[Cite as *In re V.C.*, 2015-Ohio-4991.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 102903, 103061 and 103367

IN RE: V.C.
Minor Child

[Appeal by: R.C., Mother, and L.K., Grandmother]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 13-908878

BEFORE: E.A. Gallagher, P.J., Kilbane, J., and Boyle, J.

RELEASED AND JOURNALIZED: December 3, 2015

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EILEEN A. GALLAGHER, P.J.:

{¶1} In this consolidated appeal, defendant-appellant R.C., the mother, and L.K., maternal grandmother, (collectively "appellants") appeal from the decision of the Cuyahoga County Court of Common Pleas, Juvenile Division, granting permanent custody of R.C.'s then 22- month-old daughter, V.C., to the Cuyahoga County Division of Children and Family Services ("CCDCFS"). For the reasons that follow, we affirm the trial court's judgment.

Factual and Procedural Background

{¶2} V.C. was born on May 16, 2013. She remained in the hospital for five weeks after she tested positive for opiates and methadone at birth. On June 18, 2013, when V.C. was due to be discharged from the hospital, she was taken into custody by CCDCFS pursuant to an ex parte telephonic order. The next day, CCDCFS filed a complaint and a motion for predispositional temporary custody. The complaint alleged that V.C. was abused and dependent because (1) she tested positive for opiates and methadone at the time of her birth, (2) her mother, R.C., was incarcerated and had a substance abuse problem and mental health issues that precluded her from providing safe and adequate care for V.C., (3) two of V.C.'s siblings had been previously removed from R.C.'s care due to her substance abuse and mental health issues and (4) the alleged father, J.A., had not yet established paternity and lacked stable housing. The trial court granted CCDCFS emergency temporary custody of V.C., and V.C. was placed in non-relative foster care. She has remained in the same foster care placement since that time.

{¶3} After V.C. was committed to the emergency temporary custody of CCDCFS, J.A.'s paternity of V.C. was established. On August 26, 2013, R.C. and J.A. admitted the allegations of an amended complaint, and V.C. was thereafter adjudicated to be abused and dependent.[1] Following a hearing on September 25, 2013, V.C. was committed to the temporary custody of CCDCFS and a case plan was approved that was designed to reunite V.C. with her parents.

{¶4} On June 6, 2014, CCDCFS filed a motion to modify temporary custody to permanent custody. Three-and-a-half months later, V.C.'s maternal grandmother, L.K., filed a motion to intervene in the proceedings and a motion for legal custody of V.C. CCDCFS opposed the motion to intervene, arguing that L.K. did not satisfy the definition of a "party" under Juv.R. 2(Y) and that her "expressed personal interest in custody of V.C. does not give her a legally recognized claim in this matter." On October 20, 2014, R.C. filed a separate motion requesting that the court grant legal custody of V.C. to L.K. The trial court denied L.K.'s motion to intervene and, on January 29, 2015, held a hearing on CCDCFS's motion to modify temporary custody to permanent custody and R.C.'s motion to grant legal custody to L.K. At the hearing, the trial court heard testimony from Shante Frazier and Shuntaya Howard, the two CCDCFS social workers who handled the

[1]Specifically, R.C. and J.A. admitted that: (1) V.C. tested positive for opiates and methadone at the time of her birth and experienced withdrawal symptoms that required an extended hospital stay; (2) R.C. has a substance abuse problem that interferes with her ability to provide safe and adequate care of V.C.; (3) R.C. was incarcerated in Missouri at the time the complaint was filed; (4) R.C. has been diagnosed with dissociative identity disorder and bipolar disorder that interferes with her ability to provide safe and adequate care of V.C.; (5) R.C. has two other children who were removed from her care due to her substance abuse and mental illness and placed in the legal custody of their father; and (6) J.A. is currently homeless and lacks stable housing to provide for V.C.'s basic shelter needs.

case, Dr. Richard DeFranco, a physician specializing in addiction medicine who had been treating R.C. for opiate addiction, L.K., and one of L.K.'s coworkers, Dr. Stacy Ehrenberg-Buchner. A summary of the relevant testimony follows.

{¶5} Shante Frazier was assigned to V.C.'s case from June 19, 2013 until July 8, 2014. She testified that the case was referred to CCDCFS after R.C. and V.C. tested positive for opiates and methadone at V.C.'s birth. She indicated that, in addition to V.C., R.C. has three other children, all of whom are in the legal custody of their fathers.

{¶6} Under the case plan, R.C. was to complete a substance abuse assessment and follow any related recommendations, submit to regular drug screens, achieve and maintain her sobriety, complete a mental health assessment and follow any related recommendations and complete anger management education. J.A., a registered sex offender, was required to complete a sex offender risk assessment and comply with all sex offender registration requirements. He was also required to complete a substance abuse assessment and follow any related recommendations, submit to random drug screens, obtain and maintain safe housing and demonstrate the ability to meet V.C.'s basic needs.

{¶7} With respect to J.A.'s compliance with the case plan, Frazier testified that J.A. made little, if any, progress toward completion of any of the case plan requirements. He never completed a substance abuse assessment, never complied with requests for drug screens and remained homeless and unable to meet V.C.'s basic needs during the time she handled the case. With respect to the case plan requirements related to J.A.'s status as a sex offender, Frazier testified that, although J.A. completed a sex offender assessment as

a condition of his release from prison, he did not complete the new assessment required under the case plan and failed to comply with sex offender registration requirements. CCDCFS offered into evidence an indictment for failure to verify his residence address and a related journal entry dated March 6, 2014, sentencing J.A. to prison for failing to verify his residence address. Shuntaya Howard, who began handling the case in July 2014, testified that J.A.'s whereabouts were unknown and that to her knowledge, J.A. had not complied with any of the case plan services.

{¶8} There were also issues with R.C.'s compliance with the case plan. Frazier testified that during the 13 months she was assigned to the case, R.C. was referred for substance abuse treatment "at least 15 times." Although R.C. complied with certain referrals and completed an initial drug and alcohol assessment in August 2013, she missed other appointments and failed to follow through with the treatment recommendations that had been made, i.e., that R.C. either complete intensive outpatient treatment or an inpatient treatment program. Frazier testified that during the time she was handling the case, R.C. maintained sobriety for a few months but that she had two positive drug screens — one in December 2013 for opiates and morphine and one in February 2014 for morphine, opiates and hydromorphine. R.C. had two negative drug screens in March and April 2014 but refused to submit to drug screens in May and June of 2014.

{¶9} Howard offered similar testimony. Howard testified that other than R.C.'s visits with Dr. DeFranco, who had been treating R.C. for her opiate addiction, R.C. was not compliant with the case plan services. Howard testified that she referred R.C. for a

substance abuse assessment in July 2014 and again in November 2014, but that R.C. did not complete the assessment. She indicated that R.C. repeatedly refused to comply with CCDCFS's requests for drug screens, providing only a single urine sample in the six-month period from July 2014 to January 2015. Although R.C. refused to submit to the drug screens CCDCFS requested, Howard received the results of drug screens Dr. DeFranco administered in September and October 2014, which were positive for opiates.

{¶10} With respect to R.C.'s compliance with mental health services, Frazier testified that when she was assigned to the case, R.C. was already being treated by Dr. Turkson at Metro Health Medical Center for mental health issues. Therefore, the agency's plan was to simply have R.C. "continue doing whatever she had set up with him." Frazier testified that she requested medical records from Dr. Turkson and also requested that R.C. obtain a letter from Dr. Turkson confirming her compliance with his treatment but that she never received either. As such, Frazier was unable to determine whether R.C. was compliant with her mental health services. Howard was likewise unable to verify whether R.C. was compliant with mental health services. Howard testified that when she took over the case, she learned that Dr. Turkson had retired and that R.C. was obtaining her medication from a nurse practitioner but that she had no information as to whether R.C. was receiving the mental health counseling required under the case plan.

{¶11} Although R.C. completed anger management classes, Frazier claimed that R.C. did not benefit from them because she continued to exhibit aggressive behavior toward CCDCFS staff. Howard agreed, indicating that she had personally experienced

two episodes in which R.C. was "very explosive" towards her, i.e., yelling and cursing at her over the phone.

{¶12} Frazier testified that at various points, CCDCFS explored the possibility of placing V.C. with her maternal grandmother, L.K. When V.C. was due to be discharged from the hospital in June 2013, the CCDCFS intake worker handling the case asked L.K. if she would like to have to V.C. placed with her, but L.K. declined placement. Even though L.K. had declined to have V.C. placed with her, Frazier testified that she completed a kinship care packet in July 2013 to determine whether L.K. might be a suitable placement for V.C. Frazier testified that L.K.'s home was "neat, very well-maintained" and "appropriate" but that she could not recommend L.K. for placement because R.C. was living with L.K. and L.K. had indicated that she planned to have R.C. serve as V.C.'s primary caregiver while she was at work.

{¶13} In October 2013, after CCDCFS learned that R.C. had left L.K.'s home, the agency again asked L.K. if she wanted V.C. to be placed with her. Once again, L.K. declined.

{¶14} With respect to whether L.K. could be a suitable permanent placement for V.C., Howard agreed that L.K.'s home was "neat" and "appropriate" and stated that the agency had "no concerns" regarding the safety or suitability of the home but that CCDCFS was "looking for permanency" for V.C. and since L.K. had previously declined to have V.C. placed with her, CCDCFS did not think L.K. was an appropriate permanent placement for V.C. Frazier testified that CCDCFS also had concerns regarding L.K.'s ability to provide a permanent home for V.C. because (1) L.K. had been previously

awarded legal custody of two of her other grandchildren (V.C.'s half-siblings) and, notwithstanding that the placement was intended to be permanent, the children were ultimately removed from L.K.'s care and legal custody granted to their father, and (2) after J.A. was released from prison, he listed L.K.'s address as his address for his sexual offender registration.

{¶15} With respect to how V.C. was progressing in her foster care placement, Howard testified that V.C. was "very attached" to her foster parents and four foster siblings, that she had "really bonded with all her siblings in the home," that they, in turn, were "very attached" to her and that the foster parents wished to adopt her. Howard indicated that V.C. was "doing well" developmentally but had some behavior and temper issues for which the agency had recommended "Help Me Grow" services. Howard further indicated that V.C. "appears to be healthy" but "gets sick a lot" because R.C. refused to allow V.C. to be vaccinated.

{¶16} With respect to visitation, Frazier testified that during the first year V.C. was in CCDCFS custody, R.C. was inconsistent in her visitation, missing at least a visit or two each month. Howard testified that since she took over the case in July 2014, R.C. has been consistent with her visitation, missing only three of her scheduled visits with V.C. — one due to R.C.'s medical issues and two others because V.C. was sick. The scheduled visits were initially two-hour weekly visits at the Parma Area Family Collaborative. However, because V.C. was not handling the visits well, i.e., yelling, screaming and throwing tantrums before and after each visit, in or around December 2014, the visits were reduced to biweekly visits. Although during the 13 months Frazier

handled the case, L.K. visited V.C. only three times, Howard testified that since July 2014, L.K. attended "every visit" with R.C. Howard indicated that V.C.'s visits with her mother and grandmother were "appropriate." J.A. visited V.C. only two or three times since she has been in CCDCFS custody.

{¶17} Frazier and Howard testified that they favored permanent custody because V.C. "needs" and "deserves" stability and "to be in a nurturing environment." Howard testified regarding the bond that V.C. had developed with her foster siblings and, in particular, the "extensive bond" she shared with her youngest foster sibling such that "they really can't be * * * separated, because they cry when they're not with each other." The social workers noted that V.C. had been in the agency's custody since birth, that neither R.C. nor J.A. had complied with case plan services, that J.A.'s whereabouts were unknown, that R.C.'s mental health and housing situation had not been verified and that R.C. "still has a long way to go in her recovery." Frazier stated that, in her opinion, it was not possible to reunify V.C. with R.C. or J.A. within a reasonable period of time. Howard likewise opined that, in her view, V.C. could not be reunified with either parent within the foreseeable future.

{¶18} Dr. DeFranco, R.C.'s treating physician for her opiate addiction, testified that he had been treating R.C. at Peak Health Services since October 2013. He stated that R.C. was "doing well" in his treatment program, i.e., regularly appearing for her appointments, taking her medication, attending group therapy sessions and participating in outside support activities. He testified that R.C. "has been in compliance with [the] treatment program" and provided a urine sample for drug screening when requested but

that she had some positive urine screens. He testified that urine screens conducted in November and December 2013 and January, February, April, June, July, August, October, November and December 2014 were negative for drugs of abuse. However, urine screens conducted on March 26, 2014, September 10, 2014, October 1, 2014 and October 8, 2014, tested positive for opiates, and a urine screen conducted on August 13, 2014 tested positive for cocaine.

{¶19} According to Dr. DeFranco, R.C. claimed that the March 26, 2014 positive drug screen was attributable to cough syrup her sister gave her that contained opiates and that the September 10, 2014 positive drug screen was the result of R.C. taking what she thought was an anti-depressant medication, Buspar, but was, in fact, an opiate. R.C. claimed that the October 1 and 8, 2014 positive drug screens were due to opiates R.C. had been prescribed for pain following a dental procedure. With respect to the August 13, 2014 urine screen that tested positive for cocaine, Dr. DeFranco testified that R.C. denied any cocaine use. At her request and expense, the urine sample tested on August 13, 2014, was tested a second time using a different, more accurate methodology; however, the results were again positive for cocaine. Dr. DeFranco indicated that because cocaine was not R.C.'s "drug of choice" and the level of buprenorphine in the sample — the chemical in suboxone,[2] the medication R.C. was taking as part of her treatment for opiate addiction — did not match her dose, he questioned whether the sample tested was, in fact,

[2]Dr. DeFranco explained that suboxone blocks the effects of other opiates, including opiates in pain medication, and that one of the advantages of having patients take suboxone is that they know that "if they use heroin or pain pills, they won't really get a big euphoric effect because it blocks the effect of these other drugs."

R.C.'s sample. He indicated that patients were not observed when they gave urine samples for drug screens at his facility. He stated, however, that there was "no question in [his] mind" that cocaine was in the sample tested.

{¶20} Dr. DeFranco stated that he would consider each of R.C.'s five positive urine screens to be a "relapse," such that R.C. had five relapses in the 15-month period between October 2013 and January 2015, but indicated that she had maintained sobriety for more than three months as of the date of the hearing. When asked whether he believed it was "possible" for R.C. "to recover or rehab," Dr. DeFranco replied, "[a]bsolutely," and characterized her prognosis as "good." Dr. DeFranco explained that studies show that patients such as R.C., who participate in a 12-step support program and who have had multiple treatment episodes,[3] have a higher rate of long-term recovery as compared with patients starting recovery for the first time. He also indicated, however, that because of the multiple positive urine screens, he had recommended that R.C. undergo intensive outpatient treatment but that R.C. refused, claiming that she could not undergo the recommended treatment due to "transportation issues."

{¶21} L.K. also testified. She indicated that was employed as an executive secretary for a department chairman at a local hospital and had recently moved into a newly renovated two bedroom townhouse in a residential neighborhood in Cleveland. She stated that she intended to live in the property with V.C. and that V.C. would be the only person living with her.

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[3]Dr. DeFranco indicated that, to his knowledge, the 15 months R.C. was treating with him was her third treatment episode and that she had two other treatment episodes prior to October 2013.

{¶22} L.K. indicated that she understood that, if the court were to grant legal custody to her, she would be responsible to protect V.C. from any source, including R.C. or J.A., and that the placement "could be for a long time until she's an adult." L.K. stated that she was willing to care for V.C., was physically able to care for V.C., had no serious medical problems and had sufficient financial resources to care for V.C. if the court were to grant her legal custody. With respect to what arrangements she would make for care for V.C. while she was working, L.K. stated, "Probably a nanny for the day." A doctor who worked with L.K. at the hospital, Dr. Stacy Ehrenberg-Buchner, testified that L.K. was a professional, responsible employee with a strong work ethic but admitted that she had never met V.C., had never observed L.K. with V.C. and did not interact with L.K. outside the office.

{¶23} L.K. testified that she raised four daughters, at times as a single parent, and has nine grandchildren for whom she babysits, such that she was prepared to handle any behavioral issues that might arise with V.C. L.K. stated that she has no criminal record, has never been arrested and has never had a case filed against her alleging child abuse or neglect. Although L.K. admitted to having an occasional drink, she denied having any alcohol or substance abuse problems or having ever received treatment for alcohol or substance abuse. L.K. likewise denied that J.A. ever lived with her. Although L.K. acknowledged that in 2013, J.A. "would come over a lot," that he "came in and out" and that "[s]ometimes he would stay too long, like a day," she claimed that he never lived at her house.

{¶24} L.K. admitted that she did not "formally" express interest in obtaining custody of V.C. until July 2014, 14 months after her birth, and that it was not until September 2014 that she filed a motion for legal custody. L.K. explained that she declined to have V.C. placed with her initially, i.e., when she was discharged from the hospital, because the CCDCFS social worker told her R.C. was taking drugs before she gave birth and L.K. wanted R.C. to understand that "this is serious." L.K. further explained that she thought that if she took V.C., R.C. "would feel safer" and that she wanted R.C. "to get a chance to get well." L.K. claimed that she regretted that decision because she later found out, after she had R.C.'s records "studied by a specialist," that the social worker's statement was "untrue." L.K. claimed that if she "had known it was untrue" at the time, she would have taken V.C. "right away." L.K. stated that she complied with all requests she received from CCDCFS for information and completed all forms the agency asked her to complete.

{¶25} L.K. testified that when she informed CCDCFS in July 2014 that she wanted custody of V.C., she was told that V.C. could not be placed with her at that time because R.C. was living with her. L.K. stated that she asked CCDCFS to "give us some time to work on this" because she was not going to "just kick [R.C.] out the door." After R.C. moved out in September 2014, L.K. filed her motion for legal custody.

{¶26} L.K. described her relationship with V.C. as "very nice." She testified that she visited V.C. when she was in the hospital following her birth and that she currently visits V.C. with R.C. at the Parma Area Family Collaborative. She stated that V.C. recognizes her as "grandma," goes to her freely, sits on her lap and gives her kisses and

that during her visits with V.C., they play ball or cards, read, sing or play "kitchen" and pretend to cook.

{¶27} L.K. admitted that she previously had legal custody of two of R.C.'s other children but gave custody of them to their father after only 14 months. She explained that the children had stayed with her while their father "was doing his rehab" and that, after he completed rehab, she allowed him to have increased visitation with his children and ultimately agreed to turn over legal custody of the two children to him. L.K. testified that although she understood that the legal custody arrangement was intended to be "permanent in nature" and acknowledged that it is in a child's best interest to have "a permanent and stable home," she stated that she also believes that children deserve "to be attached to [their] parents and [to] be with [their] parents if the parents are able."

{¶28} The trial court also considered the recommendations of V.C.'s guardian ad litem (the "GAL"). On November 6, 2014, the GAL submitted a report in which he recommended that the trial court grant CCDCFS's request for permanent custody. He indicated that his visits with V.C. at her foster home revealed "a bright, socializing child, * * * generally a happy developing child" who was "well bonded" with her foster parents and foster siblings. With respect to J.A., the GAL indicated that J.A.'s noncompliance with the case plan, his failure to visit V.C. and his sex offender status rendered him an unsuitable "custody prospect." With respect to R.C., he indicated that although R.C. had made attempts to comply with certain case plan requirements, she had failed to complete "significant portions" of the case plan. As such, the GAL concluded that "the parents will not qualify for reunification any reasonable time soon." With respect to whether

L.K. was a suitable permanent placement for V.C., the GAL indicated that he "was unable to endorse" the award of legal custody to L.K. based on her prior failure to maintain permanent custodial care of two other of her grandchildren, allegations that she had previously "overindulg[ed] in alcohol consumption," the fact that she had previously sheltered R.C. (knowing that she was using drugs or in treatment for her heroin addiction) and J.A. (a registered sex offender) and the "day-to-day relationship" and resulting bond that had developed between V.C. and her foster family while they, and not L.K., had been caring for V.C. since she was discharged from the hospital.

{¶29} On March 16, 2015, the trial court granted CCDCFS's motion to modify temporary custody to permanent custody, terminated J.A.'s and R.C.'s parental rights, denied R.C.'s motion to grant legal custody to L.K. and committed V.C. to the permanent custody of CCDCFS for the purpose of adoption. R.C. and L.K. appealed the trial court's judgment.[4]

{¶30} On April 23, 2015 and July 10, 2015, the trial court issued a "corrected journal entry" and "journal entry nunc pro tunc," respectively, correcting certain errors in its March 16, 2015 journal entry and findings of facts.[5] R.C. and L.K. appealed these

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[4]V.C.'s father, J.A., has not appealed the trial court's decision. In their reply brief, appellants assert that J.A. is "recently deceased."

[5]The April 23, 2015 and July 10, 2015 journal entries (1) corrected an error in the date listed for the hearing stated in the original entry from January 14, 2015 to January 29, 2015, (2) corrected an error in the identification of V.C.'s GAL in the original entry, i.e., counsel listed as GAL for L.K. in the original entry was actually the GAL for V.C., (3) clarified that the trial court "heard sworn testimony and accepted evidence" on the hearing date, not that it "*previously* heard sworn testimony and accepted evidence," (emphasis added), as stated in the original journal entry and (4) identified R.C.'s GAL, who had been omitted from the original journal entry, as an additional person present at the hearing.

journal entries as well. The three appeals have been consolidated, and appellants have assigned the following four assignments of error for review:

> Assignment of Error I: The trial court erred and abused its discretion when it determined that the grant of permanent custody to CCDCFS and not custody to the maternal grandmother was in the best interest of the child; such decision granting permanent custody to the agency and not to maternal grandmother was not by clear and convincing evidence.
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> Assignment of Error II: The trial court erred and abused its discretion since there is no competent, credible evidence to support its conclusion that the child was in the temporary custody of the agency for 12 months out of a 22-month period; the trial court's finding is insufficient; contrary to the statutory requirement; and is not by clear and convincing evidence; the agency failed to establish by clear and convincing evidence that the child had been in the agency custody for 12 months out of a 22-month period.
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> Assignment of Error III: The trial court erred and abused its discretion since there is no competent, credible evidence to support its findings against mother's motion for legal custody to maternal grandmother; such findings are not supported by clear and convincing evidence.
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> Assignment of Error IV: The trial court erred and abused its discretion when it determined, under R.C. 2151.414(B)(1)(a), that the child cannot or should not be placed with the mother within a reasonable time; such decision is not supported by clear and convincing evidence.

Law and Analysis

Standing of L.K.

{¶31} As an initial matter, we note that because L.K. was not a party to the proceedings below and has not appealed the trial court's denial of her motion to intervene in the permanent custody proceedings or the denial of her motion for legal custody,[6] there

[6]Appellants argue only that the trial court should have granted R.C.'s motion for legal custody to L.K., not that it should have granted L.K.'s motion. Even if L.K. had appealed the denial of her

is an issue as to whether L.K. has standing to challenge the permanent custody decision in this case. *See* Juv.R. 2(Y); *In re D.S.*, 9th Dist. Summit No. 24554, 2009-Ohio-4658, ¶ 7 ("where a grandparent files a motion to intervene and a motion for legal custody, and where the motion to intervene is denied and permanent custody is granted to the agency, the grandparent has standing to contest the denial of the motion to intervene, but does not have standing to challenge the permanent custody decision on appeal"); *In re R.V.*, 6th Dist. Lucas Nos. L-10-1278 and L-10-1301, 2011-Ohio-1837, ¶ 50-51 54 (following *In re D.S., supra*); *but see In re T.N.W.*, 8th Dist. Cuyahoga No. 89815, 2008-Ohio-1088, ¶ 7 (grandmother had standing to appeal the denial of her motion to modify custody in adoption proceeding where trial court considered her motion and thereby "implicitly permitted" her "to join, or intervene, in the action after judgment"); *In re P.P.*, 2d Dist. Montgomery No. 19582, 2003-Ohio-1051, ¶ 21 (grandmother had standing to appeal termination of her son's parental rights and granting of permanent custody to county agency notwithstanding that she was not a party to the proceedings where trial court permitted her to testify at the hearing and considered her request for custody of the child); *In re Travis Children,* 80 Ohio App.3d 620, 625-626, 609 N.E.2d 1356 (5th Dist.1992) (where trial court permitted grandmother to testify at dispositional hearing and considered her request to have children placed with her, grandmother had standing to appeal

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motion to intervene, there is nothing in the record to suggest that the trial court abused its discretion in denying the motion as there is no evidence L.K. ever stood in loco parentis, exercised significant control over, or assumed parental duties for the benefit of V.C. *See, e.g., In re A.S.,* 8th Dist. Cuyahoga No. 102697, 2015-Ohio-4386, ¶ 18.

judgment granting permanent custody of grandchildren to county agency even though she lacked party status).

{¶32} In this case, L.K. complied with the procedural requirements of R.C. 2151.353(A)(3),[7] filing a written motion for legal custody along with a written motion to intervene prior to the dispositional hearing. L.K.'s motion to intervene was denied in November 2014. Nevertheless, R.C.'s counsel indicated that he represented both "the mother in this case and the maternal grandmother" at the January 29, 2015 dispositional hearing.[8] L.K. attended the permanent custody hearing and testified both on direct and cross-examination. The transcript of the hearing reflects that the hearing was held on the "Motion to Modify Temporary Custody and the Motion for Legal Custody filed by the mother's counsel."

{¶33} We need not resolve this issue here because (1) even assuming L.K. lacks standing to challenge the permanent custody determination on appeal, R.C., who has also appealed the decision, has standing to do so and (2) even assuming L.K. has standing to challenge the trial court's granting of permanent custody to CCDCFS, the appeal lacks merit for the reasons set forth below.

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[7]R.C. 2151.353(A)(3) allows a court considering disposition of a child who has been adjudicated as an abused, neglected, or dependent child to award custody of the child "to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings." Pursuant to this statute, an individual need not be a party to the action in order to file a motion for legal custody.

[8]At the time L.K. filed her motions to intervene and for legal custody, however, it appears she was represented by separate counsel.

Standard for Terminating Parental Rights and Awarding Permanent Custody to CCDCFS

{¶34} We now turn to the merits of this appeal. For ease of discussion, we will address appellants' assignments of error out of order and together where appropriate.

{¶35} It is well established that a parent has a fundamental right to raise and care for his or her child. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 28; *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 40. However, that right is not absolute. *In re K.H.* at ¶ 40. Government children's services agencies have broad authority to intervene when necessary for a child's welfare. *In re C.F.* at ¶ 28. "All children have the right, if possible, to parenting from either natural or adoptive parents which provides support, care, discipline, protection and motivation." *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 66, quoting *In re Hitchcock*, 120 Ohio App.3d 88, 102, 696 N.E.2d 1090 (8th Dist.1996). When parental rights are terminated, the goal is to create "a more stable life" for dependent children and to "facilitate adoption to foster permanency for children." *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, *5 (Aug. 1, 1986). We recognize, however, that termination of parental rights is "'the family law equivalent of the death penalty in a criminal case.'" *In re J.B.*, 2013-Ohio-1704, at ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14.

{¶36} In accordance with R.C. 2151.414(B), a trial court may grant permanent custody of a child to a county children's services agency if the court determines, by clear

and convincing evidence, (1) the existence of at least one of the four conditions enumerated in R.C. 2151.414(B)(1)(a) through (d) and (2) that granting permanent custody to the agency is in the child's best interest. "Clear and convincing evidence" is that measure or degree of proof that is more than a "preponderance of the evidence" but does not rise to the level of certainty required by the "beyond a reasonable doubt" standard in criminal cases. *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 8, citing *In re Awkal*, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994). It "produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re M.S.* at ¶ 8.

{¶37} Where, as here, an appellant claims that the trial court's permanent custody determination is not supported by clear and convincing evidence, the reviewing court will examine the record to determine whether the trier of fact had sufficient evidence before it to satisfy the degree of proof. *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 24, citing *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). An appellate court will not reverse a juvenile court's termination of parental rights and award of permanent custody to an agency unless the judgment is not supported by clear and convincing evidence. *In re N.B.* at ¶ 48, citing *In re M.J.*, 8th Dist. Cuyahoga No. 100071, 2013-Ohio-5440, ¶ 24.

The Existence of One of the Conditions Set Forth in R.C. 2151.414(B)(1)(a) Through (d)

{¶38} The conditions set forth in R.C. 2151.414(B)(1)(a) through (d) are as follows:

(a) The child * * * cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

(b) The child is abandoned.

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

(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 * * *.

R.C. 2151.414(B)(1)(d) — Child in Temporary Custody of CCDCFS for at Least 12 Months of a 22-Month Period

{¶39} In their second assignment of error, appellants argue that the trial abused its discretion in terminating R.C.'s parental rights and granting permanent custody to CCDCFS under R.C. 2151.414(B)(1)(d) because there was no competent, credible evidence that, as of the time CCDCFS filed its motion for permanent custody, V.C. had been in the temporary custody of CCDCFS for at least 12 months of a consecutive 22-month period.

{¶40} However, CCDCFS moved for permanent custody under R.C. 2151.414(B)(1)(a) not R.C. 2151.414(B)(1)(d). Further, the trial court clearly stated that it was granting permanent custody based on the existence of R.C. 2151.414(B)(1)(a), i.e., its determination V.C. "cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents," not R.C. 2151.414(B)(1)(d). Accordingly, appellants' second assignment of error is overruled.

R.C. 2151.414(B)(1)(a) — Child Cannot Be Placed With Parents Within a Reasonable Time or Should Not Be Placed With Parents

{¶41} In their fourth assignment of error, appellants argue that the trial court abused its discretion in terminating R.C.'s parental rights and granting permanent custody to CCDCFS based on R.C. 2151.414(B)(1)(a) because its finding that V.C. could not be placed with R.C. within a reasonable time or should not be placed with R.C.[9] was not supported by "any medical testimony or evidence" and is "contrary" to the testimony of appellants' "expert witness" Dr. DeFranco. Appellants argue that because Dr. DeFranco testified that R.C. was "doing well" in his treatment program, believed it was "possible" for R.C. to "recover or rehab" and characterized her prognosis as "good" based on studies that show that patients who have had multiple treatment episodes have a higher rate of long-term recovery than patients seeking treatment for the first time, "[t]he medical evidence presented clearly shows that V.C. could be placed with her mother within a reasonable time" and that the trial court's finding to the contrary was not clearly and convincingly supported by the record. We disagree.

{¶42} In determining whether a child cannot be placed with his or her parents within a reasonable period of time or should not be placed with his or her parents, courts look to R.C. 2151.414(E). Pursuant to R.C. 2151.414(E), if the trial court determines, by clear and convincing evidence, that one or more of factors specified in R.C. 2151.414(E)(1) through (16) exists as to each of the child's parents, then the trial 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." In this case, the trial court

[9]There is no dispute that the trial court properly found that V.C. could not be placed with J.A. within a reasonable time or should not be placed with J.A.

found that two R.C. 2151.414(E) factors — R.C. 2151.414(E)(1) and R.C. 2151.414(E)(4) — applied to R.C.

{¶43} R.C. 2151.414(E)(1) states:

> 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.

R.C. 2151.414(E)(4) states:

> 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.[10]

{¶44} The record contains ample evidence to support the trial court's finding, by clear and convincing evidence, that R.C. "has failed continuously and repeatedly to substantially remedy" the conditions that caused V.C. to be removed from her care and that R.C. "has demonstrated a lack of commitment towards [V.C.]" by her actions showing "an unwillingness to provide an adequate permanent home for [V.C.]."

{¶45} There is no dispute that while R.C. was in treatment with Dr. DeFranco, she continued to use drugs. Despite R.C.'s purported "cooperation" with Dr. DeFranco's treatment program — attending her appointments and group therapy sessions, complying

[10]The trial court also found that J.A. had abandoned V.C. *See* R.C. 2151.414(E)(10).

with drug screens and participating in outside recovery activities — during the 15 months Dr. DeFranco treated R.C. for her opiate addiction (from October 2013 to January 2015) she had five positive urine screens. Based on these "relapses," Dr. DeFranco recommended that R.C. undergo intensive outpatient treatment. R.C., however, declined this treatment. As of the date of the hearing, R.C. had maintained sobriety for only three-and-a-half months. Dr. DeFranco offered no opinion as to when — if ever — R.C. would be in position to serve as a suitable caregiver for V.C.

{¶46} Furthermore, the record reflects that, aside from her treatment with Dr. DeFranco, R.C. consistently failed to follow through with the case plan services she was offered to remedy the conditions that caused V.C. to be placed with the agency and to provide "an adequate permanent home" for V.C. Social worker Frazier testified that she referred R.C. for substance abuse treatment "at least 15 times." Although R.C. complied with certain referrals, she ignored others and failed to follow through with the treatment recommendations that had been made, i.e., that she either complete intensive outpatient treatment or an inpatient treatment program. In addition to the five positive drug tests to which Dr. DeFranco testified, Frazier testified regarding two other positive screens. Frazier and Howard further testified that R.C. repeatedly refused to submit to other drug screens requested by CCDCFS.

{¶47} With respect to mental health treatment, the CCDCFS social workers testified that they were unable to verify whether R.C. was receiving the mental health services required under the case plan. Although R.C. completed anger management

classes, they claimed she did not benefit from them because she continued to exhibit aggressive behavior towards CCDCFS staff.

{¶48} Appellants do not dispute that the agency made reasonable and diligent efforts to assist R.C. in remedying the problems that caused V.C. to be removed from her care and concede that R.C. "is not ready to take custody of her daughter."

{¶49} Accordingly, the record contains sufficient evidence to support the trial court's finding, by clear and convincing evidence, that V.C. cannot be placed with R.C. within a reasonable time or should not be placed with R.C. Appellants' fourth assignment of error is overruled.

Best Interest of the Child

{¶50} In their first and third assignments of error, appellants argue that the trial court abused its discretion because its determination that permanent custody to CCDCFS was in V.C.'s best interest was not supported by clear and convincing evidence. Appellants contend that L.K. is an "outstanding candidate who enjoys a meaningful relationship with her granddaughter" and that, instead of granting permanent custody to CCDCFS, the trial court should have granted R.C.'s motion for legal custody to her maternal grandmother and placed V.C. with L.K.

{¶51} Once a trial court determines by clear and convincing evidence that a child cannot or should not be placed with his or her parents under R.C. 2151.414(B)(1)(a) and (E), it must then determine — once again by clear and convincing evidence — whether permanent custody is in the child's best interest. R.C. 2151.414. In determining whether permanent custody is in a child's best interest, the trial court must "consider all relevant factors," including, but not limited to, the following: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2)

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; (3) the custodial history of the child; (4) 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; and (5) whether any of the factors set forth in R.C. 2151.414(E)(7) to (11) apply.[11] R.C. 2151.414(D)(1)(a)-(e).

{¶52} "'The discretion that the juvenile court enjoys in deciding whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court's decision will have on the lives of the parties concerned.'" *In re L.O.*, 8th Dist. Cuyahoga No. 101805, 2015-Ohio-1458, ¶ 22, quoting *In re Awkal*, 95 Ohio App.3d at 365, 642 N.E.2d 424. We, therefore, review a trial court's determination of a child's best interest under R.C. 2151.414(D) for abuse of discretion. *In re L.O.* at ¶ 22. An abuse of discretion implies that the court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

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[11] The factors listed in R.C. 2151.414(E)(7)-(11) include a parent's criminal convictions (R.C. 2151.414(E)(7)), whether the parent has withheld medical treatment or food from the child when the parent has the means to provide the treatment or food (R.C. 2151.414(E)(8)), whether the parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment or rejected further treatment two or more times (R.C. 2151.414(E)(9)), whether the parent has abandoned the child (R.C. 2151.414(E)(10)) and whether the parent has previously had his or her parental rights terminated as to a sibling of the child and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare and safety of the child. (R.C. 2151.414(E)(11)).

{¶53} Although a trial court is required to consider each relevant factor under R.C. 2151.414(D)(1) in making a determination regarding permanent custody, "'[t]here is not one element that is given greater weight than the others pursuant to the statute.'" *In re T.H.*, 8th Dist. Cuyahoga No. 100852, 2014-Ohio-2985, ¶ 23, quoting *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Further, only one of the enumerated factors needs to be resolved in favor of an award of permanent custody for the trial court to terminate parental rights. *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17; *In re N.B.*, 2015-Ohio-314 at ¶ 53. The best interest determination focuses on the child, not the parent. *In re N.B.* at ¶ 59; *In re Awkal*, at 315.

{¶54} Appellants contend that the trial court should have denied CCDCFS's motion for permanent custody and should have awarded legal custody to L.K. because (1) R.C. is "doing well" in her treatment program, (2) L.K. has a meaningful, "warm, personal relationship" with V.C. that should be preserved, (3) L.K. has exercised "extensive visitation" with V.C. and expressed a willingness to assume custody of V.C. beginning in July 2014, (4) L.K. has cooperated with CCDCFS, has no history of alcohol or drug abuse, lives in an "appropriate" home and has long-term stable employment and (5) an award of legal custody to L.K. would preserve the family relationship and achieve a legally secure permanent placement.

{¶55} Every parental rights termination case involves a difficult balance between maintaining a natural parent-child relationship and protecting the best interests of a child. Although "[f]amily unity and blood relationship are vital factors to carefully and fully consider," the paramount consideration is always the best interest of the child. *In re J.B.*,

2013-Ohio-1704, at ¶ 111, citing *In re T.W.*, 8th Dist. Nos. 86084, 86109, and 86110, 2005-Ohio-6633, ¶ 15. "[A] child's best interests require permanency and a safe and secure environment." *In re E.W.*, 8th Dist. Cuyahoga Nos. 100473 and 100474, 2014-Ohio-2534, ¶ 29. "To protect the child's interest," neither the existence of a biological relationship or a "good relationship" is controlling in and of itself. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98518 and 98519, 2013-Ohio-1706, ¶ 163, citing *In re T.W.* at ¶ 15.

{¶56} In its March 16, 2015 journal entry, the trial court considered each of the relevant R.C. 2151.414(D)(1) statutory factors, set forth in detail its factual findings with respect to each such factor and concluded that "these factors weigh in favor of granting permanent custody to CCDCFS." The evidence in the record clearly and convincingly supports the trial court's determination that granting permanent custody to CCDCFS was in V.C.'s best interest.

{¶57} With regard to V.C.'s interaction and relationship with her parents, other relatives and her foster parents, the record reflects that during the first year of V.C.'s life, R.C. was inconsistent with her visitation and did not visit with V.C. consistently until after CCDCFS filed for permanent custody. Likewise, although L.K. testified at the hearing that she had a "nice relationship" with her granddaughter — a fact that was not disputed by CCDCFS — the record also reflects that after V.C. was discharged from the hospital, she visited V.C. only three times in 13 months and, prior to July 2014, repeatedly declined to have V.C. placed with her. The record further reflects that

visitation was reduced in December 2014 from weekly visits to bi-weekly visits because V.C. was not handling the visits with her biological family well.

{¶58} In addition, the record reflects that during the 20 months she was in their care, V.C. developed a strong bond with her foster family. The CCDCFS social workers testified that V.C. was thriving under the care of her foster parents, that V.C. has a strong, bonded relationship with her foster parents and foster siblings, e.g., she cries when separated from her foster siblings, and that her foster parents wish to adopt her. V.C.'s GAL made similar observations in his report and recommendation. Although V.C. is too young to express her own wishes, the GAL recommended that she be placed in the permanent custody of CCDCFS.

{¶59} As to V.C.'s custodial history, at the time of the hearing, V.C. had been in the custody of CCDCFS nearly her entire life, i.e., since her release from the hospital in June 2013. Her foster parents had raised her that entire time. Thus, the record supports the trial court's finding that these statutory factors weigh in favor of granting permanent custody to CCDCFS.

{¶60} With respect to V.C.'s need for a legally secure permanent placement and whether that type of placement could be achieved without permanent custody, there is no dispute regarding V.C.'s present need for a legally secure permanent placement. There is likewise no dispute that neither J.A. nor R.C. is "ready to take custody" of their daughter. However, appellants contend that V.C.'s need for a legally secure permanent placement could be achieved by awarding legal custody to L.K. — who established that she was both willing and able to take care of V.C. — and that the trial court, therefore,

should have awarded legal custody to L.K. and "preserved the family relationship" rather than "taking the drastic step of permanently divesting the mother of her residual parents rights, privileges, and responsibilities."

{¶61} The willingness of a relative to care for a child does not alter what a court considers in determining whether to grant permanent custody. *In re M.S.*, 2015-Ohio-1028, at ¶ 11. If permanent custody to CCDCFS is in V.C.'s best interest, legal custody to L.K. necessarily is not. *Id.* Once the trial court found that V.C. could or should not be placed with a parent, the trial court properly turned to the determination of what is in V.C.'s best interest. Although L.K.'s "appropriate" home, stable job and "warm, personal relationship" with V.C. may very well make her a suitable caregiver for V.C., it does not trump all other considerations in determining what is in V.C.'s best interest. As the Ohio Supreme Court explained *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, in deciding what is in a child's best interests, the trial court need not find by clear and convincing evidence that termination of parental rights is the only option or that no suitable relative is available for placement. *Id.* at ¶ 63. Rather, once a determination has been made that one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (d) exists, R.C. 2151.414(D)(1) "requires a weighing of all the relevant factors * * * to find the best option for the child." *Id.* "The statute does not make the availability of a placement that would not require a termination of parental rights an all-controlling factor. The statute does not even require the court to weigh that factor more heavily than other factors." *Id.*

{¶62} Thus, "[a] court is not required to favor a relative if, after considering all the factors, it is in the child's best interest for the agency to be granted permanent custody." *In re M.S.* at ¶ 11, citing *In the Matter of B.H.*, 5th Dist. Fairfield No. 14-CA-53, 2014-Ohio-5790, ¶ 72. While a trial court "must find by clear and convincing evidence that the parents are not suitable placement options, the court is not required to invoke the same standard with regard to a grandparent." *In re A.D.*, 8th Dist. Cuyahoga No. 85648, 2005-Ohio-5441, ¶ 12.

{¶63} On the record in this case, we cannot say that the trial court abused its discretion in determining, based on all the relevant factors, that permanent custody was in V.C.'s best interest rather than granting legal custody to L.K. When V.C. was due to be released from the hospital and on several other occasions, CCDCFS approached L.K. about placement of V.C. but L.K. declined to have V.C. placed with her. It was not until July 2014, 14 months after her birth, that L.K. expressed any interest in having V.C. placed with her and it was not until September 2014, when R.C. moved out of her mother's home, that placement with her became a possibility. During this time, a very strong bond developed between V.C. and her foster parents and foster siblings. Of further concern to the court was the fact that, after V.C.'s father, a registered sex offender, was released from prison, he listed L.K.'s address as his own. Although appellants claim that this was done without L.K.'s knowledge or consent and that he never lived with her, L.K. testified that, in 2013, J.A. "would come over a lot," that he "came in and out" and that "[s]ometimes he would stay too long, like a day." Further,

despite her knowledge of her daughter's heroin addiction, L.K. testified that she continued to allow R.C. to live with her until September 2014.

{¶64} In addition, although L.K. had been previously awarded legal custody of two of V.C.'s half siblings, she did not ultimately provide permanent homes for them. Notwithstanding that the arrangement was intended to be permanent, 14 months after L.K. was awarded legal custody of the children, they were returned to the custody of their father. Appellants contend that the trial court's finding that these grandchildren were "removed from" L.K.'s custody is not supported by the record. Although it may be more accurate to state that legal custody of those children was changed from L.K. to their father by means of a mediation agreement, the fact remains that L.K.'s handling of her "permanent" legal custody obligations of her other grandchildren raises a legitimate concern regarding her commitment to provide a permanent home for V.C.

{¶65} In this case, the trial court's March 16, 2015 journal entry reflects that it carefully considered each of the relevant R.C. 2151.414(D)(1) best interest factors. As detailed above, the record contains ample competent, credible evidence to support a finding, under the clear-and-convincing-evidence standard, that at least one of those factors weighed in favor of permanent custody and that permanent custody is in V.C.'s best interest. The trial court, therefore, did not abuse its discretion in awarding permanent custody of V.C. to CCDCFS and in denying R.C.'s motion to award legal custody of V.C. to her maternal grandmother, L.K. Appellants' first and third assignments are overruled.

{¶66} Judgment affirmed.

It is ordered that appellee recover from appellants the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

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EILEEN A. GALLAGHER, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and
MARY J. BOYLE, J., CONCUR