[Cite as *In re A.S.*, 2012-Ohio-4893.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

IN THE MATTER OF: A.S., ABUSED CHILD AND K.S., DEPENDENT CHILD	**:** **:**	**O P I N I O N** **CASE NOS. 2012-L-058 and 2012-L-059**

Appeals from the Lake County Court of Common Pleas, Juvenile Division, Case Nos. 2010 AB 373 and 2010 DP 375.

Judgment: Affirmed.

Matthew W. Weeks, Carl P. Kasunic Co., L.P.A., 4230 State Route 306, Building I, Suite 300, Willoughby, OH 44094 (For Appellant).

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

Christopher J. Boeman, 3537 North Ridge Road, Perry, OH 44081 (Guardian ad litem).

MARY JANE TRAPP, J.

{¶1} Andrew Sanders appeals from a judgment of the Lake County Court of Common Pleas, Juvenile Division, which terminated his parental rights and granted permanent custody of his daughters, A.S. and K.S., to the Lake County Department of Job and Family Services ("LCDJFS"). For the following reasons, we affirm the judgment of the trial court.

Substantive Facts and Procedural History

{¶2} In late April 2010, Kristyne Fye brought her youngest daughter, A.S., to the emergency room at Rainbow Babies and Children's Hospital, because A.S. was having continuous seizures. A.S. was admitted to the intensive care unit for extensive treatment after a CAT scan revealed a subdural hematoma, as well as other brain injury. Further injuries were noted during treatment, including a wrist fracture and retinal detachment. Her injuries were consistent with physical abuse.

{¶3} Neither Ms. Fye nor Mr. Sanders, A.S.'s father, were able to explain to the hospital social workers how A.S.'s injuries had occurred. Despite Mr. Sanders' efforts to identify the culprit by speaking with his family, the parents were unable to identify the perpetrator. Neither Mr. Sanders nor Ms. Fye were charged with causing A.S.'s injuries, but A.S.'s injuries were inconsistent with the history they had provided to the hospital staff.

{¶4} On March 5, 2010, LCDJFS filed two complaints; one alleging A.S. was an abused child and the second alleging K.S. was a dependent child. A Motion for Emergency Temporary Custody, regarding A.S. (d.o.b. 11/3/2009) and K.S. (d.o.b. 12/18/2008) was also filed. The girls were initially placed with their maternal grandmother, Roberta Sakal, but they were removed to a foster home on April 23, 2010, based on new injuries that A.S. had sustained. Efforts to place the girls with other relatives were unsuccessful.

{¶5} On May 5, 2010, Ms. Fye and Mr. Sanders admitted to the allegations set forth in the complaints. A dispositional hearing was held on June 1, 2010, during which

the trial court adopted a case plan. An addendum, filed on June 16, 2010, granted LCDJFS temporary custody of both girls.

The Case Plan

{¶6} The case plan adopted by the trial court required Ms. Fye and Mr. Sanders to undergo mental health assessments and follow the recommendations from those assessments. Mr. Sanders was required to undergo a drug and alcohol assessment and follow any resulting recommendations. Further, both parents were obligated to complete parenting education, and provide safe, secure and stable housing for the girls, as well as meet all of their medical needs. At the same time, A.S. began therapy at the Cleveland Sight Center to address improving her balance, sensory systems, handling, fine motor development, right arm limitations as a result of the wrist fracture, feeding difficulties, right peripheral visual field loss, and visual processing difficulties.

{¶7} Until late 2011, the family was participating in supervised visitation at LCDJFS. The family then progressed to supervised, home-based visitation. This, however, did not prove effective, and the visits were returned to the agency in January 2012. Ms. Fye and Mr. Sanders did not make every scheduled visit, even those that took place at their own home.

Motion for Permanent Custody

{¶8} After several extensions of temporary custody, and a November 23, 2011 show cause hearing at which Mother admitted to the allegations and the motion against father was dismissed, LCDJFS filed a motion for permanent custody on January 31, 2012. The guardian ad litem ("GAL") filed a supplemental report recommending that

permanent custody of both girls be granted to LCDJFS because it was in their best interest.

{¶9} Specifically, the GAL found that "Mother and Father have not demonstrated that they can provide a legally secure permanent placement for AS and KS because, even without having AS and KS to care for on a day to day basis for approximately two years, Mother and Father have not been able to secure steady employment or housing. Mother and Father also have not shown that they have (1) secure transportation and the ability to attend appointments consistently, (2) the support of extended family, or (3) a permanent and lasting relationship with each other." The GAL concluded that "Mother and Father have had approximately two years to prepare themselves for the return of their children but have not adequately done so."

{¶10} A trial was held on the matter in April 2012.

Permanent Custody Hearing

{¶11} LCDJFS presented 19 witnesses during its case in chief. While some witnesses offered discrete facts related to the parents' lifestyle and credibility, others testified extensively about A.S. and K.S.'s needs, experiences, limitations and best interests, as well as their observations of Ms. Fye and Mr. Sanders regarding their ability to achieve reunification.

{¶12} Representatives from the various service agencies involved with the Fye/Sanders family testified regarding Ms. Fye and Mr. Sanders' parenting skills, consistency or lack thereof in attending visitations, medical appointments, and therapy sessions, ability to maintain employment and stable housing, and attachment levels with both of their daughters. The picture that emerged from the significant amount of

evidence presented by LCDJFS witnesses was that: (1) the parents had systematically failed to make all of the scheduled appointments, visitations, and sessions, despite the fact that neither had maintained consistent, full-time employment over the last two years; (2) the level of attachment between the girls and Ms. Fye had improved somewhat at first, but had more recently regressed, while their attachment to Mr. Sanders had improved and remained so, and that they had demonstrated a healthy and consistent attachment to the foster mother; (3) the parents continued to struggle with their own interpersonal relationship, failing to adequately communicate, coordinate, and cooperate so as to progress through the steps required for reunification; (4) concerns remained as to Mr. Sanders and Ms. Fye's ability to adequately parent K.S. and A.S., particularly given the special needs of their daughters, which require consistent structure, genuine engagement, sensitivity to non-verbal cues, and a clear understanding of the girls' physical, psychological, and emotional limitations; and (5) substantial concerns existed as to the parents' trustworthiness as a result of their failure to disclose important information throughout the last two years.

Erin St. Dennis - Occupational Therapist

{¶13} Erin St. Dennis, an occupational therapist with the Cleveland Sight Center, described A.S.'s therapeutic regimen designed to address complications and limitations stemming from the subdural hematoma, detached retina, and wrist fracture. She provided her observations of A.S., as well as Ms. Fye and Mr. Sanders, and A.S.'s interactions with both of them. She was also able to speak to A.S.'s relationship with the foster mother, Lisa Haffa, who had attended and continues to attend every therapy session of A.S.'s. Ms. St. Dennis expressed concerns relating to Ms. Fye and Mr.

Sanders' ability to implement the necessary therapies and to participate in A.S.'s ongoing treatment. She was worried about the fact that A.S. will not engage with Ms. Fye, and that, while A.S. will engage with him, Mr. Sanders does not ask questions and must be prompted to engage A.S. in the therapeutic practices. Ms. St. Dennis further noted that A.S. often seeks out Ms. Haffa, rather than her biological parents, for support. She did note, however, that A.S. had sought comfort and support from Mr. Sanders on occasion, and that his relationship with A.S. appeared sweet, affectionate, and appropriately playful. While Mr. Sanders has demonstrated increased engagement during therapy sessions, Ms. St. Dennis did note that Ms. Fye and Mr. Sanders have missed multiple therapy sessions, while Ms. Haffa, who is employed full-time, has been present for every appointment.

Francesca Toomey - Early Interventional Specialist

{¶14} Francesca Toomey, the Early Intervention Specialist at the Cleveland Sight Center, confirmed that the parents had missed a number of therapy sessions. She stated that, between April 20, 2010 and April 24, 2012, A.S. had 81 therapy sessions at the center. Ms. Fye missed 42 of those sessions and Mr. Sanders missed 21.

Sharen Bowen - Support Group Facilitator

{¶15} The Cleveland Sight Center's facilitator of the parent support group, Sharen Bowen, explained that Ms. Haffa, Ms. Fye, and Mr. Sanders attend the group; Ms. Fye participates, but Mr. Sanders does not. Ms. Bowen reported that Ms. Fye participates by talking about herself and her own issues more than most parents, and

does not focus as much on A.S. Mr. Sanders had spoken only two times in the past two years.

{¶16} Ms. Bowen has also had opportunities to observe A.S. with her parents and Ms. Haffa. She testified that A.S. sucks her thumb as a method of self-soothing when distressed. She has not observed A.S. suck her thumb with Ms. Hafffa, but she has observed her do it with Mr. Sanders on occasion, and always sees her doing it with Ms. Fye. Ms. Bowen explained that when A.S. sucks her thumb she is essentially unavailable for any other activity or interaction; she shuts down and is not available for learning.

Donna Scott - Early Childhood Clinical Coordinator

{¶17} Donna Scott, the early childhood clinical coordinator at Crossroads, testified regarding her dual role with the Sanders family. Ms. Scott worked with Ms. Fye and Mr. Sanders on parenting issues, and she conducted a mental health diagnostic assessment of both A.S. and K.S.. She diagnosed A.S. with Post Traumatic Stress Disorder and Depression, and K.S. with an Adjustment Disorder with Mixed Emotions and Conduct. She noted that both girls, as a result of the ongoing issues in their lives, present attachment risk factors and that they need sensitive care-giving, developmental guidance, support in coping, strong structure, and active involvement by their care-givers.

{¶18} As to the parenting aspect, Ms. Scott noted that both parents need to learn how to appropriately read and respond to the non-verbal cues the girls give them. Ms. Fye, in particular, does not read the cues well and fails to respond appropriately. She did note that Mr. Sanders generally does a good job of reading and responding to

both K.S. and A.S.; however, when the parents are together, Ms. Fye is dominant, which impedes the positive dynamic Mr. Sanders has established with the girls. Ms. Scott stated that she had observed slow but steady progress until the end of the summer of 2011, when home-based visits began. The home-based visits proved ineffective, and visitation was returned to the agency in January 2012 due to regression within the family dynamic. She did note that in the four weeks leading up to the hearing, progress had been made, but observed that the parents had, overall, missed approximately 30 percent of the scheduled visits and that this had greatly upset the girls. Lastly, Ms. Scott stated that seven steps existed in the case-plan in order to achieve reunification, but that at the time of the hearing, Ms. Fye and Mr. Sanders had not even achieved and maintained the first step, as visitation had been removed from the home and returned to the agency.

Christie Marshall - Early Head Start Home Visitor

{¶19} Christie Marshall, an Early Head Start home visitor from Crossroads, supervised the weekly visits between Ms. Fye and Mr. Sanders and the girls. Despite describing how Ms. Fye and Mr. Sanders had made some efforts to make their visits with the girls special, including throwing a birthday party for K.S. and hiding eggs for the girls to find around Easter-time, she expressed substantial concerns about their ability to properly meet the girls' needs.

{¶20} Ms. Marshall specifically expressed concerns about the parents' failure to properly address A.S.'s special needs and limitations as a result of her injuries. Ms. Marshall described how the parents do not require A.S. to wear her eye glasses, despite her considerable visual impairment. She expressed particular concern

regarding Ms. Fye, stating that Ms. Fye had (1) tried to feed A.S. a french fry before she could properly chew and swallow, (2) inappropriately swung A.S. around, and (3) expressed a desire to take both girls to an amusement park. Ms. Marshall did note that Mr. Sanders had demonstrated a lot of growth in his parenting skills over the last two years. She observed him appropriately respond to K.S.'s temper tantrums and engage positively and attentively with both girls. She further noted that both girls seemed to respond well to his guidance.

{¶21} Ms. Marshall also discussed the parents' failure to make all of the scheduled visits, testifying that between August 2011 and February 2012, Ms. Fye had attended 14 of 20 possible visits, and Mr. Sanders had attended 16. She also expressed concern because Ms. Fye and Mr. Sanders missed the two most recent individual family service plan meetings, where the future goals for the children were to be discussed. Finally, she pointed out the fact that the family had never progressed to unsupervised visitations, which was concerning to her.

Marlena Adamic - Safe Family Access Program Supervisor/Coordinator

{¶22} Marlena Adamic, supervisor and coordinator of the Safe Family Access Program at Crossroads, also testified regarding the parents' failure to attend all of the available visits, despite their consistent unemployment or underemployment. She stated that between early April 2011 and mid-August 2011, of 36 possible visitation dates, Ms. Fye attended 27 and Mr. Sanders attended 25.

John Kinsel - Professional Clinical Counsel/Child Development Expert

{¶23} John Kinsel, a professional clinical counselor and expert in child development, was asked to do an attachment assessment of K.S. and A.S. in early

2011. He also conducted two parenting assessments of Ms. Fye and Mr. Sanders. Mr. Kinsel found that between his initial assessment, dated February 2011, and the second assessment, dated August 2011, the girls' relationship with Mr. Sanders advanced from "perturbed" to "adapted," and with Ms. Fye progressed from "disturbed" to "perturbed." He attributed these improvements to the parents' use of recommended interventions, including intervention psycho-education. A third assessment, dated April 2012, found that Mr. Sanders had maintained his "adapted" relationship with both girls, while Ms. Fye's relationship with them had regressed to "distressed." Mr. Kinsel noted that this was concerning, and sent a mixed message to A.S. and K.S. The parents needed to work on their interaction, coordination, and communication with each other, and he recommended that they have a relationship assessment and continued therapeutic interventions. Mr. Kinsel found the girls' relationship with Ms. Haffa adapted throughout his three assessments; he did not recommend reunification with Mr. Sanders and Ms. Fye.

Lisa Haffa - Foster Mother

{¶24} Lisa Haffa, the foster mother to both A.S. and K.S., testified that she has cared for the girls for over two years, meeting all of their basic needs. She consistently attends all of A.S.'s therapeutic sessions, and provides for both girls' substantial medical needs. She stated that should permanent custody be granted to LCDJFS, she intends to adopt both girls.

LaShawn Tindall - Social Worker

{¶25} LaShawn Tindall, a social worker with the Cuyahoga County Department of Children and Family Services ("CCDCFS"), testified regarding the parents' third child,

D.S. (d.o.b. 5/31/2011). She confirmed that CCDCFS has had temporary custody of D.S. since June 1, 2012, and that they have decided to file for permanent custody.

LCDJFS Social Workers

{¶26} Two social workers from LCDJFS, Jaime Higgenbotham and Joy Biggs, testified regarding the ongoing parenting support that had been provided to Ms. Fye and Mr. Sanders. They described how the parents had participated in a number of parenting classes over the last two years, and, yet, the service providers still felt that additional parenting support was needed. Ms. Biggs specifically noted that the Sanders/Fye family had received more services than most similarly situated families, but their progress had been slower. She observed most of the supervised visits between the parents and A.S. and K.S., and expressed substantial concern related to the parents' conduct during those visits.

The Parents

{¶27} Mr. Sanders and Ms. Fye both testified. They acknowledged that they were currently pursuing reunification as a couple, but had broken up at times throughout the past two years and had lived apart for some of that time as well. Both expressed feeling bonded to their daughters, and a wish to reunify the family, but they also acknowledged their failure to make all of the scheduled visits and therapy appointments. Mr. Sanders did acknowledge that he allows Ms. Fye to dominate during visitations, and that he had not seriously considered whether staying together as a couple was in the best interest of K.S. and A.S.

Christopher Boeman - Guardian Ad Litem

{¶28} Finally, Christopher Boeman, the guardian ad litem, testified regarding his two year involvement with the family. He was assigned as the GAL at the time of the emergency temporary custody motion, and has remained the GAL since. Despite recognizing the bond between the parents and K.S. and A.S. and the subjective nature of the situation which cut against the parents, and commending Mr. Sanders for the substantial efforts he had made and improvements he had achieved, Mr. Boeman stated that he did not feel reunification was in the best interest of the children.

{¶29} He expressed particular concern about Ms. Fye's trustworthiness; he described an incident in which she prevailed upon the trial court to order weekend visitation to accommodate what she stated was a 9 to 5 job during the work week. However, she did not hold this position for long, and then did not tell LCDJFS that her circumstances had changed. The agency had gone to great efforts and expense to accommodate the weekend visitation schedule. Further, Mr. Sanders and Ms. Fye failed to disclose the third pregnancy, which was of concern.

The Trial Court's Decision

{¶30} The trial court issued a 13-page decision, which carefully outlined the evidence presented and analyzed the required factors under R.C. 2151.414(D). Pursuant to R.C. 2151.414(B)(1)(d) and (B)(2), the trial court committed K.S. and A.S. to the permanent custody of LCDJFS, and permanently divested all parental rights of Ms. Fye and Mr. Sanders.

{¶31} In its opinion, the trial court stated that it found "in consideration of the testimony presented, the arguments of counsel, and the recommendation of the Guardian Ad Litem, that reasonable efforts have been made to avoid the continued

removal of [A.S.] and [K.S.]; however, to return to the home would be contrary to their best interest * * *."

{¶32} Mr. Sanders filed a timely notice of appeal, and now brings the following assignments of error:

{¶33} "[1.] The trial court erred, and abused its discretion, when it granted permanent custody to the Department pursuant to Section 2151.414(B)(1)(d) of the Revised Code, since it failed to prove due consideration and careful discussion of the best interest factors set forth in Sections 2151.414(D)(1)(a) and (d), as required by this court."

{¶34} "[2.] The trial court's finding regarding the interaction and interrelationship between the girls and parents pursuant to O.R.C. §2151.414(D)(1)(a) is against the manifest weight of the evidence as it fails to acknowledge the substantial amount of contact the girls have had with the parents prior to and during the pendency of this matter and the close bond the girls have to their parents, and, specifically, Father."

{¶35} "[3.] The trial court's findings regarding the girls need for a legally secured placement pursuant to O.R.C. §2151.414(D)(1)(d) is against the manifest weight of the evidence as it fails to acknowledge Father's substantial case plan compliance and progress, which warrants granting additional time for reunification to occur."

{¶36} "[4.] The trial court abused its discretion by granting permanent custody to the Department under the authority of Section 2151.414(B)(2) without providing any analysis."

{¶37} Because assignment of error one encompasses assignments of error two and three, we will analyze them together.

Whether the Trial Court's Findings Are Against the Manifest Weight of the Evidence

{¶38} In his first three assignments of error, Mr. Sanders challenges the trial court's findings generally, and under R.C. 2151.414(D)(1)(a) and (d), arguing that they are against the manifest weight of the evidence and an abuse of discretion. Because a review of the record reveals that the trial court's findings were more than adequately supported by clear and convincing evidence, we find the assignments of error to be without merit.

Standard of Review

{¶39} This court stated in *In re N.T.*, 11th Dist. No. 2010-A-0053, 2011-Ohio-650:

{¶40} "R.C. 2151.414 sets forth the guidelines to be followed by a juvenile court in adjudicating a motion for permanent custody. R.C. 2151.414(B) outlines a two-prong analysis. It authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that it is in the best interests of the child to grant permanent custody to the agency, *and* that any of the four factors apply:

{¶41} "'(a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, * * * and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

{¶42} "'(b) The child is abandoned.

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

{¶44} "'(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 * * *.'

{¶45} "This two-prong analysis required by R.C. 2151.414(B) has been summarized by our court as follows:

{¶46} "'* * * R.C. 2151.414(B) establishes a two-pronged analysis that the juvenile court must apply when ruling on a motion for permanent custody. In practice, the juvenile court will usually determine whether one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child.

{¶47} "* * *

{¶48} "'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 determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates that the juvenile court must consider all relevant factors, including, but not limited to, the following: (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) 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; (3) the custodial history of the child; and (4) 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.

{¶49} "The juvenile court may terminate the rights of a natural parent and grant permanent custody of the child to the moving party only if it determines, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody to the agency that filed the motion, and that one of the four circumstances delineated in R.C. 2151.414(B)(1)(a) through (d) is present." *In re Krems*, 11th Dist. No. 2003-G-2535, 2004-Ohio-2449, ¶32-36. *See also In re T.B.*, 11th Dist. No. 2008-L-055, 2008-Ohio-4415, ¶35.

{¶50} "'Clear and convincing evidence is more than a mere preponderance of the evidence; it is evidence sufficient to produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established.' *Krems* at ¶36, citing *In re Holcomb* (1985), 18 Ohio St.3d 361, 368 * * *.

{¶51} "'An appellate court will not reverse a juvenile court's termination of parental rights and award of permanent custody to an agency if the judgment is supported by clear and convincing evidence.' *Krems* at ¶36, citing *In re Jacobs* (Aug. 25, 2000), 11th Dist. No. 99-G-2231, 2000 Ohio App. LEXIS 3859, *8." (Parallel citation omitted.) *Id.* at ¶51-62.

The Trial Court's Determination is Supported by Clear and Convincing Evidence

{¶52} Mr. Sanders attacks the manifest weight of the trial court's determination to grant permanent custody of his daughters to LCDJFS. He does so by challenging the trial court's findings of fact and conclusions of law under two specific best interest

factors, R.C. 2151.414(D)(1)(a) and (d). He also appears to make more general arguments regarding the manifest weight of the trial court's determination as a whole.

First Prong - Triggering Circumstances

{¶53} It is undisputed that the first prong of the analysis has been established: at the time LCDJFS filed for permanent custody of K.S. and A.S., the girls had been in the custody of the agency for at least 12 out of the previous 22 months. In fact, K.S. and A.S. have been in the custody of LCDJFS since March 5, 2010; that constitutes over 22 months of *consecutive* custody by the agency at the time the motion for permanent custody was filed on January 31, 2012.

Second Prong - Best Interests of the Children

{¶54} After establishing that prong one of the permanent custody analysis had been met, the trial court then engaged in a thoughtful review of the R.C. 2151.414(D)(1) factors. In doing so, it determined that, by clear and convincing evidence, a grant of permanent custody to LCDJFS was in the best interests of both K.S. and A.S.

{¶55} A review of the record reveals the following important factors in considering whether a permanent grant of custody was clearly and convincingly in the best interest of K.S. and A.S.: (1) both parents had failed to secure and maintain reliable transportation; (2) both parents had failed to secure and maintain stable housing; (3) both parents had failed to secure and maintain stable employment; (4) the relationship between mother and father was unstable, and they continued to struggle around coordination, communication, and cooperation, despite pursuing reunification as a couple; (5) both parents missed a notable number of doctor's appointments, therapy sessions, and scheduled visitations, despite the fact that neither was employed on a

regular basis; (6) the parents blatantly misrepresented their work schedules in order to have weekend visitation, and did not disclose their third pregnancy; (7) both parents struggled to demonstrate adequate parenting skills, and were recommended for a third round of parenting classes; (8) Ms. Fye's attachment regressed to a status of "distressed," and although Mr. Sanders had been able to achieve and maintain an "adapted" status with the girls, this was threatened by Ms. Fye's domineering influence when the family was together as a foursome; (9) Mr. Sanders had failed to consider whether his continued romantic involvement with Ms. Fye and joint effort at reunification was really in the best interest of his daughters; and (10) the parents needed to achieve seven steps outlined in their case plan in order to achieve reunification, and, at the time of the permanent custody motion, they had not even completed the first step on account of visitation being removed from their home and returned to the agency.

{¶56} Mr. Sanders argues that LCDJFS did not make diligent efforts to assist him and Ms. Fye to remedy the problems that initially caused the girls to be placed outside the home and to achieve reunification. However, it is clear from the record that LCDJFS made substantial efforts to assist them in their efforts. Ms. Biggs, in particular, testified that the agency had provided services to the parents in excess of those provided to similarly situated families. Despite these additional services, Ms. Fye and Mr. Sanders made less progress than other families towards the goal of reunification.

{¶57} It is not lost on this court that Mr. Sanders, in particular, has made some demonstrable improvements over the course of the last two years, and has shown great efforts at times to work the case plan. We are also not blind to the fact that K.S. and A.S. have a recognizable bond with their parents, and Mr. Sanders in particular.

However, as Mr. Boeman, the GAL, aptly pointed out in his brief before this court, "[e]ven if we accept that Mother and Father acted appropriately with their children in supervised settings and have a bond with them, the problem is that there is much more to being a parent and making a determination of what is in the child's best interest, particularly involving a child with special needs like A.S., then [sic] being appropriate and attentive to the needs of your children during at most a few hours a day in a structured environment."

{¶58} Clear and convincing evidence exists in the record to support the trial court's findings under every prong of the R.C. 2151.414(D)(1) analysis and to support the ultimate result of a grant of permanent custody to LCDJFS. The trial court engaged in this exercise carefully and thoughtfully, presenting and analyzing all the evidence over 11 pages, before finally discussing and making a finding under each prong of R.C. 2151.414(D)(1). Despite the severity of its decision, and the unfortunate result that these parents have been permanently divested of their rights to K.S. and A.S., we find the trial court's decision fully supported by the evidence.

{¶59} In addition to a more general attack on the manifest weight of the trial court's determination, Mr. Sanders specifically challenges the trial court's findings and analysis under two of the four R.C. 2151.414(D)(1) factors.

R.C. 2151.414(D)(1)(a) – Interaction and Interrelationship of the Girls with their Parents

{¶60} Under R.C. 2151.414(D)(1)(a), a trial court must consider 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 [.]" Mr. Sanders argues that the trial court "failed to give any proper and

realistic recognition of the substantial bond between the girls and parents. There is an undeniable close bond between Father and the girls."

{¶61} The trial court examined each of the R.C. 2151.414(D) factors in four numbered paragraphs. A review of the entire judgment entry reveals that, although the trial court provided minimal assessment of the girls' relationship with Mr. Sanders and Ms. Fye under the numbered paragraphs, instead focusing on the positive relationship K.S. and A.S. had with their foster mother, it provided substantial findings of fact as to their relationship with the parents earlier in the judgment entry.

{¶62} The trial court did, in fact, discuss the various sources of evidence relating to the interrelationship and interaction of the Fye/Sanders family, including, but not limited to: (1) Mr. Kinsel's attachment assessment in which Mr. Sanders' relationship, in particular, was commended for having achieved "adapted" status; (2) Ms. St. Dennis' observations of Mr. Sanders and A.S., in which she described the sweet, affectionate and appropriately playful bond between them; and (3) Ms. Scott's observations that Mr. Sanders has demonstrated particular improvement in reading the cues of his daughters, responding appropriately, and connecting with the girls in a meaningful way.

{¶63} This evidence of positive interactions and interrelationships, however, was clearly overshadowed by the concerns expressed by all of LCDJFS's witnesses, particularly Donna Scott, Christie Marshall, Sharon Bown, Jamie Higgenbotham, and Joy Biggs, relating to the generally strained relationships between the girls and the parents. Further, the trial court specifically noted that Ms. Fye had not achieved the same positive attachment with her daughters that Mr. Sanders had, and that Ms. Fye was unfortunately domineering within the household, limiting Mr. Sanders' positive

effect on the girls. The trial court stated that "Mr. Sanders is either unable or unwilling to take charge of the situation when Mother is present."

{¶64} Ultimately, the trial court found that the "parents have limited supervised relationship with the girls. The parents have been given every opportunity to develop a relationship with these girls. If they had worked the case plan the children would have been returned." This conclusion is more than supported by clear and convincing evidence, which the trial court diligently reviewed throughout the first 11 pages of its judgment entry.

R.C. 2151.414(D)(1)(d) – The Girls' Need for a Legally Secure Permanent Placement

{¶65} R.C. 2151.414(D)(1)(d) requires that a trial court consider the "child's need for legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency [.]" Mr. Sanders argues that the trial court provided no analysis to support its conclusion that K.S. and A.S. "very much need a legally secure permanent placement and this Court finds that Mother and Father are not able to provide such placement within any reasonable or foreseeable time, and that such placement cannot be obtained without a grant of permanent custody to the Lake County Department of Job and Family Services." Again, however, the trial court's thorough review of the evidence and findings of fact in the first 11 pages of its judgment entry clearly and convincingly supports its findings in numbered paragraph four.

{¶66} In support of its ultimate conclusion that Ms. Fye and Mr. Sanders were not able to provide legally secure permanent placement for K.S. and A.S. within any reasonable or foreseeable amount of time, the trial court made substantial findings of

fact throughout the first 11 pages of the judgment entry. Specifically, the trial court found that: "The parents have had inconsistent housing. They have lived in apartments and with their relatives. Their housing has not been stable. They have been in a relationship, broken up, and have gotten back together again. The parents have only attended fifty percent of the scheduled appointments for [A.S.] at the Cleveland Sight Center. The parents have attended approximately eighty-percent of their visitation. Their visitation has always been supervised. The agency attempted to move the visits from the agency to the parents' home. The service providers determined that continued in-home visitation was detrimental to the girls. Visitation was then returned to supervised at the agency. Ms. Biggs testified that this family has received more services than most families and have progressed much more slowly than most families. * * * The Court concludes that these parents are either not able or not willing to follow through with good parenting skills.

{¶67} "The Department has investigated relative placement to no avail."

{¶68} Although not directly preceding its determination, pursuant to R.C. 2151.414(D)(1)(d), that the girls' need for legally secure permanent placement cannot be achieved without a grant of permanent custody to LCDJFS, the trial court engaged in a lengthy analysis of the evidence presented on the issue throughout the first 11 pages of its judgment entry. Substantial clear and convincing evidence was present in the record to support the trial court's determination under R.C. 2151.414(D)(1)(d), and thus its decision is not against the manifest weight of the evidence.

{¶69} Substantial evidence exists in the record to support the trial court's grant of permanent custody to LCDJFS. A review of the record reveals no abuse of the

discretion by the trial court in making such a grant and that the manifest weight of the evidence supports the trial court's judgment. Assignments of error one, two, and three are without merit.

Grant of Custody Pursuant to R.C. 2151.414(B)(2)

{¶70} In his fourth assignment of error, Mr. Sanders challenges the trial court's grant of permanent custody to LCDFJS pursuant to R.C. 2151.414(B)(2). He argues that the trial court abused its discretion in making a grant of custody under this subsection without engaging in the analysis required under R.C. 2151.414(E). Because the trial court's judgment entry clearly finds that one of the R.C. 2151.414(E) factors is present and the record more than supports such a finding, the fourth assignment of error is without merit.

{¶71} We note, initially, that the trial court made a grant of permanent custody to LCDJFS under both R.C. 2151.414(B)(1)(d) and R.C. 2151.414(B)(2). We have already determined that the trial court's grant of custody under subsection (B)(1)(d) was supported by the manifest weight of the evidence, thus the outcome of a (B)(2) analysis will not change the ultimate findings of this court. Given the serious nature of these proceedings and the gravity of the resultant outcome, however, we will review this assignment of error on the merits.

{¶72} Pursuant to R.C. 2151.414(B)(2), "the court shall grant permanent custody of the child to movant if the court determines in accordance with division (E) of this section 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 determines in

accordance with division (D) of this section that permanent custody is in the child's best interest."

{¶73} R.C. 2151.414(E) requires a trial court to consider "all relevant evidence" in making a determination under (B)(2), and allows for a grant of permanent custody to the movant 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 * * *." Subsection (E) then lays out 16 possible factual and legal scenarios for the court to consider.

{¶74} We need only to look so far as subsection E(1) to find the subsection under which the trial court clearly made its (B)(2) determination. R.C. 2151.414(E)(1) allows for permanent custody under (B)(2) if, "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."

{¶75} While the trial court did not specifically identify this subsection as the subsection under which it had found that a grant of custody was justified pursuant to (B)(2), its findings and analysis in the first 11 pages of its judgment entry make clear that (E)(1) is where it rooted its (B)(2) grant of custody. The trial court specifically

found, and a review of the record supports such a finding, that the parents have continuously failed to remedy the conditions causing the girls to be placed outside the home. The trial court stated that "the parents have had inconsistent housing. They have lived in apartments and with their relatives. Their housing has not been stable. They have been in a relationship, broken up, and have gotten back together again. The parents have only attended fifty percent of the scheduled appointments for [A.S.] at the Cleveland Sight Center. The parents have attended approximately eighty-percent of their visitation. Their visitation has always been supervised. The agency attempted to move the visits from the agency to the parents' home. The service providers determined that continued in-home visitation was detrimental to the girls. Visitation was then returned to supervised at the agency. Ms. Biggs testified that this family has received more services than most families and have progressed much more slowly than most families. * * * The Court concludes that these parents are either not able or not willing to follow through with good parenting skills."

{¶76} It is clear from the record that, although Ms. Fye and Mr. Sanders have been provided with various and meaningful support services in an effort to achieve reunification, they have not changed their conduct substantially enough to "allow them to resume and maintain parental duties." R.C. 2151.414(E)(1). The conditions initially justifying LCDJFS's placement of the girls outside the home remained present at the time of the hearing and the trial court was unable to see how the girls could be placed with either parent within a reasonable and foreseeable amount of time. Our review of the record supports this conclusion by the trial court. Therefore, the fourth assignment of error is without merit.

{¶77} For the foregoing reasons, the judgment of the Lake County Court of Common Pleas, Juvenile Division, is affirmed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.