[Cite as *In re P.B.*, 2020-Ohio-4471.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE P.B., ET AL.	:	
	:	Nos. 109518 and 109519
Minor Children	:	
	:	
[Appeal by A.S., Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 17, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD17901965, AD17909360 and AD17909361

Appearances:

Michael E. Stinn, *for appellant*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Ben Eilers, Assistant Prosecuting Attorney, *for appellee* Cuyahoga County Division of Children and Family Services.

EILEEN A. GALLAGHER, J.:

{¶ 1} Appellant-mother A.S. ("Mother") appeals from the decision of the Juvenile Division of the Cuyahoga County Court of Common Pleas (the "juvenile court") terminating her parental rights and granting permanent custody of three of her minor children to appellee, the Cuyahoga County Division of Children and

Family Services ("CCDCFS" or the "agency"). For the reasons that follow, we affirm the juvenile court's decision.

Factual Background and Procedural History

{¶ 2} This appeal involves three of Mother's four minor children — her son K.B. (born on August 25, 2006) and her twin sons P.B. and A.B. (born on June 15, 2009). Mother also has a daughter B.S. (born April 1, 2004). K.B. Sr. is the father of K.B., P.B. and A.B. B.A. is the father of B.S.

Adjudication and Temporary Custody to CCDCFS

{¶ 3} On or about February 2, 2017, CCDCFS filed a complaint for neglect and temporary custody of K.B. along with a motion for predispositional temporary custody. The complaint alleged that Mother had refused to provide for K.B.'s basic needs, that there was "extreme conflict" within the home between Mother and K.B. and that Mother had been offered services to address these problems but refused to participate in those services. The complaint further alleged that K.B. had been previously adjudicated neglected and placed under protective supervision due, in part, to Mother's failure to appropriately address his behavioral needs. With respect to K.B.'s father, K.B. Sr., the complaint alleged that he did not consistently visit, support or communicate with his son and that he did not have stable and appropriate housing. The juvenile court committed K.B. to the emergency temporary custody of CCDCFS and appointed "Daniel Bartos, Attorney-at-Law" as guardian ad litem for K.B. "pursuant to [R.C.] 2151.281(B), 2151.352 and Juv.R. 4."

{¶ 4} On April 19, 2017, the guardian ad litem filed a report and recommendation. He indicated that he had interviewed various individuals, including K.B., Mother, K.B.'s foster mother and the CCDCFS social worker assigned to the case. He reported that K.B. had behavioral problems, that both Mother and K.B. acknowledged that Mother had hit K.B. and that Mother had stated in front of K.B. that she did not want K.B. to come home and had agreed to emergency temporary custody. The guardian ad litem reported that the CCDCFS social worker had advised him that Mother had refused services offered to her and had left K.B. at CCDCFS without saying goodbye. The guardian ad litem indicated that Mother had admitted leaving K.B. and had rationalized her behavior by stating that she was mad and upset.

{¶ 5} The guardian ad litem reported that K.B. had expressed a desire "to return home to his mother, to live with his dad or to go live with his grandmother" but that "[h]e seemed more interested in [having a] discussion [about] getting his shoes * * * than having a discussion about his wishes as to placement." The guardian ad litem further reported that K.B. stated that he "was ok in the foster home for a while so the family could work on things to try and ensure this was the last time he would be removed from the home." The guardian ad litem recommended that temporary custody be granted to the agency.

{¶ 6} On May 10, 2017, K.B. was adjudicated to be neglected. He was committed to the temporary custody of the agency on May 11, 2017.

{¶ 7} On June 15, 2017, CCDCFS filed a complaint for abuse and temporary custody along with a motion for predispositional temporary custody of B.S., P.B. and A.B. The complaint alleged that, on or about April 14, 2017, Mother had brandished a weapon at a barbershop, threatening the barber, in the presence of the children. As a result of the incident, Mother was indicted on charges of carrying a concealed weapon, aggravated menacing and child endangering. The complaint further alleged that Mother had anger management issues that interfered with her ability to provide adequate parental care for her children, that she had previously engaged in anger management classes but failed to complete them and that all of Mother's children had been previously adjudicated neglected.[1] With respect to the children's fathers, the complaint alleged that K.B. Sr. was not willing to meet the basic needs of his children and that B.A. had failed to support, visit or communicate with his daughter on a consistent basis.

{¶ 8} The juvenile court committed the children to the emergency temporary custody of the agency and appointed Attorney Bartos "to serve as Guardian ad Litem and Counsel" for P.B. and A.B. "[p]ursuant to [Juv.R.] 4."

{¶ 9} On August 24, 2017, the guardian ad litem filed an updated report and recommendation. At that time, all four children were residing with their maternal grandmother. The guardian ad litem reported that "[a]lthough the children have expressed a desire to reunify with [M]other eventually, the children all are doing

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[1] The children had been placed in the custody of CCDCFS in 2011. At that time, B.S. and K.B. were placed into protective supervision, and P.B. and A.B. were placed into foster care. The children were returned to Mother's custody in July 2012.

well in the care of the grandmother and there have been some concerns expressed about changing schools." The guardian ad litem recommended that temporary custody of B.S., P.B. and A.B. be granted to the agency and that the children continue placement with their grandmother.

{¶ 10} On August 31, 2017, Mother admitted the allegations of an amended complaint.[2] On September 19, 2017, B.S., P.B. and A.B. were adjudicated to be abused and were committed to the temporary custody of CCDCFS.

{¶ 11} CCDCFS filed a case plan that required Mother to attend parenting classes, complete anger management counseling and undergo a mental health assessment to determine if any treatment would be recommended. The permanency

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[2] As related to Mother, the amended complaint alleged:

1. Mother has pending charges of carrying concealed weapons, aggravated menacing and child endangering. See case no. CR-17-617024-A.
2. At the time of filing, Mother's whereabouts were unknown.
3. Mother recently engaged in anger management counseling in order to provide adequate parental care for the children. Mother previously failed to engage in anger management classes.
4. Mother has a child who was adjudicated neglected, and is currently placed in the temporary custody of the Agency. See case no. AD17901965.
5. All of the children were previously adjudicated neglected. B.S. was committed to the protective supervision of the Agency. P.B. and A.B. were committed to the temporary custody of the Agency. See case nos. AD11912704-06.

As it related to the children's fathers, the amended complaint alleged:

6. Father of P.B. and A.B., [K.B., Sr.], has a child who was adjudicated neglected and is currently placed in the temporary custody of the Agency. See case no. AD17901965.
7. Father [K.B., Sr.] consents to P.B. & A.B. being in temporary custody of CCDCFS.
8. Father of B.S., [B.A.], is not in a position to assume custody at this time.

goal was reunification with Mother. The juvenile court approved the amended case plan.

Extension of Temporary Custody

{¶ 12} By September 2017, Mother had completed parenting classes and anger management counseling. Mother then spent several months in jail after being convicted of several offenses related to the incident at the barbershop. After Mother was released from jail, the agency filed an amended case plan. The case plan required Mother to obtain housing, demonstrate financial stability and complete a mental health assessment to determine if any treatment would be recommended. The juvenile court approved the amended case plan.

{¶ 13} On June 6, 2018, the guardian ad litem submitted an updated recommendation and report. At that time, all four children were still residing with their maternal grandmother but the grandmother had sent a letter to the agency and the guardian ad litem, indicating that she was unable to continue caring for the children and that a new placement would soon be needed. The guardian ad litem reported that Mother was still in need of housing and a source of income and that the agency was waiting on an assessment from Murtis Taylor to determine what services would be recommended for Mother. The guardian ad litem, once again, stated that "[a]lthough the children have expressed a desire to reunify with [M]other eventually, the children all are doing well in the care of the grandmother." The guardian ad litem recommended that temporary custody be extended.

{¶ 14} Because Mother was making progress with her case plan, the agency filed motions to extend temporary custody, which the juvenile court granted.[3]

{¶ 15} In or around August 2018, the children's maternal grandmother requested alternative placement for the children. The boys were removed from her care and placed into foster care.

{¶ 16} On November 26, 2018, CCDCFS filed a motion to modify temporary custody to permanent custody as to K.B., P.B. and A.B. In an affidavit submitted in support of the motion, CCDCFS social worker Becky Sawyers averred that (1) Mother had failed to comply with recommendations from mental health professionals and was not in mental health treatment as required under her case plan, (2) Mother had "failed to benefit from services designed to address her anger management issues and ha[d] displayed aggressive and inappropriate behaviors as recently as September 2018"[4] and (3) Mother had failed to secure stable and appropriate housing. Mother denied the allegations.

{¶ 17} On January 8, 2019, the juvenile court conducted an in camera interview of each of the children with the guardian ad litem present.

{¶ 18} In April 2019, the juvenile court granted the agency's motion for a second extension of temporary custody for B.S., P.B. and A.B. and, after several

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[3] On January 22, 2018, the juvenile court granted the agency's motion for first extension of temporary custody as to K.B. In late July 2018, the juvenile court granted the agency's motion for a first extension of temporary custody for P.B. and A.B. and the agency's motion for a second extension of temporary custody for K.B.

[4] The affidavit did not otherwise identify or describe the "aggressive and inappropriate behaviors" Mother allegedly exhibited in September 2018.

continuances, scheduled a hearing on the motion to modify temporary custody to permanent custody for June 5, 2019.

{¶ 19} On May 17, 2019, CCDCFS filed a motion to terminate temporary custody and to reunify all four children with Mother. CCDCFS asserted that it was "in the best interests of the children to be returned home to [Mother] because she has remedied the risks that initially caused the children to be removed." Specifically, the agency noted that Mother had completed parenting classes, had obtained appropriate housing, was employed and was "still working with Murtis Taylor for any on-going mental health needs." The agency requested an order "vesting legal custody of the children in mother [A.S.] with no restrictions."

{¶ 20} Two weeks later, the children's guardian ad litem filed a motion for family counseling to assist in the "transition between the * * * children's current placement and Mother." The juvenile court granted the motion.

{¶ 21} The agency was planning on reunifying the children with Mother that summer. However, during an "extended" visit with Mother in July 2019, K.B., P.B. and A.B. told Mother that they no longer wanted to return home. In response, Mother stopped all visitation with the boys. She did not visit the boys at all in August or September 2019. She visited A.B. and P.B. once in October 2018 and K.B. twice in October 2019.

{¶ 22} Following the July 2019 visit, the guardian ad litem requested that the juvenile court conduct a second in camera interview of the children, which occurred

on August 30, 2019, with the guardian ad litem present. On September 4, 2019, the juvenile court issued an order indicating that it found "no conflict for Dan Bartos."

{¶ 23} On September 18, 2019, the guardian ad litem filed his final report and recommendation, recommending that K.B., P.B. and A.B. be committed to the permanent custody of CCDCFS. The guardian ad litem indicated that he had interviewed the children, Mother, the children's fathers, the maternal grandmother, the social workers and the foster parents. He stated that he had participated in two in camera interviews with the children and "believes he had an adequate understanding of the wishes of the children." He stated that he had conducted a home visit "within the last month or two" and that Mother's home — a one-bedroom residence with no appliances or furnishings other than a mattress for Mother — "was not in a condition to have 4 children living there." He indicated that Mother had had "a history of violent reactions" — referencing the barbershop incident and a July 2019 incident between Mother and the then-foster parents of the twins[5] — and stated that Mother "appears to continue to have anger management issues which adversely affects her relationship with the children." He reported that Mother had recently slapped one of the children in the face during a visit at the grandmother's home and that the incident with the foster parents resulted in the twins being removed from that placement and then placed in a different foster home.

[5] In that incident, the foster father allegedly called Mother a "nutcase" and Mother responded by threatening to "slap the s*** out" of the foster parent.

{¶ 24} The guardian ad litem further reported that Mother's visits with the boys ceased in July 2019 after Mother "came to the decision that some or all of the children did not want to return home" and "[i]nstead of attempting to work thru the difficulties, * * * opted to terminate all visits with the boys." The guardian ad litem indicated that Mother "ha[d] gone as far as directly blaming the children for being removed" and that the already "rocky" relationship between Mother and the boys was further "set back" by Mother's termination of their visits.

{¶ 25} With respect to B.S., the guardian ad litem recommended that the agency pursue potential placement options with a relative before resorting to permanent custody. The guardian ad litem stated that he did not believe his recommendations were in conflict with any of the children's wishes at that time.

{¶ 26} On September 19, 2019, CCDCFS, once again, changed course and filed a motion to modify temporary custody to permanent custody as to all four children. In an affidavit submitted in support of the motion, CCDCFS social worker Ernese Williams, averred that (1) although Mother had completed anger management counseling twice, she "has been unable to apply the benefits she learned in anger management to her parenting," (2) Mother still lacks basic furnishings and appliances in her home, (3) she had not visited the children since July 2019 and (4) K.B., P.B. and A.B. had stated that they no longer wished to visit Mother.

{¶ 27} With respect to the children's fathers, Williams averred that B.A. had failed to communicate with and support B.S. on a consistent basis and that K.B., Sr.

had failed to complete a substance abuse assessment, had failed to consistently communicate with the agency or visit his children, did not have safe and stable housing and had a history of child endangering and domestic violence charges.

{¶ 28} In response, Mother filed a motion for legal custody with an order of protective supervision. Mother argued that she had remedied the risks that caused CCDCFS to take custody of her children. She stated that she had completed parenting classes and anger management counseling, secured appropriate housing and stable employment and "continue[d] to work with Murtis Taylor to maintain her mental health treatment." She further contended that the agency had completed a staffing report on September 4, 2019 that assessed her progress and recommended that she be granted legal custody of the children without restriction. Mother claimed that the report indicated that Mother "successfully visits her children," that Mother "is open to community and family support" and that Mother "will continue to support her children's education."

{¶ 29} A week later, at Mother's arraignment on the agency's motion for permanent custody, Mother's counsel stated that "both in speaking with [Mother] as well as some of the other individuals on the case[,] [B.S.] and [A.B.] may have positions that may not be aligned with the recommendation of the [g]uardian ad [l]item."[6] He asked the court "to consider assigning an attorney to those children to

[6] Although Mother asserts in her brief that, at the September 25, 2019 arraignment on the motion to modify temporary custody to permanent custody, her counsel "moved the Trial Court for an order assigning counsel *for the children*," the transcript reflects that that motion was limited to A.B. and B.S. (Emphasis added.)

be their voice to the [c]ourt if their position is not aligned with the recommendation of the [g]uardian ad [l]item." The court denied the request, indicating that neither the guardian ad litem nor the court had found a conflict between the guardian ad litem's recommendation and the boys' wishes, that the court had conducted two in camera interviews of the children and had "made its record on why the [c]ourt found no conflict" and that it would be "harmful and confusing" to appoint separate counsel for the children "at this time."

{¶ 30} On October 23, 2019, the agency filed an amended motion to modify temporary custody to permanent custody to CCDCFS; however, no substantive changes were made to the motion.

Hearing on Motion for Permanent Custody

{¶ 31} On November 20, 2019, the juvenile court held a hearing on the agency's motion for permanent custody and Mother's motion for legal custody. At the time of the hearing, B.S. was 15, K.B. was 13 and the twins were 10. At the outset of the hearing, Mother's counsel "renewed" Mother's motion "for an attorney to be provided to the children" because he "believe[d] there may be a conflict with the position of the [g]uardian ad [l]item." The juvenile court asked Attorney Bartos: "[B]eing both their attorney and their [g]uardian ad [l]item, do you see any conflict at this time?" Attorney Bartos replied that he perceived no conflict between the children's wishes and his recommendation.

{¶ 32} Two witnesses testified on behalf of CCDCFS at the permanent custody hearing — Williams and Dianette Gilbert, a social worker at the Cleveland Christian Home.

{¶ 33} Williams testified that she was assigned to the case in January 2019. She stated that K.B., P.B. and A.B. had been previously placed in agency custody in 2011 or 2012 due to allegations of physical abuse and that the agency first became involved in this case in February 2017 after K.B. told someone that he had "got a whooping by his mom" while he was on his way to school. Williams indicated that the abuse claim was not substantiated but that K.B. was placed in the custody of the agency because he said he "was afraid to go home" and "didn't want to go home." Williams testified that B.S., A.B. and P.B. came into agency custody several months later after Mother "pulled a gun out" on a barber because "he was taking too long."

{¶ 34} Williams testified that Mother's case plan included completing parenting classes, attending anger management counseling, obtaining a mental health assessment and securing appropriate housing. Williams stated that the agency had requested a mental health assessment because it had been reported that Mother was previously diagnosed as bipolar and schizophrenic. Williams indicated that Mother completed a mental health assessment at Murtis Taylor in September 2017 and that it was recommended that Mother continue with counseling and undergo a psychiatric evaluation. Mother did not comply with these recommendations. According to Williams, Mother told her that she did not have a history of mental health diagnoses and did not think the psychiatric evaluation or

counseling was necessary. Williams stated that, as of the time of the hearing, she did not have any concerns regarding Mother's mental health.

{¶ 35} With respect to the parenting classes, Williams stated that although Mother completed parenting classes in April 2017, the agency did not feel that she had benefited from them, i.e., that "the agency does not feel like she displays appropriate behaviors," and had continuing concerns regarding Mother's parenting skills, particularly given her response to the boys' statements during an "extended visit" in July 2019 that they did not want to return home.

{¶ 36} Williams indicated that, prior to July 2019 incident, Mother had had regular visits with the children, including overnight and unsupervised visits.[7] Williams stated that the visits reportedly went well and that there was no indication that the children had suffered any physical abuse during the visits.

{¶ 37} Williams testified that when she first met K.B. in February 2019, he told Williams that he wanted to live with his mother. According to Williams, K.B. made similar statements to her on March 27, 2019 and June 28, 2019. Williams testified that on June 25, 2019, P.B. and A.B. told Williams that they wanted to live with their mother and that they were "excited for * * * overnight visitation to begin."

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[7] Although Williams testified that these visits occurred at Mother's home, it appears from other information in the record, including the fact that there were no beds or other furnishings at Mother's house, that these visits occurred at the maternal grandmother's house. All of the children appeared to have a strong bond with the maternal grandmother. It is unclear from the record whether Mother was present for the full duration of these visits. The length of the intended "extended visit" in July 2019 is likewise unclear from the record.

{¶ 38} Williams testified that after K.B., A.B. and P.B. told Mother that they did not want to be reunified with her, Mother was "naturally upset and offended by the comments." Instead of trying to work through the issue, Mother "tried to see" if the children could "go back to the foster home," i.e., "[a]t that time * * * she was in agreement with them not coming home because they didn't want to come home." Williams testified that she spoke with Mother a few days after the incident and that Mother was "upset," "hurt" and "felt defeated." She indicated that Mother "felt like she had [done] everything she was supposed to do, everything she was asked to do" but that the boys "still said they didn't want to come home." Williams stated that after the boys told Mother they did not want to be reunified with her, Mother, at first, refused to visit the boys because "she didn't want to force them to do something they didn't want to do." However, Mother later told Williams that she still loved her children and wanted to pursue a relationship with them.

{¶ 39} Williams testified that in August 2019, she received a phone call from Mother stating that she wanted to see her children. In October 2019, Mother had one visit with P.B. and A.B. and two visits with K.B. and B.S. Williams stated that Mother missed one October visit with P.B. and A.B. because she had to work and missed another scheduled visit with all of the children in late October because she went out of town. Williams indicated that even when she did not visit her sons, Mother kept in regular contact with B.S., who was then still living with her maternal grandmother.

{¶ 40} With respect to the anger management component of Mother's case plan, Williams testified that Mother completed anger management counseling in 2017 and that she did not have any continuing concerns regarding Mother's anger management. She stated that aside from Mother's response to the boys' statements in July 2019 that they did not want to return home, she was not aware of anger control issues on the part of Mother and that Mother had held a job at a McDonald's restaurant without incident.

{¶ 41} With respect to housing, Williams testified that Mother has "safe and stable housing" but acknowledged that she had not visited Mother's home since May 2019 and that, at that time, Mother did not have a stove or refrigerator, a kitchen table or chairs, any beds for the children or any linens or bedding. Williams testified that Mother had told her she had made arrangements to get the children's beds from the maternal grandmother. Williams stated that Mother obtained a second job at Amazon in October 2019 and that she believed, based on Mother's housing and employment, that she could provide for the children's basic needs.

{¶ 42} Williams acknowledged that even though the agency was concerned by Mother's response to the boys' statements that they did not want to return home, at an agency staffing meeting on September 4, 2019, it was recommended that Mother be granted legal custody of the children based on the understanding that visitation with Mother had been appropriate and the fact that Mother had made significant progress in her case plan and was steadily employed, had stable housing

and had family support. However, two weeks later, the agency filed a motion for permanent custody.

{¶ 43} With respect to the children's fathers, Williams testified that the case plan for B.S.'s father, B.A., included that he provide care and support for B.S. Although B.A. had at one point filed a motion for custody of his daughter, Williams indicated that he did not follow through on his case plan. Williams testified that the case plan for K.B., Sr., the boys' father, included completion of a substance abuse assessment and to submit to random urine screens but that he made no progress on his case plan. Williams stated that K.B., Sr. had visited his children on and off during their scheduled visitation with Mother but had not visited them since July 2019.

{¶ 44} Williams testified that K.B., P.B. and A.B. have ADHD and attend Positive Education Program schools. She stated that K.B. is well behaved in his foster home but has behavioral issues at school, i.e., he fights regularly, is disruptive and aggressive towards teachers and leaves school by jumping out of a window "once or twice a month." She stated that P.B. and A.B. fight "a lot" at the foster home and have difficulty focusing at school. Williams testified that Mother had been informed of, and expressed concern regarding, the children's behavioral issues but that the agency had continuing concerns regarding whether Mother could handle these behavioral issues. She stated that the agency also had concerns regarding whether Mother would continue the children's medication, which was important to keep them focused, because, in the past, when the children were in Mother's custody, Mother did not agree that they should take medication. Williams testified that the

agency had made a referral for family preservation services in June 2019, including family counseling, to help Mother understand the boys' behavior and to "kind of transition them into the reunification phase," but that the family counseling component had not started by the time the boys advised Mother, in July 2019, that they did not want to return home.

{¶ 45} Williams stated that Mother initially continued to cooperate with family preservation services even though she was not visiting the children but stopped engaging in services once CCDCFS filed its motion for permanent custody in September 2019. Williams indicated that she did not believe Mother could appropriately manage the boys' behavior as of the time of the hearing but that she could do so in the future "with some type of therapy." Williams stated that she had no reason to believe Mother would not cooperate with family therapy.

{¶ 46} At the time of the hearing, P.B. and A.B. were together in a foster home where they had been placed for several months, K.B. was in a separate foster home, where he had been for a year and B.S. had been placed with a paternal cousin for three weeks. Williams indicated that the children were all "comfortable" in their placements and that their basic needs were being met. She stated that K.B. had a "good relationship" with his foster mother and that P.B. and A.B. liked their placement and "got along well" with the biological son of their foster mother. According to Williams, none of the placements was a potential adoptive placement, but that the paternal cousin with whom B.S. had been placed had expressed an interest in obtaining legal custody of B.S. in the future.

{¶ 47} Gilbert testified that she received a referral from CCDCFS in July 2019 to provide family preservation services to Mother and the children. Gilbert stated that her goals for Mother were to get Mother everything she needed inside the home for the children to return and to get "the case closed * * * with the County and make it final." She indicated that her goals for the children were to "explore their emotions" and for them to learn how to express and cope with any trauma they may have experienced.

{¶ 48} Gilbert testified that she first met with Mother in mid-July 2019. She stated that she spoke with the children two or three times before the services were terminated but that she had interacted more frequently with Mother. Family counseling did not commence before the services were terminated.

{¶ 49} Gilbert testified that Mother was "very honest and open about her situation" and told Gilbert that she "would like to engage in services because she was ready to get her life back and change things around for the positive." Gilbert testified that although Mother initially seemed willing to engage in services, in August 2019, Mother informed Gilbert that she no longer needed services. Gilbert stated that, at that time, Mother appeared "tired" and "weary." According to Gilbert, Mother told her that she loved all her children but that the case "had been going on for some time" and that she saw only "one way to solve it," i.e., "to take the initiative * * * and get her life back by allowing the children to remain where they were * * * because she knew they were safe." Gilbert stated that Mother told her that, for the children's mental health, safety, stability and growth and to maintain her own mental health,

Mother had decided that "it was best served that the children stay in their current placements and not return home to her." Gilbert testified that while they were interacting, Mother was always focused on what was best for the "[l]ong-term, safety, [and] happiness of her children." Mother told Gilbert that "she didn't see the benefits of [f]amily [p]reservation if it wasn't going to help with her [c]ounty case" and terminated the services.

{¶ 50} Gilbert stated that when Mother became unwilling to engage in services, she asked Mother if she could continue to work with the children. Gilbert indicated that B.S., in particular, was "eager to start services" and that she had hoped to assist B.S. in getting a job and preparing a resume. According to Gilbert, Mother said "it wasn't necessary because she didn't see how it would improve her circumstances with the case" and did not authorize Gilbert to continue working with the children. Gilbert testified that she was last at Mother's home in July 2019. At that time, Mother still needed one more bed and a stove. Gilbert stated that she worked with the family for a month and that Mother terminated services for both herself and the children in August 2019.

{¶ 51} Mother did not testify and did not present any witnesses at the hearing.

{¶ 52} The juvenile court also heard from the children's guardian ad litem regarding his recommendation. The guardian ad litem did not agree that Mother's home was appropriate, safe or stable. He stated that when he last visited the home, the only furnishing in the home was a blow-up bed for Mother and that there were

no linens, appliances or beds for the children and that capped gas lines were coming out of the wall. He likewise disputed the claim that Mother had completed required case services and noted that Mother had not completed a psychiatric evaluation and had terminated family preservation services not only for herself but for the children, who could have benefited from them, "stopp[ing] the services that would have addressed some of the concerns related to the children's anxiety and expressed emotion that they don't want to go home."

{¶ 53} The guardian ad litem indicated that although, historically, the children had all expressed an interest in being reunified with Mother, "there ha[d] been some kind of a shift at some point." He stated that he had spoken with the children "many, many, many times," meeting with them at various locations, and that as they came closer to reunification, "the more vocal it became that they had concerns about going home." The guardian ad litem indicated that he had not spoken with the children specifically about the hearing but that he was confident that his recommendation was not in conflict with the children's wishes.

{¶ 54} The guardian ad litem also disputed the claim that Mother had had "constant, continued contact with the boys," noting that from August through November 2019, she had only had one visit with them. He stressed the need for permanency and stated that he "ha[d] a problem with" the fact that Mother's "reaction and knee-jerk response to children expressing fears and concerns was to cut them off." The guardian ad litem stated that given that K.B., P.B. and A.B. have

ongoing behavioral and mental health issues, he was concerned that there would be another incident if the children were returned to Mother.

The Trial Court's Decision to Grant Permanent Custody to CCDCFS

{¶ 55} On January 15, 2020, the juvenile court granted CCDCFS' motion to modify temporary custody to permanent custody as to K.B., P.B. and A.B., terminating the parental rights of Mother and K.B., Sr. and awarding permanent custody of the three boys to CCDCFS. Based on the evidence presented at the hearing, its in camera interviews of the children and the recommendation of the guardian ad litem, the juvenile court found "by clear and convincing evidence" that the children could not be placed with either parent within a reasonable time or should not be placed with the parents, that the children had been in the temporary custody of CCDCFS for 12 or more months of a consecutive 22-month period and that it was in the best interest of the K.B., P.B. and A.B. to grant permanent custody to the agency. The juvenile court denied the motion for permanent custody as to B.S. on the grounds that "B.S. has constant contact with her mother and wishes to maintain that relationship," "the recommendation of her GAL/attorney is that [p]ermanent [c]ustody be granted as a last resort" and "there are (or soon will be) other options between reunification and [p]ermanent [c]ustody." The juvenile court dismissed all other motions as moot. The juvenile court found that "[t]he three boys do not wish to be reunified" and indicated that the children's wishes were "the single most important factor" in the juvenile court's decision to grant permanent custody of K.B., P.B. and A.B. to the agency.

{¶ 56} Mother appealed, raising the following five assignments of error for review:

> Assignment of Error No. 1: The trial court denied K.B. due process by failing to appoint counsel for him.
>
> Assignment of Error No. 2: The trial court abused its discretion in failing to appoint counsel for the children.
>
> Assignment of Error No. 3: The trial court's award of permanent custody of K.B., A.B. and P.B. to Cuyahoga [County] Division of Children and Family Services was against the manifest weight of the evidence. The trial court's decision should be reversed.
>
> Assignment of Error No. 4: Cuyahoga County Division of Children and Family Services did not present clear and convincing evidence that permanent custody was in the best interest of the children. The trial court's order should be reversed.
>
> Assignment of Error No. 5: The trial court abused its discretion in denying appellant A.S.'s motion for legal custody. The trial court's order should be vacated and legal custody of the children awarded to appellant A.S.

{¶ 57} Mother's assignments of error are interrelated. We address them together where appropriate.

Law and Analysis

Appointment of Counsel to Represent the Children

{¶ 58} In her first assignment of error, Mother contends that K.B. was denied due process because the trial court did not appoint independent counsel to represent him in the permanent custody proceeding. Mother argues that once the motion for permanent custody was filed in the case, "the children became parties to the proceedings and were entitled to legal representation" pursuant to R.C. 2151.352 and Juv.R. 4(A). In her second assignment of error, Mother contends that the trial

court abused its discretion by failing to appoint "separate counsel" for P.B. and A.B. because the children's wishes conflicted with the recommendation of Attorney Bartos, who had been appointed to serve as P.B. and A.B.'s guardian ad litem and counsel.

{¶ 59} R.C. 2151.352 provides, in relevant part:

> A child, the child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of the proceedings under this chapter or Chapter 2152. of the Revised Code. * * * Counsel must be provided for a child not represented by the child's parent, guardian, or custodian. If the interests of two or more such parties conflict, separate counsel shall be provided for each of them.

{¶ 60} Former Juv.R. 4(A) states:

> Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. When the complaint alleges that a child is an abused child, the court must appoint an attorney to represent the interests of the child. This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.

{¶ 61} Former Juv.R. 4(C) states:

> (1) When the guardian ad litem is an attorney admitted to practice in this state, the guardian may also serve as counsel to the ward providing no conflict between the roles exist.
>
> (2) If a person is serving as guardian ad litem and as attorney for a ward and either that person or the court finds a conflict between the responsibilities of the role of attorney and that of guardian ad litem, the court shall appoint another person as guardian ad litem for the ward.
>
> (3) If a court appoints a person who is not an attorney admitted to practice in this state to be a guardian ad litem, the court may appoint

an attorney admitted to practice in this state to serve as attorney for the guardian ad litem. [8]

A "party" for purpose of the Juvenile Rules includes "a child who is the subject of a juvenile court proceeding." Juv.R. 2(Y).

{¶ 62} In *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, 805 N.E.2d 1110, the Ohio Supreme Court interpreted these provisions. It held that "[p]ursuant to R.C. 2151.352, as clarified by Juv.R. 4(A) and Juv.R. 2(Y), a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and * * * is entitled to independent counsel in certain circumstances." *Id.* at syllabus. Thus, a child is not entitled to independent counsel in all juvenile court proceedings involving the termination of parental rights. A child is entitled to independent counsel in a permanent custody proceeding only when "certain circumstances" exist. *See also In re B.J.L.*, 2019-Ohio-555, 130 N.E.3d 906, ¶ 46 (4th Dist.) ("*Williams* does not mandate that a child always have independent counsel in a juvenile court proceeding to terminate parental rights. Instead, a child

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[8] Juv.R. 4 was amended effective July 1, 2020. Juv.R. 4(A) now states:

> Every party shall have the right to be represented by counsel and every child, parent, custodian, or other person in loco parentis the right to appointed counsel if indigent. These rights shall arise when a person becomes a party to a juvenile court proceeding. This rule shall not be construed to provide for a right to appointed counsel in cases in which that right is not otherwise provided for by constitution or statute.

Juv.R. 4(C) now states: "If a person is serving as Guardian ad litem for a child or ward, and the court finds a conflict exists between the role of the Guardian ad litem and the interest or wishes of the child of the ward, the court shall appoint counsel for the child or ward." In addition, Juv.R. 4(B)(9) was added, which states: "If a court appoints a person who is not an attorney admitted to the practice of law in this state to be a guardian ad litem, the court may appoint an attorney admitted to the practice of law in this state to serve as attorney for the guardian ad litem, child, or ward."

is entitled to independent counsel in a termination of parental rights proceeding only when 'certain circumstances' exist.").

{¶ 63} The *Williams* court did not specify exactly what "certain circumstances" would warrant the appointment of independent counsel, but noted that appellate courts have typically stated that the juvenile court should "make a determination, on a case-by-case basis, whether the child actually needs independent counsel, taking into account the maturity of the child and the possibility of the child's guardian ad litem being appointed to represent the child." *Williams* at ¶ 17.

{¶ 64} Ohio courts have held that a juvenile court should generally appoint independent counsel for a child "'when the child has consistently and repeatedly expressed a strong desire that differs and is otherwise inconsistent with the guardian ad litem's recommendations.'" *In re V.L.*, 12th Dist. Butler No. CA2016-03-045, 2016-Ohio-4898, ¶ 39, quoting *In re B.K.*, 12th Dist. Butler No. CA2010-12-324, 2011-Ohio-4470, ¶ 19;); *In re B.J.L.* at ¶ 48; *see also In re J.M.*, 8th Dist. Cuyahoga No. 104028, 2016-Ohio-7306, ¶ 27 ("Ohio courts have concluded that 'the appointment of independent counsel is warranted when a child has "repeatedly expressed a desire" to remain or be reunited with a parent but the child's [GAL] believes it is in the child's best interest that permanent custody of the child be granted to the state.'"), quoting *In re Hilyard*, 4th Dist. Vinton Nos. 05CA600 through 05CA609, 2006-Ohio-1965, ¶ 36 (footnotes omitted). However, a juvenile court need not "'consider the appointment of counsel based upon a child's

occasional expression of a wish to be with a parent.'" *In re N.P.*, 2016-Ohio-3125, 65 N.E.3d 319, ¶ 14 (11th Dist.), quoting *In re Williams*, 11th Dist. Geauga Nos. 2002-G-2454 and 2002-G-2459, 2002-Ohio-6588, ¶ 24; *see also In re B.J.L.* at ¶ 48; *In re E.S.*, 2d Dist. Clark No. 2016-CA-36, 2017-Ohio-219, ¶ 49-51.

{¶ 65} In *In re C.B.*, 129 Ohio St.3d 231, 2011-Ohio-2899, 951 N.E.2d 398, the Ohio Supreme Court stated that "the record [did] not support[] the claim" that a child "required independent counsel" in a permanent custody proceeding and that "the 'certain circumstances' contemplated in *Williams* for the appointment of independent counsel to represent a child" did not exist where (1) there was no statement in the juvenile court's entry appointing the guardian ad litem, that the child's wishes conflicted with the parent's interests; (2) the guardian ad litem did "not discover any conflict suggesting that appointment of independent counsel would be appropriate" and (3) "[a]lthough the guardian ad litem * * * was acting only as to the child's best interest and not additionally in the capacity as the child's attorney," there was "no indication that the guardian did not faithfully discharge his duties or that there was any reasonable basis for the juvenile court to have appointed independent counsel for the child." *Id.* at ¶ 17. [9]

{¶ 66} As an initial matter, we note that in this case, as in *In re C.B.*, there is nothing in the record to indicate that a motion was made to have independent

[9] The proposition of law related to this issue was ultimately dismissed as having been improvidently accepted. The court held that because no motion was made to the trial court requesting that independent counsel be appointed for the child, the trial court "never had occasion to rule on the issue," and, therefore, the issue was "not properly before th[e] court." *In re C.B.* at ¶ 18.

counsel appointed for K.B. or to have separate counsel appointed for P.B. Accordingly, Mother's first and second assignments of error are subject to review for plain error as to K.B. and P.B. *See In re B.J.L.*, 2019-Ohio-555, 130 N.E.3d 906, at ¶ 40-45 (4th Dist.).

{¶ 67} However, following a thorough review of the record, we do not believe that the trial court committed any error, plain or otherwise, by failing to appoint independent counsel for K.B. or separate counsel for P.B. and A.B.[10]

{¶ 68} In this case, there has been no showing that any such "certain circumstances" exist. Although the juvenile court may not have expressly appointed independent counsel for K.B.[11] and did not appoint separate counsel for P.B. and

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[10] Further, "'[i]t has often been held that a parent lacks standing to raise the issue of appointment of counsel for a child when that child's wishes do not align with the parent's wishes regarding custody." *In re M.A.S.*, 11th Dist. Portage No. 2019-P-0093, 2019-Ohio-5190, ¶ 25; *see also In re T.K.C.*, 4th Dist. Washington No. 13CA3, 2013-Ohio-3583, ¶ 14 ("[A] parent has standing to appeal an error committed against a child when the parent and the child seek the same outcome, i.e., reunification of the family."); *In re N.G.*, 9th Dist. Lorain No. 12CA010143, 2012-Ohio-2825, ¶ 17 (In "[m]other's appeal of the termination of her own parental rights * * * she has standing to raise the issue of her children's right to counsel only insofar as it impacts her own parental rights."). Here, there has been no showing that the appointment of independent counsel to advocate for K.B. or separate counsel to advocate for P.B. and A.B. would have had any bearing on the termination of Mother's parental rights.

[11] Following a careful review of the record, we note that there is some ambiguity as to whether Attorney Bartos was appointed as both guardian ad litem and counsel for K.B. or simply as guardian ad litem for K.B. The February 3, 2017 order appointing him guardian ad litem states, in relevant part: "This matter came on for consideration this 3rd day of February * * * "pursuant to [R.C.] 2151.281(B), 2151.352 and Juv.R. 4 to appoint a guardian a litem for [K.B.], the child. The Court therefore appoints Daniel Bartos, Attorney-at-Law * * *." R.C. 2151.352 is entitled "[r]ight to counsel." Further, several of the early journal entries issued in this case, including the magistrate's decisions relating to the adjudication of K.B. as neglected, the magistrate's decision committing K.B. to the temporary custody of CCDCFS and the orders of the juvenile court approving and adopting the magistrate's decisions, identify Attorney Bartos as "counsel" for K.B.

A.B., it did make repeated inquiries as to whether a conflict existed between the guardian ad litem's recommendation and the children's wishes. The juvenile court not only repeatedly asked the guardian ad litem whether a conflict existed, it also conducted two in camera interviews of the children to ascertain their wishes. Although at one point, the boys had expressed an interest in eventually returning home to Mother — which was not inconsistent with the guardian ad litem's recommendation at that time — there is nothing in the record to indicate that, as of the time of permanent custody hearing — nearly two-and-one-half to three years after they were removed from Mother's custody — the boys still wished to return to Mother. Based on its discussions with the children during the second in camera interview, the juvenile court found that there was no conflict between the children's wishes and the guardian ad litem's recommendation. This court has independently reviewed the transcripts of the juvenile court's in camera interviews with the boys and the record supports the juvenile court's finding. The record does not show that K.B., P.B. or A.B. consistently and repeatedly expressed a desire for placement that was inconsistent with the recommendation of the guardian ad litem. Accordingly, the juvenile court did not err in failing to appoint independent counsel for K.B. or separate counsel for P.B. and A.B. *See In re H & J Children*, 1st Dist. Hamilton No. C-200115, 2020-Ohio-3444, ¶ 24 (juvenile court did not err in failing to appoint independent counsel for the children where "the record contains no evidence that the wishes of any of the children conflicted with those of the guardian ad litem"). We overrule Mother's first and second assignments of error.

The Juvenile Court's Decision to Grant Permanent Custody of the Children to CCDCFS

{¶ 69} In her third and fourth assignments of error, Mother contends that the juvenile court's decision to grant permanent custody of K.B., P.B. and A.B. to CCDCFS was against the manifest weight of the evidence and that the agency failed to present clear and convincing evidence that permanent custody was in the best interest of the children.

{¶ 70} The right to raise one's own child is "'an essential and basic civil right.'" *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67, quoting *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997); *see also In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990) (a parent has a "'fundamental liberty interest' in the care, custody, and management" of his or her child), quoting *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). However, this right is not absolute. It is "'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).

{¶ 71} Because termination of parental rights is "'the family law equivalent of the death penalty in a criminal case,'" *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14, it is "an alternative of last resort," *In re Gill*, 8th Dist. Cuyahoga No. 79640, 2002-Ohio-3242, ¶ 21. It is, however, "sanctioned when necessary for

the welfare of a child." *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 7, citing *In re Wise*, 96 Ohio App.3d 619, 624, 645 N.E.2d 812 (9th Dist.1994). "'All children have the right, if possible, to parenting from either natural or adoptive parents which provides support, care, discipline, protection and motivation.'" *In re J.B.* at ¶ 66, quoting *In re Hitchcock*, 120 Ohio App.3d 88, 102, 696 N.E.2d 1090 (8th Dist.1996). Where parental rights are terminated, the goal is to create "a more stable life for the dependent children" and to "facilitate adoption to foster permanency for children." *In re N.B.* at ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, 5 (Aug. 1, 1986).

Standard for Terminating Parental Rights and Granting Permanent Custody to CCDCFS

{¶ 72} Before a juvenile court can terminate parental rights and grant permanent custody of a child to CCDCFS, it must satisfy the two-prong test set forth in R.C. 2151.414. First, the juvenile court must find by clear and convincing evidence that one of the following conditions set forth in R.C. 2151.414(B)(1)(a) through (e) exists:

> (a) The child is not abandoned or orphaned, has not 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 has not 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 if, as described in division (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, and 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.

> (b) The child is abandoned.
>
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
>
> (d) 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 division (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.
>
> (e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

{¶ 73} Second, the juvenile court must find by clear and convincing evidence that granting permanent custody to the agency is in the best interest of the child. R.C. 2151.414(B)(1). "Clear and convincing evidence" is that "measure or degree of proof" that "produce[s] in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *In re M.S.* at ¶ 8. A juvenile court's decision to grant permanent custody will not be reversed as being against the manifest weight of the evidence "'if the record contains some competent, credible evidence from which the court could have found that the essential statutory elements for permanent custody had been established by clear and convincing evidence.'" *In re G.W.*, 8th Dist. Cuyahoga No. 107512, 2019-Ohio-1533, ¶ 62, quoting *In re A.P.*, 8th Dist. Cuyahoga No. 104130, 2016-Ohio-5849, ¶ 16.

{¶ 74} Mother does not dispute that CCDCFS met its burden of establishing the first prong, i.e., that one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) exists. Mother challenges only the juvenile court's determination that CCDCFS met its burden of establishing the second prong and contends that the juvenile court abused its discretion in determining that granting permanent custody to the agency and terminating her parental rights was in the boys' best interest.

{¶ 75} R.C. 2151.414(D)(1) states that in determining whether permanent custody is in a child's best interest, 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 [R.C. 2151.414(E)(7) to (11)] apply in relation to the parents and child.

{¶ 76} The best interest determination focuses on the child, not the parent. *In re N.B.*, 2015-Ohio-314, at ¶ 59. Although the juvenile court is required to consider each statutory factor in determining what is in a child's best interest under R.C. 2151.414(D)(1), no one factor is to be given greater weight than the others. *In re T.H.*, 8th Dist. Cuyahoga No. 100852, 2014-Ohio-2985, ¶ 23, citing *In re*

Schaefer, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. A juvenile court has considerable discretion in weighing the factors set forth in R.C. 2151.414(D)(1). Only one of the factors needs to be resolved in favor of permanent custody to terminate parental rights. *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17; *In re N.B.* at ¶ 53. We review a juvenile court's determination of a child's best interest under R.C. 2151.414(D)(1) for abuse of discretion. *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47.

{¶ 77} In addition to the best interest factors identified in R.C. 2151.414(D)(1), R.C. 2151.414(D)(2) sets forth a list of circumstances, which, if found to exist, mandates a finding that permanent custody is in the best interest of the child. R.C. 2151.414(D)(2) states:

> If all of the following apply, permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency:
>
> (a) The court determines by clear and convincing evidence that one or more of the factors in [R.C. 2151.414(E)] exist and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.
>
> (b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.
>
> (c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.
>
> (d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

See also In re H.C., 7th Dist. Harrison Nos. 13 HA 5 and 13 HA 6, 2013-Ohio-5871, ¶ 32 ("[T]he R.C. 2151.414(D)(2) best interest test requires the court to find permanent custody is in the child's best interest and commit the child to permanent custody of the agency if the four listed conditions are met.").

{¶ 78} R.C. 2151.414(D)(1) and 2151.414(D)(2) are "alternative means" for determining whether permanent custody is in a child's best interest. *In re J.P.*, 10th Dist. Franklin No. 18AP-834, 2019-Ohio-1619, ¶ 39-40 ("In determining the best interest of a child, a juvenile court may apply one of two different tests. Under R.C. 2151.414(D)(1), the juvenile court weighs multiple factors * * * to decide whether granting an agency permanent custody of a child is in that child's best interest. On the other hand, under R.C. 2151.414(D)(2), if the juvenile court makes the four enumerated findings, permanent custody is per se in the child's best interest and the court 'shall' commit the child to the permanent custody of the agency."); *see also In re M.P.*, 10th Dist. Franklin No. 10AP-478, 2010-Ohio-5877, ¶ 5 ("R.C. 2151.414(D)(2) sets forth the circumstances under which a trial court is required to grant permanent custody, while the court employing the factors in R.C. 2151.414(D)(1) considers them to determine whether the best interests of the children are served in granting the permanent custody motion."). Where a juvenile court determines that permanent custody is in a child's best interest under R.C. 2151.414(D)(1), the court "need not also conduct [a] R.C. 2151.414(D)(2) analysis." *In re J.P.* at ¶ 40, citing *In re T.P.*, 11th Dist. Ashtabula No. 2018-A-0001, 2018-Ohio-1330, ¶ 27-28. If, however, any of the circumstances enumerated in R.C.

2151.414(D)(2) does not exist, then the juvenile court must proceed to a weighing of factors set forth in R.C. 2151.414(D)(1) to determine what is in the child's best interest. *See, e.g., In re K.H.*, 2d Dist. Clark No. 2009-CA-80, 2010-Ohio-1609, ¶ 54.

{¶ 79} In this case, the juvenile court determined that "[CCDCFS] has proven by clear and convincing evidence that permanent custody is in the best interest of [the] children under several different grounds pursuant to [R.C.] 2151.414." It found that granting permanent custody to the agency was in the children's best interest both after weighing the best interest factors specified in R.C. 2151.414(D)(1) and because "the provisions of R.C. 2151.414(D)(2) apply."

{¶ 80} Mother contends that permanent custody is not in the boys' best interest and that the trial court abused its discretion in weighing the factors set forth in R.C. 2151.414(D)(1).[12] Mother claims that because (1) she had made "significant progress on reunifying with her children," i.e., completing the parenting and anger management components of her case plan in 2017, "secur[ing] stable housing" and "alleviat[ing] any safety concerns," (2) "visitation had been appropriate" and (3) Mother was open to community support and had family support, the record did not

[12] In her appellate briefs, Mother does not specifically address the juvenile court's determination that "the provisions of R.C. 2151.414(D)(2) apply." Nevertheless, because the juvenile court's best-interest analysis under R.C. 2151.414(D)(2) involves the same evidence, facts and circumstances as its best-interest analysis under R.C. 2151.414(D)(1) — which Mother does challenge — and because if the juvenile court properly determined that "the provisions of R.C. 2151.414(D)(2) apply," there would be no need for a finding that permanent custody was in the boys' best interest under R.C. 2151.414(D)(1), *see* discussion above at paragraph 78, we consider that issue here.

support a finding, by clear and convincing evidence, that granting permanent custody to the agency was in the boys' best interest. We disagree.

{¶ 81} The juvenile court identified the R.C. 2151.414(D)(1) factors it considered in determining that an award of permanent custody to the agency was in the best interest of the children as follows:

> In considering the best interests of the child, the Court considered the following relevant factors pursuant to 2151.414(D)(1): The interaction and interrelationship of the child with his parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child including whether he has been in the Temporary Custody of a public child services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two-month period; his need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of Permanent Custody; and whether any of the factors in Division (E) of Section 2151.414 apply in relation to the parents and child.

{¶ 82} In determining that the boys could not be placed with one of their parents within a reasonable time or should not be placed with their parents under R.C. 2151.414(D)(2)(a), the juvenile court found that the following factors set forth in R.C. 2151.414(E) applied:

> (1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be removed from the parents, the parents have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the home.
>
> (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.
>
> (10) The fathers have abandoned the children.

> (15) The parent has committed abuse as described in section 2151.031 of the Revised Code against the child or caused or allowed the child to suffer neglect as described in section 2151.03 of the Revised Code, and the Court determines that the seriousness, nature, or likelihood of recurrence of the abuse or neglect makes the child's placement with the child's parent a threat to the child's safety.

{¶ 83} The juvenile court explained the reasoning for these findings and its determination that granting permanent custody to CCDCFS was in the boys' best interest under R.C. 2151.414(D)(1) and 2151.414(D)(2) as follows:

> The agency was planning on reunifying the children over the summer of 2019. But during an extended visit in July of 2019, the boys said to the mother that they did not want to be reunified. In response, the mother did not visit the boys for the rest of July, August and September. Eventually, there was one visit scheduled in October of 2019. There have been no visits since that one visit in October.
>
> The father of all three boys, KB Sr.[,] has not done the case plan and has other open court cases with CCDCFS with another woman involving domestic violence and housing.
>
> KB, PB, and AB all attend the Positive Education Program for their schooling and all [have] behavior problems. There was testimony that the mother did not manage their behavior problems before they were removed, and concerns about whether she could or would manage these behaviors if they were returned. The Court has concerns based on the fact that the mother closed Family Preservation Services which would have benefitted the children who need help developing coping skills. Ms. Gilbert, a social worker at the Cleveland Christian Home[,] testified that she would have helped with coping skills for the children and resume writing and vocation skills for BS. The Mother did not let this happen.
>
> The three boys do not wish to be reunified. This is the single most important factor in the Court's decision to grant Permanent Custody of these three children.
>
> * * *
>
> The Court has done two in-camera interviews with the children over the course of this case. The most recent in-camera interview of all four

> children was compelling, and the Court has serious concerns about their mental health and/or emotional stability because they have been through so much.
>
> The Court notes that the mother's compliance with the case plan is not a significant factor in the outcome of this case. However, based on the testimony and conduct in court, it is not apparent to this Court that the mother has benefited from parenting and/or anger management. Additionally, the Court does have concerns with the mother's complete lack of provisions for these children, and the social worker's apparent lack of concern over that fact and her failure to visit the mother's house since May of 2019 while continuing to state that the housing was acceptable and recommending reunification.
>
> Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for Legal Custody of the child. There are no Motions for Legal Custody of the child to an extended family member pending before the Court.
>
> The Guardian ad litem recommends that Permanent Custody is in the best interest of the three boys.

{¶ 84} Mother contends that "[w]hatever problem CCDCFS had with [Mother's] reaction to the boys not wanting to see her in July 2019 could have been solved through [f]amily [p]reservation." However, instead of working through the issue and attending the family counseling to which the family had been referred, Mother became upset and (1) discontinued visitation with them, visiting the boys only once or twice from mid-July through mid-November 2019, and (2) terminated family preservation services for both herself and her children. Although Mother argues that she discontinued family preservation services only after learning that the agency had filed its September 2019 motion for permanent custody, Gilbert testified that Mother informed her that she had decided to let the children stay in foster care and no longer needed services a month earlier, in August 2019.

{¶ 85} As of the time of the hearing, P.B. and A.B. had been in agency custody for nearly two-and-one-half years and K.B. had been in the custody of the agency for nearly three years. This was the second time the children had been in agency custody. The boys did not meet the requirements of a planned permanent living arrangement and there were no relatives or other persons interested in assuming legal custody of the boys.

{¶ 86} The record reflects that K.B. came into agency custody because Mother was unable to manage his behavior problems and, at that time, did not want him to come home (and told him she did not want him to come home). The record further reflects that there was existing strife between Mother and K.B. and Mother and P.B. and that all of the boys have continuing behavior issues. Mother had not shown that she could or would manage these behavior issues appropriately if the children were to return home.

{¶ 87} Following careful consideration of the testimony presented at the permanent custody hearing and the transcripts of the juvenile court's in camera interviews of the children, we find that competent, credible, clear and convincing evidence supports the juvenile court's findings under R.C. 2151.414(E)(1), (4) and (10)[13] and R.C. 2151.414(D)(2)(a)-(d), mandating a finding that permanent custody was in the boys' best interest.

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[13] It is not clear from the juvenile court's decision as to which parent or parents its finding under R.C. 2151.414(E)(15) relates. To the extent this finding relates to Mother, it is not supported by clear and convincing evidence in the record.

{¶ 88} Even if, however, we were to find that there was insufficient evidence to mandate a finding that permanent custody was in the children's best interest under R.C. 2151.414(D)(2), we cannot say that the trial court abused its discretion in weighing the relevant factors under R.C. 2151.414(D)(1), focusing on the children's wishes under R.C. 2151.414(D)(1)(b) and concluding that granting permanent custody to the agency was in the boys' best interest.

{¶ 89} Mother argues that this case is similar to this court's decision in *In re D.F.*, 8th Dist. Cuyahoga No. 108055, 2019-Ohio-3046. In that case, this court reversed a decision of the juvenile court terminating a mother's parental rights and granting permanent custody of seven of her minor children to CCDCFS. Although the children's mother had completed all of the programming required of her and had secured suitable housing that would accommodate all of her nine children, the agency was critical of the mother's parenting skills and questioned her ability to "manage," appropriately discipline and supervise all of her children and to address their "special needs" and "developmental delays." *Id.* at ¶ 42-43, 45, 47, 50, 54. In reversing the juvenile court, this court noted that the agency had allowed the mother to maintain custody of her two youngest children, that all of the children had a strong, loving relationship with their mother and each other, that there was no evidence that the children had were in any danger when they were with mother and that there was no evidence that the children had any significant mental or physical disabilities. *Id.* at ¶ 46, 48-49, 53-54. Concluding that the only R.C. 2151.414(D)(1) factor that "could have conceivably weighed in favor of permanent custody" was the

custodial history of the children, this court held that the agency had not shown by clear and convincing evidence that termination of the mother's parental rights was in the children's best interest and that the juvenile court had abused its discretion in granting the agency's motion for permanent custody. *Id.* at ¶ 38, 56.

{¶ 90} In *In re D.F.*, there was no issue regarding the children's wishes. It was undisputed that all of the children had a strong bond with their mother and had expressed a strong, consistent desire to be reunified with their mother. *Id.* at ¶ 38-39. There is no such evidence in this case. In this case, the juvenile court stated that the fact that "[t]he three boys do not wish to be reunified * * * is the single most important factor in the Court's decision to grant Permanent Custody of these three children" to the agency.

{¶ 91} Likewise, in *In re D.F.*, there was no issue as to the mother's commitment to her children. In this case, however, Mother terminated family preservation services designed to facilitate reunification and assist the children and told Gilbert that she had decided to have the children remain in foster care. Finally, in *In re D.F.*, although the guardian ad litem had recommended that permanent custody of the children be granted to the agency, he later clarified that it was not so much permanent custody he recommended as that the children remain in their current situations because of the length of time they had been out of their mother's custody and due to their "special needs" — of which there was little evidence in the record. *Id.* at ¶ 36. In this case, by contrast, the guardian ad litem clearly and

unequivocally recommended that permanent custody of the boys be granted to the agency.

{¶ 92} Although Mother "completed" most of the services specified in her case plan, "substantial compliance with a case plan" is not, in and of itself, "dispositive" and "does not preclude a grant of permanent custody to a social services agency." *In re J.B.*, 2013-Ohio-1704, at ¶ 90, citing *In re C.C.*, 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360, ¶ 25 (8th Dist.). Simply because a parent completes the terms of a case plan does not mean he or she has achieved the goals of the plan or has substantially remedied the conditions that caused the child to be removed. *In re J.B.* at ¶ 90. '"The issue is not whether the parent has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child's removal.'" *Id.*, quoting *In re McKenzie*, 9th Dist. Wayne No. 95CA0015, 1995 Ohio App. LEXIS 4618, 11 (Oct. 18, 1995). The juvenile court expressly acknowledged in its decision that the mother's compliance with the case plan was "not a significant factor in the outcome of the case."

{¶ 93} Every termination-of-parental-rights case involves the difficult balance between maintaining a natural parent-child relationship and protecting the best interest of a child. However, the "paramount consideration" is always the best interest of the child. *In re J.B.* at ¶ 111. As stated above, only one of the factors set forth in R.C. 2151.414(D)(1) needs to be resolved in favor of permanent custody for the trial court to find that granting permanent custody to the agency is in the best

interest of the child. *In re A.B.*, 2013-Ohio-3818, at ¶ 17; *In re N.B.*, 2015-Ohio-314, at ¶ 53. Following careful consideration of the testimony presented at the permanent custody hearing and the transcripts of the juvenile court's in camera interviews of the children, we find that competent, credible, clear and convincing evidence supports the juvenile court's finding that the children do not want to be reunified with Mother.

{¶ 94} On the record before us, considering all of the relevant facts and circumstances in this case, we cannot say that the juvenile court abused its discretion in relying on that fact as the "single most important factor" and determining that granting permanent custody to CCDCFS was in K.B., P.B. and A.B.'s best interest under R.C. 2151.414(D(1). Mother's third and fourth assignments of error are overruled. Based on our resolution of Mother's other assignments of error, her fifth assignment of error is moot.

{¶ 95} Judgment affirmed.

It is ordered that appellee recover from 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 Cuyahoga County 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.

EILEEN A. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR