

Released 09/01/21

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

IN RE: B.P.	:	
	:	
Adjudicated Neglected, Abused, Dependent Child.	:	Case No. 20CA13
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	:	
	:	
	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
	:	
	:	

APPEARANCES:

Kathryn Cornelius-Blume, Lancaster, Ohio, for Appellant.

Timothy L. Warren, Assistant Athens County Prosecuting Attorney, Athens, Ohio, for Appellee.

Smith, P. J.

{¶1} The child’s biological father, J.P. (“Appellant”), appeals the trial court’s decision that granted Athens County Children Services (“the agency”) permanent custody of his now-three-year-old child. Appellant raises two assignments of error. First, Appellant asserts that the trial court erred by granting the agency permanent custody of the child when the agency failed to allege in its permanent custody motion that the child had been in its temporary custody for 12 or more months of a consecutive 22-

month period or that any other factor specified in R.C. 2151.414(B)(1) applied. Second, Appellant argues that the trial court's decision to place the child in the agency's permanent custody is against the manifest weight of the evidence because the agency did not present clear and convincing evidence that permanent custody is in the child's best interest. We find no merit to Appellant's assignments of error. Consequently, we overrule the assignments of error and affirm the trial court's judgment.

FACTS

{¶2} On December 7, 2018, the agency filed a motion for emergency custody of the child as well as a complaint that alleged the child is a neglected and dependent child. The agency alleged that the child's mother had an arrest warrant for failure to appear and that the Adult Parole Authority had discovered the mother living in a home that was full of roaches. The mother subsequently was arrested and her boyfriend took the child. The boyfriend later was arrested and the child was left with the mother's sister who also had been living in the roach-infested house with the mother. The agency did not believe that the mother's sister could safely care for the child, and at the time, Appellant was incarcerated with a scheduled release date in October 2019. The agency thus sought and obtained custody of the child.

{¶3} The trial court later adjudicated the child a neglected and dependent child and placed the child in the agency's temporary custody.

{¶4} The agency developed a case plan to reunify the family. The agency added Appellant to the case plan when he was released from prison. The case plan required the parents to maintain safe and stable housing, obtain reliable income, attend visits and doctor appointments with the child, work with parent mentors, seek substance abuse counseling, and continue to have negative drug screens.

{¶5} On May 7, 2020, the agency filed a motion to modify the disposition to permanent custody. The agency alleged that the child cannot be placed with either parent within a reasonable time and should not be placed with either parent. The agency also asserted that the child has been in its temporary custody for purposes of R.C. 2151.414(B)(1)(d) since February 4, 2019, and that placing the child in its permanent custody is in the child's best interest.

{¶6} In October 2020, the court held a hearing to consider the agency's permanent custody motion. The mother appeared for the hearing, but Appellant did not. Appellant's counsel stated that the mother informed counsel that Appellant was unable to take the day off work to attend the hearing.

{¶7} Caseworker Stephanie McDaniel testified that the case plan required the mother to engage in substance abuse treatment, attend visits, meet with McDaniel on a monthly basis, notify McDaniel of any changes in the mother's phone number or address, maintain safe and suitable housing, and refrain from criminal activity and substance abuse.

{¶8} McDaniel explained that between the date of the child's removal in December 2018 and June 2019, she was unable to maintain consistent contact with the mother. McDaniel stated that the mother did not begin having regular contact with her until August 2019. McDaniel indicated that once the mother re-engaged with her, the mother started having negative drug screens, actively participated in visits with the child, worked with Integrated Services, and "was just actively engaged overall." McDaniel stated that the mother appeared to be making progress toward reunification.

{¶9} McDaniel testified that when Appellant was released from prison, she reviewed the case plan with Appellant and informed him of the steps that he would need to take in order to reunify the child with the family. McDaniel explained that Appellant appeared to be "on board" and that he "wanted to reunify" with the child.

{¶10} McDaniel indicated that the parents' progress led the agency to try a 30-day home visit in March 2020. McDaniel stated that the agency had

to terminate the visit early, on March 26, 2020, when the mother left the home and both parents relapsed. McDaniel explained that between the end of March and July 2020, the pandemic restrictions did not allow in-person visits, so the parents arranged video calls with the foster parents.

{¶11} McDaniel testified that in July 2020, when the agency again offered in-person visits to the parents, the mother indicated that she could not attend the first week due to a doctor's appointment, which McDaniel did not "count[] against her." McDaniel stated that the mother attended the in-person visit the following week and that after the second in-person visit, the pandemic restrictions required the visits to return to video calls.

{¶12} McDaniel indicated that since the mother obtained new housing, she has not been able to visit the home. McDaniel stated that in October 2020, she attempted two or three home visits and none were successful. McDaniel related that the mother usually canceled the scheduled home visits and that she "no-showed" for "a few."

{¶13} McDaniel also explained that she had difficulty maintaining consistent contact with Appellant. She testified that after the parents' 30-day visit ended, she had face-to-face contact with Appellant at the end of March, in April, and in May. She stated that she has not had any face-to-face contact with Appellant since May. McDaniel indicated that she did,

however, have a few phone calls with Appellant between May and September.

{¶14} McDaniel stated that since the 30-day home visit was terminated, the parents have not complied with the case plan. She does not believe that the child could safely be placed with either parent. McDaniel related that neither parent appeared able to successfully conquer their substance abuse issues. She further found it concerning that she was unable to observe the home where the parents now are living.

{¶15} Susan Jago testified that she has worked with the mother as a family peer mentor through Integrated Services. Jago explained that she attempted to work with the mother since the beginning of the case in December 2018, but that she was unable to locate the mother at the time. Jago stated that she first started working with the mother in September 2019, and that she has continued to see the mother through August 2020. She further explained, however, that after the 30-day home visit ended, she has not had success maintaining consistent communication with the mother.

{¶16} Karyn Armstrong, a parent mentor with the agency, testified that she started working with the mother in February 2020, as part of the transition to the 30-day home visit. Armstrong explained, however, that she never was able to meet with the mother in person. Armstrong stated that she

and the mother set up some appointments but the mother never seemed to be available when Armstrong went to the house. Armstrong indicated that due to the mother's lack of engagement, she was unable to make progress with the mother.

{¶17} The child's foster mother testified that the child has lived in her home since December 2018. She stated that the child transitioned to her home "surprisingly well." The foster mother reported that the child spent the first day in her home exploring and "immediately * * * took to everything in the house." She indicated that the child "loved [their] dogs" and "loved [her] older son."

{¶18} The foster mother explained that she took the child to visit with the mother but the mother did not consistently appear for the visits. She stated that during the first eight months, the mother showed up for six visits, even though the visits were scheduled weekly. The foster mother explained that after the first eight months the mother started attending visits on a more consistent basis. She testified that the visits continued on a consistent basis and the agency eventually decided to give the parents a 30-day home visit.

{¶19} The foster mother related that when the agency terminated the parents' 30-day home visit, the pandemic restrictions were being put into place. She thus explained that the majority of the subsequent visits with the

parents were video calls. The foster mother indicated that they tried to schedule video visits every two or three days based upon the parents' requests.

{¶20} The foster mother testified that the agency allowed a few in-person visits during the summer. The foster mother related that at that point the mother and Appellant were visiting with the child separately. She stated that both the mother and Appellant canceled their first visits before they started. The foster mother explained that the following week, Appellant "was a no-show" for his visit, but the mother attended her visit with the child. She then indicated that because COVID-19 infections had begun to rise again the visits returned to video calls.

{¶21} The foster mother stated that once the visits returned to video calls, the mother's visits were scheduled for 7:00 p.m. on Tuesday and Thursday evenings, and Appellant's were scheduled immediately after, at 7:30 p.m. The foster mother explained that the parents attended "about half of their" visits throughout July and August. She indicated that the mother started attending her visits more regularly in September.

{¶22} The foster mother testified that the child is "a member of [her] family" and that the child does not "see [] himself as any different than [her]

two biological sons.” She stated that she and her husband would seek to adopt the child if the agency is granted permanent custody.

{¶23} The mother testified she and Appellant have lived in the same house for about four months. She stated that although she is not currently employed, Appellant works for a tree care company.

{¶24} The mother agreed that between the date of the child’s removal and Appellant’s release from prison, the mother did not make much progress with the case plan. She stated that she “was pretty much homeless” throughout 2019, and that she was homeless for about four or five weeks during 2020. The mother further acknowledged that the agency has not been to her new residence and that she had canceled the home visits that had been scheduled.

{¶25} The mother conceded that she “messed up” and used methamphetamine when she was “stressed.” The mother thinks that she last used methamphetamine about six months ago. She stated that she is currently receiving treatment through Life Springs in Lancaster and taking Subutex and Gabapentin. The mother explained that Appellant also currently receives substance abuse treatment through Life Springs.

{¶26} The mother testified that the agency allowed her and Appellant to have a 30-day home visit in March 2020, in order to attempt reunification.

She explained, however, that the agency terminated the visit after about three weeks because she and Appellant “kinda [sic] went [their] separate ways.” The mother reported that she left the residence for a couple of days and was unaware that she was not supposed to leave the child with Appellant. She further stated that both she and Appellant “had a relapse.”

{¶27} The court continued the hearing until October 23, 2020. On that date, neither the mother nor Appellant appeared. The mother’s attorney stated that the mother might be in a treatment center.

{¶28} Anne Kemmerle, the child’s guardian ad litem, testified and stated that she believes that placing the child in the agency’s permanent custody would be in the child’s best interest. She further explained that she thinks allowing the foster family to adopt the child would be in the child’s best interest. Kemmerle does not believe that either the mother or Appellant can safely parent the child. She indicated that the “long * * * history of drug abuse is a main concern.” Kemmerle further stated that the parents had trouble maintaining a stable home and that the “periods of incarceration are concerning.” She testified that she has not seen “any evidence” that the parents can provide a home for the child.

{¶29} Kemmerle recognized that not terminating parental rights would be ideal, but she also explained that she has “such strong doubts”

about the parents' ability to safely parent the child. She further stated that she believes that "the disruption of breaking bond with the foster care givers would be potentially disastrous."

{¶30} On November 9, 2020, the trial court granted the agency's permanent custody motion. The court found that the child has been in the agency's temporary custody for 12 or more months of a consecutive 22-month period, but then stated that the agency had not alleged in its permanent custody motion that the child had been in the agency's custody for 12 or more months of a consecutive 22-month-period. The court also found that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶31} The court further determined that placing the child in the agency's permanent custody is in the child's best interest. The court discussed the child's interactions and interrelationships and found that the child is "very bonded" with the foster family. The court noted that the child has spent the majority of his young life living with the foster family and further observed that the foster parents would like to adopt the child. The court recognized that the child "does have a relationship with his mother, but the relationship lacks stability due to mother's drug use, and the effect of the drug use on other issues."

{¶32} When discussing the child’s wishes, the court explained that “the child’s age makes it difficult for him to understand the meaning or the significance of permanent custody or understand the long-term consequences of returning home.”

{¶33} The court next considered the child’s custodial history. The court found that the child has been in the agency’s custody since December 6, 2018, and that the child has remained in its temporary custody since that time.

{¶34} The court additionally determined that the child “needs a secure placement that can only be achieved with permanent custody. * * *

Permanency is necessary for optimal development of a child and can best meet his need for stability and consistency. An award of permanent custody would allow this child to be adopted.”

{¶35} The court thus granted the agency permanent custody of the child. This appeal followed.

ASSIGNMENTS OF ERROR

- I. THE TRIAL COURT ERRED IN TERMINATING APPELLANT’S PARENTAL RIGHTS IN THAT ATHENS COUNTY CHILDREN’S PROTECTIVE SERVICES FAILED TO PLEAD IN ITS MOTION FOR PERMANENT CUSTODY THAT MINOR CHILD WAS IN THE TEMPORARY CUSTODY OF THE AGENCY FOR TWELVE OR MORE

MONTHS OF A CONSECUTIVE TWENTY-TWO-MONTH PERIOD.

- II. THE TRIAL COURT'S DECISION TO TERMINATE APPELLANT'S PARENTAL RIGHTS AND RESPONSIBILITIES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AS THE STATE FAILED TO PRESENT CLEAR AND CONVINCING EVIDENCE THAT THE MOTION WAS WITHIN THE CHILD'S BEST INTEREST.

ANALYSIS

FIRST ASSIGNMENT OF ERROR

{¶36} In his first assignment of error, appellant argues that the trial court erred as a matter of law by granting the agency permanent custody of the child on the basis of R.C. 2151.414(B)(1)(d). Appellant claims that the agency failed to allege in its permanent custody motion that the child had been in its temporary custody for 12 or more months of a consecutive 22-month period or that any other factor specified in R.C. 2151.414(B)(1) applies. Appellant alleges that the agency's failure to specify one of the R.C. 2151.414(B)(1) factors as a ground for seeking permanent custody deprived him of his due process right to adequate notice.

{¶37} The agency disagrees with Appellant's representation of the record. We agree with the agency and, therefore, find it unnecessary to delve into a due-process analysis.

{¶38} In the agency’s motion to modify disposition to permanent custody, the agency quoted the language contained in R.C. 2151.414(B)(1), i.e., the court “may grant permanent custody * * * if the court determines * * * by clear and convincing evidence, that it is in the best interest of the child * * * and that any of the following apply[.]” The agency then quoted subsection (a), i.e., “the child is not abandoned * * * 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.” After this quote, the agency set forth a nine-page list of reasons that R.C. 2151.414(B)(1)(a) applies.

{¶39} The agency next quoted subsections (b) and (c), i.e., “[t]he child is abandoned,” and “[t]he child is orphaned.” The agency asserted that neither factor applied.

{¶40} Then, the agency quoted subsection (d), i.e., “[t]he 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.” Immediately after this quote, the agency stated: “this child was brought into the emergency custody of [the agency] [o]n December 6, 2018, and has remained in custody to this date, which means that the custody date for determining ‘twelve of twenty-two’ is February 4, 2019.”

{¶41} We also note that at the start of the permanent custody hearing, the trial court judge asked whether the case is “a 12 out of 22 case,” and counsel for the agency responded that it is.

{¶42} Thus, we find it puzzling that Appellant has argued on appeal—and that the trial court found—that the agency’s motion fails to specify one of the R.C. 2151.414(B)(1) grounds for seeking permanent custody. Therefore, we do not agree with Appellant that the agency failed to give him adequate notice that it was seeking permanent custody on the basis of R.C. 2151.414(B)(1)(d), in addition to other grounds.

{¶43} Accordingly, based upon the foregoing reasons, we overrule Appellant’s first assignment of error.

SECOND ASSIGNMENT OF ERROR

{¶44} In his second assignment of error, Appellant contends that the trial court’s decision to grant the agency permanent custody of the child is against the manifest weight of the evidence. Appellant asserts that the agency failed to present clear and convincing evidence that placing the child in the agency’s permanent custody is in the child’s best interest.

STANDARD OF REVIEW

{¶45} 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).

{¶46} 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.

{¶47} 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.

PERMANENT CUSTODY PRINCIPLES

{¶48} 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.

PERMANENT CUSTODY FRAMEWORK

{¶49} 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.

(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.

{¶50} The statute further 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 is sixty days after the removal of the child from home.”

R.C. 2151.414(B)(1)(e).

{¶51} In the case at bar, the trial court found that the child has been in the agency’s temporary custody for more than 12 months of a consecutive 22-month period, and thus, that R.C. 2151.414(B)(1)(d) applies. However, the trial court inexplicably stated that R.C. 2151.414(B)(1)(d) “has not been alleged in the motion for permanent custody.” We note that the trial court

asked at the start of the permanent custody hearing whether the case involved a “12 out of 22” situation, and counsel for the agency responded affirmatively. Additionally, the agency stated in its permanent custody motion that R.C. 2151.414(B)(1)(d) applied. Thus, it is not clear why the trial court wrote in its decision that the agency had not asserted R.C. 2151.414(B)(1)(d) as one of the grounds for seeking permanent custody.

{¶52} Nevertheless, Appellant does not challenge the trial court’s other finding under R.C. 2151.414(B)(1)(a) that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. Instead, Appellant limits his second assignment of error to the trial court’s determination that placing the child in the agency’s permanent custody is in the child’s best interest. Therefore, we limit our review accordingly.

{¶53} 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.

{¶54} 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).

{¶55} In the case at bar, we initially note that Appellant’s argument does not address the best interest factors. He does not argue, for instance, how the child’s interactions and interrelationships show that placing the child in the agency’s permanent custody is not in the child’s best interest. Instead, Appellant’s argument focuses upon his and the mother’s situation and their attempts to fulfill the case plan goals.

{¶56} As we noted in a recent case, when a parent does not present any analysis of the best interest factors, we ordinarily will not create that analysis for the parent. *In re B.M.*, 4th Dist. Scioto No. 19CA3897, 2020-Ohio-1376, 2020 WL 1704695, ¶ 37. An appellant, not an appellate court, has the duty “ ‘to construct the legal arguments necessary to support the appellant’s assignments of error.’ ” *Cook v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 14AP-852, 2015-Ohio-4966, 2015 WL 7738415, ¶ 40, quoting *Bond v. Canal Winchester*, 10th Dist. No. 07AP-556, 2008-Ohio-945, 2008 WL 600201, ¶ 16; accord *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, 2014 WL 4746556, ¶ 19 (stating that

appellate court is “not obligated to search the record or formulate legal arguments on behalf of the parties”). For this reason, we simply note that the record contains ample clear and convincing evidence to support the trial court’s best interest determination.

{¶57} To the extent that Appellant believes that he has partially fulfilled the case plan and that this partial compliance shows that placing the child in the agency’s permanent custody is not in the child’s best interest, as we have observed in the past, a parent’s case plan compliance may be a relevant, but not necessarily conclusive, factor when a court considers a permanent custody motion. *See 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”); *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”); *accord In re K.M.*, 4th Dist. Ross No. 19CA3677, 2019-Ohio-4252, 2019 WL 5213026, ¶ 70, citing *In re W.C.J.*, 4th Dist. Jackson No. 14CA3, 2014-Ohio-5841, ¶ 46 (stating that “[s]ubstantial 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”); *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”). “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; accord *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”). Thus, a parent’s alleged case plan compliance does not preclude a trial court from awarding permanent custody to a children services agency when doing so is in the child’s best interest. *Id.*

{¶58} As we noted above, the record shows that the agency presented substantial clear and convincing evidence that placing the child in its permanent custody would serve the child’s best interest. And because Appellant has not created an argument focused on the best interest factors, we will not create an analysis for him.

{¶59} Accordingly, based upon the foregoing reasons, we overrule Appellant's second assignment of error.

CONCLUSION

{¶60} Having overruled Appellant's two assignments of error, we 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 Athens County Common Pleas Court Juvenile 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. and Hess, J. Concur in Judgment and Opinion.

For the Court,

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.