[Cite as *In re B.M.*, 2017-Ohio-2893.]

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

IN THE MATTER OF:	:	Case Nos. 16CA3583
	:	16CA3584
B.M. and A.M.H.L.,	:	
	:	DECISION AND
ADJUDICATED DEPENDENT CHILDREN.	:	JUDGMENT ENTRY
	:	
	:	**RELEASED: 04/26/2017**

APPEARANCES:

Matthew P. Brady, Chillicothe, Ohio, for Appellant.

Matthew S. Schmidt, Ross County Prosecuting Attorney, and Jennifer L. Ater, Ross County Assistant Prosecuting Attorney, Chillicothe, Ohio, for Appellee.

Harsha, J.

{¶1} The mother appeals the trial court's decision granting permanent custody of her two children to the Family Services agency and challenges the trial court's finding that granting the agency permanent custody is in the children's best interests. However, absent plain error, she forfeited the right to raise this issue on appeal because she did not object to the magistrate's decision in accordance with Juv.R. 40. We find no plain error occurred.

{¶2} The mother claims that granting the agency permanent custody was not in the children's best interest because other placement options were available, but the court did not fully consider those placements before awarding custody to the agency. The record reflects that both caseworkers testified about two placements mother claims the court should have considered more seriously—the children's maternal grandparents. However, both caseworkers testified that they believed it would not be

appropriate to place the children with the grandparents. The evidence shows that the children's maternal grandmother was not a suitable placement due to the conflicts that existed between her and the children's mother. The record also shows that the maternal grandfather did not indicate a desire to take permanent custody of the children. The record supports the trial court's finding that granting the agency permanent custody is in the children's best interests.

{¶3} The mother also argues that the court violated her procedural due process rights by accepting her consent to the agency's permanent custody without ensuring that she did so knowingly. However, because the record shows that the court had sufficient grounds to terminate her parental rights without her consent, as noted above, it is unnecessary for us to determine whether the trial court engaged in a meaningful dialogue with the mother to determine if her consent was truly voluntary. Her procedural due process argument is moot.

{¶4} We overrule the mother's two assignments of error and affirm the trial court's judgment.

I. FACTS & PROCEDURAL HISTORY

A. The Child B.M.

{¶5} B.M. is the mother's three-year old child. In 2013, South Central Ohio Job and Family Services ("the agency") filed a dependency complaint, requesting either temporary custody of B.M. or placement with the maternal grandmother. The complaint alleged that the agency received a report expressing concerns about B.M.'s welfare. The report claimed that the mother "had several men in and out of her apartment repeatedly, that they were frequently passed out with beer cans laying all around, that

the previous week, [mother] had been found passed out on her bed with [the child] screaming beside her which did not wake her up, that [B.M.] had formula coming out of her nose at the time, that [mother] had admitted that [B.M.] had not had a bath in nearly a week, that [B.M.]'s diapers are dirtier than what they should be, and that [mother] had previously had a pill addiction and there were concerns that she was using again." A few days later a children services caseworker made an unannounced visit to the mother's apartment and informed her of the allegations. At that time the caseworker noted that the apartment appeared "generally clean, and there were no indicators of substance abuse." Mother denied that she had not bathed B.M. in one week and further denied illicit activity had been occurring at her apartment. However, the mother admitted that she had smoked a cigarette laced with cocaine the previous evening. The caseworker implemented a safety plan under which B.M. would be placed with the maternal grandmother. Mother's subsequent drug screen indicated a positive cocaine result. The agency referred the mother for substance abuse counseling and parenting services, and the caseworker continued to monitor her progress.

{¶6} The complaint further alleged that the mother had been "generally compliant" with her counseling, but missed a few appointments. The caseworker attempted to meet with the mother to discuss lifting the safety plan, but was unable to schedule a meeting.

{¶7} The complaint also alleged that the agency received a report indicating that the Ross County Sheriff's Office had responded to the mother's apartment "due to reports of suspicious activity" and located drug paraphernalia. The caseworker called the mother, who admitted that sheriff's deputies had come to her apartment and

instructed several individuals to leave the premises. She further admitted that scales, a razor, and a spoon had been discovered but claimed that the items did not belong to her.

{¶8} The court subsequently granted the agency's request to place B.M. with the maternal grandmother. In 2014, the court adjudicated B.M. a dependent child and continued B.M. in the maternal grandmother's temporary custody.

{¶9} A case plan required the mother to (1) remain drug free and submit to random drug screens, (2) be assessed by Recovery Counsel and follow all recommendations, (3) cooperate with Integrated Services of Appalachian Ohio, (4) refrain from illegal activities, and (5) not have unsupervised visits with the child unless a "responsible adult" is present to supervise the child.

{¶10} In October 2014, the agency filed a motion for emergency temporary custody. A letter attached to the motion indicated that the caseworker became aware of a situation involving B.M. that occurred in September 2014. The grandmother had allowed the mother to take B.M. to a doctor's appointment, despite knowing that she was not allowed to have unsupervised contact with the child. During the unsupervised time with B.M., the mother was the victim of a domestic violence incident at a local hotel. The court granted the agency's motion and placed B.M. in the agency's temporary custody.

{¶11} In November 2015, the agency filed a motion for permanent custody. The agency alleged that B.M. has been in its temporary custody for more than twelve out of the past twenty-two months, that B.M. cannot or should not be returned to the mother, and that placing B.M. in the agency's permanent custody is in the child's best interest.

An attached affidavit averred that (1) the mother failed to follow through with recommended services and failed to complete the case plan, (2) B.M.'s father is unknown, (3) no suitable relative placements exist, and (4) B.M. cannot and should not be returned to the mother.

B. The Infant A.M.H.L.

{¶12} In March 2015, about four months after the agency sought permanent custody of B.M., the mother gave birth to A.M.H.L. Nine days later, the agency filed a dependency complaint requesting temporary custody of A.M.H.L. and an order of protective services.

{¶13} The parties later agreed to a case plan that provided that the mother needed to (1) "abstain from illicit substance abuse and illegal behavior," (2) "secure and maintain stable housing," (3) "avoid illegal behavior," and (4) "demonstrate ability to provide for [both children's] safety and basic needs." The case plan required the mother to (1) submit to random drug screens, (2) undergo a behavioral health assessment and follow any treatment recommendations, (3) cooperate with Integrated Services, (4) ensure A.M.H.L. is under the supervision of a responsible adult at all times and not subjected to any dangerous acts, and (5) secure and maintain stable housing.

{¶14} In June 2015, the agency filed a motion for emergency temporary custody of A.M.H.L. In a letter attached to the motion, the agency presented the following circumstances: The mother has custody of A.M.H.L. and their "housing has recently become unstable." The mother had intended to stay at her mother's house, "but there has been significant conflict between the two of them." After an earlier June review hearing, the mother asked the caseworker to temporarily place A.M.H.L. in the same

foster home as B.M., because the mother "had nowhere to take her," but then "quickly revers[ed] herself and stat[ed] that she intended to take [A.M.H.L.] to Georgia to live with [a relative]." The mother then agreed to take A.M.H.L to the maternal grandfather's home for the weekend. The day before the agency filed its emergency motion, the caseworker met with the mother, who "was belligerent throughout this time, leaving the room during the discussion, and frequently returning, becoming argumentative, and slamming the door, demanding that her case be transferred to Georgia." The same day the agency filed the emergency motion, the Adams County Sheriff's Office had contacted the agency to report that the mother had called 9-1-1 "following a verbal altercation with her father while in their vehicle," apparently on their way to Georgia. A sheriff's deputy instructed the mother to return to Ross County. The children's maternal grandfather told the agency that the children's mother would no longer be staying with him. The agency had concerns regarding the mother's "erratic behavior and lack of appropriate housing."

{¶15} The court subsequently granted the agency's motion for emergency temporary custody and placed A.M.H.L. in the maternal grandmother's temporary custody.

{¶16} A month later the agency filed a motion for emergency temporary custody of A.M.H.L. In a letter attached to the motion, the agency explained that the maternal grandmother contacted the caseworker to state that "she did not feel that she could care for [A.M.H.L.] any longer due to stress brought on by ongoing conflict with [A.M.H.L.'s] mother. This was reiterated again that same day in a voicemail message left with [the caseworker], in which [the grandmother] stated that if the agency did not find another

placement for [A.M.H.L.], then [the grandmother] would hand her over to [A.M.H.L.'s mother]." The court granted the motion.

{¶17} Later that year the court adjudicated A.M.H.L. dependent and granted the agency temporary custody.

{¶18} Next the agency filed a permanent custody motion alleging that A.M.H.L. cannot or should not be returned to either parent within a reasonable time and that placing A.M.H.L in the agency's permanent custody is in the child's best interest. An attached affidavit stated that (1) the mother participated in some recommended services but failed to follow through with substance abuse treatment and a psychological evaluation, (2) A.M.H.L.'s father has not maintained contact with the agency and has not completed the case plan, (3) no suitable relative placements are available, and (4) the concerns that led to A.M.H.L.'s removal have not been remedied.

C. Permanent Custody Hearing

{¶19} The magistrate held a hearing to consider the agency's two permanent custody motions. The mother's attorney stated that the mother wished "to execute a voluntary surrender."[1] The magistrate asked the mother whether she understood that granting the agency permanent custody of the children (1) would terminate all parental rights and privileges, (2) means she "will be like a stranger to these children," and (3) would result in the children being placed for adoption. The mother responded affirmatively to those three questions. The magistrate also explained the mother's procedural rights and asked her if she understood that by consenting to the permanent custody motion she would be waiving those rights. Again, the mother affirmed that she

[1] Counsel uses the term "voluntary surrender" to describe the mother's consent to the agency's permanent custody. To clarify, this case does not involve a "voluntary surrender" under R.C. 5103.15 and that section has no application here.

understood. The magistrate asked the mother if she had been threatened or given promises in exchange for her consent and she responded negatively. The magistrate answered several of the mother's questions and then the magistrate asked if it was the mother's "voluntary wish and desire to consent to the permanent custody motion." The mother stated yes. The magistrate found that the mother voluntarily consented to the permanent custody motion.

{¶20} Even though the mother consented to the agency's motion for permanent custody, the court moved forward with an evidentiary hearing and the agency presented testimony supporting its permanent custody motions. Caseworker Will Frizzell testified that B.M.'s father was unknown, and A.M.H.L.'s father has not participated in the case. Frizzell explained that the mother's substance abuse was the agency's initial concern when it filed B.M.'s dependency complaint and her lack of stability, failure to comply with B.M.'s case plan, and general concerns for A.M.H.L.'s safety were the agency's initial concerns when it filed A.M.H.L.'s dependency complaint. Frizzell additionally stated that the mother exhibited "erratic behavior" and had made claims of wanting to harm herself. Frizzell referred her to drug and alcohol counseling, but she did not complete the counseling services and consistently tested positive for illegal substances. He also referred her for a psychological evaluation, which she did not complete. Frizzell testified that the mother lacked stable housing, moved around frequently and did not complete any part of the case plan.

{¶21} Frizzell explained that he investigated placing the children with relatives. He stated that when B.M. was placed with the maternal grandmother, the grandmother

allowed the mother to take B.M., unsupervised, in violation of the case plan. As a result, B.M. witnessed a domestic violence incident between the mother and a boyfriend.

{¶22} After Frizzell's direct testimony, the magistrate asked the mother's attorney if he wanted to cross-examine the witness and he declined.

{¶23} Supervisor Karla Lindsey testified that the agency placed B.M. in the maternal grandmother's care between December 17, 2013 through October 7, 2014, after which B.M. was placed in the agency's temporary custody. Lindsey explained that the agency placed A.M.H.L with the grandmother from April 3, 2015 through July 13, 2015, then the agency obtained temporary custody. Lindsey stated that after A.M.H.L.'s birth, the agency worked with the mother to help her maintain custody of her newborn, but the mother had ongoing mental health issues and erratic behaviors.

{¶24} Lindsey indicated that although the maternal grandmother supported the mother and "tries to significantly * * * be there for the grandkids but her, her historical discord with [the mother] has been an issue and she has been unable to maintain the children long term with her because of that and so [the grandmother] just felt as if she just wasn't able to keep the kids long term." Lindsey explained that the grandmother did not believe "it was going to be a safe situation long term for her."

{¶25} Lindsey testified that the agency explored placing the children with their maternal grandfather, but the home study was not completed because the grandfather "hasn't said that he wanted full custody he has just kind of wanted visitation to help her so that never was completed because of those reasons." Lindsey stated that the mother did not identify other possible placements for the children.

{¶26} Lindsey recognized that the mother consistently visited with the children and interacted with them in an appropriate manner, but she had not remedied the conditions that caused the children's removal. Lindsey related her belief that the children cannot or should not be placed with the mother. Lindsey stated that the children are "doing very well in the foster home," which is an adoptive placement, and that they need permanency.

{¶27} The magistrate determined that B.M. has been in the agency's temporary custody for twelve or more months of a consecutive twenty-two month period, that A.M.H.L. cannot or should not be returned to either parent, and that placing the children in the agency's permanent custody is in their best interests. The magistrate found (1) the mother failed to complete her case plan goals, (2) the mother consistently tested positive for controlled substances, (3) the conditions causing the children's removal have not been remedied, (4) A.M.H.L.'s father has not participated in the case plan and his current whereabouts are unknown, (5) the maternal grandmother could not maintain custody of the child, (6) the children need permanency and cannot obtain it without granting the agency permanent custody, (7) no suitable relative placements are available, and (8) the mother "freely and voluntarily consented" to the permanent custody motion. The magistrate ordered that the children be placed in the agency's permanent custody and terminated the mother's parental rights.

{¶28} On that same date the trial court entered similar decisions and entered judgments placing the children in the agency's permanent custody.

II. ASSIGNMENTS OF ERROR

{¶29} The mother raises two assignments of error:

I. THE TRIAL COURT ERRED IN ACCEPTING THE SURRENDER OF APPELLANT WHEN SUCH SURRENDER WAS NOT MADE KNOWINGLY AND INTELLIGENTLY.

II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT PERMANENT CUSTODY WAS IN THE BEST INTEREST OF THE MINOR CHILDREN WHEN SUCH A FINDING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

III. ANALYSIS

A. FAILURE TO OBJECT TO MAGISTRATE'S DECISION

{¶30} The mother did not object to the magistrate's decision. Therefore, she forfeited the right to challenge on appeal (1) the procedure the magistrate employed when accepting the mother's consent to the agency's permanent custody, and (2) the court's finding that permanent custody is in the children's best interest. Juv.R. 40(D)(3)(b)(iv) states that "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv.R. 40(D)(3)(a)(ii), unless the party has objected to that finding or conclusion * * *." *Cf. In re D.G.*, 4th Dist. Ross No. 13CA3382 and 13CA3383, 2014-Ohio-650, ¶20-21; *see Franchuk v. Franchuk*, 4th Dist. Washington No. 16CA3, 2016-Ohio-7563, ¶20-22; *Faulks v. Flynn*, 4th Dist. Scioto No. 13CA3568, 2014-Ohio-1610, ¶17, citing Civ.R. 53(D)(3)(b)(iv) ("A party forfeits or waives the right to challenge the trial court's adoption of a factual finding or legal conclusion unless the party objects in accordance with Civ.R. 53(D)(3)(b)"). "'In essence, the rule is based on the principle that a trial court should have a chance to correct or avoid a mistake before its decision is subject to scrutiny by a reviewing court.'" *Liming v. Damos*, 4th Dist. Athens No. 08CA34, 2009–

Ohio–6490, ¶14, quoting *Barnett v. Barnett*, 4th Dist. Highland No. 04CA13, 2008–Ohio–3415, ¶ 16.

{¶31} However, we may recognize plain errors. *Robinette v. Bryant*, 4th Dist. Lawrence No. 12CA20, 2013-Ohio-2889, ¶27, citing *Babcock v. Welcome*, 4th Dist. Ross No. 11CA3273, 2012–Ohio–5284, ¶15 (applying plain error review under Juv.R. 40(D)(3)(b)(iv) when the party failed to timely object to the magistrate's decision regarding parental rights). "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus; *Faulks* at ¶20. "Moreover, plain error does not exist unless the court's obvious deviation from a legal rule affected the outcome of the proceeding." *In re S.M.*, 4th Dist. Highland No. 14CA4, 2014-Ohio-2961, ¶34, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002).

{¶32} Here, the mother did not object to the magistrate's findings that she consented to the permanent custody motions and that permanent custody is in the children's best interests. Therefore, she forfeited the right to raise all but plain error on appeal. She has not argued plain error, and we would be within our discretion to overrule her assignments of error on this basis alone. *See State v. Gannon*, 4th Dist. Lawrence No. 15CA16, 2016–Ohio–1007, ¶31 (stating that appellate court need not consider plain error when appellant does not raise it). Nevertheless, given the

importance of the parental rights involved, we will review the assignments of error using a plain error analysis.

{¶33} Because a decision to overrule the mother's second assignment of error would render her first assignment of error moot, we proceed directly to the second assignment of error.

B. BEST INTEREST

{¶34} In her second assignment of error the mother argues that the trial court's finding that permanent custody is in the children's best interests is against the manifest weight of the evidence. She primarily focuses upon the lack of findings concerning the children's need for a legally secure permanent placement. She contends that the evidence regarding whether possible relative placement existed was underdeveloped. She points out that neither the children's grandmother nor grandfather testified and further argues that the agency's witnesses did not adequately explain why neither was an appropriate placement for the children.

{¶35} The mother did not object to the magistrate's finding that placing the children in the agency's permanent custody is in their best interest, and therefore, she forfeited all but plain error. We find that the trial did not commit plain error when it determined that placing the children in the agency's permanent custody is in their best interests.

1. STANDARD OF REVIEW IN PERMANENT CUSTODY CASES

{¶36} A reviewing court will not reverse a trial court's judgment in a permanent custody case unless it is against the manifest weight of the evidence. *E.g., In re T.J.*, 4th Dist. Highland Nos. 15CA15 and 15CA16, 2016–Ohio–163, ¶25. "To determine

whether a permanent custody decision is against the manifest weight of the evidence, an appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving evidentiary conflicts, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered." *Id.*, citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶20. In reviewing evidence under this standard, we defer to the trial court's determinations on matters of credibility, which are crucial in these cases, where demeanor and attitude are not reflected well by the written record. *Eastley* at ¶21; *Davis v. Flickinger*, 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997).

{¶37} In a permanent custody case the dispositive issue on appeal is "whether the juvenile court's findings * * * were supported by clear and convincing evidence." *In re K.H.*, 119 Ohio St.3d 538, 2008–Ohio–4825, 895 N.E.2d 809, ¶43; R.C. 2151.414(B)(1). "Clear and convincing evidence" is "that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *State ex rel. Pietrangelo v. Avon Lake*, —— Ohio St.3d ——, 2016–Ohio–5725, —— N.E.3d ——, ¶14. "[I]f the children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court's

decision is not against the manifest weight of the evidence." *In re R.M.,* 2013–Ohio–3588, 997 N.E.2d 169, ¶55 (4th Dist.).

{¶38} "The essential question we must resolve when reviewing a permanent custody decision under the manifest weight of the evidence standard is whether the amount of competent, credible evidence presented at trial produced in the court's mind a firm belief or conviction that permanent custody was warranted." *T.J.* at ¶26.

2. PERMANENT CUSTODY PRINCIPLES

{¶39} Although parents possess a fundamental liberty interest in the care, custody, and control of their children, that liberty interest is "not absolute." *In re Mullen,* 129 Ohio St.3d 417, 2011-Ohio-3361, 953 N.E.2d 302, ¶26; *In re D.A.,* 113 Ohio St.3d 88 2007–Ohio–1105, 862 N.E.2d 829, ¶11. Instead, "'it is plain that the natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the pole star or controlling principle to be observed.'" *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979), quoting *In re R.J.C.*, 200 So.2d 54, 58 (Fla.App.1974). Thus, the state may terminate parental rights when the child's best interest requires it. *In re D.A.* at ¶11.

3. PERMANENT CUSTODY FRAMEWORK

{¶40} A children services agency may obtain permanent custody of a child by (1) requesting it in the abuse, neglect or dependency complaint under R.C. 2151.353, or (2) filing a motion under R.C. 2151.413 after obtaining temporary custody. In this case, the agency sought permanent custody of the children by filing a motion under R.C. 2151.413. When an agency files a permanent custody motion under R.C. 2151.413, R.C. 2151.414 applies. *See* R.C. 2151.414(A).

{¶41} R.C. 2151.414(B) provides that a trial court may grant a children services agency permanent custody of a child if the court finds, by clear and convincing evidence, that (1) the child's best interest would be served by the award of permanent custody and (2) one of the five conditions listed in R.C. 2151.414(B)(1) applies. Relevant here, R.C. 2151.414(B)(1)(a) and (d) permit a trial court to grant a children services agency permanent custody if "[t]he child is not abandoned or orphaned * * * * 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," or if the child has been in the agency's temporary custody for twelve or more months of a consecutive twenty-two month period. The mother has not challenged these findings. Instead, she focuses her assignment of error on the trial court's best interest determination. We limit our review accordingly and simply point out that the record supports findings under R.C. 2151.414(B)(1)(a) and (d).

4. BEST INTEREST ANALYSIS

{¶42} "In a best-interests analysis under R.C. 2151.414(D), a court must consider 'all relevant factors,' including five enumerated statutory factors * * *. No one element is given greater weight or heightened significance." *In re C.F.*, 113 Ohio St.3d 73, 2007–Ohio–1104, 862 N.E.2d 816, ¶57, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006–Ohio–5513, 857 N.E.2d 532, ¶6. The five enumerated factors are: (1) the child's interaction and interrelationship with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) the child's wishes, as expressed directly by the child or through the child's guardian ad litem, with due regard for the child's maturity; (3) the child's custodial

history; (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 factors listed under R.C. 2151.414(E)(7) to (11) apply.

{¶43} Determining whether granting permanent custody to a children services agency will promote a child's best interest involves a delicate balancing of "all relevant [best interest] factors," as well as the "five enumerated statutory factors." *In re C.F.* at ¶57, citing *Schaefer* at ¶56; accord *In re C.G.*, 9th Dist. Summit Nos. 24097 and 24099, 2008–Ohio–3773, ¶28; *In re N.W.*, 10th Dist. Franklin Nos. 07AP-590 and 07AP-591, 2008-Ohio-297, ¶19. However, none of the best interest factors requires a court to give it "greater weight or heightened significance." *Id*. Instead, the trial court considers the totality of the circumstances when making its best interest determination. *In re K.M.S.*, 3rd Dist. Marion Nos. 9-15-37, 9-15-38, and 9-15-39, 2017-Ohio-142, ¶24; *In re A.C.*, 9th Dist. Summit No. 27328, 2014–Ohio–4918, ¶46. In general, "[a] child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security." *In re C.B.C.*, 4th Dist. Lawrence Nos. 15CA18 and 15CA19, 2016-Ohio-916, ¶66, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991).

{¶44} Here, we find that the trial court did not commit plain error when it determined that placing the children in the agency's permanent custody would serve their best interests.

a. Failure to Request Findings of Fact and Conclusions of Law

{¶45} The mother did not request either the magistrate or the trial court to enter findings of fact or conclusions of law under Civ.R. 52, which states: "When questions of fact are tried by a court without a jury, judgment may be general for the prevailing party

unless one of the parties in writing requests otherwise * * * in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law." Juv.R. 40(D)(2)(a)(ii) is similar "[A] magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law." Additionally, R.C. 2151.414(C) states: "If the court grants permanent custody of a child to a movant under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding." The failure to request findings of fact and conclusions of law ordinarily results in a forfeiture of the right to challenge the trial court's lack of an explicit finding concerning an issue. *E.g., In re C.B.C.* at ¶40, citing *In re Barnhart*, 4th Dist. Athens No. 02CA20, 2002–Ohio–6023, ¶23, and *Wangugi v. Wangugi*, 4th Dist. Ross No. 99CA2531, 2000 WL 377971 (Apr. 12, 2000). Furthermore, "'when a party does not request that the trial court make findings of fact and conclusions of law under Civ.R. 52, the reviewing court will presume that the trial court considered all the factors and all other relevant facts.'" *Barnhart* at ¶23, quoting *Fallang v. Fallang*, 109 Ohio App.3d 543, 549, 672 N.E.2d 730 (12th Dist.1996). We apply this rule to permanent custody cases and have held that unless a party requests findings of fact and conclusions of law, a trial court need not set forth specific factual findings regarding the R.C. 2151.414(D) best interest factors. *In re C.B.C.* at ¶41; *In re R.S.-G.*, 4th Dist. Athens No. 15CA2, 2015–Ohio–4245, ¶48; *In re N.S.N.*, 4th Dist. Washington Nos. 15CA6, 15CA7, 15CA8, 15CA9, 2015–Ohio–2486, ¶37.

{¶46} Thus, in the absence of findings of fact and conclusions of law, we presume that the trial court applied the law correctly and will affirm its judgment if

evidence in the record supports it. *In re C.B.C.* at ¶42; *Bugg v. Fancher*, 4th Dist. Highland No. 06CA12, 2007–Ohio–2019, ¶10, citing *Allstate Fin. Corp. v. Westfield Serv. Mgt. Co.*, 62 Ohio App.3d 657, 577 N.E.2d 383 (12th Dist.1989); accord *Leikin Oldsmobile, Inc. v. Spofford Auto Sales*, 11th Dist. Lake No.2000–L–202, 2002–Ohio–2441, ¶7 ("It is difficult, if not impossible, to determine the basis of the trial court's ruling without findings of fact and conclusions of law * * *."); *Yocum v. Means*, 2nd Dist. Darke No. 1576, 2002–Ohio–3803, ¶7 ("The lack of findings obviously circumscribes our review * * *."). As one court explained:

> [W]hen separate facts are not requested by counsel and/or supplied by the court the challenger is not entitled to be elevated to a position superior to that he would have enjoyed had he made his request. Thus, if from an examination of the record as a whole in the trial court there is some evidence from which the court could have reached the ultimate conclusions of fact which are consistent with [its] judgment the appellate court is bound to affirm on the weight and sufficiency of the evidence.
>
> The message should be clear: If a party wishes to challenge the * * * judgment as being against the manifest weight of the evidence he had best secure separate findings of fact and conclusions of law. Otherwise his already "uphill" burden of demonstrating error becomes an almost insurmountable "mountain."

Pettet v. Pettet, 55 Ohio App.3d 128, 130, 562 N.E.2d 929 (5th Dist.1988).

{¶47} Here the mother did not request findings of fact and conclusions of law. Therefore the trial court was not required to set forth specific factual findings regarding the R.C. 2151.414(D) best interest factors and did not do so. Consequently, due to the failure to request findings of fact and conclusions of law, we presume that the trial court properly applied the law and will affirm its judgment so long as the record reasonably supports it. *E.g., In re C.B.C., supra.*

b. Children's Interactions and Interrelationships

{¶48} The testimony shows that the mother interacted appropriately with her children and she consistently visited the children during supervised visitation. However, the record shows that while B.M. was in the custody of the maternal grandmother, the mother violated the terms of the plan and took B.M., exposing the child to violence and drugs. Both children are young and the agency has been involved in the children's lives since they were infants. The children are doing well in the foster home.

c. Children's Wishes

{¶49} The children appear too young to express their wishes, but the guardian ad litem recommended that the trial court grant the agency permanent custody. *In re S.M.,* 4th Dist. Highland No. 14CA4, 2014-Ohio-2961, ¶32, citing *In re C.F*., 113 Ohio St.3d 73, 2007–Ohio–1104, 862 N.E.2d 816*,* ¶55 (noting that R.C. 2151.414 permits court to consider child's wishes as child directly expresses or through the guardian ad litem).

d. Custodial History

{¶50} The agency removed A.M.H.L. from the mother's custody in June 2015, shortly after the child's birth. Since then the child has not been under the mother's custodial care. Instead, she lived with her maternal grandmother until July 2015 and was then placed in a foster home. She has lived in the same foster home since her removal from the grandmother's temporary custody. As of the date of the permanent custody hearing, A.M.H.L. had lived with her mother for approximately three months, with her grandmother for approximately one month, and in the foster home for approximately fifteen months.

{¶51} The agency removed B.M. from the mother's custody in December 2013, when the child was three-months-old, and placed her in her maternal grandmother's care. In October 2014, B.M. was removed from her grandmother's care and placed in a foster home, where she has since remained. As of the date of the permanent custody hearing, B.M. had lived with her mother for approximately three months, with her grandmother for approximately ten months, and in the foster home for approximately two years.

{¶52} Thus, both children have experienced two custodial changes throughout their young lives and have experienced their longest placements in the current foster home. Neither has lived under their mother's custodial care for any significant length of time. Both children lived with their mother for only a few months before being removed from her care.

e. Legally Secure Permanent Placement

{¶53} "Although the Ohio Revised Code does not define the term, 'legally secure permanent placement,' this court and others have generally interpreted the phrase to mean a safe, stable, consistent environment where a child's needs will be met." *In re M.B.*, 4th Dist. Highland No. 15CA19, 2016-Ohio-793, ¶56, citing *In re Dyal*, 4th Dist. Hocking No. 01CA12, 2001 WL 925423, *9 (Aug. 9, 2001) (implying that "legally secure permanent placement" means a "stable, safe, and nurturing environment"); *see also In re K.M.*, 10th Dist. Franklin Nos. 15AP–64 and 15AP–66, 2015–Ohio–4682, ¶28 (observing that legally secure permanent placement requires more than stable home and income but also requires environment that will provide for child's needs); Thus, "[a] legally secure permanent placement is more than a house with four walls. Rather, it

generally encompasses a stable environment where a child will live in safety with one or more dependable adults who will provide for the child's needs." *In re M.B.* at ¶56.

{¶54} Furthermore, a trial court considering a child's need for a legally secure permanent placement need not determine that terminating parental rights is "the only option" or that no suitable person is available for placement. *Schaefer*, 111 Ohio St.3d 498, 2006–Ohio–5513, 857 N.E.2d 532, at ¶64. Rather, R.C. 2151.414 requires the court to weigh "all the relevant factors * * * to find the best option for the child." *Id*. "The statute does not make the availability of a placement that would not require a termination of parental rights an all-controlling factor. The statute does not even require the court to weigh that factor more heavily than other factors." *Id*. Instead, a child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security. *Ridenour*, 61 Ohio St.3d at 324, 574 N.E.2d 1055. Therefore, courts are not required to favor relative placement if, after considering all the factors, it is in the child's best interest for the agency to be granted permanent custody. *Schaefer* at ¶64; accord *In re T.G*., 4th Dist. Athens No. 15CA24, 2015–Ohio–5330, ¶24; *In re V.C.,* 8th Dist. Cuyahoga No. 102903, 2015–Ohio–4991, ¶61 (stating that relative's positive relationship with child and willingness to provide an appropriate home did not trump child's best interest). And "[i]f permanent custody is in the child's best interest, legal custody or placement with [a parent or other relative] necessarily is not." *In re K.M*., 9th Dist. Medina No. 14CA0025–M, 2014–Ohio–4268, ¶9; *e.g., In re K.L*., 4th Dist. Meigs No. 16CA9, 2017-Ohio-44, ¶39.

{¶55} The evidence demonstrates that the mother has been unable or unwilling to provide the children with a legally secure permanent placement. She did not comply

with the case plan and consistently tested positive for illegal substances. A home with a drug-addicted mother who fails to address her substance abuse issues ordinarily is not a legally safe or legally secure home. The children's maternal grandmother provided them with apparently appropriate shelter briefly, but the grandmother eventually learned that her inability to control her relationship with the children's mother negatively affected the grandmother's ability to provide a safe place for them. The agency considered whether the children's grandfather could care for them, but the grandfather did not express a willingness to take permanent custody. Thus, the evidence fails to show that the grandfather could provide the children with a permanent home, even assuming his home was otherwise legally secure. The record does not contain any evidence that the agency located any other possible legally secure permanent placements. The record supports a finding that the children need a legally secure permanent placement and that they cannot achieve this type of placement without granting the agency permanent custody.

{¶56} Although the mother complains that testimony regarding possible placement with the grandparents was underdeveloped, her failure to cross-examine any of the agency's witnesses and her failure to call any witnesses on her behalf invited any error that may have resulted from a failure to fully develop this testimony. "'Under [the invited-error] doctrine, a party is not entitled to take advantage of an error that he himself invited or induced the court to make.'" *Martin v. Jones*, 2015–Ohio–3168, 41 N.E.3d 123, ¶2 (4th Dist.), quoting *State ex rel. Kline v. Carroll*, 96 Ohio St.3d 494, 2002–Ohio–4849, 775 N .E.2d 517, ¶ 27; accord *State v. Spaulding*, ___Ohio St.3d___, 2016-Ohio-8126, ___N.E.3d___, ¶100, Here, the mother chose not to call any

witnesses to testify at the permanent custody hearing, and chose not to cross-examine any of the agency's witnesses. Under these circumstances the mother invited any error that may have resulted from the failure to more fully develop testimony concerning either grandparent's suitability to take custody of the children. Based upon a consideration of the evidence presented during the permanent custody hearing, as well as the trial court's unique position to observe the parties throughout the pendency of the case, the trial court could have reasonably formed a firm belief that granting permanent custody to the agency is in the children's best interests. The court's decision is not against the manifest weight of the evidence. Accordingly, we overrule the second assignment of error.

C. DUE PROCESS

{¶57} In her first assignment of error the mother argues that the trial court failed to provide "procedural protection" to her because it accepted her voluntary consent to the agency's permanent custody without determining if it was made knowingly. She contends that her "due process rights were violated when the trial court accepted her surrender when there was evidence [she] did not fully understand the consequences of the waiver * * *." Because she contends the trial court did not afford her the procedural safeguard of a "meaningful dialogue" into whether her consent was made knowingly, we construe her claim as a procedural, rather than substantive, due process argument.

{¶58} Although the Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees the right to procedural due process, the statutory procedures set forth in R.C. 2151.414 regarding the termination of parental rights satisfy those requirements. *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308,

¶27. Courts have held that any waiver of these procedural protections and consent to an agency's permanent custody must be made with full knowledge of the rights and consequences. *In re K.C.*, 3rd Dist. Defiance Nos. 4-15-05 and 4-15-06, 2015-Ohio-3815, ¶18; *In re A.C.*, 8th Dist. Cuyahoga No. 102351, 2015-Ohio-3673, ¶5; *In re D.R.*, 2nd Dist. Miami No. 2005CA10 and 2006CA7, 2006-Ohio-3513, ¶12; *In re Rock Children*, 5th Dist. Stark No. 2004CA00358, 2005–Ohio–2572, ¶17; *Elmer v. Lucas Cty. Children Serv. Bd.*, 36 Ohio App.3d 241, 245, 523 N.E.2d 540 (6th Dist. 1987). One court explained:

> [F]undamental due process requires that when a parent is waiving the fundamental right to care for and have custody of a child, the trial court must have a meaningful dialogue with that parent to be certain that the consent is truly voluntary. If a parent expresses uncertainty or misunderstandings about his or her decision to waive parental rights, the trial court's acceptance of the waiver is improper. (Citations omitted.)

In re Terrence, 162 Ohio App.3d 229, 2005-Ohio-3600, 833 N.E.2d 306, ¶89 (6th Dist.).

{¶59} Here it is unnecessary for us to determine whether the trial engaged in a meaningful dialogue with the mother to determine if her consent was truly voluntary because the record shows that the court had sufficient statutory grounds to terminate her parental rights without her consent. Although the mother gave her consent, the court held a hearing and the agency presented evidence that support the court's findings. *See generally In re Erich L.*, 6th Dist. Lucas No. L-04-1340, 2005-Ohio-2945, ¶ 47 (where court conducts a hearing and the agency presents sufficient evidence that permanent custody is in the child's best interest, parental consent is "but one more article of testimonial evidence"); *In re Lakes*, 149 Ohio App.3d 128, 2002-Ohio-3917, 776 N.E.2d 510, ¶71-72 (2nd Dist.) (Although mother conceded that granting the agency's request

for permanent custody was in the children's best interest, the court's magistrate properly proceeded to hear other evidence on the issue before entering a permanent custody order. As a result, the court was not required to engage in a colloquy with the mother before it either accepted her admission or entered its order.).

{¶60} This procedural difference distinguishes this case from those cited by the mother. In *In re Terrence, supra*, and *In re K.C., supra*, the trial courts did not hold an evidentiary hearing. Instead, the courts accepted parental consent to the agency's permanent custody and granted the agency permanent custody based exclusively on parental consent. *See In re Terrence*, ¶ 83; *In re K.C.*, ¶ 26. As we explained in our analysis of the second assignment of error, the record contains competent and credible evidence to support the trial court's findings. Therefore, it is unnecessary to determine whether the trial court adequately discussed the mother's waiver and consent with her. The first assignment of error is moot; we overrule it and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Juvenile Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Abele, J. & Hoover, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.