

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

IN THE MATTER OF:	:	O P I N I O N
S.P. AND T.P.,	:	
DEPENDENT CHILDREN	:	CASE NOS. 2011-L-032
	:	and 2011-L-033

Civil Appeals from the Lake County Court of Common Pleas, Juvenile Division, Case Nos. 2008 DP 1974 and 2008 DP 1975.

Judgment: Affirmed.

Matthew C. Bangerter, 38109 Euclid Avenue, Willoughby, OH 44094 (For Appellants-S.P. and T.P.).

Charles E. Coulson, Lake County Prosecutor, and *Teri R. Daniel*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Appellee-Lake County Department of Job and Family Services).

Anita B. Staley, Barthol & Staley, L.P.A., 7327 Center Street, Mentor, OH 44060 (Guardian ad litem).

DIANE V. GRENDELL, J.

{¶1} Appellants, T.P. and S.P., appeal from the Judgment of the Lake County Court of Common Pleas, Juvenile Division, granting permanent custody of T.P. and S.P. to appellee, Lake County Department of Job and Family Services (LCDJFS). The issue to be determined in this case is: When a child's parent is frequently incarcerated and is alcohol dependent, is it in that child's best interest to grant permanent custody to a children's services agency? For the following reasons, we affirm the decision of the court below.

{¶2} Geri Johnson is the biological mother of T.P., born on March 28, 2000, and S.P., born on January 22, 2003. Steven Pounds is the biological father of both children.

{¶3} On October 2, 2008, LCDJFS filed two complaints, alleging that T.P. and S.P. were dependent children. The complaints alleged that the Euclid Police Department received a report of a child running around an apartment building. Upon their arrival, police officers noticed that the child's mother, Johnson, was in the hallway, intoxicated. The officers were unable to locate T.P. at an address provided by Johnson. The complaint also asserted that a social worker received a police report documenting an incident of abuse between Johnson and her boyfriend, and also stating that officers responding to the abuse incident noted that T.P. had a bump on his head and redness on his neck.

{¶4} On November 17, 2008, the magistrate issued two Magistrate Decisions, finding both T.P. and S.P. to be dependent children under R.C. 2151.04 and granting protective supervision to LCDJFS. The trial court judge adopted these decisions on November 17, 2008.

{¶5} On March 23, 2009, LCDJFS filed a motion requesting emergency temporary custody of T.P. and S.P., asserting that they had been left at home unattended. At the time, T.P. was eight years old and S.P. was six years old. The motion also asserted that the children had recently been placed in shelter care upon Johnson's arrest for Disorderly Conduct. On March 24, 2009, a Magistrate Order was issued, granting temporary custody of the children to LCDJFS. The magistrate found that T.P. and S.P. were in "immediate danger from [their] surroundings[,] *** removal

was necessary to prevent immediate or threatened physical or emotional harm,” and removal was in their best interest.

{¶6} On February 17, 2010, LCDJFS filed a Motion to Extend Temporary Custody of T.P. and S.P., asserting that continued custody was in the children’s best interest, due to Johnson’s alcohol dependency, her arrest for a probation violation, her inability to follow through with services, and the children’s behavioral issues. On April 21, 2010, the Magistrate Decision granted LCDJFS the extension of temporary custody. The Magistrate Decision was adopted by the trial court on April 27, 2010.

{¶7} On September 15, 2010, LCDJFS filed a Motion for Permanent Custody, asserting that Johnson continuously failed to remedy the conditions causing the children to be placed outside of her home and had repeatedly failed to follow through with the case plan.

{¶8} Hearings were held in this matter on January 5, 26, and 31, 2011, and on February 9 and 10, 2011. Johnson appeared at the hearing on all dates except January 31. On January 31, the court took an approximately two hour recess in an attempt to locate Johnson. Johnson did not appear and the hearings continued. T.P. and S.P.’s father, Pounds, did not appear at any of the proceedings. The following testimony was presented at the hearings.

{¶9} John Bender, the assistant principal at Royalview Elementary School, testified that T.P. and S.P. attended Royalview in 2008 and 2009. During this time, both children were sent to his office on several occasions. He stated that T.P. was sent to the office for “putting [his] hands on other students” and that S.P. was sent to the office for similar behavior, as well as for using inappropriate language.

{¶10} Shelly Pulling, the principal at T.P.'s school, testified that T.P. was placed on a behavioral plan for students who are "experiencing difficulty in school" because he had caused disruptions due to his swearing and rambunctious behavior. She stated that T.P. receives support for students who are "emotionally disturbed," and was placed in a special classroom for children with similar behavioral problems.

{¶11} Bonnie Shinhearl, a mental health therapist at Crossroads, conducted individual counseling sessions with T.P., S.P., and Johnson. She testified that both children have reactive attachment disorder (RAD). She explained that she counsels T.P. regarding his "defiant behavior" and works with S.P. on her aggressive behaviors and her "need for control." Shinhearl testified that S.P. attends the PHP program at Crossroads, which is a "therapeutic school that houses children with extreme behavior problems that can't be managed *** in a typical school setting."

{¶12} Regarding counseling sessions with Johnson, Shinhearl testified that Johnson has weekly appointments, but missed three appointments, including her last two, due to conflicts with Johnson's work schedule. Shinhearl testified that Johnson "has made progress" in her counseling sessions and that she has "made improvement in her understanding" of her children's needs. However, Shinhearl explained that Johnson needs to be able to understand how to use "specific interventions" to encourage positive behaviors in her children, due to their RAD, and that there is still "a lot of work to be done."

{¶13} Shinhearl also testified that T.P. and S.P. need to have a predictable schedule and a controlled environment. She stated that they also need a "consistent caregiver" who does not lose her temper.

{¶14} Melissa Flick, a supervisor with LCDJFS, testified that she was the supervisor on T.P. and S.P.'s case. Flick testified that LCDJFS had protective supervision of the children in 2007, which continued until March of 2008 and then resumed again in November of 2008. Flick testified that LCDJFS pursued permanent custody because of concerns regarding Johnson's lack of compliance with the case plan, issues with her ability to maintain sobriety, and questions about her ability to refrain from being arrested and incarcerated. Flick testified that Johnson did not comply with the mental health goal in the case plan and also did not meet the substance abuse goal, due to several relapses. Flick testified that Johnson told her she was under the influence of prescription drug medication on one occasion. Flick stated that Johnson refused to sign release forms, as required by the case plan, thereby preventing LCDJFS from monitoring the mental health and alcohol-use case plan goals. Flick also identified Johnson's potential inability to pay for housing as a concern.

{¶15} Flick stated that the children are clearly bonded to Johnson. She also stated that Johnson had supervised visitation at Crossroads and exercised this visitation regularly, except while incarcerated.

{¶16} Flick explained that Johnson was able to comply with the case plan for a period of time but that this compliance "was superficial because there weren't any changes occurring with her situation."

{¶17} Regarding the foster homes that T.P. and S.P. had been placed in, Flick testified that the children had been in three different foster homes while in LCDJFS' custody. The children were removed from the first foster home due to "inappropriate discipline," which resulted in an injury to T.P.'s lip. The children were removed from the

second foster home due to concerns regarding the children's hygiene, discipline that included taking away T.P.'s glasses, and the foster parents' failure to allow T.P. to participate in a football program. The children are currently placed in a third foster home. On one weekend, T.P. and S.P. were placed in a home with a respite provider and a physical altercation took place between the two children.

{¶18} Suzanne Heslop, a social worker for LCDJFS, testified that she had been working on T.P. and S.P.'s case since 2007. She explained that LCDJFS had protective supervision of the children starting in September of 2007 and this continued until March of 2008, when the case was closed. In August of 2008, LCDJFS received a referral regarding the children being left alone and then resumed protective supervision. She testified that on March 18, 2009, LCDJFS received a referral that T.P. and S.P. had been left alone in the middle of the night and that LCDJFS subsequently received shelter care of the children.

{¶19} Heslop testified that she was aware of at least five times that Johnson had been incarcerated from 2006 to 2010. Heslop testified that Johnson admitted to drinking beer in September of 2010.

{¶20} Heslop stated that Johnson did not meet her case plan goals as they related to drug and alcohol use and she failed to complete a drug and alcohol program on six different occasions. In addition, Heslop testified that Johnson did not meet the case plan recommendations as they related to her mental health. Heslop was unable to obtain complete information about Johnson's mental health treatment due to Johnson's failure to sign release forms. However, Johnson did complete the required parenting class.

{¶21} Heslop testified that it was “hard to say” whether Johnson complied with the stable housing goal because Johnson had obtained her apartment less than a month prior to the trial and had not shown Heslop a pay stub that would verify Johnson could continue to pay rent. She stated that the apartment has two bedrooms and that Johnson indicated she would sleep in the living room and each child would have his or her own bedroom.

{¶22} Heslop explained that when Johnson visited with T.P. and S.P., they were typically happy and excited to see her. Johnson was “usually always at visitation” and often brought gifts or food for the children. Visitation between the children and Johnson was “typically nice.” Heslop also stated that she believed there were some indications of “attachment and bonding” between the children and Johnson. She testified that the children are close to Johnson and “care very much about her.” Heslop stated that the children were “scared” to be adopted.

{¶23} Heslop testified that she was aware that abuse occurred in the first foster home where the children lived and that she heard T.P. was “picked up by his legs” by his foster father and had injured his lip.

{¶24} Meghan Bohinc, a mental health therapist and case manager at Crossroads, testified that she provided counseling for T.P., S.P., and Johnson. She counseled the parties on issues related to reunifying the children with their mother, dealing with changes in their lives, and with “attachment issues.” Bohinc testified that she wrote a letter to LCDJFS recommending that Johnson participate in family counseling sessions with T.P. and S.P. She was not aware of Johnson participating in

any of these family sessions, although Johnson did express an interest in participating in such sessions.

{¶25} Eve Smith, a mental health and drug counselor at Catholic Charities, testified that Johnson came in for a drug and alcohol assessment in November of 2009, and Smith recommended that she complete counseling sessions. Johnson did not complete this recommendation because she moved from Geauga County to Lake County. Smith testified that Johnson was diagnosed as alcohol dependent. Smith stated that Johnson told her she had a continued sobriety period for several months, but admitted to having a problem with alcohol.

{¶26} Richard Naylor, a drug and alcohol counselor at the Lake-Geauga Center, testified that Johnson was referred to his relapse group in April of 2010. Johnson completed the relapse group, as well as an after-care group and was discharged on October 28, 2010. Naylor stated that, as part of Johnson's discharge, he recommended that she attend Alcoholics Anonymous (AA) meetings and abstain from the use of alcohol. He stated that although Johnson successfully completed the program, if he had been aware that Johnson had relapsed during her treatment at the Lake-Geauga Center, he would not have considered her completion of the program to be successful.

{¶27} Tara Cuturic, an intake specialist at Pathways, testified that Johnson was referred to Pathways by LCDJFS in August of 2010. A mental health assessment was completed and it was recommended that Johnson participate in counseling, but Johnson did not complete such counseling.

{¶28} Lynn Davis, a residential treatment counselor at Oak House, testified that Johnson was referred to Oak House through jail treatment. Johnson was admitted for

three months of residential treatment for her alcohol addiction. Davis diagnosed Johnson as alcohol dependent and found that she was also dependent on cocaine. Johnson admitted to Davis that she consumed about thirty beers and two-fifths of liquor a week, and had been doing so for the past two years. Davis testified that Johnson also admitted to using marijuana occasionally. Although the program supervisors recommended that Johnson complete twelve weeks of after-care, Johnson did not start or complete such after-care at Oak House.

{¶29} Amber Thomas, a supervisor and therapist at Crossroads, is trained in working with children who have RAD and was submitted as an expert witness. She testified that RAD is a diagnosis used to describe children who have had “attachment breaks” in their early childhood and who have “a pattern of difficulty in establishing and being in relationships with other people.” She testified that attachment breaks can occur when children experience trauma, witness violence, or have a parent who has drug and alcohol problems. Thomas stated that children with RAD engage in behavior designed to “keep people distant.” Thomas testified that both T.P. and S.P. met the criteria for RAD. She explained that children with RAD need “as much stability and consistency as possible in terms of their living situation.”

{¶30} Thomas stated that if T.P. and S.P. were returned to a home where a parent could not maintain stability or sobriety, “the prognosis would not be good.” She also stated that “quite a bit” of work was left to be done by Johnson and that the time frame for such work to be completed would be “longer than a year.”

{¶31} Thomas also admitted that Dr. Chavinson, a psychiatrist who works with Crossroads, did not sign paperwork confirming T.P.’s RAD diagnosis. However,

Thomas claimed that this was due to a failure to update the paperwork correctly and T.P.'s therapists had properly diagnosed him with RAD.

{¶32} Officer Edward Miller of the Willowick Police Department testified that on March 22, 2009, he responded to a complaint that Johnson was an “unwanted guest” at an individual's home. He testified that Johnson appeared to be under the influence of alcohol, based on her slurred speech, bloodshot eyes, and the odor of alcohol on her breath. Officer Miller testified that T.P. and S.P. were with Johnson at the time of this incident and “appeared to be dirty.” Johnson was subsequently arrested for Disorderly Conduct based on her public intoxication and police filed notice of placement in a shelter for the children.

{¶33} Benedetto Bruno, a police officer for the Willowick Police Department, testified that on September 29, 2010, he responded to a call of an unwanted guest. Bruno testified that he encountered Johnson, who appeared intoxicated and gave him fraudulent information about her identity.

{¶34} Officer Charles Krejsa, a police officer for the Willowick Police Department, testified that on January 26, 2011, while on patrol, he encountered a commotion involving Johnson in a parking lot. Officer Krejsa testified that Johnson was uncooperative and had the odor of alcohol on her breath. Johnson provided false information about her identity, was arrested, and was charged with Disorderly Conduct.

{¶35} Raymond Gandolf, Johnson's probation officer, testified that she was placed on probation for a Domestic Violence conviction in October of 2007 and was unsuccessfully terminated from probation in May of 2010. He testified that she violated her terms of probation by failing to comply with the provisions requiring her to refrain

from consuming alcohol and to obey all laws of the state of Ohio. He stated that Johnson admitted to the continued use of alcohol in 2007, and in June of 2008, he noticed the odor of alcohol on her breath.

{¶36} Gandolf testified that Johnson had been incarcerated in July of 2008 for approximately 45 days. In September of 2008, Johnson was found guilty of a probation violation and given a 168 day sentence, with 150 days suspended. In May of 2009, Johnson was found guilty of a probation violation and sentenced to 150 days in jail, 90 of which she served in Oak House. In the spring of 2010, Johnson was incarcerated for a probation violation and served approximately 60 days in jail.

{¶37} Diane Wakeley, a therapist and counselor who previously worked at Crossroads and developed Crossroads' attachment and bonding program, testified as an expert witness. She testified that she had reviewed Crossroads' records related to T.P.'s and S.P.'s RAD diagnoses. She stated that the assessment instrument used by Crossroads has been rejected by most clinicians as a standardized instrument. Wakeley testified that the testing may not have been accurate due to stress caused by the changes occurring in the children's lives. Wakeley did not believe the assessment conducted was a "solid assessment" and felt that the results of the assessment should be called into question.

{¶38} Johnson testified that she has been attending 12-step Christian group meetings as well as AA meetings. She stated that she has housing for the children and that each child would have his or her own bedroom in her apartment. She testified that she has a job cleaning houses. She also testified that she did not appear at the hearing on January 31, 2011, because she did not know that the hearing was occurring.

Johnson also testified that she takes medication for anxiety and post-traumatic stress disorder and that she takes the medication as prescribed.

{¶39} The guardian ad litem (GAL), Attorney Anita Staley, testified that she believed granting permanent custody of the children to LCDJFS would be in their best interest. Staley stated that the children need consistency and that Johnson “has not exhibited stability or consistency for the children.” She explained that the children had “serious emotional and behavioral issues that existed well before [the] children were in the temporary custody of [LCDJFS].” She believed that while in their mother’s care, the children have “had a history of chaos and uncertainty.” Staley testified that Johnson failed continuously and repeatedly to remedy the conditions leading to the removal of the children and she did not believe that this situation would change in the foreseeable future.

{¶40} In her GAL report, filed on November 26, 2010, Staley stated that she had been in contact with Johnson, T.P., S.P., and various LCDJFS workers during the course of her investigation and that she had seen the children interact with Johnson during visitation. Staley also observed the children in their current foster home. Staley noted that the children expressed their wishes to be reunified with their mother, but that they were bonded with the foster family and feel safe in the foster home. Staley noted that she did not believe it was in the children’s best interest to remain with their mother because she cannot provide consistency and had trouble meeting the children’s basic needs.

{¶41} On March 2, 2011, the trial court issued a Judgment Entry, granting permanent custody of T.P. and S.P. to LCDJFS. The court found that Johnson “either cannot, or will not, provide the environment necessary for the return of the children.” The court found reasonable efforts had been made to avoid the removal of T.P. and S.P., but that returning the children to Johnson would be contrary to their best interests. The court found that Johnson has not been able to properly parent the children and will not be able to do so in the future. The court also found that Johnson had not complied with the case plan and has a “severe and chronic” chemical dependency. The trial court stated that it considered the factors in R.C. 2151.414(D) and that Johnson does not have the ability to parent the children, the wishes of the children were considered, the children had been in the custody of LCDJFS for over twelve of the last twenty-two months, and the children need a secure placement that Johnson is unable to provide. The court also found that Johnson’s chemical dependency makes her unable to provide an adequate home, the father has demonstrated a lack of commitment to the children, and the children cannot be placed with either parent within a reasonable time.

{¶42} T.P. and S.P. timely appeal and assert the following assignment of error:

{¶43} “The trial court erred by granting permanent custody of T.P. and S.P. to the Lake County Department of Job and Family Services contrary to the manifest weight of the evidence.”

{¶44} “[P]arents who are suitable persons have a ‘paramount’ right to the custody of their minor children.” *In re Murray* (1990), 52 Ohio St.3d 155, 157 (citations omitted). “The fundamental interest of parents is not absolute, however.” *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, at ¶11. The “extreme disposition” of permanently

terminating a parent's rights with respect to a child "is nevertheless expressly sanctioned *** when it is necessary for the 'welfare' of the child." *In re Cunningham* (1979), 59 Ohio St.2d 100, 105. "[T]he *fundamental* or *primary* inquiry at the dispositional phase of these juvenile proceedings is not whether the parents of a previously adjudicated 'dependent' child are either fit or unfit," rather, it is "the best interests and welfare of that child [that] are of paramount importance." *Id.* at 106 (emphasis sic).

{¶45} R.C. 2151.414(B) is the applicable standard that a trial court must apply to determine the outcome of a motion for permanent custody. The statute provides:

{¶46} "(B)(1) Except as provided in division (B)(2) of this section, the 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:

{¶47} "(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, *** 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.

{¶48} "(b) The child is abandoned.

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

{¶50} “(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 ***.” R.C. 2151.414(B)(1)(a)-(d).

{¶51} “Assuming the juvenile court ascertains that one of the four circumstances listed in R.C. 2151.414(B)(1)(a) through (d) is present, then the court proceeds to an analysis of the child’s best interest.” *In re T.B.*, 11th Dist. No. 2008-L-055, 2008-Ohio-4415, at ¶34. “In determining the best interest of a child ***, the court shall consider all relevant factors, including, but not limited to, *** [t]he 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; *** [t]he custodial history of the child ***; [and] [t]he 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.” R.C. 2151.414(D)(1)(a),(c), and (d).

{¶52} When reviewing the juvenile court’s findings, this court applies the civil manifest-weight-of-the-evidence standard. *In re Lay* (1986), 25 Ohio St.3d 41, 42 (citation omitted). “Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *State v. Wilson*, 113 Ohio St.3d

382, 2007-Ohio-2202, at ¶24, quoting *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, at the syllabus. “A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.” *Id.*, quoting *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 81.

{¶53} T.P. and S.P. argue that the trial court improperly found they could not or should not be placed with Johnson in a reasonable time, as required under R.C. 2151.414(E).

{¶54} “In determining *** whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence.” R.C. 2151.414(E). “If the court determines, by clear and convincing evidence, *** that one or more of the following exist as to each of the child’s parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent: (2) *** [C]hemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing ***. (4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child.” R.C. 2151.414(E).

{¶55} Although T.P. and S.P. assert that the trial court made findings as to only two of the R.C. 2151.414(E) factors, we note that “the existence of a single factor will support a finding that a child cannot be placed with either parent within a reasonable time.” *In re J. L. C.*, 11th Dist. No. 2010-T-0085, 2010-Ohio-5936, at ¶63, citing *In re*

Johnston, 11th Dist. No. 2008-A-0015, 2008-Ohio-3603, at ¶40 (citation omitted); *In re Jason S.*, 6th Dist. No. L-05-1264, 2006-Ohio-726, at ¶30 (“because one of the enumerated conditions existed, it was unnecessary for the juvenile court to address any of the other 15 conditions listed in R.C. 2151.414(E)”).

{¶56} In the present case, the trial court found that R.C. 2151.414(E)(2) applied because Johnson has “chronic chemical dependency” that is “so severe that it makes [her] unable to provide an adequate permanent home for the children at the present time.” See R.C. 2151.414(E)(2).

{¶57} T.P. and S.P. also argue that the trial court’s finding pursuant to R.C. 2151.414 (E)(2) is contrary to the evidence because Johnson is showing signs that “she may be ready to overcome her alcohol issues” and that she had begun the recovery process.

{¶58} However, the finding that Johnson has a chronic alcohol problem is supported by clear and convincing evidence. The testimony of Smith and Davis demonstrated that Johnson was alcohol dependent. Officers Miller and Bruno testified that Johnson was arrested in 2008 and 2009 and exhibited signs of intoxication. Gandolf testified that Johnson continually violated her probation due to her use of alcohol. Johnson herself admitted that she drank up to thirty beers per week. While Johnson asserts that she has started to make progress on her alcohol use, Officer Krejsa testified that Johnson appeared to be under the influence and was arrested as recently as January 26, 2011. Testimony also established that Johnson was frequently unable to complete alcohol treatment programs.

{¶59} In addition, although Johnson has had temporary periods of sobriety during incarceration or while in residential treatment programs, this is not sufficient evidence that she has remedied her alcohol addiction. See *In re T.F.*, 11th Dist. No. 2009-A-0039, 2010-Ohio-590, at ¶56 (temporary periods of sobriety, while in controlled environments such as jail or a treatment facility, are not evidence that a parent has solved her alcohol problem).

{¶60} Although Johnson asserts that she has made attempts to comply with the alcohol goals in the case plan and is improving, she has failed to actually complete these goals. Attempts at compliance with a case plan are “insufficient grounds upon which to rest a finding that [a parent] can be reunified with her children within a reasonable period of time.” *In re M.J.*, 11th Dist. No. 2011-A-0014, 2011-Ohio-2715, at ¶46. Where there is compliance with some aspects of the case plan but the problems which led to the initial removal still exist, a court may find that a child cannot be placed with the parent within a reasonable time. *In re S.M.*, 11th Dist. No. 2008-G-2858, 2009-Ohio-91, at ¶26; *In re Pihlblad*, 5th Dist. Nos. 2008CA0019 and 2008CA0020, 2008-Ohio-2776, at ¶32 (“where, despite marginal compliance with some aspects of the case plan, the exact problems which led to the initial removal remained in existence, a court does not err in finding the child cannot be placed with the parent within a reasonable period of time”).

{¶61} Regarding T.P. and S.P.’s father, the trial court found that he demonstrated a lack of commitment by failing to support the children or visit with the children. This was uncontroverted at the hearings, which the father did not attend. Therefore, the evidence supports the trial court’s finding that at least one of the R.C.

2151.414(E) factors applies to each parent, and the trial court did not err by finding that the children cannot be placed with either parent within a reasonable time.

{¶62} T.P. and S.P. also argue that granting permanent custody to LCDJFS was not in their best interest. They assert that the evidence showed they were well-bonded with Johnson and that LCDJFS placed the children in inappropriate foster homes.

{¶63} We first note that the trial court's judgment demonstrates it properly considered the factors required under R.C. 2151.414(D) regarding the best interests of the children.

{¶64} Regarding R.C. 2151.414(D)(1)(a) and (b), the evidence presented shows that the children did interact well with their mother and had a bond with her. The testimony of the GAL also establishes that the children wanted to live with Johnson, although they also felt "safe" with their foster parents.

{¶65} However, although the children have a bond with Johnson, she is unable to provide a secure home for the children. The testimony of T.P. and S.P.'s counselors, as well as the testimony of the GAL, established that it would not be in the best interest of the children to remain with their mother, due to her inability to meet their needs. Regarding R.C. 2151.414(D)(1)(d), the children's need for a legally secure placement is of special importance in this case. T.P. and S.P. have a strong need for a secure placement due to their RAD diagnoses. The testimony of Thomas, the children's therapist, as well as Staley, the GAL, emphasized their need for "consistency" and "stability" within their living situation. Thomas testified that the prognosis for the children would not be positive if they returned to a home with a parent who was inconsistent due to alcohol problems and frequent incarceration. Thomas also believed that Johnson

was unable to properly parent the children and handle the problems caused by their RAD.

{¶66} The weight of the testimony presented at trial showed that Johnson would not be able to provide a secure placement. Staley and Thomas testified that Johnson was unable to provide the consistency and stability that the children need. The testimony of several police officers, as well as Johnson's probation officer, demonstrated that Johnson has been frequently arrested and incarcerated. On one occasion, while the children were still living with Johnson, they had to be placed in shelter care due to Johnson's arrest. Johnson's incarceration is a relevant consideration when engaging in a best interest analysis and prevents her from being able to provide a secure home to the children. See *In re C.N.*, 8th Dist. No. 81813, 2003-Ohio-2048, at ¶32 (the trial court's best interest analysis was not an abuse of discretion when the court found that the children needed a legally secure placement due to the mother's history of substance abuse, rejections of drug treatment, and repeated incarceration); *In re A.P.*, 5th Dist. No. 10-CA-65, 2011-Ohio-1909, at ¶¶82-83 (a father's repeated incarceration was an issue to be considered in determining the child's best interest).

{¶67} In addition, Johnson's continued alcohol problem makes it difficult to consider her home a legally secure placement. Johnson's alcohol use has frequently led to her incarceration. In addition, her alcohol use had led to several incidents where the children were either left at home or not being supervised.

{¶68} T.P. and S.P. have also been in the custody of LCDJFS for at least 12 of the past 22 months. See R.C. 2151.414(D)(1)(c). The children have been in the

custody of LCDJFS since March of 2009. Moreover, during this time, Johnson has only had one unsupervised visit with the children and was allowed only supervised visitations at Crossroads.

{¶69} While T.P. and S.P. assert that moving to multiple foster homes created instability, this does not negate Johnson's inability to provide a secure home. See *In re* A.S., 9th Dist. Nos. 23064 and 23074, 2006-Ohio-2977, at ¶¶45-54 (although the children had been in several different foster placements while in the custody of children's services, it was in their best interest to be permanently removed from their parents' custody, as the parents could not provide a secure home). Although T.P. and S.P. experienced difficulty in their first two foster placements, the parties agree that they are currently living in a secure foster placement and are bonded to their foster family. Lisa Sturgill, the current foster parent of the children, testified that she is willing to continue as the children's foster parent until they are adopted. Moreover, Heslop testified that, although T.P. and S.P. have special issues related to their RAD, this would not cause difficulty in finding them a secure adoptive home.

{¶70} When considering Johnson's ongoing alcohol dependency issues, the pattern of arrests, including Johnson's recent arrest on January 26, 2011, and the children's need for stable environment due to their RAD, the trial court's decision to grant temporary custody of T.P. and S.P. to LCDJFS is not against the weight of the evidence.

{¶71} Finally, T.P. and S.P. assert that LCDJFS failed to make reasonable efforts to reunify the family during the child custody proceedings, prior to the termination of parental rights, as required by R.C. 2151.419(A).

{¶72} “In determining whether the agency made reasonable efforts [pursuant to R.C. 2151.419(A)(1)] to prevent the removal of the child from the home, the issue is not whether the agency could have done more, but whether it did enough to satisfy the reasonableness standard under the statute.” *In re Elliott*, 11th Dist. No. 2005-A-0018, 2006-Ohio-738, at ¶16, citing *In re Lewis*, 4th Dist. No. 03CA12, 2003-Ohio-5262, at ¶16. “‘Reasonable efforts’ does not mean all available efforts. Otherwise, there would always be an argument that one more additional service, no matter how remote, may have made reunification possible.” *Id.*

{¶73} In this case, LCDJFS has been involved in T.P.’s and S.P.’s lives from 2008 through the present time. During this period, Johnson was provided with counseling, case supervision, drug and alcohol assessments, mental health assessments, and supervised visitation through LCDJFS in an attempt to rectify the issues that led to the removal of the children and to encourage reunification. The only service not provided by LCDJFS was family counseling. However, Thomas’ testimony demonstrated that such counseling would be available to Johnson, but she first had to complete “family guidance sessions,” which would help her understand her children’s needs. According to Thomas, Johnson had been inconsistent in her attendance and participation in these sessions and therefore had been unable to progress to family counseling. In addition, LCDJFS filed a motion to extend temporary custody in order to give Johnson time to work toward reunification with the children. Such services were reasonable efforts at reunification. See *S.M.*, 2009-Ohio-91, at ¶33 (efforts to provide case supervision, counseling, psychiatric care, drug and alcohol assessments, drug

testing, supervised visitation, and home studies were sufficient reasonable efforts to prevent a child's removal from the home pursuant to R.C. 2151.419(A)).

{¶74} The sole assignment of error is without merit.

{¶75} Based on the foregoing, the Judgment of the Lake County Court of Common Pleas, Juvenile Division, granting permanent custody of T.P. and S.P. to LCDJFS, is affirmed. Costs to be taxed against appellants.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.