

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the matter of: M.B., M.B.

Court of Appeals No. L-09-1185

Trial Court No. JC 07169611

DECISION AND JUDGMENT

Decided: February 12, 2010

* * * * *

Stephen D. Long, for appellant.

Julie C. Taylor, for appellee.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of Common Pleas, Juvenile Division, which granted permanent custody of appellant's two minor children to Lucas County Children Services Board ("LCCSB"). Because we conclude that the trial court did not err in terminating appellant's parental rights, we affirm.

{¶ 2} Appellant, T.B., is the biological mother of the two female children, born in 2002 and 2003, who were ages six and five at the time of the hearing. In June 2007, following the agency's removal of the two children under an emergency shelter care order, LCCSB filed a complaint in dependency and neglect regarding both children.¹ The complaint alleged that police found appellant's four-year-old girl outside, "completely naked and playing with an expired rat" at 6:00 a.m. on June 16, 2007. When police went to the child's home, they found two other small children sleeping on the floor in unsanitary conditions. All the children were extremely dirty. The house contained garbage, rotten food, and smelled of feces. In addition to the dirty conditions, nails and a nail gun had been left near the children, and there was exposed electrical wiring and holes in the walls.

{¶ 3} No parents or other adults were at home, but the parents' then 14-year-old daughter was asleep in a back bedroom. While the police were at the home, mother arrived, claiming she had been shopping for groceries. Mother did not have any groceries, stating that someone had stolen her money and pop she had purchased on the way home. The 14 year old was supposed to be babysitting, according to mother. Father also came home, but was intoxicated and was arrested for disorderly conduct/intoxication. Both parents were arrested for child endangering counts, and mother was arrested on a previous warrant for loitering with intent to solicit.

¹Three older children, one born in 1989 and two born in 1993 were also included in the order and complaint. In November 2008, the court granted legal custody of the two children born in 1993 to LCCSB and the oldest child had reached the age of majority in December 2007. The custody of those children is not the subject of this appeal.

{¶ 4} The complaint alleged that father was unsuitable as a caretaker for the children because he suffers from cognitive delays and physical health problems. Mother allegedly received service from the Lucas County Board of Mental Retardation and Developmental Disability ("MR/DD") and "may have problems with her mental health."

{¶ 5} In August 2007, pursuant to the parents' stipulation, the court adjudicated the children to be dependent and neglected and awarded temporary custody to LCCSB. The initial case plan goal was reunification of the children with the parents. Certain services were offered to the parents who attempted to complete the case plan goals. In January 2008, the magistrate conducted a reasonable efforts review hearing with all parties present. In March 2008, the trial court adopted the magistrate's decision that found reasonable efforts were being made by LCCSB.

{¶ 6} In May 2008, LCCSB moved to extend temporary custody which was granted. In October 2008, LCCSB moved for permanent custody regarding the two children. The court conducted a hearing pertaining to a motion filed by LCCSB for a court ordered psychological evaluation of mother. The court denied the motion for a new evaluation, determining that the psychological evaluation conducted in 2006 and previously submitted would be used as evidence in the proceedings.

{¶ 7} In February 2009, the court conducted a hearing on the motion for permanent custody and the following witnesses and evidence were presented.

{¶ 8} LCCSB first called Dr. Mark S. Pittner to testify as an expert in psychology. He testified regarding the psychological evaluations he conducted on both parents in 2006.

The evaluations were done pursuant to a court order when the parents' oldest son, then age 16, was arrested and faced being tried as an adult for juvenile delinquent behavior. The parents were ordered to undergo psychological evaluations to determine if the son's placement in a group home might be warranted. The doctor stated that his conclusions from the 2006 evaluations had not changed and were supported by the parents' subsequent behavior and lack of parenting abilities.

{¶ 9} Dr. Pittner testified that mother's IQ score was in the mid-sixties, which fell within a classification of mild mental retardation. She could not recall her education history and had never been gainfully employed. Mother did not have any history of alcohol or drug abuse problems. Dr. Pittner opined that mother's IQ level would make it difficult for her to get much out of a standard parenting class. Although she was able to recall some of the techniques taught, such as time-outs and positive reward systems, she did not believe they were effective and was concerned that LCCSB would not permit physical discipline methods.

{¶ 10} The doctor said that although mother had basic skills to meet the minimum needs of children under age 12, she would have difficulty with any child who had developmental problems and with preteen or teen children who did not have such problems. Dr. Pittner also testified that, independently, mother would have an extremely difficult time understanding and implementing discipline for children who had special needs and required constant day and night supervision.

{¶ 11} Regarding father, Dr. Pittner stated that he did not suffer from any mental illness but had significant visual impairment that interfered with the administration of the IQ test. The doctor surmised that father functioned at a higher intelligence level than mother, based only on clinical impressions. Father had quit school in the ninth grade to go to work. Father also reported significant medical issues, including heart problems. Although he recognized that the parenting classes he had taken were meant to assist him and his wife, he did not see value or usefulness in the techniques suggested, such as time out, charts, and reward systems. Father was also concerned that, since the agency had become involved, he and his wife could no longer use physical "whoopings" to discipline their children. He further acknowledged that he and his wife could not handle their oldest son and daughter, both in their late teens, and had difficulty getting them to attend school. Both of those children were involved with the juvenile court system for alleged criminal behavior.

{¶ 12} Dr. Pittner's ultimate assessment was that neither parent would be able to effectively parent children who presented any sort of behavior problems or special needs. He noted in his October 2006 report that even though "exposed to some parenting information * * * [they] are either unwilling and/or unable to apply these strategies in their own home." The doctor stated that the parents would need extensive services "in order to help prevent any of the other children under their care from developing oppositional and antisocial difficulties in their teenage years. Apparently, two or three of the younger children in the home have also been diagnosed as having either SDHD or developmental

delay problems and will present difficulties for them in the years to come (as did [the oldest son])." Dr. Pittner further stated specifically that mother and father appear overwhelmed by any child who presents "oppositional behavior" such as teenagers going through the normal stages of development. Dr. Pittner opined that even with supportive services from LCCSB and MR/DD, it was unlikely that the parents would be able to provide adequate parenting for difficult children over time.

{¶ 13} Terri Strickland, a service and support specialist ("SASS") with MR/DD, also testified regarding services that had been provided to the parents. Strickland testified that she was the initial SASS assigned to the parents. After meeting with the agency caseworker and mother in her own home, Strickland presented various services that were offered to her by MR/DD. Father stayed in the bedroom during the meeting and was not a part of the process to implement services. Although mother expressed a desire to get her children back, she was unable to formulate a specific plan to accomplish that goal. Mother believed that the only thing she really needed to do was to clean and fix up her home. She agreed to attend more parenting classes, but did not want to utilize any other services offered by MR/DD.

{¶ 14} Strickland said she and the caseworker attempted but could not find a parenting class which would be more suited to mother's intellectual level than the one offered by LCCSB. One such program offered by MR/DD was the Parent Empowerment Program ("PEP") which placed a personal care aide in the home who could provide assistance and instruction as needed in a variety of areas, such as budgeting, banking, bill

paying, parenting, discipline, homework help, parent/child interaction, community participation, working with school teachers, and attending IEP and disciplinary meetings at schools. Strickland acknowledged however, that mother could not utilize the PEP which provided hands-on services to parents because the children were not in the home.

{¶ 15} Strickland opined that mother's inability to understand and apply parenting skills was due in part to her intelligence level and in part to her own decision to resist changing her own behavior. Strickland acknowledged that mother loves her children and that her absorption in the fact that she had lost her children and her "fixation" on getting them back likely affected her ability to implement parental techniques she had been taught.

{¶ 16} Next, Erika Brower, another SASS worker with MR/DD testified that the parents' case was transferred to her from Strickland in August 2008. She noted that mother is now ready to look for a job and, at the time of the hearing, February 2009, was still obtaining services from MR/DD, including a Job Readiness Assessment that was scheduled for the following week. Brower surmised that when she first met mother, she expressed interest in pursuing a job and anger management counseling. The SASS worker stated that referral processes tended to have a waiting list. Although Brower scheduled an appointment for mother to be assessed and referred to a mental health agency, mother later changed her mind and declined to participate in those services. She noted that father had seemed supportive of mother receiving services from MR/DD, but that she only had brief contacts with him and was not fully aware of his health issues.

{¶ 17} Brower stated that mother had been cooperative and that, even if she were to lose custody of the children, she intended to continue with the services at MR/DD. She also testified that when she visited the home, she noticed that holes in the walls had been repaired and there were no broken windows or pieces of glass on the floors. Brower said that father had told her that his health prevents him from working and having more financial resources to do more repairs. She agreed the house was cleaner, but did not think the house was very dirty the first time she met them in August 2008. Both SASS workers acknowledged that MR/DD did not require any particular services, but rather was an agency that provided options from which mother could choose.

{¶ 18} Cherese Mitchell-El, LCCSB caseworker, then testified regarding the services provided to the family and the parent's ability to care for their children. LCCSB had been involved with the family since December 2006 when the oldest child of five children in the home had been arrested. In July 2007, the four remaining children were taken into temporary custody and the case plan goal was amended to reunification to add visits for the parents, parenting classes through LCCSB, diagnostic assessments for the two older children, and to have the two younger children tested through MR/DD. In addition, the parents' goal was to maintain stable housing, free from physical hazards and within building codes.

{¶ 19} As part of the case plan, mother and father were to complete diagnostic and drug and alcohol assessments. Both parents completed drug and alcohol assessments, but were not referred for any services. Mother completed the diagnostic assessment and was

referred for brief counseling at Family Services of Northwest Ohio. The counselor there referred mother to MR/DD which he thought would be better suited to her intellectual needs. Father also completed his diagnostic and was referred to Unison for counseling.

{¶ 20} Mitchell-El said she was told that father suffered from congestive heart failure, cataracts, thyroid disorder, and diabetes. She noted that father sometimes had a hard time breathing and was often tired, but he never said that his health interfered with his everyday functioning. She acknowledged that he said he was unable to work, however, which had an impact on his ability to function normally. Father was not diagnosed with any severe, chronic mental illness, but did exhibit signs of depression.

{¶ 21} Mitchell-El also confirmed that the parents participated in the required LCCSB weekly parenting classes, in conjunction with their weekly Saturday visitations with the children. The caseworker said the parents did not successfully complete the parenting program, however, even though they attended and participated in every class that was offered for the full 15 weeks. At that point, mother was referred to the Hefner Center for Parenting through MR/DD and father was also permitted to participate. There, the parents attended a four-week parent education class and received completion certificates. That class did not involve interaction with the children.

{¶ 22} Mitchell-El also testified that, at the time of the hearing, the parents' oldest child had turned 18, and the two next oldest children, ages 15 and 16, were in the agency's custody in long-term foster care. Regarding the minor children who were the subject of the permanent custody motion, Mitchell-El said they had been ultimately placed together

in the same foster home. The caseworker described the five-year-old girl as smart, excited about going to kindergarten the next year, and having some behavior issues with her sister, often fighting, including hitting and biting.

{¶ 23} Mitchell-El said that the six-year-old girl also displayed hitting and biting aggressive behavior and attended kindergarten at the Kobacker Center (a special school that deals with children with problem behaviors), with an individualized education plan ("IEP") for emotional disturbance disorder. The six year old was also diagnosed with, and prescribed Adderall medication for, "ADHD, ODD," and developmental delay. She also had difficulty sleeping at night, which had only recently begun to improve. The medication has also improved her behavior, although the dosage was still being adjusted.

{¶ 24} Both children were in counseling at the Cummins Center. The caseworker stated that at one point she had located and approved placement of the two girls with a relative, who later decided she could not handle the children's aggressive behavior issues. She stated that the agency would be willing to re-contact that relative, since the children's behavior had improved. The agency also planned to continue visits with the older siblings, even if permanent custody was granted and they were adopted.

{¶ 25} On cross-examination, Mitchell-El agreed that mother had cooperated with her case plan services as much as she was able, based upon her limitations. The caseworker did acknowledge that in the initial case plan, the family was supposed to have a community advocate assigned, which would have assisted in correcting any deficiencies in the parents' housing. The caseworker said she did not make a referral for the advocate,

because mother herself had started doing the work needed. The caseworker agreed that mother complied with the alcohol and drug assessment and attended all parenting classes. Mitchell-El testified that mother would try to follow her directions regarding her services, but mother would often argue with her about it. She agreed that her relationship with mother had been "up and down" during the course of the involvement with the family.

{¶ 26} The caseworker also acknowledged that the parenting educator had recommended extended parenting as a good plan, but only if the parents got "closer to the reunification process." Mitchell-El then said that she did not believe that mother would benefit from a second round of parenting instruction because she had reached a maximum benefit based on her ability. Although mother had made some improvements in parenting over the three years she had been involved with LCCSB, the caseworker stated that mother often needed the same information repeated over and over. Mitchell-El also acknowledged that even though she searched at MR/DD, she did not know of any special parenting program for low functioning parents with special needs children.

{¶ 27} As the final witness for the agency, Thelassia Johnson, a parent education caseworker with LCCSB's interactive parenting program, testified about the parents' participation in the 12 week parenting program. Johnson worked with the parents from December 2007 to April 2008. She said she facilitated the group parenting classes at LCCSB and visited with the parents and their children one hour per week for the interactive part of the classes. The parenting classes are taught at a third grade reading level. Johnson said that both parents attended all the scheduled sessions, but that mother

had a problem understanding the goal sheets and what was being taught. Father did better and mother relied on him to fill in the answers. Johnson said she helped mother at the agency one-on-one with the goal sheets.

{¶ 28} After being in the program for approximately ten weeks, the parents, children, and Johnson held a visit with the two younger girls outside the agency at the public library. Although the walk across the street from the agency to the library went well, Johnson said that the six year old immediately ran away from father inside the building. He was away for ten minutes, dealing with her misbehavior, while mother remained at the computers with the five year old. When father returned with the six year old, he attempted to put her in "time-out," but she screamed and had a tantrum. Father then told Johnson he wished to leave and end the visit. Since the classes were ending, this was the only out-of-agency visit the parents had.

{¶ 29} According to Johnson, although the parents had made some progress in dealing with their children, it was not enough to constitute successful completion of the program. She observed that the parents would express love, hug, color with, play with, and read to the children, but would only sporadically use the discipline techniques taught in the classes. Johnson said she continued to coach the parents until the final visit, advising them to follow through on whatever action was necessary to discipline the children when they did not behave appropriately. She said she never saw mother take the initiative to discipline the children and would "baby" them, often undermining father's attempts to correct their behavior.

{¶ 30} Johnson noted that, although the extended parenting program was a potential option, the parents never progressed in their initial program to make that viable. Although late in the program, mother would often give praise and had shown some attempts to try to discipline the children, she would only perform the techniques once and then needed reminders. Johnson said that the parents were not consistent enough with discipline issues and the children's negative behaviors continued. Despite one-on-one assistance to mother in the parenting classes, in order to make progress, the parents, particularly mother, needed extensive work and supervision.

{¶ 31} Mother's counsel called Grace Lambard, a vocational rehabilitation counselor with the Bureau of Vocational Rehabilitation ("BVR"), to testify regarding mother's progress in finding employment. Lambard testified that she had two contacts with mother since November 2008. After the first contact, she made a referral to the MR/DD Vocational Department so that mother's work skills could be assessed. Lambard said that she was still waiting for the results of that assessment. Mother had expressed a desire to get a job, and that once she gets the test results, she, mother, and her MR/DD case manager will meet to decide what job might be suitable.

{¶ 32} Next, Pamela York, LCCSB family visitation manager, testified that she observed agency visits between the parents and their children. Usually all four of the children in agency custody would be present for the visits; a few times it was just the two younger children. She noted that the parents had visited regularly, were on time or early, either brought games and activities or used available agency items, and brought food for

the children. York observed that the parents and children were bonded to each other, with affection displayed by the parents to the children. She stated that she did not recall anything negative about the visits. The parents engaged with the kids, and used timeouts to properly discipline the two younger children who were very, very active. She noted that both father and mother disciplined the two younger children, each supporting the other. Overall, she said the visits at the agency went well.

{¶ 33} Father's counsel then called Cathy Durco, the parenting program director at East Toledo Family Center, who testified regarding the parents' attendance at parenting sessions and their successful performance on the post-tests given. Durco testified that both mother and father completed and received Certificates of Completion for attending and participating in a parenting program about caring for three- to five-year-old children. Father and mother both attended the four-week program, from November 11, 2008 to December 29, 2008. Since the class was not interactive, Durco was unable to give an opinion on whether appellant could apply the parenting skills taught in the classes.

{¶ 34} Mother then testified regarding the services and classes she had attended or completed. She said that she had been married to father for 25 years and had seven children. Three were adults, and the other four were in agency custody at the time of the hearing. Mother said that she cooperated with all assessments at LCCSB, and went to counseling on that recommendation. She testified that the counselor, Raul Packo, said she needed to get an assessment at MR/DD because she was a person who did not want to open up and talk about her feelings. Mother also said she completed a drug and alcohol

assessment, but was not referred to services for that since she does not use those substances.

{¶ 35} Mother then said she had attended parenting classes taught by Thelassia Johnson. Mother said that she had trouble with reading and writing and often did not understand the materials in the classes. She said that she had been a special needs student in school, and had a tutor who gave her extra help to understand her schoolwork. Mother said she was never told that she could have one-on-one instruction in the class, to insure that she understood the lesson. Mother also said that the classes dealing with three- to five-year-olds were easier than the ones about mixed age children or teenagers. Mother also said she tried to put into practice the things she learned in the parenting classes, such as timeouts and talking to her children. She also said that, during visits, she would play with the children, did crafts, and sang songs.

{¶ 36} Diane Lynn, the guardian ad litem, was called by the trial court. She testified regarding the behavior and special needs of the children, especially the six-year-old child. She stated that the older child had been placed on medication in February or March, but was changed to a different medication in April. Since taking the medications, the older child is somewhat calmer, but still has behavior problems. Comparing her observations of both foster parents and the biological parents, Lynn stated that the foster mother had greater control over the children. Lynn stated that, despite the controlled setting at the agency, the parents had more difficulty controlling both children's behavior.

Even after the older child has been on medication, she presents a challenge to the foster parents.

{¶ 37} Lynn testified that the older child also presented issues with sexually explicit behavior, which increased when she started kindergarten. Counseling sessions have increased to deal with those issues. The guardian had concerns that because the three older children were in LCCSB's legal custody and placed in foster care, they would not be in the home to assist the parents with the two youngest children. She acknowledged that the parents loved the children, but have not shown an ability to control them. Lynn also had concerns that the older child would likely continue to have behavior problems for the rest of her life, and would need an actively involved parenting style.

{¶ 38} Lynn stated that mother would learn to a certain point, but then she would get angry and would find reasons to blame her difficulties on someone else, or deny the children's behavior issues. At visitations, mother sometimes also used derogatory or offensive language when referring to the children. According to the guardian, mother failed to follow through with what she had learned in the class, primarily due to her inability to absorb what was being taught and to implement it on a long term basis. She observed that father tried harder, and, due to his health problems, would rely on mother for certain things. Lynn emphasized that she thought the parents were "good people" and cared a great deal about their children.

{¶ 39} On cross-examination, the guardian also acknowledged that, despite the requirement that she visit the children monthly, she had only had contact with them 11

times over the previous two years. She stated that she did not believe more contacts or observations with the parents would have changed her opinion about the custody issues. She also noted that several times she had attempted to see the parents, but they were either not at home, or would not let her enter the house.

{¶ 40} After considering all the testimony and evidence, the court determined that the children "cannot and should not be returned to the care of either of their parents within a reasonable period of time and that it would be contrary to the welfare of the children to reunify with their family." The court found that both parents are low functioning in intelligence and would not be successful or able to care for or manage the children's behavior currently or as they grew older. In addition, both children have special needs that would require psychiatric care and counseling.

{¶ 41} The trial court issued findings under R.C. 2151.414(E)(1) and (2), concluding that the parents were either unable or unwilling to utilize services provided to remedy the conditions for which the children had been removed and that the chronic illness or mental retardation of the parents prevented them currently from providing an adequate permanent home or, as anticipated, within one year of the hearing. The court also found that the children had been in the temporary custody of the agency for 12 out of a consecutive 22 month period, pursuant to R.C. 2151.414(B)(1)(d). Therefore, the court found, pursuant to R.C. 2151.414(D)(1-5), that an award of permanent custody to the agency was in the best interest of the children, and terminated the parental rights of both parents.

{¶ 42} Appellant now appeals from that judgment, arguing the following sole assignment of error:

{¶ 43} "The decision of the trial court to award the agency permanent custody was against the manifest weight of the evidence and not supported by sufficient evidence."

{¶ 44} A parent's rights to conceive and rear his or her child have been "deemed 'essential,' *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), 'basic civil rights of man,' *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942), and 'far more precious * * * than property rights.' *May v. Anderson*, 345 U.S. 528, 533(1953). 'It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.' *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)." *Stanley v. Illinois* (1972), 405 U.S. 645, 651.

{¶ 45} In order to grant permanent custody of a child to a children's services agency, the court must determine by clear and convincing evidence that permanent custody is in the children's best interests and one of the following conditions has been met: (a) the child is not orphaned or abandoned and has not been in the temporary custody of the agency for 12 or more months of a consecutive 22 month period, but 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; or (d) the child has been in the temporary custody of the agency for 12 or more months of a consecutive 22 month period. R.C. 2151.414(B)(1). Clear and convincing evidence is that

measure or degree of proof which is more than a mere preponderance of the evidence but less than proof beyond a reasonable doubt. *State v. Schiebel* (1990), 55 Ohio St .3d 71, 74, citing to *Cross v. Ledford* (1954), 161 Ohio St. 469, paragraph three of the syllabus. It produces in the mind of the fact-finder a firm belief or conviction as to the facts sought to be established. *Id.*

{¶ 46} The Ohio General Assembly has defined parental unfitness for a child who is not abandoned or orphaned as a finding that 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." R.C. 2151.414(B)(1)(a). To enter such a finding, the court must conclude that the evidence presented clearly and convincingly discloses that the parent in question is unsuitable for one or more of the reasons articulated in R.C. 2151.414(E). *In re William S.* (1996), 75 Ohio St.3d 95, syllabus.

{¶ 47} R.C. 2151.414(E) provides that:

{¶ 48} "(E) In determining * * * whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

{¶ 49} "(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 parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those 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.

{¶ 50} "(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent * * * is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code * * *."

{¶ 51} In determining the best interest of the child, R.C. 2151.414(D) provides that:

{¶ 52} "[T]he court shall consider all relevant factors, including, but not limited to, the following:

{¶ 53} "(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;

{¶ 54} "(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;

{¶ 55} "(c) The custodial history of the child, including whether 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;

{¶ 56} "(d) 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;

{¶ 57} "(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

{¶ 58} In this case, the reason for removal of the children from appellant's custody stemmed primarily from the allegations of neglect and inability to provide a safe home environment. Although the home was cleaned up and repairs were made, concerns remained regarding the parents' ability to care for children who had special needs.

{¶ 59} Our review of the record indicates that mother's mental capacity prevented her from learning or retaining information which would enable her to successfully cope

with children with special needs, even with additional education. Despite attending parenting classes, she was unable to understand, retain and utilize the parenting skills, especially those needed as the children grew older and into their teens. We recognize that mother is bonded with and loves her children and, in fact, had remedied some of the issues involving the cleanliness and hazards in the home. Nevertheless, she often did not recognize the reasons and motivations for the activities involved in parenting skills and was not able to utilize counseling services due to her limited intellectual capacity.

{¶ 60} In this case, the evidence presented was sufficient to show that mother failed continuously and repeatedly to remedy the problems that initially caused the children to be placed outside the home, she failed to utilize the services offered to alleviate the conditions that led to the children's removal, and she failed to change parental conduct which would allow her to resume and maintain parental duties. Consequently, the trial court's findings under R.C. 2151.414(E)(1) and (2) were supported by clear and convincing evidence.

{¶ 61} We note that the trial court also found that, pursuant to R.C. 2151.414(B)(1)(d), the children had been in the temporary custody of the agency for 12 out of consecutive 22 months. Since this finding was coupled with the substantive findings regarding parental suitability under R.C. 2151.414(E), it merely provides additional evidence in support of the trial court's ultimate disposition. Consequently, considering the factors under R.C. 2151.414(D), the record supports the trial court's finding that permanent custody was in the children's best interest and that at least one of the factors under R.C. 2151.414(E) was proved by clear and convincing evidence.

Therefore, the trial court properly granted permanent custody of the two children to LCCSB.

{¶ 62} Accordingly, appellant's sole assignment of error is not well-taken.

{¶ 63} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.