[Cite as *In re J.H.*, 2017-Ohio-1564.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105073

IN RE: J.H., ET AL.
A Minor Child

[Appeal By J.H., Father]

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 15905549 and AD 15905550

BEFORE: Celebrezze, J., E.T. Gallagher, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: April 27, 2017

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FRANK D. CELEBREZZE, JR., J.:

{¶1} J.H., II ("appellant"), brings this appeal challenging the trial court's judgment granting permanent custody of his children to the Cuyahoga County Division of Children and Family Services ("CCDCFS"). Specifically, appellant argues that the trial court's judgment violated his right to due process and was against the manifest weight of the evidence. After a thorough review of the record and law, this court affirms.

I. Factual and Procedural History

{¶2} Appellant is the father of twins, J.H., III, and J.H. The children's mother is J.E.

{¶3} On April 22, 2015, CCDCFS filed a complaint alleging appellant's children to be dependent and requesting temporary custody of the children to be granted to the paternal grandparents. Furthermore, CCDCFS requested predispositional temporary custody of the children be granted to the paternal grandparents.

{¶4} On May 5, 2015, a magistrate held a hearing on CCDCFS's motion for predispositional temporary custody. Appellant and the children's mother attended the hearing and vehemently opposed CCDCFS's request that temporary custody be granted to the paternal grandparents. The magistrate ordered predispositional temporary custody of the children to CCDCFS.

{¶5} On July 7, 2015, a magistrate held an adjudicatory hearing on CCDCFS's complaint. Appellant and J.E. stipulated to an amended complaint. The magistrate

found the children to be dependent. The trial court adopted the magistrate's decision in its July 30, 2015 journal entry.

{¶6} The magistrate granted temporary custody of the children to CCDCFS. The trial court approved and adopted the magistrate's decision it its August 7, 2015 journal entry.

{¶7} On August 18, 2015, CCDCFS filed a motion to modify temporary custody to permanent custody. On August 5, 2016, appellant filed a motion requesting that his parents, the children's paternal grandparents, be granted legal custody of the children.

{¶8} On August 29, 2016, the trial court held a hearing on CCDCFS's motion for permanent custody and appellant's motion requesting that his parents be granted legal custody of the children. During the hearing, the trial court heard testimony from CCDCFS supervisor Angela McCord-Crump, CCDCFS social worker Jennifer Neff, Dr. Kathryn Kozlowski, therapist Neema Saleem, appellant's mother, and Gail Nanowsky, the children's guardian ad litem ("GAL"). On September 13, 2016, the trial court granted CCDCFS's motion for permanent custody.

{¶9} On October 12, 2016, appellant filed the instant appeal challenging the trial court's judgment. He assigns two errors for review:

> I. The trial court's award of permanent custody to [CCDCFS], despite [CCDCFS's] failure to make reasonable efforts to eliminate the continued removal of the children from their home and to return the children to their home, violated state law and appellant's right to due process of the law as guaranteed by the Fourteenth Amendment of the United States Constitution and Section 16, Article I of the Ohio Constitution.
>
> II. The trial court's decision to award permanent custody to [CCDCFS] was

against the manifest weight of the evidence.

II. Law and Analysis

A. Reasonable Efforts at Reunification

{¶10} In his first assignment of error, appellant challenges the trial court's finding that CCDCFS made reasonable efforts to reunify him with his children. His challenge is based on two grounds: (1) that the trial court failed to comply with R.C. 2151.419 and the court's findings were not sufficient, and (2) CCDCFS failed to make reasonable efforts to reunify the family.

1. Trial Court's Findings

{¶11} Appellant acknowledges that the trial court concluded that CCDCFS made reasonable efforts to reunify him and his children. He asserts, however, that the trial court "did not support that conclusion with sufficient factual findings. The findings of the lower court were legally insufficient to meet the requirements of R.C. 2151.419(B)(1)[.]" Appellant's brief at 8.

{¶12} R.C. 2141.419 pertains to a trial court's determination as to whether an agency made reasonable efforts to prevent removal or to return a child to the child's home. Appellant's reliance on R.C. 2151.419 is misplaced, however, because CCDCFS's motion for permanent custody was filed pursuant to R.C. 2151.413.

{¶13} In *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.3d 816, the Ohio Supreme Court analyzed whether a reasonable efforts determination is required in motions for permanent custody filed pursuant to R.C. 2151.413. *Id.* at ¶ 2. The court

concluded that R.C. 2151.419 does not apply to motions for permanent custody filed pursuant to R.C. 2151.413, nor hearings held pursuant to R.C. 2151.414 on motions for permanent custody. *Id.* at ¶ 41.

> R.C. 2151.419, which requires a trial court to determine whether a children services agency made reasonable efforts to prevent removal or to return a child to the child's home, applies only at "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children."

In re A.P., 8th Dist. Cuyahoga No. 104130, 2016-Ohio-5849, ¶ 13, quoting *In re C.F.* at ¶ 41.

{¶14} In *In re Baby Boy M.*, 8th Dist. Cuyahoga No. 91312, 2008-Ohio-5271, this court applied the Ohio Supreme Court's holding in *In re C.F.* This court held that the trial court did not need to make a reasonable efforts determination because it was ruling on a motion for permanent custody. *Id.* at ¶ 41. *Accord In re A.P.* at ¶ 13; *In re L.D.*, 8th Dist. Cuyahoga No. 104325, 2017-Ohio-1037, ¶ 19.

{¶15} Because the state moved for permanent custody under R.C. 2151.413, the trial court was not required to make the R.C. 2151.419 determination that CCDCFS made reasonable efforts to reunify the family. Nevertheless, the record reflects that the trial court did, in fact, make reasonable-efforts findings throughout the pendency of the case.

{¶16} The magistrate's May 5, 2015 journal entry setting forth its pretrial order and findings of fact regarding emergency temporary custody provides, in relevant part,

> [t]he court further finds that reasonable efforts [were made] to prevent the removal of the child from the home, to eliminate the continued removal of the child from home, or to make it possible for the child to return home. The relevant services provided by the [a]gency to the family of the child and reasons why those services did not prevent the removal of the child

> from home or enable the child to return home are as follows: [s]afety plan was enacted. Assisted with obtaining WIC and supplies to assist with the child's needs. The Community Collaborative offered parenting services to assist the parents.

{¶17} In the trial court's August 7, 2015 judgment entry and findings of fact in which it adopted the magistrate's decision and placed the children in the temporary custody of CCDCFS, the trial court stated, "the court finds that [CCDCFS] has made reasonable efforts to prevent removal of the child, to eliminate the continued removal of the child from her home, or to make it possible for the child to return home. Relevant services were provided to the family, but were not successful[.]"

{¶18} The trial court's September 13, 2016 judgment entries granting permanent custody of the children to the agency provide, in relevant part:

> 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 parents have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.
>
> * * *
>
> The court further finds that *reasonable efforts were made to prevent the removal of the child from [the parents'] home, or to return the child to the home, and to finalize the permanency plan, to wit: reunification*. Relevant services provided to the family were: housing, parenting, substance abuse treatment, domestic violence, mental health and basic needs.

(Emphasis added.)

{¶19} Accordingly, appellant's contention that the trial court failed to make adequate findings regarding CCDCFS's efforts at reunification is without merit.

2. CCDCFS's Efforts to Reunify the Family

{¶20} Appellant further argues that CCDCFS failed to make reasonable efforts to reunify the family. We disagree.

{¶21} In *In re C.F.*, the Ohio Supreme Court explained that even though R.C. 2151.419 does not apply to motions for permanent custody, the agency

> must still make reasonable efforts to reunify the family during the child-custody proceedings prior to the termination of parental rights. If the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time.

In re C.F., 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.3d 816, at ¶ 43.

{¶22} In the instant matter, the record reflects that CCDCFS made reasonable efforts to reunify the family. CCDCFS filed case plans on May 28, 2015, and June 19, 2015, to address and remedy the issues that caused the children's removal from the home. Furthermore, CCDCFS filed amended case plans on February 11, 2016, to reflect a change in visitation.

{¶23} Angela McCord-Crump ("McCord-Crump"), a CCDCFS social supervisor, testified that appellant's case plan included objectives for "mental health assessment, substance abuse assessment, domestic violence classes, parenting classes and [appellant] needed to secure stable housing." (Tr. 88.) She explained that basic needs was part of the case plan's housing objective. Jennifer Neff ("Neff"), a CCDCFS child protection specialist, testified that the agency provided appellant with services for parenting,

including a parenting class and a supportive parenting coach, substance abuse, and mental health.

{¶24} Neema Saleem ("Saleem"), a licensed professional counselor at The Centers for Family and Children, testified that she began working with appellant in October 2015 and developed a treatment plan to work on mood tolerance, coping, and interpersonal communication skills. Dr. Kathryn Kozlowski, a psychologist with the juvenile court diagnostic clinic, met with appellant and conducted a psychological evaluation on November 2, 2015.

{¶25} The testimony of McCord-Crump, Neff, Saleem, and Dr. Kozlowski indicated that CCDCFS developed a plan for appellant in an attempt to address his parenting, substance abuse, domestic violence, and mental health issues and reunify him with his children. Accordingly, appellant's contention that CCDCFS failed to make reasonable efforts to reunify the family is without merit.

{¶26} For all of the foregoing reasons, appellant's first assignment of error is overruled.

B. Manifest Weight

{¶27} In his second assignment of error, appellant argues that the trial court's judgment granting permanent custody of the children to CCDCFS is against the manifest weight of the evidence.

1. Standard of Review

{¶28} A parent has a "fundamental liberty interest" in the care, custody, and management of his or her child and an "essential" and "basic civil right" to raise his or her children. *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990). A parent's right, however, is not absolute. "The natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed." *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979). Thus, when the child's best interest demands it, the state may terminate parental rights.

> A trial court's decisions with respect to child custody issues should generally be accorded the utmost respect, especially in view of the nature of the proceeding and the impact the court's determination will have on the parties' lives. *See generally Davis v. Flickinger*, 77 Ohio St.3d 415, 674 N.E.2d 1159 (1997). The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding (i.e., observing their demeanor, gestures and voice inflections, and using these observations in weighing the credibility of the proffered testimony) cannot be conveyed to a reviewing court by a printed record. *Id.*, citing *Trickey v. Trickey*, 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952). As the Ohio Supreme Court has stated, "it is for the trial court to resolve disputes of fact and weigh the testimony and credibility of the witnesses." *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 23, 550 N.E.2d 178 (1990).

In re N.H., 8th Dist. Cuyahoga No. 103574, 2016-Ohio-1547, ¶ 23.

{¶29} Absent an abuse of discretion, a reviewing court should affirm a trial court's judgment. Thus, a reviewing court will not overturn a trial court's custody or placement decision unless the trial court has acted in a manner that can be characterized as arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). When applying an abuse of discretion standard, a reviewing court

may not substitute its judgment for that of the trial court. *Berk v. Matthews*, 53 Ohio St.3d 161, 169, 559 N.E.2d 1301 (1990).

{¶30} R.C. 2151.414 sets forth a two-part test that courts must apply when deciding whether to award permanent custody to a public services agency. The statute requires a court to find, by clear and convincing evidence, that (1) either the child (a) cannot be placed with either parent within a reasonable period of time or should not be placed with either parent if any one of the factors in R.C. 2151.414(E) are present; (b) is abandoned; (c) is orphaned and no relatives are able to take permanent custody of the child; or (d) has been in the temporary custody of one or more public or private children services agencies for 12 or more months of a consecutive 22-month period, and (2) granting permanent custody of the child to the agency is in the best interest of the child.

2. R.C. 2151.414(B)(1)

{¶31} Regarding the first prong, appellant challenges the trial court's finding under R.C. 2151.414(B)(1)(a) that the children cannot be placed with appellant or J.E. within a reasonable period of time or should not be placed with either parent.

{¶32} In the event that R.C. 2151.414(B)(1)(a) applies, and the children cannot be placed with either parent within a reasonable time or should not be placed with the 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 [R.C. 2151.414(E)] factor will support the court's finding that the child cannot

be reunified with the parent within a reasonable time." *In re J.M.*, 8th Dist. Cuyahoga No. 104030, 2016-Ohio-7307, ¶ 47, citing *In re R.M.* at *id*.

{¶33} In this case, the trial court found, among other factors, that R.C. 2151.414(E)(1) applied to both appellant and J.E. R.C. 2151.414(E)(1) provides,

> [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. 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.

{¶34} Appellant argues that the trial court's finding under R.C. 2151.414(E)(1) was against the manifest weight of the evidence. His challenge is based on two grounds: (1) he was not given enough time to work on his case plan and the trial court did not have sufficient information to determine that R.C. 2151.414(E)(1) applied, and (2) he substantially complied with his case plan.

a. Timing

{¶35} Appellant places great emphasis on the fact that 105 days elapsed between May 5, 2015, when the children were placed in CCDCFS's emergency custody, and August 18, 2015, when CCDCFS filed its motion to modify temporary custody to permanent custody. Appellant asserts that this was not a reasonable period of time to allow him to work on his case plan or to participate in case plan services "to an extent that

would have impacted the decision to return the children home." Appellant's brief at 18. In sum, appellant argues that he "never was given a chance" and was "set up to fail by [CCDCFS]." Appellant's brief at 18.

{¶36} After review, we find that appellant's argument is flawed and unsupported by the record. Appellant's entire argument is premised on the assumption that the trial court's permanent custody determination was based solely on the progress he made up until August 18, 2015, when the permanent custody motion was filed. Appellant suggests that when the permanent custody motion was filed, he no longer had an opportunity to work on the case plan and remedy the conditions that resulted in the children's removal.

{¶37} Appellant neglects to consider, however, that more than one year elapsed between August 18, 2015, and August 29, 2016, when the trial on the permanent custody motion was held. During this period of time, appellant could have worked on his case plan and remedied the conditions that led to the children's removal.

{¶38} McCord-Crump testified that the CCDCFS continues to work with families for reunification even after filing for permanent custody. (Tr. 142.) She explained that CCDCFS has withdrawn pending motions for permanent custody, but that did not happen in this case because "[t]he parents haven't made significant progress on the case plan services." (Tr. 143.) Neff, who worked with the family from March 2016 to August 2016 — after CCDCFS filed its motion for permanent custody — testified that the agency's goal was reunification with the parents.

{¶39} Accordingly, we find no merit to appellant's assertion that he did not have enough time to work on his case plan and remedy the conditions that led to the children's removal.

b. Substantial Compliance

{¶40} Appellant concedes that he was "not completely in compliance" with the case plan. However, he contends that he "did substantially comply with the case plan." Appellant's brief at 18. In support of his substantial compliance argument, appellant emphasizes that he participated in and completed substance abuse treatment, parenting classes, and domestic violence counseling.

{¶41} "Substantial compliance with a case plan does not mean that the parent has achieved the ultimate goals of the plan or that the parent has substantially remedied the conditions that caused the children to be removed." *In re A.P.*, 8th Dist. Cuyahoga No. 104129, 2016-Ohio-5848, ¶ 19, citing *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 139.

> A parent can successfully complete the terms of a case plan yet not substantially remedy the conditions that caused the children to be removed — the case plan is simply a means to a goal, but not the goal itself. Hence, the courts have held that the successful completion of case plan requirements does not preclude a grant of permanent custody to a social services agency. *In re J.L.*, 8th Dist. No. 84368, 2004-Ohio-6024, at ¶ 20; *In re Mraz*, 12th Dist. Nos. CA2002-05-011, CA2002-07-014, 2002-Ohio-7278.

In re C.C., 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360, ¶ 25 (8th Dist.).

{¶42} In the instant matter, we recognize that appellant did, in fact, engage in services required by the case plan. As noted above, appellant's case plan included

mental health, substance abuse, domestic violence, parenting, housing, and basic needs objectives. Appellant substantially completed programs addressing *some* of these issues, and his progress is certainly commendable.

{¶43} Nevertheless, we find that the record contains ample evidence to support the trial court's finding that appellant failed to remedy the conditions that caused the children to be placed outside the home. The record reflects that appellant failed to complete the domestic violence component of his case plan, stopped participating in his substance abuse treatment by failing to provide urine screens to verify his sobriety after completing an outpatient drug treatment program, failed to consistently participate in mental health treatment, failed to consistently attend visitations with the children, and failed to establish a stable residence.

{¶44} At the permanent custody hearing, McCord-Crump testified about the objectives of appellant's case plan. She explained that the case plan included a substance abuse objective because appellant admitted to using marijuana. Appellant completed a substance abuse assessment in August 2015, at which time he tested positive for cocaine. Appellant also tested positive for cocaine in October 2015. Appellant completed a non-intensive outpatient drug treatment program in February 2016. After appellant completed the outpatient treatment program, CCDCFS expected him "[t]o continue with urine screens so [the agency] can verify that he was sober." (Tr. 90.) However, appellant failed to consistently complete drug screens.

{¶45} McCord-Crump testified that appellant's case plan included a mental health objective because he was diagnosed with bipolar disorder. The case plan included a domestic violence objective because "[appellant] has a history of criminal convictions regarding domestic violence. [J.E.] has reported that [appellant] has been domestically violent. [J.E.] and [appellant] both have been in altercations." (Tr. 91-92.) McCord-Crump stated that the domestic violence incidents involving appellant and J.E. took place between April 2015 and February 2016. The agency received reports from appellant's mother about appellant and J.E. "constantly yelling and screaming at each other. The police being called to the [grandparents'] home for the altercations." (Tr. 94.) McCord-Crump asserted that appellant did not complete domestic violence or anger management classes.

{¶46} McCord-Crump testified that appellant's case plan included objectives for basic needs and housing, explaining, "initially [appellant and J.E.] reported being homeless. They were evicted from their previous apartment and they were staying with [the paternal grandparents]." (Tr. 94.) As of March 2016, appellant was still living with his parents.

{¶47} McCord-Crump testified about appellant's visits with the children. She stated that between June 2015 and February 2016, the parents attended approximately 21 of the 36 scheduled visits. McCord-Crump supervised one or two of the visits and explained

> [appellant] needed a lot of prompting. * * * [Appellant] had to be shown how to hold the kids, to calm them down. * * * [Appellant] had to be

> prompted to interact with the kids. Like get off the sofa and interact with the kids. And lower his voice because sometimes he frightened the children. The visits were really rough at first.

(Tr. 96.) As a result of the problems during the visits, CCDCFS implemented a "visiting coach" in August 2015.

{¶48} McCord-Crump stated that she believed it would be in the best interest of the children to remain with the foster parents because the parents had not completed case plan services and had not addressed the issues that brought the children into CCDCFS's custody.

{¶49} Neff confirmed that a supportive parenting coach was assigned to the family based on the agency's concerns that appellant and J.E. "hadn't really benefitted from the parenting class from what was observed during the visits with the children." (Tr. 147.) Neff testified about appellant's parenting abilities: "[appellant] needs a lot of redirection, you know, he needed to be reminded to supervise the kids, especially now that they're both mobile and want to get into everything they possible can. * * * [H]e needs to be reminded, you know, be off the phone, watch what they're doing, watch what they're grabbing at." (Tr. 147.)

{¶50} Neff testified that between March 2016 and August 2016, there were 21 available visits. She stated that both J.E. and appellant came to three visits, and appellant came to three visits on his own. Neff explained that appellant did much better with the children when he had assistance from the supportive parenting coach. However, she believed that appellant needed additional parenting services.

{¶51} Neff explained that she was unable to verify appellant's progress with the substance abuse issue because he was no longer completing urine screens. Neff was concerned about appellant's progress with the mental health services. She explained that appellant was not consistent with his mental health treatment until June 2016. She stated that when appellant consistently participates in the treatment, he does well.

{¶52} Neff was further concerned about the domestic violence issue. Around August 8, 2016, she received a voicemail from J.E. during which J.E. sounded "very panicked, very upset." (Tr. 152.) Neff explained that she heard a lot of yelling and commotion in the background during the voicemail. She confirmed that appellant had not completed domestic violence services.

{¶53} Neff believed that reunification with appellant was not possible — either at the time of the August 29, 2016 hearing or six months thereafter. She opined that granting permanent custody to CCDCFS was in the children's best interest based on her concern that the parents "haven't done enough to alleviate the concerns that led to the children's removal initially." (Tr. 165-166.)

{¶54} Dr. Kozlowski's testimony is relevant to the case plan's mental health objective. She testified that she was concerned about appellant "functioning in the borderline range of intellectual disability." (Tr. 44.) Dr. Kozlowski explained that borderline intellectual functioning "absolutely impact[s a parent's] ability to parent safely and effectively." (Tr. 45.)

{¶55} The children's GAL, Gail Nanowsky ("Nanowsky"), agreed with

McCord-Crump's and Neff's recommendations. She recommended that the children be placed in the permanent custody of CCDCFS.

{¶56} Finally, regarding the case plan's housing and basic needs objectives, appellant asserts that he resided with his parents, the children's paternal grandparents, and that their home was appropriate. Appellant's contention is unsupported by the record.

{¶57} Neff testified that approximately two weeks before the August 29, 2016 hearing, the parents indicated that they got their own apartment.[1] Neff scheduled a home visit prior to the hearing but the parents cancelled the appointment. As a result, Neff was unable to verify that the parents got their own apartment or determine whether the apartment was appropriate for the children.

{¶58} Regarding the parents' housing situation, Neff testified that since she took over the case in March 2016, "there was some back and forth, [the parents] were staying between friends and the paternal grandparents and that seemed to change almost each time I talked to them." (Tr. 157.) Neff explained that even if the parents managed to achieve independent housing, her concern about the stability of the housing would not be alleviated: "even through the life of this case, they did have their own apartment for six months, but they were evicted for nonpayment of rent. So it would still be a concern." (Tr. 187.) Thus, the record reflects that appellant failed to remedy the housing and basic needs concerns which, among other things, caused the children to be placed outside the parents' home.

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[1] The parents told Neff that they moved into the apartment on August 8, 2016. (Tr. 186.)

{¶59} Accordingly, the record clearly and convincingly supports the trial court's determination that the children cannot be placed with appellant or J.E. within a reasonable time or should not be placed with either parent.

3. Best Interest of the Children

{¶60} After determining that one of the four factors listed in R.C. 2151.414(B)(1) is present, the trial court proceeds to an analysis of the children's best interest. In determining the best interests of a child, R.C. 2151.414(D)(1) directs the trial court to consider "all relevant factors, including, but not limited to":

> (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 CCDCFS;
>
> (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶61} In the instant matter, the trial court determined that it was in the children's best interest to be placed in the permanent custody of CCDCFS. Although appellant does not specifically challenge the trial court's best interest determination, a review of the

record reveals clear and convincing evidence upon which the trial court could determine granting permanent custody of the children to CCDCFS is in the children's best interest.

{¶62} The children had been in the temporary custody of CCDCFS since May 5, 2015. After the children's removal, the parents did not establish a stable residence. The parents did not consistently attend visitations with the children. When the parents did participate in visitation, they did not form a positive bond with the children and the social workers had concerns about the parents' interaction with the children and their parenting abilities. On the other hand, the children had a strong bond and were "thriving" with their foster parents.

{¶63} McCord-Crump testified that the children were placed in a foster home when they first came into the agency's temporary custody, and that they remained with the foster parents at the time of the permanent custody hearing. She opined, "I believe the children have a close bond with their foster parents and it would be in their best interest to remain there if permanent custody is granted." (Tr. 105.)

{¶64} Neff asserted that the children had been with the foster parents since May 5, 2015. She testified, "they're doing very well in the foster home. They're happy, very, very happy children. Thriving. They love to read. They will bring books to anyone who shows up. They're very bonded to the foster parents and the foster father's parents." (Tr. 159.) Neff opined that the children were more bonded with the foster parents than with appellant or J.E.:

> I'd say with the foster parents that is who they are closely bonded to. You know, when foster mom leaves the room, they get upset until she comes

> back. It's the kind of relationship between children and a primary caregiver.
>
> Whereas with the parents, its like they know who mom and dad are, [appellant] and [J.E.], but they don't have that close bond.

(Tr. 160.) Neff testified that she believed permanent custody is in the best interest of the children: "they've been where they're at for over a year. That's the only home they know. And just the concerns that the parents haven't done enough to alleviate the concerns that led to the children's removal initially." (Tr. 165-166.)

{¶65} As noted above, Nanowsky, the children's GAL recommended that the children be placed in the permanent custody of CCDCFS. Nanowsky had a chance to observe the parents' visit with the children when they were "babies." She explained that the parents "really weren't able to handle babies." (Tr. 211.)

{¶66} Finally, the trial court considered that R.C. 2151.414(E)(11) applied to J.E., as she had her parental rights involuntarily terminated with respect to two of the children's siblings in Summit County.

{¶67} On August 5, 2016, appellant filed a motion requesting that his parents be granted legal custody of the children. Therein, he asserted that it would be in the children's best interest to be placed in the legal custody of their paternal grandparents. Appellant's assertion is unsupported by the record.

{¶68} "[A] child's best interest are served by the child being placed in a permanent situation that fosters growth, stability, and security." *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 11, citing *In re Adoption of Ridenour*, 61 Ohio

St.3d 319, 324, 574 N.E.2d 1055 (1991). The willingness of a relative to care for a child does not alter what a court considers in determining whether to grant permanent custody. *Id.*, citing *In re A.D.*, 8th Dist. Cuyahoga No. 85648, 2005-Ohio-5441, ¶ 12.

{¶69} The trial court is not required to favor a relative if it finds that it is in the child's best interest, based on the R.C. 2151.414(D) factors, for the agency to be granted permanent custody. *M.S.* at ¶ 11, citing *In re B.H.*, 5th Dist. Fairfield No. 14-CA-53, 2014-Ohio-5790, ¶ 72. The Ohio Supreme Court has held that under R.C. 2151.414, the availability of a relative to care for a child is neither an all-controlling factor nor a factor that the court is required to weigh more heavily than the other factors. *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 63.

{¶70} In the instant matter, CCDCFS initially requested that the children be placed in the temporary custody of the paternal grandparents. During the May 5, 2015 emergency custody hearing, appellant adamantly opposed CCDCFS's request and alleged that he had been abused by his parents as a child. McCord-Crump explained that appellant "made a lot of serious allegations against his parents. He stated that he was abused as a child. He stated he didn't get along with his parents and he did not want them to have anything to do with his children." (Tr. 87.)

{¶71} Based on appellant's allegations, the magistrate's emergency temporary custody order and findings of fact included an order prohibiting the children from being placed with the paternal grandparents. The magistrate's order remained in effect for approximately seven months, until it was lifted in January 2016. After the order was

lifted, the trial court ordered CCDCFS to explore the paternal grandparents as potential caretakers.

{¶72} McCord-Crump testified that the paternal grandparents have gone "back and forth" regarding their interest in having custody of the children. She explained that appellant and J.E. indicated that they would like the paternal grandparents to have legal custody in the event they cannot complete their case plan services. She stated, "after the court order was lifted, the grandparents did attend maybe four or five visits, but the grandparents commitment to the kids has been inconsistent. One minute they want the kids, but they can't take care of them, they want help. It's just back and forth." (Tr. 129.)

{¶73} McCord-Crump testified that CCDCFS went through the home study process and determined that it would not be in the children's best interest to grant custody to the grandparents because "the kids were with these foster parents for so long and that's where the bond was." (Tr. 134.) She explained that CCDCFS conducted background checks and determined that the grandparents had a history with the agency, including approximately five or six referrals regarding their own children. McCord-Crump testified that even after the court order was lifted, CCDCFS was skeptical about placing the children with the grandparents because appellant was adamant about his abuse allegations.

{¶74} Neff did not believe it would be appropriate to grant legal custody of the children to the grandparents based on appellant's multiple allegations that he was abused

as a child and that his parents are violent. She explained that appellant also alleged that his parents permitted his brother to use drugs in the home. Neff stated that before the children were removed from the parents' home, the paternal grandmother called the agency and said she was unable to take care of the children, it was too hard on her health, and she had no one to help her.

{¶75} Finally, Nanowsky, the GAL, testified that she met with the children's family members — including appellant, J.E., and the paternal grandparents — and the foster parents. She conducted background checks on everyone. Nanowsky explained that the grandparents were "a little bit suspicious" and that she was unable to complete a full investigation or conduct a home visit due to the grandparents' lack of cooperation. (Tr. 210-211.)

{¶76} The agency made good faith and reasonable efforts to place the children with their blood relatives, but the relatives were either unwilling, unsuitable, or both. The evidence in the record showed that the children were thriving in foster care and had formed a positive bond with their foster parents. Thus, we find no merit to appellant's contention that it is in the children's best interest to be placed in the custody of the paternal grandparents.

{¶77} Accordingly, the record supports the trial court's determination that granting permanent custody to CCDCFS was in the children's best interest.

{¶78} For all of the foregoing reasons, we find that the trial court's judgment awarding permanent custody to CCDCFS is supported by clear and convincing evidence.

A review of the record reveals clear and convincing evidence upon which the trial court could determine that (1) the children could not and should not be placed with appellant or J.E. within a reasonable time, and (2) granting permanent custody of the children to CCDCFS is in the children's best interest.

{¶79} Appellant's second assignment of error is overruled.

III. Conclusion

{¶80} Although the trial court was not required to make the reasonable efforts finding under R.C. 2151.419 when ruling on the motion for permanent custody, the record reflects that the trial court determined that CCDCFS did, in fact, make reasonable efforts to reunify the family. Furthermore, the record reflects that CCDCFS made such reasonable efforts at reunification.

{¶81} The trial court's judgment awarding permanent custody of the children to CCDCFS is supported by clear and convincing evidence, and thus, is not against the manifest weight of the evidence.

{¶82} 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 common pleas court, juvenile division, 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.

FRANK D. CELEBREZZE, JR., JUDGE

EILEEN T. GALLAGHER, P.J., and
SEAN C. GALLAGHER, J., CONCUR