[Cite as *In re A.S.*, 2017-Ohio-1166.]

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

IN THE MATTER OF:	:	
A.S. and J.S.,	:	Case No. 16CA878 16CA879
	:	
Adjudicated Neglected and Dependent Children.	:	DECISION AND JUDGMENT ENTRY
	:	

APPEARANCES:

Michael H. Mearan, Portsmouth, Ohio, for Appellant.

Elisabeth M. Howard, Waverly, Ohio, for Appellee.

CIVIL APPEAL FROM COMMON PLEAS COURT, JUVENILE DIVISION
DATE JOURNALIZED: 3-17-17
Abele, J.

{¶ 1} This is a consolidated appeal from two Pike County Common Pleas Court, Juvenile Division, judgments that granted Pike County Children Services Board (PCCS), appellee herein, permanent custody of two-year-old A.S. and four-year-old J.S. F.N., the children's maternal grandmother and appellant herein, raises the following assignments of error for review:

> FIRST ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT ABUSED ITS DISCRETION IN NOT GRANTING A CONTINUANCE FOR THE DISPOSITION HEARING."
>
> SECOND ASSIGNMENT OF ERROR:

> "THE TRIAL COURT'S FINDING THAT IT WOULD BE IN THE CHILDREN'S BEST INTEREST TO BE PLACED WITH CHILDREN SERVICES, RATHER THAN THE MATERNAL GRANDMOTHER OF THE MINOR CHILDREN, WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE."

{¶ 2} On June 8, 2015, appellee filed neglect and dependency complaints and requested temporary custody of the two children. The complaints alleged that (1) the parents have a history with Franklin County Children Services, (2) the parents are transient and difficult to locate, (3) in May 2015, appellee received a report that the parents are using heroin in the children's presence, (4) the mother's arms are scarred from needle use and now injects heroin into the veins of her neck, (5) the children are dirty and appear malnourished, and (6) the children were left in appellant's care. The complaint further asserted that appellant is not a suitable placement for the children. Appellee claimed that (1) appellant has a prior child endangerment conviction, (2) appellant's husband has prior criminal charges, including domestic violence, and (3) when appellee filed the complaints, appellant had a black eye. The trial court subsequently granted appellee emergency temporary custody of the children.

{¶ 3} On July 21, 2015, the trial court adjudicated the children neglected and dependent and set the matter for a dispositional hearing. The court continued the children in appellee's temporary custody pending the dispositional hearing.

{¶ 4} On August 20, 2015, the trial court issued a dispositional order that directed the children to be placed in appellee's custody[1] and that granted appellant supervised "parenting time."

[1] Although the trial court did not specify whether it placed the children in appellee's temporary or permanent custody, it appears that the court placed the children in appellee's temporary custody.

{¶ 5} On March 2, 2016, appellant filed a motion that requested the trial court to award her custody of the children. The court subsequently added appellant as a party.

{¶ 6} On April 5, 2016, appellee filed a motion to modify the disposition to permanent custody. Appellee alleged that the parents have abandoned the child and that the child cannot or should not be placed with either parent.

{¶ 7} On May 4, 2016, appellant filed a motion to continue the permanent custody hearing in order to allow the guardian ad litem an opportunity to meet with her and to inspect her home. The trial court continued the matter until August 11, 2016.

{¶ 8} On August 8, 2016, appellant filed a second motion to continue the permanent custody hearing. She alleged that she "just received" the guardian ad litem's report, which indicated that the guardian ad litem had not received appellant's background check. Appellant asserted that the background check may be completed in approximately one month and that it will "clear [her] of any wrongdoing." The trial court nevertheless held the permanent custody hearing as previously scheduled.[2]

{¶ 9} At the start of the permanent custody hearing, appellant's counsel noted that the trial court had overruled appellant's motion to continue the hearing and stated that appellant nevertheless was "prepared to go forward with what we have." Appellant's counsel, however, asked the court to delay rendering a decision until it could review appellant's background check. Counsel stated: "So, uh, we have no objection to proceeding, but I would ask that the Court not

[2] We note that the trial court record does not indicate that the court filed a decision concerning appellant's August 8, 2016 motion to continue. Nevertheless, when a trial court fails to rule on a motion, we ordinarily presume that the court overruled it. *Wheatley v. Marietta College*, 2016-Ohio-949, 48 N.E.3d 587, ¶50 (4th Dist.); *State v. Dickess,* 174 Ohio App.3d 658, 667, 2008-Ohio-39, 884 N.E.2d 92 (4th Dist.).

make a final decision in this case until we do in fact get a copy of what the background check says because I think we have explanations for everything in it." The trial court indicated that it would "withhold ruling" on appellant's request until the conclusion of the permanent custody hearing.

{¶ 10} Appellee's first witness, PCCS caseworker Ashley Leasure, testified that in June 2015 appellant contacted appellee to inform them that the children's parents had left the children in her care. Leasure stated that appellee had learned that the children's parents "had been gone from their children for quite some time" and that the children were living with appellant. Leasure explained that appellee discovered that appellant "had child endangerment charges," as well as "an extensive history with Children's Services." Leasure further related that appellant advised appellee "that she had domestic issues with her current husband," and Leasure noted that appellant had a black eye. Leasure indicated that appellant initially claimed that she sustained the black eye from a fall, but appellant eventually admitted that her husband caused the black eye. Leasure stated that appellee determined it would be best to remove the children from appellant's care.

{¶ 11} Leasure further testified that on July 29, 2016, approximately thirteen months after appellant advised Leasure that her husband was violent and that she feared him, appellant filed a domestic violence civil protection order against her husband. Appellant alleged that her husband "has been both verbally and physically violent."

{¶ 12} Leasure explained that appellee developed a case plan for the parents, but the parents have not been in contact with appellee since September 2015. Leasure testified that the children have been in foster care since their removal from appellant's home. She explained that

J.S. initially had "significant speech delays and behavioral issues." She related that J.S. "is extremely violent" and that "he'll punch, kick, [and] bite" out of frustration due to his delayed verbal skills. Leasure stated that "the foster parent has struggled a lot with getting [J.S.] to behave within the community and in their home." Leasure testified that J.S. receives weekly speech therapy while in foster care and has improved. She explained that J.S. will need to continue speech therapy "for a while longer." Leasure expressed concern that appellant may not be able to ensure J.S. attends all of his therapy sessions.

{¶ 13} Leasure stated that A.S. lives in the same foster home with J.S. Leasure explained that appellee initially had concerns about A.S.'s speech, but since her foster care placement, A.S. has emerged from "her shell more now and she's on target."

{¶ 14} Leasure testified that in January 2016 she conducted an initial home study of appellant's residence. She related that appellee discovered that appellant had a 2011 child endangerment charge, a history with children services, and did not complete a BCI and FBI background check. Leasure stated that appellee thus did not approve appellant's home for placement.

{¶ 15} Leasure testified that in July 2016, appellee performed an additional home study on a second address that appellant provided. She stated that appellee again denied placement with appellant "due to her history with our Children's Services Agency, the failure to get her B.C.I. background check and her child endangerment charge." Leasure explained that the 2011 child endangerment charge arose when one of appellant's grandchildren had left the motel room where appellant had fallen asleep. A passerby saw the child and contacted law enforcement officers. Officers went to the motel to question appellant and asked her whether "she was

missing anybody. And [appellant] was like, oh, but she realized they were talking about [her grandchild]." At that point, the officers arrested appellant and charged her with child endangerment.

{¶ 16} Leasure explained that appellant's history with children services dates to April 1990, and since that time, appellee has "received 27 intakes of neglect and physical abuse on her [four] children." She stated that "nearly every intake had a different address" where appellant and the children were living and that "most of the intakes were anywhere from a month to three months apart." Leasure testified that from 1990 through 2000, appellant reported twenty different addresses at which she was residing, "most of which were not her actual home. She was either in a motel or living with another relative." Leasure stated that appellee "extensively" worked with appellant but "she was not exactly cooperative with her applications." Leasure related that appellant failed to pay deposits to have her gas turned on, even though she was employed at the time. Leasure stated that not all of the reports were substantiated, but that after the year 2000, appellant did not have full custody of any of her children.

{¶ 17} Leasure stated that in 1999, appellee filed a neglect and dependency complaint concerning two of appellant's children. She indicated that appellee removed the children from appellant's "custody after * * * the children had reported that one of [appellant']s paramours * * * had been abusing them." Leasure stated that appellant "was aware of this information" and "[a] stay away was conducted." Leasure testified that appellant "then proceeded to tell the police department that she no longer wanted her children and she would rather be with [her paramour.]" Leasure stated that in 2000 the case was closed when appellant's mother and stepfather received legal custody of the children.

{¶ 18} On cross-examination, Leasure stated that appellant was afforded fifty-five visitation opportunities, but visited the children only twenty-five times. Leasure related that appellant "had an excuse for only five of those visits."

{¶ 19} Leasure testified that in their current foster placement, the children live with eight other children. The foster parents adopted six siblings and have two foster children in addition to J.S. and A.S. Leasure stated that the foster parents are "fantastic with the children." The foster mother "is completely patient" with [J.S.] and all of []his behaviors." Leasure indicated that the children are "very bonded" with the foster parents and call them mom and dad.

{¶ 20} Leasure testified that she believed placing the children in appellee's permanent custody is in the children's best interests "due to [appellant's] extensive history of domestic violence."

{¶ 21} Appellant testified and stated the two children lived with her for three weeks before she called children services. She became concerned that the children's parents were not returning, so she decided to call children services. Appellant claimed that she has filed for divorce from her husband and that she presently lives with a new boyfriend. Appellant also admitted that her new boyfriend has an "indicated" sexual abuse case with children services that involved an eight-year-old female relative.

{¶ 22} On August 26, 2016, the trial court granted appellee permanent custody of the children. The court determined that awarding appellee permanent custody of the children is in their best interests. With respect to the children's interactions and interrelationships, the court found that (1) the children have been in appellee's custody since June 5, 2012, (2) neither parent has had any contact with the children since September 17, 2015, (3) the children's contact with

their parents has been limited and "thus, there isn't much of a parental bond," and (4) the children share a strong bond with each other, and the two currently live in the same home.

{¶ 23} The trial court determined that the children are too young to express their wishes, but the court recognized that the guardian ad litem believes granting appellee permanent custody is in their best interests. The court also noted that the guardian ad litem indicated that the children have "done very well while in the care of [their] foster parents."

{¶ 24} The trial court next considered the children's custodial history and found that before appellee obtained custody of the children in June 2015, the parents had left the children in appellant's care for approximately three weeks.

{¶ 25} The trial court also found that the children need a legally secure permanent placement that cannot be achieved without granting appellee permanent custody. The court stated that the parents "have shown absolutely no interest in the child[ren] for nearly a year, and, as such, have shown no inclination to provide any type of placement for the child[ren], let alone a secure placement." The court determined that the parents have abandoned the children. The court stated that the children "cannot be returned to the custody of his parents due to their abandonment of the minor child, their lack of stable housing, and their failure to complete drug treatment."

{¶ 26} The trial court additionally found that R.C. 2151.414(E)(6)[3] applied to appellant

[3] R.C. 2151.414(E)(6) states that if the court finds the existence of the following factor, then it "shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent":

> The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section 2919.22 or under section 2903.16, 2903.21, 2903.34, 2905.01, 2905.02, 2905.03, 2905.04, 2905.05, 2907.07, 2907.08, 2907.09,

due to her child endangerment conviction. The court thus concluded that the children "cannot and should not be placed with" appellant.

{¶ 27} The trial court separately evaluated appellant's request for custody of the children. The court found that appellee did not approve appellant's home study "due to her extensive history with children services agencies and her conviction for child endangerment." The court observed that appellant admitted that in 2011, she was convicted of child endangerment and found the circumstances of the offense illustrated that appellant would have difficulty maintaining control of J.S. and A.S. The court noted that appellant's child endangerment conviction resulted after her two-year-old grandchild escaped from the motel room where she had been watching him. The child was found wandering near Route 23, in Piketon, Ohio. Appellant stated that the child "was very hyper and had a hard time getting to sleep." The court pointed out that appellant recognized that J.S. also has behavioral issues that would require structured supervision. The court thus implied that appellant's past history involving her two-year-old grandchild escaping from her care was an indication of the type of care she would provide to J.S. and A.S.

{¶ 28} The trial court found that children services had been involved with appellant's own children and that all had been removed from her care at one point or another. The court further observed that two of appellant's children are addicted to illegal drugs and do not have

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2907.12, 2907.23, 2907.25, 2907.31, 2907.32, 2907.321, 2907.322, 2907.323, 2911.01, 2911.02, 2911.11, 2911.12, 2919.12, 2919.24, 2919.25, 2923.12, 2923.13, 2923.161, 2925.02, or 3716.11 of the Revised Code, and the child or a sibling of the child was a victim of the offense, or the parent has been convicted of or pleaded guilty to an offense under section 2903.04 of the Revised Code, a sibling of the child was the victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

custody of their own children.

{¶ 29} The trial court additionally noted that appellant has a history of poor decision-making concerning the adult males in her life. Appellant "maintained a long term relationship with Daniel Joseph Madden, who was violent with her and her minor children, even threatening to kill them." Appellant continued "to allow Mr. Madden around her children even after the court issued orders that her children were not to be around Mr. Madden. In fact, at one point [appellant] was convicted [of] interference with custody by removing two of her children from the State of Ohio to live with her and Mr. Madden." Appellant's current husband had threatened her with a knife and was violent towards her as recently as October 2015. When appellee removed the child in June 2015, appellant had a black eye that her husband inflicted. Appellant now lives with a different man who "has an indicated sexual abuse" resulting from a July 2014 children services investigation. The alleged victim was the man's eight-year-old niece.

{¶ 30} When considering appellant's motion for legal custody, the trial court reviewed the factors set forth in R.C. 3109.04(F)(1). In considering the children's wishes, the court again noted that the guardian ad litem recommended permanent custody. The court further noted the guardian's concerns regarding appellant's ability to care for J.S.'s special needs "and was very concerned that [appellant]'s conviction for child endangerment involved one of her grandchildren the same age as A.S." The guardian ad litem believed that denying appellant's motion for legal custody is in the children's best interest.

{¶ 31} The trial court also considered the children's interaction and interrelationship with appellant, and noted that appellant "missed more than half of her visits." Appellant visited the

child only twenty-five out of the fifty-five opportunities offered. "Additionally, while [appellant] stated that she loved the minor child[ren], she admitted to living with a man that has an indicated sexual abuse with children services; and has failed to make any meaningful preparations to care for [the children] as far as [their] medical and educational needs."

{¶ 32} The trial court also considered the children's adjustment to the child's home, school, and community and noted that the foster parents are meeting the children's "emotional and developmental needs."

{¶ 33} The trial court thus granted appellee permanent custody of the two children. This appeal followed.[4]

I

JURISDICTION

{¶ 34} Before we consider the merits of this appeal, we first address a jurisdictional issue. Appellant filed new trial motions before she filed her notices of appeal. According to App.R. 4(B)(2), a "timely and appropriate" Civ.R. 59 new trial motion tolls the App.R. 4(A) thirty-day time period for filing a notice of appeal until the trial court rules on the motion. App.R. 4(B)(2)(b). App.R. 4(B)(2) further provides guidance to appellate courts when a party appeals "from an otherwise final judgment but before the trial court has resolved" a Civ.R. 59 new trial motion. The rule states that "the court of appeals, upon suggestion of any of the parties, shall remand the matter to the trial court to resolve the post-judgment filings in question and shall stay appellate proceedings until the trial court has done so."

[4] On August 30, 2016, appellant filed a copy of her criminal background check.

{¶ 35} In the case at bar, appellant timely filed her new trial motions. On January 25, 2017, we directed the parties to file memoranda addressing App.R. 4(B) and our jurisdiction to consider these appeals. Appellant subsequently filed notices that she dismissed her new trial motions. We question, however, whether appellant's new trial motions were "appropriate" so as to activate the staying provision contained in App.R. 4(B)(2). *See In re McBride*, 110 Ohio St.3d 19, 2006-Ohio-3454, 850 N.E.2d 43, ¶9, citing *In re Nelson* (Mar. 29, 1996), Geauga App. No. 95–G–1918, 1996 WL 200618 (pointing out that "[t]he Eleventh District has found that paternal grandparents lacked standing under R.C. 2151.414(F) to file a motion for visitation after their son's parental rights were terminated"); *Matter of Jasper*, 12th Dist. Warren No. CA98-01-002, 1998 WL 729234, *2 (Oct. 19, 1998) (indicating that a grandparent does not have "a legal right to intervene in a permanent custody case after the natural parents' parental rights have been terminated").

{¶ 36} If appellant's new trial motions were not "appropriate," then the App.R. 4(B)(2) tolling provision does not apply. By our count, appellant filed her notices of appeal thirty-two days after the trial court's judgment that granted appellee permanent custody (not including the date upon which the court filed its judgment). App.R. 4(A) requires that a party file a notice of appeal within thirty days of a final order. App.R. 4(A)(3) provides, however, that in a civil case, the thirty-day time to appeal does not begin to run "if the clerk has not completed service of the order within the three-day period prescribed in Civ.R. 58(B)."

{¶ 37} Civ.R. 58(B) provides:

> When the court signs a judgment, the court shall endorse thereon a direction to the clerk to serve upon all parties * * * notice of the judgment and its date of entry upon the journal. Within three days of entering the judgment upon

> the journal, the clerk shall serve the parties in a manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. * * * The failure of the clerk to serve notice does not affect the validity of the judgment or the running of the time for appeal except as provided in App.R. 4(A).

{¶ 38} "In those cases in which both Civ.R. 58(B) and App.R. 4(A) are applicable, if service of the notice of judgment and its entry is made within the three-day period of Civ.R. 58(B), the appeal period begins on the date of judgment, but if the appellants are not served with timely notice, the appeal period is tolled until the appellants have been served." *State ex rel. Sautter v. Grey*, 117 Ohio St.3d 465, 2008-Ohio-1444, 884 N.E.2d 1062, ¶16, citing *In re Anderson*, 92 Ohio St.3d 63, 67, 748 N.E.2d 67 (2001). Thus, App.R. 4(A)(3) "'tolls the time period for filing a notice of appeal * * * if service is not made within the three-day period of Civ.R. 58(B).'" *Id.*, quoting *State ex rel. Hughes v. Celeste*, 67 Ohio St.3d 429, 431, 619 N.E.2d 412 (1993).

{¶ 39} In the case sub judice, the trial court endorsed upon its judgment entry a "direction to the clerk to serve upon all parties * * * notice of the judgment and its date of entry upon the journal," as required by Civ.R. 58(B). However, we have been unable to locate a notation in the appearance docket that the clerk served appellant with notice of the judgment as Civ.R. 58(B) requires. Civ.R. 58(B) specifically requires the clerk to "note the service in the appearance docket." *Anderson*, 92 Ohio at 67. Accordingly, assuming, arguendo, that appellant's new trial motions were not "appropriate" and thus did not toll the thirty-day time to appeal, the App.R. 4(A)(3) tolling provision applies. We therefore have jurisdiction to hear this appeal. *See In re Elliott*, 4th Dist. Washington Nos. 03CA65 and 03CA66, 2004-Ohio-2770, 2004 WL 1189475; *In re Aldridge*, 4th Dist. Ross No. 02CA2661, 2002-Ohio-5988, 2002 WL 31439807, ¶14.

II

MOTION TO CONTINUE

{¶ 40} In her first assignment of error, appellant argues that the trial court abused its discretion by refusing to continue the permanent custody hearing until her criminal background check had been completed.

{¶ 41} Initially, we point out that appellant explicitly agreed to proceed with the hearing after it recognized that the trial court had denied her request to continue. Appellant's counsel stated, at the beginning of the hearing, that he was prepared to proceed, despite the court's decision not to continue the matter. Thus, under these circumstances, we conclude that appellant invited any error. *State v. Jackson*, — Ohio St.3d —, 2016-Ohio-5488, — N.E.3d —, ¶108, quoting *State ex rel. Kline v. Carroll*, 96 Ohio St.3d 404, 2002-Ohio-4849, 775 N.E.2d 517, ¶27, citing *Lester v. Leuck*, 142 Ohio St. 91, 50 N.E.2d 145 (1943), paragraph one of the syllabus ("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.'"); *id.* at ¶122 (noting that invited error doctrine applies "when a party * * * affirmatively consented to a procedure that the trial court proposed").

{¶ 42} Assuming, arguendo, that appellant did not invite the error, we do not believe that the trial court abused its discretion by overruling her motion to continue the permanent custody hearing.

{¶ 43} "The determination whether to grant a continuance is entrusted to the broad discretion of the trial court." *State v. Conway*, 108 Ohio St.3d 214, 2006-Ohio-791, 842 N.E.2d 996, ¶147, citing *State v. Unger*, 67 Ohio St.2d 65, 423 N.E.2d 1078 (1981), syllabus.

Consequently, "'[a]n appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion.'" *State v. Jones*, 91 Ohio St.3d 335, 342, 744 N.E.2d 1163 (2001), quoting *Unger*, 67 Ohio St.2d at 67.

{¶ 44} "'[A]buse of discretion' [means] an 'unreasonable, arbitrary, or unconscionable use of discretion, or * * * a view or action that no conscientious judge could honestly have taken.'" *State v. Kirkland*, 140 Ohio St.3d 73, 15 N.E.3d 818, 2014–Ohio–1966, ¶67, quoting *State v. Brady*, 119 Ohio St.3d 375, 2008–Ohio–4493, 894 N.E.2d 671, ¶23. "An abuse of discretion includes a situation in which a trial court did not engage in a '"sound reasoning process."'" *State v. Darmond*, 135 Ohio St.3d 343, 2013–Ohio–966, 986 N.E.2d 971, ¶34, quoting *State v. Morris*, 132 Ohio St.3d 337, 2012–Ohio–2407, 972 N.E.2d 528, ¶14, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). The abuse-of-discretion standard is deferential and does not permit an appellate court to simply substitute its judgment for that of the trial court. *Darmond* at ¶34.

{¶ 45} A trial court reviewing a motion for a continuance may consider the following factors: "the length of the delay requested, prior continuances, inconvenience, the reasons for the delay, whether the defendant contributed to the delay, and other relevant factors." *State v. Jordan*, 101 Ohio St.3d 216, 2004-Ohio-783, 804 N.E.2d 1, ¶45, quoting *State v. Landrum* (1990), 53 Ohio St.3d 107, 115, 559 N.E.2d 710; *accord State v. Unger*, 67 Ohio St.2d 65, 67–68, 423 N.E.2d 1078 (1981). Additionally, with respect to the continuance of juvenile court hearings, Juv.R. 23 provides that "[c]ontinuances shall be granted only when imperative to secure fair treatment for the parties."

{¶ 46} In the case sub judice, assuming, arguendo, that appellant did not invite the error, we do not believe that the trial court abused its discretion by overruling appellant's motion to continue the permanent custody hearing. The trial court could have reasonably determined that a continuance was not necessary in order to secure fair treatment for appellant.

{¶ 47} Moreover, the trial court could have reasonably determined that the *Jordan* factors did not weigh in favor of a continuance. Although appellant did not appear to request an overly-lengthy continuance, she had previously requested and received a continuance. Thus, her August 2016 motion to continue was her second motion. Appellant requested a continuance to allow additional time to complete her criminal background check. As appellee notes, however, appellant did not promptly take action to ensure that her background check would be completed in a more timely fashion. The children services caseworker testified that she twice informed appellant of the need to complete a background check: once in January 2016, and again in July 2016. Appellant did not complete the steps necessary to move forward with her background check until August 1, 2016, less than two weeks before the permanent custody hearing was scheduled to begin. Under these circumstances, we do not believe that the trial court abused its discretion by denying appellant's second motion to continue.

{¶ 48} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

III

PERMANENT CUSTODY

{¶ 49} In her second assignment of error, appellant challenges the trial court's finding that placing the children in appellee's permanent custody is in their best interests. Appellant

claims that under R.C. 2151.412(A)(2), the trial court should have placed the children in her legal custody.

{¶ 50} Appellee asserts that appellant misquotes R.C. 2151.412(A)(2) and that her reliance upon R.C. 2151.412 is misplaced. Appellee contends that R.C. 2151.412 provides guidance to children services agencies when implementing case plans and does not set forth the procedure a trial court must follow when considering whether to place a child in a children services agency's permanent custody. Appellee further argues that ample clear and convincing evidence supports the trial court's permanent custody decision.

A

STANDARD OF REVIEW

{¶ 51} Generally, a reviewing court will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *E.g., In re B.E.*, 4th Dist. Highland No. 13CA26, 2014–Ohio–3178, ¶27; *In re R.S.*, 4th Dist. Highland No. 13CA22, 2013–Ohio–5569, ¶29.

> "'Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief."'"

Eastley v. Volkman, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting Black's Law Dictionary 1594 (6th Ed.1990).

{¶ 52} When an appellate court reviews whether a trial court's permanent custody

decision is against the manifest weight of the evidence, the court "'"weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered."'" *Eastley* at ¶20, quoting *Tewarson v. Simon,* 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *Thompkins,* 78 Ohio St.3d at 387, quoting *State v. Martin,* 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983); *accord In re Pittman,* 9th Dist. Summit No. 20894, 2002–Ohio–2208, ¶¶23–24.

{¶ 53} The question that we must resolve when reviewing a permanent custody decision under the manifest weight of the evidence standard 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. "Clear and convincing evidence" is:

> the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

In re Estate of Haynes, 25 Ohio St.3d 101, 103–04, 495 N.E.2d 23 (1986). In determining whether a trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *State v. Schiebel,* 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990); *accord In re Holcomb,* 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), citing *Cross v. Ledford,* 161 Ohio St. 469, 120 N.E.2d 118 (1954) ("Once the clear and convincing standard has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and

determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof.") *In re Adoption of Lay*, 25 Ohio St.3d 41, 42–43, 495 N.E.2d 9 (1986). *Cf. In re Adoption of Masa,* 23 Ohio St.3d 163, 165, 492 N.E.2d 140 (1986) (stating that whether a fact has been "proven by clear and convincing evidence in a particular case is a determination for the [trial] court and will not be disturbed on appeal unless such determination is against the manifest weight of the evidence"). Thus, if 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.,* 4th Dist. Athens Nos. 12CA43 and 12CA44, 2013–Ohio–3588, ¶62; *In re R.L.,* 2nd Dist. Greene Nos.2012CA32 and 2012CA33, 2012–Ohio–6049, ¶17, quoting *In re A.U.,* 2nd Dist. Montgomery No. 22287, 2008–Ohio–187, ¶9 ("A reviewing court will not overturn a court's grant of permanent custody to the state as being contrary to the manifest weight of the evidence 'if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements * * * have been established.'"). Once the reviewing court finishes its examination, the court may reverse the judgment only if it appears that the fact-finder, when resolving the conflicts in evidence, "'clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.'" *Thompkins,* 78 Ohio St.3d at 387, quoting *State v. Martin,* 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). A reviewing court should find a trial court's permanent custody decision against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the [decision].'" *Thompkins,* 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175; accord *State v. Lindsey,* 87 Ohio St.3d 479, 483, 721

N.E.2d 995 (2000).

{¶ 54} Furthermore, when reviewing evidence under the manifest weight of the evidence standard, an appellate court generally must defer to the fact-finder's credibility determinations. *Eastley* at ¶21. As the *Eastley* court explained:

> "'[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. * * *
>
> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.'"

Id., quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978).

{¶ 55} Moreover, deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." *Davis v. Flickinger*, 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997); a*ccord In re Christian*, 4th Dist. Athens No. 04CA10, 2004–Ohio–3146, ¶7. As the Ohio Supreme Court long-ago explained:

> In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and observation of the parties and through independent investigation can not be conveyed to a reviewing court by printed record.

Trickey v. Trickey, 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952). Furthermore, unlike an ordinary civil proceeding in which a jury has no contact with the parties before a trial, in a permanent custody case a trial court judge may have significant contact with the parties before a permanent custody motion is even filed. In such a situation, it is not unreasonable to presume that the trial court judge had far more opportunities to evaluate the credibility, demeanor, attitude, etc., of the

parties than this court ever could from a mere reading of the permanent custody hearing transcript.

B

PERMANENT CUSTODY STANDARD

{¶ 56} R.C. 2151.414(B)(1) permits a trial court to grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and that:

> (a) The child is not abandoned or orphaned or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.
>
> (b) The child is abandoned.
>
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
>
> (d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.
>
> (e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

{¶ 57} Thus, before a trial court may award a children services agency permanent custody, it must find (1) that one of the circumstances described in R.C. 2151.414(B)(1) applies, and (2) that awarding the children services agency permanent custody would further the child's best interests.

{¶ 58} In the case sub judice, appellant does not challenge the trial court's R.C. 2151.414(B)(1) finding. We therefore do not address it. Appellant also does not specifically

discuss whether permanent custody is in the children's best interests. Rather, she claims that the evidence shows that she "is not an unsuitable person to raise her grandchildren" and that "under R.C. 2151.412, legal custody should be placed with [appellant]." Appellant asserts that she is a suitable placement because she has (1) an appropriate home for the children, (2) the financial resources to provide for them, (3) a vehicle, and (4) "the love to raise her grandchildren in a safe environment."

{¶ 59} First, we find appellant's reliance upon R.C. 2151.412 misplaced. The statute is entitled, "Case plans," and discusses the guidelines that govern an agency's case plan implementation. R.C. 2151.412(H) indicates that "[t]he agency and the court should be guided by the following general priorities," and then lists placement options. R.C. 2151.412(H)(2) states:

> 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 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. We therefore find appellant's assertion that R.C. 2151.412 required the trial court to place the children in her legal custody to be without merit. Instead, because this case involved appellee's request for permanent custody of the children, R.C. 2151.414 is the applicable statute.

C

BEST INTEREST

{¶ 60} Second, we do not believe that the trial court's best interest finding is against the manifest weight of the evidence. R.C. 2151.414(D) directs a trial court to consider "all relevant

factors," as well as specific factors, to determine whether a child's best interests will be served by granting a children services agency permanent custody. The listed factors include: (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.[5]

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[5] R.C. 2151.414(E)(7) to (11) state:

> (7) The parent has been convicted of or pleaded guilty to one of the following:
>
> (a) An offense under section 2903.01, 2903.02, or 2903.03 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 an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;
>
> (b) An offense under section 2903.11, 2903.12, or 2903.13 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 an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
>
> (c) An offense under division (B)(2) of section 2919.22 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 the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;
>
> (d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 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 an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
>
> (e) An offense under section 2905.32, 2907.21, or 2907.22 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 the offense described in

{¶ 61} 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.*, 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, ¶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, 2008 WL 224356, ¶19. However, none of the best interest factors requires a court to give it "greater weight or heightened significance." *C.F.* at ¶57. In general, "[a] child's best interest is served by placing the child in a permanent situation that fosters growth,

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that section and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

(f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a), (d), or (e) of this section.

(8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.

(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(10) The parent has abandoned the child.

(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.

stability, and security." *In re C.B.C.*, 4th Dist. Lawrence Nos. 15CA18 and 15CA19, 2016-Ohio-916, 2016 WL 915012, ¶66, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991).

{¶ 62} In the case at bar, after our review of the record we believe that ample competent and credible evidence supports the trial court's finding that granting appellee permanent custody is in the children's best interests.[6]

1

Children's Interactions and Interrelationships

{¶ 63} The parents have absented themselves from their children's lives, and the children lack any parental bond with either parent. While appellant expresses her strong love for the children (which we do not doubt), she did not exercise all of the visitation opportunities available. Rather, she only visited the children twenty-five out of an available fifty-five times. Thus, although appellant may believe that she shares a strong relationship with the grandchildren, her actions show that she has not demonstrated a consistent commitment to the children. As the court noted, J.S.'s special needs require consistency. Moreover, given both children's young ages, consistency in all aspects of their lives will provide them with the best opportunities to thrive. Appellant's actions unfortunately illustrated that she lacks the level of commitment

[6] Although appellee asserts that R.C. 3109.04(F)(1) governed the trial court's best-interest determination, we believe that because the court was considering appellant's request for custody in the context of appellee's permanent custody motion, R.C. 2151.414(D) is the applicable statute in the case at bar. *See generally In re T.A.*, 9th Dist. Lorain Nos. 15CA010858 and 15CA010859, 2016-Ohio-5552, ¶6 (explaining that because no statute specifies best interest evaluation when determining whether to award a party legal custody of a child, courts may look to both R.C. 2151.414(D) and R.C. 3109.04(F)(1) factors); *In re J.D.*, 9th Dist. Summit No. 24915, 2010-Ohio-1344, ¶7 (noting that R.C. 3109.04(F)(1) factors may be appropriate considerations when considering "competing motions for legal custody" following a dependency adjudication).

needed to provide consistent care for the children.

{¶ 64} The guardian ad litem indicated that the children are doing well in the foster home and that the children share a strong bond with each other.

2

Children's Wishes

{¶ 65} The trial court found that both children are too young to directly express their wishes. Nevertheless, the court noted that the guardian ad litem recommended that the court award appellee permanent custody of the children.

3

Custodial History

{¶ 66} The children have been in appellee's custody since June 2015. Immediately before their removal, they were in appellant's care for a few weeks. The children apparently were in their parents' custody between birth and the time the parents left them in appellant's care. Thus, the children have experienced three separate custodial situations in their young lives.

4

Legally Secure Permanent Placement

{¶ 67} "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, 2016 WL 818754, ¶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); *In re J.H.*, 11th Dist. Lake No. 2012–L–126, 2013–Ohio–1293, ¶95 (stating that mother unable to provide legally secure permanent placement when she lacked physical and emotional stability and that father unable to do so when he lacked grasp of parenting concepts); *In re J.W.*, 171 Ohio App.3d 248, 2007–Ohio–2007, 870 N.E.2d 245, ¶34 (10th Dist.) (Sadler, J., dissenting)[7] (stating that a legally secure permanent placement means "a placement that is stable and consistent"); Black's Law Dictionary 1354 (6th Ed. 1990) (defining "secure" to mean, in part, "not exposed to danger; safe; so strong, stable or firm as to insure safety"); *id.* at 1139 (defining "permanent" to mean, in part, "[c]ontinuing or enduring in the same state, status, place, or the like without fundamental or marked change, not subject to fluctuation, or alteration, fixed or intended to be fixed; lasting; abiding; stable; not temporary or

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[7] In *J. W.*, Judge Sadler elaborated upon the meaning of "legally secure permanent placement":

> The Ohio Revised Code does not define the term "legally secure permanent placement." But the word "secure" means "free from fear, care, or anxiety," "affording safety," "trustworthy, dependable," "strong, stable, or firm enough to ensure safety," and "capable of being expected or counted on with confidence." Webster's Third New International Dictionary (1966) 2053. The word "permanent" means "continuing or enduring (as in the same state, status, place) without fundamental or marked change," "not subject to fluctuation or alteration," and "lasting, stable." *Id.* at 1683.
>
> In accord with these definitions, Ohio courts have interpreted R.C. 2151.414(D)(4) as requiring a placement that is stable and consistent. The word "stable" means "firmly established" and "abiding, enduring, persisting, permanent." *Id.* at 2218. The word "consistent" means "marked by harmony, regularity, or steady continuity throughout." *Id.* at 484.

J. W. at ¶33-34 (Sadler, J., dissenting).

transient"). 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." *M.B.* at ¶56.

{¶ 68} In the case sub judice, the evidence demonstrates that the children need a legally secure permanent placement that cannot be achieved without granting appellee permanent custody. Neither parent is able or willing to provide the children with a legally secure permanent placement. They have abandoned their children.

{¶ 69} While appellant believes her home is a legally secure permanent placement, the evidence suggests that it is not. When appellant's own children were minors, children services was involved and all of the children were removed from her care at one point or another. Appellant did not adequately supervise a two-year-old grandchild. Her grandchild escaped from the hotel room where appellant had been watching him, and the grandchild later was found wandering near a busy road. Appellant blamed the event on the grandchild's hyperactivity, yet the evidence indicates that J.S. may have similar behaviors. Thus, if appellant could not provide a secure placement for her hyperactive two-year-old grandchild, it is questionable whether she could provide a secure placement for J.S., who has behavioral challenges.

{¶ 70} Furthermore, the evidence shows that appellant has chosen to live with paramours who are either violent or who have sexual-abuse-involving-minors concerns. Her actions show that she places her own interests above the vulnerable children in her life. While we cannot doubt appellant's strong desire to provide a legally secure permanent placement for her grandchildren, her actions, unfortunately, speak louder than her words. Those actions show that she sadly is unable to provide the children with the legally secure permanent placement that they

need. Even if the physical space in appellant's home is appropriate for the children, a legally secure permanent placement in the permanent custody context requires more than four walls and a roof over the children's heads.

5

R.C. 2151.414(E)(7)-(11)

{¶ 71} The trial court found that R.C. 2151.414(E)(10) applies to the parents. For purposes of R.C. Chapter 2151, "a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days." R.C. 2151.011(C). The evidence in the case at bar establishes that the parents have not had any contact with their children since September 2015. When appellee filed its permanent custody motions, well-over ninety days had elapsed since the parents' last contact. Consequently, the evidence supports the trial court's finding that the parents abandoned their children.

{¶ 72} The trial court additionally determined that appellant had an R.C. 2919.22 child endangering conviction and that R.C. 2151.414(E)(6) applies to appellant. R.C. 2151.414(E)(6) states that if the court finds the existence of the following factor, then it "shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent":

> The parent has been convicted of or pleaded guilty to an offense under division (A) or (C) of section 2919.22 * * * and the child or a sibling of the child was a victim of the offense, or the parent has been convicted of or pleaded guilty to an offense under section 2903.04 of the Revised Code, a sibling of the child was the victim of the offense, and the parent who committed the offense poses an ongoing danger to the child or a sibling of the child.

{¶ 73} It is not clear whether this provision requires a finding that a child cannot be placed with a grandparent within a reasonable time or should not be placed with the grandparent when a cousin of the child was a victim of the offense. We nevertheless believe that the trial court could consider appellant's child endangering conviction as a relevant factor.

6

Relative Placement

{¶ 74} Although R.C. 2151.414(D) does not specify "relative placement" as a factor, courts generally have reviewed the possibility of a relative placement in the context of whether the child can achieve a legally secure permanent placement without granting the children services agency permanent custody (i.e., if a relative can provide a legally secure permanent placement, then the child could achieve a legally secure permanent placement without a grant of permanent custody). We point out, however, that a trial court evaluating a child's best interest need not determine that terminating parental rights is "the only option" or that no suitable person is available for placement. *In re Schaefer, supra*, ¶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. *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991). 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). Additionally, we observe that "[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.

{¶ 75} Furthermore, we recognize that "[f]amily unity and blood relationship" may be "vital factors" to consider, but neither is controlling. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98518 and 98519, 2013–Ohio–1703, ¶31. Indeed, "neglected and dependent children are entitled to stable, secure, nurturing and permanent homes in the near term * * * and their best interest is the pivotal factor in permanency case." *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009–Ohio–5496, ¶35. Thus, while biological relationships may be important considerations, they are not controlling when ascertaining a child's best interest. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98518 and 98519, 2013–Ohio–1706, ¶111. Additionally, "relatives seeking custody of a child are not afforded the same presumptive rights that a natural parent receives." *In re M.H.*, 5th Dist. Muskingum No. CT2015-0061, 2016-Ohio-1509, 2016 WL 1426473, ¶25. "The law does not provide grandparents with inherent legal rights based simply on the family relationship." *In re H.W.*, 114 Ohio St.3d 65, 2007-Ohio-2879, 868 N.E.2d 261, ¶9. In the case sub judice, therefore, the trial court was not required to favor an option that would have preserved a familial relationship with appellant when the circumstances show that the children's best interests would be better served by placing them in appellee's permanent custody. *See In re M.H.*, 4th Dist. Athens No. 15CA39, 2016-Ohio-3407, 2016 WL 3259718, ¶¶33-35.

{¶ 76} We believe that based upon a consideration of all 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 reasonably could have formed a firm belief that permanent custody is in the child's best interest. We therefore do not believe that the trial court's finding that awarding appellee permanent custody is in the children's best interests is against the manifest weight of the evidence.

{¶ 77} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pike County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

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

McFarland, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, 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.