

court.

{¶2} Appellant ("Mother") is the biological mother of three children: Heather H., born March 27, 1996; Joshua C., born October 19, 1993; and Josiah C., born May 21, 1992.¹ This matter commenced in February 2008 when Mother sought assistance at the offices of the Butler County Department of Jobs and Family Services, Children Services Division ("Children Services" or "the agency"). Mother reported feeling overwhelmed with life. She was nearing eviction from her apartment, her utilities were being shut off, and she recently lost her job. In addition, Mother informed the agency that she was bipolar, had not been taking her medication properly, and was experiencing suicidal thoughts.

{¶3} Mother agreed to sign a voluntary care agreement with the agency whereby she consented to placing the three children in foster care. Mother was then taken to the hospital for evaluation.

{¶4} In March 2008, Children Services filed complaints alleging that all three children were dependent within the meaning of R.C. 2151.04. The agency retained temporary custody of the children, who remained in foster care. In May 2008, all three children were adjudicated dependent. At that time, the juvenile court adopted a case plan which required Mother to participate in a psychological evaluation and a substance abuse assessment and follow the resultant recommendations for both, take her medications as prescribed, maintain housing and employment, and complete random urine screens as requested by Children Services or the guardian ad litem.

{¶5} In December 2008, the juvenile court granted temporary custody of Heather to the child's paternal grandmother, Joanne G. ("Grandmother"). Joshua and

1. Joshua and Josiah share a biological father, while Heather was fathered by a different man. Neither father participated in the proceedings below, nor is either father a party to this appeal.

Josiah remained in the foster home at this time.

{¶16} In April 2009, Children Services filed a motion for an order granting legal custody of Heather to Grandmother. The agency also filed a motion to modify temporary custody of the boys to a planned permanent living arrangement ("PPLA"). Following a hearing, the juvenile court conducted in camera interviews with the three children. In addition, the guardian ad litem filed a report supporting the agency's two motions.

{¶17} In November 2009, the magistrate issued decisions ordering that Heather be placed in the legal custody of Grandmother and ordering that Joshua and Josiah be placed in a PPLA. Mother subsequently filed objections to the magistrate's decisions as well as a motion to set the decisions aside. Following a hearing, the juvenile court overruled Mother's objections, denied her motion to set aside the magistrate's decisions, and adopted the decisions as final appealable orders. Mother timely appeals, raising two assignments of error.

{¶18} Assignment of Error No. 1:

{¶19} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY GRANTING LEGAL CUSTODY TO [JOANNE G.]."

{¶10} Mother concedes that the juvenile court considered the appropriate statutory factors in determining whether placement of Heather in the legal custody of Grandmother would be in Heather's best interest. See R.C. 3109.04(F)(1)(a) – (j). Nonetheless, Mother contends that the court did not adequately consider these factors and that its decision awarding legal custody of Heather to Grandmother was against the manifest weight of the evidence.

{¶11} An appellate court reviews a juvenile court's custody determination for an abuse of discretion. *In re Brown* (2001), 142 Ohio App.3d 193, 198. An abuse of

discretion implies that the court's decision was unreasonable, arbitrary, or unconscionable, and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. The discretion afforded to a juvenile court in custody matters "should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned." *In re J.M.*, Warren App. No. CA2008-12-148, 2009-Ohio-4824, ¶17, quoting *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74.

{¶12} Mother's assignment of error alleges that the juvenile court's decision was against the manifest weight of the evidence. An appellate court will not reverse a judgment as being against the manifest weight of the evidence where the judgment is supported by some competent, credible evidence going to all essential elements of the case. *C.E. Morris Co. v. Foley Const. Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶13} After a child is adjudicated abused, neglected, or dependent, the juvenile court may award legal custody to a nonparent upon determining that such a disposition is in the child's best interest. R.C. 2151.353(A)(3). The best interest finding must be supported by a preponderance of the evidence, meaning "evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it." *In re M.D.*, Butler App. No. CA2006-09-223, 2007-Ohio-4646, ¶26.

{¶14} In order to make the best interest determination, the juvenile court must consider all relevant factors in R.C. 3109.04(F)(1). These factors include, in relevant part: the wishes of the parents; the wishes of the child; the child's interaction and interrelationship with parents, siblings, and other significant persons; the child's adjustment to home, school, and community; the mental and physical health of all persons involved; the parent more likely to honor and facilitate visitation; and whether one parent has denied the other parenting time. See R.C. 3109.04(F)(1).

{¶15} Contrary to Mother's assertions, the record demonstrates that the juvenile court adequately considered the relevant best interest factors and that its findings are supported by the evidence. The juvenile court considered the fact that Mother opposed the motion and Heather's father approved of his daughter being placed with his mother. The court also took into account Heather's wishes, as expressed by the child in camera, and the recommendation of the guardian ad litem in favor of the motion.

{¶16} The evidence demonstrated that Heather is doing well in Grandmother's house, where she has been residing since December 2008. She attends counseling and school, earns good grades, and has made friends. She has a positive relationship with Grandmother and the other three children in the household. In addition, Grandmother cooperates with the foster family housing Joshua and Josiah in arranging monthly visits for the three siblings. While Mother and Grandmother have a contentious relationship, there is no evidence that Grandmother willfully hinders Mother's supervised visitation or telephone calls with Heather. In addition, Grandmother arranges visits between Heather and her father.

{¶17} Regarding mental and physical health issues, there is no evidence to suggest that Grandmother has any pertinent problems. However, there are ongoing concerns regarding Mother's mental health and substance abuse issues. As stated, the agency's involvement in this case was prompted by Mother's mental health issues. The record portrays a turbulent past for the family prior to the agency's involvement. According to Grandmother, Mother lived an unstable existence, moving from place to place and often residing in homes without utilities or water. Grandmother also indicated that Mother was verbally and mentally abusive to the children and would shift them from caretaker to caretaker.

{¶18} Children Services caseworker Sarah Nesbit testified that Mother has been

minimally compliant with the case plan requirements. She is no longer taking medication for her psychological issues, and refused to undergo urine screens on four or five occasions. Mother also continues to experience difficulty attaining stable housing and income. She moved from place to place up until one month prior to the hearing on the agency's custody motions. Mother conveyed that her residence at the time of the hearing was a work in progress, requiring furnishing and remodeling.

{¶19} In the past, Mother has admitted to smoking marihuana on a daily basis in an effort to self-medicate. Dr. Kenneth Tepe, one of her therapists, reported that Mother exhibited suicidal ideations, anxiety, and periods of depression. Mother has described herself as bipolar, depressed, or manic depressive to a number of mental health professionals. While she sought psychological therapy at an Indiana facility called "Cornerstone," that relationship was terminated and a protection order issued after Mother allegedly threatened to kill the therapist if she lost custody of her children.

{¶20} The record also indicates that the family has a history with children services agencies in other states. Relevant to this discussion, there was testimony that Heather was placed in foster care in Kentucky in 2002.

{¶21} Mother's testimony demonstrates her refusal to accept responsibility for her situation and face reality. Mother claims she has gone "above and beyond" what was required of her in the case plan. According to Mother, she "completed" individual counseling with three counselors. Although she admits difficulty with housing, she emphasizes the fact that she had been renting and fixing up a two bedroom house for one month at the time of the hearing. Mother also retained part-time employment at a restaurant and a car lot, and was working for her landlord fixing up the house. Mother further maintains that she took classes to reinstate her certified nursing assistant license and is actively seeking employment in that field.

{¶22} In an effort to explain her depression, Mother stated that she has been diagnosed with fibromyalgia. By controlling the chronic pain caused by this disorder, Mother claims she controls her depression. She believes there is no need for psychological medication or individual therapy on her part because her problems stem from her physical disorder and not from mental health issues. Mother insists that her physical ailment would not interfere with her ability to care for the children. Regarding her past substance abuse issues, she stated that she was attending drug abuse sessions with counselor James Wortham two to three times a week.

{¶23} Mother concedes that visitation with her children has been difficult, but maintains that she has always tried to be as regular as possible. She speaks with Heather once a week on the telephone and visits the child for two hours a week.

{¶24} While it appears that Mother has made some strides towards improvement, her progress has been slow and halfhearted. Other than sporadic therapy sessions, Mother does not seem to have made any significant progress with her mental health issues. In fact, she now denies them completely. In addition, while her current residence may be promising a one-month tenure in a largely unfurnished house and a series of part-time jobs are not sufficient achievements to demonstrate stability over an 18-month period.

{¶25} We acknowledge that Mother opposed the legal custody motion and that Heather appears to be bonded to Mother. However, these considerations, alone, do not invalidate the juvenile court's decision. The remaining factors advocate strongly in favor of awarding legal custody of Heather to Grandmother. Mother's actions are simply too little, too late at this stage of the proceedings.

{¶26} We conclude that the juvenile court did not abuse its discretion in awarding legal custody of Heather to Grandmother. Moreover, the juvenile court's decision was

supported by competent, credible evidence and was therefore not against the manifest weight of the evidence.

{¶27} Mother's first assignment of error is overruled.

{¶28} Assignment of Error No. 2:

{¶29} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY GRANTING THE STATE'S MOTION TO MODIFY TEMPORARY CUSTODY TO A PLANNED PERMANENT LIVING ARRANGEMENT FOR [JOSHUA AND JOSIAH C.]."

{¶30} Mother argues that the juvenile court's decision placing Joshua and Josiah in a PPLA was against the manifest weight of the evidence. Mother acknowledges that the juvenile court properly invoked the correct statute, R.C. 2151.415, in rendering its decision, but insists that the court failed to discuss how such a disposition accorded with the boys' best interests under R.C. 2151.414(D)(1).

{¶31} In addressing the second assignment of error, we apply the same abuse of discretion and manifest weight standards enumerated under Mother's first assignment of error.

{¶32} R.C. 2151.415 governs motions for dispositional orders where an agency has been granted temporary custody of a child. One such disposition is a PPLA, available under subsection (A)(5) of the statute. Subsection (C) sets forth the various grounds upon which placement of a child in a PPLA may be based. Relevant to the present matter, the juvenile court based its decision ordering a PPLA for Joshua and Josiah on the following:

{¶33} "(C)(1) * * * A court shall not place a child in a planned permanent living arrangement, unless it finds, by clear and convincing evidence, that a planned permanent living arrangement is in the best interest of the child and that one of the following exists:

{¶34} " * * *

{¶35} "(b) The parents of the child have significant physical, mental, or psychological problems and are unable to care for the child because of those problems, adoption is not in the best interest of the child, as determined in accordance with division (D)(1) of section 2151.414 of the Revised Code, and the child retains a significant and positive relationship with a parent or relative[.]"

{¶36} In order to make the best interest determination, the juvenile court must consider all relevant factors in R.C. 2151.414(D)(1). These factors include, in pertinent part: the child's interaction and interrelationship with parents, siblings, foster caregivers, and other significant persons; the wishes of the child; the custodial history of the child; and the child's need for legally secure permanent placement and whether that need can be fulfilled without ordering a PPLA. See R.C. 2151.414(D)(1).

{¶37} After reviewing the record, we find substantial evidence supporting a finding that placement of Joshua and Josiah in a PPLA was in their best interests. Both boys have been residing in the same foster home for 16 months since May 2008. Although there have been some adjustment issues, the record demonstrates that the boys are doing well in that placement. The boys have a positive relationship with their foster parents. They are doing well in school. They participate in counseling, school activities, tae kwon do lessons, and do household chores. Their hygiene has improved. Also, the boys enjoy engaging in recreational activities with their foster family.

{¶38} Regarding Joshua's and Josiah's relationships with Mother, the record shows that visits with Mother are sporadic. Supervised visits are scheduled twice a month. Mother concedes that she has had trouble attending these visits, but attributes this to weather and transportation constraints. Visits that take place typically go well, although Mother has been observed sleeping on occasion during visits. Even though

Joshua and Josiah are permitted to call Mother, their foster father testified that they never do.

{¶39} Joshua and Josiah have a positive relationship with their sister, Heather. As stated, the foster family and Grandmother cooperate to orchestrate visits between the boys and Heather on monthly basis. Heather stays with the foster family for the weekend during these visits. The boys have limited supervised contact with their father, who is a sex offender. Finally, the record indicates that the magistrate conducted an in camera interview with both boys and considered their wishes, and that the guardian ad litem recommended granting the agency's motion for a PPLA.

{¶40} In accordance with R.C. 2151.415(C)(1)(b), there is ample evidence in the record to support a finding that Mother has significant mental or psychological problems which interfere with her ability to care for the boys. The agency's involvement in this case began because these very problems prevented Mother from caring for her children. As stated, Mother previously described herself as bipolar, depressed, or manic depressive. She has admitted to thoughts of suicide and severe anxiety, and to self-medicating with illegal narcotics. In view of the overarching instability in Mother's life and the living circumstances the children endured in her care, we are not convinced that Mother's diagnosis of fibromyalgia and treatment with pain medication conveniently resolved her mental health issues.

{¶41} The record consistently demonstrates that Mother refuses to accept responsibility for her troubles. She attributes her problems to "bad luck" or to the flaws of government agencies and mental health professionals involved in the case. Despite her sporadic attempts at therapy, there is no evidence that Mother has made significant progress in addressing the psychological issues which have hindered her care of herself and the children in the past.

{¶42} Much of the evidence discussed under the first assignment of error is relevant to the boys' need for legally secure permanent placement. Mother's recurring instability with housing and employment, her ongoing mental health and substance abuse issues, and her erratic attempts at therapy are all considerations supporting the juvenile court's decision to place the boys in a PPLA.

{¶43} We conclude that the juvenile court did not abuse its discretion in placing Joshua and Josiah in a PPLA. In addition, the juvenile court's decision was supported by competent, credible evidence and therefore not against the manifest weight of the evidence.

{¶44} Mother's second assignment of error is overruled.

{¶45} Judgment affirmed.

YOUNG, P.J., and BRESSLER, J., concur.