[Cite as *In re H.M.B.*, 2016-Ohio-5702.]

STATE OF OHIO, BELMONT COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN RE:	)	
	)	
H.M.B.,	)	
	)	CASE NO. 16 BE 0004
ALLEGED NEGLECTED CHILD.	)	
	)	OPINION
	)	
	)	
	)	
CHARACTER OF PROCEEDINGS:		Civil Appeal from Court of Common Pleas, Juvenile Division of Belmont County, Ohio Case No. 14 JC 719
JUDGMENT:		Affirmed

JUDGES:

Hon. Gene Donofrio
Hon. Mary DeGenaro
Hon. Carol Ann Robb

Dated: August 29, 2016

APPEARANCES:

For Appellant (father)	Attorney Mary G. Warlop 116 Cleveland Ave., NW, Suite 500 Canton, Ohio 44702
For Appellant (mother)	Attorney Gregory J. Wysin 2037 Brady Lake Road Kent, Ohio 44241
For Appellee Belmont County Dept. of Job and Family Services	Attorney Rhonda L. Greenwood Assistant Prosecutor 147 A West Main Street St. Clairsville, Ohio 43950
For Guardian Ad Litem	Attorney Brent A. Clyburn 604 Sixth Street Moundsville, WV 26041

[Cite as *In re H.M.B.*, 2016-Ohio-5702.]
DONOFRIO, P.J.

{¶1} Appellants, Kimberly B. and Timothy S., appeal from a Belmont County Juvenile Court judgment granting permanent custody of their child to appellee, the Belmont County Department of Job and Family Services.

{¶2} H.B. was born on April 9, 2014. Appellant mother and appellant father live together but are not married. The hospital made a referral to appellee Belmont County Department of Job and Family Services (the agency) because H.B.'s parents were not attending to her after her birth.

{¶3} In July 2014, the agency received concerns from the Help Me Grow staff who was working with the family that H.B had only gained two pounds since her birth. Help Me Grow also raised safety concerns regarding unsafe sleeping arrangements for H.B. and curdled milk in her bottles.

{¶4} In August 2014, the family was accepted for additional in-home services as more safety and cleanliness issues arose.

{¶5} On November 17, 2014, caseworkers went to the family's home for a visit at 4:00 p.m. They found both parents in bed, the house dark, and H.B. in a pack-and-play covered with two heavy blankets. The caseworkers had to step over clutter to get to H.B. The caseworkers saw electrical cords next to the pack-and-play. H.B. was soaked through her diaper with feces and urine. The house was dirty and cluttered with dirty clothing, dirty dishes, and dirty diapers. The basement was piled to the ceiling with dirty clothes and the wiring posed a safety concern. The agency took temporary emergency care of H.B. the next day.

{¶6} On November 19, 2014, the agency filed a complaint alleging that H.B. was a dependent child based on the living conditions at the home and the parents' unwillingness to follow instructions from the Help Me Grow staff regarding issues such as sleeping conditions, developmental exercises, and safety. The trial court granted the agency temporary emergency shelter care that day and set the matter for a hearing. It also appointed a guardian ad litem (GAL) for H.B.

{¶7} The trial court held a hearing on the complaint on February 11, 2015. Both parents stipulated to the allegations in the complaint. The court found H.B to be dependent. Father agreed to temporary custody to the agency. Mother did not

agree. The court heard testimony and determined that temporary custody to the agency was in H.B.'s best interest.

{¶8} A case plan was put in place for the parents that included decluttering their home and making it safe for an infant, attending parenting classes, and psychological evaluations.

{¶9} The agency filed a motion for permanent custody on October 2, 2015. The agency alleged that the parents' home remained in deplorable condition and the parents could not understand the safety concerns pointed out to them.

{¶10} The trial court held a hearing on the motion on December 10, 2015, where it heard testimony from numerous witnesses including counselors, the caseworker, the GAL, the social service aid, and the parents. In its judgment entry, the trial court found by clear and convincing evidence that the parties had failed continuously for a period of six months or more to substantially remedy the conditions that caused H.B. to be removed from the home despite reasonable case planning and diligent efforts by the agency to assist the parents in remedying the problems. The court found by clear and convincing evidence that it was in H.B.'s best interest that it grant her permanent custody to the agency.

{¶11} The parents each filed a timely notice of appeal on February 22, and 23, 2016. Father now raises three assignments of error. Mother raises two assignments of error.

{¶12} A parent's right to raise his or her children is an essential and basic civil right. *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990), citing *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). "Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.' *In re Smith* (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45, 54." *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997). However, this right is not absolute. *In re Sims*, 7th Dist. No. 02-JE-2, 2002-Ohio-3458, ¶ 23. In order to protect a child's welfare, the state may terminate parents' rights as a last resort. *Id*.

{¶13} We review a trial court's decision terminating parental rights and

responsibilities for an abuse of discretion. *Sims*, 7th Dist. No. 02-JE-2, ¶ 36. Abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude was arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶14} Father's first assignment of error states:

> THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY TO THE BELMONT COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES (BCDJFS) AS BCDJFS FAILED TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT GROUNDS EXISTED FOR PERMANENT CUSTODY AND SUCH DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶15} Father alleges the trial court failed to make the necessary findings required by R.C. 2151.414(B)(1) before granting permanent custody. Moreover, father argues the evidence presented at the hearing does not support a finding that H.B. cannot be placed with her parents within a reasonable time or should not be placed with her parents. He asserts he and mother complied with all aspects of their case plan except remedying the home conditions. He points out they attended parenting classes and psychological evaluations and notes the agency did not refer them to any further classes or counseling. He asserts H.B could have been returned to them within a reasonable time.

{¶16} Pursuant to R.C. 2151.414(B)(1):

> [T]he court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:
>
> (a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or

> private child placing agencies for twelve or more months of a consecutive twenty-two-month period * * * 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, * * *.
>
> (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.

{¶17} Clear and convincing evidence is evidence that produces in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established. *In re Adoption of Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985).

{¶18} In this case, the trial court found by clear and convincing evidence that it was in H.B.'s best interest that it grant permanent custody to the agency. Thus, it made the first required statutory finding.

{¶19} But it is not as clear whether the court made the second required finding. The court did not specifically make a finding that one of the R.C. 2151.414(B)(1) conditions applied here.

{¶20} H.B. was not abandoned, orphaned, or in the agency's custody for 12 or more months of a 22-month period. Thus, R.C. 2151.414(B)(1)(b)(c) and (d) do not apply. Likewise, there was no evidence regarding three separate occasions of abuse, neglect, or dependency. Therefore, R.C. 2151.414(B)(1)(e) does not apply. This leaves R.C. 2151.414(B)(1)(a) as the only possibility in this case, that being the child has not been in the agency's custody for 12 months of a consecutive 22-month

period and she cannot be placed with either of her parents within a reasonable time or should not be placed with her parents.

{¶21} Pursuant to R.C. 2151.414(E):

> In determining * * * whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. *If the court determines, by clear and convincing evidence * * * that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent*:
>
> (1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(Emphasis added.) The statute then lists 14 other possible findings that would require the court to enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶22} In this case, the trial court made a finding by clear and convincing evidence that:

> the parents have failed continuously and repeatedly for a period of six

> (6) months or more to substantially remedy the conditions which caused the child to initially be placed outside the home, despite reasonable case planning and diligent efforts by the agency to assist the parents in remedying these problems and considering the parents utilization of services and resources. Reasonable efforts taken include: visitation, transportation, counseling and parenting classes.

(Jan. 25, 2016 Judgment Entry). Thus, the court made the finding set out in R.C. 2151.414(E)(1). And pursuant to R.C. 2151.414(E), if the court determines by clear and convincing evidence that this finding exists as to each parent, then the court *shall* enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶23} The court failed to make the finding expressly that H.B. cannot be placed with either parent within a reasonable time or should not be placed with either parent. Nonetheless, it made the evidentiary finding that necessitates that particular finding/conclusion. Once the court determined the evidence was clear and convincing that the parents failed continuously and repeatedly to substantially remedy the condition that caused H.B. to be placed outside the home despite reasonable case planning and diligent efforts by the agency to assist them, a finding that H.B. cannot be placed with either parent within a reasonable time or should not be placed with either parent was mandatory. The court did not have the discretion to conclude otherwise. Therefore, despite the fact that the court failed to include the finding in its judgment entry, this is not reversible error because the court made a finding that the parents failed continuously and repeatedly to substantially remedy the condition that caused H.B. to be placed outside the home despite reasonable case planning and diligent efforts by the agency to assist them and this finding automatically requires a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.

{¶24} Turning to father's second argument in this assignment of error, the evidence supports the conclusion that H.B. cannot be placed with her parents within

a reasonable time or should not be placed with her parents.

{¶25} The agency removed H.B. from her home on November 18, 2014, due in large part to the deplorable condition of the home and the parents' apparent lack of attention to H.B. and her needs. The agency made clear to the parents that in order to have H.B. returned to their custody, among other things, they had to remedy the condition of their home. The court held the permanent custody hearing over a year later and most of the testimony indicated that the parents were either unable or unwilling to make the necessary changes to their home.

{¶26} Caseworker Sue Helt testified that she saw "very little" improvement in the home's condition during this case. (Tr. 91). She described the home as "deplorable." (Tr. 91). She took photographs in October 2015, that depicted trash and clutter about the home. (State Ex. 4). Helt stated that she discussed this problem with the parents at every home visit, which occurred at least once if not twice a month, and pointed out that it was a safety concern. (Tr. 92). Yet the parents did not remedy the condition. The agency even provided the parents with dumpsters to dispose of their garbage and dressers to put away their clothes, but the condition of the house did not improve. (Tr. 104, 203).

{¶27} Helt's testimony was corroborated by GAL Brent Clyburn and social service worker Judy Beckett. The GAL visited the home the day before the hearing, December 9, 2015, and testified the home was actually in worse condition than the photographs from October depicted. (Tr. 131-132, 156). He noted dog urine and feces in the home among the other clutter. (Tr. 134). And Beckett discussed a leaky roof, black mold, and electrical problems. (Tr. 196). Beckett stated that over the past year, she had not seen any progress on the condition of the house. (Tr. 217).

{¶28} Additionally, the evidence demonstrated that over the course of a year, the agency offered the parents 100 visits with H.B. (Tr. 191-192). Of those 100 visits, father attended 55. (Tr. 191). Mother attended 45 of the visits with him. (Tr. 191). Thus, the parents only exercised approximately one-half of the visits offered to them. Moreover, there were times where neither parent visited for an extended duration of time.

{¶29} These circumstances demonstrate that the parents have been unable to remedy major problems in this case, that being the condition of their home and their inattentiveness to H.B. The evidence is clear and convincing that the parents failed continuously and repeatedly to substantially remedy the condition that caused H.B. to be placed outside the home despite reasonable case planning and diligent efforts by the agency to assist. Thus, the evidence is likewise clear and convincing that H.B. cannot be placed with her parents within a reasonable time or should not be placed with her parents.

{¶30} Accordingly, father's first assignment of error is without merit.

{¶31} Father's second assignment of error states:

> THE TRIAL COURT ERRED IN GRANTING PERMANENT CUSTODY TO THE BELMONT COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES (BCDJFS) AS BCDJFS FAILED TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT IT IS IN THE BEST INTERESTS OF THE MINOR CHILD TO GRANT PERMANENT CUSTODY AND SUCH DECISION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶32} Father asserts here the trial court failed to make any findings as to the best interest factors. He contends the court was required to, and failed to, weigh each of the statutory best interest factors. And father states that a trial court may not base its decision on permanent custody solely on the limited cognitive abilities of the parents. Citing, *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, 862 N.E.2d 829, syllabus. He asserts no harm would have come in this case by granting him additional time to complete any additional services needed.

{¶33} In determining whether it is in the child's best interest to grant custody to the agency, the court shall consider:

> (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home

providers, and any other person who may significantly affect the child;

(b) The wishes of the child, * * * with due regard for the maturity of the child;

(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, * * *;

(d) 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;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child [regarding certain crimes, withholding food or medical treatment, drug and alcohol abuse, abandonment, and having previously had parental rights terminated].

R.C. 2151.414(D)(1).

{¶34} In its judgment entry, the court discussed the evidence noting the following.

{¶35} The counselor who tested the parents testified that they both scored a 54 on an IQ test, which indicated low mental ability and mild to moderate retardation. These test results were verified by Dr. Victor Cerra. The counselor who provided the parenting classes testified that both parents completed the classes. But the counselor also testified that the results of a test after the parents completed the classes actually showed worse results than a pre-class test and concluded that even though the parents attended the classes, they did not obtain helpful information. The caseworker testified there was very little improvement in the parents' housing issues and safety issues. She also testified the parents only had limited visits with H.B. The caseworker testified that since H.B. has been in foster care, her health concerns have been eliminated. And she opined permanent custody was in H.B.'s best interest. The GAL described the parents' home as a "wreck" and submitted pictures

to demonstrate. He opined the parents' concerns were not focused on H.B. and indicated that father wanted less visitation than the agency scheduled. An agency worker testified that father only attended 55 of 100 possible visits while mother only attended 45 of 100 possible visits with H.B. She also testified that during visits, the parties appeared bored and could not stay focused.

{¶36} The trial court stated that the condition of the parents' home somewhat improved during the course of the case. It found the parents' sporadic visits disturbing. It also found the questionable understanding of the parenting classes and the parties' low IQ's disturbing. The court was permitted to consider the parties' IQ's as one factor, it just could not base its entire permanent custody decision on their IQ's. *In re N.L.*, 9th Dist. No. 27784, 2015-Ohio-4165; *In re Cunningham Children*, 3d Dist. No. 13-08-27, 2008-Ohio-5938. Based on the above evidence, the trial court found permanent custody was in H.B.'s best interest.

{¶37} The record must demonstrate that the trial court considered the statutory best interest factors. *In re Joshua C.*, 6th Dist. No. L-06-1350, 2007-Ohio-3953, ¶ 80; *In re Turner*, 5th Dist. No. 2006-CA-45, 2006-Ohio-6793, ¶ 34; *In re Hershberger & Smith*, 3d Dist. No. 1-04-55, 2005-Ohio-429, ¶ 28.

{¶38} In this case, there is not a specific indication in the court's judgment entry that it considered the statutory factors. But the court set out a summary of the evidence and concluded it was in H.B.'s best interest to grant the motion for permanent custody.

{¶39} While the court did not specifically address the best interest factors, its findings indicated that it considered the applicable factors. The court discussed the lack of interaction between the parents and H.B. at the visits and the parties' poor attendance at the visits. The court also discussed how there was little improvement in the parties' housing situation, the parties' questionable understanding of the parenting classes, and the parties' low IQ. And the court noted that H.B. had been in the agency's care for six months or more. These discussions indicate that the court considered H.B.'s interaction with her parents, H.B.'s custodial history, and how H.B. could not have a legally secure permanent placement without a grant of custody to

the agency. There was no evidence as to H.B.'s wishes due to her young age. Likewise, there was no evidence that any of the factors in R.C. 2151.414(E)(7) to (11) applied to the parents. Thus, there was nothing for the court to consider regarding these factors.

{¶40} The evidence, as follows, supports a finding that permanent custody to the agency is in H.B.'s best interest.

{¶41} Nancy Georges is the counselor who administered psychological and IQ tests to the parents. As to mother, Georges testified that mother did not seem to understand her circumstances. (Tr. 12). She stated that mother scored a 54 on the IQ test, which indicates low mental ability and low intellectual functioning. (Tr. 14). She went on to explain that someone with low mental ability would require assistance in social, occupational, and financial domains of life. (Tr. 15). She stated that people with this score usually need family support, community support, and government assistance. (Tr. 15). She also testified that mother reads at a kindergarten level. (Tr. 17). Georges indicated that mother may have problems caring for a child. (Tr. 19). And she indicated mother may need community-based help to care for herself. (Tr. 19). As to father, Georges testified that he too scored a 54 on the IQ test. (Tr. 21). She opined she had concerns about whether father could care for a child and himself. (Tr. 22). Georges also stated she recommended further evaluation to rule out mental illness. (Tr. 40).

{¶42} Psychologist Victor Cerra is Georges' supervisor. He testified that he reviewed Georges' reports and concurred with her results. (Tr. 52-53).

{¶43} Sarah Day is the counselor who provided the parenting classes the parents attended. Day testified that when she first met with the parents she had some concerns as to whether they would be able to digest the material. (Tr. 64-65). She stated that both parents completed the required 12 classes. (Tr. 65). As to father, Day testified that he struggled to pay attention and had his phone out a lot during the classes either playing a game or watching a video. (Tr. 71). She also stated father was not able to relate well to group discussions. (Tr. 71). And she stated mother gave very brief responses to questions. (Tr. 84). Additionally, Day reported that the

parents' post-class test showed worse results than their pre-class test. (Tr. 73-74).

{¶44} Sue Helt is the agency caseworker for this case. She provided the history of the agency's involvement with H.B. Helt testified that the agency's initial concerns began when H.B. was an infant. (Tr. 88). H.B. was receiving services from Help Me Grow and was still not gaining weight, her parents were not doing developmental exercises with her, and the condition and safety of the home were an issue. (Tr. 88). Helt testified that the agency developed a case plan that included maintaining a safe and clean home, parenting classes, psychological evaluations, and visitation. (Tr. 88-89). She also testified she met with the parents and held family team meetings every 90 days. (Tr. 89). She also met with the parents monthly or bi-monthly at their home. (Tr. 90). Helt testified that over the course of this case she saw "very little" improvement. (Tr. 91). She described the home as "deplorable" and noted sometimes she had to kick trash out of her way to walk through the home. (Tr. 91-92). Helt stated that she discussed this problem with the parents at every home visit and pointed out that it was a safety concern. (Tr. 92). She stated mother would cross her arms and shut down and father could not stay focused. (Tr. 92-93). Helt stated that every month she would tell the parents what needed to happen with the home in order to be reunified with H.B. (Tr. 93).

{¶45} Helt testified regarding several photographs she took in October 2015. (Tr. 94; State Ex. 4). The photographs depict various rooms in the house. (Tr. 95). She stated that the parents do not have an actual bedroom, but instead "live" in the first floor. (Tr. 97). The pictures depict trash, clothes, and unidentifiable clutter throughout the house. (State Ex. 4). Helt testified the home looked like this throughout this case. (Tr. 98). Helt testified that the agency provided the parents with two dumpsters to use. (Tr. 104). But the photographs she submitted depicted the mess that remained even after the parents used the dumpsters. (Tr. 104). When asked about the condition of the home, father would reply that it was a work in progress or the parents would blame each other. (Tr. 125).

{¶46} Helt testified that in the summer, the parents got a dog. (Tr. 109). A few months later, the dog died. (Tr. 109). The parents stated they did not know what

happened to it. (Tr. 109). The parents also got kittens and reported that one of them died from fleas. (Tr. 109). Helt advised the parents that having animals might not be a good idea. (Tr. 126-127). But they then got another dog. (Tr. 127).

{¶47} Helt did testify that the parents complied with some aspects of the case plan including providing information and cooperating with Help Me Grow and the agency, completing parenting classes and psychological evaluations, and signing releases. (Tr. 161-162). The remaining problem continued to be the condition of the home. (Tr. 163).

{¶48} Helt also testified about H.B. She stated H.B. has been in foster care for over a year and is now developmentally on target and current on all doctor's visits. (Tr. 110). She opined that it was in H.B.'s best interest that the court grant permanent custody to the agency. (Tr. 114). She based this opinion on her concerns for H.B.'s safety, basic needs, the parents' lack of parenting knowledge and their inability to raise her and keep her safe. (Tr. 114).

{¶49} The GAL testified next. He stated that initially he thought the parents could improve the house and noted that father had made some repairs to the floor and ceiling. (Tr. 133). The GAL stated that his last meeting with the parents was just the day before the hearing. (Tr. 131). He testified that the home was actually in worse condition than the photographs from October depicted. (Tr. 132, 156). He stated that dirty laundry is piled all over despite his repeated instructions to wash it and put it away. (Tr. 132-133). He testified that the dog had gone to the bathroom all over the upstairs rooms, which were already full of clutter. (Tr. 134). He also testified that he believed the parents had hoarding tendencies. (Tr. 135). The GAL stated that when he went to the house unannounced, mother would be asleep. (Tr. 136). He also raised concerns with the parents' recent involvement with the volunteer fire department. (Tr. 136-137). When asked what they would do if there was a fire for them to respond to and they had H.B. with them, the parents stated they would take her to the fire with them. (Tr. 137).

{¶50} The GAL also raised concerns that the parents' house had a $40,000 mortgage and delinquent taxes that they were unaware of. (Tr. 141). He stated that

at a family team meeting, the parents were told to apply for other housing and were provided with an application but they did not complete it. (Tr. 141). An additional concern raised by the GAL was that the parents asked to decrease the number of visits with H.B. (Tr. 151). Although, the GAL stated that father interacted appropriately with H.B. at the visits he observed. (Tr. 151). The GAL opined that permanent custody to the agency was in H.B.'s best interest. (Tr. 142).

{¶51} Judy Beckett is a social service worker for the agency. She has had continuous contact with the parents throughout this case providing such services as transportation to visits and evaluations and supervising visits. (Tr. 177-178). Beckett testified that during this case, the parents have had 100 visits offered to them. (Tr. 191-192). Of those 100 visits, father attended 55 and mother attended 45. (Tr. 191). During March 2015, mother did not visit at all and father only visited once. (Tr. 184). During May 2015, mother only visited once. (Tr. 185). During July and August 2015, when the agency had scheduled visits on consecutive days, the parent would attend one visit but not the next. (Tr. 187). Father told Beckett it was too hard on H.B. (Tr. 187). During November 2015, the parents only visited once. (Tr. 189). Father said he missed the visits because he was having chest pains and mother missed the visits because she hurt her wrist. (Tr. 190-191).

{¶52} As to the quality of the visits, Beckett testified that the parents got bored and could not stay focused. (Tr. 192). She also testified that they had a difficult time interacting with H.B. (Tr. 193). On one occasion, Beckett stated she had to take the parents' phones away from them because they were too preoccupied with them. (Tr. 193-194). On other occasions, Beckett stated that father lies on the floor and mother sits on the couch and they comment that the time goes slowly. (Tr. 228). However, she also testified that father does play with H.B. and H.B. is happy to see father. (Tr. 226).

{¶53} As to housing, Beckett testified the parents' home has many problems such as a leaky roof, black mold, and electrical problems. (Tr. 196). She stated she practically begged them to let her help them get other housing but they would not let her. (Tr. 196). Eventually, she stated, the parents asked for a housing application

but they had not turned it in. (Tr. 197). She also testified that the agency bought the parents dressers so they could put their clothing somewhere. (Tr. 203). Beckett also testified as to the clutter, trash, and safety issues in the house over the course of the case including dog feces in the house, a gasoline can and clothes piled by the furnace, and eating in bed because there was no kitchen table. (Tr. 200, 203, 214, 216). She stated that over the past year, she has not seen any progress on the condition of the house. (Tr. 217).

{¶54} Father and mother both testified too. Father testified that the garbage and clutter in the house is now cleaned up. (Tr. 240). He claimed he cleaned everything up in the two days since Beckett was there. (Tr. 247). Father showed the court six photographs on his cell phone that purported to show the condition of the house after he had cleaned it. (Tr. 248). The court only allowed the father to show the photographs after counsel stated he would print the photos and submit them. (Tr. 248). However, the photos are not contained in the record.

{¶55} As to visitation, father stated that he missed several visits because he was having chest pains and mother missed them because she hurt her wrist. (Tr. 253-254). He stated they missed other visits because it was putting too much strain on H.B.'s body. (Tr. 256). He stated that at the visits he attended, he played with H.B., fed her, and changed her diaper. (Tr. 258).

{¶56} Father opined it would be in H.B.'s best interest to be returned to him and mother. (Tr. 268-269).

{¶57} On cross-examination, father stated they currently have one dog. (Tr. 279). As to the other dog, he stated they woke up one morning and it was dead. (Tr. 280). As to their cats, father stated, "[t]hey disappeared somewhere in the house." (Tr. 280).

{¶58} Mother testified that she has health problems because her iron is dropping and her leg gives out. (Tr. 298-299). She testified that if they got H.B. back they would keep their house neat and clean. (Tr. 300). Mother also testified that she has a three-year-old son who is in his grandmother's custody. (Tr. 308-309). When asked why she missed so many visits, mother stated that she's had iron problems

and sore throats. (Tr. 309). When asked what was in the piles of stuff in her house, she stated she did not know what was in there. (Tr. 315).

{¶59} Given this testimony, clear and convincing evidence supports a finding that granting the permanent custody motion was in H.B.'s best interest.

{¶60} Both the GAL and the caseworker opined it was in H.B.'s best interest for the court to grant permanent custody to the agency. The counselor who provided the parenting classes stated that the parents actually tested lower after completing the parenting classes than before. The counselor who conducted the parents' psychological testing testified that both parents' scores put them in the low mental ability and low intellectual functioning level and indicated they may have difficulty caring for themselves and a child. All witnesses who visited the parents' home testified as to its deplorable condition noting such things as dirty dishes, dirty clothes, black mold, electrical issues, dog urine and feces, and all over clutter. And while the transcript indicates father showed the court a few cell phone photographs that purported to show that he had cleaned the house in one day's time, the photographs are not included in the record. Moreover, at least one dog died in the parents' care and two kittens were "lost" somewhere in the house.

{¶61} As to H.B., the caseworker indicated that H.B. has been in foster care for over a year and is now developmentally on target and current on all doctor's visits. Additionally, the agency provided the parents 100 opportunities to visit H.B. over the course of the year. Father only visited H.B. 55 of those times and mother only accompanied him 45 of those times. The parties gave numerous excuses ranging from a hurt wrist to chest pains to explain their lack of visits.

{¶62} The above evidence clearly and convincingly supports a finding that it was in H.B.'s best interest to grant the permanent custody motion. Accordingly, father's second assignment of error is without merit.

{¶63} Father's third assignment of error and mother's first assignment of error both assert the trial court should have appointed a guardian ad litem for them. Therefore, we will address them together. Father's third assignment of error states:

THE TRIAL COURT ERRED AND/OR ABUSED ITS DISCRETION BY FAILING TO APPOINT A GUARDIAN AD LITEM FOR APPELLANT.

{¶64} Mother's first assignment of error states:

BECAUSE THE APPELLANT SUFFERED PREJUDICE BY NOT BEING APPOINTED A GUARDIAN AD LITEM BY THE TRIAL COURT PURSUANT TO LAW, THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO APPOINT A GUARDIAN AD LITEM TO PROTECT THE BEST INTERESTS OF THE MOTHER AS REQUIRED UNDER RC 2151.281(C) AND JUV.R. 4(B)(3), DESPITE BEING FULLY AWARE IN FEBRUARY OF 2015 THAT THE MOTHER APPEARED TO BE MENTALLY INCOMPETENT.

{¶65} Here, father argues the trial court should have appointed a GAL for him. He asserts the record contains numerous references to his low IQ, lack of cognitive ability, and moderate mental retardation. This evidence, father argues, demonstrates that he appeared mentally incompetent and the trial court should have appointed a GAL for him. He claims that without the assistance of a GAL he had difficulties understanding the nature of the case, assisting his counsel, and making legal decisions.

{¶66} Mother argues the record was replete with evidence that both parents, but her in particular, appeared to be mentally incompetent. Specifically, mother points to evidence such as her IQ score of 54, diagnosis of moderate mental retardation, testimony that she required community-based assistance in nearly every practical and social aspect of life, and testimony that she learned nothing from the parenting classes.

{¶67} Pursuant to R.C. 2151.281(C), in a proceeding concerning an abused, neglected, or dependent child where the parent appears to be mentally incompetent, the court shall appoint a guardian ad litem to protect the parent's interest. *Accord*

Juv.R. 4(B)(3).

{¶68} We review a trial court's decision whether to appoint a guardian ad litem for a parent for abuse of discretion. *In re K.R.*, 11th Dist. No. 2015-T-0008, 2015-Ohio-2819, ¶ 27. First, we must look at whether the parent appeared mentally incompetent during the trial court proceedings. *Id.* Then, if we find that the trial court should have appointed a guardian ad litem, we must consider whether the parent suffered any prejudice by the court's failure to appoint one. *Id.* at ¶ 28.

{¶69} In this case, the testimony was that both parents scored low on their IQ tests and had low mental ability and low intellectual functioning. Nonetheless, the parents used cell phones, participated in volunteer firefighting, and understood their case plans. Additionally, they both testified on their own behalf and appropriately answered the questions posed to them. There was no indication that the court or counsel had any difficulty understanding their answers. Thus, despite their low IQ scores, neither father nor mother appeared mentally incompetent during the court proceedings.

{¶70} Moreover, father and mother each had their own appointed counsel who advocated against the grant of permanent custody. Even when a parent's attorney is appointed solely as counsel and not specifically for the dual purpose of serving as a guardian ad litem, the parent does not suffer prejudice if counsel protects the parent's rights and advocates for reunification in accordance with the parent's wishes. *In re M.T.*, 6th Dist. No. L-09-1197, 2009-Ohio-6674, ¶ 17, citing *In the Matter of A.S.*, 6th Dist. No. L-09-1080, 2009-Ohio-5504, ¶ 28. Other appellate courts have found that the trial court does not abuse its discretion in failing to appoint a GAL for a parent where the parent's counsel represented the parent vigorously and advocated that the trial court deny the permanent custody motion. *In re K.R.*, 11th Dist. No. 2015-T-0008, 2015-Ohio-2819, ¶ 32-33; *In re A.M.*, 4th Dist. No. 08CA862, 2008-Ohio-4835, *In re Amber G.*, 6th Dist. No. L-04-1091, 2004-Ohio-5665. There is no indication of prejudice here where both father's and mother's counsel advocated for reunification in accordance with their wishes.

{¶71} Finally, although the parents argue they would have benefited from the

appointment of guardians ad litem, "a guardian ad litem may not always advocate 'for reunification and may believe the ward's wishes do not align with [the ward's] best interests.'" *In re B.E.*, 4th Dist. No. 13CA26, 2014-Ohio-3178, ¶ 24, quoting *K.J.D.*, 10th Dist. Nos. 12AP-652, 12AP-653, 2013-Ohio-610, ¶ 51. It would be speculation in this case to assume guardians ad litem appointed for father and mother would have recommended the trial court deny the motion for permanent custody.

{¶72} For the above reasons, the trial court did not abuse its discretion in failing to appoint guardians ad litem for father and mother. Accordingly, father's third assignment of error is without merit. Likewise, mother's first assignment of error is without merit.

{¶73} Mother's second assignment of error states:

> THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT FOUND THAT BCDJFS MADE REASONABLE EFFORTS TO ELIMINATE THE CONTINUED REMOVAL OF H.M.B. FROM HER HOME OR MAKE IT POSSIBLE TO RETURN INTO HER MOTHER'S LEGAL CUSTODY PRIOR TO THE FILING OF BCDJFS' MOTION FOR PERMANENT CUSTODY, AS NO TESTIMONY APPEARS ON THE RECORD REGARDING WHETHER THE AGENCY'S EFFORTS TO REUNIFY WERE REASONABLE GIVEN THE MOTHER'S MENTAL LIMITATIONS, AND THE COURT'S FINDINGS OF REASONABLE EFFORTS APPEAR TO HAVE BEEN SPECIFICALLY BASED UPON A PARTY AGENT'S EX PARTE COMMUNICATION WITH THE COURT FOUR DAYS PRIOR TO THE FILING OF THE JOURNAL ENTRY GRANTING PERMANENT CUSTODY.

{¶74} In this assignment of error, mother argues the agency did not make reasonable efforts to return H.B. She argues that her psychological evaluation revealed that she required additional services, which the agency never provided. She further points out that the case plan contains no requirement for counseling nor did the agency refer her to counseling. Mother asserts, therefore, the agency did not

make reasonable efforts to reunify her with H.B.

{¶75} As to the psychological evaluation, Georges stated that she had recommended further evaluation of the parents to rule out mental illness. (Tr. 40). She added that this was not an unusual recommendation. (Tr. 40). But there is no indication in the record that any further evaluations were performed. Nonetheless, the agency did make reasonable efforts to reunify H.B. with her parents.

{¶76} Helt testified that the agency developed a case plan that included maintaining a safe and clean home, parenting classes, psychological evaluations, and visitation. (Tr. 88-89). The safe and clean home was the major obstacle in this case. Helt testified that she brought this issue up to the parents at the monthly or bi-monthly visits. (Tr. 90, 92). She also testified that in an effort to aid the parents with this goal, the agency provided them with two dumpsters to clean out their house. (Tr. 104). And Beckett stated the agency provided them with dressers so they could clean up their clothes. (Tr. 203). Beckett and the GAL also urged the parents to apply for alternative housing and Beckett even brought them an application. (Tr. 141, 193). Helt testified that every month she would tell the parents what needed to happen with the home to be reunified with H.B. (Tr. 93). Thus, with this aspect of the case plan, the agency tried to aid the parents in maintaining a safe and clean house and reminded them what needed to be done. But the parents did not respond. Additionally, the agency provided the parents with 100 opportunities to visit with H.B. And they provided the transportation to all of the visits they attended. Moreover, the caseworker and GAL met with the parents on a regular basis for family team meetings where they discussed what the parents needed to do to regain custody of H.B. Thus, the agency made reasonable efforts at reunification.

{¶77} In this assignment of error, mother also takes issue with an email between the agency's employees where one of the employees states that reasonable efforts for the reunification included visitation, transportation, counseling and parenting classes. The trial court included this statement in its judgment entry. Mother asserts this was inappropriate.

{¶78} An email is noted on the docket on January 21, 2016. And mother

attached a file-stamped copy of the email to her brief. However, an actual copy of the email is not included in the record.

{¶79} Given that an actual copy of the email is not included in the record, this matter is beyond our review. But even if the trial court used a judgment entry submitted by the agency, this practice is not uncommon. Courts frequently request the parties to prepare the judgment entry in a case.

{¶80} Accordingly, mother's second assignment of error is without merit.

{¶81} For the reasons stated above, the trial court's judgment is hereby affirmed.

DeGenaro, J., concurs.

Robb, J., concurs.