



for amphetamines and received very little prenatal care. The complaint alleged while she was pregnant, appellant was in treatment for her addiction and that she tested positive for drugs during her pregnancy. The complaint also alleged that appellant did not have a residence, was not employed and did not have family support in the area.

{¶3} The child was placed in the custody of the agency and subsequently placed in foster care upon his release from the hospital. On December 12, 2008, the court found the child was dependent and continued temporary custody to the agency. A motion for permanent custody was filed by the agency on December 21, 2009. A hearing was held on the motion on February 17, 2010 and the court granted the motion in a written decision on March 3, 2010.

{¶4} Appellant now appeals the decision of the trial court granting permanent custody of her child to MCDJFS. She raises the following single assignment of error for our review:

{¶5} THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY [OF] APPELLANT'S CHILD TO THE MADISON COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES, CHILDREN SERVICES DEPARTMENT[,] PURSUANT TO 2151.414.

{¶6} In her sole assignment of error, appellant argues that the trial court's decision to grant permanent custody was against the manifest weight of the evidence.

{¶7} Before a natural parent's constitutionally protected liberty interest in the care and custody of her child may be terminated, the state is required to prove by clear and convincing evidence that the statutory standards for permanent custody

have been met. *Santosky v. Kramer* (1982), 455 U.S. 745, 759, 102 S.Ct. 1388. An appellate court's review of a juvenile court's decision granting permanent custody is limited to whether sufficient credible evidence exists to support the juvenile court's determination. *In re Starkey*, 150 Ohio App.3d 612, 2002-Ohio-6892, ¶16. A reviewing court will reverse a finding by the juvenile court that the evidence was clear and convincing only if there is a sufficient conflict in the evidence presented. *In re Rodgers* (2000), 138 Ohio App.3d 510, 520.

{¶18} R.C. 2151.414(B)(1) requires the juvenile court to apply a two-part test when terminating parental rights and awarding permanent custody to a children services agency. \* \* \* Specifically, the court must find that: (1) the grant of permanent custody to the agency is in the best interest of the child, utilizing, in part, the factors of R.C. 2151.414(D); and, (2) any of the following apply: the child cannot be placed with either parent within a reasonable time or should not be placed with either parent; the child is abandoned; the child is orphaned; or where the above do not apply, the child has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period. R.C. 2151.414(B)(1)(a), (b), (c) and (d); *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, ¶31-36; *In re Ebenschweiger*, Butler App. No. CA2003-04-080, 2003-Ohio-5990, ¶9.

{¶19} The juvenile court found by clear and convincing evidence, and appellant does not dispute, that Ay. Y. is dependent, and has been in the temporary custody of MCDJFS for more than 12 months of a consecutive 22-month period as of the date MCDJFS filed the permanent custody motion.

{¶10} The juvenile court also found that it was in the child's best interest to grant permanent custody to the agency. R.C. 2151.414(D)(1) provides that in

considering the best interest of a child in a permanent custody hearing, "the court shall consider all relevant factors, including, but not limited to the following:

**{¶11}** "(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

**{¶12}** "(b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

**{¶13}** "(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999;

**{¶14}** "(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

**{¶15}** "(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child."

**{¶16}** Two witnesses testified at the permanent custody hearing. Jennifer Miller, an agency caseworker testified that Ay. Y., who was 17 months old at the time of the hearing, has been in the same foster home from the time he was six days old. The child is bonded to the foster family, who would like to adopt him. The caseworker testified that appellant has not completed any of the objectives set by the case plan. She did not successfully complete parenting classes. According to the parenting facilitator, appellant missed over the allowable number of absences and was encouraged to re-take the classes but did not do so. Appellant also failed to

maintain any type of stable housing. During the pendency of the case, she was homeless, living in a tent and homeless shelter, living with different relatives and friends and the agency was unsure where the mother was living at the time of the hearing.

**{¶17}** Miller testified that appellant also failed to meet the case plan objective of securing employment and was not employed at any time during the entire case. Appellant also failed to complete drug and alcohol treatment requirements. She was scheduled for an assessment in early January 2009 but did not follow through with the appointment. She eventually completed the assessment in February 2009 but refused the referral provided and decided to detox at the Talbot Hall instead. She completed this step and was placed in a halfway house but was discharged due to noncompliance with the program. After continuous urging of the agency, she again took some steps to get treatment, but ultimately did not complete the requirements. The caseworker testified that she met weekly with appellant and discussed the steps needed to obtain treatment, but appellant frequently failed to follow through or was noncompliant. Miller stated that out of 49 drug screens taken during the case, 17 were positive, with the last positive result in December 2009.

**{¶18}** Miller also testified that appellant visits weekly with Ay. Y. for a two-hour visit. She stated that appellant usually attends visits and the few visits which were no calls/no shows occurred when appellant was in jail or in detox. Miller stated that the visits go well, although there are gaps in appellant's parenting and she internalizes the child's actions and has had less interaction with the child lately in visits. The caseworker also explained that there were no family members who could be approved for placement.

{¶19} The caseworker testified that the agency decided to request permanent custody due to the lack of progress on the case plan. She explained that the child was 17 months old and had minimal contact with appellant other than the two-hour weekly visits. She stated that even the visitation could not be increased until appellant began to make progress on the case plan, which did not occur.

{¶20} The foster mother also testified at the hearing and stated that Ay. Y. has been with her family since he was released from the hospital at six days old. She stated that the child is bonded to the family and they could consider adopting him if permanent custody is granted.

{¶21} The trial court reviewed the factors listed above regarding the child's best interest and found that the child has been with the same foster parents since he was six days old and has visited for two hours a week with his mother. The court determined that the child is in need of a legally secure permanent placement that can only be achieved through a grant of permanent custody to the agency. The guardian ad litem also recommended granting permanent custody as it was in the child's best interest.

{¶22} The trial court further found that the mother has not completed parenting classes, has not had stable housing during the case and continues to be dependent on others for housing. The court determined that the mother has been unemployed throughout the case and has repeatedly failed to complete drug/alcohol treatment programs and has repeatedly tested positive for illegal substances.

{¶23} Appellant's argument on appeal is essentially that her inability to find housing and unemployment were a direct result of her drug dependency and relapses and failure are common with drug treatment. She contends that continuing

temporary custody is in the child's best interest, as it gives the family the best chance at reunification.

{¶24} However, we find no error in the court's determination that permanent custody is in the child's best interest. At the time of the hearing, the child had been in foster care for 17 months, with no significant progress by the mother towards reunification. As determined by the trial court, the child needs a legally secure placement. The mother has already had a significant amount of time to show progress, yet very little has changed. Accordingly, we find the trial court's determination to grant permanent custody was not against the manifest weight of the evidence.

{¶25} Judgment affirmed.

POWELL and HENDRICKSON, JJ., concur.