[Cite as *In re C.E.*, 2019-Ohio-4125.]

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

IN THE MATTER OF:	:	
C.E.,	:	CASE NO. 19CA10
Adjudicated Dependent Child.	:	DECISION & JUDGMENT ENTRY
	:	

APPEARANCES:

K. Robert Toy, Athens, Ohio, for Appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Timothy L. Warren, Athens County Assistant Prosecuting Attorney, Athens, Ohio, for Appellee.

CIVIL CASE FROM COMMON PLEAS COURT, JUVENILE DIVISION
DATE JOURNALIZED: 9-30-19
ABELE, J.

{¶ 1} This is a an appeal from an Athens County Common Pleas Court, Juvenile Division, judgment that granted Athens County Children Services, appellee herein, permanent custody of four-year-old C.E. The child's biological mother, appellant herein, assigns the following errors for review:

> FIRST ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT DID NOT ADEQUATELY CONSIDER ALL RELEVANT FACTORS IN DETERMINING THE CHILD'S BEST INTEREST. EVENTUAL CUSTODY TO MOTHER REMAINED A VIABLE ALTERNATIVE TO TERMINATION OF PARENTAL RIGHTS."
>
> SECOND ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURTS [SIC] FINDING THAT [IT] IS IN THE CHILD'S BEST INTEREST THAT MOTHER'S PARENTAL

RIGHTS BE TERMINATED AND THAT ATHENS COUNTY CHILDREN SERVICES RECEIVE PERMANENT CUSTODY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 2} On May 9, 2017, appellee filed a complaint that alleged the child is neglected and dependent. The complaint averred, in part, that (1) appellant had been in a substance abuse program for approximately five years; (2) appellant no longer is involved in the substance abuse program due to failed drug screens; (3) appellant recently used heroin and cocaine; (4) one of appellant's other children, J.H., missed fifty days of school and is failing every grade; (5) appellant admitted that she stole merchandise from a grocery store; (6) appellant reported that she recently smoked marijuana while the children were at home; (7) appellant indicated that she is depressed and needs mental health services; and (8) appellant missed an endocrinology appointment for J.H., who has diabetes. Appellee therefore requested an order of protective supervision. On September 21, 2017, the court adjudicated the child dependent and dismissed the neglect allegation.

{¶ 3} Approximately one month later, appellee requested the court award it temporary custody of the child. Appellee alleged that since the adjudicatory hearing, appellee has had difficulty contacting appellant and, that when appellee has been able to drug test appellant, appellant consistently tested positive for methamphetamine and cocaine. The trial court subsequently placed the child in appellee's temporary custody.

{¶ 4} On October 18, 2018, appellee filed a motion to modify the disposition to permanent custody. Appellee asserted that the child cannot be placed with either parent within a reasonable time, or should not be placed with either parent, and that placing the child in

appellee's permanent custody is in the child's best interest. Appellee alleged that reunification efforts have not been successful due to appellant's failure to resolve her substance abuse and mental health issues. Appellee claimed that appellant (1) consistently tested positive for methamphetamine and did not engage in an appropriate drug treatment program, (2) did not consistently attend mental health counseling in order to manage her condition, and (3) was unable to maintain a stable residence that would be appropriate for the child.

{¶ 5} On February 25, 2019, the trial court held a hearing to consider appellee's permanent custody motion. Cathye Williams, a drug and alcohol counselor at Integrated Services, testified that, in September 2017, Williams gave appellant an intake for substance abuse counseling services. Williams subsequently recommended that appellant continue to engage in counseling.

{¶ 6} Williams stated that, although appellant did not attend another counseling appointment until November 17, 2017, appellant did see other providers at the center on four other occasions during November. Williams explained that in addition to substance abuse counseling at Integrated Services, appellant also saw a caseworker and a psychiatric nurse.

{¶ 7} Williams stated that her next counseling session with appellant occurred on December 4, 2017. Williams reported that in January 2018, appellant attended weekly counseling sessions, but that appellant did not attend any appointments in February or March 2018. Williams testified that appellant attended a session on April 19, 2018, but she did not return for a counseling appointment again until July 12, 2018.

{¶ 8} Williams explained that after the July 12, 2018 appointment, appellant next attended a session on August 16, 2018. Appellant also attended an appointment the following

week. Williams related that appellant additionally attended three September 2018 sessions, two October 2018 sessions, one November 2018 session, two December 2018 sessions, one January 2019 session, and three February 2019 sessions. Williams agreed that appellant did not consistently see Williams according to the recommended weekly schedule, but she nevertheless believes that appellant has made "good progress" over the last six months managing her sobriety.

{¶ 9} The foster mother testified that the child has lived in her home since October 27, 2017. The foster mother reported that the child "is generally doing pretty well." The foster mother stated that the child sometimes calls her by her first name and other times she calls her mom. The foster mother explained that the child has a few struggles and indicated that, when the child first entered her home, the child "had a lot of difficulty regulating emotion." She stated that the child "would get upset and scream and cry" and sometimes "would lash out by hitting or kicking, or sometimes even throwing things." The foster mother related that she and the child engaged in parent-child interaction therapy for approximately three months. The foster mother testified that she believes that the therapy has helped the child's behaviors improve. The foster mother further explained that the child continues to have struggles and that inconsistencies with visitations appear to aggravate the child's behaviors. The foster mother stated that when appellant consistently visits, the child appears "much better." The foster mother indicated that the child enjoys her visits with appellant.

{¶ 10} Caseworker Tamrin Vanderwalt testified that the case plan required appellant to obtain and maintain independent and stable housing and to address her substance abuse and mental health issues. Vanderwalt stated that she also spoke with appellant about the need to maintain consistent visitation with the child. Vanderwalt reported that in March 2018, she

spoke with appellant about appellant's failure to visit the child for more than six weeks. Appellant explained that her life had become hectic and that she "had been going through a lot of personal issues."

{¶ 11} Caseworker Stephanie Boaine testified that she investigated several relative placements for the child, but none seemed appropriate.

{¶ 12} Appellant testified that when the child was removed, appellant had been living in New Marshfield. Appellant explained that shortly after the child's removal, she left the residence because her landlord suddenly passed away and the landlord's family wanted to sell the property. Appellant stated that she then moved to Albany and remained in the same residence until July 2018. Appellant reported that in July 2018, she was asked to leave the residence for non-payment of rent. Appellant indicated that she next went to West Virginia, where she stayed in a hotel efficiency for about three months. After she left West Virginia, appellant moved to Ashland, Kentucky. There, she again lived in an efficiency for a few months. Appellant explained that she now lives in Hazard, Kentucky with her boyfriend.

{¶ 13} Appellant admitted that she struggles with both substance abuse and mental health issues. Appellant reported that she has been diagnosed with borderline bipolar disorder, manic depression, and attention deficit disorder. Appellant also admitted that she used methamphetamine throughout the history of the case. She further explained that she continues to receive treatment and that "as long as [she is] with the right people, and the right doctors, and on the right meds," she can take care of the child "very well."

{¶ 14} Appellant also agreed that in the beginning of the case, she may have missed visits. She stated, however, that in the past six months, she has visited on a consistent basis

unless either she or the child were sick.

{¶ 15} ACCS caseworker Mandi Knowlton testified that she has worked with the family since July 2018. Knowlton stated that she advised appellant of the need to attend visits consistently and to have clean drug screens. Knowlton indicated that the inconsistencies in visitations appeared to negatively affect the child's behavior. Knowlton reported that when visits were inconsistent, the child "had more tantrum behavior." Knowlton also explained that appellant discussed her past substance abuse issues with heroin and cocaine and that appellant believed that she had made significant progress to conquer her addiction. Knowlton stated that appellant reported that she used methamphetamine occasionally as a form of self-medication.

{¶ 16} Based upon all of the foregoing, Knowlton concluded that returning the child to appellant would not serve the child's best interest. Knowlton stated that appellant has not maintained consistent visitation and has not adequately resolved her substance abuse issues. Knowlton related that Knowlton would not feel secure that appellant could "safely parent" the child due to appellant's continued drug use.

{¶ 17} The child's guardian ad litem also testified and likewise recommended that the court grant appellee permanent custody of the child. The guardian ad litem explained that appellant's case-plan progress has been inconsistent and that the child needs consistency.

{¶ 18} On May 10, 2019, the trial court awarded appellee permanent custody of the child. The court concluded that the child cannot be placed with either parent within a reasonable time, or should not be placed with either parent. The court observed that appellant's long history of substance abuse has caused her to struggle to meet her parenting responsibilities. The court noted that although appellant attempted treatment, that she continues using illegal substances,

including methamphetamine, for what appellant describes as "self-medication."

{¶ 19} The trial court also noted that appellant relocated several times throughout the pendency of the case and found that appellant did not engage in meaningful case planning efforts. The court determined that appellant's visits with the child had been inconsistent, until appellee filed its permanent custody motion. The court thus concluded that appellant failed to adequately resolve the concerns that led to the child's removal from the home.

{¶ 20} The court next considered the child's best interest. With respect to the child's interactions and interrelationships, the court found as follows:

> Father's last contact with his daughter was in January 2018. Mother's contacts have been sporadic, both when she lived in this community, and since mother's departure from Ohio in July of 2018. Visits with mother have improved in both regularity and quality since about the time of the agency's filing for permanent custody. C.E. has limited contact with one half-sibling who lives in Columbus with a paternal relative. She does well in her foster home where she has lived since emergency removal on October of 2017.

{¶ 21} The court determined that the child, at slightly more than four years of age, is "not capable of expressing meaningful wishes that could be given weight."

{¶ 22} The court additionally reviewed the child's custodial history. The court noted that the child lived with both parents "for some period of time" and that appellee removed her from the home in October 2017. The court found that since her removal, the child has remained in appellee's temporary custody and in the same foster home.

{¶ 23} The court determined that the child needs a legally secure permanent placement and that she cannot achieve that type of placement without granting appellee permanent custody. The court noted that appellee explored relative placement but did not suggest placing the child with any of the proposed relative placements.

{¶ 24} The court also found that R.C. 2151.414(E)(10) applies because the father has abandoned the child.

{¶ 25} The court therefore granted appellee permanent custody of the child. This appeal followed.

I

{¶ 26} Appellant's two assignments of error challenge the trial court's decision to grant appellee permanent custody of the child. Because the same standard of review governs both assignments of error, for ease of discussion we consider them together.

{¶ 27} In her first assignment of error, appellant asserts that the trial court failed to adequately consider all of the best interest factors. Appellant contends that she is ready, willing, and able to provide the child with a safe and permanent home.

{¶ 28} In her second assignment of error, appellant asserts that the trial court's best interest finding is against the manifest weight of the evidence.

A

STANDARD OF REVIEW

{¶ 29} 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).

{¶ 30} 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.

{¶ 31} The question that an appellate court 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).

{¶ 32} In the case sub judice, after our review of the record, we are unable to conclude that the evidence weighs heavily against the trial court's decision.

B

PERMANENT CUSTODY PRINCIPLES

{¶ 33} A parent has a "fundamental liberty interest" in the care, custody, and management of his or her child and an "essential" and "basic civil right" to raise his or her children. *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990); *accord In re D.A.*, 113 Ohio St.3d 88, 2007–Ohio–1105, 862 N.E.2d 829, ¶¶ 8–9. A parent's rights, however, are not absolute. *D.A.* at ¶ 11. Rather, "'it is plain that the natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the polestar 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.*, 300 So.2d 54, 58 (Fla.App.1974). Thus, the State may terminate parental rights when a child's best interest demands such termination. *D.A.* at ¶ 11.

C

PERMANENT CUSTODY FRAMEWORK

{¶ 34} Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. *Id.* Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying purposes of R.C. Chapter 2151: "to care for and protect children, 'whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety.'" *In re C.F.*, 113 Ohio St.3d 73, 2007–Ohio–1104, ¶ 29, quoting R.C. 2151.01(A).

{¶ 35} 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, appellee sought permanent custody of the child by filing a motion under R.C. 2151.413. When an agency files a permanent custody motion under R.C. 2151.413, R.C. 2151.414 applies. R.C. 2151.414(A).

{¶ 36} 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 one of the following conditions applies:

> (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.
>
> For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

{¶ 37} 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 interest.

1

R.C. 2151.414(B)(1)

{¶ 38} In the case sub judice, neither of appellant's assignments of error explicitly addresses the trial court's R.C. 2151.414(B)(1) finding. Instead, appellant's assignments of error challenge the trial court's best-interest finding. Nevertheless, within the argument section of her first assignment of error, appellant cites R.C. 2151.414(E). We observe that R.C. 2151.414(E) would be relevant to an R.C. 2151.414(B)(1)(a) analysis, i.e., whether the child cannot be returned to a parent within a reasonable time or should not be returned to a parent.

We additionally recognize that most of the argument attached to appellant's first assignment of error focuses upon appellant's efforts to comply with the case plan. Furthermore, in the argument section of her second assignment of error, appellant alleges that the child could be returned to her within a reasonable period of time.

{¶ 39} We point out that appellate courts generally determine an appeal "on its merits on the assignment of error[s]" and not on "mere arguments." App.R. 12(A)(1)(b); *State v. Johnson*, 4th Dist. Scioto No. 17CA3814, 2018-Ohio-4516, 2018 WL 5892659, ¶ 8; *State v. Ross*, 4th Dist. No. 16CA3771, 2017-Ohio-9400, 103 N.E.3d 81, ¶ 53. Furthermore, the Appellate Rules require each assignment of error to be presented separately. Also, App.R. 12(A)(2) allows a court to "disregard an assignment of error presented for review if the party raising it * * * fails to argue the assignment separately in the brief, as required under App. R. 16(A)." Moreover, App.R. 16(A)(3) requires an appellant's brief to include "[a] statement of the assignments of error presented for review, with reference to the place in the record where each error is reflected."

{¶ 40} Because appellant did not explicitly challenge the trial court's R.C. 2151.414(B)(1)(a) finding as an assignment of error means that this court could disregard the argument. The present matter, however, involves the termination of parental rights – the family law equivalent of the death penalty. *See, e.g., In re R.K.*, 152 Ohio St.3d 316, 2018-Ohio-23, 95 N.E.3d 394, ¶ 1, citing *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, ¶ 10, and *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997). Thus, in view of the gravity of the rights at stake in the case sub judice, we could exercise our discretion to construe appellant's first assignment of error as challenging the trial court's R.C. 2151.414(B)(1)(a) finding that the child could not be placed with appellant within a reasonable time or should not be placed with

appellant. However, we do not believe that we should review the trial court's R.C. 2151.414(B)(1)(a) finding. Instead, we conclude that we may uphold the trial court's R.C. 2151.414(B)(1) finding on the alternate basis that the child has been in appellee's temporary custody for twelve or more months of a consecutive twenty-two month period pursuant to R.C. 2151.414(B)(1)(d).

{¶ 41} R.C. 2151.414(B)(1)(d) permits a trial court to grant a children services agency permanent custody of a child if, at the time the agency files its permanent custody motion, the child has been in the agency's temporary custody for twelve or more months of a consecutive twenty-two month period. *See In re C.W.*, 104 Ohio St.3d 163, 2004–Ohio–6411, 818 N.E.2d 1176, ¶ 26 (construing R.C. 2151.414(B)(1)(d) and explaining that before children services agency can seek permanent custody under R.C. 2151.414(B)(1)(d), the child must have been in agency's temporary custody for at least twelve months before the agency files a permanent custody motion). The statute further specifies that a child is considered to have entered an agency's temporary custody on the date of adjudication or on the date that is sixty days after the child's removal from the home, whichever is earlier.

{¶ 42} In the case sub juice, the trial court adjudicated the child dependent on September 21, 2017. The child was removed from the home approximately one month later. Sixty days after the child's removal from the home would have been in December 2017. September 21, 2017 is, therefore, earlier than sixty days after the child's removal from the home. Thus, for purposes of R.C. 2151.414(B)(1), the child is considered to have entered appellee's temporary custody on September 21, 2017. Accordingly, at the time appellee filed its October 2018 permanent custody motion, the child had been in its temporary custody for approximately

thirteen months for purposes of R.C. 2151.414(B)(1). Consequently, at the time appellee filed its permanent custody motion, the child had been in its temporary custody for twelve or more months of a consecutive twenty-two month period. Therefore, any arguable error with the R.C. 2151.414(E) finding would constitute harmless error that we must disregard. Civ.R. 61 (stating that "[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties"); *In re A.A.*, 4th Dist. Athens No. 14CA38, 2015-Ohio-1962, 2015 WL 2452413, ¶ 48; *In re J.V–M.P.*, 4th Dist. Washington No. 13CA37, 2014–Ohio–486, ¶ 22.

2

BEST INTEREST FACTORS

{¶ 43} Appellant next asserts that the trial court's best-interest determination is against the manifest weight of the evidence.

{¶ 44} 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 interest 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.

{¶ 45} 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. Instead, the trial court considers the totality of the circumstances when making its best interest determination. *In re K.M.S.*, 3rd Dist. Marion Nos. 9–15–37, 9–15–38, and 9–15–39, 2017–Ohio–142, 2017 WL 168864, ¶ 24; *In re A.C.*, 9th Dist. Summit No. 27328, 2014–Ohio–4918, ¶ 46. In general, "[a] child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security." *In re C.B.C.*, 4th Dist. Lawrence Nos. 15CA18 and 15CA19, 2016–Ohio–916, 2016 WL 915012, ¶ 66, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991).

{¶ 46} In the case at bar, we first note that appellant does not directly address each of the best interest factors and discuss why they weigh in favor of rejecting appellee's request for permanent custody of the child. Instead, she primarily focuses on her case-plan compliance. We note, however, that a parent's "substantial compliance with a case plan, in and of itself, does not prove that a grant of permanent custody to an agency is erroneous." *In re A.C–B.*, 9th Dist. Summit Nos. 28330 and 28349, 2017–Ohio–374, 2017 WL 440116, ¶ 11, citing *In re M.Z.*, 9th Dist. No. 11CA010104, 2012–Ohio–3194, ¶ 19; *In re K.J.*, 4th Dist. Athens No. 08CA14,

2008–Ohio–5227, ¶ 24 (stating that "when considering a R.C. 2151.414(D)(1)(d) permanent custody motion, the focus is upon the child's best interests, not upon the parent's compliance with the case plan"). A parent's case plan compliance may be relevant to the extent that it affects the child's best interest. *E.g., In re T.J.*, 4th Dist. Highland No. 2016–Ohio–163, 2016 WL 228187, ¶ 36, citing *In re R.L.*, 9th Dist. Summit Nos. 27214 and 27233, 2014–Ohio–3117, ¶ 34 (stating that "although case plan compliance may be relevant to a trial court's best interest determination, it is not dispositive of it"). A parent's case plan compliance does not, however, preclude a trial court from awarding permanent custody to a children services agency when doing so is in the child's best interest. *Id.*, citing *In re N.L.*, 9th Dist. Summit No. 27784, 2015–Ohio–4165, ¶ 35 (stating that "substantial compliance with a case plan, in and of itself, does not establish that a grant of permanent custody to an agency is erroneous"); *In re S.C.*, 8th Dist. Cuyahoga No. 102349, 2015–Ohio–2280, ¶ 40 ("Compliance with a case plan is not, in and of itself, dispositive of the issue of reunification."); *In re W.C.J.*, 4th Dist. Jackson No. 14CA3, 2014–Ohio–5841, ¶ 46 ("Substantial compliance with a case plan is not necessarily dispositive on the issue of reunification and does not preclude a grant of permanent custody to a children's services agency."). "Indeed, because the trial court's primary focus in a permanent custody proceeding is the child's best interest, 'it is entirely possible that a parent could complete all of his/her case plan goals and the trial court still appropriately terminate his/her parental rights.'" *W.C.J.* at ¶ 46, quoting In re Gomer, 3d Dist. Wyandot Nos. 16–03–19, 16–03–20, and 16–03–21, 2004–Ohio–1723, ¶ 36.

{¶ 47} Consequently, although we commend appellant for her attempt to conquer her mental health and substance abuse issues, we disagree with appellant that her effort to comply

with the case plan shows that granting appellee permanent custody is not in the child's best interest. Rather, we believe that, despite appellant's efforts, the record contains ample competent and credible evidence to support the trial court's finding that granting appellee permanent custody is in the child's best interest.

1

Child's Interactions and Interrelationships

{¶ 48} Appellant clearly loves her child, and it appears that the child enjoys her visits with appellant. The caseworkers did not note any areas of concern regarding appellant's interaction with the child during the visits that appellant attended. The caseworkers and the foster mother reported, however, that the child displayed difficult behaviors when appellant did not visit on a consistent basis.

{¶ 49} Moreover, appellant unfortunately continued to abuse drugs throughout the history of the case and has an admitted substance abuse problem. Sadly, appellant stated that she continues to use methamphetamine as a form of self-medication. Although appellant may have made strides to conquer her addiction, she sadly has not been able to abstain from abusing methamphetamine so that appellee could attempt to return the child to appellant's care.

{¶ 50} The child's foster mother also indicated that the child appears happy in her home and that the child's behaviors have improved since placement in the home. The child sometimes refers to the foster mother as "mom."

{¶ 51} The child's father has not visited the child since January 2018, and the trial court found that the father abandoned the child.

2

Child's Wishes

{¶ 52} The court found that the child is too young to meaningfully express her wishes. We observe, however, that the guardian ad litem recommended that the trial court grant appellee permanent custody. *In re S.M.*, 4th Dist. Highland No. 14CA4, 2014–Ohio–2961, ¶ 32 (noting that R.C. 2151.414 permits court to consider child's wishes as child directly expresses or through the guardian ad litem).

3

Custodial History

{¶ 53} The child lived with appellant until her removal in October 2017. When appellee filed its permanent custody motion, the child had been in its physical custody for approximately one year. For purposes of R.C. 2151.414(B)(1)(d), the child had been in appellee's temporary custody for approximately thirteen months.

4

Legally Secure Permanent Placement

{¶ 54} "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) (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 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.

{¶ 55} We also observe that a trial court that is evaluating a child's need for a legally secure permanent placement and whether the child can achieve that type of placement need not determine that terminating parental rights is "not only a necessary option, but also the only option." *Schaefer, supra,* at ¶ 64. Rather, once the court finds the existence of any one of the R.C. 2151.414(B)(1)(a)-(e) factors, R.C. 2151.414(D)(1) 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).

{¶ 56} Additionally, 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). We again 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." *K.M.* at ¶ 9.

{¶ 57} In the case at bar, our review reveals that the record contains competent and credible evidence that the child needs a legally secure permanent placement and that she cannot achieve this type of placement without granting appellee permanent custody. Unfortunately, appellant has not maintained a stable home throughout the vast majority of the case. Currently, she lives with a boyfriend in Hazard, Kentucky. Although the home might be structurally appropriate, appellant has yet to discontinue abusing methamphetamine. A home where a parent is abusing methamphetamine is not a safe home for a child.

{¶ 58} Moreover, appellee did not approve any of the proposed relative placements. Nor was it required to do so.

{¶ 59} After considering all of the foregoing factors, we are unable to conclude that the trial court's best-interest determination is against the manifest weight of the evidence. The present case is not one of those exceptional cases in which a manifest miscarriage of justice will

result if the trial court's judgment is allowed to stand.

{¶ 60} Accordingly, based upon the foregoing reasons, we overrule appellant's two assignments 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 Athens 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.

Smith, P.J.: Concurs in Judgment & Opinion
McFarland, J.: Concurs in Judgment Only

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.