

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
NOBLE COUNTY

IN THE MATTER OF: R.D.P. and K.A.P.

OPINION AND JUDGMENT ENTRY

Case Nos. 22 NO 0498 & 22 NO 0499

Civil Appeals from the
Court of Common Pleas, Juvenile Division of Noble County, Ohio
Case Nos. 221-3001 & 221-3002

BEFORE:

Gene Donofrio, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

Atty. Jordan C. Croucher, Noble County Prosecutor, 150 Courthouse, Caldwell, Ohio 43724 for Appellee, (State of Ohio, Noble County Job and Family Services, Children Services Division) and

Atty. Rhonda G. Santha, 6401 State Route 534, West Farmington, Ohio 44491, for Appellant, Natural Mother and *Atty. Charles A.J. Strader*, Attorney Charles Strader, LLC, 175 Franklin Street, S.E., Warren, Ohio 44481 for Appellant, Natural Father.

Dated:
January 3, 2023

Donofrio, P. J.

{¶1} Appellant mother and Appellant father each appeal from a Noble County Common Pleas Court judgment terminating their parental rights of their two daughters and granting permanent custody to appellee, the Noble County Department of Job and Family Services (the agency).

{¶2} The two girls were born prematurely on November 3, 2020, testing positive for substances including methamphetamine at birth. A third sibling was stillborn. The girls were placed in the temporary custody of the Monroe County Department of Job and Family Services (MCDJFS) on December 18, 2020. Jurisdiction and temporary custody were transferred to Noble County on January 19, 2021. The agency filed a complaint alleging the girls were abused, neglected, and dependent.

{¶3} At a March 12, 2021 hearing, mother admitted that the girls were dependent. The court subsequently adjudicated the girls dependent and ordered that they continue in the temporary custody of the agency. A case plan was put in place for mother.

{¶4} The girls remained hospitalized until March 22, 2021. Upon release from the hospital, the girls were placed directly in their foster parents' home where they have remained throughout this case.

{¶5} Paternity was established on August 25, 2021. Father was in prison at the time for aggravated possession of drugs.

{¶6} At an October 29, 2021 review hearing, the trial court found it was in the girls' best interest that they continue in the agency's temporary custody. The court expressed that its goal was reunification with mother but that, at this point in time, reunification was not in the girls' best interests.

{¶7} At a March 21, 2022 review hearing, the trial court found that the children could not be reunified with mother at that time because mother had not complied with the case plan or the agency's requests. It also noted that father remained in prison, so the agency could not work on a case plan with him.

{¶8} On June 23, 2022, the agency filed a motion for permanent custody.

{¶9} The trial court held the permanent custody hearing on July 11, 2022. It heard testimony from the girls' occupational therapist, physical therapist, Help Me Grow

worker, foster mother, caseworker, dietician, guardian ad litem, mother, and father. Based on the evidence, the trial court found that the girls had been in the agency's temporary custody continuously since December 18, 2020. It noted that the girls have required significant medical attention and therapy due to their fragile state, which foster mother has attended to. The court pointed out that foster mother testified she and her husband would adopt the girls if given the opportunity. The court further found that mother had failed to comply with her case plan and that father had been incarcerated for most of the girls' lives. Consequently, the court found it was in the girls' best interest to grant their permanent custody to the agency. The court terminated mother's and father's parental rights.

{¶10} Mother filed a timely notice of appeal on September 14, 2022. Father filed a timely notice of appeal on September 21, 2022. Mother now raises three assignments of error. Father raises five assignments of error.

{¶11} A parent's right to raise his or her children is an essential and basic civil right. *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990), citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). "Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.' *In re Smith* (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45, 54." *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997). However, this right is not absolute. *In re Sims*, 7th Dist. Jefferson No. 02-JE-2, 2002-Ohio-3458, ¶ 23. In order to protect a child's welfare, the state may terminate parents' rights as a last resort. *Id.*

{¶12} We review a trial court's decision terminating parental rights and responsibilities for an abuse of discretion. *Sims*, 7th Dist. Jefferson No. 02-JE-2, ¶ 36. Abuse of discretion implies that the court's attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶13} Mother's first assignment of error states:

APPELLEE, NOBLE COUNTY JOB AND FAMILY SERVICES,
CHILDREN SERVICES DIVISION, INITIALLY FAILED TO MAKE
REASONABLE EFFORTS TO REUNIFY APPELLANT WITH HER
NEWBORN TWINS.

{¶14} Mother argues the agency failed to make reasonable efforts to reunify her with the girls. She notes that the first hearing in Noble County was a pre-trial on February 9, 2021, after which the trial court found that both the agency and MCDJFS had made reasonable efforts to prevent removal. Mother argues no efforts were made to reunify her with the girls prior to February 9, 2021. She points out that foster mother received the necessary G-tube training and MIC-Key training, which were required to feed the girls, just prior to taking them home from hospital. But she asserts she was never given any similar training.

{¶15} Pursuant to R.C. 2151.419(A)(1):

the court shall determine whether the public children services agency * * * has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home. The agency shall have the burden of proving that it has made those reasonable efforts.

{¶16} In *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, ¶ 43, the Ohio Supreme Court found that the reasonable efforts provision of R.C. 2151.419(A)(1) does not apply in a hearing on a motion for permanent custody filed under R.C. 2151.413. The Court noted:

By its terms, R.C. 2151.419 applies only at hearings held pursuant to R.C. 2151.28, 2151.31(E), 2151.314, 2151.33 or 2151.353. See R.C. 2151.419(A)(1). These sections involve adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children, all of which occur prior to a decision transferring permanent custody to the state. The statute makes no reference to a hearing on a motion for permanent custody. Therefore, “[b]y its plain terms, the statute does not apply to motions for permanent custody brought pursuant to R.C. 2151.413, or to hearings held on such motions pursuant to R.C. 2151.414.” *In re A.C.*, supra, 2004-Ohio-5531, ¶ 30.

{¶17} *Id.* at ¶ 41. The Court went on to point out that this does not relieve children’s services agencies of their duty to make reasonable efforts for reunification:

At various stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification. To the extent that the trial court relies on R.C. 2151.414(E)(1) at a permanency hearing, the court must examine the “reasonable case planning and diligent efforts by the agency to assist the parents” when considering whether the child cannot or should not be placed with the parent within a reasonable time. However, the procedures in R.C. 2151.414 do not mandate that the court make a determination whether reasonable efforts have been made in every R.C. 2151.413 motion for permanent custody.

Id. at ¶ 42.

{¶18} In this case, the trial court stated that it held multiple review hearings throughout the case and has consistently found that the agency was making reasonable efforts to attempt reunification with mother. It noted the following reasonable efforts: case management; more than one referral for drug and alcohol treatment; drug screening; transportation assistance offered for medical appointments and visitation; visitation with the girls; and assistance and direction with medical providers for the girls. Despite these services, the court found, the girls are still unable to return safely home because mother has failed to comply with the case plan. The court noted mother: failed to attend the girls’ medical appointments on a consistent basis that would enable her to care for medically fragile infants; failed to feed the girls correctly; failed to timely provide a medical device for one of the girls; and allowed the girls to be around cigarette smoke despite them having open wounds and being made aware of medical advice to the contrary.

{¶19} Because this was a permanent custody hearing, the trial court was not required to determine whether the agency had made reasonable efforts at reunification. Nonetheless, the trial court thoroughly examined and set out the reasonable efforts made by the agency in this case. Thus, mother’s argument to the contrary must fail.

{¶20} Accordingly, mother's first assignment of error is without merit and is overruled.

{¶21} Mother's second assignment of error states:

THE JUVENILE COURT'S FINDINGS OF BEST INTERESTS BY CLEAR AND CONVINCING EVIDENCE IN A PERMANENT CUSTODY CASE WHICH TERMINATED APPELLANT'S PARENTAL RIGHTS WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶22} In this assignment of error, mother argues that several reasons the trial court pointed to in support of its decision were not the reasons for the girls' initial removal. She notes the court referred to her not attending medical appointments, not learning how to attend to the girls' serious medical needs, not protecting them from cigarette smoke, and failing to attend alcohol counseling. She claims she has attended medical appointments for the girls, stopped using drugs and alcohol, and is attempting to quit smoking.

{¶23} Pursuant to R.C. 2151.414(B)(1):

[T]he court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, 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.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, * * *.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

{¶24} Thus, in order to grant permanent custody to the agency, the trial court must make one of the five findings set out in R.C. 2151.414(B)(1)(a) through (e) and make a best interest finding.

{¶25} In considering the child's best interest, the trial court shall consider all relevant factors, including, but not limited to:

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

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

(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(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.

R.C. 2151.414(D)(1).

{¶26} In this case, the trial court found that the girls have been in the custody of the agency for at least 12 months of a consecutive 22-month period, specifically from December 18, 2020 until the date of the hearing, July 11, 2022. This fact is undisputed.

{¶27} The court also found that it is in the girls' best interest to be placed in the agency's permanent custody. In reaching this conclusion, the court analyzed the R.C. 2151.414(D)(1) factors.

{¶28} As to the first factor, the court found that the girls have had very little contact with father and, therefore, have no relationship with him. It found the girls do have a relationship with mother through visitation. It stated that mother loves the girls but has refused to work with their medical providers and follow their direction to care for the girls. It found that foster parents have gone to great efforts to learn from the medical providers how to care for the girls and have provided them with great care. It also noted foster mother loves the girls and she and her husband are willing to do what is necessary to care for them. As to the second factor, the court noted that the girls are too young to express their wishes. It also noted that their guardian ad litem recommended that permanent custody to the agency was in the girls' best interest. As to the third factor, the court observed that the girls have been in temporary custody since December 18, 2020 and have been in their foster parents' care since their release from the hospital on March 22, 2021. As to the fourth factor, the court found the girls need a legally secure placement. It pointed out that all they have known is the hospital and their foster home. It found the girls need a safe and stable home where their needs are met on a consistent daily basis. The court found that the girls cannot find a legally secure placement with mother as she has demonstrated she is unwilling to work with the medical providers to provide for the girls' needs. And it found the girls cannot find a legally secure placement with father because he is currently in a residential drug treatment facility as part of his prison sentence. As to the final factor, the court noted that no evidence was presented with regard to the factors listed in R.C. 2151.414(E)(7) to (11).

{¶29} We must consider whether clear and convincing evidence supports the trial court's findings.

{¶30} Sally Trifiletti is the social worker for the girls. Trifiletti testified that the agency first became involved with mother and father when it was informed in September or October 2020, that mother was pregnant, drinking heavily, and abusing drugs. (Tr. 117). The girls were born on November 3, 2020. (Tr. 117). Because mother gave her address as being in Monroe County, the girls were placed in the temporary custody of MCDJFS on December 18, 2020. (Tr. 118). They were still in the hospital at that time. The agency subsequently took over temporary custody. (Tr. 118). Trifiletti stated the girls have continuously been in the temporary custody of a public children's services agency since December 18, 2020. (Tr. 119). She testified that as of March 2022, the girls had been in temporary custody for over 12 months. (Tr. 127).

{¶31} The girls remained hospitalized for over four months after their birth. (Tr. 131). When they were born, a third sibling was stillborn. (Tr. 131). Mother had no prenatal care and did not know she was pregnant with triplets. (Tr. 131). The girls were low birth weight. (Tr. 131). They tested positive for methamphetamines and amphetamines in their core blood. (Tr. 131). They had difficulty breathing and eating at the same time so they required feeding tubes. (Tr. 131).

{¶32} Trifiletti stated that because father was in prison, the agency was unable to work on a case plan with him. (Tr. 119). She stated that when the girls were first born, father was not in prison. (Tr. 127). But he was incarcerated in the spring of 2021. (Tr. 128). At the time of the trial, father was in a "step down" facility in Tiffin, Ohio. (Tr. 128). Trifiletti stated father had been unavailable for any type of parenting or case plan for at least the past 15 months. (Tr. 129). While he was in prison, Trifiletti visited him and went over the case with him. (Tr. 129).

{¶33} The agency put a case plan in place for mother. (Tr. 119). It required mother to test "clean" for all substances and work with a substance abuse counselor. (Tr. 119). Trifiletti testified that mother tested positive for alcohol multiple times, including when she was to have visitation with the girls in her home. (Tr. 119, 121, 136). When Trifiletti instructed mother to attend further substance abuse counseling, it took her over six months to comply. (Tr. 123).

{¶34} The case plan also required mother to attend the girls' medical appointments so she could learn their needs, how to care for them, and how to properly feed them. (Tr. 120, 125). Trifiletti stated that the agency advised mother of when the appointments were and offered to help her by providing gas cards. (Tr. 133). She testified that mother told her that the girls did not need to see so many doctors and if they were just home with her everything would be fine. (Tr. 133). Trifiletti stated that out of over 200 medical appointments, mother only attended 11 total. (Tr. 126-127). Trifiletti testified she had concerns if the girls were reunified with mother that she would not take care of their medical needs and the girls would fail to thrive. (Tr. 135).

{¶35} The case plan also required mother to not smoke around the girls due to their open wounds and for her and others to wear masks around the girls due to their weakened immune systems. (Tr. 120). Yet mother attended multiple supervised visits not properly wearing a mask. (Tr. 136, 143). In addition, she attended some visits smelling like cigarette smoke. (Tr. 142).

{¶36} As to mother's home, Trifiletti testified that mother lives in a camper with a built-on addition. (Tr. 124). Trifiletti had some safety concerns with the camper such as the lack of a railing on the upper level. (Tr. 124). She stated that mother lived there with three minor children and occasionally her adult daughter and infant grandchild stayed there. (Tr. 125).

{¶37} As to visitation, Trifiletti stated mother attends many but not all of her weekly visits. (Tr. 144-145). She misses approximately one visit a month and cuts some visits short. (Tr. 145). Mother has also brought the wrong formula to visits and prepared it incorrectly. (Tr. 149). And she fed the girls too fast. (Tr. 148).

{¶38} Additionally, Trifiletti testified that mother was to seek work as part of her case plan. (Tr. 175). She had not yet done so. (Tr. 175).

{¶39} In sum, Trifiletti opined that it was in the girls' best interests for the agency to have permanent custody. (Tr. 153). She pointed out that the agency was well past the 12-of-22-months requirement. (Tr. 153). She noted that the girls are in a foster-to-adopt home and have been with the same foster family for their entire lives. (Tr. 154).

{¶40} Amanda Somerville is the girls' occupational therapist. She sees them for feeding therapy every other week. (Tr. 9). The foster parents bring the girls to their

appointments. (Tr. 11). Mother attended three appointments out of approximately the last 14. (Tr. 11). Somerville stated that the girls will continue to require occupational therapy and that the foster parents have done everything they should do to help the girls in this regard. (Tr. 23).

{¶41} Autumn Davis is the girls' physical therapist. She sees the girls for gross motor skill delay. (Tr. 26). She started by working with them on sitting, crawling, and balance when they were seven months old. (Tr. 27). Davis testified that now, at 18 months, they are close in development to other 18-month-olds. (Tr. 28). She stated that one of the girls required a device called a "hip helper" to help her learn to crawl. (Tr. 30). Davis noted that the girls had 21 appointments with her in the past 11 months. (Tr. 31). A foster parent attended all of those appointments. (Tr. 31). Mother attended six of those 21 appointments. (Tr. 32). Davis testified it was important for caregivers to attend each appointment to learn what they needed to do to help the girls with their motor skills and what to work on at home. (Tr. 32).

{¶42} Dee Nau is a home visitor for Help-Me-Grow. Help-Me-Grow provides support to nurture the relationship between babies and their caretaker. She received a referral from the agency for the girls and mother. (Tr. 48). She had three home visits in mother's home when mother had visitation with the girls. (Tr. 49). She noted that mother's goal at the time was reunification. (Tr. 49). She talked about things with mother regarding the girls' fine motor skills, gross motor skills, and talking. (Tr. 54). Nau noted that she experienced communication problems with mother as far as not returning phone calls and not getting in contact with her. (Tr. 62). She also noted that mother acted interested in her suggestions. (Tr. 62).

{¶43} Riley Brown is the girls' clinical dietician. She works with the foster parents to advise them on different feeding issues. (Tr. 188). Brown helps them determine which formulas to use, the volume of the feedings, the girls' needed caloric intake, and the consistency of the formulas. (Tr. 188). These things all need adjusted over time to fit the girls' changing issues. (Tr. 188-191).

{¶44} Foster mother testified that she has been the girls' foster mother since they were released from the hospital on March 22, 2021. (Tr. 65-66). They have resided in her home continuously since that time. (Tr. 65). Foster mother testified that the girls are

medically fragile. (Tr. 65). Both girls required feeding tubes. (Tr. 66). She and foster father went through a training class to learn how to feed the girls. (Tr. 68). She stated that she and foster father fed the girls by way of their feeding tubes until July 9, 2021. (Tr. 67). At that time, the feeding tubes were removed and replaced with “MIC-Key” buttons, which also allows feeding directly to the stomach. (Tr. 68-69). Because the MIC-Key button requires an open wound into the stomach, foster mother testified that they require specialized care including not being around smokers and not being touched with un-sanitized hands. (Tr. 70-71). Foster mother is trained to change the MIC-Key buttons, which she does every three months. (Tr. 71).

{¶45} Foster mother testified that the girls have had to switch formulas multiple times due to various issues including vomiting. (Tr. 72-73). She stated they need to be fed every three hours starting at 6:00 a.m. until 9:00 p.m. (Tr. 74). Each feeding takes an hour. (Tr. 75). She stated that they must feed the girls slowly to help reduce their vomiting. (Tr. 75).

{¶46} Foster mother testified that the girls see eight different specialists. (Tr. 76-77). In total, since the girls were placed in their care, they have had 126 appointments each. (Tr. 79). Of those appointments, mother has only attended 11 total. (Tr. 80).

{¶47} At one point in time, mother had visitation at her house. Foster mother testified that at first she let mother use her car seats to transport the children. (Tr. 84). But mother returned the car seats smelling like cigarette smoke. (Tr. 84).

{¶48} Foster mother testified that due to the girls’ fragile medical state, their doctors had instructed that anyone who did not live in their household was to wear a mask around the girls. (Tr. 88-89).

{¶49} Foster mother stated the girls have made significant progress as far as their physical and occupational therapy. (Tr. 90). At one point, she testified, one of the girls required a “hip-helper” to help her hips stay in place as she learned to crawl. (Tr. 93). Foster mother purchased the device and used it as directed. (Tr. 93-94). She stated that mother did not purchase one initially and then eventually purchased the wrong size. (Tr. 94).

{¶50} Foster mother testified that she and her husband want to adopt the girls. (Tr. 97). She stated she believes mother loves the girls but mother cannot take care of them. (Tr. 97).

{¶51} Kristy Rothenbuhler is the girls' guardian ad litem. Rothenbuhler opined that it was in the girls' best interests for the court to grant permanent custody to the agency due to neither parent being able to parent the children within a reasonable time. (Tr. 204). She also noted that the girls have been in the agency's custody in excess of 12 of the past 22 months. (Tr. 204-205).

{¶52} As to father, Rothenbuhler testified that he would have too much ground to make up with the girls in a reasonable amount of time. (Tr. 205). She noted that he has been incarcerated throughout the majority of this case. (Tr. 216). And he has not seen the girls since December 18, 2020. (Tr. 216).

{¶53} As to mother, Rothenbuhler testified that at some of her home visits to mother's camper everything was fine and at other visits it looked like "madness." (Tr. 207-208). She noted there is not a lot of space in the camper for the amount of people who live there. (Tr. 208). She observed a carpenter bee problem at one time and also a septic smell. (Tr. 208). She had a safety concern with the lack of railings on the upper level. (Tr. 208). Rothenbuhler has also noted a strong cigarette smell and ashtrays on some visits. (Tr. 209). She testified that during visits sometimes mother is very attentive to the girls while other times she cannot seem to parent them both. (Tr. 210). In addition, she pointed out that mother would feed the girls too quickly. (Tr. 211). Rothenbuhler next testified that mother was not aware of the physical therapy the girls needed and believed it to be unnecessary. (Tr. 212). Rothenbuhler was concerned that if the girls were returned to mother, she would not keep up with the medical attention they required. (Tr. 214).

{¶54} Mother testified next. She stated she has stopped drinking alcohol and is "working on" stopping smoking. (Tr. 236). She testified that she has tested "clean" for everything except alcohol since January 2021, when she tested positive for methamphetamines. (Tr. 241).

{¶55} Mother believes that she can care for the girls if given the opportunity. (Tr. 236). She claimed that the feeding issues brought up by the other witnesses were simply

“mistakes” on her part. (Tr. 227). She stated that she does not take the girls’ medical issues lightly. (Tr. 232). She testified she would make sure they got to all of their appointments. (Tr. 232).

{¶56} Father also testified. He stated that he went to prison on April 17, 2021 after pleading guilty to aggravated possession of drugs. (Tr. 249). He was granted judicial release in May 2022 and is currently at a community-based correction facility. (Tr. 251). Depending on when he completes his program, he could be released in 105 days to six months. (Tr. 251). Father testified that, since being incarcerated, he has passed all of his drug screens. (Tr. 253-254). He stated he attended AA and NA meetings. (Tr. 254). Additionally, while in prison he completed classes for interacting with people, making a financial plan, and interacting with family. (Tr. 255-256).

{¶57} Father stated that he was willing to meet with medical providers virtually or by telephone to learn how to care for the girls. (Tr. 257-258). He testified that he was willing to do whatever is asked of him to work toward reunification. (Tr. 258).

{¶58} This evidence clearly and convincingly supports the trial court’s finding that granting permanent custody to the agency is in the girls’ best interests. Considering each of the best interest factors demonstrates the following.

{¶59} As to the interaction and interrelationship of the girls with their parents, both the girls’ caseworker and guardian ad litem agreed that mother has a relationship with the girls and loves them. The girls do not have a relationship with father, however, due to his incarceration throughout their lives. Foster parents have been the girls’ caretakers since they left the hospital. They have provided the girls with all of the medical care and therapy they require. Foster parents wish to adopt the girls. (R.C. 2151.414(D)(1)(a)).

{¶60} As to the girls’ wishes as expressed directly by them or through their guardian ad litem, the girls were under the age of two at the time of the hearing. Thus, they were too young to express their wishes. Their guardian ad litem, however, did opine it was in the girls’ best interest for the court to grant permanent custody to the agency. (R.C. 2151.414(D)(1)(b)).

{¶61} As to the girls’ custodial history, they have been in the custody of a children’s services agency since December 18, 2020. The girls have resided with their

foster parents since they were released from the hospital on March 22, 2021. (R.C. 2151.414(D)(1)(c)).

{¶62} As to the girls' 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, the evidence indicated that father is currently still serving part of his sentence and mother is unable or unwilling to provide the care the girls require. The testimony demonstrated the girls require care from multiple specialists and therapists in order to thrive. Mother has been unwilling to attend the vast majority of the girls' appointments. She has minimized the serious nature of the girls' fragile medical condition. She has ignored the girls' doctors' orders that she not smoke and that she and others wear masks around the girls. She has not followed the girls' feeding instructions. She failed to timely provide a properly fitted hip-helper for one of the girls. It is questionable whether mother has ample, safe housing for the girls. Given this evidence, both the girls' caseworker and their guardian ad litem opined the girls' best interests would be served by granting permanent custody to the agency. (R.C. 2151.414(D)(1)(d)).

{¶63} Finally, as to whether any of the factors in R.C. 2151.414(E)(7) to (11) apply in relation to the parents and the girls, no evidence was presented that any of these factors apply in this case. These factors have to do with certain crimes involving children, the parent placing the child in a substantial risk of harm, the parent abandoning the child, and the parent having their parental rights involuntarily terminated as to another child. (R.C. 2151.414(D)(1)(e)).

{¶64} Based on the above, clear and convincing evidence supports the trial court's judgment granting permanent custody to the agency. Thus, we conclude the trial court did not abuse its discretion. The girls have been either in the hospital or with their foster parents their entire lives. They will only have a legally secure placement if the agency has permanent custody.

{¶65} Accordingly, mother's second assignment of error is without merit and is overruled.

{¶66} Mother's third assignment of error states:

TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY
WHEN THERE WAS A VIABLE LESS DRASTIC ALTERNATIVE WITH
MATERNAL RELATIVE PLACEMENT.

{¶67} Here, mother asserts the girls could have been placed with her parents instead of with foster mother.

{¶68} Trifiletti testified that she did seek relative placement for the girls. (Tr. 150). Father had provided her with the name of his sister for possible placement. (Tr. 150-151). Trifiletti contacted the sister and provided her with information about the girls. (Tr. 151). The sister told Trifiletti she could not take them because she was not comfortable handling all of their health issues. (Tr. 151).

{¶69} Additionally, Trifiletti stated that Monroe County had looked into mother's parents for placement but that they never completed a required background check. (Tr. 151). The agency informed mother and maternal grandmother what was required. (Tr. 158). But they did not follow through. (Tr. 158). There was no testimony to the contrary.

{¶70} Here, the agency informed maternal grandmother what she would need to do in order for to be considered for relative placement. Maternal grandmother did not follow through. Therefore, we cannot conclude that the trial court abused its discretion in failing to place the girls with their maternal grandmother.

{¶71} Accordingly, mother's third assignment of error is without merit and is overruled.

{¶72} Father's first assignment of error states:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT
ASSUMED JURISDICTION OVER THIS MATTER, WHEN JURISDICTION
WAS WITH MONROE COUNTY, OHIO.

{¶73} In his first assignment of error, father argues Noble County did not have jurisdiction in this case, which was initially filed in Monroe County. He claims he was never given the opportunity to contest jurisdiction. He further argues evidence was never presented that he, mother, or the girls were residents of Monroe County.

{¶74} The girls were initially placed in the temporary custody of the Monroe County Department of Job and Family Services on December 18, 2020. On January 19, 2021, the matter was transferred to Noble County.

{¶75} Father has confused the issue of jurisdiction with that of venue. As explained by the Ohio Supreme Court:

Ohio's juvenile courts are statutory courts, created by the General Assembly. R.C. Chapter 2151; *State v. Wilson*, 73 Ohio St.3d 40, 43, 652 N.E.2d 196 (1995). As a statutory court, the juvenile court has limited jurisdiction, and it can exercise only the authority conferred upon it by the General Assembly. See *State ex rel. Ramey v. Davis*, 119 Ohio St. 596, 165 N.E. 298 (1929), paragraph four of the syllabus.

* * *

It is undisputed that all Ohio juvenile courts have subject-matter jurisdiction over dependency cases. R.C. 2151.23(A)(1) provides that a juvenile court has “exclusive original jurisdiction * * * [c]oncerning any child who on or about the date specified in the complaint * * * is alleged * * * to be a * * * dependent child.” It is not possible for this statutory grant of jurisdiction to be limited by the Juvenile Rules. *Linger* at 100, 386 N.E.2d 1354, quoting Juv.R. 44 (“[t]hese rules shall not be construed to extend or limit the jurisdiction of the juvenile court’ ”). Moreover, jurisdiction and venue are distinct legal concepts. *In re A.G.*, 139 Ohio St.3d 572, 2014-Ohio-2597, 13 N.E.3d 1146, ¶ 53, citing *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841 (1972), paragraph one of the syllabus. Venue is a “procedural matter,” and it refers not to the power to hear a case but to the geographic location where a given case should be heard. *Morrison* at 87–88, 290 N.E.2d 841.

In re Z.R., 144 Ohio St.3d 380, 2015-Ohio-3306, 44 N.E.3d 239, ¶ 14, 16.

{¶76} Generally, the decision to transfer venue is within the juvenile court's broad discretion. *Id.* at ¶ 25.

{¶77} At a February 9, 2021 hearing, the trial court brought up this issue. The agency’s counsel explained the history of the case and why it was now properly in Noble County. Counsel noted that the girls were born at a hospital in Marietta and were subsequently transferred to three other hospitals. (Feb. 9, 2021 Tr. 3). One of the hospitals made a referral to Noble County for intake. (Feb. 9, 2021 Tr. 3). Noble County did a preliminary investigation at the address it was given, which was in Noble County, and was then informed mother resided “up the hill in a camper” that was in Monroe County. (Feb. 9, 2021 Tr. 4). Consequently, Monroe County filed the complaint and the girls were placed in the temporary custody of Monroe County. (Feb. 9, 2021 Tr. 4). At either the shelter care hearing or mother’s initial appearance, mother indicated to the court that she lived in Noble County. (Feb. 9, 2021 Tr. 4). Consequently, to avoid a dismissal, a motion to transfer the case to Noble County was filed. (Feb. 9, 2021 Tr. 4). Mother was at the February 9, 2021 hearing with counsel and they did not dispute this. And at the permanent custody hearing, Trifiletti explained that the reason this case was transferred from Monroe County to Noble County was because mother stated in open court that her address was in Noble County at the time. (Tr. 154). No one objected to this statement.

{¶78} Given the facts of this case, the trial court did not abuse its discretion in proceeding with this case in Noble County once it was transferred from Monroe County. Mother may have lived in Monroe County at one point. However, after Monroe County filed the complaint in this case, mother indicated to the court that she resided in Noble County. In addition, mother did not contest this fact when later questioned by the Noble County Court.

{¶79} Moreover, father asserts he was never given the chance to contest jurisdiction (venue). This, however, is not true. Father’s counsel was present via telephone at the February 9, 2021 hearing where the trial court addressed the issue. Thus, counsel could have raised an objection if he believed an objection was warranted.

{¶80} Accordingly, father’s first assignment of error is without merit and is overruled.

{¶81} Father’s second assignment of error states:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT REASONED THAT THE NATURAL FATHER, * * *, HAD ABANDONED THE MINOR CHILDREN.

{¶82} Father argues here the trial court erred in finding that he abandoned the girls. He points to testimony by foster mother that because father is a convicted felon, she was uncomfortable with him contacting her. He also points to restrictions on visitations at the prison for children under five years of age. These circumstances, father argues, demonstrate that he did not intend to permanently abandon the girls but that circumstances beyond his control dictated his lack of contact with them.

{¶83} The trial court found that father abandoned the girls pursuant to R.C. 2151.414(B)(1)(b) since he failed to have contact with them since December 2020 due to his being incarcerated most of that time.

{¶84} Appellant claims he has not seen the girls due to circumstances beyond his control. But appellant pleaded guilty to a felony, which resulted in his prison sentence. Thus, his circumstances resulted from his own actions

{¶85} Moreover, even if the trial court had erred in finding the father abandoned the girls; R.C. 2151.414(B)(1) was still clearly satisfied. Pursuant to R.C. 2151.414(B)(1), in order to grant permanent custody of a child to a children's services agency, the trial court has to find that it is in the child's best interest and that any one of five listed circumstances existed. One of those circumstances is that the child is abandoned. R.C. 2151.414(B)(1)(b). Another one of those circumstances is that the child has been in the temporary custody of one or more public children services agencies for 12 or more months of a consecutive 22-month period. R.C. 2151.414(B)(1)(d). As set out above, the trial court found that the girls have been in the temporary custody of the agency for well over 12 of the last 22 months. This fact was undisputed. Thus, the trial court did not err in finding that R.C. 2151.414(B)(1) was met in this case.

{¶86} Accordingly, father's second assignment of error is without merit and is overruled.

{¶87} Father's third and fourth assignments of error share a common basis of law and fact. Thus, we will discuss them together.

{¶88} Father's third assignment of error states:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT REASONED THAT REASONABLE EFFORTS WERE MADE TO PROVIDE CASE MANAGEMENT SERVICES TO THE NATUAL FATHER, * * *.

{¶89} Father's fourth assignment of error states:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT REASONABLE EFFORTS WERE MADE TO REUNIFY THE MINOR CHILDREN WITH THE NATURAL FATHER, * * *.

{¶90} Father contends no reasonable efforts were made to include him in the case plans. He points out that he was not part of the case plans because he was incarcerated. Father further argues the agency did not make reasonable efforts to reunify him with the girls. He points out that by the time of the final trial, he had been released from prison into a halfway house. He notes that the caseworker testified that he could get “caught up” with the girls’ medical and feeding issues in six months’ time. He claims he should have been given this opportunity.

{¶91} R.C. 2151.419 provides that at any hearing at which the court removes a child from the child's home or continues the removal of a child from the child's home, it shall determine whether the children services agency “has made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home. The agency shall have the burden of proving that it has made those reasonable efforts.” The statute requires reasonable efforts, however, not unreasonable ones. *In re C.B.C.*, 4th Dist. Lawrence No. 15CA18, 2016-Ohio-916, ¶ 83.

{¶92} Trifiletti testified that the agency could not set up a case plan for father because he was incarcerated in the spring of 2021. (Tr. 159). Paternity was not established until father was already serving a prison term. (Tr. 159-160). Trifiletti did have contact with father in prison. (Tr. 160). She visited him in prison. (Tr. 160). Father told her of various classes and programs he was completing. (Tr. 160). Trifiletti noted that father was now currently out of prison and in a half-way-house type facility in Tiffin, Ohio. (Tr. 165). She stated that even if father was able to start a case plan, it would take

at least six months before the agency would even consider overnight visits. (Tr. 166). So there was no chance of reunification within six months. (Tr. 169).

{¶93} Father testified that Trifiletti contacted him and told him that once he was released, she could get him a case plan. (Tr. 252). He would then have to demonstrate that he could supply adequate housing, employment, and transportation. (Tr. 252). He stated that while he was in prison, the prison did not allow for visits with children under five years of age. (Tr. 253).

{¶94} In this case, when paternity was established, father was in prison. Thus, the agency could not include him in the case plan. Visitation was not permitted at the prison for children under age five. So the girls had no contact with father. At the time of the permanent custody hearing, father was still serving his sentence but had moved to a residential facility. By that time, the girls had already been in the agency's temporary custody for more than 12 of the last 22 months and were in need of a legally secure placement. To require the agency to start a case plan with father after he is released from his sentence would be unreasonable under the circumstances.

{¶95} Accordingly, father's third and fourth assignments of error are without merit and are overruled.

{¶96} Father's fifth assignment of error states:

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT IT WAS IN THE BEST INTEREST OF THE MINOR CHILDREN TO GRANT PERMANENT CUSTODY TO THE NOBLE COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES.

{¶97} In his final assignment of error, father argues that the manifest weight of the evidence did not support the trial court's finding that it was in the girls' best interest to grant permanent custody to the agency.

{¶98} In mother's second assignment of error, we discussed in detail the evidence presented at the hearing. We have already concluded that the evidence clearly and convincingly supported the trial court's finding that it was in the girls' best interests to grant their permanent custody to the agency.

{¶99} Accordingly, father's fifth assignment of error is without merit and is overruled.

{¶100} For the reasons stated above, the trial court's judgment is hereby affirmed.

Robb, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgments of the Court of Common Pleas of Noble County, Ohio, are affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.