

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE G.L.	:	
	:	No. 110284
A Minor Child	:	
	:	
[Appeal by T.L., Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 1, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-19908427

Appearances:

Rick L. Ferrara, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Joseph C. Young, Assistant Prosecuting Attorney, *for appellee* Cuyahoga County Division of Children and Family Services.

EMANUELLA D. GROVES, J.:

{¶ 1} Appellant-Mother, T.L. (“Mother”),¹ appeals from the judgment of the Cuyahoga County Court of Common Pleas, Juvenile Division (“juvenile court”) that granted permanent custody of her child G.L. (d.o.b. January 30, 2006), to the

¹ Father’s parental rights were also terminated. He is not a party to this appeal, however, and will therefore only be minimally discussed.

Cuyahoga County Division of Children and Family Services (“CCDCFS” or “the agency”). For the reasons set forth below, we affirm the award of permanent custody to the agency.

Procedural History

{¶ 2} On July 9, 2019, city of Middleburg Heights police officers responded to a motel on a report that G.L. was wandering around alone. On arrival, the officers found Mother on the floor of the motel room, suffering a medical crisis. Both Mother and G.L. were transported to the hospital, where G.L. was found to be medically fragile, malnourished, and severely underweight. It was also determined that G.L. was severely autistic, had cerebral palsy, asthma, and was nonverbal.

{¶ 3} On July 10, 2021, CCDCFS filed a complaint for dependency and a motion for predispositional temporary custody, detailing the events that triggered the filing. In the filing, CCDCFS also noted that, in September 2015, G.L. had previously been adjudicated dependent, after Mother was hospitalized following a mental health crisis. In addition, CCDCFS alleged that Mother had been diagnosed with bipolar disorder and that her level of engagement with mental health professionals was unknown. Further, CCDCFS alleged that G.L.’s father had not made himself available to provide care for the child.

{¶ 4} On the same day, the juvenile court found there was probable cause for removing G.L. from Mother’s home and that there were no suitable relatives willing to be a temporary custodian for G.L. The juvenile court then ordered G.L.

committed to the emergency temporary custody of CCDCFS. The juvenile court also appointed a Guardian Ad Litem (“GAL”).

{¶ 5} G.L. was subsequently placed in a foster home, in Pickering, Ohio, with a foster mother who had extensive experience taking care of children with special needs. In a report dated September 11, 2019, recommending a grant of temporary custody to CCDCFS, the GAL noted that the foster mother had decided to continue bringing G.L. to his pediatrician in Cleveland; that G.L., who had once been fed through a G-Tube, had gained three pounds since his last doctor’s visit in July 2019; and that he was well bonded with the foster mother. The GAL noted she attended G.L.’s July 2019 doctor’s visit, where she observed that G.L. followed the foster mother around in the doctor’s suite.

{¶ 6} On October 7, 2019, after a hearing, wherein both Mother and Father stipulated to an amended complaint, as well as to the case plan, the juvenile court adjudicated G.L. dependent and granted temporary custody to CCDCFS. The established case plan, with a goal of reunification, addressed Mother’s mental health, substance abuse, and housing challenges. Mother would be subject to random drug screens because she had tested positive for cocaine in the hospital around the time of G.L.’s removal from the home. Mother would also have to receive mental health counseling, due to her bipolar disorder. In addition, Mother, who was married and sharing custody of G.L. with Father, who was working in Toledo with a traveling circus, was tasked with obtaining a safe and stable home.

{¶ 7} On January 3, 2020, CCDCFS filed a motion to modify temporary custody of G.L. to permanent custody. In the supporting brief, CCDCFS stated that Mother had not made any meaningful progress regarding the approved case plan. Also, Mother continued to test positive for cocaine, was homeless and had not visited G.L. since he was placed in temporary custody. In addition, CCDCFS stated that Father had not complied with the case plan, which required him to obtain suitable housing. Further, Father had not communicated with the assigned caseworker.

Dispositional Hearing

{¶ 8} At a dispositional hearing, on January 19, 2021, CCDCFS presented the testimony of social worker Arielle Smith (“Smith”), who was assigned to the case in January 2020. Smith testified that CCDCFS presented Mother with a case plan that addressed substance abuse, mental health care, and housing. Smith testified Mother completed a referral for drug abuse, through Murtis Taylor and Moore Counseling, but never fully engaged in the services. At one point, Mother was asked to leave a sober-living facility before completing the services. Thereafter, although Mother completed the drug screen and tested negative twice, she often gave reasons for not reporting for required random drug tests.

{¶ 9} Smith also testified that she referred Mother to several agencies including, the Central Community Collaborative to assist with obtaining suitable housing. Mother met with a caseworker but failed to remain in contact. Smith opined that “[Mother] was under the impression that she went there, and they would give her keys to somewhere. So she was kind of frustrated with like the process of

family housing and wanted it kind of rapidly.” Smith testified she then referred Mother to CEOGC, which is an agency that aids with a variety of needs including housing. Mother responded well to the caseworker and remained in contact. Council for Economic Opportunities in Greater Cleveland (“CEOGC”) was able to find housing, and Mother completed the relevant paperwork, indicating she would be able to afford the rent using G.L.’s social security income, if reunited. CEOGC requested a letter from CCDCFS confirming that G.L. would be reunited with Mother. Although CCDCFS sent a letter to CEOGC, it could not provide the needed assurance because the motion for permanent custody had already been filed.

{¶ 10} Ultimately, Mother did not obtain housing through CEOGC, and Smith referred her to two other agencies, one of which included the requirement to stay in a shelter for a short period, so that she could be placed on a waiting list for housing. Mother did report to the shelter but did not stay until the next day to meet with the coordinator because of COVID-19 concerns. Mother subsequently stayed with a daughter and then with different friends at various periods of time.

{¶ 11} Additionally, Smith testified Mother made some progress relative to her mental health challenges. Mother engaged in monthly medication management but was not in active counseling until October 2020. Smith viewed Mother’s participation in mental health services as inconsistent. Mother declined employment services because of her receiving Social Security Disability Income.

{¶ 12} Further, Smith testified that Mother visited with G.L., via video and FaceTime, but the visits were sporadic. Mother generally called G.L. weekly if her

phone was active. Smith testified that since G.L. has been in temporary custody, Mother has had no face-to-face visits with G.L. Smith testified that despite attempts to arrange face-to-face visits, with the proper COVID-19 safeguards, Mother declined the offers. Smith testified that the foster mother was willing to bring G.L. to Cleveland for face-to-face visits, but Mother still declined.

{¶ 13} Finally, Smith testified that G.L. was receiving wraparound services for his disabilities and for his health. G.L. received physical and occupational therapy, was working with a speech pathologist, and was learning sign language. G.L. also was engaged in mental health counseling with a therapist. G.L. no longer required a G-Tube for feeding, had gained weight, was doing well eating solid food, attempted to feed himself, but still had to be fed by the foster mother. G.L. was working on developing independent living skills and attempted to assist his foster mother when she dressed him or put on his shoes.

{¶ 14} Smith testified that G.L. was in a special needs day school program and was in his age-current grade, with an IEP in place. The foster mother is interested in adopting G.L., who is very bonded with her and the rest of the family. The foster mother has an adult biological daughter, who does not live with her, and three adoptive children, with special needs. Smith recommended that permanent custody would be in the best interest of G.L., who needed stability and specialized care.

{¶ 15} In a written report, filed January 13, 2020, the GAL, Becky Blair (“Blair”), opined that permanent custody was in the best interest of G.L. In the

report, Blair noted that G.L. was in a medically certified foster home due to his significant special needs. In addition to the previously indicated disabilities, Blair noted that G.L. was born with a cleft palate, had no front teeth, was on medication to regulate his behavior and needed assistance with most living skills.

{¶ 16} Blair added that G.L. resided in a five-bedroom single family home with his foster mother and her four sons, who all have special needs, the majority of whom are less abled cognitively and physically than G.L. The foster mother, who had adopted three of her sons, was initially hopeful that Mother would complete her case plan objectives and be reunified with G.L. Blair noted the foster mother expressed a willingness to share her experience and expertise with Mother, but Mother never expressed a willingness to accept any assistance. The foster mother is a licensed nurse who has the support of nurses and aides for in-home care.

{¶ 17} Blair continued that G.L. has had no in-person contact with Mother or Father since 2019. Blair noted that, at the last in-person visit, G.L. seemed genuinely happy to see Mother, and the foster mother indicated it was a wonderful visit. Mother was to attend a second visit, but only Father appeared. According to the foster mother, G.L. was initially apprehensive, but warmed up eventually. Father stayed a little over an hour for what was a scheduled two-hour visit. When Father left, the foster mother got the sense that Father was not going to see G.L. again by the way he hugged and kissed him goodbye. Father has had no contact with G.L. since that 2019 visit.

{¶ 18} Blair underscored that Mother has had very little consistent, demonstrable sobriety or mental health compliance, plus issues with housing. Specifically, Blair stated:

I don't believe that there is any doubt that [G.L.'s] parents love him. However [G.L.'s] medical and cognitive condition require far more consistency and attention than a Mother with no documented sobriety or mental health compliance can give. [G.L.] cannot perform the simplest of basic needs without prompting or assistance. He certainly cannot self-protect.

[G.L.'s] current needs and parents' lack of commitment to work their case plan would create a recipe for disaster if [G.L.] were to be reunified with either parent. The window of opportunity for [G.L.] to achieve basic milestones is shortening. The parents have had ample time to complete their services. [G.L.] needs a permanent, stable and safe environment in order for him to achieve everything he is able to.

{¶ 19} Blair supplemented the above salient points with an oral report. Blair opined that Mother was not in a position to care for G.L. at this time, adding that even if Mother had completed all of the case plan's services, she would still need a lot of education regarding all of G.L.'s special needs. Blair noted that Mother finally contacted her after the written report had been submitted; that they had about eight telephone conversations; and that not once did Mother inquire about G.L.'s well-being. Blair then orally recommended that the juvenile court grant permanent custody to CCDCFS.

{¶ 20} Following the hearing, the juvenile court journalized an entry that granted CCDCFS's motion for permanent custody of G.L.

{¶ 21} Mother now appeals, assigning the following errors for review:

Assignment of Error No. 1

The trial court abused its discretion in denying a continuance for G.L.'s Mother to attend the final dispositional hearing determining permanent custody.

Assignment of Error No. 2

The trial court abused its discretion in awarding permanent custody because the state did not present sufficient, clear and convincing evidence necessary for the order.

{¶ 22} In the first assignment of error, Mother argues the juvenile court erred when it denied the motion to continue the dispositional hearing.

{¶ 23} The decision to grant or deny a motion for a continuance rests in the sound discretion of the trial court. *In re C.W.*, 8th Dist. Cuyahoga No. 109219, 2020-Ohio-3189, ¶ 15, citing *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981); *In re S.B.*, 8th Dist. Cuyahoga Nos. 101159 and 101160, 2014-Ohio-4839, ¶ 43. “A court abuses its discretion when a legal rule entrusts a decision to a judge’s discretion and the judge’s exercise of that discretion is outside of the legally permissible range of choices.” *State v. Hackett*, Slip Opinion No. 2020-Ohio-6699, ¶ 19.

{¶ 24} An abuse of discretion may be found where a trial court “applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact.” *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, 892 N.E.2d 454, ¶ 15 (8th Dist.). When applying the abuse of discretion standard, a reviewing court may not substitute its judgment for that of the trial court. *Vannucci v. Schneider*, 2018-Ohio-1294, 110 N.E.3d 716, ¶ 22 (8th Dist.).

{¶ 25} The trial court’s decision must comport with due process. *In re D.T.*, 8th Dist. Cuyahoga No. 108407, 2019-Ohio-4895, ¶ 16, citing *In re M.J.*, 8th Dist. Cuyahoga No. 100071, 2013-Ohio-5440, ¶ 21, citing *In re A.C.*, 6th Dist. Lucas No. L-10-1025, 2010-Ohio-4933, ¶ 128. However, not every failure to grant a continuance violates due process “even if the party fails to offer evidence or is compelled to defend without counsel.” *In re C.W.*, 8th Dist. Cuyahoga No. 109209, 2020-Ohio-3189, ¶ 16, citing *In re C.G.*, 9th Dist. Summit No. 26506, 2012-Ohio-5999, ¶ 9, quoting *Ungar v. Sarafite*, 376 U.S. 575, 589, 84 S.Ct. 841, 11 L.Ed.2d 921 (1964). *See also In re T.R.*, 8th Dist. Cuyahoga No. 102071, 2015-Ohio-4177, ¶ 34. In addition, a parent’s right to be present at a custody hearing is not absolute. *In re D.G.B.*, 8th Dist. Cuyahoga No. 107921, 2019-Ohio-3571, ¶ 16, citing *In re C.G.* at ¶ 19, citing *In re J.S.*, 9th Dist. Lorain No. 10CA009908, 2011-Ohio-985, ¶ 17.

{¶ 26} In *Ungar*, the Ohio Supreme Court noted that “[t]here are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied.” *Id.* at 67. The following factors are to be considered:

The length of the delay requested; whether other continuances have been requested and received, the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case.

Id. at 67-68.

{¶ 27} Juv.R. 23, is also instructive and provides that “[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties.” Loc.R. 35(C) of the Cuyahoga County Court of Common Pleas, Juvenile Division, further provides:

No case will be continued on the day of trial or hearing except for good cause shown, which cause was not known to the party or counsel prior to the date of trial or hearing, and provided that the party and/or counsel have used diligence to be ready for trial and have notified or made diligent efforts to notify the opposing party or counsel as soon as he/she became aware of the necessity to request a postponement. This rule may not be waived by consent of counsel.

{¶ 28} In the instant case, counsel requested a continuance on the day of trial because Mother failed to appear. Mother’s counsel stated: “I got a voicemail that she left for me late last night indicating that her ride for this morning fell through. She’s unable to afford bus tickets. So, she relayed to me that I request a continuance.” The state of Ohio objected, informing the juvenile court that “our caseworker offered her a bus ticket this morning and she declined it.” In her brief to this Court, Mother argues she had previously expressed concerns about COVID-19.

{¶ 29} Considering the facts of this case, we find no abuse of discretion in connection with the juvenile court’s denial of Mother’s motion for a continuance. Here, the motion did not comply with the rules of court because it was made on the day of trial. Also, Mother does not challenge the juvenile court’s notice or service of the notice of the hearing.

{¶ 30} In addition, the record established that CCDCFS filed the motion for permanent custody on January 3, 2020. Thus, the matter had been pending for more than a year by the time the trial was conducted. We note, that pursuant to R.C. 2151.414(A)(2), the trial court is to hold the permanent custody hearing no later than 120 days after the agency files its motion except for “good cause shown” for a reasonable continuance, and the court is to dispose of the motion for permanent custody no later than 200 days after the agency files its motion. *See also In re D.T.*, 8th Dist. Cuyahoga No. 108407, 2019-Ohio-4895 at ¶ 16; *In re M.J.*, 8th Dist. Cuyahoga No. 100071, 2013-Ohio-5440 at ¶ 21, citing *In re A.C.*, 6th Dist. Lucas No. L-10-1025, 2010-Ohio-4933, ¶ 128.

{¶ 31} Recently, in *In re I.N.*, 8th Dist. Cuyahoga No. 110067, 2021-Ohio-1406, we addressed the concerns of a mother who argued a continuance should have been granted pursuant to the then-applicable order of the Cuyahoga County Juvenile Court titled “Order Extending the Judicial Emergency and Continuity of Operations of the Court Due to Covid-19 Pandemic” (“Juvenile Court order”) and a more recent order of the Ohio Supreme Court, dated December 16, 2020, titled *Administrative Actions #2*, 2020-Ohio-6726, 2020-Ohio-6726, 159 N.E.3d 294 (“Supreme Court order”). There, in affirming the juvenile court’s decision to deny Mother’s last-minute request for a continuance, we stated:

Although the Juvenile Court order and the Supreme Court's order might have justified a continuance for a verified Covid-19 exposure, there simply was no evidence to substantiate Mother's Covid-19 claim. To the contrary, the record demonstrates that Mother failed to communicate and cooperate with the court and counsel and that she

failed to demonstrate good cause for a continuance. We, therefore, find no abuse of discretion in the trial court's decision to deny Mothe's last-minute request for a continuance.

Id. at ¶ 25.

{¶ 32} We reach a similar conclusion and find no abuse of discretion. Although, Mother now adds COVID-19 concerns, Mother's stated reason for requesting a continuance was her inability to afford a bus ticket. Yet, when the caseworker offered Mother a bus ticket that morning to facilitate her attendance at the trial, Mother declined. Thus, Mother has failed to demonstrate good cause for a continuance.

{¶ 33} Accordingly, we overrule Mother's first assignment of error.

{¶ 34} In the second assignment of error, Mother argues the juvenile court abused its discretion in awarding permanent custody to CCDCFS.

{¶ 35} It is well established that a parent has a fundamental right to raise and care for his or her child. *In re L.M.*, 8th Dist. Cuyahoga No. 106072, 2018-Ohio-963, citing *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 28; *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 40. We recognize that termination of parental rights is "the family law equivalent of the death penalty in a criminal case." *In re V.C.*, 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991, citing *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14.

{¶ 36} An appellate court will not reverse a juvenile court’s decision awarding permanent custody to an agency if the judgment is supported by clear and convincing evidence. *In re J.M-R.*, 8th Dist. Cuyahoga No. 98902, 2013-Ohio-1560, ¶ 28. “Clear and convincing evidence” is that measure or degree of proof that is more than a “preponderance of the evidence,” but does not rise to the level of certainty required by the “beyond a reasonable doubt” standard in criminal cases. *In re K.S.*, 8th Dist. Cuyahoga No. 109928, 2021-Ohio-694, ¶ 15, citing *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 8, citing *In re Awkal*, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994), citing *Lansdowne v. Beacon Journal Publishing Co.*, 32 Ohio St.3d 176, 180-181, 512 N.E.2d 979 (1987). It “produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.” *In re K.S.* at ¶ 15, citing *In re M.S.* at ¶ 18.

{¶ 37} The termination of parental rights is governed by R.C. 2151.414. *In re M.H.*, 8th Dist. Cuyahoga No. 80620, 2002-Ohio-2968, ¶ 22. R.C. 2151.414 sets forth a two-part test courts must apply when deciding whether to award permanent custody to a public services agency.

First Prong: R.C. 2151.414(B)(1)(a)-(e)

{¶ 38} Under the first prong, the juvenile court must find by clear and convincing evidence one of the following five factors:

- (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, or 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 if, 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, 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, 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.

(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.

R.C. 2151.414(B)(1)(a)-(e).

{¶ 39} Only one of the factors must be present for the first prong of the permanent custody analysis to be satisfied. *In re S.S.*, 8th Dist. Cuyahoga No. 109356, 2020-Ohio-3039, ¶ 28, citing *In re L.W.*, 8th Dist. Cuyahoga No. 104881, 2017-Ohio-657, ¶ 28.

{¶ 40} In this instance, the juvenile court found that the condition under R.C. 2151.414(B)(1)(d) was met when it determined that

[t]he child has been in temporary custody of the Cuyahoga County Division of Children and Family Services which is for twelve (12) or

more months of a consecutive twenty-two (22) month period. The child has been in the temporary custody since October 7, 2019.

Mother has not disputed this finding, which is fully supported by the record. Of note, permanent custody may be granted to an agency where R.C. 2151.414(B)(1)(d) is met and permanent custody is in the best interest of the child. *In re N.M.P.*, 160 Ohio St.3d 472, 2020-Ohio-1458, 159 N.E.3d 241, ¶ 22.

{¶ 41} Having found that subsection (d) was satisfied, no further grounds were required under R.C. 2151.414(B)(1), but the juvenile court additionally found that the child “cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent,” and the court made findings in relation to R.C. 2151.414(E). The juvenile court found that despite reasonable case planning and diligent efforts by CCDCFS following removal of G.L. from the home, the parents have “failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child’s home.”

{¶ 42} To that end, the juvenile court listed a plethora of factors including Mother’s demonstrated lack of commitment towards the child by failing to regularly support, visit, or communicate with the child; Mother’s unwillingness to successfully complete her case plan to enable her to provide for the child; and Mother’s lack of commitment to addressing her chronic mental illness and chemical dependency. Here, both Smith’s and Blair’s testimony above established that Mother, although she made some progress, never fully engaged in, or committed to, the objectives of the case plan. As such, the issues which caused G.L.’s removal from the home

remained. Although Father is not appealing the grant of permanent custody to CCDCFS, the juvenile court found that “Father has abandoned the child.”

{¶ 43} Because Mother has not made appreciable strides toward the case plan’s objectives, there is no dispute that G.L. cannot be placed with either parent within a reasonable time. Our review of the record reveals that the juvenile court’s findings under the first prong are supported by competent and credible evidence. Finding no error with the juvenile court’s findings under the first prong, we consider the court’s finding under the second prong.

Second Prong: R.C. 2151.414(D)

{¶ 44} The second prong also requires the juvenile court to find by clear and convincing evidence that granting permanent custody to the agency is in the best interest of the child. We review a trial court’s best-interest determination under R.C. 2151.414(D) for an abuse of discretion. *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47. In this regard, “[a] trial court’s failure to base its decision on a consideration of the best interests of the child constitutes an abuse of discretion.” *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 60.

{¶ 45} R.C. 2151.414(D)(1) sets forth best-interest factors that the court must consider when making the best-interest determination under R.C. 2151.414(D)(1), including

(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 * * *;

(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 * * *;

(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.

{¶ 46} The juvenile court has considerable discretion in weighing these factors. *In re D.A.* at ¶ 47. Although a trial court is required to consider each relevant factor under R.C. 2151.414(D)(1) in making a determination regarding permanent custody, “there is not one element that is given greater weight than the others pursuant to the statute.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Moreover, “[R.C. 2151.414(D)(1)] requires a weighing of all the relevant factors * * * [and] requires the court to find the best option for the child * * *.” *Id.* at ¶ 64.

{¶ 47} Further, the Ohio Supreme Court, in *In re A.M.*, Slip Opinion No. 2020-Ohio-5102, held that R.C. 2151.414(D)(1) does not require a juvenile court to expressly discuss each of the best-interest factors in R.C. 2151.414(D)(1)(a) through (e). *Id.* at ¶ 31. Consideration is all the statute requires. Although a reviewing court must be able to discern from the magistrate's or juvenile court's decision, and the court's judgment entry, that the court satisfied the statutory requirement that it consider the enumerated factors, we may not graft onto the statute a requirement

that the court include in its decision a written discussion of or express findings regarding each of the best-interest factors. *Id.*

{¶ 48} We begin our inquiry by noting the juvenile court’s final reflections after hearing the testimony and signaling that based on the testimony and evidence presented, the agency had met its burden of clear and convincing evidence, and it was going to grant the motion for permanent custody. There, the juvenile court noted: “It’s an unfortunate situation for [G.L.] and for his parents as well. I mean, you think you’ve heard everything until you come to work here.”

{¶ 49} In the journalized entry, the juvenile court found that

[t]he child’s continued residence in or return to the home of [T.L.], Mother will be contrary to the child’s best interest.

The Court further finds that reasonable efforts were made to prevent removal of the child from his home, or to return the child to the home, and to finalize the permanency plan, to wit: reunification. Relevant services provided to the mother were not successful. Mother has been non-compliant with the services offered.

{¶ 50} A review of the record supports the juvenile court’s best-interest findings encapsulated above. The testimony established that subsection (a), the interaction and interrelationship of the child with the child’s parents, siblings, relatives, and foster parents, was met. G.L. was well bonded with his foster mother and foster siblings, who are in the same home. Under subsection (b), the wishes of the child, although, due to cognitive and physical limitation, G.L. was unable to articulate his desires, his GAL’s recommendation clearly represented his unspoken desire. Under subsection (c), the custodial history of the child, the record

unequivocally established that G.L. was in temporary custody of CCDCFS for twelve or more months of a consecutive twenty-two-month period.

{¶ 51} Under subsection (d), the child's need for a legally secure placement and whether that could be achieved without a grant of permanent custody, the record conclusively established that G.L. needed to be in a placement that afforded him the specialized care. The record established that the foster home was medically licensed, the foster mother was a nurse who specialized in the care of children with G.L.'s challenges and who had access to nurses and aides to assist with G.L.'s care. In addition, no relative was presented as an option to care for G.L. Further, given Mother's lack of compliance with the case plan, G.L.'s need for a legally secure placement could not be achieved by granting permanent custody to CCDCFS. Under subsection (e), whether any of the factors in divisions R.C. 2151.414(E)(7) to (11) apply, we find many of the juvenile court's findings previously discussed satisfy the best-interest considerations.

{¶ 52} Our review reflects that the best-interest factors that the juvenile court must consider under the second prong was contained in the record.

{¶ 53} Nonetheless, Mother argues that she was attempting to engage in the case plan's objectives and specifically contends that CCDCFS became her adversary in obtaining housing, by not providing a satisfactory letter to the housing provider. A review of the record reveals Mother's contentions are not well taken.

{¶ 54} Smith specifically testified that CCDCFS sent CEOGC a letter, which was followed by a conversation with an agency supervisor and the caseworker at

CEOGC. However, CCDCFS was unable to put in the letter that G.L. was absolutely going to be returned to Mother and that Mother would be able to afford the stated rent with G.L.'s social security payments. As such, Mother's contentions are without merit.

{¶ 55} Based on the foregoing, we conclude the record contains competent, credible evidence from which the juvenile court could have found the essential statutory elements for an award of permanent custody were established. The juvenile court's decision to grant permanent custody to CCDCFS, and the termination of Mother's parental rights was not an abuse of discretion.

{¶ 56} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EMANUELLA D. GROVES, JUDGE

SEAN C. GALLAGHER, P.J., and
LARRY A. JONES, SR., J., CONCUR