[Cite as *In re C.T.*, 2021-Ohio-2274.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE C.T.	:	
	:	No. 110303
A Minor Child	:	
	:	
[Appeal by B.T., Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: July 1, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD20904262

Appearances:

Michael E. Stinn, *for appellant*.

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

EILEEN A. GALLAGHER, J.:

{¶ 1} Appellant-mother B.T. ("Mother") appeals from the decision of the Juvenile Division of the Cuyahoga County Court of Common Pleas (the "juvenile court") that terminated Mother's parental rights, granted permanent custody of her daughter, C.T., to the Cuyahoga County Division of Children and Family Services

("CCDCFS" or "the agency") and denied Mother's motion for legal custody to the child's maternal aunt. For the reasons that follow, we affirm.

Factual Background and Procedural History

{¶ 2} C.T. was born to Mother and J.S. ("Father") on April 11, 2020. At that time, Mother and Father, who were married, had three other children — a daughter D.T. (d.o.b. 4/6/13), a son R.S. (d.o.b. 1/26/18) and a son M.T. (d.o.b. 11/15/18).

{¶ 3} On April 20, 2020, CCDCFS filed a complaint for abuse and dependency and permanent custody of C.T. and a motion for predispositional temporary custody. The complaint alleged that Mother and C.T. had tested positive for marijuana and cocaine at C.T.'s birth and that Mother and Father had substance abuse and mental health issues they had failed to address that prevented them from providing appropriate care for C.T. The complaint further alleged that C.T.'s three siblings had been adjudicated neglected and had been committed to the temporary custody of CCDCFS due, in part, to Mother's and Father's substance abuse, mental health issues and failure to provide medical care.

{¶ 4} Following a hearing, the juvenile court granted the agency's motion for predispositional temporary custody and committed C.T. to the emergency temporary custody of CCDCFS. C.T. was placed with the foster family with whom her three siblings were then living.

{¶ 5} On May 19, 2020, CCDCFS filed a case plan that required Mother and Father to undergo a substance abuse assessment and psychological evaluation, successfully complete any recommended treatment and aftercare and submit to

random drug screens. In July 2020, D.T. was moved out of the foster home in which she had been living with her siblings.[1]

{¶ 6} On October 15, 2020, the guardian ad litem, who served as the guardian ad litem for R.S., M.T. and C.T., filed his initial report and recommendation relating to C.T. He reported that Mother and Father seemed unwilling or unable to care for their children and that the foster parents had taken great care of the children and had expressed an interest in adopting all of them. At that time, he recommended that permanent custody of all three children be granted to the agency.[2]

{¶ 7} An adjudicatory hearing was held on October 21, 2020. Mother stipulated to the allegations of an amended complaint,[3] and C.T. was adjudicated an abused and dependent child.

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[1] It is unclear from the record why this occurred.

[2] According to his report, the guardian ad litem's recommendation was based on: (1) conversations or meetings with the parents, the CCDCFS caseworker, the children's maternal grandfather and the foster parents; (2) home visits with the children's paternal grandparents, with the children and their foster parents and with Mother's brother and sister-in-law; (3) his review of various court filings and (4) attendance at various hearings in the children's cases.

[3] The amended complaint alleged:

> 1. Mother has a substance abuse issue, specifically cocaine and marijuana, which interferes with her providing appropriate care for the child. On April 11, 2020, the child and mother tested positive for marijuana and cocaine. Mother needs to engage in services to address her substance abuse issue.
> 2. Mother has mental health concerns which she needs to appropriately address her substance abuse issue.
> 3. Mother and father['s], [J.S.'s], three older children were adjudicated neglected and committed to the temporary custody of CCDCFS, due

{¶ 8} In November 2020, Mother's brother and his wife were granted legal custody of D.T. On December 3, 2020, Mother filed a motion for legal custody, requesting that legal custody of C.T. be granted to C.T.'s maternal aunt, H.T. Mother asserted that H.T. "has appropriate housing free from any hazards, has gainful employment, can provide for the basic needs of her niece, and is ready, willing, and able to take legal custody of C.T. immediately." The motion was accompanied by a statement of understanding signed by H.T.

{¶ 9} On December 4, 2020, the guardian ad litem filed a second report in which he recommended that the juvenile court grant permanent custody of R.S. and M.T. to the agency but recommended that C.T. be placed with H.T. The guardian ad litem reported that the parents had not been recently in contact with him or their children but that he had had an opportunity to conduct a home visit and meet H.T.

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in part, to mother and alleged father's substance use, mental health issues and failure to provide medical care. *See* Case No[s.] AD18905412-13 and AD19903996. Motions to modify temporary custody to permanent custody are currently pending as it relates to these children.

4. Father, [J.S.], has a substance abuse issue, specifically cocaine and marijuana, which prevents him from providing appropriate care for the child. Father has failed to engage in services to address his substance abuse issue.
5. Father has mental health concern[s] which he has failed to appropriately address. Father's mental health issues prevent him from providing appropriate care for the child.

Reasonable efforts were made by Cuyahoga County Division of Children and Family Services to prevent removal of the child from the home and removal is in the best interest of the child.

and her children.[4] He indicated that H.T. was employed, that her home was "very appropriate" and that the "only potential problem" involved H.T.'s husband. He reported that H.T. had informed him that she was "going through a divorce," that "there was violence" and that her husband was "in jail." The guardian ad litem indicated that "[i]f and when he is released from incarceration, it would be uncertain what role, if any, he would have with [H.T.] and her biological kids."

{¶ 10} The guardian ad litem stated that he believed C.T.'s placement with H.T. would be in her best interest because "[s]he would be able to be raised by her family." However, he noted that the foster parents had "stated an interest in having all three children" and that "[i]f the Court determines that [C.T.] should continue to be placed with the foster parents * * *, she would do very well there."

The Permanent Custody Hearing

The Proceedings on December 9, 2020

{¶ 11} On December 9, 2020, the case proceeded to a dispositional hearing. The dispositional hearing was a joint hearing on the complaint for permanent custody the agency had filed as to C.T. and a hearing on motions to modify temporary custody to permanent custody the agency had filed as to R.S. (Cuyahoga J.C. No. AD18905413) and M.T. (Cuyahoga J.C. No. AD19903996). At the outset of the hearing, Mother's counsel requested a continuance because Mother was not

[4] In addition to his home visit with H.T., the report indicates that the guardian ad litem had an additional telephone call with one of the foster parents and attended two additional hearings after he filed his October 15, 2020 report.

present. The juvenile court denied the request. Father was also not present for the hearing.

Testimony of CCDCFS Caseworker

{¶ 12} CCDCFS caseworker Aimee Shipman testified on behalf of the agency at the permanent custody hearing. Shipman stated that the agency had been involved with the family since 2018 and that she had been assigned to the family's cases beginning in March 2019.

{¶ 13} Shipman detailed the family's history with the agency. She stated that, due to concerns regarding their parents' substance abuse, D.T. and R.S. were adjudicated neglected and committed to the protective supervision of the agency in October 2018.

{¶ 14} Shipman testified that in November 2018, M.T. was born "severely premature" and had numerous medical issues, including continuing lung and respiratory issues, related to his premature birth. She stated that the agency was granted emergency custody of M.T. in April 2019 when the hospital was ready to discharge him due to his parents' continuing substance abuse and mental health issues and M.T.'s medical needs. In May 2019, the agency was granted emergency custody of D.T. and R.S. In July 2019, the agency was granted temporary custody of M.T. In December 2019, the agency was granted temporary custody of D.T. and R.S.

{¶ 15} Shipman testified that when the agency first became involved with the family, the agency developed a case plan for the parents to assist them in addressing their substance abuse and mental health issues. Shipman indicated that

Father's drug of choice was marijuana and that Mother's drugs of choice were marijuana and cocaine. The case plan required Mother and Father to undergo substance abuse assessments and psychological evaluations, successfully complete any recommended treatment and aftercare and submit to random drug screens. The permanency goal at that time was reunification. Shipman stated, however, that neither parent ever made any significant progress on any of the case plan objectives.

{¶ 16} With respect to Father, Shipman testified that the agency made referrals in August 2019 for Father to complete substance abuse and mental health assessments, but that he never completed the assessments and had last submitted to a drug screen in November 2019. Shipman indicated that, to her knowledge, Father was living in his own apartment with a roommate in Cleveland. She stated that Father had never allowed the agency to view the apartment and had informed her that it was not appropriate for the children. Shipman stated that the agency had been unable to reach Father since July 2020.

{¶ 17} With respect to Mother, Shipman testified that Mother had told her that she had previously completed services at Community Actions Treatment Center ("CATS") and wanted to return there for her case plan services. Shipman stated that Mother started with CATS in May 2019 but was discharged in June 2019 due to lack of attendance. The agency made other referrals for Mother to Catholic Charities, Matt Talbot and Recovery Resources for substance abuse and mental health assessments and services. In November 2019, Mother scheduled an assessment with Recovery Resources but never completed the assessment.

{¶ 18} Shipman testified that Mother later informed her that she was interested in completing an assessment and receiving services through MetroHealth Medical Center because that was where she was going for prenatal care during her pregnancy with C.T. Shipman stated that she had received a letter the morning of the hearing from Mother's counsel, indicating that Mother had been receiving mental health services through MetroHealth Medical Center since October 2020, but that she had not received a medical release from Mother to allow her to confirm this. Shipman stated, however, that even if Mother had recently begun receiving mental health services, it would not change the agency's assessment of whether permanent custody of the children was appropriate because Mother had, in the past, engaged in services for a short period of time but was then discharged because she had stopped engaging in services.

{¶ 19} With respect to Mother's continuing substance abuse issues, Shipman testified that Mother had been asked to submit to random drug screens approximately once a week. She stated that the last time Mother had submitted to drug screen was in November 2019 and that, at that time, Mother had tested positive for marijuana. Shipman indicated that Mother has acknowledged to her that she has a substance abuse problem. She testified that Mother had told her that she had been "clean and sober before in the past" and "wants to do it again" but that Mother "just doesn't follow through."

{¶ 20} Shipman stated that when the agency first became involved with the family, Mother was living with her parents but that, in May 2020, Mother informed

her that she was living with Father in his apartment. Shipman indicated that she was unsure, as of the date of the hearing, whether Mother was still living with Father or was living with her parents. Shipman testified that when she was last in Mother's parents' home, she had observed that the home had adequate space for, and could serve the basic needs of the children, but that when D.T. and R.S. had previously lived in that home, they were neglected, their medical needs were not being met and Mother's mental health and substance abuse impacted her ability to parent.

{¶ 21} With respect to visitation, Shipman testified that from approximately May 2019 through January 2020, Mother and Father visited regularly with D.T., R.S. and M.T. In January 2020, Mother began cancelling visits. Shipman indicated that Mother told her she had cancelled one visit because she had been unable to make cupcakes for R.S.'s birthday and did not want to come to the visit without the cupcakes and cancelled another visit because she had a cold and, given M.T.'s health issues, did not want to attend a visit with a cold. Between January and March 2020, the parents had one visit with the children.

{¶ 22} After the pandemic hit in March 2020, the family began having weekly virtual visits with the children. Shipman stated that the virtual visits consisted of two-hour FaceTime calls the foster parents set up on their television so the parents could see the entire room at once, e.g., so that the parents could see the children playing and C.T. in her swing, and the children could see a large image of their parents as they communicated with them. These virtual visits continued regularly until D.T. was moved to a different home in July 2020. The parents then

continued to visit virtually with D.T., but did not visit with the younger three children. Shipman testified that when she raised the issue of visiting the other children with Mother, Mother told her that since they were "unable to speak to her," "there was no point in visiting with them."

{¶ 23} Shipman testified that she spoke with the parents multiple times about the importance of following through with case plan services if they wished to reunify with their children. Shipman stated that although the parents repeatedly told her they understood, they did not comply with services and did not meet any objectives of the case plan.

{¶ 24} Shipman indicated that R.S., who was nearly three at the time of the hearing, was "globally delayed" by approximately nine months and that it was "unknown" whether he would eventually "catch up." She indicated that R.S. was enrolled in the Bright Beginnings program and received occupational therapy, physical therapy and speech therapy and had made "great progress" since he first came into agency custody. Although Mother was kept apprised of R.S.'s services and development, she did not take any steps to participate in any of his services. Shipman noted that there were some obstacles to Mother's participation in services, e.g., Mother lacked transportation, the foster parents lived two-and-a-half hours away and Mother had stated she was unable to download Zoom on her cell phone to participate in services offered via Zoom, but that alternate arrangements could have been made for Mother to participate in at least some of his services if she had shown an interest in doing so.

{¶ 25} Shipman testified that M.T., who was then two years old, has "a lot of medical needs" as well as developmental delays due to his premature birth, but was doing "very well." She stated that M.T. wears glasses and a patch to address vision problems and is, at times, "kind of like a bull in a china shop" due to his eyesight. She indicated that M.T. was also enrolled in the Bright Beginnings program and was receiving occupational therapy, physical therapy and speech therapy. Shipman stated that although Mother had been invited to doctors' appointments and had the opportunity to engage in services with M.T., she had not done so.

{¶ 26} Shipman stated that C.T., who was then eight months old, did not have any known special needs, health issues or delays at that time.

{¶ 27} Shipman testified that from the time the children were taken into agency custody, C.T., M.T. and R.S. had been living together in the same foster placement, a "country home," where all their needs are being met. She stated that C.T., M.T. and R.S. are "very bonded" to one another, that the children play together and that C.T.'s "whole face lights up" when her brothers talk to her or play with her. Shipman testified that the foster family is "very bonded to the children" and that the foster parents have been "very open" with Mother. Shipman stated that when C.T. was born, Mother called the foster parents and asked them if they would take C.T. and keep all of her children together. Shipman indicated that the foster home was a "licensed to adopt" foster home and that if the agency was granted permanent custody, the placement would "stay the same."

{¶ 28} Shipman stated that the foster parents' children "respond very quickly to the needs of the younger children," e.g., helping out with feeding or changing diapers. She stated that the foster parents are "great" with the children, are "very attentive" to the children and "stay on top" of all the children's appointments and services. She testified that the foster parents continued to facilitate a relationship between R.S., M.T. and C.T. and their older sister, D.T. after she left the foster home.

{¶ 29} Shipman explained that the agency believed permanent custody was in C.T.'s best interest because "the parents have had two years ultimately to do their case plan services" and had not made any progress on their case plan services. She also noted that C.T. is "very bonded with her siblings" and that "it would be in their best interest to all be placed up for adoption together." Shipman indicated that the agency "likes to keep children within their family[,] whether it be with a relative or it be with their own parents," but that it also likes "to keep the siblings together."

{¶ 30} With respect to relatives who had been considered as a possible placement or legal custodian for the children, Shipman testified that when the agency sought emergency custody of D.T. and R.S. in May 2019, the children's paternal grandparents offered to take them, but were denied by the agency due to substance abuse issues. She indicated that the maternal uncle and aunt who were granted legal custody of D.T. initially stated that they were interested in taking all four children but, after a weekend visit, decided they did not want to take the

younger three children, indicating that, due to C.T.'s needs as an infant and the other children's special needs, they thought it best for them just to take D.T.

{¶ 31} Shipman testified that in May 2019, H.T., C.T.'s maternal aunt, expressed an interest in adopting D.T., R.S. and M.T. At the time, however, H.T. was living in a two-bedroom apartment in Cleveland with four children of her own and could not be approved for placement due to inadequate space.

{¶ 32} Shipman testified that H.T. was again brought to the agency's attention as a possible placement for C.T., M.T. and R.S. in November 2020. By that time, H.T. and her four children had moved into a three-bedroom apartment. Shipman indicated that a home study was completed on H.T., that her home was "beautiful" and "appropriate" and that she had a "good job," but that the agency could not recommend her placement due to a "long history of domestic violence" and concerns regarding her "decision making" and ability to "self-protect" the children.

{¶ 33} Shipman explained that H.T. had had "multiple cases" opened with CCDCFS from 2016 to January 2020. According to Shipman, these cases involved incidents where H.T.'s children witnessed domestic violence against H.T. by her boyfriend/husband, L.S.,[5] with whom she shared two children. Shipman stated that some of the referrals were substantiated, some were unsubstantiated, some were

[5] H.T. and L.S. married in July 2017.

indicated and there was at least one that could not be located. Despite the multiple referrals, no cases were filed in juvenile court relating to H.T. or any of her children.

{¶ 34} Shipman described an incident in December 2019 in which the agency received a referral after one of H.T.'s children had called Mother and asked Mother for help because L.S. was attacking H.T. Mother allegedly went over to help her sister, and H.T. and L.S. later attempted to press charges against Mother related to the incident. Shipman stated that although H.T. was the victim in these domestic violence incidents, these incidents and, in particular, H.T.'s decision-making related to these incidents raised concerns for the agency about placing C.T. with H.T. because she would be unable to self-protect. Shipman stated that, to her knowledge, H.T. had not obtained a civil stalking protection order against L.S. and that, although H.T. reportedly had divorce papers prepared, the papers had not been signed or filed. Shipman stated that it was her understanding that L.S. did not reside with H.T., but that L.S. had been at her residence in January 2020 during a domestic violence incident.

{¶ 35} Shipman testified that H.T. had been offered domestic violence services for herself but had not completed them. She stated that H.T. had also been offered services for her children to address the domestic violence they had witnessed. Shipman explained that before the agency would be open to considering placement of C.T. with H.T., H.T. would need to complete domestic violence classes and show that she was able to protect herself and her children, e.g., by getting away

from L.S., filing for a protection order against L.S., filing for divorce and having no incidents of domestic violence in the home for a period of time.

{¶ 36} Shipman testified that before C.T. was born, H.T. and her children attended a couple of the parents' in-person visits with D.T., R.S. and M.T. because D.T. liked seeing her cousins. However, H.T. and her children had never met or visited C.T.

{¶ 37} With respect to the parents' wishes, Shipman stated that, prior to November 2020, when H.T. came forward as a possible custodian, Mother had told her that she wanted to keep her children together and wanted to keep them in the foster parents' home because "they were doing such a great job to care for the children." Shipman stated that she had not spoken with Mother regarding her desire to have H.T. take custody of C.T. because she had not been able to reach her but that she had recently received an email from Mother in which Mother indicated that she was "mad" at Shipman because D.T. was no longer with the foster parents and her children were being separated. In that email, Mother indicated that she now wanted R.S. to go to her brother and his wife, that she wanted M.T. and C.T. to go to H.T. and that, if H.T. could not take M.T., she wanted M.T. to go to another sister.

{¶ 38} Shipman stated that in response to Mother's email, she spoke with Mother's brother and H.T. She indicated that Mother's brother was not interested in taking R.S. and that H.T. was not interested in taking M.T. because she did not believe she could meet his special needs. Shipman stated that she had never been given any contact information for Mother's other sister.

{¶ 39} The parents presented no witnesses with regard to R.S. and M.T.'s cases at the permanent custody hearing, but Mother's counsel requested a continuance with regard to C.T.'s case to allow H.T. to appear and testify. The juvenile court granted the continuance.

The Guardian Ad Litem's Recommendation as to R.S. and M.T.

{¶ 40} At the conclusion of the agency's case as to R.S. and M.T., the guardian ad litem placed his recommendation on the record as it related to R.S. and M.T. He stated that the foster parents were "doing an excellent job with both boys" and that the boys "seem[ed] to be flourishing" with their foster family. He recommended that the agency's motion be granted and that the boys "stay where they are right now."

Statements by the Foster Parents

{¶ 41} After the parties presented their closing arguments as to R.S. and M.T., the juvenile court gave the foster parents an opportunity to make a statement. The foster parents stated that they have five children (ages 23, 20, 18, 13 and 11) and that their three youngest children currently live at home. The foster parents explained how M.T. was first placed with them after he was discharged from the hospital, then D.T. and R.S. and finally, C.T. The foster parents expressed their love for the children, described their bonding with the children and detailed how the children had developed and thrived while under their care. No objection was raised to the foster parents' statements.

The Juvenile Court's Decision to Grant Permanent Custody of R.S. and M.T. to CCDCFS

{¶ 42} At the conclusion of the December 9, 2020 hearing, the juvenile court terminated the prior orders granting temporary custody of R.S. and M.T. to CCDCFS, terminated the parental rights of Mother and Father as to R.S. and M.T. and committed R.S. and M.T. to the permanent custody of CCDCFS.

Continuation of the Dispositional Hearing as to C.T. – Proceedings on January 27, 2021

{¶ 43} The balance of the dispositional hearing relating to C.T. was held on January 27, 2021. Father, once again, failed to appear for the hearing. Mother, however, was present for the January 27, 2021 hearing.

Testimony of Maternal Aunt, H.T.

{¶ 44} At the January 27, 2021 hearing, Mother presented the testimony of her sister, H.T., who confirmed that she wished to become the legal custodian of C.T. H.T. testified that she had been interested in obtaining custody of D.T. and R.S. after they had been removed from Mother's care in 2019 but, at the time, she did not have enough room in the two-bedroom apartment she shared with her four children to do so. H.T. stated that in November 2020, after Mother reached out to her, she contacted Mother's counsel and inquired about obtaining custody of C.T.

{¶ 45} H.T. testified that she is employed as the Assistant Director of Environmental Services for a nursing home and lives in a three-bedroom home with her four children, ages 12, 11, 8 and 7. H.T. discussed her relationship with L.S. and the incidents of domestic violence of which she had been a victim. H.T. testified that

she and L.S. became a couple in or around July 2011 and that L.S. was the father of her two youngest children. H.T. explained that she and her children had been involved with CCDCFS several times in connection with altercations she had had with L.S., but that the cases were closed quickly, and CCDCFS had never taken a case to court involving her or her children.

{¶ 46} According to H.T., the agency first became involved with H.T. and her children in or around June 2017, after H.T. and L.S. got into a verbal altercation at a school. H.T. stated that following the incident, L.S. took anger management classes and she took domestic violence classes until she and L.S. married in July 2017 and relocated to Wayne County.

{¶ 47} H.T. testified that the first incident of physical abuse occurred on March 5, 2018 when she and L.S. lived in Wayne County. She indicated that prior to that time there had been just "verbal arguments," which had occurred outside the presence of the children. By March 2018, L.S. had become "addicted to crystal meth." H.T. stated that she left L.S. the following day.

{¶ 48} H.T. testified that domestic violence charges were filed against L.S. in 2018 for unlawful restraint but that nothing ever happened with the case. H.T. stated that she was supposed to receive a summons to testify in the case but that she never received it and was unaware she needed to appear in court.

{¶ 49} H.T. testified that after she left L.S. in March 2018, he would continue to harass her, follow her and attempt to gain entry into her home. She stated that when this occurred, she told her children to call the police while she tried to block

the entryway and "protect the kids." H.T. testified that in 2019, she called the police "several times" due to L.S.'s harassment and attempts to forcibly enter her apartment. In December 2019, H.T. called the police following an altercation with L.S. in her hallway.[6] H.T. stated that she pressed charges and that the prosecutor informed her that a no contact order had been entered when L.S. pled guilty to a misdemeanor assault charge in March 2020. H.T. testified that she did not know whether L.S. was in jail or on probation or whether the no contact order was still in effect. H.T. stated that L.S. had not visited with his children due to the no contact order and that she would never voluntarily have contact with L.S. again because "he has violent tendencies" and she "ha[d] no trust that it wouldn't happen again." Although H.T. initially indicated that her children were "not at risk" from L.S., when asked whether L.S. might "hurt" her children, she responded, "As of right now I'm not sure to be honest with you. I don't know. * * * Because he's not in his right state of mind. He's still using."

{¶ 50} H.T. testified that she had never sought a temporary protection order or civil stalking protection order on her own and did not know that she could seek one. She stated that L.S. did not know where she lived and had not attempted to contact her since she had moved. H.T. testified that she was "trying to file for

[6] It is unclear whether this December 2019 incident was the same December 2019 incident in which Mother allegedly intervened. H.T. denied that her children had called Mother to intervene in that incident and denied that she or L.S. had threatened to press charges against Mother related to that incident. H.T. claimed that Mother came over an hour after L.S. had left, after police forced him out of H.T.'s apartment.

divorce" but could not afford the filing fee. She stated that she planned to use her tax refund to pay the filing fee and move forward with the divorce.

{¶ 51} H.T. testified that in November 2020, she decided to seek legal custody of C.T. after Mother told her that she needed to find a permanent placement for her children and was "hoping the kids could be with family." H.T. acknowledged that she did not have a relationship with C.T., that she had never visited C.T. (due, in part, to COVID restrictions) and that she had last visited R.S. and M.T. in December 2019. H.T. testified that she does not know anything about C.T.'s routines, medical needs, bonding or current placement and could not provide any information regarding C.T., M.T. and R.S.'s relationship with one another other than to "guess that they're close." H.T. indicated, however, that she was willing and able to take the steps necessary to develop a relationship with C.T. and care for her.

{¶ 52} Although H.T. denied that becoming C.T.'s legal custodian would put a "strain" on her family, she stated that she was interested in obtaining legal custody only of C.T., not her older brothers R.S. and M.T. H.T. explained:

> I'm busy, you know, I have my own life. * * * I work[], I have four kids. I don't have an[y] available time to be honest. Working full time and then coming home and taking care of four kids with homework and dinner, baths, it keeps you busy.
>
> Q. Would it put a strain on your family as it is to add a child that's less than a year old into that mix?
>
> A. No. Trust me once you have four, it's like a daycare.
>
> * * *
>
> Q. Okay. But you're only interested in legal custody of [C.T.], is that correct?

A. Yes.

Q. Why not the other children?

A. As you know, I have four children of my own and I was — I am under the impression that [M.T.] has medical conditions, same with [R.S.] and I don't want to take on responsibility if I'm not able to meet fully their needs.

Q. But wouldn't, you know, if you have four children if you just add a couple more, wouldn't that be just like a daycare?

A. It would be if they're perfectly healthy. I know children with needs would need dedicated time and I really wouldn't want my kids feeling neglected because I'm taking responsibility of two more children that have special needs.

* * *

[M.T.], he has hydrocephalus. I know that leads to a lot of doctor appointments. I know there for a short time that I knew of he had breathing problems or problems with his lungs. I know he was in the hospital a lot. I'm not exactly aware for what, but I know he had a lot of medical conditions that kept him in and out of the hospital. And as far as [R.S.] I was under the impression that he's globally challenged and has a lot of physical like therapy and stuff.

{¶ 53} H.T. stated that if it were determined that C.T. had special needs, she could make the necessary adjustments within her family to meet those needs given the "flexibility" of her job and the support of her brother and sister-in-law (who had custody of D.T.). She indicated, however, she was not in a position to care for two (or more) young children with special needs.

Recommendation of Guardian Ad Litem as to C.T.

{¶ 54} After H.T. testified, the guardian ad litem set forth his recommendation with respect to C.T. on the record. He stated that he believed it

would be in C.T.'s best interest to live with H.T. because C.T. would then "stay within the family" and be raised by a family member. Upon further inquiry by the juvenile court and cross-examination by the agency, he described the case as "gut-wrenching" but stated when there is an "opportunity to keep a child within the family, I think we should do that." As he explained:

> If there's a way that I can have my ward go back to the biological family and there's someone who is ready, willing and able to step up to the plate and someone at the very minimum has a job and has a place, has a home, has an appropriate home. * * * [I]t's something I rarely see, then I would recommend that the child go with biological family.

{¶ 55} The guardian ad litem acknowledged that C.T. and her brothers were "very close," that the foster parents were doing "a very good job," that her "only concept of family" was life with her siblings and foster parents and that he had never observed H.T. or her children interact with C.T. However, he stated that he, nevertheless, believed that it was in C.T.'s best interest to be placed with H.T. "[b]ecause [C.T.] is so young and [H.T.] is her family."

The Juvenile Court's Decision to Grant Permanent Custody of C.T. to CCDCFS

{¶ 56} On January 27, 2021, the trial court ruled from the bench, terminating Mother's and Father's parental rights as to C.T. and awarding permanent custody of C.T. to the agency. In February 2021, the juvenile court issued a written journal entry setting forth its findings. The juvenile court found, by clear and convincing evidence, that C.T. could not be placed with one of her parents within a reasonable time or should not be placed with either parent pursuant to R.C.

2151.414(E), specifically, R.C. 2151.414(E)(1), (2), (4), (10), (11), (15) and (16). The juvenile court further found, after considering the factors set forth in R.C. 2151.414(D)(1) and "all of the other dispositional alternatives," that it was in C.T.'s best interest to be placed in the permanent custody of the agency.

{¶ 57} The juvenile court also found that "reasonable efforts were made to prevent the removal of the child from the home, or to return the child to the home and finalize a permanency plan, to wit: reunification. Relevant services provided to the family include: Mother was referred for Substance Abuse and Mental Health Services. Father was referred for Substance Abuse and Mental Health Services." The juvenile court denied Mother's motion for legal custody to H.T.

{¶ 58} Mother appealed, raising the following three assignments of error for review:

> Assignment of Error No. 1: The trial court erred in denying B.T.'s motion for legal custody to H.T.
>
> Assignment of Error No. 2: The trial court erred in granting permanent custody of C.T. to Cuyahoga County Department of Children and Family Services.
>
> Assignment of Error No. 3: The trial court committed plain error, to the prejudice of B.T., in permitting the foster caregivers to give unsworn statements.

Law and Analysis

Juvenile Court's Decision to Grant Permanent Custody to CCDCFS

{¶ 59} Mother's first and second assignments of error are interrelated. We, therefore, address them together.

{¶ 60} 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).

{¶ 61} 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).

{¶ 62} As an alternative to an award of permanent custody, a juvenile court may award legal custody of an abused, neglected or dependent child to a nonparent who asks for legal custody or is proposed as a legal custodian in a complaint or motion filed prior to the dispositional hearing. R.C. 2151.353(A)(3). Unlike an award of permanent custody, "[a]n award of legal custody of a child does not divest parents of their residual parental rights, privileges, and responsibilities." *In re C.R.*, 108 Ohio St.3d 369, 2006-Ohio-1191, 843 N.E.2d 1188, paragraph one of the syllabus.

Standard for Terminating Parental Rights and Granting Permanent Custody to CCDCFS

{¶ 63} An agency may obtain permanent custody of a child in two ways. *In re J.F.*, 2018-Ohio-96, 102 N.E.3d 1264, ¶ 44 (8th Dist.), citing *In re E.P.*, 12th Dist. Fayette Nos. CA2009-11-022 and CA2009-11-023, 2010-Ohio-2761, ¶ 22. An agency may first obtain temporary custody of the child and then file a motion for permanent custody under R.C. 2151.413, or an agency may request permanent custody as part of its abuse, neglect or dependency complaint under R.C. 2151.353(A)(4). *In re J.F.* at ¶ 44. In this case, the agency sought permanent custody for C.T. as part of its complaint.

{¶ 64} When proceeding on a complaint with an original dispositional request for permanent custody, the juvenile court must satisfy two statutory requirements before a child can be placed in the permanent custody of a children's services agency. *In re J.F.* at ¶ 48. R.C. 2151.353(A)(4) provides that, if a child is adjudicated an abused, neglected or dependent child, the juvenile court may "[c]ommit the child to the permanent custody of a public children services agency," if the court determines (1) "in accordance with [R.C. 2151.414(E)] that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent" and (2) "in accordance with [R.C. 2151.414(D)(1)] that the permanent commitment is in the best interest of the child."

{¶ 65} "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.

{¶ 66} "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.*, 2015-Ohio-1028, at ¶ 8. "It is intermediate, being more than a mere preponderance, but not to the extent of such

certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal." (Emphasis deleted.) *Cross* at 477.

Determination that C.T. Could Not Be Placed with Mother within a Reasonable Time or Should Not Be Placed with Mother

{¶ 67} When deciding whether permanent custody should be awarded to the agency, the juvenile court was first required to determine whether C.T. could not be placed with one of her parents within a reasonable time or should not be placed with either parent in accordance with R.C. 2151.414(E). *See* R.C. 2151.353(A)(4). In making such a determination, the juvenile court must consider "all relevant evidence," including specific factors enumerated in R.C. 2151.414(E). If the juvenile court finds by clear and convincing evidence that at least one of the enumerated factors in R.C. 2151.414(E) exists as to each of the child's parents, the juvenile court must find that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(E).

{¶ 68} In this case, the juvenile court found, by clear and convincing evidence, that R.C. 2151.414(E)(1), (2), (4), (10), (11), (15) and (16) applied, as follows:

> (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 placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. *Both parents have not engage[d] in, completed, or benefitted from case plan services. Neither parent has provided a urine screen for the Agency in over a year, despite continuous requests to do so.*

(2) The chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year.

(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 parent has abandoned the child. *Parents stopped visiting with the child in July 2020.*

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child. *Sibling placed in legal custody of relative AD 18905412. Siblings placed in Permanent Custody of Agency in AD 18905413 and AD 19903996.*

(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.

(16) Any other factor the Court finds relevant: *Neither parent was present for the dispositional hearing on December 9, 2020.*

(Emphasis sic.)

{¶ 69} Based on its findings under R.C. 2151.414(E)(1), (2), (4), (10), (11), (15) and (16), the juvenile court was required to find that C.T. could not be placed with either of her parents within a reasonable time or should not be placed with

either parent. *See, e.g., In re C.H.*, 8th Dist. Cuyahoga Nos. 82258 and 82852, 2003-Ohio-6854, ¶ 58, citing *In re Glenn*, 139 Ohio App.3d 105, 113, 742 N.E.2d 1210 (8th Dist.2000). Mother does not challenge any of the juvenile court's findings under R.C. 2151.414(E) or its determination that C.T. could not be placed with Mother within a reasonable time or should not be placed with Mother. Mother challenges only the juvenile court's determination that granting permanent custody of C.T. to the agency was in C.T.'s best interest. However, as detailed above, the record contains competent, credible, clear and convincing evidence supporting the juvenile court's determination under R.C. 2151.414(E) that C.T. could not be placed with one of her parents within a reasonable time or should not be placed with either parent.

Best Interest of the Child

{¶ 70} The best-interest determination focuses on the child, not the parent. *In re N.B.*, 2015-Ohio-314, at ¶ 59. In determining whether permanent custody is in the best interest of the child under R.C. 2151.414(D)(1), the juvenile court must consider "all relevant factors," including, but not limited to: (1) 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; (2) 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; (3) the custodial history of the child; (4) the child's need for a legally secure permanent placement and whether that type of placement can be achieved without

a grant of permanent custody to the agency and (5) whether any of the factors set forth in R.C. 2151.414 (E)(7) to (11) apply.[7]

{¶ 71} The juvenile court is required to consider each factor listed in R.C. 2151.414(D)(1); however, 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. Further, only one of the factors set forth in R.C. 2151.414(D)(1) need be resolved in favor of permanent custody to support a finding that permanent custody is in a child's best interest and to terminate parental rights. *In re J.C-A.*, 8th Dist. Cuyahoga No. 109480, 2020-Ohio-5336, ¶ 80; *In re A.B.*, 8th Dist. Cuyahoga No. 99836, 2013-Ohio-3818, ¶ 17; *In re N.B.* at ¶ 53.

{¶ 72} The juvenile court has considerable discretion in weighing the R.C. 2151.414(D)(1) factors. We review a juvenile court's determination of a child's best interest for abuse of that discretion. *In re P.B.*, 8th Dist. Cuyahoga Nos. 109518 and 109519, 2020-Ohio-4471, ¶ 76, citing *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47; *see also In re J.B.*, 2013-Ohio-1704, at ¶ 97 ("[T]he discretion that a trial court has in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned."). A juvenile court abuses its discretion where its

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[7] These factors include: whether the parent has been convicted of certain crimes, has withheld medical treatment or food from the child, has placed the child a substantial risk due to the parent's drug or alcohol use and rejected treatment, has abandoned the child or had had its parental rights terminated with respect to a sibling of the child. R.C. 2151.414(E)(7)-(11).

decision is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore,* 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). A decision is unreasonable if there is "'no sound reasoning process that would support that decision.'" *In re C.D.Y.*, 8th Dist. Cuyahoga No. 108355, 2019-Ohio-4987, ¶ 8, quoting *Baxter v. Thomas*, 8th Dist. Cuyahoga No. 101186, 2015-Ohio-2148, ¶ 21. A decision is arbitrary if it is made "'without consideration of or regard for facts [or] circumstances.'" *In re C.D.Y.* at ¶ 8, quoting *Black's Law Dictionary* 125 (10th Ed.2014).

{¶ 73} In its February 2021 journal entry, the juvenile court identified each of the relevant factors it considered in determining that an award of permanent custody to the agency was in C.T.'s best interest of C.T. and set forth specific factual findings explaining its evaluation of those factors as follows:

> With respect to the best interest of the child, the Court has considered the following factors under O.R.C. 2151.414(D)(1):
>
> (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. *The Child was placed in a foster home shortly after birth and has remained there since. This is the only home the child knows and her two brothers are placed there as well. Child is extremely bonded with Caregivers and with her siblings in the home. Maternal Aunt, [H.T.] (and her kids) have never met the Child and have no bond with her at all.*
>
> (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 temporary custody of a public children 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. *Child has been in Agency custody since shortly after birth and has remained there since.*
>
> (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. *Child deserves a safe and stable environment where her needs can be met. This cannot be achieved with Mother or Father as they have failed to engage in, complete, and benefit from case plan services that led to the removal of the child.*
>
> (e) Whether any of the factors in [R.C. 2151.414 (E)(7) to (11)] apply in relation to the parents and child. *(E)(10) and (E)(11) apply*.

(Emphasis sic.) Following careful consideration of the testimony presented at the permanent custody hearing, we find that competent, credible, clear and convincing evidence supports these findings.

{¶ 74} Mother contends that the juvenile court abused its discretion in denying her motion for legal custody to H.T. and granting permanent custody of C.T. to CCDCFS because (1) it did not give "any consideration to B.T.'s wishes," (2) did not appear to have given H.T.'s familial connection to C.T. and her "uncontroverted testimony" that she was willing and able to care for C.T. "much, if any, weight" and (3) gave "little to no weight" to the guardian ad litem's recommendation.

{¶ 75} With respect to Mother's claim that the juvenile court did not give "any consideration to Mother's wishes" — even assuming it was required to do so[8]

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[8] The wishes of the biological parents is not one of the factors enumerated in R.C. 2151.414(D)(1) that a court is required to consider in determining what is in a child's best interest in a permanent custody case. It is, however, one of the factors often considered when deciding legal custody. Because there is no "specific test or set of criteria" that must be applied or considered when determining what is in a child's best interest on a motion for legal custody, *In re T.R.*, 8th Dist. Cuyahoga No. 102071, 2015-Ohio-4177, ¶ 48, in legal custody cases, courts often look to the best interest factors set forth in R.C. 2151.414(D) and the best interest factors set forth in R.C. 3109.04(F) as a potential guide

— the record is clear that the juvenile court gave due consideration to whether legal custody of C.T. should be granted to H.T. The juvenile court expressly stated at the permanent custody hearing that, in deciding what was in C.T.'s best interest, it had "taken into consideration all the other dispositional alternatives," including granting temporary custody to the agency and granting legal custody to H.T.

{¶ 76} Citing R.C. 2151.412(H)(2), Mother also argues that "[t]here is generally a statutory preference that a child be placed with relatives when possible" and that the juvenile court should have, therefore, given preference to placing C.T. with H.T. once it was established that H.T. could be an appropriate caregiver. Mother contends that H.T.'s lack of relationship with C.T. was "understandable" given "COVID restrictions [that] prevented in-person visitation" and that the absence of a relationship between them "could be remedied if predispositional temporary custody was continued" and a visitation schedule put in place for H.T.

{¶ 77} R.C. 2151.412(H)(2) addresses the development and review of case plans. That provision states:

> In the agency's development of a case plan and the court's review of the case plan, the child's health and safety shall be the paramount concern. The agency and the court shall be guided by the following general priorities: * * * If both parents of the child have abandoned the child, have relinquished custody of the child, have become incapable of supporting or caring for the child even with reasonable assistance, or have a detrimental effect on the health, safety, and best interest of the

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in determining what is in a child's best interest. *See, e.g., In re J.O.*, 8th Dist. Cuyahoga No. 87626, 2007-Ohio-407, ¶ 11; *In re K.S.*, 12th Dist. Warren Nos. CA2019-01-009 and CA2019-02-015, 2019-Ohio-2384, ¶ 37. One of the factors specified in R.C. 3109.04(F) is "[t]he wishes of the child's parents regarding the child's care." *See* R.C. 3109.04(F)(1)(a).

> child, the child should be placed in the legal custody of a suitable member of the child's extended family.

"By its terms, R.C. 2151.412 applies to case plans and not to permanent custody hearings." *In re C.M.*, 4th Dist. Athens Nos. 17CA16 and 17CA17, 2017-Ohio-9037, ¶ 95. "Although R.C. 2151.412(H)(2) instructs the trial court to prioritize placing children in the legal custody of 'a suitable member of the child's extended family' when developing case plans, there is no such requirement in permanent custody determinations." *In re Tr.T.*, 8th Dist. Cuyahoga No. 106107, 2018-Ohio-2126, ¶ 17, citing *In re J.F.*, 2018-Ohio-96, 102 N.E.3d 1264, at ¶ 41; *see also In re C.H.*, 8th Dist. Cuyahoga No. 103171, 2016-Ohio-26, ¶ 27 ("While it may be preferential * * * that children be placed with an appropriate relative * * * the preference applies only to case plans, not to custody determinations.") (Emphasis deleted.), citing *In re M.W.*, 8th Dist. Cuyahoga No. 96817, 2011-Ohio-6444, ¶ 26.

{¶ 78} The issue before the juvenile court was not whether H.T. was — or could be — a suitable caregiver for C.T. The issue before the juvenile court was what was in the best interest of C.T. The willingness of a relative to care for a child does not alter what a court must consider when determining whether to grant permanent custody. *See, e.g., In re T.H.*, 8th Dist. Cuyahoga No. 107947, 2019-Ohio-3045, ¶ 13; *In re Tr.T.*, 8th Dist. Cuyahoga No. 102071, 2015-Ohio-4177, at ¶ 19; *In re V.C.*, 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991, ¶ 61. A juvenile court need not find, by clear and convincing evidence, that termination of parental rights is the only option or that no suitable relative is available for placement before

granting an agency's motion for permanent custody. *See, e.g., id.*, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, at ¶ 63; *see also In re J.T.*, 8th Dist. Cuyahoga No. 99143, 2013-Ohio-2096, ¶ 16, fn. 1 ("Because the focus is on the best interest of the child, a juvenile court is not required to find by clear and convincing evidence that a relative is unsuitable before granting permanent custody to a proper agency."); *see also In re C.H.*, 2016-Ohio-26, at ¶ 27 (juvenile court was not required to give preferential consideration to father's request that the paternal grandmother be granted custody of the children). However, '"[t]he possibility that a relative could provide a permanent placement for a child by assuming legal custody is relevant to the consideration of the R.C. 2151.414(D)(1)(d) best-interest factor,'" i.e., 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. *In re E.M.B.T.*, 8th Dist. Cuyahoga No. 109479, 2020-Ohio-4308, ¶ 23, quoting *In re J.P.*, 10th Dist. Franklin No. 18AP-834, 2019-Ohio-1619, ¶ 27.[9]

[9] Citing *In re T.H.*, 2019-Ohio-3045, at ¶ 14, *In re Tr.T.*, 2018-Ohio-2126, at ¶ 17, and *In re J.F.*, 2018-Ohio-96, 102 N.E.3d 1264, at ¶ 42, the agency asserts that Mother cannot challenge the juvenile court's failure to award legal custody to H.T.; rather, her challenge is limited to whether the juvenile court's decision to terminate her parental rights was proper. However, because "'[t]he possibility that a relative could provide a permanent placement for a child by assuming legal custody is relevant to the consideration of the R.C. 2151.414(D)(1)(d) best-interest factor, * * * a parent has standing to raise arguments regarding the possibility of a relative assuming legal custody of a child * * * to the extent those arguments challenge the decision to terminate the parent's rights.'" *In re E.M.B.T.* at ¶ 23, quoting *In re J.P.* at ¶ 27, citing *In re S.C.*, 2018-Ohio-2523, 115 N.E.3d 813, ¶ 16 (8th Dist.).

{¶ 79} '"Courts are not required to favor a relative if, after considering all the factors, it is in the child's best interest for the agency to be granted permanent custody.'" *In re S.F.*, 2d Dist. Montgomery No. 28606, 2020-Ohio-693, ¶ 50, quoting *In re A.A.*, 2d Dist. Greene No. 2008 CA 53, 2009-Ohio-2172, ¶ 19. '"The statute does not make the availability of a placement that would not require a termination of parenting rights an all-controlling factor [and] does not even require the court to weigh that factor more heavily than other factors.'" *In re S.C.*, 8th Dist. Cuyahoga No. 102349, 2015-Ohio-2280, ¶ 52, quoting *In re Schaefer* at ¶ 63. Rather, R.C. 2151.414 requires that the juvenile court find the best option for the child based on a weighing of all the relevant factors.

{¶ 80} Likewise, a juvenile court is not compelled to follow the recommendation of the guardian ad litem; the decision of what is in a child's best interest is for the juvenile court upon a consideration of all the evidence presented. *See, e.g.*, *In re M.W.*, 2017-Ohio-8580, 101 N.E.3d 95, ¶ 24 (8th Dist.); *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 34. The record reflects that the juvenile court carefully considered the guardian ad litem's recommendation and probed the basis of his recommendation when questioning him at the permanent custody hearing. Although the guardian ad litem recommended that C.T. be placed with H.T., the record reveals that that recommendation was based on the fact that H.T. was a relative, that she had a nice home and that placing C.T. with H.T. would allow her to be raised by family. However, H.T. and her children had never met C.T., they had no bond with her and H.T. knew very little, if anything, about C.T. other

than that it was believed, at this juncture, that C.T. did not have any special needs. H.T. did not reach out to the agency to inquire about obtaining legal custody of C.T. She contacted Mother's counsel about C.T. only after Mother had reached out to her, shortly before the permanent custody hearing, and told her that she needed to find a permanent placement for her children and wanted them to be with family.

{¶ 81} The juvenile court's decision to grant permanent custody of C.T. to the agency in this case was, no doubt, a difficult one. As the juvenile court pointed out at the permanent custody hearing, H.T.'s willingness to "step up to the plate and accept legal custody" of C.T. was laudable, particularly given that H.T. did not have a relationship with C.T. and did not have a strong relationship with her sister. However, granting legal custody to H.T. would have necessarily removed C.T. from the family that had raised her since birth — the only family she had ever known — including two of her biological siblings, with whom C.T. reportedly had a "very strong" bond. Based on the record before us, we cannot say that the juvenile court acted unreasonably, arbitrarily or unconscionably in in determining that it was in C.T.'s best interest to grant permanent custody to the agency. The record reflects that the juvenile court carefully considered and weighed all of the relevant factors in determining that permanent custody was in C.T.'s best interest.

{¶ 82} "[I]f permanent custody to the agency is in [a child's] best interest, legal custody to [a relative] necessarily is not." *In re V.C.*, 2015-Ohio-4991, at ¶ 61, citing *In re M.S.*, 2015-Ohio-1028, at ¶ 11. Accordingly, the juvenile court did not abuse its discretion in granting permanent custody of C.T. to CCDCFS and denying

Mother's motion for legal custody to H.T. Mother's first and second assignments of error are overruled.

Unsworn Statement by the Foster Parents at the Dispositional Hearing

{¶ 83} In her third assignment of error, Mother argues that the juvenile court committed reversible error by permitting the foster parents to give unsworn statements, which were not subject to cross-examination, at the permanent custody hearing.

{¶ 84} At the conclusion of the permanent custody hearing relating to R.S. and M.T., the children's foster parents each made a statement describing how R.S., M.T. and C.T. came to be in their care, their needs and development and the relationship between the foster family and the children. The foster parents' statements were not made under oath.

{¶ 85} R.C. 2151.424(A) provides, in relevant part:

> If a child has been placed in a certified foster home * * * a court, prior to conducting any hearing pursuant to division (F)(2) or (3) of section 2151.412 or section 2151.28, 2151.33, 2151.35, 2151.414, 2151.415, 2151.416, or 2151.417 of the Revised Code with respect to the child, shall notify the foster caregiver * * * of the date, time, and place of the hearing. At the hearing, the foster caregiver * * * shall have the right to be heard.

{¶ 86} Mother contends that because Shipman testified only that the foster parents' home was a "licensed" home and no evidence was presented that the foster parents' home was a "certified" foster home, the foster parents should not have been permitted to make a statement at the permanent custody hearing under R.C.

2151.424(A). Mother also contends even if R.C. 2151.424(A) gave the foster parents a right to be heard at the permanent custody hearing, it did not give them the right to make unsworn statements.

{¶ 87} Mother, however, did not object to the foster parents' unsworn statements below. Nor did she request an opportunity to cross-examine the foster parents regarding their statements. Accordingly, Mother has forfeited all but plain error. *See, e.g.*, *In re E.C.*, 2020-Ohio-3807, 156 N.E.3d 375, ¶ 55 (8th Dist.); *In re G.W.*, 2019-Ohio-1533, at ¶ 58; *cf. In re G.W.*, 1st Dist. Hamilton Nos. C-190388 and C-190390, 2020-Ohio-3355, ¶ 21, 25 ("[T]he mere failure to have a witness sworn is error that may be waived, and thus, unsworn testimony is competent evidence where the opposing counsel neither requests that the witness be sworn nor makes a timely objection to the testimony.").

{¶ 88} Plain error is limited to those "extremely rare cases" in which "exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a materially adverse effect on the character of, and public confidence in, judicial proceedings." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997); *see also In re E.C.* at ¶ 55. The error must be clearly apparent on the face of the record and must also be prejudicial to the appellant. *Id.* Plain error exists only where the error "seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial

process itself." *Goldfuss* at 122-123. Mother has the burden of demonstrating plain error. *In re E.C.* at ¶ 55.

{¶ 89} In this case, Mother simply asserts that the juvenile court committed plain error in "permitting the caregivers to make unsworn statements concerning the child" at the permanent custody hearing. She does not explain how or why this rises to the level of plain error, i.e., that the claimed error "seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself," and does not offer any authority in support of her assertion. *Goldfuss* at syllabus.

{¶ 90} Mother has not demonstrated that the foster parents' statements affected the outcome of the proceedings or that she was otherwise prejudiced as a result of the foster parents' statements at the permanent custody hearing. The juvenile court did not refer to the foster parents' statements in its decision and there is nothing in the record to otherwise suggest that the juvenile court relied on anything the foster parents said in rendering its decision. All of its findings were based on, and supported by, the sworn testimony of Shipman and H.T. *See, e.g., In re S.F.*, 9th Dist. Summit No. 27908, 2016-Ohio-5213, ¶ 17-21 (father failed to demonstrate that foster mother's unsworn statement under R.C. 2151.424(A) affected the outcome of the proceedings so as to rise to the level of plain error where the juvenile court did not refer to the foster mother's statement in its decision and all of its findings regarding the foster parents were based on the sworn testimony of the caseworker and the guardian ad litem, not anything that the foster mother said);

In re G.D., 9th Dist. Summit No. 27855, 2015-Ohio-4669, ¶ 36-43 (father failed to establish plain error based on foster father's unsworn statement at permanent custody hearing where father could not demonstrate that the juvenile court based its decision on anything foster father said and the juvenile court's findings were "fully supported by the testimony of properly sworn witnesses"). Mother's third assignment of error is overruled.

{¶ 91} 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 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

ANITA LASTER MAYS, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR