**[Cite as *In re S.S.*, 2017-Ohio-2938.]**

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

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| IN THE MATTER OF: | : | |
| | : | |
| S.S., | : | Case Nos. 16CA7 |
| M.S., | : | 16CA8 |
| | : | |
| | : | |
| Adjudicated Abused and | : | DECISION AND |
| Dependent Children. | : | JUDGMENT ENTRY |
| | : | |
| | : | RELEASED 05/17/2017 |

Stacy M. Brooks, Waverly, Ohio, for appellant-mother.

Darren L. Meade, Parks and Meade, LLC, Columbus, Ohio, for appellant-father.

Justin Lovett, Jackson County Prosecuting Attorney, and Timothy E. Forshey, Jackson County Assistant Prosecuting Attorney, Jackson, Ohio, for appellee.

Dana E. Gilliland, Gilliland and Gilliland Law Offices, Wellston, Ohio, Guardian Ad Litem/counsel for S.S. and M.S..

Hoover, J.

{¶ 1} The children's biological parents appeal the trial court's judgment that awarded the Jackson County Department of Jobs and Family Services ("the agency") permanent custody of eleven-year-old S.S. and nine-year-old M.S. For the reasons that follow, we affirm the trial court's judgment.

## I. Facts and Procedural Posture

### A. Background

{¶ 2} The mother and the father are the biological parents of seven children; and the mother has two other children from a previous relationship. All of the children except S.S. and M.S. are emancipated. Children services has been involved in all of the children's lives,

including the two from the mother's previous relationship. Those two children were removed from the mother's custody. The other emancipated five children are C.S., F.S., T.S., Tia. S. and N.S. When C.S. was a young child, the parents agreed to place her in the father's sister's custody. F.S. is twenty-three years of age and is currently in prison for drug-related offenses. Before F.S.'s imprisonment, he had been in and out of jail; and he lived in the family's home when he was not in jail. T.S. is twenty-two years of age, and when the permanent custody hearing began, he was living with a friend. However, T.S. is now in prison. Tia.S is twenty years of age and lives in the household. N.S. is eighteen years of age and lives in a different household.

{¶ 3} The family household has been chaotic over the years: the father drank; F.S. and T.S. engaged in criminal activities; F.S. and T.S. showed no respect for the mother as F.S. would scream at her; and T.S. even threatened to kill the mother; N.S. was frustrated; and the mother did not have any time for the younger children, S.S. and M.S. S.S. was "addicted to video games" and would not sleep. The parents believed S.S. had a sleep disorder. The mother locked herself away in her bedroom in order to avoid the drinking and chaos.

**B. Agency Involvement**

{¶ 4} On June 17, 2013, the agency filed an abuse, neglect, and dependency complaint regarding Tia.S., N.S., S.S., and M.S. During the proceedings, Tia.S. and N.S. became emancipated; and thus, they are not involved in this appeal. We also note that although statements appear throughout the record of prior children services involvement, the record does not contain any documents to illustrate what happened in those prior proceedings.

{¶ 5} The agency's complaint alleged that the father habitually drank, the mother abused drugs, and the parents were constantly fighting in front of the children. The agency requested temporary custody of the children and also filed a motion for a pre-dispositional emergency

temporary custody order. Although the record does not contain an entry concerning the agency's request for emergency temporary custody, a notation is included in the docket listing which states that the "judge and prosecutor * * * determined that no emergency exists at the present time."

{¶ 6} After the complaint was filed, further events occurred. For instance, on July 7, 2013, at approximately 4:30 a.m., police responded to the parents' home. When the police arrived, the father ran into the home and shut the door. The mother was outside and pantless. The mother tried to push the door open and accidentally hit the youngest child in the face. The father smelled of alcohol. Both the father and the mother were arrested—father for "disorderly by intoxication" and mother for public indecency.

{¶ 7} Another event occurred on July 26, 2013. With the mother still in jail, the father left M.S. and S.S. in the care of a sixteen-year-old male. The father returned home after 1:00 a.m. to discover that M.S. was missing. Approximately one hour later, the father contacted the police to report M.S. as a missing person. M.S. was found later in the day, naked and obviously traumatized. M.S. displayed many physical injuries as well as physical indications of sexual assault. Additional facts pertaining to the criminal acts perpetrated upon M.S. may be found in *State v. Dunn*, 4th Dist. Jackson No. 15CA1, 2017-Ohio-518. The agency immediately filed a motion for emergency custody of the children, which the court granted.

{¶ 8} On July 29, 2013, the agency filed an amended complaint that included the July 7 incident, as well as M.S.'s July 26 abduction and sexual assault.

### C. Adjudication and Initial Disposition

{¶ 9} On November 25, 2013, the court adjudicated M.S. an abused and dependent child and adjudicated S.S. a dependent child. On that same date, the court placed the children in the

agency's temporary custody. The court additionally directed each parent to undergo mental health and drug/alcohol assessments and to complete any recommended treatment. The court permitted the parents to have supervised visits with the children. The court further found that the agency had made reasonable efforts to prevent the children's removal from the home.

**D. Case Plan**

{¶ 10} The agency developed a case plan for the family. The case plan indicated that the mother and father would both need "to reduce risk and address safety issues of the child(ren)." The case plan required the mother to: (1) attend and participate in a substance abuse assessment and follow any treatment recommendations; (2) participate in random drug screens; (3) avoid placing the children in the middle of arguments; (4) "attend and participate in counseling at Woodland Centers for evaluation of her mental health status and treatment and follow recommendations"; (5) "receive parenting education through ISS services and utilize skills learned with her children"; (6) use caution on who she allows into her home and around the children; and (7) provide a safe, stable home environment to meet the children's needs.

{¶11} Additionally, the case plan required the father to: (1) engage in "ISS counseling * * * and receive parenting information through ISS and utilize skills learned"; (2) attend and participate in a substance abuse assessment and follow any treatment recommendations, including any mental health recommendations; (3) participate in random drug screens; (4) refrain from alcohol abuse; (5) ensure that the children have proper adult supervision and use caution when permitting outsiders into the home; (6) discontinue fighting with the mother in the children's presence and placing the children in the middle of arguments and fights; (7) avoid conflict with the mother when the children are present; and (8) avoid domestic violence.

{¶ 12} Furthermore, the case plan required that S.S. (1) have a suitable bedtime and sleep schedule; (2) attend school daily; (3) take medication as recommended by a physician; and (4) participate in services with ISS. As for M.S., the case plan required that M.S. (1) receive counseling at the Child Protection Center; (2) participate in services through ISS; (3) have consistent rules, structure, and expectations; and (4) have a stable and safe environment.

**E. Case Plan Progress**

{¶ 13} The January 9, 2014 Semiannual Administrative Review ("SAR") indicated that S.S. had made significant progress while in foster care. S.S. had not displayed any signs of a sleeping disorder, regularly attended school, and was even named "student of the month in December." The SAR related that M.S. had made some progress while in the foster care. Although M.S. had continued counseling to help her cope with the sexual assault and the adjustment to foster care; she engaged in a sexual act with another child. As a result, both S.S. and M.S. were removed from their first foster home.

{¶ 14} The SAR's summarization of the progress was that agency custody was still needed as legal issues were still ongoing with M.S.; and the parents still needed to continue to try to establish a calm and stable home environment and to address emotional and drug/alcohol concerns. In other words, sufficient progress had not been made for reunification.

{¶ 15} In addition, a case review document identified the safety threat to the children as "active" due to the fact that the criminal investigation and court case were still pending regarding M.S.'s abduction and sexual assault. Moreover, the parent's home situation was still unstable at times with recent domestic incidents, disruptions, and police calls. The case review document outlined that the parents still had unresolved problems in their own relationship and with their housing situation. The parents had also changed some service providers on their own. The trial

court had ordered psychological evaluations; but they could not take place until a later date due to lack of available providers and full schedules. A chaotic home situation continued to be a concern as the parents reported difficulty in keeping their disruptive adult sons away from the home. Ultimately, the case review identified the risk reassessment score as "high."

{¶ 16} A January 21, 2014 case plan amendment incorporated the court-ordered psychological evaluations as requirements for both parents.

{¶ 17} A May 12, 2014 SAR demonstrated that the mother had been compliant with counseling through ISS and received services at Woodland Centers. The mother had completed her psychological evaluation and had requested marriage counseling and additional counseling to help her and M.S. The mother had made efforts to keep T.S. away from the home; but she had a few friends stay at the home temporarily to help with expenses. The SAR further indicated that the father had addressed alcohol concerns by participating in rehabilitation programs at the Marsh House. The father was complying with his treatment program and only had one month left in the program. Prior to participating in the rehabilitation program, the father was reported to be at least minimally compliant with services at HRS. Lastly, the father completed his psychological evaluation.

{¶ 18} The May 12, 2014 case review "strengths and needs update" expressed that M.S. needed continued support and counseling to help her deal with past trauma. In addition, the case review indicated that the children needed a structured environment free from conflict in order to reduce emotional difficulties and to have success at school. Domestic incidents in the home remained a concern. The parents still needed to be able to provide adequate supervision for the children in an environment free from conflict and chaos. The mother continued to need counseling to deal with personality dynamics and ways of coping with difficulties. The father

continued to need substance abuse services to deal with a history of alcohol abuse. The risk assessment continued to be rated as "high."

### F. Trial Court's Extension of the Temporary Custody Order

{¶ 19} On July 17, 2014, the trial court extended the temporary custody order and amended the case plan to include services recommended in the parents' March 2014 psychological evaluations. The court again found that the agency had made reasonable efforts to prevent the children's continued removal from the home.

{¶ 20} On August 13, 2014, the agency filed a motion "for a finding of Annual Reasonable Efforts." The mother opposed the motion. She argued that the agency had not used reasonable and diligent efforts and claimed that the agency should be doing more to promote reunification. The mother claimed that she and the father went beyond what was expected in the case plan; and they had made significant improvements to their residence in order to provide an appropriate and stable home for their children. The mother asserted that she and the father have not received extended visits with the children and that these visits were necessary to facilitate reunification.

### G. Increased Visitation

{¶ 21} On October 17, 2014, the agency filed a motion to permit limited unsupervised visits with the parents. The agency asserted that the parents "appear to be compliant with the case plan services" and that the unsupervised visits are "a necessary step toward reunification." On that same date, the agency filed a motion to withdraw its request for a reasonable efforts finding. The agency asserted that it had overlooked the court's reasonable efforts finding contained in its July 17, 2014 judgment.

{¶ 22} On November 3, 2014, the trial court addressed the request for increased visitation and the agency's efforts to reunify. The trial court ordered that (1) updated reports be provided from all service providers; (2) that the family counseling must be provided by a licensed counselor; (3) that the Child Protection Center provide an opinion on the projected impact on the two youngest children of increased visits with the parents; and (4) that an opinion be provided to the trial court regarding whether or not the parents' counseling effectively addresses the concerns raised in the psychological assessments of each parent.

**H. November 2014 Amended Case Plan**

{¶ 23} On November 5, 2014, the agency filed an amended case plan to document the following changes: (1) S.S.'s participation in counseling at the Child Protection Center due to behavioral difficulties exhibited in foster care; (2) Abby McGee of ISS will conduct "family sessions"; (3) the father will receive mental health counseling as recommended in his psychological evaluation; and (4) unsupervised visits will occur in the home and will increase as the family continues to make progress.

{¶ 24} The amended case plan noted the following strengths: (1) the father "has made progress with substance abuse counseling and has not experienced recent problems related to alcohol"; (2) the father "shows bonding" with the children; (3) the parents "currently have a good relationship and are willing to utilize services to work toward reunification"; (4) "[M.S.] has benefited from counseling"; and (5) both children enjoy visiting with their parents and siblings.

{¶ 25} The amended case plan required the mother to (1) continue counseling and to follow any recommendations; (2) engage in family counseling with ISS and use the skills learned with her children; (3) provide a safe, stable home environment to meet the children's needs; and

(4) participate in random drug screens. Much like the original case plan, the amended case plan required the father to (1) continue following his substance abuse treatment recommendations; (2) receive counseling "to address maladaptive personality traits," to manage his anger, and to "identify ways in which his interpersonal relationships impact sobriety, mental health and behavioral adaptations"; (3) to participate in random drug screens; (4) to refrain from alcohol abuse; (5) to engage in ISS counseling and family sessions; (6) to use caution as to who he permits in the home; (7) to avoid conflict with the mother when the children are present; and (8) to avoid domestic violence.

**I. Family's Continued Progress**

{¶ 26} A November 17, 2014 case review documents that the parents had made progress and that their relationship had been more stable: The parents had fewer disturbances and conflict in the home, had made improvements with furniture and remodeling in order to prepare for expanded visitation and reunification, and had engaged in family counseling sessions. The case review states that M.S. and S.S. need to continue therapeutic services to address their emotional needs, anger, and defiance and that they need consistent information regarding reunification plans. The document related that the children's defiance "can increase likelihood of a placement disruption which would not be beneficial at this time."

{¶ 27} This case review placed the risk assessment at "moderate," and indicated that the agency plans to extend the visits to overnight visitations. The agency indicated that it would continue the children in temporary custody "until it is determined that the home is a safe and stable environment for the children" and further stated that the family continues "to show progress with services and toward goal of reunification."

**J. Case Progresses to Unsupervised Visitations**

{¶ 28} On December 3, 2014, the trial court allowed the parents to have unsupervised visits with the children for up to two hours twice each week. Around the beginning of January 2015, the parents began unsupervised weekend visits with the children.

{¶ 29} On February 23, 2015, the court entered an order that prohibited the parents from having "roommates/renters in the household and no non-related overnight guests."

**K. Agency Terminates Unsupervised Visitations**

{¶ 30} Unfortunately, the parents were unable to continue the unsupervised weekend visits with the children. The agency had determined that the unsupervised visitation was no longer appropriate. The agency filed an amended case plan on March 31, 2015, noting that the children have been moved to another foster home and that visitation will be at the agency's discretion and will occur at the agency.

{¶ 31} On April 2, 2015, the agency filed a "memorandum regarding reduction of visitation." On February 27, 2015, the agency reduced the visits to supervised visits at the agency due to the following concerns. The agency alleged that on February 13, 2015, the mother called the common pleas court to discuss the criminal proceeding involving M.S.'s abductor. During the call, the mother told a court employee that "every time she saw [the abductor] * * * she wanted to climb over the table and start stabbing him." The court employee described the mother's conversation as a "rant." The agency further claimed that the mother advised a law enforcement officer that the abductor allegedly wrote a letter in which he implicated the parents in a scheme to abduct M.S.

{¶ 32} The agency additionally stated that it learned of a Craigslist, Inc. advertisement seeking "renters" for the parents' residence. The Craigslist, Inc. advertisement stated the following:

> where [sic] lookin [sic] for a female room mate with benefits were [sic] a married couple looking to share a room with a bi female we own our home so we just split the utilities and food and of course the bedroom its [sic] a three bedroom house and you have your own room we own our own car where [sic] not fancy but looking for some one who likes play cars movies etc and sex wife prefer heavy set girls because she is as well if you think this sounds good maybe even consider a couple we can meet coffee lunch if you don't drive not a problem we come to you so if seven 4 zero four one eight nine nine five two we have pics share and we can be decreat [sic] about living situration [sic] as well can make each other fantacy [sic] come true and ladies he carryin [sic] 8 inches posted pic think it blurry [sic].

The advertisement was troubling to the agency as it asserted that having strangers living in the home can cause additional trauma to M.S.

{¶ 33} The agency also learned that the mother bathed or showered with M.S. during visits. The agency asserted that this behavior exhibited the mother's continued lack of understanding and disregard for appropriate boundaries, especially since M.S. had experienced such a traumatic abduction and sexual assault. The agency could not support allowing the children to visit the parents unsupervised due to the parents' inability to maintain a structured and safe environment for the children.

### L. Agency Seeks Permanent Custody

{¶ 34} On May 1, 2015, the agency filed a motion to modify the temporary custody order to permanent custody. The agency alleged that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent and that the children have been in its temporary custody for more than twelve months of a consecutive twenty-two month

period. The agency asserted that despite counseling, the parents continue "to engage in a pattern of behaviors which are not consistent with providing a safe and stable household for the children to return."

### M. Permanent Custody Hearing

#### 1. Agency's Witnesses

#### a. Mother

{¶ 35} The mother stated that she has been in counseling for three years. She explained that she initially engaged in counseling due to a court order that she complete anger management counseling as a result of a domestic violence incident with her husband. She testified that she continued the counseling because she found it helped her handle the alcohol use and violence that occurred in the household, as well as the troubles surrounding F.S.'s and T.S.'s behaviors. The mother stated that the counseling has helped her learn how to control her anger and emotions and to avoid inserting herself into other individuals' problems.

{¶ 36} The mother explained that she rented a room in her home in order to generate household income and that she sometimes allowed others who needed a place to stay to use the room. In October 2013, she permitted a couple and their three children to stay in the home. In February 2014, she took in a male renter who she later learned was a registered sex offender. The mother next permitted a cousin to stay with her. In May 2014, T.S. overdosed while in the house, but the mother claimed he was no longer living there. In August 2014, the mother had another set of renters in the house, who stayed for approximately one week. Next, a seventeen-year-old runaway female from West Virginia stayed at her house. When law enforcement officers arrived at the parents' residence to confirm the minor's presence, the minor was located in the bedroom. The mother stated that she and the father were unaware that the female was a minor or a runaway

at the time they allowed her into the home. In November 2014, a twenty-year-old girl rented the room, and her boyfriend later moved in with her. In January 2015, the mother's cousin's two children stayed at her house for a couple of days.

{¶ 37} The state presented the mother with a Craigslist, Inc. advertisement, generated around January 2015, that sought renters and that contained their phone number. The mother would neither admit nor deny that she posted the advertisement.

{¶ 38} The state additionally presented the mother with a February 28, 2015 letter that she wrote. In the letter, the mother explained that Levi Workman, her ex-husband's child, contacted her to discuss a conversation he had with M.S.'s abductor, Zachary Dunn. Workman alleged that while imprisoned with Dunn, Dunn claimed that M.S.'s parents had set him up and framed him. Workman further alleged that M.S.'s parents had paid Dunn $1,000 to kidnap M.S. and that they promised him an additional $4,000 when Dunn finished the job. The mother also stated that according to what Workman claimed Dunn informed him, the father told Dunn that Dunn "could take [M.S.]" and that the father is the one who actually took and raped M.S.

{¶ 39} The mother admitted that T.S. contributed to the chaos and conflict in the home but explained that she tried to prohibit T.S. from entering the household. The mother agreed that her efforts to prevent T.S. from entering the household had not been entirely successful but claimed that the police did not sufficiently help when she requested assistance with T.S. She admitted that T.S. continued to pose a problem and indicated that on the date of her testimony, she called the police because T.S. had pried the lock to the basement and entered the house. Additionally, in May 2015, T.S. and Tia.S. had an altercation; and T.S. threatened to assault the mother.

**b. Abigail McGee**

{¶ 40} Integrated Services behavioral health consultant Abigail McGee testified that she started working with the family in October 2014 to improve their interactions and communications and to help stabilize the household. She stated that the parents were receptive to counseling and that the family made progress. McGee related that the mother had improved her awareness and appeared to be aware of M.S.'s triggers and the sensitivity regarding her trauma. She further explained that the mother encouraged S.S. to engage in counseling, instead of playing video games. McGee stated that the father had made more of an effort to spend time with S.S. and that she had not noticed any alcohol in the home. The parents had physically improved the home by providing appropriate bedding for the children and rearranging the home to be more child-friendly. McGee testified that the children appeared bonded to their parents.

{¶ 41} McGee stated that the parents recognized that their behaviors contributed to S.S.'s previous sleeping problems and difficulty attending school and have since established routines and schedules, as well as behavioral and chore charts. The parents also developed a plan to keep the children safe, entitled "Important Steps to Keep Our Kids Safe." McGee explained that in developing this safety plan, the parents talked to other professionals involved in the case and then compiled a list of ways to keep the children safe such as obtaining baby monitors, turning off cell phones when spending time with the children, and maintaining a bedtime routine.

{¶ 42} McGee related that the mother had discussed her frustration trying to keep T.S. away from the home and the lack of law enforcement response when she requests help. McGee additionally stated that the parents now understand why they should not have renters in the home if the children are there. McGee indicated, however, that the mother continued to engage herself in other individuals' problems and to discuss inappropriate topics around the children.

{¶ 43} McGee stated that counseling helped the family strengthen the family dynamics by reducing conflict and chaos in the home so that they could provide a safe and stable environment. She further testified that she did not believe that the family was ready to terminate counseling.

**c. George Sellers**

{¶ 44} George Sellers was the family's caseworker from July 2013 to June 2015. He testified that the parents "pretty much" complied with the case plan. He explained that the family dynamic improved. Sellers's case notes indicate that the parents' "home appears calmer" and that they "often had positive interactions with the children during the visits." Sellers also stated that the parents made "significant repairs to the home," including remodeling and installing a new furnace and new carpeting.

{¶ 45} Sellers related that the parents requested extra services that were not part of the case plan, such as marriage counseling, and that they consistently requested more in-home visits with the children. He stated that the mother asked for a specialist to help her and M.S. when M.S. returns home. Sellers additionally testified that the mother started parenting sessions on her own, but she indicated that she was not certain whether she wished to continue.

{¶ 46} Sellers explained that T.S. was an on-going issue. He stated that the parents recognized that T.S. caused problems; they tried to keep T.S. away from the home; and the mother reported that she needed help from the police to keep T.S. away from the home. Sellers related that the parents did not believe law enforcement officers provided adequate assistance when they requested help concerning T.S.

{¶ 47} Sellers stated that the children enjoyed visits with the parents; and he believed they shared a bond with the parents. Sellers explained that the children were doing well in their

current foster home. He related that the current foster home is "a calm home" and that the foster parents "are able to deal well with [the children]." Additionally, S.S.'s school performance improved while in foster care. However, the children continued to display some behavioral difficulties. For instance, S.S. would wet the bed; and M.S. had started urinating in containers in her bedroom.

{¶ 48} Sellers explained that the children's current foster home is their third placement since their removal from the parents' home. Sellers stated that the children continued exhibiting behavioral issues while in foster care. When the children were in the second foster home, their behavioral problems increased. The second foster parents became frustrated and requested the agency to remove the children. Sellers related that the children were removed from the first foster home because M.S. "sexually perpetrated the foster parents' four year old daughter." Sellers indicated that the children's behavioral problems coincided with increased visits with the parents and with the Dunn criminal trial; but he was unable to state that there specifically was a correlation.

{¶ 49} Sellers explained that the agency had "safety concerns" regarding the people who stayed at the family's home. He testified that "[t]here seemed to be a pattern there of [the parents] wanting to get renters in or people that stayed hadn't been providing any assistance. [sic]" Sellers stated that after the agency informed the parents that renters would be inappropriate if the children were returned home, Sellers did not learn of any subsequent renters.

{¶ 50} Sellers explained that the agency stopped unsupervised visits after learning that the mother showered and bathed with M.S. and after learning of the Craigslist, Inc. advertisement. Sellers stated that the agency did not believe that the mother should have bathed with M.S. as that behavior is not appropriate with a child that has been sexually abused.

{¶ 51} The trial judge asked Sellers whether the parents improved their situation. Sellers responded that they had; and, thus, the agency increased the visits and permitted overnight visits. The judge asked Sellers whether he agreed with the permanent custody motion; in response, Sellers answered that at the end of the two-year period, the parents had not made enough progress to reunify, and "[t]he agency was running out of options." He further stated that the agency had concerns about "strangers coming into the home" and the mother's "chronic mental health issues." The judge asked Sellers whether he believed that placing the children in the agency's permanent custody is in their best interests, and Sellers responded, "I don't think I can say one way or another on that." He explained that while he believes that the agency had valid reasons for requesting permanent custody, he does not "know the parents' situation now and whether they've made enough improvements since then * * *."

**d. Dr. Robin Rippeth**

{¶ 52} Dr. Robin Rippeth testified that in March 2014, she performed psychological evaluations of both parents. She gathered complete psychosocial histories and administered projective and achievement testing, as well as parenting questionnaires. Dr. Rippeth also administered a sobriety maintenance skills assessment and a Substance Abuse Subtle Screening Inventory to the father.

**i. Father's Psychological Evaluation**

{¶ 53} Dr. Rippeth's report notes that the father had a lengthy criminal history that dates back to 1999. Her report stated that the father "shows a disregard for the safety of others and himself as evidenced by receiving numerous Disorderly Conduct, Persistent Disorderly, and Domestic Violence charges." Dr. Rippeth's report additionally indicated that the father had displayed "difficulty providing for the safety of his children overtime [sic]." She explained:

> For example, he left his two youngest children in the case of a 16 year-old without much concern. He and his family have had various investigations by [children services] related to the children's needs not being met as well as the safety of the children. [The father]'s alcohol dependence and personality characteristics appear to be intertwined and when [he] uses alcohol, this serves to disinhibit his behavior. Both of these concerns are pervasive issues that have become ingrained patterns of behavior.

{¶ 54} Dr. Rippeth diagnosed the father with alcohol dependence and anti-social personality disorder. She explained that anti-social personality disorder is "characterized by disregard for societal rules and limits; irresponsibility such as failure to sustain work activities, impulsivity, aggression, failure to think and plan ahead." She stated that "[a] parent who has been diagnosed with anti-social personality disorder would exhibit behaviors like failure to model appropriate coping skills to their child; failure to express emotions and use appropriate coping responses, but responding with aggression and not modeling prosocial behaviors to the children." Dr. Rippeth indicated that "personality disorders are long standing patterns of behavior that individuals have displayed beginning in later teenage, early adulthood" and that "there's no medication that can be prescribed to effectively change that." She related that "[t]he patterns repeat themselves through history and are pretty, even with treatment, it's very hard to change those patterns and behaviors." Her report stated that "Personality Disorders by nature are ingrained patterns of behavior and fairly resistant to change."

{¶ 55} Dr. Rippeth noted in her report that she did not detect

> any significant cognitive limitations which would impede [the father's] ability to engage in effective parenting. [He] does not present with an affective disorder that

> precludes him from serving in an appropriate parental role; however, he evidences difficulty with affect management, specifically with regard to managing his anger through appropriate means. His personality characteristics further impact his ability to serve as an appropriate parental role model to his children. Given his disregard for authority, [the father] is likely to model aggression as opposed to healthier coping responses to his children. Furthermore, there have been repeated investigations by [children services] and [the father] has historically chosen inappropriate caregivers to provide supervision of his children. This suggests that his decision-making skills regarding parenting may still be limited, which would place the children at risk for ongoing neglect. It will be important for [the father] to think through potential concerns and issues that may impact his children's safety.

{¶ 56} Dr. Rippeth recommended the following treatment for the father: "gaining insight into his personality dynamics and implementing more healthy and appropriate coping responses for anger, engaging in more appropriate final decision making skills. Definitely focusing on the alcohol abuse, establishing sobriety, establishing a relaxed prevention plan and appropriate coping skills to replace the use of illicit substances." The father's "treatment would need to [be] on-going and long term, probably over years of treatment to gain and maintain progress." Dr. Rippeth noted that "[a]lthough mental health treatment should address some of [the father]'s personality characteristics, the ingrained patterns of behavior are unlikely to change significantly even with treatment."

**ii. Mother's Psychological Evaluation**

{¶ 57} Dr. Rippeth's report regarding the mother indicates that the mother recognized her household was "very chaotic" when F.S., T.S., and Tia.S. lived in the household. The mother reported a period of four years during which she "was unable to engage in assertive parenting with her children and she isolated herself to her bedroom."

{¶ 58} The report also related that the mother had a criminal history that dates to 1999. Dr. Rippeth concluded that the mother's "history reflects extensive legal system involvement and repeated failure to comply with societal rules and expectations."

{¶ 59} Dr. Rippeth diagnosed the mother as suffering from "Personality Disorder Not Otherwise Specified with Borderline and Antisocial Traits and Neglect of Child." Dr. Rippeth's report explained that the diagnosis means that the mother

> evidences a pattern of personality characteristics that reflect emotional reactivity that is excessive for the situation and lack of regard for rules and regulations. Personality disorders are not an organic condition, but rather a pervasive learned pattern of inner experiences and behavior. [The mother] will likely continue to engage in behavior that violates major societal rules and norms. Her personality structure indicates that she is likely to demonstrate impulsivity, manipulative and deceitful behavior, and failure to consider the needs of others.

{¶ 60} Dr. Rippeth testified that the mother's traits "would model to the children, the emotional over-re-activities [sic], so the children would have a hard time learning how to express their emotions appropriately from what they are seeing in the home and it would model lack of prosocial behaviors. Kind of a disregard for complying with established rules and limits and lack of boundaries, things of that nature." Dr. Rippeth testified that a household with the parents'

types of traits "is going to be characterized by lack of structure and lack of rules, lack of supervision, lack of support."

{¶ 61} Dr. Rippeth related that the mother has "basic parenting skills and knowledge and has no cognitive limitations which would impede her ability to effectively serve in a parental role." However, Dr. Rippeth also believed that the mother had historically prioritized her own needs over her children's needs. Dr. Rippeth's report indicated that the mother repeatedly failed to fully meet the needs of her children; and that the mother had various charges of child endangering dating back to 2002 with her older children. Dr. Rippeth explained:

> [The mother's] two oldest children were removed from her care and adopted. Her third oldest child has predominantly been raised by [the mother]'s sister-in-law. [The mother] reports that she is unable to control her next two oldest boys and has been unsuccessful in attempts to manage their behaviors. * * * * Despite this extensive history, [the mother] reports that she has made progress since [the agency] became involved and desires to reunify with her three youngest children.

{¶ 62} Dr. Rippeth stated that the mother has "an ingrained pattern of behavior" and she is "resistant to change." Dr. Rippeth testified that the mother would need "on-going and long term treatment likely expanding across years." Dr. Rippeth explained that "[i]ndividuals with borderline personality disorder, borderline personality traits, have a hard time establishing boundaries in therapy" and that it is "difficult for them to establish boundaries in any relationship and/or social situation," "especially if they are feeling threatened or dealing with people in positions of authority."

**e. Brian Bethel**

{¶ 63} Brian Bethel, the children's therapist, testified that both children experienced "episodic progression," i.e., periods of improvement followed by regression. Bethel stated that around the time of the criminal trial, he noted behavioral changes in both children. He indicated that M.S. regressed significantly and withdrew. Further, Bethel testified that S.S. sought more attention during that time, was not following rules, and had difficulty following his foster parents' directives. S.S. was also arguing with his sister.

{¶ 64} When the children started home visits with the parents, Bethel noticed the children were more defiant, and conflicted more with one another. S.S. was wetting the bed; and M.S. was urinating in containers. Nonetheless, Bethel could not state "with a 100% degree certainty" that the parents' conduct or visits with the children caused the children's regressive behaviors. In a written update Bethel prepared for the children's caseworker, Bethel stated: "While it would be impossible to determine the cause of this recent deterioration, the behavioral issues would be consistent with the expansion of visitation with the child's biological parents." He further indicated: "Although it is not uncommon for children to experience a decline in functioning with changes in visitation, anticipation of reunification, etc., it would appear that [the children]'s behavioral regression is severe."

{¶ 65} Bethel found the mother's bathing with M.S. to be concerning, especially given M.S.'s sexual trauma. Bethel explained: "Sexual trauma survivors are far more attuned to sexuality, genitalia; it certainly creates some concerns for re-traumatization, potential increase in anxiety, not to mention the lack of appropriate boundaries."

{¶ 66} Bethel indicated that he also had concerns about the renters or overnight guests at the parents' home. He stated that in addition to concerns regarding who the parents allowed into the home, the renters and guests led to a lack of consistency and a lack of appropriate boundary-

setting. Bethel related that the renters and overnight guests were not conducive to the type of environment the children need. He stated that S.S. "needs a very structured environment; one in which there are appropriate healthy boundaries; one in which the child's needs are foundational and one in which the child feels free that he can express himself in a safe and a loving environment." Bethel explained that M.S. needs a "very consistent, nurturing environment" with "very healthy boundaries; very healthy communication between all family members; as well as an environment in which the child feels safe."

{¶ 67} Bethel testified that he reviewed the parents' psychological evaluations. He stated that the parents' prior child welfare and legal involvement "raised concerns about the consistency of that environment" and "the parents' ability to place the children's needs before their own." Bethel related that the mother's diagnosis "seems to be a long standing, sometimes life-long course of very rigid personality characteristics that could certainly influence additional inappropriate behavior" and that the mental health profession does "not have a high rate of success in" treating individuals with personality disorder.

{¶ 68} Bethel testified that the children discussed their visits with the parents and "[a]t times they seem very happy about their parents." However, he believed that there was "unhealthy bonding." Bethel related that sometimes the parents' own needs superseded those of the children. Bethel was concerned about the parents' lengthy history of both child welfare involvement, as well as legal involvement. Bethel worried that the environment would not be stable enough for the children.

{¶ 69} Bethel additionally believed the parents inappropriately discussed the Dunn criminal trial with the children. Bethel explained that both children possessed specific knowledge

of the criminal proceedings involving M.S.'s abduction and rape—knowledge "that children of their developmental stage would not" possess independently.

{¶ 70} Bethel further related his concern that the parents discussed the foster care placement with the children. He stated that "both children at different points had stated that their parents disliked the [second] foster placement. On one occasion, [S.S.] had said that his parents felt as though the previous foster parents were, quote, 'assholes.' That obviously created conflict and tension between the children and the foster parents." Bethel explained that discussing the foster care placement with the children was not appropriate because "foster care is a difficult process in and of itself. When children are aware of conflicts between biological parents and foster parents, sometimes children can use that to manipulate. Sometimes children have lots of fears regarding what happens if I don't get to stay here. It just certainly aggravates the existing circumstances." It essentially "interferes with setting the children up * * * to return home."

{¶ 71} Bethel further testified that he believed the parents also discussed the custody proceedings with the children, as recently as the week prior to his testimony. A week earlier, S.S. "had stated that his parents told him that the court was going well" and that "they would be coming home." M.S. stated that the parents informed her "the Court was going great and they would be coming home soon." Bethel stated that the parents' discussion of all of these adult topics with the children demonstrated that the parents' own needs superseded those of the children.

{¶ 72} Ultimately, Bethel testified that he has not observed sufficient progress to enable the children to return home. He stated that their progression has been "erratic" and that if they were returned home, they would need counseling for several months, "if not [for] a year or longer."

**f. Kristin Butts**

{¶ 73} Caseworker Kristin Butts testified that the agency discontinued unsupervised home visits with the parents in 2015 due to concerns regarding the parents' judgment. Butts explained that the agency learned of a Craigslist, Inc. advertisement bearing the mother's phone number that sought renters and that "had a sexual component to it." She further related the mother's story that Levi Workman claimed to have spoken with Dunn—M.S.'s abductor—and that Dunn supposedly implicated M.S.'s parents in a scheme to kidnap and murder M.S. Butts indicated that both incidents "speaks to [the] judgment" of the parents "and their ability to make decisions about what they are going to involve themselves in."

{¶ 74} Butts additionally stated that the mother continued to involve herself in other individuals' affairs. Butts explained: "It almost seems every other week, there's something going on there that is a chaotic event that she has to talk to me about before, I mean, almost before I can even get to how's the visit going with your kids? What have you been doing with your kids today?" She further indicated that she has observed "very few visits" when someone else is not in the home. Butts stated that she had not seen evidence that the mother is able to disengage herself from other individuals' drama.

{¶ 75} Butts testified that the mother lacked appropriate boundaries between herself and other individuals she does not know well and fears that the mother could not help M.S. understand boundaries with strangers. Butts related that M.S. lacked "differential attachment skill," i.e., the ability to distinguish between a person she knows versus someone she does not know. Butts stated that the foster parents, for example, do not take M.S. to the store because she "runs off and will approach and talk to anybody."

{¶ 76} Butts further stated that the mother continued to discuss inappropriate topics in the children's presence. She explained that during a May 29, 2015 visit, the mother discussed Dunn's sentencing hearing, the difficulty experienced with T.S., and filing a lawsuit against the second foster parents for allegedly mistreating S.S.

{¶ 77} Butts testified that the mother's bathing with M.S. caused her concern and suggested "that the boundaries that Mr. Bethel discussed were [not] actually being practiced in the home." She related that a bathing incident occurred during a six-hour unsupervised visit and that she found it odd that the mother deemed a bath appropriate during a six-hour visit.

{¶ 78} Butts stated that in April 2015, the agency permitted unsupervised home visits with a "drop in." Butts indicated that during an April 6 visit, the parents permitted the children to view "a zombie blood and guts kind of movie." The caseworker advised the parents that the movie was not appropriate for the children; but the parents did not agree. She testified that during another visit, the parents allowed M.S. to answer the door without knowing who it might be. Butts explained that permitting M.S. to answer the door to unknown individuals carries a risk of re-traumatization.

{¶ 79} Butts explained that although the parents have reduced the number of police reports from fifty-five at the start of the case to only ten within the past two years, the parents have not sufficiently eliminated their need to involve the police with their troubles. Butts explained that in May 2015, two criminal incidents occurred at the home. The father and another male were arrested for disorderly conduct. Later in the month, T.S. and Tia.S. were involved in an altercation that resulted in Tia.S. being arrested for disorderly conduct. Butts stated that the mother recently was cited for "[r]ecklessly caus[ing] inconvenience, annoyance, and alarm to another by insulting, taunting, challenging another under circumstance and while such conduct is

likely to provoke a violent response." Butts indicated that the mother had been yelling and cursing in a public location. Butts stated that in July 2015, the mother reported that T.S. broke into the home and stole a computer.

{¶ 80} Butts agreed that the parents had made progress, engaged in services, were actively involved, and consistently visited the children. She further agreed that the parents went "above and beyond" some of the recommendations. However, she did not believe the parents had established "a healthy home where the children aren't going to continue to be exposed to chaos and decisions that lack boundaries and just a chaotic environment with lack of boundaries and that relative social norms are embraced." Butts stated that the children need "a non-chaotic, stable environment where appropriate boundaries are reinforced and protective capacities are reinforced." Butts explained: "[P]ersonality disorder characteristics and personality disorder symptoms, indicators are very difficult to change, so progress has been made, but even in a two year period, significant progress has not been made and I believe it's due to that pervasiveness of that personality disorder and the difficulty to treat that." She stated that she continued to have concerns about the parents' ability to place their children's needs above their own.

{¶ 81} Butts related that M.S. and S.S. exhibited a lot of anxiety about their custodial situation and seem to seek finality. Consequently, Butts believed that the children should have a permanent placement as soon as possible and that placing them in the agency's permanent custody is in their best interests.

**2. Parents' Witnesses**

**a. Michelle Walburn**

{¶ 82} Michelle Walburn, a behavioral specialist at Integrated Services, testified that she started working with the parents in September 2013. Walburn explained that her involvement

diminished around the beginning of 2015, when her coworkers, McGee and Leah Arms, assumed primary responsibility in order to provide more focused family counseling.

{¶ 83} Walburn stated that the parents were doing everything they could to have the children returned home and that the children could be returned home, so long as the parents would have supportive services. Walburn noted that the mother had some mental health issues, but she was receiving treatment for those issues. Walburn believed that the mother's mental health issues would not interfere with her ability to parent the children. Walburn testified that the visits she observed were positive and she "never observed anything negative." She explained that the parents were engaged and that the family appeared to share a bond.

{¶ 84} Walburn further explained, however, that she did not collaborate with the children's therapist to ascertain their needs and that her primary focus was helping the parents overcome their obstacles. For instance, she worked with the mother to help her control her anger and anxiety and helped both parents improve their communication skills.

**b. Tom Moore**

{¶ 85} Tom Moore, the mother's therapist, testified that in 2012, he counseled the mother pursuant to a court order of anger management. Moore stated that the mother contacted him after M.S.'s abduction for additional counseling.

{¶ 86} Moore did not offer any opinion concerning the mother's mental health issues; rather, he testified to the mother's treatment and his diagnosis of post-traumatic stress disorder. Additionally, Moore agreed with Dr. Rippeth that the mother needed to comply with mental health treatment. Moore further agreed that even if she would continue with mental health treatment, that personality disorders by nature are ingrained patterns of behavior and are difficult to change without long-term treatment and internal motivation to change. Moore believed that

the mother's characteristics serve as the primary barrier in terms of her ability to consistently engage in effective, safe parenting of her children over time.

**c. Rachel Wheatley**

{¶ 87} Rachel Wheatley testified that she treated the father for alcohol dependence. She explained that she also treated the father in accordance with Dr. Rippeth's diagnosis of an anti-social personality disorder. Wheatley indicated that she stopped treating him for anti-social personality around June 2015, when a psychologist in her agency, Dr. Earl S. Stump, administered his own testing to the father and removed the anti-social personality disorder diagnosis.

{¶ 88} Wheatley stated that although the father's record was not "flawless," he made progress. Wheatley indicated that as of the date of her testimony (in January 2016), the father had maintained sobriety for four months. She additionally stated, however, that the father returned four "diluted tests" between November 2015 and December 2015. Wheatley explained that a "diluted test" means that the "creatine level is not high enough to be considered a valid test." She testified that a diluted test ordinarily results when an individual uses a liquid substance to "flush" their system and that certain products are rumored to have this type of effect. Wheatley stated that she is unaware of any unintentional means of causing dilution.

**N. Post-Hearing Proceedings**

{¶ 89} On March 11, 2016, Dr. Stump had been subpoenaed to appear and testify, but he did not appear. The court noted that Dr. Stump had been in a nursing home, was scheduled to be released in the near future; and the parties had scheduled a deposition. The court additionally observed that the parties agreed to permit the guardian ad litem to submit an updated report instead of testifying. The court indicated that once it received Dr. Stump's deposition and the

guardian ad litem's updated report, it would deem the matter submitted. The court further permitted the parties to submit written closing arguments.

**1. Dr. Stump**

{¶ 90} The trial court granted the father's motion to admit a March 15, 2016 letter from Dr. Stump. Dr. Stump opined that the father did not have Antisocial Personality Disorder. He explained that the father's criminal history evidenced "a mean drunk but not the wide variety of impulsive crimes we would expect with the antisocial personality disorder."

**2. Guardian Ad Litem's Report**

{¶ 91} The guardian ad litem recommended that the court place the children in the agency's permanent custody despite the fact that the parents had made progress. Some of the positive things that had occurred were that (1) the parents installed a home monitoring system and have continued their visits and family counseling; (2) T.S. was imprisoned and no longer had access to the household; (3) the family had not had renters in the home during the past year; (4) neither parent had significant criminal activity in the past six months; and (5) the family chaos was less than it had been in the past. On the other hand, negative occurrences were that (1) strangers and distant acquaintances continued to frequent the family home and premises; (2) the family continued to have, and [the mother] appeared to seek, outside influences and people who do not provide emotional, financial, or societal support or meaningful assistance; (3) the father "failed a series of drug screens from September through December 2015, and was in danger of being dismissed from HRS as a result of non-compliance."

{¶ 92} The guardian ad litem concluded that the family had not progressed to the level that would permit the children to be safely returned to the parents. The guardian ad litem's reasoning was that the children are sensitive, require high levels of counseling, mental health,

and school monitoring, and neither parent would be able to meet the children's needs due to the parents' current situations and their history with the children. The parents' personal mental health and psychological conditions do not appear to be stabilized to an extent that they would be able to meet the children's needs in a safe environment. Moreover, the psychological reports and evaluations indicate that the problems with the children are difficult to remedy, and are likely to reoccur. Therefore, the guardian ad litem recommended permanent custody be granted to the agency.

**3. Agency Files Motion to Terminate Parents' Visits**

{¶ 93} On May 19, 2016, the agency filed a motion to terminate or limit the parents' visitations. The agency asserted that it had received a report that earlier in the day, the police responded to an incident at the parents' residence. The report indicated that Tia.S.'s live-in boyfriend and the father were drinking, and an argument erupted. The father hit Tia.S. and her boyfriend with a baseball bat, threw Tia.S. into a wall, and punched Tia.S. in the mouth. The police report indicated that the father "was too intoxicated to get a statement from him." The agency stated that it had concerns for M.S.'s and S.S.'s safety if permitted unsupervised visits in the parents' home. The court suspended visits pending further order.

**4. Agency's Closing Argument**

{¶ 94} In the agency's final written argument, the agency asserted that the Craigslist, Inc. advertisement demonstrated the parents' "crass indifference or ignorance" of M.S.'s needs. The advertisement shows that the parents continued to seek renters—strangers—to bring into their home for financial or sexual reasons, despite wanting to have additional unsupervised visits with the children and despite knowing M.S.'s delicate state and the need for her to learn appropriate boundaries with strangers.

{¶ 95} The agency noted that the court must consider the best interest factors contained in R.C. 2151.414(D) and specifically pointed to (c) and (d). The agency asserted that the children had been in the agency's continuous temporary custody since July 2013. The agency further argued that the evidence showed that the children need a legally secure permanent placement and that they cannot achieve this type of placement without granting the agency permanent custody. The agency also pointed to R.C. 2151.414(E)(1), (2), and (16) as factors supporting a finding that the children cannot be placed with either parent within a reasonable time or should not be placed with either parent.

**5. Parents' Closing Arguments**

{¶ 96} In the mother's closing argument, she asserted that the agency failed to establish that the children cannot be placed with the parents within a reasonable time or should not be placed with either parent. She claimed that the parents substantially remedied the conditions that caused the children's removal from the home. The mother agreed that the children had been in the agency's temporary custody for more than twelve months, but claimed that the agency should have made more efforts to reunify the family.

{¶ 97} The mother further contended that the record does not contain clear and convincing evidence that placing the children in the agency's permanent custody would be in their best interest. The mother quoted R.C. 2151.414(D)(1)(a)-(e), and noted that although the agency focused its argument on (c) and (d), the court also must consider the children's wishes and the family interactions and interrelations. The mother asserted that the children are bonded to each other and to their parents. She additionally contended that the children can achieve a legally secure permanent placement without granting the agency permanent custody. The mother argued that the parents have remedied the conditions that caused the children's removal; and thus, their

home now is a legally secure permanent placement. She further claimed that granting the agency permanent custody is not more likely to lead to a legally secure permanent placement. The mother observed that the children have behavioral issues, have been placed in three different foster homes; and the current foster parents are not willing to adopt. She asserted that the children would have the greatest chance of attaining a legally secure permanent placement if placed with their parents.

{¶ 98} The mother also faulted the agency for failing to make reasonable efforts to reunify the family. She claimed that the parents would have been able to prove that they could provide the children with a legally secure permanent placement if the agency had granted the parents extended home visits.

{¶ 99} The father's closing argument largely mirrored the mother's argument. He claimed that "the Agency consistently and blatantly refused to meet the requirements for reasonable efforts to facilitate the reunification." The father additionally argued that the agency did not show that permanent custody is the only way to achieve a legally secure permanent placement.

{¶ 100} On August 1, 2016, the agency filed a motion that requested the court to find that the agency had used "annual reasonable efforts" to reunite the family. On August 5, 2016, the court entered a finding that the agency used reasonable efforts to return the children to their parents by providing case plan services, referrals, and visitations.

**O. Trial Court's Decision**

{¶ 101} On August 30, 2016, the court granted the agency permanent custody of M.S. and S.S. The court noted that at the adjudicatory hearing the parents agreed to the following facts:

1) There are drug/alcohol issues with the parents. The father has admitted to alcohol dependency. The mother has stated that the father is on drugs. The father has stated the mother is on drugs.
2) [N.S.] runs the streets and has made statements he cannot handle the constant fighting in the home. [N.S.] also has 32 unexcused absences from [school] from the 2012-2013 school year.
3) The agency has received information from [S.S.]'s school indicating [S.S.] has missed 104 days of school during the 2012-2013 school year. Many of the reasons documented are that [S.S.] will not get up and go to school. The parents have claimed a sleep disorder. From agency's involvement, it appears [S.S.] was not on a schedule to attend school. The parents did not have a sleep study conducted during the school year.
4) Agency has received from the Jackson Police Department 55 reported incidents, from 2007 on, that JPD had been called to intervene in matters in the [family's] home including, but not limited to, assault, domestic violence, alcohol use, and drug abuse involving family or household members. These things often occurred in front of the children. Some of the police reports document drug sales by [F.S.] and [T.S.] who are adult children of the parents that were living at the home at the time.
5) [M.S.] (age 6) on July 26, 2013 was reported missing to the Jackson Police Department at about 2:10 a.m. [The] mother * * * was incarcerated at the Ross County Jail at the time of incident, and [the child] was in the care of her father * * * . Father stated that he had left the children in the care of [a] 16

> year old [boy] when this incident occurred. [M.S.] was located at approximately 4 p.m. on July 26, 2013 at a residence on Oakland Road, approximately 7 miles from [the child's] home. [The child] had no clothes on when found. [The child] was examined at Adena, and [the child] had numerous physical injuries and physical indications of sexual assault.

{¶ 102} The court found that the children have been in the agency's temporary custody for more than twelve months out of twenty-two month period. The court noted that the children entered the agency's temporary custody in July 2013, and that the agency filed its permanent custody motion on May 15, 2015.

{¶ 103} The court next examined the children's best interests. With respect to the children's interactions and interrelationships, the court explained:

> The Court strove during this case to protect the rights of the parents and welfare of the children. The visitations have increased as the parents would progress during planned services and numerous times situations in the home would arise. The [adult] sibling, [T.S.], as an adult was the disruptive and dangerous factor. The Court finds that the mother did her best to keep [T.S.] away from the home, but father in this case facilitated his visits to the house in opposition to mother's wishes and the advice of counseling agencies. Violence resulted as part of these visits. This type of activity is the norm for this family. Although the parents engaged in services, on the surface, it is clear from the evidence that their allowing strangers without regard to their criminal history into their home to affect the climate and safety of the home in opposition to the Court's goal of providing a permanent, stable environment for these children

[sic]. The Court believes that in spite of their best efforts, the parents are unable to correct their anti-social behavior to the negative effects that that behavior has on the children [sic].

The children have progressed significantly in foster care and the educational issues that were initially cited have been resolved, that the sleep issues that [S.S.] was experiencing have been resolved and the Court has no doubt that if this family is reunited, these issues and others will reoccur in the lives of the children.

[M.S.]'s tragic abduction and assault only worked to compound the difficulties encountered in working with this group. Another factor to be noted is that [M.S.]'s abductor/assaulter was the personal friend of * * * the father, and although [the father] is not implicated in the activity, it seems apparent that parental decisions and social decisions of the parents have affected this child.

{¶ 104} The court also considered the children's wishes and stated:

Each of the children is relatively young, but not of tender years and have the ability to describe their feelings in regard to reunification in this case. Obviously, they have attachments to their parents, but have experienced more stability in substitute care and the Court relies on the representation of the guardian ad litem in her description of the children's mixed expressions of preference. It is clear to the Court that the children are not vehement about being reunified, but the conditions are such that their wishes would be sublimated in this case by the judgment of the Court regardless of their expressed desires.

{¶ 105} The court reviewed the children's custodial history and found that they have been in the agency's temporary custody for twelve or more months of a consecutive twenty-two month period.

{¶ 106} The court additionally considered whether the parents could provide the children with a stable, permanent home.[1] The court stated:

> Contact between parents and children has ebbed and flowed upon the progress or lack thereof of [sic] progress of parents and stability has never been achieved and the children could not return to their home during the pendency of the case.
>
> The children are preadolescent and still able to develop more appropriately. The parents, however, have not shown the progress or stability required to affect proper development of the children in a stable, permanent arrangement necessary for the children's best interest.

{¶ 107} The court also cited R.C. 2151.414(D)(2)(a) and (b).[2] The court found that the children have been in the agency's custody for twelve or more months of a consecutive twenty-two month period,[3] that one or more R.C. 2151.414(E) factors apply, and that the children cannot

[1] The court's decision actually indicates that it considered the stability of the parents' home under R.C. 2151.414(E)(7) to (11). Its discussion, however, appears directed to R.C. 2151.414(D)(1)(d), i.e., the children's need for a legally secure permanent placement and whether they can achieve that type of placement without granting the agency permanent custody. Thus, we question whether the court made a clerical error in this part of its decision.

[2] R.C. 2151.414(D)(2) requires a trial court to find that permanent custody is in a child's best interest and to commit the child to the agency's permanent custody when all of the following apply: (1) one of more R.C. 2151.414(E) factors exists and the child cannot be placed with either parent within a reasonable time or should not be placed with either parent; (2) the child has been in the agency's custody for two years or longer and no longer qualifies for temporary custody under R.C. 2151.415(D); (3) the child does not meet the requirements for a planned permanent living arrangement; and (4) no relative or other interested person has filed, or been identified in, a motion for legal custody.

[3] We point out that R.C. 2151.414(D)(2)(b) requires a finding that the children have been in the agency's custody for two or more years. Thus, a finding that the children have been in the agency's custody for twelve or more months of a consecutive twenty-two month period would not suffice under R.C. 2151.414(D)(2).

be placed with one of their parents within a reasonable time or should not be placed with either parent.

{¶ 108} In determining that the children cannot be placed with one of their parents within a reasonable time or should not be placed with either parent, the court reviewed R.C. 2151.414(E)(1), (2), and (11). The court found that "the parents did not satisfy the expectation of the providers and reunification was never recommended or achieved." The court additionally determined that the mother's psychological report "strongly indicates her chronic and severe emotional and mental health issues which prevent her from appropriately responding to therapy even in the face of losing contact with her children." The court found that the father's "anti-social personality disorder plus his addiction to alcohol have rendered him unable to properly parent his children. He is unable to control his impulsivity and tendency toward violent behavior and his failed attempts at conquering his alcohol addiction lead the Court to concur that he cannot be reunited with his children within a reasonable time." The court also noted that the mother and her first husband had two children removed from their custody more than 25 years ago; but the court did not consider it as a factor.

{¶ 109} The court further explained that it based its decision upon Dr. Rippeth's expert opinion concerning each parent's psychological state. The court found that the mother "repeatedly failed to fully meet the needs of her children, resulting in various charges of Child Endangerment dating back to 2002 with her older children." The court determined that the mother's behavioral pattern confirms Dr. Rippeth's opinion that:

> [The mother] evidences a pattern of personality characteristics that reflect emotional reactivity that is excessive for the situation and lack of regard for rules and regulations. Personality disorders are not an organic condition, but rather a

> pervasive learned pattern of inner experiences and behavior. The pattern of behavior develops in early childhood and extends through adulthood. [The mother] will likely continue to engage in behavior that violates major societal rules and norms. Her personality structure indicates that she is likely to demonstrate impulsivity, manipulative and deceitful behavior, and failure to consider the needs of others.

{¶ 110} The court did not "question [the mother's] concern or affection for her children," but found that she cannot serve the children's best interests. The court found that the mother "is inappropriate as a caregiver for these two children." The court noted that Dr. Rippeth opined that the mother's "personality characteristics serve as the primary barrier in terms of her ability to consistently engage in effective, safe parenting of her children over time."

{¶ 111} The court determined that the father made "a good faith effort to conquer his alcohol addiction and abuse," but that he could not and has not maintained sobriety. The court found that the father presented diluted tests and that "[d]eception was evident." The court noted Dr. Rippeth's statement that the father's "ingrained patterns of behavior are unlikely to change significantly even with treatment."

{¶ 112} The court further found that the parents allowed visitors or renters into their home during the pendency of the case, which contributed to overall chaos: "[T]hese interruptions in family life only contributed to the Court's opinion and the unsuitability of [the] household for the children." The court concluded that the parents "are on track of repetitive anti-social and maladaptive behaviors that interfere with the proper rearing of these children." The court thus terminated the parents' parental rights and placed the children in the agency's permanent custody.

## II. Assignments of Error

### A. Father

{¶ 113} The father raises two assignments of error:

First Assignment of Error:

The trial court erred in its decision to terminate Father's parental rights. This decision was an abuse of discretion, and against the manifest weight of the evidence, as a result of the Court's failure to consider all of the factors in R.C. 2151.414(D). In addition, the Court failed to find in its decision that clear and convincing evidence was presented.

Second Assignment of Error:

The trial court erred in terminating Father's parental rights because the Agency did not exercise reasonable efforts to prevent the children's continued removal and because this decision was against the manifest weight of the evidence.

### B. Mother

{¶ 114} The mother raises three assignments of error:

First Assignment of Error:

The Trial Court's decision to terminate Mother's parental rights was an abuse of discretion and an error as a matter of law because there had been no finding that the Agency fulfilled its duty to use reasonable efforts pursuant to R.C. 2151.419.

Second Assignment of Error:

The Trial Court's decision to terminate Mother's parental rights was an abuse of discretion and against the manifest weight of the evidence because the Trial Court failed to consider all of the factors in R.C. 2151.414(D) and clear and convincing evidence was not presented.

Third Assignment of Error:

The Trial Court erred in terminating Mother's parental rights because the Agency did not exercise reasonable efforts to prevent the children's continued removal and such decision was against the manifest weight of the evidence.

## III. Analysis

{¶ 115} In their assignments of error, the father and the mother essentially argue that the trial court's decision to grant the agency permanent custody of the children is against the manifest weight of the evidence for the following reasons: (1) the trial court did not find, and the evidence does not establish, that the agency used reasonable efforts to prevent the children's continued removal from the home; and (2) the evidence does not show that placing the children in the agency's permanent custody is in their best interests. The same legal principles and analysis guide our discussion of all of the assignments of error. Thus, for ease of analysis we have combined our discussion of the assignments of error and address them out of order when logical to do so.

**A. Standard of Review**

{¶ 116} A reviewing court generally will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *In re R.M.*, 2013–Ohio–3588, 997 N.E.2d 169, ¶53 (4th Dist.).

> 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).

{¶ 117} 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* 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.

{¶ 118} 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." *R.M.* at ¶ 55.

{¶ 119} 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).

{¶ 120} 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* 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 Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978).

**B. Permanent Custody Principles**

{¶ 121} 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. *D.A.* at ¶ 11. Rather, " 'it is plain that the natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.' " *In re Cunningham,* 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979), quoting *In re R.J.C.*, 300 So.2d 54, 58 (Fla.App.1974). Thus, the State may terminate parental rights when a child's best interest demands such termination. *D.A.* at ¶ 11.

{¶ 122} 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**

{¶ 123} A children services agency may obtain permanent custody of a child by (1) requesting it in the abuse, neglect or dependency complaint under R.C. 2151.353, or (2) filing a motion under R.C. 2151.413 after obtaining temporary custody. In this case, the agency sought permanent custody of the children by filing a motion under R.C. 2151.413. When an agency files a permanent custody motion under R.C. 2151.413, R.C. 2151.414 applies. R.C. 2151.414(A).

{¶ 124} R.C. 2151.414(B)(1) specifies that a trial court may grant a children services agency permanent custody of a child if the court finds, by clear and convincing evidence, that (1) the child's best interest would be served by the award of permanent custody, and (2) any of the following conditions applies:

> (a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent

> agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.
>
> (b) The child is abandoned.
>
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
>
> (d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.
>
> (e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

**1. R.C. 2151.414(B)(1)(d)**

{¶ 125} In the case at bar, the trial court found that the children have been in the agency's temporary custody for more than twelve months of a consecutive twenty-two month period, and thus, that R.C. 2151.414(B)(1)(d) applies. The parents do not challenge the trial court's R.C. 2151.414(B)(1)(d) finding. Therefore, we do not address it. Rather, we simply note that the

record amply demonstrates that the children have been in the agency's temporary custody for well over twelve months of a consecutive twenty-two month period.

{¶ 126} To the extent the trial court also relied upon R.C. 2151.414(B)(1)(a), we point out that this provision, by its terms, is inapplicable 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. *See In re Damron,* 10th Dist. Franklin No. 03AP–419, 2003–Ohio–5810, ¶ 9 ("The plain language of R.C. 2151.414(B)(1)(a) reveals that this subsection is only triggered when none of the remaining * * * subsections are triggered."). Consequently, 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. Thus, when considering a R.C. 2151.414(B)(1)(d) permanent custody motion, the only other consideration becomes the child's best interest. *In re N.S.N.,* 4th Dist. Washington Nos. 15CA6, 15CA7, 15CA8, 15CA9, 2015-Ohio-2486, ¶ 52; *In re Berkley,* 4th Dist. Pickaway Nos. 04CA12, 04CA13, 04CA14, 2004–Ohio–4797, ¶ 61.

**2. Best Interest**

{¶ 127} The parents assert that the trial court's best interest determination is against the manifest weight of the evidence. They claim that the record does not contain clear and convincing evidence to support the trial court's finding that placing the children in the agency's permanent custody is in their best interests. The parents contend that the trial court failed to

adequately consider the familial bond and the importance of preserving the family unit. The parents additionally contend that the trial court erred as a matter of law by failing to consider all of the best interest factors outlined in R.C. 2151.414(D)(1). They emphasize that the court failed to evaluate whether the children can achieve a legally secure permanent placement without granting the agency permanent custody and that had the court properly considered this factor, the court would have determined that the parents are able to provide the children with a legally secure permanent placement. The parents also claim that the court did not give adequate consideration to the children's wishes.

**a. Failure to Request Findings of Fact and Conclusions of Law**

{¶ 128} Initially, we observe that the trial court entered a rather lengthy decision that detailed the procedural history of the case, that set forth some factual findings, and that discussed the permanent custody statute. Although the trial court may not have engaged in a thoroughly detailed analysis of every factor contained in the permanent custody statute, the parents' failure to file a Civ.R. 52 request for findings of fact and conclusions of law means that the court was not required to do so.

{¶ 129} 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 findings 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, *5 (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).

{¶ 130} We consistently 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 C.S.,* 4th Dist. Athens No. 15CA18, 2015-Ohio-4883, ¶ 30; *N.S.N., supra,* at ¶¶ 36–37; *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–883–04AP–892, 2005–Ohio–5163, ¶ 53.

{¶ 131} Furthermore, in the absence of findings of fact and conclusions of law, we generally must presume that the trial court applied the law correctly and must affirm if some evidence in the record supports its judgment. *Bugg v. Fancher,* 4th Dist. Highland No. 06CA12, 2007–Ohio–2019, ¶ 10, citing *Allstate Fin. Corp. v. Westfield Serv. Mgt. Co.*, 62 Ohio App.3d 657, 577 N.E.2d 383 (12th Dist.1989); *accord Yocum v. Means,* 2nd Dist. Darke No. 1576, 2002–Ohio–3803, ¶ 7 ("The lack of findings obviously circumscribes our review * * *."). As the court explained in *Pettet v. Pettet,* 55 Ohio App.3d 128, 130, 562 N.E.2d 929 (5th Dist.1988):

> [W]hen separate facts are not requested by counsel and/or supplied by the court the challenger is not entitled to be elevated to a position superior to that he would have enjoyed had he made his request. Thus, if from an examination of the record as a whole in the trial court there is some evidence from which the court could have reached the ultimate conclusions of fact which are consistent with [its] judgment the appellate court is bound to affirm on the weight and sufficiency of the evidence.
>
> The message should be clear: If a party wishes to challenge the * * * judgment as being against the manifest weight of the evidence he had best secure separate findings of fact and conclusions of law. Otherwise his already "uphill" burden of demonstrating error becomes an almost insurmountable "mountain."

Therefore, in the case at bar, we must affirm the trial court's permanent custody decision as long as the evidence reasonably supports it and as long as the record indicates that the court indeed considered the appropriate factors.

**b. Best Interest Factors**

{¶ 132} R.C. 2151.414(D)(1) requires a trial court to consider all relevant, as well as specific, factors to determine whether a child's best interest will be served by granting a children services agency permanent custody. The specific factors include: (1) the child's interaction and interrelationship with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) the child's wishes, as expressed directly by the child or through the child's guardian ad litem, with due regard for the child's maturity; (3) the child's custodial history; (4) the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; and (5) whether any factors listed under R.C. 2151.414(E)(7) to (11) apply.

{¶ 133} Determining whether granting permanent custody to a children services agency will promote a child's best interest involves a delicate balancing of "all relevant [best interest] factors," as well as the "five enumerated statutory factors." *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 57, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56; *accord In re C.G.*, 9th Dist. Summit Nos. 24097 and 24099, 2008–Ohio–3773, ¶ 28; *In re N.W.*, 10th Dist. Franklin Nos. 07AP-590 and 07AP-591, 2008-Ohio-297, ¶ 19. However, none of the best interest factors requires a court to give it "greater weight or heightened significance." *C.F.* at ¶ 57. Instead, the trial court considers the totality of the circumstances when making its best interest determination. *In re K.M.S.*, 3d Dist. Marion Nos. 9-15-37, 9-15-38, and 9-15-39, 2017-Ohio-142, ¶ 24; *In re A.C.*, 9th Dist. Summit No. 27328, 2014–Ohio–4918, ¶ 46. In general, "[a] child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security." *In re C.B.C.*, 4th Dist. Lawrence

Nos. 15CA18 and 15CA19, 2016-Ohio-916, ¶ 66, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991).

{¶ 134} Additionally, R.C. 2151.414(D)(2) states that "permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency" when all of the following circumstances apply:

> (a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.
>
> (b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.
>
> (c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.
>
> (d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

{¶ 135} If all of the R.C. 2151.414(D)(2) factors apply, "then an award of permanent custody is in the child's best interest, and the trial court need not perform the weighing specified in division (D)(1)." *In re K.H.*, 2d Dist. Clark No. 2009–CA–80, 2010–Ohio–1609, ¶ 54; *accord In re N.K.*, 6th Dist. Sandusky Nos. S-14-040 and S-14-041, 2015-Ohio-1790, ¶ 70; *In re K.M.D.*, 4th Dist. Ross No. 11CA3289, 2012-Ohio-755, ¶ 30. However, "if any one of the facts

enumerated in division (D)(2) does not exist, then the trial court must proceed to the weighing of factors set forth in division (D)(1) to determine the child's best interest." *K.H.* at ¶ 54.

{¶ 136} In the case at bar, the trial court's decision includes language from both R.C. 2151.414(D)(1) and (2)(a)-(b).[4] It further appears that the trial court examined the facts using both standards. The trial court concludes its decision by stating that it relied upon the following statutory authority in support of its order to terminate parental rights in this matter.

> 1. The children were removed for twelve (12) of twenty-two (22) months. * * * *
>
> 2. That the children cannot reasonably be reunified with their parents within a reasonable time.

This language appears based upon R.C. 2151.414(B)(1)(a) and (d). The trial court did not specifically find that all of the factors specified in R.C. 2151.414(D)(2) apply. Thus, we believe that R.C. 2151.414(D)(1) provided the primary rationale for the court's best interest determination. Nevertheless, given the parents' failure to request Civ.R. 52 findings of fact and conclusions of law, we will uphold the trial court's judgment so long as either R.C. 2151.414(D)(1) or (D)(2) supports it. We also note that the trial court's decision indicates that it considered the appropriate statutory factors, even though the court may not have quoted or cited each specific statutory provision.

**c. R.C. 2151.414(D)(1) Factors**

**i. Children's Interactions and Interrelationships**

{¶ 137} The children appeared happy during visits with their parents; and the family appeared bonded. The parents deeply love their children, do not want their bond broken, and have made commendable efforts in an attempt to reunify with their children. The parents typically actively engaged with the children during their visits. The majority of the interactions

[4] The trial court did not cite or quote subsections (c) and (d).

during visits appeared positive and appropriate, although some struggles existed during transitions and during the criminal trial.

{¶ 138} However, not all interactions were appropriate and some caused the children's therapist and the agency great concern. During a six-hour visit in April 2015, the mother bathed with M.S. and believed that this interaction was appropriate. M.S.'s therapist and the agency believed the bathing incident was highly inappropriate due to M.S.'s past sexual trauma. On another visit, the parents permitted the children to watch a "zombie blood and guts" movie. Additionally, the parents placed a sexually suggestive Craigslist, Inc. advertisement seeking "renters." Placing this type of advertisement illustrates that the parents lack appropriate boundaries with strangers and actually sought to have strangers move into their home.

{¶ 139} M.S.'s therapist and caseworkers repeatedly emphasized the sensitive nature of her traumatized condition and stated that she needs safety, security, stability, and nurturing—not strangers living in the home. Moreover, Caseworker Butts testified that there seemed to be a consistent trail of people in and out of the home during her visits, with S.K., the mother of T.S.'s child being a frequent visitor. Children services is also involved with S.K.'s and T.S.'s child. The parents' conduct raises doubts whether they would reduce the trail of visitors and prohibit strangers from entering the home. Their conduct suggests that the children would have interactions with individuals they do not know well or that they do not know at all. The frequent trail of visitors also leads to a lack of consistent interaction with the children.

{¶ 140} Furthermore, the agency continued to have concerns about the mother's ability to prioritize her children's needs over her desire for drama and her inability to avoid discussing inappropriate topics with the children or while they were present. Thus, even if the majority of

the interactions may have been appropriate on a superficial level, a deeper inquiry suggests that the parents exhibit a pattern of engaging in inappropriate behaviors.

{¶ 141} Moreover, the trial court found that the father had yet to conquer his alcohol addiction. The father's alcohol abuse negatively affected the family dynamics and served as a catalyst for chaos in the household. After the permanent custody hearing concluded, an alcohol-fueled confrontation occurred between the father and Tia.S.'s live-in boyfriend. Exposing the children to alcohol-fueled violence would not be a positive interaction and would not create a positive relationship with them. Thus, the father's alcohol addiction and his history with different incidents indicates that he would not have positive interactions with the children if he were intoxicated.

{¶ 142} Little evidence exists regarding the children's interactions and interrelationships with their older sibling, Tia.S., who apparently continues to live in the household. Nothing suggests that they share a negative emotional relationship with her, but Tia.S. and T.S. had a violent encounter, and Tia.S.'s live-in boyfriend had a violent confrontation with the father. Thus, Tia.S. has brought negative elements into the household that would detrimentally affect the two children and could inhibit the progress they have made through therapy.

{¶ 143} Both F.S. and T.S. currently are in prison. However, when they lived in or had access to the home during the time M.S. and S.S. also lived in the home, F.S. and T.S. brought in criminal elements and violence.

{¶ 144} The children live together in the same foster home and display signs of sibling rivalry—sometimes to an abnormal extent, according to their therapist. They appear to share a mostly positive relationship with the foster parents. Although the foster parents do not intend to adopt the children, the foster parents have provided the children with a stable and calm

environment. Both children have experienced substantial educational improvements since being placed in foster care but continue to display behavioral difficulties.

{¶ 145} The evidence thus documents that although the superficial interactions and interrelationships between the children and the parents appear positive, deeper consideration reveals unhealthy family relationships and inappropriate interactions. The children are not exposed to unhealthy relationships or inappropriate interactions in their foster home.

**ii. Children's Wishes**

{¶ 146} The trial court found that the children did not express any strong desires regarding their placement. However, the guardian ad litem indicated that the children appeared anxious about obtaining permanency. The guardian ad litem recommended that the trial court award the agency permanent custody of the children. *In re S.M.*, 4th Dist. Highland No. 14CA4, 2014-Ohio-2961, ¶ 32, citing *C.F.*, *supra*, at ¶ 55 (noting that R.C. 2151.414 permits court to consider child's wishes as child directly expresses or through the guardian ad litem).

**iii. Custodial History**

{¶ 147} S.S. lived with his parents for the first seven years of his life, and M.S. for the first six years of her life. Since then, the children have been in the agency's continuous temporary custody. At the time the agency filed its permanent custody motion, the children had been in its continuous temporary custody for nearly two years. As of the time of this writing, the children have been in the agency's continuous temporary custody for nearly four years.

{¶ 148} Between the children's July 2013 removal and December 2013, the children lived in the first foster home. In December 2013, the children were placed in the second foster home, where they remained until January 2015. From February 2015 through the date of the

permanent custody hearing, the children lived in the third foster home. Clearly, the children have not enjoyed a stable custodial history.

**iv. Legally Secure Permanent Placement**

{¶ 149} "Although the Ohio Revised Code does not define the term, 'legally secure permanent placement,' this court and others have generally interpreted the phrase to mean a safe, stable, consistent environment where a child's needs will be met." *In re M.B.*, 4th Dist. Highland No. 15CA19, 2016-Ohio-793, ¶ 56, citing *In re Dyal*, 4th Dist. Hocking No. 01CA12, 2001 WL 925423, *9 (Aug. 9, 2001) (implying that "legally secure permanent placement" means a "stable, safe, and nurturing environment"); *see also In re K.M.*, 10th Dist. Franklin Nos. 15AP–64 and 15AP–66, 2015–Ohio–4682, ¶ 28 (observing that legally secure permanent placement requires more than stable home and income but also requires environment that will provide for child's needs); *In re J.H.*, 11th Dist. Lake No. 2012–L–126, 2013–Ohio–1293, ¶ 95 (stating that mother unable to provide legally secure permanent placement when she lacked physical and emotional stability and that father unable to do so when he lacked grasp of parenting concepts); *In re J.W.*, 171 Ohio App.3d 248, 2007–Ohio–2007, 870 N.E.2d 245, ¶ 34 (10th Dist.) (Sadler, J., dissenting) (stating that a legally secure permanent placement means "a placement that is stable and consistent"); Black's Law Dictionary 1354 (6th Ed. 1990) (defining "secure" to mean, in part, "not exposed to danger; safe; so strong, stable or firm as to insure safety"); *Id.* at 1139 (defining "permanent" to mean, in part, "[c]ontinuing or enduring in the same state, status, place, or the like without fundamental or marked change, not subject to fluctuation, or alteration, fixed or intended to be fixed; lasting; abiding; stable; not temporary or transient"). Thus, "[a] legally secure permanent placement is more than a house with four walls. Rather, it generally encompasses a stable environment where a child will live in safety with one or more dependable

adults who will provide for the child's needs." *M.B.* at ¶ 56. Furthermore, a trial court that is evaluating a child's need for a legally secure permanent placement and whether the child can achieve that type of placement need not determine that terminating parental rights is "not only a necessary option, but also the only option." *Schaefer*, *supra*, at ¶ 64. Rather, once the court finds the existence of any one of the R.C. 2151.414(B)(1)(a)-(e) factors, R.C. 2151.414(D)(1) requires the court to weigh "all the relevant factors * * * to find the best option for the child." *Id.*

{¶ 150} Here, the evidence supports a finding that the children need a legally secure permanent placement and that they cannot achieve this type of placement without granting the agency permanent custody. The evidence establishes that the physical nature of the parents' home generally is appropriate for the children. They have made substantial physical improvements in anticipation of the children's return. They even redecorated each child's room. However, the parents' behaviors and the father's alcohol abuse illustrate that the home is not a legally secure permanent placement for the children.

{¶ 151} The father is an admitted alcoholic. The trial court found that the father's alcohol problems continued despite completion of a rehabilitation program and counseling. In fact, after the permanent custody hearing, the agency filed a motion to curtail the parents' visits due to a violent confrontation that resulted from the father's alcohol use. Although the father may have complied with the case plan requirement to undergo alcohol abuse counseling, the evidence shows that he has not successfully controlled his alcohol use so as to provide a legally secure environment for the children. Instead, his alcohol use contributes to the instability of the household, to intrafamily conflicts, and to criminal behavior, thus calling into question his ability to remain free from jail or imprisonment.

{¶ 152} The mother has mental health issues that impede her ability to provide a secure environment for her children. She has been diagnosed with a personality disorder and has displayed an inability to consistently prioritize the children's needs over her own desires. Throughout the first year and one-half of the case, she continued to seek renters or permitted extended, overnight guests. As the trial court noted, one of those individuals was a registered sex offender. Even as she sought increased overnight visits with the children, she placed a sexually suggestive Craigslist, Inc. advertisement seeking "renters."

{¶ 153} The caseworker stated that the mother appeared to have a need to involve herself in other individuals' tribulations and exhibited a desire to discuss the drama in her life, instead of the children. The caseworker further indicated that the family frequently had visitors in the home that disrupted daily life and interfered with the consistency that the children need. Additionally, the mother, without consulting M.S.'s therapist or the caseworker, determined that taking a bath with M.S. was an appropriate behavior. The mother exhibited poor decision-making and her behavior calls into question her ability to make appropriate decisions to keep her children safe and to make them feel secure, especially considering M.S.'s past sexual trauma.

{¶ 154} While both parents attest that they have finally seen the errors of their ways and that the progress they have made shows that they can provide the children with a legally secure permanent placement, we observe that the trial court specifically relied upon its intimate knowledge of the case and the parties when reaching its decision. The trial court was involved in this case for over three years and heard eight days of testimony. Determining whether to terminate the parents' parental rights presented a difficult question. Admittedly, the parents made great strides to comply with all of the case plan requirements and went above and beyond the requirements—they engaged in individual and family counseling, they improved the physical

condition of the home, they developed a safety plan, the father entered an alcohol rehabilitation program, and they consistently visited the children and requested additional visitation. However, despite all of these improvements, the mother's behaviors continued to be a cause for concern; and the father had yet to conquer his alcohol addiction. The evidence clearly shows that the father's alcohol abuse is a primary contributor to the instability of the parents' household.

{¶ 155} Our review of the entire of the record indicates the trial court believed that the parents are beyond redemption based upon their lengthy history of criminal conduct and involvement with children services, as well as the father's serious alcohol addiction, the mother's behavioral patterns, and both parents' poor decision-making. This court has recognized that a parent's past history is one of the best predictors of future behavior. *In re West*, 4th Dist. Athens No. 05CA4, 2005-Ohio-2977, ¶ 28, citing *In re A.S.*, 12th Dist. Butler Nos. CA2004–07–182 and CA2004–08–185, 2004–Ohio–6323, ¶ 37 ("Past history is often the best predictor of future conduct. While surely people can change, the facts do not indicate that [the biological parents] have the motivation or ability to follow through and do what is necessary to regain custody of their child."); *In re Vaughn*, 4th Dist. Adams No. 00CA692, 2000 WL 33226177, *7 (Dec. 6, 2000) ("To further the interests of the children, the court must consider any evidence available to it, including a parent's pattern of conduct. Some of the most reliable evidence for the court to consider is the past history of the children and the parents."); *see also In re Brown*, 60 Ohio App.3d 136, 139, 573 N.E.2d 1217 (1st Dist.1989) (stating that the mother's "past parenting history and her ability to comply with prior reunification plans regarding her other children were relevant considerations in the juvenile court's dispositional determination" to award a children services agency permanent custody).

{¶ 156} In the case at bar, the parents' past history illustrates that although they have been able to make progress, they eventually regress. During the permanent custody proceedings, the father—although undergoing counseling and claiming to have maintained sobriety—returned diluted tests. The trial court specifically found that the father continued to abuse alcohol, despite his claims to the contrary. The father's own conduct proves this fact—in May 2016, he was involved in an alcohol-induced altercation. Throughout the proceedings, the mother engaged in counseling, but she continued to display inappropriate judgment by seeking "renters," by inserting herself into other individuals' drama, and by failing to avoid inappropriate discussions with or near the children. Moreover, evidence exists that during the permanent custody hearings, the mother had an emotional outburst in a public location, resulting in her receiving a citation. Additionally, Dr. Rippeth's psychological evaluation concerning the mother indicates that the mother's personality traits render therapy unlikely to effect fundamental changes.[5] The mother's later emotional outburst seems to confirm Dr. Rippeth's opinion. Although the mother participated in mental health counseling, the trial court had an adequate basis to believe that the mother would regress to past behaviors. The trial court had more than ample reason to believe that the parents are certain to regress. Thus, clear and convincing evidence supports a finding

[5] We note that the parents object to any consideration of Dr. Rippeth's psychological evaluations based upon our decision in *In re S.C.*, 189 Ohio App.3d 308, 2010-Ohio-3394, 938 N.E.2d 390 (4th Dist.). We believe *S.C.* is easily distinguishable.

In *S.C.*, the psychologist who oversaw the evaluation stated: "[I]t's inappropriate to use a psychological evaluation that's almost two years old as a basis of any significant decision." *Id.* at ¶ 30. Moreover, at the time of the final custody hearing, the father had maintained sobriety for two and one-half years. However, the psychologist noted that certain elements of the report would remain the same, such as the father's "borderline intellectual functioning and personality dynamics." *Id.*

In the case at bar, Dr. Rippeth specifically stated that the parents' diagnoses are ingrained and unlikely to change, even with treatment. Her diagnoses are similar to the elements of the report in *S.C.* that the psychologist stated would remain the same. Thus, even though Dr. Rippeth's report may be more than two years old, her report indicates that the parents' ingrained personality traits will remain the same, even with the passage of time or with treatment. Moreover, the parents' behaviors displayed throughout the proceedings independently document Dr. Rippeth's findings. Consequently, we disagree with the parents that Dr. Rippeth's evaluations fail to reflect their current psychological diagnoses.

that the parents would not be able to permanently provide M.S. or S.S. with a stable, safe, and appropriate environment. *See generally In re J.L.*, 10th Dist. Franklin No. 15AP-889, 2016-Ohio-2858, ¶ 73 (determining that permanent custody was warranted when "safety threat" to children flowed from parents' poor decision-making skills and "lack of regard" for who they allowed in the household).

{¶ 157} Moreover, we did not view the parents' demeanor or attitude and simply cannot second-guess the trial court's determination that they are unable to provide the children with a legally secure permanent placement.[6] Instead, we must defer credibility matters "to those 'who see and hear what goes on in the courtroom.' "[7] *State v. Neyland*, 139 Ohio St.3d 353, 2014-Ohio-1914, 12 N.E.3d 1112, ¶ 59, quoting *State v. Cowans*, 87 Ohio St.3d 68, 84, 717 N.E.2d 298 (1999).

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[6] The trial court's decision does not recite these exact words, "legally secure permanent placement," but the context of its decision shows that it considered the legally-secure-permanent-placement factor enumerated in R.C. 2151.414(D)(1)(d). The court stated that the parents did not achieve "stability" or an ability to provide the children with a "stable, permanent arrangement."

[7] As Justice Resnick wrote in *Arrington v. DaimlerChrysler Corp.*, 109 Ohio St.3d 539, 2006-Ohio-3257, 849 N.E.2d 1004, ¶¶ 76-77 (dissenting):

> "Demeanor is of the utmost importance in the determination of the credibility of a witness. The innumerable telltale indications which fall from a witness during the course of his examination are often much more of an indication to judge or jury of his credibility and the reliability of his evidence than is the literal meaning of his words." *Govt. of Virgin Islands v. Aquino* (C.A.3, 1967), 378 F.2d 540, 548.
>
> As explained by Judge Learned Hand, "the carriage, behavior, bearing, manner and appearance of a witness—in short, his 'demeanor'—is a part of the evidence. The words used are by no means all that we rely on in making up our minds about the truth of a question that arises in our ordinary affairs, and it is abundantly settled that a jury is as little confined to them as we are. They may, and indeed they should, take into consideration the whole nexus of sense impressions which they get from a witness. This we have again and again declared, and have rested our affirmance of findings of fact of a judge, or of a jury, on the hypothesis that this part of the evidence may have turned the scale." *Dyer v. MacDougall* (C.A.2, 1952), 201 F.2d 265, 268–269. *See, also, Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 10 OBR 408, 461 N.E.2d 1273 ("The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony").

**v. R.C. 2151.414(E)(7)-(11)**

{¶ 158} The trial court cited R.C. 2151.414(E)(7)-(11),[8] but immediately thereafter, it did not correlate any factual findings to those factors. When the trial court discussed whether the

[8] R.C. 2151.414(E)(7)-(11) state:

> (7) The parent has been convicted of or pleaded guilty to one of the following:
> (a) An offense under section 2903.01, 2903.02, or 2903.03 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 an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;
> (b) An offense under section 2903.11, 2903.12, or 2903.13 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 an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
> (c) An offense under division (B)(2) of section 2919.22 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 the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;
> (d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 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 an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
> (e) An offense under section 2905.32, 2907.21, or 2907.22 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 the offense described in that section and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
> (f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a), (d), or (e) of this section.
> (8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.
> (9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the child or an order was issued by any other court requiring treatment of the parent.
> (10) The parent has abandoned 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.

children could be placed with either parent within a reasonable time or should be placed with either parent, it referred to R.C. 2151.414(E)(11) and noted that approximately twenty-five years ago, children services removed the mother's two children that she had with her ex-husband. However, the court stated that it did not find this twenty-five-year-old children services involvement to be a relevant factor.

**vi. Balancing**

{¶ 159} While we cannot ignore the parents' efforts to reunify with their children, we also cannot discount the children's need for permanency, rather than continued custodial limbo. Reunifying the children with the parents, while once a possibility, has become an uncertain endeavor. The children have lived in three foster homes during their time in the agency's custody. The guardian ad litem indicated that the children appear anxious for a resolution. These children desperately need a permanent home and have waited far too long to attain one.

{¶ 160} The children's situation, especially M.S.'s sexual trauma, is tragic. M.S. clearly is a fragile and deeply traumatized child who will require years of therapy. Both children need a stable, safe, and nurturing environment. Attempting reunification with the parents, given their propensity for regression and the father's continued alcohol abuse, would not ensure that the children would have the safe and structured environment that they need. Additionally, both children have displayed behavioral problems that appear to escalate during times of stress; and thus, their problems likely would escalate if reunification is unsuccessfully attempted.

{¶ 161} The parents had nearly two years to demonstrate that they could provide the children with a legally secure permanent placement, but unfortunately, their efforts fell short. The trial court had no obligation to experiment with the children's welfare in order to allow the parents to demonstrate that they would not regress into old behaviors.

> "* * * [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 W.C.J.*, 4th Dist. Jackson No. 14CA3, 2014-Ohio-5841, ¶ 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 (1972); accord *In re A.A.*, 4th Dist. Athens Nos. 14CA38-14CA40, 2015–Ohio–1962, ¶ 60.

{¶ 162} Upon consideration of the totality of the factors, and recalling that the trial court's judgment may rest upon witness demeanor and nuances that do not translate to the written record, we are unable to find that the trial court's best interest determination is against the manifest weight of the evidence.

**d. R.C. 2151.414(D)(2)**

{¶ 163} Because the evidence adequately supports a finding under R.C. 2151.414(D)(1) that permanent custody is in the children's best interest, any further finding under R.C. 2151.414(D)(2) is superfluous. Consequently, any error would be harmless error that we must disregard. *See* R.C. 2501.02 (stating that appellate courts review for prejudicial error); Civ.R. 61 (stating that courts "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties"); App.R. 12(B) (explaining that reviewing court may reverse

trial court's judgment if it finds prejudicial error). We therefore do not address any findings that the trial court made under R.C. 2151.414(D)(2).

**D. Case Plan Compliance**

{¶ 164} The parents assert that they substantially complied with the case plan, and, thus, that the children should be returned to them. However, a parent's case plan compliance, while it may be relevant to a best interest analysis, does not automatically override a trial court's decision regarding what is in a child's best interests. *In re N.L.*, 9th Dist. Summit No. 27784, 2015–Ohio–4165, ¶ 35 (stating that "substantial compliance with a case plan, in and of itself, does not establish that a grant of permanent custody to an agency is erroneous"); *In re S.C.*, 8th Dist. Cuyahoga No. 102349, 2015–Ohio–2280, ¶ 40 ("Compliance with a case plan is not, in and of itself, dispositive of the issue of reunification."). As we have previously recognized, "[s]ubstantial compliance with a case plan is not necessarily dispositive on the issue of reunification and does not preclude a grant of permanent custody to a children's services agency." *W.C.J., supra*, at ¶ 46, citing *In re C.C.*, 187 Ohio App.3d 365, 2010–Ohio–780, 932 N.E.2d 360, ¶ 25 (8th Dist.), and *In re West*, 4th Dist. Athens No. 03CA20, 2003–Ohio–6299, ¶ 19. "Indeed, because the trial court's primary focus in a permanent custody proceeding is the child's best interest, 'it is entirely possible that a parent could complete all of his/her case plan goals and the trial court still appropriately terminate his/her parental rights.' " *Id.*, quoting *In re Gomer*, 3d Dist. Wyandot Nos. 16–03–19, 16–03–20, and 16–03–21, 2004–Ohio–1723, ¶ 36. Furthermore, simply because the parents complied with all of the services the case plan required does not mean that they fulfilled the ultimate goal to establish a safe, stable, and structured environment free from conflict and alcohol abuse, and an environment where the children's needs consistently would be met. Consequently, we disagree with the parents that their

compliance with the case plan requirements means that the court could not grant the agency permanent custody of the children.

{¶ 165} Accordingly, based upon the foregoing reasons, we overrule the father's first assignment of error and the mother's second assignment of error.

**E. Reasonable Efforts**

{¶ 166} The parents additionally argue that the trial court improperly granted the agency permanent custody without first finding that the agency used reasonable efforts. They further assert that the evidence does not show that the agency used reasonable efforts to reunify the family.

{¶ 167} R.C. 2151.419(A)(1) requires a trial court to determine whether a children services agency "made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home." However, this statute applies only at "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children * * *." *C.F.*, *supra*, at ¶ 41; *accord C.B.C.*, *supra*, at ¶ 72. Thus, " '[b]y its plain terms, the statute does not apply to motions for permanent custody brought pursuant to R.C. 2151.413, or to hearings held on such motions pursuant to R.C. 2151.414.' " *C.F.* at ¶ 41, quoting *In re A.C.*, 12th Dist. Clermont No. CA2004-05-041, 2004-Ohio-5531, ¶ 30. Nonetheless, "[t]his does not mean that the agency is relieved of the duty to make reasonable efforts" before seeking permanent custody. *Id.* at ¶ 42. Instead, at prior "stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification." *Id.* Additionally, "[if] the agency has not

established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time." *Id.* at ¶ 43.

{¶ 168} The parents' appeals do not originate from one of the types of hearings specifically listed in R.C. 2151.419(A): "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children." Therefore, the agency was not required to prove at the permanent custody hearing that it used reasonable efforts to reunify the family, unless it had not previously done so. Here, the record reflects that the trial court made a reasonable efforts finding by entry dated July 17, 2014, prior to the filing of the motion for permanent custody. Thus, the court did not need to address reasonable efforts at the permanent custody hearing.

{¶ 169} To the extent the parents argue that the trial court erred by failing to enter specific factual findings to support its reasonable efforts determination,[9] we believe that any error would be harmless error that we must disregard. *See C.B.C.*, *supra*, at ¶ 78, citing R.C. 2501.02; Civ.R. 61; App.R. 12(B); *In re Keaton*, 4th Dist. Ross No. 04CA2785, 2004–Ohio–6210, ¶ 72 (stating that trial court's failure to make reasonable efforts finding "may be harmless error if it is apparent from the record that the agency used reasonable efforts").

{¶ 170} We also recognize that both parents claim that R.C. 2151.413(D)(3)(b) requires the agency to engage in " 'reasonable case planning and diligent efforts * * * to assist the parents' to remedy the initial problems" before a court may grant an R.C. 2151.413(D) permanent custody motion. The parents cite our *C.B.C.* decision at ¶ 72, and *In re Lawson/Reid*

[9] R.C. 2151.419(B)(1) states:

> A court that is required to make a determination as described in division (A)(1) or (2) of this section shall issue written findings of fact setting forth the reasons supporting its determination. If the court makes a written determination under division (A)(1) of this section, it shall briefly describe in the findings of fact the relevant services provided by the agency to the family of the child and why those services did not prevent the removal of the child from the child's home or enable the child to return safely home.

*Children*, 2d Dist. Clark No. 96-CA-0010, 1997 WL 189379 (Apr. 18, 1997), as support. Nowhere in our *C.B.C.* decision have we been able to locate a reference to R.C. 2151.413(D)(3)(b) or a statement that a court must find that the children cannot be placed with the parents "notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents" to remedy the initial problems before it may grant an R.C. 2151.413(D) permanent custody motion. Instead, the language the parents cite, "notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents," appears in R.C. 2151.414(E)(1), not in R.C. 2151.413(D)(3)(b) or 2151.419. Additionally, *C.B.C.* at ¶ 72 does not support the parents' proposition. Rather, that paragraph reads:

> R.C. 2151.419(A)(1) requires a trial court to determine whether a children services agency "made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home." However, this statute applies only at "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children." *C.F.* at ¶ 41. Thus, " '[b]y its plain terms, the statute does not apply to motions for permanent custody brought pursuant to R.C. 2151.413, or to hearings held on such motions pursuant to R.C. 2151.414." *Id.* But, "[t]his does not mean that the agency is relieved of the duty to make reasonable efforts" before seeking permanent custody. *Id.* at ¶ 42. Instead, at prior "stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification." *Id.* And "[if] the agency has not established that reasonable efforts have been made prior

> to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time." *Id.* at ¶ 43.

{¶ 171} We also reviewed the second case the parents cite, *In re Lawson/Reid*, and again could not locate the proposition which the parents cite. Instead, the *Lawson/Reid* court determined that a reasonable efforts finding is a "judicially engrafted one." *Id.* at *8.

{¶ 172} Furthermore, the current version of R.C. 2151.413(D)(3)(b) reads:

> (3) An agency shall not file a motion for permanent custody under division (D)(1) or (2) of this section if any of the following apply:
>
> * * *
>
> (b) If reasonable efforts to return the child to the child's home are required under section 2151.419 of the Revised Code, the agency has not provided the services required by the case plan to the parents of the child or the child to ensure the safe return of the child to the child's home.

{¶ 173} "Under R.C. 2151.413(D)(3)(b), an agency may not file for permanent custody under R.C. 2151.413(D)—the '12 months out of 22' rule—'[i]f reasonable efforts to return the child to the child's home are required under section 2151.419' and the agency has not provided the services required by the case plan." *C.F., supra,* at ¶ 29. Some courts have held that "the inquiry under R.C. 2151.413(D)(3)(b) is whether the agency provided the services specified in the case plan," and not whether the agency used "reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home" as specified in R.C. 2151.419. *In re J.H.,* 12th Dist. Clinton No. CA2015–07–014 and CA2015-07-015, 2016–Ohio–640, ¶ 34; accord *In re C.C.*, 3d Dist. Marion Nos. 9-16-07 and 9-16-08, 2016-Ohio-6981, ¶16. Because the

trial court entered a reasonable efforts finding before placing the children in the agency's permanent custody, we do not find it necessary to determine whether R.C. 2151.413(D)(3)(b) implicitly requires a trial court to find that the agency used reasonable efforts, as contemplated in R.C. 2151.419, to reunify the family before placing a child in the agency's permanent custody.

{¶ 174} Consequently, we disagree with the parents that the trial court failed to enter a reasonable efforts finding before granting the agency permanent custody of the children.

{¶ 175} The parents next argue that the record fails to demonstrate that the agency, in fact, used reasonable efforts to reunify the family. We question whether this is a proper issue to consider in an appeal from an R.C. 2151.413 permanent custody motion when a prior reasonable efforts finding had been made at an "adjudicatory, emergency, detention, [or a] temporary-disposition hearings, [or] dispositional hearings for abused, neglected, or dependent children." Nevertheless, given the importance of the parental rights involved, we will consider the matter.

{¶ 176} We discussed the meaning of "reasonable efforts" in *C.B.C.*, *supra*, at ¶ 76, as follows:

> In general, "reasonable efforts" mean "'[t]he state's efforts to resolve the threat to the child before removing the child or to permit the child to return home after the threat is removed.'" *C.F.* at ¶ 28, quoting Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U.Pub.Int.L.J. 259, 260 (2003). " 'Reasonable efforts means that a children's services agency must act diligently and provide services appropriate to the family's need to prevent the child's removal or as a predicate to reunification.' " *In re H.M.K.*, 3d Dist. Wyandot Nos. 16–12–15 and 16–12–16, 2013–Ohio–4317, ¶ 95, quoting *In re D.A.*, 6th Dist. Lucas No. L–11–1197,

2012–Ohio–1104, ¶ 30. In other words, the agency must use reasonable efforts to help remove the obstacles preventing family reunification. Bean, *Reasonable Efforts: What State Courts Think*, 36 U. Tol. L.Rev. 321, 366 (2005), quoting *In re Child of E.V.*, 634 N.W.2d 443, 447 (Minn.Ct.App.2001), and *In re K.L.P.*, No. C1–99–1235, 2000 WL 343203, at *5 (Minn.Ct.App. Apr. 4, 2000) (explaining that the agency must address what is "necessary to correct the conditions that led to the out-of-home placement" and must "provide those services that would assist in alleviating the conditions leading to the determination of dependency"). However, " '[r]easonable efforts' does not mean all available efforts. Otherwise, there would always be an argument that one more additional service, no matter how remote, may have made reunification possible." *In re Lewis*, 4th Dist. Athens No. 03CA12, 2003–Ohio–5262, ¶ 16. Furthermore, the meaning of "reasonable efforts" "will obviously vary with the circumstances of each individual case." *Suter v. Artist M.*, 503 U.S. 347, 360, 112 S.Ct. 1360, 118 L.Ed.2d 1 (1992). Additionally, "[i]n determining whether reasonable efforts were made, the child's health and safety shall be paramount." R.C. 2151.419(A)(1).

{¶ 177} In the case at bar, we do not believe that the trial court's reasonable-efforts finding is against the manifest weight of the evidence.[10] The record shows that the agency made a clear and concerted effort to help the parents remove the issues preventing the children from returning to the home. Over the course of nearly two years, the agency engaged in case planning services, assisted with individual and family counseling, and permitted the parents to have

[10] As we did in *C.B.C.*, we assume, without deciding, that the manifest-weight-of-the evidence standard applies to a reasonable-efforts determination. *See id.* at ¶ 75. However, we recognize that other courts have applied an abuse-of-discretion standard. *E.g., In re C.C.* at ¶ 14.

overnight, unsupervised visits with the children. Agency caseworkers maintained consistent contact with the parents and monitored the parents' progress. Simply because the agency did not ultimately determine to place the children in the home on a trial basis or to increase visitation does not mean that the agency failed to use reasonable efforts. Instead, the agency cited rational reasons (the Craigslist, Inc. advertisement, the showering/bathing with M.S.) for discontinuing unsupervised, overnight visits. As Caseworker Butts stated during the permanent custody hearing, the Craigslist, Inc. advertisement "was enough," by itself, for her to believe that unsupervised visits should terminate. Thus, it was not the agency's lack of reasonable efforts, but the parents' continued inappropriate conduct that resulted in the curtailing of visits and the agency's decision not to seek reunification.

{¶ 178} The parents nevertheless claim that the agency arbitrarily terminated unsupervised visits based upon unsubstantiated allegations and point to Butts's testimony that she could not "speak to whether [the concerns were] substantiated." However, the full context of Butts's testimony illustrates that she did not know whether her concern that the mother may have fabricated evidence was substantiated, and not that all of her concerns were unsubstantiated. The mother's counsel and Butts engaged in the following colloquy:

> Attorney Brooks: * * * * Does the agency have any proof the [the mother] fabricated evidence?
>
> Ms. Butts: That was an investigation conducted by Jackson Police Department.
>
> Attorney Brooks: Does the police department, to your knowledge, have any evidence or proof that she fabricated any evidence in that trial?

Ms. Butts: No, as was presented here in the courtroom, there was a letter and somebody did testify, but * * * I'm not really sure what the result of that all was; it was very confusing.

Attorney Brooks: Ok, but that's one of the compounding, I guess, your terms, compounding pieces of this puzzle. Did that have any impact on the children whatsoever?

Ms. Butts: Again, I think it [sic] speak to judgment of people who are going to be parenting and their ability to make decisions about what they are going to involve themselves in and * * *

Attorney Brooks: So if someone contacted me and said I have information about this trial and possibly some sort of confession or information on the perpetrator, I mean, is someone in [the mother]'s position not supposed to report that?

Ms. Butts: Again, the details are very unclear to me so I don't know that that's exactly what happened.

Attorney Brooks: But it's unclear to me then how that goes to their ability to parent so it's fair to say that there was nothing to substantiate that [the mother] was fabricating evidence in that trial, correct? Based on everything we've heard, all the witnesses that have testified that you've seen, there's nothing to substantiate that factor?

Ms. Butts: I don't know if I can speak to whether that's substantiated or not because I'm not a police officer involved in that investigation.

Attorney Brooks: Ok…

Ms. Butts: It was concerning however as a child welfare worker when we have to make decisions about parents.

Attorney Brooks: It's concerning that there's no evidence to say that [the mother] did anything wrong?

Ms. Butts: I don't know if there's evidence to say that or not.

Attorney Brooks: Can you point to evidence, can you point to anything that you heard the police officers testify about or any of the information that's been presented to say [the mother] did anything wrong in that scenario?

Ms. Butts: I believe the officer had a hard time being able to discern either way. That was what I got out of it.

Thus, contrary to the parents' assertions, Butts did not indicate that all of the concerns that led her to believe unsupervised visits should be terminated were unsubstantiated. Instead, Butts related that the mother's story concerning the Workman-Dunn situation was confusing and that she did not know whether the mother fabricated evidence.

{¶ 179} Consequently, we disagree with the parents' arguments that the agency failed to use reasonable efforts. Accordingly, based upon the foregoing reasons, we overrule the father's second assignment of error and the mother's first and third assignments of error.

## IV. Conclusion

{¶ 180} Having overruled all of the parents' assignments of error, we affirm the trial court's judgment.

JUDGMENT AFFIRMED.

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED. Appellants shall pay the costs herein taxed, jointly and severally.

The Court finds there were reasonable grounds for this appeal.

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

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

McFarland, J.: Concurs in Judgment and Opinion.
Harsha, J.: Concurs in Judgment Only.

For the Court

By:_____
Marie Hoover, 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.