

[Cite as *In re Q.M.*, 2015-Ohio-1315.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 102032, 102033, 102034, 102035, 102036, and 102037

IN RE: Q.M., ET AL.
Minor Children

[Appeal by Father P.M.]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD12917758, AD12917759, AD12917760,
AD12917761, AD12917762, AD12917763

BEFORE: McCormack, J., Kilbane, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: April 2, 2015

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TIM McCORMACK, J.:

{¶1} Appellant P.M. (“Father”) appeals the judgment of the Cuyahoga County Court of Common Pleas, Juvenile Division, that granted permanent custody of his six minor children (C.M., D.M., M.M., A.M., F.M., and Q.M.) to the Cuyahoga County Department of Children and Family Services (“CCDCFS” or “the agency”). Following a thorough review of the record, we affirm.

Procedural History and Substantive Facts

{¶2} On October 23, 2012, CCDCFS filed a complaint for temporary custody of the minor children, whose ages range from three years to nine years of age. The agency alleged that the children were neglected and dependent.¹ In support of its allegations, the agency stated that both Mother and Father have repeatedly engaged in acts of domestic violence in the presence of the children; the home is unsafe and unsanitary; Mother and Father lack appropriate judgment and parenting skills; Father has been diagnosed with schizo-affective disorder and has failed to address his mental needs; Father has a substance abuse problem; Mother has been suffering from depression; Mother is developmentally delayed and her delays interfere with her ability to provide for her children; Father has two older children from a previous relationship who were removed from his care and committed to the legal custody of a relative; and three of the children

¹ The agency’s complaint was filed against Mother, T.C.-M., as well as Father. Mother has filed a separate appeal in *In re Q.M.*, 8th Dist. Cuyahoga Nos. 101999, 102001, 102003, 102004, 102007, and 102008. For a more complete recitation of the facts, especially as those facts pertain to Mother, see the decision from this court in Mother’s appeal.

(C.M., D.M., and M.M.) were “previously adjudicated” due to the domestic violence between the parents and were committed to the protective supervision of CCDCFS.

{¶3} On November 6, 2012, CCDCFS issued a case plan with a goal of reunification wherein the agency addressed the concerns regarding both Mother and Father. Regarding Father, the case plan required him “to learn ways to reduce his anger and aggression in order to reduce the risk of safety and harm to the children” and to successfully participate in anger management/domestic violence services. The case plan required both parents to learn ways to better maintain the house in order to reduce the risk of harm to the children, including the risk of fires, because the home appeared to be a fire hazard. The parents were also required to learn ways to maintain behavioral control of the children and address the children’s unmet developmental and physical needs. Finally, the plan required Father to address his own mental health issues in order to reduce the risk of harm to his children.

{¶4} Subsequently, the court appointed guardians ad litem (“GAL”) for Mother, Father, and the six children. A hearing was then scheduled on the complaint. On December 7, 2012, the court ordered that Father shall not reside in the family home or have contact with the children or Mother until further order of the court. Further, the court ordered that Father shall have supervised visitation only.

{¶5} Following a hearing on December 14, 2012, both Mother and Father stipulated to emergency temporary custody to CCDCFS and the children were placed in foster care. Thereafter, the case plan was amended to include counseling for the children

due to the severe emotional trauma they suffered by witnessing domestic violence and physical abuse in the home. The amended case plan also required that the caregivers ensure that the children attend all scheduled doctors' appointments. They were to be immediately treated should any medical issue arise.

{¶6} Subsequently, the complaint was amended, thus removing the allegation that Mother was developmentally delayed. On January 8, 2013, both Mother and Father stipulated to the charges in the amended complaint, and the court ordered that the children be adjudicated dependent.

{¶7} On February 21, 2013, the GAL for the children submitted a report based on his investigation. He reported the following:

1. “[S]erious domestic violence issues”;
2. “[S]erious abuse issues” to which the children are subjected;
3. Numerous incidents of inappropriate physical discipline by both parents;
4. “[H]orrible living conditions,” including bug infestation and urine-stained beds;
5. The children were bathed approximately once every three weeks, bathing all children at the same time, and their hair was likely never washed;
6. Dirty and inappropriate clothing;
7. Q.M. was significantly underweight and has severe physical problems;
8. Many of the children were behind on their immunizations and did not receive appropriate medical checkups or treatment;

9. Numerous incidents of psychological abuse, some resulting from the children being forced to eat on the floor, except on Father's birthday, when they were permitted to eat at the table;
10. The children exhibited inappropriate boundaries, being "way too friendly [with] strangers"; and
11. Possible sexual abuse.

The GAL concluded his report with a recommendation of temporary custody with the agency, stating that "[t]his appears to be one of the most serious cases of abuse, both physical and psychological, that I have been involved with in over twenty years of being a [GAL] in this court."

{¶8} Following a hearing on February 22, 2013, both Mother and Father stipulated to the court granting temporary custody of the children to CCDCFS, pending further review for substantial compliance with the case plan. The court then committed the children to the temporary custody of the agency. The court noted that the agency had made reasonable efforts to prevent removal of the children, to eliminate the continued removal of the children from the home, with the ultimate goal of making it possible for the children to return home. The court also found, with respect to Father, that he must complete anger management classes and parenting education, and undertake a mental health assessment and follow any recommendations of the assessment. Further, a substance abuse assessment was ordered. Father was to follow any recommendations of the assessment. The court made certain findings as they pertained to Mother as well. The findings included drug and mental health assessments and domestic violence counseling as well as parenting education. In addition, the court ordered that the

children be assessed for learning disabilities and delays. Finally, the court determined that there were no relatives willing and able to provide substitute care for the children. The court determined that returning the children to their home would be contrary to their best interests.

{¶9} In September 2013, the agency conducted a case review and indicated in its report that Father had demonstrated significant progress toward addressing the safety of the children. Both parents had completed parenting classes and attended scheduled visits with the children. The review also noted that Q.M.'s medical issues were being addressed while in foster care. Her feeding tube was no longer needed, and she was in Help Me Grow Services, receiving speech and occupational therapy. She was "doing well." The agency noted that some progress had been made regarding the children's counseling sessions.

{¶10} Father had demonstrated, however, only some progress regarding addressing his own mental health issues. He was diagnosed with adjustment disorder, anxiety, and alcohol abuse, and he attended counseling sessions approximately one to two times per month. He made contradictory statements during his competency evaluation and maintained "unreliable reporting." Additionally, Father has demonstrated insufficient progress toward addressing housing permanency and the children's well-being. There continued to be "ongoing conflict" with Father and the neighbors and there was "no housing stability." Finally, Father has demonstrated insufficient progress in addressing the domestic violence issues. Although Father completed domestic violence and anger

management services, there continued to be “ongoing conflict in the home” between both Mother and Father. The report noted verbal and physical aggression in front of the children.

{¶11} The review noted, with respect to each child, that the current placement of the children in foster care is appropriately meeting the children’s basic and special needs:

All six children are placed together in one foster home where all basic and special needs are being met. This is the least restrictive option at this point * * *. The four oldest children are participating in a trauma support group to talk about * * * past incidents of abuse and neglect as well as currently being separated from their parents. They are making good progress. The three oldest are in school and their needs are being me[t]. The two youngest will begin Head Start to allow the children more interaction with peers and gain needed skills to be better prepared for kindergarten. Visitation happens on a bi-weekly basis * * *. The visits still need supervision because while visiting, parents have arguments in front of the children with the assigned social worker and each other. This makes the children feel uncomfortable and * * * upset[s] them during visits.

{¶12} The agency concluded in its case review that the family is in need of home placement services and it recommended an extension of temporary custody due to “continued domestic relations/discord, parenting and lack of housing stability at this time.” In summary, CCDCFS stated that “[d]uring this review period both parents are making progress, but are not consistently demonstrating the desired behavior which is the reason that the children cannot return to either parent’s care at this time.” The agency then requested an extension of temporary custody, which was ultimately granted.

{¶13} On September 24, 2013, Father moved for legal custody of the children. His motion was held in abeyance. On September 30, 2013, the GAL for the children submitted a report recommending that the children continue in the temporary custody of

the agency. He specifically noted they should continue in their present placement in foster care. The GAL reported that the children have adjusted very well to their foster placement and all of their needs are being met, including several medical issues. Three of the children have been diagnosed with a genetic chromosomal disorder and have been referred for physical therapy. The youngest of those three children has “several other issues,” including partial facial paralysis for which she has been referred to a neurologist.

She also suffers from hearing loss in her left ear and tubes in the other ear, for which she receives speech therapy. She will begin occupational therapy.

{¶14} In his report, the GAL expressed “serious concerns” regarding the continuing domestic violence and anger management issues of the parents, noting that Mother threw items at Father in their home after they both completed their classes. The parents have separated due to the continuing conflict. During a visitation, Father purportedly became angry and both parents argued in front of the children. The GAL also noted serious concerns regarding the parents’ parenting abilities, providing that their domestic violence hampers their parenting abilities, despite the parents having completed parenting classes. Finally, the GAL submits that Father’s mental health and substance abuse continue to be an issue. Father was administered a psychological evaluation. The clinic, however, could not give a full diagnosis and recommended Father for a psychiatric evaluation. According to the agency’s report, the psychiatrist diagnosed Father as bipolar. Father completed outpatient substance abuse treatment; however, there were no

recommendations for further treatment. Additionally, the GAL expressed concerns about Mother's own developmental delays.

{¶15} The agency moved to finalize a permanency plan regarding the children. On March 24, 2014, the court determined that substantial compliance with the case plan by Mother and Father has been made. Progress, though, has not been made in alleviating the cause for removal of the children from the home. Return of the children to the home would be contrary to the children's best interests. The court concluded that the placement of the children is appropriate and the continued temporary custody by the agency is in the children's best interests.

{¶16} On April 18, 2014, CCDCFS filed a motion to modify temporary custody to permanent custody. On August 14, 2014, the GAL for the children submitted a report recommending that the court grant the agency's motion. The GAL reported, once again, on the continued problems with domestic violence issues, noting that the Court Diagnostic Clinic report indicated that Father has failed to benefit from services to address domestic violence and anger management. Serious concerns remained regarding the domestic violence and anger management of both parents. Parenting skills as well as the parents' ability to communicate appropriately with the children remained major barriers to reunification. The GAL reported that although Mother and Father have completed parenting classes, their "continuing conflicts after the completion of domestic violence/parenting classes are also applicable to the issue of the parents' parenting abilities."

{¶17} Additionally, the GAL reported the following regarding Father's mental

health:

He was diagnosed with alcohol abuse, borderline intellectual functioning, and domestic violence issues. The report from the clinic also states that Father has failed to benefit from both parenting and domestic violence services which he previously received. Additionally, Father has displayed signs of paranoia, including having surveillance cameras [installed] throughout the house, including the children's bedrooms, outside the home, and in the mother's bedroom. He had a monitor in his room to watch all the activities * * *.

{¶18} Finally, the GAL submitted that the six children, having all been placed in the same foster home, have adjusted very well to foster placement and all of their needs are being met:

There is a significant difference in the interaction of the children at the foster home as opposed to visitation with the parents. The children are much more animated * * * and interact more comfortably * * * in the foster home. Clearly, they are more comfortable there. It is their safe haven. They have a clear and strong bond with the foster mother. They listen to her. They comply with her directives and with the rules of the home. They have made tremendous strides since being in foster care. * * * The foster mother is on top of everything. * * * She has obtained services for these children and is very proactive in obtaining services for them, in researching each child's issues and needs and reaching out for services for the children. She has given the children structure, one on one attention, used appropriate parenting techniques and the love and attention they need. They feel safe and comfortable with her. Frankly, she is the most impressive foster mother I have ever met in over twenty years as a [GAL] for this court. * * * Her commitment to these children is unbelievable and in my opinion the children were very fortunate to be placed in this foster home.

{¶19} The matter proceeded to trial on August 14, 2014, wherein CCDCFS presented testimony from Debbie Sherrick, the children's foster mother, and April Long, the social worker assigned to the case.

{¶20} Debbie Sherrick testified that she has been a foster parent for 21 years and has provided care for approximately 120 special needs children. Sherrick and her husband, Jeffrey, who are licensed foster parents with a treatment foster agency, have received extensive specialized training in order to care for special needs children. Their training included training in domestic violence, cultural diversity, some medical needs, and classes on ADD, ADHD, and substance use/abuse. Sherrick stated that she and her husband have provided care for P.M.'s six children for approximately 21 months. It is especially noteworthy that they took them in because they did not want the children split up between several foster homes.

{¶21} Sherrick testified concerning the care and well-being of the six children and how they are doing presently. She compared that with how they were doing when they were first placed in her home. She first testified concerning the oldest child, C.M., who is nine years old. C.M. is one of three children who has the chromosomal disorder known as 17q12 microdeletion, which can present itself with up to 52 symptoms. C.M. has developmental delays, hypertonia (stiffening of the limbs and weak muscles), multi-cystic dysplastic kidney syndrome, "lazy eye," and is under the care of a cardiologist due to open heart surgery when she was younger.

{¶22} Sherrick stated that when C.M. came to her home, she was "a little bit behind" in school and had extremely low test scores. She had difficulty retaining information. C.M. has only one working kidney that also contains cysts. She requires an appointment with a specialist every three months. Sherrick reported that C.M. should

have been receiving renal scans yearly since birth. She had not had a single scan prior to Sherrick's care. Additionally, C.M. is short for her age. She had black toenails, "tingling in her feet," "fluttering in her chest," and she would have accidents in bed and when she was reprimanded.

{¶23} Sherrick testified that C.M. is doing very well now. Sherrick takes C.M. to all of her medical appointments. She has been working on obtaining an individualized education program ("IEP") for C.M. at school. C.M. is in an afterschool program for tutoring. Sherrick maintains an orderly home and provides structure for the children, which has provided a beneficial routine for C.M. Sherrick also provides daily reminders for C.M. regarding personal hygiene and schoolwork. Sherrick takes C.M. swimming and to gymnastics in order to help with her weakened muscles and other physical disabilities. She performs massages on C.M.'s feet and pedicures on C.M.'s black toenails. Sherrick stated that C.M. no longer has accidents when she is reprimanded or becomes scared.

{¶24} Regarding D.M., who is eight years old, Sherrick testified that she is a little behind in school, typically complains of a headache or stomachache "when she goes to a visit," and was behind on her immunizations. She is otherwise healthy. Sherrick stated that D.M. is "the mom of the group," expressing the need to take care of the other children. Sherrick has had discussions with the school regarding D.M.'s schoolwork and stated a possible need for tutoring. Sherrick stated that D.M. is "a great kid" who loves to swim and is also in gymnastics.

{¶25} M.M., who is seven years old, also has the chromosomal disorder, has the “most special needs of all the children.” M.M. is the most developmentally delayed. She has hypertonia and certain resultant physical disabilities. She also requires renal scans. Sherrick testified that sometimes M.M. “just blanks out.” She had failure to thrive syndrome as an infant, and she presently has dental and vision problems. Sherrick stated that M.M. gained 14 pounds and grew six inches the first six months living in foster care. M.M. now receives physical therapy as well as speech therapy, and she benefits from daily swimming exercises.

{¶26} A.M., who is five years old, does not have developmental delays or medical issues. She attended Headstart and did well. Sherrick testified that the only major issue A.M. had when she came to foster care was “trying to get her to not be so mean.” However, A.M. is a typical child who is full of energy.

{¶27} F.M., who is four years old, was significantly behind with her immunizations when she came to foster care. She has severe astigmatism and requires glasses. Sherrick stated that she should have received glasses as an infant. Because her vision is so poor, even with glasses, Sherrick intends to address F.M.’s needs with the school concerning possibly obtaining an IEP for her. F.M. is also receiving occupational therapy because she is approximately one year behind in her gross motor skills. Although she has not been diagnosed with the chromosomal microdeletion, F.M. will undergo testing because of concerns that she may have a different chromosomal

abnormality. F.M. also has an irrational fear that bugs are crawling all over her. Sherrick testified that she intends to obtain counseling for F.M. when she gets older.

{¶28} Finally, Sherrick testified concerning the youngest of the children, Q.M., who is three years old. Q.M. has the chromosomal disorder, severe speech delay, paralysis on the right side of her face, hearing and vision issues, including “lazy eye” and a problem voluntarily closing one eye. Q.M. also had an infected feeding tube when she came to live with Sherrick, and she suffered from silent aspiration, wherein food particles could travel to the lungs resulting in pneumonias.

{¶29} Sherrick testified that she has been addressing all of Q.M.’s issues. Q.M. receives speech therapy (in school and from a private speech pathologist), she has a hearing aid, and she wears “very, very strong prescription * * * glasses.” Sherrick stated that Q.M. should have had glasses and a hearing aid as an infant because her vision was so poor and because she failed her hearing test at birth. Sherrick completes exercises with Q.M. to help develop the muscles in Q.M.’s mouth and cheeks, from which Q.M. has benefitted. She initially helped feed Q.M. because Q.M. did not know how to properly use eating utensils. As a result of her assistance, Q.M. was able to eat and she gained five pounds in the first month living with Sherrick. Eventually, Q.M. no longer aspirated and her feeding tube was permanently removed. Sherrick also places drops in her eyes three times a day because of dryness. Sherrick further testified that she takes Q.M. to Children’s Hospital approximately four to ten visits each month, depending on the need.

{¶30} In general, Sherrick testified that the children's behavior was "almost animalistic" when she initially began providing care. They would hit each other, fight, and steal food off each other's plates. They had difficulty sitting down at the table for a meal and many of the children did not know how to properly use eating utensils. They had difficulty making daily decisions, as well, such as what to wear, what to eat, when to drink, and what shoes to put on. Sherrick stated that she "did every single thing for these kids, every single decision" because they did not know how.

{¶31} Sherrick provided that the children now "get along great." They have learned how to "talk out their problems," match their outfits, and take care of their personal hygiene. The children are also learning boundaries, and they are not hitting each other anymore. Sherrick stated that she is working on disciplining the children differently for disruptive behavior, depending on the needs and emotional issues of each child, using "time-ins" or "time-outs." Further, the four older girls are in counseling to address their emotional needs. Sherrick testified that she has attended the counseling sessions as well, in order to learn more about domestic violence, and she now teaches a class on the effects of domestic violence on a child's developing brain.

{¶32} Finally, Sherrick testified that she loves the children and thinks "they have a lot of potential." Sherrick has expressed a desire to adopt all six children, as she believes strongly in keeping siblings together in the home. She further testified that should she adopt the children, she is willing to maintain the children's relationship with their biological parents.

{¶33} April Long, the assigned social worker with CCDCFS, testified that she received the case in February 2013, when the children were committed to the temporary custody of the agency. Temporary custody was thereafter extended, and a case plan was developed with the goal of reunification with the parents. The case plan required Father to receive substance abuse assistance, the parents to maintain safe and stable housing, both parents to receive parenting education and domestic violence services, and both Mother and Father to maintain the children's medical issues.

{¶34} Regarding the substance abuse issues, Long testified that Father had a history of drug use and had previously been in treatment prior to her receiving the case. In this matter, the agency referred Father for non-intensive outpatient drug and alcohol treatment. Father participated in the assessment, and he completed the recommended treatment plan. However, after having completed the treatment, Father purportedly engaged in an act of domestic violence while intoxicated.² The agency then required Father to undergo hair follicle testing; however, Father reported for testing with short hair several times, resulting in the inability to perform the testing.

{¶35} Regarding the domestic violence issues, Long testified that both parents were exposing the children to violent acts between Mother and Father. One incident that occurred took place while the parents were driving a vehicle, which put the children at risk. Long stated that both parents completed domestic violence classes, yet they

² As a result of this incident in June 2014, Father was arrested but not charged for his actions. Long testified that Mother refused to press charges.

continued to argue. She recorded several incidents wherein both Mother and Father engaged in physical, verbal, and emotional abuse. She stated that the children have been exposed to “severe domestic violence” and are in counseling because of the exposure. She opined that neither parent has benefitted from the domestic violence services.

{¶36} On cross-examination, she explained her position regarding the domestic violence classes:

I feel that when a person completes a class and they don't benefit from it that there's something far more going on than just completing a class. So when I referred them to domestic violence classes and they completed them, but did not benefit from them, there's other rational[e]s as to why they're not benefitting from them. So therefore, I think that it's in combination of mental health problems, substance abuse.

So sending a person to domestic violence class * * * [is] going to teach them how to interact with one another and abstain from mental and emotional and physical abuse, but that doesn't mean that they're going to benefit from them.

{¶37} Long further testified that Father, in particular, has had a long history of domestic violence that dates back to 2000 and involved different significant others. She stated that Father's two older sons from a previous marriage have been in the custody of their paternal grandmother since 2004. According to Long, the agency became involved because of Father's domestic violence issues.

{¶38} The parents have also completed parenting classes. Long testified that, although the parents completed the classes, they have not benefitted from the classes because the completion of the parenting classes has not remedied their significant

parenting issues. In support of her testimony, she noted that the parents engaged in manipulative and controlling behavior with the children during visits and made inappropriate comments. She testified that the children “don’t want to go home, but they do want to see their parents because they love them.” Long also expressed concerns that Father’s mental health issues have affected his ability to parent his children and, as a result, she has advised against unsupervised visitation with Father. Further, she does not believe that either parent has progressed to warrant unsupervised visits with the children.

{¶39} Long expressed concern about Mother’s ability to parent the children independently. She testified that Mother has received Social Security benefits as a child due to her own developmental disabilities. Mother, though, has not been able to substantiate her disabilities in order that she may receive assistance from the county. Long stated that should she find the appropriate documentation, she could receive assistance with supportive services, such as employment and parenting programs, because she is low functioning.

{¶40} Finally, Long testified that permanent custody is in the children’s best interest because

the parents have failed to benefit from services that have consistently been provided for them, and the issues that led to our initial removal have not been rectified. And these children have medical issues. They need a slew of support from the parents, and they need this ongoing through their lives.

And our agency does not feel that the parents have even met the basic needs of the children, let alone their medical needs.

{¶41} James Schulz, GAL for the children, testified that he has been involved with the case since the filing of the original complaint. He stated that based upon his investigation and his interaction with the children, the parents, the foster mother, and the social worker, he believes permanent custody would be in the best interest of the children. He further stated that he believes the agency has made efforts “to try to give the parents services, but those efforts, unfortunately, haven’t been successful.” According to Schulz, the foster home is the most appropriate placement, where all of the children’s needs are met, including “very difficult special needs,” despite the fact that there are other foster children in the home.

{¶42} Following the trial, the court ordered the children to be committed to the permanent custody of CCDCFS. In its order, the court found that the children have been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period. The court also found that the continued residence of the children in the home will be contrary to the children’s best interest and welfare.

{¶43} The court stated as follows:

Upon considering the interaction and interrelationship of the child with the child’s parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period; the child’s need for a legally secure permanent placement and whether that type of placement can be achieved without grant of permanent custody; and, the

report of the [GAL], the court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the child and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

{¶44} Additionally, the court determined that

[f]ollowing 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.

The 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 permanent home for the child at the present time and, as anticipated, within one year.

{¶45} This appeal follows the decision of the trial court wherein Father sets forth one assignment of error for our review.

Assignment of Error

The trial court's decision to award permanent custody to CCDCFS was against the manifest weight of the evidence as it was not supported by clear and convincing evidence.

Law and Analysis

{¶46} In his sole assignment of error, Father argues that the evidence does not support the trial court's finding that the children cannot be placed with him within a

reasonable time and permanent custody with CCDCFS is not in the best interest of the children.

{¶47} We begin with the recognition that parents have a constitutionally protected interest in raising their children. *In re M.J.M.*, 8th Dist. Cuyahoga No. 94130, 2010-Ohio-1674, ¶ 15, citing *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). That interest, however, is “always subject to the ultimate welfare of the child.” *Id.*, quoting *In re B.L.*, 10th Dist. Franklin No. 04AP-1108, 2005-Ohio-1151, ¶ 7.

{¶48} R.C. 2151.414 sets forth a two-prong analysis to be applied by a juvenile court in adjudicating a motion for permanent custody. R.C. 2151.414(B). First, it authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that any of the four factors apply: (a) the child is not abandoned or orphaned, but the child cannot be placed with either parent within a reasonable time or should not be placed with the child’s parents; (b) the child is abandoned; (c) the child is orphaned, and there are no relatives of the child who are able to take permanent custody; or (d) the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for 12 or more months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a)-(d). *In re J.G.*, 8th Dist. Cuyahoga No. 100681, 2014-Ohio-2652, ¶ 41.

{¶49} In the event that R.C. 2151.414(B)(1)(a) applies, and the child is not abandoned or orphaned, but the child cannot be placed with either parent within a reasonable time or should not be placed with the child's parents, a trial court must consider the factors outlined in R.C. 2151.414(E). *In re R.M.*, 8th Dist. Cuyahoga Nos. 98065 and 98066, 2012-Ohio-4290, ¶ 14. The presence of only one factor will support the court's finding that the child cannot be reunified with the parent within a reasonable time. *Id.* The relevant factors include the following:

(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 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 * * *;

(3) The parent committed any abuse as described in section 2151.031 of the Revised Code against the child, caused the child to suffer any neglect as described in section 2151.03 of the Revised Code, or allowed the child to suffer any neglect as described in section 2151.03 of the Revised Code between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody;

* * *

(16) Any other factor the court considers relevant.

R.C. 2151.414(E).

{¶50} Substantial compliance with a case plan is not dispositive in and of itself on the issue of reunification and does not preclude a grant of permanent custody to a social services agency. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 139. “The issue is not whether the parent has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child’s removal.” *Id.*, quoting *In re McKenzie*, 9th Dist. Wayne No. 95CA0015, 1995 Ohio App. LEXIS 4618 (Oct. 18, 1995).

{¶51} If any of the factors outlined in R.C. 2151.414(B)(1)(a)-(d) exists, the trial court proceeds to the second part of the analysis: whether, by clear and convincing evidence, it is in the best interests of the child to grant permanent custody to the agency.

{¶52} In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D)(1) mandates that the juvenile court consider all relevant factors, including, but not limited to, the following:

- (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;
- (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;
- (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 * * *;

(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 * * *.

{¶53} Only one of the factors enumerated in R.C. 2151.414(D) needs to be resolved in favor of the award of permanent custody in order for the court to terminate parental rights. *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 53; *In re Z.T.*, 8th Dist. Cuyahoga No. 88009, 2007-Ohio-827, ¶ 56.

{¶54} The permanent custody statute requires the court to find, by clear and convincing evidence, (1) one of the factors enumerated in R.C. 2151.414(B)(1)(a)-(d), and (2) an award of permanent custody is in the best interest of the child. Clear and convincing evidence is that which will produce in the trier of fact “a firm belief or conviction as to the facts sought to be established.” *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. While requiring a greater standard of proof than a preponderance of the evidence, clear and convincing evidence requires less than proof beyond a reasonable doubt. *In re Parsons*, 9th Dist. Lorain No. 97CA006662 and 97CA006663, 1997 Ohio App. LEXIS 5141 (Nov. 12, 1997).

{¶55} As for the reviewing court's role on appeal from the trial court's decision, we are cognizant that a juvenile court's termination of parental rights and award of permanent custody to an agency is not reversed unless the judgment is not supported by clear and convincing evidence. *In re J.G.*, 8th Dist. Cuyahoga No. 100681,

2014-Ohio-2652, at ¶ 47; *In re: Dylan C*, 121 Ohio App.3d 115, 121, 699 N.E.2d 107 (6th Dist.1997).

{¶56} Here, we find that the trial court satisfied the first prong of the permanent custody analysis. The court found by clear and convincing evidence that the children had been in the temporary custody of the agency for 12 or more months of a consecutive 22-month period. The record supports the court's finding.

{¶57} The court also determined, under the first prong, that the children cannot be placed with either parent within a reasonable time or should not be placed with the children's parents. The record supports the court's determination.

{¶58} In this case, the evidence shows that Father has failed continuously and repeatedly to substantially remedy the conditions causing the children to be removed from the home. Although Father completed some of the requirements of his case plan, he failed to benefit from the services. For instance, Father completed an alcohol and drug assessment program. However, the record demonstrates that after the completion of the program, Mother reported that Father was using alcohol and crack cocaine in an incident that also involved acts of domestic violence. Further, Father repeatedly reported to hair follicle testing without the sufficient length of hair required for testing.

{¶59} Father also failed to benefit from domestic violence classes. The record shows that both parents completed the classes, yet they continued to engage in physical, verbal, and emotional abuse in the presence of the children. This abuse has resulted in the children's need for counseling. Moreover, the evidence demonstrates that Father has

a long history of domestic violence that dates back to at least 2000. As a result of his prior domestic violence, Father's two older children from a previous relationship have been removed from his care.

{¶60} Additionally, while both parents have completed parenting classes, the record demonstrates that they have not benefitted from the classes. The parents continued to engage in manipulative and controlling behavior with the children during visits. They have also made inappropriate comments to the children during these visits. The evidence shows that the parents have not progressed beyond unsupervised visits due to the parents' inappropriate behavior with the children. Moreover, the record shows that the children's basic needs, including their medical and significant special needs, had not been met while in the parents' care.

{¶61} Regarding the second prong of the analysis, we find that there was clear and convincing evidence in the record to support the court's determination that awarding permanent custody to the agency was in the children's best interests.

{¶62} The evidence establishes that the children's basic needs, as well as their special and medical needs, were not met while the children were living at home. Three of the children have a chromosomal disorder requiring extensive continuing medical treatment. At least one of these children should have been receiving kidney scans from birth, yet those scans had only begun under the care of the foster parents. One of the children came to foster care with an infected feeding tube. Two of the children had extremely poor vision, which could have been alleviated had they received glasses at a

much earlier age. One child has poor hearing and should have had a hearing aid since infancy. All of the children were behind with their immunizations, one of whom was significantly behind. Several of the children have developmental delays requiring additional assistance with schoolwork and basic life skills. Several of the children could not hold eating utensils or address personal hygiene issues. Four of the children receive counseling services and, as the younger children age, they will also likely receive counseling.

{¶63} The record also reveals that the children had been removed from their parents' care for more than 12 months in a consecutive 22-month period, during which time they were under the care of the same foster parents. These foster parents, who receive specialized training in order to care for the children's special needs, have provided a stable and loving home environment for the children where the children's needs are satisfied. In addition, the evidence shows that the foster mother has worked with the children. She has worked with the children on their behavior and taught them basic life skills. The foster mother takes the children to medical appointments and enables the children to receive physical, occupational, and speech services. She takes them swimming in order to address their physical disabilities and she manages their daily care, including providing eye drops, assisting with feeding, providing massages and pedicures for seemingly infected toenails, assisting certain children with daily exercises, and obtaining special education services. The evidence also shows that the foster parents

advocate keeping all of the children together. They have clearly expressed a desire to adopt the children.

{¶64} Importantly, the children's GAL recommended permanent custody with the agency. He communicated that permanent custody would be in the best interests of the children. According to the GAL, the current foster home is the most appropriate placement where all of the children's needs are met.

{¶65} In light of the foregoing, we find that the trial court considered the relevant statutory factors. We further find that the trial court's determination that permanent custody with CCDCFS is in the best interests of the children was supported by clear and convincing evidence.

{¶66} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the juvenile court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

TIM McCORMACK, JUDGE

MARY EILEEN KILBANE P.J., and
PATRICIA ANN BLACKMON, J., CONCUR