

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: N.C.
 M.C.

C.A. Nos. 27116
 27118

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. DN 11-12-0838
 DN 11-12-0839

DECISION AND JOURNAL ENTRY

Dated: April 29, 2015

MOORE, Judge.

{¶1} Appellants, Debra C. (“Mother”) and Robert C. (“Father”), each appeal from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that granted legal custody of their minor children, M.C. and N.C., to relatives. This Court affirms.

I.

{¶2} Mother and Father are the parents of M.C., born March 14, 2001, and N.C., born July 11, 2009. Mother had another child, A.B., born January 27, 1997, with a different man, and A.B. (“Step-daughter”) also resided with Mother and Father at the time this case began. Her custody is not at issue in this appeal, however.

{¶3} On November 5, 2011, CSB received a referral alleging the sexual abuse of fourteen-year-old Step-daughter. The next day, CSB and Akron police went to the home of Mother and Father to assess the concern. They found the home to be in deplorable condition.

They reported that it was so cluttered that it was difficult to walk through the home and also described the home as being unsanitary with animal feces throughout. Due to the condition of the home and the sexual abuse allegations, all three children were immediately removed from the home pursuant to Juv.R. 6.

{¶4} Initially, CSB held a team decision meeting and implemented a written safety plan in lieu of filing for custody of the children in juvenile court. Step-daughter was placed with her biological father and step-mother, while the two younger children were placed with an adult half-sister. The younger children were subsequently placed with a maternal uncle and aunt. Step-daughter was interviewed by Colleen Shrout, a social worker at Akron Children's Hospital Care Center, a unit of the hospital that investigates any type of sexual or physical abuse. On November 28, 2011, Step-daughter began counseling with Dr. Cynthia Keck-McNulty, a mental health therapist who specializes in trauma.

{¶5} On December 20, 2011, CSB filed complaints in juvenile court, alleging that all three children were abused, neglected, and dependent, and sought temporary custody of them. The matter proceeded to an adjudicatory hearing where the court heard testimony from a police officer who participated in the removal of the children, as well as from Ms. Shrout and Dr. Keck-McNulty. The trial court also heard from the CSB intake worker. Father's niece testified on Father's behalf.

{¶6} The police officer testified that the home did not seem to exhibit "livable conditions." He described it as "nasty" and "dirty," with clothes everywhere so that one could barely walk through the house and children would have to sit on clothes. He explained that walking in the home, would be especially difficult for a toddler. The inside of the refrigerator

was very dirty, with several dried spills. The kitchen sink was full of dirty dishes. He described the kitchen as likely inoperable.

{¶7} Regarding the investigation of claims of sexual abuse, Ms. Shrout testified that Step-daughter reported that Mother beat her with a belt or with her open hand and that Father would do “nasty stuff,” which she explained as oral sex and “regular sex.” She described “regular sex” as vaginal intercourse. She reported that Father would tickle her “vagina, armpit, boobs, and feet” using his tongue and hands. She said that Father warned her when sperm were coming out because she is too young to get pregnant. Step-daughter stated that Father took pictures of her, Mother, M.C., and N.C. while naked in the shower, and he watched her bathe, use the toilet, or change clothes. Step-daughter reported that she had seen a picture of a girl performing oral sex and a picture of a girl with bruises, apparently having been forced to have sex with someone, which she understood to be rape. Step-daughter explained that when she tried to refuse Father, he would get mad and threaten to keep her cell phone. Step-daughter told the social worker that she did not feel safe going back to the home of Mother and Father.

{¶8} After Step-daughter spoke to the social worker at the Care Center and to law enforcement, she began therapy with Dr. Keck-McNulty. The therapist testified that she has met with Step-daughter weekly and is treating her for anxiety. Step-daughter disclosed to her, similar to her disclosures to the social worker at the Care Center, that Father took nude pictures of her in the shower and had sexual contact with her, including oral and vaginal sex. Step-daughter explained that the sexual contact began when she was 11 years old and continued frequently thereafter. She reported that she recently learned in school that this was wrong. When she tried to refuse, she said Father got mad and threatened to cut off Christmas gifts. Step-daughter reported that she told Mother about the picture-taking, and Mother “told her to shut up.” She

reported that “he touched her privates and showed her his. He put his private in her private.” Step-daughter claimed she told Mother, and Mother screamed. Mother has consistently refused to believe Step-daughter’s claims of sexual abuse or contact. Step-daughter expressed concern for her siblings and reported that they bathed with Mother while Father took pictures of them.

{¶9} At the adjudicatory hearing, Dr. Keck-McNulty testified that she has seen vast improvement in Step-daughter in the last year. When she first came to the home of her biological father and step-mother, she was suffering from enuresis and encopresis. The step-mother had reported to Ms. Shroul that when Step-daughter first arrived at their home, she was urinating in the closets. The symptoms soon stopped, but they began again after her first visit with Mother. In advance of that visit, Step-daughter bit her fingernails down to the quick and started urinating in the corners of her bedroom. The therapist believes Mother’s presence triggered anxiety and other symptoms, and, therefore, recommended that those visits cease.

{¶10} Based on Step-daughter’s comments, the therapist believed Mother was present during some sexualized behaviors by Father, including pictures taken of Step-daughter and Mother bathing together. Step-daughter described sexual touching by Mother occurring at the same time, soaping her from her breasts to the vaginal area, which Step-daughter said made her uncomfortable. Step-daughter did not like having such pictures taken and complained that she had no privacy in the home. Step-daughter did not know what happened to the pictures and reported that Father said they were erased.

{¶11} Dr. Keck-McNulty testified that enuresis and encopresis are very typical behaviors of females that have been sexually abused. The individual has no control over the behavior. She explained that the emotional trigger is the physical act of being violated over and over and feeling unsafe. The therapist said that Step-daughter needed to address the reasons for

her symptoms. Step-daughter reported that she feels safe with her biological father and step-mother.

{¶12} Dr. Keck-McNulty testified that Step-daughter has been consistent in her disclosures and across interviews with her. She observed that Step-daughter is very naïve and emotionally younger than her chronological age, and that this factor was useful against her as a victim. The therapist recommended ongoing counseling for Step-daughter to address anxiety issues, as well as her sleeping and nightmare issues. While Step-daughter may be able to stop her therapy at some point, the therapist anticipated that she will likely need to return to counseling as she enters new developmental stages.

{¶13} Verna Hamner, the CSB intake worker, also testified at the adjudicatory hearing. She emphasized that Mother and Father consistently denied the allegations of sexual abuse made by Step-daughter. Father claimed that Step-daughter learned about sexual abuse and sexual activity through her school curriculum instead, and he also claimed that allegations of sexual abuse were brought up whenever Mother sought an increase in child support from Step-daughter's biological father. Ms. Hamner testified that the agency had not received any prior referrals alleging sexual abuse between Step-daughter and Father. Ms. Hamner, who observed the interview at the Care Center through glass, testified that Step-daughter was consistent and detailed in relaying her experience.

{¶14} Ms. Hamner also testified about M.C. and N.C., whose custody is at issue in the present case. She said M.C. was very shy when she came into care and seems somewhat delayed. Ms. Hamner stated that M.C. admitted that Father took pictures of Step-daughter, Mother, N.C., and herself while naked in the bathtub. As to N.C., Ms. Hamner explained that he was more than two years old when he came into care, but was having difficulty walking and his

speech was gibberish. Ms. Hamner also stated that he had been enrolled in a special day care and believed that was arranged by Mother and Father.

{¶15} Ms. Hamner reported that Mother did not believe Step-daughter at all and was not willing to even consider that something of a sexualized nature happened to Step-daughter. Mother never spoke about her own participation in bath time with any of the children while pictures were being taken. Ms. Hamner checked Step-daughter's school records and found no record of her lying. She also spoke to Step-daughter's school principal and was told that the sexual terms used by Step-daughter were not part of their school curriculum.

{¶16} Ms. Hamner made two follow-up visits to the parents' home and, at those times, found no concerns with the conditions or cleanliness of the home. Apparently, relatives had come over to help the parents clean, as they had occasionally in the past.

{¶17} Father's niece testified on behalf of Father. She said that she had babysat for the children and even lived in their home for a period of time. She did not believe Father would sexually abuse either Step-daughter or M.C.

{¶18} After hearing all the evidence, the trial court adjudicated Step-daughter as abused under R.C. 2151.031(A) and (B), neglected under R.C. 2151.03(A)(3), and dependent under R.C. 2151.04(C), and also adjudicated M.C. and N.C. as neglected under R.C. 2151.03(A)(3) and dependent under R.C. 2151.04(C) and (D). The trial court specifically concluded, inter alia, that it was clear that Step-daughter and M.C. were exposed to inappropriate sexual activity and that there had been inappropriate sexual contact within the home. The trial court placed Step-daughter in the temporary custody of her biological father, subject to the protective supervision of CSB, and placed M.C. and N.C. in the temporary custody of CSB. Neither Mother nor Father

appealed from this judgment, and thus, these adjudicatory findings have been “resolved.” *In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, ¶ 13.

{¶19} “[A]n appeal of an adjudication order of abuse, dependency, or neglect of a child and the award of temporary custody to a children services agency pursuant to R.C. 2151.353(A)(2) must be filed within 30 days of the judgment entry pursuant to App.R. 4(A).” *Id.* at ¶ 18. Otherwise, these matters “are not subject to readjudication if a children services agency later seeks permanent custody of the child.” *Id.* at ¶ 15, citing R.C. 2151.414(A). Where the parent has not appealed from the adjudicatory findings and the award of temporary custody, “the parent [] retains the right to appeal any award of permanent custody * * * includ[ing] issues that arose *after* the adjudication order.” (Emphasis added.) *Id.* at ¶ 17. Accordingly, the adjudicatory findings are not subject to challenge at this point.

{¶20} The matter of the custody of Step-daughter proceeded separately. Eventually, she was placed in the legal custody of her biological father.

{¶21} The case plan, as adopted by the trial court, required that the children’s mental health and developmental needs be addressed, that the parents maintain clean, safe, stable housing, that Father obtain a sex offender assessment and follow recommendations, and that Mother participate in a parenting evaluation and follow recommendations. Regarding visitation, Mother was permitted to have supervised visits with M.C. and N.C.

{¶22} Although Mother and Father continued to reside together, they filed separate motions for the legal custody of M.C. and N.C. For its part, CSB moved for legal custody to be granted to the maternal relatives with whom the children had been placed for more than a year. Following a hearing, the trial court denied the motions of Mother and Father and granted legal custody of M.C. and N.C. to the maternal relatives.

{¶23} Mother and Father have each appealed from the order granting legal custody to the maternal relatives. Mother assigns two errors for review and Father assigns three. The assignments of error have been rearranged and consolidated for ease of review.

II.

MOTHER’S ASSIGNMENT OF ERROR I

THE TRIAL COURT’S FAILURE TO ISSUE WRITTEN FACTS SUPPORTING ITS “REASONABLE EFFORTS” DETERMINATION CONSTITUTES REVERSIBLE ERROR AS A MATTER OF LAW[.]

FATHER’S ASSIGNMENT OF ERROR III

THE TRIAL COURT’S FAILURE TO ISSUE WRITTEN FACTS SUPPORTING ITS “REASONABLE EFFORTS” DETERMINATION CONSTITUTES REVERSIBLE ERROR AS A MATTER OF LAW[.]

{¶24} Mother and Father have each argued that the trial court failed to comply with the requirement in R.C. 2151.419 to issue written facts in support of its reasonable efforts determination following the legal custody hearing in this matter.

{¶25} R.C. 2151.419(A)(1) required the trial court to determine whether CSB had made reasonable efforts “to eliminate the continued removal” of the children from their home “or to make it possible for [them] to return safely home” at specified hearings “at which the court removes a child from the child’s home or continues the removal of a child from the child’s home[.]” The hearings specified in the statute include the dispositional hearing of an abused, neglected, or dependent child at which legal custody is awarded to an appropriate custodian. *See* R.C. 2151.419(A)(1); *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, ¶ 41.

{¶26} Of relevance to this appeal, R.C. 2151.419(B)(1) provides that, when making the required reasonable efforts findings, the trial court “shall issue written findings of fact setting forth the reasons supporting its determination.” Specifically, the court must “briefly describe in

its 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.” *Id.* See *In re J.G.*, 9th Dist. Wayne No. 12CA0037, 2013-Ohio-417, ¶ 36. This is so because “[a] trial court’s failure to make the requisite findings not only disregards a clear legislative directive contained in the statute, it also undermines an obvious purpose of making the required findings, which is to facilitate appellate review of the trial court’s reasonable efforts determination.” *Id.* at ¶ 35.

{¶27} When M.C. and N.C. were first removed from the custody of their parents, they were placed in the emergency temporary custody of an adult half-sister. Later, they were placed with a maternal uncle and aunt, and they remained there throughout the rest of the trial court proceedings. Thus, the order granting legal custody “continue[d] the removal of a child from the child’s home.” See R.C. 2151.419(A)(1).

{¶28} On appeal, Mother and Father both make the identical claim that the record fails to include any factual findings that support the court’s reasonable efforts determination. The decision granting legal custody was entered, in the first instance, by a magistrate of the juvenile court. The magistrate issued a single-spaced five-page decision explaining his decision and discussing the services offered to the parents. Through written objections to that decision, Father raised seven objections and Mother entered a cursory objection, claiming that the judgment was against the weight of the evidence, based on insufficient evidence, and contrary to law. Neither parent objected, however, to the purported failure of the magistrate to issue written facts supporting the reasonable efforts determination as claimed on appeal. Because Mother and Father failed to raise this issue in the trial court through objection to the decision of the magistrate and have not argued plain error on appeal, they have failed to preserve the issue for

appellate review. Juv.R. 40(D)(3)(a). *See In re M.T-B.*, 9th Dist. Summit No. 26866, 2013-Ohio-4998, ¶ 15. Consequently, we do not reach the merits of this argument. Mother's first assignment of error is overruled and Father's third assignment of error is overruled.

MOTHER'S ASSIGNMENT OF ERROR II

THE TRIAL COURT'S FINDING THAT LEGAL CUSTODY TO A
RELATIVE WAS IN THE BEST INTEREST OF THE CHILDREN IS
AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE[.]

FATHER'S ASSIGNMENT OF ERROR II

THE COURT ERRED AND ABUSED ITS DISCRETION BY GRANTING
SUMMIT COUNTY CHILDREN SERVICES' MOTION FOR LEGAL
CUSTODY TO A RELATIVE AND DENYING FATHER'S MOTION FOR
LEGAL CUSTODY FINDING SAME TO BE IN THE CHILDREN'S BEST
INTEREST WHEN SUCH A DECISION WAS AGAINST THE MANIFEST
WEIGHT OF THE EVIDENCE.

{¶29} Mother and Father each argue that the trial court erred in finding that an order granting legal custody of M.C. and N.C. to relatives was in their best interests, and that, instead, the court should have returned the children to either of them, respectively.

{¶30} Generally, this Court reviews a trial court's action with respect to a magistrate's decision for an abuse of discretion. *See, e.g., Fields v. Cloyd*, 9th Dist. Summit No. 24150, 2008-Ohio-5232, ¶ 9. However, "[i]n so doing, we consider the trial court's action with reference to the nature of the underlying matter." *Tabatabai v. Tabatabai*, 9th Dist. Medina No. 08CA0049-M, 2009-Ohio-3139, ¶ 18.

{¶31} When a child has been adjudicated neglected and dependent, the trial court has several dispositional alternatives available, including legal custody to either parent or to any other person who has filed a motion requesting legal custody of the child prior to the dispositional hearing. *See* R.C. 2151.353(A). The decision to grant or deny a motion for legal custody is within the juvenile court's sound discretion. *In re M.S.*, 9th Dist. Summit No. 22158,

2005-Ohio-10, ¶ 11. This Court will not reverse that decision absent an abuse of discretion. *Id.* An abuse of discretion implies that a trial court was unreasonable, arbitrary, or unconscionable in its judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶32} The statutory scheme regarding an award of legal custody does not include a specific test or set of criteria, but Ohio courts have concluded that the trial court must base such a decision on the best interest of the child. *See, e.g., In re N.P.*, 9th Dist. Summit No. 21707, 2004-Ohio-110, ¶ 23. We have previously indicated that the best interest factors of R.C. 2151.414(D) may provide some guidance in determining whether legal custody is in the best interest of the child. *In re B.C.*, 9th Dist. Summit Nos. 26976, 26977, 2014-Ohio-2748, ¶ 16, citing *In re T.A.*, 9th Dist. Summit No. 22954, 2006-Ohio-4468, ¶ 17. Those factors include: the interaction and interrelationships of the child, the wishes of the child, the custodial history of the child, and the child’s need for permanence in his life. *See* R.C. 2151.414(D).

{¶33} The main focus of this appeal is the allegation of sexual abuse and sexually inappropriate behavior in the home and the effect it has had on the children. The parents have continued to deny any type of sexual offense against the children, and they also deny that there was any sexually inappropriate behavior taking place in the home.

{¶34} Psychologist Carrie Schnirring, who conducted a psychological evaluation of M.C., testified that M.C. reported two incidents in which Step-daughter and Mother were in the bathtub, naked, and Father took a picture of them. M.C. explained that she could see the bathroom from her bedroom. Ms. Schnirring said that Mother and Father admitted the incidents did, in fact, occur and described them as “practical joke[s].” According to them, the first incident took place when Step-daughter got dog feces in her hair while playing in the yard and jumped into the bathtub so Mother could help her wash her hair. For the second incident, the

parents decided to pour cold water on Step-daughter's head and take a picture of the look of shock on her face.

{¶35} Ms. Schnirring testified that it is difficult to justify such behavior by the parents as a practical joke. The witness explained that children develop modesty between the ages of eight and ten, and exposure generates feelings of embarrassment and distress, whether it is a joke or not. She stated that taking such pictures demonstrated a lack of judgment by the parents. It also sent a poor message to M.C., suggesting that it is acceptable to expose the private parts of one's body, show them to others, or take pictures of private parts. She explained that such behavior may affect M.C.'s ability to protect herself if someone attempts to do something inappropriate to her. She may not recognize the behavior as inappropriate because of being exposed to such things at home that are borderline or completely inappropriate.

{¶36} Psychologist Schnirring voiced concern that the parents seemed unaware of how such behavior might make Step-daughter feel and expressed no understanding that such behavior was inappropriate. She believed Father would need quite a bit of counseling to address those values and significant progress would need to be made. The parents would need to demonstrate insight into the wrongfulness of their actions. Otherwise she would be concerned about putting M.C. back in that home because there is a risk that she could be exposed to boundary violations and abusive behavior.

{¶37} In terms of diagnoses, the psychologist explained that M.C. had previously been diagnosed with attention deficit hyperactivity disorder, oppositional defiant disorder, and pica, a disorder in which a child eats non-nutritive items, such as pencils, as in M.C.'s case. Ms. Schnirring entered a current diagnosis of adjustment disorder with mixed disturbance of emotion and conduct. She explained that this meant there are particular stressors causing concerning

behavioral or emotional changes that require treatment. She said that M.C. named Mother, Father, and her grandmother as good, safe adults. Ms. Schnirring described M.C. as quiet and withdrawn, with a tendency to shut down when she is overwhelmed. She recommended that M.C. begin therapy as soon as possible to get assistance with the thoughts and feelings with which she was struggling.

{¶38} When M.C. was first placed with her adult half-sister, the half-sister reported that M.C. engaged in masturbation in clear view of others at home and at school. Ms. Schnirring testified that this behavior, which gradually subsided, along with other “acting out” behaviors were indicative of poor boundaries. Thereafter, when M.C. was placed with her uncle and aunt, she was urinating on a carpet in the bathroom, directly in front of the toilet, much like the reported behavior of Step-daughter in her father’s home. She was also wearing doll diapers, urinating in them, and hiding them. These behaviors stopped after a few months in the new home. Since then, M.C. has exhibited some acting out and has developed a recent problem with lying about her school work, but she has made good progress in communication, overcoming sleep difficulties, and improving self-control. N.C. was also said to have made progress. At removal, he could hardly talk or walk, but now uses signs to communicate and his mobility has improved. His aunt reported that he recently climbed a flight of stairs unassisted.

{¶39} M.C. began weekly therapy sessions with Nicole Pearson in May 2012. Ms. Pearson explained that she sought to address the problems M.C. presented in adaptive behaviors, depressed mood, sleeping difficulties, guilt, and sadness. While Ms. Pearson conceded that M.C.’s initial anxiety and depression could have been a reaction to the removal from her home as Father has argued, she also stated that urinating on the floor is not a typical reaction to a new home. Ms. Pearson noted that M.C.’s assessment did not reveal any developmental delays, but

she perceived that M.C. acts much younger than her 12 years and frequently seeks validation from adults rather than pursuing her own independence.

{¶40} Father points to testimony by Psychologist Schnirring that, during her psychological evaluation, M.C. denied that anyone photographed her while in the bathtub or with her clothes off, but M.C. did tell Ms. Schnirring that she watched Father take such pictures of Step-daughter. In addition, M.C. did tell Ms. Pearson, with whom M.C. had a more long-term and therapeutic relationship, that Father took nude pictures of her and Step-daughter in the bathtub and that she knew it was “not right.” M.C. also told Ms. Hamner, the CSB intake worker, that Father took nude pictures of her, Step-daughter, Mother, and N.C. while naked in the bathtub. Ms. Schnirring testified that if the parents were to be able to parent these children, they would need to engage in counseling and parent education to develop insight into how the bathtub incidents with Step-daughter might have affected her and might also affect M.C. There would also need to be evidence that the parents had gained such insight over the past year.

{¶41} As far as the children’s relationship with their parents, Psychologist Schnirring said that M.C. never expressed a desire to see Father and never included him in her descriptions of where she used to live, causing Ms. Schnirring to question the extent of any bond between them. Therapist Pearson testified that M.C. expressed no opinion about Mother and no emotion about Father. She said that M.C. indicated she did not want to see Father, and specifically did not want him to attend her birthday party, but did not explain the reason why.

{¶42} Neither child had visits with Father because of a no-contact order. M.C.’s visits with Mother were suspended for a period of time, and Ms. Schnirring noted that M.C. said that made her sad. M.C. also believed Mother was sad because she missed her. However, when visits were later offered to M.C., Ms. Schnirring said M.C. did not react strongly. Ms. Pearson

observed some of M.C.'s visits with Mother and described their interaction as positive. They played together, looked through catalogues together, and discussed their activities. The caseworker described Mother's attendance at visits as very good. She also thought Mother interacted well with the children. She would get N.C.'s food ready for him and talk to M.C.

{¶43} While Mother's visits were fine, there is little evidence that Mother would be able to parent the children on her own. The guardian ad litem stated that Mother relies on Father for most aspects of daily living. The guardian believed a parenting evaluation of Mother was advisable to assess her ability.

{¶44} Mother did complete a parenting assessment, which concluded that, even if specific criminal sexual abuse did not occur as the parents maintain, there is reason for concern that the parents did not appreciate the seriousness of other inappropriate behaviors that were, in fact, conceded by the parents. In that regard, the report cited Mother participating with Step-daughter in nude pictures taken by Father while being observed by M.C. It also included fully-developed Step-daughter walking around the home while naked, Step-daughter pretending to deliver a baby on the couch with no clothing from the waist down, and Father reporting that Step-daughter would walk in on him in the bathroom. According to the caseworker, there was no lock on the bathroom door. The caseworker testified that this is not acceptable behavior and the parents are the ones who need to set the boundaries and guidelines. The failure of Mother and Father to appreciate that these behaviors are inappropriate supports a conclusion that they lack insight and judgment in these areas.

{¶45} Mother's parenting assessment recommended that she engage in counseling. Mother attended only three sessions at Portage Path over the course of nine months. She then decided she was unhappy with the service at that location and switched to the Charak Center for

Health and Wellness, just one month prior to the legal custody hearing. The caseworker emphasized that Mother is still in the beginning stages of counseling.

{¶46} Mother also attended parenting classes. Her instructor recommended that Mother obtain individual case management through the Blick Clinic. Mother failed to obtain such assistance.

{¶47} Mother has had a relationship with the Summit County Board of Developmental Disabilities since 2010. The service support coordinator testified that Mother was listed in their files as “moderate MR.” She was repeatedly offered a number of services including homemaker services, personal care services, and transportation, but Mother declined all offers of assistance. The service support coordinator thought Mother would likely need assistance if Father were not present in her life.

{¶48} For his part, Father completed a sex offender assessment at Summit Psychological, which resulted in a recommendation for sex offender treatment and, once that was completed, parenting classes. The assessor indicated that Father could not go forward with sex offender treatment because Father denied the allegations of sex abuse. At Father’s request, a second sex offender evaluation was court-ordered. The second assessor similarly recommended that Father should complete sex offender treatment with a specialist and then attend parenting classes, before engaging in any contact with children. Father declined to engage in any sex offender treatment.

{¶49} M.C. is bonded with her brother N.C., and they both reside with their uncle and aunt. The children get along well with those caregivers as well as with the two older children living in the home. Neither Mother nor Father has raised any concerns regarding the care provided to the children by the uncle and aunt.

{¶50} The children's aunt testified at the legal custody hearing. She explained that she and her husband are the godparents of M.C. and N.C. and they had an existing relationship with the children before this placement. They often celebrated holidays with the family. Among other things, the aunt observed that M.C. liked the fact that the bathroom door in their home locked. The aunt said she loves the children and they call her Aunt Barb. According to M.C.'s therapist, M.C. likes these caregivers. She is functioning well in the home and has adjusted to her new school as well as to the expectations in the home. Her old room was "messy," the child says, and she likes having space in her new room. M.C. reported that she was sad that she was not able to have a normal living situation, however.

{¶51} The caseworker testified that she would be particularly concerned for M.C.'s safety if she were returned home because Mother has shown no better capacity to protect her children now than in November 2011. She believed it would be in the best interest of both children for their legal custody to be transferred to the relatives.

{¶52} The guardian ad litem similarly testified that the relatives are appropriate custodians and have offered the children loving and consistent care. He believed an order of legal custody to them would serve the best interests of the children. He said he has no doubt that Mother loves her children very much, but he cannot recommend placing either child back in the home of the parents if Father is present because he has not engaged in the treatment that was recommended by two different assessors. Also, although the parents recently said they would separate if that would lead to reunification, the guardian does not believe that is a practical reality because of the degree of reliance Mother has on Father for daily living.

{¶53} In his written report, the guardian ad litem indicated that M.C. recently told him that she wanted to remain in the home of her uncle and aunt and did not want to return to

Mother. In addition, she expressed that she did not even want to visit with Father. Due to N.C.'s young age, the guardian ad litem did not question his wishes as to placement. At the legal custody hearing, the guardian ad litem said that he was unable to recommend placing either child back in the home with Father, given the fact that Father has not engaged in the treatment that was recommended by two different assessors. In the course of explaining his recommendation, he noted the consistency of Step-daughter's disclosures, the age of M.C., and M.C.'s quiet and meek manner.

{¶54} The custodial history of the children is that they lived with their parents until this case was initiated: ten years for M.C. and two years for N.C. At that point, both children were placed with relatives and remained out of their parents' care for the rest of the case, approximately one and one-half years until the time of the legal custody hearing. During that time, they resided with Father's adult daughter for two months and then with the maternal uncle and aunt for 14 months.

{¶55} There was evidence before the trial court that the children were in need of the stability and security that would come with a permanent placement. They were doing well in the home of their uncle and aunt. M.C.'s behavioral symptoms were decreasing and N.C. was making good developmental progress.

{¶56} Based on a careful review of the record, this Court concludes that the trial court did not abuse its discretion in concluding that it was in the best interests of M.C. and N.C. to be placed in the legal custody of maternal uncle and aunt. Mother's second assignment of error and Father's second assignment of error are overruled.

FATHER’S ASSIGNMENT OF ERROR I

THE COURT ERRED AND ABUSED ITS DISCRETION BY REQUIRING [FATHER] TO ADMIT THAT HE SEXUALLY ABUSED HIS STEP-DAUGHTER AND/OR BY ORDERING HIM TO COMPLETE A SEX OFFENDER TREATMENT PROGRAM AND DEMONSTRATE HE DOES NOT POSE A THREAT TO HIS CHILDREN IN ORDER FOR HIM TO BE REUNITED WITH AND/OR HAVE CONTACT OR VISITATION WITH HIS OTHER TWO CHILDREN AS SAME VIOLATES HIS RIGHT AGAINST COMPULSORY SELF-INCRIMINATION AS GUARANTEED BY THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

{¶57} Father argues that the trial court erred by requiring him to admit he sexually abused Step-daughter and by ordering him to complete a sex offender treatment program on the ground that this violates his right against compulsory self-incrimination as protected by the Fifth Amendment of the United States Constitution.

{¶58} Juv.R. 40(D)(3)(b)(i) allows a party to file written objections to a decision of the magistrate within fourteen days of the filing of the decision. Juv.R. 40(D)(3)(b)(iv) provides that “a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv.R. 40(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b).” “Where a party has failed to file any objections to the magistrate’s findings or conclusions, that party has [forfeited] the right to challenge either the findings or conclusions on appeal.” *Costin v. Atkins*, 9th Dist. Lorain No. 11CA010025, 2011-Ohio-6680, ¶ 6, citing *Tawney v. Tawney*, 9th Dist. Medina No. 02CA0018-M, 2002-Ohio-6122, at ¶ 15.

{¶59} Father failed to raise the constitutional issue reflected in this assignment of error in either his objections to the magistrate’s adjudicatory and dispositional decision in which the case plan was adopted or to the magistrate’s decision granting legal custody to the relatives.

Accordingly, Father failed to preserve for appeal any Fifth Amendment issue arising out of those proceedings and has forfeited his right to assert it against the trial court judgment now on appeal.

{¶60} First, following the magistrate’s decision on adjudication and disposition, Father entered an objection to the case plan requirement that he complete a psychological sex offender assessment, but did so only on the basis that “the evidence presented did not support a finding that [Father] sexually abused any of his children.” The trial court overruled the objection, finding that the evidence was clear that Step-daughter and M.C. had been exposed to inappropriate sexual activity within their home. Neither this objection nor the trial court ruling involved the Fifth Amendment argument Father now asserts for the first time. Furthermore, as noted above, Father did not appeal from the trial court judgment regarding the adjudication and disposition in which the case plan was adopted, although he could have done so. *See In re H.F.*, 120 Ohio St.3d 499, 2008-Ohio-6810, ¶ 8-9.

{¶61} Second, Father objected to the magistrate’s decision that granted legal custody of M.C. and N.C. to relatives and included seven specific grounds to his objection, but he did not include the Fifth Amendment argument he asserts now on appeal. Thus, Father has failed to preserve for appeal any Fifth Amendment issue arising out of those proceedings and has forfeited his right to assert it against the trial court judgment now on appeal.

{¶62} In addition, Father has not identified the point in the record where the purported error is reflected and on which the assignment of error is based as required by the Ohio Rules of Appellate Procedure. *See* App.R. 12(A)(2) and 16(A)(3). Finally, Father has not made any plain error argument on appeal, and we decline to create one for him. *See* Juv.R. 40(D)(3)(b)(4); App.R. 12(A)(2) and 16(A)(7). *See also In re B.P.*, 9th Dist. Lorain No. 14CA010531, 2015-Ohio-48, ¶ 6, citing *Cardone v. Cardone*, 9th Dist. Summit No. 18349, 1998 WL 224934, *8

(May 6, 1998) (noting that it is not this Court's duty to create an appellant's argument). Father's first assignment of error is overruled.

III.

{¶63} Mother's two assignments of error and Father's three assignments of error are overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

HENSAL, P. J.
CARR, J.
CONCUR.

APPEARANCES:

RONALD T. GATTS, Attorney at Law, for Appellant.

ANGELA M. KILLE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.