[Cite as *In re T.J.*, 2024-Ohio-110.]

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

In re T.J.

Court of Appeals No. L-23-1207

Trial Court No. JC 22290263

DECISION AND JUDGMENT

Decided: January 12, 2024

* * * * *

Janna E. Waltz, for appellee.

Misty Wood, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an expedited appeal from a judgment by the Lucas County Court of Common Pleas, Juvenile Division, which terminated the parental rights of appellant-mother, A.C., to the subject minor child, T.J., and granted permanent custody to appellee, Lucas County Children Services. The father of the minor child, whose parental rights were also terminated, did not appeal the judgment, and we will limit the discussion below

to appellant-mother. For the reasons set forth below, this court affirms the judgment of the juvenile court.

I. Background

{¶ 2} The following facts are relevant to this appeal. On August 8, 2022, appellee filed a complaint against appellant-mother alleging dependency and neglect of eight-year-old T.J., who is developmentally delayed, nonverbal, and uses a wheelchair due to cerebral palsy and microcephaly. T.J. has been involved with appellee since birth and requires around-the-clock care.

{¶ 3} Since December 14, 2015, the juvenile court removed T.J. from appellant-mother's care and granted legal custody of the then-17-month-old T.J. to appellant-mother's sister. The reasons for the removal were unknown father; the child's developmental delay "as mother has not appropriately cared for the child"; and appellant-mother residing at a battered-women's shelter. At some point during this period, appellant-mother was incarcerated and appellant-mother's sister struggled to maintain T.J.'s care without help. Appellant-mother was to also care for T.J. while appellant-mother's sister had legal custody but did not do so.[1]

{¶ 4} By February 1, 2022, the legal custodian was no longer able to care for the child because of her own family needs and contacted appellee to remove T.J. At that

[1] Meanwhile, appellant-mother gave birth to another child who tested positive for THC. Neither that child, nor that child's father, are parties in this matter.

time appellant-mother indicated to appellee she wanted the father to care for T.J., and saw no reason to attend appellee's planning meetings for that placement. For the period up to August 8, the father cared for T.J., when father dropped off T.J. with the paternal grandmother on August 5, and did not return for the child. The paternal grandmother contacted appellee because she had to work and was financially unable to continue to care for T.J., and appellee opened this case. The juvenile court immediately held a shelter-care hearing during which the magistrate found that appellant-mother's home "is not accessible for the child. Mother reports minimal involvement with the child. * * * Child has significant medical and developmental needs." The juvenile court placed T.J. in the interim temporary custody of appellee.

{¶ 5} By judgment entry journalized on October 17, 2022, the juvenile court adjudicated T.J. a dependent child and continued interim temporary custody with appellee. Then effective November 28, the juvenile court formally awarded appellee temporary custody of T.J. with the goal of reunification with both parents or a kinship placement. Appellant-mother was offered individualized case plan services, and the juvenile court ordered her to comply with them. At a February 8 review hearing, the magistrate found, and the juvenile judge adopted, that appellee could not verify that appellant-mother had completed the second dual assessment for mental health and substance-abuse as appellant-mother claimed she had done, and the lack of progress in her dual assessment led to a delayed referral for parenting classes. Appellant-mother

would not complete the second dual assessment for an additional six months, until August 3, 2023. Appellant-mother also waited until three weeks prior to the dispositional hearing for T.J.'s permanent custody to commence the parenting classes required in her approved case plan. The parenting classes are a 12-week trauma-based curriculum through the Parent Empowerment Institute and would include at the end, a component to observe appellant-mother interact with T.J.

{¶ 6} Meanwhile, on May 15, 2023, appellee filed a motion for permanent custody of T.J. pursuant to R.C. 2151.413 and 2151.414. Appellee argued that terminating parental rights to T.J. and awarding permanent custody with appellee was in the child's best interests because appellant-mother failed to comply with case plan services, frequently missed visits with T.J., and mostly failed her drug screens or refused to provide them. Meanwhile, T.J. was doing well in foster care, but no appropriate relatives could be identified for permanent placement.

{¶ 7} On August 1, appellant-mother filed a motion to delay the proceedings and extend appellee's temporary custody for six months to allow her to complete case plan services.

{¶ 8} The three-day dispositional hearing on the pending motions commenced on August 31, 2023. The juvenile court heard testimony from two witnesses, appellee's caseworker and T.J.'s guardian ad litem ("GAL"), and admitted six exhibits into

evidence. Appellant-mother did not testify. At the conclusion of the dispositional hearing, the juvenile court announced:

> This Court has had the opportunity to review all admissible and relevant evidence and testimony, and this Court finds by clear and convincing evidence that despite reasonable efforts to prevent the child's continued removal from her parents that this child could not and should not be returned to her parents. And it is in the best interests of this child to grant permanent custody to Lucas County Children Services.
>
> There have been reasonable efforts to reunify the child. The Lucas County Children Services has made reasonable efforts to finalize the permanency plan. The Court is looking to sections 2151.414(E) with regard to mother sections (1) and (4). * * * [S]o, I'm just talking to the parents for a second * * * although you've made some progress, this Court finds that too little, too late. This child needs a really significant – there's been so much inconsistency in your ability to remedy those issues that cause the removal in the first place. She deserves and needs a forever home, and the only way that can be accomplished at this time is through the granting of permanent custody.

{¶ 9} By judgment entry journalized on September 20, 2023, the juvenile court denied appellant-mother's motion, granted appellee's motion, and made a number of

findings relevant to this appeal. Before reaching various findings, the juvenile court described appellant-mother's ongoing noncompliance with her case plan services to remedy the issues that led to the T.J.'s removal:

> Mother completed a dual diagnostic assessment at Unison in July 2022. It was reported that Mother did not answer the questions clearly and was vague in her responses throughout the assessment. Due to these concerns. She was asked to complete a second assessment. [The case worker] testified that multiple referrals were made for Mother to complete the second assessment. She did not complete the updated assessment until August 2023. * * * There were no recommendations from this assessment.
>
> [The case worker] testified that Mother was asked to complete random urine screens throughout this case. She provided a screen on April 2, 2022, which was dilute and one on August 8, 2022, which was positive for alcohol and marijuana. * * * Mother failed to provide any requested screens thereafter.
>
> Mother was referred to Pathways to complete her parenting service, however she did not attend. Mother did begin parenting classes approximately three weeks ago with the Parent Empowerment Institute. There have been no concerns noted with her participation in this program.
>
> * * *

> Mother visits with the child supervised at Level 1 at LCCS. She was placed in Level 1 due to concerns with the lack of parenting the child and her special needs. Mother has not been consistent with her visits. Due to her inconsistency, she was placed on a one-hour call, whereby she is required to call the visitation department one hour prior to her scheduled visit to confirm her attendance. Mother has been offered 50 visits between August 2022 and August 2023. She has only completed 23 of the scheduled visits.
>
> [The case worker] testified that she discussed Mother's lack of consistency in visitation with her. Mother indicated that she has a lot going on. She also reported that her work schedule and lack of transportation are barriers to consistent visitation. [The case worker] testified that Mother was provided with bus passes to assist her in her transportation needs for completing service and visitation, however she remains inconsistent.

{¶ 10} Pursuant to R.C. 2151.414(B)(1)(a), 2151.414(E)(1) and 2151.414(E)(4), the juvenile court found by clear and convincing evidence that T.J. cannot be placed with appellant-mother within a reasonable period of time and should not be placed with her because, notwithstanding reasonable case planning and diligent efforts by appellee, appellant-mother failed to complete case plan services and failed "continuously and repeated[ly] to substantially remedy the conditions causing the child to be placed outside of her home." The juvenile court determined that despite father's latest wish for

appellant-mother to care for T.J., the child suffers from the lack of permanency: "She should not be shuffled between parents or other individuals when it becomes inconvenient to care for her." The juvenile court continued:

> Although Mother completed her dual diagnostic assessment, it took her more than one year to complete. She has failed to complete the recommended parenting service and has failed to provide urine screens as requested by LCCS. Mother's lack of consistency in both her case plan services and visitation with the child are significant indicators that she is unable to meet the significant needs of this child. Mother has provided a lot of excuses and no follow-through. * * * Mother [has] demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child. * * * [Mother] had to be put on a one hour call due to [her] inconsistency. Mother has attended approximately 50% of her scheduled visits with the child.

{¶ 11} The juvenile court then found by clear and convincing evidence that permanent custody with appellee is in the best interest of T.J. Pursuant to R.C. 2151.414(D)(1)(a), the juvenile court found that for over seven years, appellant-mother had neither cared for T.J. nor for her significant medical needs and had not consistently

visited with T.J., despite the opportunities to visit. Pursuant to R.C. 2151.414(D)(1)(b), the GAL testified of her impressions that T.J., who is unable to verbally express her wishes, is doing very well in her foster care placement and appears to be happy there. Pursuant to R.C. 2151.414(D)(1)(c), T.J. is doing well in her foster care placement, is bonded with her caregivers, and receives consistent care for her numerous medical needs. Appellant-mother did not apply for legal custody for T.J. upon learning in 2022 that the legal custodian was no longer able to provide care. Pursuant to R.C. 2151.414(D)(1)(d), appellant-mother has not made substantial progress in case plan services, whether to reunify with T.J. or to prioritize T.J.'s needs or care. No factor pursuant to R.C. 2151.414(D)(1)(e) applied to appellant-mother. However, in considering all relevant factors, the juvenile court determined R.C. 2151.414(E)(16) applied with the father desiring appellant-mother to resume custody of T.J. where appellant-mother "is not capable of providing the necessary care for the child." The juvenile court summarized, "Children do not have to wait forever for parents to remedy the circumstances causing the removal. Furthermore, despite intensive efforts, no appropriate relative has been identified for placement of the child."

{¶ 12} Appellant-mother timely appealed the juvenile court's decision and set forth one assignment of error in her appeal: "Sufficient clear and convincing evidence to prove the child could not be placed with Mother within a reasonable time was not

presented. Mother was making significant progress with her case plan. Permanent placement for the child had not been secured."

II. Permanent Custody Determination

{¶ 13} We review the juvenile court's determination of permanent custody under a manifest-weight-of-the-evidence standard. *In re L.W.*, 6th Dist. Huron No. H-22-017, 2023-Ohio-958, ¶ 24. We must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice that the decision must be reversed. *Id.* We are mindful that the juvenile court, as the trier of fact, was in the best position to weigh the evidence and evaluate testimony so every reasonable presumption must be made in favor of the judgment and the finding of facts. *In re M.L.*, 6th Dist. Lucas No. L-23-1127, 2023-Ohio-3541, ¶ 30. A judgment on permanent custody supported in the record by some competent, credible evidence by which the court could have formed a firm belief as to all the essential elements will not be reversed on appeal as being against the manifest weight of the evidence. *In re D.M.*, 6th Dist. Lucas No. L-03-1337, 2004-Ohio-3982, ¶ 8.

{¶ 14} Prior to granting appellee's motion for permanent custody of T.J., the juvenile court must make specific findings by clear and convincing evidence pursuant to R.C. 2151.414(B)(1). *In re A.M.*, 166 Ohio St.3d 127, 2020-Ohio-5102, 184 N.E.3d 1, ¶ 18. First, "that one or more of the conditions in R.C. 2151.414(B)(1)(a) through (e)

applies." *Id.* Second, that the grant of permanent custody to appellee is in the best interest of T.J. *Id.* "Clear and convincing evidence is that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 471, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 15} For the first prong, the juvenile court determined R.C. 2151.414(B)(1)(a) applied to appellant-mother, which states:

> Except as provided in [R.C. 2151.414(B)(2)], the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to [R.C. 2151.414(A)], by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply: (a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period * * * , 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.

{¶ 16} Where the juvenile court determined the first prong pursuant to R.C. 2151.414(B)(1)(a), the juvenile court must also consider the presence of any R.C. 2151.414(E) factors that would indicate T.J. cannot be placed with appellant-mother within a reasonable time or should not be placed with her. *In re T.G.*, 6th Dist. Lucas No. L-23-1073, 2023-Ohio-2576, ¶ 36. Here, the juvenile determined both R.C. 2151.414(E)(1) and (4) applied to appellant-mother, which state:

> In determining at a hearing held pursuant to [R.C. 2151.414(A)] whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, * * * that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent: (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. * * * (4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child.

{¶ 17} Although the juvenile court found multiple R.C. 2151.414(E) factors to support its decision, it needed to only find one. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 50.

{¶ 18} In order to satisfy the second-prong of the permanent-custody test, the juvenile court must consider "all relevant factors," including the nonexhaustive list under R.C. 2151.414(D)(1)(a) through (e). *In re A.M.*, 166 Ohio St.3d 127, 2020-Ohio-5102, 184 N.E.3d 1, at ¶ 19. "Consideration is all the statute requires." *Id.* at ¶ 31. The juvenile court satisfied the statute when it considered, through individual review, the R.C. 2151.414(D)(1)(a) through (e) factors, which state:

> In determining the best interest of a child at a hearing held pursuant to [R.C. 2151.414(A)] * * *, the court shall consider all relevant factors, including, but not limited to, the following:

(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) The wishes of the child, as expressed * * * through the child's guardian ad litem, with due regard for the maturity of the child;

(c) The custodial history of the child[;]

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

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

{¶ 19} Appellant-mother challenges the juvenile court's determination that T.J. cannot be placed with appellant-mother within a reasonable time or should not be placed with her. Appellant-mother disputes the juvenile court's findings that R.C. 2151.414(E)(1) and (4) applied to support the R.C. 2151.414(B)(1)(a) determination. Specifically, appellant-mother argues that the juvenile court should have granted her motion because T.J. can be placed with her within a reasonable time, i.e., within six months, for four reasons: (1) she completed both of her dual diagnostics and three-out-of-twelve parenting classes; (2) she would like to provide consistent medical care to T.J. if given the opportunity; (3) appellee has not yet identified a permanent placement for

adoption of T.J.; and (4) she now lives in a larger home more suitable to T.J.'s needs. Appellant-mother self-described her case plan progress as "substantial" to the best of her ability, i.e., when she was able to do so. Appellant-mother argues the case plan services have nothing to do with her ability to care for T.J.'s medical needs and are not clear and convincing evidence of her inability to care for T.J.

{¶ 20} Appellee responds that clear and convincing evidence was admitted at the dispositional hearing that appellant-mother's conduct caused the ongoing removal of T.J. from the home. Appellant-mother's conduct included vague responses during the first dual diagnostic assessment, then the year-long delay to complete the second dual diagnostic assessment and an unexplained rejection of the first parenting service provider. The result was her last-minute commencement of parenting classes and her incomplete case plan services as of the dispositional hearing. Appellant-mother's conduct shows she is unreliable to keep scheduled visitations with T.J. in addition to being unreliable to keep her drug screen appointments and meetings with case plan service providers. Appellant-mother failed numerous opportunities to demonstrate her consistent dedication to reunification with T.J. Collectively, appellee argues that evidence supports the finding of what the juvenile court summarized as "too little, too late."

{¶ 21} We agree that it is "too little, too late" where the clear and convincing evidence shows what amounts to eleventh-hour efforts by appellant-mother to demonstrate that T.J. should be placed with her in a reasonable time. *In re Jordan R.*, 6th

Dist. Lucas No. L-06-1100, 2006-Ohio-5470, ¶ 44; *Matter of G.B.*, 2d Dist. Greene No. 2017-CA-30, 2017-Ohio-8759, ¶ 24 (juvenile court not required to give much weight to parent's eleventh-hour attempt to begin complying with case plan). Here, appellant-mother completing the case plan services on her extended schedule and simply "on paper," i.e., where she does not accept the relevance of either the objectives of the case plan services or the timely manner in which she was to complete them, is not supporting evidence that T.J. should be placed with her in a reasonable time.

{¶ 22} The permanent custody law does not contemplate holding T.J. in custodial limbo for an extended period of time while appellant-mother attempts to establish that she can finally provide T.J. with a legally secure permanent placement since first losing legal custody of T.J. in 2015 and since the legal custodian relinquished T.J. in 2022. *See Matter of S.M.S.B.*, 4th Dist. Lawrence No. 22CA17, 2023-Ohio-1532, ¶ 39. Appellant-mother labels appellee's case plan services for her as irrelevant, but the juvenile court was not required to prolong the custody proceedings for appellant-mother to accept and cooperate in the case planning process. *See In re May.R.*, 6th Dist. Lucas No. L-19-1030, 2019-Ohio-3601, ¶ 30.

{¶ 23} Appellee is meeting all of T.J.'s special and regular needs through temporary custody, while in the GAL's opinion appellant-mother would not. The GAL testified that only after appellee filed for permanent custody did appellant-mother begin to make any progress in her case plan services, to improve her housing situation, and to

improve her visitation schedule: "So that's my concern. Like, why wait so long if that's what your end goal is to get [T.J.] back?" The GAL continued:

> The concern, again, goes back to, are they going to be able to do it on a regular basis? Because [T.J.] is going to need something every week. She has appointments every week. So * * * I just don't think they've been consistent enough that * * * all her needs will be met with appointments, and just her regular needs. I mean, it takes a lot to take care of her. When she's in school, okay, the school staff is taking care of her, but when she's home, there are a lot of needs that need to be met.

{¶ 24} "Ultimately, parental interests are subordinate to the child's interest when determining the appropriate resolution of a petition to terminate parental rights." *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, ¶ 20. The caseworker was only able to reach appellant-mother about seventy-percent of the time to schedule visits with the child and home visits. Due to appellant-mother's frequent no-shows, appellee required appellant-mother to call to confirm her visitation one-hour in advance. Appellant-mother told the caseworker that her inconsistent visits over the past year were because she "had a lot going on," such as work or lack of transportation, for which appellee provided free bus passes. The caseworker was concerned by mother's inability to prioritize scheduled visits with T.J. "which translates to her potentially not caring for the child's needs if she cannot show to a scheduled visit that she's aware of and has been

aware of." The same is true for appellant-mother's failure to prioritize completing her own case plan services, which led appellee to change its case plan from reunification to appellee's permanent custody. According to the caseworker and GAL, even if T.J. remained in appellee's temporary custody for an additional six months for appellant-mother to complete her parenting classes, the best option to ensure T.J.'s uninterrupted progress is permanent custody with appellee for adoption placement.

{¶ 25} The evidence in the record describes T.J.'s best interests as, despite when it is inconvenient or challenging, being with a custodian who is consistent, stable, and prioritizes her needs so that her progress does not digress since entering foster care. T.J. needs frequent medical appointments, about six per month, in addition to occupational therapy, physical therapy, and speech therapy through school. According to the caseworker, "[O]ne of the most important things for [T.J.] in receiving the care that she needs is consistency and her ability to make it to those medical appointments, as well as the routine scheduled each day." Appellant-mother has not demonstrated she will prioritize T.J. to ensure her daily routine and making all of her medical and educational appointments, as T.J. currently receives in foster care. If T.J. misses any appointments, she "would digress in the progress she has made since being in the foster home. She would likely not get the medication that she needs in order for her to sleep and to feel comfortable. She would not be able to walk like the doctors think that she is able to."

{¶ 26} By the time of the juvenile court's judgment in this matter, T.J. had waited seven years for appellant-mother to seek, or at least demonstrate suitability for, her permanent custody. Keeping T.J. in custodial limbo, and prolonging the uncertainty of her legally secure permanent placement, is not in T.J.'s best interest. *See Matter of Z.M.*, 4th Dist. Scioto No. 18CA3856, 2019-Ohio-2564, ¶ 34, citing *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, at ¶ 20. Appellant-mother argues what is important is she be given more opportunities to demonstrate she can handle T.J.'s care, which appellee agrees was limited due to appellant-mother not having custody. On the other hand, appellant-mother has not sought T.J.'s custody and has not prioritized T.J.'s needs.

{¶ 27} We find the juvenile court's grant of appellee's motion for permanent custody was not against the manifest weight of the evidence. The juvenile court's determinations were supported by clear and convincing evidence. We find there was some competent, credible evidence by which the juvenile court could form a firm belief, under all factors under R.C. 2151.414(D)(1), that it was in T.J.'s best interest to award permanent custody to appellee and that T.J. cannot be placed with appellant-mother within a reasonable time or should not be placed with appellant-mother under R.C. R.C. 2151.414(B)(1)(a), 2151.414(E)(1) and 2151.414(E)(4). We do not find the juvenile court clearly lost its way to create such a manifest miscarriage of justice as to require reversal of the judgment granting appellee's motion for permanent custody of T.J.

{¶ 28} Appellant-mother's sole assignment of error is not well-taken.

III. Conclusion

{¶ 29} The judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating appellant-mother's parental rights to T.J. and granting permanent custody of T.J. to appellee is affirmed. Appellant-mother is 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

Gene A. Zmuda, J. _____
JUDGE

Charles E. Sulek, P.J. _____
CONCUR.
JUDGE