[Cite as *In re B.S.*, 2019-Ohio-4143.]

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

IN RE:	:	
	:	
B.S.	:	
I.S.	:	
	:	
Adjudicated neglected dependent children	:	Case No. 19CA6
	:	
	:	DECISION AND JUDGMENT ENTRY
	:	
	:	

APPEARANCES:

James A. Anzelmo, Gahanna, Ohio, for Appellant.

Timothy E. Forshey, Jackson, Ohio, for Appellee.

Smith, P. J.

{¶1} A.B., the children's biological mother, appeals the trial court's judgment that (1) granted Jackson County Department of Job and Family Services ("the agency") permanent custody of I.S. and (2) granted H.M. legal custody of B.S. The mother raises two assignments of error:

First Assignment of Error:

Children services failed to establish, by clear and convincing evidence, that it should be given permanent custody of I.S.

Second Assignment of Error:

The trial court abused its discretion by giving [H.M.] legal custody of B.S.

{¶2} On March 29, 2016, the agency filed a complaint that alleged the children are neglected, abused, and dependent. The complaint averred that the agency received a report that B.S.'s putative father, J.S., physically abused him and otherwise neglected him. The complaint further asserted that the agency had concerns regarding I.S., because at ten months of age, she weighed only thirteen pounds. The agency also requested the court to grant it emergency temporary custody of the children. The court subsequently granted the agency emergency temporary custody of the children.

{¶3} On June 13, 2016, the court adjudicated I.S. a neglected child and adjudicated B.S. a dependent child. The court continued the children in the agency's temporary custody pending a dispositional hearing. The trial court later entered a dispositional order that placed the children in the agency's temporary custody.

{¶4} On June 16, 2017, the agency filed a motion to modify the disposition to permanent custody. The agency alleged that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent and that the children have been in the agency's temporary custody for twelve or more months of a consecutive twenty-two-

month period. The agency further asserted that placing the children in its permanent custody would serve the children's best interest.

{¶5} During the pendency of the case, genetic testing revealed H.M. to be the biological father of B.S. H.M. later filed a motion that requested the court grant him legal custody of B.S.

{¶6} On March 16, 2018, the trial court held the first of two hearings to consider the agency's permanent custody motion. Missy Warrens testified that she worked with the mother and J.S. as a community behavioral health worker and also as a Help Me Grow home visitor. Warrens stated that she visited the family home to talk to the mother and J.S. about brain development, small and large motor skills, and activities that the mother and J.S. could engage in with the children to help with the children's development. Warrens also discussed nutrition and safety issues with the mother and J.S.

{¶7} During her visits with the family, Warrens noted that J.S. usually seemed engaged with the children but that the mother frequently was not. The mother instead appeared entranced with her cell phone. Warrens thus discussed with the mother that she should not be so involved with her cell phone, and instead, the mother should engage with the children.

{¶8} Warrens explained that in April 2017, she became more of a case manager for the mother. Warrens helped ensure that the mother met her probation obligations, provided budget assistance, and helped the mother maintain stability.

{¶9} Warrens also helped the mother try to obtain employment. Warren stated that the mother had the opportunity to use the services of the Ohio Bureau of Vocational Rehabilitation ("BVR"). Warrens explained that the BVR is a job-placement resource for individuals with learning or physical disabilities. Warrens testified that she gave the mother the BVR referral two or three times. Warrens reported that the mother followed up on the first referral but that the mother canceled the appointments scheduled for the other referrals.

{¶10} Warrens further explained that she helped the mother complete job applications. Additionally, the mother was attending an online school to obtain a diploma.

{¶11} Warrens stated that in September 2017, the mother was evicted from her apartment and moved to Pike County. Warrens referred the mother to Integrated Services in Pike County. Warrens explained that the mother then received a Pike County caseworker, and Warrens' involvement with the mother stopped.

{¶12} Jessica Gilliland, the family's on-going caseworker, testified that at the time the agency filed its permanent custody motion, the mother had yet to complete parenting classes, engage in mental health counseling, or find a job. After the agency filed its permanent custody motion, the mother completed parenting classes.

{¶13} Gilliland explained that throughout the history of the case, the mother and J.S. had both supervised and unsupervised visits with the children. Gilliland indicated that after each attempt at unsupervised visits, the agency had to return to supervised visits.

{¶14} Gilliland explained that the first series of unsupervised visits stopped after the foster mother discovered burn marks on I.S. Gilliland stated that the foster mother discovered the burn marks immediately after I.S. had visited the mother and J.S. Gilliland reported that the foster mother took I.S. to the emergency room.

{¶15} At the emergency room, the medical professionals were unable to determine how the burns happened but observed that the burns were small and circular. Gilliland related that the caseworkers went to the family home to ask about the burn marks, and J.S. told the agency caseworkers "to get the fuck out of his house." Gilliland testified that the caseworkers later were

able to talk to the mother and J.S. about the burns. They claimed that the child sustained the burn injuries from a coffee cup.

{¶16} Gilliland stated that the second series of unsupervised visits stopped after the mother and J.S. asked the agency to rearrange their visitation schedule so that they could go out on the weekends and "get drunk." Gilliland advised the mother and J.S. that going out and getting drunk was not a good idea considering that the agency was attempting to work with them in order to reunite the family. Gilliland reported that the mother and J.S. nevertheless apparently engaged in some drunkenness: after a party they hosted, at which there was underage drinking, the mother ended up in the hospital and J.S. was cited "[w]ith contributing to a minor."

{¶17} Gilliland testified that the third series of unsupervised visits stopped after Gilliland went to the home and found the mother and J.S. fighting. Gilliland stated that J.S. announced that he was leaving the mother and shortly thereafter he did in fact leave her.

{¶18} Gilliland explained that after J.S. left the mother, the mother began having supervised visits. Gilliland stated that during the mother's supervised visits, "lack of engagement with the children" always was an issue. Gilliland reported that the mother would sit and color by herself or

play a game by herself while the children played in the room. Gilliland testified that the mother "was on her phone constantly."

{¶19} Gilliland stated that in October 2017, the visits essentially stopped because the mother moved to Cleveland. Gilliland related that between October 2017 and the date of the final permanent custody hearing, October 24, 2018, the mother visited with the children twice: once in March 2018; and again the Friday before the hearing.

{¶20} Gilliland further stated that the agency had concerns regarding the mother's ability to maintain the home in a safe and sanitary condition. Gilliland related that the home often appeared dirty and cluttered. She observed cigarettes and cigarette butts lying on the floor, tobacco all over the kitchen table, and cats eating from the kitchen table. Gilliland additionally stated that "[t]he home had a very foul smell." Gilliland explained that she tried to discuss the home conditions with the mother and J.S., but J.S. became "very defensive" and the mother "wouldn't say much at all." Gilliland also revealed that the children often would return from the unsupervised visits with dirty diapers and an overall dirty appearance.

{¶21} Gilliland stated that she does not believe that returning the children to the mother would be in their best interest for the following reasons: (1) the mother does not have stable housing; (2) she sometimes has

boyfriends or other people living in the home who the agency knows nothing about; and (3) the children need appropriate parenting and proper nutrition.

{¶22} Gilliland testified that she also does not believe that placing B.S. in H.M.'s legal custody would serve B.S.'s best interest for the following reasons: (1) H.M. only recently became involved in the case; (2) the child is "very rambunctious" and "act[s] out" after visits with H.M.; and (3) B.S. and I.S. "are very close." Gilliland further agreed, however, that the father consistently visited the child and that he upgraded from a two-bedroom apartment to a three-bedroom apartment in order to have adequate space for the child.

{¶23} The children's guardian ad litem testified and stated that she supports H.M.'s request for legal custody. The guardian ad litem visited H.M.'s home and found it to be appropriate. She explained that the child appears "very comfortable in the home" and that she does not have any concerns about placing the child with H.M.

{¶24} The guardian ad litem agreed that the two children "are very bonded to one another," and that she does believe that separating them "would be traumatic." She further indicated, however, that H.M. has expressed a willingness to facilitate visits between the children and to become certified as a foster home so that I.S. could be placed with him.

{¶25} The guardian ad litem testified that although the mother clearly loves her children, the guardian ad litem has concerns about the mother's ability to care for the children independently and without supervision.

{¶26} The mother testified and explained that she thought she had only to complete parenting classes and was unaware that the case plan required her to engage in mental health counseling. The mother stated that she "went willingly for mental health."

{¶27} The mother reported that she currently lives with her mother in Cleveland, Ohio and that she intends to remain living in her mother's home. She indicated that she wanted to visit the children more after she moved to Cleveland but transportation was a barrier.

{¶28} The mother stated that she is able to care for the children and would like them returned to her custody. She explained that she does not feel that she has a bond with the children at the present time due to her relocation and lack of visitation. But the mother related that before she moved, she believed that she "had a pretty good bond with them."

{¶29} On cross-examination, the agency's attorney reviewed the case plan with the mother. He asked the mother whether she recalled that the case plan required the mother to (1) provide proper food supply and nutrition for the children, (2) learn new coping skills and address any mental health

concerns, (3) learn new parenting skills and be able to apply those skills, and (4) obtain employment. The mother stated that she remembered each item. The mother explained that she engaged in mental health counseling but did not complete a program because she moved to Cleveland. The mother reported that she completed parenting classes in March 2018. The mother testified that she had not completed parenting classes sooner because she had been working with her caseworker.

{¶30} On March 1, 2019, the trial court granted the agency permanent custody of I.S. and granted H.M. legal custody of B.S. The court found that the children have been in the agency's temporary custody for twelve or more months of a consecutive twenty-two-month period and that placing I.S. in the agency's permanent custody would serve her best interest. The court also found that placing B.S. in H.M.'s legal custody is in his best interest.

{¶31} When the court considered the children's best interest, the court first evaluated their interactions and interrelationships. The court noted that the children "are very bonded to one another and to their foster parents." The court observed that the children have not visited the mother "in multiple months" and that I.S. has not seen her father in over a year.

{¶32} The court found that the children are unable to directly express their wishes due to their young ages.

{¶33} The court considered the children's custodial history and again noted that they have been in the agency's temporary custody for twelve or more months of a consecutive twenty-two-month period.

{¶34} The trial court also found that the mother could not provide the children with a legally secure permanent placement. The court specifically found that the mother's Cleveland residence "would not provide the kind of safe and stable environment that would be required for placement of the children at that residence." The court noted that a home study was conducted of the residence, but it "was not approved because it was not her residence." Instead, the residence belonged to the children's maternal grandmother, and the mother lived there temporarily. The court thus concluded that placing I.S. in the agency's permanent custody would serve her best interest.

{¶35} The court determined that placing B.S. in H.M.'s legal custody would serve his best interest. The court noted that H.M. "has been consistent in maintaining proper visitation and has made preparations for full custody" of the child.

{¶36} The court thus ordered that B.S. be placed in H.M.'s legal custody and that I.S. be placed in the agency's permanent custody. This appeal followed.

I. FIRST ASSIGNMENT OF ERROR

{¶37} In her first assignment of error, the mother essentially argues that the trial court's decision granting the agency permanent custody of I.S. is against the manifest weight of the evidence. Specifically, she contends that the agency failed to present clear and convincing evidence that permanent custody is in the child's best interest. The mother asserts that the following circumstances show that placing the child in the agency's permanent custody is not in the child's best interest. The mother: (1) lives in Cleveland in a home that is suitable for the child; (2) receives financial assistance; (3) completed parenting classes; (4) enrolled in a mental health program; (5) is enrolled in college courses; and (6) "expressed interest in continuing to visit her children while [living] in Cleveland."

A. STANDARD OF REVIEW

{¶38} A reviewing court generally will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *In re R.M.*, 2013-Ohio-3588, 997 N.E.2d 169, ¶ 53 (4th Dist.). 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 v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶39} In a permanent custody case, the ultimate question for a reviewing court 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. 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). "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." *R.M.* at ¶ 55.

{¶40} 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* at 387, 678 N.E.2d 541, quoting *Martin* at 175, 485 N.E.2d 717. 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].' " *Id.*, quoting *Martin* at 175, 485 N.E.2d 717.

B. PERMANENT CUSTODY PRINCIPLES

{¶41} 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

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

{¶43} R.C. 2151.414(B)(1) specifies 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) any of the following conditions applies:

> (a) The child is not abandoned or orphaned, 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, 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 if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, 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.
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> (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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.
>
> (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.

{¶44} In the case at bar, the trial court found that the children have been in the agency's temporary custody for more than twelve months of a consecutive twenty-two- month period and that R.C. 2151.414(B)(1)(d) thus applies. The mother does not challenge the trial court's R.C. 2151.414(B)(1)(d) finding. Therefore, we do not address it.

{¶45} R.C. 2151.414(D)(1) requires a trial court to consider all relevant, 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 specific 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.

{¶46} 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, 2008 WL 2906526, ¶ 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.*, 3d 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, 2014 WL 5690571,

¶ 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).

D. ANALYSIS OF BEST INTEREST FACTORS

1. Children's Interactions and Interrelationships

{¶47} The mother's love for her children is evident, and she would like them returned to her custody. The mother unfortunately moved to Cleveland and has not visited with the children more than a handful of times during the year preceding the permanent custody hearing. The mother admitted that she does not feel bonded to the children due to not being able to visit them more frequently.

{¶48} When the mother had visits with the children, she usually did not engage with them and was entranced with her cell phone.

{¶49} The children are bonded to one another. The foster mother cares for the children and provides for their needs.

{¶50} Once H.M. was identified as B.S.'s father, B.S. had visits with H.M. H.M. has not had any abuse, neglect, or dependency allegations levied against him, and H.M. has shown extreme interest in having B.S. placed in

his legal custody. H.M. even upgraded his apartment to make more room for B.S. B.S. appears happy while visiting H.M.

2. Children's Wishes

{¶51} As the trial court noted, the children are too young to express their wishes. We observe, however, that the guardian ad litem recommended that the court place I.S. in the agency's permanent custody and place B.S. in H.M.'s legal 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. Children's Custodial History

{¶52} The children have been in the agency's temporary custody for more than twelve months out of a consecutive twenty-two-month period. The children were removed from the home in March 2016, and the court adjudicated the children dependent on June 13, 2016. When the agency filed its June 16, 2017 permanent custody motion, the children had been in the agency's temporary custody for approximately fifteen months (and twelve months for purposes of R.C. 2151.414(B)(1)(d)).[1]

4. Legally Secure Permanent Placement

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

[1] R.C. 2151.414 states: 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

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.

{¶54} I.S. needs a legally secure permanent placement, and she cannot achieve that type of placement without granting the agency permanent custody. The mother lives in her own mother's home. The agency did not approve this home for placement. The mother did not successfully complete a mental health counseling program and did not obtain stable employment to allow her to provide for the children's needs. Additionally, when the mother had visits with the children, she usually was disengaged and consumed with her cell phone. Moreover, the mother appeared to elevate her ability to "get drunk" over her children. The mother asked the agency to rearrange her visitation schedule so that she could go out on the weekends and "get drunk." The mother's conduct thus does not

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is sixty days after the removal of the child from home.

evince a firm conviction that she would consistently prioritize the children's needs over her own desires. Therefore, the mother cannot provide the children with a legally secure permanent placement.

{¶55} Furthermore, the agency was unable to identify any relatives who could provide I.S. with a legally secure permanent placement.

{¶56} Based upon all of the foregoing circumstances, we believe that the trial court could have developed a firm belief that granting the agency permanent custody of I.S. is in her best interest. While we commend the mother for her recent efforts, her efforts to improve her well-being do not override what is in I.S.'s best interest.

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

II. SECOND ASSIGNMENT OF ERROR

{¶58} In her second assignment of error, the mother argues that the trial court abused its discretion by granting H.M. legal custody of B.S. The mother again alleges that she has significantly improved her situation and that the evidence fails to support the trial court's finding that the mother cannot provide adequate care for B.S. The mother additionally asserts that the child's caseworker testified that placing the child in H.M.'s legal custody would not be in the child's best interest.

A. STANDARD OF REVIEW

{¶59} "A trial court has broad discretion in proceedings involving the care and custody of children." *In re Mullen*, 129 Ohio St.3d 417, 2011–Ohio–3361, 953 N.E.2d 302, ¶ 14. Consequently, we review a trial court's decision to award a party legal custody of an abused, neglected, or dependent child for an abuse of discretion, and we afford its decision "the utmost deference." *In re E.W.*, 4th Dist. Washington Nos. 10CA18, 10CA19, and 10CA20, 2011–Ohio–2123, ¶ 18, citing *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988); *accord In re A.J.*, 148 Ohio St.3d 218, 2016–Ohio–8196, 69 N.E.3d 733, ¶ 27, citing *Flickinger*, 77 Ohio St.3d 415, 417, 674 N.E.2d 1159 (1997) (stating that "a trial court's decision in a custody proceeding is subject to reversal only upon a showing of abuse of discretion"); *In re A.L.P.*, 4th Dist. Washington No. 14CA37, 2015–Ohio–1552, ¶ 15; *In re C.J.L.*, 4th Dist. Scioto No. 13CA3545, 2014–Ohio–1766, ¶ 12. Ordinarily, "[t]he term 'abuse of discretion' implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable." *In re H.V.*, 138 Ohio St.3d 408, 2014–Ohio–812, 7 N.E.3d 1173, ¶ 8. In *Davis*, however, the court explained the abuse of discretion standard that applies in child custody proceedings as follows:

> The standard for abuse of discretion was laid out in the leading case of *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d

> 279, 8 O.O.3d 261, 376 N.E.2d 578, but applied to custody cases in *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21, 550 N.E.2d 178, syllabus:
>
> "Where an award of custody is supported by a substantial amount of credible and competent evidence, such an award will not be reversed as being against the weight of the evidence by a reviewing court. (*Trickey v. Trickey* [1952], 158 Ohio St. 9, 47 O.O. 481, 106 N.E.2d 772, approved and followed.)"
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> The reason for this standard of review is that the trial judge has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page. As we stated in *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80–81, 10 OBR 408, 410–412, 461 N.E.2d 1273, 1276–1277:
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> "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony. * * *
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> " * * * A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not. The determination of credibility of testimony and evidence must not be encroached upon by a reviewing tribunal, especially to the extent where the appellate court relies on unchallenged, excluded evidence in order to justify its reversal."
>
> This is even more 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.

Id. at 418–419. While we might be "perplexed" by this hybrid abuse-of-discretion-manifest-weight standard, the Ohio Supreme Court has not overruled, modified, or clarified the standard set forth in *Bechtol* or *Davis*.

A.L.P. at ¶ 23 (Harsha, J., concurring). We therefore continue to apply this standard when reviewing child custody matters.

{¶60} Accordingly, reviewing courts should afford great deference to trial court child custody decisions. *Id.* at ¶ 16; *E.W.* at ¶ 19, citing *Pater v. Pater*, 63 Ohio St.3d 393, 396, 588 N.E.2d 794 (1992). Additionally, because child custody issues involve some of the most difficult and agonizing decisions that trial courts are required to decide, courts must have wide latitude to consider all of the evidence, and appellate courts should not disturb a trial court's judgment absent an abuse of discretion. *Davis*, 77 Ohio St.3d 418; *Bragg v. Hatfield*, 152 Ohio App.3d 174, 2003–Ohio–1441, 787 N.E.2d 44, ¶ 24 (4th Dist.); *Hinton v. Hinton*, 4th Dist. Washington No. 02CA54, 2003–Ohio–2785, ¶ 9; *Ferris v. Ferris*, 4th Dist. Meigs No. 02CA4, 2003–Ohio–1284, ¶ 20.

B. LEGAL CUSTODY

{¶61} Once a trial court adjudicates a child abused, neglected, or dependent, R.C. 2151.353(A)(3) authorizes the court to "[a]ward legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings."

Additionally, a trial court may terminate or modify a prior dispositional order and award legal custody to an individual requesting it if doing so serves the child's best interest. *A.L.P.* at ¶ 17; *E.W.* at ¶ 20; see R.C. 2151.417(B) (granting juvenile court authority to amend its dispositional orders). See generally *In re Pryor*, 86 Ohio App.3d 327, 332, 620 N.E.2d 973 (4th Dist.1993) (stating that "the primary, if not only, consideration in the disposition of all children's cases is the best interests and welfare of the child").

{¶62} R.C. 3109.04(F)(1) specifies the best interest factors courts must consider when determining whether to award legal custody to a party requesting it. *A.L.P.* at ¶ 17, citing *E.W.* at ¶ 20; R.C. 2151.23(F)(1); *In re Poling*, 64 Ohio St.3d 211, 594 N.E.2d 589 (1992), paragraph two of the syllabus ("[w]hen a juvenile court makes a custody determination under R.C. 2151.353, it must do so in accordance with R.C. 3109.04"); *Pryor*, 86 Ohio App.3d at 333, fn.4 (stating that a trial court applies the same best interest standard in child custody disputes originating from a divorce and originating from a neglect, dependency, abuse complaint). Those factors are as follows:

> (a) The wishes of the child's parents regarding the child's care;
> (b) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities

> concerning the child, the wishes and concerns of the child, as expressed to the court;
>
> (c) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;
>
> (d) The child's adjustment to the child's home, school, and community;
>
> (e) The mental and physical health of all persons involved in the situation;
>
> (f) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;
>
> (g) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;
>
> (h) Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to [certain specified criminal offenses];
>
> (i) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;
>
> (j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

{¶63} In the case at bar, the trial court did not engage in a specific analysis of the foregoing best interest factors. However, the mother did not request the trial court to issue findings of fact and conclusions of law. Thus, in the absence of a proper request for findings of fact and conclusions of law, the court had no obligation to analyze the R.C. 3109.04(F)(1) best interest factors. Civ.R. 52 ("When questions of fact are tried by a court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise * * * in which case, the court

shall state in writing the conclusions of fact found separately from the conclusions of law.").

{¶64} Moreover, the failure to request findings of fact and conclusions of law ordinarily results in a waiver of the right to challenge the trial court's lack of an explicit finding concerning an issue. *Pawlus v. Bartrug*, 109 Ohio App.3d 796, 801, 673 N.E.2d 188 (9th Dist.1996). Additionally, when a party fails to request findings of fact and conclusions of law, we generally must presume the regularity of the trial court proceedings. *Bunten v. Bunten,* 126 Ohio App.3d 443, 447, 710 N.E.2d 757 (3d Dist.1998); *accord Cherry v. Cherry,* 66 Ohio St.2d 348, 356, 421 N.E.2d 1293 (1981). This means that we ordinarily presume that the trial court applied the law correctly and affirm if some evidence in the record supports the court's judgment. *Bugg v. Fancher*, 4th Dist. Highland No. 06CA12, 2007–Ohio–2019, ¶ 10; see *Yocum v. Means,* 2d Dist. Darke No. 1576, 2002–Ohio–3803, ¶ 7 ("The lack of findings obviously circumscribes our review * * *."). As the court explained in *Pettet v. Pettet,* 55 Ohio App.3d 128, 130, 562 N.E.2d 929 (5th Dist.1988):

> [W]hen separate facts are not requested by counsel and/or supplied by the court the challenger is not entitled to be elevated to a position superior to that he would have enjoyed had he made his request. Thus, if from an examination of the record as a whole in the trial court there is some evidence from which the court could have reached the ultimate conclusions of fact which are consistent with his

> judgment the appellate court is bound to affirm on the weight and sufficiency of the evidence.
>
> The message should be clear: If a party wishes to challenge the custodial judgment as being against the manifest weight of the evidence he had best secure separate findings of fact and conclusions of law. Otherwise his already "uphill" burden of demonstrating error becomes an almost insurmountable "mountain."

{¶65} In the case at bar, we are unable to conclude that the trial court abused its discretion by placing B.S. in H.M.'s legal custody. Instead, the record contains evidence that reasonably supports the trial court's decision that placing the child in H.M.'s legal custody is in his best interest. The guardian ad litem had no reservations about placing B.S. in H.M.'s legal custody. Although the caseworker had some concerns, she failed to articulate clearly why her concerns demonstrate that placing B.S. in H.M.'s legal custody would not be in the child's best interest. The caseworker was concerned about breaking the bond that exists between B.S. and I.S. H.M., however, stated that he would facilitate visits between the siblings and that he would seek to become a certified foster home so that I.S. could be placed with him. The casework also expressed concern that B.S. returned from visits with the father in a rambunctious mood. The evidence does not suggest, however, that B.S.'s supposedly rambunctious mood resulted from some type of mistreatment, neglect, or abuse while in H.M.'s care.

{¶66} In light of the foregoing, the trial court reasonably could have concluded that placing B.S. in H.M.'s legal custody would serve the child's best interest. Consequently, we do not agree with the mother that the trial court abused its discretion by placing the children in H.M.'s legal custody.

{¶67} Accordingly, based upon the foregoing reasons, we overrule the mother'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 costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

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

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

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

For the Court,

BY: _____
Jason P. Smith, Presiding 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.