[Cite as *In re A.B.*, 2021-Ohio-3660.]

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

IN THE MATTER OF:	:	CASE NO. 21CA3940
A.B., G.B., and B.B,	:	
Adjudicated Neglected and Dependent Children.	:	DECISION & JUDGMENT ENTRY
	:	

APPEARANCES:

Valerie M. Webb, Portsmouth, Ohio, for Appellant.[1]

CIVIL CASE FROM COMMON PLEAS COURT, JUVENILE DIVISION
DATE JOURNALIZED:10-5-21
ABELE, J.

{¶1} This is an appeal from a Scioto County Common Pleas Court, Juvenile Division, judgment that granted the Scioto County Children Services Board, appellee herein, permanent custody of three minor children. B.B., the children's biological mother and appellant herein, raises the following assignments of error for review:

FIRST ASSIGNMENT OF ERROR:

"THE SCIOTO COUNTY JUVENILE COURT ERRED BY PROCEEDING WITH THE PERMANENT CUSTODY

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[1] Different counsel represented appellant during the trial court proceedings. We further observe that no one has entered an appearance on behalf of the appellee.

HEARING WITHOUT APPELLANT BEING PRESENT OR OTHERWISE ABLE TO PARTICIPATE, THUS DENYING HER RIGHT TO DUE PROCESS."

SECOND ASSIGNMENT OF ERROR:

"THE SCIOTO COUNTY JUVENILE COURT'S DENIAL OF APPELLANT'S DUE PROCESS RIGHTS IS PLAIN ERROR."

{¶2} On March 1, 2018, appellee filed a complaint that alleged the three children are "neglected/dependent" and that requested temporary custody. Appellee additionally requested an ex parte order to place the children in its temporary custody. The affidavit attached to the complaint alleged that an investigator had learned that appellant did not have a home for the children and that she had been using heroin. That same day, the trial court granted appellee's request for an ex parte order to place the children in appellee's temporary custody.

{¶3} Later, the trial court adjudicated the children "neglected/dependent" and placed them in appellee's temporary custody pending the disposition hearing.

{¶4} At the disposition hearing, Caseworker Angie Kemper testified that father is incarcerated and mother has made no progress on the case plan activities. Kemper stated that the mother has, however, attended weekly visits with the children. The court subsequently placed the children in appellee's temporary custody.

{¶5} Over the next 22 months, the trial court extended its temporary custody order multiple times. During that time, the mother had been sentenced to serve a two-and-one-half-year prison term, and father was released from prison. After father's release, he visited the children but did not successfully complete a drug treatment program so as to safely unify the children with him. Thus, on February 18, 2020, appellee filed a permanent custody motion.

{¶6} On June 16, 2020, and continuing on November 10, 2020, a magistrate held a permanent custody hearing.[2] On December 29, 2020, the magistrate awarded appellee permanent custody. The magistrate first found that the children had been in appellee's temporary custody for 12 or more months of a consecutive 22-month period. The magistrate next considered the children's best interests. The magistrate noted that appellant had convictions for grand theft of a motor vehicle, receiving stolen property, and tampering with evidence, and that appellant had been sentenced to more than two years in prison with an expected release date of September 3, 2021.

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[2] As we explain *infra*, although appellant filed transcripts of the hearings before the magistrate, appellant's failure to object to the magistrate's decision and produce the transcripts for the trial court to review precludes us from reviewing the transcripts on appeal. We therefore rely upon the facts as recited in the magistrate's and the trial court's decisions.

{¶7} The magistrate determined that the children's relationship with appellant is "almost non-existent," and that appellant did not maintain contact with either the caseworker or the children. The magistrate additionally found that appellant would like to have visits with her children, but that she agreed to appellee "being granted Permanent Custody of her children."

{¶8} The magistrate also noted that it "received input from the [guardian ad litem] concerning the children's wishes," but the decision does not indicate the guardian ad litem's recommendation. The magistrate further found that the children have been in the same foster home since their removal and that the children are doing well in the foster home. The magistrate observed that the foster parents would consider adoption if the option became available.

{¶9} Consequently, the magistrate determined that the children cannot achieve a legally secure permanent placement without granting appellee permanent custody because appellant remains incarcerated and father failed to complete his case plan goals. The magistrate remarked that "the parents' drug addiction and inability to conquer the addiction continues to be a barrier to providing the children with a safe, stable and secure home environment."

{¶10} The magistrate thus granted appellee's motion for permanent custody and notified the parties that objections to the magistrate's decision must be filed within fourteen days.

{¶11} On January 13, 2021, the trial court adopted the magistrate's decision and granted appellee permanent custody of the three children. On January 21, 2021, appellant filed a letter with the court and asked for legal counsel to file "a motion to set aside the magistrate's order." Appellant stated that she did "not wish to relinquish [her] parental rights." On January 28, 2021, the trial court appointed counsel to represent appellant "for the purpose of appeal." This appeal followed.

I

{¶12} Initially, we note that appellee did not file an appellate brief or otherwise appear in this appeal. When an appellee fails to file an appellate brief, App.R. 18(C) authorizes us to accept an appellant's statement of facts and issues as correct, then reverse a trial court's judgment as long as the appellant's brief "reasonably appears to sustain such action." In other words, an appellate court may reverse a judgment based solely on consideration of an appellant's brief. *Harper v. Neal*, 4th Dist. Hocking No. 15CA25, 2016-Ohio-7179, 2016 WL 5874628, ¶ 14, citing *Fed. Ins. Co. v. Fredericks*, 2015-Ohio-694, 29 N.E.3d 313, ¶ 79 (2nd Dist.); *Sites v. Sites*, 4th

Dist. Lawrence No. 09CA19, 2010-Ohio-2748, 2010 WL 2391647, ¶ 13; *Sprouse v. Miller*, 4th Dist. Lawrence No. 06CA37, 2007-Ohio-4397, 2007 WL 2410894, fn. 1.

{¶13} In the case sub judice, appellee's failure to file an appellate brief would permit us to reverse the trial court's judgment and remand for a new permanent custody hearing based upon the arguments presented in appellant's brief. However, in the case sub judice we do not believe that reversing the trial court's judgment on this basis will further the interests of justice or the children's best interests. Nevertheless, we caution and admonish counsel for appellee that any future failure to file an appellate brief may result in the reversal of the trial court's judgment on that basis alone.

II

{¶14} Because appellant's two assignments of error are interrelated, for ease of discussion we consider them together. In her first assignment of error, appellant asserts that the trial court violated her due process rights by conducting the November 10, 2020 permanent custody hearing in appellant's absence. In her second assignment of error, appellant argues that the denial of her due process rights constitutes plain error.

A

{¶15} We first observe that appellant did not file objections to the magistrate's decision in accordance with Juv.R. 40(D)(3)(B). The juvenile rules require an objecting party to (1) file written objections to a magistrate's decision within 14 days of the decision, (2) state with specificity and particularity all grounds for objection, and (3) support objections to a magistrate's factual finding with a transcript of the evidence submitted to the magistrate or an affidavit of evidence if a transcript is unavailable. Juv.R. 40(D)(3)(b)(i)-(iii).

{¶16} The purpose of the requirement to support objections with a transcript of the evidence is to allow a court to fulfill its duty under Juv.R. 40(D)(4)(d): to "undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." *See generally* App.R. 9 2013 Staff Notes (trial court cannot undertake independent review "unless the appellant provided the trial court with an adequate description of the evidence presented to the magistrate—either through a transcript or, if a transcript is unavailable, an affidavit describing that evidence"). "In the absence of a transcript or an affidavit, a trial court is required to accept

the magistrate's findings of fact and may only determine the legal conclusions drawn from those facts." *Hopkins v. Hopkins*, 4th Dist. Scioto No. 14CA3597, 2014-Ohio-5850, 2014 WL 7499381, ¶ 25 (citations omitted); *accord M.S. v. J.S.*, 6th Dist. Lucas No. L-19-1234, 2020-Ohio-5550, 2020 WL 7091275, ¶ 9, quoting *In re M.W.*, 6th Dist. Lucas No. L-11-1241, 2012-Ohio-2959, ¶ 6 (stating that "[w]ithout a transcript, 'the trial court is required to accept the magistrate's findings of fact as true, and is permitted to examine only the legal conclusions based on those facts'"); *Allread v. Allread*, 2d Dist. Darke No. 2010CA6, 2011-Ohio-1271, 2011 WL 943785, ¶ 18, quoting *Dayton Police Dept. v. Byrd*, 189 Ohio App.3d 461, 2010-Ohio-4529, 938 N.E.2d 1110, ¶ 8 (2d Dist.) (if the objecting party does not file a proper transcript of all relevant testimony or an affidavit of evidence, "'a trial court's review is necessarily limited to the magistrate's conclusions of law'"). Furthermore, "[a] reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter." *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus. The absence of a transcript or affidavit of evidence at the trial court level thus prevents appellate review of that transcript or affidavit.

{¶17} Accordingly, appellate courts will not review a transcript of a magistrate's proceeding unless the appellant first presented the transcript to the trial court to review when ruling upon the appellant's objections to the magistrate's decision. *E.g., Babcock v. Welcome*, 4th Dist. Ross No. 11CA3273, 2012-Ohio-5284, 2012 WL 5542087, ¶ 16, quoting *Molnar v. Molnar*, 9th Dist. No. 3102-M, 2001 WL 688898, *2 (June 20, 2001) (reviewing "'court will not review the transcript on appeal because our decision would then be predicated upon materials that the trial court did not have the opportunity to review in rendering its judgment'"); *accord In re S.N.*, 1st Dist. Hamilton No. C-190151, 2020-Ohio-3958, 2020 WL 4516083, ¶ 19; *Tucker v. Hines*, 10th Dist. Franklin No. 18AP-375, 2020-Ohio-1086, 2020 WL 1487865, ¶ 8; *In re I.W.*, 1st Dist. Hamilton No. C-180095, 2019-Ohio-1515, 2019 WL 1781486, ¶ 9. We further note, however, that "the absence of a transcript or affidavit at the trial court level should not preclude appellate review of a legal determination, so long as the appellant complied with the objection requirements of the applicable magistrate rule." App.R. 9 2013 Staff Notes.

{¶18} If none of the parties files written objections, a trial court may adopt the "magistrate's decision unless it determines that there is an error of law or other defect evident

on the face of the magistrate's decision." Juv.R. 40(D)(4)(c). Additionally, the juvenile rules prevent a party from assigning "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)." Juv.R. 40(D)(3)(b)(iv). This rule "embodies the long-recognized principle that the failure to draw the trial court's attention to possible error when the error could have been corrected results in a waiver of the issue for purposes of appeal." *In re Etter*, 134 Ohio App.3d 484, 492, 731 N.E.2d 694 (1st Dist. 1998). Thus, under Juv.R. 40(D)(3)(b)(iv), parties do not properly object to a magistrate's decision waive all but plain error. *See State ex rel. Neguse v. McIntosh*, 161 Ohio St.3d 125, 2020-Ohio-3533, 161 N.E.3d 571, ¶ 9, quoting Civ.R. 53(D)(3)(b)(iv) ("failure to object to the magistrate's decision bars [appellant] from 'assign[ing] as error on appeal the court's adoption of any factual finding or legal conclusion' of the magistrate" and that appellate review is therefore limited to plain error); *Tucker v. Hines*, 10th Dist. Franklin No. 18AP-375, 2020-Ohio-1086, 2020 WL 1487865, ¶ 6 ("party who fails to timely object to a magistrate's decision is limited by operation of Juv.R. 40(D)(3)(b)(iv) to claims of plain error on appeal"); *In re Z.A.P.*, 177 Ohio App.3d 217, 2008-Ohio-3701, 894 N.E.2d

342, ¶ 15 (4th Dist.).

{¶19} For the plain error doctrine to apply, the party that claims error must establish that (1) "'an error, i.e., a deviation from a legal rule'" occurred, (2) the error was "'an "obvious" defect in the trial proceedings,'" and (3) 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, 1003 (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.").

{¶20} 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 error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss*, 79 Ohio St.3d at 122, 679 N.E.2d 1099; *accord Jones v. Cleveland Clinic Found.*, 161 Ohio St.3d 337, 2020-Ohio-3780, 163 N.E.3d 501, ¶ 24; *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 v. Ohio Dept. of Nat. Resources*, 144 Ohio St.3d 278, 2015-Ohio-3731, 42 N.E.3d 718, ¶ 28, quoting *Sizemore v. Smith*, 6 Ohio St.3d 330, 332, 453 N.E.2d 632 (1983), fn. 2; *accord 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*, 79 Ohio St.3d at 122, 679 N.E.2d 1099.

{¶21} In the case sub judice, appellant did not file objections to the magistrate's decision. See Juv.R. 40(D)(3)(b). Thus, the trial court did not have an opportunity to review the legal issue that appellant now raises on appeal, i.e., appellant's absence from the second part of the permanent custody hearing deprived her of due process of law. Consequently, appellant has forfeited all but plain error. Juv.R. 40(D)(3)(b)(iv). However, as we explain below, we do not believe that any error occurred in the case at bar.

{¶22} Moreover, appellant did not submit for the trial court's review a transcript of the proceedings held before the magistrate or an affidavit of the evidence. We recognize that appellant did request a transcript of the proceedings for purposes of appeal. However, appellant's failure to file the transcript with the trial court prevents this court from adding it to the record and deciding this appeal based on material that was not part of the trial court's proceedings.

B

{¶23} We recognize that "parents' interest in the care, custody, and control of their children 'is perhaps the oldest of the fundamental liberty interests recognized by [the United States Supreme Court].'" *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, ¶ 19, quoting *Troxel v. Granville*, 530

U.S. 57, 65, 120 S.Ct. 2054 , 147 L.Ed.2d 49 (2000); *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) ("natural parents have a fundamental right to the care and custody of their children"). Indeed, the right to raise one's "child is an 'essential' and 'basic' civil right." *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990); *accord In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, ¶¶ 8-9; *In re Hayes,* 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997). Thus, "parents who are 'suitable' have a 'paramount' right to the custody of their children." *B.C.* at ¶ 19, quoting *In re Perales*, 52 Ohio St.2d 89, 97, 369 N.E.2d 1047 (1977), citing *Clark v. Bayer*, 32 Ohio St. 299, 310 (1877); *Murray*, 52 Ohio St.3d at 157.

{¶24} Additionally, the Ohio Supreme Court has described the permanent termination of parental rights as "'the family law equivalent of the death penalty in a criminal case.'" *Hayes,* 79 Ohio St.3d at 48, quoting *In re Smith*, 77 Ohio App.3d 1, 16, 601 N.E.2d 45 (6th Dist.1991). Consequently, courts must afford parents facing the permanent termination of their parental rights "'every procedural and substantive protection the law allows.'" *Id.*, quoting *Smith*, 77 Ohio App.3d at 16; *accord B.C.* at ¶ 19. Because parents possess a fundamental liberty interest in the care and custody of their children, the state may not

deprive parents of their parental rights without due process of law. *In re James*, 113 Ohio St.3d 420, 2007-Ohio-2335, 866 N.E.2d 467, ¶ 16; *e.g., In re A.G.*, 4th Dist. Athens No. 14CA28, 2014-Ohio-5014, 2014 WL 5812193, ¶ 12. Moreover, a parent's right to due process "does not evaporate simply because" that parent has "not been [a] model parent[] or [has] lost temporary custody of their child to the state." *Santosky*, 455 U.S. at 753.

{¶25} Although "due process" lacks precise definition, courts have long held that due process requires both notice and an opportunity to be heard. *B.C.* at ¶ 17; *In re Thompkins*, 115 Ohio St.3d 409, 2007-Ohio-5238, 875 N.E.2d 582, ¶ 12, citing *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701, 708, 4 S.Ct. 663, 28 L.Ed. 569 (1884); *Caldwell v. Carthage*, 49 Ohio St. 334, 348, 31 N.E. 602 (1892). "[D]ue process" is a "flexible" concept "and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). "In the context of termination of parental rights, due process requires that the state's procedural safeguards ensure that the termination proceeding is fundamentally fair." *B.C.* at ¶ 17, citing *Santosky*, 455 U.S. at 753-754.

{¶26} We further observe that this court and others have held that an incarcerated parent does not have an absolute due process right to attend a permanent custody hearing. *In re C.B.*, 2020-Ohio-5151, 161 N.E.3d 770, ¶ 17 (4th Dist.); *In re L.M.*, 9th Dist. Summit No. 29687, 2020-Ohio-4451, 2020 WL 5551981, ¶ 6; *In re M.W.*, 8th Dist. Cuyahoga No. 103705, 2016-Ohio-2948, 2016 WL 2757895, ¶ 10; *In re M.M.*, 4th Dist. Meigs No. 14CA6, 2014-Ohio-5111, 2014 WL 6468945, ¶ 43; *see Mancino v. Lakewood*, 36 Ohio App.3d 219, 221, 523 N.E.2d 332 (8th Dist.1987) (a prisoner does not have absolute due process right to attend trial of a civil action). Instead, courts that evaluate the due process rights of an incarcerated parent to be present at a permanent custody hearing generally apply the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). *B.C.* at ¶ 18; *In re S.P.*, 6th Dist. Lucas No. L-20-1127, 2021-Ohio-25, 2021 WL 72376, ¶¶ 46-47; *In re S.G.*, 1st Dist. Hamilton No. C-200261, 2020-Ohio-5244, 2020 WL 6580558, ¶¶ 19-23; *In re M.M.*, 4th Dist. Meigs No. 14CA6, 2014-Ohio-5111, 2014 WL 6468945; *In re Elliot*, 4th Dist. Lawrence No. 92CA34, 1993 WL 268846, *4 (June 25, 1993); *accord In re A.F.*, 6th Dist. Williams No. WM–13–007, 2014–Ohio–633, ¶ 19; *In re K.L.*, 10th Dist. Franklin Nos. 13AP–218 and 13AP–231, 2013–Ohio–3499, ¶ 43.

{¶27} The *Mathews* test requires a court to evaluate three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335. In the case sub judice, with respect to the first factor, the permanent custody hearing will affect a significant private interest. Appellant's "interest in the care, custody, and control of [her child] 'is perhaps the oldest of the fundamental liberty interests.'" *B.C.* at ¶ 19, quoting *Troxel*, 530 U.S. at 65. Appellant's interest is not the only consideration, however. Rather, we also must consider the children's private interests. *B.C.* at ¶ 20.

{¶28} In the context of a permanent custody motion, the child's best interests are the "paramount consideration[]". *In re M.D.*, 38 Ohio St.3d 149, 153, 527 N.E.2d 286 (1988); *In re Cunningham*, 59 Ohio St.2d 100, 105, 391 N.E.2d 1034 (1979) ("the 'best interests' of the child are the primary consideration in questions of possession or custody of children"). Thus, parents' private interests in the care, custody, and control

"are subordinate to the child's interest." *B.C.* at ¶ 20.

{¶29} A child's private interest initially "mirrors" a parent's interest in that both have "a substantial interest in preserving the natural family unit." *Id.* When, however, "remaining in the natural family unit would be harmful to [the child], [the child's] interest changes. [The child's] private interest then becomes a permanent placement in a stable, secure, and nurturing home without undue delay." *Id.*, citing *In re Adoption of Zschach*, 75 Ohio St.3d 648, 651, 665 N.E.2d 1070 (1996). Indeed, "'[t]here is little that can be as detrimental to a child's sound development as uncertainty over whether he is to remain in his current 'home,' under the care of his parents or foster parents, especially when such uncertainty is prolonged.'" *Id.*, quoting *Lehman v. Lycoming Cty. Children's Servs. Agency*, 458 U.S. 502, 513–514, 102 S.Ct. 3231, 73 L.Ed.2d 928 (1982).

{¶30} In the case at bar, appellant has a significant private interest in maintaining care, custody, and control over her children. The children, however, have stronger interests: (1) removing the prolonged uncertainty surrounding appellant's ability to provide them with a permanent home; and (2) being placed in a stable, secure, and nurturing home without undue delay.

{¶31} Second, the risk of an erroneous deprivation of appellant's fundamental liberty interest in the care, custody, and management of her children by holding the second permanent custody hearing in her absence appears low. The trial court's decision reflects that appellant was present for the first hearing in June 2020, and that she fully participated in that hearing. Moreover, appellant's counsel fully participated in the second permanent custody hearing and represented appellant's interest. *See generally In re H.S.*, 12th Dist. Clermont No. CA2013-02-012, 2013-Ohio-2155, 2013 WL 2316606, ¶ 10; *In re C.M.*, 9th Dist. Summit Nos. 23606, 23608, 23629, 2007-Ohio-3999, 2007 WL 2255232, ¶ 24; *In re Maciulewicz*, 11th Dist. Ashtabula No. 2002-A-0046, 2002-Ohio-4820, 2002 WL 31053851, ¶ 18 (all recognizing that parent's counsel's participation in hearing reduces likelihood of erroneous deprivation).

{¶32} Next, we must consider the state's interest. "Two state interests are at stake in a permanent custody proceeding — a *parens patriae* interest in preserving and promoting the welfare of the child and a fiscal and administrative interest in reducing the cost and burden of such proceedings." *In re Elliott*, 4th Dist. Lawrence No. 92CA34, 1993 WL 268846, *5 (June 25, 1993); *accord B.C.* at ¶ 23 (stating that the two state interests are "minimizing fiscal and administrative costs" and

"promoting the welfare of the child"). "In a permanent custody proceeding, the state's *parens patriae* interest 'is served by procedures that promote an accurate determination of whether the natural parents can and will provide a normal home.'" *Elliott* at *5, quoting *Santosky*, 455 U.S. at 767.

{¶33} Permitting an incarcerated parent to attend a permanent custody hearing is "the optimal arrangement" to secure an accurate determination of whether the parent can and will provide a safe and stable home. *Id.* As we noted earlier, however, Ohio courts have not held that an incarcerated parent has an unfettered due process right to be present at a permanent custody hearing. Rather, "[a] trial court possesses discretion to proceed with a permanent custody hearing in a parent's absence." *In re A.C.H.*, 4th Dist. Gallia No. 11CA2, 2011-Ohio-5595, 2011 WL 5143239, ¶ 46, citing *In re S.G.*, 2nd Dist. Greene No. 2009-CA-46, 2010-Ohio-2641, 2010 WL 2641, ¶ 22; *accord In re E.C.*, 6th Dist. Wood No. WD-12-033, 2013-Ohio-617, ¶ 14, citing *State ex rel. Vanderlaan v. Pollex*, 96 Ohio App.3d 235, 236, 644 N.E.2d 1073 (6th Dist.1994). In *A.C.H.*, we determined that the trial court did not deprive the parent of his due process rights by holding the permanent custody hearing in his absence when "[c]ounsel meaningfully represented appellant at the hearing, a complete record was made, and appellant * * * failed to show

what testimony or evidence he would have offered that would have changed the outcome of the case." *Id.* at ¶ 46.

{¶34} In the case sub judice, we observe that counsel meaningfully represented appellant at the second hearing, a complete record was made, and appellant failed to show any additional testimony or evidence that she would have offered at the second hearing to change the outcome of the case. We further note that appellant attended the June 2020 hearing and that she chose to testify. Consequently, in view of the foregoing, we do not believe the trial court deprived appellant of her due process right to a fundamentally fair permanent custody hearing. Therefore, we do not agree with appellant that the trial court committed plain error.

{¶35} Accordingly, based upon the foregoing reasons, we overrule appellant's first and second assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

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

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

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, 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.