**[Cite as *In re M.P.*, 2015-Ohio-2226.]**

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| STATE OF OHIO | ) | IN THE COURT OF APPEALS |
| | )ss: | NINTH JUDICIAL DISTRICT |
| COUNTY OF LORAIN | ) | |

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| IN RE: M.P. | C.A. No. 14CA010678 |
| | APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 13JC40306 |

DECISION AND JOURNAL ENTRY

Dated: June 8, 2015

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CARR, Judge.

**{¶1}** Appellant, Marquesha P. ("Mother"), appeals from a judgment of the Lorain County Court of Common Pleas, Juvenile Division, that terminated her parental rights to her minor child, M.P., and placed the child in the permanent custody of Lorain County Children Services ("LCCS"). This Court reverses and remands.

I.

**{¶2}** M.P. was born to Mother on June 6, 2010. The biological father of the child is unknown.

**{¶3}** Jessica Kulik, the LCCS caseworker assigned to this case, testified that the agency received a referral in June 2010, indicating that then fifteen-year-old Mother had just given birth at 27 weeks to M.P., that the baby weighed 1 pound and 15 ounces, and that the baby tested positive for THC. The record does not reflect any agency involvement with Mother or M.P. at that time.

**{¶4}** Three years later, in mid-2013, Mother left M.P. in the care of maternal grandmother ("Grandmother") when she entered the Pathways facility.[1] Although LCCS indicated it had an "open case on the entire family" since April 2013, the record does not reflect any agency involvement with Mother or M.P. at that time. On July 24, 2013, while Mother was in Pathways, police followed up on a report that a one-year-old child was found out-of-doors alone. The child was determined to be one of Grandmother's six minor children. Grandmother was reportedly arrested and all of the children then living at her home, including M.P., were placed in Blessing House, an emergency safe home. M.P. was soon moved to the home of maternal great aunt, Althea Washington, under a safety plan, according to the subsequently filed complaint. Grandmother's children became the subject of a separate action.

**{¶5}** According to Caseworker Kulik, Mother left Pathways on September 20, 2013, one week before her eighteenth birthday, and returned to Grandmother's home. The caseworker reported that Mother appeared to be doing very well at that time. She explained that Mother had been linked to services while at Pathways and, upon her release, expressed good intentions to follow through with them.

**{¶6}** Two weeks later, on October 3, 2013, LCCS filed a dependency and neglect complaint regarding M.P. and sought an award of temporary custody to Ms. Washington with protective supervision in LCCS. As grounds, the complaint cited the earlier incident involving Grandmother's one-year-old wandering alone outside the home; a lack of supervision, particularly citing the fact that Grandmother was often overwhelmed with the care of her children and grandchildren; a lack of financial resources by "[t]he family" to provide for all the children; and Mother's "delinquency issues." The complaint also cited "frequent referrals since

[1] The parties have not explained what Pathways is, why Mother was there, or exactly when she was there.

2009," domestic violence in the home, unexplained "environmental concerns," and ambiguous assertions that the "home and yard have been observed to be cluttered and dirty, although from time to time, it will be clean." The trial court appointed a guardian ad litem for M.P. on October 8, 2013, who later testified that he also served as guardian ad litem for Grandmother's children.

**{¶7}** The agency soon developed concerns about the condition of Ms. Washington's home and her ability to meet M.P.'s needs. Based on these concerns and Mother's progress at Pathways, the agency initiated a return of M.P. to Mother in Grandmother's home. The guardian ad litem's first report indicates that Mother and M.P. were reunited on October 10, 2013, one week after the complaint was filed.

**{¶8}** In late October 2013, the agency learned of a domestic violence incident that had taken place between Grandmother and one of her adult children on September 15, 2013, while Mother was in Pathways. The caseworker testified that, upon learning of this incident, the agency decided that Grandmother's home was not a safe place for M.P. and sought an order for the emergency temporary custody of the child. On November 6, 2013, the magistrate found that M.P. was "in immediate danger from the surroundings" and ordered the removal of the child. The magistrate based his decision on the same matters alleged in the original complaint, as well as a report that Mother had again been using marijuana. At the same time, the magistrate ordered the agency to prepare a case plan to "assure reunification."

**{¶9}** On December 11, 2013, M.P. was adjudicated neglected and dependent, and she was placed in the temporary custody of the agency. LCCS submitted a case plan, which was signed by Mother as in agreement, and it was adopted as an order of the trial court.

**{¶10}** Mother gave birth to a second child on May 31, 2014. Like M.P., that child tested positive for THC at birth. The infant was removed from Mother's care, but his custody is not at issue in this case.

**{¶11}** On June 4, 2014, LCCS filed a motion for the permanent custody of M.P.[2] Following a hearing, the trial court granted the agency's motion. Mother appeals and assigns one error for review.

II.

**ASSIGNMENT OF ERROR**

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN VIOLATION OF MOTHER'S FOURTEENTH AMENDMENT TO THE UNITED [STATES'] CONSTITUTION DUE PROCESS CLAUSE AND ARTICLE I SECTION SIXTEEN OF THE OHIO CONSTITUTION IN FINDING THAT PERMANENT CUSTODY WAS SUPPORTED BY CLEAR AND CONVINCING EVIDENCE, AND IN TERMINATING APPELLANT'S PARENTAL RIGHTS WHEN THE TRIAL COURT'S JUDGMENT WAS AGAINST THE WEIGHT OF THE EVIDENCE.

**{¶12}** Mother contends the judgment of the trial court granting permanent custody of M.P. to LCCS is not supported by clear and convincing evidence and is against weight of the evidence. In her supporting argument, Mother argues that she was not afforded sufficient time to

[2] In its motion for permanent custody, LCCS claimed only that M.P. could not be placed with either parent within a reasonable time or should not be placed with a parent, but the agency failed to cite any "E factors" under R.C. 2151.414. Thus, there is a question of whether the agency provided Mother with reasonable notice of the grounds against which she would be required to defend. *See, e.g., In re K.G.*, 5th Dist. Holmes No. 13CA011, 2014-Ohio-266, ¶ 17, citing *In re J.M.*, 9th Dist. Summit No. 24827, 2010-Ohio-1967, ¶ 18 ("[I]n granting a motion for permanent custody, a trial court may not rely upon a ground unless that ground has been properly brought to the attention of the parents in a timely fashion. * * * [D]ue process fundamentally requires both notice and an opportunity to be heard * * *.") We do not specifically address the merits of this issue because, *inter alia*, Mother has not assigned it as error on appeal.

work on her case plan and that case planning services were not tailored to address the specific concerns at issue.

**{¶13}** R.C. 2151.414(B)(1) establishes a two-part test for courts to apply when determining whether to grant a motion for permanent custody to a public services agency. The statute requires the court to find, by clear and convincing evidence, that: (1) one of the enumerated factors in R.C. 2151.414(B)(1)(a)-(e) apply, and (2) permanent custody is in the best interest of the child under R.C. 2151.414(D)(1)(a)-(e). *See* R.C. 2151.414(B)(1). Clear and convincing evidence is that which is sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

**{¶14}** The trial court determined that the first prong of the permanent custody test was satisfied because M.P. could not be returned to Mother within a reasonable time or should not be returned to her care. *See* R.C. 2151.414(B)(1)(a). In support of that determination, the trial court made two findings:[3] (1) that Mother failed continuously and repeatedly to substantially remedy the problems that initially caused the child to be placed outside the home despite reasonable case planning and diligent efforts by children services under R.C. 2151.414(E)(1), and (2) that Mother

[3] The trial court referred to two additional "(E) factors" in its judgment entry, but neither of them can satisfy R.C. 2151.414(B)(1)(a).

First, pursuant to R.C. 2151.414(E)(9), the trial court declined to find that Mother "placed the child at substantial risk of harm" due to alcohol or drugs two or more times, but did find that Mother "rejected treatment" or "refused to participate in further treatment" two or more times, which represents only half of this statutory factor. *See* Journal Entry, filed September 22, 2014, at 8. Factually, the record indicates that the caseworker attempted to refer Mother for inpatient substance abuse treatment twice in November 2013, but there was no case plan in effect until December 11, 2013. It is only after a proposed case plan is adopted and journalized by the trial court that the case plan becomes legally binding on all parties. *See* R.C. 2151.412(E) and (F)(1). *See also In re S.D-M.*, 9th Dist. Summit Nos. 27148, 27149, 2014-Ohio-1501, ¶ 26.

Second, the trial court's finding on abandonment under R.C. 2151.414(E)(10) appears to contain a typographical error, which we are unable to discern. The court wrote: "Mother has not abandoned the child, as she has not seen the child in over 90 days[.]"

demonstrated a lack of commitment to her child under R.C. 2151.414(E)(4). The trial court also found that granting permanent custody to LCCS was in M.P.'s best interest under the second prong of the permanent custody test. *See* R.C. 2151.414(D)(1).

I. R.C. 2151.414(E)(1)

**{¶15}** We consider the evidence regarding the trial court's finding that Mother failed continuously and repeatedly to substantially remedy the problems that initially caused the removal of the child despite reasonable case planning and diligent efforts by the agency. *See* R.C. 2151.414(B)(1)(a) and R.C. 2151.414(E)(1). This factor is unique among those listed in R.C. 2151.414(E) in that confirmation of the finding is based not only on a parent's failure to remedy certain problems, but is specifically conditioned upon agency behavior, i.e., whether the agency engaged in "reasonable case planning and diligent efforts * * * to assist the parents to remedy" those problems. *See* R.C. 2151.414(E)(1). Mother contends that LCCS did not meet the required level of assistance because she was not afforded sufficient time to address these problems and because the case plan was not tailored to her needs in remedying the conditions that initially caused the removal of M.P.

A. Problems Causing the Initial Removal of the Child

**{¶16}** M.P. was technically placed outside her home twice, and both of those removals were most directly due to the behaviors of Grandmother as opposed to Mother. When the caseworker was asked for the reasons that initially caused M.P.'s removal, she cited concerns of (1) the condition of the home, (2) a lack of supervision in the home, and (3) possible alcohol abuse, all of which took place while Mother was in Pathways in July 2013. Later, the caseworker added domestic violence, but, on cross-examination, specifically agreed that the domestic violence incident took place while Mother was in Pathways and did not involve

Mother. As explained above, M.P. was returned to Mother after the complaint was filed and after a brief placement with a relative under a "safety plan." According to the caseworker, the second removal took place in late October 2013, after the agency learned of a domestic violence incident between Grandmother and an adult child that had taken place on September 15, 2013, again while Mother was in Pathways. In ordering the child's removal, the trial court cited the same reasons as it did in the initial complaint along with a report that Mother was using marijuana since her release from Pathways.

B. The LCCS Complaint

**{¶17}** The complaint filed by LCCS cites Mother's "delinquency issues" and "frequent referrals since 2009" as matters in support of the claim that the child was dependent and neglected. The record, however, contains no documentary evidence regarding any "delinquency issues" for Mother. At the opening of the trial court proceedings, Mother's attorney requested that the trial court take judicial notice of the file in Mother's juvenile detention case. The LCCS attorney declined to object. As we have previously indicated, a court may take judicial notice of proceedings in the immediate case before it, but may not take judicial notice of proceedings in other cases "even though between the same parties and even though the same judge presided." *In re J.C.*, 186 Ohio App.3d 243, 2010-Ohio-637, ¶ 14 (9th Dist.), quoting *Patel v. Gadd*, 9th Dist. Summit No. 21604, 2004-Ohio-436, ¶ 7. "The rationale for this rule is that an appellate court cannot review the propriety of the trial court's reliance on such prior proceedings when that record is not before the appellate court. This court's review is necessarily limited to the record on appeal." (Citation omitted.) *In re J.C.* at ¶ 15. Accordingly, the record of the present custody case contains no court records from any juvenile proceeding involving Mother.

**{¶18}** However, the record includes some testimony. The LCCS caseworker testified without objection that she solely relied on conversations with Mother's juvenile probation officer in determining that Mother was on juvenile probation at some point for "petty theft," that she was confined at a detention home at some point for an unknown violation of juvenile probation, that she was discharged from probation at some point, and that Mother was at Pathways from "about June 2013 to September 2013."

**{¶19}** Next, regarding the reference in the complaint to "frequent referrals since 2009," we emphasize that referrals are not evidence of abuse, dependency, or neglect, and, in and of themselves, are nothing more than "anonymous allegations." *See In re A.A.*, 9th Dist. Summit No. 24817, 2009-Ohio-5884, ¶ 9. A children services agency must produce proper evidence of a family's involvement with the agency at the hearing. *See In re A.W.*, 9th Dist. Lorain No. 09CA0009631, 2010-Ohio-817, ¶ 22. The mere existence of anonymous referrals is not substantive evidence of the truth of such referrals. Here, the reference in the complaint to "frequent referrals" merely supports a conclusion that LCCS had a familiarity with the family.

C. Mother's Case Plan

**{¶20}** Although the agency had notice of Mother giving birth to a child at the age of fifteen in 2010, and acknowledged that they had an "open case" with the family since April 2013, LCCS failed to offer assistance or services to Mother at that time. There is no evidence that counseling, parenting education, support services, or even protective supervision was offered to Mother in 2010. *See, e.g., In re M.W.*, 9th Dist. Lorain No. 03CA008342, 2004-Ohio-438, ¶ 20, ¶ 29 (utilizing a joint foster placement for a minor mother and infant child for role modeling and practical parenting instruction). Instead, the agency first engaged with Mother and M.P. largely on the basis of Grandmother's conduct as opposed to that of Mother. The present

dependency-neglect case was initiated when Mother was barely out of her minority and had no resources or family support. At that time, the agency presented Mother with a broad and extensive case plan. In addition, the caseworker informed her that "[the agency] would not reunify [M.P.] with [Mother] if she was living in [Grandmother's] home."

**{¶21}** The case plan that was adopted in December 2013, lists the following requirements for the component directed to meeting the basic needs of M.P.: (1) maintain a safe, stable, sanitary living environment either independently or with an approved relative for six months; (2) obtain a stable source of income either through employment or Lorain County Department of Job and Family Services ("LCDJFS") benefits for six months that is adequate to support her and M.P.; (3) complete a high school diploma or GED; (4) participate in appointments with community resources such as Help Me Grow to increase knowledge of child development and parenting skills; (5) attend class and/or work with a parent mentor or an in-home therapist to learn about and implement suggestions regarding typical behavior for M.P. and what kind of care and discipline usually work best for M.P.; (6) have a reliable means of public or private transportation; (7) use her own income and community resources to assist her with transportation, clothing, utilities, and other necessities; (8) utilize household budgeting, money management, and nutritional meal planning skills; (9) have supplies needed to care for M.P., including car seat, crib/bassinet, first aid kit, clothing, blankets, and three days' worth of food, diapers, and wipes; demonstrate knowledge of a child's symptoms of illness and have a medical provider chosen; (10) describe and demonstrate an understanding of the need to nurture and bond with M.P.; (11) develop a child care plan in which a safe, reliable trusted caregiver is secured whenever she goes to work or must leave M.P. at home; and (12) find and use "non-using supports" and other outlets for stress.

**{¶22}** Additional case plan components required Mother to: (13) engage in mental health counseling; (14) address drug and alcohol abuse; (15) assist in establishing paternity for her child; and (16) provide names of relatives that might provide care for M.P. in her stead. Finally, along with an opportunity for weekly visits, Mother was given a letter from LCCS that outlined agency expectations for those visits. The agency required that Mother call the day before every scheduled visit and arrive 30 minutes early. LCCS also required Mother to bring "a prepared meal," as well as other basic needs, including diapers, wipes, and activities to the visits.

**{¶23}** Reasonable case planning and diligent efforts to remedy the problems that initially caused the removal of the child necessarily includes services that focus on assisting a parent with securing independent housing, obtaining income to independently support herself and her child, and meeting the needs of the child, including providing practical parenting instruction and a positive support system.

D. Urban League Involvement

**{¶24}** Before specifically considering the case planning services and efforts of LCCS, it is important to observe that Mother acted on her own initiative to seek out an additional resource to assist in her attempt to reunite with her daughter. In June or July of 2014, Mother contacted the Lorain County Urban League. She apparently learned of their program through the father of her second child.

**{¶25}** Following intake procedures, Mother began working with Tina Allen, the Associate Director of Programs and Senior Advocate Counselor of Lorain County Urban League, in August 2014. Ms. Allen testified at the permanent custody hearing about Mother and Urban League's efforts to assist her. Ms. Allen explained that she contacted LCCS to learn about Mother's case plan in order to become educated on how to best help Mother. Urban

League social workers then created an individual service plan for Mother which addressed stress reduction, parenting classes, and substance abuse**,** along with housing, employment, and domestic violence. The plan included careful monitoring of Mother's progress with LCCS and Urban League.

**{¶26}** Ms. Allen explained that their program is federally funded and they are held accountable, "making sure we can do all we can do to help our students within our capacity." Ms. Allen stated that through their services, they were able to provide Mother with transportation to appointments, gas cards, referrals for child care, and needs-based payments. Their telephone lines are open 24 hours a day. They have a case manager and an advocate who works on their client's behalf to make sure they are successful. Ms. Allen testified that she anticipated accomplishing goals and moving Mother to self-sufficiency within six months. She believed that as long as Mother was working with them, reunification with M.P. could be accomplished.

**{¶27}** Ms. Allen emphasized that her goal was to make sure Mother was successful. She was specific about creating a priority of goals and objectives, with the main goal of getting Mother to a place where she could take care of her two children. She met with Mother on at least a weekly basis. At those meetings, Ms. Allen made sure that certain tasks were completed, that she had Mother's calendar, that Mother had transportation to her appointments, and that she knew how to reach Mother.

**{¶28}** In terms of personal qualities, Ms. Allen stated that Mother was "pretty good," i.e., she was responsive about accomplishing her tasks 90 percent to "close to 100 percent" of the time. Ms. Allen described Mother as very smart, capable of managing her kids, and capable of being successful in school. "She just needs a support system and someone to hold her accountable, you know, in a different way." Ms. Allen stated that Mother "loves her kids" and

that was the most important factor for her. She said Mother thinks more about her children than herself.

**{¶29}** Ms. Allen testified that she believed it would be in the best interest of both Mother and M.P. to give Mother an opportunity to participate in the Urban League program for six months to see if Mother could successfully reunite with her daughter. Ms. Allen believed that it could be done in six months. "Six months is what we need to be able to do that. We can do that." She emphasized that she believed Mother can accomplish the goals because she now has support, and a structured program that will hold her accountable and monitor her work toward her goals. She believed that a support system was the key missing part, and stated that she was committed to helping Mother turn herself around.

E. Reasonable Case Planning and Diligent Efforts by LCCS

**{¶30}** R.C. 2151.414(E)(1) requires that children services agencies engage in reasonable case planning and diligent efforts to remedy the concerns at issue. In addition to setting appropriate case plan goals for parents engaged in custody actions, children services agencies must, in good faith, provide services and engage in efforts that are reasonably calculated to succeed in reunifying parents and their children. *See, e.g., In re C.E.*, 3d Dist. Hancock Nos. 5-09-02, 5-09-03, 2009-Ohio-6027, ¶ 23, ¶ 33. "These plans must take into consideration the individual circumstances of each case[.]" *Id.* at ¶ 15. In addition, it is fundamental that parents must be afforded a reasonable amount of time to accomplish their goals.

**{¶31}** We next consider the services provided and the efforts engaged in by the children services agency on the key case plan goals at issue.

1. Housing

**{¶32}** Mother's LCCS case plan required her to obtain and maintain housing for six months either independently or with an approved relative. There is no evidence that Mother has a relative that would be able to provide "approved" housing for her. Since Mother's release from Pathways, she stayed with Grandmother, friends, or at a homeless shelter.

**{¶33}** In terms of LCCS assistance to achieve independent housing, Caseworker Kulig testified that she spoke to Mother about the need to obtain housing while she was still in Pathways. Mother told Ms. Kulig that she had already applied for Lorain Metropolitan Housing Authority ("LMHA") housing, and the caseworker concluded that there was nothing more that she could do. Ms. Kulig claimed she could not contact LMHA for a status inquiry because she did not know who Mother's LMHA case manager was. On further examination, Ms. Kulig admitted that she could, in fact, have learned the name of Mother's LMHA case manager by making a telephone call, but did not do so. When asked why she did not do so, she replied: "I don't know. I don't have an answer for that. I don't know."

**{¶34}** By way of comparison, Ms. Allen of Urban League explained that Mother's existing application for LMHA housing could not go forward since her children were no longer with her, but that Mother could apply for housing individually. That application is pending, she stated, and also indicated that she will assist Mother in pursuing housing at another complex as well. She explained that the wait may be longer because her children are not in her custody, but "people who are single without children can get housing." She also spoke about other options, such as "sober living housing," and the importance of working with different entities. In order to secure housing, Ms. Allen explained that she and Mother would complete the applications and

make the telephone calls together. She also explained that she would direct Mother to complete some tasks on her own and then "get back to me."

2. Income

**{¶35}** The LCCS case plan required that Mother secure income for at least six months through LCDJFS benefits or employment. There is no evidence in the record that the agency helped Mother to obtain benefits from LCDJFS.

**{¶36}** Regarding employment, the caseworker first claimed that Mother had not been employed during the time she has been assigned to the case. On cross-examination, however, Ms. Kulig admitted that she knew Mother had worked for Pierre Foods for a period of time, but said that she lacked verification of the employment. The caseworker also said she did not know whether Mother was currently employed. By way of comparison, the guardian ad litem testified that he had confirmed that Mother had been working with Pierre Foods and had held a job there for two months from November to December 2013. He further testified that Mother left the job because her doctor told her to get as much rest as she could due to her pregnancy.

**{¶37}** For her part, Ms. Allen testified about a job development program that was directed towards eventual permanent employment. Under the program, Urban League can offer individuals, such as Mother, a subsidized job experience for 20 weeks, at $8 hour, and for 20 hours per week. Individuals are placed according to their career goals. If they are successful in this program, the job developer will get them into training and then help them secure permanent employment.

3. Parenting

**{¶38}** Mother was very young when she gave birth to M.P. and, by all accounts, did not have a good support system or appropriate role-modeling for parenting skills. The case plan

required Mother to attend class and/or work with a parent mentor or an in-home therapist to learn about and implement suggestions regarding typical behavior for her child and what care and discipline worked best for her.

**{¶39}** In terms of assistance by LCCS on this goal, there was no evidence of any effort to connect Mother with a "parent mentor or in-home therapist" as included in the case plan. Nor was there any evidence of an attempt to secure a joint foster placement while Mother was still a minor to create a situation where Mother could be taught parenting in a practical, hands-on manner with her own child.

**{¶40}** Instead, the caseworker testified that she gave Mother the telephone number of Ohio Guidestone where she could attend parenting classes. She suggested Ohio Guidestone because Mother was familiar with the facility through other services, the location was convenient, and it frequently repeats courses. There was no indication that the program was particularly suited to a young parent, such as Mother, with little in the way of positive parenting models. The caseworker offered no other options for parenting instruction and did not make a referral for parenting classes. As a further resource, the caseworker explained that she provided Mother with the same packet of Lorain County community resources given to all families with such needs. That packet, she stated, included a list of agencies for mental health, drug and alcohol issues, housing, parenting, domestic violence, and medical needs. Otherwise, the caseworker testified that Mother never said she needed help with housing, parenting classes, income, or employment.

**{¶41}** The caseworker required that Mother must bring a prepared meal to visits. She very nearly cancelled one visit when Mother failed to bring food, but allowed visitation to take

place because Mother and child were already on site. She explained that "we let her have that visit, but just as a reminder that she needs to bring in her own items."

**{¶42}** The guardian ad litem stated that Mother did not have a good support system in place, and he doubted that Mother would be able to raise her daughter without one. The guardian ad litem did not believe Mother could take care of herself and her child. He also told Mother that "[t]he children will not be reunited with you if you live in [Grandmother's] home, as far as I'm concerned." When asked whether he had talked to Mother about his concerns surrounding her ability to care for her child, the guardian ad litem stated that he had not.

**{¶43}** On behalf of the Urban League, Ms. Allen explained that one of the first steps in their plan is to seek to reduce stresses related to parenting, substance abuse, and homelessness. That involved creating a support system so Mother would know she is not alone. Ms. Allen explained that she would receive ongoing progress notes on whether Mother was attending the parenting and other program sessions and whether she was making adequate progress.

4. Substance Abuse

**{¶44}** There is no evidence of referrals by LCCS for substance abuse treatment provided to Mother during this case. Despite the lack of referrals, Mother sought out services on her own. Mother enrolled and began attending a 12-week educational program at UMADAOP, a program designed to encourage individuals to overcome barriers so they can live productively once again. The program provides relapse prevention and social re-integration services. The caseworker testified that this educational program was not acceptable, and that Mother needed to obtain treatment at a licensed drug and alcohol facility instead. For her part, Ms. Allen testified that Mother recently completed a substance abuse assessment and was scheduled to start treatment at The Key later that week.

R.C. 2151.414(E)(1) Conclusion

**{¶45}** We conclude that Mother was not afforded a reasonable length of time in which to accomplish the tasks that she had been given. LCCS moved for permanent custody less than six months after the case plan was adopted, and the permanent custody hearing was conducted three months later. We recognize that Ohio law no longer provides a minimum length of time as a prerequisite to the filing of a motion for permanent custody, with the exception of reliance on R.C. 2151.414(B)(1)(d). *See In re Brenna E.*, 124 Ohio App.3d 143, (6th Dist.1997). Nevertheless, six months is an exceedingly short time in which to accomplish all of the goals set forth here, whereas custody cases are frequently extended to the maximum of two years. *See* R.C. 2151.415(D)(4). The record provides no indication of why this proceeding was cut short by the early filing of a motion for permanent custody. This case does not involve the sort of extreme behaviors that call for such expedited treatment, nor does it involve a reasonable efforts bypass procedure. *See, e.g.,* R.C. 2151.419(A)(2).

**{¶46}** Unlike most custody cases, Mother presented evidence that an alternative service provider, the Lorain County Urban League, was supporting her and developed a plan by which Mother could satisfy her case plan and be reunited with her daughter within six months. The guardian ad litem admitted that Mother needed to separate from her own mother and would benefit from having a support system. The LCCS caseworker conceded the value of the Urban League job developer program, and also conceded that Mother needed a hands-on approach. The Urban League program appeared to offer Mother what she needed to accomplish her goals. Given the specific facts of this case, six months was not a reasonable amount of time to allow Mother to complete her case plan.

**{¶47}** Second, this Court concludes that the case plan created for Mother and the assistance offered to her on the key case plan components were not reasonably calculated to successfully reunite Mother and M.P. This Court has previously recognized that children services agencies have much discretion in the creation of reasonable case plans for parents at risk of having their parental rights terminated, and they also have much discretion in implementing those case plans. *In re M. W.*, 2004-Ohio-438, at ¶ 29. At the same time, however, the end result must be one that has "some reasonable chance of promoting the reunification of the family and not one that seems likely to be doomed to failure or to promote separation." *Id.* Ms. Allen of the Urban League believed that the obligations placed upon Mother by her case plan were so "overwhelming" that it was "really a setup for failure." We emphasize here that the agency's reasonable efforts are not measured by a comparison to the services provided by the Urban League. Nevertheless, Mother's compliance with case plan objectives under the guidance of Ms. Allen at the Urban League is evidence of the likelihood of reunification within appropriate time limits had LCCS used reasonable efforts to assist Mother in fulfilling her case plan objectives.

**{¶48}** Case plans are the tools that children services agencies use to set forth the goals of parents to allow for the return of children to their parents. *In re C.E.*, 2009-Ohio-6027, at ¶ 15. Their central purpose is to remedy the problems that caused the children's removal and to accomplish the reunification of parents and children. In so doing, the agency must take into consideration the individual circumstances of each case. In this case, this young Mother had no family support, no resources, and no home upon which to rely. The case plan and the level of assistance offered to Mother by LCCS in this case falls short of the goal of promoting the reunification of the family. *See In re M.W.* at ¶ 29.

**{¶49}** Based on the above analysis, this Court concludes that the evidence before the trial court did not clearly and convincingly satisfy the requirements of R.C. 2151.414(E)(1).

II. R.C. 2151.414(E)(4)

**{¶50}** The trial court also found that Mother demonstrated a lack of commitment toward M.P. by failing to regularly support, visit, or communicate with her when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for her.

**{¶51}** The record contains the following evidence of Mother's efforts to be reunited with her daughter. Mother attended trial court hearings for shelter care, adjudication, disposition, and permanent custody. Although Mother did not consistently attend scheduled visits, she nevertheless did visit with her child. There is evidence that she missed some visits due to ordered bed rest, illness, a lack of transportation, a lack of funds, and difficulty in preparing meals when she did not have housing. The record does not indicate which visits Mother attended or if she missed any visits that she was able to attend. Although the caseworker was not satisfied with Mother's choice of a substance abuse program, Mother did enroll in a substance abuse program and attended sessions until she discovered that the program would not satisfy the case plan. Mother was scheduled to begin a treatment program through Urban League within days. While Mother did not obtain a high school diploma, she was enrolled in a GED program. Mother was on a waiting list for LMHA housing and there was a plan through Urban League to apply for additional housing opportunities. Mother had secured employment early on and worked for two months at Pierre Foods, leaving because of ordered bed rest due to her pregnancy. Finally, Mother independently sought the additional assistance of Lorain County Urban League to address the issues on her case plan and be reunited with her daughter.

**{¶52}** Although Mother did not substantially complete her LCCS case plan by the time of the permanent custody hearing, this Court cannot conclude that the evidence clearly and convincingly established that Mother demonstrated a lack of commitment to M.P. or that she showed an unwillingness to provide an adequate permanent home for her. *See* R.C. 2151.414(E)(4).

Neutral Guardian ad Litem

**{¶53}** We are compelled to address a final concern regarding the participation of the guardian ad litem assigned to this case. This Court has previously emphasized that a guardian ad litem must be "neutral and detached from the parties." *In re Smith*, 9th Dist. No. 20711, 2002 WL 5178, *6 (Jan. 2, 2002), citing R.C. 2151.281(B)(1). The neutrality and detachment of the guardian ad litem is "necessary to the fairness of the * * * hearing." *In re A.K.*, 9th Dist. Summit No. 26291, 2012-Ohio-4430, ¶ 30.

**{¶54}** During his testimony, the guardian ad litem admitted that Mother missed some visits with her daughter because she was ordered to bed rest due to her pregnancy with her second child, but he also went on to volunteer that Mother's pregnancy "didn't interfere with her beating up on [the father of Mother's second child] on the street in April." The guardian ad litem also stated that Mother lacked funds for transportation and food, but went on to add that "she has the money to buy grass, and I don't believe they come to the front door to sell it to you." Although the first comment was stricken as nonresponsive, both comments reflect a concerning attitude on behalf of the guardian ad litem.

**{¶55}** Paternity was never determined for M.P. The caseworker testified that Mother refused to name the father of the child. The guardian ad litem wrote in his report that Mother had been raped by an unknown person. In his subsequent testimony, he volunteered that "I just

find it very difficult that a young lady of 14 years of age cannot remember who fathered her child." These statements reflect not only an inconsistency, but also an insensitivity toward Mother that is troubling, particularly if Mother was raped.

**{¶56}** Finally, if the best interest of the child were being considered in this case, we question whether any weight should be accorded to the conclusion of the guardian ad litem regarding the child's wishes. The guardian ad litem reported that M.P. expressed a wish to return to Mother early on. The guardian ad litem made no other reports of the child's wishes as to placement. In fact, he stated that he had intentionally not asked M.P. about Mother or going home recently, yet he nevertheless concluded that "[s]he wants to stay where she's at."

Conclusion

**{¶57}** In an action to terminate parental rights, due process requires the State to support its allegations with at least clear and convincing evidence. *Santosky v. Kramer*, 455 U.S. 745, 747-748 (1982). Because parents have a fundamental liberty interest in the care, custody, and management of their children, this elevated level of certainty is necessary to preserve fundamental fairness in a government-initiated proceeding that threatens an individual with a deprivation of the custody of his or her child. *Id.* at 756, 759.

**{¶58}** The evidence before the trial court in this case does not clearly and convincingly establish that M.P. could not be placed with Mother within a reasonable time or should not be placed with Mother. *See* R.C. 2151.414(B)(1)(a). Finding no satisfaction of the first prong of the permanent custody test, it is not necessary for this Court to consider the evidence upon the second prong best interest factors.

**{¶59}** For the reasons previously enunciated, this Court concludes that the evidence presented by LCCS does not clearly and convincingly establish that Mother's parental rights to M.P. should be terminated. Mother's sole assignment of error is sustained.

III.

**{¶60}** Mother's assignment of error is sustained. The judgment of the Lorain County Court of Common Pleas, Juvenile Division, is reversed and the cause is remanded for further proceedings.

Judgment reversed,
and cause remanded.

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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(C). 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 Appellee.

DONNA J. CARR
FOR THE COURT

HENSAL, P. J.
SCHAFER, J.
CONCUR.

APPEARANCES:

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DENNIS P. WILL, Prosecuting Attorney, and CARA M. FINNEGAN, Assistant Prosecuting Attorney, for Appellee.