

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF: : JUDGES:
 : Julie A. Edwards, P.J.
 : William B. Hoffman, J.
 R.P., H.M. & S.Y. : Patricia A. Delaney, J.
 :
 : Case No. 09 CA 123, 09 CA 124, &
 : 09 CA 125
 :
 :
 : OPINION

CHARACTER OF PROCEEDING: Civil Appeal from Licking County
Court of Common Pleas, Juvenile
Division, Case Nos. C 20070173, C
20070174 and C 20070175

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: March 11, 2010

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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Edwards, P.J.

{¶1} Appellant, Brandi-Morgan Dowell, appeals from the October 8, 2009, Judgment Entry issued by the Licking County Court of Common Pleas, Juvenile Division, in Case No. C 20070173 placing R.P. into a Planned Permanent Living Arrangement. Appellant also appeals from the October 8, 2009, Judgment Entry issued by the Licking County Court of Common Pleas, Juvenile Division, in Case No. C 20070174 placing H.M. into the legal custody of his father and the October 8, 2009, Judgment Entry in Case No. C 20070175 terminating appellant's parental rights and granting permanent custody of S.Y. to the Licking County Department of Job and Family Services.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant Brandi-Morgan Dowell is the mother of R.P. (DOB 9/15/94), H.M. (DOB 8/26/99) and S.Y. (DOB 11/13/01). Scott Goddard is H.M.'s father. Appellant also has two other children who are in the custody of their father.¹

{¶3} On March 6, 2007, a complaint was filed in Case No. C 20070173 alleging that R.P. was a dependent and/or abused child. On the same day, complaints were filed in Case No. C 20070174 alleging that H.M. was a dependent and/or abused child and in Case No. C 20070175 alleging that S.Y. was a dependent and/or abused child. On June 1, 2007, the trial court found R.P. to be an abused child and H.M. and S.Y. to be dependent children. Temporary custody of the three children was granted to Licking County Department of Job and Family Services.

¹ David Robinette is the father of R.P. and Joel Young is the father of S.Y. Neither were involved in this appeal.

{¶4} On February 7, 2008, Licking County Department of Job and Family Services (hereinafter “the agency”) filed a motion in Case No. C 20070173 asking that R.P. be placed into a Planned Permanent Living Arrangement (PPLA) pursuant to R.C. 2151.415(A)(5) and 2151.415(C). On the same date, the agency filed a motion requesting that the current order of temporary custody of H.M. to the agency be terminated and legal custody of H.M. be granted to his father pursuant to R.C. 2151.415(A)(3). Finally, on the same date, the agency filed a Motion for Permanent Custody of S.Y. pursuant to R.C. 2151.413(A) and 2151.414(E)(1).

{¶5} A hearing before a Magistrate commenced on July 7, 2008. The following testimony was adduced at the hearing.

{¶6} Appellant testified that she spanked R.P. with a belt and that she hit her other children on their “butts.” Transcript of July 7, 2008, hearing at 12. She testified that she was unemployed at the beginning of this case and admitted that she had a history of drug abuse, although she testified that it had been 14 years since she used drugs. Appellant further testified that she had not had a drink in over a year and that, although she worked at the Dew Drop Inn, a bar, she did not hang out there when she was not working.

{¶7} When appellant was questioned about her involvement with Children’s Services, she testified that her involvement started in 1999 when Children’s Services was first contacted. Appellant testified that she did not work full time, but that she worked at Goodwill “30 hours for cleaning and about six to seven for laundry.” Transcript of July 7, 2008, hearing at 17. Appellant also works at the Dew Drop Inn on an as needed basis. Appellant testified that she could support herself and her children

on her income if no child support was taken out of her pay for her children who live with their father.

{¶8} Appellant testified that she had lived in four different places in the last two years. The following testimony was adduced when appellant was asked how many places she had lived since 1994, the year when R.P. was born:

{¶9} “A. I have no idea. There’s been several.

{¶10} “Q. Would it be approximately 26 places?

{¶11} “A. I don’t think it’s been that many, no.

{¶12} “Q. Okay. Close to that many?

{¶13} “A. No.

{¶14} “Q. Okay. If you’ve received benefits at 26 different places since [R.P.] has been born, would that be an accurate depiction of how many places you’ve lived?

{¶15} “A. I’m not sure.” Transcript of July 7, 2008, hearing at 22.

{¶16} Testimony was adduced that the three children who are at issue in this case had been removed from appellant’s care four times in four different counties. Appellant also testified that she had been involved with Children’s Services other times when her children had not been removed from her care. When asked if she hit her children back then, appellant testified that she “busted” her third child’s butt. Transcript of July 7, 2008, hearing at 32. Appellant denied that she still hit her children when disciplining them, but testified that she had “busted” their behinds. She testified that there was “a difference between having a black eye and having a butt busted.” Transcript of July 7, 2008, hearing at 37.

{¶17} Testimony also was adduced that two of appellant's children, R.P. and H.M., alleged that appellant had sexually abused them. Appellant testified that she never sexually abused her children, but that they had been sexually abused in 2005 while in her care by her nephew who was arrested. The children received counseling. Appellant, who herself had been sexually abused in the past, testified that she had received counseling to address her own problems. When asked who made up her support system, appellant identified the two counselors who she had been involved with since becoming involved with Children's Services.

{¶18} Appellant testified that she believed that R.P. and H.M., both, who have behavioral issues, should come home and that she could handle them on her own.

{¶19} The next witness to testify was Linda Nabors, the Principal at John Clem Elementary who was familiar with H.M. Nabors testified that H.M. was having behavioral issues at the beginning of the 2007/2008 school year and that he was confrontational with his peers. She testified that H.M. was aggressive and lied. Nabors further testified that as H.M. progressed through the school year, he was easier to talk with and his misbehavior became less frequent. She also testified that he stopped lying and that his relationships with his peers improved. Nabors further testified that H.M. became angrier when he was in appellant's home than when he was in foster placement. According to Nabors, when H.M. was placed in his father's home, his behavior improved dramatically. She testified that Scott Goddard, H.M.'s father, was involved with school and had been very supportive and understanding. She testified that he was consistent with H.M. and that the two had a positive relationship.

{¶20} Nabors also testified that, over the past year, appellant had been willing to work with her.

{¶21} Jamie Berry, who is with Licking County Children's Services, testified that she had contact with appellant and that she had seen appellant walk into the Triangle Bar a couple of weekends prior to the hearing.

{¶22} Kathleen Klingensmith, a social worker with the Licking County Department of Job and Family Services, testified that she was contacted by a social worker, Jennifer Masterson, on June 28, 2008, at around 9:50 p.m. and asked to accompany Masterson to the Dew Drop Inn to see if appellant was there. She testified that she saw appellant sitting at a table inside the bar and that appellant did not appear to be working. There were drinks on the table.

{¶23} Sandra Freeze, a child development professional with an associate's degree in child development, testified that she had received special training to be a foster parent. Freeze testified that H.M. and S.Y. had lived in her home since March of 2007, and that she knew R.P. through visits. When H.M. first arrived at Freeze's home, he had hygiene issues and was very belligerent and angry. Freeze testified that H.M. would compulsively lie and foraged for food. H.M. was placed in counseling with Freeze's input and she testified that he progressed in her care prior to going back to appellant's home. Freeze testified that before H.M. was returned to appellant's home, his misbehavior was not as regular.

{¶24} Freeze testified that both children did not know how to shampoo their hair or use toilet paper and that both had lice. According to Freeze, H.M. and S.Y. argued

with each other a lot and screamed at and hit each other. Freeze further testified that S.Y. would lie and would gorge herself on food.

{¶25} After the two children were returned to appellant's care in late November of 2007, that they would call Freeze and want to stay the night with her. The following is an excerpt from Freeze's testimony:

{¶26} "Q. Okay. And did anything else occur prior to when - - any other contacts prior to when the children came back into your home the second time?

{¶27} "A. They come out and stayed out all night with me one - - I think it was a Friday or a Saturday. I don't really remember.

{¶28} "Q. Okay. How was that visit?

{¶29} "A. It was one weekend. They come out and they had a smell about them. We had to immediately get rid of their socks, and their shoes had to be set outside and sprayed with a freshener. You know, we had to immediately bathe them. [H.M.] had a rash from head to toe that I'm assuming - - and that's just total assumption - - that it was scabies. He said he was being treated for it, though, because I asked him.

{¶30} "Q. Okay.

{¶31} "A. So . . .

{¶32} "Q. Okay. Any change in the behaviors during that visit?

{¶33} "A. Oh, yeah, there were - - a little more of the wildness about them. You know, they didn't have to follow the rules of the household anymore because they really didn't live with me, so, we had to re-establish, you know, that the house rules still apply, that type of thing. And just the constant fighting back and forth. And they were a little

more physical with each other, with the hitting and knocking each other around.” Transcript of July 7, 2008, hearing at 96-97.

{¶34} When S.Y. was placed back in Freeze’s care in January of 2008, after living with appellant, she had lice and hygiene issues. Freeze testified that she had to go out and buy new clothing for S.Y. because she did not come with any clothes that fit her. The clothes that S.Y. came with were a size or two too small. Freeze testified that S.Y. regressed after being with her mother and did not even attempt to use toilet paper. She further testified that S.Y. was a lot more aggressive and screamed and yelled. Freeze also testified that S.Y. had been masturbating since returning to Freeze’s home the second time.

{¶35} Freeze was questioned about the first time when S.Y. was in her care. She testified that S.Y. was then always very excited about visiting appellant, but would come back agitated and indicated a few times that appellant had threatened her. After S.Y. came into Freeze’s home the second time, she was not excited about visiting appellant.

{¶36} At the hearing, Freeze was questioned about her impression of Scott Goddard. She testified that she had talked with him a few times and was very impressed. According to Freeze, H.M. was a different child when he was with his father.

{¶37} Kelly Morrison, a certified pediatric nurse practitioner who specialized in child abuse, testified that she evaluated H.M. in March of 2008, for child abuse after his father brought him. She testified that H.M. wrote for her that appellant had touched his penis and butt with her hand and that white sticky stuff came out of appellant’s boyfriend’s “wiener.” Transcript of July 7, 2008, hearing at 142.

{¶38} Mariam Mihok-Hopkin, a residential therapist with a master's in social work, testified that she had worked for a year at Adriel, a residential treatment facility, as a residential therapist. She testified that she was R.P.'s therapist and that R.P. was admitted into the residential program in December of 2007 after her foster mother no longer could handle her. R.P. was diagnosed with post-traumatic stress disorder, oppositional defiant disorder, and ADHD [attention deficit hyperactivity disorder] and had begun to display symptoms of reactive attachment disorder. During counseling, R.P. disclosed that she had experienced neglect and physical abuse and been exposed to domestic violence.

{¶39} Mihok-Hopkin testified that R.P. had tantrums, anger management issues and that she cussed and was defiant towards authority figures. She testified that R.P. had improved a bit on medication and with counseling, but that she had some ups and downs. Mihok-Hopkin testified that R.P. was doing okay until she decided that she did not want to be in contact with appellant because there was too much turmoil during their telephone calls. During the calls, R.P. allegedly heard appellant's boyfriend screaming at the children, which made her fearful for both her own and the safety of her siblings.

{¶40} Mihok-Hopkin testified that R.P., who was suicidal one time, had indicated that she was sexually abused by a cousin and raped by appellant and that S.Y. had nightmares. According to Mihok-Hopkin, R.P. had a lot of anger to deal with and said that she did not want to return to appellant and would run away with her siblings if forced to do so. The following testimony was adduced when she was asked what type of environment R.P. needed to have in order to succeed and develop:

{¶41} “A. At this point highly structured, clear appropriate boundaries with adults and peers, a safe living environment. Of course I want her to continue meds (inaudible) you know services with the medications, and the trials of maybe different. Psycho - - you know, psychotic medications, because we’re still, you know, trying to figure out how we can keep her more on task, how to decrease the nightmares when she had them and, you know, the anxiety that she has at the time of the sleep - - you know, in the evening.

{¶42} “But right now I - - you know, I can’t see her doing well in any type of family environment. Right now she is just starting to make progress in the residential facility. And I’m not a big - - you know, stand up for residential treatment, but I don’t know that she could do well in a family right now at this point.

{¶43} “Q. Okay. So, she’ll need continued intensive counselling (sic) for - -

{¶44} “A. Uh-huh.

{¶45} “Q. Do you know how long that’s going to take or does it just depend how she keeps doing?

{¶46} “A. Yeah, it - - that just totally depends on her progress. Normally we estimate, you know, anywhere between 9 and 12 months from the time she was admitted. So, she has about five months to go. So, if she does really well in the next five months, I can see how she could be discharged.

{¶47} “Q. Okay. But at that point in time is she going to need to go into the stable type environment that - -

{¶48} “A. Yes.

{¶49} “Q. - - you’ve been explaining?

{¶50} “A. Absolutely.

{¶51} “Q. Okay. She could not be released into a chaotic-type environment?

{¶52} “A. Right.” Transcript of July 7, 2008, hearing at 183-184.

{¶53} At the hearing, Carla Steiner, who supervises and monitors parent/child visitation for Licking County Children’s Services, testified that she first had contact with appellant’s family in 2007. She testified that during appellant’s visit with her children in October of 2007, appellant’s boyfriend came with appellant and it was chaotic. Steiner testified that appellant also referred to Scott Goddard as “dickhead” and was harsh with her children and snapped at them. Transcript of July 7, 2008 hearing at 247. According to Steiner, when appellant visited with S.Y. and H.M. on January 31, 2008 after they had been removed from her house, she was angry and glaring at them and the children were scared. She further testified that H.M. came out of the room to get her and said that he was afraid that appellant was going to hurt him and his sister.

{¶54} H.M.’s father, Scott Goddard, testified that H.M. was raised by appellant until 2006. He testified that he had been incarcerated in 1999 for three years shortly after appellant became pregnant. Goddard testified that he had convictions for second degree burglary, felony breaking and entering, arson and misdemeanors. He testified that he did not learn about the children being taken from appellant until his wife read about it in the paper and that he had no idea about appellant’s history with Children’s Services. Goddard testified that appellant drank. Goddard testified that he had been released from prison ten years ago and off of probation for seven years and had not committed any crimes since then and did not use drugs or alcohol. He also testified that

he did not associate with people who had recently been convicted of felonies or violent crimes.

{¶55} Goddard testified that he had been employed as a pastry chef for almost six months and that he could support H.M. and himself. He testified that he had been married for five years and that his wife worked full-time also. According to Goddard, his wife was very excited about H.M. coming to live with them in their two bedroom home. He further testified that he regularly kept in contact with H.M.'s school and worked with H.M. on hygiene and control issues.

{¶56} On the second day of the hearing, Heidi Holmer, a clinical health therapist, testified that she performed an intake assessment of H.M. in February of 2007. She testified that H.M. had ADHD and that she was seeing him every other week. Holmer indicated that H.M. had anger and aggression towards others and animals and had tantrums and outbursts. According to Holmer, H.M. was doing very well with his anger and aggression issues and they were working on his social skills. During the one session when Holmer saw H.M. while he was living with appellant, he was very quiet and guarded and was defiant, which is different from how he acted when he was in foster care. When questioned about her contact with appellant, Holmer testified that appellant felt that the treatment "should not be focused on [H.M.'s] sperm donor" and that appellant was angry and belligerent towards her. Transcript of July 9, 2008, hearing at 19.

{¶57} According to Holmer, H.M. did not want to return to appellant. She testified that Scott Goddard had participated in counseling and that he was very playful and positive with H.M., taking him fishing and doing interactive things. Holmer testified that

H.M. enjoyed living with Goddard and his wife and that they did a good job of explaining things to him. She believed that he was progressing appropriately in Goddard's house and that he was "very bubbly and animated." Transcript of July 9, 2008 hearing at 31.

{¶58} Holmer also performed an intake assessment of S.Y. in May of 2008. She testified that S.Y. was suffering from anxiety and was guarded and that she was fearful because appellant had told her to keep her mouth shut. Holmer diagnosed S.Y. with adjustment disorder with depressed mood and anxiety. She testified that S.Y. was progressing slowly and that she interacted well with her foster mother. Holmer testified that S.Y. needed a safe and secure environment with appropriate rules and consequences. When asked if she had concerns about S.Y. being placed back in appellant's home, Holmer indicated that she did and noted that S.Y. had expressed negative emotions in appellant's home.

{¶59} On cross-examination, Homer testified that she believed that Scott Goddard and his wife were good parents for H.M. and that Goddard's wife was willing to get advice and help. She also testified that she was consulted before H.M. and S.Y. were returned to appellant's home the first time and that she agreed because there were no reported concerns at such time and appellant appeared to be following the case plan. She indicated that she did not believe that the children could return home.

{¶60} Jennifer Masterson, a social worker with Licking County Department of Job and Family Services, testified that the agency received a referral for courtesy supervision from Adams County in October of 2006. She testified that appellant's family had a very extensive involvement with Children's Services involving four different agencies, multiple cases and more than one removal. Masterson also testified that

Children's Services first became involved with appellant's family in 1996, but that the first substantiated referral was in November of 2000. Of the 35 referrals that they had received, Masterson testified that 15 had "either been substantiated or indicated." Transcript of July 9, 2008, hearing at 57.

{¶61} Masterson testified that R.P. had been removed 7 times from appellant's home and that H.M. and S.Y. had been removed three times. She testified that the agency became involved in 2000 over concerns about substantiated physical abuse. The following is an excerpt from her testimony:

{¶62} "Q. Okay. Now, briefly, what issues were the family having that led to the involvement in 2000?

{¶63} "A. In 2000? Physical abuse had been substantiated. And that was through Licking County.

{¶64} "Q. Okay. In what years was abuse or extreme punitive discipline an issue?

{¶65} "A. The abuse?

{¶66} "Q. Abuse or extreme punitive discipline, in what years was that an issue with this family?

{¶67} "A. 2001, and 2002, and another one in 2002, and 2003, and 2004, 2005, 2006, 2007, 2008.

{¶68} "Q. Okay. And that's - - 2006, 2008, that's this case, correct - -

{¶69} "A. Yes, it is.

{¶70} "Q. - - that we're talking about right now - -

{¶71} "A. Uh-huh.

{¶72} “Q. - - today? And what years was domestic violence an issue?”

{¶73} “A. That has been an ongoing issue with Brandi and the children. That was involving the one in 2000 - - two in 2000, 2001, 2002 - - two of them in 2002 - - three in 2002, 2003, 2005 on two different occasions here, and 2006.

{¶74} “Q. Okay. And when was alcohol an issue?”

{¶75} “A. It had been mentioned in all but three of the referrals.” Transcript of July 9, 2008, hearing at 58-59.

{¶76} According to Masterson, appellant’s failure to meet her childrens’ basic needs was an issue in 2002 and 2004. She also testified that in the past eight years, there had not been a year without a substantiated referral against appellant’s family. Physical abuse was an issue in 2003 also.

{¶77} Masterson testified that she developed a case plan for the family. When asked what objectives she identified in the case plan for appellant, Masterson indicated that appellant had problems disciplining her children and a history of drug and alcohol abuse. Masterson testified that appellant was referred to a parenting program and also was referred to a psychologist. According to Masterson, appellant attended the parenting program, but had shown that she did not apply what she learned. When asked if she would have concerns if the children were placed back in appellant’s home, Masterson indicated that she did due to the children’s exposure to domestic violence.

{¶78} Masterson also testified that the children were originally removed from appellant’s house in March of 2007 and then placed back in her home on December 1, 2007 before being removed again on January 16, 2008. The children were removed the second time after the agency received a referral indicating that H.M. was being called

names and that appellant and her boyfriend were yelling at each other and being aggressive. The sexual abuse allegations against appellant did not become apparent until after the removal. The following testimony was adduced when Masterson was asked if she had any concerns about the physical and sexual abuse continuing:

{¶79} “A. Well, my concern is that, I mean, through all the services, the 21 months that I’ve worked with Brandi and, you know, the numerous case management that she had from other counties, that things have not changed, and actually that things appear to be worse in the situation. She’s had extensive counselling (sic) and parenting education. And she’s had all the services above and beyond what we’re able to give a family. In all of my 13 years of social work, I’ve put more time into this family than I have actually any of my other families. And I’m just - - it was very disappointing that this information came out and that this stuff was happening to the children.

{¶80} “So, again, you know, they were removed because of physical abuse, but then when they return home it continues, verbal abuse and then sexual abuse on top of that.” Transcript of January 9, 2008, hearing at 86.

{¶81} Masterson also indicated that she had concerns that appellant was still using alcohol and had concerns about appellant being employed at the Dew Drop Inn. She also testified that appellant had a sporadic employment history. Appellant, who had been employed by Goodwill for almost a year, has been dependent on financial assistance from Job and Family Services for help with rent and utilities. She also testified that appellant had moved 26 times since R.P. was born and that appellant’s lack of stable housing was a constant concern.

{¶82} Masterson testified that Scott Goddard was eager to do anything he needed to do for H.M. and that she had a lot of contact with him. She testified that he had gone to the library to read about ADHD and parenting and was self-motivated. She indicated that she had no concerns about his parenting ability and that H.M. was doing well in his home. Both Goddard and his wife had been screened for drugs and participated in counseling

{¶83} Masterson also testified that appellant was unable to meet S.Y.'s and R.P.'s special needs and that S.Y. and R.P. were currently in places where such needs could be met. She indicated that S.Y.'s foster mother would be willing to adopt her if needed and that there is was minimal possibility that R.P. would be adopted due to her behavior. Masterson testified that R.P. did not want to go home and that all of the children needed stability. Masterson testified that it was in H.M.'s best interest to be placed with Scott Goddard and that the children should not be placed with appellant at any time in the foreseeable future. She also testified that it was in R.P.'s best interest to be placed in a planned permanency living arrangement.

{¶84} Testimony also was adduced at the hearing that appellant's boyfriend spanked the children.

{¶85} Scott Goddard testified at the hearing that he had a relationship with appellant for four to six weeks and that, during such time, H.M. was conceived. He lived with appellant during most of that time and testified that he witnessed appellant physically and verbally abuse her children. Goddard also testified that H.M. told him that appellant had sex with her boyfriend in front of him and he had been sexually abused. Goddard testified that H.M. was doing well in school.

{¶86} Wendy Flowers, a psychologist, testified that she became involved with R.P. via a referral from Jennifer Masterson. She counseled R.P. from August of 2007 until November of 2007. She met with R.P. once a week to work on anger management issues and testified that she thought that R.P. was progressing nicely. Testimony was adduced that R.P. was being disruptive in foster placement and would throw fits and behave in an unruly manner. Flowers testified that appellant came to the sessions every time that she was asked and that she completely cooperated in services. Flowers, who was not consulted when R.P. was removed from foster placement in either November or December of 2007, testified that she was not in agreement with residential placement. She testified that she felt that reunification between R.P. and appellant was happening and that the problem was with R.P.'s foster home. Flowers indicated that she would have looked for other solutions for local placement and continuation of the reunification process. She further testified that R.P. was "capable of bonding and working in a home setting." Transcript of July 9, 2008 at 215. On cross-examination, she testified that she last saw R.P. in November of 2007 and that she would not have recommended reunification at that time.

{¶87} On the third day of the hearing, Mackenzie Barickman, a licensed psychologist, testified that she received a referral from Jennifer Masterson to work with appellant in individual counseling. She first began counseling appellant, who had been diagnosed with bipolar disorder and ADD [attention deficit disorder], in April of 2007. While appellant was initially resistant to counseling, Barickman testified that her attitude changed and she became more receptive. Barickman also became involved in joint counseling between appellant and R.P. and testified that they were progressing very

well and their relationship was improving. She testified that she disagreed with the plan to put R.P. into residential placement because she believed that “it was headed in a really good direction for both of them and we didn’t want that to stop.” Transcript of August 22, 2008 hearing at 58. She opined that if appellant and R.P. had more time in counseling, they could have been successful.

{¶88} On cross-examination, Barickman testified that her recommendation that residential placement was unwarranted was based solely on her counseling of appellant and her belief that the one visit between appellant and her children that Barickman viewed was appropriate. Barickman admitted that during appellant’s visitation at the agency, appellant had difficulty showing affection to her children.

{¶89} On the final day of the hearing, appellant testified that she did not drink while she was working at the Dew Drop Inn. She admitted going to other bars since the case was opened, but denied drinking. Appellant also admitted that she was not able to completely support herself with her job at Goodwill, but testified she would be able to support her children. Appellant testified that she was not ready to take the children home with her and testified as follows when asked why:

{¶90} “Q. And you also stated that you’re not ready to have the kids come home today?

{¶91} “A. Not today, no.

{¶92} “Q. Okay. And why not yet?

{¶93} “A. Because it’s been a year since I’ve seen my children and it’s going to be - - I don’t know effecting (sic) them just to throw them back into another situation. There’s counselling (sic) that needs to be done. There’s work that needs to be done.

There's child care that needs to be set up. There's (sic) all kinds of things that need to be set before they're permanently put back into my home." Transcript of January 15, 2009, hearing at 83.

{¶94} She testified that she needed two or three more months to arrange for things like child care and go get prepared for the children to return home. Appellant also testified that she was on medication for ADHD, bipolar and manic depression.

{¶95} The Guardian Ad Litem recommended that H.M. be placed with his father, that R.P. be placed in PPLA and that S.Y. be placed in permanent custody of the agency.

{¶96} The Magistrate, in a Decision filed on July 2, 2009, recommended that R.P be placed into a Planned Permanent Living Arrangement, that H.M. be placed into the legal custody of his father and that permanent custody of S.Y be granted to the Licking County Department of Job and Family Services. After objections were filed, the trial court, in a Decision filed on October 8, 2009, affirmed the Decision of the Magistrate. A Judgment Entry was filed on the same date.

{¶97} Appellant now raises the following assignments with respect to Case No. C 20070173. Such case has been assigned Case No. 09CA123.

{¶98} "I. THE MAGISTRATE ERRED WHEN HE DECIDED TO PLACE R.P. INTO A PLANNED PERMANENT LIVING ARRANGEMENT.

{¶99} "II. THE DECISION TO AWARD CUSTODY OF THE CHILD TO LICKING COUNTY CHILDREN SERVICES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶100} Appellant also raises the following assignments with respect to Case No. C 20070174. Such case has been assigned Case No. 09CA124.

{¶101} “I. THE MAGISTRATE ERRED WHEN HE DECIDED TO PLACE H.M. INTO THE LEGAL CUSTODY OF HIS FATHER.

{¶102} “II. THE DECISION TO AWARD CUSTODY OF THE CHILD [TO] MR. GODDARD WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶103} Finally, appellant raises the following assignment of error with respect to Case No. C 20070175. Such case has been assigned Case No. 09CA125.

{¶104} “THE DECISION TO AWARD PERMANENT CUSTODY OF THE CHILD TO LICKING COUNTY CHILDREN SERVICES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶105} For purposes of judicial economy, we shall address the three cases together.

Case No. 09CA123

{¶106} Appellant, in her two assignments of error in Case No. 09CA123, argues that the trial court erred when it placed R.P. into a planned permanent living arrangement. We disagree.

{¶107} A planned permanent living arrangement “is an alternative form of custody in which the child is placed in a foster home or institution, with the intention that the child will remain in that home or institution until he is no longer in the county child services system.” *In re D.B.*, Cuyahoga App. No. 81421, 2003-Ohio-3521, ¶ 6. “A PPLA does not sever the parental bonds as permanent custody, but it also does not provide the child with a legally permanent placement.” *Id.*

{¶108} Pursuant to R.C. 2151.353(A)(5), a PPLA is appropriate if the court finds, by clear and convincing evidence, that it is in the best interest of the child and one of the following conditions is met:

{¶109} “(a) The child, because of physical, mental, or psychological problems or needs, is unable to function in a family-like setting and must remain in residential or institutional care now and for the foreseeable future beyond the date of the dispositional hearing held pursuant to section 2151.35 of the Revised Code.

{¶110} “(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.

{¶111} “(c) The child is sixteen years of age or older, has been counseled on the permanent placement options available to the child, is unwilling to accept or unable to adapt to a permanent placement, and is in an agency program preparing the child for independent living.” R.C. 2151.353.

{¶112} “An appellate court will not reverse a trial court's determination concerning parental rights and child custody unless the determination is not supported by sufficient evidence to meet the clear and convincing standard of proof.” *In re Dylan C.* (1997), 121 Ohio App.3d 115, 121, 699 N.E.2d 107. “Clear and convincing evidence is that level of proof which would cause the trier of fact to develop a firm belief or conviction as to the facts sought to be proven.” *Id.*

{¶113} When a trial court determines the best interest of a child, it is required by R.C. 2151.414(D) to consider all relevant factors, including:

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

{¶115} “(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;

{¶116} “(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;

{¶117} “(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;

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

{¶119} There was clear and convincing evidence that R.P. suffered from mental or psychological problems which made it unlikely that she would be able to successfully function in a family-like setting. As is stated above, there was testimony that R.P. was placed in a residential program at Adriel in December of 2007, after her foster mother was unable to handle her due to her behavior. Her counselor, Mariam Mihok-Hopkin testified that R.P. has post-traumatic stress disorder, oppositional defiant order and ADHD and that she had begun to display symptoms of reactive attachment disorder.

Miriam Mihok-Hopkins further testified that R.P. needed to be in a highly structured environment, that she would not do well in a family environment, and that R.P. needed to continue extensive counseling. There also was testimony that R.P. did not want to live with her mother and determined, on her own, to terminate contact with her mother. Moreover, there was evidence that she wished to be in a PPLA. R.P. advised the Magistrate, in an in-camera interview, and also told the Guardian Ad Litem that she did not want to live with appellant.

{¶120} Appellant, in her brief, argues that both Wendy Flowers, R.P.'s outpatient counselor, and appellant's counselor, Mackenzie Brown, indicated that they opposed residential placement for R.P. However, as noted by the trial court in its October 8, 2009, Decision, the testimony of these individuals "had little probative value at the time of the instant hearing..." Flowers had not seen R.P. since before November 19, 2007, when R.P. was placed in residential care. Moreover, further noted by the court, "it was only [R.P.'s] counselor at Adriel that (sic) could testify as to [R.P.'s] current mental health status and her ability to do well in a family environment."

{¶121} In addition, we find that PPLA was in R.P.'s best interest. There was testimony that appellant would be unable to provide an acceptable home for R.P. within the near future and that placement with appellant would not be in R.P.'s best interest. As is stated above, R.P. indicated that she did not want to live with her mother. However, as noted by the Magistrate, she [R.P.] "never expressed a desire to have no relationship with her mother." We concur with the Magistrate that a grant of PPLA would allow R.P.'s relationship appellant to continue and, perhaps, improve over time. The Guardian Ad Litem recommended that R.P. be placed in a PPLA. Furthermore, there was testimony

adduced that R.P.'s relationship with appellant was full of turmoil and not beneficial to R.P.'s mental health. The guardian Ad Litem, in a report filed on July 7, 2008, indicated that R.P. had advised counsel that she wished appellant were dead.

{¶122} In short, we find there was sufficient competent and credible evidence to support the trial court's decision, and the trial court did not abuse its discretion in placing R.P. in a PPLA.

{¶123} Appellant's two assignments of error in Case No. 09CA123 are, therefore, overruled.

Case No. 09CA124

{¶124} Appellant, in her two assignments of error in Case No. 09CA124, argues that the trial court erred when it decided to place H.M. into the legal custody of his father, Scott Goddard, and that such decision was against the manifest weight of the evidence. We disagree.

{¶125} As an initial matter, we note that appellee contends that such issues are moot because H.M. is no longer living with his father and is currently in a PPLA. However, because there is no evidence in the case sub judice with respect to the same, we shall address appellant's assignments.

{¶126} R.C. 2151.415 governs modification and termination of prior dispositional orders. Subsection (A)(3) permits a public children services agency to file a motion for an "order that the child be placed in the legal custody of a relative or other interested individual." The court must hold a dispositional hearing and issue a dispositional order under R.C. 2151.415(A) "in accordance with the best interest of the child as supported by the evidence presented." R.C. 2151.415(B).

{¶127} As an appellate court, we neither weigh the evidence nor judge the credibility of the witnesses. Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment. *Cross Truck v. Jeffries* (February 10, 1982), Stark App.No. CA-5758, 1982 WL 2911.

{¶128} We find that there was clear and convincing evidence that it was in H.M.'s best interest to be placed with Scott Goddard. As is discussed above in detail, there was testimony adduced at the hearing that Goddard and his wife had been married for five years and had a two bedroom house. Both were employed full-time and underwent drug screens and participated in counseling. There was testimony that Scott Goddard was actively involved in H.M.'s education, that H.M. was doing well under his care and that Goddard independently researched ADHD after he learned that H.M. had the same. As noted by the trial court, both H.M.'s principal and counselor indicated that they had seen positive improvements in H.M. since he went to live with the Goddards. Both also indicated that his behavior was worse when he was in appellant's home.

{¶129} While Scott Goddard had a criminal history, he testified that he had not been in prison in ten years and had been off of probation for seven years. He further testified that he did not drink or do drugs or associate with people who had been convicted of felonies or violent crimes. The Guardian Ad Litem, in her report, stated that H.M. wished to remain with the Goddards and wanted no relationship with appellant.

{¶130} Moreover, as noted by the trial court, while Goddard "has made significant improvements in his life, the mother [appellant] has continued to struggle with the same issues she has dealt with for years." As set forth in our lengthy statement of the facts, appellant had been involved with various agencies for years and H.M. had

been removed from her home on three different occasions. The same issues of domestic violence, physical abuse, punitive discipline and lack of meeting the children's basic needs have persisted throughout this case. When H.M. resided with appellant, he had lice and was unclean. Finally, appellant admitted herself, on the final day of the hearing, that she was not prepared to take her children home. As noted by the Magistrate in his Decision, appellant had a "terrible track record of failing in her ability to care for her children, not only in this case, but over the course of many years."

{¶131} Based on the foregoing, we find that the trial court did not err in granting legal custody of H.M. to his father and that such decision was not against the manifest weight of the evidence.

{¶132} Appellant's two assignments of error in Case No.09CA124 are, therefore, overruled.

Case No. 09CA125

{¶133} Appellant, in Case No. 09CA125, argues that the trial court's decision to terminate her parental rights and award permanent custody of S.Y. to Licking County Department of Job and Family Services was against the manifest weight of the evidence. We disagree.

{¶134} A trial court's decision to grant permanent custody of a child must be supported by clear and convincing evidence. The Ohio Supreme Court has defined "clear and convincing evidence" as "[t]he 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."

Cross v. Ledford (1954), 161 Ohio St. 469, 477, 120 N.E.2d 118; *In re: Adoption of Holcomb* (1985), 18 Ohio St.3d 361, 481 N.E.2d 613.

{¶135} In reviewing whether the 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* (1990), 55 Ohio St.3d 71, 74, 564 N.E.2d 54, 60; See also, *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. If the trial court's judgment is “supported by some competent, credible evidence going to all the essential elements of the case,” a reviewing court may not reverse that judgment. *Schiebel*, 55 Ohio St.3d at 74.

{¶136} Moreover, “an appellate court should not substitute its judgment for that of the trial court when there exists competent and credible evidence supporting the findings of fact and conclusion of law.” *Id.* Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273: “The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” Moreover, 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.” *Davis v. Flickinger*, 77 Ohio St.3d 415, 419, 1997-Ohio-260, 674 N.E.2d 1159; see,

also, *In re: Christian*, Athens App. No. 04CA10, 2004-Ohio-3146; *In re: C. W.*, Montgomery App. No. 20140, 2004-Ohio-2040.

{¶137} Pursuant to 2152.414(B)(1), the court may grant permanent custody of a child to the movant if the court determines “that it is in the best interest of the child to grant permanent custody to the agency that filed the motion for permanent custody and that any of the following apply:

{¶138} “(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 period of time or should not be placed with the child's parents.* * *

{¶139} Revised Code 2151.414(E) sets forth the factors a trial court must consider in determining whether a child cannot or should not be placed with a parent within a reasonable time. If the court finds, by clear and convincing evidence, the existence of any one of the following factors, “the court shall enter a finding that the child cannot be placed with [the] parent within a reasonable time or should not be placed with either parent”:

{¶140} “(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 parent to remedy the problem that initially caused the child to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the conditions that caused the child to be placed outside the child's home. In determining whether the parents have substantially remedied the 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.* * *

{¶141} “(16) Any other factors the court considers relevant.”

{¶142} A trial court may base its decision that a child cannot or should not be placed with a parent within a reasonable time upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with the parent within a reasonable time. See *In re: William S.* (1996), 75 Ohio St.3d 95, 661 N.E.2d 738; *In re: Hurlow* (Sept. 21, 1998), Gallia App. No. 98 CA 6, 1998 WL 655414; *In re: Butcher* (Apr. 10, 1991), Athens App. No. 1470, 1991 WL 62145.

{¶143} As is stated above, there was detailed testimony concerning appellant's extensive history with Children's Services over an extended period of time. Throughout, there have been concerns about domestic violence, physical abuse, the needs of the children not being met and alcohol use by appellant. S.Y. had been removed from appellant's home on three different occasions. Appellant has a history of moving and of changing jobs and has trouble financially. Testimony was adduced that appellant needed help with the rent and utilities. There was also testimony that appellant has been unable to teach the children proper hygiene and that S.Y. was unclean and had lice after being removed from appellant's home the second time. Finally, appellant herself testified that she would not be able to take the children home on the final day of the hearing, but would need additional time to prepare.

{¶144} We find, based on the foregoing, that there was testimony that S.Y. could not and or should not be placed with appellant within a reasonable time and that appellant continuously and repeatedly failed to remedy the conditions that led to S.Y. being removed from her home. As noted by the Magistrate, “[d]espite having services in place for almost two years in this case, and 20 years of involvement with Children’s Services, [appellant] testified that she needs more time to address her problems over time. If 20 years of services leads to a point where the basics of parenting, cleaning and clothing the children cannot be successfully accomplished by [appellant], additional time will do nothing more than delay what seems inevitable.”

{¶145} We further find that it was in S.Y.’s best interest to terminate appellant’s parental rights and grant permanent custody of S.Y. to the agency. In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D) mandates the trial 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.

{¶146} Testimony was adduced that S.Y. was progressing slowly and that she interacted well with her foster mother. Heidi Holmer testified that S.Y. needed a safe and secure environment with appropriate rules and consequences. Testimony was

adduced that S.Y. referred to her foster mother as grandma and that the foster mother would pursue adoption, if needed. In addition, Heidi Holmer, S.Y.'s counselor, testified that S.Y. did not feel happy, safe or loved with appellant.

{¶147} Based on the foregoing, we find that the court's decision terminating appellant's rights and granting permanent custody of S.Y. to the agency was not against the manifest weight of the evidence.

{¶148} Appellant's sole assignment of error in Case No. 09CA125 is overruled.

{¶149} Accordingly, the judgment of the Licking County Court of Common Pleas, Juvenile Division, is affirmed.

By: Edwards, P.J.

Hoffman, J. and

Delaney, J. concur

s/Julie A. Edwards

s/William B. Hoffman

s/Patricia A. Delaney

JUDGES

JAE/d0208

