

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

In re: S.B. & S.M.	:	
	:	Case No. 24CA5
Adjudicated Dependent Children.	:	
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	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
	:	
	:	<b>RELEASED: 07/08/2025</b>

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APPEARANCES:

Christopher Bazeley, Cincinnati, Ohio, for appellant.

Keller J. Blackburn, Athens County Prosecutor, and Brittany E. Leach, Athens County Assistant Prosecutor, Athens, Ohio, for appellee.

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Wilkin, J.

{¶1} Appellant, the children’s mother, (“Mother”) appeals a judgment of the Athens County Court of Common Pleas, Juvenile Division, that granted Richard Bullock,<sup>1</sup> the children’s father, (“Father”) legal custody of the parties’ two children: S.B. and S.M.

{¶2} Mother raises two assignments of error that assert that the trial court’s judgment placing the children in Father’s legal custody is not supported by a preponderance of the evidence and the trial court committed plain error when it granted Father’s motion for legal custody without filing a statement of understanding as is required by R.C. 2151. After our review of the record and the applicable law, we do not find any merit to Mother’s assignments of error. Therefore, we affirm the trial court’s judgment.

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<sup>1</sup> The father, Richard Bullock, did not file a response brief in this matter.

## FACTS AND PROCEDURAL BACKGROUND

{¶3} On May 23, 2023, Athens County Children Services (“ACCS”) filed a complaint that alleged the children were abused, neglected, “and/or” dependent children. The complaint indicated that Mother and Father failed to ensure the children attended school on a consistent basis. Mother has mental health issues which affected her ability to care for the children. For example, in February of 2023, Mother encouraged one of the children to paint the paternal grandfather’s vehicle to anger Father. The ACCS further requested a disposition of protective supervision.

{¶4} On July 31, 2023, the parties agreed and the court ordered that the children were adjudicated as dependent but remained in the legal custody of Mother and Father with the protective supervision of the ACCS.

{¶5} On December 11, 2023, Father filed a motion for legal custody of the children. In support of his motion, Father indicated that Mother had relocated outside of the home. He therefore claimed he could provide the sole care for the children. He would also ensure the children are regularly attending school. Father supervised visits between Mother and the children. Mother has provided no care and/or support for the children and Father believed that Mother is not taking her prescribed mental health prescriptions. Father concluded his motion by indicating that it would be in the children’s best interest to grant him custody.

{¶6} It does not appear that Mother filed a response.

{¶7} On January 23, 2024, the trial court held a hearing to consider Father’s motion. Father testified as follows. He is married to Mother and they have two children S.B. and S.M. Mother moved out of the marital home and Father had since been the

sole provider and caretaker for the children. Father indicated that Mother has been hospitalized for her mental health approximately six times in the past four years. She had run away with the children on occasion and they were found at her mother's home. Father testified that he knew Mother well enough to determine when she was and was not using her medications. When she was not on her medications, then she was "real scary for the kids." When on her medications, she made better decisions. Father stated that it was unsafe for the children to be with their mother because of "her mental condition. It's unsafe. She makes bad decisions." Father indicated that he allowed Mother to visit the children at his home, supervised. Father further testified that the children "are doing amazing" in school. "Ones got straight A's, and the other one got straight A pluses, and their attendance is great."

{¶8} Mother testified next. She indicated that she was seeing "a counselor in The Plains and she treats there." She testified that the children and her endured trauma and abuse in the home of Father. Mother stated that she still loves her children and she doesn't "want to leave them in an unsafe environment." Mother doesn't "feel like she has mental problems because [Father] constantly abuses me verbally, and calls me mental and causes my kids to do things." Mother felt that Father was "putting on this show and making his self-look like he's the one that's doing all of these good things when really, he's doing something else behind closed doors before he's calling these people on me and making me look crazy." She felt as though it is in the children's best interest "that their Mommy is not going to be called mental." Mother stated that she has tried the medication and she didn't like the way it makes her feel. "I don't feel normal."

Mother moved out of the home with the children and Father and she now resides with her mother.

{¶9} When Mother was asked if she completed a psychological assessment as was required by the case plan, she stated “I don’t know.” Mother said she was taking Suboxone for pain management. She stated that she is “not taking any antipsychotic [medicines] because I don’t’ feel like I need them, and the doctor doesn’t prescribe them.” Mother didn’t think she is mentally ill.

{¶10} The last witness to testify was Melissa Stewart. Stewart was an employee with ACCS and she was the caseworker assigned to this matter. Stewart last visited with Father and the children in December of 2023. She indicated that Father “has been in the home with the girls over the past several months and has done the parenting, and he’s done a really nice job getting the girls to school[.]” “The girls seem well adjusted and happy.” Stewart testified that she has no concerns with Father’s ability to care for the children. Stewart recommended that Father have custody or “at least placement of the girls during this time.”

{¶11} On the other hand, Stewart continued to have concerns with Mother’s mental health and “her ability to care for the children in a safe manner.” Stewart stated that since April of 2023, Mother has been in at least two mental health institutions. Stewart saw Mother hallucinate, where she was having conversations with people who are not present. When Mother was on her medications, she was “more stable, and um, and lucid in her thinking and communication.” As part of the case plan, Stewart stated that Mother was required to have a psychiatric evaluation by a licensed psychiatrist, but she failed to do so. The case plan also required that Mother take her prescribed

medications, but Mother was not able to tell Stewart “what she was taking and how she was taking it.” Stewart indicated that when Mother first got out of the mental health institution, “she did appear to be put together. She was conversational. She seemed appropriate in her interactions.” But, then when Stewart went to visit a month later, there “was an apparent difference. [Mother] was, um, her thoughts were kind of all over the place. It was difficult to follow the conversation. She seemed unkept herself[.]”

**{¶12}** On February 13, 2024, the trial court found that it was in the best interest of the children to grant Father legal custody. The court further terminated ACCS's protective supervision and granted Mother supervised visitations at the discretion of Father. This appeal followed.

#### ASSIGNMENTS OF ERROR

- I. THE TRIAL COURT'S DECISION GRANTING FATHER LEGAL CUSTODY IS NOT SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE.
- II. THE TRIAL COURT PLAINLY ERRED WHEN IT GRANTED THE FATHER'S MOTION FOR SOLE LEGAL CUSTODY OF THE CHILDREN WITHOUT FILING A STATEMENT OF UNDERSTANDING AS REQUIRED BY R.C. 2151.

#### ASSIGNMENT OF ERROR I

**{¶13}** In mother's first assignment of error, she argues that the trial court's decision was not supported by a preponderance of the evidence. She contends that neither Father nor ACCS provided sufficient evidence regarding the children's relationship with their parents or their wishes. Mother also highlights safety concerns with Father's residence and his alleged history of abuse.

**{¶14}** ACCS responds by maintaining that the trial court's decision was in the best interest of the children and it was supported by a preponderance of the evidence.

ACCS emphasizes Father's role as the primary caregiver and the positive environment he provides for the children.

## Law

### 1. Standard of Review

{¶15} “A trial court has broad discretion in proceedings involving the care and custody of children.” *In re Mullen*, 2011-Ohio-3361, ¶ 14. “Consequently, we review a trial court's decision to award a party legal custody of an abused, neglected, or dependent child for an abuse of discretion, and we afford its decision ‘the utmost deference.’ ” *Matter of W.W.*, 2024-Ohio-878, ¶ 23 (4th Dist.), citing *In re E.W.*, 4th Dist. 2011-Ohio-2123, ¶ 18 (4th Dist.). “The reason for this standard of review is that the trial judge has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page.” *Davis v. Flickinger*, 1997-Ohio-260, 77 Ohio St. 3d 415, 418 (1997).

{¶16} Typically, an “ ‘abuse of discretion’ implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable.” *In re H.V.*, 2014-Ohio-812, ¶ 8. However, in a child custody case a court does not abuse its discretion “ ‘[w]here an award of custody is supported by a substantial amount of credible and competent evidence, such an award will not be reversed as being against the weight of the evidence by a reviewing court.’ ” *Davis* at 418, quoting *Bechtol v. Bechtol*, 49 Ohio St.3d 21 (1990), syllabus. We note that “[w]hen conflicting evidence is presented at trial, a judgment is not against the manifest weight of the evidence simply because the trier of fact believed one side's testimony over the other's.” *Peterson v. Booth*, 2023-Ohio-1301, ¶ 29 (2d Dist.), citing *In re M.J.C.*, 2015-Ohio-820, ¶ 35 (12th Dist.).

## 2. Legal Custody

After a trial court adjudicates a child abused, neglected, or dependent, R.C. 2151.353(A)(3) authorizes the court to award legal custody of the child to any other person who is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings.” *In re R.P.*, 2025-Ohio-656, ¶ 13 (4th Dist.). “Legal custody” means a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities.

R.C. 2151.011(B)(21).

{¶17} “Although legal custody ‘is intended to be permanent in nature,’ R.C. 2151.42(B), it ‘is not as drastic a remedy as permanent custody because a parent retains residual rights and has the opportunity to request the return of the children.’ ” *Matter of W.W.* at ¶ 28, quoting *In re Memic*, 2006-Ohio-6346, ¶ 24 (11th Dist.).

{¶18} “To award legal custody of an abused, neglected, or dependent child, a trial court must find, by a preponderance of the evidence, that legal custody is in the child's best interest.” *Id.* “A ‘preponderance of the evidence’ is ‘evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.’ ” *In re B.P.*, 2010-Ohio-6458, ¶ 43 (4th Dist.), quoting *Black's Law Dictionary* 1182 (6th Ed.1998).

{¶19} Although a “child's best interest is the controlling principle in determining whether to award a parent or other person legal custody, . . . R.C. 2151.353(A)(3) does not list any factors that guide the best interest determination.” *In re R.P.*, 2025-Ohio-656, ¶ 16 (4th Dist.). And “Ohio appellate courts have not agreed on a single best interest test that a trial court must apply when considering a R.C. 2151.353(A)(3) legal

custody award.” *Id.* “Instead, courts have applied the best interest factors listed in R.C. 3109.04 or R.C. 2151.414, a combination of the two, or a general best interest test.” *Id.*, citing *Matter of W.W.*, 2024-Ohio-878, ¶ 30 (4th Dist.) and cases cited therein.

{¶20} “This court traditionally has considered the best interest factors listed in R.C. 3109.04 when reviewing a trial court’s legal custody decision in an abuse, neglect, or dependency case.” *Matter of W.W.*, at ¶ 31 (4th Dist.), citing *In the Matter of E.N.* 2022-Ohio-116, ¶ 25 (4th Dist.); *In re A.L.P.*, 2015-Ohio-1552, ¶ 17 (4th Dist.); *Pryor*, 86 Ohio App.3d 327, 336 (4th Dist. 1993) (“[I]n our opinion, the juvenile courts should consider the totality of the circumstances, including, to the extent they are applicable, those factors set forth in R.C. 3109.04(F)”). R.C. 3109.04(F)(1) sets out a non-exhaustive laundry list of factors for courts to consider in determining what is in the best interest of the child including, but not limited to: “the child’s adjustment to the child’s home, school, and community[;]” and “the mental and physical health of all persons involved in the situation.”

#### Analysis

{¶21} The trial court issued a judgment granting Father’s motion for custody determining it was in the best interest of S.B. and S.M, but offered no analysis. However, contrary to the Mother’s assertion, we find that the trial court’s decision was not an abuse of discretion, as it is backed by a substantial amount of credible and competent evidence.

{¶22} Stewart, who was the case worker herein, recommended that Father be awarded custody of S.B. and S.M. She testified that Father had done a good job parenting the children, including properly feeding and clothing them. She also stated



that the children were doing very well in school. She maintained that S.B. and S.M. seemed “well adjusted and happy.”

{¶23} She also expressed concerns regarding Mother’s mental stability, and her ability to safely care for the children. Stewart maintained that Mother had difficulty staying on her medicine to treat her mental health illness. Stewart testified that she experienced Mother hallucinate once.

{¶24} Father corroborated much of Stewart’s testimony. He testified that Mother had been hospitalized six times over a four-year period for mental illness. He testified that when Mother was on her medication she made “better decisions,” but when she was not, it was “real scary for the kids.” Father stated that S.M. and S.B. were both doing very well in school. Both were getting straight A’s.

{¶25} While Mother claimed that she had resumed treatment, she also testified that she did not feel that she had mental health problems. She also admitted that she was not taking her medication prescribed to treat her mental health problems.

{¶26} We find the trial court’s judgment that awarded legal custody of the children to the Father is supported by a substantial amount of credible and competent evidence. Therefore, the trial court did not abuse its discretion in awarding custody to Father. Accordingly, we overrule Mother’s first assignment of error.

#### ASSIGNMENT OF ERROR II

{¶27} In her second assignment of error, Mother argues that the trial court erred when it granted Father’s motion for sole legal custody of the children without filing a “statement of understanding” as required by R.C. 2151. Because she did not raise this

objection in the trial court, Mother admits this assignment of error is reviewed under a plain error standard.

**{¶28}** Mother maintains that R.C. 2151.353(A)(3) made it mandatory for Father to file a “statement of understanding” which requires statements that he is the person able to assume custody, he understands custody will be permanent, he will respect visitation rights, and he understands he must be present for the dispositional hearing prior to the disposition of custody.

**{¶29}** Mother claims that Father did not file a statement of understanding or testify to those statements. Mother argues that this failure requires this court to vacate the trial court’s decision granting custody to Father.

**{¶30}** In response, the ACCS maintains that plain error should be applied only in cases involving extraordinary circumstances where the error “seriously affects the fairness, integrity, or public reputation of the judicial process.”

**{¶31}** The ACCS cites a Ninth District Court of Appeals case in which the court concluded that a “parent is not required to sign a statement of understanding before being awarded custody of his or her child” in *In re L.S.*, 2014-Ohio-5531, ¶ 12 (9th Dist.). Clearly, Father is one of the children’s’ parents herein.

**{¶32}** The ACCS also cites a Fifth District Court of Appeals case that held failing to submit a statement of understanding was not plain error where the appellant failed to show that the adopting foster parent was not aware of the responsibilities set out in the statement of understanding in *In re W.A.*, 2013-Ohio-3444, ¶ 1-15 (5th Dist.). The ACCS argues that Mother failed to show that not submitting the statement of understanding affected the basic fairness, integrity, or public reputation of the judicial

process. Further, there is nothing in the record to show that Father was unaware of his responsibilities as the custodial parent.

## Law

### 1. Standard of Review

{¶33} “To prevail on a claim of plain error appellant must establish that an error occurred, that the error was plain, and that but for the error, the outcome of the trial clearly would have been otherwise.” *Sarchione-Tookey v. Tookey*, 2018-Ohio-2716, ¶ 49 (4th Dist.), citing *State v. Mammone*, 2014-Ohio-1942, ¶ 69. “The plain error doctrine is not, however, readily invoked in civil cases. Instead, an appellate court ‘must proceed with the utmost caution’ when applying the plain error doctrine in civil cases.” *Eichenlaub v. Eichenlaub*, 2018-Ohio-4060, ¶ 23 (4th Dist.), quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997). “The Ohio Supreme Court has set a ‘very high standard’ for invoking the plain error doctrine in a civil case.” *Id.*, citing *Perez v. Falls Financial, Inc.*, 87 Ohio St.3d 371, 721 (2000). Consequently, “ ‘the doctrine is sharply limited to 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.’ ” *Id.*, quoting *Goldfuss*, at 122.

{¶34} Finally, appellate courts “should be hesitant to decide [issues under a plain error analysis] for the reason that justice is far better served when it has the benefit of briefing, arguing, and lower court consideration before making a final determination.” *Risner v. Ohio Dep’t of Nat. Res., Ohio Div. of Wildlife*, 2015-Ohio-3731, ¶ 28, citing *Sizemore v. Smith*, 6 Ohio St.3d 330, 332 (1983), fn. 2.

## 2. R.C. 2151.353

{¶35} In pertinent part, R.C. 2151.353(A)(3) states that an:

[a]ward legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. A *person* identified in a complaint or motion filed by a party to the proceedings as a proposed legal custodian shall be awarded legal custody of the child only if the *person* identified signs a statement of understanding for legal custody that contains at least the following provisions.

(Emphasis added.)

## Analysis

{¶36} In *In re L.S.*, “L.S. was adjudicated a dependent child, and was placed in the temporary custody of Father.” 2014-Ohio-5531, ¶ 2 (9th Dist.). Father moved for legal custody of L.S. Mother opposed the motion, and the court held a hearing. *Id.* “Father, Mother, the guardian ad litem, and a caseworker from [Summit County Children’s Services] testified.” *Id.* at ¶ 3. “At the end of the hearing, Mother objected to the court granting legal custody to Father, in part, because he had not signed a statement of understanding as required by R.C. 2151.353.” *Id.* The objection was overruled.

{¶37} Mother appealed. Similar to the instant case, “Mother argue[d] that the court erred in granting legal custody to Father because he did not sign a statement of understanding [pursuant to R.C. 2151.353(A)(3)].” *Id.* at ¶ 5. The court of appeals disagreed finding that if the person seeking legal custody is a *parent*, R.C.

2151.353(A)(3) does not require his or her signature. *Id.* at ¶ 12. The court of appeals reasoned that

In R.C. 2151.353(A)(3) the legislature differentiated between a parent and “any other person” who may be awarded legal custody. *Id.* (The court may “[a]ward legal custody of the child to either parent or to any other person who \* \* \* files a motion requesting legal custody \* \* \* or is identified as a proposed legal custodian \* \* \* by any party to the proceedings.”). With this distinction being made in the first sentence, the legislature chose not to include the term “parent” in the second sentence, which details who must sign a statement of understanding. Instead, the statute limits that requirement to only “person[s] identified in a complaint or a motion filed by a party to the proceedings as a proposed legal custodian.” R.C. 2151.353(A)(3). “We read the statute as providing for a grant of legal custody to either parent, or, in the alternative, to any other person who files a motion for legal custody and a statement of understanding.” *In re R.K.*, 5th Dist. Muskingum No. CT2012–0006, 2012–Ohio–2739, ¶ 23.

*Id.* at ¶ 11

{¶38} We agree with *In re L.S.*, the plain language of R.C. 2151.353(A)(3) does not require a *parent* to sign a statement of understanding as a precursor to attaining custody. Therefore, we find that the trial court did not err, let alone plainly err, when it granted the Father’s motion for sole legal custody of the children even though Father did not sign a statement of understanding.

{¶39} Moreover, even if R.C. 2151. 353(A)(3) required a parent to sign a statement of understanding, we find no plain error. In *In re W.A.*, Muskingum County Children Services (“MCCS”) “took emergency custody of W.A., born in 2009, and filed with the trial court a complaint alleging that W.A. was a neglected or dependent child[.]” 2013-Ohio-3444, ¶ 2 (5th Dist.). W.A. was eventually placed with a foster parent Amanda Brunton, who was not related to W.A. *Id.* at ¶ 3. Following a hearing on

September 29, 2011, W.A. was adjudicated to be a neglected and dependent child. *Id.* “The trial court held a dispositional hearing on the same day, and W.A. was placed in the temporary custody of Amanda Brunton with protective supervision granted to the Agency.” *Id.* “On June 18, 2012, the [MCCS] filed a motion to modify temporary custody to legal custody to Amanda Brunton, W.A.’s foster parent, and a motion to terminate protective supervision. The trial court held a hearing for both motions on September 11, 2012 and issued a judgment entry on December 3, 2012 terminating protective supervision of the agency and awarding legal custody of the child to Ms. Brunton.” *Id.* at ¶ 4.

{¶40} W.A.’s mother appealed. In her First Assignment of Error, she contended the trial court committed reversible error by awarding legal custody of W.A. to Brunton, a non-relative, without a signed statement of understanding as set forth in R.C. 2151.353(A)(3). *Id.* at ¶ 9. The court of appeals found that there was no evidence that Brunton had signed a statement of understanding. *Id.* However, because Mother never objected to that failure in the trial court, the court of appeals applied a plain error standard of review. *Id.*

{¶41} After reviewing the transcript of the custody hearing, the court of appeals determined that “Brunton obtained an approved home study by MCCS approximately in August 2011, following which the agency placed W.A. with her. . . The guardian ad litem further recommended that legal custody be awarded to Ms. Brunton.” *In re W.A.* at ¶ 16. The court of appeals “surmise[d] that the legislative purpose of the signed statement of understanding under R.C. 2151.353(A) is to help insure that prospective legal custodians are apprised of the significant responsibilities they will undertake.” *Id.*

The court stated that “[Mother] does not direct us to anything in the present record to suggest Ms. Brunton was not aware of such responsibilities.” *Id.* Therefore, the court of appeals found that Mother failed to prove plain error.

{¶42} In the instant case, like in *In re W.A.*, Mother fails to point out anything to suggest that Father was not aware of his responsibilities. Further, the caseworker testified that both children appeared well adjusted, clothed, and fed. Both Father and the case worker testified that the children were also doing well in school. The caseworker recommended that Father be granted custody. From this we can infer that the Father understands and is fulfilling his role as a parent. We find that these circumstances do not constitute the “extremely rare case involving exceptional circumstances where error . . . seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.”

{¶43} For all the aforementioned reasons, we find that Mother failed to prove plain error herein. Therefore, we overrule Mother’s second assignment of error.

#### CONCLUSION

{¶44} Having overruled both of Mother’s assignment of error, we affirm the trial court’s judgment entry granting father legal custody.

**JUDGMENT AFFIRMED.**

**JUDGMENT ENTRY**

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

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

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

Abele, J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: \_\_\_\_\_  
Kristy S. Wilkin, 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.**