

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
A.H. (DOB 05/25/2015)	:	Hon. Craig R. Baldwin, J.
	:	Hon. Andrew J. King, J.
L.H. (DOB 05/31/2018)	:	
	:	
A.H. (DOB 03/15/2020)	:	Case Nos. 2024CA00077
	:	2024CA00078
	:	2024CA00079
	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING:	Appeal from the Stark County Court of Common Pleas, Juvenile Division, Case Nos. 2022 JCV 01052, 01053, 01054
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	September 25, 2024
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APPEARANCES:	
For Plaintiff-Appellee	For Defendant-Appellant Mother
JAMES PHILLIPS Stark County JFS 402 2nd St SE Canton, Ohio 44702	RICHARD D. HIXSON 3808 James Court, Suite 2 Zanesville, Ohio 43701

*Baldwin, J.*

{¶1} The appellant, C.H., appeals the decision of the Stark County Court of Common Pleas, Juvenile Division, granting permanent custody of the children to the appellee, Stark County Job and Family Services (“the Agency”).

### **STATEMENT OF THE FACTS AND THE CASE**

{¶2} A.H. was born on May 25, 2015. L.H. was born on May 31, 2018. A.H. (referred to as “A.H.2.” herein after as has same initials as sibling) was born on March 15, 2020. (collectively referred to as “the children”) The appellant is the biological mother. J.H. is the biological father.

{¶3} On September 9, 2022, the Agency filed a complaint alleging the abuse, dependency, and/or neglect of the children

{¶4} The same day, at an emergency shelter care hearing, the trial court found probable cause existed for the issuance of the emergency orders and granted the Agency temporary custody of the children.

{¶5} On November 30, 2022, the trial court found the children to be dependent and placed them into the temporary custody of the Agency. The trial court approved the initial case plan.

{¶6} On August 4, 2023, the trial court extended the Agency’s temporary custody of the children for an additional six months.

{¶7} On February 2, 2024, the Agency amended its Motions to Return the Child and Terminate Involvement to a Motion Requesting Permanent Custody.

{¶8} On April 29, 2024, the trial court took evidence on the Motion Requesting Permanent Custody.

{¶9} At trial, Heather Richardson testified she was the ongoing caseworker at the Agency. The children have been in the custody of the Agency since September 9, 2022. There were concerns of domestic abuse between J.H. and the appellant, J.H. being a registered sex offender against minors, and physical abuse of the children. J.H. had been convicted of several sexual offenses, with victims being underage females.

{¶10} Ms. Richardson also testified that a case plan was developed to address the Agency's concerns. J.H. was referred to a parenting assessment at Lighthouse Family Center, was to complete a sex offender risk assessment, was to participate in individual counseling, and, if the children return home, was to complete parenting classes. He was recommended to participate in a sex offender treatment program and was only to have supervised visits with the children.

{¶11} The appellant was required to participate in mental health services, attend counseling, attend anger management and parenting classes. The appellant made some progress in her case plan, but her attitude and participation were described only as fair.

{¶12} In July of 2023, Ms. Richardson had a conversation with the appellant about the risk J.H. posed to the children. The appellant said she understood the risk and agreed to separate from J.H.

{¶13} Ms. Richardson said the appellant filed for divorce from J.H. The children were placed on an extended visit with the appellant as she said she would protect them from the J.H.

{¶14} Ms. Richardson testified that the appellant had informed the judge presiding over her divorce case and the Guardian-ad-Litem that she only filed for divorce because her caseworker was making her. The appellant indicated to the Guardian-ad-Litem that

she wanted J.H. to have fifty-fifty parenting time with the children. The Guardian-ad-Litem expressed concerns that the appellant could not or would not protect the children from J.H. Ms. Richardson immediately removed the children from the appellant. During the removal the appellant told an officer that she intended to reunite with J.H. once the case was closed. Ms. Richardson does not believe the appellant understands the risk J.H. poses to the children, and the appellant cannot safely care for the children.

**{¶15}** J.H. completed his first sex offender risk assessment. He attended a sex offender treatment program, but the provider refused to provide meaningful feedback on his progress. J.H. was referred for an updated sexual risk assessment at Melymbrosia. The new assessment indicated he did not make any progress at treatment and needed ongoing treatment.

**{¶16}** A.H. has been diagnosed with Autism, PTSD, ODD, and ADHD. The child is on medication and in counseling. A.H. receives speech and occupational therapy and is on an individualized educational plan at school. A.H.'s foster parent attends to all of this.

**{¶17}** L.H. is in counseling. The child is placed with A.H.2. in a foster home and has developed a bond with the foster parents. The foster parents are willing to adopt if permanent custody is granted.

**{¶18}** A.H.2. has speech and developmental delays. The child is placed with L.H. in a foster home and has developed a bond with the foster parents. The foster parents are willing to adopt if permanent custody is granted.

**{¶19}** Ms. Richardson testified that J.H. was still a risk to the children. After seventeen months of services, J.H.'s visits were still supervised, and he could not safely

care for the child. Ms. Richardson believes it is in the child's best interest for the agency to be granted permanent custody of the children as J.H.'s risk to the children has not been reduced after seventeen months of services and the appellant does not recognize the risk J.H. poses to the children.

**{¶20}** The child's Guardian ad Litem from Monroe County testified that she has concerns about the relationship between J.H. and his children. One of the children stated that she has a "special body." When confronted with this statement, J.H. smirked. During visitation, he seemed to focus his attention on this female child.

**{¶21}** Dr. Aimee Thomas testified that J.H.'s evaluation focused on his history of sexual offenses. J.H. failed to disclose his West Virginia convictions. Dr. Thomas still has concerns with his ability to parent.

**{¶22}** The Guardian ad Litem for the children testified that J.H. did not understand the risk he posed to the children and that it was in the best interest of the children to be placed in the Agency's permanent custody.

**{¶23}** Dr. Steve Dean testified as an expert that he conducted the sexual risk assessment of J.H. at Melymbrosia. Dr. Dean testified that J.H. failed to disclose sex offense convictions in West Virginia during his evaluation. Dr. Dean assessed him as being at average risk of offending again. J.H. was required to have additional sex offender treatment, but he had little insight into what he did at it.

**{¶24}** On May 1, 2024, the trial court granted the Agency's Motion for Permanent Custody. It terminated the parental rights of the Appellant and J.H. as the children could not and should not be placed with J.H. and the appellant within a reasonable amount of time, the children had been in the continuous custody of the Agency for twelve of the last

twenty-two consecutive months, and granting the Agency permanent custody of the children is in the best interest of the children.

{¶25} The appellant filed a timely notice of appeal and raises the following assignment of error:

{¶26} “I. THE TRIAL COURT’S FINDING THAT PERMANENT CUSTODY WAS IN THE BEST INTEREST OF THE CHILDREN WAS UNSUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

I.

{¶27} In the appellant’s sole Assignment of Error, the appellant argues that the trial court erred in granting permanent custody of the children to the Agency because the Agency failed to show by clear and convincing evidence that grounds existed for permanent custody and that it was in the best interest of the child. We disagree.

**STANDARD OF REVIEW**

{¶28} 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*, 161 Ohio St. 469 (1954); *In re: Adoption of Holcomb*, 18 Ohio St.3d 361 (1985).

{¶29} 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*, 55 Ohio St.3d 71 (1990); see also, *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978). 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* at 74.

{¶30} 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 conclusions 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*, 10 Ohio St.3d 77 (1984): “[t]he 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.”

{¶31} 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*, 1997-Ohio-260; see also, *In re: Christian*, 2004-Ohio-3146 (4<sup>th</sup> Dist.); *In re: C.W.*, 2004-Ohio-2040 (2<sup>nd</sup> Dist.).

### ANALYSIS

{¶32} The appellant argues it is not in the best interest of the child to grant permanent custody to the Agency, a no contact order with J.H. would be enough. Pursuant to R.C. §2151.41(B)(1), the trial court may grant permanent custody of a child to the movant if the court determines “that 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:

(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.

\* \*

(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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.



**{¶33}** 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.

**{¶34}** Ms. Richardson testified that it is in the children's best interest that permanent custody be granted to the Agency. A.H.2. has speech and developmental delays. L.H. is in counseling and has been placed with A.H.2. in a foster home. They have bonded with foster parents who are willing to adopt. A.H. has been diagnosed with Autism, PTSD, ODD, and ADHD. A.H. is in counseling and on medication. A.H. receives speech and occupational therapy and is on an individualized educational plan at school Ms. Richardson testified that it is in the children's best interest that permanent custody be granted to the Agency. The Agency has experience finding adoptive homes for children dealing with these issues.

**{¶35}** Ms. Richardson also testified that after seventeen months of services, J.H. is still being supervised during visits, and he had not made progress in his treatment for sex offenses. She believes a grant of permanent custody outweighed any harm by breaking any bond between the appellant and the child. After seventeen months of services, the risk J.H. poses to the children has not been reduced.

{¶36} The Guardian ad Litem testified that C.H. does not understand the risk the appellant poses to the child. It is in the best interest to grant permanent custody of the children to the Agency.

{¶37} The appellant still does not understand the risk J.H. poses to her children, and has indicated that she is unwilling to keep her children from J.H. As such, a no contact order would not be effective. The trial court's finding that granting the Agency permanent custody of the children is in their best interest is supported by clear and convincing evidence.

{¶38} Accordingly, the appellant's sole Assignment of Error is overruled.

### **CONCLUSION**

{¶39} Based on the foregoing, the judgment of the Stark County Court of Common Pleas, Juvenile Division, is affirmed.

By: Baldwin, J.

Gwin, P.J. and

King, J. concur.