[Cite as *In re J.M.*, 2018-Ohio-5374.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

IN THE MATTER OF:	:	
	:	
J.M., A.M., AND C.M.	:	Case No. 18CA3633
	:	18CA3634
	:	18CA3635
	:	18CA3664
	:	18CA3665
	:	
	:	DECISION AND JUDGMENT ENTRY
	:	
	:	
	:	RELEASED 12/28/2018

APPEARANCES:

Darren L. Meade, Columbus, Ohio, for the mother-appellant.

Matthew P. Brady, Grove City, Ohio, for the father-appellant.

Matthew S. Schmidt, Prosecuting Attorney, and Jennifer L. Ater, Assistant Prosecuting Attorney, Chillicothe, Ohio, for Ross County Children Services.

Hoover, P.J.

{¶1} The children's biological mother appeals the trial court's judgments that awarded South Central Ohio Job and Family Services, Children Services Division, ("the agency") permanent custody of her three children: six-year-old A.M.; four-year-old J.M.; and two-year-old C.M. A.M.'s and J.M.'s biological father separately appeals the trial court's judgments that awarded the agency permanent custody of his two children.[1] We consolidated the appeals for purposes of review and determination. For the reasons that follow, we affirm the trial court's judgments.

I. FACTS

[1] C.M.'s father did not participate during the trial court proceedings and is not involved in this appeal.

{¶2} In June 2014, the agency filed complaints that alleged that A.M. (then two years of age) and J.M. (then six months of age) were dependent children. The agency requested the court to grant it temporary custody of the children. The attached statement of facts stated that the agency had received a report that emergency responders discovered J.M. home alone. Responders noted that the home did not contain any food, diapers, or clothing for the child. The agency was unable to obtain any information regarding J.M.; therefore, he was placed in emergency foster care. The sheriff's office later made contact with an individual at the home. This individual gave J.M.'s mother's name to the sheriff. Officials were unable to immediately locate the mother.

{¶3} The magistrate later adjudicated both A.M. and J.M. dependent and placed them in the agency's temporary custody. The trial court subsequently entered a separate judgment that placed the children in appellee's temporary custody but that did not specifically adjudicate the children dependent.

{¶4} In June 2016, the agency filed a complaint that alleged that C.M. was a dependent child and that requested temporary custody of the child. The agency claimed that at the time of the child's birth, the mother appeared intoxicated and tested positive for cocaine and marijuana. The magistrate subsequently adjudicated C.M. a dependent child and continued the child in the agency's temporary custody. The trial court entered the same judgment.

{¶5} The agency later filed motions for permanent custody of all three children. The agency alleged that A.M. and J.M. had been in its temporary custody for more than twelve out of the past twenty-two months and that placing the children in its permanent custody would be in the children's best interests. The agency alleged that although the mother had been participating in recommended services, she continued to test positive for illegal substances and had been

unable to maintain sobriety. The agency asserted that A.M.'s and J.M.'s father also continued to test positive for illegal substances. The agency's permanent custody motion regarding C.M. contained similar allegations.

{¶6} At the permanent custody hearing, the children's first caseworker, Katlynn Pryor, testified that when the agency removed A.M. and J.M. from the home, the father was in prison for drug-related offenses; the mother had substance abuse issues; and the parents lacked stable housing. Pryor explained that when the mother gave birth to C.M., the child tested positive for cocaine and THC.

{¶7} Pryor stated that the agency developed a case plan for the parents. The case plan required the parents to maintain stable housing, complete "AOD" services,[2] complete parenting classes, submit to drug screens, refrain from using illegal substances, maintain consistent visitation with the children, and refrain from criminal activity. Pryor indicated that the agency referred the parents to three different substance abuse counseling centers; but the parents did not successfully complete any recommended treatment program.

{¶8} Pryor additionally related that throughout the pendency of the case, the parents had eleven encounters with law enforcement officers and about one-half of those resulted in an arrest. Pryor testified that neither parent demonstrated an ability to maintain sobriety and to refrain from criminal activity. She stated that the parents did, however, complete parenting classes.

{¶9} Pryor testified that the three children live in the same foster home and seem "very happy" in the home. Pryor indicated that the agency investigated relative placements but did not deem any of them suitable. She stated that the agency did not approve the paternal grandmother for placement due to "near hoarding" conditions.

[2] Although none of the testimony indicated what "AOD" meant, it appears to have meant "Alcohol and Other Drug."

{¶10} The children's current caseworker, Breanna Schreck, testified that the children appear "well bonded" with the foster parents.

{¶11} Patricia Friel testified that the parents were referred to her for substance abuse counseling and that neither successfully completed a treatment program. Friel explained that when she first encountered the mother in April 2017, the mother's drug screen returned positive for buprenorphine, THC, and alcohol. Friel developed a treatment plan for the mother that required her to attend three group sessions per week. Friel indicated that the mother only completed three total sessions. Friel said that the mother was terminated from the program due to noncompliance. Friel related that the father never had an assessment; therefore, she was unable to develop a treatment protocol for him.

{¶12} Greg Parks, a counselor with Prism Behavioral Health Care, stated that the parents were referred to him in February 2016 and that both parents completed an assessment. Parks explained that although the parents completed the first three steps of the program, they later relapsed and neither successfully completed a treatment program. Parks additionally indicated that after C.M.'s birth, both parents were referred for inpatient treatment, but neither complied with the recommendation. Parks testified that the parents were terminated from the program.

{¶13} Jason Rhoades, a counselor with the Recovery Council, stated that the father did not complete a treatment program and was terminated from the program in January 2017. Rhoades further explained that a week before the permanent custody hearing (in early September 2017), the father contacted Rhoades.

{¶14} The court then stood in recess until January 2018. When the permanent custody hearing resumed, Rhoades testified that the father had re-engaged in treatment and completed an

assessment. Rhoads indicated, however, that the father did not comply with the recommended treatment program. Rhoades additionally stated that the mother completed an assessment in September 2017; but she did not comply with treatment and was terminated from the program.

{¶15} Several law enforcement officers testified that they had multiple contacts with the parents throughout the pendency of the case and frequently found the mother intoxicated. The reports often involved alcohol and fighting between the mother and the father.

{¶16} The parents both testified. The father stated that he left Prism due to what he perceived as inappropriate behavior from the male providers who visited the parents' house. The father claimed that the two males watched the mother urinate in a cup. The father stated that he and the mother quit Prism and denied that they were terminated.

{¶17} The mother testified that she has done everything possible to regain custody of the children.

{¶18} The magistrate subsequently granted the agency permanent custody of the three children. The magistrate determined that the children had been in the agency's temporary custody for more than twelve out of the past twenty-two consecutive months and that placing them in the agency's permanent custody would be in their best interests.

{¶19} The trial court immediately adopted the magistrate's decisions and entered judgments that placed the children in the agency's permanent custody. The court found as follows: (1) the mother and the father have failed to complete any of the alcohol and drug counseling programs to which they were referred; (2) the parents have had numerous contacts with law enforcement; (3) the parents' current residence is not suitable; (4) the parents have not completed the case plan, although they did attend parenting class and Help Me Grow; (5) C.M.'s father has had no involvement; (6) no suitable relative placement exists; (7) "[t]he children are

doing great in their foster home and have bonded with their foster parents"; and (8) the children need a legally secure permanent placement and they cannot obtain one without granting the agency permanent custody. The court thus found that it is in the children's best interest to place them in the agency's permanent custody and granted the agency's motions for permanent custody of the three children.

{¶20} Shortly thereafter, the father objected to the magistrate's decisions regarding A.M. and J.M. and requested the court to issue findings of fact and conclusions of law. The court overruled the father's request for findings of fact and conclusions of law and explained: "Inasmuch [as] the Magistrate's Decision includes findings of fact and conclusions of law, Father['s] requests for findings of facts and conclusion[s] of law [are] hereby overruled."

{¶21} On April 27, 2018, the father filed amended objections to the magistrate's decisions. He objected to the magistrate's finding that no suitable relative placement exists and to the magistrate's finding that he did not remedy the conditions that led to the children's removal. The father claimed that the evidence presented at the hearing shows that his mother, the children's paternal grandmother, could take custody of A.M. and J.M. The father also asserted that the conditions that led to the children's removal "had nothing to do with [him]."

{¶22} Later, the trial court overruled the father's objections. The court pointed out that R.C. 2151.414 applies; and the court recited the applicable factors. The court stated that it reviewed the transcript and the evidence and concluded that the record supports the magistrate's decisions. The court further noted that the father had not directed his request for findings of fact and conclusions of law to the magistrate, but instead, to the trial court. The court also determined that the court's adoption of the magistrate's decisions constituted the court's findings of fact and conclusions of law. The court found that the Juvenile Rules did not require it to issue findings of

fact and conclusions of law. The court also found that its decisions that adopted the magistrate's decision contain findings of fact and conclusions of law. The court thus overruled the father's objections and adhered to its prior judgments that placed the children in the agency's permanent custody.[3]

II. ASSIGNMENT OF ERROR

{¶23} The mother raises one assignment of error:

> The trial court erred in granting Jobs [sic] and Family Services permanent custody as said decision was not supported by clear and convincing eviden[c]e as required by R.C. 2151.414 and was against the manifest weight of the evidence.

{¶24} The father raises four assignments of error:

> First Assignment of error:
>
> The trial court committed reversible error by granting permanent custody to South Central Ohio Job and Family Services, Children's Division before the children were properly adjudicated to be abused, neglected, or dependent children.
>
> Second Assignment of Error:
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> The trial court committed reversible error in not determining and specifically addressing the best interest factors under R.C. 2151.414(D) when the trial court overruled Appellant's request for additional findings.
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> Third Assignment of Error:
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> In the alternative to Assignment of Error No. 2, the trial court committed reversible error in overruling Appellant's request for findings of fact and conclusions of law when it is not clear that the Magistrate's Decision contained a complete set of findings.
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> Fourth Assignment of Error:

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[3] Juv.R. 40(D)(4)(e)(i) indicates that "the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered."

> The trial court committed reversible error in finding that permanent custody was in the best interests of the minor children when the Magistrate's findings were insufficient to establish by clear and convincing evidence that the granting of permanent custody was in the best interests of the minor children.

III. ANALYSIS

A. Father's Appeal

1. First Assignment of Error

{¶25} In his first assignment of error, the father argues that we must reverse the trial court's judgments granting the agency permanent custody of the children because the court entered its dispositional orders before it adopted the magistrate's decisions that adjudicated the children dependent. The father claims that a trial court cannot enter a dispositional order unless the court first enters a separate and independent adjudicatory decision.

{¶26} The father appears to recognize that his failure to raise this issue at a time when the trial court could have corrected any alleged error means that he is limited to plain-error review on appeal. The father contends that the court's dispositional decisions—entered before it actually adopted the magistrate's adjudicatory decisions—constitute an obvious error that affected his substantial rights. The father argues that "[t]he outcome of the trial would have been different because the permanent custody hearing should not have occurred at all before the children had been adjudicated."

{¶27} The father's failure to raise this issue at a time when the trial court could have avoided any error means that he forfeited the right to raise the alleged error on appeal. *E.g., In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, 855 N.E.2d 851, ¶ 16; *Stores Realty Co. v. Cleveland,* 41 Ohio St.2d 41, 43, 322 N.E.2d 629 (1975) ("Ordinarily, errors which arise during the course of a trial, which are not brought to the attention of the court by objection or otherwise, are

waived and may not be raised upon appeal.”); *State ex rel. Jeffers v. Athens Cty. Commrs.*, 4th Dist. Athens No. 15CA27, 2016-Ohio-8119, fn.3 (stating that “[i]t is well-settled that failure to raise an argument in the trial court results in waiver of the argument for purposes of appeal”). Appellate courts may, however, consider a forfeited argument using a plain-error analysis. *See Risner v. Ohio Dept. of Nat. Resources, Ohio Div. of Wildlife*, 144 Ohio St.3d 278, 2015-Ohio-3731, 42 N.E.3d 718, ¶ 27 (stating that reviewing court has discretion to consider forfeited constitutional challenges); *see also Hill v. Urbana*, 79 Ohio St.3d 130, 133–34, 679 N.E.2d 1109 (1997), quoting *In re M.D.*, 38 Ohio St.3d 149, 527 N.E.2d 286 (1988), syllabus (stating that “ ‘[e]ven where [forfeiture] is clear, [appellate] court[s] reserve[] the right to consider constitutional challenges to the application of statutes in specific cases of plain error or where the rights and interests involved may warrant it’ ”).

{¶28} Before a reviewing court may consider recognizing plain error, the party claiming error must establish (1) that “ ‘an error, i.e., a deviation from a legal rule’ ” occurred, (2) that the error was “ ‘an “obvious” defect in the trial proceedings,’ ” and (3) that this obvious error affected substantial rights, i.e., the error “ ‘must have affected the outcome of the trial.’ ” *State v. Rogers*, 143 Ohio St.3d 385, 2015-Ohio-2459, 38 N.E.3d 860, ¶ 22, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002); *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 209, 436 N.E.2d 1001 (1982) (“A ‘plain error’ is obvious and prejudicial although neither objected to nor affirmatively waived which, if permitted, would have a material adverse affect on the character and public confidence in judicial proceedings.”).

{¶29} The plain error doctrine is not, however, readily invoked in civil cases. Instead, an appellate court “must proceed with the utmost caution” when applying the plain error doctrine in civil cases. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997). The Ohio

Supreme Court has set a "very high standard" for invoking the plain error doctrine in a civil case. *Perez v. Falls Financial, Inc.*, 87 Ohio St.3d 371, 721 N.E.2d 47 (2000). Thus, "the doctrine is sharply limited to the *extremely rare* case involving *exceptional* circumstances where the error, left unobjected to at the trial court, rises to the level of challenging the legitimacy of the underlying judicial process itself." *Goldfuss* at 122; *accord Gable v. Gates Mills*, 103 Ohio St.3d 449, 2004-Ohio-5719, 816 N.E.2d 1049, ¶ 43. Moreover, appellate courts " 'should be hesitant to decide [forfeited errors] for the reason that justice is far better served when it has the benefit of briefing, arguing, and lower court consideration before making a final determination.' " *Risner* at ¶ 28, quoting *Sizemore v. Smith*, 6 Ohio St.3d 330, 332, 453 N.E.2d 632 (1983), fn.2; *Mark v. Mellott Mfg. Co., Inc.*, 106 Ohio App.3d 571, 589, 666 N.E.2d 631 (4th Dist.1995) ("Litigants must not be permitted to hold their arguments in reserve for appeal, thus evading the trial court process."). Additionally, "[t]he plain error doctrine should never be applied to reverse a civil judgment * * * to allow litigation of issues which could easily have been raised and determined in the initial trial." *Goldfuss* at 122.

{¶30} We further note that the plain-error rule applies to voidable, but not void, judgments. *State v. Snyder*, 4th Dist. Pike No. 16CA881, 2017-Ohio-8091, 96 N.E.3d 833, ¶ 23, citing *State v. Peeks*, 10th Dist. Franklin No. 05AP-1370, 2006-Ohio-6256, ¶ 9 (stating that "[a] voidable error can be waived"); *accord J.J.* at ¶ 12 (concluding that appellant's failure to timely object to procedural irregularity that rendered judgment merely voidable resulted in waiver of issue for purposes of appeal). The rule is based on the notion that a timely objection allows the trial court to correct any procedural irregularities before terminating the case. *State v. Slagle*, 65 Ohio St.3d 597, 604, 605 N.E.2d 916 (1992), quoting *State v. Craft*, 52 Ohio App.2d 1, 4–5, 367 N.E.2d 1221 (1st Dist.1977) (explaining that purpose of forfeiture rule " 'is practical: to prevent

the defensive trial tactic of remaining silent on a fatal error during trial with the expectation of demanding a reversal on appeal if the [judgment is adverse]' "); *see also State v. Bradford*, 4th Dist. Ross No. 16CA3531, 2017-Ohio-3003, 91 N.E.3d 10, ¶ 12 (determining that even though "[a] judge who acts absent a proper transfer of a case is without authority," "it is incumbent upon the complaining party to raise its objection to the judge's authority to act at the first opportunity").

{¶31} Here, we do not believe that the trial court's failure to adopt the magistrate's decision and to adjudicate the children dependent before the court entered its dispositional decision is an error of sufficient magnitude to warrant application of the plain error doctrine. *See In re H.S.*, 4th Dist. Ross No. 16CA3569, 16CA3570, 2017-Ohio-457, 84 N.E.3d 127, ¶ 37, citing *In re G.S.*, 4th Dist. Ross No. 15CA3510, 2016-Ohio-5362, ¶ 17 (noting that a magistrate's decision is not effective unless the trial court adopts it and that court cannot consider matters relating to disposition until there has been an adjudication).

{¶32} The error—the court's failure to comply with Juv.R. 40(D)(4) and adopt the magistrate's adjudicatory decision before proceeding to disposition—is a procedural irregularity that the court easily could have corrected if the father had timely raised an objection. Furthermore, the court did eventually adopt the magistrate's adjudicatory decision and enter its own judgment that adjudicated the children dependent. We therefore do not believe that a manifest miscarriage of justice will result if we do not recognize the error.

{¶33} Accordingly, based upon the foregoing reasons, we overrule the father's first assignment of error.

2. Second and Third Assignments of Error

{¶34} For ease of discussion, we combine our review of the father's second and third assignments of error.

{¶35} In his second assignment of error, the father argues that the trial court erred by failing to specifically address each of the best interest factors contained in R.C. 2151.414(D), despite the father's request for findings of fact and conclusions of law. The father recognizes that the trial court found that the magistrate's decisions adequately set forth findings of fact and conclusions of law. He also observes that the court adopted the magistrate's decisions, incorporated her findings of fact and conclusions of law, and entered judgments placing the children in the agency's permanent custody. The father nevertheless contends that the court's findings of fact and conclusions of law fail to set forth a complete analysis of the best-interest factors.

{¶36} In his third assignment of error, the father asserts that the trial court incorrectly determined that the magistrate's decisions contained adequate findings of fact and conclusions of law.

{¶37} First, we observe that although the father objected to the magistrate's decisions and requested findings of fact and conclusions of law, he did not specifically object to the magistrate's best-interest determination or to the lack of a factor-by-factor best-interest analysis. Juv.R. 40(D)(3)(b)(ii) requires a party's "objection to a magistrate's decision [to] be specific and state with particularity all grounds for objection." A party who does not raise specific objections and fails to state with particularity all grounds for objection forfeits any unspecified and non-particularized issues for purposes of appeal. Juv.R. 40(D)(3)(iv); *State ex rel. Muhammad v. State,* 133 Ohio St.3d 508, 2012-Ohio-4767, 979 N.E.2d 296, ¶ 3 (noting that party waives argument on appeal if party failed to specifically raise issue in objections to magistrate's

decision); *Sarchione-Tookey v. Tookey*, 4th Dist. Athens No. 17CA41, 2018-Ohio-2716, ¶ 35 (recognizing that in proceedings involving magistrate's decision, party forfeits all but plain error on appeal concerning an issue if the party did not first object to magistrate's decision on that specific issue); *McClain v. McClain,* 4th Dist. Athens No. 10CA53, 2011-Ohio-6101, ¶ 7 (explaining that a party's failure to raise a particular issue when objecting to a magistrate's decision results in a waiver of that issue on appeal); *see State v. Awan,* 22 Ohio St.3d 120, 122, 489 N.E.2d 277 (1986), quoting *State v. Childs*, 14 Ohio St.3d 56, 236 N.E.2d 545 (1968), paragraph three of the syllabus (explaining that appellate courts "will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court."). Thus, because the father failed to challenge the magistrate's best-interest determination or lack of a specific best-interest analysis when he filed his objections, he has forfeited the issue for purposes of appeal; but he may assert that the court's failure to specifically analyze each of the best-interest factors constitutes plain error. *See* Juv.R. 40(D)(3)(b)(iv).

{¶38} The father does not argue that the trial court plainly erred by failing to set forth a detailed analysis regarding each best-interest factor. We thus could simply disregard this assignment of error. *Sarchione-Tookey* at ¶ 35, citing *Selbee v. Van Buskirk*, 4th Dist. Scioto No. 16CA3777, 16CA3780, 2018-Ohio-1262, ¶ 34.

{¶39} The father nevertheless asserts that his request for findings of fact and conclusions of law mandated that the court—whether the magistrate or the trial court—set forth a detailed best-interest analysis. The father asserts that because he requested findings of fact and conclusions of law, our decision in *In re C.S.*, 4th Dist. Athens No. 15CA18, 2015-Ohio-4883, required the trial court to comment on each of the R.C. 2151.414(D)(1) best interest factors. In *In*

re C.S., we stated that "unless a party requests findings of fact and conclusions of law, a trial court need not set forth specific factual findings regarding each R.C. 2151.414(D) best interest factor." *Id.* at ¶ 30. We then indicated that if "a party requests findings of fact and conclusions of law, then the trial court must set forth specific factual findings that correlate to each best interest factor." *Id.* We also noted that "the record must indicate that the trial court indeed considered the proper statutory factors." *Id.* However, we did not state that a court's failure to correlate its factual findings to each best-interest factor necessarily results in reversible error.

{¶40} The juvenile rules permit "a magistrate's decision [to] be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law." Juv.R. 4040(D)(3)(a)(ii). "A request for findings of fact and conclusions of law shall be made before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision." *Id.*

{¶41} Additionally, R.C. 2151.414(C) requires a juvenile court, upon request of either party, to file a written opinion setting forth its findings of fact and conclusions of law regarding a permanent custody decision. Likewise, Civ.R. 52 requires the trial court, upon timely request, to issue findings of fact and conclusions of law. Civ.R. 52 states: "When questions of fact are tried by a court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise * * * in which case, the court shall state in writing the findings of fact found separately from the conclusions of law."

{¶42} The purpose of findings of fact and conclusions of law is " 'to aid the appellate court in reviewing the record and determining the validity of the basis of the trial court's judgment.' " *In re Adoption of Gibson*, 23 Ohio St.3d 170, 172, 492 N.E.2d 146 (1986), quoting *Werden v. Crawford*, 70 Ohio St.2d 122, 124, 435 N.E.2d 424 (1982). "[T]he findings and

conclusions must articulate an adequate basis upon which a party can mount a challenge to, and the appellate court can make a determination as to the propriety of, resolved disputed issues of fact and the trial court's application of the law." *Kroeger v. Ryder*, 86 Ohio App.3d 438, 442, 621 N.E.2d 534 (6th Dist.1993). " 'The test for determining whether a trial court's opinion satisfies the requirements of Civ.R. 52 is whether the contents of the opinion, when considered together with other parts of the record, form an adequate basis upon which to decide the narrow legal issues presented.' " *State ex rel. Gilbert v. City of Cincinnati*, 125 Ohio St.3d 385, 2010-Ohio-1473, 928 N.E.2d 706, ¶ 38, quoting *Brandon/Wiant Co. v. Teamor*, 135 Ohio App.3d 417, 423, 734 N.E.2d 425 (8th Dist.1999).

{¶43} Here, the father timely requested findings of fact and conclusions of law. The father specifically "request[ed] the Court to provide a Finding [sic] of Fact and Conclusion [sic] of Law supporting said Magistrate's Decision." The trial court overruled the father's request. The trial court found that the magistrate adequately set forth findings of fact and conclusions of law. The trial court further noted that it had adopted the magistrate's decisions, incorporated the magistrate's findings, and entered judgments placing the children in the agency's permanent custody.

{¶44} Later, when the court ruled on the father's objections, the court again concluded that the magistrate's decision adequately set forth findings of fact and conclusions of law. The court stated:

> The Magistrate's Decision sets forth her findings by clear and convincing evidence. The Court has reviewed the transcript and the evidence presented supports all of the findings of the Magistrate set forth in the Decision, specifically paragraphs 5, 7-10, and 12-20. The Magistrate's Decision sets forth

in detail the findings made by the Magistrate and complies with the requirements of Juvenile Rule 40.

{¶45} The trial court additionally found that the father had directed his request for findings of fact and conclusions of law to the trial court and not to the magistrate as Juv.R. 40(D)(3)(a)(ii) requires. The court determined that Juv.R. 40 did not require the trial court to "provide findings of fact and conclusions of law in this situation." The court further stated: "Regardless, the Court has adopted the Decision of the Magistrate which this Court finds constitute findings of fact and conclusions of law."

{¶46} Here, although "the court's decision is not ideal, we nonetheless find that the trial court's decision, combined with the transcript of the permanent custody hearing * * *, forms an adequate basis for the trial court's ruling and for our review." (Footnote omitted.) *In re Cunningham*, 4th Dist. Athens No. 03CA26, 2004-Ohio-787, ¶ 26, citing *In re Lewis,* 4th Dist. Athens No. 03CA12, 2003-Ohio-5262, ¶41. "Furthermore, assuming the court erred, such error is harmless." *Id.*, citing *Dovetail Const. Co., Inc. v. Baumgartel*, 4th Dist. Washington No. 00CA2, 2001 Ohio App. LEXIS 4752, *20 (Sept. 25, 2001). *See* Civ.R. 61 (explaining that court "must disregard any error or defect in the proceeding" that does not affect a party's substantial rights); *Niskanen v. Giant Eagle, Inc.*, 122 Ohio St.3d 486, 2009-Ohio-3626, 912 N.E.2d 595, ¶ 26, quoting *Smith v. Flesher*, 12 Ohio St.2d 107, 110, 233 N.E.2d 137 (1967) (explaining that " 'in order to secure a reversal of a judgment,' " a party " 'must not only show some error but must also show that that error was prejudicial to him' "). The father has not explained how any error that the trial court made by failing to analyze every R.C. 2151.414(D)(1) factor affected the outcome of the proceeding. As we explain in our discussion of the father's fourth assignment of error, the record contains substantial competent and credible evidence to support a finding that

placing the children in the agency's permanent custody is in the children's best interests. Therefore, even if the trial court erred by failing to engage in a precise factor-by-factor analysis of the best-interest factors, the error did not affect the outcome of proceedings. Thus, assuming that the father's request for findings of fact and conclusions of law properly preserved his argument that the trial court should have entered more specific findings regarding the best-interest factors, any error is harmless. We thus must disregard the error.

{¶47} Accordingly, based upon the foregoing reasons, we overrule the father's second and third assignments of error.[4]

3. Fourth Assignment of Error

{¶48} In his fourth assignment of error, the father essentially argues that the trial court's best-interest determination is against the manifest weight of the evidence. The father contends that the record does not contain sufficient evidence to support the court's finding that placing the children in the agency's permanent custody is in their best interests. He alleges that the record does not contain any evidence regarding the following best-interest factors: (1) the children's interactions and interrelationships with their parents; (2) the children's wishes or the guardian ad litem's recommendation; or (3) whether the children could achieve a legally secure permanent placement with their paternal grandmother.

{¶49} We again note, however, that the father did not raise all of the foregoing issues when objecting to the magistrate's decisions. Rather, the only best-interest factor he specifically challenged when he objected to the magistrate's decisions was whether the children could achieve a legally secure permanent placement with the paternal grandmother. The father

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[4] The father additionally raises an argument concerning R.C. 2151.414(D)(2) and 2151.414(E)(1), in the event the agency asserts either of those statutory provisions apply. The agency's appellate brief states that R.C. 2151.414(D)(1) applies. We therefore do not address the father's conditional argument regarding R.C. 2151.414(D)(2) and 2151.414(E)(1).

therefore forfeited all but plain error for purposes of appeal with respect to the children's interactions and interrelationships and with respect to the children's wishes. Although the father has not argued that the court plainly erred, considering that parental rights are at stake, we will briefly address whether the trial court plainly erred by determining that placing the children in the agency's permanent custody is in their best interest.

{¶50} A reviewing court generally will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *In re R.M.,* 2013-Ohio-3588, 997 N.E.2d 169, ¶53 (4th Dist.). When an appellate court reviews whether a trial court's permanent custody decision is against the manifest weight of the evidence, the court " 'weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.' " *Eastley v. Volkman,* 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 12, quoting *Tewarson v. Simon,* 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *State v. Martin,* 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶51} In a permanent custody case, the ultimate question for a reviewing court is "whether the juvenile court's findings * * * were supported by clear and convincing evidence." *In re K.H.,* 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶43. In determining whether a 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, 74, 564 N.E.2d 54 (1990). "Thus, if the children services agency presented competent and credible evidence upon

which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court's decision is not against the manifest weight of the evidence." *R.M.* at ¶55.

{¶52} Once the reviewing court finishes its examination, the court may reverse the judgment only if it appears that the fact-finder, when resolving the conflicts in evidence, " 'clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.' " *Thompkins* at 387, quoting *Martin* at 175. A reviewing court should find a trial court's permanent custody decision against the manifest weight of the evidence only in the " 'exceptional case in which the evidence weighs heavily against the [decision].' " *Id.,* quoting *Martin* at 175.

{¶53} R.C. 2151.414(D)(1) requires a trial court to consider all relevant, as well as specific, factors to determine whether a child's best interest will be served by granting a children services agency permanent custody. The specific factors include: (1) the child's interaction and interrelationship 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 child's wishes, as expressed directly by the child or through the child's guardian ad litem, with due regard for the child's maturity; (3) the child's custodial history; (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 to the agency; and (5) whether any factors listed under R.C. 2151.414(E)(7) to (11) apply.

{¶54} Here, we believe that the record contains substantial competent and credible evidence to support the trial court's best-interest determination and that the court did not plainly

err by finding that placing the children in the agency's permanent custody is in their best interests.

{¶55} With respect to the children's interactions and interrelationships with the parents, we recognize that the agency did not present much evidence at the permanent custody hearing to show how the parents currently interact and interrelate with the children. Nevertheless, the record contains evidence that the parents did not have positive interactions with the children during the limited time that the children were in their care. Authorities found J.M. abandoned in a home without any adult supervision or supplies appropriate for a six-month-old infant. When the mother gave birth to C.M., the newborn tested positive for illegal substances. The parents have serious substance abuse issues that they have failed to successfully overcome. This evidence supports a finding that the children did not and would not share positive interactions and interrelationships with their parents.

{¶56} The evidence does establish, however, that the children are doing well in the foster home, which is an adoptive placement, and that they are bonded to the foster parents.

{¶57} The agency did not present evidence at the permanent custody hearing that specifically addressed the children's wishes. Nor did the trial court explicitly discuss the children's wishes. Yet, under the circumstances in the case at bar, "[w]e do not believe that the court's failure to [discuss] this one factor constitutes plain error[.]" *In re S.M.*, 4th Dist. Highland No. 14CA4, 2014-Ohio-2961, ¶ 36. The record contains several reports that the children's guardian ad litem filed. The guardian ad litem noted that the children are young and do not seem to understand the nature of the permanent custody proceedings. He recommended that the court grant the agency permanent custody of the children. The guardian ad litem additionally wrote in his report that A.M. stated that she would like to remain in the foster home. Thus, the record

contains some evidence to support a finding that the children's wishes weigh in favor of granting permanent custody to the agency.

{¶58} The father does not dispute that the court considered the children's custodial history.

{¶59} The father asserts that the evidence does not sufficiently support the court's finding that A.M. and J.M. could not be placed with his mother. We note, however, that one of the agency's caseworkers stated that the agency did not approve the paternal grandmother's home due its "near hoarding" condition.

{¶60} Furthermore, a trial court need not first determine that no suitable relative placement exists before it may grant permanent custody to a children services agency. Indeed, a trial court need not determine that terminating parental rights is "the only option" or that no suitable person is available for placement. *In re Schaefer,* 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 64 (2006). Rather, R.C. 2151.414 requires the court to weigh "all the relevant factors * * * to find the best option for the child[.]" *Id.* "The statute does not make the availability of a placement that would not require a termination of parental rights an all-controlling factor. The statute does not even require the court to weigh that factor more heavily than other factors." *Id.* A child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security. *In re Adoption of Ridenour,* 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991). Therefore, courts are not required to favor relative or non-relative placement if, after considering all the factors, it is in the child's best interest for the agency to be granted permanent custody. *Schaefer* at ¶ 64; *accord In re T.G.,* 4th Dist. Athens No. 15CA24, 2015-Ohio-5330, ¶ 24. We therefore disagree with the father that the trial court

failed to adequately consider whether A.M. and J.M. could be placed with the paternal grandmother.

{¶61} In sum, we are unable to conclude that the trial court plainly erred by determining that placing the children in the agency's permanent custody is in their best interests. As the court noted, the parents have had approximately three and one-half years to comply with the case plan requirement to successfully treat their substance abuse issues but have failed to do so. The children have been in the agency's custody for the vast majority of their lives and are bonded to the foster family. The trial court could have quite reasonably determined that further prolonging the children's uncertainty would not be in their best interests and that entering judgments that will secure permanency for them is in their best interests.

{¶62} Accordingly, based upon the foregoing reasons, we overrule the father's fourth assignment of error.

B. Mother's Appeal

{¶63} In her sole assignment of error, the mother asserts that the trial court's decision to grant the agency permanent custody of the children is against the manifest weight of the evidence. She contends that the agency did not provide her with "the time and support necessary to comply with the case plan." However, the mother failed to object to the magistrate's decision. She therefore failed to preserve a challenge to the trial court's decision that adopted the magistrate's decision placing the children in the agency's permanent custody.

{¶64} Juv.R. 40(D)(3)(b)(iv) states that "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b)." The rule thus limits a party who completely fails to object to a magistrate's decision to plain-

error review on appeal. *Faulks v. Flynn,* 4th Dist. Scioto No. 13CA3568, 2014-Ohio-1610, ¶ 17, citing Civ.R. 53(D)(3)(b)(iv) (stating that "[a] party forfeits or waives the right to challenge the trial court's adoption of a factual finding or legal conclusion unless the party" properly objects); *accord State ex rel. Muhammad v. State,* 133 Ohio St.3d 508, 2012-Ohio-4767, 979 N.E.2d 296, ¶ 3.

{¶65} As we previously stated, appellate courts should exercise extreme caution when invoking the plain error doctrine, especially in civil cases. *Goldfuss,* 79 Ohio St.3d at 122–123. Moreover, plain error does not exist unless the court's obvious deviation from a legal rule affected the outcome of the proceeding. *E.g., State v. Barnes,* 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002). Additionally, "[b]ecause parental rights determinations are difficult to make and appellate courts accord wide latitude to the trial court's consideration of evidence in these cases, '[p]lain error is particularly difficult to establish.' " *Faulks* at ¶ 20, quoting *Robinette v. Bryant,* 4th Dist. Lawrence No. 12CA20, 2013-Ohio-2889, ¶ 28.

{¶66} The mother does not acknowledge her failure to timely object to the magistrate's decision; and she does not invoke the plain-error doctrine on appeal. "We generally will not craft a plain-error argument for an appellant who fails to do so." *State v. Dailey*, 4th Dist. Adams No. 18CA1059, 2018-Ohio-4315, ¶ 23, citing *Redmond v. Wade*, 4th Dist. Lawrence No. 16CA16, 2017-Ohio-2877, ¶ 34, citing *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 19, quoting *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, 78 (O'Donnell, J., concurring in part and dissenting in part), quoting *Carducci v. Regan*, 714 F.2d 171, 177 (D.C.Cir.1983). Because the mother fails to present a plain-error argument on appeal, we will not create one for her. Instead, we simply note that the record contains nothing to

suggest that the trial court made an obvious error or that the case at bar is one of those extremely rare cases that warrants application of the plain-error doctrine.

{¶67} Accordingly, based upon the foregoing reasons, we overrule the mother's first assignment of error.

C. Conclusion

{¶68} Having overruled all of the parents' assignments of error, we affirm the trial court's judgments.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds that reasonable grounds existed for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas, Probate Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Harsha, J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

By: ______________________________
Marie Hoover, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.