[Cite as *In re W.C.J.*, 2014-Ohio-5841.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
JACKSON COUNTY

IN THE MATTER OF:		
	:	Case No. 14CA3
W.C.J.	:	
	:	
Adjudicated Dependent Child.	:	DECISION AND JUDGMENT ENTRY
	:	
	:	
	:	**Released: 12/31/14**

APPEARANCES:

William S. Cole, Jackson, Ohio, for Appellant.

Justin Lovett, Prosecuting Attorney, and Randy H. Dupree, Assistant Prosecuting Attorney, Jackson, Ohio, for Appellee.

McFarland, J.

{¶ 1} Appellant, W.J., appeals the trial court's judgment that awarded appellee, Jackson County Children Services (JCCS), permanent custody of his biological child, W.C.J. Appellant argues that the trial court abused its discretion by awarding appellee permanent custody of the child. Appellant contends that he complied with the case plan, and thus, the court could not award appellee permanent custody. We do not agree. A parent's case plan compliance is not the dispositive issue in a permanent custody proceeding. Instead, the dispositive issues in the case at bar were (1) whether the child could or should be returned to

appellant within a reasonable time and (2) the child's best interest. Therefore, we overrule appellant's assignment of error and affirm the court's judgment.

I. FACTS

{¶ 2} On December 19, 2011, appellee filed a dependency complaint concerning appellant's two-day-old child. The complaint alleged that the hospital staff called appellee the day of the child's birth and reported its concern regarding the mother's ability to care for the child. The hospital reported that the mother had given birth to seven previous children but did not have custody of any of them. The complaint further alleged that the mother suffered from schizophrenia and bipolar disorder and was in need of an involuntary psychiatric hospitalization. The complaint alleged that the child's father lived in a school bus located in the mother's driveway and that neither the mother's home nor the father's residence had water. Appellee requested the court to grant it emergency temporary custody of the child. The court subsequently granted appellee emergency temporary custody of the child.

{¶ 3} On January 31, 2012, appellee filed an amended complaint that alleged the child was neglected and dependent and requested the court to award it permanent custody of the child.[1]

[1] Appellee later apparently abandoned the original request for permanent custody. However, nothing in the written record shows that appellee amended this complaint or withdrew the request for permanent custody.

{¶ 4} On April 4, 2012, the child's guardian *ad litem* filed a report regarding appellant's residency. The guardian *ad litem* stated that appellant lived in a school bus and that it "is not fit for an infant," because it lacked permanent electricity, water, a toilet, a bath or shower, a washing machine, propane, a refrigerator, and adequate space. The guardian also expressed a concern that neither appellant nor the mother understood "the limitations of this residence for any child[,] particularly an infant."

{¶ 5} On May 7, 2012, the trial court adjudicated the child dependent and continued the child in appellee's temporary custody.

{¶ 6} On January 22, 2013, appellee filed a motion requesting the court to modify the disposition to permanent custody. Appellee alleged the child could not or should not be placed with either parent within a reasonable time. Appellee asserted that the mother had significant mental health issues that prevented her from providing ongoing care for the child, and appellant failed to see the significance of the mother's emotional difficulties. Appellee further alleged that appellant's "ability to provide for a child is questionable." Appellee claimed that the parents "are not interested in receiving parenting instruction which has been

offered" and had not secured suitable housing. Appellee asserted that the parents currently lived in a school bus[2] on property owned by the mother's family.

{¶ 7} On May 20, 2013, the guardian *ad litem* filed a report and recommended that the court award appellee permanent custody of the child.

{¶ 8} On June 1, 2013, appellant and the mother were involved in an automobile accident. The mother was driving the car, even though she did not have a valid Ohio driver's license. Appellant sustained several injuries and was hospitalized. He subsequently left the hospital against medical advice. A passenger in the vehicle was killed. As a result of the accident, the mother was charged with various felonies and placed in Appalachian Behavioral Health for evaluation.

{¶ 9} On September 6, 2013, October 16, 2013, and April 3, 2014, the court held a hearing to consider appellee's permanent custody motion. JCCS investigator Kristina Carlisle stated that she handled the initial intake of the newborn child. Carlisle explained that JCCS had concerns about the mother's mental health. Carlisle testified that shortly after the child's birth, the mother was involuntarily hospitalized due to her mental health issues.

{¶ 10} Carlisle further explained that JCCS had concerns about the father's ability to care for the newborn on an on-going basis. She stated that the nurses at

[2] The parties and the court used various terminology throughout the proceedings to describe the school bus—camper, motor home, etc. For sake of clarity, we use the term "school bus" in this opinion, unless taken from a direct quote using different terminology.

the hospital reported that they spent a lot of time working with appellant to ensure he properly cared for the baby. Carlisle also explained that neither appellant nor the mother appeared to be able to care for their own needs — she stated that neither displayed proper hygiene — and, thus, she questioned their ability to care for a newborn.

{¶ 11} Carlisle explained that JCCS also had concerns with appellant's failure to recognize the detrimental effect the mother's mental health issues would have upon the child. She stated that appellant did not appear concerned with the mother's mental health issues and did not believe that the mother required hospitalization at the time of the child's birth.

{¶ 12} Carlisle additionally explained that JCCS did not feel comfortable allowing appellant to take the newborn to his residence. Carlisle stated that at the time of the child's birth, appellant lived in an old school bus. She did not believe that the bus was a safe place for the child. Carlisle testified that appellant did not appear interested in obtaining a different residence for the child, but instead, he wanted to learn what he could do to make the bus appropriate for the child.

{¶ 13} Carlisle stated that JCCS initially filed a complaint for permanent custody based upon its belief that the mother had her parental rights involuntarily terminated with respect to at least one other child. She explained that JCCS later

learned that the information was incorrect and, thus, JCCS did not pursue its request for permanent custody.

{¶ 14} JCCS caseworker George Sellers testified that appellant did not comply with the case plan. Sellers stated that appellant refused to undergo individual parenting counseling, did not engage in Help Me Grow services, and failed to obtain a safe and stable home for the child. Sellers explained that the bus where appellant lived was not safe for a child. He stated that in May 2013, several months after JCCS filed its permanent custody motion, appellant still lived in the bus and wanted to fix it to make it appropriate for the child. Appellant informed Sellers that this was "country living."

{¶ 15} Sellers stated that during the May 2013 visit, the mother was sitting in a car, shaking her head "very violently," and was "unresponsive." He testified that appellant advised him that the mother was not always like that.

{¶ 16} Sellers testified that he had advised appellant of his concerns regarding the mother's mental health issues, but appellant did not appear concerned. Sellers stated: "I've expressed sometimes the concern about [the mother's] serious mental health problems and how that would relate to the care of the child and [appellant] felt that is not a concern and that would not result in a risk to the child or any harm to the child."

{¶ 17} Maxine Jacobs testified she supervised the parents' visits with the child. Jacobs stated that appellant admitted that the mother has "fits of rage," but appellant nonetheless believed the mother could adequately care for the child. Jacobs also testified the mother stated during these visitation sessions that her previous children all had met extremely violent deaths. For instance, the mother believed the children had been raped and/or mutilated. Jacobs stated the mother also believed that W.C.J. had been raped in the foster home. Jacobs explained that appellant heard the mother's comments, but appellant told Jacobs that appellant meant that the children are "dead" in the sense that they are no longer with her.

{¶ 18} Dana Gilliland, the child's guardian *ad litem*, testified that she does not believe appellant is capable of caring for the child. She explained:

> "He is not self-reflective with regards to his decision making process with [the mother]. He defers most often to [the mother]. * * * [H]e has historically made statements to me and to children's services caseworkers about violent acts and conflict between [the mother] and [appellant]. In fact, he's moved out of residences, they've separated and then moved back together, yet he is not reflective of that relationship. * * * He does not acknowledge the severity of [the mother's] condition."

{¶ 19} Gilliland stated that appellant appeared committed to remaining with the child's mother. Gilliland opined that the child would suffer if appellant remained with the mother. She further testified that it was not in the child's best interest to be placed in appellant's care.

{¶ 20} The child's foster mother testified that the child had continually remained in her home since his initial removal. She stated that the child was closely bonded with the foster family and called her "mom" and her husband "dad." She stated that during recent visits with appellant, the child cried and became upset. The foster mother testified that she and her husband would adopt the child, if given the opportunity.

{¶ 21} Appellant testified that the mother was capable of caring for the child and would be a good mother, despite her mental health issues. Appellant stated that he did not believe the mother's mental health issues were "serious" or that the child would be in danger if placed in his and the mother's care. He believed that the mother would have been able to care for the child when he was born and that she should not have been involuntarily hospitalized.

{¶ 22} Appellant stated that for approximately six months, he had been involved with a church and through that church he had obtained the help he needed to secure an adequate home for the child. Appellant also stated that he completed a parenting course through the church. He testified that church members were available to help him care for the child and to provide transportation if needed. Appellant explained that even though he now lives in an apartment, he believed the bus could have been an appropriate home for the child.

{¶ 23} During the hearing, the court noted that the case plan initially required appellant to undergo a mental health assessment and appellant strenuously objected to that requirement. The court thus struck the mental health assessment from the case plan. However, at that time, the court warned appellant that his refusal to undergo a mental health assessment would be at his peril. The court explained: "[W]hen the conversation in this courtroom and at every hearing was that his ability to discern whether it was appropriate to be with [the mother], live in a bus with a bomb in it and those kind of things, he needed to come to me and show me that he could * * * that, in fact, he was capable."[3]

{¶ 24} On July 10, 2014, the court awarded appellee permanent custody of the child. The court determined that the child could not or should not be placed with either parent within a reasonable time. The court found that appellant "failed to meet any of the goals of the numerous case plans." The court noted that although it sustained appellant's objection to the case plan requirement that he obtain a mental health evaluation, it warned appellant "of the possible ramifications of his strenuously objecting to an evaluation that could inform the Court more fully as to his ability to parent the child." The court observed that appellant "received some services," "maintained an independent residence" and "improved his living condition" with assistance from community members. The

[3] The court did not clarify what it meant by a "bomb" on the bus, but the context of the entire hearing suggests that the court was referring to the propane tank appellant kept on the bus.

court nonetheless determined that despite appellant's improved living arrangements, "[n]othing in the record indicates that his judgment would benefit the child in any way and would, in fact, place the child at constant risk." The court observed:

> "[The mother's] episodes and behaviors are such that a reasonable person would be fearful for the safety of the child, which [appellant] isn't. [Appellant] almost totally lacks the ability to appreciate the seriousness of [the mother's] mental heath issues. At the permanent custody hearing, he testified that he regularly allowed her to drive an automobile, knowing that she had no driver's license and the inability to pass a driving test. The unfortunate result of the episode was a crash in which one of [the mother's] passengers was killed. This incident took place during the reunification process and has resulted in [the mother's] indictment and incarceration."

{¶ 25} The court additionally noted:

> "[Appellant] insists that in spite of [the mother's] repeated hospitalizations, bouts of delusion, erratic behaviors, and fits of rage as described by [appellant], that she is a capable mother and that the child's best interests would be served by her parenting. More telling is [appellant's] admission that he would, in a joint parenting situation, which he desires, would defer to her judgment when making important decisions regarding the child. The Court cannot properly describe [appellant's] frame of mind due to his refusal to submit to a psychological evaluation * * *."

{¶ 26} The court thus found that the child could not or should not be placed with either parent within a reasonable time.

{¶ 27} The court also found that granting appellee permanent custody would serve the child's best interest. The court determined that (1) the child was easily adoptable, (2) "adoption would positively benefit the child, (3) "the granting of the permanent custody would facilitate such an adoption," (4) the child was

"very bonded to his foster care parents who wish to adopt him," (5) the foster parents fully met the child's needs, (6) the child had remained in the foster parents' continual care since his initial removal, (7) the child was too young to express his wishes, and (8) the child had been in appellee's temporary custody for more than twelve months. The court further stated:

> "[The c]hild is reported to be thriving in his substitute placement. Neither parent has shown any ability to provide a safe environment for the child and refuses offered services. There is little possibility that either parent can ever provide a suitable environment for this child. The Court recognizes that such an environment is vital for the future of the well-being of this child."

{¶ 28} The court thus awarded appellee permanent custody of the child and terminated appellant's parental rights. This appeal followed.

II. ASSIGNMENT OF ERROR

{¶ 29} Appellant raises one assignment of error:

> The trial court abused its discretion by granting the Jackson County Department of Job and Family Services' Motion for Permanent Custody.

III.

ANALYSIS

{¶ 30} In his sole assignment of error, appellant argues the trial court erred by granting appellee permanent custody. Appellant contends the trial court abused its discretion by awarding appellee permanent custody. Appellant alleges that he

complied with the case plan's requirements and that his case plan compliance precluded the court from awarding appellee permanent custody of the child.

A.

STANDARD OF REVIEW

{¶ 31} A reviewing court generally will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *In re R.S.*, 4th Dist. Highland No. 13CA22, 2013–Ohio–5569, ¶ 29.

> " 'Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.' "

Eastley v. Volkman, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting Black's Law Dictionary 1594 (6th ed.1990).

{¶ 32} When an appellate court reviews whether a trial court's permanent custody decision is against the manifest weight of the evidence, the 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 trial ordered." *Eastley* at ¶ 20, quoting

Tewarson v. Simon, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *Thompkins,* 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *State v. Martin,* 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). *Accord In re Pittman,* 9th Dist. Summit No. 20894, 2002–Ohio–2208, ¶¶ 23–24.

{¶ 33} The essential question that we must resolve when reviewing a permanent custody decision under the manifest weight of the evidence standard is "whether the juvenile court's findings * * * were supported by clear and convincing evidence." *In re K.H.,* 119 Ohio St.3d 538, 2008–Ohio–4825, 895 N.E.2d 809, ¶ 43. "Clear and convincing evidence" is:

> "The measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal." *In re Estate of Haynes,* 25 Ohio St.3d 101, 103–04, 495 N.E.2d 23 (1986).

{¶ 34} In determining whether a trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *State v. Schiebel,* 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). *Accord In re Holcomb,* 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), citing *Cross v. Ledford,* 161 Ohio St. 469, 120 N.E.2d 118 (1954). ("Once the clear and convincing standard has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and determine if the trier of fact had

sufficient evidence before it to satisfy this burden of proof."); *In re Adoption of Lay*, 25 Ohio St.3d 41, 42–43, 495 N.E.2d 9 (1986). *Cf. In re Adoption of Masa*, 23 Ohio St.3d 163, 165, 492 N.E.2d 140 (1986) (stating that whether a fact has been "proven by clear and convincing evidence in a particular case is a determination for the [trial] court and will not be disturbed on appeal unless such determination is against the manifest weight of the evidence"). Thus, if the children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court's decision is not against the manifest weight of the evidence. *In re R.M.*, 2013–Ohio–3588, 997 N.E.2d 169, ¶ 62 (4th Dist.).

{¶ 35} Once the reviewing court finishes its examination, the court may reverse the judgment only if it appears that the fact-finder, when resolving the conflicts in evidence, "clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered." *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). A reviewing court should find a trial court's permanent custody decision against the manifest weight of the evidence only in the "exceptional case in which the evidence weighs heavily against the [decision]." *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting

Martin, 20 Ohio App.3d at 175, 485 N.E.2d 717; *accord State v. Lindsey,* 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000).

{¶ 36} Additionally, deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well (Emphasis sic)." *Davis v. Flickinger,* 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997). *Accord In re Christian,* 4th Dist. Athens No. 04CA 10, 2004–Ohio–3146, ¶ 7. As the Ohio Supreme Court long-ago explained: "In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and observation of the parties and through independent investigation cannot be conveyed to a reviewing court by printed record." *Trickey v. Trickey,* 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952).

B.

PERMANENT CUSTODY PRINCIPLES

{¶ 37} A parent has a "fundamental liberty interest" in the care, custody, and management of his or her child. *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599; *In re Murray* (1990), 52 Ohio St.3d 155, 157, 556 N.E.2d 1169. Moreover, a parent has an "essential" and "basic civil right" to raise his or her children. *Murray,* 52 Ohio St.3d. at 157. The parent's

rights, however, are not absolute. Rather, "it is plain that the natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the pole star or controlling principle to be observed." *In re Cunningham* (1979), 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (quoting *In re R.J.C.* (Fla.App.1974), 300 So.2d 54, 58). Thus, the state may terminate parental rights when the child's best interest demands such termination.

{¶ 38} When a state seeks to terminate parental rights, it must provide parents with fundamentally fair procedures. *Santosky*, 455 U.S. at 753-54. The statutory protections contained in R.C. Chapter 2151 provide parents facing a termination of their parental rights with fundamentally fair procedures. *See In re B.C.*, --- Ohio St.3d ---, 2014-Ohio-4558, --- N.E.2d ---, ¶¶ 25-27 (explaining that the statutory protections contained in R.C. Chapter 2151 preserve due process rights of parents facing parental rights termination). Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. R.C. 2151.414(A)(1). Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying principles of R.C. Chapter 2151:

> (A) To provide for the care, protection, and mental and physical development of children * * *;
>
> * * *
>
> (B) To achieve the foregoing purpose[], whenever possible, in a family environment, separating the child from its parents only when necessary for his welfare or in the interests of public safety. R.C. 2151.01.

{¶ 39} R.C. 2151.414(B)(1) outlines the conditions that must exist before a trial court may grant permanent custody of a child to a children services agency. A court may grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and that one of the following circumstances exist:

> (a) The child is not abandoned or orphaned 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 ending on or after March 18, 1999, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.
>
> (b) The child is abandoned.
>
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
>
> (d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶ 40} Thus, before a trial court may award a children services agency permanent custody, it must find, by clear and convincing evidence, (1) that one of the circumstances described in R.C. 2151.414(B)(1) applies, and (2) that awarding

the children services agency permanent custody would further the child's best interests.

{¶ 41} In the case at bar, appellant does not specifically argue that the trial court's best interest finding is against the manifest weight of the evidence. Nor does he specifically challenge the court's finding that the child could not or should not be returned to him within a reasonable time. Instead, appellant contends that his case plan compliance precluded the court from granting appellee permanent custody. This essentially is a dispute of the court's finding that the child could not or should not be returned to him within a reasonable time. Appellant seems to assert that because he complied with the case plan, he substantially remedied the conditions that led to the child's removal and thus, the child could and should be returned to him within a reasonable time.

C.

R.C. 2151.414(E)

{¶ 42} R.C. 2151.414(E) governs a trial court's analysis of whether a child cannot or should not be returned to a parent within a reasonable time. The statute requires the trial court to consider "all relevant evidence" and sets forth the factors a trial court must consider in determining whether a child could not or should not be placed with either parent within a reasonable time. As relevant in the case at bar, if the court finds the existence of any one of the following factors, "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:"

> (1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

The statute also permits the court to consider any other factor that it deems relevant. R.C. 2151.414(E)(16).

{¶ 43} In the case at bar, clear and convincing evidence supports the trial court's finding that the child could not or should not be placed with appellant. The conditions that led to the child's removal included the mother's serious mental health issues, appellant's failure to recognize the detrimental impact the mother's serious mental health issues could have upon the child, and appellant's failure to maintain a safe, stable, permanent home for the child. The trial court determined that appellant continuously and repeatedly failed to understand the import of the mother's mental health issues. The court noted that appellant believes the mother would be an appropriate caregiver for the child, despite her schizophrenia and other mental health issues that the mother failed to remedy. The court additionally

found that appellant persisted in poor decision-making skills by allowing the mother to drive an automobile.[4] The court observed that appellant found it appropriate to allow the mother to drive, even though the mother lacked a driver's license and exhibited poor mental states. The court noted that appellant's decision to allow the mother to drive resulted in the automobile accident in which one of the passengers was killed.

{¶ 44} Moreover, the evidence shows that appellant believed the school bus was an appropriate home for the child and that he persisted in this belief. The evidence shows that the bus was completely unsafe for any child, yet appellant believed, even as late as May 2013, that the bus could be an appropriate home for the child.

{¶ 45} Furthermore, although appellant completed a parenting skills course through his church and obtained independent housing with church assistance, he did not do so until after appellee filed its permanent custody motion. Appellant offered no explanation why he was unable to accomplish either of these case plan goals between the child's removal in December 2011, and January 2013, when appellee filed its permanent custody motion. Appellant had over one year to

[4] Courts have upheld parental rights termination when a parent demonstrates poor judgment, *In re McKinley*, 2nd Dist. Montgomery No. 19716, 2003-Ohio-2828, ¶¶ 7-8, or when a parent fails to recognize the potential risk the other parent poses to the child. *See In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 54; *In re A.S.*, 8th Dist. Cuyahoga Nos. 100530 and 100531, 2014-Ohio-3035; *In re B.K.*, 6th Dist. Lucas No. L-10-1053, 2010-Ohio-3329; *In re Jordan B.*, 6th Dist. Lucas No. L-06-1161, 2007-Ohio-2537, ¶ 31; *In re Brown*, 7th Dist. Columbiana No. 04CO59, 2005-Ohio-4374, ¶ 58.

accomplish the case plan goals, but apparently made no effort to do so until faced with the termination of his parental rights.

{¶ 46} Even if appellant substantially complied with the case plan, we note that in a permanent custody proceeding, the question is not "whether the parent has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child's removal." *In re McKenzie*, 9th Dist. Wayne No. 95CA0015 (Oct. 18, 1995); *accord In re Hogle*, 10th Dist. Franklin No. 99AP-944 (June 27, 2000) (stating that "under R.C. 2151.414(E)(1), the relevant inquiry is not simply whether the parents complied with all aspects of the case plan but whether they complied with the terms and objectives of a case plan related to the conditions causing the child's removal"). Substantial compliance with a case plan is not necessarily dispositive on the issue of reunification and does not preclude a grant of permanent custody to a children's services agency. *In re C.C.*, 187 Ohio App.3d 365, 2010–Ohio–780, 932 N.E.2d 360, ¶ 25 (8th Dist.); *In re West*, 4th Dist. Athens No. 03CA20, 2003-Ohio-6299, ¶ 19. Simply because a parent completes the requirements of a case plan does not necessarily mean that the parent substantially remedied the conditions that caused the child's removal. *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 90, *appeal not allowed*, 136 Ohio St.3d 1453, 2013-Ohio-3210, 991 N.E.2d 259. Indeed, because the trial court's primary focus in a permanent custody proceeding is the child's best

interest, "it is entirely possible that a parent could complete all of his/her case plan goals and the trial court still appropriately terminate his/her parental rights." *In re Gomer*, 3rd Dist. Wyandot Nos. 16-03-19, 16-03-20, and 16-03-21, 2004-Ohio-1723, ¶ 36; *accord In re A.S.*, 8th Dist. Cuyahoga No. 100530 and 100531, 2014-Ohio-3035, ¶ 32.

{¶ 47} Consequently, even if appellant complied with the case plan by obtaining an appropriate home for the child and by completing parenting education courses, his case plan compliance does not necessarily demonstrate that he substantially remedied the conditions that caused the child's removal or that reuniting him with the child is in the child's best interest. See *In re W.A.J.*, 8th Dist. Cuyahoga No. 99813, 2014-Ohio-604, ¶ 21 (observing that "mother's completion of parenting skills courses did not mean that she proved her competency to parent"). As we explained above, the evidence supports a finding that despite appellant's improvements, he had not substantially remedied the conditions that led to the child's removal.

{¶ 48} Moreover, this court has recognized:

> "* * * [A] child should not have to endure the inevitable to its great detriment and harm in order to give the * * * [parent] an opportunity to prove her suitability. To anticipate the future, however, is at most, a difficult basis for a judicial determination. The child's present condition and environment is the subject for decision not the expected or anticipated behavior of unsuitability or unfitness of the * * * [parent]. * * * The law does not require the court to experiment with the child's welfare to see if he will suffer great detriment or harm." *In re Bishop,* 36 Ohio App.3d 123, 126,

521 N.E.2d 838 (5th Dist.1987), quoting *In re East*, 32 Ohio Misc. 65, 69, 288 N.E.2d 343, 346 (1972).

Thus, the trial court had no obligation to experiment with this young child's welfare in order to permit appellant to prove that he would be able to properly care for the child, protect the child from potential harm that could result from the mother's mental illness, and provide a safe, stable, and permanent home, especially when the child had been in the same foster home since birth and when appellant had over one year to prove his suitability. The trial court quite reasonably could have determined that uprooting the child from the only home he has ever known and placing him in appellant's uncertain care would not be in the child's best interest.

{¶ 49} Accordingly, based upon the foregoing reasons, we overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

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

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

Harsha, J. & Hoover, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.