

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
HARRISON COUNTY

IN THE MATTER OF: M.R.,

A DEPENDENT CHILD.

OPINION AND JUDGMENT ENTRY
Case No. 22 HA 0003

Juvenile Appeal from the
Court of Common Pleas Juvenile Division of Harrison County, Ohio
Case No. 20203001

BEFORE:

David A. D'Apolito, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:

Affirmed.

Atty. Christopher P. Lacich, Roth, Blair, Roberts, Strasfeld & Lodge, 100 East Federal Street, Suite 600, Youngstown, Ohio 44503, for Appellant and

Atty. Lauren E. Knight, Harrison County Prosecutor, and *Atty. Jack L. Felgenhauer*, Assistant Prosecuting Attorney, Harrison County Prosecutor's Office, 111 West Warren Street, P.O. Box 248, Cadiz, Ohio 43907, for Appellee.

Dated: June 22, 2022

D'APOLITO, J.

{¶1} Appellant, T.R. (“Mother”), appeals the March 18, 2022 judgment entry of the Harrison County Court of Common Pleas, Juvenile Division (“juvenile court”), terminating her parental rights and granting permanent custody of her son, M.R. (d.o.b. 08/18/09) to Appellee, Harrison County Department of Job and Family Services, (“Agency”), following a hearing. M.R.’s father, C.T. (“Father”), likewise had his parental rights permanently terminated in the judgment entry on appeal. However, Father does not challenge the judgment entry terminating his parental rights and is not a named party to this appeal.

{¶2} In her sole assignment of error, Mother asserts that the case plan designed by the Agency was illusory in the sense that the Agency never intended to reunite her with M.R. Next, Mother argues that she was unaware she could challenge a no contact order issued by the Juvenile Division of the Stark County Court of Common Pleas (“Stark County juvenile court”) in 2018, which prohibited the Agency from scheduling parenting time for either of M.R.’s parents throughout the pendency of the case plan. Mother further argues that the judgment entry is not supported by competent, credible evidence because Ohio law favors reunification and both parents sought custody of M.R. Finally, to the extent that Mother required additional time to bond with M.R. and develop the skills necessary to parent him, she argues that temporary custody by the Agency should have been continued.

{¶3} Having reviewed the record, we find that there exists competent, credible evidence that the award of permanent custody to the Agency is in the best interest of M.R., who requires intense and comprehensive treatment to address his severe mental health and behavioral issues. With respect to Mother’s arguments predicated upon her lack of awareness of the Stark County juvenile court’s 2018 no contact order, Mother was repeatedly notified throughout the proceedings below that she could challenge the order in Stark County. Further, Mother conceded on cross-examination that she was aware of the no contact order, but she made no effort to seek vacation or modification of the order to visit, and ultimately be reunited with M.R. Accordingly, the judgment of the juvenile court is affirmed.

FACTS AND PROCEDURAL HISTORY

{¶4} Relevant to the above-captioned appeal, legal custody of then-nine-year-old M.R. was awarded to C.D., his maternal great grandmother, in a March 8, 2018 judgment entry issued by Stark County juvenile court. C.D. testified that she was M.R.'s sole caretaker since the inception of the proceedings in Stark County when M.R. was roughly age six.

{¶5} According to the Stark County judgment entry, Mother forced M.R. to "shoot a little girl," and M.R. was "traumatized" and "does not want to see Mother." (3/18/18 J.E., p. 1.) When Mother was asked about the 2018 judgment entry at the permanency hearing, she denied the allegation, opining that it "just sounds like something somebody made up." (3/14/22 Hrg. Tr., p. 81.) Of greater import, the Stark County judgment entry further provides, in relevant part, "no contact between the child and father, the child and mother, and the child and maternal grandmother." (3/8/18 J.E., p. 2.)

{¶6} Turning to the events in Harrison County giving rise to this appeal, the Agency filed a complaint for abuse and dependency, and a shelter care request, with the juvenile court on January 13, 2020. According to Dominick Harper, M.R.'s social service worker at the Agency, the abuse complaint was predicated upon an accusation that M.R. was struck by C.D. with a (presumably, toy) race car track. However, Harper conceded at the permanency hearing that the accusation was never substantiated. (3/14/22 Hrg. Tr., p. 38-40.)

{¶7} The dependency and shelter care portion of the motion was predicated upon notice to the Agency that C.D. had insisted that then-twelve-year-old M.R. be admitted to the emergency facility of Union Hospital in Dover, Ohio. C.D. alleged that M.R. had killed a kitten, stolen a mobile telephone, and was hiding knives under his bed. Fearing for her own safety, C.D. refused to allow M.R. to return to her home. (Complt., p. 2). During a psychiatric evaluation, M.R. conceded that he had either strangled or smothered one of the family cats, and that he had hidden "knives or things" under his bed. (3/14/22 Hrg. Tr., p. 41.)

{¶8} At an adjudicatory hearing on February 6, 2020, Mother and C.D. appeared in court, represented by separate counsel, and stipulated to a finding of dependency. The juvenile court awarded temporary custody of M.R. to the Agency and the abuse allegation

was dismissed.

{¶9} At that time, C.D. and Mother were ordered to participate in the case plan and all Title IV-E eligibility determination requirements as necessary. The case plan set goals and objectives for C.D. and Mother, including the development of healthy and constructive ways to respond to M.R.'s continuing mental health and behavioral issues.

{¶10} M.R. was placed at New Horizons, a mental health treatment service center in Bethesda, Ohio, following his psychiatric evaluation. Counselors at New Horizons recommended that M.R. would be best served by a more intensive program than was available at New Horizons, so he was placed at the Village Network, a stabilization center in Wooster, Ohio, where he resided from January to March of 2020. (*Id.*, p. 42.)

{¶11} The Agency filed a motion for review and six-month extension on October 9, 2020. A hearing on the motion was conducted on February 8, 2021. C.D. and Mother were both in attendance and represented by separate counsel. In response to an inquiry at the hearing regarding the Agency's failure to arrange parenting time with M.R., C.D. presented the 2018 no contact order from the Stark County juvenile court prohibiting contact between Mother and M.R. (2/8/21 Hrg. Tr., p. 11.)

{¶12} As a consequence, the juvenile court advised Mother and her counsel of the "need to pull paperwork to see what's exactly there." (*Id.*, p. 12.) The juvenile court explained, "out of Stark County Juvenile Court, signed by Judge James, March 8, 2018, [she is] to have no contact with the child. That is why [the Agency] has not been providing that contact. So for them to do so you need to file something up there or show cause at the next hearing on why that should change." (*Id.*, p. 13.)

{¶13} Although M.R. successfully completed the stabilization program at the Village Network, he required continued therapeutic treatment. As a consequence, M.R. resided at New Beginnings, a youth treatment center in Youngstown, Ohio, from March of 2020 through June of 2021. Harper explained that M.R.'s time at New Beginnings was lengthy because M.R. experienced a lot of "peaks and valleys," that is, he would "do well as far as both behavioral and participating in his therapeutic counseling sessions, then there would be some times where his behaviors would regress and he would act out negatively." (3/14/22 Hrg. Tr., p. 43.)

{¶14} While M.R. was at New Beginnings, C.D. regularly attended supervised

visitation. Mother expressed a desire to visit M.R., but the Agency was prohibited from scheduling visits due to the 2018 no contact order of the Stark County juvenile court.

{¶15} A second review hearing was conducted on June 7, 2021. C.D. and Mother were both in attendance and represented by separate counsel. Josette Landis, the clinical director at New Beginnings testified that M.R. had done “everything he needs to do, [he was] compliant with treatment and with the rules * * * and overall probably in the past two or three months [he had] been doing really well.” Landis concluded that M.R. was capable of returning to his home with C.D. (6/7/21 Hrg. Tr., p. 15.) M.R. was reunified with C.D. under protective supervision on the day of the hearing.

{¶16} The significance of the 2018 no contact order was specifically addressed for a second time at the June 2, 2021 hearing. Appellant’s counsel acknowledged the 2018 no contact order prohibited the Agency from scheduling parenting time with Mother and M.R. or returning M.R. to Mother’s custody. (6/7/21 Hrg. Tr., p. 13.) The juvenile court observed, “being that there’s a Stark County Juvenile Court protection order against [Mother] it is not possible for this court to override that so it is logical that [M.R.] be returned to the legal custody of [C.D.] with court ordered protective supervision.” (*Id.*, p. 22.) In response, Appellant’s counsel represented that “it’s [Mother’s] understanding if she wants to have visitation with [M.R.] she’s probably going to have to go back to Stark County . . . and get that matter cleared up with the Stark County courts.” (*Id.*) The juvenile court added, “if [Mother] wants parenting time *or anything with this child* she must petition the Stark County courts to [lift] the restraining order or no contact” (Emphasis added.)

{¶17} On October 18, 2021, the Agency filed a motion to close the case, predicated upon the “participation and completion of the case plan by [C.D.] and [M.R.’s] continued counseling and improved behavior.” (10/18/21 Mot., p. 1.) The motion was set for a hearing on November 4, 2021.

{¶18} However, on November 2, 2021, a detention hearing and initial appearance was held on an assault allegation against M.R. in case number 20212044. At that hearing, C.D. stated that she did not want M.R. to return to her residence upon his release from Sargus Detention Center, and M.R. stated that he likewise did not want to return to her residence. C.D. further expressed her desire to surrender temporary custody of M.R. back to the Agency.

{¶19} As a consequence, temporary custody of M.R. was returned to the Agency. Further, the Agency withdrew the motion to close the case.

{¶20} According to the report of the guardian ad litem (“GAL”), C.D. was roughly seventy years of age on November 2, 2021 and feared for her safety. The GAL described M.R., then-age twelve, as a “big young man.” (2/28/22 Report, p. 2.) Although C.D. expressed unequivocal love for M.R., she conceded that she was incapable of providing the supervision that M.R. required. She further observed that M.R. was capable of injuring her even though causing her injury was not his intent.

{¶21} At a status hearing conducted on November 22, 2021, C.D. reiterated that she did not want M.R. in her home and M.R. again stated he did not want to reside with C.D. (11/23/21 J.E.) As a consequence, temporary custody of M.R. was maintained by the Agency. (11/3/21 J.E.)

{¶22} M.R. was the subject of seven different placements from November 2, 2021 to March 14, 2022. From November 2, 2021 to November 30, 2021, M.R. was placed in a therapeutic foster home in Delaware, Ohio. A thirty-day notice of removal was filed due to M.R.’s overly-affectionate behavior toward a fellow female foster child. (3/14/22 Hrg., p. 50-51.)

{¶23} M.R. spent roughly one week, from November 30, 2021 to December 5, 2021, at a second therapeutic foster home in Cambridge, Ohio. A notice of removal was filed based on M.R.’s behavior.

{¶24} M.R.’s placement at a third therapeutic foster home, also in Cambridge, Ohio, lasted a little more than a month, from December 6, 2021 to January 12, 2022. A notice of removal was filed after M.R. threatened to punch or hit his foster mother, and caused structural damage to the residence when he struck the kitchen countertop with a hammer. (*Id.*, p. 52-53.)

{¶25} The Motion for Permanent Custody at the crux of this appeal was filed on January 12, 2022, as well as a motion for appointment of a guardian ad litem (“GAL”). The motion for appointment of a GAL was granted two days later on January 14, 2022.

{¶26} The permanency motion was predicated upon C.D.’s unwillingness to allow M.R. to return to her home. The motion plainly reads that reunification with Mother was not considered due to 2018 no contact order from Stark County juvenile court.

{¶27} On January 12, 2022, M.R. was placed at Fox Run, a lockdown treatment center for adolescents in St. Clairsville. On January 21, 2022, the facility sought M.R.'s immediate removal based on several assaults committed against staff members and residents. One staff member suffered unidentified injuries as a result of M.R.'s physical aggression. (*Id.*, p. 54.)

{¶28} Representatives at Fox Run filed a police report and M.R. was charged and found guilty of assault and adjudicated a delinquent. M.R. was housed in the Sargus Juvenile Detention Center from January 21, 2022 to January 27, 2022. He was placed in Tompkins Treatment Center in Cambridge, Ohio from January 27, 2022 to February 17, 2022, when a thirty-day notice of removal was filed based on M.R.'s behavior. (*Id.*, p. 54.)

{¶29} The permanency motion came before the court for hearing on January 24, 2022. However, the matter was continued until February 28, 2022, due to the request for a continuance by the GAL.

{¶30} M.R. returned to Sargus Detention Center on February 17, 2022 to serve a twenty-one-day term of juvenile probation. According to the GAL's testimony at the permanency hearing, M.R. began causing harm or attempting to cause harm to other residents and staff members within days of his return to Sargus. (*Id.*, p. 10.)

{¶31} At the permanency hearing on February 28, 2022, Appellant was not present, but C.D. appeared and stipulated to the award of permanent custody of the Agency. A continuance of the permanency hearing was thereafter ordered as the GAL had not timely filed his report.

{¶32} At the same hearing, the juvenile court heard testimony on a motion for qualified residential treatment review filed by the Agency on February 15, 2022. At the hearing, the juvenile court accepted the testimony of Mikel Mayer, the program manager and a clinical therapist and licensed social worker from the Village Network. Mayer has a Master's Degree in Clinical Psychology and Community Mental Health, and over 30 years of experience in the treatment of emotional and behavioral problems.

{¶33} Mayer testified that he is a trained Child and Adolescent Needs and Strengths ("CANS") assessor with six years of experience. He further testified that he was already acquainted with M.R. when he undertook the CANS assessment as he had

provided outpatient therapy to M.R. between 2018 to 2019.

{¶34} Mayer conducted his CANS assessment with M.R. on January 27, 2022, while M.R. was housed at the Sargus Detention Center for the first time after he physically assaulted the staff member at Fox Run. Mayer opined:

[P]lacement of [M.R.] in a less restrictive environment is highly problematic. Historical evidence has shown that it hasn't worked well whether it's been familial placement or a kinship placement or a foster care placement. Those have all disrupted in some way. Even residential treatment . . . had been difficult for [M.R.] to be successful in [sic.]

(2/28/22, p. 18.) Mayer further opined, based on M.R.'s "history of elopement and not thinking before he engages in certain behaviors[,] . . . a locked facility would at least slow that process down and a staff intensive facility would allow multiple folks to be involved . . . to assist during times of impulsivity, during times of aggression." (*Id.*, p. 18-19.)

{¶35} According to the GAL's report, M.R.'s emotional and behavioral problems are related to physical abuse he suffered at the hands of Mother's "boyfriend." (2/28/22 Report, p. 2.) Although the identity of the boyfriend is not contained in the record, Mother testified that she has been in a twelve-year relationship with M.M. It does not appear from the record that Mother and M.M. reside in the same home. M.M. has custody of his children with another woman as a result of a safety plan. (3/14/22 Hrg., p. 94.)

{¶36} M.M. is the father of Mother's two younger children, T. (LNU) (d.o.b. 8/2/11), and M. Jr. (LNU) (d.o.b. 11/3/19). Mother testified that she lost custody of T. immediately on the date of T.'s birth, but that T. resides with M.M.'s mother, and that Mother and T. regularly visit and converse on the telephone. (*Id.*, p. 70.) Mother has retained custody of M. Jr. since his birth.

{¶37} It is not clear from the record that M.M. is the boyfriend that abused M.R. Although it seems unlikely that M.M. is M.R.'s abuser, as the record is silent as it relates to M.M.. M.R. was twelve years of age at the time of the permanency hearing. Mother twice stated at that hearing that she had been with M.M. for twelve years. Mother's counsel explained that M.M. was in attendance at the permanency hearing, but Mother "[did] not want [her counsel] to call him." (*Id.*, p. 84.)

{¶38} The GAL explained in his report that M.R. harbors a great deal of resentment and anger due to his physical abuse. (2/28/22 Report, p. 2.) While living with C.D., he set fires, physically assaulted C.D., and expressed his desire to injure his younger brother. Although the younger brother was not identified by name, it appears to be M. Jr. However, as Father testified that he has other children, the younger brother to which M.R. referred may be his father's child.

{¶39} M.R.'s anger has been historically directed at younger, smaller children. The GAL opined that M.R.'s serious mental health, behavioral, and emotional issues had not significantly improved despite his admission to five different residential treatment facilities in the previous 24 months. The GAL described M.R. as a potential danger to himself and others. (2/28/22 Report, p. 2.)

{¶40} M.R. was released from Sargus Detention Center and placed in a fourth therapeutic foster home in Mansfield, Ohio on March 8, 2022, roughly six days prior to the final permanency hearing, which was held March 14, 2022. (3/14/2022 Hrg. Tr., p. 55.)

{¶41} At the March 14, 2022 hearing, the juvenile court accepted the testimony of Agency witnesses, Harper and Mayer. The GAL presented his findings to the juvenile court at the hearing and Mother and Father each testified on their own behalf.

{¶42} Harper conceded that Mother was in the process of completing parenting classes and mental health counseling, which were also a condition of her post-release control following her conviction for felonious assault, when reunification was being considered in 2020. (*Id.*, p. 59.) Harper testified that he was unable to arrange contact via the internet or telephonic contact for Mother with M.R. due to the 2018 no contact order. Harper further testified that he removed Mother from the case plan in January of 2021 based on the Agency's inability to move forward with her reunification with M.R. (*Id.*, p. 61-62.)

{¶43} In his CANS assessment, Mayer attributed M.R.'s current emotional and behavioral problems to his exposure to family and community violence, substance abuse, criminal behavior, and abuse and neglect as a young boy. (*Id.*, p. 29.) Mayer summarized his CANS assessment at the permanency hearing as follows:

The CANS assessment looks at different aspects of the respondent's life, everything from family involvement to community involvement to treatment issues, and it identifies scores of two or three on the assessment are considered notable. Two meaning that this requires therapeutic attention or the attention of higher levels of care. Three is considered to be more of an immediate action required.

And notable scores that [M.R.] had were things like family stability, his living situation, social functioning, a lack of recreation, poor judgment, school issues, school attendance, relationship permanence. These scores mainly [sic] that he's struggling with developing and maintaining supportive and enriching relationships with others, that he struggles with trust, he struggles with social reciprocity, kind of back[-]and[-]forth relationships, social mutuality.

There were also mental health issues related to depression or mood disorder, impulsive disorders, hyperactivity, attention and concentration. There were several indicators for conduct and antisocial behavior, reckless behaviors, danger to others, himself, history of run away, and these were tied to adjustment issues with stress and trauma.

You know, likely grief and separation issues but also manifesting itself as hyperarousal, (inaudible), emotional and physical dysregulation which can lead to aggression. Those scores indicated that he's struggling with emotional behavior regulation issues likely as a component to trauma and stress in the past as a young child.

He has not yet – the assessment determines that he has not yet developed consistent methods to manage those issues or the ability to regulate his emotions and his behaviors which affects his daily functioning and his ability to work with others.

The scores of three that were notable in the assessment were more related to things like legal issues, oppositional behavior, anger control, delinquent behavior, intentional misbehavior, current placements in detention and repeated involvement with the court and law enforcement.

Those suggested that his behaviors indicated a heightened danger to himself and others in the community. His ability to manage himself safely in variable and various settings was assessed as poor. This means that his behavior suggests that he generally does not or cannot adhere to the supervision of the adults with him and his behaviors place him and others around him in potential danger.

He does not demonstrate independent safety. So in other words kind of left to his own devices his behaviors often times are considered either dangerous or potentially dangerous.

(*Id.*, p. 23-25.)

{¶44} Although Mayer opined that a home placement was likely to provide the best emotional and social support for M.R., he conceded that any potential family placement for M.R. would be “problematic at best mainly because of the extent of his behavior and need.” (*Id.*, p. 28.) Mayer further opined that a home placement would require “at least two adults * * * trained in mental health issues or very specifically trained in managing disregulated and disruptive placements in children.” (*Id.*, p. 28-29.)

{¶45} The GAL described M.R.’s then-current placement at the Mansfield therapeutic foster home as “so far, so good.” However, the GAL conceded that M.R. had only been there for six days. (*Id.*, p. 11.) The GAL testified that M.R. appeared to be confused, frustrated, and afraid during their lengthy conversation. The GAL explained:

Those [are not] the words he used but, you know when you see a [twelve] year old boy in tears are [sic] running down his face, you know, he’s confused, he doesn’t know what his future is going to be and I took it that he is a little bit afraid.

(*Id.*, p. 9.) When asked if M.R. expressed any desire to live with Mother, the GAL responded, “He did not say that. I don’t – I [could not] get – like, he [did not] give me a directive on that question. Cause [sic] I [do not] think he knows where he wants to go. Cause [sic] every place [he has] been it [does not] work out.” (*Id.*)

{¶46} The GAL recommended that permanent custody of M.R. be awarded to the Agency. He opined that Mother was essentially a stranger to M.R., as M.R. had little or no contact with Mother for at least four years. The GAL further opined that M.R. was fortunate to know the identity of his parents, and was at an age that provided him the opportunity to reconnect with his parents should he choose in the future. (*Id.*, p. 11.)

{¶47} Mother testified that she lost custody of M.R. in 2016, when M.R. was age six, due to homelessness. (*Id.*, p. 68.) When asked to explain the events leading to her incarceration for felonious assault, she testified that she was imprisoned “for defending [herself.] Protecting [herself] against a male.” (*Id.*, p. 69.) She further explained that she was convicted “[c]ause [sic] Ohio has no self defense.” (*Id.*, p. 77.)

{¶48} Mother testified that she was employed at Malone College at the time of the hearing, but her response to the question regarding her position at the college was inaudible. (*Id.*, p. 71.) She further testified that she has stable housing.

{¶49} With respect to the case plan, Mother testified that “[she] completed everything that was [thrown her] way.” (*Id.*, p. 71.) In apparent disregard of the 2018 no contact order, Mother expressed frustration with her inability to obtain custody of M.R., stating that “[her] grandma had two chances to get [M.R.] back[,] why can’t [Mother] earn a chance.” (*Id.*, p. 68.) Mother further testified that she was “depressed to find out that [she is] not going to have [her] son again.” (*Id.*, p. 72.)

{¶50} When asked if she was aware of the no contact order, she testified that she “kinda got familiar with it when [Harper] was telling [her] about it like toward the end after everything was already completed.” (*Id.*, p. 71-72.) However, during cross-examination, Mother conceded her knowledge of the no contact order as early as 2018. Mother further conceded to several violations of the order because “[her] grandmother was sneaking [M.R.] down to [her] mom’s house on the weekends.” (*Id.*, p. 83.)

{¶51} Specifically, Mother testified, “I was aware that I had no contact, me and my grandma and everybody else but she was still bringing him around.” Counsel for the

Agency confirmed, “So you were aware that the order was in existence,” and Mother responded, “But I [did not] know why, [did not] know why, no.” (*Id.*) Counsel for the Agency replied, “So you were aware of it since 2018,” and Mother responded, “I heard about it.” (*Id.*, p. 84.)

{¶52} The judgment entry granting permanent custody to the Agency was filed on March 18, 2022. The juvenile court found that there existed clear and convincing evidence in the record that the Agency used reasonable efforts to reunify the family and create a plan of permanency, and that Mother was either unable or voluntarily unable to provide the necessary care for M.R. based upon the following statutory factors:

[M.R.] was in the temporary custody of Harrison County Job and Family Services for twelve or more months of a consecutive twenty-two-month period in accordance with R.C. 2151.414(B)(1)(d);

[M.R.] has not had any significant contact with his parents since before March 8, 2018 and does not have a relationship with his parents pursuant to R.C. 2151.414(D)(1)(a);

[M.R.] did not have any reaction when asked if he wanted to live with his father and stated that he did not want to live with his mother and did not state a preference of where he would like to reside pursuant to R.C. 2151.414(D)(1)(b);

[M.R.] had been in the custody of [the Agency] for twelve or more months of a consecutive twenty-two-month period in accordance with R.C. 2151.414(D)(1)(c);

[M.R.] needs a secure permanent placement that can only be accomplished through permanency;

Pursuant to R.C. 2151.414(D)(1)(e) Mother has been convicted of Felonious Assault (R.C. 2151.414(E)(7)(b)) and does not have custody of her middle child due to children services involvement (R.C.

2151.414(E)(11)) and that Father has been convicted of Sexual Battery (R.C. 2151.414(E)((7)(d));

That both parents demonstrated a lack of commitment toward [M.R.] by failing to support, visit, or communicate with him, or by other actions showing an unwillingness to provide an adequate permanent home for [M.R.]

(3/18/22 J.E., p 2-7.) As a consequence, the juvenile court concluded that “it is in the best interest of the child that [M.R.] be placed in the permanent custody of [the Agency] and all parental rights of [Mother], [Father], and [C.D.] are permanently severed.”

{¶53} This timely appeal followed.

ANALYSIS

{¶54} Mother asserts a single assignment of error:

THE JUVENILE COURT COMMITTED REVERSIBLE ERROR IN GRANTING [THE AGENCY’S] MOTION FOR PERMANENT CUSTODY OF THE MINOR CHILD M.R., FOR THE CASE PLAN WAS NEVER DESIGNED TO REUNITE NATRUAL [SIC] MOTHER WITH MINOR CHILD, WAS ILLUSORY AND NOT THE LAST RESORT, AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AND AN ABUSE OF DISCRETION.

“[T]he right to raise a child is an ‘essential’ and ‘basic’ civil right.” *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990), quoting *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208 (1972). A parent’s interest in the care, custody, and management of his or her child is “fundamental.” *Id.*; *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388 (1982). The permanent termination of a parent’s rights has been described as, “[* * *] the family law equivalent to the death penalty in a criminal case.” *In re Smith*, 77 Ohio App.3d 1, 16, 601 N.E.2d 45 (6th Dist.1991). Therefore, parents

“must be afforded every procedural and substantive protection the law allows.” *Id.*

In re W.W., 7th Dist. Columbiana No. 21 CO 0011, 2021-Ohio-3440, ¶ 26.

{¶55} “[A] court exercising Juvenile Court jurisdiction is invested with a very broad discretion, and, unless that power is abused, a reviewing court is not warranted in disturbing its judgment.” *In re Anteau*, 67 Ohio App. 117, 119, 36 N.E.2d 47, 48 (1941). “The term ‘abuse of discretion’ connotes more than an error of law or of judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable [* * *].” *In re Jane Doe 1*, 57 Ohio St.3d 135, 137, 566 N.E.2d 1181, 1184 (1990), citing *State v. Adams*, 62 Ohio St.2d 151, 157, 172-173, 404 N.E.2d 144, 148-149 (1980).

{¶56} Accordingly, a juvenile court’s decision to terminate parental rights and transfer permanent custody of a minor child must be supported by clear and convincing evidence. *Santosky*, supra, paragraph three of the syllabus. “Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is [an] intermediate [standard], being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.” (Emphasis sic). *Cross v. Ledford*, 161 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

When reviewing the decision of a juvenile court to determine whether it is supported by clear and convincing evidence, “a reviewing court may not as a matter of law substitute its judgment as to what facts are shown by the evidence for that of the trial court” because the “trial judge, having heard the witnesses testify, was in a far better position to evaluate their testimony [than] a reviewing court.” *Id.* at 478, 120 N.E.2d 118. “Where the evidence is in conflict, the trier of facts may determine what should be accepted as the truth and what should be rejected as false.” *Id.* “Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the

manifest weight of the evidence.” *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

In re T.N.T., supra, at ¶ 14-15.

{¶57} When a motion for permanent custody is filed by a children services agency, the juvenile court’s decision whether to grant permanent custody to the agency is governed by R.C. 2151.414(B)(1), the first prong of the permanent custody test, which provides in part:

“[T]he court may grant permanent custody of a child to [the agency] if the court determines at the hearing * * * 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 that filed the motion for permanent custody and that any of the following apply:

(a) The child * * * cannot be placed with either of the child’s parents within a reasonable time or should not be placed with the child’s parents.

* * *

(d) The child has been in the temporary custody of one or more public children services agencies * * * for twelve or more months of a consecutive twenty-two-month period * * *.

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code [to be an abused, neglected, or dependent child] or the date that is sixty days after the removal of the child from home.

R.C. 2151.414(B)(1)(a)-(e). Mother does not dispute that M.R. has been in the temporary custody of Agency for at least twelve months of a consecutive 22-month period.

{¶58} In addition to the first prong, “[an] agency [also] bears the burden of proving by clear and convincing evidence that the grant of permanent custody is in the child’s best

interest. *Matter of J.C.*, 7th Dist. Monroe No. 20 MO 0012, 2021-Ohio-1476, ¶ 6, citing *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, ¶ 26. “R.C. 2151.414(D)(1) sets out a nonexhaustive list of factors the court must consider, and the court is encouraged but not required to address the factors relevant to the decision.” *Matter of J.C.* at ¶ 6.

{¶59} R.C. 2151.414(D)(1) provides, in relevant part:

In determining the best interest of a child * * *, the court shall consider all relevant factors, including, but not limited to, the following:

- (a) The interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child * * *;
- (d) 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;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

R.C. 2151.414(D)(1)(a)-(e).

{¶60} R.C. 2151.414(E)(11) reads, in its entirety:

The parent has had parental rights involuntarily terminated with respect to a sibling of the child, pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing

evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare and safety of the child.

{¶61} At least two other subsections of R.C. 2151.414(E) are relevant to the juvenile court’s conclusion that the award of permanent custody to the Agency was in M.R.’s best interest:

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

* * *

(16) Any other factor the court considers relevant.

{¶62} Mother contends that the case plan was illusory because the Agency had no genuine intent to reunite her with M.R. Mother’s argument is predicated upon her alleged lack of awareness of the 2018 no contact order, which, among other relevant factors, ultimately prevented her from regaining custody of M.R.

{¶63} However, the record is replete with references to the 2018 no contact order by the juvenile court and Mother’s counsel, as well as a series of concessions by Mother that she was fully aware that the 2018 no contact order would completely forestall contact with M.R. At the June 7, 2021 hearing, Mother’s counsel represented to the juvenile court that “it’s [Mother’s] understanding if she wants to have visitation with [M.R.] she’s probably going to have to go back to Stark County . . . and get that matter cleared up with the Stark County courts.” The juvenile court added, “if [Mother] wants parenting time *or anything with this child* she must petition the Stark County courts to [lift] the restraining order or no contact” (Emphasis added.)

{¶64} Further, it was within Mother’s sole discretion to seek vacation or modification of the 2018 no contact order with the Stark County juvenile court. The juvenile court correctly concluded that Mother “demonstrated a lack of commitment

toward [M.R.] * * * by other actions showing an unwillingness to provide an adequate permanent home for [M.R.],” R.C. 2151.414(E), that is, Mother failed to seek the removal of an absolute barrier to her ability to regain custody of M.R. Simply stated, Mother’s accusation that the Agency’s effort to reunite her with M.R. was illusory is unfounded because the Agency’s ability to reunite Mother with M.R. was foreclosed exclusively by her own inaction.

{¶65} Of equal import, Mother conceded at the permanency hearing that she has never had custody of T., who was immediately placed at the time of her birth with M.M.’s mother. Although Mother testified that she has a relationship with T., Mother did not represent that she had sought to regain custody of T.

{¶66} R.C. 2151.414(E)(11) provides that the juvenile court may predicate an award of permanent custody to the Agency where a parent has had her parental rights terminated with respect to a sibling, and failed to provide by clear and convincing evidence that she can provide a “legally secure permanent placement and adequate care for the health, welfare, and safety of the child.” Mother made no such showing here.

{¶67} Next, Mother contends that the award of permanent custody to the Agency was not the last resort. She argues that the Agency’s temporary custody of M.R. should have been continued in order to provide to her the opportunity to regain custody of M.R. at some future date.

{¶68} Mother’s argument ignores the “best interest of the child” standard at the foundation of R.C. 2151.414. As the juvenile court correctly observed, M.R. has had no significant contact with Mother since 2018. Further, M.R. expressed no desire to return to Mother’s custody. Although M.R. had experienced periods of success and regression during the Agency’s temporary custody, the record reflects that the Agency is in the best position to address M.R.’s need for intense and comprehensive treatment to address his severe mental health and behavioral issues. See R.C. 2151.414(B)(1)(a)-(d).

{¶69} Of equal import, M.R. has a long, documented history of uncontrolled and increasingly violent behavior. Mayer conceded that any potential family placement for M.R. would be “problematic at best mainly because of the extent of his behavior and need.” Mayer further opined that a home placement would require “at least two adults * * * trained in mental health issues or very specifically trained in managing disregulated

and disruptive placements in children.” M.R.’s need for trained supervision falls squarely within the catchall provision of R.C. 2151.414 that allows the juvenile court to predicate its permanent custody determination on other relevant factors.

{¶70} Finally, the GAL described M.R.’s palpable fear and frustration regarding the uncertainty of his future. The award of permanent custody to the Agency removes at least some of that understandable uncertainty. Further, in the Agency’s permanent custody, M.R. will have the opportunity to continue his mental health treatment in order to address his anger and resentment issues.

{¶71} Having reviewed the record and considered Mother’s arguments in favor of reversal, we find to the contrary that the judgment entry terminating Mother’s parental rights and awarding permanent custody of M.R. to the Agency is supported by competent, credible evidence. Accordingly, we find that Mother’s sole assignment of error is without merit.

CONCLUSION

{¶72} For the foregoing reasons, the judgment entry of the juvenile court terminating Mother’s parental rights and awarding permanent custody of M.R. to the Agency is affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas Juvenile Division of Harrison County, Ohio, is affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.