

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

IN RE: I.U. : APPEAL NO. C-180302  
TRIAL NO. F07-2858x  
: *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

I.U.'s mother appeals from the judgment of the Hamilton County Juvenile Court awarding permanent custody of I.U. to the Hamilton County Department of Job and Family Services ("HCJFS"). In a single assignment of error, appellant contends that the trial court's finding under R.C. 2151.414(D)(1) that a grant of permanent custody to HCJFS is in I.U.'s best interest was against the weight and sufficiency of the evidence. It was not.

A "best interest" finding must be supported by clear and convincing evidence. *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 46; see *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus (clear and convincing evidence is evidence "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established"). In this case, the state presented evidence that I.U. had been sexually abused by appellant's live-in boyfriend. Within a several month period, I.U. reported

two instances of sexual abuse, which were not substantiated. A third report was substantiated after I.U. reported the abuse to her foster mother, a social worker, and in a Mayerson Clinic interview. The interview was admitted into evidence at trial.

The state presented evidence that I.U. was not particularly bonded with appellant, but was bonded with her foster mother and her half-siblings, whom the foster mother had adopted. Foster mother had cared for four year-old I.U. approximately three-fourths of I.U.'s life. Evidence also established that appellant had had other children permanently committed to HCJFS's custody because she could not care for them based in part on a developmental disability. Also in the case of her other children, appellant had made questionable choices regarding the men she associated with, including a registered sex offender whose victim had been a minor.

Appellant maintained at trial that I.U.'s sexual abuse allegations were fabricated, and pointed to seeming inconsistencies in her reports of abuse. Appellant claimed that I.U. had been coached to lie by her foster mother so that the foster mother could adopt I.U. Appellant also presented evidence that I.U. had bonded with her.

On appeal, appellant specifically contends that without independent evidence of sexual abuse, the trial court's judgment is against the weight and sufficiency of the evidence. This argument goes more to the trial court's adjudication of abuse, which has not been challenged on appeal. To the extent the trial court relied on the evidence presented during the adjudication hearing in granting permanent custody of I.U. to HCJFS—which it did in this case without objection—we find no error. There is no “independent evidence” requirement. *See* R.C. 2151.031(A) (setting forth elements of a sexual abuse adjudication). The cases cited by appellant in support of this argument are inapposite. The trial court acted within its discretion in rejecting appellant's claim of fabrication, and finding I.U.'s report of abuse to be credible. *See State v. DeHass*, 10

**OHIO FIRST DISTRICT COURT OF APPEALS**

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Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus (the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts).

Upon a review of the record, we hold that the trial court properly considered all factors outlined in R.C. 2152.414(D)(1)(a)-(e) in determining that it was in I.U.'s best interest to be placed in the permanent custody of HCJFS. The trial court's findings are supported by clear and convincing evidence, and were not against the manifest weight of the evidence.

Appellant's sole assignment of error is overruled.

The judgment of the trial court is affirmed.

A certified copy of this judgment 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.

**CUNNINGHAM, P.J., MILLER and DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on August 15, 2018

per order of the court \_\_\_\_\_  
Presiding Judge