[Cite as *In re N.S.N.*, 2015-Ohio-2486.]

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

IN THE MATTER OF:

N.S.N. and N.E.N.,	:	Case No. 15CA6
	:	15CA7
	:	15CA8
	:	15CA9
Adjudicated Dependent Children.	:	DECISION AND JUDGMENT ENTRY
	:	RELEASED 06/18/2015

APPEARANCES:

David A. Sams, West Jefferson, Ohio, for Appellant J.K.M.

Joseph H. Brockwell, Marietta, Ohio, for Appellant J.N.

Amy Graham, Marietta, Ohio, for Appellee Washington County Children Services.

Hoover, P.J.

{¶ 1} Appellants, J.K.M. and J.N., separately appeal the trial court's judgments that awarded appellee, Washington County Children Services (WCCS), permanent custody of their two-year-old twin daughters, N.S.N. and N.E.N. For the reasons that follow, we affirm the trial court's judgment.

I. FACTS

{¶ 2} J.K.M. (the mother) presented to Ohio State University Medical Center when she was pregnant with the twins. Due to the high-risk nature of her pregnancy, she was admitted to the hospital. J.N. (the father) visited J.K.M. in the hospital; and they went outside to smoke a cigarette. J.K.M. returned to her hospital room without J.N. and later

learned that J.N. became intoxicated and was arrested. J.K.M. left the hospital against medical advice to post bond for J.N. She and J.N. eventually ended up at Grant Medical Center, where, on October 15, 2012, she gave birth to the twin girls, who were born prematurely. The twins were later transferred to Nationwide Children's Hospital and remained hospitalized for two months.

{¶ 3} During the twins' two-month stay at the hospital, hospital personnel expressed concerns to appellee regarding the parents' ability to provide proper care for the twins. Thus, on December 12, 2012, before the twins were released to the parents, WCCS sought and obtained custody of them pursuant to an *ex parte* emergency telephone removal order. On December 13, 2013, the court held a shelter care hearing and continued the children in appellee's temporary custody.

{¶ 4} Also on December 13, 2012, appellee filed complaints alleging the children to be neglected and dependent. The complaints alleged that on October 17, 2012, appellee received a dependency report regarding the premature twins. Appellee alleged that the parents appeared uninterested in caring for the children and lacked necessary items to properly care for the children.

{¶ 5} On February 20, 2013, the parents admitted that the children were dependent; and the court confirmed the temporary custody order in favor of appellee. The court dismissed the neglect allegations. On March 13, 2013, the parents consented to the children remaining in appellee's temporary custody. At later review hearings, the court continued the children in appellee's temporary custody.

{¶ 6} On June 11, 2014, appellee filed motions seeking permanent custody of the two children. Appellee alleged that the children had been in its custody for twelve or more

months of a consecutive twenty-two month period under R.C. 2151.414(B)(1)(d) and that awarding it permanent custody would serve the children's best interests.

{¶ 7} On October 21, 2014, the trial court held a hearing to consider appellee's permanent custody motions. WCCS caseworker Dorothy Anderson testified that shortly after the birth of the twins in October 2012, appellee received a referral from Nationwide Children's Hospital regarding the parents' alleged inability to care for the twins. She stated that "[t]he parents were not prepared to have the children come into the home." Anderson explained that appellee had concerns about J.K.M.'s interest in providing proper care for the children because she did not listen to advice, she fell asleep while visiting the twins, and she left the room for "smoke breaks at inopportune times."

{¶ 8} Anderson testified that J.K.M.'s case plan required her to (1) complete a parenting education course and follow recommendations, (2) obtain Help Me Grow services and follow recommendations, (3) maintain an appropriate and stable residence, (4) obtain necessary infant care items, (5) accommodate the twins' basic needs, (6) complete domestic violence education courses, (7) participate in drug and alcohol counseling and follow recommendations, and (8) submit to random drug tests. Anderson stated that J.K.M. did not complete any of the case plan goals and "was very unwilling to listen to advice or encouragement." She further stated that J.K.M. handled the children "roughly and was unwilling to listen to advice on handling the children." Anderson also noted that in October 2013, J.K.M. had given birth to another child and admitted that she was using marijuana at the time of his birth.

{¶ 9} Anderson testified that J.N.'s case plan required him to (1) complete a parenting education course and follow recommendations, (2) obtain Help Me Grow

services and follow recommendations, (3) maintain an appropriate and stable residence, (4) obtain necessary infant care items, (5) accommodate the twins' basic needs, (6) participate in drug and alcohol support groups, and (7) submit to random drug tests. Anderson stated that J.N. also did not complete any of the goals.

{¶ 10} Anderson testified that through June 2014, appellee offered 145 visits to the parents and at least one parent attended 96 of the visits. Anderson explained that during visits with the children, J.K.M. slept or listened to a radio or telephone. She stated that although J.N. interacted appropriately with the children during visits, she did not detect much bonding or attachment. Anderson also testified that the parents argued at almost every visit they had with the children. She further stated that the parents engaged in frequent bouts of domestic violence, which resulted in seven jail visits for J.N. and three jail visits for J.K.M. Anderson noted that J.K.M. spent 90 days in jail for domestic violence. Anderson testified that the children continuously remained in appellee's temporary custody and in the same foster home between the date of their removal, December 12, 2012, and the date of the permanent custody hearing, October 21, 2014.

{¶ 11} Melissa Cox stated that she provided services to the parents and the twins through Help Me Grow. She testified that she met with the parents and discussed how to properly care for the children. Cox explained that the parents often failed to attend scheduled appointments. Cox stated that when the parents did attend appointments, the parents often fought and used foul language during the time when they should have been interacting with the children. She further stated that J.K.M. was not receptive to her advice, did not appear to have bonded with the twins, and "never engaged with them."

{¶ 12} Cox explained that Help Me Grow provided the parents with "reality dolls" to monitor their ability to provide proper care for the twins. Cox stated that the "reality dolls" contain computer chips that detect whether the dolls are being provided proper care. She stated that Help Me Grow provided the dolls to J.K.M. and J.N. on February 4, 2013; and the parents returned them within two days. Cox testified that she provided the dolls to the parents again a few weeks later; this time the parents kept the dolls for a week. She stated that the computer-generated report received after the parents returned the dolls showed some "rough handling." Cox testified that she had concerns about the children being placed with the parents. Cox explained that the parents "are very angry with each other, very violent towards one another." Cox further stated that J.K.M. lacks a bond with the girls, does not interact with them appropriately, refuses help, and fails to take responsibility.

{¶ 13} Help Me Grow service coordinator Royetta Cline testified that she observed the twins in the foster home and believed that they were "more loving" with the foster parents. Cline also explained that the twins received speech therapy and that they had just started talking over approximately the last three months. She stated that one child used approximately ten words while the other child used around twenty words.

{¶ 14} WCCS caseworker Candace Gabriel described the parents' visits with the children as "chaotic." Gabriel explained that the parents often fought and that J.K.M. became easily frustrated if the twins cried. Gabriel stated that J.K.M. became upset if she tried to give her parenting advice. Gabriel also testified that the parents did not properly supervise the children and explained: "There was an incident pulling a [booster] chair down on top of herself. Pulling chairs down, pulling the toys from the top of the toy box

down on themselves. Climbing on the couch. Falling off a chair." In addition, Gabriel testified that she did not believe J.K.M. shared a bond with the twins. Gabriel explained that J.K.M. did not tell the girls that she loved them; and J.K.M. did not hold them, kiss them, or show them any type of affection. In contrast, Gabriel stated that she did not "have a lot of concerns with" J.N.'s visits. She explained that J.N. was affectionate with the twins and played with them.

{¶ 15} The children's guardian ad litem, Robert Henry, testified that although he believed the parents showed some progress on the case plan goals, the parents' domestic violence presented "one of the most significant concerns." He stated that the parents' history showed that they had a "difficult relationship," and he believed their relationship would "affect the children." Henry stated: "It's not in the children's best interests to be exposed to what seems to be an ongoing animosity between the two that manifests in fights and arguments." Henry also explained that he believed any additional stressors in the home would only escalate the parents' relationship difficulties.

{¶ 16} Henry further expressed concern that the parents would "repeat the behavior." Henry explained that he had not seen "any evidence why" the fights and law enforcement involvement "wouldn't happen again." He stated that "one of [his] biggest concerns" was that the parents would continue to face repeated incarcerations due to the frequent bouts of domestic violence, which would then prevent them from caring for the children. Henry testified that he did not believe that "much can be accomplished at this point" by continuing the children in appellee's temporary custody.

{¶ 17} Henry stated that he visited the children in the foster home and had "no doubt they're well cared for." Henry admitted that J.N. "could be a great father if given

the right circumstances, but [he did not] think it is right here." He stated that he thus believed awarding appellee permanent custody would serve the children's best interests.

{¶ 18} On January 8, 2015, the trial court awarded appellee permanent custody of the children. The court found that the children had continuously been in appellee's temporary custody from the date of removal, December 12, 2012, until the date appellee filed its permanent custody motion, June 11, 2014. The court further noted that the children never lived with the parents and have lived in the same foster home since their removal.

{¶ 19} The court additionally found that (1) the parents did not complete any of the case plan goals, (2) the parents argued during visits, used inappropriate language, and "spent more time focused on themselves than the children," (3) J.K.M. "has been very uncooperative with the various outside agencies trying to help her," (4) J.K.M. "exhibited very little bonding with the children," (5) J.K.M. "slept through most visits, and when awake was very lethargic and would ignore the children and be on her phone," (6) J.K.M. had also "handled the children roughly during visits," (7) although J.N. "was for the most part appropriate with the children during visits, he is not able to provide the care needed for them on a fulltime basis."

{¶ 20} The court determined that neither parent could provide the children with stability or a legally secure permanent placement. The court also noted that the foster parents are meeting the children's needs, that the children are doing well in the foster home, and that the guardian ad litem recommended that the court award appellee permanent custody of the children. The trial court thus determined that awarding appellee

permanent custody would serve the children's best interests and granted appellee's motion for permanent custody. This appeal followed.

II. ASSIGNMENTS OF ERROR

{¶ 21} Appellant, J.K.M., raises one assignment of error.

> The judgment is based on insufficient evidence concerning the best interest of t[he] children and is likewise against the manifest weight of the evidence in that the record lacks clear and convincing evidence of the placement wishes of the children or that they are too immature to meaningfully express such.

{¶ 22} Appellant, J.N., raises one assignment of error.

> The juvenile court abused its discretion, and its judgment was against the weight of the evidence, when it found that it was in the best interest of the children to permanently terminate the parental rights of the father.

III. ANALYSIS

{¶ 23} In their sole assignments of error, J.K.M. and J.N. both assert that the trial court's decision to award appellee permanent custody of the children is against the manifest weight of the evidence. Because both assignments of error involve the same legal principles, we first set forth those principles.

A. STANDARD OF REVIEW

{¶ 24} 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 M.H.*, 4th Dist. Vinton No. 11CA683, 2011–Ohio–5140, ¶ 29; *In re A.S.*, 4th Dist. Athens Nos. 10CA16, 10CA17, 10CA18, 2010–Ohio–4873, ¶ 7.

> "Weight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.' "

Eastley v. Volkman, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶ 12, quoting *State v. Thompkins,* 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting Black's Law Dictionary 1594 (6th Ed.1990).

{¶ 25} 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." ' " *Id.* at ¶ 20, quoting *Tewarson v. Simon,* 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *Thompkins* at 387, quoting *State v. Martin,* 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). *Accord In re Pittman,* 9th Dist. Summit No. 20894, 2002–Ohio–2208, ¶¶ 23–24.

{¶ 26} 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. "Clear and convincing evidence" is:

> [T]he measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

In re Estate of Haynes, 25 Ohio St.3d 101, 104, 495 N.E.2d 23 (1986). In determining whether a trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *State v. Schiebel,* 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). *Accord In re Holcomb,* 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), citing *Cross v. Ledford,* 161 Ohio St. 469, 120 N.E.2d 118 (1954) ("Once the clear and convincing standard has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof."). "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." (Citations omitted.) *In re R.M.,* 2013–Ohio–3588, 997 N.E.2d 169, ¶ 55 (4th Dist.).

{¶ 27} Once the reviewing court finishes its examination, the court may reverse the judgment only if it appears that the fact-finder, when resolving the conflicts in evidence, " 'clearly lost its way and created such a manifest miscarriage of justice that the

[judgment] must be reversed and a new trial ordered.' " *Thompkins,* 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *Martin* at 175. 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; *accord State v. Lindsey*, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000).

{¶ 28} Furthermore, when reviewing evidence under the manifest weight of the evidence standard, an appellate court generally must defer to the fact-finder's credibility determinations. As the *Eastley* court explained:

> "[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts. * * *
>
> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment."

Eastley, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3, quoting 5 Ohio Jur.3d, Appellate Review, Section 60, at 191–192 (1978).

B. PERMANENT CUSTODY PRINCIPLES

{¶ 29} 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. A parent's rights, however, are not absolute. *In re 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. *In re D.A.* at ¶ 11.

{¶ 30} Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. *Id.* Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying purposes of R.C. Chapter 2151, as set forth in R.C. 2151.01:

> (A) To provide for the care, protection, and mental and physical development of children * * * whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety;
>
> (B) To provide judicial procedures through which Chapters 2151. and 2152. of the Revised Code are executed and enforced, and in which the

> parties are assured of a fair hearing, and their constitutional and other legal rights are recognized and enforced.

C. PERMANENT CUSTODY FRAMEWORK

{¶ 31} R.C. 2151.414(B)(1) permits a trial court to grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and that any of the following apply:

> (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.

{¶ 32} Thus, before a trial court may award a children services agency permanent custody, it must find (1) that one of the circumstances described in R.C. 2151.414(B)(1)[1] applies, and (2) that awarding the children services agency permanent custody would further the child's best interests.

D. BEST INTEREST

{¶ 33} R.C. 2151.414(D) requires a trial court to consider specific factors to determine whether a child's best interest will be served by granting a children services agency permanent custody. The 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. "In a best-interests analysis under R.C.

[1] The General Assembly recently amended R.C. 2151.414(B)(1) to add division (e), which states:

2151.414(D), a court must consider 'all relevant factors,' including five enumerated statutory factors * * *. No one element is given greater weight or heightened significance." *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.

E. J.K.M.'S APPEAL

{¶ 34} In the case at bar, the only aspect of the trial court's decision J.K.M. challenges is whether the trial court considered the children's wishes when evaluating whether permanent custody would serve the children's best interests. She contends that the record fails to show that the children directly expressed their wishes, that the guardian *ad litem* expressed the children's wishes, or that the children are too immature to meaningfully express their wishes. J.K.M. thus asserts that the trial court erred as a matter of law by failing to consider one of the factors expressly enumerated in R.C. 2151.414(D).

{¶ 35} R.C. 2151.414(D)(1)(b) requires a trial court that is evaluating a children services agency's permanent custody motion to consider the child's wishes "as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child[.]" This statute "unambiguously gives the trial court the choice of considering the child's wishes directly from the child or through the guardian ad litem." *In re C.F.* at ¶ 55. Thus, "[t]he trial court has discretion to accept the testimony of the guardian ad litem on the child's wishes rather than hearing a direct expression of those wishes made by the child." *Id.* at ¶ 56. Additionally, the statute requires the court to consider the child's maturity when examining the child's wishes. "A trial court ordinarily

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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.

errs if it completely fails to address a child's wishes." *In re S.M.*, 4th Dist. Highland No. 14CA4, 2014-Ohio-2961, ¶ 32, citing *In re T.V.*, 10th Dist. Franklin Nos. 04AP–1159 and 04AP1160, 2005–Ohio–4280; *In re Ridenour*, 11th Dist. Lake Nos. 2003–L–146, 2003–L–147, 2003–L–148, 2004–Ohio–1958; *In re Swisher*, 10th Dist. Franklin Nos. 02AP–1408 and 02AP–1409, 2003–Ohio–5446; *In re Williams*, 10th Dist. Franklin No. 00AP–973, 2001 WL 266886 (Mar. 20, 2001).

{¶ 36} In the case at bar, we initially observe that although the trial court entered some findings of fact and conclusions of law, J.K.M. did not file a request for findings of fact and conclusions of law. Civ.R. 52 states: "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." Additionally, R.C. 2151.414(C) states: "If the court grants permanent custody of a child to a movant under this division, the court, upon the request of any party, shall file a written opinion setting forth its findings of fact and conclusions of law in relation to the proceeding." 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. *In re Barnhart*, 4th Dist. Athens No. 02CA20, 2002-Ohio-6023, ¶ 23, citing *Pawlus v. Bartrug*, 109 Ohio App.3d 796, 801, 673 N.E.2d 188 (9th Dist.1996), and *Wangugi v. Wangugi*, 4th Dist. Ross No. 99CA2531, 2000 WL 377971 (Apr. 12, 2000). " '[W]hen a party does not request that the trial court make findings of fact and conclusions of law under Civ.R. 52, the reviewing court will presume that the trial court considered all the factors and all other

relevant facts.' " *Id.*, quoting *Fallang v. Fallang*, 109 Ohio App.3d 543, 549, 672 N.E.2d 730 (12th Dist.1996).

{¶ 37} We have applied this rule to R.C. 2151.414 permanent custody cases and have stated that unless a party requests findings of fact and conclusions of law, a trial court need not set forth specific factual findings regarding each R.C. 2151.414(D) best interest factor. *In re M.M.*, 4th Dist. Scioto No. 07CA3203, 2008-Ohio-2007, ¶ 20; *In re Pettiford*, 4th Dist. Ross No. 06CA2883, 2006-Ohio-3647, ¶ 28; *In re Myers*, 4th Dist. Athens No. 02CA50, 2003-Ohio-2776, ¶ 23, citing *In re Malone*, 4th Dist. Scioto No. 93CA2165, 1994 WL 220434 (May 11, 1994); *In re Dyal*, 4th Dist. Hocking No. 01CA12, 2001 WL 925423, fn. 3 (Aug. 9, 2001), quoting *In re Day*, 10th Dist. Franklin No. 00AP–1191, 2001 WL 125180 (Feb. 15, 2001); accord *In re R.H.*, 5th Dist. Perry No. 10CA9, 2010-Ohio-3293, ¶ 14. If, however, a party requests findings of fact and conclusions of law, then the trial court must set forth specific factual findings that correlate to each best interest factor. *Myers* at ¶ 23. Additionally, the record must indicate that the trial court indeed considered the proper statutory factors. *In re Allbery*, 4th Dist. Hocking No. 05CA12, 2005-Ohio-6529, ¶ 13; *In re C.C.*, 10th Dist. Franklin No. 04AP-883, 2005-Ohio-5163, ¶ 53. Thus, because J.K.M. did not request findings of fact and conclusions of law, the trial court was not required to set forth specific factual findings relating to the children's wishes. Instead, the record need only indicate that the court indeed considered the children's wishes in relation to their best interests.

{¶ 38} In the case sub judice, the trial court affirmatively indicated that it considered the factors listed in R.C. 2151.414(D) in its best interest analysis. In its judgment entry, the court recognized its obligation to consider "all relevant factors,

including but not limited to the factors set forth in R.C. 2151.414(D).” The court then stated: “R.C. 2151.414(D)(1)(a), (c) and (d) are applicable to this case.” The court quoted these three provisions and stated: “After considering all relevant evidence and factors, including those set forth in [R.C.] 2151.414(D)(1)(a), (c) and (d), the Court finds by clear and convincing evidence that it is in the best interest of the child to be placed in the permanent custody of the movant.” The court’s statement that it considered “all relevant evidence and factors” indicates that the court was aware of and considered all of the factors outlined in R.C. 2151.414(D)(1), including the children’s wishes, but chose not to explicitly discuss each factor.

{¶ 39} Contrary to J.K.M.’s assertions, the omission of R.C. 2151.414(D)(1)(b) does not necessarily indicate that the court completely failed to consider the children’s wishes. Instead, the court appears to have consciously omitted this factor from its written analysis, most likely due to the children’s young age and inability to speak their wishes. *In re H.M.*, 2014-Ohio-755, 9 N.E.3d 470, ¶ 32 (3rd Dist.) (“The trial court, on its own, can find that a child is too immature to express his or her wishes, so long as that finding is supported in the record.”). The evidence in the case at bar shows that the two-year-old twins started using words approximately three months before the permanent custody hearing and that neither had a vocabulary greater than twenty words. Under these circumstances, it would not have been unreasonable for the trial court to believe that the children were too young to directly express their wishes. Although the court did not provide this reason for omitting a specific reference to R.C. 2151.414(D)(1)(b), we again note that J.K.M. did not request findings of fact and conclusions of law. The trial court, therefore, was not required to explicitly explain its analysis of the children’s wishes. Had

J.K.M. desired an explicit finding regarding R.C. 2151.414(D)(1)(b), she could have filed a request for findings of fact and conclusions of law. Thus, we believe that the record indicates that the court considered R.C. 2151.414(B)(1)(b) but determined that the children were too young or immature to directly express their wishes.

{¶ 40} Moreover, even though the court's judgment entry omitted reference to R.C. 2151.414(D)(1)(b), we observe that the court did recognize that the guardian ad litem recommended that the court award appellee permanent custody. Thus, the court indirectly considered the children's wishes via the guardian ad litem's recommendation. *See In re C.T.L.A.*, 4th Dist. Hocking No. 13CA24, 2014-Ohio-1550, ¶ 49 (noting that court considered children's wishes as expressed through the guardian *ad litem*); *In re Haller*, 3rd Dist. Wyandot No. 16-08-16, 2009-Ohio-545, ¶ 17 (observing that trial court may ascertain child's wishes via guardian ad litem's report and recommendation, especially when child is of young age and has delayed development). Consequently, we do not agree with Appellant that the trial court failed to consider the children's wishes.

{¶ 41} Accordingly, based upon the foregoing reasons, we overrule J.K.M.'s sole assignment of error.

F. J.N.'S APPEAL

{¶ 42} J.N. asserts that the clear and convincing evidence fails to support the trial court's best interest determination. He more specifically argues that the trial court "abused its discretion by determining that [he] cannot provide the children with an acceptable level of care and a secure permanent placement within a reasonable time."

{¶ 43} R.C. 2151.414(D)(1)(d) requires a trial court that is evaluating a permanent custody motion to consider "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." J.N. seems to challenge the trial court's finding that the children cannot achieve a legally secure permanent placement without granting appellee permanent custody. J.N. believes that the evidence shows that he is able to provide the children with a legally secure permanent placement. We do not agree.

{¶ 44} Substantial competent and credible evidence shows that J.N. cannot provide the children with a legally secure permanent placement. During the two-year time period when the children were in appellee's temporary custody, J.N. was arrested seven times and J.K.M. was arrested three times. The guardian ad litem indicated that one of his "biggest concerns" if the children were to return to J.K.M. and J.N. was that the parents would continue to have repeated incarcerations, thus leaving the children without proper care. The evidence thus showed that J.K.M. and J.N. had frequent bouts of domestic violence that resulted in one or both of them being incarcerated. A parent's repeated incarcerations clearly do not create a secure environment for a child. Instead, a parent's repeated incarcerations breed instability.

{¶ 45} Moreover, the parents' past conduct displayed a pattern of domestic violence that showed no signs of stopping any time in the near future. Instead, the pattern suggested that they would continue to experience domestic violence. The guardian ad litem stated that he would be concerned about the children's safety if they were returned to the parents' care and specifically stated that it was "not in the children's best interests to be exposed to what seems to be an ongoing animosity between the [parents] that manifests in fights and arguments." A home where the parents engage in frequent bouts of domestic violence is not a legally secure permanent placement. Rather, it places the children at risk

of becoming victims themselves—whether through emotional damage caused by witnessing such acts or by becoming the victims of physical violence—and it leads to instability via the danger that the parents will be incarcerated and unable to provide care for the children. A violent, unstable home environment certainly is not in any child's best interests; and the trial court reasonably could have concluded that this would be the life these young, fragile girls would face if it did not award appellee permanent custody.

{¶ 46} Additionally, the evidence showed that even when the parents were not engaged in physical violence, they shared a volatile relationship. WCCS caseworkers stated that J.K.M. and J.N. spent many visits arguing with one another instead of focusing on the children.

{¶ 47} Therefore, the evidence supported a finding that J.N.'s home environment with J.K.M. is not stable and secure. J.N. did not present any evidence that he intended to live separate and apart from J.K.M. or that he would or could protect the children from the toxic, unstable environment his relationship with J.K.M. created. We further observe that J.N. had two years to show that he could provide the children with a legally secure permanent placement. He instead showed that he continued to engage in domestic violence with the children's mother and that he could not stay out of jail. He and J.K.M could not even show WCCS caseworkers sufficient ability to care for the children during monitored visits at the agency to give the caseworkers confidence to attempt even one home visit. Out the ninety-six visits of which the parents chose to take advantage, the visitation monitors reported that most of the time, the parents appeared incapable of working together to provide appropriate care for the children. Instead, the parents chose to argue.

{¶ 48} While the visitation monitors did state that J.N.'s interaction with the children was appropriate, a legally secure permanent placement requires more than mere displays of appropriate interaction. A legally secure permanent placement requires not only a loving parent, which we have no doubt J.N. is, but also a loving parent who is committed to providing for the children's best interests, to keeping them safe from harm, and to providing them with stability and security. The children's best interests do not include being exposed to repeated incidents of domestic violence and a parent's repeated incarcerations. Had J.N. truly been committed to the children's best interests, he would have made better attempts to stay out of jail and to adequately address the domestic violence issues in the home. He did neither.

{¶ 49} Furthermore, during the permanent custody hearing, appellee's counsel asked J.N. if he believed the children "are in need of a stable, secure, permanent environment" and whether he believed his relationship with J.K.M. would provide the children with a "secure, stable environment." J.N. stated: "Not all the time, no." Thus, even J.N. recognized that his home environment is not a secure or stable environment for the children.

{¶ 50} Additionally, J.N.'s future ability to stay out of jail and to keep his home free of domestic violence is questionable given his past history. The trial court was not required to deny the children the permanency that they need, especially at such a young age, in order to provide J.N. additional chances to prove that he can provide a legally secure permanent placement for the children. To deny appellee permanent custody would only prolong the children's uncertainty and instability. We do not believe that the trial court was required to experiment with the children's best interest in order to give J.N.

additional chances to prove that he may be able to provide them with a legally secure permanent placement at some undetermined point in the future.

> "' * * * [A] child should not have to endure the inevitable to its great detriment and harm in order to give the * * * [parent] an opportunity to prove her suitability. To anticipate the future, however, is at most, a difficult basis for a judicial determination. The child's present condition and environment is the subject for decision not the expected or anticipated behavior of unsuitability or unfitness of the * * * [parent]. * * * The law does not require the court to experiment with the child's welfare to see if he will suffer great detriment or harm.'"

In re Bishop, 36 Ohio App.3d 123, 126, 521 N.E.2d 838 (5th Dist.1987), quoting *In re East*, 32 Ohio Misc. 65, 69, 288 N.E.2d 343 (C.P.1972). We therefore do not agree with J.N. that the court's finding that the children need a legally secure permanent placement is against the manifest weight of the evidence.

{¶ 51} To the extent that J.N. asserts that the court should have found that the children cannot or should not be returned to him within a reasonable time, we agree with appellee that this finding was unnecessary in the case at bar. Appellee's motion alleged that the children had been in its temporary custody for twelve or more months of a consecutive twenty-two month period under R.C. 2151.414(B)(1)(d). Whether a child could not or should not be returned to a parent within a reasonable time is a factor under R.C. 2151.414(B)(1)(a) and R.C. 2151.414(B)(2). In the present case, the trial court did not enter any findings under R.C. 2151.414(B)(1)(a) or (B)(2). Rather, the court determined that R.C. 2151.414(B)(1)(d) applied.

{¶ 52} It is well-established that under the plain language of R.C. 2151.414(B)(1)(d), when a child has been in a children services agency's temporary custody for twelve or more months of a consecutive twenty-two-month period, a trial court need not find that the child cannot or should not be placed with either parent within a reasonable time. *E.g., In re C.W.,* 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, ¶ 21; *In re A.M.1,* 4th Dist. Athens Nos. 10CA21 through 10CA31, 2010–Ohio–5837, ¶ 31; *In re T.F.,* 4th Dist. Pickaway No. 07CA34, 2008–Ohio–1238, ¶ 23; *In re Williams,* 10th Dist. Franklin No. 02AP–924, 2002–Ohio–7205. Consequently, when considering a R.C. 2151.414(B)(1)(d) permanent custody motion, the only other consideration becomes the child's best interests. A trial court need not conduct a R.C. 2151.414(B)(1)(a) analysis of whether the child cannot or should not be placed with either parent within a reasonable time. *In re Berkley*, 4th Dist. Pickaway Nos. 04CA12, 04CA13, 04CA14, 2004–Ohio–4797, ¶ 61. Because the trial court in the case sub judice concluded that R.C. 2151.414(D)(1)(d) applied, the court was not required to determine that the children could not or should not be placed with J.N. within a reasonable time pursuant to R.C. 2151.414(D)(1)(a).

{¶ 53} Accordingly, based upon the foregoing reasons, we overrule J.N.'s sole assignment of error.

IV. CONCLUSION

{¶ 54} We overrule J.K.M.'s and J.N.'s assignments of error and affirm the trial court's judgments.

JUDGMENTS AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENTS ARE AFFIRMED and that Appellants shall each pay the costs of his and her own appeal.

The Court finds there were reasonable grounds for these appeals.

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

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Harsha, J. and Abele, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Marie Hoover, 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.