

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

In re Ma.R.-R., Me.R.-R.,  
F.R.-R., D.R.-S.

Court of Appeals No. L-15-1026

Trial Court No. JC 13236472

**DECISION AND JUDGMENT**

Decided: June 5, 2015

\* \* \* \* \*

Stephen D. Long, for appellant.

Shelby J. Cully, for appellee.

\* \* \* \* \*

**SINGER, J.**

{¶ 1} This is an appeal from the judgment issued by the Lucas County Court of Common Pleas, Juvenile Division, terminating the parental rights of appellant, A.R. (“mother”), and C.S., and granting permanent custody of the minor children to appellee,

Lucas County Children Services Board (“the agency”). For the following reasons, the judgment of the trial court is affirmed.

{¶ 2} Mother sets forth one assignment of error:

The termination of appellant’s parental rights was against the manifest weight of the evidence.

### **Procedural History**

{¶ 3} Appellant, A.R., is the biological mother of the four children at issue in this appeal: Ma.R.-R. (born in September 2006), Me.R.-R. (born in March 2009), F.R.-R. (born in January 2011) and D.R.-S. (born in October 2013). C.S. is the biological father of D.R.-S. C.S. is not a party to this appeal. The biological father of Ma.R.-R., Me.R.-R. and F.R.-R. is deceased, having committed suicide in the home he shared with mother and their three children.

{¶ 4} In July 2013, the agency became involved with the family due to numerous issues including housing, poor hygiene, depression, substance abuse and domestic violence.

{¶ 5} On November 5, 2013, the agency filed a complaint alleging dependency and neglect of the children. A shelter care hearing was held and the agency was awarded temporary custody of the children. D.R.-S. was admitted to the hospital and the other three children were placed in a foster home. Thereafter, mediation was held and an agreement was reached that the children were dependent and neglected. A case plan and several amended plans were filed, with reunification as the goal. Under the plans, mother

was to undergo a diagnostic assessment, complete domestic violence survivor's classes and parenting classes and maintain the home in an orderly manner, while C.S. was to have a diagnostic assessment and it was recommended that he attend intensive outpatient treatment, anger management classes as well as parenting classes.

{¶ 6} On October 3, 2014, the agency moved for permanent custody of the four children. A trial was held on January 9, 2015. Mother attended the trial and testified. C.S. was not at the trial. On January 22, 2015, the court filed its judgment entry awarding permanent custody of the children to the agency.

### **Permanent Custody Trial**

{¶ 7} Cathy Young, the foster mother of the four children, testified she and her husband have been the foster parents since November 2013. When the three children arrived at the Young home, they were unclean and two of the children had lice and scabies. In addition, two of the children were behind on their immunizations. Young took the children to their primary care doctor for their shots.

{¶ 8} Regarding D.R.-S., Young brought him to her home from the hospital, but before she did, she met with D.R.-S.'s doctor to learn how to care for him due to a heart condition he had. D.R.-S. had to see the heart doctor every three weeks, the pediatrician for normal check-ups and a kidney specialist for the first six month of his life. In January 2014, D.R.-S. was readmitted to the hospital where he stayed for three and one-half weeks before he was transferred to another hospital where he underwent heart surgery on February 3, 2014. He had to stay at that hospital for another three and one-half weeks.

D.R.-S. was released from the hospital, but then had an intestinal blockage and was readmitted to the hospital where he stayed for a week. At the end of March, beginning of April 2014, D.R.-S. again had to be hospitalized, this time for about two weeks. During the above-mentioned time period, Young saw mother on Saturdays for visitations with the three other children and had conversations with mother regarding D.R.-S. being in the hospital. Mother never visited D.R.-S. in the hospital. In October 2014, D.R.-S. had surgery to have tubes inserted in his ears. Young arrived at the hospital with the children a couple of hours before the surgery while mother, who was informed of the surgery, arrived at the hospital about ten minutes before the procedure. D.R.-S. had another surgery in December 2014, and mother was at the hospital for that procedure. Prior to October 2014, Young did not invite mother to attend D.R.-S.'s doctor appointments, nor did mother ask about D.R.-S.'s appointments or D.R.-S.'s condition.

{¶ 9} Young testified D.R.-S. will be getting hearing aids and she will attend a training to learn how to work them and keep them in his ears. D.R.-S. has to go to the audiologist every ten weeks until he is four years old to get molds of his ears, and after that, he has to go every six months. D.R.-S. will also be starting occupational therapy to help with chewing because his jaw muscles are not properly developed. Young stated D.R.-S. has a milk allergy.

{¶ 10} Regarding Ma.R.-R., Young testified when he first came into the Young home, he had nightmares almost every night. Young said he is doing very well in school, although he got into a little trouble for trying to ride the banisters down the hallway. He

has lots of friends at school and in the neighborhood, is very active and is doing very well at home. He has no special needs.

{¶ 11} As to Me.R.-R., when she arrived at the Young home, she was four years old and could not identify numbers, letters or colors, except pink and purple. She also had nightmares virtually every night. Me.R.-R. is now in kindergarten with an IEP and speech problems. She also has an ear deformity and slight hearing loss and will be undergoing surgery on her ears in March 2015. Young must put drops in Me.R.-R.'s ears every night. Me.R.-R. sees an ear, nose and throat doctor, an audiologist and a plastic surgeon. Mother did not go to any of Me.R.-R.'s medical appointments.

{¶ 12} Young testified F.R.-R. is three, almost four years old and attends a special needs preschool. He also goes to speech classes and an IEP is being developed for him. When he first came to the Young home, he was two years old and knew four words. F.R.-R. has some issues with eating, in that he will keep eating until he gets sick. He also cannot eat chocolate or drink milk. When F.R.-R. first started living with the Youngs, he would vomit almost every day, but now he is on medication which has helped with this issue. At Saturday visitations, Young has spoken with mother about F.R.-R.'s allergies and asked that mother provide lunch for the children since it is the lunch hour. Young testified "[a] lot of times Saturdays and Sunday we have dealt with him throwing up after visitation." Young talked to mother and the situation improved "on and off." Following the visit with mother right before Christmas 2014, F.R.-R. started vomiting on the way

home. Young then found chocolate pieces and two out of three peanut butter cups in the children's bag. D.R.-S. was also sick after that visit with mother.

{¶ 13} Young stated her family has developed a very strong bond with the children and are willing to adopt the children and stay in contact with mother.

{¶ 14} Ramona Bethany, a clinical therapist at Unison Behavioral Health Group, testified mother was referred for therapy in April 2014. Mother was diagnosed with major depressive disorder and bereavement. Bethany saw mother twice in April 2014, then saw mother next in September 2014. Initially, the primary focus of the therapy was grief counseling and the goal was for mother to cope with the loss of her husband, but when mother returned for counseling, the focus was on mother coping with the requirements of her case plan and dealing with being separated from her children. Since mother returned to counseling, she usually meets with Bethany twice a month.

{¶ 15} Rhonda Nicholson, a caseworker for the agency, testified to the following. The agency first became involved with mother in 2009. There were 17 referrals made regarding the family from 2009 until the current case opened in July 2013. Prior to the current case, there were three "alternative response cases" for mother. These cases were open for 30 to 45 days, and the concerns in those cases were: housing issues as the house was dirty, hygiene issues as the children were dirty and had poor hygiene, drug use by C.S. and his friends who were living in the home, and domestic violence. There was also a time when mother's brother lived in the house and the house was raided because the brother was allegedly selling drugs out of the basement.

{¶ 16} In July 2013, the agency became involved with the family due to housing issues and the children's poor hygiene. Mother was depressed, pregnant and not meeting her children's needs. There were also concerns that C.S. was abusing substances. In addition, C.S. was involved in criminal activity, as he became belligerent while trying to visit mother at the hospital and was arrested. Police then found prescription pills and a syringe on C.S. and he was charged accordingly. At that time, mother and C.S. agreed that C.S. would leave the family home.

{¶ 17} In October 2013, D.R.-S. was born with special medical needs, including severe jaundice and a heart defect. When D.R.-S. was discharged from the hospital, mother was instructed by the doctor's office to bring the newborn in for testing. Mother did not do so. The doctor's office tried contacting mother but could not reach her, so the office telephoned Nicholson to have Nicholson communicate to mother that D.R.-S. had to be seen by the doctor.

{¶ 18} Nicholson went to mother's home and informed mother the doctor's office was trying to contact her. Mother said her phone was stolen but she would try to call the doctor to schedule an appointment. C.S. then walked into the room, and mother said she had taken the baby to the doctor's appointment. C.S. agreed, saying maternal grandmother took them to one of the appointments. Neither mother nor C.S. could remember the date of the appointment. Nicholson noticed D.R.-S. was in a bouncy seat or car seat on the floor, with two pit bull puppies roaming freely in the house. There was dog urine all over the floor. F.R.-R. and Me.R.-R. were at the house and F.R.-R. needed

a diaper change. Nicholson spoke to mother and C.S. about the urine on the floor; C.S. started cleaning it up. Nicholson voiced her concern to mother about the baby being on the floor with the puppies; mother said the puppies had not tried to jump on the baby. Nicholson noted C.S. was not supposed to be in the family home.

{¶ 19} In late October 2013, mother was arrested. Nicholson did not know where the children were and mother said the children were with C.S., but mother did not know where. The children were ultimately located at the maternal grandmother's home. The agency implemented a safety plan that mother and the children had to reside at the maternal grandmother's home; mother and grandmother signed the plan on Saturday. By Monday, mother had taken the children back to the family home, in violation of the safety plan.

{¶ 20} In early November 2013, D.R.-S. was admitted to the hospital and diagnosed with non-organic failure to thrive. The agency then filed a complaint based on concerns that D.R.-S.'s medical needs were not being met, two of the other children were behind on their immunizations, and the children were very dirty. One child had dirt caked on both hands and feet and had lice, while another child had nits. Two of the children had to be given baths and their clothes and shoes had to be thrown away. The complaint also referenced C.S.'s substance abuse and the condition of the house, including the floors were very sticky, there were dirty diapers on the floor, the house smelled strongly of urine and feces and the front door would not lock, because "when the home was raided previously, the door did not pull up all the way." The children were

found to be neglected and dependent, and the agency was awarded custody. Initially, the children were placed in two foster homes until they were all placed together in the Young home.

{¶ 21} Regarding relative placement, the agency reviewed numerous relatives' applications until two families' home studies were approved. The one family then decided it was not interested in the placement due to the fear that C.S. would harass the family for D.R.-S. The other family could not take the children because that family had moved to a smaller home.

{¶ 22} In November 2013, a case plan was developed for C.S. to have a diagnostic assessment. He completed the assessment and it was recommended that he attend intensive outpatient treatment. He went the first couple of weeks, then never went back, so he was discharged. It was also recommended that he take anger management and parenting classes, neither of which he took. C.S. visited with D.R.-S. in November and December 2013, and last saw his son on December 4, 2013. Nicholson went to the jail in September 2014, to meet with C.S. and discuss D.R.-S.'s medical issues, but C.S. said he already knew what was going on, as he had been in contact with mother. C.S. indicated he had been to the house where mother was living because he was friends with someone who also lived in that house. C.S. knew mother was married and pregnant, but did not like her husband. Although C.S. was given Nicholson's business card to contact her when he was released from jail, C.S. never called her. At the time of trial, C.S. was back in jail.

{¶ 23} Also in November 2013, a case plan was developed for mother to have a diagnostic assessment, complete domestic violence survivor's classes and parenting classes. Mother completed the assessment in March 2014. She was referred to Unison for counseling for major depression, and initially went to counseling, then stopped. She returned to counseling again in September 2014. Mother was also referred for domestic violence survivor's classes and began classes in early April 2014, and continued through mid-May 2014. She stopped attending those classes due to her conflicting work schedule. In early July 2014, mother requested a referral to another provider for the classes, but in late July 2014, she asked if she could return to the original provider. She started classes again in early August 2014, and completed the domestic violence survivor's classes in mid-October 2014. Regarding parenting classes, the referral was not initially made since mother was not following through with her mental health services. As a result, mother never attended parenting classes.

{¶ 24} With respect to housing issues, at the time of trial, mother owned a home but it was abandoned and condemned and considered a nuisance property. Mother had lived for a time in a rented duplex with another couple, but had recently moved with her new husband to another house on January 1, 2015. Nicholson just learned of mother's new residence and had no opportunity to confirm the condition of the home.

{¶ 25} At the time of trial, mother was not employed and her husband had just started a new job.

{¶ 26} Regarding mother's relationships, when the case started, she was dating C.S. After she ended that relationship, she dated two other men, one who was incarcerated and the other who thought he might be D.R.-S.'s father, but testing established C.S. was the father. Mother then married her current husband in June 2014, and was pregnant by him at the time of trial. The children had met mother's husband maybe twice, but had never visited with him as he is not on the visit list.

{¶ 27} Nicholson stated mother was never told that she could not attend her children's medical appointments, but was told she needed to be supervised. Mother contacted the agency almost two weeks after D.R.-S. had open heart surgery so she could visit him in the hospital, but he was being released the next day. Mother did not ask to be a part of any other medical appointments, nor did mother request to take part in any of the children's IEP meetings. It was not until October 2014, at the permanent planning conference, when Nicholson's supervisor suggested to mother "maybe she needs to start going" to the children's appointments that mother started attending appointments.

Mother's visitation with the children occurred every Saturday from 11:00 a.m. to 1:00 p.m. There were some concerns that mother was not really interacting with the children, especially if the children's grandparents were also visiting. Ma.R.-R., the oldest child, "was really doing most of the \* \* \* fixing the kids stuff or if they spilled something, they had to clean it up." In addition, mother fed the children inappropriate food during some visits, such that the children were sick afterwards.

{¶ 28} Nicholson noted the children were bonded with each other and overall were doing well in the foster home.

{¶ 29} The agency recommended permanent custody so the children could be adopted. Nicholson observed mother did not engage in services in the beginning, she went “on and off,” and it was not until the agency pursued a plan to seek permanent custody that mother “decided to do her services.” Nicholson found it difficult getting information from mother as mother was not forthcoming about her housing, marriage and pregnancy. Nicholson was concerned if the children were in mother’s care and mother was overwhelmed since three of the children have medical needs, how mother would handle the situation and whether mother would be able to ask for help.

{¶ 30} Mother testified her children were removed from the home on November 5, 2013. She visits with her children once a week for two hours and has only missed one visitation due to her work. At the time of trial, mother was not working as she was on bed rest due to her pregnancy. Her new husband was working and supporting both of them.

{¶ 31} Mother discussed the home she owns and how they could not live there after the lights and everything were turned off because C.S. took all of her money while she was in the hospital. Mother said she knew there was a problem with the house being dirty, but “there were too many things going on.” After leaving the home, she said they moved in with some friends. Then in December 2013, mother had C.S. arrested for spitting in her face, pushing her and stealing her van and ruining it. Mother moved in

with another friend and the friend's mom, and started working. After the friend's mom moved out, a man moved in. Following mother's marriage in June 2014, her husband moved in. Mother and her husband are currently renting a three bedroom home and have a 12-month lease.

{¶ 32} Mother testified about the services in her case plan. She explained she stopped meeting with Bethany at Unison for a while because it conflicted with her work hours. She then started back and it has taught her a lot. Mother discussed her husband's suicide and how she found him hanging in the doorway. She said the children were also in the house but did not see anything, although they heard her screams. Mother was numb after his death, then met C.S., and ultimately was overwhelmed. She talked about the domestic violence issues with C.S., the classes she attended for survivors of domestic violence and what she learned. She described how she started, stopped then resumed those classes.

{¶ 33} Regarding her children, mother acknowledged they have medical needs. She said she did not know about D.R.-S.'s heart surgery because "they didn't tell me when" and she only learned about it afterwards from Ma.R.-R. at a visit. Mother was also not aware of D.R.-S.'s surgeries for an intestinal blockage. Mother explained she knew he was in and out of the hospital in Ann Arbor, but she did not have a car at that time and "I don't know what is allowed and not allowed with CSB. Because I don't want to seem too pushy." She said it was after a meeting with the agency that she began attending medical appointments in October 2014, as "they said I was allowed to" and she

was not aware prior to then that she was allowed to go. She never asked anyone if she could go to doctor appointments because she “didn’t want it to seem that I was being weird.”

{¶ 34} Mother said she sent Ma.R.-R. to see the school counselor to see how his father’s death was affecting him at school, and the school said he was okay. Mother testified he did not seem really affected by his father’s death until one time Ma.R.-R. was playing a video game and said he missed his dad and started crying.

{¶ 35} With respect to the food issues, mother stated she was told F.R.-R. was having trouble with lactose and red food dye, so she did not bring chocolate milk and no longer brought fruit snacks or pizza to the visits. Mother never asked what foods would be appropriate for the children, and regarding F.R.-R. “I just -- I tried everything. They tell me what not to --.”

{¶ 36} Mother said she believes she will be able to take care of the special needs of her children and the new baby. She stated “it’s not going to be too hard” to get the children to their doctor appointments since the two older will be in school and F.R.-R. will be in pre-school. Mother also intends to go back to work when she is released to do so.

{¶ 37} Mother requested a six-month extension to complete her services so that reunification may be possible.

{¶ 38} Veronica Szozda testified she has been the guardian ad litem for the children since July 2014, as the previous guardian ad litem had moved out of state.

Szozda conducted an independent investigation by attending at least two visits between mother and the children, seeing the children at the foster home, looking at the records and talking with various people including relatives and the children's teachers. She never saw C.S. interact with the children, but she did speak with him over the phone. She opined "[h]e didn't seem like he was really wanting to be involved in the child's life." She also spoke with Ma.R.-R. during the in-camera interview and his wishes regarding where to live fluctuated. Szozda filed a report and recommendation on November 26, 2014, recommending permanent custody of all four children be awarded to the agency. Szozda acknowledged mother loved the children, but mother does not have insight into nor can she handle the children's needs. Szozda concluded the children need stability which lies with the agency so they can be adopted.

## **The Appeal**

### **Standard – Permanent Custody**

{¶ 39} A trial court's decision 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. Lucas No. L-11-1057, 2011-Ohio-4857, ¶ 11, citing *In re Andy-Jones*, 10th Dist. Franklin Nos. 03AP-1167 and 03AP-1231, 2004-Ohio-3312, ¶ 28. The factual findings of a trial court are presumed correct since, as the trier of fact, the court is in the best position to weigh the evidence and evaluate the witnesses' testimony. *In re Brown*, 98 Ohio App.3d 337, 342, 648 N.E.2d 576 (3d Dist.1994). Furthermore, "[e]very reasonable presumption must be made in favor of the judgment and the findings of facts [of the trial court]." *Karches*

*v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988). Hence, a judgment supported by some competent, credible evidence going to all essential elements of the case is not against the manifest weight of the evidence. *Id.*; *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 40} The juvenile court may grant permanent custody of a child to a children services agency if the court finds, by clear and convincing evidence, two statutory prongs: (1) the existence of at least one of the four factors set forth in R.C. 2151.414(B)(1)(a) through (d), and (2) the child’s best interest is served by granting permanent custody to the agency. *In re M.B.*, 10th Dist. Franklin No. 04AP755, 2005-Ohio-986, ¶ 6. Clear and convincing evidence requires proof which “produce[s] in the mind of the trier of facts 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.

#### **A. Factors Under R.C. 2125.414(B)(1)**

{¶ 41} The first prong of the permanent custody analysis requires the court to make a finding, by clear and convincing evidence, of one of the factors under R.C. 2151.414(B)(1). Here, the court found the factor under subsection (a) applied as to mother and subsection (b) applied regarding C.S. and his son, D.R.-S.

{¶ 42} R.C. 2125.414(B)(1)(a) and (b) state:

[T]he 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 \* \* \* 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.

(b) The child is abandoned.

{¶ 43} A finding under R.C. 2151.414(B)(1)(a) requires a determination that the child cannot be placed with either parent within a reasonable time or should not be placed with the child's parents. R.C. 2151.414(E) directs a court to "enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent" where it finds by clear and convincing evidence that "one or more" of the factors listed under R.C. 2151.414(E) exist. R.C. 2151.414(E)(1) provides:

(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.

{¶ 44} Ohio courts have consistently concluded that “[n]on-compliance with a case plan is grounds for termination of parental rights.” (Citation omitted.) *In re St.L.*, 6th Dist. Fulton No. F-13-002, 2013-Ohio-4414, ¶ 9-10.

### **B. Best Interest Factors**

{¶ 45} The second prong of the analysis requires the court to consider the best interest of the child. To satisfy the best interest prong of the permanent custody test, the agency was required to establish, by clear and convincing evidence, that permanent custody to the agency is in the best interest of the children based on an analysis under R.C. 2151.414(D). To that end, the trial court must consider all relevant factors, including: the interaction and interrelationship of the children with their parents, siblings, relatives, foster caregivers and out-of-home providers; the wishes of the children; the custodial history of the children; the children’s need for permanence; whether a parent has abandoned the child.

{¶ 46} Here, the record shows and the trial court found the agency first became involved with the family in this case due to the conditions in the home, the poor hygiene of the children, C.S.’s drug use and domestic violence issues between him and mother. The court noted after the agency became involved but prior to the children being removed from the home, both C.S. and mother were arrested. Following mother’s arrest, the

agency requested mother and the children stay at maternal grandmother's home. While mother agreed to this safety plan, she did not follow it, as she and the children returned to the family home with C.S. within days. The agency then removed the children from the home.

{¶ 47} The trial court observed and the record reveals mother waited almost five months to start her services, then only sporadically attended those services. The court found “[m]other continues to struggle with being overwhelmed with her own services.” In addition, mother did not participate in her children's medical appointments until almost a year after the children were removed from the home, and only after a supervisor at the agency suggested mother do so. Prior to that time, mother did not visit D.R.-S. in the hospital during his numerous stays, did not request information on his medical condition nor did she ask to attend his medical appointments.

{¶ 48} The trial court found mother has not stabilized her life since the children were removed from the home. The record supports this finding. Mother does not have stable housing, as she recently moved with her new husband to a new home after living with another couple where domestic violence issues were present. The new home has not been inspected by the agency's caseworker as the caseworker just learned of the new residence. Regarding mother's dating history, the court noted mother had relationships with three men during the pendency of the case, and ultimately married a man who does not know her children and has not bonded with the children. At the time of trial, mother was pregnant with her husband's child. Mother was not employed, and her new husband

recently started a new job. The court observed mother does not have an income or a viable plan for providing support for her children. Moreover, mother did not keep the caseworker informed of any of the events in mother's life.

{¶ 49} The court set forth extensive facts regarding the children's medical, educational and developmental issues. The court referred to the foster mother's testimony regarding two of the children's problems with certain foods, that mother was informed not to feed these foods to the children during visitation and how mother never asked what foods would be appropriate to feed the children, mother just kept trying new foods. The foster mother also testified that during one visit, mother brought chocolate for the children and thereafter two of the children had serious stomach problems. The court found despite the numerous issues the children had experienced, the children's needs were being met by their foster parents. The court further found the children are bonded with their foster family and the foster parents are willing to adopt the children.

{¶ 50} As to the children's need for permanence, the court recognized the children must have a legally secure permanent placement, and an award of permanent custody would facilitate a permanent adoptive home. In addition, the record shows both the caseworker and the guardian ad litem testified permanent custody of the children and termination of mother's rights was in the children's best interest.

{¶ 51} With respect to C.S., the court noted although attempts were made to notify him of the proceedings, he failed to maintain contact with the agency and did not

participate in case plan services or attend hearings. The trial court found C.S. failed to visit or maintain contact with D.R.-S., thus legally constituting abandonment.

{¶ 52} Based on our review of the record as summarized above, we find, as to the first prong of the permanent custody analysis, there is clear and convincing evidence in the record to support the court's determination that pursuant to R.C. 2151.414(B)(1)(a), the children cannot be placed with mother within a reasonable time, because, despite reasonable case planning and diligent efforts by the agency, mother has failed to substantially remedy the conditions which caused the children's removal. There is also clear and convincing evidence in the record to support the trial court's finding that pursuant to R.C. 2151.414(B)(1)(b), C.S. abandoned D.R.-S. As to the second prong of the permanent custody analysis, we find the record contains clear and convincing evidence to support the trial court's determination that an award of permanent custody to the agency is in the best interest of the children. We further find the trial court's judgment is not against the manifest weight of the evidence. Mother's assignment of error is therefore not well-taken.

{¶ 53} On consideration whereof, the judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Costs of this appeal are assessed to appellant 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.

Arlene Singer, J.

\_\_\_\_\_  
JUDGE

Thomas J. Osowik, J.

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JUDGE

Stephen A. Yarbrough, 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>.