[Cite as *In re M. M.*, 2010-Ohio-2278.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: M. M.
J. H.
M. H.
L. L.

C. A. Nos. 10CA009744, 10CA009745
10CA009746, 10CA009747

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE Nos. 08JC22655, 08JC22656
08JC22657, 08JC22658

DECISION AND JOURNAL ENTRY

Dated: May 24, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} This case involves the permanent custody of four children. The mother of the children has assigned a single error on appeal. She has argued that the trial court incorrectly entered a finding that is not permitted by the controlling statute. Specifically, she has argued that the trial court's finding that the children could not be placed with a parent within a reasonable time or should not be placed with a parent was not permitted because the children had been in the temporary custody of the agency for more than 12 of 22 consecutive months. See R.C. 2151.41.4(B)(1)(a). On this basis, the mother has argued that the trial court judgment is not supported by clear and convincing evidence and must be reversed. Upon review, this Court concludes that the judgment of the trial court is supported by the alternative finding that the

children were in the temporary custody of the agency for more than 12 of 22 consecutive months. Consequently, the judgment of the trial court is affirmed.

FACTS

{¶2} Melissa L. is the mother of M.M., born on April 17, 1997; J.H., born on June 20, 1998; M.H., born on February 19, 2002; and L.L., born on March 23, 2006. Another child was born to the mother during the pendency of this case, but that child's custody is not at issue in this appeal. The fathers of the four children were either unknown or not involved in their children's lives, and none of them are parties to this appeal.

{¶3} The Lorain County Children Services Agency initially became involved with the family in October 2007 on an in-home basis because of concerns of poor school attendance by the children, the mother's mental health, and the unsanitary condition of the family home. Matters improved briefly, but then deteriorated. At one point, the agency was denied access to the home to verify the safety and welfare of the children and had concerns that a registered sex offender was in the home. Consequently, on June 11, 2008, the agency initiated this action in juvenile court. On August 15, 2008, the trial court adjudicated the children as abused, neglected, and dependent and placed them in the temporary custody of the agency.

{¶4} Service providers made commendable efforts to implement the mother's case plan and to reunite this family. Permanent custody cases force difficult decisions, but the best resolutions may often be reached after highly supportive services directed towards reunification are provided to parents. The mother's counselor went beyond typical efforts and made specific job recommendations and personal inquiries on behalf of the mother. A team meeting included the foster parents so that they could share particular parenting techniques that had been successful with the children. And the agency arranged for an extended home stay by the

children, preceded by presenting the mother with an eight-item task list and monitored through daily visits by the guardian ad litem, a case aide, or the caseworker. The caseworker explained that "really, the only way to know if Mom was going to be able to handle five children would be to place these children into her care for an extended visit and see if she can do it."

{¶5} Despite these efforts, the mother never established stable housing or employment, and she demonstrated no meaningful progress on parenting skills or mental health concerns. Eventually, the agency moved for permanent custody. According to the mother's counselor, the caseworker, and the guardian ad litem, the mother could not provide adequate care for her children now or in the near future. The same witnesses explained that the mother's behavior was often irrational. The children were diagnosed with multiple emotional, physical, and educational deficits largely related to a lack of proper care, but showed great improvement after they were removed from the mother's home.

{¶6} Following the hearing, the trial court terminated the mother's parental rights to her four children and placed them in the permanent custody of the agency. In so doing, the trial court found that the children could not be returned to a parent within a reasonable time or should not be returned to a parent, that the children had been in the temporary custody of the agency for more than 12 of 22 consecutive months, and that permanent custody was in the best interests of the children. The mother has appealed and has assigned a single error for review.

LEGAL ARGUMENT

{¶7} The mother has argued that the trial court's finding that the children could not be placed with a parent within a reasonable time or should not be placed with a parent is erroneous because the children were in the temporary custody of the agency for more than 12 of 22 consecutive months. At the same time, she has conceded that the children were in the temporary

custody of the agency for more than 12 of 22 consecutive months, and she has not challenged the finding that permanent custody is in the best interests of the children. Nevertheless, the mother has argued that the trial court judgment granting permanent custody is erroneous because it is not supported by clear and convincing evidence and must be reversed.

{¶8} The mother's assignment of error requires, in part, an interpretation of Section 2151.41.4(B)(1) of the Ohio Revised Code. The interpretation of statutory authority is a question of law that is reviewed de novo. *State v. Consilio*, 114 Ohio St. 3d 295, 2007-Ohio-4163, at ¶8. "The primary goal of statutory construction is to ascertain and give effect to the legislature's intent in enacting the statute." *State v. Lowe*, 112 Ohio St. 3d 507, 2007-Ohio-606, at ¶9. To determine legislative intent, a court will first look to the plain language of the statute itself. *Id*., (citing *State ex rel. Burrows v. Indus. Comm'n*., 78 Ohio St. 3d 78, 81 (1997)). Words and phrases must be read in context and construed according to the rules of grammar and common usage. R.C. 1.42.

{¶9} Section 2151.41.4(B)(1)(a)-(d) sets forth the requirements for a juvenile court to grant permanent custody of a child to an appropriate moving agency. The statute provides in pertinent part:

> "(B)(1) [T]he court may grant permanent custody of a child to a movant if the court determines . . . that it is in the best interest of the child . . . and that any of the following apply:
>
> (a) The child is not abandoned or orphaned, has not been in the temporary custody of [an agency] for twelve or more months of a consecutive twenty-two month period . . . and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.
>
> (b) The child is abandoned.
>
> (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 [an agency] for twelve or more months of a consecutive twenty-two month period. . . ."

{¶10} The plain language of Section 2151.41.4(B)(1) provides that, in order to grant permanent custody of a child to an appropriate agency, the trial court must make two determinations: (1) permanent custody is in the best interest of the child and (2) "any" of the four specified options apply. *Id.* By common definition, the word "any" means "one or more." Webster's Third New International Dictionary 97 (1993). Accordingly, the trial court is required to enter findings on at least one option, but is permitted to enter findings on more of the options included within Section 2151.41.4(B)(1)(a)-(d) before granting permanent custody of a child to an agency. In this case, the trial court entered findings on two options: Section 2151.41.4(B)(1)(a) and Section 2151.41.4(B)(1)(d).

{¶11} The mother has correctly noted that, under the plain language of Section 2151.41.4(B)(1)(a), that option does not apply if the child has been abandoned, orphaned, or has been in the temporary custody of an agency for more than 12 of 22 continuous months. See, e.g., *In re M.B.*, 7th Dist. No. 08 MA 241, 2009-Ohio-2634, at ¶53; *In re Elder*, 5th Dist. No. CT 2006-0022, 2006-Ohio-5889, at ¶27. This does not mean, however, that a trial court may not enter findings on that and another option.

{¶12} Ohio courts, including this one, have routinely concluded that the options contained within Section 2151.41.4(B)(1)(a)-(d) are alternative findings and that only one must be met in order for the first prong of the permanent custody test to be satisfied. See, e.g., *In re J.H.*, 9th Dist. No. 07CA009168, 2007-Ohio-5765, at ¶22; *In re T.D.*, 12th Dist. No. CA2009-01-002, 2009-Ohio-4680, at ¶15; *In re Langford*, 5th Dist. No. 2004CA00349, 2005-Ohio-2304, at ¶17 (each alternative finding is "independently sufficient" to support a motion for permanent custody). In addition, appellate courts that have been faced with trial court decisions that rely on

both Section 2151.41.4(B)(1)(a) and Section 2151.41.4(B)(1)(d) have considered the finding on Subsection (d) first, and, if that finding fails, have then considered the finding on Subsection (a). Reviewing courts have variously held that if a child has been in the temporary custody of the agency for more than 12 of 22 consecutive months, consideration of whether the child could not or should not be placed with a parent is "not necessary," *In re M.B.*, 7th Dist. No. 08 MA 241, 2009-Ohio-2634, at ¶55, *In re S.R.*, 10th Dist. No. 05AP-1356, 05AP-1366, 05AP-1367, 05AP-1373, 2006-Ohio-4983, at ¶27 (not prohibited, but also not necessary); "extraneous," *In re T.D*, 12th Dist. No. CA2009-01-002, 2009-Ohio-4680, at ¶16; "not applicable," *In re Parks*, 5th Dist. No. CT 2006-0023, 2006-Ohio-5890, at ¶27; or "irrelevant." *In re J.Z.*, 7th Dist. No. 08 CO 31, 2009-Ohio-1937, at ¶22; *In re Krems*, 11th Dist. No. 2003-G-2534, 2004-Ohio-2446, at ¶52 (O'Neill, J., dissenting). But none, that we have located, has held that it is reversible error for a trial court to enter findings on both Section 2151.41.4(B)(1)(a) and Section 2151.41.4(B)(1)(d).

{¶13} In practical effect, additional findings under Section 2151.41.4(B)(1)(a)-(d) can be important. For example, if a finding of "12 of 22" has been determined on appeal to be erroneous because of faulty calculations, appellate courts, including this one, have upheld judgments of permanent custody by relying on an alternate finding that the child could not be placed with a parent within a reasonable time or should not be placed with a parent. See, e.g., *In re M.B.*, 7th Dist. No. 08 MA 241, 2009-Ohio-2634, at ¶6-7; *In re G.H.*, 9th Dist. No. 08CA009391, 2008-Ohio-4154, at ¶6-7; *In re J.L.T.*, 9th Dist. No. 21359, 2003-Ohio-2346, at ¶32. This procedure is reasonable in that it expedites resolution of a permanent custody matter as opposed to remanding the case for additional fact finding by the trial court, when such determinations could have been done initially.

{¶14} The mother has claimed that the trial court judgment is not supported by clear and convincing evidence and must be reversed. She has not merely taken the position that such an additional finding would be superfluous, but has asserted that making the additional finding invalidates the judgment of the trial court. The mother has not offered any case law in support of her position, nor has she offered a policy argument that would support adoption of her reading of the statute.

{¶15} This position neglects the fact that the finding under Section 2151.41.4(B)(1)(d) continues to exist and apply. Indeed, as part of her argument, the mother has specifically conceded that the children have been in the temporary custody of the agency for more than 12 of 22 months, within the meaning of Section 2151.41.4(B)(1)(d). Along with the unchallenged best interest finding, the statutory requirements for an order of permanent custody have been met. See R.C. 2151.41.4(B)(1).

{¶16} In interpreting and construing the statutory provisions concerning the juvenile court, this Court is charged with doing so liberally in order to effectuate the goals set forth in Section 2151.01: (1) the care, protection, and mental and physical development of children whenever possible in a family environment and separating children from their parents only when necessary for the children's welfare or in the interests of public safety and (2) judicial procedures that assure the parties of a fair hearing and the protection of their constitutional and other legal rights. *In re C.W.*, 104 Ohio St. 3d 163, 2004-Ohio-6411, at ¶15-18. The interpretation advanced by the mother furthers neither of these goals.

{¶17} Statutes must also be construed to presume a just and reasonable result if possible. R.C. 1.47. Courts presume that the General Assembly does not intend ridiculous or absurd results from the operation of the statutes it enacts, and must avoid, if reasonably possible,

construing statutes so that they would lead to such an outcome. See *In re T.R.*, 120 Ohio St. 3d 136, 2008-Ohio-5219, at ¶16. This Court can conceive of no reason why the mother's position would lead to a just and reasonable result. Nor does this Court conclude that her position would advance the statutory goals of Section 2151.01. The mother's assignment of error is overruled.

CONCLUSION

{¶18} The mother's assignment of error is overruled. The judgment of the Lorain County Common Pleas Court, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

APPEARANCES:

HOLLACE B. WEIZEL, attorney at law, for appellant.

DENNIS P. WILL, prosecuting attorney, and AMY L. PRICE, assistant prosecuting attorney, for appellee.

KATHY BEVAQUE, guardian ad litem.