

Mother lives in a one-bedroom house and works a full-time job. She has been diagnosed with PTSD and schizoid personality disorder.

T.M.1, T.M.2, and C.M. were adjudged dependent in October 2015, and placed in foster care. In April 2016, JFS moved for permanent custody of these three children. In May 2016, JFS filed a complaint for permanent custody regarding D.M. He was adjudged dependent in July 2016, and a hearing regarding all four children was held in the fall of 2016. All of the children are doing well in their current placements, and though they desire to reunite with their mother, their GAL believes that permanent custody is in their best interests.

The magistrate heard testimony regarding mother's mental illnesses and relationship history, the children's extensive physical, mental, behavioral, and developmental issues, and mother's involvement in reunification services. There was general agreement that mother has been well-involved in services since 2015. However, the witnesses agreed that mother's current housing was not appropriate for several teenagers, and that mother would require significant "wraparound" services to assist her if she were to regain custody of the children. JFS expressed concern that mother lacks the ability to manage the behaviors of her children and to meet their special needs, particularly because she lacks relatives that are able to support her. Mother received two home studies, but neither was approved. Mother struggled to fully articulate all of her children's needs.

Following the hearing, the magistrate granted JFS permanent custody of the children. Mother filed objections, and the trial court overruled them and adopted the magistrate's decision as its judgment. Mother timely appealed. Her sole assignment of error is that the trial court's ruling was against the manifest weight of and based on insufficient evidence.

It is well-settled that parents who are suitable persons have a paramount right to the custody of their children. *In re Perales*, 52 Ohio St.2d 89, 97, 369 N.E.2d 1047 (1977). “The fundamental interest of parents is not absolute, however,” because the best interest of the child controls in a custody determination. *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, ¶ 11. 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. “Our review for sufficiency asks whether some evidence exists on each element. * * * Our review for weight asks whether the evidence on each element satisfies the burden of persuasion.” *In re A.B.*, 1st Dist. Hamilton Nos. C-150307 and C-150310, 2015-Ohio-3247, ¶ 15.

R.C. 2151.414 governs the procedures that apply when a motion for permanent custody has been filed under R.C. 2151.413. *In re W.M.* at ¶ 15. Three of the children under consideration, T.M.1, T.M.2, and C.M., are subject to these procedures. R.C. 2151.414(B)(1) provides that “the court may grant permanent custody of a child to a movant if the court determines * * * by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency,” and that one of four conditions apply. It is undisputed that these three children have been in the temporary custody of JFS “twelve or more months of a consecutive twenty-two-month period,” which fulfills the condition in R.C. 2151.414(B)(1)(d). Therefore, the only question before us with regard to these three children is whether the trial court erred in determining that a grant of permanent custody to JFS was in their best interests.

The trial court considered the proper “best interest” factors under R.C. 2151.414(D)(1)(a)-(d), noting: the children’s previous abuse at the hands of family members, mother’s relationships with sexual offenders, and the children’s success with their current foster providers; the children’s desire to be reunited with their mother; the children’s custodial history, particularly the fact that the children have not lived with mother since 2009; and the children’s need for a legally secure permanent placement. The trial court concluded that mother was not able to provide a stable and secure home for the children due to the children’s extensive needs and mother’s mental-health issues and relationship history. Competent, credible evidence supports this determination, and mother’s assignment of error regarding these three children is therefore overruled.

As to the final child, D.M., R.C. 2151.353(A)(4) provides that if a child is adjudicated dependent, the court may grant permanent custody to JFS if the court finds that permanent custody is in the child’s best interest, and “determines in accordance with division (E) of section 2151.414 of the Revised Code that the child cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent.” Therefore, in addition to reviewing the trial court’s determination that permanent custody is in D.M.’s best interest, we review its determination that D.M. cannot be placed with mother within a reasonable time or should not be placed with mother.

The trial court found, pursuant to R.C. 2151.414(E)(1), that “[f]ollowing the placement of the child outside the child’s home and notwithstanding reasonable case planning and diligent efforts by the agency to assist [mother] to remedy the problems that initially caused the child to be placed outside the home, [mother] has failed continuously and repeatedly to substantially remedy the conditions causing the child

to be placed outside the child’s home.” We note that R.C. 2151.414(E)(16) provides that the court may also consider “[a]ny other factor the court considers relevant” when determining whether the child cannot or should not be placed with mother.

The trial court found that the “abandonment of the child by father, as well as the concerns about mother’s mental health, housing, abuse of the children while in mother’s care, and choice in partners coupled with credible testimony that established that Mother did not display any specific behavioral changes that would satisfy her case plan establishes that the Child cannot and should not be placed with either parent within a reasonable time.” The trial court also found, pursuant to R.C. 2151.414(D)(1), that D.M.’s developmental delays and mental disorders, “coupled with the many above mentioned concerns regarding Mother demonstrates clearly and convincingly that permanent custody of [D.M.] to JFS is in his best interest.” Both of these findings are supported by competent, credible evidence, and mother’s assignment of error regarding this child is therefore overruled, and the trial court’s judgment is affirmed.

Further, a certified copy of this judgement entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

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

To the clerk:

Enter upon the journal of the court on October 11, 2017

per order of the court _____.

Presiding Judge