

[Cite as *In re F.M.*, 2021-Ohio-3039.]

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE F.M., ET AL. :
 : No. 110350
Minor Children :
 :
 :
 :
[Appeal by W.C., Father] :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 2, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD18907381 and AD20909151

Appearances:

Rachel A. Kopec, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Joseph C. Young, Assistant Prosecuting
Attorney, *for appellee.*

MARY EILEEN KILBANE, J.:

{¶ 1} Appellant W.C. (“Father”) appeals from the juvenile court’s decision awarding permanent custody of his and A.M.’s (“Mother”) two minor children, F.M. (D.O.B. June 6, 2018) and I.M. (D.O.B. May 21, 2020), to appellee Cuyahoga County

Division of Children and Family Services (“CCDCFS”).¹ For the following reasons, we affirm the decision of the trial court.

Factual and Procedural History

{¶ 2} This case began shortly after F.M.’s birth when CCDCFS filed a complaint on June 11, 2018, for F.M. in Cuyahoga J.C. No. AD18907381, alleging she was dependent and seeking temporary custody of the child along with a motion for emergency predispositional temporary custody. The complaint alleged hospital staff observed Mother displaying manic symptoms and paranoid ideations that prevented her from exercising appropriate parenting skills and judgment. The complaint also alleged she did not have provisions to care for the child. Regarding Father, it alleged he had not established paternity, was not willing to care for the child, and that he was a registered sex offender for his prior convictions of rape of a minor and corrupting another with drugs.

{¶ 3} On June 11, 2018, the court held a hearing on the motion and granted emergency predispositional custody to CCDCFS. On September 27, 2018, F.M. was adjudicated dependent lacking adequate parental care by reason of the mental or physical condition of Mother and committed to the temporary custody of CCDCFS. The court’s entry from that hearing reflects Mother admitted to the allegations in the complaint, which included allegations that she had the parental rights of her older child terminated in Georgia.

¹ Mother also appealed the trial court’s judgment, and the opinion was released on August 12, 2021, *In re F.M.*, 8th Dist. Cuyahoga No. 110333, 2021-Ohio-2774.

{¶ 4} CCDCFS develop a case plan to promote reunification of the child with Mother that included services to address her mental health and housing issues to provide basic needs for the child. On April 26, 2019, the agency filed a motion for permanent custody of F.M. The corresponding affidavit alleged Father had failed to make himself available for case plan services and abandoned the child. This is because Father had failed to contact CCDCFS since the child's birth in June 2018, despite the agency reaching out to him for almost a year. On November 22, 2019, while the motion for permanent custody was pending, Father filed a motion for legal custody of F.M. or in the alternative placement with F.M.'s paternal grandmother ("L.C.-W.").

{¶ 5} On May 21, 2020, I.M. was born and on May 26, 2020, she was committed to predispositional temporary custody of CCDCFS. After dismissing the original complaint, CCDCFS refiled the complaint on October 28, 2020, alleging I.M. was dependent and requesting permanent custody of I.M. The complaint alleged Mother's mental health interfered with her ability to provide care for the child and that she lacked stable housing and the means to support a child. Regarding Father, it alleged Father had prior convictions for rape of a minor and corrupting another with drugs. It also alleged he lacked the ability to provide for I.M.'s basic needs, failed to establish paternity, and failed to support, visit, or communicate with the child since birth. The complaint also included a motion for emergency predispositional temporary custody of I.M., which the court granted after a hearing on October 29, 2020.

{¶ 6} The adjudicatory hearing on the motion for permanent custody of I.M. was held on January 14, 2021. At the hearing, Gabrielle Uhrin (“Uhrin”) testified that she had been working as the family’s social worker since 2018 and that F.M. had previously been adjudicated dependent. She testified regarding Father’s criminal background, which was stipulated to by counsel, where he had been convicted for raping a minor and designated a registered sex offender. She testified that Father had been unavailable when F.M. was born, and at the time of I.M.’s birth, Uhrin had been unable to verify Father’s housing to make sure it was appropriate. She also explained CCDCFS’s concerns about Father’s prior convictions and being alone with the children. In its January 19, 2020 order, the court found the allegations of the complaint for I.M. had been proven by clear and convincing evidence and adjudicated the child to be dependent under R.C. 2151.04(B) and (D). The case was continued for the dispositional hearing, where the court considered CCDCFS’s motion for permanent custody of F.M., as well as its request in the complaint for permanent custody of I.M.

{¶ 7} The dispositional hearing for both F.M. and I.M. occurred on January 28, 2021. At the commencement of the dispositional hearing, the trial court granted CCDCFS’s request to incorporate the evidence, testimony, and exhibits entered at the prior adjudication hearing. CCDCFS called three witnesses, the first being Kathleen Miller (“Miller”), a licensed social worker with training in diagnosing mental health issues who testified regarding her diagnosis of Mother’s mental health. “[Miller] diagnosed Mother with paranoid schizophrenia based on the

criteria in the DSM-V. Miller's report then established a series of engagement goals, which the records indicate Mother did not pursue." *In re F.M.*, 8th Dist. Cuyahoga No. 110333, 2021-Ohio-2774, ¶ 12.

{¶ 8} Uhrin again testified about her involvement as the case worker for the family. With respect to Father, she testified that he was "unavailable" from September 2018 when she was assigned to the children's case to May 2019, almost the entire first year of F.M.'s life. CCDCFS knew his identity and attempted to contact him but was unable to reach him. Father never responded to CCDCFS during this time. Once Father finally responded to CCDCFS in May 2019, he was given a case plan that consisted of a list of directives that included establishing paternity, building a relationship with the children, and verifying adequate housing. Father established paternity for F.M. and eventually I.M. after her birth. Uhrin testified that Father eventually did make efforts to establish a relationship with both children per his case plan. CCDCFS had scheduled visits at Catholic Charities for Mother and children, but Father was not able to enter the premises, due to his prior convictions. Biweekly visits with both children were then arranged at a park for Father, who consistently attended these visits, appropriately playing with F.M. on the playground.

{¶ 9} Uhrin also testified how CCDCFS had been trying to verify Father's housing situation since he became involved in this case in 2019 but had been unable to do so. After an extreme delay, Father did eventually verify his living situation the same week as the final dispositional hearing, over 18 months after he was put on

notice of the case plan's goals. Uhrin testified she viewed his one-bedroom apartment virtually. Uhrin also testified that Father's prior convictions for rape of a minor under thirteen and corrupting another with drugs, together with his status as a registered sex offender, caused her great concern about the children's safety if custody was given to Father.

{¶ 10} Last, Uhrin also testified that the children had been placed together in a foster home and were doing very well, having received services to assist in their development. Uhrin testified that I.M. had finally begun reaching appropriate developmental milestones for her age. She discussed how CCDCFS had attempted to identify appropriate relatives for possible placement, including Mother's half-sister and the children's paternal grandmother, L.C.-W. However, Mother's half-sister was not approved due to prior agency history, and L.C.-W. was not selected due to her minimization of Father's convictions for rape of a minor and corrupting another with drugs and her admission to permit him future unsupervised access to the children. CCDCFS also called Rhonda Wilson of Catholic Charities at the Hough Collaborative/The Fatima Family Center, whose testimony only concerned Mother. *See In re F.M.*, 8th Dist. Cuyahoga No. 110333, 2021-Ohio-2774, at ¶ 17.

{¶ 11} Mother did not call any witnesses. Father only called his mother, L.C.-W., as a witness, who testified remotely. L.C.-W. testified regarding her job and home. In court, Father produced L.C.-W.'s paystubs and her lot rental for her trailer where she resides in Florida, which L.C.-W. confirmed. She testified how the Florida children and family services agency had investigated her and approved her for

placement. She acknowledged Father's rape conviction and that he was a registered sex offender but stated that if it were up to her, she would permit him to have unsupervised contact with the children if placed with her.

{¶ 12} Last, the court heard from both children's guardians ad litem. F.M.'s guardian, Maureen Savino ("Savino"), recommended F.M. be placed in the permanent custody of CCDCFS and noted her extreme concern of the children's safety with the L.C.-W.'s minimization of Father's prior convictions. I.M.'s guardian, Pamela Hawkins ("Hawkins"), testified regarding her concerns of Father having custody due to his serious prior convictions. She emphasized that the court in his criminal case determined Father was a sexual predator and she had great concern for the children's safety and for him to be alone and unsupervised with them. She also noted she had been unable to verify his housing prior to the trial because it was presented just before the hearing. Hawkins also recommended to the court that CCDCFS be granted permanent custody of I.M.

{¶ 13} On February 8, 2020, the trial court issued two judgment entries, one for each child. The judgments are almost identical in their findings but do contain a few immaterial differences. In both entries the court found:

That one or more of the factors in division (E) of section 2151.414 of the Revised Code exist * * *.

[T]he Court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the child and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

The Court further finds: 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.

The Court further finds that: the parent has been convicted of or pleaded guilty to an offense listed in [R.C.] 2151.414(E)(6) or [R.C.] 2151.414(E)(7).

The court's entries each considered placement with L.C.-W. but found "[h]er testimony provided concern for the court regarding her cavalier attitude about her son's Rape and Corrupting a Minor with Drug convictions." The court noted that "[L.C.-W.] maintained that she would eventually allow her son to have unsupervised visitation with the girls if she were granted legal custody and given unfettered control over visitation."

{¶ 14} The court therefore concluded in each child's entry that "it is in the best interest of the child to be placed in the permanent custody of the Cuyahoga County Division of Children and Family Services"; and then terminated both Mother's and Father's parental rights and responsibilities for F.M. and I.M. The permanency plan for the children was adoption because both children have been with the same foster family that intends to adopt them. Father now appeals the court's granting of permanent custody of F.M. and I.M., to CCDCFS, presenting one assignment of error for our review.

Law and Analysis

{¶ 15} In Father’s sole assignment of error, he alleges that awarding “[p]ermanent [c]ustody of the children [to CCDCFS] was against the manifest weight of the evidence.”

{¶ 16} Under a manifest weight review, the court assesses the credibility of witnesses and the quality of the evidence produced to determine whether the trier of fact reached an unreasonable conclusion. *In re Martin*, 8th Dist. Cuyahoga No. 78184, 2001 Ohio App. LEXIS 2079, 5 (May 10, 2001), citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). “A reviewing court will not reverse a decision as against the manifest weight of the evidence unless the factfinder’s decision is a miscarriage of justice.” *Id.* That being said, this court is cognizant that:

In addition to the manifest-weight standard, however, we must also recognize the traditional deference afforded to juvenile custody determinations, and our duty to uphold such determinations absent an abuse of discretion. Although one might make the facile observation that a judge abuses his discretion when his custody determination is against the manifest weight of the evidence, an abuse of discretion in this context is generally considered to require a decision that can be characterized as unreasonable or arbitrary. Therefore, we must be thoroughly convinced that a judge’s custody determination is against the manifest weight of the evidence before reversing on that ground.

In re M.M., 8th Dist. Cuyahoga No. 79947, 2002 Ohio App. LEXIS 463, 13-15 (Feb. 7, 2002).

{¶ 17} “An agency may obtain permanent custody of a child in two ways. An agency may first obtain temporary custody of the child and then file a motion for permanent custody under R.C. 2151.413. Or an agency may request permanent

custody as part of its original abuse, neglect, or dependency complaint under R.C. 2151.353(A)(4).” *In re A.R.*, 8th Dist. Cuyahoga No. 109482, 2020-Ohio-5005, ¶ 30, citing *In re E.P.*, 12th Dist. Fayette Nos. CA2009-11-022 and CA2009-11-023, 2010-Ohio-2761, ¶ 22.

{¶ 18} Here, the agency requested permanent custody of F.M. through a motion for permanent custody pursuant to R.C. 2151.413. However, for I.M., the agency requested custody as a part of the original complaint for dependency pursuant to R.C. 2151.353(A)(4). Each statute requires the court to satisfy two requirements, though each has slightly different requirements.

{¶ 19} With respect to F.M. and the motion for permanent custody, this court has previously explained:

When an agency files a permanent custody motion under R.C. 2151.413 after obtaining temporary custody, the guidelines and procedure set forth under R.C. 2151.414 apply. Division (B) of R.C. 2151.414 sets forth a two-prong analysis to be applied by a juvenile court. Pursuant to this division, before a trial court can terminate parental rights and grant permanent custody to a county agency, the court must find by clear and convincing evidence (1) the existence of any one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e), and (2) that granting permanent custody to the agency is in the best interest of the child.

In re J.F., 2018-Ohio-96, 102 N.E.3d 1264, ¶ 45 (8th Dist.). “Where clear and convincing proof is required at trial, a reviewing court will examine the record to determine whether the trier of fact had sufficient evidence before it to satisfy the requisite degree of proof.” *Id.* at ¶ 47, citing *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 24, citing *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). “Judgments supported by competent, credible evidence going to all the

essential elements of the case will not be reversed as being against the manifest weight of the evidence.” *Id.*

{¶ 20} As for I.M., pursuant to R.C. 2151.353(A)(4), this court has stated that:

When proceeding on a complaint with an original dispositional request for permanent custody, the trial court must satisfy two statutory requirements before ordering a child to be placed in the permanent custody of a children’s services agency. Specifically, the trial court must find, “in accordance with division (E) of section 2151.414 of the Revised Code 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 further must determine “in accordance with division (D)(1) of section 2151.414 of the Revised Code that the permanent commitment is in the best interest of the child.” R.C. 2151.353(A)(4).

In re A.R., 8th Dist. Cuyahoga No. 109482, 2020-Ohio-5005, ¶ 31. Both statutory schemes have two prongs: the first prong requires the finding of a certain condition and the second prong requires a finding that permanent custody to CCDCFS is in the best interest of the child. We will review the conditions for the first prong of both children first.

I. First Prong of R.C. 2151.414(B)(1) and 2151.353(A)(4)

{¶ 21} To satisfy the first requirement to grant permanent custody of F.M. to CCDCFS, the court was required to find one of the conditions listed in R.C. 2151.414(B)(1)(a) through (e):

(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.

{¶ 22} Pursuant to R.C. 2151.414(B)(1)(a), the court's judgment entries after the disposition hearing reflects the court found: "[t]he child is not abandoned or orphaned * * * by clear and convincing evidence 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." After this finding is made, R.C. 2151.414(B)(2) requires the court to examine the various conditions listed in R.C. 2151.414(E) to support this finding for F.M.

{¶ 23} Similarly, for I.M., the first prong to support an award of permanent custody to CCDCFS pursuant to R.C. 2151.353(A)(4) also required the court to

determine in accordance with division (E) of section 2151.414 that the child cannot be placed with one of the child's parents within a reasonable period of time or should not be placed with either parent. Therefore, in this case, to satisfy the first prong for both F.M. and I.M., the court was required to determine by clear and convincing evidence that one or more of the 16 listed conditions under division (E) existed as to the children's parent. Only one condition needs to be found to require the court to enter a finding that the children cannot or should not be placed with either parent and no factor is weighted greater than the others. *In re S.C.*, 8th Dist. Cuyahoga No. 102350, 2015-Ohio-2410, ¶ 30 (quotation and citation omitted).

{¶ 24} In this regard, the court's entries reflect findings pursuant to division (E)(1), (E)(6), and (E)(7). The statutory subdivisions for (E) state in relevant part:

(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.

* * *

(6) The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section 2919.22 or under section * * * 2925.02 * * * and the child or a sibling of the child was a victim of the offense * * *.

(7) The parent has been convicted of or pleaded guilty to one of the following:

* * *

(d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code * * * and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

R.C. 2151.414(E)(1), 2151.414(E)(6), 2151.414(E)(7)(d). The trial court's dispositional judgment entries made findings pursuant to these statutory factors. The entries reflect that:

The Court further finds: 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.

The Court further finds that: The parent has been convicted of or pleaded guilty to an offense listed in ORC §2151.414(E)(6) or §2151.414(E)(7).

The court's findings for F.M. and I.M. in this regard are identical and neither entry specifies which parent is being referred to for these findings. We will analyze the evidence to determine if there is competent credible evidence to support these findings as to Father. *In re J.F.*, 2018-Ohio-96, 102 N.E.3d 1264, at ¶ 45.

{¶ 25} As to R.C. 2151.414(E)(1), the complaints filed for F.M. and I.M. alleged the children were dependent because their Mother's mental health issues made her unable to care for or support them and their Father was unavailable. F.M.'s original complaint for temporary custody was filed on June 11, 2018. The court's journal entry reflects that from May 2018 until May 2019, no one at CCDCFS was able to get in contact with Father. Father failed to make himself available for

case plan services and abandoned the child for the first year of F.M.'s life. Even after he finally contacted CCDCFS regarding F.M. in May 2019, he did not file a motion for custody until November 2019. Father's absence and unavailability resulted in F.M. being unsafe and uncared for, requiring CCDCFS to place F.M. in foster care.

{¶ 26} Similarly, when I.M. was born on May 21, 2020, CCDCFS alleged in the complaint for permanent custody that Father lacked the ability to provide basic needs for I.M. and had failed to support, visit, or communicate with I.M. since the child's birth. Even after Father's delayed and limited involvement with I.M., the court found I.M. dependent at her adjudicatory hearing on January 14, 2021. At the time of that hearing, CCDCFS social worker Uhrin had still been unable to verify Father's housing for the children.

{¶ 27} Both children have been legally found to be dependent almost since their respective births, were taken from Mother at the hospital, and have remained in the continual care and custody of the agency. F.M. has been in the custody of CCDCFS for over two years and no longer qualified for temporary housing custody. Father has never been alone with the children, he has never actually taken care of either child by himself for a single night of the children's lives, nor has he demonstrated that he was capable of caring for them by himself. It was not until the week of the dispositional hearing on January 28, 2021, more than 20 months after he began communicating with CCDCFS, that Father was able to prove that he could provide shelter, the most basic of care, for the children. This proof, however, was

presented so belatedly that only the social worker Uhrin was able to virtually verify the housing whereas the guardians for the children could not.

{¶ 28} The court's dispositional entry does acknowledge that, despite Father's "dilatory performance," Father met his case plan goals to establish paternity and began having visits with F.M. and I.M. after his lengthy absence. Even considering Father had belatedly established paternity and began to build a relationship with the children, this court has held repeatedly that "'substantial compliance with a case plan' is not, in and of itself, 'dispositive' and 'does not preclude a grant of permanent custody to a social services agency.'" *In re L.S.*, 2021-Ohio-510, 168 N.E.3d 149, ¶ 59 (8th Dist.), quoting *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 90, citing *In re C.C.*, 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360, ¶ 25 (8th Dist.). The trial court even states that Father has not benefitted from the case plan services nor has he shown any initiative to engage in a sexual offender "rehabilitation program or any sexual offender specific counseling."

{¶ 29} Both children were taken into emergency temporary custody of CCDCFS at birth and have never spent one night in the home of either Mother or Father. In the meantime, the court's entry reflects that the children have been thriving together with the same foster family that desires to adopt them. Therefore, we find upon review of the entire record that the trial court's findings under R.C. 2151.414(E)(1) are supported by competent, credible evidence that Father failed to remedy the conditions that caused the children to be placed in the agency's custody

from the hospital. We are not convinced that the court's findings are against the manifest weight of the evidence as to create a miscarriage of justice and therefore cannot reverse on that ground. *In re M.M.*, 8th Dist. Cuyahoga No. 79947, 2002 Ohio App. LEXIS 463, at 13-15.

{¶ 30} Father does not dispute the trial court's specific finding for any one factor under R.C. 2151.414(E), instead he argues generally that the trial court placed too much emphasis on Father's prior convictions as justification to grant custody to CCDCFS. While not explicitly stated, this general argument is related to the trial court's finding that "[t]he parent has been convicted of or pleaded guilty to an offense listed in ORC §2151.414(E)(6) or §2151.414(E)(7)." Father does have two prior convictions that are enumerated in R.C. 2151.414(E)(6) and (E)(7) because he pled guilty to violations of R.C. 2907.02 and 2925.02. However, under divisions (E)(6) and (7), to meet the condition, the parent must have been convicted of the offense and "the child or a sibling of the child was a victim of the offense[.]" There is no evidence in the record that the victim of Father's offenses was one of Father's children or a sibling of the children. Therefore, the findings of the conditions under divisions (E)(6) and (7) are not supported by competent and credible evidence.

{¶ 31} However, the trial court need only find one condition under division (E) to be required to find F.M. and I.M. could not be placed with either of their parents within a reasonable time or should not be placed with either parent. *In re S.C.*, 8th Dist. Cuyahoga No. 102350, 2015-Ohio-2410, at ¶ 30. As stated above, we clearly and convincingly find the court's findings pursuant to division (E)(1) were

based on competent and credible evidence. Therefore, based on the trial court's findings pursuant to R.C. 2151.414(E)(1), the juvenile court was required to find that F.M. and I.M. could not be placed with one of their parents within a reasonable time or should not be placed with either parent. *See, e.g., In re C.H.*, 8th Dist. Cuyahoga Nos. 82258 and 82852, 2003-Ohio-6854, ¶ 58, citing *In re Glenn*, 139 Ohio App.3d 105, 113, 742 N.E.2d 1210 (8th Dist.2000).

I. Second Prong of R.C. 2151.414(B)(1) and 2151.353(A)(4)

{¶ 32} The second prong for both children's permanent custody analysis requires the court to determine whether permanent custody to CCDCFS is in the best interest of the child under R.C. 2151.414(D)(1), which states:

In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, 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 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.

The court is required to consider each factor listed in R.C. 2151.414(D)(1)(a)-(e), but no one factor is given greater weight than the others. *In re T.H.*, 8th Dist. Cuyahoga No. 100852, 2014-Ohio-2985, ¶ 23, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Importantly, only one of the factors in R.C. 2151.414(D)(1) is required to support a finding that permanent custody is in a child's best interest and to terminate parental rights. *In re J.C-A.*, 8th Dist. Cuyahoga No. 109480, 2020-Ohio-5336, ¶ 80.

{¶ 33} The court has considerable discretion in weighing the factors in R.C. 2151.414(D)(1) such that we review the court's determination of a child's best interest for abuse of discretion. *In re P.B.*, 8th Dist. Cuyahoga Nos. 109518 and 109519, 2020-Ohio-4471, ¶ 76, citing *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47. "A juvenile court abuses its discretion where its decision is unreasonable, arbitrary or unconscionable." *In re C.T.*, 8th Dist. Cuyahoga No. 110303, 2021-Ohio-2274, ¶ 72, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 34} In its February 8, 2021 journal entry, the court stated that it considered the required factors pursuant to R.C. 2151.414(D)(1):

Therefore it is in the best interest of the child to be placed in the permanent custody of the Cuyahoga County Division of Children and Family Services;

Upon considering the interaction and interrelationship of the child with the child's parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period; 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; and, the report of the Guardian ad Litem, the Court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the child and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

The trial court was only required to find one of the factors, and as discussed above, there is evidence to support findings under R.C. 2151.414(D)(1)(a) through (e). For example, the court heard testimony of the children's relationship with both Father and Mother during visits as well as the recommendations of both children's guardians, who each recommended that permanent custody to CCDCFS was in the best interest of the children pursuant to R.C. 2151.414(D)(1)(a) and (b). The court also heard testimony regarding both children's custodial history of essentially being in the custody of CCDCFS since birth. The court also considered pointedly in its entry that the children are both in the same foster home "thriving" with a family that wants to adopt both of them, thereby considering the children's need for a legally secure permanent placement.

{¶ 35} Father does not allege that any of the court's findings pursuant to R.C. 2151.414(D)(1) were unsupported by the evidence in the record. The trial court considered all the relevant factors, and our review of the record has shown the trial court did not abuse its discretion in finding permanent custody to CCDCFS was in

the best interest of the children. We find clearly and convincingly find that the trial court's decision to grant permanent custody of F.M. and I.M. to CCDCFS was supported by competent and credible evidence and was not against the manifest weight of the evidence.

{¶ 36} Father's assignment of error is overruled.

{¶ 37} 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.

MARY EILEEN KILBANE, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
EILEEN A. GALLAGHER, J., CONCUR