

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

In the Matter of: D.P.

Court of Appeals No. E-11-023

Trial Court No. 2007 JD 029

DECISION AND JUDGMENT

Decided: August 19, 2011

* * * * *

Elizabeth F. Wilber, for appellant.

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Mary Ann Barylski, Assistant Prosecuting Attorney, for appellee.

* * * * *

YARBROUGH, J.

{¶ 1} This is an appeal from a judgment issued by the Erie County Court of Common Pleas, Juvenile Division, terminating appellant's parental rights and awarding permanent custody of the minor child, D.P., to appellee. For the following reasons, we affirm.

{¶ 2} Appellant, K.P., is the biological mother of D.P., born in August 2005. In May 2007, appellee, Erie County Department of Job and Family Services ("ECDJFS"),

filed a complaint against appellant and D.P.'s biological father, alleging dependency and seeking protective supervision of D.P. The complaint alleged that appellee had been working with the family since November 2005, and that D.P. had elevated lead levels and is delayed in his development. The complaint went on to state: "[Appellant] has not followed through with her counseling and reports that she is depressed and feels overwhelmed. There were bi-monthly wrap-around meetings that were occurring for the family and an emergency Team Decision Making meeting was held on May 9, 2007, after the child was identified because of the lack of parents [sic] follow through." The complaint also alleged that D.P. lacked "proper care or support by reason of the mental or physical condition of the child's parents * * *." An initial case plan was submitted on June 14, 2007.

{¶ 3} One June 18, 2007, an adjudication hearing was held. Appellant and father were present and waived their right to counsel. According to the judgment entry, filed July 10, 2007, both parents entered admissions as to the allegations contained in the complaint. Based upon their admissions, the court found D.P. to be dependent by clear and convincing evidence and protective supervision was awarded to appellee.

{¶ 4} On July 13, 2007, appellee filed a written motion for an ex-parte emergency order which sought emergency temporary custody of D.P. In its motion, appellee alleged that D.P. had medical issues, including asthma, and that there were high levels of lead in the home. The complaint went on to state that, "[c]aseworker, Flo Dyer, went to the home to see the family and [D.P.] answered the door and [father] was sound asleep on the

couch and was non-responsive when the caseworker called his name. [Appellant] was not home at the time. * * *." The trial court awarded appellee emergency temporary custody, pursuant to R.C. 2151.33(C) and (D).

{¶ 5} At the shelter care hearing, held on July 16, 2007, appellant and father were present. Appellant and father waived their right to counsel as well as their right to a hearing. The court then granted temporary custody of D.P. to appellee, and awarded supervised visitation to appellant and father. An amended case plan was thereafter submitted on July 20, 2007, which required appellant to follow the recommendations of a mental health assessment, follow the recommendations of her counselor, participate in family counseling, take her psychotropic medication as prescribed, and sign necessary releases.

{¶ 6} On July 24, 2007, an initial dispositional hearing was held. The court determined that it was in the best interest of D.P. to remain in the temporary custody of appellee. The court also found that, "in accordance with [R.C. 2151.353(B)] that the complaint alleging the dependency contained a prayer requesting permanent custody, temporary custody, or the placement of the child in long-term foster care as desired

* * *.¹

¹The complaint in the instant case did not contain a prayer for permanent custody, temporary custody, or for the placement of D.P. in long-term foster care. Rather, appellee sought only protective supervision of D.P. We note, however, that R.C. 2151.33 (B)(1) authorized an order granting temporary custody "[a]fter a complaint, petition, writ, or other document initiating a case dealing with an alleged or adjudicated * * * dependent child is filed and upon the filing or making a motion pursuant to [R.C. 2151.33(C)] * * *."

{¶ 7} A dispositional review was held on November 6, 2007, and temporary custody was extended. The Erie County Court Appointed Special Advocate ("CASA") was appointed as guardian ad litem for D.P. on November 7, 2007. Temporary custody was again extended, after dispositional reviews, on February 5, 2008, July 8, 2008, November 19, 2008, February 25, 2009, and March 25, 2009. On April 9, 2009, appellee filed a motion for permanent custody, pursuant to R.C. 2151.413(D)(1),² alleging that D.P. had been in its temporary custody for the past 19 months, and that the child cannot and should not be placed with either parent. The complaint further alleged that the parents suffered from chronic mental and emotional illness and were unable to "prove an adequate permanent home for the child."

{¶ 8} On May 14, 2009, attorney Thomas Sprunk was also appointed as guardian ad litem for D.P. A final dispositional hearing was eventually held on July 13, 16, and 20, 2010, on appellee's motion for permanent custody. We note that the father was only present for the first two days of the trial, and is not a part of this appeal.

{¶ 9} The following testimony, relevant to the mother's appeal, is as follows.

{¶ 10} Felicia Zendejas testified that she was employed as the Community Psychiatric Support Treatment Manager at the Counseling and Recovery Services of Erie County, located at Firelands Hospital. She worked with appellant from August 2008 through June 2010, with the exception of her maternity leave from June through August

²R.C. 2151.413(D)(1) requires that a public child services agency "shall" file a motion requesting permanent custody of a child if the child has been in the temporary custody of the agency for twelve or more months of a consecutive twenty-two-month period.

2009. As her case manager, Zendejas helped appellant find housing, and manage her finances. She would also "follow-up" with appellant if appellant missed a session with a therapist, doctor, or in the partial hospitalization program ("PHP"). She testified to appellant's sporadic attendance in therapy. A letter written by Zendejas to the agency on March 2, 2009, and admitted as evidence, indicates that K.P. made little progress toward her case management goals, and that K.P. was "closed" to therapy services in December 2008 for non-attendance. In addition, Zendejas testified that she assisted K.P. in finding housing by driving K.P. to Ottawa County and helping her to apply for apartments as K.P. did not have a car. Apparently, K.P. was placed on waiting lists for two or three apartments.

{¶ 11} When Zendejas was on maternity leave, K.P. was approved for Social Security benefits. K.P. then designated her live-in boyfriend, M.H., as her payee for these benefits and the two found an apartment together. However, K.P. was evicted from her apartment in early 2010 for non-payment of rent because M.H. failed to pay her bills. Zendejas then helped K.P. to find a new payee for her benefits, Partners in Community.

{¶ 12} Dr. Ih Foo Lin, a psychiatrist working at Firelands Counseling and Recovery Services, testified that, in 2007 and 2008, K.P. had frequent hospitalizations with the same complaints of depression and suicidal tendency. K.P.'s medical records, admitted as evidence, list K.P.'s diagnoses as borderline personality disorder, recurrent major depression, borderline intelligence, and an adjustment disorder with a depressed mood. The records indicate that K.P. was psychiatrically hospitalized in July 2007,

September 2007, November 2008, May 2009, and February 2010, at Firelands Regional Medical Center. Evidence admitted by stipulation of the parties also indicates K.P. was psychiatrically hospitalized at St. Charles Mercy Hospital at the end of July 2007, November 2007, and in February 2009. Lin testified that throughout her hospitalizations, attempts were made to make K.P.'s vague complaints of her problems more specific; but all efforts failed. Also, Dr. Lin testified that he meets with K.P. once every three months and that he adjusts her medications at those visits. At the time of his testimony, on July 16, 2010, Dr. Lin testified that K.P.'s medications were working and that K.P. was stabilized.

{¶ 13} Cindy Franketti, the WRAP Around Supervisor, testified that she worked with K.P. three years ago, in 2007, because K.P. and father were unable to maintain a safe environment for D.P. According to Franketti, K.P. was cooperative, but her mental health issues prevented her from successfully utilizing WRAP Services. Franketti also described K.P.'s adoptive mother as not a very positive influence.

{¶ 14} Franketti's next contact with K.P. was in the fall of 2009. However, during that time, K.P. became psychiatrically hospitalized and the process was interrupted. Franketti hoped to help K.P. obtain housing and develop an emergency backup plan in the event K.P. was hospitalized again. Franketti testified that it would have been difficult to coordinate respite care for D.P. during K.P.'s hospitalizations for more than one weekend a month due to budgeting restraints. She testified that overall, she could not identify a positive support system for K.P.

{¶ 15} Flo Dyer, a caseworker for ECDJFS, also testified for appellee. Ms. Dyer was the case worker in this matter from June 2007 through September 2009. She testified that D.P. had been in the temporary custody of the agency since July 13, 2007. In regards to the time prior to the complaint, she testified that K.P. and father missed several doctors' appointments, and they failed to show up for physical, speech, and occupational therapy. Dyer also described their home as unsanitary.

{¶ 16} When testifying about K.P.'s completion of the case-plan programs, she testified that D.P. "aged out" of Help-Me-Grow at the age of three, and that K.P. "definitely took interest in working with those people." Dyer testified that K.P. had transportation issues and limited time for these programs because "[the program workers] were also working with the foster parents who was [sic] actually care giving [D.P.]." Dyer testified that K.P. completed a Collaborative Program for Volunteers of America and the National Endowment of Financial Education Program for Financial Success on May 7, 2008, even though these were not required under the case plan. K.P. also completed an anger management program on March 17, 2008, and actively participated in "Parents as Teachers" once a month.

{¶ 17} In regards to K.P.'s mental health and related housing problems, Dyer also testified to K.P.'s frequent hospitalizations. Specifically, that K.P. voluntarily admitted herself into a psychiatric hospital on the day appellee was awarded temporary custody of D.P. She then admitted herself into the psychiatric hospital again in late July 2007 and again in November 2007. Thereafter, Dyer assisted K.P. in finding housing. Initially,

K.P. lived in Safe Harbor, but K.P. was asked to leave. When an opening became available at Crossroads, a shelter operated by Volunteers of America ("VOA"), Dyer took K.P. there. During the intake process, however, K.P. became emotional, and Dyer took her to Firelands hospital. She was then sent to St. Charles Hospital, and then eventually back to Crossroads where she remained until she was hospitalized again in November 2008. Dyer testified that K.P. was then incarcerated in Erie and Huron counties for charges stemming from writing bad checks after being released from Firelands Hospital. K.P. then lived at Crossroads until an incident occurred and she was required to leave Crossroads for 30 days in February 2009. She then went back to St. Charles Hospital on February 24, 2009, and then back to Crossroads until she was hospitalized in May 2009 through mid-June 2009. She then stayed at Crossroads until her Social Security Disability benefit was approved and she found and rented an apartment in Sandusky in July or August 2009 with M.H. Testimony reflects that most hospital stays lasted two to three weeks. Dyer also testified to K.P.'s sporadic attendance with mental health counseling and that K.P. took her medications correctly only "three quarters of the time." Dyer testified that K.P. was not consistent in her mental health counseling and even failed to notify Dyer of one of her hospitalizations. Apparently, even while K.P. was hospitalized, she wasn't engaged in "the work that they do there, that mostly what she wanted to do was stay in her room and sleep, or behave inappropriately towards males * * *."

{¶ 18} In regards to D.P.'s special needs, Dyer testified that D.P. is globally delayed, has limited speech, cognitive delays, and is socially delayed. Dyer further testified that D.P. is very attached to his foster parents, but that they are unwilling to adopt him. Dyer testified that an award of permanent custody to the agency would be in D.P.'s best interest because no one would be available to care for D.P. should K.P. be hospitalized again. Dyer further testified that even though D.P. had lived with K.P.'s adoptive parents for six months when he was an infant, K.P.'s adoptive mother was unwilling to take custody of D.P.

{¶ 19} Dyer testified that even outside of being hospitalized, she did not feel that K.P. could care for D.P. because he is a "high energy kid." She testified that K.P. would be exhausted and overwhelmed after three hours of "running after [D.P.] and attending to him." Testimony reflects that K.P.'s medications also made her sleepy in the mornings. Dyer testified that during the time she was the caseworker, K.P. missed 17 visits with D.P.; five of which were because of her incarcerations or hospitalizations. Despite this, K.P. was eventually able to have unsupervised visitation with D.P. at the family side of Crossroads. Dyer was eventually transferred off the case in September 2009.

{¶ 20} Amanda Siesel, a caseworker for ECDJFS, also testified on behalf of appellee. At the time of working with K.P., she was a permanency specialist in Children Services. Siesel was the caseworker in this matter from September 2009 through May 2010.

{¶ 21} Siesel testified that K.P. began in-home visitations with D.P. in October 2009. At that time, K.P. was asked if she had anyone else living in her home. K.P. denied this, but Siesel received an anonymous phone call in "late January 2007 [sic], early February" advising her that M.H. was living with K.P. and that M.H. had been present when D.P. was in the home for visits. Siesel confirmed that M.H. was also apparently acting as K.P.'s payee at the time. Siesel testified that the agency would have required background checks on M.H. had they known he was living with K.P. Further, Siesel testified that court records from the Sandusky Municipal Court indicated that both K.P. and M.H. were on the eviction notice. Once Siesel confronted K.P. with this information in February 2010, she became upset and requested that Siesel take her to Firelands Hospital, where she was eventually admitted. K.P. lost her apartment at this point, and the in-home visitations were then moved back to supervised visitations at the agency. Apparently, K.P. sporadically visited with D.P., and even missed two visitations, without notifying the agency, because of frustration directed at Siesel. In March 2010, Siesel interrupted a visit because she thought that K.P. had fallen asleep on the floor.

{¶ 22} Siesel testified that the agency is also concerned about K.P.'s support system. K.P. could not give a definitive plan as to what she would do with D.P. should she become hospitalized once again. K.P.'s adopted mother was asked if she would be willing to take placement of D.P. but declined because she had several special need adults as well as K.P.'s oldest daughter living with her. Siesel could not recall, however, whether K.P.'s adoptive mother was specifically asked if she would be willing to take

D.P. should K.P. become hospitalized. Even so, Siesel testified that she did not feel K.P.'s adoptive mother would be a good supportive person for K.P. because during a phone conversation, "[K.P.'s adoptive mother] did not have positive things to say about [K.P.], and questioned [K.P.]'s motives for wanting [D.P.] in her home."

{¶ 23} In regards to the case plan, Siesel testified that K.P. signed up for and completed a parenting class on her own initiative, K.P. removed M.H. as her payee for her Social Security benefits, and K.P. worked with her Firelands case manager to find a new payee. K.P. also worked with Crossroads to find new housing and Siesel "monitored [K.P.'s] compliance with her mental health counselor."

{¶ 24} As of January 2010, Siesel was still hopeful that D.P. and K.P. could be reunified, and Siesel did not see any major concerns that would cause them to "pull the visitation back." However, visits were never extended overnight, and they only lasted six to seven hours. Further, once K.P. lost her housing, visitations were moved back to the agency.

{¶ 25} Siesel also testified that K.P. did not take her medication during January 2010. Despite this, K.P. was still able to parent D.P. during visits. Apparently, K.P. did not have money for her medication again due to M.H.'s failure to pay K.P.'s bills.

{¶ 26} Siesel stated that the initial situation was not remedied because K.P. did not have stable housing, and visitation was unstable. For K.P.'s part, Siesel stated that "I don't question that [K.P.] would be a good mom to [D.P.]. She is a good mom to [D.P.]. She has shown a bond with [D.P.]. I do not question that." Siesel also testified that K.P.

was providing for child support and attending many of D.P.'s medical appointments. However, K.P. was not consistent with her mental health counseling, and could not identify a positive support system in the event that she is hospitalized again.

{¶ 27} Siesel testified that D.P. is not in a legally secure placement, and that an award of permanent custody to appellee would facilitate an adoption which would provide him with a legally secure permanent placement. Siesel also testified that D.P. is of an age where he does not have any mature opinion or wishes as to whether he wants to be adopted, and that an award of permanent custody to the agency would be in his best interests.

{¶ 28} Julie Kyer, a caseworker assigned to this case in May 2010, testified that K.P. was terminated from the partial hospitalization program in May 2010, because she was not attending individual counseling. However, K.P. was compliant with seeing her case manager at Firelands and her individual counselor.

{¶ 29} In regards to D.P., Kyer testified that D.P. needs speech therapy, physical therapy, and has medical appointments. D.P. has delays in his speech. At four years old, D.P. can only babble.

{¶ 30} In regards to visitations, Kyer testified that K.P. had eight scheduled visitations with D.P. in May 2010, but only attended two. Apparently, in May 2010, K.P. went to the emergency room for vertigo and an infection. In June 2010, K.P. also had eight scheduled visitations, but only attended four. Kyer was unaware of why K.P. did not attend those visits. In July 2010, prior to the dispositional hearing, K.P. only attended

two of the five scheduled visitations. Kyer testified that K.P. has asked, at various times, to end her visits early.

{¶ 31} In regards to the services provided to K.P., Kyer testified that K.P. was looking for an apartment but that K.P. was not given any bus tokens or rides by the agency for visitations.

{¶ 32} Kyer testified that she did not believe K.P. would be able to provide D.P. with a permanent, adequate home. She further testified that D.P. has been in foster care for at least 12 months of the last 22 months, and that D.P. is in need of a legally secure placement. Kyer concluded that it would be in D.P.'s best interest for permanent custody to be awarded to appellee.

{¶ 33} Barb Agrawal, the CASA, stated to the court that her recommendation is that D.P. be adopted by a family familiar with his special needs, and that this is in D.P.'s best interests. Her report also reflects this recommendation.

{¶ 34} Attorney Thomas Sprunk also filed his report with the court which stated that it would be in the best interest of D.P. for appellee to be awarded permanent custody so that he may be adopted.

{¶ 35} Finally, K.P. was the only witness to testify on her behalf. She testified that her incarcerations were due to non-payment of fines from previous charges. K.P. testified that M.H. actually sold one of her social security checks, and she eventually had to file a police report and wait six months to receive a new check. Further, once K.P. informed her case manager at Firelands of the situation, she was compliant in finding a

new payee who eventually paid her fines associated with the criminal matter in Huron and Erie counties.

{¶ 36} In regards to finding stable housing, K.P. testified that she has been working with Kim Whaley, a housing specialist at the VOA, and that she arranged to pay the VOA 50 percent of her social security benefit and the VOA would pay the other 50 percent up to six months. She is also on the waiting list for Section 8 housing. K.P. testified that she is living at VOA on the individual side, but that there is a family section there. However, K.P. must have custody of D.P. to begin the application process for family housing.

{¶ 37} In regards to her sporadic visitation with D.P., K.P. also testified that she has free access to transit due to a medical card in her possession, but that she needed to give advance notice to arrange for that transportation. Therefore, K.P. testified that she secured transportation through a friend. Her explanation for missing so many recent visitations is that because of her depressed moods, it is difficult for K.P. to "get up." On days where she feels depressed, K.P. testified that "I don't talk to no one. I don't see nobody for a while. And this is part of the reason why I messed up some of the visits." K.P. testified that as of May 7, 2010, she went to the emergency room and explained that she was suicidal because of a break-up with a boyfriend. She was contemplating taking pills to kill herself but she saw a therapist, and avoided being admitted to the hospital.

{¶ 38} K.P. testified that she does have a support group in place in the event she goes to the hospital. This group is composed of her adoptive mother and a friend named

C.G. She testified that C.G. would be willing take D.P. for a couple of days, and that her mother would take D.P. for a couple of weeks. In regards to her relationship with her adoptive mother, she testified that at one point they did not get along, but they have since reconciled and she has been able to visit her oldest daughter more often. K.P. also testified that her adoptive mother was aware of the hearing. However, the record does not reflect that K.P.'s adoptive mother appeared at the hearing.

{¶ 39} Following the hearing, a magistrate's decision, journalized on September 17, 2010, recommended an award of permanent custody to the agency. Appellant thereafter filed objections to the magistrate's decision. The trial court overruled those objections and eventually issued its final judgment entry, which was journalized on March 18, 2011.

{¶ 40} This appeal followed, with appellant asserting the following assignment of error:

{¶ 41} "THE COURT ERRED AS A MATTER OF FACT AND LAW AND ABUSED ITS DISCRETION WHEN IT FOUND TERMINATING THE PARENTAL RIGHTS OF THE MOTHER AND NOT REUNIFYING WITH APPELLANT TO BE IN THE CHILD'S BEST INTEREST BECAUSE SUCH WAS NOT THE ONLY MEANS OF OBTAINING A LEGALLY SECURE PERMANENT PLACEMENT FOR THE CHILD, SUCH WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND/OR BECAUSE PERMANENT CUSTODY WAS NOT IN THE CHILD'S BEST INTEREST."

{¶ 42} Appellant argues that the trial court's findings were against the manifest weight of the evidence and the trial court abused its discretion when it terminated her parental rights. This court does not agree.

{¶ 43} "On appeal from an order terminating parental rights, an appellate court will not reverse the trial court's judgment if, upon a review of the record, it determines that the trial court had sufficient evidence to satisfy the clear and convincing evidence standard. *In re Wise* (1994), 96 Ohio App.3d 619, 626. The 'clear and convincing evidence' standard is a higher degree of proof than the 'preponderance of the evidence' standard generally utilized in civil cases but is less stringent than the 'beyond a reasonable doubt' standard used in criminal cases. *State v. Schiebel* (1990), 55 Ohio St.3d 71, 74. An appellate court will not substitute its own judgment for that of a trial court applying a 'clear and convincing evidence' standard where some competent and credible evidence supports the trial court's factual findings. *Id.*; *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, syllabus. (Parallel citations omitted)." *In the Matter of Antonio C. and Angelica C.*, 6th Dist. Nos. S-03-011, S-03-012, 2004-Ohio-82, ¶ 48, quoting *In the Matter of Baby Girl Doe*, 6th Dist. No. L-02-1027, 149 Ohio App.3d 717, 2002-Ohio-4470, ¶ 89.

{¶ 44} An agency can obtain permanent custody of a child by: (1) requesting it in the abuse, neglect or dependency complaint, pursuant to R.C. 2151.353, or (2) by filing a motion pursuant to R.C. 2151.413 after obtaining temporary custody. *In re Tyler C.*, 6th

Dist. No. L-07-1159, 2008-Ohio-2207, ¶ 74. Here, a motion for permanent custody was filed pursuant to R.C. 2151.413(D)(1).

{¶ 45} A juvenile court may then grant permanent custody of a child to a public services agency if the court finds, by clear and convincing evidence, two statutory prongs: "(1) the existence of at least one of the four facts enumerated in R.C. 2151.414(B)(1) and (2) that the child's best interest is served by a grant of permanent custody to the children's services agency." *In the Matter of A.L.*, 6th Dist. No. L-10-1355, 2011-Ohio-2569, ¶ 40, citing *In re M.B.*, 10th Dist. No. 04AP-755, 2005-Ohio-986, ¶ 6.

{¶ 46} Under the first prong, the four factors to be considered under R.C. 2151.414(B)(1), are as follows:

{¶ 47} "(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 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 time or should not be placed with the child's parents.

{¶ 48} "(b) The child is abandoned.

{¶ 49} "(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

{¶ 50} "(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 * * *."

{¶ 51} R.C. 2151.414(B) further provides that "a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to [R.C. 2151.28] or the date that is sixty days after the removal of the child from the home." We find that the trial court's finding under R.C. 2151.414(B)(1)(d), that D.P. was in appellee's temporary custody for twelve out of a consecutive twenty-two month period, was supported by clear and convincing evidence. D.P. was placed in the temporary custody of the agency on July 13, 2007, and remained there until the agency filed its motion for permanent custody on April 9, 2009. The parties also do not dispute this finding.

{¶ 52} Once a finding is made by the court satisfying one of the factors enumerated in R.C. 2151.414(B)(1), the trial court must only determine if an award of permanent custody to the agency is in the child's best interest. *In re C. W.*, 104 Ohio St.3d 163, 2004-Ohio-6411, ¶ 21; *In the Matter of Antonio C.*, supra, at ¶ 49; *In re Nice* (2001), 141 Ohio App.3d 445, 459.

{¶ 53} In making this determination, R.C. 2151.414(D)(1) provides that the court "shall consider all relevant factors, including but not limited to, the following:

{¶ 54} "(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;

{¶ 55} "(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;

{¶ 56} "(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 ending on or after March 19, 1999;

{¶ 57} "(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;

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

{¶ 59} The factors set forth in R.C. 2151.414(E)(7) through (11) include: (7) whether the parents have been convicted of or pleaded guilty to various crimes, (8) whether medical treatment or food has been withheld from the child, (9) whether the parent has placed the child at a substantial risk of harm due to alcohol or drug abuse, (10) whether the parent has abandoned the child, and (11) whether the parent has had parental rights terminated with respect to a sibling of the child.

{¶ 60} In regards to the best interest prong of the permanent custody analysis, evidence was presented that appellant suffers from mental health issues. Although appellant made some efforts to address her mental health issues, she is not able to parent D.P. This is evidenced by her sporadic visitation with D.P. caused by her depressed moods.

{¶ 61} Further, D.P., who was almost five years old at the time of the disposition hearing, had been in foster care for more than half of his young life. Prior to being placed with appellee, D.P. lived with K.P.'s adoptive parents for approximately six months. D.P. has only lived with appellant for 18 months of his life. Several witnesses testified to his need for a legally secure permanent placement and that an award of permanent custody to the agency would facilitate this.

{¶ 62} Also, the trial court appointed a CASA as a guardian ad litem as well as an attorney to represent D.P.'s interest. Because of his young age and difficulties communicating, both concluded on his behalf that an award of permanent custody is in D.P.'s best interest.

{¶ 63} Appellant, in her brief, argues that the trial court should have applied R.C. 2151.414(E), (E)(1) and (E)(2). However, pursuant to R.C. 2151.414(B)(1), the trial court was only required to find by clear and convincing evidence that permanent custody was in the best interests of the child because he was in the temporary custody of the agency for more than 12 months. *In the Matter of Antionio C.*, supra, at ¶ 52, citing *In re Nice*, supra, at 459.

{¶ 64} Therefore, we conclude that the trial court's findings that (1) 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 (2) that granting permanent custody of D.P. to appellee was in the child's best interest were not against the manifest weight of the evidence.

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

{¶ 66} The judgment of the Erie 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.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, 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>.