

June 27, July 27, August 4, and August 9, 2016. The court allowed aunt and uncle to intervene in the hearing and seek permanent custody of the children.

Tiana Bailey, the children's JFS caseworker, testified that between December 2014 and July 2015, aunt made several calls reporting that she could no longer care for the children. Rachel Smith, a therapist from Cincinnati Children's Hospital Medical Center who worked with the children, testified that aunt and uncle were not always responsive to her advice, and that aunt told her that the family stress level was out of hand. Bonnie Davis, the children's court appointed special advocate (CASA), testified that aunt did not know if she could handle the three girls by herself, and that the children caused her much more anxiety than she had anticipated. During most visits, aunt and uncle would bring up financial concerns. Bailey, Davis, and Smith all testified that aunt told them that when uncle was away from the home, being alone with the children caused her a great deal of anxiety.

On July 16, 2015, Bailey, Davis, Smith, Morgan Zak, the children's guardian ad litem, Jermil Tarver, a JFS supervisor, and aunt and uncle held a team meeting. Davis testified that a week before the team meeting, aunt and uncle asked her to come and get the children because they could no longer care for them. The meeting was set up as an attempt to salvage the placement. The family's financial issues and aunt's mental health were the main areas of concern. The professionals suggested that uncle obtain employment outside the home, but he did not agree to do so. Zak told aunt that it was emotionally abusive to talk to the children about money because their parents had neglected their basic needs. This statement incited aunt and uncle to demand the children's immediate removal. The other team members suggested that a two-week transition plan be put in place so that the children did not feel abandoned for a second time, but aunt and uncle refused.

Dr. Carolyn Kowatch, aunt's therapist, testified that prior to July 2015, aunt's medication dosage was being raised and her mental state became unstable as a result. She further testified that aunt's medication had since been adjusted and this problem had subsided. Dr. Kowatch also testified that aunt had made progress, and that she would be able to manage her stress if the children were in her home. However, Dr. Kowatch also testified that aunt's progress was based on her own self-reporting, and Dr. Kowatch could not point to specific examples of how aunt was using anxiety-management techniques.

Aunt testified that she followed through with all of JFS's requests, and stated that she never heard a single complaint over the ten months the children were with her. She denied saying that she could not be alone with the children and requesting the children's removal prior to the team meeting. Aunt agreed that her reaction at the meeting was inappropriate, and conceded that she did not consider the impact that immediate removal would have on the children. She testified that uncle now works outside of the home and that they have adequate income to care for the children. Based on her demeanor and presentation, and the fact that Bailey, Smith, and Davis contradicted the majority of her testimony, the magistrate specifically found her not credible.

Jennifer Feldman, a social worker at Lighthouse Youth Services, testified that she approved aunt and uncle as foster parents in February 2016. However, in completing the home study, Ms. Feldman did not receive information regarding aunt and uncle's involvement with JFS, except what aunt and uncle reported to her. Aunt and uncle did not report their past financial difficulties or that they had demanded the children's removal. Aunt's sister testified to her belief that aunt is able to adequately care for the children.

The magistrate's September 20, 2016 decision found that, even considering the positive reports about aunt and uncle and their lifestyle changes, it was in the children's best interest for JFS to have permanent custody. Aunt objected, and on March 16, 2017, the trial court overruled her objections and adopted the magistrate's decision.

A trial court's award of permanent custody must be supported by clear and convincing evidence, and we will not substitute our judgment for the trial court's when its decision is supported by competent, credible evidence. *In re W.M.*, 1st Dist. Hamilton No. C-170003, 2017-Ohio-1398, ¶ 14. The juvenile court has discretion to award legal custody to any person who has filed a petition for legal custody. *In re Wilkenson*, 1st Dist. Hamilton Nos. C-010402 and C-010408, 2001 WL 1220026, *1 (Oct. 12, 2001). Relatives seeking custody are not afforded the same presumptive rights as natural parents; rather, the juvenile court has discretion to determine what placement option is in the child's best interest. *Id.*

R.C. 2151.414 governs the procedures that apply when deciding a motion for permanent custody. The court may grant permanent custody to JFS if the court determines, by clear and convincing evidence, that one of several conditions apply and that it is in the child's best interest. *See* R.C. 2151.414(B)(1). The statute also provides that, "[i]n determining the best interest of a child * * * the court shall consider all relevant factors * * *." R.C. 2151.414(D)(1). The trial court found that mother and father had abandoned the children, which fulfills two of the statute's necessary conditions. *See* R.C. 2151.414(B)(1)(a) and (b); R.C. 2151.414(E)(10). The parents did not object to the termination of their parental rights, and no one contests this finding. Therefore, our analysis proceeds to what would serve the best interests of the children.

Aunt's argument is essentially that clear and convincing evidence did not support the trial court's decision, and therefore, the trial court abused its discretion. She specifically argues that two of the statutory "best interest" factors weigh in her favor: "[t]he interaction and interrelationship of the child[ren] with the[ir] * * * relatives"; and "[t]he child[ren]'s need for a legally secure permanent placement * * *." *See* R.C. 2151.414(D)(1)(a) and (d).

Aunt notes that the testimony demonstrated that the children were bonded with aunt and uncle and that the girls had improved psychologically while in their home. She also argues that "[t]here is no guarantee that [the children] will be adopted to a safe and loving home." However, the trial court considered the nearly two years aunt and uncle have been separated from the children, and that the children were traumatized by aunt and uncle's decision to abandon them. The trial court also determined that the children's current placement is intended to be their "forever home," and that the children are happy and well-adjusted in their current placement. Additionally, the children wish to remain where they are and have no desire to return to aunt and uncle.

Aunt further argues that her "overreaction" after the July 2015 team meeting was a one-time occurrence that will never recur, and that she has taken steps to ensure as much. While her decision to remove the children from her home certainly played a large role in the trial court's decision, it was not the only factor. The trial court also noted, among other things, that aunt's emotional "progress" had been made in a lower-stress environment without three additional children. There is therefore a risk that aunt would relapse when the children were reintroduced and the stress level in the home inevitably increased.

OHIO FIRST DISTRICT COURT OF APPEALS

In short, for this court to overturn the trial court’s decision, it would have to credit aunt’s testimony over the other testimony. But the trial court did not find her testimony credible, and we are not at liberty to second guess the trial court’s credibility determinations. *See In re A.S.*, 183 Ohio App.3d 697, 2009-Ohio-3932, 918 N.E.2d 531, ¶ 46 (12th Dist.) (“As an appellate court reviewing a decision granting permanent custody, we neither weigh the evidence nor assess the credibility of the witnesses, but instead determine whether there is sufficient clear and convincing evidence to support the juvenile court’s decision.”). Based on the foregoing, we hold that competent, credible evidence supported the trial court’s decision, and we therefore overrule aunt’s assignment of error and affirm the trial court’s judgment.

Further, a certified copy of this judgement entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

MOCK, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on June 28, 2017

per order of the court _____.

Presiding Judge