August 23, 2018, appellee removed appellant from the case plan because he "was sentenced to three years in prison for a F4 Drug Trafficking charge. His expected release date is 7/21/2020. He is not able to work the case plan due to this." At the October 2, 2018 semi-annual administrative review, the progress review also noted that L.B. had admitted to long term drug use, tested positive for methamphetamine, fentanyl, cocaine, benzodiazepines, morphine, and alcohol and admitted to using methamphetamine and heroin the day before her arrest.

{¶ 5} At the October 18, 2018 hearing, the trial court found that on September 6, 2018, L.B. tested positive for cocaine, amphetamines, methamphetamine, THC, opiates, benzodiazepines and buprenorphine. On September 24, 2018, L.B. entered inpatient treatment and was on house arrest at the facility due to her pending felony heroin trafficking charges. The court continued temporary custody of the children with appellee.

{¶ 6} The trial court held a hearing on December 13, 2018 and issued a December 27, 2018 entry that indicated that appellant had been removed from the case plan due to his incarceration, but that L.B. had complied with her inpatient treatment and received weekly two hour visits with the children. Because the visits were going well, reunification remained the goal of the case plan. On February 28, 2019, appellee filed a motion to extend temporary commitment.

{¶ 7} On March 28, 2019, the trial court held an annual review and concluded that L.B. did not comply with the case plan, had failed to visit with the children for an extended period of time, and had not received any after-care treatment. The goal continued to be parental reunification and the court ordered L.B. to comply with case plan requirements, attend outpatient substance abuse treatment, obtain suitable housing, and to regularly visit the children. Unfortunately, on May 30, 2019 the court held a review hearing and found that L.B. tested positive for (1) fentanyl and THC on March 19, 2019,

(2) THC on April 8, 2019, and (3) suboxone (without a prescription) on May 6, 2019.

{¶ 8} After a May 30, 2019 review hearing, the trial court found that the children had been placed with a foster family since April 5, 2018 and that they have bonded to their caretakers. The court also determined that L.B. did not comply with her reunification case plan, continued to test positive for illegal substances and does not have housing. Thus, the court ordered the children to continue in appellee's temporary custody and ordered L.B. to continue to have supervised parenting time for two hours per week.

{¶ 9} On July 26, 2019, appellee requested the modification of temporary custody to permanent custody. Appellee noted that the children had been in temporary custody for at least 12 months of a consecutive 22 month period beginning on the earlier of the date of adjudication May 3, 2018 or June 4, 2018, the date that is 60 days after the removal of the children from the home. The motion asserted that the children cannot be reunited with their parents within a reasonable time or that they should not be placed with their parents. The GAL's August 26, 2019 report recommended that permanent custody be granted in favor of appellee.

{¶ 10} At the October 24, 2019 permanent custody hearing, Pike County Children's Services Caseworker Ashley Leasure testified that "Raymont's other daughter, Brittany, who lives in Kentucky, at the beginning of the case had come forward and said that she was interested, um, but this was not pursued further from her. * * * His mother also inquired several months ago. And I contacted her back and she stated that at that time she was not able to financially care for the children as there was a hurricane. She lives in Alabama. A hurricane had gone through and she just could not take them at that time. Um, it is my understanding that she had called back, um, two to three weeks ago and spoke to someone else and advised that she was interested again. But at that point we are - I mean

we had filed P.C. by that point and have continued with this process."

{¶ 11} Foster parent Alicia Shaw testified that she had been the children's foster mother for almost a year and a half and that when the children first came to live with her, I.W. had just turned three and her speech was delayed. A.W., sixteen months old and very detached, did not want to be held, cried all of the time, and did not want contact. Shaw testified that things are much better for both of them now, that I.W. is in preschool and doing well and A.W. is at home with Shaw, a stay-at-home caretaker. I.W. has played soccer for the past two years and has started basketball, while A.W. is too young for many extracurricular activities. Shaw testified that if the trial court granted permanent custody, Shaw and her husband are interested in becoming an adoptive placement for the minor children. The trial court also took judicial notice of the GAL's recommendation that the court grant permanent custody to appellee.

{¶ 12} Appellant testified that he was incarcerated at the Chillicothe Correctional Institution at the time of the hearing with an expected release date of July 18, 2020, and with possible early release as early as March or April 2020. Appellant explained that he provided to a caseworker a list of possible family members who could take the children, but he was initially under the impression that the children's mother, L.B., had complied with her responsibilities under the case plan and that L.B. would have custody of the children while appellant served his prison sentence. Appellant stated that he did not realize that L.B. failed to comply with the case plan until late in the process, and by the time his mother called it was apparently too late. Specifically, appellant testified that his adult daughter, Brittany, "started calling from the beginning of this ordeal" and that he had another daughter in Columbus, as well as a brother and sister.

{¶ 13} On cross-examination, appellant conceded that he did not write, call, or otherwise

contact appellee or his children during his incarceration. Appellant also conceded that he did not contact his mother, daughter, or other family members to testify on his behalf at the hearing. When asked what his daughter, Brittany, does for a living, appellant responded, "Um, I think she's a stay - - I think she works at a hotel maybe."

{¶ 14} On December 9, 2019, the trial court issued a decision that included findings of fact and conclusions of law. The court indicated that L.B. had stated on the record that she believed it is in the best interest of her minor children to be placed into the appellee's permanent custody under the terms of the current case plan goal of adoption. Thus, L.B. consented to the termination of her parental rights.

{¶ 15} The trial court further observed that, other than giving some names to the appellee early on, appellant admitted on cross-examination that he did not contact appellee to inquire about family placement. Further, the court observed that appellant had appointed counsel during the pendency of the action, but did not request that legal custody be given to a family member. Moreover, the court held that appellant did not attempt to maintain any contact with his daughters during the pendency of the action. "Father did not write letters, send birthday cards or request any phone access to his children during his incarceration." "Even after the filing of the motion to modify temporary custody to permanent custody," appellee "made no effort to contact [appellee] about other permanency options for his children." The court observed, "[i]t is important to note that none of Father's family members appeared at the hearing asking to be considered as placement for the minor children or to give reasons why they needed more time to be considered for placement." Finally, the court stated that the appellee's caseworker, Ms. Leasure, "when questioned about the inquiries of the family members, stated that the family members failed to follow through with their requests for placement." Thus, on

December 30, 2019 the trial court granted appellee's request for permanent custody. This appeal followed.

{¶ 16} In his sole assignment of error, appellant asserts that the trial court's permanent custody award of I.W. and A.W. to appellee is against the manifest weight of the evidence and the sufficiency of the evidence.

Permanent Custody Principles

{¶ 17} In general, 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). A parent's rights, however, are not absolute. *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, ¶ 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); accord *In re B.S.,* 4th Dist. Jackson No. 19CA6, 2019-Ohio-4143, ¶ 41.

Standard of Review

{¶ 18} 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.); *In re T.J.*, 4th Dist. Highland Nos. 15CA15 and 15CA16, 2016-Ohio-163, ¶ 25. 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 v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 19} 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, ¶ 32. 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). "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.

{¶ 20} In reviewing evidence under this standard, appellate courts generally defer to a trial court's determination of matters of credibility, which are crucial in these cases, when a witnesses' demeanor and attitude are not adequately reflected in a written record. *Eastley* at ¶ 21; *Davis v. Flickinger*, 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997). 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, 485 N.E.2d 717.

Statutory Framework

{¶ 21} A children services agency may obtain permanent custody of a child by (1) requesting

it in the abuse, neglect, or dependency complaint under R.C. 2151.353, or (2) filing a motion under R.C. 2151.413 after it obtained temporary custody. In this case, appellee sought permanent custody of the children by filing a motion under R.C. 2151.413. When an agency files a permanent custody motion under R.C. 2151.413, R.C. 2151.414 applies. R.C. 2151.414(A).

{¶ 22} R.C. 2151.414(B)(1) provides that a trial court may grant a children services agency permanent custody of a child if the court finds, by clear and convincing evidence, that (1) the child's best interest would be served by the award of permanent custody, and (2) any of the conditions in R.C. 2151.414(B)(1)(a)-(e) apply.

{¶ 23} In the case sub judice, the trial court found that the children have been in appellee's temporary custody for more than 12 months of a consecutive 22 month period. Thus R.C. 2151.414(B)(1)(d) applies and because appellant does not challenge the trial court's R.C. 2151.414(B)(1)(d) finding, we do not address it.

{¶ 24} Next, the trial court cited R.C. 2151.414(D)'s best-interest framework. In determining the best interest of a child at a hearing held pursuant to division (A) of this section of the Revised Code, R.C. 4151.414(D)(1) instructs courts to consider all relevant factors, including, but not limited to:

> (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) custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies * * * for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;
>
> (d) The child'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;
>
> (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶ 25} In examining the R.C. 2151.414(D) factors, the trial court found the following relevant facts by clear and convincing evidence: (1) the children were placed in the appellee's emergency custody on April 5, 2018; (2) appellee had cause to remove the children and continue temporary custody, and on May 3, 2018 the children were adjudicated as abused, neglected, and dependent; (3) by appellant's own testimony, he has previous convictions for trafficking in heroin, drug possession, gross sexual imposition, and the failure to register as a sex offender; (4) appellant has been incarcerated throughout the pendency of the case at bar and due to his incarceration has not had visits with the children during this time; (5) at the time of the filing of the request for permanent custody, L.B. was not in compliance with the case plan and later appeared at the permanent custody hearing and consented to the termination of her parental rights, and (6) the children had been in the temporary custody of one or more public service agencies for 12 or more months of a consecutive 22 month period pursuant to R.C. 2151.414(B)(1)(d) as the minor children were adjudicated on May 3, 2018 and were still in appellee's custody on the date of the hearing on October 24, 2019.

{¶ 26} R.C. 2151.414(D)(1) requires the trial court "to consider 'all relevant factors,' including five enumerated statutory factors * * * No one element is given greater weight or heightened significance." *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 57, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 6. In applying the R.C. 2151.414(D)(1) factors, the trial court found that it is in the best interest of the children to terminate the biological parents' parental rights for the following reasons:

{¶ 27} As for the R.C. 2151.414(D)(1)(a) "the interaction and interrelationship of the child

with the child's parents, siblings, relatives, foster care givers and out-of-home providers, and any other person who may significantly affect the child," the trial court determined that the children shared a very strong bond with each other and their foster family, have had no contact with appellant since his April 5, 2018 arrest, are placed together in foster care, and that their current foster care family will request adoptive placement upon the termination of parental rights.

{¶ 28} Regarding the R.C. 2151.414(D)(1)(b) "[t]he wishes of the child," the court determined that the children "are four and two years of age at the hearing on this matter and are too young to express their wishes as to placement. However, their Guardian Ad Litem filed a timely report recommending termination of parental rights and indicating his agreement that said termination is in the best interests of the minor children."

{¶ 29} For the R.C. 2151.414(D)(1)(c) factor concerning the children's "custodial history," the trial court determined that the children have been in the appellee's continuous temporary custody since their April 5, 2018 removal.

{¶ 30} As for the R.C. 2151.414(D)(1)(d) "need for a legally secure permanent placement" and the ability to achieve placement without a grant of permanent custody to the agency, the trial court found:

> mother has already agreed to the termination of her parental rights and is, therefore, unable to provide a legally secure placement. Father is incarcerated and has a tentative release date of May 9, 2020. Father asks for an additional seven(7) months to complete his prison sentence, then additional time to secure housing, employment and rebuild his bond with his daughters. The girls have already waited more than eighteen (18) months for permanency. This Court finds that they have waited long enough. * * * As to Father's relatives, the Court finds they are not an option for a legally secure placement for the minor children. As stated above, said relatives have made no attempt to address this Court directly to request intervention and/or custody of the minor children. Father provided no evidence that the minor children have any meaningful connection to said family members.

{¶ 31} As for the R.C. 2151.414(D)(1)(e) factor of whether any of the factors in divisions (E)(7) to (11) apply in relation to the parents and the children, the trial court held:

> Father has abandoned the minor children. He has failed to visit with or attempt to provide any care for the minor children since his arrest on April 5, 2018. This is well beyond the ninety (90) days definition of abandonment as stated in R.C. 2151.011(C). Father did not request any visitation with the minor children and did not attempt to maintain any form of contact available to him while incarcerated, i.e., letter writing and/or telephone contact.

Thus, the trial court determined that the termination of parental rights is in the best interest of the children.

{¶ 32} We now turn to appellant's contention that appellee failed to find family placement for the minor children. In particular, appellant contends that his adult daughter (Lavender) made an initial inquiry about the children. Appellant argues that his testimony and the testimony of appellee's caseworker (Leasure) call into question the agency's argument that no suitable relatives were available for placement. Appellant asserts that the court required the appellee, from the initial shelter care hearing through disposition, to "continue to seek family placement for the minor children." Thus, appellant argues, the agency had an ongoing obligation to investigate the paternal relatives for possible placement. Appellant further contends that, if the agency did not establish that reasonable efforts to seek family placement have been made prior to the permanent custody hearing, it must then demonstrate such efforts at that time. Appellant cites *In re C.F.*, *supra*; accord, *In re: C.B.C.*, 4th Dist. Lawrence Nos. 15CA18 and 15CA19, 2016-Ohio-916, quoting *In re A.C.*, 12th Dist. Clermont No. CA 2004-15-041, 2004-Ohio-5531, at 30. However, this court held in *C.B.C.* that a trial court need not find that no suitable person is available for placement. *C.B.C.* at ¶ 66, citing *Schaefer* at ¶ 64. Rather, once a court finds the existence of any of the R.C. 2151.414(B)(1)(a)-(e) factors, R.C. 2151.414(D)(1) requires the court to weigh "all the relevant factors * * * to find the best option for

the child." *Id.*

{¶ 33} In the case at bar, we point out that Lavender did not file a motion to seek custody, and the appellant's family's lack of contact and interest in the children could have caused the trial court to reasonably conclude that placement with her is not in the children's best interest. A child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security. *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991). Thus, courts are not required to favor relative or non-relative placement if, after considering all the factors, it is in the child's best interest for the agency to be granted permanent custody. *Schaefer* at ¶ 64; accord *In re T.G.*, 4th Dist. Athens No. 15CA24, 2015-Ohio-5330, ¶ 24; *C.B.C.* at ¶ 66.

{¶ 34} "In determining whether reasonable efforts were made, the child's health and safety shall be paramount." R.C. 2151.419(A)(1). Thus, as the trial court highlighted, the court is not required to find that appellee "exhausted all possible other placements before requesting permanent custody." The Supreme Court of Ohio has held that a trial court need not find "by clear and convincing evidence that no suitable relative was available for placement." *Schaefer, supra,* at ¶ 64. Further, this court has held that "a trial court need not first determine that no suitable relative placement exists before it may grant permanent custody to a children services agency." *In re: J.M.*, 4th Dist. Ross Nos. 18CA3633, 18CA3634, 18CA3635, 18CA3664, 18CA3665, 2018-Ohio-5374, ¶ 60. In the case sub judice, we agree with the trial court's conclusion that appellant abandoned the children, that the children could not be placed with either parent within a reasonable time and should not be with their parents, and that permanent custody is in the children's best interest.

{¶ 35} Again, appellant had been removed from the case plan due to his own actions and his incarceration. As for appellant's family, Leasure testified that she did not receive any communication

from Lavender. Leasure testified that the paternal grandmother did contact her early on in the process but stated that she could not care for the children at that time. As appellee noted, appellant includes in his statement of facts a letter from the paternal grandmother dated September 4, 2020 (sic. 2019), but that letter was not presented at the permanent custody hearing. Further, even if appellant's mother contacted the agency and expressed interest in obtaining custody of the children, this request did not resurface until 2019 when the children had been placed with their foster family for more than a year.

{¶ 36} As the trial court concluded, we agree that the appellee did attempt to explore family placement options. However, the paternal grandmother was unable to care for the children due to a recent hurricane and did not contact appellee until late in the process. Lavender also failed to follow through with any contact with appellee. Moreover, appellant also failed to contact appellee, his children, or follow up with family placement options. Appellant's family members made no efforts to reach out to the children during the pendency of the case. Moreover, no family member filed a motion for legal custody or appeared at the permanent custody hearing.

{¶ 37} "Every parental rights termination case involves a difficult balance between maintaining a natural parent-child relationship and protecting the best interests of a child. Although '[f]amily unity and blood relationship are vital factors to carefully and fully consider,' the paramount consideration is always the best interest of the child. *In re J.B.*, 2013-Ohio-1704, at ¶ 111, citing *In re T.W.*, 8th Dist. Cuyahoga Nos. 86084, 76109, and 86110, 2005-Ohio-6633, ¶ 15. "[A] child's best interests require permanency and a safe and secure environment." *In re E.W.,* 8th Dist. Cuyahoga Nos. 100473 and 100474, 2014-Ohio-2534, ¶ 29.

{¶ 38} Therefore, after our review in the case sub judice, we agree with the trial court's

conclusion. Here ample evidence adduced during the proceeding supports the determination that a permanent custody award is warranted and in the best interest of the children.

{¶ 39} Accordingly based upon the foregoing reasons, we overrule appellant's 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 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 Pike County Common Pleas Court, Juvenile Division, to carry these judgments into execution.

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

Smith, P.J. & Hess, 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.