[Cite as *In re R.S.-G.*, 2015-Ohio-4245.]

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

IN RE:

R.S.-G.,	:	Case No. 15CA2
Adjudicated Dependent Child	:	DECISION AND JUDGMENT ENTRY
	:	**Released: 09/30/15**

APPEARANCES:

James A. Wallace, Athens, Ohio, for Appellant.

Keller J. Blackburn, Athens County Prosecutor, and Merry M. Saunders, Assistant County Prosecutor, Athens, Ohio, for Appellee.

McFarland, A.J.

{¶ 1} Appellant, S.S.-G., appeals the trial court's judgment that awarded permanent custody of her two-year-old biological child, R.S.-G., to appellee, Athens County Children Services. Appellant argues that the trial court's decision awarding appellee permanent custody is against the manifest weight of the evidence, because clear and convincing evidence does not support its best interest finding. The record contains ample clear and convincing evidence that awarding appellee permanent custody is in the child's best interest. Appellant did not demonstrate a consistent desire to build her relationship and improve her interaction with her child. Instead,

she failed to consistently attend visitation, and when she did attend, she often slept. Appellant did not always appropriately engage with the child and did not demonstrate sufficient knowledge of the child's needs. ACCS caseworkers expressed concern whether appellant would be able to provide proper care for the child. Moreover, the child has been in appellee's temporary custody for nearly its entire life and has never been in appellant's complete care. The child is doing well in the foster home, where he has lived since he was three and one-half weeks old. Consequently, we do not believe that the trial court's best interest determination is against the manifest weight of the evidence. Therefore, we overrule appellant's sole assignment of error and affirm the court's judgment.

I. FACTS

{¶ 2} On February 19, 2013, appellee filed an abuse, neglect, and dependency complaint concerning R.S.-G., who was born on January 25, 2013. The complaint alleged that appellee received a report that the child tested positive for opiates when he was born. Appellee additionally requested temporary and emergency temporary custody of the child. The trial court subsequently granted appellee emergency custody of the child.

{¶ 3} On April 3, 2013, the trial court adjudicated the child dependent and dismissed the abuse and neglect allegations. The court noted that the

parties stipulated to the allegations contained in the complaint and agreed to place the child in appellee's temporary custody.

{¶ 4} Appellee prepared a case plan that raised some of the following concerns: (1) appellant has a history of drug use; (2) appellant does not have independent housing and lives in a home that appellant described as unsafe due to domestic violence; (3) the home has safety hazards; (4) appellant has a history of mental health concerns; (5) appellant and the child's father[1] have a history of domestic violence; and (6) appellant has limited parenting skills and has attempted to feed the child baby food that was not age appropriate. The case plan required appellant (1) to provide a safe, stable, home environment for the child, (2) to maintain a home free from illegal drug use, (3) to refrain from using illegal drugs, (4) to demonstrate appropriate parenting skills, (5) to continue working with Health Recovery Services on stabilizing her mental health and maintaining a sober lifestyle, (6) to follow treatment recommendations, (7) to attend and participate in parent mentoring and follow all recommendations, (8) to work with Help Me Grow and follow all recommendations, (9) to attend all visits and remain awake for the entire duration of the visit, (10) to engage in age appropriate activities with the child while visiting, (11) to attend all of the child's medical appointments,

[1] The parties informed this court in their briefs that the child's father died after the trial court granted appellee permanent custody.

and (12) to meet with Help Me Grow staff to learn about the child's development.

{¶ 5} On July 31, 2014, appellee filed a motion to modify the disposition to permanent custody. Appellee asserted that the child cannot or should not be returned to either parent within a reasonable time, that the child has been in its temporary custody for more than twelve of the past twenty-two months, and that awarding appellee permanent custody is in the child's best interest. Appellee alleged that reunification efforts have been unsuccessful and that the parents have not complied with the case plan goals or addressed the issues that led to the child's removal.

{¶ 6} Appellee claimed that appellant initially regularly visited with the child, but she often slept for large parts of the visits, she left some visits early, she had little interaction with the child, and she did not understand how to meet the child's needs. Within a couple of months, appellant started consistently missing visits. Appellee emphasized to appellant the importance of attending visits regularly in order to learn the appropriate skills to care for the child, to bond with the child, and to demonstrate that appellant could meet the child's needs, but appellant still did not consistently attend visitations.

{¶ 7} Appellee additionally asserted that appellant has not developed appropriate parenting skills. Appellee claimed that appellant needs to be prompted to check and change diapers, does not understand the child's feeding needs, and has been unable to apply what she has been told regarding the child's needs from visit-to-visit. Appellee stated that a parent mentor had attempted to work with appellant, but due to appellant's failure to consistently attend visits, the mentor was unable to work on the parenting and interaction issues.

{¶ 8} On December 1, 2014 and January 15, 2015, the court held a hearing to consider appellee's permanent custody motion. ACCS caseworker Annie Anderson stated that appellant's mental health, substance abuse, and parenting abilities, along with domestic violence, were appellee's principal concerns. Anderson explained that the case plan required appellant to receive counseling through Health Recovery Services, maintain a sober lifestyle, work with a parent mentor, work with Help Me Grow, submit to random drug screens, attend all visits and remain attentive and awake during visits, and refrain from using illegal substances.

{¶ 9} Anderson stated that appellant's home environment was a concern, as well, but appellee did not address it at the beginning "because there [were] so many other issues that we were trying to focus on."

Anderson explained that the room where the child would sleep was not heated, the home was infested with cockroaches, and clutter and trash were scattered on the floor. Anderson testified that the home did not become safe enough for the child to be placed there.

{¶ 10} Anderson stated that appellant reported that the child's father "was violent and that she needed to get out of the home and that she needed to find a safer environment." Anderson testified that the parties never addressed the domestic violence issue through counseling, so she is not aware whether it had been resolved.

{¶ 11} Anderson explained that appellant did not consistently visit with the child. Anderson stated that when appellant did visit, appellant often slept. Anderson testified that she spoke with appellant about the importance of attending visits consistently. She explained that appellant seemed to understand the importance, "but there always seemed to be an issue why [the parents] couldn't be there. Either [appellant] was ill, and you know, how could she be there if she was ill, or she had a sprained shoulder and she wasn't going to be able to hold [the child]." Anderson stated that "there just ended up being a lot of reasons or excuses as to why they were unable to be there even though we did talk about many, many times how they needed to be there." She further testified that appellant tried to feed the child food that

was not yet age appropriate. Anderson stated that these issues were "addressed many times with the parent/mentor and with me[; however], it continued to be an issue."

{¶ 12} Anderson testified that appellee worked with the parents to develop a visitation schedule that the parents thought they could handle. The parents stated afternoon visits would be better, so appellee arranged afternoon visits. Anderson explained that after arranging afternoon visits, the parents still missed visits. Appellee then moved visits to a little later in the afternoon. Anderson stated that the parents' visitation was better for a little while.

{¶ 13} Anderson testified that she did not think the child should be returned to the parents' home due to "ongoing concerns with domestic violence, substance abuse." Anderson explained that appellant admitted to using heroin, selling prescription medication, using marijuana, and abusing alcohol. Anderson further expressed concern with appellant's failure to consistently visit with the child and stated that she was uncertain whether appellant could consistently care for the child and provide him with proper care.

{¶ 14} Anderson stated that the child is doing well in the foster home and "always seemed very happy." "[E]very time" she visited, "he would

seem to be learning a new skill." Anderson believed that the child "was bonding well" and that the child "was doing very well in that home."

{¶ 15} The child's foster mother testified that the child has been in her care since he was three and one-half weeks old, and he will turn two years old in January. The foster mother explained that when the child was born, he was "very, very thin" and "refused to eat." She stated that he had "failure to thrive." The foster mother testified that the child eats better now. She stated that the child has a speech delay and receives speech therapy. The foster mother explained that the child has "maybe five words total."

{¶ 16} ACCS kindship coordinator Stephanie Blaine testified that she looked at several relative or family-friend placements for the child, but appellee did not find any to be appropriate for the child.

{¶ 17} ACCS parent mentor and family support worker Jennifer Pinney testified that she had a limited amount of time to work with appellant due to her failure to consistently attend visitations. She explained that when she was able to work with the parents, they were not accepting of the advice she gave them. Pinney stated that she had to prompt appellant to change the child's diaper. She further testified that appellant slept during visits. Pinney stated that she discussed with appellant the importance of staying awake

during visits so she could bond with the child, but she did not always stay awake.

{¶ 18} Pinney explained that she asked appellant to limit her cigarette breaks during visits with the child, "and [appellant] became very upset and she stated that that was the only way she would be able to keep herself awake." Pinney stated that she discussed with appellant second-hand smoke concerns and asked appellant to wash her forearms and change her shirt after taking a cigarette break. Pinney testified that appellant did not always do so.

{¶ 19} Pinney stated that she also talked to appellant "at length" about appellant's failure to attend visits with the child, but appellant's attendance did not improve. Pinney testified that appellee offered the parents a total of 123 visits, and appellant attended 76 of those. Pinney further explained that appellee removed the parents from the visitation schedule between May 15, 2014 and July 8, 2014, and between July 8, 2014 and September 23, 2014, for failing to attend. Pinney stated that the parents thus did not visit at all from May 15 to September 23, 2014. Pinney testified that since September 23, 2014, the parents have not consistently attended visits. She stated that in December, the parents had one visit.

{¶ 20} Pinney additionally related that she did not notice any improvement in appellant's parenting skills. She stated that appellant lacks

basic knowledge of the child's development, had not been able to parent effectively during the two-hour visits at the agency, and has a "complete lack of the ability to parent."

{¶ 21} ACCS caseworker Deborah Osborne stated that she observed a visit the parents had with the child two days before the permanent custody hearing and did not notice any improvement in appellant's ability to care for the child.

{¶ 22} ACCS caseworker Kelly Epling testified that she does not believe appellant could safely parent the child. She explained that appellant and the father "have not put forth any effort to establish a bond with the child[]. Based on the last visitation they might have * * * the appropriate parenting skill to parent, but they're not putting forth the effort to do so. I think that's just the blatant disregard. They're not putting forth the effort to show up for visits. They are not even putting forth the effort to call the agency a lot of the times to cancel or to let people know what's happening."

{¶ 23} Epling stated that she believes permanent custody is in child's best interest. She explained: "The parents have not put forth any effort to gain custody back of their son. [The child] needs ongoing services which the parents have proven time, and time again, they haven't been compliant with even to sign paperwork. It's been an ongoing struggle to get those

services in place and I don't feel at this point they would participate with those services in the future."

{¶ 24} Joanne Dodd, the child's guardian *ad litem*, testified and recommended that the court award appellee permanent custody of the child.

{¶ 25} On January 27, 2015, the trial court awarded appellee permanent custody. The court found that the child has been in appellee's temporary custody for twelve or more months of a consecutive twenty-two month period under R.C. 2151.414(B)(1)(d). The court also determined that awarding appellee permanent custody would be in the child's best interest. The considered the child's interactions and interrelationships and found that the child has spent the majority of his life in foster care. The court additionally found that the child and his younger sibling "never lived together, but there has been some visitation between the siblings, sometimes including a parent or both." The court further determined that appellant's "living arrangements * * * are non-traditional to be sure. The home is actually owned by [the father]'s mother who also lives there. [The father] also has three older children by [another woman]. She and those three children live there and have throughout. Now [appellant] lives there (again) and proposes that this child and the younger sister be returned to them." The court also found that appellant "has other children not in her custody, and

there is no suggestion that they have a relationship or history together with R.S.-G."

{¶ 26} With respect to the child's wishes, the court observed that the child was "just turning two years old."

{¶27} The court considered the child's custodial history and observed that the child entered foster care on February 16, 2013 and has remained there since that time. The court additionally found that during a five month period, neither parent visited with the child.

{¶ 28} With respect to the child's need for a legally secure permanent placement, the court stated:

> "Like all young children, this little boy needs and deserves a legally secure placement, and this Court believes that a grant of permanent custody to the agency is necessary to achieve such a result. The evidence is clear and convincing that the parents cannot or will not correct the significant problems that stand between themselves and adequate parenting."

{¶ 29} The court also noted that the proceedings were very emotional for appellant and that she "clearly love[s her] child in the general sense." The court found, however, that "[m]ental health and substance abuse issues have plagued [appellant] throughout the agency's and Court's involvement." The court thus granted appellee permanent custody and terminated appellant's and the father's parental rights.

II. ASSIGNMENT OF ERROR

{¶ 30} Appellant raises one assignment of error.

> The trial court's finding that a grant of permanent custody to ACCS was in the child's best interest was not supported by clear and convincing evidence.

III.

ANALYSIS

{¶ 31} In her sole assignment of error, appellant contends that the evidence fails to clearly and convincingly show that awarding appellee permanent custody is in the child's best interest. She argues that the trial court's factual findings regarding the child's interactions and interrelationships and regarding the child's need for a legally secure permanent placement "are extremely sparse, and in several cases, flatly incorrect." Appellant points out that the court found that the child had never lived together with his younger sibling. Appellant asserts that the child did, in fact, live with his younger sibling in the foster home. Appellant further notes that the court found that appellant had other children who were not in her custody, but appellant states that the evidence shows that R.S.-G. and his younger sibling are her only two biological children. Appellant also faults the trial court for failing to assess how the "non-traditional" nature of the home impacted the child's ability to live there and for failing to discuss the quality of the visitations that occurred between appellant and the child.

{¶ 32} Appellant additionally challenges the court's finding regarding the child's need for a legally secure permanent placement and whether that type of placement can be achieved without granting appellee permanent custody. Appellant argues that the record does not contain any evidence as to whether granting appellee permanent custody would lead to a permanent home for the child. She asserts: "Whether or not a permanent custody award will in fact result in a legally secure permanent placement is * * * purely a matter of speculation, unsupported by anything resembling clear and convincing evidence."

A.

STANDARD OF REVIEW

{¶ 33} A reviewing court generally will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *In re R.S.*, 4th Dist. Highland No. 13CA22, 2013–Ohio–5569, ¶29.

> "'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).

{¶ 34} When an appellate court reviews whether a trial court's permanent custody decision is against the manifest weight of the evidence, the court "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered." *Eastley* at ¶20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, 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.

{¶ 35} The essential question that we must resolve when reviewing a permanent custody decision under the manifest weight of the evidence standard 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:

> "The 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, 103–04, 495 N.E.2d 23 (1986).

{¶ 36} 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."); *In re Adoption of Lay*, 25 Ohio St.3d 41, 42–43, 495 N.E.2d 9 (1986). *Cf. In re Adoption of Masa*, 23 Ohio St.3d 163, 165, 492 N.E.2d 140 (1986) (stating that whether a fact has been "proven by clear and convincing evidence in a particular case is a determination for the [trial] court and will not be disturbed on appeal unless such determination is against the manifest weight of the evidence"). 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. *In re R.M.*, 2013–Ohio–3588, 997 N.E.2d 169, ¶ 62 (4th Dist.).

{¶ 37} 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 *State v. Martin,* 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). 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]." *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541, quoting *Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717; *accord State v. Lindsey*, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000).

{¶ 38} Additionally, 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 (Emphasis sic)." *Davis v. Flickinger,* 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997). *Accord In re Christian,* 4th Dist. Athens No. 04CA 10, 2004–Ohio–3146, ¶7. As the Ohio Supreme Court long-ago

explained: "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).

{¶ 39} Within her assignment of error, appellant 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. Appellant 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 have rejected this same argument in prior cases and stated that when we review a trial court's permanent custody decision, we apply the same manifest weight standard that applies in ordinary civil and criminal cases. *In re R.M.*, 2013-Ohio-3588, 997 N.E.2d 169, 184, ¶60 (4th Dist.), citing *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶17 (stating that civil cases are not treated "differently from criminal cases

with regard to appellate review on the issues of sufficiency and manifest weight"); *In re B.C.-1*, 4th Dist. Athens Nos. 14CA43 and 14CA48, 2015-Ohio-2720, ¶36; *accord In re G.D.*, 10th Dist. Franklin Nos. 14-AP-801 to 805 and 14-AP-884 to 888, ¶28 (determining that *Eastley* manifest weight of the evidence standard applies to appellate review of permanent custody decisions). We adhere to this position and reject appellant's assertion that we must apply a more stringent standard of review when reviewing permanent custody decisions.

B.

PERMANENT CUSTODY PRINCIPLES

{¶ 40} A parent has a "fundamental liberty interest" in the care, custody, and management of his or her child. *Santosky v. Kramer* (1982), 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599; *In re Murray* (1990), 52 Ohio St.3d 155, 157, 556 N.E.2d 1169. Moreover, a parent has an "essential" and "basic civil right" to raise his or her children. *Murray*, 52 Ohio St.3d. at 157. The parent's rights, however, are not absolute. 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* (1979), 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (quoting *In re R.J.C.* (Fla.App.1974), 300 So.2d 54, 58). Thus,

the state may terminate parental rights when the child's best interest demands such termination.

{¶ 41} When a state seeks to terminate parental rights, it must provide parents with fundamentally fair procedures. *Santosky,* 455 U.S. at 753–54. The statutory protections contained in R.C. Chapter 2151 provide parents facing a termination of their parental rights with fundamentally fair procedures. *See In re B.C.*, —– Ohio St.3d ——–, 2014–Ohio–4558, —– N.E.2d ——–, ¶¶ 25–27 (explaining that the statutory protections contained in R.C. Chapter 2151 preserve due process rights of parents facing parental rights termination).

{¶ 42} 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. R.C. 2151.414(A)(1). Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying principles of R.C. Chapter 2151:

> (A) To provide for the care, protection, and mental and physical development of children * * *;
> * * *

> (B) To achieve the foregoing purpose[ ], whenever possible, in a family environment, separating the child from its parents only when necessary for his welfare or in the interests of public safety.

R.C. 2151.01.

{¶ 43} R.C. 2151.414(B)(1) outlines the conditions that must exist before a trial court may grant permanent custody of a child to a children services agency. A court may 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 one of the following circumstances exist:

> (a) The child is not abandoned or orphaned 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 ending on or after March 18, 1999, 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 ending on or after March 18, 1999.

{¶ 44} 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)[2] applies, and (2) that awarding the children services agency permanent custody would further the child's best interests. In the case at bar, appellant does not challenge the court's R.C. 2151.414(B)(1) finding. Instead, she limits her argument to the trial court's best interest findings. We therefore limit our review accordingly.

C.

BEST INTEREST

{¶ 45} 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)

[2] Effective September 17, 2014, R.C. 2151.414(B)(1) includes division (e), which states:

apply. "In a best-interests analysis under R.C. 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.

{¶ 46} In the case *sub judice,* appellant specifically challenges the court's findings regarding the child's interactions and interrelationships and the child's need for a legally secure permanent placement. She contends that the some of the court's factual findings are incorrect and also asserts that the court failed to adequately explain how the facts applied to the statutory factors.

{¶ 47} We observe that although the trial court entered some findings of fact and conclusions of law, appellant 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

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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.

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).

{¶ 48} 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. 00AP1191, 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 appellant 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 child's interactions and interrelationships or concerning the child's need for a legally secure permanent placement. Instead, the record need only indicate that the court indeed considered these factors.

{¶ 49} Here, the record indicates that the court was aware of and considered the statutory best interest factors. Even if appellant is correct that some of the court's factual findings are incorrect or that the court failed to properly analyze the statutory factors, we must uphold its judgment if it is

otherwise legally correct. *E.g.*, *In re G. T.B.*, 128 Ohio St.3d 502, 2011-Ohio-1789, 947 N.E.2d 166, ¶7 (stating that a reviewing court "will not reverse a correct judgment simply because it was based in whole or in part on an incorrect rationale"). In the case at bar, we believe that the trial court's judgment awarding appellee permanent custody is legally correct.

{¶ 50} The record contains clear and convincing evidence to support the trial court's finding that awarding appellee permanent custody is in the child's best interest. With respect to the child's interactions and interrelationships, the evidence shows that neither appellant nor the father consistently attended visitations. Appellant attended approximately sixty percent of the visits offered, but during those visits, she sometimes slept or did not otherwise fully engage with the child. Moreover, appellee removed appellant from the visitation schedule between May 15, 2014 and September 23, 2014, due to appellant's failure to consistently attend visitations. Thus, even if some evidence suggests that appellant's interactions with the child were sometimes appropriate, her failure to consistently visit with the child demonstrates that appellant did not have a firm commitment to the child. Appellant's actions do not show that she is willing to maintain the continuous interaction and relationship necessary in any parent-child relationship. Without a commitment to continuously visiting and interacting

with the child, we fail to see how appellant could form a strong relationship with the child. The child, on the other hand, appears to be doing well in the foster home where he lives with his younger sibling.

{¶ 51} The record also contains clear and convincing evidence to support the court's finding that the child needs a legally secure permanent placement and that this type of placement cannot be achieved without granting appellee permanent custody. At the time of the permanent custody hearing, appellant lived in a three-bedroom trailer along with the child's father (D.G.); the child's father's ex-girlfriend (A.S.); A.S.'s boyfriend; A.S. and D.G.'s three children; and D.G.'s mother. Even if this home was minimally adequate for the child, appellant did not complete all of her case plan goals, including completing a drug treatment program. Moreover, appellant's failure to demonstrate a firm commitment to visiting the child portends that she might well lack a commitment to providing proper care for the child, if he were returned to her custody. Additionally, the evidence shows that appellant failed to implement the parenting skills that the parent mentor suggested, failed to develop an understanding of the child's needs, and failed to attend the child's medical and therapy appointments. Without a commitment to the child, appellant could not possibly provide the child with a legally secure permanent placement.

{¶ 52} Appellant further complains that no evidence shows that awarding appellee permanent custody would lead to a legally secure permanent placement, because appellee did not present any evidence regarding the child's likelihood of adoption. R.C. 2151.414(D)(1)(d) requires the court to consider, as one of the best interest factors, whether the child needs a legally secure permanent placement and whether the child can achieve a legally secure permanent placement without granting a children services agency permanent custody. We do not believe that the statute requires a children services agency to present concrete proof that the child will be adopted if the court awards the agency permanent custody. Instead, "R.C. 2151.414 requires the court to find the best option for the child." *In re Schaefer*, 111 Ohio St.3d 498, 506, 2006-Ohio-5513, 857 N.E.2d 532, ¶64. Here, the evidence is clear that neither parent can provide the child with a legally secure permanent placement for the child and that no suitable relatives are available. Even if the evidence does not show that the child definitely will be adopted, the court could have determined that the child has a better chance of obtaining a legally secure permanent placement by being placed in appellee's permanent custody than by continuing the child in limbo and waiting to see if appellant ever shows sufficient ability to properly care for the child.

{¶ 53} Moreover, as this court frequently recognizes:

> "'" * * * [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."'"

W.C.J. at ¶48, quoting *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, 346 (1972). Although appellant may deeply love and care for her child, she unfortunately did not demonstrate, over the course of nearly two years, that she is committed to doing everything in her power to provide proper care for her child.

{¶ 54} Accordingly, based upon the foregoing reasons, we overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

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

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.

Hoover, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland,
Administrative 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.