

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: G.E.
 T.E.

C.A. Nos. 22AP0043
 22AP0044

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE Nos. 2020 JUV-C 000696
 2020 JUV-C 000697

DECISION AND JOURNAL ENTRY

Dated: June 30, 2023

FLAGG LANZINGER, Judge.

{¶1} Appellant, P.W. (“Mother”), appeals from a judgment of the Wayne County Court of Common Pleas, Juvenile Division, that placed her two minor children in the permanent custody of Wayne County Children Services Board (“CSB”). This Court affirms.

I.

{¶2} Mother is the biological mother of G.E., born May 27, 2009; and T.E., born January 27, 2011. The children’s father did not appeal the permanent custody judgment.

{¶3} On September 3, 2020, CSB filed complaints, alleging that G.E. and T.E. were neglected and dependent children. At that time, the children were living solely with Father because Mother was incarcerated on federal convictions of identity theft and wire fraud. The complaints alleged that the children were living in an unsafe and dirty home, where they were exposed to drug

use by Father and other adults; and that they were not attending school or otherwise receiving appropriate care. The children were taken into emergency custody that day.

{¶4} On September 24, 2020, the trial court adjudicated the children dependent and dismissed the allegations of neglect, based on an agreement between the parties. The court later placed the children in the temporary custody of CSB and adopted the case plan as an order of the court. By that time, Mother had been released from incarceration and was on probation through the federal court.

{¶5} The following day, CSB filed an amended case plan to add a substance abuse component for Mother because she had submitted drug tests to her probation officer that tested positive for methamphetamine. The trial court adopted the amended case plan, which required Mother to engage in substance abuse treatment and demonstrate sobriety; complete a family mental health assessment at the Village Network, or another agency approved by CSB, and follow all treatment recommendations; and obtain and maintain stable income and housing.

{¶6} For eight months after the case plan was adopted, Mother failed to work with CSB or engage in reunification services under the case plan. Because Mother violated the conditions of her probation by repeatedly testing positive for methamphetamine and/or amphetamine, she was ordered by the criminal court to complete a 30-day drug treatment program. She continued to test positive for drugs after she was released from that program.

{¶7} Neither parent attended a court hearing on June 28, 2021. At that time, the trial court found that the parents had not made sufficient case plan progress and ordered CSB to move for permanent custody. CSB initially moved for permanent custody on August 5, 2021.

{¶8} Meanwhile, before CSB filed its initial permanent custody motion, Mother had again violated her probation by testing positive for drugs, so the federal court ordered her to

complete a 120-day drug treatment program. CSB later learned that Mother was making progress toward sustained sobriety in that program. Consequently, CSB withdrew the August 2021 permanent custody motion.

{¶9} The trial court extended temporary custody for another six months but, aside from achieving and maintaining sobriety, Mother did not comply with the other requirements of the case plan. She failed to verify that she had stable housing or income, and she did not complete the required mental health assessment. Moreover, Mother continued to be “deceit[ful]” with the caseworker and the guardian ad litem about almost every aspect of this case.

{¶10} On January 14, 2022, the agency again moved for permanent custody of G.E. and T.E. The trial court held a three-day hearing on the motion on April 5, June 2, and June 14, 2022. Between the first and second day of the hearing, Mother completed the family mental health assessment that was required by the case plan. The psychologist who evaluated her testified on the second day of the hearing. He had diagnosed Mother with depression, anxiety, and dependent personality disorder. He explained that Mother’s dependent personality disorder is characterized by her inability to make her own decisions and her history of involvement with controlling and/or abusive men. The psychologist opined that Mother would need therapy for at least a year, targeted at her dependence on others, for Mother to reduce the likelihood that she will again place herself and others at risk of being controlled or abused by her romantic partners.

{¶11} Following the hearing, the trial court terminated parental rights and placed G.E. and T.E. in the permanent custody of CSB. Mother appeals and raises two assignments of error.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT
DENIED APPELLANT COUNSEL’S REQUEST FOR A CONTINUANCE

WHEN COUNSEL FOR THE APPELLANT DID NOT RECEIVE TRIAL EXHIBITS FROM [CSB] UNTIL LATE NIGHT THE DAY BEFORE THE PERMANENT CUSTODY HEARING.

{¶12} Mother's first assignment of error is that the trial court erred in denying her request for a continuance of the permanent custody hearing. This Court reviews the trial court's decision to grant or deny a continuance for an abuse of discretion. *In re L.M.*, 9th Dist. Summit No. 29687, 2020-Ohio-4451, ¶ 5. Mother's trial counsel requested a continuance of the first day of the hearing, April 5, 2022, because CSB had just given him notice of its hearing exhibits the day before. Counsel did not dispute that he had timely received the documents during discovery. His sole complaint was that CSB had not provided sufficient notice of the specific documents it intended to present as exhibits.

{¶13} Mother's counsel noted that CSB had provided the parents with "hundreds" of documents during discovery, and it has been his experience that opposing counsel is required to provide at least seven days' notice of the exhibits it intends to present at the permanent custody hearing. After discussing the matter with the parties off the record, the trial judge noted on the record that, although juvenile courts in some nearby counties have such a local rule, Wayne County does not. Consequently, Mother's counsel cited no authority to support the argument that CSB did not provide timely notice of its exhibits. On appeal, Mother has again cited no authority to support her argument.

{¶14} Moreover, the trial court granted a brief recess before beginning the hearing to allow trial counsel time to review CSB's exhibits. CSB did not refer to most of its exhibits on the first day of the hearing and did not seek to admit any of them into evidence until the third day of the hearing, which was more than two months later. Because Mother has failed to demonstrate

that the trial court erred or prejudiced her defense by denying her request for a continuance, her first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY
TERMINATING MOTHER’S PARENTAL RIGHTS AND GRANTING
PERMANENT CUSTODY OF THE CHILD TO [CSB].

{¶15} Mother’s second assignment of error challenges the evidence supporting the permanent custody decision. Before a juvenile court may terminate parental rights and award permanent custody of a child to a proper moving agency, it must find clear and convincing evidence of both prongs of the permanent custody test: (1) that the child is abandoned; orphaned; has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period; the child or another child of the same parent has been adjudicated abused, neglected, or dependent three times; or that the child cannot be placed with either parent, based on an analysis under R.C. 2151.414(E); and (2) that the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under R.C. 2151.414(D)(1). R.C. 2151.414(B)(1) and 2151.414(B)(2); *see also In re William S.*, 75 Ohio St.3d 95, 98-99 (1996). Clear and convincing evidence is that which will “produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” (Internal quotations omitted.) *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 368 (1985), quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶16} In considering whether the juvenile court’s judgment is against the manifest weight of the evidence, this Court “weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment]

must be reversed and a new [hearing] ordered.” (Internal quotations and citations omitted.) *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶ 20. When weighing the evidence, this Court “must always be mindful of the presumption in favor of the finder of fact.” *Id.* at ¶ 21.

{¶17} The trial court found that the first prong of the permanent custody test was satisfied in this case under R.C. 2151.414(B)(1)(d) because G.E. and T.E. had been in the temporary custody of CSB for at least 12 months of a consecutive 22-month period. Mother does not dispute that finding, which is supported by the record. G.E. and T.E. were adjudicated dependent on September 24, 2020. *See* R.C. 2151.414(B)(1) (the period of temporary custody for “12 of 22” purposes begins on the earlier of the date of adjudication or 60 days after the children were removed from the home). The children remained in the temporary custody of CSB throughout this case. When CSB filed its motion for permanent custody on January 14, 2022, the children had been in CSB’s temporary custody for more than 15 months of a consecutive 22-month period.

{¶18} Mother does challenge the trial court’s finding that permanent custody was in the best interest of the children. This Court’s best interest review focuses on the best interest factors set forth in R.C. 2151.414(D). In making its best interest determination, the trial court was required to consider the statutory best interest factors, which include: the interaction and interrelationships of the child, the wishes of the child, the custodial history of the child, the child’s need for permanence and whether that can be achieved without a grant of permanent custody, and whether any of the factors outlined in R.C. 2151.414(E)(7)-(11) apply.¹ R.C. 2151.414(D)(1)(a)-(e); *see In re R.G.*, 9th Dist. Summit Nos. 24834 and 24850, 2009-Ohio-6284, ¶ 11.

¹ The trial court did not find that any of those provisions applied to the facts of this case pertaining to Mother.

{¶19} Mother's interaction with the children was limited to supervised visitation throughout this case. Mother attended a total of 14 in-person visits during this case. She had virtual visits while she was in drug treatment and again for the last eight months of the case. CSB stopped Mother's in-person visits after Mother attended a visit with what appeared to be bed bug bites on her arms. CSB informed Mother that she would have to demonstrate that she was living in a home without bed bugs before she could return to the visitation center. Although CSB offered to pay to have Mother's home inspected and/or exterminated, she refused to identify the owner of the home, whose permission was required for anyone to conduct an inspection and/or extermination.

{¶20} Mother admittedly had trouble finding her own housing during this case because of her criminal convictions, so she apparently stayed with people she knew who already had housing. Throughout this case, however, she refused to keep CSB apprised about where and with whom she was living. Mother's failure to cooperate with CSB to allow the agency to inspect the different places and people with whom she lived also prevented her from progressing to visits with the children in her home.

{¶21} Throughout this case, Mother refused to honestly communicate with the caseworker, the guardian ad litem, or her probation officer. The caseworker gave numerous examples of Mother lying to others during this case, including the children, and attempting to support her lies with fabricated documents and text messages. At one point, Mother presented the caseworker and the guardian ad litem with a false lease, signed by someone who was not the landlord, to an apartment where she claimed to live by herself. Even when the caseworker confronted her with proof that the apartment was, in fact, leased to a man named Jason, Mother continued to lie about who was living in the apartment.

{¶22} By the time of the hearing, Mother admitted that she and Jason were living together in that apartment, but CSB had no opportunity to investigate Jason to determine whether he was an appropriate person to be around G.E. and T.E. Moreover, Mother and Jason were planning to move elsewhere because the apartment was too small, and Mother was potentially facing another probation violation because she had lied to her probation officer about where and with whom she was living.

{¶23} The interaction of G.E. and T.E. in the foster home had been generally positive. The children were bonded to each other and felt safe and secure in the foster home. The foster mother, who was not interested in adopting the children because of her age, had provided them with a loving home and was willing to continue doing so. Both children had been diagnosed with anxiety and trauma-based mental health problems and the foster mother had ensured that they regularly attended counseling to address those concerns. The source of their trauma had not yet been discovered by their counselors.

{¶24} At the time of the hearing, G.E. was temporarily residing in a mental health facility because she had repeatedly attempted to harm herself. Mother had been invited to participate in Zoom meetings about G.E.'s treatment plan at the facility, but she attended only one session and participated only minimally, when prompted by the caseworker. The caseworker did not believe that Mother was prepared to appropriately address her children's mental health problems.

{¶25} Early in this case, the children expressed a desire to return to Father's home. By the time of the hearing, their priority was that they remain together and were happy to stay with their current foster mother. The children, then 11 and 13 years old, had expressed disappointment that Mother had failed to work on the reunification requirements of the case plan. G.E. felt abandoned by Mother and T.E. was reluctant to believe her because she had lied to him so often.

The guardian ad litem recommended permanent custody to CSB, emphasizing that Mother had ample time to work on the case plan but failed to address her mental health concerns until the last minute and did not secure stable housing. She was concerned that Mother had not been truthful with her during this case and did not know if she could believe anything she said.

{¶26} The children had been in the temporary custody of CSB for well over a year by the time of the hearing and needed a legally secure permanent placement. CSB had been unable to find any suitable friends or relatives who were willing and able to provide the children with a permanent home. The trial court reasonably concluded that a legally secure permanent placement would be achieved by placing the children in the permanent custody of CSB.

{¶27} Given the evidence presented at the permanent custody hearing, Mother has failed to demonstrate that the trial court lost its way in concluding that permanent custody was in the best interest of G.E. and T.E. *See Eastly* at ¶ 20. Mother's second assignment of error is overruled.

III.

{¶28} Mother's assignments of error are overruled. The judgment of the Wayne County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Wayne, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JILL FLAGG LANZINGER
FOR THE COURT

HENSAL, J.
CARR, J.
CONCUR.

APPEARANCES:

ERIC D. HALL, Attorney at Law, for Appellant.

ANGELA WYPASEK, Prosecuting Attorney, and TIMOTHY BOGNER, Assistant Prosecuting Attorney, for Appellee.