

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

In re De.D. and Di.D.

Court of Appeals Nos. L-11-1220  
L-11-1262

Trial Court No. JC 09195343

**DECISION AND JUDGMENT**

Decided: March 2, 2012

\* \* \* \* \*

Stephen D. Long, for appellant D.D.

Laurel Kendall, for appellant C.W.

Angela Y. Russell and Shelby J. Cully, for appellee Lucas County Children  
Services.

\* \* \* \* \*

**YARBROUGH, J.**

**I. Introduction**

{¶ 1} This is an appeal from the judgment of the Lucas County Court of Common  
Pleas, Juvenile Division, terminating the parental rights of appellant C.W. (“mother”) and

appellant D.D. (“father”), and awarding permanent custody of the minor children De.D. and Di.D. to appellee Lucas County Children Services (“LCCS”). For the reasons that follow, we affirm.

### **A. Facts and Procedural Background**

{¶ 2} De.D. was born in March 2009 to father and mother. In June 2009, De.D. was removed from the home and placed in the temporary custody of LCCS. De.D. was adjudicated dependent in September 2009. The magistrate’s decision indicates that both mother and father were present at the adjudicatory hearing with counsel, and that both consented to the finding of dependency. At the dispositional hearing in December 2009, De.D. was placed in the temporary custody of LCCS. Motions by LCCS to extend the temporary custody were granted in July 2010 and January 2011.

{¶ 3} Di.D. was born in December 2010 to father and mother. Temporary custody was subsequently given to LCCS, and Di.D. was placed in the same foster home as De.D. In January 2011, the trial court found Di.D. to be dependent. Again, both parents were present with counsel for the adjudicatory hearing and consented to the finding of dependency.

{¶ 4} In April 2011, LCCS moved to consolidate the two cases and moved for permanent custody of both children. A hearing was held on August 12, 2011, and August 16, 2011, on LCCS’ motion for permanent custody. The testimony presented at that hearing is as follows.

{¶ 5} Stephanie Dixon, the LCCS caseworker assigned to this case since September 2009, testified that LCCS initially became involved in response to a domestic violence situation between mother and father in May 2009. In June 2009, two additional reports were made concerning several separate incidents. First, there was an incident of domestic violence where it was reported father grabbed mother. Second, an incident occurred where, after an argument, father put mother out of the home at around 4:30 or 5:30 in the morning without shoes or a coat. Finally, there was an incident where mother attempted suicide and was transported to Rescue Mental Health Services, and as a result, De.D.—then three months old—was left alone in the care of father, which raised concerns because father had epilepsy and because he had been diagnosed with schizophrenia.

{¶ 6} Dixon also testified that, during the case, there were additional reports from mother that father was verbally and mentally abusive to her, that “she felt threatened as though he would get in her face and yell and scream as though he were about to hit her.” Dixon testified that there were six 911 calls for domestic violence during the course of the case, and that two of them involved mother wielding knives. In addition, Dixon stated that concerns existed with regards to father being extremely controlling and the fact that he did not like mother to have friends because she was easily influenced. Dixon recounted an incident where she went to the home and had to enter through the back door because father had taken the key out of the front door. Dixon stated that father did this because he felt mother could not be trusted and might let somebody into the home.

Despite the reports of these incidents, father has never been charged with domestic violence.

{¶ 7} Dixon testified that case plan services were offered to mother and father to address the issues of domestic violence, mental health, and parenting skills.

### **1. Mother**

{¶ 8} Dixon stated that mother's case plan called for her to participate in mental health services at Unison, domestic violence services, parenting classes, and the Second Chance program, as well as complete a psychological evaluation.

#### **a. Mental Health Services**

{¶ 9} As to the mental health services, Dixon testified that mother had been diagnosed with bipolar disorder, depression, and attention deficit hyperactivity disorder. She testified that mother has been meeting with an individual counselor, and that she has been prescribed medications for her conditions. She further stated that approximately three weeks before the hearing, mother said she was not on her depression medication and was having a tough time; in fact, mother cried during the visitation with her kids. Dixon testified that she did not consider the mental health part of the case plan to be complete.

#### **b. Domestic Violence Services**

{¶ 10} Concerning the domestic violence services, Dixon testified that mother was referred to Project Genesis. Dixon stated that mother reported she was doing well in the program, and that she was participating and had an understanding of what was going on

in the group. However, Dixon also stated that the group facilitator was concerned that mother was not understanding the concepts as it related to her relationship with father. Dixon testified that mother went through the program twice, but her failure to grasp the concepts was evidenced by a conversation between Dixon and mother in which mother recounted a dispute between herself and father. The dispute took place in June 2011, and involved father calling mother names such as “bitch” and “whore.” Mother told Dixon she believed that type of conduct was normal, and that it happens in every relationship. Dixon stated she thought mother should have known such conduct was not normal after going through the program. Dixon testified that she did not consider the domestic violence part of the case plan to be complete.

{¶ 11} Augustine Abbott, the supervisor of the Project Genesis domestic violence program, testified that mother had been through the program twice, the first time from December 2009 to June 2010, and the second time from January 2011 to May 2011. Abbott testified that although mother came through the program, she did not feel that mother had an understanding of domestic violence because mother would contradict herself, saying in one breath that she had been abused, and in another breath that she had not. Abbott testified that she did not believe mother had successfully completed Project Genesis.

### **c. Parenting**

{¶ 12} With regards to parenting, Dixon testified that mother had bonding issues with De.D., and that mother felt overwhelmed and needed father’s help. Dixon stated

that during visitation, mother required a lot of encouragement and prodding to interact with De.D. Dixon relayed an incident where mother cried throughout the visitation and kept saying, “I can’t do it. This is why I don’t want to visit by myself. This is why I want my aunt here, [father] here.” Dixon testified that mother was referred to parenting classes. Mother successfully completed those classes, but reservations still existed concerning mother’s ability to make sure De.D. was safe in her environment. Dixon stated that she also referred mother to receive individual parenting assistance. Dixon testified that mother was visiting the children “pretty regularly” both at the beginning and recently, but there was a time in the middle when mother began missing visitations.

{¶ 13} Heidi Herman, a parent education caseworker at LCCS, testified that she observed mother’s visitations with De.D. on two occasions between August 2010 and October 2010, and on four occasions between February 2011 and May 2011. Herman observed that mother had a difficult time bonding with De.D., and that she struggled supervising both children at the same time. Herman testified that often mother was focused on Di.D., and to some extent disregarded Herman’s suggestions to interact with De.D. In addition, Herman related an incident where mother heated Di.D.’s bottle for 15 minutes because she had never learned how to heat up bottles.

#### **d. Second Chance**

{¶ 14} As to Second Chance, Dixon testified that mother continues to participate in the program on a regular basis. Jane Ginter, a social worker at Second Chance, explained that the program works with women who have prostituted or who are at risk of

prostituting. Ginter stated that mother was referred to Second Chance because she was prostituted by her mother for most of her life. Ginter testified that she met with mother weekly, and during those meetings they worked on relational skills, assertiveness skills, and sorting through mother's past trauma. Ginter described a pattern of conduct where mother will say that her relationship with father is going well, and then a few days later mother will say that it is abusive, or that father is cheating on her in front of her eyes, or that father is yelling at her. Ginter testified there was one time when she picked mother up in the middle of the night and mother stayed the night at Second Chance.

#### **e. Psychological Evaluation**

{¶ 15} Dr. Janis Woodworth is the licensed psychologist who performed the psychological evaluation of mother. Dr. Woodworth testified that she was asked “[w]hether or not [mother] had mental health issues that would interfere with her ability to maintain a safe environment for her daughter.” Dr. Woodworth testified that mother reported she was diagnosed with attention deficit hyperactivity disorder, she had a long history of depression dating back to childhood, and she had a significant history of physical and sexual abuse. Mother also indicated that she had some learning problems in school. Dr. Woodworth testified that although she did not have a learning disability, mother had borderline cognitive thinking ability.

{¶ 16} To complete her evaluation, Dr. Woodworth administered a clinical interview, the MMPI-2, the Mini Mental Status Examination, the Parenting Stress Inventory, the Symptom Checklist – 90 – Revised, and the Wechsler Intelligence Scale

Fourth Edition. Dr. Woodworth testified that the test results indicated mother was very mistrustful and suspicious of others, that she demonstrates poor judgment, that she has high levels of anxiety and stress, and that she has difficulty coping with the emotional stress.

{¶ 17} Dr. Woodworth also performed a parent-child observation. She reported that mother's handling of Di.D.—an infant—was awkward, and that mother had difficulty providing head support for Di.D. Dr. Woodworth also testified that mother had a difficult or impaired attachment with De.D., and she did not appear to be engaged with De.D. during the observation.

{¶ 18} Dr. Woodworth testified to three recommendations she made based on the interview, psychological testing, and parent-child observation. First, Dr. Woodworth felt that mother did not have the ability to establish and maintain a safe environment for the children, and thus Dr. Woodworth did not recommend reunification. Second, Dr. Woodworth recommended that mother continue with her mental health services to address the issues she is experiencing from her history of physical and sexual abuse. Finally, Dr. Woodworth recommended that mother continue with supervised visits with her children.

## **2. Father**

{¶ 19} In regards to father, Dixon testified that the case plan called for father to engage in domestic violence classes and parenting classes, to continue his mental health services at Unison, and to undergo a psychological evaluation.

### **a. Domestic Violence Batterer's Treatment**

{¶ 20} Concerning domestic violence batterer's treatment, Dixon testified that father became engaged in the services at Unison around July 2010, participated in three sessions, and then stopped attending. Dixon stated that sometime after December 2010, father re-engaged in the program. After re-engaging, father told Dixon that he recognized he was abusive, and that he was happy to be in the class and was dedicated to making the changes that he needed to make. Dixon testified that, unfortunately, father missed some groups and was released out of the program without successfully completing it. Dixon stated that father has restarted the program within the two weeks prior to the hearing.

{¶ 21} Ramona Bethany, a clinical therapist at Unison, testified on father's behalf and confirmed father's engagement in the domestic violence batterer's group. Bethany testified that father has attended approximately 20 group sessions, with the majority of them coming during his second engagement with the program. Bethany stated that Unison's policy is that a person can only miss two of the 24 sessions before being withdrawn from the group. During his second engagement, father attended approximately 15 sessions before he was withdrawn for excessive absences, some of which she believed had to do with transportation issues. Bethany testified that father was making progress through the program, in that he was more cooperative and receptive, and that he verbalized an understanding of what was being presented in the group. On cross-examination, Bethany testified that Unison does not prohibit a person from restarting a

group immediately after being withdrawn so long as the person understands the importance of not missing the group and makes a commitment to correct whatever was preventing him or her from being there. However, the guardian ad litem, Doris Robertson, later testified that the Unison policy on restarting was confusing.

{¶ 22} Dixon also testified about two separate incidents of violence involving father. The first concerned a dispute with some neighbors who had been evicted from their home and were staying with father and mother. During this dispute, father reportedly picked up a female and threw her across the room. The second concerned a January 2011 dispute with a female neighbor who father believed had broken into his home earlier. Reportedly, father punched this woman in the face so hard that she fell to the ground. Dixon also mentioned that, in July 2011, father was almost hit by a car following a confrontation with a man who was harassing father's brother.

#### **b. Parenting**

{¶ 23} Regarding parenting, Dixon testified that father was referred to parenting classes in September 2009, and successfully completed them. Dixon testified that father visits the children "pretty regularly," but that she has concerns about some of the reasons father has missed visitation. Those reasons include father having scheduled appointments on the day of his visit, or father having to wait for furniture being delivered, or father was moving, or "the weather was too hot." Dixon also testified that she was concerned that father had to be "really, really encouraged" to visit De.D. when the child was hospitalized with an extremely low white blood cell count. However, Dixon stated on cross-

examination that father did show up at the hospital and ultimately spent the night there with De.D.

### **c. Mental Health**

{¶ 24} As it relates to mental health, Dixon testified that father had been diagnosed with schizophrenia and mood disorder. Dixon stated that father reports hearing voices all the time, but that he is stable on his medication and self-refers to programs when needed. Dixon testified that the agency has arranged for a cab to transport father to and from domestic violence classes because being outside at night could trigger his paranoia. Dixon testified that she did not think the case plan services regarding father's mental health functioning were complete. On cross-examination, Dixon testified that father was already engaged in mental health services with Unison when the case was opened, and that throughout the course of the case father has continued with those services, and that there is every reason to believe those services will continue indefinitely.

### **d. Psychological Evaluation**

{¶ 25} Dr. Woodworth's evaluation of father began in November 2010, and ended in January 2011. The question Dr. Woodworth was asked to answer was "whether or not [father] had the cognitive ability and emotional adaptation to establish and maintain a safe environment for his children." To determine this, Dr. Woodworth administered the Mini Mental Status Examination, the Symptom Checklist – 90 – Revised, the MMPI-2, the Parent Stress Inventory, and the Wechsler Adult Screen of Intelligence. Dr.

Woodworth testified that the results of the administered tests indicated that father has “low average” cognitive ability, a high level of emotional stress, and that he has difficulty coping with that stress. However, on cross-examination, Dr. Woodworth testified that the fact LCCS has custody of the two children, and is seeking permanent custody of them, is a stressor on father.

{¶ 26} For her evaluation, Dr. Woodworth also reviewed father’s mental health records from Unison, consulted with father’s case manager, and performed a parent-child observation between father and the children. Dr. Woodworth testified that, during the parent-child observation, father demonstrated good ability to hold and comfort Di.D, who was an infant at the time. Father also spent a lot of time engaging in play activities with De.D., and he kept a close eye on De.D., who was “a pretty busy little girl.” Dr. Woodworth stated that father communicated with De.D. through questions and commands, which is not unusual, but is not as preferable as communicating through reflective statements or praise.

{¶ 27} In addition to the above testimony, Dr. Woodworth testified about the January 2011 incident where father hit the female neighbor whom he believed had broken into his apartment earlier. Further, Dr. Woodworth testified that father reported an incident in father’s past where he stopped taking his medication and his mental health began to deteriorate and destabilize. At that time, father’s visual and auditory hallucinations became more pronounced, and as a result he was hospitalized for several months. Shortly after his discharge, father was arrested for breaking and entering an

automobile, and while in prison, he assaulted a corrections officer because he believed the officer was going to hurt him. On cross-examination, Dr. Woodworth testified that it appears father's mental health diagnoses are being appropriately treated, and that such treatment would expect to be ongoing indefinitely into the future.

{¶ 28} Based on her evaluation of father, Dr. Woodworth testified that she made four recommendations. The first recommendation was

[Father] has not acknowledged domestic violence in the relationship with his children's mother. He has a history of aggression, the most recent aggressive act one week ago. Given this history, [father] does not appear to have the ability to establish and maintain a safe environment for his children at this time.

{¶ 29} The second recommendation was that father complete a batterer's program given his history of violent and aggressive behavior. The third recommendation was that father continue in mental health services. The final recommendation was that if father has unsupervised visitation with the children, it would be very important for father's case manager at Unison to "be a committed presence in his life to keep an eye on the stress that caring for two children might engender in him and be able to take action."

{¶ 30} At the end of her direct testimony, Dr. Woodworth stated that she had concerns whether the parents together could maintain a safe environment for the children. On cross-examination, Dr. Woodworth was asked if she would change her recommendation assuming that father and mother would live separate and apart, with

father being primarily responsible for parenting the children. Dr. Woodworth responded that she would still be concerned because “[father] reports a history of breaking up relationships with women and going off his medication and his mental health destabilizing.”

### **3. Home Environment**

{¶ 31} In addition to the above topics, the parties also presented testimony regarding the home environment. Dixon testified that the home was tidy and nicely furnished, but that it is usually pretty dark inside and the music is sometimes loud. Dixon also stated that both mother and father had other people staying in the home off and on throughout the life of the case. Ginter testified that the home is dark and she sometimes had to ask for a flashlight or for the light to be turned on. Ginter added that the stereo is usually “full blast and we can’t talk in there.” Ginter also testified that there are a lot of people in and out of the home or just milling around.

{¶ 32} Ashley Rieder, an acquaintance of father and mother, testified on father’s behalf and stated that the home was very clean and very nice, and that she has never observed anything inappropriate in the home. On cross-examination, Rieder did acknowledge that the music is relatively loud sometimes, and that the home is dark sometimes.

{¶ 33} Deanna Watson, father’s friend, also testified that the home is dark sometimes, but it is very clean. Watson stated she has never seen anything in the home, nor in father’s behavior, that is concerning to her. In addition, Watson testified that she

has left her two children with father three or four times for a period of around six hours, without incident.

#### **4. Whether Mother and Father are Living Together**

{¶ 34} The parties also presented testimony about mother and father's ongoing relationship and whether they are living together. Dixon testified that father and mother have informed her that they are no longer living together, however, Dixon was told by Ginter that mother never actually moved out. Dixon also testified that mother continues to maintain a relationship with father, and that mother stated she intended on moving out of the home only until Children Services closed their case, at which time she would return. Ginter testified that as of the night before the hearing, mother was living with father. Audrey Hess, mother's aunt, testified on behalf of mother and stated that mother was residing with her, but that mother spends the weekends with father. Robertson, the guardian ad litem, also testified that mother's residence is at her aunt's house.

#### **5. Guardian Ad Litem's Testimony**

{¶ 35} Finally, Robertson testified that it was her recommendation that permanent custody of De.D. and Di.D. be awarded to LCCS. Robertson's report recommending the same also was entered into evidence.

{¶ 36} On cross-examination, Robertson testified that the home was clean and that she did not observe anything in the home that concerned her. Robertson also testified that she did not observe any interactions between father and mother that caused her concern, nor did her interviews with any of father's friends or neighbors give Robertson

any cause for concern. Robertson also stated that father does well with the children at visitation, and that his interactions with them are appropriate. In addition, Robertson testified that she believed father was “very compliant” with his services at Unison.

{¶ 37} Robertson acknowledged that her recommendation was based on Dr. Woodworth’s evaluations and the concerns with father’s ability to handle the stress of raising De.D. and Di.D. Robertson also stated that she was concerned about father having visitors at the home and his ability to keep the children safe.

{¶ 38} In response to a question from the court, Robertson testified that she did not have any additions, deletions, or changes that she cared to make to her report recommending permanent custody to LCCS in light of the testimony presented at the hearing.

### **B. Trial Court’s Judgment Entry**

{¶ 39} On September 16, 2011, the trial court issued its judgment entry awarding permanent custody of De.D. and Di.D. to LCCS. Pursuant to R.C. 2151.414(B)(1)(a),<sup>1</sup>

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<sup>1</sup>R.C. 2151.414(B)(1) provides:

Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child 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*

the trial court found by clear and convincing evidence that De.D. and Di.D. “cannot be placed with either parent within a reasonable period of time and should not be placed with either parent.” Specifically, the trial court found that R.C. 2151.414(E)(1), (2), and (4) applied to mother, and that R.C. 2151.414(E)(1) and (4) applied to father.<sup>2</sup> In

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*of the child’s parents within a reasonable 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 \* \* \*. (Emphasis added.)*

<sup>2</sup> R.C. 2151.414(E) provides:

In determining at a hearing held pursuant to division (A) of this section \* \* \* 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, \* \* \* 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:*

(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;

(2) Chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate

addition, the trial court found that De.D. has been in the temporary custody of LCCS for twelve or more months of a twenty-two-month period, satisfying R.C. 2151.414(B)(1)(d). The trial court then considered all of the factors in R.C. 2151.414(D)(1)(a) – (e), and found that an award of permanent custody to LCCS is in the children’s best interest.

{¶ 40} Mother and father have filed separate notices of appeal.

## **II. Analysis**

### **A. Mother’s Appeal**

{¶ 41} We will address mother’s assignments of error first, which are:

Assignment of Error No. 1: The judgment of the trial court that Appellant [Mother] neglected her children was not supported by clear and convincing evidence.

Assignment of Error No. 2: The judgment of the trial court that Appellant [Mother’s] children were dependent was not supported by clear and convincing evidence.

Assignment of Error No. 3: The judgment of the trial court that Appellant [Mother] continuously and repeatedly failed to remedy the

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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 \* \* \*;

\* \* \*

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child; \* \* \*. (Emphasis added.)

underlying causes for the removal of her children was not supported by clear and convincing evidence.

### **1. Appeal from Findings of Dependency is Time Barred**

{¶ 42} In her first and second assignments of error, mother contests the trial court's initial findings of dependency with regards to De.D. and Di.D.<sup>3</sup> LCCS contends that mother is time barred from appealing these adjudicatory findings. We agree.

{¶ 43} In *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, 900 N.E.2d 607, ¶ 18, the Ohio Supreme Court held that an adjudication order of abuse, dependency, or neglect of a child and the award of temporary custody to a children services agency pursuant to R.C. 2151.353(A)(2) is a final order that must be appealed within 30 days of the judgment entry pursuant to App.R. 4(A). Here, the magistrate found De.D. to be dependent on September 17, 2009, and the trial court adopted that finding on November 5, 2009. The magistrate awarded temporary custody of De.D. to LCCS at the dispositional hearing on December 16, 2009, and this award was adopted by the trial court on February 22, 2010. Di.D. was found to be dependent, and temporary custody was awarded to LCCS, on January 28, 2011, and the trial court adopted those decisions on February 15, 2011. Mother did not appeal from those orders, and did not file her present notice of appeal until after the permanent custody hearing in August 2011. Therefore, mother's appeal of these issues is well beyond the 30-day period set forth in

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<sup>3</sup>Mother's first assignment of error contests the trial court's finding of neglect. However, a review of the record reveals that the children were found only to be dependent.

App.R. 4(A). *See In re T.H.*, 6th Dist. No. L-09-1096, 2009-Ohio-4409, ¶ 35-36

(appellant's argument contesting the validity of her stipulation to a finding of dependency was not well-taken where the trial court found the child to be dependent in January 2008 and the notice of appeal was not filed until April 2009).

{¶ 44} Accordingly, mother's first and second assignments of error are not well-taken.

## **2. Trial Court's Findings are not Against the Manifest Weight of the Evidence**

{¶ 45} In her third assignment of error, mother contests the trial court's finding under R.C. 2151.414(E)(1) that she continuously and repeatedly failed to remedy the conditions that caused the children's removal from the home. We note that mother does not contest the trial court's finding under R.C. 2151.414(E)(2) that she has chronic mental and emotional illnesses preventing her from providing an adequate permanent home. Nor does mother contest the trial court's finding under R.C. 2151.414(E)(4) that she has demonstrated a lack of commitment toward the children by failing to regularly support, visit, or communicate with them. Further, we note that the trial court's findings under R.C. 2151.414(E)(2) and (4) are sufficient by themselves to support a finding under R.C. 2151.414(B)(1)(a) 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(E). Nevertheless, we uphold the trial court's finding, based upon clear and convincing evidence, that mother continuously and repeatedly failed to remedy the underlying causes for removal.

{¶ 46} In a proceeding for the termination of parental rights, the trial court's findings must be supported by clear and convincing evidence. R.C. 2151.414(E). Clear and convincing evidence is that which is sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. It is more than a preponderance of the evidence, but does not require proof beyond a reasonable doubt. *Id.*

{¶ 47} “A trial court’s determination in a permanent custody case will not be reversed on appeal unless it is against the manifest weight of the evidence.” *In re A.H.*, 6th Dist. No. L-11-1057, 2011-Ohio-4857, ¶ 11, citing *In re Andy-Jones*, 10th Dist. Nos. 03AP-1167 and 03AP-1231, 2004-Ohio-3312, ¶ 28. We recognize that, as the trier of fact, the trial court is in the best position to weigh the evidence and evaluate the testimony. *Id.* citing *In re Brown*, 98 Ohio App.3d 337, 342, 648 N.E.2d 576 (3d Dist.1994). Thus, “[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 48} Here, the court found that De.D. was removed from the home due to concerns regarding domestic violence, mental health, and physical health issues. In particular, mother had attempted to commit suicide and De.D. was left alone with father. The court recounted Dixon’s testimony that there had been several 911 calls for domestic

violence during the course of this case. The court found there was a pattern of verbal altercations that also involved father putting mother out of the family home. The court further found that although mother was referred to Project Genesis, and the domestic violence coordinator spent additional time with mother, mother “did not appear to grasp the concepts being taught regarding domestic violence group.” As recently as June 2011, the parties had a verbal argument in which father referred to mother as a “whore” and other inappropriate names. Mother reported to Dixon that this was normal. Moreover, the court found that although mother claims to have moved from the family home, she admitted that she did not intend to end the relationship with father, and continues to spend significant time with him. The court concluded that “the parents continue to have an unhealthy relationship based upon power and control leading to a domestically violent relationship.”

{¶ 49} In addition, the court found that concerns existed regarding mother’s bond with the children and her ability to perform simple parenting skills. The court found that during an observation, mother failed to provide adequate head support for Di.D., and that she was disengaged. The court also cited the issue of mother having heated Di.D.’s bottle for fifteen minutes. The court determined that “although [mother] has completed a parenting course, she lacks the ability to care for and protect the children.”

{¶ 50} We find that competent, credible evidence exists in the record, sufficient to produce a firm belief or conviction supporting the trial court’s determination that mother

failed to substantially remedy the conditions that caused De.D. and Di.D. to be placed outside the home within the meaning of R.C. 2151.414(E)(1).

{¶ 51} Accordingly, mother's third assignment of error is not well-taken.

### **B. Father's Appeal**

{¶ 52} Father's sole assignment of error is:

THE TRIAL COURT ERRED WHEN IT FOUND BY CLEAR  
AND CONVINCING EVIDENCE THAT PERMANENT CUSTODY OF  
DE.D. AND DI.D. SHOULD BE AWARDED TO LUCAS COUNTY  
CHILDREN SERVICES BOARD.

{¶ 53} In support of his assignment of error, father challenges the trial court's findings under R.C. 2151.414(E)(1) and (4) as against the manifest weight of the evidence. Additionally, father argues that the trial court's application of R.C. 2151.414(B)(1)(d) to terminate his parental rights as to De.D. is unconstitutional because it circumvents the question of his parental fitness, thus violating his due process right to raise his children.

#### **1. The Trial Court's Findings under R.C. 2151.414(E)(1) are not Against the Manifest Weight of the Evidence**

{¶ 54} Regarding R.C. 2151.414(E)(1), the trial court found that although father completed an interactive parenting program, and participated in domestic violence services and mental health services, there has not been "sufficient chang[e] to the extent that he is able to care for and protect his children." Father argues that the evidence

presented at the hearing was that he was managing his mental health issues, and that no evidence was presented indicating any significant issues where his mental health status affected his ability to parent. Father asserts that the only evidence produced at the hearing was speculation that his mental health could deteriorate with the stress of ending his relationship with mother and the assumption of sole responsibility for the children. In addition, father argues that he substantially complied with his domestic violence case plan services by completing 15 of the 24 classes. Further, father asserts the evidence presented indicates that he gained an understanding of domestic violence issues and has made a positive change in his attitude and actions.

{¶ 55} As it relates to his mental health, the trial court found that father “lacks support to assist him with the children while he continues to address his mental health and it is clear that [father] cannot parent independently at the current time.” The trial court found that father has been diagnosed with schizophrenia and that he takes his medication on a consistent basis. However, due to his medical condition, father does become paranoid in certain situations, such as when he attends domestic violence classes in the evening. Further, Dr. Woodworth expressed concern that father had a serious impairment in his mental health.

{¶ 56} As it relates to the domestic violence issues, we note that the trial court’s findings supporting its conclusion that “the parents continue to have an unhealthy relationship based upon power and control leading to a domestically violent relationship,” as discussed in mother’s appeal, apply to father as well. Further, the trial court found that

although father had made progress in his domestic violence groups on his second attempt, he only attended approximately 15 of the 24 classes, and was discharged due to excessive absences. The trial court found that father did not complete the domestic violence batterer's program. Moreover, Dr. Woodworth also testified that father has a past and current history of aggressive behavior, including hitting a woman in January 2011 that he believed had robbed his home earlier.

{¶ 57} Thus, we find that competent, credible evidence exists in the record, sufficient to produce a firm belief or conviction supporting the trial court's determination that father failed to substantially remedy the conditions that caused De.D. and Di.D. to be placed outside the home within the meaning of R.C. 2151.414(E)(1).

**2. The Trial Court's Findings under R.C. 2151.414(E)(4) are not Against the Manifest Weight of the Evidence**

{¶ 58} Father argues that the evidence presented at the hearing established that father regularly visits his children, and even walked to the hospital and spent the night with De.D. when she was hospitalized. Further, he argues the evidence presented demonstrates that his interaction with the children is appropriate, and that he is bonded with the children. Finally, father points to the numerous witnesses who testified his residence was well kept, although some may have preferred that it was better lit or that the music was turned down.

{¶ 59} However, the trial court found, under R.C. 2151.414(E)(4), that although he regularly visits, father has demonstrated a lack of commitment toward the children by

missing visits due to scheduling appointments on the day of visits, or due to the weather being too hot. Moreover, the trial court found that father's actions show an unwillingness to provide an adequate permanent home for the children. In support of this, the trial court identified that father has had two years to complete the domestic violence services and has not done so. The court also identified that "the parents continue to maintain an unhealthy relationship which they have chosen over their children." Finally, the court took into consideration the testimony about the parents inviting inappropriate persons into their home.

{¶ 60} Upon review, we find that competent, credible evidence exists in the record, sufficient to produce a firm belief or conviction supporting the trial court's determination, under R.C. 2151.414(E)(4), that father has demonstrated a lack of commitment toward De.D. and Di.D. by failing to regularly visit when able to do so, and by showing an unwillingness to provide an adequate permanent home for them.

{¶ 61} Because we uphold the trial court's finding, based on clear and convincing evidence, that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent under R.C. 2151.414(B)(1)(a), we need not address father's due process argument concerning the application of R.C. 2151.414(B)(1)(d).

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

### III. Conclusion

{¶ 63} For the foregoing reasons, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellants are 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.

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JUDGE

Mark L. Pietrykowski, J.

Stephen A. Yarbrough, J.  
CONCUR.

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JUDGE

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JUDGE

<p>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: <a href="http://www.sconet.state.oh.us/rod/newpdf/?source=6">http://www.sconet.state.oh.us/rod/newpdf/?source=6</a>.</p>
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