[Cite as *In re E.W.*, 2017-Ohio-7258.]

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

IN RE E.W.,	:	Case No. 17CA10
	:	
	:	DECISION AND
ADJUDICATED DEPENDENT CHILD.	:	JUDGMENT ENTRY
	:	
	:	**RELEASED: 07/27/17**

APPEARANCES:

David J. Winkelmann, Millfield, Ohio, for Appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Merry M. Saunders, Athens County Assistant Prosecuting Attorney, Athens, Ohio, for Appellee.

Harsha, J.

{¶1} The father appeals the trial court's decision granting permanent custody of his child to the Athens County Children Services ("the agency"), initially contending the agency's motion for permanent custody was premature because the agency did not satisfy its duty to make diligent efforts of family reunification. However, the agency sought permanent custody only after making unsuccessful reasonable efforts to reunify the family. Thus, its motion for permanent custody was not premature.

{¶2} In making a similar assignment of error, the father also argues that the trial court's decision to terminate parental rights and grant permanent custody to the agency was not supported by the requisite evidence. He contends that testimony at the hearing established that reunification could be completed in a reasonable time. However, clear and convincing evidence shows that the parents had substance abuse and mental health issues that caused their child to be removed from custody; and they failed to address those issues despite reasonable and diligent case planning efforts by the

agency. Thus, the record supports the trial court's finding that E.W. cannot be placed with either parent within a reasonable time and should not be placed with either parent.

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

I. FACTS & PROCEDURAL HISTORY

{¶4} In November 2015, the agency filed a dependency complaint and motion requesting temporary custody of E.W., a three-month-old infant. According to the complaint, the agency became involved after the Nelsonville Police received a 911 call from E.W.'s parents who reported an intruder in their home. The father told police that he saw the intruder, gave the intruder three minutes to leave, and then started to give E.W. a bath. Because the intruder was still there after the father finished E.W.'s bath, he telephoned the police. The mother told police that she saw the intruder crawl into the box springs of the bed and when she "sprayed Febreze" on it, the intruder jumped out. The mother also told police an intruder had broken into their home a week earlier. The police found no intruder or signs of forced entry, but observed that the windows had knives in them to prevent them from opening and that the home was "very messy with trash and debris." (OR #1)

{¶5} The complaint alleged that E.W.'s parents both have a history of drug abuse and are on probation for crimes related to drug use and possession. The police immediately contacted the agency out of concern for E.W.'s safety because the parents were either under the influence of drugs and/or experiencing serious mental health issues. Caseworkers arrived, observed the parents' erratic and escalating behaviors,

obtained an ex parte custody order, and removed E.W. from the home and placed her into foster care.

{¶6} The case plan indicated that both parents have a history of heroin abuse and unemployment. The case plan required both parents to (1) complete mental health and substance abuse assessments and follow any recommendations, (2) work with Integrated Services to obtain more suitable housing, (3) attend scheduled visits with E.W. and follow visitation rules, and (4) sign necessary releases of information and complete all required medical background forms. The mother needed to submit to drug screens and comply with the rules of her probation. The father needed to continue to work with a drug/alcohol agency for treatment and counseling to help him stay sober and on target in his recovery.

{¶7} In 2016, after hearings and with the parents' agreement, the court adjudicated E.W. a dependent child and granted the agency temporary custody.

{¶8} In May 2016, the agency completed a semi-annual administrative review, which found that E.W.'s parents had made minimal case plan progress. Both parents were suspended from mental health care services due to numerous cancellations and "no shows." The mother had failed to obtain a substance abuse assessment or treatment. Both parents had numerous positive drug screens and failed to provide the agency with information concerning potential prescription drugs. The parents had been unable to obtain stable housing and were homeless.

{¶9} In August 2016, the agency filed an amended case plan to place E.W. in a foster-to-adopt placement because E.W.'s parents had not been visiting on a consistent

weekly schedule. Both parents filed objections to the amended case plan, but at a hearing on the objections, the parents withdrew them.

{¶10} In October 2016, the agency filed a motion for permanent custody. The agency alleged that all attempts at reunification had been unsuccessful because the parents had not successfully addressed their substance abuse and mental health issues. The agency alleged that E.W.'s parents were referred to Integrated Services to address housing issues, but they were evicted from their apartment in early 2016, spent much of the year homeless, and only obtained housing in September 2016. The agency alleged that E.W. cannot and should not be returned to the parents, and it is in E.W.'s best interest to be placed in the agency's permanent custody.

{¶11} In February 2017, the trial court held a permanent custody hearing. A police officer testified that in March 2016 he had been called to a hospital to speak with E.W.'s mother about an incident that resulted in the father's arrest for domestic violence. A second police officer testified that in July 2016 he was called to an apartment for an alleged drug overdose and when he arrived he saw E.W.'s father passed out on the kitchen floor. The officer was able to wake up the father and had him transported by squad to the local hospital. A third police officer testified that he had been called by E.W.'s father to the parents' apartment in December 2016 because the father believed that there was an intruder in his apartment, but when the officer arrived he found no intruder or evidence of any possible break-in. A fourth police officer testified that several weeks after the December 2016 call, E.W.'s father called to report a suspicious male in front of his home. The officer drove to the home, but saw no one in the vicinity. The officer testified that approximately 45 minutes later the father called

again and reported that his home had been broken into and his medication stolen. However, after the police discovered the medication in plastic bags in the father's pockets, the officer charged him with falsification.

{¶12} The agency's transportation supervisor testified that the parents had been eligible to receive transportation for visitation with E.W. but they repeatedly violated the transportation policies. The supervisor reported that the parents had been removed from the transportation schedule on at least five different occasions during the case, most recently on December 2016 for having at least four missed transports.

{¶13} Todd Smith, an Adult Parole Authority supervising officer for E.W.'s mother testified that she is a felon currently on probation for drug possession. The parole supervisor testified that the mother is not compliant with her parole reporting, has not reported to him in over a year, has had three arrest warrants, and has not submitted to drug screens as required. The supervisor testified that the mother currently has parole violations pending for which she could receive long-term placement in a correctional-based counseling facility for alcohol and drug treatment, or a prison term.

{¶14} Jennifer Pinney, a parent-mentor with the agency testified that she had been involved in E.W.'s case as a parent-mentor since November 2016. In December 2016, Pinney attempted to provide mentoring services in a home visit, but both parents appeared to be excited, frantic, moving rapidly and under the influence of drugs. Pinney testified that the parents were upset because they had received drug screen results for the father and he had tested positive for methamphetamine. Pinney expressed concerns to her supervisor about whether parent mentoring was going to be effective

because of the parents' ongoing drug use and possible detoxing. The agency suspended parent mentoring from December 6, 2016 through January 19, 2017.

{¶15} Pinney testified that she went for a home visit in late December 2016 after the father had been arrested for falsification to do a well-check on the mother and found wood debris on the stairwell, music blasting, and the door jamb broken. No one responded to her knocking or verbal inquiries; she felt unsafe and left. Pinney testified that she also observed a number of visits between E.W. and the parents. Pinney testified that the parents were no-shows for four visits and at approximately one-third of the visitations she supervised, the parents arrived and appeared to be under the influence of drugs, have slurred speech, were extremely lethargic, and had drooping eyes. Pinney testified that she has not recommended that the parent-child visitations take place off agency grounds because the parents' behavior over the course of the case has been "very hit or miss, good and bad. Until they have a sustained time of sobriety I don't feel at this point it would be safe to move the visits off ground."

{¶16} Agency caseworker Melissa Frechette testified that she had been working with E.W.'s parents since December 2015. Frechette testified that the parents lost housing and lived in motels, with friends or family, and in a tent from February 2016 through September 2016. Frechette testified that E.W.'s mother told her that she "gets her medications from the streets", and the mother revoked consent to allow her physicians to report to the agency. Frechette testified that E.W.'s mother did not want to participate in preparing a concurrent case plan, and refused informative brochures and parent-mentoring services because she believed she needed no help with her parenting skills. Frechette stated that she had difficulties tracking all the different doctors the

parents had seen and identified at least nine different physicians or nurse practitioners. Frechette testified that both parents were terminated from the mental health assessment and treatment program for no shows or cancellations and that her attempts to meet with them during the case was frustrated by their repeated no shows, homelessness, and her inability to communicate with them by phone. Frechette's attempts to meet with the parents in May through August 2016 were frustrated by the parents' repeated no shows and her inability to locate them. Frachette met with them in June 2016 and went over their drug screens from a May 2016 visitation. She testified that the mother was four months pregnant with a second child at that time. The father's drug screen was positive for amphetamines, marijuana and "benzos." Both parents' drug screens were positive.

{¶17} Frachette testified that she met with the parents in August 2016 because E.W. had been placed in respite care for the weekend and the agency decided to change the case plan to place E.W. in a foster-to-adopt home that would meet his permanency goals. The agency filed its proposed amended case plan on August 31, 2016 and filed a motion for permanent custody five weeks later in October 2016. Frachette testified that both parents' efforts to follow the case plan improved beginning in September 2016, but neither parent has complied with the requirement to have a medical examination and there have been large gaps of time where they were not receiving drug counseling services. Frachette testified that even though the parents have obtained housing, she would still have concerns about having E.W. returned to the parents because of their drug use, criminal charges, and lack of medical evaluations. Frachette testified that it is in E.W.'s best interest to be placed in permanent custody

with the agency because of those issues, as well as the general level of chaos and instability in their lives. Frachette testified that although the parents had shown improvement after the agency filed for permanent custody, their efforts to comply with the case plan have been inconsistent over the history of the case. Frachette testified that the parents' current housing has cockroach infestation, heating/cooling issues, and is not appropriate for E.W.

{¶18} Ruth Reilly, the guardian ad litem for E.W. testified that she believed it was in E.W's best interest to be placed in the agency's permanent custody because the parents do not have the capabilities to take care of him. Reilly testified that the parents have had over a year to address their issues and they have not taken personal responsibility. The parents never made sufficient progress on their case plans to progress to unsupervised visits. Reilly testified that E.W. is "thriving tremendously" in foster care. Reilly stated that she is concerned about the parents' mental health and their failure to take responsibility for their actions. Reilly testified that the recent efforts the parents have made to comply more fully with the case plan are not enough to convince her that E.W. would be safe in their care, and that giving them more time to make additional efforts would be not be beneficial for E.W.

{¶19} Several witnesses from Integrated Services testified on behalf of the parents about their efforts to help with transportation and locate housing. Rachell Dishong is a community health case manager for Integrated Services and testified that she has worked with E.W.'s mother since April 2016. Dishong testified that during her interactions with the mother, she did not appear to be under the influence of drugs. Darlene Lustgarten is a housing coordinator for Integrated Services and has been

working with E.W.'s parents since October 2016 to locate housing and a HUD housing voucher. Lustgarten testified that she hoped to be able to help E.W.'s parents find more appropriate housing soon. Brandon Buckley is a case manager for Intergrated Services and has been working with E.W.'s father since late September 2016. Buckley testified that he meets with E.W.'s father weekly and the father has made "a big change for the positive," has been receptive and cooperative, and appears coherent and responds appropriately to questions.

{¶20} The parents did not testify.

{¶21} Under R.C. 2151.414(B)(1) the trial court found that it was in the best interest of the child to terminate parental rights and grant permanent custody to the agency. The trial court found that mother and father have (1) mental health and substance abuse issues central to the case plan; (2) inability to sustain stable housing resulting in homelessness or unacceptable living arrangements; and (3) felony drug convictions and/or arrests. The trial court found that the mother faces likely revocation of community control because of her failure to meet basic reporting requirements, having been subject to at least three arrest warrants.

{¶22} The trial court found that the agency has provided services and referrals related to mental health, substance abuse, housing, transportation, and parenting, but the parents fail to avail themselves of the services and refused signing necessary releases or revoked releases previously granted. The trial court recognized that the parents recently showed "encouraging signs of insight into the serious challenges that stand between them and acceptable parent standards" but "provide no evidence of meaningful engagement addressing their core mental health issues." "Given the amount

of time and opportunities that have passed and the degree of unapologetic irresponsibility demonstrated" the court applied R.C. 2151.414(B)(1) and found that E.W. cannot be placed with either parent within a reasonable time and should not be placed with the parents. The trial court ordered that E.W. be placed in the agency's permanent custody and terminated the mother and father's parental rights.

II. ASSIGNMENTS OF ERROR

{¶23} The father raises two assignments of error:

> I. THE TRIAL COURT ERRED BY GRANTING PERMANENT CUSTODY OF [E.W.] TO THE STATE OF OHIO WHERE ATHENS COUNTY CHILDREN SERVICES HAD FILED ITS MOTION REQUESTING PERMANENT CUSTODY PREMATURELY, THE CHILD HAD BEEN PLACED WITH A FAMILY THAT INTENDED TO ADOPT THE CHILD, AND THE COURT FAILED TO MAKE THE REQUIRED FINDINGS IN THIS REGARD.[1]
>
> II. THE TRIAL COURT ERRED IN FINDING SUFFICIENT EVIDENCE EXISTED TO TERMINATE PARENTAL RIGHTS AND GRANT PERMANENT CUSTODY TO THE STATE.

III. ANALYSIS

A. TIMING OF THE AGENCY'S PERMANENT CUSTODY MOTION

{¶24} Rather than focusing on a specific statutory or agency time frame that would cause the motion for permanent custody to be premature, father seems to contend that the motion was premature because the agency failed to satisfy its statutory duty to make reasonable efforts at family unification. However, the father did not object to the timing of the agency's permanent custody motion below and therefore forfeited all but plain error. To prevail on a claim of plain error appellant must establish that an error

[1] Appellant presents his first assignment of error three times in different sections of the brief. Twice it is identified as set forth above. Once it is set forth as "The trial court erred by rigidly applying the time provisions in 2152.414(B) in to [sic] rigid a fashion." Because the legal argument follows the error as set forth above, we address that version of the first assignment of error and disregard the one not argued.

occurred, that the error was plain, and that but for the error, the outcome of the trial clearly would have been otherwise. *See generally State v. Mammone*, 139 Ohio St.3d 467, 2014-Ohio-1942, 13 N.E.3d 1051, ¶ 69. In addition, "[a]n appellate court 'must proceed with the utmost caution' in applying the doctrine of plain error in a civil case." *Risner v. Ohio Dept. of Natural Resources, Ohio Div. of Wildlife*, 144 Ohio St.3d 278, 2015-Ohio-3731, 42 N.E.2d 718, ¶ 27, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997). "Plain error should be strictly limited 'to the *extremely rare* case involving *exceptional* circumstances when the error, left unobjected to at the trial court, rises to the level of challenging the legitimacy of the underlying judicial process itself.' " (Emphasis sic.) *Risner* at ¶ 27, quoting *Goldfuss*, 79 Ohio St.3d at 122, 679 N.E.2d 1099.

{¶25} The father argues that the agency was "unconcerned with the timeline dictated by statute" and "prematurely [filed] its motion requesting permanent custody." Even though more than a year had transpired between the initial removal of E.W. and the permanent custody hearing, the father argues that the agency "had no intent to afford [father and mother] the time required by the relevant statute to secure the return of [E.W.]." He contends that the agency placed E.W. with a foster-to-adopt family in August 2016, which he argues supports his contention that the agency was not making diligent efforts at reunification. The father also contends that the trial court did not "make the required findings in this regard." In other words, he contends that the trial court failed to find that the agency made reasonable efforts at reunification.

{¶26} R.C. 2151.413 and R.C. 2151.414 govern motions for permanent custody and do not limit to a specific date the agency's permanent custody motion. Nonetheless,

"except for a few narrowly defined exceptions, the state must have made reasonable efforts to reunify the family prior to the termination of parental rights." *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 21, 43 (although the state must make reasonable efforts to reunify prior to applying for permanent custody, it does not have to establish that reasonable efforts have been made at the time of the permanent custody hearing if it has established it prior to the hearing). Here the agency obtained emergency temporary custody of E.W. on November 9, 2015 and filed a motion for permanent custody on October 5, 2016. The agency submitted a case plan for reunification in December 2015, and worked with the parents on the case plan until the permanent custody hearing in February 2017. The trial court's journal entries filed March 16, 2016, July 19, 2016, September 14, 2016, and November 29, 2016 make the specific finding that the agency has made reasonable efforts towards reunification under the case plan. The father did not object to any of those entries. Additionally, on January 26, 2017, the magistrate issued a decision finding that the agency has made reasonable efforts to work toward finalizing the permanency plan of reunification. The decision indicates that the father's attorney approved the decision and did not object to the magistrate's findings. The trial court adopted the magistrate's decision, and in the trial court's order granting the agency permanent custody the trial court cited to *In re C.F., supra*, and found that the agency had already established that it had made reasonable efforts at reunification prior to the hearing on permanent custody. We find nothing in the record that would support the father's contention that the agency's motion was filed "prematurely" i.e., before the agency made reasonable reunification efforts.

{¶27} And, the record does not support the father's claim that the agency's foster-to-adopt placement undermined the reunification efforts. Frechette explained that E.W. had been placed in a foster-to-adopt home for respite care in August 2016; the original foster parents were not interested in adopting E.W. Therefore, the agency decided it was in E.W.'s best interest to remain with the respite caregivers, who were interested in providing foster-to-adopt care.

{¶28} The father also argues that the trial court made no findings under R.C. 2151.414(B)(1). This contention is factually incorrect. The relevant portion of R.C. 2151.414(B)(1) and (B)(1)(a) provide that a court may grant permanent custody to the agency if it determines by clear and convincing evidence that: (1) it is in the best interest of the child to grant permanent custody to the agency and (2) "(a) * * * 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." R.C. 2151.414(D)(1)(a) – (e) governs the trial court's "placement with the parents" analysis.

{¶29} The trial court's order identifies the relevant statutory provisions as R.C. 2151.414(B)(1) and (B)(1)(a). The trial court identifies the best interest factors in R.C. 2151.414(D)(1)(a)-(e) and which of factors in R.C. 2151.414(E) it considers relevant to its "placement with the parents" analysis – specifically (E)(1), (4) and (16). The court examines each of the best interest factors and finds by clear and convincing evidence that it is in the child's best interest that permanent custody be granted to the agency:

> E.W. was removed from his parents at three months of age, and has not returned. Visitation was always offered and the parents managed to attend about 70% of the visits. However, their visits were never able to progress to the point where even "off grounds" visits could be considered safe or appropriate. Except for a new younger sibling (also in the temporary custody of [the agency]), E.W. has no other family member in his life. He

> is bonded and doing well in foster care. * * * The child is too young to express wishes in this regard. * * * The first three months of E.W.'s life were spend with these parents and the rest in foster care as a result of orders by this Court. * * * The child needs and deserves a legally secure placement that can only be achieved by a termination of parental rights, permanent custody to [the agency], and placement for adoption. This is the result sought by [the agency], recommended by the guardian ad litem, and approved by the Court.

{¶30} Next the court expressly states that it examined the factors relevant to "placement with the parents" and finds by clear and convincing evidence that the child cannot be placed with either parent within a reasonable time and should not be placed with the parents:

> Mother and father both have active issues with their mental health and substance abuse. The adjudication of dependency was agreed upon by counseled admission based upon the "health issues" of the parents. Since the child's removal, mental health and substance use and abuse have been central to the case plan. These issues have, however, revealed themselves in other measurable ways. The parties cannot sustain stable housing, periodically resulting in homelessness or unacceptable living arrangements. Both parties are also defendants in the felony criminal justice system. For example, mother has been convicted of drug possession, and father is awaiting trial for heroin charges. Mother had been placed on community control but is now facing likely revocation because of her failure to meet even the most basic reporting requirements, having been subject to at least three arrest warrants. Father's fate is yet to be determined.
>
> Throughout this case, [the agency] has provided a wealth of services and referrals regarding mental health, substance abuse, housing, transportation and parenting. The parents failed to avail themselves of these services, and often would refuse the signing of necessary releases or revoke release previously granted. They have also engaged in a pattern of moving from provider to provider, often "shopping" for medical opinions and prescriptions as well as acquiring drugs from the "streets". Throughout all this they have regularly failed to accept responsibility for their actions and inactions. The parents have recently shown encouraging signs of insight into the serious challenges that stand between them and acceptable parenting standards. But even with that being said they still provide no evidence of meaningful engagement address their core mental health issues. Given the amount of time and opportunities that have passed and the degree of unapologetic irresponsibility demonstrated, the decision in this case is clear.

> * * * the parents have failed to meaningfully engage in the services directed toward the clear problems, and failed to otherwise demonstrate progress or improvement.

{¶31} The trial court's decision contains an assessment of the proper factors in the best interest analysis and a clear analysis of the evidence supporting the relevant factors to assess whether the child can be returned to the parents within a reasonable time. The agency did not "prematurely" file its motion for permanent custody, nor is there any evidence that the agency undermined the reunification plan by making a foster-to-adopt placement in August 2016. The trial court found that the agency had already established that reasonable efforts at reunification had been made prior to the hearing on permanent custody. Thus there was no requirement that the trial court make this finding at the hearing. The trial court also made express findings that permanent custody with the agency is in E.W.'s best interest and that E.W. cannot be placed with either parents within a reasonable time and should not be placed with the parents.

{¶32} We overrule the father's first assignment of error.

B. TERMINATION OF PARENTAL RIGHTS AND GRANT OF AGENCY PERMANENT CUSTODY

{¶33} In his second assignment of error the father argues that the trial court erred in terminating his parental rights because the evidence shows that the parents made progress on their case plan starting in September 2016; that there is "almost no evidence in the record" to support the conclusion that the parents were obtaining drugs illegally; and there is no expert testimony that they had mental health issues.

1. STANDARD OF REVIEW IN PERMANENT CUSTODY CASES

{¶34} 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).

{¶35} 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*, 149 Ohio St.3d 273, 2016–Ohio–5725, 74 N.E.3d 419, ¶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.).

{¶36} "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

{¶37} 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

{¶38} 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 utilized the latter procedure. When an agency files a permanent custody motion under R.C. 2151.413, R.C. 2151.414 applies. *See* R.C. 2151.414(A).

{¶39} 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) permits a trial court to grant a children services agency permanent custody if "[t]he child is not abandoned or orphaned, has not been in the temporary custody of one or more public agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period * * * 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."

{¶40} Here the father has not challenged the trial court's best interest findings. Instead, he focuses his argument on the trial court's determination that the child cannot be placed with either parent within a reasonable time or should not be placed with the child's parent. We limit our review accordingly and simply point out that the record supports best interest findings under R.C. 2151.414(B)(1) and (D)(1)(a) through (d).

4. PLACEMENT WITH PARENTS WITHIN REASONABLE TIME

{¶41} R.C. 2151.414(E) sets forth the factors the court must consider when determining whether the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. Consequently, before a trial court may award a children services agency permanent custody as an initial disposition, it must find that one of the circumstances described in R.C. 2151.414(E) applies.

{¶42} To support his contention that the trial court erred in terminating his parental custody under R.C. 2151.414(E), the father focuses on the parents' "hard work" at reunification that started in September 2016, the court's focus on the parents' homelessness, and the parents' mental health and substance abuse issues.

{¶43} R.C. 2151.414(E) requires a trial court to "consider all relevant evidence" when determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent. The statute further mandates such a finding if clear and convincing evidence shows the existence of any one of several enumerated factors. Relevant here, R.C. 2151.414(E)(1), (4), and (16) require such a finding if:

> (1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.
> * * * *
> (4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;
> * * * *
> (16) Any other factor the court considers relevant.

{¶44} A trial court may base its decision that a child cannot be placed with either parent within a reasonable time or should not be placed with either parent upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with either parent within a

reasonable time or should not be placed with either parent. *E.g., In re C.F.*, 113 Ohio St.3d 73, 2007–Ohio–1104, 862 N.E.2d 816, ¶ 50; *In re William S.*, 75 Ohio St.3d 95, 99, 661 N.E.2d 738 (1996). Here, the trial court found that R.C. 2151.414(E)(1), (4), and (16) applied.

{¶45} Although the father does not cite which of the three R.C. 2151.414(E) factors he disputes, his argument focuses on the parents' attempts to remedy the conditions causing the child to be placed outside the home, which is the factor under R.C. 2151.414(E)(1).

{¶46} The record contains abundant competent and credible evidence that the parents failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. For the first ten months, the parents failed to make any significant or meaningful progress on their case plan; they refused medical, psychiatric, psychological, and the other social and rehabilitative services and material resources that were made available to them by the agency for the purpose of allowing reunification. When they were informed in August 2016 of the agency's decision to terminate parental rights and seek permanent custody, the parents made some belated efforts in September 2016. However, the record shows that even these efforts were inadequate. The father tested positive for methamphetamine in December 2016 and the agency suspended parent mentoring from December 6, 2016 through January 19, 2017 due to the parents' preoccupation with drug use and detox. The parents lived in a tent or had other inadequate housing for at least seven months during the case. Although the parents located housing in September 2016, the record shows that it was infested with cockroaches and had heating and cooling issues,

making it inappropriate housing for E.W. The parents cannot provide a legally secure permanent placement and adequate care for E.W. or are unwilling to do so.

{¶47} Consequently, the record contains clear and convincing evidence to support the court's findings under R.C. 2151.414(E) that E.W. cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶48} Accordingly, we overrule the father’s second assignment of error 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. & McFarland, 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.