

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: S.C.
 I.C.-O.

C.A. No. 27676

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. DN 13-09-0638
 DN 13-09-0639

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

HENSAL, Presiding Judge.

{¶1} Appellant, Mary D. (“Mother”), appeals from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated her parental rights and placed her two minor children in the permanent custody of Summit County Children Services Board (“CSB”). This Court affirms.

I.

{¶2} Mother is the natural mother of S.C., born July 23, 2002; and I.O.-C., born December 16, 2004. The children’s fathers are not parties to this appeal.

{¶3} On September 29, 2013, the children were removed from Mother’s home pursuant to Juvenile Rule 6 because she had left them home alone while she worked a full-day shift as a home health care aide and the children did not know where she was working or how to contact her. The condition of the home was also deplorable and the children were unable to identify

another adult who could care for them. The following day, CSB filed complaints to allege that the children were abused, neglected, and dependent.

{¶4} CSB filed a case plan with the trial court and Mother later stipulated to the magistrate's adjudication that both children were neglected and dependent. The magistrate later issued a dispositional decision that placed the children in the temporary custody of CSB. Although the decision included factual statements about the parties agreeing to the case plan, the magistrate did not explicitly adopt the case plan. The trial court adopted the dispositional decision the same day but also failed to adopt the case plan as an order of the court. Mother filed no objections to the magistrate's decision, however, nor did any party raise this issue during the trial court proceedings. Instead, the parties proceeded throughout this case under the apparent impression that they were bound by the terms of case plan.

{¶5} On August 15, 2014, CSB moved for permanent custody of both children. The matter proceeded to a hearing during which no one mentioned the trial court's failure to adopt the case plan. In fact, without objection, the trial court and the parties made repeated references to the case plan having been adopted as an order of the court and the parties presented evidence about CSB's reunification efforts and whether Mother had made progress toward reunification with her children.

{¶6} Following the hearing, the trial court found that the children could not be returned to Mother's custody within a reasonable time or should not be returned to her custody and that permanent custody was in their best interests. Consequently, it terminated Mother's parental rights and placed the children in the permanent custody of CSB. Mother appeals and raises two assignments of error.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND PLAIN ERROR WHEN IT HELD A PERMANENT CUSTODY HEARING EVEN THOUGH IT NEVER ADOPTED A CASE PLAN FROM THE ORIGINAL DISPOSITIONAL HEARING.

{¶7} Mother's first assignment of error is that the trial court committed plain error by terminating her parental rights because it never journalized the case plan that CSB filed prior to the adjudicatory hearing, nor did it formally adopt any of the amended case plans. Although Mother suggests that this error affected the trial court's subject matter jurisdiction, the juvenile court's subject matter jurisdiction was established when CSB filed complaints to allege that S.C. and I.O.-C. were abused, neglected, and dependent children. *See* R.C. 2151.23(A)(1); *In re J.G.*, 9th Dist. Wayne No. 12CA0037, 2013-Ohio-417, ¶ 13. Consequently, even if Mother would prevail on this assigned error, this Court's judgment would not affect the trial court's subject matter jurisdiction in this case, nor would it render any aspect of the trial court proceedings null and void.

{¶8} Instead, Mother asserts an error that challenges the propriety of the trial court's permanent custody judgment. "Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.' Therefore, parents 'must be afforded every procedural and substantive protection the law allows.'" *In re Hayes*, 79 Ohio St.3d 46, 48 (1997), quoting *In re Smith*, 77 Ohio App.3d 1, 16 (6th Dist.1991). Among the procedural protections of the parties is the statutory obligation of the children services agency to develop a case plan and make reasonable efforts to reunify the children with one or both parents. *See* R.C. 2151.412 and 2151.419.

{¶9} Because there was no judicial finding in this case that CSB was excused from making reasonable reunification efforts under one of the circumstances enumerated in Revised Code Section 2151.419(A)(2), it had the statutory obligation to develop a case plan and make reasonable reunification efforts between Mother and the children. *See In re S.R.*, 9th Dist. Summit No. 27209, 2014-Ohio-2749, ¶ 40. CSB did file a case plan in this case that included reunification goals and services for Mother.

{¶10} Of relevance here, Revised Code Section 2151.353(E) required the trial court to “journalize” the case plan in its initial dispositional order. It is only after the trial court journalizes the case plan that it becomes an order of the court that is binding on the parties. *See In re S.D-M.*, 9th Dist. Summit Nos. 27148 and 27149, 2014-Ohio-1501, ¶ 26. Although this issue was never raised in the trial court, Mother correctly asserts that the trial court erred by failing to comply with the statutory requirement that it adopt a case plan in this case.

{¶11} To demonstrate reversible error, however, Mother must demonstrate not only that the trial court committed error but also that she suffered prejudice as a result. *See Lowry v. Lowry*, 48 Ohio App.3d 184, 190 (4th Dist.1988), citing *Gries Sports Ents., Inc. v. Cleveland Browns Football Co., Inc.*, 26 Ohio St.3d 15, 28 (1986). Moreover, had any of the parties raised this issue in a timely manner in the trial court, the court would have had the opportunity to promptly remedy this error. Because none of the parties raised this error in a timely manner, or at any time prior to or during the permanent custody hearing, Mother has forfeited all but plain error. *See In re E.A.*, 9th Dist. Wayne No. 14AP0044, 2015-Ohio-806, ¶ 40.

{¶12} This Court has not determined whether the civil or criminal plain error standard applies in cases involving the termination of parental rights. *See In re D.S.*, 9th Dist. Summit No. 24619, 2009-Ohio-3167, ¶ 10. In the criminal context, “[p]lain error does not exist unless it

can be said that but for the error, the outcome of the trial would have been different and that reversal is necessary to prevent a manifest miscarriage of justice.” *State v. White*, 142 Ohio St.3d 277, 2015-Ohio-492, ¶ 57. The civil plain error standard may be applied only in “the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.” *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus. Mother has failed to demonstrate, under the specific facts of this case, that the trial court’s failure to adopt the case plan rose to the level of plain error under either standard.

{¶13} Mother analogizes the facts of this case to those of *In re S.R.*, 9th Dist. Summit No. 27209, 2014-Ohio-2749, in which this Court recognized plain error because the trial court terminated the father’s parental rights despite the lack of any reunification efforts by the agency. This Court’s decision in *In re S.R.* emphasized that it was “the egregious nature” of the facts of that case that compelled us to recognize plain error. *Id.* at ¶ 34. Specifically, CSB knew the identity and location of S.R.’s father, that he was interested in reunifying with S.R., and the record failed to reveal any basis for CSB to obtain a reasonable efforts bypass under R.C. 2151.419(A)(2), yet the agency did not include S.R.’s father in the case plan or make any efforts to reunify him with S.R. prior to moving for permanent custody. *Id.* at ¶ 34, 40.

{¶14} CSB’s efforts to reunify Mother with S.C. and I.O.-C. were significantly different from those in *In re S.R.* Although we do not accept CSB’s argument that the trial court’s failure to adopt the case plan constituted “harmless error,” we cannot conclude that Mother has met the more significant burden of demonstrating that the error rose to the level of “plain error.” Under the specific facts of this case, as detailed below, Mother has failed to demonstrate that the trial

court's failure to explicitly adopt the case plan created a manifest miscarriage of justice or affected the basic fairness or integrity of the trial court proceedings.

{¶15} In sharp contrast to the situation in *In re S.R.*, CSB made ongoing efforts to reunify Mother with her children from the beginning of this case. On November 6, 2013, CSB filed a case plan with the juvenile court, with a stated goal of reunification. The case plan includes a notation that, although the caseworker attempted to include Mother in the case planning process, Mother refused to sign or provide input into the case plan but told the caseworker to prepare the case plan and send it to her counsel for review. The case plan had reunification goals for Mother, including that she obtain a psychological evaluation and follow any treatment recommendations, attend weekly supervised visits with the children, and demonstrate that she was able to provide them with a safe and stable home with adequate supervision.

{¶16} From the commencement of this case, concerns about Mother's mental health were expressed on the record by CSB personnel, the guardian ad litem, and the magistrate who presided over all but the final hearing in this case. Mother was easily agitated and continually accused CSB, the guardian ad litem, and others of conspiring against her. Throughout the case, Mother vocalized her mistrust of the other people involved in this case, yet CSB and the trial court continually attempted to resolve those obstacles to Mother's reunification with her children.

{¶17} Beginning with the first case plan, CSB arranged for Mother to visit with the children at the public library instead of the CSB visitation center because Mother did not trust CSB and insisted that the visits be held at a neutral, public location. Mother stipulated to the magistrate's adjudication that both children were neglected and dependent and the magistrate

later issued a dispositional decision that placed them in the temporary custody of CSB. Although the magistrate's dispositional decision did not explicitly adopt the case plan, it found that CSB had made reasonable efforts to prevent the continued removal of the children from the home "including the development of an appropriate case plan; referrals for services; [and] facilitation and supervision of off-site visits."

{¶18} The magistrate's decision further explained that Mother had initiated services for her psychological evaluation and that, although Mother did not want to visit the children at the CSB visitation center or the public library, she would continue to visit them at the public library "until she finds a location where she is comfortable." Because there had been problems with Mother and one of the fathers speaking negatively about each other and CSB during their visits with the children, the magistrate ordered that they stop that inappropriate behavior.

{¶19} Mother later filed a pro se motion with the court to change the time of her weekly visits with the children because her work schedule had changed. According to her motion, she had met with her attorney, the guardian ad litem, and the caseworker and her supervisor, but had been unable to resolve this issue. Her motion also stated that she believed that she was being treated unfairly by CSB and had been subject to "blatant, unlawful discrimination."

{¶20} The trial court set the motion to be heard at the next review hearing, scheduled for March 11, 2014. On March 3, 2014, Mother filed another motion through counsel, requesting that the trial court assign her a new caseworker. On March 11, Mother filed two more motions through counsel, seeking legal custody of both children and an in camera interview of each child.

{¶21} Following a hearing before the magistrate on these and other issues of apparent conflict between Mother and CSB regarding the terms of the case plan, the magistrate declined to grant Mother legal custody or to assign a new caseworker to the case, but ordered that CSB

consider Mother's request for joint counseling with the children and that the parties to take certain steps to facilitate the reunification goals of the case plan, including that CSB should file an amended case plan. Two months later, pursuant to an agreement of the parties, CSB assigned a new caseworker to the case.

{¶22} On March 27, 2014, CSB filed an amended case plan, which incorporated new reunification requirements, given that Mother had completed a psychological evaluation. Without objection from any party, CSB filed additional amended case plans on April 4, May 16, August 15, September 11, and September 25, 2014.

{¶23} On June 23, 2014, Mother's counsel moved to change the time and location of Mother's scheduled visits with the children to Sunday afternoons at Mother's church, asserting that the change would accommodate another change in her work schedule. CSB opposed the motion because the agency could not supervise Sunday visits and also requested that the visits be moved back to the CSB visitation center. After a two-day hearing on the visitation issue as well as other aspects of the case plan, the magistrate found that neither party had established a justification to change the visitation time or location and, consequently, denied both motions. Because Mother was unsuccessful in her attempt to move the visits to her church, however, she stopped visiting the children altogether.

{¶24} CSB eventually moved for permanent custody of both children and the matter proceeded to a hearing before the trial judge. Although the case plan had not been journalized, all parties proceeded through this case up to the final judgment under the apparent understanding that they were bound by the terms of the case plan. The purported adoption and binding effect of the case plan was repeatedly referenced during the hearing, with no objection from any party.

Mother herself testified about her understanding of the case plan and what she had done to work toward reunification with her children.

{¶25} Mother received reasonable reunification services from CSB and all parties attempted to resolve obstacles to Mother's reunification with her children. Throughout the two-day permanent custody hearing, the trial court heard considerable testimony about the reunification goals of the case plan and the services provided to Mother; the repeated motions and court hearings to change service providers, the caseworker, and the visitation schedule; Mother's repeated utilization of CSB's internal grievance procedures; and Mother's attempts to comply with the reunification goals of the case plan.

{¶26} Under the specific facts of this case, this Court cannot conclude that the trial court's error in failing to adopt the case plan created a manifest miscarriage of justice or affected the basic fairness of the proceedings. Therefore, Mother has failed to demonstrate plain error and her first assignment of error is overruled.

ASSIGNMENT OF ERROR II

THE TRIAL COURT COMMITTED REVERSIBLE AND PLAIN ERROR WHEN IT TERMINATED MOTHER'S PARENTAL RIGHTS AS THE [JUDGMENT] WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶27} Mother's second assignment of error is that the permanent custody decision is not supported by the evidence presented at the hearing. Before a juvenile court may terminate parental rights and award permanent custody of a child to a proper moving agency it must find clear and convincing evidence of both prongs of the permanent custody test: (1) that the child is abandoned, orphaned, has been in the temporary custody of the agency for at least 12 months of a consecutive 22-month period, or that the child cannot be placed with either parent within a

reasonable time or should not be placed with either parent, based on an analysis under Revised Code Section 2151.414(E); and (2) that the grant of permanent custody to the agency is in the best interest of the child, based on an analysis under Section 2151.414(D). *See* Former R.C. 2151.414(B)(1)¹ and 2151.414(B)(2); *see also In re William S.*, 75 Ohio St.3d 95, 99 (1996).

{¶28} The trial court found that the first prong of the permanent custody test had been satisfied because the children could not be returned to Mother within a reasonable time or should not be returned to her based on its alternate findings under Revised Code Sections 2151.414(E)(1), (2), and (4). The trial court also found that the second prong of the test was satisfied because permanent custody was in the best interests of the children. Mother does not specifically challenge the trial court's best interest findings under the mandatory factors set forth in Revised Code Section 2151.414(D). Instead, she confines her argument to the trial court's findings that the children could not or should not be returned to her custody under Revised Code Section 2151.414(E). Essentially, she asserts that, because there was no court-ordered case plan, the trial court had no basis to make any of its alternate findings under Section 2151.414(E).

{¶29} The trial court's conclusion that the children could not or should not be returned to Mother's custody was based on several alternate findings under Revised Code Section 2151.414(E): that Mother had failed to substantially remedy the conditions that caused the children to be placed outside their home; that she had a chronic mental illness that was so severe that it prevented her from being able to provide a suitable home for the children at that time or within the following year; and that she demonstrated a lack of commitment toward the children. *See* R.C. 2151.414(E)(1); R.C. 2151.414(E)(2); and R.C. 2151.414(E)(4).

¹ R.C. 2151.414(B)(1) was amended effective September 17, 2014.

{¶30} Because the trial court was required to find only one statutory ground to support its finding under the first prong of the permanent custody test, this Court has repeatedly emphasized that any error in its alternate findings is not prejudicial as long as one of the trial court's stated grounds is proper. *See, e.g., In re R.H.*, 9th Dist. Lorain Nos. 11CA010002 and 11CA010003, 2011-Ohio-6749, ¶ 13-14. Because this Court concludes that substantial evidence supported the trial court's finding under Revised Code Section 2151.414(E)(1), it will confine its review accordingly.

{¶31} Section 2151.414(E)(1) required the trial court to find that:

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.

{¶32} Hinging her argument on the trial court's failure to adopt the case plan, Mother argues that there was no evidence to support the trial court's finding under Revised Code Section 2151.414(E)(1) because "Mother received no court-ordered reunification services." Although she asserts that she was given no opportunity to remedy the conditions that caused the children's removal from her custody because CSB failed to make reunification services or resources available to her, the record reflects otherwise.

{¶33} This Court must again stress that it does not condone the trial court's failure to adopt the case plan, yet it cannot conclude that the absence of a legally-binding case plan constituted plain error under the facts of this case. As detailed above, although the parties were not legally bound by the terms of the case plan, they proceeded throughout this case as if they

were. The parties came to court repeatedly to resolve their conflicts over visitation and other terms of the case plan, which resulted in court orders as to some aspects of the case plan; the case plan was also amended numerous times to address those conflicts; and Mother repeatedly availed herself of CSB's internal grievance procedures, ultimately meeting with the executive director of CSB. The record in this case demonstrates that Mother received reasonable reunification services from CSB, yet failed to remedy the conditions that caused her children to remain placed outside of her custody.

{¶34} Mother's children were removed from her custody because she left them alone without adult supervision. Further investigation by CSB revealed that Mother blamed her children and others for her family's problems, that she often left the children to fend for themselves, and that S.C. had assumed a parental role to provide care for her younger sister. Because CSB suspected that Mother's mental health issues were the basis of her parenting problems, its reunification goals focused on mental health treatment.

{¶35} Mother obtained a mental health evaluation and was diagnosed with delusional disorder.² The psychologist who evaluated Mother explained that delusional disorder is characterized by "false beliefs that are distortions of reality" and that those who have the disorder tend to have no insight into their need for mental health treatment because of their psychoses. She testified that Mother had a long history of "pervasive paranoid delusions[,]" which included "bizarre and illogical thinking" that people or agencies were conspiring against her or wanting to harm her.

² Although Mother suggests that she objected to the psychologist's testimony on the basis of privilege at the hearing, she did not. The psychologist herself questioned whether her testimony was privileged and, without objection, the trial judge explained to her that her testimony was not privileged because she had evaluated Mother pursuant to a court-ordered case plan. *See* R.C. 4732.19; R.C. 2317.02(B)(1)(b).

{¶36} The psychologist recommended that Mother engage in long-term mental health treatment with a psychologist or counselor and a psychiatrist. She explained that Mother needed individual counseling to learn to recognize the symptoms of her mental illness, what triggers her paranoia, and how to control her anger; and that she needed medication to help control or prevent her psychoses. The psychologist also opposed Mother having unsupervised contact with the children until her mental health providers, in conjunction with the children's counselors, determined that it would be safe and appropriate. The service providers never verified that unsupervised contact would be appropriate.

{¶37} Although Mother obtained a psychological assessment, she did not, as far as CSB knew, engage in ongoing counseling. Mother refused to sign releases and, as such, CSB was unaware of any counseling. Even if Mother had been involved in counseling, the record reflects that her delusional disorder continued to pose an obstacle to her reunification with her children.

{¶38} During June 2014, Mother requested that the location of the visits be changed from the public library to her church. Mother did not want CSB to supervise the visits, but the caseworker explained to her that CSB would need to approve the person who would supervise each visit. Although Mother suggested some people from her church, one of them backed out, and Mother refused to allow CSB to interview the others. Because Mother was unable to convince the trial court to change the location of the visits, she stopped visiting the children altogether. By the time of the permanent custody hearing, Mother had not seen either child for more than six months.

{¶39} When CSB moved for permanent custody, Mother was no longer speaking to the second caseworker or the guardian ad litem but insisted that they communicate with her through her counsel. Shortly before the permanent custody hearing, however, Mother's trial counsel

moved the trial court to appoint Mother new counsel. Following a hearing on that issue, the magistrate found that Mother was not cooperating with her trial counsel and even refused to speak to or sit near her in the courtroom. Having observed behavioral signs of Mother's "obsessive and paranoid thought patterns" throughout this case, the magistrate concluded that Mother would not likely develop a trusting relationship with another attorney. Although Mother stated that she would represent herself, the magistrate found that Mother's waiver of counsel was not intelligently made, given her apparent failure to understand the nature of the proceedings. Consequently, with the consent of Mother's counsel, the magistrate ordered that trial counsel remain on the case and also appointed a guardian ad litem to represent Mother throughout the remainder of the trial court proceedings.

{¶40} At the permanent custody hearing, several witnesses testified about how Mother's untreated delusional disorder impeded her ability to work with the caseworker, the guardian ad litem, or service providers toward reunification with her children. The psychologist who performed Mother's psychological evaluation testified that, in addition to being paranoid and delusional, Mother was very easily agitated and had trouble focusing and staying on topic.

{¶41} Mother's own testimony at the hearing at times was rambling and not responsive to the questions asked of her and included several examples her paranoia. Without providing any fact-based justifications for her mistrust of others, most of Mother's testimony consisted of accusing different people at CSB, service providers, and her former neighbors of being dishonest, manipulative, rude, and/or abusive to her and her daughters.

{¶42} Several witnesses also expressed concern about Mother blaming others, particularly her children, for the family's involvement with CSB. Mother had told several witnesses that her children were removed from her home because they had serious behavioral

problems and that she did not want them back until their behavior improved and they would agree to sign a contract to abide by a code of conduct. Mother even referred to one of the children as a “child from hell.”

{¶43} The first caseworker and the guardian ad litem testified about Mother telling the children that they needed to improve their behavior before they could come home. Mother refused to allow the first caseworker to redirect her inappropriate behavior, but was more cooperative with the second caseworker. Nonetheless, the second caseworker also overheard Mother blaming the children and/or her neighborhood for her family’s involvement with CSB. In response to Mother’s comments at one visit, the caseworker heard I.O.-C. defend herself by saying, “I’m so much better. And we can come home.” The second caseworker also observed the children blaming each other for the family’s involvement with CSB.

{¶44} Mother frequently complained to the second caseworker about the prior caseworker, service providers, and others involved in the case, rather than focusing on what she needed to do to be reunified with her children. Mother did not talk to the caseworker about loving or missing her children but only spoke about them to criticize their behavior. By the time of the hearing, Mother had not seen her children for more than six months, nor had she accepted any responsibility for her family’s situation or demonstrated to CSB that she was involved in counseling or psychiatric medication management.

{¶45} Despite the trial court’s failure to adopt the case plan, the overwhelming evidence at the permanent custody hearing demonstrated that CSB had exerted reasonable reunification efforts toward Mother, but that Mother had failed make substantial progress in remedying the problems that caused the continued removal of her children from the home. Mother’s second assignment of error is overruled.

III.

{¶46} Mother's 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.

JENNIFER HENSAL
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR.

APPEARANCES:

NEIL P. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.

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