



*Baldwin, J.*

{¶1} Appellant D.A. appeals a judgment of the Stark County Common Pleas Court, Juvenile Division, awarding permanent custody of her son T.W. to appellee Stark County Department of Job and Family Services (SCDJFS).

STATEMENT OF THE FACTS AND CASE

{¶2} T.W. was born May 22, 2009. Appellee initially became involved with appellant and T.W. when appellant was arrested for operating a vehicle while intoxicated and child endangering. T.W. was in the car at the time of appellant's arrest, and was not secured in a car seat. He began attending protective daycare.

{¶3} On September 12, 2013, the protective daycare facility called appellee to report that appellant was late picking the child up in the evening, and when she arrived she smelled of alcohol and appeared to be intoxicated. The next day a SCDJFS caseworker went to the daycare to confront appellant. Appellant again arrived smelling strongly of alcohol. In addition, there was an outstanding warrant for appellant because she failed to appear to receive a TAD bracelet related to her 2012 OVI conviction. Police were called and appellant was arrested at the daycare. As no relatives were available to care for T.W., he was placed in the emergency temporary custody of appellee. T.W. was found to be dependent on October 10, 2013, and temporary custody was awarded to appellee. T.W. was placed with his paternal grandparents in Tennessee. Appellee filed a motion for permanent custody on August 5, 2015, and the case proceeded to trial on October 1, 2015.

{¶4} A case plan was adopted for appellant that required her to complete a psychological evaluation at Northeast Ohio Behavioral Health (NEOBH) and follow their

recommendations, obtain stable and appropriate housing and employment, complete Goodwill parenting classes, and submit to a substance abuse assessment at Quest Recovery Services and follow all recommendations.

{¶15} Appellant's NEOBH assessment found her to be alcohol dependent and showing signs of cannabis abuse. Dr. Aimee Thomas of NEOBH noted that appellant failed to understand the severity of her problem or recognize a problem with substance abuse. Appellant arrived at her initial clinical interview at NEOBH smelling strongly of alcohol, but denied using alcohol. Dr. Thomas recommended outpatient treatment with Quest, residential treatment, regular urine drug screens, Alcoholics Anonymous, and Goodwill parenting classes. In order to satisfy the requirement that appellant get treatment for substance abuse, Dr. Thomas wanted to see nine to twelve months of sobriety on appellant's part.

{¶16} April Pryor was appellant's treatment counselor at Quest Recovery Services. At the time of the permanent custody hearing, appellant was attending her third intensive outpatient treatment program with Quest, having been unsuccessful at two previous treatment attempts. She had missed sessions of her current treatment program. Her previous treatment program was terminated because she failed to attend services for a thirty-day period. During her third attempt at treatment, appellant had three positive urine screens in September of 2015, and had at least one positive screen per month since March of 2015. She had attended 45 sessions, while missing 40 sessions.

{¶17} T.W.'s paternal grandparents wished to adopt him. T.W. was in first grade at the time of the hearing, was doing well in school, and had good grades. He was bonded with his grandparents.

{¶18} After the hearing, the trial court found that appellant had failed to remedy the problems that led to the child's removal, and the child could not be placed with her within a reasonable time. The court further found that T.W. had been in the custody of appellee for a period of greater than 12 out of the last 22 months and was no longer eligible for an extension of temporary custody. Although the child was bonded with appellant, the court found that the benefits of permanency outweighed the detriments of severing that bond, and that permanent custody was therefore in the best interest of the child. The court granted the motion for permanent custody.

{¶19} Appellant assigns three errors:

{¶10} "I. THE TRIAL COURT'S JUDGMENT THAT T.W. CANNOT BE PLACED WITH APPELLANT WITHIN A REASONABLE PERIOD OF TIME WAS AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE.

{¶11} "II. THE TRIAL COURT ERRED IN FINDING THAT APPELLEE MADE REASONABLE AND DILIGENT EFFORTS TO PREVENT THE NEED FOR PLACEMENT AND/OR MAKE IT POSSIBLE FOR THE CHILD TO RETURN HOME.

{¶12} "III. THE TRIAL COURT ERRED IN FINDING THAT SCJFS SHOWED BY CLEAR AND CONVINCING EVIDENCE THAT PERMANENT CUSTODY WAS IN THE BEST INTEREST OF T.W."

I.

{¶13} Appellant argues that the court's finding that T.W. could not be placed with her within a reasonable period of time was against the manifest weight and sufficiency of the evidence. She argues that she made significant progress on the case plan, as she completed the NEOBH evaluation, completed the Quest assessment, was working with

Quest for alcohol treatment, had obtained employment, and had obtained appropriate housing.

{¶14} A trial court's decision to grant permanent custody of a child must be supported by clear and convincing evidence. The Ohio Supreme Court has defined “clear and convincing evidence” as “[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.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954); *In re: Adoption of Holcomb*, 18 Ohio St.3d 361, 481 N.E.2d 613 (1985).

{¶15} In reviewing whether the 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, 60 (1990); See also, *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978). If the trial court's judgment is “supported by some competent, credible evidence going to all the essential elements of the case,” a reviewing court may not reverse that judgment. *Schiebel*, 55 Ohio St.3d at 74, 564 N .E.2d 54.

{¶16} 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.” *Id.* 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*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), “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.”

{¶17} 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*, 77 Ohio St .3d 415, 419, 674 N.E.2d 1159 (1997); see, also, *In re: Christian*, 4th Dist. Athens App. No. 04CA10, 2004–Ohio–3146; *In re: C. W.*, 2nd Dist. Montgomery App. No. 20140, 2004–Ohio–2040.

{¶18} Pursuant to 2151.414(B), the court may grant permanent custody of a child to the movant if the court determines “that it is in the best interest of the child to grant permanent custody to the agency that filed the motion for permanent custody and that any of the following apply:

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

(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.

**{¶19}** Revised Code 2151.414(E) sets forth the factors a trial court must consider in determining whether a child cannot or should not be placed with a parent within a reasonable time. If the court finds, by clear and convincing evidence, the existence of any one of the following factors, “the court shall enter a finding that the child cannot be placed with [the] parent within a reasonable time or should not be placed with either parent”:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parent to remedy the problem that initially caused the child to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the conditions that caused the child to be placed outside the child's home. In determining whether the parents have substantially remedied the conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.\* \* \*

(16) Any other factors the court considers relevant.

{¶20} In the case sub judice, the trial court found by clear and convincing evidence that the child had been in the temporary custody of a public children services agency for twelve or more months of a consecutive twenty-two month period pursuant to R.C. 2151.414(B)(1)(d). Appellant does not challenge the trial court's finding. This finding alone, in conjunction with a best-interest finding, is sufficient to support the grant of permanent custody. *In re Calhoun*, 5th Dist. No.2008CA00118, 2008–Ohio–5458, ¶ 45.

{¶21} Further, the trial court's finding that T.W. could not be placed with appellant within a reasonable period of time was not against the manifest weight or sufficiency of the evidence. The caseworker testified that appellant had not consistently abstained from alcohol use. She had been involved in treatment programs three times, but tested positive for alcohol the month before trial. April Pryor, appellant's counselor at Quest, testified that appellant had been terminated from the program in the past for noncompliance and had been unable to consistently abstain from alcohol use. Appellant had three positive drug screens the month before the permanent custody hearing. She had attended 45 sessions in the treatment program, while missing 40 sessions, and continued to use alcohol. She was unable to attend Goodwill parenting classes due to her inability to maintain sobriety. The trial court's finding that appellant's alcohol addiction placed T.W. at risk now and in the reasonably foreseeable future is not against the manifest weight or sufficiency of the evidence.

{¶22} The first assignment of error is overruled.

## II.

{¶23} In her second assignment of error, appellant argues that the agency did not make reasonable efforts to reunite her with T.W. because the child was placed in

Tennessee where she was unable to visit regularly or maintain consistent contact with him.

{¶24} The Ohio Supreme Court has held that the trial court need not make a finding of reasonable efforts to reunify the family at a permanent custody hearing:

Therefore, we hold that R.C. 2151.419(A)(1) does not apply in a hearing on a motion for permanent custody filed pursuant to R.C. 2151.413. However, except for some narrowly defined statutory exceptions, the state must still make reasonable efforts to reunify the family during the child-custody proceedings prior to the termination of parental rights. If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time.

{¶25} *In re C.F.*, 113 Ohio St.3d 73, 81, 2007-Ohio-1104, 862 N.E.2d 816, 823, ¶ 43 (2007).

{¶26} In the instant case, the trial court made findings of reasonable efforts to reunify the family at review hearings on March 6, 2014, August 7, 2014, January 30, 2015, March 12, 2015 and July 24, 2015. Further, R.C. 2151.419(A)(1) imposes a duty on appellee to make reasonable efforts “to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home.” T.W.’s placement in Tennessee did not relate to the issue of reasonable efforts in the instant case. The record reflects that the primary concern relating to the placement of T.W. with appellant was her ongoing alcohol

abuse, and the evidence demonstrated that appellee made repeated efforts to engage appellant in alcohol treatment through Quest Recovery Services.

{¶27} The second assignment of error is overruled.

### III.

{¶28} In her final assignment of error, appellant argues that the finding that permanent custody was in the best interest of T.W. was against the manifest weight and sufficiency of the evidence. Appellant argues that the evidence demonstrated that she was bonded to T.W.

{¶29} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates the trial court must consider all relevant factors, including, but not limited to, the following: (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; and (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.

{¶30} The trial court recognized that appellant and T.W. shared a bond. However, the court found that the child's interest in permanency outweighed the detriment of severing this bond. The evidence demonstrated that T.W. was bonded to his grandparents and doing well in their home. They wished to adopt T.W. The report of the guardian ad litem recommended that permanent custody be granted to appellee. The guardian relied on reports from the caseworker in Tennessee, who had monthly visits with

T.W. and reported that he was doing well. He was in first grade, liked school, and had good grades. The trial court's finding that permanent custody was in the best interest of T.W. was supported by the evidence.

{¶31} The third assignment of error is overruled.

{¶32} The judgment of the Stark County Common Pleas Court, Juvenile Division, is affirmed. Costs are assessed to appellant.

By: Baldwin, J.

Farmer, P.J. and

Gwin, J. concur.