

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
HANCOCK COUNTY**

IN RE:

CASE NO. 5-25-34

C.M.,

**ADJUDICATED NEGLECTED AND
DEPENDENT CHILD.**

**OPINION AND
JUDGMENT ENTRY**

[JAMES M. - APPELLANT]

**Appeal from Hancock County Common Pleas Court
Juvenile Division
Trial Court No. 2023 AND 0025**

Judgment Affirmed

Date of Decision: August 24, 2026

APPEARANCES:

***W. Alex Smith* for Appellant**

***Miranda M. Lobdell* for Appellee**

WILLAMOWSKI, J.

{¶1} Father-appellant James M. (“Father”) brings this appeal from the judgment of the Court of Common Pleas of Hancock County, Juvenile Division terminating his parental rights and granting permanent custody of C.M. to the Hancock County Job and Family Services – Children’s Protective Services Unit (“the Agency”). Father claims on appeal that the trial court erred by 1) relying on hearsay evidence, 2) finding that Rachel K. (“Mother”) suffered from a chronic mental illness and that Father failed to remedy the conditions causing the removal of C.M. from the home, and 3) finding that the termination of parental rights was in C.M.’s best interest. For the reasons set forth below, the judgment is affirmed.

{¶2} In August 2016, C.M. was born to Mother and Father. On April 4, 2023, C.M. was removed from the home via an ex parte order of the trial court and placed in the temporary care of the Agency. That same day, the Agency filed a complaint alleging that C.M. was a neglected and dependent child. The Agency then filed a case plan requiring Father to 1) maintain safe and stable housing by not smoking around C.M. due to the medical needs of C.M., 2) attend visits with C.M., 3) participate in and complete a parenting program, 4) engage in mental health services, and 5) participate in home coaching. On June 15, 2023, the trial court conducted an adjudicatory hearing. Father and Mother admitted that C.M. was a dependent child. The parties all agreed to proceed with disposition immediately.

By the agreement of the parties, the trial court ordered that C.M. remain in the temporary custody of the Agency.

{¶3} On September 13, 2023, the Agency filed a semi-annual review. The review noted that Father had completed his parenting class, but there were concerns that he was not implementing the skills he learned. The case worker noted that Father appeared not to be smoking at the home anymore and Father reported that he no longer smoked. The review indicated that Father was compliant with the home coach, but had not demonstrated an understanding of the parenting skills being taught. James had completed an intake through OhioGuidestone (“OGS”), but had not used the recommended services, despite OGS reaching out to him multiple times. Overall, the Agency noted that Father had made some progress, but needed to continue the case plan.

{¶4} On March 5, 2024, the Agency filed the second semi-annual review. The Agency again noted that Father had made some progress, but determined it would be best to continue with C.M. in the Agency’s custody. Additionally, the Agency recommended that both Father and Mother submit to psychological testing. The review noted that neither Father nor Mother believed they had done anything wrong to justify the Agency removing C.M. from their care and both refused to take accountability. The Agency also noted that Father had been diagnosed with adjustment disorder. The trial court granted the Agency’s request for a six-month extension.

{¶5} On September 4, 2024, the Agency again filed for an extension of the case. The Agency also filed a third semi-annual review. The Agency noted that Father was making insufficient progress regarding his mental health and had been observed pinching C.M.'s brother at a visit. The Agency also expressed concerns that Father had missed several visits after he was deemed "high risk" and required two monitors for his visits. Father was also caught being dishonest with his home coach. As a result, the Agency noted that Father was making insufficient progress as to his parenting techniques. The Agency was also concerned that Father had shown aggressive behavior during visitations. Although the Agency noted it was still waiting on the evaluation reports from the psychological evaluations, the Agency was concerned that Mother and Father were no longer making progress in the case and that they were engaging in "concerning behaviors" during visits.

{¶6} On October 9, 2024, the Agency filed a motion for permanent custody of C.M. The motion alleged that 1) the child could not be placed with Father or Mother within a reasonable time, 2) the child had been in the temporary custody of the Agency for more than twelve months in a consecutive twenty-two month period, and 3) the child was abandoned. The Agency claimed that terminating the parental rights would be in C.M.'s best interest. Prior to the hearing on this motion, the Guardian Ad Litem ("GAL") filed her report. The GAL noted that Mother seemed to care more about C.M.'s well-being than her own wishes and would be devastated to lose all contact with him. The GAL noted that Father meant well, but lacked the

ability to appreciate the needs of C.M. According to the GAL, C.M. was torn as to where he would like to live, with Mother, Father, and the foster mother all being choices at some time. The child was afraid to hurt someone's feelings. The GAL recommended that the Agency's motion for permanent custody be granted because, despite Mother and Father loving C.M., "neither parent has been able to improve their parenting skills enough to provide adequately for [C.M.'s need], physical, emotional, social, or spiritual." GAL report at 6.

{¶7} A hearing was held on the Agency's motion on September 29, 2025, and October 1, 2025. The first witness for the Agency was Dr. Mark Babula ("Babula"), a psychologist who performed an evaluation on Mother and Father. Babula identified exhibit 2 as his report regarding Father and exhibit 3 as the report regarding Mother. Babula's testing showed there were no major emotional problems, but there were aspects of personality, such as cynicism, present. Although Father's testing showed that he was aware of the appropriate responses to certain issues, he struggled to appropriately address health concerns a child could have. When a child was acting in a manner Father did not like, he would not look for the underlying cause, instead classifying the behavior as bad and just addressing the behavior instead of the cause. The common pattern was that Father would address the symptom of a situation, but not look for a way to prevent the situation. Babula noted that during his observations of Father with C.M., there were times that Father's health prevented him from fully interacting with C.M. However, the

interactions between the two were generally positive. Babula's opinion was that although Father could appropriately parent C.M. for a period of time without supervision, he could not properly parent for extended periods of time. Babula recommended that Father engage in a parenting class to teach him child development and parenting skills. Babula also recommended that Father participate in counseling to learn to address his stressors. Babula testified that he would not recommend Father have custody of C.M. at that time.

{¶8} Babula also conducted a screening on Mother. Babula was concerned regarding Mother's decision making as her typical response to stressors were ones that could "potentially put her in danger." Tr. 30-38. Babula's opinion was that Mother could not parent C.M. at that time, but could visit with him unsupervised for about four hours. Babula testified that he would not recommend Mother have custody of C.M. at that time.

{¶9} Lexi Goedde ("Goedde") testified that she was the ongoing caseworker in this matter until April of 2025. Goedde testified that the Agency filed for permanent custody of C.M. on October 9, 2024. C.M. entered the custody of the Agency on April 4, 2023. C.M. was adjudicated a dependent child on June 15, 2023. Since the removal of C.M. from the home, he has remained in the temporary custody of the Agency. Goedde testified that the first case plan required Father to utilize mental health services, complete parent education, provide safe and stable housing, and refrain from smoking around C.M. Referrals were provided for mental health

services, parenting classes, and visitation with C.M. In March of 2024, the case plan was amended to require psychological evaluations for Mother and Father. While the case was pending, Goedde met with Mother and Father monthly, as well as any contact that was needed. Goedde testified that Father did alleviate the concern regarding smoking around the children. Father worked with a home coach to help him learn parenting skills, but he did not implement the skills he learned. Father completed the mental health assessment as requested and went to counseling. However, he was discharged from services due to concerns that he was not being forthcoming with the counselors. Father completed the parenting classes, but again did not implement what he learned. Goedde was concerned that Father would not give C.M. the medications prescribed to him on the schedule set by the doctor.

{¶10} Goedde testified that visitations started out at one hour a week, but later were increased to two hours a week. The visits did not go smoothly. During the initial visits, the parents behaved appropriately, but began “showing more inappropriate behavior towards” C.M. as visits progressed. Tr. 96. Visits became worse after Mother and Father separated. The number of rule violations by Mother and Father increased. Father received a rule violation for pushing C.M. to exercise to excess when C.M.’s asthma is exercise induced. During another visit, Father kept encouraging C.M. to keep running even after the monitor pointed out that C.M. was overdoing it and an asthma attack was triggered. The Agency had to set a rule that if Father had three rule violations in one visit, the visit was terminated immediately.

Throughout the course of this case, neither Father nor Mother made significant progress on the case plan. Father was unable “to show that he could implement anything learned from any of the case plan services, and continued to be hostile towards providers and continued to show that it would be an unsafe environment if he were to have [C.M].” Tr. 113.

{¶11} Goedde testified that when she observed C.M. in the foster home, he was “always a happy child.” Tr. 117. If C.M. were to get upset, he ran to his foster mother for comfort. Goedde testified that C.M. had been in the custody of the Agency for 12 out of a consecutive 22 month period and was in need of a legally secure and permanent placement. According to Goedde, neither parent ever accepted responsibility for why C.M. was initially removed.

{¶12} Jessica Achey (“Achey”) testified that she was the ongoing caseworker for this case after Goedde. According to Achey, C.M. has been in the temporary custody of the Agency since the initial removal. Achey testified that Father was not understanding the severity of C.M.’s medical needs. Although Father did go to OGS for counseling, he was discharged in February of 2024 for lack of engagement. Father never returned to counseling even after Babula’s report stated that he needed to continue counseling and it being included on the case plan. Although Father kept telling Achey he was going to return to counseling, he never did so. Achey admitted that the Agency was satisfied that Father had safe and stable housing. However, she then testified that Father had not alleviated this concern

because he was still vaping and had a dog in the home which could possibly trigger C.M.'s asthma. Despite Father's completion of the parenting classes, he was still encouraging behavior by C.M. which would trigger C.M.'s asthma, such as excessive running. Although Father worked with a home coach, when asked, Father could not state what the current goals were. In Achey's opinion, Father has not made significant progress towards reunification. On cross-examination, Achey admitted that she had never observed C.M. with either parent and that the Agency did not offer specific services to teach the parents about handling C.M.'s asthma. The home coach would help the parents set up a schedule to care for C.M., but would not address caring for the asthma. Achey admitted that the Agency never added teaching the parents to deal with C.M.'s specific issues and the Agency did not really work with either parent on addressing those issues. Instead, the Agency focused on basic parent education.

{¶13} Achey testified that C.M. had a good relationship with the foster mother and that he is bonded with her. The foster mother cared for his basic needs and met his medical needs. C.M. had a "great brother relationship" with his sibling who is also in the foster home with C.M. In Achey's opinion, the children should remain together as it would be detrimental to them to be parted. The father of C.M.'s brother was unknown. Since the motion for permanent custody was filed in October of 2024, no concerns were alleviated. Achey testified that C.M. was in need of a

legally secure placement and this was not achievable without granting the motion for permanent custody.

{¶14} Kelli Miller (“Miller”) testified that she is the Agency’s administrator. Miller testified that throughout the case, both parents had numerous rule violations during visits with C.M. In 2024, visits were reduced to one hour per parent because the rule violations increased after one hour. According to Miller, visits would have been better if the parents completed their mental health recommendations as that is “the bottom layer of their parenting choices.” Tr. 224. The failure to do so indicated that the parents were not interested in taking the steps to address the concerns of the Agency. Miller testified that Father needed mental health services to address the “root cause” of his parenting issues, but he refused to address them. In Miller’s opinion, C.M. needed a permanent and safe placement and she believed he could achieve this through adoption. She testified that she believed that C.M. would “100 percent” be adopted. Tr. 228. After speaking with the foster mother, Miller believed that she would like to adopt C.M. and his brother. Due to the bond between the brothers, Miller believed it was important they not be separated. Finally, Miller testified that C.M. had been out of the home for almost 900 days at the time of the hearing.

{¶15} After the Agency closed its case-in-chief, Father testified on his own behalf. He denied vaping in his home or that his dog caused any issues with C.M.’s asthma. Father testified that C.M. liked playing soccer and suffered no health issues

when he went to a soccer camp at the YMCA. According to Father, he did encourage C.M. to run and exercise, but he claimed that he did so pursuant to recommendations from C.M.'s allergist. The one incident where he allowed C.M. to run during a visitation, there was no issue and the inhaler was not needed. The one time Father recalls the inhaler being needed during a visitation was due to environmental allergies rather than exercise. Father denied the allegation that he "forced" C.M. to run, instead claiming that C.M. wanted to run and he merely allowed him to do so. Tr. 247.

{¶16} As to transportation, Father admitted that the Agency did provide gas cards, but claimed they only covered three months of visits due to the long distance he had to drive for visits. The gas cards also did not cover the additional costs for the added mileage on the car.

{¶17} Father also testified that he was tired during many visits because he was receiving chemo therapy for cancer during part of these proceedings. At the time of the hearing, Father was in remission. Father believed he could handle C.M.'s medical concerns.

{¶18} When questioned about his home, Father described it as a two-bedroom apartment. Father testified that there would be room for C.M. if he were to be permitted to return. Father indicated that he was employed earning \$25 per hour working a 40 hour week. As a result, Father was not concerned about paying for C.M.'s expenses.

{¶19} Shana James (“James”) testified that she was the family and wellness coach that worked with Father and Mother. James testified that she had discussed using child-led play, healthy diets, and how to set up doctor’s appointments and follow up appointments. James found Father to be receptive and testified that Father had shown her evidence that he was implementing what he learned. When James worked with Father, he appeared to be using the lessons appropriately. On cross-examination, James testified that Father had taken responsibility for the actions which caused the case to be opened.

{¶20} Marquien W. (“Grandmother”) testified that she is the paternal grandmother of C.M. Prior to the removal, Grandmother witnessed interactions between Father and C.M. regularly. She described Father’s relationship with C.M. as loving and attentive. Grandmother testified that the only time she saw C.M. have any issues with his asthma was if he ran around too much outside or if he became overly upset. When it occurred, Father provided C.M. with the inhaler and would hold him to calm him down, which was generally helpful.

{¶21} On October 31, 2025, the trial court entered its judgment granting the Agency’s motion for permanent custody of C.M. Father filed a notice of appeal from this judgment on November 18, 2025. Mother did not appeal. On appeal, Father raised the following assignments of error.

First Assignment of Error

The juvenile court erred by admitting and relying on hearsay and non-personal knowledge testimony in a permanent custody hearing where the Rules of Evidence apply.

Second Assignment of Error

The juvenile court erred in finding by clear and convincing evidence that [Mother] suffered from a chronic mental illness so severe that she could not provide an adequate permanent home within one year, and in finding under [R.C. 2151.414(E)(1)] that both parents failed continuously and repeatedly to substantially remedy the conditions causing removal.

Third Assignment of Error

The juvenile court's best interest determination under [R.C. 2151.414(D)(1)] is against the manifest weight of the evidence.

{¶22} In Father's first assignment of error, he claims that the trial court erred by relying on hearsay evidence. In support of the argument, Father challenges 1) the use of the GAL report and 2) reliance by the case workers on reports rather than firsthand observations. Hearsay is defined as an out-of-court statement offered for the truth of the matter asserted. Evid. R. 801(C). It is generally not admissible. Evid.R. 802.

{¶23} Father first argues that the trial court should not have relied upon the GAL report as it contained hearsay. "The purpose of a GAL's report is to give the court information in addition to that elicited at the hearing to guide the juvenile court in making its decision." *In re S.W.*, 2012-Ohio-3199, ¶ 14 (12th Dist.). Generally, the report is not considered evidence and is only used as additional information,

similar to that of a presentence investigation report in a criminal proceeding. *In re R.J.E.*, 2017-Ohio-886 (11th Dist.). Thus, Ohio courts allow consideration of the GAL report, despite it containing hearsay, as long as the trial court insures due process requirements are met by making the GAL available for cross-examination. *In re Sherman*, 2005-Ohio-5888 (3d Dist.).

{¶24} In this case, the GAL participated in the hearing. At the conclusion of the hearing, the trial court asked the parties if they wished to cross-examine the GAL about her report. Counsel for all parties indicated they did not wish to do so and did not object to the admission of her report. Since the trial court provided the parties with the opportunity to cross-examine the GAL on the contents of her report, the due process requirements were met. This means that the GAL report could be considered by the trial court. Additionally, as the trial was one to the bench, we may presume that the trial court disregarded any inadmissible hearsay contained in the report. *S.W.*, *supra* at ¶ 15.

{¶25} Father also claims that the trial court erred by considering the testimony of the social workers regarding information in the Agency's records rather than their personal knowledge. We note that Father's brief does not specifically cite to any testimony he believes to be prejudicial. Evidence Rule 803(6) permits the information contained within regularly kept business records to be admitted as a hearsay exception. Goedde testified to her personal knowledge and gave her opinion. Achey testified to her personal knowledge after Goedde, but also

testified to what was in the records that were regularly kept in the course of business. This testimony was permitted by the rules of evidence. This Court also notes that the trial court was made aware of the fact that Achey was testifying to things that were in the records rather than her personal knowledge. As noted above, the trial court in a bench trial is presumed to ignore inadmissible hearsay evidence.

{¶26} The record contains no indication that the trial court considered any improper hearsay evidence. Therefore, the first assignment of error is overruled.

{¶27} Father claims in his second assignment of error that the trial court erred by 1) finding that Mother suffered from a chronic mental illness and 2) finding that Mother and Father failed to substantially remedy the conditions which caused the removal of C.M. from the home. Father initially challenges the trial court's finding of fact regarding Mother. We note that Mother has chosen not to appeal. "[A]n appealing party may not ordinarily complain of an error committed against a non-appealing party" unless it is prejudicial to the rights of the appellant. *In re J.T.*, 2008-Ohio-1650, ¶ 15 (3d Dist.). Since he has not made this showing, this first argument is without merit. Father next challenges the trial court's finding that neither parent had remedied the conditions which caused the removal of the child from the home. Both of these arguments essentially claim that the trial court's decision that the case plan was not completed is against the weight of the evidence.

{¶28} "Parents have a 'fundamental liberty interest' in the care, custody, and management of their children." *In re Leveck*, 2003-Ohio-1269, ¶ 6 (3d Dist.).

These rights may be terminated, however, under appropriate circumstances and when all due process safeguards have been followed. *Id.* When considering a motion to terminate parental rights, the trial court must comply with the statutory requirements set forth in R.C. 2151.414. These requirements include, in pertinent part, as follows:

(B)(1) Except as provided in division (B)(2) of this section, the 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, or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.

...

(d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, as described in division (D)(1) of section 2151.413 of the Revised Code, the

child was previously in the temporary custody of an equivalent agency in another state.

...

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to [R.C. 2151.28] or the date that is sixty days after the removal of the child from home.

R.C. 2151.414(B). “A court’s decision to terminate parental rights will not be overturned as against the manifest weight of the evidence if the record contains competent, credible evidence by which a court can determine by clear and convincing evidence that the essential statutory elements for a termination of parental rights have been established.” *In re Da.R.*, 2019-Ohio-2270, ¶ 9 (3d Dist.).

{¶29} The determination whether to grant a motion for permanent custody requires a two-step approach. *In re L.W.*, 2017-Ohio-4352 (3d Dist.). The first step is to determine whether any of the factors set forth in R.C. 2151.414(B)(1) apply. *Id.* If one of those circumstances applies, then the trial court must consider whether granting the motion is in the best interest of the child by considering the factors set forth in R.C. 2151.414(D). *Id.*

{¶30} Father is arguing that the trial court’s decision pursuant to R.C. 2151.414(B)(1)(a) was not supported by the evidence because the factors set forth in R.C. 2151.414(E) did not apply so the trial court could not find that C.M. could not be placed with him in a reasonable time. However, even if Father was correct in his argument, it would be moot as the trial court is only required to find that one

of the conditions set forth in R.C. 2151.414(B)(1) apply. A review of the record shows that C.M. was adjudicated a dependent child on June 15, 2023. Doc. 33. The motion for permanent custody was filed on October 9, 2024. This means that at the time of the filing of the permanent custody motion, C.M. had been in the temporary custody of the agency for approximately 17 months. The trial court made a finding that the statutory requirements of R.C. 2151.414(B)(1)(d) were met and the record supports this finding. Thus, there is no need to consider whether the trial court's findings under R.C. 2151.414(B)(1)(a) were also met. For this reason, the second assignment of error is overruled.

{¶31} Finally, Father claimed that the trial court erred in finding that termination of his parental rights was in the best interest of C.M.

(D)(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section . . . the court shall consider all relevant factors, including, but not limited to, the following.

(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, as expressed directly by the child or through the child's guardian ad litem, 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 . . . 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.

R.C. 2151.414(D).

{¶32} The trial court in this case specifically considered all of the statutory best interest factors. In regards to C.M.'s relationships with his parents, siblings, foster parents, and others, the trial court noted that Father could not parent for more than a couple of hours at a time and the testimony indicated that he could not safely parent C.M. full time. The GAL noted that Father loves C.M., but recommended permanent custody be granted to the Agency. The trial court found that C.M. was very bonded with his brother and the foster mother and that C.M. was thriving in the foster home. This factor weighed in favor of granting the motion.

{¶33} The second factor is the wishes of the child. The trial court noted that C.M. had told the GAL he wanted to live with his mother, his father, and the foster mother. The trial court noted that C.M. wanted it all. Based upon this, the trial court found this factor to be neutral in his consideration.

{¶34} Next the trial court considered the custodial history of C.M. The trial court determined that C.M. had been out of the home, as of the date of the hearing, for 851 days and that visitation had not progressed past two hours. The trial court found this factor weighed in favor of granting the motion.

{¶35} The fourth factor the trial court considered was C.M.'s need for a legally secure permanent placement. The trial court noted that Achey and Miller both testified that C.M. needed a legally secure placement and it was only achievable through permanent custody. The GAL report indicated that although Mother and Father love C.M., they lacked the ability to care for him. Thus, the trial court found this factor weighed in favor of granting the motion.

{¶36} Based upon all of the factors set forth in R.C. 2151.414(D)(1)(a-d)¹, the trial court determined that it would be in C.M.'s best interest to grant the Agency's motion for permanent custody. A review of the record shows that the trial court's findings were supported by the testimony at the hearing. As the judgment is supported by competent, credible evidence, this Court will not reverse it. The third assignment of error is overruled.

{¶37} Having found no error prejudicial to the appellant in the particulars assigned and argued, the judgment of the Court of Common Pleas of Hancock County, Juvenile Division is affirmed.

Judgment Affirmed

MILLER and WALDICK, J.J., concur.

¹ The trial court found that no factors set forth in R.C. 2151.414(D)(1)(e) applied.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

John R. Willamowski, Judge

Mark C. Miller, Judge

Juergen A. Waldick, Judge

DATED:
/hls