[Cite as *In re N.M.*, 2015-Ohio-2180.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

In Re:	:	
	:	Appellate Case Nos. 26469
N.M. and N.M.	:	26482
	:	
	:	Trial Court Case Nos. 20119681
	:	20119682
	:	(Civil Appeal from
	:	Montgomery County Juvenile Court)
	:	
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O P I N I O N

Rendered on the 5th day of June, 2015.

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HALL, J.

{¶ 1} In this expedited appeal, J.M. (Father) and B.V. (Mother) appeal separately from the trial court's judgment entry awarding Montgomery County Children Services (MCCS) permanent custody of their two children.

{¶ 2} Father advances two assignments of error. First, he contends the trial court erred in granting the agency permanent custody where it failed to prove by clear and convincing evidence that such a disposition was in the children's best interest. Second, he claims the trial court abused its discretion by refusing to grant a requested continuance of the permanent-custody hearing. In her sole assignment of error, Mother argues that MCCS failed to prove by clear and convincing evidence that an award of permanent custody was in the children's best interest.

{¶ 3} The record reflects that MCCS filed a December 2011 dependency complaint regarding the children, who at that time were three and four years old respectively and were residing with Mother. Among other things, the complaint was based on the deplorable condition of Mother's home, Mother's mental health, the children's behavior, and developmental concerns about them. The complaint also noted concerns about Father's history as a sex offender. In January 2012, MCCS obtained interim temporary custody. The following month, the trial court adjudicated the children dependent. In July 2012, MCCS obtained full temporary custody. MCCS subsequently moved for permanent custody in October 2013. Thereafter, in February 2014, Father moved for legal custody. A magistrate held a hearing on the motions in February and March 2014. At the time of the hearing, the children were five and six years old

respectively. In May 2014, the magistrate filed a decision awarding MCCS permanent custody of the children and denying Father's motion for legal custody. Mother and Father separately filed objections. The trial court overruled all objections and adopted the magistrate's decision in an October 24, 2014 decision and judgment. The trial court found that MCCS was entitled to permanent custody. Mother and Father timely appealed.

{¶ 4} We begin our analysis with the standard of review. A trial court's decision to grant permanent custody and to terminate parental rights must be supported by clear and convincing evidence. *In re L.C.*, 2d Dist. Clark No. 2010 CA 90, 2011-Ohio-2066, ¶ 14. We ordinarily apply an abuse-of-discretion standard, and we will not disturb such a decision on evidentiary grounds "if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established." (Citation omitted). *Id*.; *see also In re S.S.*, 2d Dist. Miami No. 2011-CA-07, 2011-Ohio-5697, ¶ 7. The phrase "abuse of discretion" implies a decision that is unreasonable, arbitrary or unconscionable. *Id*. Therefore, a trial court's act of overruling a parent's objections and adopting a magistrate's decision terminating parental rights cannot be reversed based on a mere difference of opinion or substitution of our judgment for that of the lower court. *Id*. With regard to Mother's appeal, the foregoing case law sets forth the applicable standard of review.

{¶ 5} Our review is more constrained, however, with regard to Father's appeal. That is so because his supplemental objections to the magistrate's decision were untimely, and the trial court did not consider them. The record reflects that Father filed a timely general objection on May 28, 2014, which was fourteen days after the magistrate

ruled. (Doc. #34). Mother also filed a timely objection on May 28, 2014 and requested leave to supplement after obtaining a transcript of the permanent-custody hearing. (Doc. #36). The trial court granted Mother thirty days after filing of the transcript to supplement her objections. (Doc. # 28). Although we have not been able to locate the entry in the trial court's docket, it also apparently granted Father the same thirty days to supplement his objection. A two-volume transcript was filed in the trial court on August 8, 2014. (Doc. #14-15). Mother supplemented her objections on September 8, 2014. (Doc. #12). One month later, Father filed an October 7, 2014 motion seeking an extension of time to file objections to the magistrate's decision. Therein, Father's counsel stated: "Counsel thought that the parties had [s]ixty days from being provided the transcripts of the Permanent Custody hearing to file the Supplement[al] objections to said hearing. Only after contacting the Court did Counsel realize that the parties had thirty days to respond to and to file Supplemental Objections." (Doc. #10). On October 7, 2014, Father also separately filed his proposed supplemental objections. (Doc. #9). On October 8, 2014, MCCS filed a response to Mother's supplemental objections. (Doc. #8).

{¶ 6} On October 24, 2014, the trial court filed its decision and judgment overruling all objections and awarding MCCS permanent custody. (Doc. #7). With regard to Father's objections, the trial court stated:

> On May 28, 2014, [Father] filed general objections expressing his disagreement with the Magistrate's Decision and requested a transcript of the hearing. By Entry filed June 13, 2014, the Court granted [Father's] transcript request and granted [Father] thirty days from the filing date of the transcript to file supplemental objections. The Court notes that the transcript

> of the hearing in this matter was filed on August 8, 2014. On October 7, 2014, [Father] filed his supplemental objections and a motion requesting an extension of time in which to file supplemental objections. The Court notes that [Father's] supplemental objections and motion requesting an extension of time were filed twenty-nine days after his deadline for filing supplemental objections. The Court finds [Father] had ample time in which to file supplemental objections and hereby DENIES the motion for an extension of time. Accordingly, the Court will only consider [Father's] general objections filed on May 28, 2014, when reviewing the Magistrate's Decision.

(*Id*. at 2).

{¶ 7} Father's first assignment of error challenges the trial court's best-interest determination as against the weight of the evidence. (Father's brief at 8). He also asserts: "Because Appellant did Object to the Magistrate's Decision granting permanent custody, Appellant submits that this argument was preserved for purposes of appeal." (*Id*. at 8-9). We note, however, that the trial court only considered Father's timely general objection on May 28, 2014, not his untimely October 7, 2014 supplemental objections. We note too that Father has not raised the trial court's rejection of the supplemental objections as an issue on appeal. The question, then, is whether Father's one-sentence general objection, which did not raise any particular issue, preserved his current evidentiary challenge to the best-interest determination.

{¶ 8} Juvenile Rule 40 governs a magistrate's decision in juvenile-court proceedings. It provides that objections to a magistrate's decision "shall be specific and state with particularity all grounds for objection." Juv.R. 40(D)(3)(b)(ii). Juvenile Rule 40

also provides that "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b)." Juv.R. 40(D)(3)(b)(iv). "Courts have held that general objections do not meet [the Juv.R. 40(D)] standard." *Ramsey v. Ramsey*, 7th Dist. Jefferson No. 13 JE 17, 2014-Ohio-1227, ¶ 16 (citing cases).[1] A general objection, then, that alleges no particular error is effectively no objection at all. Therefore, we must apply plain-error review to Father's challenge to the trial court's best-interest determination. *See In re H.B.*, 2d Dist. Montgomery No. 21365, 2006-Ohio-2124, ¶ 13 (recognizing that the plain-error doctrine applies "in proceedings that involve parental rights").

{¶ 9} Having clarified our standard of review with regard to the separate appeals by Mother and Father, we turn now to the substantive issues before us. The standards governing permanent-custody motions are as follows:

> R.C. 2151.414 establishes a two-part test for courts to apply when determining a motion for permanent custody to a public services agency. The statute requires the court to find, by clear and convincing evidence, that: (1) granting permanent custody of the child to the agency is in the best interest of the child; and (2) either the child (a) cannot be placed with either parent within a reasonable period of time or should not be placed with either parent if any one of the factors in R.C. 2151.414(E) are present; (b) is abandoned; (c) is orphaned and no relatives are able to take permanent custody of the child; or (d) has been in the temporary custody of one or

[1] We note that *Ramsey* involved identical requirements for objections in civil matters governed by Civ.R. 53.

> more public or private children services agencies for twelve or more months of a consecutive twenty-two month period. * * *
>
> R.C. 2151.414(D) directs the trial court to consider all relevant factors when determining the best interest of the child, including but not limited to: (1) the interaction and interrelationship of the child with the child's parents, relatives, foster parents and any other person who may significantly affect the child; (2) the wishes of the child; (3) the custodial history of the child, including whether 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; (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 of the factors in R.C. 2151.414(E)(7) through (11) are applicable.

In re S.J., 2d Dist. Montgomery No. 25550, 2013-Ohio-2935, ¶ 14–15.

{¶ 10} Here the trial court made the findings required to award MCCS permanent custody. Specifically, it found, among other things, that the children had been in the agency's temporary custody for more than twelve months of a consecutive twenty-two-month period and that an award of permanent custody to the agency was in the children's best interest. On appeal, neither party challenges the trial court's "twelve in twenty-two" finding, which is supported by the record. Therefore, the remaining substantive issue is whether the trial court's best-interest finding is supported by clear and convincing evidence. *In re M.R.*, 2d Dist. Greene No.2010 CA 64, 2011-Ohio-3733, ¶ 25.

{¶ 11} In its decision, the trial court made the following detailed findings with regard to the statutory best-interest factors:

> * * * Pursuant to R.C. 2151.414(D)(1), to determine if it is in the best interest of these children to permanently terminate parental rights and grant permanent custody to MCCS, the Court shall consider all relevant factors, including, but not limited to, the following:
>
> *a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child.*
>
> After being removed from [Mother's] care in January 2012, the children were placed in their current foster placement in October 2012. (Tr. 196.) Since their removal, the children have had visits with [Mother] at MCCS for three hours every Friday. (Tr. 177.) [Mother] has consistently attended said visits, but her visits have continued to be monitored due to concerns regarding the children's behavior and [Mother's] inability to redirect the children. (*Id*.) The children appear to be bonded with [Mother]. (Tr. 124.) [Mother] appears bonded to the children and wishes to reunify with them. (Tr. 326.) Dawn Morton, a visitation assessor with MCCS, testified that [Mother] and the children are very bonded and that they love each other very much. (Tr. 150.)
>
> After visiting with [Mother], the children have three hours of visitation with [Father] at MCCS. (Tr. 194.) [Father] has consistently attended said visits and MCCS has no concerns regarding [Father's] visits. (Tr. 194-195.)

The children appear bonded to [Father]. (Tr. 138, 214.) [Father] testified that he has a good interaction with the children at visits and that they express lots of love. (Tr. 265-266.) [Father] believes it is in the children's best interest to be in his care. (Tr. 273.) [K.M.], the children's stepmother, also attends said visits and reports that the visits go well and that the children are happy to see [Father]. (Tr. 243.)

b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with regard for the maturity of the child.

Mr. Valley, the GAL for the children, met with the children at their current foster home on January 14, 2014. (*GAL Report*, February 2, 2014.) During this meeting, Mr. Valley asked each of the children where they wanted to live. (*Id*.) [One child] said, "I don't know" and then refused to talk about it any further. (*Id*.) [The other child] reported that he wished to live with [Father, Stepmother, and Mother]—that he wants to go back and forth between them. (*Id*.) In previous reports, Mr. Valley has reported that the children wish to reside with "daddy, [Stepmother], and mommy." (*GAL Report*, July 14, 2013 and February 19, 2013.)

c) The custodial history of the child.

The children have been in the temporary custody of MCCS since January 2012 and in their current foster placement since October 2012. (Tr. 196.) The Court notes that both extensions of temporary custody have been granted. The Court finds that the custodial history of the children supports

granting permanent custody to MCCS.

d) The child's need for a legally secure placement and whether that type of placement can be achieved without granting permanent custody to the Agency.

MCCS was awarded temporary custody of the children in January 2012 and both extensions of temporary custody have been granted. MCCS filed the motion requesting permanent custody on October 15, 2013. Considering the length of time the children have been removed from the home and the fact that both extensions of temporary custody have been granted, the Court finds that the children are in need of a legally secure and permanent placement.

The Court notes that MCCS developed a case plan for the family, which included [Father, Mother,] and the children. (Tr. 163-164.) The Court adopted said case plan by Decision filed July 11, 2012. As previously discussed, [Father and Mother] have seen the case plan and indicated they understand their respective case plan objectives. (Tr. 164, 179.)

[Father's] case plan objectives include: complete a parenting and psychological evaluation and follow all recommendations; complete sex offender aftercare treatment; complete parenting classes; maintain stable housing and income; and maintain a regular visitation schedule. (Tr. 180.) The Court notes that [Father] was found guilty of, or pled guilty to, the following offenses: [a 1996 Rape Case[2], a 1999 Gross Sexual Imposition

[2] We note that although Father was indicted for Rape of a child under 13, in that case he

case, and 2008 and 2009 Failure to Notify cases]. [Father] is a registered sex offender until 2020. (Tr. 286.) Mr. Valley, GAL for the children, reported that the "primary concern" regarding [Father] is "his history of sexually-oriented convictions, his designation as a Habitual Sexual Offender, and his subsequent felony convictions for failure to register his address." (*GAL Report*, February 3, 2014.) [Father] completed a parenting and psychological evaluation with Dr. Kidd in May 2012. (*Id*.) Dr. Kidd observed that [Father] was not taking full responsibility for his prior offenses and referred him to Dr. Roush for sex offender aftercare treatment. (Tr. 23-24, 78, 189.) [Father] began aftercare treatment with Dr. Roush in August 2012, and Dr. Roush expected treatment to last six months. (Tr. 96-97.) At the time of the hearing, [Father] has not finished aftercare treatment, which prevented Mr. Roush from completing a risk assessment to determine [Father's] risk level for reoffending. (Tr. 84, 88).) [Father] completed a parenting class in September 2012 and has maintained adequate housing since at least August 2012. (Tr. 189-190.) [Father] is currently unemployed and looking for employment. (Tr. 232, 265.) [Father] earns money from doing odd jobs, and that, coupled with his wife's income, is sufficient to support the family. (Tr. 233, 265.) [Father] has visitation with the children for three hours every Friday, and MCCS reports that they have no concerns with [Father's] visitation schedule. (Tr. 194-195.) Considering [Father's] history of sexual offense convictions (including his failure to

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pled guilty to a charge of Sexual Battery by way of a Bill of Information.

report as a sex offender) and the fact that he has not completed sex offender aftercare treatment, the Court finds that [Father] has not completed his case plan.

[Mother's] case plan objectives include: complete a parenting and psychological evaluation and follow all recommendations; maintain stable housing for at least six months; complete a parenting class with an emphasis on classes specifically designed for children with ODD and ADHD; gain knowledge about the children's disorders; complete a mental health assessment and receive ongoing counseling; have income sufficient to meet the children's needs; and maintain a consistent visitation schedule. (Tr. 165-166.) [Mother] completed a parenting and psychological assessment with Dr. Lilley in May 2012. (Tr. 292.) Dr. Lilley diagnosed [Mother] as having "features of a dependent personality disorder, some histrionic features, and * * * some mild indices of depression." (Tr. 303.) The Court notes that Dr. Lilley's diagnoses were based on a reasonable degree of psychological and scientific certainty. (*Id*.) [Mother] obtained a subsidized apartment in late March or early April 2013. (Tr. 167.) [Mother] completed a parenting class with Family Works in September 2012. (Tr. 170.) To assist [Mother] in becoming knowledgeable about the children's disorders, MCCS arranged for Wendy Franck, a child therapist at Samaritan Behavioral Health, to consult with [Mother] at her weekly parenting time. (Tr. 120, 123, 170.) Ms. Franck testified that these children, who have been diagnosed with ODD and ADHD, thrive on consistency and knowing the rules, and that

> [Mother] has not shown that she can consistently control the children's behavior. (Tr. 126, 129.) [Mother] completed a mental health assessment at South Community and was diagnosed with bipolar disorder. (Tr. 172.) However, [Mother] has failed to consistently attend any mental health counseling, only attending sporadically prior to July 2013 and not attending at all from October 2013 to January 2014. (Tr. 106-109.) [Mother] testified she earns $125 per week babysitting for two friends, but MCCS has not been able to verify the amount. (Tr. 175, 230, 325.) [Mother] has visitation with the children for three hours every Friday and has regularly attended the same. (Tr. 177-178.) Considering [Mother's] failure to consistently attend mental health counseling and her inability to consistently meet the children's special needs, the Court finds [Mother] has not completed her case plan.
>
> As neither parent has completed their case plan objectives, the Court finds that the children cannot and should not be placed with [Father or Mother] within a reasonable time. In light of the foregoing, the Court finds that a legally secure placement cannot be achieved without granting permanent custody to MCCS. Accordingly, the Court finds that this factor weighs in favor of granting permanent custody to MCCS.

(Doc. #7 at 5-8).

{¶ 12} Based on the foregoing analysis, the trial court concluded:

> After considering all relevant factors, the Court finds that permanent custody to MCCS is in the best interest of the children. The Court

> acknowledges the children appear bonded to each parent and the fact that the children wish to reside with their parents. However, the Court notes that the children have been in the care of MCCS for approximately twenty-four months and that both extensions of temporary custody have been granted. Therefore, the Court finds that the children are in need of a legally secure, permanent placement. As neither parent has completed their case plan objectives, the Court finds that a legally secure, permanent placement cannot be achieved without granting permanent custody to MCCS. Finally, the Court notes Mr. Valley, GAL for the children, recommends permanent custody to MCCS. In light of the foregoing, the Court finds the State presented clear and convincing evidence that permanent custody to MCCS is in the best interest of the children. Accordingly, the Court hereby OVERRULES the objections filed by [Father and Mother].

(*Id*. at 8).

{¶ 13} On appeal, Father stresses his bond with the children. (Father's brief at 9). He also notes that their custodial history, prior to MCCS's involvement, included weekend visits and extended stays at his house with his wife. (*Id*. at 10). Although the children are doing well in their foster home, Father points out that it is not a foster-to-adopt home. (*Id*. at 11). Finally, with regard to his history as a sex offender, Father notes that the offenses were long ago and did not involve the children at issue. Since that time, Father has completed sex-offender treatment and undergone counseling with Dr. Kidd and Dr. Roush. Father argues that he substantially had completed his case plan, that there is no evidence he poses a risk to the children, and that the best-interest factors weigh in favor

of granting him legal custody. Father asserts that no matter what he did in this case, MCCS and the trial court simply were unwilling to return the children to him.

{¶ 14} Applying the plain-error standard of review, we cannot say the trial court erred in finding an award of permanent custody to MCCS to be in the children's best interest. In 1996, Father was charged with rape of a child under age thirteen. He pled guilty to a reduced charge of sexual battery, a third-degree felony, and received a two-year prison sentence. Following his release, Father was charged in 1999 with gross sexual imposition involving a child under age thirteen. He was found guilty by a jury and was sentenced to three years in prison. The victims of Father's two offenses were a daughter and a step-daughter who are not involved in the present case. In December 2008, Father was charged with felony failure to provide notice of a change of address and a change of vehicle information. He pled guilty and received a community control sanction. In June 2009, Father again was charged with felony failure to provide notice of a change of address and a change of vehicle information. He pled guilty and again received a community control sanction.

{¶ 15} Due to Father's history, his case plan required him to see Dr. Kidd, who expressed some concern because Father was "minimizing" and "not taking full responsibility" for his past offenses. (Hearing Tr. at 22-25). Although Father fell in the low-risk range on a standardized test, Dr. Kidd believed his risk level to re-offend was "somewhat higher" based on known risk factors that were not captured by the test. (*Id*. at 28). These factors included his failure-to-notify convictions, a denial of the first offense, and a placing of blame on women generally and on the victims. (*Id*. at 29-30, 37). As a result, Dr. Kidd referred Father for additional treatment with Dr. Roush. (Id. at 78).

Father's first session with Dr. Roush occurred in August 2012. (*Id*. at 78). That treatment was expected to last for six months (*Id*. at 96), but it still had not been completed when the permanent-custody hearing ended in late March 2014. Dr. Roush attributed the delay in finishing to "various gaps" in the sessions, some of which were attributable to Father. (*Id*. at 84-85, 96, 181). At the time of Dr. Roush's testimony on February 6, 2014, he had not seen Father since November 2013. (*Id*. at 84). Dr. Roush was unsure why no sessions had occurred, but he knew they had been scheduled. (*Id.).* But for the gaps in Father's sessions, Dr. Roush could have completed a final risk assessment prior to the permanent-custody hearing. (*Id*. at 97).

{¶ 16} Particularly in light of (1) Father's history of sex offenses and Dr. Kidd's articulated concerns about Father's risk to re-offend being higher than a standardized test indicated, (2) Dr. Roush's failure to complete his counseling sessions with Father—and his corresponding inability to complete a final risk assessment and relapse-prevention plan—due to gaps in Father's attendance, (3) Father's multiple more recent convictions for failure-to-notify, and (4) the trial court's inability to grant further continuances of MCCS's temporary custody, we cannot say, applying a plain-error standard of review, that the trial court erred in granting permanent custody to MCCS. Although Father had completed most of his case plan, that fact alone is not dispositive of the children's best interest. The trial court is best positioned to weigh the various best-interest factors, and an award of permanent custody to the State may be appropriate even when just one of those factors supports such a disposition. *In re N.Q*., 2d Dist. Montgomery No. 25428, 2013-Ohio-3176, ¶ 71-72. Here the trial court appears to have placed considerable weight on Father's history as a habitual sex offender and his more recent failure to

complete counseling with Dr. Roush to assess his current risk, despite having ample time to do so, to find that a legally secure placement could not be achieved without awarding permanent custody to MCCS. We see no plain error in this determination. Finally, the trial court was not required to find a probability of adoption in order to find that a legally secure placement could not be achieved without a grant of permanent custody to MCCS. *Id*. at ¶ 75.

{¶ 17} As for Mother, she asserts that she was bonded with the children, that she visited them regularly and appropriately, that she had suitable housing, that she had no drug or alcohol problems, and that she obtained a mental-health evaluation and took parenting classes. Mother also stresses that the children's current foster placement is not an adoptive one. (Mother's brief at 11-12).

{¶ 18} On the other hand, the trial court recognized on-going concerns about other aspects of Mother's case plan, namely the adequacy of her income, her failure to attend mental-health counseling consistently, and her failure to show an ability to meet the children's psychological needs. The record supports these concerns. Mother was diagnosed with bipolar and developmental disorder in 2012 and prescribed medication. (Hearing Tr. at 172). She also was diagnosed with anxiety disorder and mixed personality disorder. (*Id*. at 104). The personality disorder manifested itself in Mother having "[p]roblems with anger, irritability, a difficulty being consistent in her obligations and responsibilities, difficulty with trusting authority figures, and * * * interpersonal conflicts and unstable relationships." (*Id*. at 119). The children have been diagnosed with ODD and ADHD. (*Id*. at 208). During supervised visits, Mother has continued to have significant trouble controlling the children or re-directing their behavior. (*Id*. at 171). According to

therapist Wendy Franck, the children's behavior and language seemed to "regress" during Mother's visits. (*Id*. at 127). Franck believed better progress had been made with the children's behavior in their foster-care setting. (*Id*. at 129-130).

{¶ 19} At the time of the hearing, Mother's participation in mental-health counseling was described as "inconsistent." (*Id*. at 172). Caseworker Leslie Bassler explained: "She's only able to go in on a walk-in basis due to numerous missed appointments. There will be sessions where—or periods of time where she will attend regularly for a month or so, and then, you know, she won't attend for quite a while, and then it jumps back to about once every two months or so." (*Id*. at 173). The record reflects that Mother would make progress dealing with her mental-health issues but then regress when she started missing appointments. (*Id*. at 110). Mother also had quit taking the one medication prescribed for her because she did not like it. (*Id*.). At the time of the hearing, Mother remained in need of mental-health services. (*Id*. at 113-114). Mother testified at the hearing that her only source of income was $125 per week that she received babysitting for two friends. (*Id*. at 230). MCCS was unable to verify this limited income, and the record contains testimony that Mother had not been paid for three weeks and was contemplating stopping babysitting. (*Id*. at 210).

{¶ 20} In light of the evidence before us and the trial court's findings, we see no error in its determination that an award of permanent custody to MCCS was in the children's best interest. Of particular significance, the record supports the trial court's concerns about Mother's case-plan progress, which remained incomplete, and its determination that a legally secure placement could not be achieved without awarding permanent custody to MCCS. Consequently, for the reasons set forth more fully above,

we overrule Mother's sole assignment of error and Father's first assignment of error.

{¶ 21} In his second assignment of error, Father claims the trial court abused its discretion by refusing to grant a requested continuance of the permanent-custody hearing.

{¶ 22} The record reflects that Father's counsel sought a continuance on March 27, 2014 at the conclusion of the two-day permanent-custody hearing before the magistrate. Counsel professed to have received a letter from Dr. Roush indicating that four to six more counseling sessions were required for Father to complete his treatment. (Hearing Tr. at 354). Counsel requested a continuance to permit that to occur. (*Id*.). The guardian ad litem opposed the motion, maintaining that a continuance of several months would be needed and would not be in the children's best interest. (*Id*. at 255). The magistrate overruled the motion, noting that the information from Dr. Roush did not indicate when the sessions would be completed or when a final report would be done. (*Id*. at 355-356).

{¶ 23} Upon review, we observe that the magistrate denied the continuance. The trial court subsequently considered only Father's timely general objection, which did not raise the continuance issue. Therefore, we once again are limited to plain-error review.

{¶ 24} We see no plain error here. During the first day of the permanent-custody hearing on February 6, 2014, Dr. Roush testified that Father needed at most eight more sessions to complete his counseling. (*Id*. at 84). Roughly *seven weeks* later when the permanent-custody hearing concluded on March 27, 2014, Dr. Roush believed Father still needed up to six more sessions. (*Id*. at 354). In light of the apparently slow scheduling of the prior sessions and the lack of information about when the four to six additional

sessions would be completed, we cannot say the trial court committed plain error in declining to continue the proceedings, particularly where its final extension of temporary custody to MCCS already had expired. Accordingly, Father's second assignment of error is overruled.

{¶ 25} The judgment of the Montgomery County Common Pleas Court, Juvenile Division, is affirmed.

. . . . . .

FAIN, J., concurs.

DONOVAN, J., concurring and dissenting:

{¶ 26} I disagree as to Father. "The permanent termination of parental rights has been described as the family law equivalent of the death penalty in a criminal case." *In Re: Smith*, 77 Ohio App.3d 1, 16, 601 N.E.2d 45 (6th Dist. 1991). Therefore, parents "must be afforded every substantive and procedural protection the law allows." *Id*. *In Re: Hayes*, 79 Ohio St.3d 46, 48, 679 N.E. 2d 680 (1997).

{¶ 27} In my view, Father was denied such rights, when the court refused to consider a brief continuance of the proceedings to consider Dr. Roush's ultimate recommendation regarding placement with Father upon completion of Father's relapse prevention sessions. Pursuant to R.C. 2151.414(A) for good cause shown, the court should have continued the permanent custody hearing for a reasonable period of time beyond the 120-day deadline from the date the motion for permanent custody was filed.

{¶ 28} Father was on the verge of completing all objectives when the court, without articulating a reasoned decision, simply denied his request for an opportunity to complete 4 – 6 sessions with Dr. Roush. It was critical that this valuable expert weigh in on

placement with Father.

{¶ 29} When viewing the entirety of the record, it would appear that Children Services was not serious about Father's parental interest from the beginning, given his criminal convictions. This is admitted in testimony from CSB personnel, wherein it is admitted no home study was done on Father due to his sex offender status. "No doubt certain offenses and the facts of the crimes may weigh heavily in a court's decision as to the best interest of the children. Nonetheless, loss of custody is not an automatic sanction for any criminal offense." *In Re: R.L.*, 2d Dist. Greene Nos. 2012 CA 32, 2012 CA 33, 2012-Ohio-6049, ¶ 57.

{¶ 30} It is overlooked, except by one expert that the victims of the sexual battery and GSI were girls, not boys. The children at issue here are biological sons and there is nothing to suggest Father is attracted to young boys. Also disregarded is the fact that these offenses occurred 14 and 18 years earlier and Father is now 48 years old and scored low risk to reoffend.

{¶ 31} Significantly, the testimony of the caseworkers and experts established that Father is:

- well bonded with his children
- has maintained stable employment
- has completed parenting classes
- has consistently attended individual sessions with Dr. Roush, twice a month for over a year[3]
- has progressed significantly in his relapse program

[3] Some missed appointments were attributed to his wife's illness and his father's heart attack and subsequent paralysis which demanded Appellant-Father's time and attention.

• has a healthy marriage with an employed spouse

{¶ 32} I would reverse the termination of parental rights as to the Father only.

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Copies mailed to:

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