



**BOCK, Judge.**

{¶1} Father appeals the Hamilton County Juvenile Court’s decision to award permanent custody of his child, D.A., to the Hamilton County Department of Job and Family Services (“HCJFS”). We affirm the juvenile court’s decision.

**Relevant Facts and Procedural History**

A. Custodial History

{¶2} D.A., born in March 2014, was first placed in HCJFS’s temporary custody in August 2016 based on Cincinnati Children’s Hospital Medical Center’s (“CCHMC”) allegations that her medical and developmental needs were not being met. In October 2017, HCJFS returned D.A. to her parents with protective supervision orders.

{¶3} In February 2019, HCJFS moved for interim custody of D.A. based on CCHMC’s allegation that D.A.’s parents were unable to provide her proper care after she had undergone surgery for hip dysplasia. The complaint alleged that D.A. had ongoing diaper rash issues, raised questions about whether D.A. was taking in “sufficient food and liquids [] essential for growth and healing,” expressed concern as to the parents’ level of supervision over D.A., and noted that D.A. had remained hospitalized at CCHMC “for about a month.”

B. Case Plan

{¶4} In June 2019, the court adjudicated D.A. dependent and awarded HCJFS temporary custody based on its findings that the parents were not satisfactorily caring for D.A. after the surgery for hip dysplasia, D.A. needed a second surgery, D.A. had persistent diaper rash and was not toilet-trained at five years old, D.A. was not taking in sufficient food and liquids, and the parents did not

understand or meet D.A.'s needs related to her cognitive delays and therapeutic requirements.

{¶5} The court adopted HCJFS's proposed case plan for each parent. The case plan for mother consisted of: (1) diagnostic assessment update, (2) parenting assessment, (3) parenting enrichment, (4) re-engagement in Mental Retardation and Developmental Disabilities ("MRDD") service, which included a parenting component, (5) attendance at D.A.'s medical/therapeutic appointments, and (6) regular visitation with D.A. The court's entry stated that father's case plan was congruent to the mother's. The entry noted that, as this was the child's second time in HCJFS's care, the parents "needed time and opportunity to demonstrate that they can meet all of [D.A.'s] needs."

{¶6} In August 2020, HCJFS filed a "Motion to Modify Temporary Custody to Permanent Custody to the Hamilton County Job and Family Services."

**C. Motion for Permanent Custody**

1. Magistrate's Decision<sup>1</sup>

{¶7} After a hearing, the magistrate granted HCJFS's motion for permanent custody. The magistrate determined that the R.C. 2151.414(B) factors permitted the juvenile court to grant permanent custody. The magistrate further determined that permanent custody was in D.A.'s best interest because: (1) D.A. could not be placed with her parents within a reasonable amount of time; (2) D.A. should not be placed with either parent; (3) D.A.'s return to the home would be contrary to her best interest and welfare; and (4) it was in the best interest of D.A. to be placed in the permanent custody of HCJFS. The magistrate found that HCJFS had made

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<sup>1</sup> As only father has appealed, some of the discussion is limited to father.

reasonable efforts to eliminate the need for removing D.A. from the home and to provide an opportunity for reunification.

{¶8} Father objected to the magistrate’s decision.

2. Juvenile Court’s Entry

{¶9} In August 2021, the juvenile court modified and supplemented the magistrate’s decision in a 17-page entry. The court accepted the magistrate’s determination that, under R.C. 2151.414(B), clear and convincing evidence established that: (1) D.A. had been in temporary custody “for at least 12 months of a consecutive 22 month period”; (2) D.A. could not and should not be placed with either parent; (3) neither parent had “made satisfactory progress in case plan services, and ha[d] not demonstrated an ability to meet [D.A.’s] needs”; and (4) the parents had not “demonstrated the behavioral changes necessary to resume and maintain parental duties.” The court considered the best-interest factors:

R.C. 2151.414(D)(1)(a) Interactions and Interrelationships

{¶10} The evidence indicated that D.A. was appropriately and strongly bonded with each parent, her sibling, and her foster family. But the court found that father did not consistently visit D.A., which resulted in visits being suspended at one point and, later, terminated.

R.C. 2151.414(D)(1)(b) The Wishes of the Child

{¶11} A child’s wishes may be expressed through the child’s guardian ad litem (“GAL”). D.A.’s GAL was in favor of granting permanent custody to HCJFS.

R.C. 2151.414(D)(1)(c) Custodial History

{¶12} D.A. had been in HCJFS’s custody since April 2019.

R.C. 2151.414(D)(1)(e) Whether Factors in (E)(7)-(10) Apply

{¶13} The court found that the evidence demonstrated that the parents acted appropriately with D.A. during visits. Despite the parents not visiting D.A. for a long period of time, it did not find that the parents had abandoned D.A.

R.C. 2151.414(D)(1)(d) Child's Need for Legally Secure Permanent Placement

{¶14} Father could not maintain stable housing or income. During the pendency of the action, he had lived in at least five different residences (one was an unfinished trailer) and he was not employed. HCJFS was unable to identify any relatives who were able to take care of D.A. Although D.A.'s sibling, B., remained in father's care, B. had "no major concerns" while D.A. was "significantly delayed in comparison to B."

{¶15} The court was concerned about the parents' ability to address D.A.'s medical needs with regard to her hip dysplasia, whether the parents could provide proper nutrition for D.A., and whether they could attend to D.A.'s physical and cognitive needs. It noted that D.A.'s prior removal was based on similar concerns. D.A. still had "extensive special needs," struggled with "global delays," was not able to care for herself "on a level commensurate with her age," and had been wearing a patch for two hours each day for her lazy eye, which could require surgery.

{¶16} The court determined that D.A. was not meeting milestones that were expected at her age. She needed assistance with eating, daily activities, developing social skills, and changing diapers. D.A. also had an Individualized Education Plan ("IEP") for school and needed occupational therapy to help her perform basic functions (such as brushing her teeth and hair), speech therapy, physical therapy related to the hip dysplasia, and ophthalmology appointments to address D.A.'s lazy eye.

{¶17} The juvenile court determined that, while the parents had engaged in some case-plan services, they did not do so consistently to demonstrate that they had made the “necessary behavioral changes needed to successfully care for” D.A. It noted that the parents did not progress from supervised visits to less restrictive visits. It stated that the inconsistencies have been a “long-standing concern [regarding] this family, including their past involvement with the Court.” It added that, even if it were to return D.A. to the parents, the parents’ lack of a stable place to live called into question where D.A. would be sleeping that evening.

{¶18} The court concluded that the magistrate had properly determined the factual issues and the evidence and that the magistrate’s decision was supported by the evidence and in accordance with the law.

D. Argument on Appeal

{¶19} Only father appealed. He argues in his sole assignment of error that the juvenile court’s decision was based on insufficient evidence and was against the manifest weight of the evidence.

**Law and Analysis**

{¶20} A juvenile court’s decision to terminate parental rights and award permanent custody to HCJFS must be supported by clear and convincing evidence, which is evidence sufficient to “produce in the mind of the trier of fact [ ] a firm belief or conviction as to the facts sought to be established.” *In re W.W.*, 1st Dist. Hamilton No. C-110363, 2011-Ohio-4912, ¶ 46, quoting *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 42. An appellate court independently reviews a juvenile court’s “best-interest” findings to determine whether its decision is supported by competent, credible evidence. *In re W.W.* at ¶ 46.

{¶21} A review of the sufficiency of the evidence is different than a review of the weight of the evidence. *In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 15. To determine whether there was sufficient evidence upon which to terminate parental rights, the court determines whether some evidence exists on each element. *Id.* It is a test for adequacy and is a question of law. *Id.* When conducting a weight-of-the-evidence review in permanent-custody cases, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflicts in the evidence, the juvenile court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed. *Id.* at ¶ 16.

{¶22} A juvenile court may grant permanent custody if it finds that permanent custody is in the child’s best interest and that one of the conditions in R.C. 2151.414(B)(1) applies. *In re B.J.*, 1st Dist. Hamilton Nos. C-200372 and C-200376, 2021-Ohio-373, ¶ 15. A finding by clear and convincing evidence that even one of the factors exists is sufficient. *In re J.H.*, 1st Dist. Hamilton No. C-210441, 2021-Ohio-4005, ¶ 15.

{¶23} R.C. 2151.414(B)(1)(d) is applicable here because, at the time that HCJFS filed the motion for permanent custody, “the child ha[d] been in the temporary custody of one or more public children services agencies \* \* \* for [12] or more months of a consecutive [22]-month period.”

{¶24} Accordingly, this court must determine if the juvenile court considered all of the relevant factors under R.C. 2151.414(D)(1) in finding that permanent custody was in D.A.’s best interest and whether its decision was supported by sufficient evidence or was against the manifest weight of the evidence.

A. Sufficiency of the Evidence

{¶25} The record reflects that competent, credible evidence exists on each element to support the juvenile court's finding that awarding permanent custody to HCJFS was in D.A.'s best interest.

{¶26} D.A. had been in HCJFS's custody since April 2019, which was 60 days after the date when she was removed from her parents' home. *See* R.C. 2151.414(B)(1)(d). The hearing on the motion for permanent custody was held in June 2021. Therefore, clear and convincing evidence shows that D.A. had been in HCJFS's custody for more than 12 out of 22 consecutive months, permitting the court to consider whether to grant permanent custody to HCJFS. *See* R.C. 2151.414(B)(1)(d).

R.C. 2151.414(D)(1)(a) Interactions and Interrelationships

*CCHMC Involvement*

{¶27} When D.A. was placed in HCJFS custody for the second time, she was five years old, still in diapers, and nonverbal. She had been hospitalized for about one month for postsurgical hip pain and persistent, severe diaper rash, which CCHMC staff found should have been resolved from when it initially had presented.

{¶28} CCHMC was also concerned that after tubes had been surgically placed inside D.A.'s ear, her mother had been instructed on how to drain D.A.'s ears, but her ears continued to drain bloody fluids for two months.

{¶29} CCHMC reported that, when it requested that the parents stay for 24 hours to be educated on how to continue D.A.'s postsurgical care and address the chronic diaper rash, father would only stay for 12 hours. He told CCHMC that he would not change D.A. because she changed herself at home. Mother testified that

D.A. was an extremely picky eater, did not eat meat, and would only eat McDonald's chicken nuggets and fries. This supports CCHMC staff's concerns regarding D.A.'s nutrition and chronic constipation—staff was concerned about D.A.'s parents struggling to ensure that she was eating and drinking enough, which was essential for her growth and healing. Despite those concerns, during the 24-hour stay, mother stated that she would not assist D.A. with eating because she would not get nutritional assistance at home.

*Educational and Therapeutic Appointments*

{¶30} Father's testimony was inconsistent with the evidence. Father first claimed that he was not notified of D.A.'s appointments. He later stated that he received emails and texts regarding the appointments, but there was either no location listed or he was not notified of last-minute cancellations. Father also testified that he did not know that D.A. was being seen at different locations and blamed the caseworker, saying that she "confused" them. Father also stated that he was not notified of D.A.'s IEP appointments. But the foster father testified that the parents had attended one of the three IEP appointments at D.A.'s school.

{¶31} The record reflects that D.A.'s parents received texts from the foster mother and monthly emails containing the date, time, and location of D.A.'s therapeutic appointments and could contact the foster mother or the caseworker if they were confused about the location or time of the appointments.

{¶32} Father failed to attend even the appointments that were located in close proximity to where he lived. Father argued that transportation posed a barrier to his attendance at the therapeutic appointments, but he testified that he had a reliable car and that HCJFS had provided gas cards to assist with transportation.

*Visitation*

{¶33} Father’s visits with D.A. were inconsistent—he missed most visits. Father testified that visits were canceled because he forgot, he could not get from mother’s job to the Family Nurturing Center (“FNC”) on time due to her schedule and traffic, or HCJFS did not inform him of visits and parenting class appointments. FNC never recommended visits that were less restrictive than supervised visits.

*D.A.’s Continued Therapeutic and Educational Needs*

{¶34} Father argued that evidence of his inability to parent rested upon D.A.’s postsurgical medical condition, which has been remedied. Although *some* concerns had been resolved, clear and convincing evidence shows that D.A. continues to need therapeutic assistance to address her global delays, speech, and ability to independently complete day-to-day tasks.

{¶35} The record reflects that father continued to underestimate—or simply was not cognizant of—D.A.’s continued special needs. Father insisted that D.A. and the youngest sibling, B., were “the same kid.” But B. had no apparent delays or medical needs. Father did not know what grade D.A. was in or any challenges or delays that D.A. had experienced prior to her removal, other than hip dysplasia. He had never heard of “fine motor skills.” Father did not know his case plan for reunification with D.A. because he had “never read it.” He could not articulate an understanding of physical or occupational therapy or D.A.’s routine.

{¶36} Although D.A. was communicating better and could independently manage some activities—such as eating and taking off her coat—D.A.’s medical and developmental needs were not resolved. As D.A. continued to need therapeutic assistance, the fact that her younger sibling remains in father’s custody does not

alleviate concerns for father’s “alleged cognitive abilities, housing, relationship status, or service completion” and it does not demonstrate his ability to appropriately parent D.A.

R.C. 2151.414(D)(1)(b) The Wishes of D.A.

{¶37} Father asserted, without assigning it as error, that D.A.’s wishes regarding custody conflicted with the GAL and therefore, she should have been appointed an *In Re Williams* attorney. We find that his argument is without merit.

{¶38} One of the functions of the GAL is to protect the interests of the child, which includes speaking on the child’s behalf if she cannot express her wishes due to age or capacity. *See* R.C. 2151.281(B). Where a child’s custodial wishes are contrary to the GAL’s recommendation, the child is entitled to independent counsel. *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, 805 N.E.2d 1110, syllabus; *In re D.D.*, 1st Dist. Hamilton No. C-190387, 2019-Ohio-4492, ¶ 10; *In re A.J.O. and M.N.O.*, 1st Dist. Hamilton No. C-180680, 2019-Ohio-975, ¶ 28.

{¶39} The GAL supported awarding HCJFS permanent custody. There is no evidence that D.A.’s wishes conflicted with the GAL’s or that D.A. expressed a desire to live with father.

R.C. 2151.414(D)(1)(c) Custodial History

{¶40} A child is considered to have entered the temporary custody of an agency on the date when the child was adjudicated dependent, or the date that is 60 days after the removal from the home, whichever date is the earliest. R.C. 2151.414(B)(1). D.A. had been in HCJFS’s custody since April 2019, which was 60 days after the date she was removed from father’s home. Therefore, clear and

convincing evidence shows that D.A. had been in HCJFS's custody for more than 12 out of 22 consecutive months.

R.C. 2151.414(D)(1)(d) Child's Need for Legally Secure Permanent Placement

{¶41} The juvenile court did not err in finding that D.A. remained in need of a legally secure permanent placement. Father continued to fail to maintain stable housing—he moved five times between when D.A. was removed from his custody and the permanent-custody hearing. At one point, father lived in a trailer, which did not have complete flooring or drywall and had exposed electrical wires.

{¶42} The record shows inconsistencies in D.A.'s parents' intention involving with whom D.A. would live. Father testified that he and mother lived together with B. in a two-bedroom apartment and they were in the process of obtaining a bed for D.A. But mother testified that she was living in a hotel alone and that father and B. lived with the paternal grandmother. Mother also testified that she would remain married to N.B.—who was adjudicated a sex offender as a juvenile and has had two children permanently removed from his care. Yet, mother testified that she was renting a new home where she intended to live only with father, B., and D.A.

{¶43} The record clearly and convincingly supports the court's determination that, if it were to remand custody to the parents, there was no guarantee that D.A. would have a place to sleep that evening.

*Father's Lack of Engagement in Individual Services*

{¶44} Father was discharged from parenting classes at FNC due to his lack of attendance. JFS referred him to SafeCare, but Father testified he did not complete the program because no one would call him back. The record does not indicate

whether father followed through with the DAF recommendations as to individual counseling.

*Other Issues*

{¶45} The HCJFS caseworker testified that father had informed her that he was in agreement with D.A. not coming home because he felt like D.A. was where she needed to be and B. was staying elsewhere as the parents had nowhere to live.

R.C. 2151.414(D)(1)(e) Whether Factors in (E)(7)-(10) Apply

{¶46} The juvenile court determined that none of these factors apply.

{¶47} Based on all of the relevant factors, we find that the juvenile court's decision to grant permanent custody to HCJFS was sufficiently supported by clear and convincing evidence.

B. Weight of the Evidence

{¶48} The evidence offered by HCJFS, FNC, and the GAL showed that father was inconsistent in visitation with D.A. and in attending D.A.'s therapeutic and educational appointments. The evidence supported that father was either inconsistent with participating in individual services, or did not participate at all. The evidence further reflects that father has not demonstrated an understanding or appreciation of D.A.'s special needs and therapeutic routine. The record further reflects that the parents were unable to maintain stable housing, even as of the date of the hearing, and that D.A. did not express wishes to be returned to her parents' or father's custody.

{¶49} Father was given ample opportunity to rectify these issues, but made little to no progress. As such, the juvenile court did not clearly lose its way or create a manifest miscarriage of justice in finding that granting permanent custody to HCJFS

was in D.A.'s best interest.

{¶50} For the foregoing reasons, father's sole assignment of error is overruled.

**Conclusion**

{¶51} The juvenile court's determination that granting HCJFS permanent custody of D.A. was in her best interest was based on competent, credible evidence. The court did not clearly lose its way in its decision. We therefore affirm the juvenile court's judgment.

Judgment affirmed.

**CROUSE, P.J., and WINKLER, J.,** concur.

Please note:

The court has recorded its entry on the date of the release of this opinion