[Cite as *In re A.P.*, 2025-Ohio-2125.]

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

IN RE:	:	
	A.P., A.P., B.P., L.P., S.P., and S.P.	: Case No. 25CA702
	:	
Adjudicated Neglected Children.[1]	:	DECISION AND JUDGMENT ENTRY

:

APPEARANCES:

Benjamin E. Fickel, Logan, Ohio, for appellant.[2]

William L. Archer, Jr., Vinton County Prosecuting Attorney, and Amanda K. Miller, Vinton County Assistant Prosecuting Attorney, McArthur, Ohio, for appellee.

CIVIL CASE FROM COMMON PLEAS COURT, JUVENILE DIVISION
DATE JOURNALIZED:6-9-25

[1] We have used the same caption that appears on the trial court's judgment entry placing the children in appellee's permanent custody. We observe, however, that the trial court's decision states that it adjudicated the children dependent and dismissed the neglect allegations.

[2] Different counsel represented appellant during the trial court proceedings.

Abele, J.

{¶1} This is an appeal from Vinton County Common Pleas Court, Juvenile Division, judgments that granted South Central Ohio Job and Family Services, appellee herein, permanent custody of A.P., A.P., B.P., L.P., S.P., and S.P.[3]

{¶2} Appellant, A.R., the children's biological mother, raises the following assignment of error:

> "THE TRIAL COURT'S RULING, GRANTING APPELLEE'S MOTION FOR PERMANENT CUSTODY, WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶3} In May 2022, appellee filed complaints that alleged the six children were neglected or dependent children. The complaints recited appellee's concerns regarding the conditions of the family's home. An agency caseworker observed that the children appeared to be dirty, the home lacked adequate bedding and food, and the children lacked properly functioning car seats. At the time, the youngest child was approximately one month old, and the oldest child six years of age. Appellee asked the court to place the children in its temporary custody.

{¶4} Appellee also filed motions that requested the court

[3] During the trial court proceedings, each child had a separate case number. After the initial round of filings, the trial court and the parties included all six case captions on their filings. Appellant filed notices of appeal in all six cases; only one appellate case number has been assigned.

to place the children in its ex parte temporary custody, which the trial court granted.

{¶5} In August 2022, appellant admitted that the children were dependent, and the trial court dismissed the neglect allegations. The court further observed that the weekend before the hearing, the children's father sadly had died. The court continued the children in appellee's temporary custody pending the dispositional hearing.

{¶6} At the dispositional hearing, the court ordered the children to remain in appellee's temporary custody.

{¶7} In November 2022, the trial court planned to return the children to appellant's care, subject to appellee's protective supervision. Before doing so, however, the children's guardian ad litem (GAL) filed motions that asked the court not to return the children to appellant's care. The GAL reported that appellant had allowed a registered sex offender into her home. The court later ordered that the children be returned to appellant's care, subject to appellee's protective supervision, and further ordered that appellant not allow the registered sex offender, Austin McCoy, to be around the children.

{¶8} Despite some additional concerns that appellant continued to allow McCoy around the children, the court kept the

children in appellant's care until January 24, 2023, when the GAL filed emergency motions that asked the court to remove the children from appellant's care. The GAL reported that she remained concerned that appellant continued to allow McCoy to be around the children. The GAL further stated that the school-aged children had not been at school for more than one week.

{¶9} On November 29, 2023, appellee filed motions that asked the court to modify the dispositions from temporary to permanent custody.

{¶10} In March 2024, appellant filed motions to reinstate reunification efforts, which the trial court granted. Around this same time, appellee filed motions to dismiss the cases and to return the children to appellant's custody.

{¶11} On August 7, 2024, appellee filed motions to advance the permanent custody hearing scheduled for November 6 and 7, 2024. Shortly thereafter, appellee filed motions to withdraw its motions to dismiss.

{¶12} On October 10 and 11, 2024, the trial court held a hearing to consider appellee's permanent custody motions. At the hearing, appellee presented witnesses who testified that the primary concern remained appellant's involvement with the registered sex offender, McCoy. The GAL stated that appellant seemed to remain dependent on McCoy and unwilling to completely

sever her relationship with him. The GAL indicated that the older children informed her that they are afraid of McCoy and do not want to live with appellant if she remains involved with McCoy. The GAL recommended that the court place the children in appellee's permanent custody.

{¶13} Caseworker Laurie Bartkowiak testified, in relevant part, as follows. Appellant's relationship with McCoy prevented appellee from attempting to reunify the children with appellant. Bartkowiak notified appellant approximately seven times that appellee had concerns regarding her relationship with McCoy. Bartkowiak additionally told appellant that her relationship with McCoy prevented appellee from reunifying the family. Appellant usually denied that she was in a relationship with McCoy. Before the last court hearing in August 2024, however, appellant stated that McCoy "was a big support for her." Bartkowiak further indicated that McCoy's vehicle "constantly" was at appellant's home and that outward appearances suggested that appellant and McCoy were in a relationship. Additionally, the children had reported that appellant is married to McCoy.

{¶14} Appellant testified and stated that she has not seen McCoy since the end of August 2024, but she has remained in contact with him via text messages and phone calls. She further

asserted that if the court returns the children to her custody, she would ensure that McCoy no longer would be part of her life or be around the children.

{¶15} On December 27, 2024, the trial court granted appellee permanent custody of the children. The court determined that the children had been in appellee's temporary custody for 12 or more months of a consecutive 22-month period. The court noted that the parties stipulated that the children had been in appellee's temporary custody for 12 or more months of a consecutive 22-month period. The court additionally found that the children cannot be placed with appellant within a reasonable time or should not be placed with appellant.

{¶16} The trial court also concluded that placing the children in appellee's permanent custody is in their best interests. The court observed that R.C. 2151.414(D)(2) required the court to find that permanent custody is in the children's best interests and to place the children in appellee's permanent custody if the court found the existence of the statutory factors. The court determined that all of those statutory factors existed. The court further stated that it considered the R.C. 2151.414(D)(1) best interest factors and found that those factors established that placing the children in appellee's permanent custody is in their best interest.

{¶17} In reaching its decision, the trial court expressed "no confidence" that appellant would keep McCoy away from the children. The court pointed out that she had disobeyed prior court orders that she not permit McCoy to be around the children. The court thus granted appellee permanent custody of the children. This appeal followed.

{¶18} In her sole assignment of error, appellant asserts that the trial court's permanent custody judgments are against the manifest weight of the evidence. She contends that the evidence does not support the trial court's finding that the children cannot be placed with her within a reasonable time. Appellant argues that she has appropriate housing, reliable transportation, regular employment, and the financial means to care for the children. She recognizes the court's concern regarding her association with a sex offender, but she contends that, except for two "brief periods of time," this sex offender had not been around the children.

{¶19} Appellant further argues that she "realized her mistakes and testified that she was breaking ties with [the sex offender]." Appellant points out that she informed the court that "she would cut off all communication" with the sex offender. She further asserts that appellee did not present any evidence to show that she remained "connected to" the sex

offender. Appellant thus contends that the trial court's judgments placing the children in appellee's permanent custody are against the manifest weight of the evidence.

A

{¶20} Generally, a reviewing court will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *E.g., In re B.E.*, 2014-Ohio-3178, ¶ 27 (4th Dist.); *In re R.S.*, 2013-Ohio-5569, ¶ 29 (4th Dist.); *accord In re Z.C.*, 2023-Ohio-4703, ¶ 1.

> "Weight of the evidence concerns 'the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.'"

Eastley v. Volkman, 2012-Ohio-2179, ¶ 12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *Black's Law Dictionary* 1594 (6th Ed.1990).

{¶21} When an appellate court reviews whether a trial court's permanent custody decision is against the manifest weight of the evidence, the court "'"weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [finder of fact] clearly lost its way and created such a

manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered."'" *Eastley*, 2012-Ohio-2179, at ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115 (9th Dist. 2001), quoting *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983); *accord In re Pittman*, 2002-Ohio-2208, ¶ 23-24 (9th Dist.). We further observe, however, that issues that relate to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984):

> The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.

{¶22} Moreover, deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." *Davis v. Flickinger*, 77 Ohio St.3d 415, 419 (1997); *accord In re Christian*, 2004-Ohio-3146, ¶ 7 (4th Dist.).

{¶23} The question that an appellate court must resolve when reviewing a permanent custody decision under the manifest weight

of the evidence standard is "whether the juvenile court's findings . . . were supported by clear and convincing evidence." *In re K.H.*, 2008-Ohio-4825, ¶ 43. "Clear and convincing evidence" is

> the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

In re Estate of Haynes, 25 Ohio St.3d 101, 103-04 (1986). In determining whether a trial court based its decision upon clear and convincing evidence, "a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *State v. Schiebel*, 55 Ohio St.3d 71, 74 (1990); *accord In re Holcomb*, 18 Ohio St.3d 361, 368 (1985), citing *Cross v. Ledford*, 161 Ohio St. 469 (1954) ("Once the clear and convincing standard has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof."); *In re Adoption of Lay*, 25 Ohio St.3d 41, 42-43 (1986); *compare In re Adoption of Masa*, 23 Ohio St.3d 163, 165 (1986) (whether a fact has been "proven by clear and convincing evidence in a particular case is a determination for

the [trial] court and will not be disturbed on appeal unless such determination is against the manifest weight of the evidence").

{¶24} Thus, if a children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, the court's decision is not against the manifest weight of the evidence. *In re R.M.*, 2013-Ohio-3588, ¶ 62 (4th Dist.); *see also In re R.L.*, 2012-Ohio-6049, ¶ 17 (2d Dist.), quoting *In re A.U.*, 2008-Ohio-187, ¶ 9 (2d Dist.) ("A reviewing court will not overturn a court's grant of permanent custody to the state as being contrary to the manifest weight of the evidence 'if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements * * * have been established.'").

{¶25} Once a reviewing court finishes its examination, the judgment may be reversed only if it appears that the fact-finder, when resolving the conflicts in evidence, "'clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.'" *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175. A reviewing court should find a trial court's permanent

custody judgment against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the [decision].'" *Id.*, quoting *Martin*, 20 Ohio App.3d at 175; *see Black's Law Dictionary* (12th ed. 2024) (the phrase "manifest weight of the evidence" "denotes a deferential standard of review under which a verdict will be reversed or disregarded only if another outcome is obviously correct and the verdict is clearly unsupported by the evidence").

B

{¶26} Courts must recognize that "parents' interest in the care, custody, and control of their children 'is perhaps the oldest of the fundamental liberty interests recognized by th[e United States Supreme] Court.'" *In re B.C.*, 2014-Ohio-4558, ¶ 19, quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Indeed, "the right to raise one's children is an 'essential' and 'basic' civil right." *In re Murray*, 52 Ohio St.3d 155, 157 (1990), quoting *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *accord In re Hayes*, 79 Ohio St.3d 46, 48 (1997); *see Santosky v. Kramer*, 455 U.S. 745, 753 (1982) ("natural parents have a fundamental right to the care and custody of their children"). Thus, "parents who are 'suitable' have a 'paramount' right to the custody of their children." *B.C.* at ¶ 19, quoting *In re Perales*, 52 Ohio St.2d 89, 97 (1977), citing *Clark v. Bayer*, 32

Ohio St. 299, 310 (1877); *Murray*, 52 Ohio St.3d at 157.

{¶27} A parent's rights, however, are not absolute. *In re D.A.*, 2007-Ohio-1105, ¶ 11. Rather, "'it is plain that the natural rights of a parent . . . are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.'" *In re Cunningham*, 59 Ohio St.2d 100, 106 (1979), quoting *In re R.J.C.*, 300 So.2d 54, 58 (Fla. App. 1974). Thus, the State may terminate parental rights when a child's best interest demands such termination. *D.A.* at ¶ 11.

{¶28} Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. *Id.* Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying purposes of R.C. Chapter 2151: "to care for and protect children, 'whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety.'" *In re C.F.*, 2007-Ohio-1104, ¶ 29, quoting R.C.

2151.01(A).

C

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

{¶30} R.C. 2151.414(B)(1) permits a trial court to grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and that one of the following conditions applies:

> (a) The child is not abandoned or orphaned, has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, . . . and the child cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents.
>
> (b) The child is abandoned.
>
> (c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.
>
> (d) The child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a

> consecutive twenty-two-month period . . .
>
> (e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

{¶31} Thus, before a trial court may award a children services agency permanent custody, it must find, by clear and convincing evidence, (1) that one of the circumstances described in R.C. 2151.414(B)(1)(a)-(e) applies, and (2) that awarding the children services agency permanent custody would further the child's best interest.

{¶32} In the case at bar, the trial court stated that the parties stipulated that the children had been in appellee's temporary custody for more than 12 months of a consecutive 22-month period. The court thus found, pursuant to R.C. 2151.414(B)(1)(d), that the children had been in appellee's temporary custody for more than 12 months of a consecutive 22-month period. Appellant does not challenge this finding on appeal. We therefore do not address this issue. Appellant instead disputes the trial court's R.C. 2151.414(D)(2)(a) finding that the children could not be placed with either parent within a reasonable time.

{¶33} R.C. 2151.414(D) provides two alternatives for a trial court to conclude that placing a child in an agency's permanent

custody is in the child's best interest. *See In re J.P.*, 2019-Ohio-1619, ¶ 40 (10th Dist.), citing *In re M.K.*, 2010-Ohio-2194, ¶ 22 (10th Dist.) ("R.C. 2151.414(D)(1) and 2151.414(D)(2) are alternative means for reaching the best-interest determination"). R.C. 2151.414(D)(1) directs a trial court to consider "all relevant factors," as well as specific factors, to determine whether a child's best interest will be served by granting a children services agency permanent custody. The listed factors include: (1) the child's interaction and interrelationship with the child's parents, siblings, relatives, foster parents and out-of-home providers, and any other person who may significantly affect the child; (2) the child's wishes, as expressed directly by the child or through the child's guardian ad litem, with due regard for the child's maturity; (3) the child's custodial history; (4) the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; and (5) whether any factors listed under R.C. 2151.414(E)(7) to (11) apply.

{¶34} Courts that must determine whether a grant of permanent custody to a children services agency will promote a child's best interest must consider "all relevant [best interest] factors," as well as the "five enumerated statutory

factors." *C.F.*, 2007-Ohio-1104, at ¶ 57, citing *In re Schaefer*, 2006-Ohio-5513, ¶ 56; *accord In re C.G.*, 2008-Ohio-3773, ¶ 28 (9th Dist.); *In re N.W.*, 2008-Ohio-297, ¶ 19 (10th Dist.). However, none of the best interest factors is entitled to "greater weight or heightened significance." *C.F.* at ¶ 57. Instead, the trial court considers the totality of the circumstances when making an R.C. 2151.414(D)(1) best interest determination. *In re K.M.S.*, 2017-Ohio-142, ¶ 24 (3d Dist.); *In re A.C.*, 2014-Ohio-4918, ¶ 46 (9th Dist.). In general, "[a] child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security." *In re C.B.C.*, 2016-Ohio-916, ¶ 66 (4th Dist.), citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324 (1991).

{¶35} R.C. 2151.414(D)(2), on the other hand, requires a finding that permanent custody is in a child's best interest if all of the following apply:

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

> division (A)(5) of section 2151.353 of the Revised Code.
>
> (d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

{¶36} A trial court need not determine that both R.C. 2151.414(D)(1) and (2) apply before it may place a child in an agency's permanent custody. *In re C.W.*, 2024-Ohio-4987, ¶ 50 (1st Dist.) ("It is not necessary for a trial court to make both a discretionary and a mandatory best-interest determination."); *see J.P.*, 2019-Ohio-1619, at ¶ 40 (10th Dist.), citing *In re T.P.*, 2018-Ohio-1330, ¶ 27-28 (11th Dist.) ("Where a juvenile court employs the R.C. 2151.414(D)(1) method of determining the child's best interest, the court need not also conduct the R.C. 2151.414(D)(2) analysis"). Instead, either best interest finding suffices. *See In re K.M.*, 2024-Ohio-2137, ¶ 44 (10th Dist.) ("the best interest of the child finding under R.C. 2151.414(D)(2) is sufficient to support granting the PCC motion alone"). Accordingly, when the evidence supports one of the two alternative best interest findings, an erroneous finding regarding one of those alternatives constitutes harmless error. *See In re S.S.*, 2017-Ohio-2938, ¶ 163 (4th Dist.) ("Because the evidence adequately supports a finding under R.C. 2151.414(D)(1) that permanent custody is in the children's best interest, any further finding under R.C. 2151.414(D)(2) is superfluous.").

{¶37} In the case at bar, when the trial court determined that placing the children in appellee's permanent custody is in their best interest, the court relied upon both R.C. 2151.414(D)(1) and R.C. 2151.414(D)(2). Appellant does not challenge the trial court's R.C. 2151.414(D)(1) finding that placing the children in the agency's permanent custody is in their best interest. For this reason, we will not create an argument for appellant. *E.g., In re B.P.*, 2021-Ohio-3148, ¶ 56 (4th Dist.) ("when a parent does not present any analysis of the best interest factors, we ordinarily will not create that analysis for the parent"); *State v. Munoz*, 2023-Ohio-1895, ¶ 21 (8th Dist.), citing *State v. Quarterman*, 2014-Ohio-4034, ¶ 19 ("[a]ppellate courts are not obligated to create, nor should they sua sponte provide, arguments on behalf of parties"). We simply note that the record contains ample evidence to support the court's R.C. 2151.414(D)(1) finding that placing the children in appellee's permanent custody is in their best interest.

{¶38} Furthermore, even if, for purposes of argument, we agreed with appellant that the trial court's alternative R.C. 2151.414(D)(2)(a) finding is against the manifest weight of the evidence, appellant has not suggested that the court's R.C. 2151.414(D)(1) best interest finding is against the manifest

weight of the evidence. Thus, because the court's R.C. 2151.414(D)(1) finding alone suffices, we need not consider whether the trial court's superfluous R.C. 2151.414(D)(2)(a) finding is against the manifest weight of the evidence. *See In re J.C.*, 2024-Ohio-5107, fn. 5[4] (10th Dist.) (declining to address R.C. 2151.414(D)(2) argument when "the trial court's findings under (D)(1)(a) through (e) were met and not against the manifest weight of the evidence"). Instead, any error would be harmless error that we must disregard. *See S.S.*, 2017-Ohio-2938, at ¶ 163 (4th Dist.), citing R.C. 2501.02(C) (appellate courts review for prejudicial error); Civ.R. 61 (courts "must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties"); App.R. 12(B) (reviewing court may reverse a trial court's judgment if it finds prejudicial error).

{¶39} In sum, appellant has not shown that the trial court's judgments placing the children in appellee's permanent custody are against the manifest weight of the evidence. Accordingly, based upon the foregoing reasons, we overrule appellant's sole

[4] Footnote five in the *J.C.* court's opinion is not contained in a numbered paragraph. Instead, the footnote is attached to one of the headings.

assignment of error and affirm the trial court's judgments.

JUDGMENTS AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgments be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

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

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

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.