[Cite as *In re B.C-1*, 2015-Ohio-2720.]

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

IN THE MATTER OF:	:	
	:	
B.C.-1	:	Case Nos. 14CA43
B.C.-2	:	14CA48
S.F.C.	:	
B.C.-3	:	DECISION AND
	:	JUDGMENT ENTRY
ADJUDICATED NEGLECTED	:	
DEPENDENT CHILDREN.	:	**RELEASED: 4/27/2015**

APPEARANCES:

Frank A. Lavelle, Athens, Ohio, for Appellant, John Cunningham.

James Wallace, Athens, Ohio, for Appellant, Jo Beth Francis.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Sabrina Ennis, Athens County Assistant Prosecuting Attorney, Athens, Ohio, for Appellee.

Harsha, J.

{¶1} J.C. and J.B.F. separately appeal the trial court's permanent custody decision. We *sua sponte* consolidated the appeals for purposes of decision.

{¶2} In case number 14CA43, J.C. appeals the trial court's judgment awarding Athens County Children Services (ACCS) permanent custody of his three biological children B.C.-2, S.F.C., and B.C.-3, and his non-biological child, B.C.-1. Because J.C. does not have any parental rights relating to B.C.-1, he does not have standing to appeal the trial court's judgment awarding ACCS permanent custody of B.C.-1. Thus, we consider J.C.'s appeal as it relates to his three biological children.

{¶3} J.C. asserts that the trial court's judgment is against the manifest weight of the evidence because ACCS failed to prove the children could not be placed with him

and the children's mother within a reasonable time or should not be placed with either. We do not agree. The evidence shows (1) J.C. displayed an unwillingness to provide the children with an adequate permanent home and (2) he previously had his parental rights over three children from a prior relationship involuntarily terminated and he cannot provide a legally secure permanent placement and adequate care for his children's health, welfare, and safety. Moreover, although J.C. claims that reunification was possible, because ACCS sought permanent custody as the initial disposition, reunification efforts were unnecessary. Accordingly, we overrule J.C.'s two assignments of error and affirm the trial court's judgment.

{¶4} In case number 14CA48, J.B.F appeals the trial court's judgment that awarded Athens County Children Services (ACCS) permanent custody of her four biological children: B.C.-1, B.C.-2, S.F.C., and B.C.-3. She argues that the trial court's judgment is against the manifest weight of the evidence because ACCS failed to prove that the children could not be placed with her within a reasonable time or should not be placed with her. Specifically, J.B.F. contends that the evidence does not support the trial court's R.C. 2151.414(E)(1) finding that she failed to substantially remedy the conditions that led to the children's removal. Even though the trial court improperly determined that R.C. 2151.414(E)(1) applied to this permanent custody action, which sought permanent custody as the initial disposition, the trial court also found that R.C. 2151.414(E)(4) and (14) applied, neither of which J.B.F. challenges. The existence of either of these two remaining factors alone supports the trial court's finding that the children cannot be placed with either parent within a reasonable time or should not be

placed with either parent and renders her assignment of error moot. Accordingly, we affirm the trial court's judgment.

I. FACTS

{¶5} ACCS has an extensive history with the family and opened its first case in 2009. At that time ACCS's concerns were the home's lack of cleanliness, the parents' substance abuse, and the children's lice. The court granted ACCS a protective order, but the children entered ACCS's temporary custody in September 2010, due to chronic lice problems and the parents' failure to make progress on the case plan. In November 2010, the children returned home under a protective supervision order and remained in the home until ACCS received emergency custody in May 2011, due to the parents' substance abuse, the home's lack of cleanliness, and the parents' failure to properly care for the oldest child's medical condition. ACCS later received temporary custody of the children, and when S.F.C. was born, ACCS obtained a protective supervision order over him. The two older children returned home around the time of S.F.C.'s birth and remained there until March 2012, when ACCS obtained emergency custody of the children due to a "drug raid" and the home's deplorable condition. The parents subsequently agreed to give ACCS temporary custody of the children. The children returned home in October 2012, and ACCS closed the case in January 2013. The children remained living in the home until May 23, 2014, when J.C.'s parole officer discovered drugs and paraphernalia in the home, noted the extreme unsanitary condition of the home, and called ACCS.

{¶6} When ACCS caseworkers responded to the home on May 23, they discovered clothes and trash piled throughout the house, dog feces on top of some of

the clothes, overflowing trash in the kitchen, numerous cockroaches crawling in the kitchen, filthy children, and a foul odor in the home. ACCS caseworkers deemed the home unsafe for the children and obtained emergency custody of the children.

{¶7} After ACCS obtained emergency custody of the children, all of the children underwent medical checkups. The youngest child had acute conjunctivitis in both eyes, a middle ear infection, and a diaper rash with yeast infection. One child had a skin rash, one child had an acute skin rash along with decreased hearing, and another child had conjunctivitis in both eyes.

{¶8} ACCS later filed neglect and dependency complaints concerning the four children and requested permanent custody. The complaints alleged that the family has an extensive history with ACCS and asserted that the same concerns—lack of cleanliness in the home, substance abuse, and failing to meet the children's needs—continued to plague the parents. ACCS further noted that several years earlier, a court involuntarily terminated J.C.'s parental rights over his three children from a prior relationship. The trial court subsequently adjudicated the children neglected and dependent.

{¶9} On August 25, 2014 and September 17, 2014, the court held the disposition hearing. ACCS family services supervisor Laura Sommers stated that in 2006, ACCS started receiving referrals involving the family. She explained that ACCS opened a case in June 2009 due to the unsanitary living conditions, the parents' substance abuse, and lack of proper care for the children. Sommers testified that ACCS worked with the family between 2009 and 2013. She stated that the case plan required the parents to receive drug and alcohol counseling, provide drug screens, and

keep the house clean. Sommers explained that even though ACCS closed the case in January 2013, ACCS received nine additional calls or reports involving the family and implemented two "alternative response" plans. She testified that the basic concerns involved in the alternative response plans remained the same: unsanitary living conditions and substance abuse.

{¶10} Sommers stated that ACCS requested permanent custody of the children because they need stability and because the repeated removals that occurred over the years are "really bad for the kids in regards to behavior and attachment issues." Sommers further explained that the parents have not taken responsibility for the problems, and she does not believe the parents are willing to work with ACCS. She stated: "We have been down this road many, many, many times. They are able to pull together for short periods of time. If they know a worker is coming they clean up. They'll do what they need to do, but the evidence shows that as soon as [ACCS] is not involved or as soon as they feel that no one is watching them then they slide back into the old pattern."

{¶11} J.B.F. testified and denied that drugs are a concern in her home, even though she recognized that J.C. was arrested and indicted for possession of drugs. She stated that neither she nor J.C. has a drug problem. She claimed that although drugs were discovered in her home, the drugs did not belong to her or J.C.

{¶12} J.B.F. further stated that she did not believe the home's condition was a problem, and she disagreed with the testimony that dog feces were inside the home and that the home carried a foul odor. J.B.F. admitted that the home had cockroaches and

stated that the landlord has taken steps to alleviate the problem. She testified that her home "is immaculate right now."

{¶13} J.B.F. agreed that ACCS recommended counseling for all of the children, but she disagreed with ACCS's recommendation. She noted that S.F.C. was referred for counseling, but she disagreed with the referral because he "act[s] like a 3-year-old." J.B.F. recognized that the youngest child received a developmental evaluation, but stated she "ain't going to worry about that" because it is "incorrect." She stated that she refused to allow Help Me Grow to work with the youngest child because "they were incorrect."

{¶14} When questioned about the children's medical conditions after ACCS obtained emergency custody, J.B.F. stated that the two youngest children had "a cold in their eye[s]" and they were not "exposed to pink eye."

{¶15} J.B.F. admitted that the repeated removals are not in the children's best interests but claimed that the repeated removals are not her "fault." J.B.F. testified that she believes "[t]he issues is [*sic*] people can't stay out of my life and they get mad at me so they pick up the phone and call Children Services on me." J.B.F. also stated that she does not believe she has done anything wrong but claimed she is willing to work with ACCS. However, she admitted she is not willing to consider that a specialized school may benefit the oldest child (who has scoliosis and other developmental issues), to obtain counseling for the children, or to allow Help Me Grow to work with the youngest child.

{¶16} J.C. likewise denied that the youngest child required Help Me Grow's services. He stated that "they falsely diagnosed her." He also denied that he has a

drug problem and claimed that the house was not "unliveable." He explained that when ACCS removed the children on May 23, the house was unusually cluttered.

{¶17} Betty Lowe, the oldest child's foster mother, testified that the child has "rages," when she "kicks and screams and carries on." Lowe stated that the child has kicked and hit her. She explained that the child receives counseling, and the counselor recommended the child attend a specialized school for handicapped children.

{¶18} ACCS caseworker Kathi Vanmeter stated that she started working with the family in June 2014 and ACCS developed a case plan with permanent custody as the goal. The case plan required the parents to allow her into the home, to complete required paperwork, to attend the children's medical appointments and follow treatment recommendations, to provide names for placements, to attend visitations, and to complete random drug screens. The case plan also required J.B.F. to complete a Health Recovery Services assessment and follow recommendations.

{¶19} Vanmeter testified that she went to the home seven times and was not allowed inside on four of those occasions. She explained that during one of her unannounced visits, she observed dog feces on the floor and dog vomit on a pile of clothes. Vanmeter stated during her most recent visit, she did not observe any issues in the home.

{¶20} Tara Huffman, the children's guardian *ad litem*, testified that permanent custody is in the children's best interests. Huffman noted that ACCS's concerns remained the same throughout all of the previous removals, yet the parents did not change their behaviors.

{¶21} On November 4, 2014, the trial court awarded ACCS permanent custody of the four children. The court found that awarding ACCS permanent custody would serve the children's best interests. The court first evaluated the children's interactions and interrelationships and stated: "The parents here have a love for their children and certainly display a strong possessory interest in them. The children demonstrate an attachment to their parents and sibling relationships with each other. The children are also close to [the paternal grandfather] and his wife, and the three youngest are actually in kinship care with them[.]"

{¶22} The court next considered the children's wishes:

> "At the writing of this decision the children's ages are ten, five, three, and under one. The three oldest announce a desire to go home to their parents. In many cases a discussion with a ten year old might prove helpful in gauging the interactions in the family unit, but here, the oldest child is multi-handicapped and behaviorally challenging. No children testified nor was there a request for an *in camera* conversation."
>
> The court also reviewed the children's custodial history:
>
> "While this is not a classic 'twelve of twenty-two' fact pattern, a historic review of agency involvement with the family provides important perspective. In addition to ACCS involvement with [the father] and his former wife and their three children in the early 2000s, this current family has been under some level of scrutiny since 2006 with 'open cases' from 2009 through 2013. There have been multiple foster and kinship placements through that period, all in an attempt to get the parents to provide a safe, stable, nurturing home. This Court has sanctioned multiple reunifications, some against the recommendations of ACCS, and each time another removal became necessary.
>
> When the children are in the custody of their parents, they live together as a family with [the mother] who is unemployed, and [the father] working off Job & Family Services benefits, doing odd jobs, or incarcerated on his various criminal charges."

{¶23} The court considered the children's need for a legally secure permanent placement and whether it could be achieved without granting permanent custody:

> "This is perhaps the most troubling of the R.C. 2151.414(D) factors, not because the answer is unclear any longer, but because these parents could and should have prevented this situation. The children need and deserve a legally secure placement which can only be achieved with a grant of permanent custody to the agency. The oldest child will have great difficulty with this decision, and her physical and emotional well-being appears fragile. Mother's dislike and distrust of social service agencies and programs have stood between these children and 'best practices' interventions throughout the Court's involvement, but this outcome will reopen important doors."

{¶24} The court next considered whether R.C. 2151.414(E)(7) to (11) applied and found that "R.C. 2151.414(E)(11) applies in that father has had his parental rights terminated in this Court with respect to three older children from another relationship."

{¶25} The court also found the children cannot placed with either parent within a reasonable time or should not be placed with either parent. The court explained:

> "The factors delineated in R.C. 2151.414(E)(1), (4), and (14), have overlapping significance in the facts that bring this matter before the Court for decision. These children have been placed outside their home numerous times during their young lives while reasonable case planning was being employed to assist the parents in addressing the issues that make their parenting unacceptable. With the possible exception of father's unrefuted insistence that he no longer uses drugs and, or marijuana himself, the issue remain [*sic*]. This is true in spite of referrals and direct assistance available from numerous agencies, and other resources. While these parents may appear 'committed' to their children in the most basic sense, they remain unwilling to provide an adequate permanent home.
>
> As a basic example of this problem I have considered the evidence, at adjudication and disposition, regarding the condition of the home at the time of the most recent removal. On May 23, 2014, [the father's] Ohio Adult Control Authority Officer appeared at the home to find both parents and the children present. * * * * Over the next hour or two, two other adult parole officers and children services workers were called to the scene. This Court's 'Decision, Judgment Entry' on adjudication addressed the deplorable conditions in the home, but a brief recap is in order. One of the parole officers testified that in over twenty years of making home visits this home was 'one of the worst.' Another parole officer testified that he had to step well outside the home to avoid vomiting from the stench, odor, and filth. The home had food, dishes, clothes, feces 'everywhere' * * * and was so infested with cockroaches that opening a kitchen cabinet door revealed 'a wall' of cockroaches on the inside of the door. Even

walking on what carpet could be accessed under the debris and piles of things proved difficult because feet would 'stick' to the carpet.

Bearing in mind that [the father] was on community control for drug violations the officers readily found 'lots of drug paraphanalia' [*sic*] such as snort tubes, pill crushers, and cutters, powder, green leafy matter, and pills, all within the reach of the older kids. [The father] admitted possession of the drugs and identified some individuals he deals with. * * *

One of the younger children was observed 'rocking violently' in a high chair, to which the parents were unattentive [*sic*]. More than one of the children had untreated medical issues of one degree or another that needed prompt and proper care upon removal. The oldest child has a well documented case of scoliosis and requires a back brace virtually around the clock. Proper attention to her condition and dedicated adherence to medical instructions will be extremely important as some form or forms of surgery appear likely in her future.

The Court has concluded that the parents are unwilling to modify their personal lifestyles to provide adequate and proper parenting, and provide a safe and stable home. Evidence of this includes the deplorable conditions in the family home, even though mother has no employment, schooling or other demanding activities, and father usually only has the work that is necessary to justify the benefits received from Job & Family Services. Further, father continues to possess drugs and paraphanalia [*sic*] in the family home while under the watchful eyes of both the criminal justice system and social services. Further, the parents will not avail themselves and their family of multiple important services for their children, even when professional assessment and evaluation recommend such, and they would be receiving them without charge."

II. ASSIGNMENTS OF ERROR

{¶26} J.C. raises two assignments of error:

First Assignment of Error:
"Reunification between the children and parents was possible. Therefore it was error to grant permanent custody as the initial disposition as a matter of law, and not in the children's best interests."

Second Assignment of Error:
"The decision of the trial court was against the manifest weight of the evidence."

{¶27} III. ANALYSIS

{¶28} J.C.'s two assignments of error challenge the trial court's decision to award ACCS permanent custody of the children. He essentially asserts that the court's

judgment is against the manifest weight of the evidence because clear and convincing evidence does not support the court's finding that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶29} In her sole assignment of error, J.B.F. argues that the trial court's decision to award ACCS permanent custody is against the manifest weight of the evidence. She contends that she remedied the conditions that caused the children's initial removal and complied with the case plan, and thus, the evidence does not show that the children cannot be placed with her within a reasonable time or should not be placed with her. For ease of analysis, we consider the assignments of error together.

A. J.C.'S STANDING TO APPEAL

{¶30} Before we review J.C.'s assignments of error, we consider ACCS's assertion that J.C. lacks standing to appeal the trial court's permanent custody decision relating to B.C.-1. ACCS asserts that because J.C. is not the biological father of B.C.-1, he lacks standing to appeal the trial court's decision granting ACCS permanent custody of B.C.-1.

{¶31} Standing to appeal is a jurisdictional prerequisite, and only aggrieved parties have standing to appeal. *Goodman v. Hanseman*, 132 Ohio St.3d 23, 2012-Ohio-1587, 967 N.E.2d 1217, 1218, ¶1; *Ohio Contract Carriers Assn., Inc. v. Pub. Util. Comm.,* 140 Ohio St. 160, 42 N.E.2d 758 (1942), syllabus; *Safest Neighborhood Assn. v. Athens Bd. of Zoning Appeals*, 4th Dist. Athens Nos. 12CA32, 12CA33, 12CA34, and 12CA25, 2013-Ohio-5610, ¶10; *Liquidation Properties v. Mosley,* 4th Dist. Scioto No. 11CA3453, 2012-Ohio-6281, ¶14. Thus, "'only those parties who can demonstrate a present interest in the subject matter of the litigation and who have been prejudiced by

the decision of the lower court possess the right to appeal.'" *Liquidation Properties* at ¶14, quoting *In re Estate of Jones,* 4th Dist. Adams No. 09CA879, 2009–Ohio–4457, ¶ 22. In other words, to have standing, "'an appellant must be an aggrieved party whose rights have been adversely affected by the order appealed.'" *Id.*, quoting *In re Forfeiture John Deere Tractor*, 4th Dist. Athens No. 05CA26, ¶10. Therefore, J.C. has standing to appeal the trial court's permanent custody decision relating to B.C.-1 only if the court's decision adversely affected him.

{¶32} The court's decision awarding ACCS permanent custody of B.C.-1 did not adversely affect any of J.C.'s legal rights. J.C. does not have any legal rights relating to B.C.-1. He admits that he is not B.C.-1's natural father. When a trial court grants a children services agency permanent custody, the decision "divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations." Juv.R. 2(Z). Because J.C. is not B.C.-1's natural parent, the court's permanent custody decision did not divest him of any rights. Moreover, because he is not B.C.-1's natural father, he has no parental rights to enforce. Consequently, the trial court's decision awarding ACCS permanent custody of B.C.-1 did not adversely affect J.C. Accordingly, J.C. lacks standing to challenge the trial court's judgment awarding ACCS permanent custody of B.C.-1. *In re Matthews*, 3rd Dist. Marion Nos. 9-07-28, 9-07-29, and 9-07-34, 2008-Ohio-276, ¶23 (holding that non-biological father lacked standing to appeal permanent custody decision pertaining to non-biological child); *In re A.L.A.*, 11th Dist. Lake Nos., 2011-L-20 and 2011-L-21, 2011-Ohio-3124, ¶2, citing *In re Neff*, 3rd Dist. Allen No. 1-78-9, *2 (June 14, 1978) (holding that step-father lacked standing to appeal trial court's custody decision). We therefore

consider J.C.'s appeal only as it relates to his three biological children, B.C.-2, S.C.F., and B.C.-3.

B. STANDARD OF REVIEW

{¶33} The same standard of review applies to both appeals. When a trial court grants a children services agency permanent custody under R.C. 2151.414, a reviewing court generally will not disturb that decision unless it is against the manifest weight of the evidence. *See In re R.S.,* 4th Dist. Highland No. 13CA22, 2013–Ohio–5569, ¶29; *accord In re J.V.-M.P.,* 4th Dist. Washington No. 13CA37, 2014–Ohio–486, ¶11. To determine whether a permanent custody decision is against the manifest weight of the evidence, an appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving evidentiary conflicts, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *R.S.* at ¶30, citing *Eastley v. Volkman,* 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶20. In reviewing the evidence under this standard, we must defer to the trial court's credibility determinations because of the presumption in favor of the finder of fact. *Id.* at ¶33, citing *Eastley* at ¶21. Deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." *Davis v. Flickinger,* 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997); *accord In re Christian,* 4th Dist. Athens No. 04CA10, 2004–Ohio–3146, ¶7. As the Ohio Supreme Court explained long-ago: "In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and

observation of the parties and through independent investigation cannot be conveyed to a reviewing court by printed record." *Trickey v. Trickey,* 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952). Furthermore, unlike an ordinary civil proceeding in which a jury has no contact with the parties before a trial, in a permanent custody case a trial court judge may have significant contact with the parties before permanent custody is even requested. *In re R.S.* at ¶34. In such a situation it is reasonable to presume that the trial court judge had far more opportunities to evaluate the credibility, demeanor, attitude, *etc.,* of the parties than this court ever could from a mere reading of the permanent custody hearing transcript. *Id.*

{¶34} In a permanent custody case involving abused, neglected, or dependent children, the dispositive issue on appeal 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; *accord* R .C. 2151.414(B)(1). "Clear and convincing evidence" is "that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford,* 161 Ohio St.469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *State ex rel. Miller v. Ohio State Hwy. Patrol,* 136 Ohio St.3d 350, 2013–Ohio–3720, 995 N.E.2d 1175, ¶14. "[I]f the children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court's decision is not against the manifest weight of the evidence." *In re R.M.,* 2013–Ohio–3588, 997 N.E.2d 169, ¶55

(4th Dist.). Thus, the essential question we must resolve when reviewing a permanent custody decision under the manifest weight of the evidence standard is whether the trier of fact had enough evidence before it to satisfy the requisite degree of proof, *i.e.* clear and convincing evidence. *See State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990).

{¶35} In *Schiebel* a unanimous Supreme Court advised us that "it is also firmly established that judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court." *Id.* We construe these two edicts not as being inconsistent, but rather to mean we must recognize the higher burden of proof at trial as we scrutinize the record for enough evidence to support the trial court's conclusion. *See, Eastley*, ¶ 17. In other words, "some evidence" means "enough" to satisfy the clear and convincing standard in the mind of a reasonable fact finder, regardless of whether we would have reached the same conclusion. We will continue to apply this standard of review until the Supreme Court of Ohio mandates a different analysis.[1]

{¶36} Within her assignment of error J.B.F. argues that the standard of review we traditionally have applied in permanent custody cases is too deferential. She contends that when the burden of proof at trial is clear and convincing, then a reviewing court must find more than "some competent and credible evidence" to affirm the judgment. J.B.F. asserts that in a permanent custody case, where the burden of proof is clear and convincing, a reviewing court must examine the record to determine whether clear and convincing indeed exists to support the trial court's judgment. We

[1] We recognize the Supreme Court of Ohio has sent mixed signals on this issue previously. *See, In re R.M.*, 2012-Ohio-3588, 997 N.E.2d 169, fn. 4.

believe our interpretation of the "some evidence" requirement satisfies any obligation of heightened scrutiny that exists. We adhere to this position and reject J.B.F.'s assertion that we must apply a more stringent analysis when reviewing permanent custody decisions.

C. PERMANENT CUSTODY PRINCIPLES

{¶37} 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, 156, 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. *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 pole star 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.

D. PERMANENT CUSTODY FRAMEWORK

{¶38} A trial court may commit an adjudicated abused, neglected, or dependent child to a children services agency's permanent custody if the court determines that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines that permanent custody is in the child's best interest of the child. R.C. 2151.353(A)(4). R.C. 2151.414(E) sets forth the factors the court must consider when determining whether the child cannot be placed with

either parent within a reasonable time or should not be placed with either parent, and R.C. 2151.414(D) sets forth the best interest factors. Consequently, before a trial court may award a children services agency permanent custody as an initial disposition, it must find (1) that one of the circumstances described in R.C. 2151.414(E) applies, and (2) that awarding the children services agency permanent custody would further the child's best interest.

{¶39} Here, even though J.C. mentions "best interests" in his first assignment of error, his argument does not focus on the court's best interest findings and he does not argue how the evidence fails to support the court's best interest findings. Instead, he limits his argument to the trial court's R.C. 2151.414(E) finding. J.B.F. likewise limits her argument to the trial court's R.C. 2151.414(E) finding. We limit our review accordingly.

{¶40} R.C. 2151.414(E) requires a trial court to "consider all relevant evidence" when determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with either parent. The statute further directs a court to find that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent if clear and convincing evidence shows the existence of any one of the enumerated factors. As relevant here, R.C. 2151.414(E)(1), (4), (11), and (14) state that a court "shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent" if:

> (1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to

> substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.
> * * * *
> (4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;
> * * * *
> (11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.
> * * * *
> (14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

{¶41} A trial court may base its decision that a child cannot be placed with either parent within a reasonable time or should not be placed with either parent upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. *E.g., In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶50; *In re William S.*, 75 Ohio St.3d 95, 99, 661 N.E.2d 738 (1996). Here, the trial court found that R.C. 2151.414(E)(1), (4), (11), and (14) applied.

E. J.C.'S APPEAL

{¶42} Although J.C. does not cite which of the four R.C. 2151.414(E) factors he disputes, his first assignment of error focuses on ACCS's failure to attempt reunification with the parents. His second assignment of error lacks any clear focus.

{¶43} We have previously held that children services agencies do not have a duty to continue reunification efforts after filing a permanent custody complaint. *In re Ward*, 4th Dist. Scioto No. 99CA2677 (Aug. 2, 2000); *accord In re Lewis,* 4th Dist. Athens No. 03CA12, 2003-Ohio-5262. In *Ward,* we noted that ""[i]t is axiomatic that a parent's statutory right to a reunification plan does not apply in the context of actions seeking permanent custody."" *Id.*, quoting *In re Cooperman*, 8th Dist. Cuyahoga No. 67239 (Jan. 19, 1995), quoting *In re Woods*, 8th Dist. Cuyahoga No. 62638 (Jan. 28, 1993). Thus, a trial court "can award permanent custody to a children services agency even though little or no efforts are made to return the child to his or her home if the evidence supports a finding that it is in the child's best interest and that the child should not be returned to the parents." *Id.* However, if R.C. 2151.414(E)(1) is the basis for the permanent custody award, then the children services agency must develop a case plan aimed at reunification. *In re Allbery*, 4th Dist. Hocking No. 05CA12, 2005-Ohio-6529, ¶25.

{¶44} In this case ACCS requested permanent custody as the initial disposition. Thus, ACCS was not required to file a case plan aimed at reunification, unless ACCS based its permanent custody request on R.C. 2151.414(E)(1). Although ACCS's did not base its permanent custody request on R.C. 2151.414(E)(1), the trial court found that R.C. 2151.414(E)(1) applied. R.C. 2151.414(E)(1) applies only if the parent's conduct after the child's removal in the current case shows that the parent continuously and

repeatedly failed to substantially remedy the conditions that caused the child to be placed outside his or her home. *In re Norris*, 4th Dist. Athens Nos. 00CA38 and 00CA41 (Dec. 12, 2000) (noting that a trial court cannot consider evidence from a closed case when determining applicability of R.C. 2151.414(E)(1)); *Ward*. As we explained in *Ward*:

> "The focus of R.C. 2151.414(E)(1) is on the efforts made to remedy the problems *after* the child is removed from the home. The plain language of R.C. 2151.414(E)(1) precludes an interpretation that it refers only to conditions existing at the time of the child's removal. *See In re Scott* (Sept. 17, 1999), Lucas App. No. L-99-1012, unreported, ("Absent any evidence of agency efforts to reunification *after* the children's removal from the home, an R.C. 2151.414(E)(1) predicate finding cannot be sustained."). If an agency chooses to argue that the parent did not rectify the cause(s) for removal, then the parent must have an opportunity to do so. Furthermore, a case plan relating to a prior matter cannot be used to satisfy this requirement where the agency seeks permanent custody as the initial disposition."

(Emphasis *sic*).

{¶45} Here, the trial court incorrectly determined that R.C. 2151.414(E)(1) applied. ACCS sought permanent custody as the initial disposition and did not attempt to reunify the children with the parents. However, the trial court's erroneous R.C. 2151.414(E)(1) finding does not mandate that we reverse its judgment. The trial court also found that R.C. 2151.414(E)(4), (11), and (14) applied. J.C. does not specifically dispute any of these three factors, and the existence of any factor alone supports the court's determination that the children cannot be placed with him within a reasonable time or should not be placed with him.

{¶46} Granting J.C. the benefit of the doubt, we liberally construe his argument as challenging the court's findings under R.C. 2151.414(E)(4) or (14) that he displayed an unwillingness to provide the children with an adequate permanent home or an

unwillingness to provide food, clothing, shelter, or other basic necessities for the children and a finding under R.C. 2151.414(E)(11) that he failed to show by clear and convincing evidence that he could provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the children.[2] However, the record contains ample competent and credible evidence that J.C. cannot provide a legally secure permanent placement and adequate care for the children or is unwilling to do so. ACCS first raised concerns regarding J.C.'s home environment and substance abuse in 2009. Those same concerns persisted over the next five years, necessitating ACCS's intervention and the two oldest children's multiple removals from the parents' home. The most recent removal involved all four children and occurred after J.C.'s parole officer discovered drugs and paraphernalia in the home and after ACCS caseworkers found the home in deplorable conditions. J.C. may state that he is willing to work with ACCS to provide the children with a legally secure permanent placement and adequate care, but his actions over the past five years have shown that his willingness is temporal at best and that once he is no longer under ACCS's watchful eye, he regresses to the point where ACCS (and possibly law enforcement) intervention again becomes necessary. ACCS has provided J.C. multiple opportunities to prove that he is willing to provide a legally secure permanent placement and adequate care for the children, and each time he ultimately failed to do so. Instead, he chose a life of drugs and allowed his home to denigrate to deplorable, unsanitary conditions. Thus, although J.C. may state

[2] The trial court did not mention the second clause contained in R.C. 2151.414(E)(11). However, because J.C. does not challenge the court's R.C. 2151.414(E)(11) finding, we do not consider any error the court may have committed by failing to specifically find that J.C. did not present clear and convincing evidence that, notwithstanding the prior termination, he can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the children.

he is willing to work with ACCS, his actions over the past five years speak much louder than his words. Consequently, we reject J.C.'s argument that clear and convincing evidence fails to support the court's finding that the children cannot be placed with him within a reasonable time or should not be placed with him.

{¶47} Accordingly, we overrule J.C.'s two assignments of error.

F. J.B.F.'S APPEAL

{¶48} Although J.B.F. does not cite which R.C. 2151.414(E) factors she disputes, her argument appears to focus only upon the court's R.C. 2151.414(E)(1) finding. She contends that she substantially remedied the conditions that led to the children's removal.

{¶49} As we stated in our discussion of J.C.'s assignments of error, R.C. 2151.414(E)(1) applies only if the parent's conduct after the child's removal in the current case shows that the parent continuously and repeatedly failed to substantially remedy the conditions that caused the child to be placed outside his or her home. The trial court incorrectly determined that R.C. 2151.414(E)(1) applied. ACCS sought permanent custody as the initial disposition and did not develop a case plan that gave J.B.F. a chance to rectify the problems that caused the children's removal. However, because ACCS sought permanent custody as the initial disposition, it did not have a duty to provide a case plan aimed at reunification. *Ward*. Moreover, the trial court appears to have relied upon J.B.F.'s conduct from a closed case or cases when determining that she failed to continuously and repeatedly substantially remedy the conditions. Thus, to this extent, the trial court erred as a matter of law. *Id.*

{¶50} However, the trial court's erroneous R.C. 2151.414(E)(1) finding does not mandate that we reverse its judgment. The trial court also found that R.C. 2151.414(E)(4) and (14) applied. J.B.F. does not seem to dispute the trial court's alternate findings under R.C. 2151.414(E)(4) and (14). Nowhere in her appellate brief does she explicitly dispute the trial court's finding that she is unwilling to provide an adequate permanent home for the children or that she is unwilling to provide food, clothing, shelter, and other basic necessities for the child. The existence of either factor alone supports the court's determination that the children cannot be placed with her within a reasonable time or should not be placed with her.

{¶51} Moreover, ample competent and credible evidence supports the court's finding that J.B.F. displayed an unwillingness to provide the children with an adequate permanent home or an unwillingness to provide food, clothing, shelter, or other basic necessities for the children. Unlike R.C. 2151.414(E)(1) which limits a court to considering evidence occurring after the removal in the current case, R.C. 2151.414(E)(4) and (14) contain no such limitation. *In re Norris*. Moreover, R.C. 2151.414(E) requires a court to consider "all relevant evidence." The relevant evidence in the case at bar shows that J.B.F. has an extensive history with ACCS that dates to 2006, when ACCS first started receiving referrals involving the family. In 2009, ACCS opened a case involving J.B.F.'s children and obtained protective supervision. At that time, ACCS's concerns were unsanitary living conditions, substance abuse, and failure to provide proper care for the children. Over the next four years, J.B.F.'s children were continually either in ACCS's protective supervision, emergency custody, or temporary custody. The children were removed and returned to J.B.F.'s home multiple times with

the essential concerns each time remaining the same: drug use and failure to maintain a sanitary home. With each removal, J.B.F. made some progress maintaining a sanitary home but eventually relapsed, which again required the children's removal. Additionally, drugs remained a problem in the home. Even though ACCS closed the case in 2013, it subsequently twice attempted "alternative response" plans and continued to receive referrals involving the family, culminating in the May 23, 2014 removal. Thus, the evidence shows that over the span of five years, ACCS worked with the family to attempt to resolve the concerns regarding the home's cleanliness and the substance abuse issues with no ultimate success. Although J.B.F. may have demonstrated temporary success, she failed to consistently provide a sanitary environment for the children. The evidence shows that once J.B.F. knew she no longer was under ACCS's watchful eye, she allowed home conditions to deteriorate until ACCS's next intervention. Consequently, the record contains clear and convincing evidence to support the court's finding that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶52} Accordingly, we overrule J.B.F.'s sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellants shall pay the costs.

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 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.

Abele, J. & McFarland, A.J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, 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.