

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

IN RE E.B., ET AL. :  
 : No. 109477  
Minor Children :  
 :  
 :  
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[Appeal by S.B., Father] :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: September 3, 2020**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD18908173 and AD18908174

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***Appearances:***

Gregory T. Stralka, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Rachel Eisenberg, Assistant Prosecuting  
Attorney, *for appellee.*

RAYMOND C. HEADEN, J.:

{¶ 1} Appellant S.B. (“S.B.”) appeals from two underlying decisions of the Cuyahoga County Court of Common Pleas, Juvenile Division (“juvenile court”), which granted permanent custody of each of his two children, E.B. and M.B., to the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “the

agency”), and terminated S.B.’s parental rights.<sup>1</sup> For the reasons that follow, we affirm the judgment.

## **I. Factual and Procedural History**

{¶ 2} On June 28, 2018, the agency filed a complaint regarding E.B. and M.B. and their older sibling, E.T., which alleged that the children were abused (E.T. and E.B.) and neglected (E.T., E.B., and M.B.) and sought temporary custody to CCDCFS.<sup>2</sup> K.T. is the biological mother of all three children. S.B. is the biological father of E.B. and M.B. The complaint’s allegations included sexual abuse and rape by S.B.; K.T.’s failure to protect the children from S.B.; K.T.’s mental health and substance abuse issues; and domestic violence between K.T. and S.B. This appeal involves S.B.’s parental rights with respect to E.B. and M.B.; K.T.’s parental rights are addressed in a companion case before this court.<sup>3</sup>

{¶ 3} The juvenile court determined there was probable cause to remove the children and that continued residence with K.T. would be contrary to the children’s best interest and, therefore, on June 29, 2018, granted CCDCFS’s motion

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<sup>1</sup> We note that the captions on the juvenile court’s journal entries attached to the notice of appeal redacted the children’s names to E.B. and M.B., and we shall refer to the children in the same manner.

<sup>2</sup> The caption on the juvenile court’s journal entry attached to the notice of appeal redacted E.T.’s name to E.M.B.T. For purposes of this appeal, we will refer to E.M.B.T. by his first and last initials — E.T.

<sup>3</sup> K.T. appealed the juvenile court’s decision to grant permanent custody to CCDCFS and deny legal custody of all three children to J.T., the children’s maternal great-uncle. That companion case is separately before this court in *In re E.M.B.T.*, 8th Dist. Cuyahoga No. 109479.

for preadjudicatory temporary custody. E.B. and M.B. were placed together in a therapeutic foster home. A case plan was implemented, including a visitation plan for K.T. and J.T., the children's maternal great-uncle, with whom E.T. had been previously placed.

{¶ 4} On September 18, 2018, J.T. filed a motion for party status, a motion for legal custody of E.T., and motions for visitation with E.B. and M.B. The court denied these motions. The magistrate issued a decision on September 18, 2018, finding E.B. and M.B. committed to the agency's temporary custody. On October 4, 2018, K.T. and S.B. — both incarcerated — stipulated to an amended complaint and, as a result, E.B. was adjudicated abused, and E.B. and M.B. were adjudicated dependent. The juvenile court adopted the magistrate's decision on October 12, 2018, and committed the children to the temporary custody of the CCDCFS. E.B. and M.B. continued their placement with a therapeutic foster family and received services from the agency.

{¶ 5} Neither S.B. nor K.T. were actively engaged with the children. S.B. has been incarcerated since February 2018, on charges of rape, gross sexual imposition, and endangering children; E.T. and E.B. were identified as victims of those charges. Cuyahoga C.P. Nos. CR-18-626046-A and CR 18-631377-B. In August 2018, S.B. pleaded guilty to sex offenses perpetrated against E.T. and was designated a Tier III sex offender. S.B. was sentenced in CR-18-626046-A to life in prison and, based upon subsequent charges brought in CR-18-631377-B where E.B. was the victim, S.B. received an additional sentence of seven years.

{¶ 6} On August 3, 2018, K.T. was arrested and charged with child endangerment in CR-18-631377-B. These charges related to K.T.’s failure to protect E.T. — and it was later found she also failed to protect E.B. — from S.B. K.T. was eventually sentenced to a three-year prison sentence.

{¶ 7} Due to K.T. and S.B.’s incarceration and inability to work case plan services and parent their children, CCDCFS filed a motion to modify temporary custody to permanent custody on April 26, 2019.

{¶ 8} On August 1, 2019, S.B. filed two motions: a motion for legal custody to an interested individual, K.G., and a motion to extend temporary custody to the agency allowing the agency adequate time to investigate and evaluate K.G. as a potential caregiver.<sup>4</sup> K.G. was the former girlfriend of S.B.’s father. K.G. filed a statement of understanding for legal custody on October 29, 2019, indicating her intent to be the legal custodian of E.B. and M.B.

{¶ 9} On August 16, 2019, K.T. also filed a motion for legal custody to the children’s great-uncle, J.T., with whom E.T. had been placed in April 2018.

{¶ 10} On December 9, 2019, the children’s guardian ad litem (“GAL”) found it was in the best interest of E.B. and M.B. to extend temporary custody to the agency. On January 16, 2020, the GAL filed a supplemental report that stated it was in the best interest of the children to grant the agency permanent custody.

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<sup>4</sup> S.B. references the interested individual in his motion for legal custody as “K.F-G.” We shall refer to her as “K.G.”

**{¶ 11}** On January 17, 2020, the court conducted a permanent custody hearing. The court addressed three issues: the agency's motion to modify temporary custody to permanent custody; S.B.'s motion to place legal custody in K.G., an interested individual; and K.T.'s motion for legal custody to J.T. At that time, the children were 11 (E.T.), 9 (E.B.), and 7 (M.B.) years old. The three case workers child-protection specialists involved in the matter and the GAL all testified in support of permanent custody to CCDCFS. K.G. and her daughter testified in support of legal custody to K.G. J.T. provided testimony in support of legal custody to himself.

**{¶ 12}** The testimony revealed that E.T., E.B., and M.B. witnessed domestic violence between S.B. and K.T. E.T. was the victim of rape and sexual abuse from S.B. It was disclosed that K.T. was present when E.T. was sexually assaulted by S.B., though she was asleep or passed out, and E.T. told K.T. what was happening. E.T. was removed from the home and placed with J.T., his great-uncle. E.B. and M.B. were removed at a later date based upon reports of unsanitary conditions within their home, and concerns about K.T., including excessive drinking. E.B. and M.B. were placed together in a specialized foster home. E.B. eventually disclosed she was also sexually abused by S.B. The evidence also indicated E.B. was sexually victimized by E.T.

**{¶ 13}** The agency investigated J.T. and K.G. for placement of E.B. and M.B. The record demonstrates that E.T. was in J.T.'s temporary care, and J.T. had a good relationship with E.B. and M.B. There was concern about placing E.T. and E.B. in

the same home due to E.T.'s prior victimization of E.B. The agency also harbored concerns about K.G. who had no contact with E.B. and M.B. for the previous three years, was not a blood relative, and lacked specialized training for children with emotional and behavioral issues.

{¶ 14} The GAL recommended an award of permanent custody to the agency as being in the best interest of the children. The GAL was concerned about further traumatizing E.B. and M.B. with a change in residence now that they were well adjusted to their therapeutic foster family.

{¶ 15} In the case of both children, the juvenile court granted the agency's motion to modify temporary custody to permanent custody thereby terminating parental rights to K.T. and S.B., and denied all other pending motions, including S.B.'s motion to place legal custody with K.G.

{¶ 16} S.B. filed a timely appeal on February 5, 2020, raising two assignments of error:

First Assignment of Error: The trial court's denial of appellant's motion for legal custody was an abuse of discretion since the law requires legal custody when appropriate.

Second Assignment of Error: The trial court's decision denying legal custody was against the manifest weight of the evidence.

## **II. Law and Argument**

{¶ 17} For ease of analysis, we will address S.B.'s assignments of error together. S.B. argues that the trial court's denial of legal custody to K.G. and grant of permanent custody to CCDCFS was an abuse of discretion and against the

manifest weight of the evidence. Specifically, S.B. argues that K.G. was available and appropriate to assume legal custody of E.B. and M.B. but the agency failed to adequately investigate her as a potential caregiver. We disagree.

{¶ 18} Initially, S.B. confuses this court’s analysis in a claim for legal custody. “A parent has no standing to assert that the court abused its discretion by failing to give [a relative] legal custody; rather, the challenge is limited to whether the court’s decision to terminate parental rights was proper.” *In re Pittman*, 9th Dist. Summit No. 20894, 2002-Ohio-2208, ¶ 70. A juvenile court is not required to consider placement with a relative prior to granting permanent custody to children’s services. *Id.* at ¶ 72, citing *In re Knight*, 9th Dist. Lorain Nos. 98CA007258 and 98CA007266, 2000 Ohio App. LEXIS 1123, 9 (Mar. 22, 2000). Thus, S.B.’s challenge to the juvenile court’s judgment granting CCDCFS permanent custody is limited to whether the juvenile court improperly terminated his parental rights.

{¶ 19} A parent has a fundamental interest in the care and custody of his children. *In re L.W.*, 8th Dist. Cuyahoga No. 107708, 2019-Ohio-1343, ¶ 20. However, parental rights are not absolute: “The natural rights of a parent are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.” *In re L.D.*, 2017-Ohio-1037, 86 N.E.3d 1012, ¶ 29 (8th Dist.), quoting *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979). “By terminating parental rights, the goal is to create ‘a more stable life’ for dependent children and to ‘facilitate adoption to foster permanency for children.” *In re R.G.*, 8th Dist. Cuyahoga No. 104434, 2016-Ohio-7897, ¶ 21,

quoting *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, 5 (Aug. 1, 1986).

{¶ 20} A juvenile court must satisfy the two-prong test set forth in R.C. 2151.414 before it can terminate parental rights and grant permanent custody to CCDCFS. The juvenile court must find by clear and convincing evidence that (1) any one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) applies, and (2) it is in the best interest of the children to grant permanent custody to the agency. *In re L.W.* at ¶ 22.

{¶ 21} Clear and convincing evidence has been defined as “that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 42, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. We examine the record to determine whether the juvenile court had sufficient evidence to meet the required degree of proof. “Judgments supported by competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence.” *In re L.W.* at ¶ 24, quoting *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 24.



{¶ 22} In the case sub judice, the juvenile court found, and S.B. does not dispute, that E.B. and M.B. could not be placed with S.B. or K.T. within a reasonable time or should not have been placed with either parent. R.C. 2151.414(B)(1)(a). Therefore, we need not address the first prong presented by R.C. 2151.414. S.B. disputes the juvenile court's finding that it was in the best interest of the children to grant permanent custody to CCDCFS. S.B. asserts that legal custody should have been granted to K.G. rather than permanent custody to the agency.

{¶ 23} The juvenile court was required to find by clear and convincing evidence that it is in the children's best interest to grant permanent custody to the agency. *In re L.W.*, 8th Dist. Cuyahoga No. 107708, 2019-Ohio-1343, at ¶ 36. On appeal, the court reviews a trial court's best interest analysis under R.C. 2151.414(D) for an abuse of discretion. *Id.* at ¶ 37. "[A]n abuse of discretion is more than a mere error of law or judgment; it implies that the court's decision was unreasonable, arbitrary, or unconscionable." *In re R.G.*, 8th Dist. Cuyahoga No. 104434, 2016-Ohio-7897, at ¶ 27, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). "While a trial court's discretion in a custody proceeding is broad, it is not absolute. 'A trial court's failure to base its decision on a consideration of the best interests of the child constitutes an abuse of discretion.'" *Id.*, quoting *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, at ¶ 60, citing *In re T.W.*, 8th Dist. Cuyahoga No. 85845, 2005-Ohio-5446, ¶ 27, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 574 N.E.2d 1055 (1991).

**{¶ 24}** To determine the best interests of the children, the trial court considers all relevant factors including, but not limited to, those listed in R.C. 2151.414(D)(1)(a)-(e):

(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, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(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.

Not one factor listed in R.C. 2151.414(D)(1) is given greater weight than any other factor. *In re L.W.* at ¶ 39, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Only one of the statutory factors needs to be found in favor of the award of permanent custody. *In re L.W.* at ¶ 39. The focus of a best interest determination is the children, not the parent. *In re R.G.* at ¶ 28.

**{¶ 25}** Here, the evidence before the juvenile court clearly and convincingly demonstrated that upon consideration of the factors delineated in

R.C. 2151.414(D)(1), an award of permanent custody to CCDCFS was in the children's best interest. The juvenile court found the parents were incarcerated for offenses committed against E.T. and E.B. S.B. was incarcerated for life. K.T. and S.B. committed abuse and neglect towards E.B. and M.B. and the likelihood of recurrence made a future placement of the children with either parent a threat to the children's safety. The evidence shows E.B. and M.B. were placed together in a therapeutic foster home since September 2018. The foster family was not currently interested in adoption, but E.B. and M.B. were bonded with the family.

**{¶ 26}** With respect to the wishes of E.B. and M.B., their GAL represented that permanent custody to the agency was in their best interest. Both E.B. and M.B. have low I.Q.s, and suffer from behavioral and emotional issues stemming from their dysfunctional family. The caseworker described M.B.'s extreme mental-health concerns — he blanks out and moans in a fetal position — and stated he is not engaged in the educational process. E.B., who receives occupation and speech therapy at school, has many fears and was described as quiet and emotionally frail. E.B. will likely require future therapy related to the sexual misconduct she experienced at the hands of S.B. and E.T. The caseworker felt it was in the children's best interest to remain with the therapeutic foster family where they are protected and their basic needs are met rather than disrupting their lives and moving them to a new home.

**{¶ 27}** The evidence demonstrated that E.B. and M.B. had been in agency custody since September 18, 2018, and placed with the same therapeutic foster family since they were removed from K.T.'s care in June 2018.

**{¶ 28}** As to whether the children's need for a legally secure permanent placement could be achieved without a grant of permanent custody, the evidence demonstrated that while K.G. had good intentions to care for the children, a change in housing could prove disruptive to E.B. and M.B. who had gained much progress during their consistent placement in foster care. The therapeutic foster parents had specialized training; K.G. had no such training. The caseworker testified he did not discuss with the children a potential placement with K.G. but he did not believe E.B. and M.B. would even recognize K.G. or remember her distant relationship with their dad, S.B. Since K.G. had no contact with the children for three years prior to the custody trial, it is understandable that E.B. and M.B. would likely have no recollection of her. Further, the caseworker discussed concerns regarding K.G.'s ability to protect E.B. and M.B. from their parents and ensure the children's best interest were maintained. K.G. had an ongoing relationship with S.B. and she attended his trial. That being said, K.G. did testify that based upon the abuse divulged during S.B.'s trial, she did not believe the kids should visit with their father. She was open to visitation with their mother upon K.T.'s release from jail.

**{¶ 29}** Lastly, if the trial court had granted legal custody to K.G., S.B. and K.T. would have residual rights to seek a change of custody. R.C. 2151.353(E)(2). The evidence in the record indicates return of E.B. and M.B. to their natural parents

was not in their best interest. K.T. had a history of mental illness and excessive drinking; failed to protect her children from S.B.'s sexual abuse and, as a result, was incarcerated for child endangerment; and failed to provide habitable living conditions for her children. The caseworker testified that it was inappropriate to return the children to K.T.'s care due to her inability to previously protect them. On this evidence, it is apparent that the only legally secure placement for E.B. and M.B. was permanent custody to CCDCFS.

{¶ 30} S.B. argues that the agency failed to prove permanent custody was in the best interest of the children because K.G. was willing to have legal custody of them and had been approved by the agency. The juvenile court did not expressly state its findings with regard to K.G.'s suitability as legal custodian, but simply denied S.B.'s motion seeking legal custody to K.G.<sup>5</sup> However,

[t]he trial court is not required to consider placing the children with a relative prior to granting permanent custody to CCDCFS. This court has previously held that the willingness of a relative to care for a child does not alter what the court must consider in determining permanent custody. *In re Benavides* (May 3, 2001), Cuyahoga App. No. 78204, 2001 Ohio App. LEXIS 2002, citing *In re Patterson* (1999), 134 Ohio App.3d 119, 730 N.E.2d 439. And, although the court must find by clear and convincing evidence that the parents are not suitable placement options, the court is not required to invoke the same standard with regard to a [relative]. *Patterson*, supra at 130.

*In re A.D.*, 8th Dist. Cuyahoga No. 85648, 2005-Ohio-5441, ¶ 12. The Ohio Supreme Court has instructed that a child's best interest analysis "does not make the

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<sup>5</sup> While the juvenile court was not required to provide in its journal entry an explanation for its denial of S.B.'s motion for legal custody to an interested individual, best practices indicate such reasoning is beneficial and insightful to the parties, especially in a custody matter.

availability of a relative placement an all-controlling factor; the statute does not even require the court to weigh that factor more heavily than other factors.” *In re E.C.*, 8th Dist. Cuyahoga No. 103968, 2016-Ohio-4870, ¶ 39, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, at ¶ 63. “[I]f permanent custody to the agency is in the children’s best interest, legal custody to [a relative] necessarily is not.” *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 11, citing *In re L.C.*, 9th Dist. Summit No. 26816, 2013-Ohio-2799, ¶ 10.

**{¶ 31}** Further, there is sufficient evidence in the record that demonstrates placement with K.G. would not have been in the best interest of the children. The agency completed a kinship caregiver (“KCAR”) investigation of K.G. and those individuals living in her home. The KCAR investigation entailed evaluating K.G.’s fingerprints in the BCI and FBI database; completing an in-person interview; and conducting an in-home investigation to ensure utility services were available, no safety hazards existed, and no weapons were on the premises. Pursuant to the KCAR investigation, the agency found K.G. approved as a potential caregiver. However, the KCAR is not the determining factor as to legal custody. The agency considers additional, subjective measures when it evaluates placement of children with a legal custodian and it was that further analysis that indicated legal custody with K.G. was not in the children’s best interest.

**{¶ 32}** E.B. and M.B. were removed from K.T.’s custody in June 2018. K.G. was in contact with S.B. in June of 2018 but she did not contact the agency with regard to custody until the summer of 2019, approximately one year after the agency

gained temporary custody. K.G. was not a blood relation to E.B. and M.B. and she had not interacted with the children for over three years prior to the custody hearing. When K.G. saw the children in approximately 2016, she never spent an extended period of time with them but visited with them at S.B. and K.T.'s home. K.G. claimed to have established a bond with E.B. during those visits and during continued phone conversations when S.B. and K.T. moved the family out of state. Upon further questioning, K.G. admitted those long-distance phone conversations were exclusively between K.G., S.B., and K.T.

**{¶ 33}** K.G.'s daughter, A.T., testified on her mother's behalf. A.T. indicated she was a college senior studying education and that she would be home during school vacations and holidays to assist with E.B. and M.B. Just as K.G. had not seen the children for three years, neither had A.T. A.T.'s father — also S.B.'s father and the prior paramour of K.G. — was a registered sex offender. While K.G.'s former boyfriend's sex-offender status was not established until after she ended her relationship with him, this raised concerns as to K.G.'s judgment. Additionally, K.G. attended S.B.'s trial to show her support and gain an understanding of the charges brought against him. Mid-trial, the trial court required K.G. to leave the courtroom when she engaged in conversations with K.T. that challenged the separation of trial witnesses. K.G. stated she was unfamiliar with the rules of court and made an honest mistake. This incidence raised potential concerns with regard to K.G.'s decision-making processes.

{¶ 34} K.G. voiced her willingness to facilitate necessary counseling for E.B. and M.B. Yet, K.G. did not know the children experienced behavioral difficulties or that E.B. may suffer from lifelong emotional problems. (Tr. 186-187.) K.G. exhibited compassion, and yet perhaps a lack of desire to parent the children, when she indicated acceptance that E.B. and M.B.'s placement may continue with their foster family:

Q: And would you understand if for some reason the [a]gency wanted to try to have consistency for these children?

A. That's the idea of this whole thing is just to try to have a consistent place for them to be where they're safe and taken care of and loved, so yeah, I would understand.

Q. Right. And if you were to be told that the [a]gency has found this foster home to be a good, consistent setting —

A. Yes, I would be fine with that.

(Tr. 186.) The agency indicated K.G. could be considered as a future caretaker, if needed, but it was best to maintain E.B. and M.B.'s current status rather than threaten retraumatization.

{¶ 35} S.B. also argues that the court was required to award legal custody to K.G. once K.G. filed a statement of understanding in compliance with R.C. 2151.353.

The relevant portions of the statute read:

(A) If a child is adjudicated an abused, neglected, or dependent child, the court may make any of the following orders of disposition:

\* \* \*

(3) Award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal



custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A person identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the person identified signs a statement of understanding for legal custody that contains at least the following provisions:

\* \* \*

R.C. 2151.353.

**{¶ 36}** Under R.C. 2151.353(A), if a child is adjudicated abused, neglected, or dependent, a court may implement any of the dispositional orders delineated in paragraphs (A)(1) through (A)(6), including legal custody as identified in R.C. 2151.353(A)(3).

**{¶ 37}** As detailed in the statute, completion of a statement of understanding is a prerequisite to a court's granting legal custody. R.C. 2151.353. In addition to the execution of a statement of understanding, the juvenile court must determine legal custody is in the child's best interest. *In re A.F.*, 12th Dist. Butler No. CA2019-01-005, 2019-Ohio-4627, ¶ 63. S.B.'s suggestion that the statute's use of the word "shall" mandated the juvenile court to grant K.G.'s motion for legal custody once she submitted a statutorily compliant statement of understanding — and before the juvenile court undertook a best interest analysis — is incorrect and fails to accurately represent the wording and intent of R.C. 2151.353.

**{¶ 38}** The record reflects that the trial court's decision to grant permanent custody to CCDCFS, and deny legal custody to K.G., was in the best interest of E.B. and M.B.; was supported by clear and convincing evidence; and was not an abuse of

discretion or against the manifest weight of the evidence. Therefore, S.B.'s first and second assignments of error are without merit and are overruled.

**{¶ 39}** Judgment affirmed.

It is ordered 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 common pleas court, juvenile 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.

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RAYMOND C. HEADEN, JUDGE

SEAN C. GALLAGHER, P.J., and  
MICHELLE J. SHEEHAN, J., CONCUR