[Cite as *In re A.J.*, 2014-Ohio-421.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In re A.J., D.E. IV, D.E., L.E.

Court of Appeals No. L-13-1118

Trial Court No. 12227980

DECISION AND JUDGMENT

Decided: February 4, 2014

* * * * *

Adam H. Houser, for appellant D.E. III.

Tim A. Dugan, for appellant C.E.

Dianne L. Keeler, for appellee.

* * * * *

JENSEN, J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of Common Pleas, Juvenile Division, which terminated all parental rights and responsibilities and awarded permanent custody of the minor children to Lucas County Children Services. For the reasons that follow, we affirm.

Statement of Facts and Procedural History

{¶ 2} Appellant, C.E., is the mother to all four children at issue in this case: A.J., age 16 ("Child No. 1"); D.E. IV, age 12 ("Child No. 2"); D.E., age 10 ("Child No. 3"); and L.E., age 5 ("Child No. 4"). Appellant, D.E. III, is the legal father of the three youngest children and stepfather to Child No. 1. C.E. and D.E. III remain married to one another but separated in 2009. The biological father of Child No. 1 is J.L. He did not participate in the proceedings below and is not part of this appeal. Appellee is Lucas County Children Services ("LCCS").

{¶ 3} The three oldest children were first removed from appellants' custody in 2007 when their home was found to be without heat and unsanitary. The children were placed in foster care. The parents were provided case plan services, which resulted in their reunification with the children on June 19, 2008.

{¶ 4} LCCS became involved again with the family in 2009 after reports of filthy living conditions, an incident of domestic violence, and D.E. III's arrest and guilty plea to two felony counts of possessing child pornography. LCCS filed a complaint for permanent custody on July 16, 2009. Following a hearing, the trial court awarded permanent custody of the children to LCCS. C.E., D.E. III, and the children separately appealed the trial court's judgment.

{¶ 5} On August 13, 2010, this court reversed the judgment of permanent custody and remanded the case for further proceedings consistent with the decision of the court. *In re A.J.*, 6th Dist. Lucas No. L-10-1038, 2010-Ohio-4206. Following another trial, the

trial court awarded legal custody of the children to C.E. and awarded D.E. III Level 1 supervised visitation. D.E. III appealed that judgment. The children were reunited with C.E. on November 11, 2011. The facts underlying LCCS's second complaint for permanent custody, at issue in this case, occurred subsequent to that date.

{¶ 6} At the time of reunification, C.E. was living in a trailer that had no functioning furnace. Instead, C.E. relied upon four space heaters, two of which failed when the wiring melted. With only two space heaters, the trailer was so cold that the pipes froze. Because the trailer had no running water and inadequate heating, LCCS strongly encouraged C.E. to take the children to a homeless shelter. C.E. was subsequently evicted from the trailer for failing to pay rent.

{¶ 7} LCCS began looking for suitable housing for C.E. and the children. Toward that end, LCCS enlisted the support of Volunteers of America, a permanent supportive housing program, and its director, Jodi Jankowski. Ms. Jankowski helped to place C.E. and the children in a "higher end" apartment in a "really good" neighborhood. The family lived in the apartment for six or seven months before being "asked to leave" in August of 2012. During those six or seven months, Jankowski observed that the apartment looked as though it was never cleaned. While there was no one reason C.E. was asked to leave, there were several problems that accumulated in a short amount of time, like stopped up toilets, interior damage and visits by the police. In August of 2012, Jankowski secured a "less restrictive" three bedroom home for C.E. and the children. LCCS paid for and arranged for a new refrigerator to be delivered to the home.

Jankowski testified that it looked as though C.E. never unpacked the family's belongings and that she overall suffered from a lack of motivation.

{¶ 8} The triggering event that caused LCCS to seek permanent custody occurred on October 28, 2012, nearly a year after the children's reunification with C.E. On that date, C.E. invited a man, whom she knew only as "TJ," into the home. TJ was in his "early 20's" and was an acquaintance of an ex-coworker. While in the home, TJ is alleged to have raped Child No. 1, then 15 years old.

{¶ 9} Child No. 1 reported the rape the next day at school. The Toledo police officer on duty at the school drove Child No. 1 home, picked up C.E., and transported both to the hospital. During an examination, an anal tissue tear was discovered. The injury was consistent with Child No. 1's description of the incident.

{¶ 10} Later that day, Katelyn Middleton, crisis case manager at The Zepf Center, visited the home after Child No. 1 and C.E. returned from the hospital. Middleton was familiar with the family and made frequent unannounced visits to the home. She explained that it was "impossible" to make scheduled appointments because C.E. would not answer the phone or return phone calls. C.E. expressed skepticism to her that Child No. 1 could have been raped. She conceded, however, that Child No. 1 and TJ had twice been alone upstairs for "maybe like five minutes," long enough for the abuse to occur. Middleton observed that C.E. offered no comfort to her daughter.

{¶ 11} Randall Scott Schlievert, M.D., the director of the child abuse program at Mercy Hospital, examined Child No. 1 following the incident. He testified that he found

Child No. 1's allegation "believable" based upon his review of the hospital records and his physical examination of her.

The Complaint

{¶ 12} On November 1, 2012, four days after the incident, LCCS filed a complaint alleging that the children were dependent, neglected, and abused. LCCS sought an adjudication to that effect. LCCS asked for an award of permanent custody, pursuant to R.C. 2151.353(A)(4).

{¶ 13} The complaint sets forth six broad categories of allegations as to C.E.: (1) that she failed to parent safely and appropriately; (2) that she failed to properly supervise her children; (3) that she failed to follow through with her own and her children's case plan services; (4) that she was unable to maintain housing and employment; (5) that she was unable to properly supervise and protect Child No. 1; and (6) that all of the children had deteriorated since returning to their mother's care in 2011.

The Report and Recommendation of the Guardian Ad Litem

{¶ 14} The guardian ad litem ("GAL"), Rochelle Abou-Arraj, submitted a 26 page report at trial which was admitted into evidence. In it, she chronicles her extensive history with the family, having served as the GAL since September 2010. The GAL made the following observations with respect to the instant case:

{¶ 15} C.E. failed to supervise and control her children, particularly Child No. 1, who became sexually active with one or more of the neighborhood boys at the apartment complex. Child No. 1 told the GAL that she sent inappropriate pictures of herself to a

boy. All of the children were observed frequently running around the parking lot of the apartment complex unsupervised.

{¶ 16} Child Nos. 1, 2, and 3's attendance at their respective schools was poor. Also, after changing school districts in the summer of 2012, C.E. failed to timely register the children at their new schools, causing all three to begin the school year late.

{¶ 17} C.E. made poor financial decisions. Following her eviction from the trailer, C.E. abandoned the television and computer. She then purchased a new computer and big screen television for the apartment. While she claimed that she could not afford to divorce D.E. III, she maintained a Sam's Club membership and had professionally manicured nails.

{¶ 18} C.E. failed to take the children to court ordered visits with their father, D.E. III. C.E. offered many excuses, ranging from a lack of gas money to concerns for the children's safety around D.E. III. C.E. reported that D.E. III had, years ago, touched Child No. 1 in a sexual manner. As a result, LCCS instructed C.E. to engage Child No. 1 in mental services to address potential past sexual trauma. After C.E. failed to do so, the caseworker scheduled the appointments on Child No. 1's behalf. Many appointments were missed.

{¶ 19} The GAL observed that Child No. 1's behavior deteriorated after returning to her mother's care. Child No. 1 was a "very respectful, well behaved child who earned good grades in foster care * * * [but became] a child with hypersexual behaviors, with

inappropriate behaviors, with inappropriate language, and a child who did not follow rules at home or at school, and who was failing all her classes." Zepf crisis manager, Kate Middleton, concurred with that assessment. She testified that Child No. 1 had been in a continual state of crisis since reunification with her mother. Throughout that year, Child No. 1 was treated several times at Kobacker, an in-patient psychiatric facility, for erratic and suicidal behavior.

{¶ 20} A similar change was noted in Child No. 4. The GAL noted that Child No. 4 was "very well behaved" in foster care but when returned to C.E., Child No. 4 "was observed to run wild and was uncontrolled by her mother."

{¶ 21} The GAL report notes that all of the children have special needs. Child No. 1 is on an Individual Educational Plan ("IEP") and takes medication for a mood disorder.

{¶ 22} Child No. 2 has been diagnosed with attention deficit and hyperactivity disorder ("ADHD"), conduct disorder, and nocturnal and diurnal enuresis (bedwetting). Child No. 2 underwent a psychiatric evaluation on October 30, 2012, just two days prior to the children's removal from C.E.'s home. In the evaluation, the psychiatrist noted that Child No. 2 was receiving "F's"; had been suspended twice from school, once for bringing a knife to school and the other for hitting someone on the school bus, stole candy from a store, and used a lighter to ignite toys and toilet paper on fire.

{¶ 23} Child No. 3 underwent a similar evaluation on October 12, 2012. According to the report, Child No. 3 suffers from ADHD and oppositional defiant

disorder. Finally, Child No. 4 has also begun receiving treatment at Zepf for a behavioral disorder.

{¶ 24} Based on the above, the GAL opined that granting permanent custody to LCCS was in the children's best interests.

The Trial

{¶ 25} The matter proceeded to a lengthy trial. In all, eight hearings took place between January 25 and April 15, 2013. The following relevant testimony was offered regarding C.E.:

{¶ 26} According to the caseworker, Dottie Sullivan, the children's basic needs were not met while under C.E.'s care. Sullivan observed that the children had poor hygiene and appeared unkempt. She also questioned how safe the living conditions were. She testified, "I went there three times in one week, and [C.E.] was sleeping * * *." Likewise, Ms. Jankowski observed that Child No. 4 was frequently "naked" and "never dressed" when she visited.

{¶ 27} C.E. failed to enroll Child No. 4 in Head Start despite frequent encouragement for her to do so by the caseworker. C.E. told Sullivan she was "too busy to fill out the paperwork." At the hearing, C.E. blamed her older daughter for her own inaction, complaining "There wasn't a day that went by that I didn't get a call from [Child No. 1's] school." From the time the children were returned to C.E. in November of 2011, until they were removed in November of 2012, Child No. 4 never did attend Head Start.

{¶ 28} At the conclusion of the trial, the court found that all four children were dependent and neglected and further found that Child No. 1 was abused.

{¶ 29} The trial court made the following findings as to C.E.: (1) C.E. had not followed through on her stated intention to divorce D.E. III despite identifying him for years as abusive and/or threatening to the children; (2) C.E. failed to take responsibility in the care of the children but instead "views herself as a victim"; (3) C.E. "is not looking for employment in any realistic way"; (4) C.E. blames LCCS for losing her job at McDonalds when in reality she was fired; (5) C.E. is not able to keep up her housing; (6) C.E. blames Child No. 1 as an excuse for why she cannot parent the other children; (7) C.E. exercises poor judgment in who she allowed to be around the children; and (8) C.E. did not "meaningfully engage" in the many social services that were provided to her and her children.

{¶ 30} At the conclusion of the dispositional hearing, the court found that, despite LCCS's reasonable efforts, the children can neither now, nor in a reasonable time, be reunited with their parents pursuant to R.C. 2151.414(E). The court concluded that it was in the children's best interest that all parental rights be terminated and that permanent custody be granted to appellee. The court's judgment entry was journalized on May 14, 2013.

{¶ 31} C.E. filed a pro se notice of appeal on June 11, 2013. D.E. III, also pro se, filed a notice of appeal on June 13, 2013. Each was appointed independent counsel.

{¶ 32} C.E. raises two assignments of error:

1. Appellee failed to prove by clear and convincing evidence that the children could not be returned to Appellant C.E. within a reasonable time and that permanent custody was in the best interest of the children.

2. Appellee failed to prove by clear and convincing evidence that they used reasonable efforts to prevent the removal of all of the children from the home.

{¶ 33} D.E. III raises a single assignment of error:

1. The Trial Court lacked jurisdiction to adjudicate the custodian issues of the appellant and his children.

Analysis

{¶ 34} The right of a family to remain intact is constitutionally protected. *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). Judicial decisions terminating parental rights are carefully scrutinized. "Only where there is demonstrated an incapacity on the part of the parent to provide adequate parental care, not better parental care, should parents be deprived of custody." *In re Rashaun*, 6th Dist. Lucas No. L-03-1306, 2004-Ohio-7349, ¶ 15.

{¶ 35} A trial court's judgment in a permanent custody case will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re A.H.*, 6th Dist. Lucas No. L-11-1057, 2011-Ohio-4857, ¶ 11. The factual findings of a trial court are presumed correct because, as the trier of fact, it is in the best position to weigh the

evidence and evaluate the testimony. *In re Brown*, 98 Ohio App.3d 337, 342, 648 N.E.2d 576 (3d Dist.1994). Moreover, "[e]very reasonable presumption must be made in favor of the judgment and the findings of facts [of the trial court]." *Karches v. Cincinnati*, 38 Ohio St.3d 12, 19, 526 N.E.2d 1350 (1988). Thus, judgments supported by some competent, credible evidence going to all essential elements of the case are not against the manifest weight of the evidence. *Id.; C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

{¶ 36} Before a juvenile court may consider whether a child's best interests may be served by permanent removal from his or her family, there first must be a demonstration that the parents are "unfit." *In re Sean B.*, 170 Ohio App.3d 557, 2007-Ohio-1189, 868 N.E.2d 280, ¶ 30 (6th Dist.).

{¶ 37} When a child is not abandoned or orphaned, the Ohio equivalent of parental unfitness is a statutory determination that he or she "cannot be placed with either parent within a reasonable period of time or should not be placed with the parents." R.C. 2151.414(E). The statute directs that this threshold conclusion may be entered only if, following a hearing, the court concludes that there is clear and convincing evidence that one of the predicate conditions enumerated in R.C. 2151.414(E)(1) through (16) exists. *In re William S.*, 75 Ohio St.3d 95, 661 N.E.2d 738 (1996), syllabus. Once this finding is properly entered, the court must then determine, also by clear and convincing evidence, that terminating a parent's parental rights is in the child's best interests pursuant to R.C. 2151.414(D). Clear and convincing evidence is that evidence sufficient for the trier of

fact to form a firm conviction or belief that the essential statutory elements for a termination of parental rights have been established. *In re Tashayla S.*, 6th Dist. Lucas No. L-03-1253, 2004-Ohio-896, ¶ 14; *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus .

{¶ 38} In her first assignment of error, C.E. challenges the trial court's "unfitness" and "best interests of the child" findings as they relate to her. The trial court found that the children should not be returned to C.E. pursuant to R.C. 2151.414(E)(1), (14) and (15).[1] If any one of these predicate findings is supported by the evidence, the court's decision must be sustained. *In re Alexis K.*, 160 Ohio App.3d 32, 2005-Ohio-1380, 825 N.E.2d 1148, ¶ 24 (6th Dist.).

{¶ 39} In her second assignment of error, C.E. argues that LCCS failed to prove by clear and convincing evidence that it used reasonable efforts "to prevent the removal" of the children from the home. C.E.'s argument is a secondary challenge to the trial court's Section (E)(1) finding. Therefore, her assignments of error will be discussed together.

R.C. 2151.414(E)(1)

{¶ 40} This statutory provision provides that the court shall find that a child cannot or should not be placed with his or her parent if:

[1] The trial court found R.C. 2151.414(E)(1), (4) and (16) applicable as to appellant D.E. III and sections (E)(4), (10) and (14) applicable as to J.L. Those findings are not at issue in this appeal.

> (1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

{¶ 41} An analysis of Section (E)(1) requires a finding that we (1) determine the specific reason why the children were placed outside the home, then (2) examine the efforts of the public children services agency to remedy the problem that caused removal, and (3) survey the record to determine whether there was clear and convincing evidence demonstrating that C.E. failed continuously and repeatedly to substantially remedy the conditions causing removal. *In re Stacey S*., 136 Ohio App.3d 503, 519, 737 N.E.2d 92 (6th Dist.1999). The complaint associated with a child's removal from the home is an appropriate indicator of the reasons for the child's removal. *Id*.

{¶ 42} The complaint cites C.E.'s inability to maintain housing and employment and her failure to follow through with her own case plan services. Our examination of

the record reveals that C.E. showed a lack of effort and commitment to the reunification process. The most glaring examples of this were C.E.'s failure to make honest efforts to establish suitable, stable housing or employment.

{¶ 43} Indeed, after the children were removed from the home in November of 2012, C.E. lost her subsidized rental home. Caseworker Sullivan encouraged C.E. to apply to a homeless shelter. C.E. recognized that residing in a shelter would help her to re-qualify for subsidized housing and would put her in a position to welcome the children back to a stable environment. At first, C.E. said she would wait until after the holidays. One month later, however, on January 30, 2013, she still had not applied. The caseworker testified,

> I've talked with her since [the holidays] while I was still working with her, and she reported to me that she was crashing [at] her friend, Wes's, house. * * * I asked her if I could meet with her at her friend's house and she said, no, he didn't want me there. [Sic] So my last conversation with her the other day was that she was in the process of completing the application to [the homeless shelter].

{¶ 44} Another month passed. On March 1, 2013, when C.E. testified at the hearing, she was still sleeping at her friend's house and claimed that she was waiting for a call back from the shelter.

{¶ 45} C.E. exhibited a similar lack of urgency to seek employment. In a six month time frame, C.E. applied for a mere 7 to 12 jobs, despite having no income. She admitted that her efforts were insufficient.

{¶ 46} C.E. has been diagnosed with depression and adjustment disorder and was referred to Harbor Behavioral Healthcare for individual counseling. Prior to the children's removal, C.E. missed half of her monthly appointments. The frequency of the scheduled appointments doubled after the children were removed to help C.E. cope with her separation from her children. Nonetheless, C.E. continued to skip appointments and received a warning letter from Harbor that she was in danger of being terminated from the practice. C.E. cited fatigue and missing the bus as reasons for the missed appointments.

{¶ 47} A finding under Section (E)(1) also requires clear and convincing evidence of "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 * * *." In a reasonable efforts determination, the issue is not whether the agency could have done more, but whether it did enough to satisfy the reasonableness standard under the statute. *In re S.R.,* 6th Dist. Lucas Nos. L-12-1298, L-12-1326, 2013-Ohio-2358, ¶ 21. A "reasonable effort" is an "honest, purposeful effort, free of malice and the design to defraud or to seek an unconscionable advantage." (Citations omitted.) *Id.*

{¶ 48} In C.E.'s second assignment of error, she alleges that appellee failed to prove that it used "reasonable efforts to prevent the removal of all of the children from the home."

{¶ 49} We disagree. The record is replete with evidence of goods and services provided or coordinated by appellee for the purpose of helping C.E. meet the demands of raising four children. Those goods and services included arranging for parenting classes, individual counseling for C.E., in-home therapy for the children, the provision of clothing, toiletries, a refrigerator, bus passes, laundry tokens, help with utilities, and locating and arranging quality, subsidized housing. Despite all those resources provided to her, C.E. displayed an unwillingness to make her children's well-being her chief priority or to take responsibility for their care.

{¶ 50} Also, testimony at the hearing established that following the children's removal, appellee continued to try and help C.E. move toward reunification by encouraging more frequent counseling for C.E. and to locate suitable housing. C.E. disregarded those efforts.

{¶ 51} This court has affirmed the termination of parental rights under similar circumstances pursuant to R.C. 2151.414(E)(1). For example, in *In re Dylan R.*, 6th Dist. Lucas No. L-02-1267, 2003-Ohio-69, we held,

> Appellant's inability to maintain steady employment, to find independent housing, to end his unstable relationship with [the mother], and to achieve more than minimal parenting skills demonstrate that, despite the

more than reasonable efforts of the LCCS to aid appellant in remedying the conditions that caused [the child's] removal from his home, appellant continuously and repeatedly failed to remedy those conditions. *Id.* at ¶ 27.

See also In re J.H., 6th Dist. Lucas No. L-12-1072, 2013-Ohio-408, ¶ 21 (Father's failure to obtain stable housing or employment evidence of his failure to remedy the condition which caused removal.).

{¶ 52} In sum, we find that there was clear and convincing evidence to support the trial court's findings, under R.C. 2151.414(E)(1), that C.E. failed continuously and repeatedly to substantially remedy the conditions that caused the children's removal from the family home despite reasonable case planning and diligent efforts by LCCS to assist her. C.E.'s second assignment of error is not well-taken.

R.C. 2151.414(E)(14)

{¶ 53} The trial court also relied upon R.C. 2151.414(E)(14) in finding that C.E. was "unfit." That section provides,

> The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

{¶ 54} The statute specifically addresses a parent's unwillingness to protect her children as one of the factors for the court to consider under Section (E)(14). This

section may be applied even in the absence of any affirmative act of abuse by the parent. *In re J.H.*, 12th Dist. Preble No. CA2007-07-016, 2007-Ohio-7079, ¶ 30-31.

{¶ 55} Here, there was ample evidence to show that C.E. exercised poor judgment in who she allowed into the family home, and that her poor decision-making posed a direct threat to the children's safety. The most obvious example is C.E.'s decision to invite a man, whom she barely knew, into the home and then allowed him to have unsupervised access to her daughter. At the time, C.E. knew that Child No. 1 was sexually active and that she was being treated for hypersexualized behavior. The trial court's conclusion that Child No. 1 was sexually abused by an unknown man named "TJ" is not against the manifest weight of the evidence. Moreover, C.E.'s continued skepticism about what occurred under her own roof displays a conscious disregard to protect her children and for their well-being.

{¶ 56} C.E. also showed poor judgment in continually allowing her friend, Crystal, to be in the family home. The transcript is replete with testimony regarding Crystal being frequently, if not "almost always" in the home, not to mention her bad influence. Testimony included Crystal babysitting while entertaining an unknown man in the home, drinking until she vomited, and stealing C.E.'s food stamp card. Ms. Jankowski also observed Crystal in the home while under the influence of drugs and/or alcohol. To no avail, Jankowski and the GAL repeatedly discouraged C.E. from allowing Crystal in the home.

{¶ 57} We are also struck by C.E.'s testimony that, if given a choice, she would prefer that the children reside with D.E. III rather than continue to live in foster care. C.E. maintains this position despite D.E. III's 2009 child pornography convictions, allegations of sexual misconduct toward Child No. 1, and acts of domestic violence by him.

{¶ 58} C.E.'s failure to address the pervasive issues of neglect and abuse in the household shows an unwillingness to prevent the children from suffering continued harm in the future. C.E.'s failure to recognize the need to supervise and keep her children safe supports the court's finding under R.C. 2151.414(E)(14). *In re Jere L. Jr.*, 6th Dist. Lucas Nos. L-07-1221, L-07-1222, L-07-1230, 2007-Ohio-6525, ¶ 14.

R.C. 2151.414(E)(15)

{¶ 59} Finally, the trial court found the evidence supported a finding that C.E. was unfit under R.C. 2151.414(E)(15), specifically as to Child No. 1. That section provides,

> (15) The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

{¶ 60} Under this section, a child cannot or should not be reunified with the parents if the trial court determines that the seriousness or nature of the abuse or neglect

makes placement with the parents a threat to the child's safety. *In re Baby Girl Doe,* 149 Ohio App.3d 717, 2002-Ohio-4470, 778 N.E. 1053, ¶ 91 (6th Dist.). ("[G]iven where and in what condition the baby was found, the court cannot find that the trial court erred in its reliance upon R.C. 2151.414(E)(15).")

{¶ 61} The precipitating event that caused appellee to seek permanent custody was the sexual abuse perpetrated against Child No. 1. The trial court's conclusion was not against the manifest weight of the evidence. Given the seriousness of the abuse, C.E.'s lack of acknowledgement of the abuse, and C.E.'s lack of supervision, we find that the trial court could make a finding under R.C. 2151.414(E)(15) pursuant to the evidence before it.

{¶ 62} We cannot say that the trial court's conclusions that C.E. is "unfit" pursuant to R.C. 2151.414(E)(1), (14), and (15) are against the manifest weight of the evidence. Therefore, we find that the trial court did not err in finding that Child Nos. 1, 2, 3, and 4 could not be placed with C.E. within a reasonable time or should not be placed with her.

The Best Interests of the Child

{¶ 63} The second part of the two-part test is consideration of the best interests of the children. The trial court must find, by clear and convincing evidence, that a grant of permanent custody to appellee was in each of the child's best interests. R.C. 2151.414(D). In considering whether an award of permanent custody to a public

children services agency is in the best interests of a child, R.C. 2151.414(D) provides that a "court shall consider all relevant factors, including, but not limited to, the following:

> (4) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

{¶ 64} In its judgment entry, the trial court stated that it had considered the statutory factors under R.C. 2151.414(D) and determined by clear and convincing evidence that permanent placement of the children with appellee was in their best interest. The court found that the children needed permanency, "having been six years in a state of flux" and that a "legally secure permanent placement * * * cannot be achieved without a grant of permanent custody" to appellee. This comports with the opinion of the GAL and even C.E. herself who testified that it would not be in the children's best interest for them to be returned to her, given that she has no job and no home.

{¶ 65} It is apparent to us that the trial court considered not only the children's need for a legally secure permanent placement, but also the children's relationship with their caregivers, including C.E. and their custodial history, before finding that permanent custody was in the children's best interests. The record further supports the trial court's conclusion that a secure environment for the children would only be achieved through the permanent termination of C.E.'s parental rights. C.E. was unable to provide a stable environment, as she failed to obtain stable housing or employment. Her lack of commitment to her case plan and to reunifying with the children as well as her inability to

meet their needs for a secure environment through employment and housing stability, indicate divestiture of custody is the only means to advance a secure placement for the children. *In re Campbell*, 138 Ohio App.3d 786, 791, 742 N.E.2d 663 (10th Dist.2000).

{¶ 66} In sum, we conclude that the trial court's judgment is supported by competent credible evidence going to the essential elements of the case. Therefore, the judgment is not against the manifest weight of the evidence. C.E.'s first and second assignments of error are not well-taken.

D.E. III's Assignment of Error: Subject-Matter Jurisdiction

{¶ 67} In his single assignment of error, D.E. III claims that the trial court lacked jurisdiction. He argues that the trial court "had no authority to decide the adjudication of [himself] and his minor children [because] his appeal in case L-12-1010 is still pending and regards the exact same issues that this Appeal covers."

{¶ 68} The case to which D.E. III refers involved appellee's first complaint for permanent custody. In that case, as previously discussed, the juvenile court awarded C.E. legal custody and granted D.E. III limited visitation. D.E. III has appealed the order, and that appeal remains pending.

{¶ 69} First, we disagree with D.E. III's characterization that the two cases involve "the exact same issues." Case No. L-12-1010 involved appellee's July 16, 2009 complaint and was based upon allegations occurring prior to that date. D.E. III's appeal challenged the trial court's award of limited visitation. By contrast, the instant case involves a series of allegations occurring after reunification of the children with their

mother on November 11, 2011. At issue in this case is the termination of all parental rights. The two cases are both legally and factually distinct.

{¶ 70} Second, the trial court had jurisdiction to hear the instant case. R.C. 2151.23(A)(1) conveys exclusive original jurisdiction to the juvenile court "[c]oncerning any child * * * alleged * * * to be * * * abused, neglected, or dependent * * * [.]" The Ohio Supreme Court has explained,

> Subject-matter jurisdiction connotes the power to hear and decide a case upon its merits. The General Assembly established the jurisdiction of juvenile courts and, in R.C. 2151.23(A)(1), granted them exclusive, original jurisdiction concerning matters involving a neglected or dependent child. * * * Jurisdiction over the particular case, as the term implies, involves the trial court's authority to determine a specific case within that class of cases that is within its subject matter jurisdiction. (Internal quotations and citations omitted.). *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, ¶ 11-12.

This action involves the permanent custody of Child Nos. 1, 2, 3, and 4. Pursuant to R.C. 2151.23(A)(1), it falls squarely within the subject-matter jurisdiction of the juvenile court.

{¶ 71} D.E. III confuses subject-matter jurisdiction, the lack of which renders an order void ab initio, with jurisdiction over a particular case, the lack of which results in trial court error and merely renders an order voidable. *Id.* That D.E. III elected to

exhaust his appellate rights in case No. L-12-1010 does not, in turn, strip the juvenile court of subject-matter jurisdiction to hear a subsequently filed complaint. The juvenile court in this case acted within the limits of its exclusive original jurisdiction when it terminated D.E. III's parental rights. D.E. III's sole assignment of error is not well-taken.

{¶ 72} On due consideration, we find clear and convincing evidence supports the judgment terminating C.E.'s parental rights and awarding permanent custody to LCCS. C.E.'s first and second assignments of error are found not well-taken. Likewise, D.E. III's single assignment of error is found not well-taken. The judgment of the Lucas County Court of Common Pleas, Juvenile Division, is affirmed. Appellants are ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J. _____
JUDGE

Stephen A. Yarbrough, P.J. _____
JUDGE

James D. Jensen, J. _____
CONCUR.
JUDGE