[Cite as *In re A.S.*, 2025-Ohio-681.]

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

IN RE: :

A.S. 1 (DOB: 9/15/2008) :
Case No. 24CA20
A.S. 2 (DOB: 4/30/2010)
S.S. (DOB: 6/19/2015)
:

Adjudicated Dependent : DECISION AND JUDGMENT ENTRY

Children.

:

APPEARANCES:

Christopher Bazeley, Cincinnati, Ohio, for appellant.[1]

Brittany E. Leach, Athens County Assistant Prosecuting Attorney, Athens, Ohio, for appellee.

CIVIL CASE FROM COMMON PLEAS COURT, JUVENILE DIVISION
DATE JOURNALIZED:2-20-25
ABELE, J.

{¶1} This is an appeal from an Athens County Common Pleas Court, Juvenile Division, judgment that granted Athens County

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

Children Services, appellee herein, permanent custody of 15-year-old A.S. 1, 14-year-old A.S. 2, and 9-year-old S.S.

{¶2} Appellant, J.S., the children's biological mother, raises the following assignments of error:

> FIRST ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT'S DECISION TERMINATING [APPELLANT'S] PARENTAL RIGHTS IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."
> SECOND ASSIGNMENT OF ERROR:
>
> "THE TRIAL COURT'S DENIAL OF [APPELLANT'S] MOTION FOR LEGAL CUSTODY IS NOT SUPPORTED BY A PREPONDERANCE OF THE RECORD."

{¶3} On February 1, 2024, the trial court entered an ex parte order that placed the children in appellee's emergency custody.

{¶4} The next day, appellee filed complaints that alleged the children are dependent and requested permanent custody of the children. Appellee alleged that, under previously filed cases, the children have been in its temporary custody since September 23, 2023. Appellee asserted that (1) the family has a

lengthy history with the agency, (2) appellant "has failed to consistently engage in parenting education services," (3) appellant "has failed to benefit from case plan services," (4) the father "has a history of substance use issues," (5) the father "cannot care for the children at this time, due, in part, to not having adequate housing for the children," and (6) the father has informed appellee "that he does not feel that [appellant] can appropriately care for the children."

{¶5} The trial court subsequently adjudicated the children dependent and continued them in appellee's temporary custody pending the dispositional hearing. Shortly before the dispositional hearing, appellant filed a motion for legal custody of the children.

{¶6} On April 23, 2024, the trial court held the dispositional hearing. Caseworker Tasha Jenkins, the family's caseworker from January through October 2023, testified that initial concerns related to A.S. 1's and A.S. 2's truancy, the home conditions, and the children's mental health. A.S. 1's

truancy apparently resulted from her arm injury and recurring doctor appointments. A.S. 2's truancy resulted from "a lot of anxiety, depression, and suicidal ideation." Appellant scheduled an evaluation for A.S. 2, and the child began receiving counseling services and other mental health treatment.

{¶7} Appellee also had concerns regarding the parents' supervision of the children and their ability to protect them from "inappropriate persons" and relationships. For example, the children were exposed via the internet to two individuals who were appellant's boyfriends. "[T]he children quickly became bonded to" one of the boyfriends even though "they have never had any physical contact with or met" him in person. The children "began calling him their father, or daddy." Appellant recognized this problem when the caseworker raised it, but "she was unable to maintain the progress."

{¶8} Additionally, in September 2023, when appellee obtained temporary custody of the children, appellant's brother, a registered sex offender, had been living in the home. The victim was S.M., appellant's biological daughter who now is over

the age of majority.

{¶9} Appellee also had concerns regarding the home conditions. The home had "[a] lot of . . . piled up garbage in and around the home." During one visit, the caseworker saw "a dead ferret in a kennel in the kitchen." The family also had several cats and their "litter boxes were placed inside the children's bedrooms." After the caseworker discussed this concern, appellant removed the litter boxes from the children's bedrooms and kept the cats locked in cages in the dining room.

{¶10} Appellant reported that she experienced financial stress and could not provide food. The caseworker expressed some concern that appellant's monthly income was approximately $4,000 per month, yet she had difficulty budgeting for food.

{¶11} Around June 2023, appellant had some health issues, and on two occasions, "she had just passed out." One of the children reported to a teacher "that her mom had passed out and died and her aunt gave her[] CPR, and a[n] ambulance was called and escorted [appellant] out of the home." The caseworker spoke with appellant about the episode and gathered that appellant's

anxiety "symptoms or depression become[] exacerbated and she kinda just blacked out."

{¶12} At one point, appellant reported that she was pregnant and that the father was a boyfriend who she never had met in person. Appellant continued to state throughout the summer of 2023 that she was pregnant with a due date in November 2023. The caseworker tried to obtain a release of information to contact appellant's doctor to ensure that she received appropriate prenatal care, but the name appellant gave to the caseworker was for a nonexistent provider. As of the date of the dispositional hearing, April 23, 2024, appellant had not given birth to a child.

{¶13} Appellee also expressed concerns regarding the children's supervision. When A.S. 2 was 12 years old, she engaged in unprotected sex with her boyfriend.

{¶14} The children's father stated that "he was highly concerned with [appellant]'s ability to care for the children." He "also recognized his own limitations and housing and resources, and stated that he would be unable." The father is

unemployed and has struggled with substance abuse. He lives in a one-bedroom apartment with his girlfriend and two children.

{¶15} Appellee has received approximately 98 referrals regarding the family that reported the same essential concerns with "untreated mental health," the home conditions, and "inappropriate supervision." The caseworker recommended that the court grant appellee permanent custody of the children due to "neglect" and "emotional maltreatment."

{¶16} Caseworker Maya Zoulek testified that the children have been in appellee's temporary custody since September 2023. They also had been in appellee's temporary custody two other times. The caseworker did not provide the dates the children previously entered and left appellee's temporary custody, but instead she referred to three judgment entries (dated August 17, 2020, February 16, 2022, and January 4, 2024) filed in previous cases. Each judgment adjudicated the children dependent. Two of the judgments contained dispositional orders that placed the children in appellee's temporary custody. The January 4, 2024 judgment continued the children in appellee's emergency custody.

{¶17} Caseworker Zoulek began to work with the family in 2021, and continued to work with the family until "late summer or early fall of 2022." She later was reassigned to work with the family in 2023.

{¶18} In 2021, appellee's concerns related to the housing conditions, effective parenting, and the children's mental health. The parents and the children lived in the home with a person who "was in a relationship with [the father] as well as [appellant]." This person's three children also lived in the home. Additionally, the father had been "using substances."

{¶19} In 2021-2022, the family's "home was very cluttered" and infested with "multiple types of bugs." More recently, "clutter has not been a huge concern." The home does not appear to contain "rotting food or the bugs." The home has multiple animals, however, with cats kept in cages.

{¶20} A.S. 1 and A.S. 2 also "had significant mental health concerns" and had "periods of time where they expressed suicidal ideation." They also "had significant anxiety concerns as well as depression. They would often talk about a desire to run away

from the home or to harm themselves permanently. Overall their emotional state was very tumultuous."

{¶21} The current case plan required appellant "to remain engaged with services through Hopewell Health," to work with a parent mentor, and to work on discussing "body safety" with the children. Appellant "has identified over the years that she struggles with mental health concerns" and informed the caseworker that she has "significant anxiety." Appellant indicated that she believes she is "a better parent when she's addressing those concerns actively."

{¶22} Caseworker Zoulek also had concerns about appellant's pregnancy claim, partly because appellant previously informed the caseworker that she had her fallopian tubes tied. When the caseworker asked appellant what led her to believe that she was pregnant, appellant responded that she took a test at a hospital and the hospital stated that the pregnancy test was positive. The caseworker learned that appellant had taken another pregnancy test, with a negative result. Yet appellant continued to believe that she was pregnant and "due to give birth within a

matter of weeks to months." The caseworker also expressed concern that appellant had informed the children that "she had had a miscarriage" and "their sibling had died." The children "were pretty emotional about it." Appellant continued to state that she was pregnant, "but she wasn't actively preparing for a baby to arrive." When the caseworker asked appellant "whether she had items prepared for a baby," appellant stated that she did not and "she would address it" when the baby was born. This conversation occurred after appellant had received a negative pregnancy test.

{¶23} The children had talked to Caseworker Zoulek "about concerns of people having touched them." During these conversations, the children "have been dismissive of some negative feelings that they identified about those situations" and "stated, well, you know, this individual didn't rape me so it wasn't bad." The caseworker talked to the children about being in charge or their bodies and protecting their personal safety.

{¶24} Recently, the children disclosed to the caseworker

their belief that their father sexually abused them. The children indicated that "they had sort of a family meeting with [appellant] where they all came to this realization together." When the caseworker visited the children in February 2024, the two girls were "in tears" and "expressed that they felt they were at fault for what they determined was an innocent man . . . Jerry Keirns, being in jail." The girls thought that Jerry, who is appellant's brother, had not done anything wrong and their father was the person responsible for the abuse. The caseworker found these revelations concerning and stated that, even if the children's father had been the perpetrator, appellant appeared "to know about it and continued to allow him to be in the home for quite sometime after that."

{¶25} Currently, the children live in foster homes, receive educational services, have access to school counselors, and have treatment advocates. The children also are engaged in mental health counseling.

{¶26} Caseworker Zoulek explained that appellee is

requesting permanent custody due to the family's "very long history of involvement" with appellee that started when the oldest child was an infant and continues through the present day. Appellee received approximately 98 referrals and received "about a third of those . . . within the last year or so." Zoulek indicated that "numerous different service providers" have attempted to help the family and despite these services, "the family has not been able to safely maintain the kids in the home." Furthermore, the children have had "a lot of instability . . . throughout their entire lives." The children have entered appellee's temporary custody three times, and each time "has been traumatic." Zoulek stated that the children "need stability and consistency, and they need caregivers" who can model appropriate interactions and healthy relationships with others. Zoulek also noted that the father has stated "that he is concerned about [appellant]'s ability to care for [the children] moving forward based on her inability to care for them historically." After Zoulek's testimony, appellee rested its case.

{¶27} Appellant presented testimony from Cheryl McDonald, a case manager at Hopewell Health Centers. McDonald has worked with appellant for approximately four-and-one-half years and helps to ensure that appellant's needs are being met–"[h]ousing, finances, transportation, [and] any conflicts within the home." McDonald also helps to ensure that appellant attends her appointments. She visited appellant's home in the past week and found "[n]othing out of place," but further indicated that appellant tends to "slide back" when services are not being provided. McDonald believes that providing appellant with "wraparound" services would help her be more successful.

{¶28} The children's guardian ad litem (GAL) testified and recommended that the court return the children to appellant's custody with "ongoing support services for the family." The GAL stated that the family is "in need of support." She indicated that providing mental health services is the "number 1" priority, along with "any and all other support services that would" help the parents "do a good job of raising their kids." She was uncertain, however, whether appellee should remain

involved with the family. The GAL explained that "the girls in particular were afraid that at any moment they might be taken" and that this fear contributed to their anxiety. She would not be opposed to a protective services order, and she had no recommendation as to whether appellee should remain involved with the family. The GAL also was uncertain whether the trial court should return the children to appellant and terminate appellee's involvement. She explained that she does not know "what options are out there and what would make the most sense, but if it's an either or then, yes, [she] would recommend returning the children" to appellant's custody "without agency involvement." The GAL further stated that, if appellee could remain involved with the family without creating "that sense of anxiety" for the children, then she "would not be opposed."

{¶29} Appellee's counsel questioned the GAL about the basis for her recommendation and asked whether her GAL training might suggest that she "should make a different recommendation." The GAL responded, "I guess what I'm saying is I'm not sure what the options are, and so, I would trust the Judge to make that

decision and in terms of, um, evaluating, um, sexual misconduct, sexual abuse, sexual imposition . . . I don't consider myself qualified to make that judgment." The GAL based her recommendation to return the children to appellant "based on the many visits, the phone calls, the emails, [and] the conversations with lots of different people." The GAL stated that appellant and the children love each other, and she does not believe that "there's anything more important than that."

{¶30} On July 29, 2024, after the trial court considered and weighed all the evidence, the court granted appellee permanent custody of the children. The court initially noted that appellee filed its complaint on February 2, 2024, but the children had been in appellee's temporary custody since September 20, 2023, under previously filed, and then dismissed, complaints. The complaints had been dismissed because they "could not be disposed within the statutory time limits."

{¶31} The trial court found that (1) the children cannot be placed with either parent within a reasonable time and should not be placed with either parent, and (2) placing the children

in appellee's permanent custody is in their best interests.

{¶32} With respect to its finding that the children cannot be placed with either parent within a reasonable time and should not be placed with either parent, the trial court cited R.C. 2151.414(E)(1), (4), and (16). The court stated that the children first entered appellee's temporary custody in August 2020 and that throughout this time, "effective parenting has been an issue." The court further noted that the parents' protective capacities have remained questionable and the same issues persist. The court recognized that appellant engaged in mental health treatment, but she "has not benefitted from these services or does not acknowledge what is appropriate versus inappropriate parenting." The court stated that the children's father "has all but given up on his progress with this family." The court observed that the father recognized "his inability to care for the children" and expressed "his concerns about [appellant]'s ability to care [for the children] based upon her history" with the agency.

{¶33} The trial court additionally indicated that appellee

"worked extensively with this family" and provided services. The court, however, did not believe that the family benefitted from those services. The court determined that the children would "remain at a high risk to be neglected and/or dependent if returned to their parents' care." The court also found that the children's father has demonstrated a lack of commitment toward the children. Under R.C. 2151.414(E)(16), the trial court found that appellant does not possess "the necessary ability to protect [the] children in the future." The court stated that appellant's "mental health is of paramount concern and her ability to provide the protective capacity for these children does not appear to be sufficient nor does it appear that in the future things will change in the family home." The court found that the "parents have consistently shown their inability to keep their children safe and to provide for the children's basic needs. The only way for that to be achieved is if permanent custody [is] granted to [appellee]."

{¶34} The trial court next considered the children's best interests. With respect to the children's interactions and

interrelationships, the court found that the "children's lives have been unstable for a substantial period of time." Although the court did not doubt the strong bond and love that appellant and the children share with one another, the court noted that since 2020 the children have entered appellee's temporary custody three separate times.

{¶35} The trial court further stated that appellant and the children's "positive relationship . . . does not equate to effective parenting." The court found appellant's interactions with individuals who "pose a risk to the children" to be "of grave concern." The court recognized that appellant has "voiced an understanding of [the] risks," but did not believe that she "truly is capable of providing a protective capacity for the children."

{¶36} The court additionally noted that the foster family provides the children with "necessary support and care," and the children "are receiving the appropriate services that they have lacked in the past while in their parents' care."

{¶37} Regarding the children's wishes, the trial court found

that the children "have unequivocally and consistently stated that their wishes are to live with [appellant]." The court also noted that the GAL recommended that the court deny appellee's request for permanent custody "but was unsure of what other options may be available to the family." The court observed that the GAL reported that "a strong love exists between [appellant] and the children," but they need "more ongoing support."

{¶38} With respect to the children's custodial history, the trial court found that, although the case "is not a '12 of 22' case," the children spent considerable time in agency custody for the last three years. The court stated that during the last three years, the children have entered appellee's temporary custody on three occasions, and have been in appellee's temporary custody since September 20, 2023, under previously filed case numbers. Because the court did not dispose of those cases "within statutory time limits," appellee refiled the complaints at issue. The children, however, remained in appellee's temporary custody throughout this time period. The

court thus found that appellee's "history with the family" is "lengthy and significant."

{¶39} The trial court also determined that the children need a legally secure permanent placement and that they cannot achieve this type of placement without placement in appellee's permanent custody. The court recognized the strong family bond, but further stated that "the children have lived a chaotic lifestyle for far too long," and the children "deserve stability." The court found that the issues that have plagued the family–"mental health stability, proper parenting techniques, appropriate individuals in or around the home"–persist, and resolving these issues in the near future did not appear likely.

{¶40} The trial court also determined that placing the children in appellee's permanent custody will allow them "to finally be in a safe environment that will provide them with the best chance to make consistent progress in their individual lives." The court found that the parents' decisions "show a pattern of their inability to recognize unsafe or risky

situations." The court further observed that appellee had "received 98 total reports/referrals regarding the family throughout the years, and most of the concerns have remained the same."

{¶41} Consequently, the trial court granted appellee permanent custody of the children. This appeal followed.

I

{¶42} In her first assignment of error, appellant asserts that the trial court's permanent custody judgment is against the manifest weight of the evidence. She contends that the evidence does not support the trial court's findings that (1) the children cannot be placed with her within a reasonable time or should not be placed with her, and (2) placing the children in appellee's permanent custody is in their best interests.

A

{¶43} 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).

{¶44} 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.

{¶45} 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.).

{¶46} 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").

{¶47} 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.); *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.'").

{¶48} 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

{¶49} 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 "child is an 'essential' and 'basic' civil right." *In re Murray*, 52 Ohio St.3d 155, 157 (1990); *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.

{¶50} 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.

C

{¶51} 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 requesting it in the complaint. R.C. 2151.353(A)(4) allows a court to grant an agency permanent custody at the disposition stage if the court determines that (1) under R.C. 2151.414(E), the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent, and (2) under R.C. 2151.414(D)(1), permanent commitment is in the child's best interest.[2]

[2] Appellant asserts that the trial court had to find the existence of one of the R.C. 2151.414(B)(1)(a)-(e) factors before it awarded appellee permanent custody. Appellee, however, requested permanent custody as the initial disposition. Thus, the framework set forth in R.C. 2151.353(A)(4) governs. *See In re B.S.*, 2018-Ohio-4645, ¶ 55-57 (4th Dist.) (explaining

{¶52} 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).

1

{¶53} R.C. 2151.414(E) requires a court that is determining whether a child cannot be placed with either parent within a reasonable period of time, or should not be placed with the parents, to consider all relevant evidence. The statute further specifies that if clear and convincing evidence shows that one or more of the following conditions exist "as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or

---

the difference between permanent custody motions and permanent custody complaints).

should not be placed with either parent:"

> (1) 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.
>
> . . .
>
> (4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;
>
> . . .
>
> (16) Any other factor the court considers relevant.

{¶54} Appellant argues that the trial court incorrectly determined that the children could not be placed with either parent within a reasonable period of time, or should not be placed with either parent. She asserts that she "made significant progress and satisfied the requirements of the case plan" and that placing the children with her within a reasonable

time "was conclusively possible."

{¶55} Even if appellant complied with the case plan requirements, however, a parent's "substantial compliance with a case plan, in and of itself, does not prove that a grant of permanent custody to an agency is erroneous." *In re A.C-B.*, 2017-Ohio-374, ¶ 11 (9th Dist.), citing *In re M.Z.*, 2012-Ohio-3194, ¶ 19 (9th Dist.); *In re S.C.*, 2015-Ohio-2280, ¶ 40 (8th Dist.) ("Compliance with a case plan is not, in and of itself, dispositive of the issue of reunification."); *In re W.C.J.*, 2014-Ohio-5841, ¶ 46 (4th Dist.) ("Substantial compliance with a case plan is not necessarily dispositive on the issue of reunification and does not preclude a grant of permanent custody to a children's services agency."). Simply because a parent completes some or all of the terms of a case plan does not mean the parent has achieved the goals of the plan, or has substantially remedied the conditions that caused the child to be removed. *In re J.B.*, 2013-Ohio-1704, ¶ 90 (8th Dist.). Indeed, "under R.C. 2151.414(E)(1), the crux of the analysis is not on the case plan services themselves, but on the desired

effect of those services. The services are provided to the parent 'for the purpose of changing parental conduct to allow them to resume and maintain parental duties.'" *In re C.S.*, 2023-Ohio-1662, ¶ 49 (6th Dist.), quoting R.C. 2151.414(E)(1). Thus, "'[t]he issue is not whether the parent has substantially complied with the case plan, but whether the parent has substantially remedied the conditions that caused the child's removal.'" *J.B.*, 2013-Ohio-1704, at ¶ 90 (8th Dist.), quoting *In re McKenzie*, 1995 WL 608285, *4 (9th Dist. Oct. 18, 1995); *accord In re M.S.K.*, 2023-Ohio-316, ¶ 34 (8th Dist.).

{¶56} In the case at bar, the trial court found that, despite repeated agency involvement and case planning services, appellant had not substantially remedied the conditions that caused the child to be removed. The court stated that appellant "has been engaged in services for several years to help with her mental health and ability to appropriately parent the children," but she "has not benefitted from these services" or "acknowledge[d] what is appropriate versus inappropriate parenting." The court also pointed out that the children's

father expressed "his concerns about [appellant]'s ability to care" for the children based upon her history of appellee's involvement. The court found that given appellant's history, the children would be at "high risk" of being "neglected and/or dependent if returned to their parents' care." The court determined that "[m]ost of the conditions that were present in 2020 remain present in 2024."

{¶57} The court additionally cited R.C. 2151.414(E)(16) and stated that it did not believe that appellant "possesses the necessary ability to protect these children in the future." The court elaborated as follows:

> The children have been in risky situations while in the family home. The children have been placed around risky individuals while in the family home. [Appellant]'s mental health is of paramount concern and her ability to provide the protective capacity for these children does not appear to be sufficient nor does it appear that in the future things will change in the family home.
>
> The parents have consistently shown their inability to keep their children safe and to provide for the children's basic needs.

{¶58} After our review of the evidence, we find nothing in the record to suggest that the trial court's findings are against the manifest weight of the evidence. *See In re W.A.J.*,

2014-Ohio-604, ¶ 21 (8th Dist.) ("mother's completion of parenting skills courses did not mean that she proved her competency to parent"). We further point out that as recently as February 2024, appellant informed the children that their father, not their uncle, had sexually abused them. The caseworker stated that appellant's revelation caused the girls emotional distress and further suggested that, if appellant had known all along that the children's father had abused them and had not reported it to appropriate authorities, her failure to report was troubling. Accordingly, we do not agree with appellant that the trial court's finding that the children cannot be placed with appellant within a reasonable time or should not be placed with her is against the manifest weight of the evidence.

2

{¶59} Appellant next asserts that the trial court's best interest determination is against the manifest weight of the evidence.

{¶60} R.C. 2151.414(D) 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.

{¶61} 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 its 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).

Children's Interactions and Interrelationships

{¶62} Appellant argues that the evidence shows that appellant loves her children and that she consistently visited the children. Appellee recognizes that the trial court found that the children and appellant share a strong bond and love for one another, but further states that the trial court also determined that the evidence failed to show that appellant is

capable of protecting the children from a risk of harm from other individuals with whom she associates.

{¶63} We recognize that "[f]amily unity and blood relationship" may be "vital factors" to consider, but neither is controlling. *In re J.B.*, 2013-Ohio-1703, ¶ 31 (8th Dist.). Indeed, "neglected and dependent children are entitled to stable, secure, nurturing and permanent homes in the near term . . . and their best interest is the pivotal factor in permanency case." *In re T.S.*, 2009-Ohio-5496, ¶ 35 (8th Dist.). Thus, while biological relationships may be important considerations, they do not control when ascertaining a child's best interest. *J.B.*, 2013-Ohio-1706, at ¶ 111 (8th Dist.). Consequently, courts are not required to preserve biological relationships when doing so is not in a child's best interest.

{¶64} In the case at bar, the trial court determined that, despite the familial bond, the children's interactions and interrelationships with appellant have been detrimental to their safety and well-being. The court did not believe that

preserving that familial bond would provide the children with a safe environment.

{¶65} Here, competent clear and convincing evidence supports the court's finding. As noted above, appellant told the children that their father had been the perpetrator of the sexual abuse. This revelation traumatized the two girls, who then blamed themselves for being the cause of a potentially innocent person's conviction. The agency caseworker also expressed concern that appellant had told the children this version of events and suggested that she was uncertain whether appellant told the children the truth. Thus, despite the children's closeness with appellant, their relationship with her has been detrimental to their emotional well-being.

{¶66} Furthermore, the evidence indicates that appellant exposed the children to an online boyfriend who appellant never met in person, yet the children called this person "daddy." In sum, appellant did not engage in relationships or interactions with her children that were conducive to raising healthy and mentally stable children.

Children's Wishes

{¶67} Appellant asserts that the trial court found that the children "unequivocally and consistently" indicated their desire to remain with appellant. She further notes that the GAL recommended that the court return the children to appellant's custody.

{¶68} Even though the children obviously love appellant and wish to be returned to her custody, the trial court concluded that doing so would place them at risk of further neglect or dependency.

{¶69} Furthermore, the GAL indicated that her recommendation rested upon not knowing what other options might be available for the family, and she ultimately concluded that the court must decide the appropriate placement for the children. Moreover, the trial court was not required to follow the GAL's recommendation. *See In re K.A.*, 2021-Ohio-1773, ¶ 47 (5th Dist.) ("the trial court, as the trier of fact, is permitted to assign weight to the GAL's testimony and recommendation and to

consider it in the context of all the evidence before the court"); *In re A.J.M.*, 2018-Ohio-4413, ¶ 15 (8th Dist.) ("The trial court acted within its discretion in choosing not to follow the recommendation of the guardian ad litem."); *In re L.M.*, Cuyahoga No. 106072, 2018-Ohio-963, ¶ 21 (8th Dist.) (observing that a trial court is not required to adopt GAL's recommendation and that the trial court ultimately decides the placement that will serve a child's best interest).

Custodial History

{¶70} Appellant points out that the trial court did not find that the children had been in appellee's temporary custody for more than 12 months of a consecutive 22-month period. Appellee, however, notes that the trial court found that the family has a "lengthy and significant" history with the agency.

{¶71} The evidence in the record does not show how many months the children have spent in appellee's temporary custody. Instead, the evidence establishes that since 2020, they have been adjudicated dependent four times, including the current

case; and they have been placed in appellee's temporary custody twice and emergency custody twice, including the current case. Thus, for the past four years, the children have not had a stable custodial history.

Legally Secure Permanent Placement

{¶72} Appellant argues that the evidence shows that she can provide the children with a legally secure permanent placement. She contends that she had "the insight and motivation to obtain food for her family during an emergency" and that she once held a job that paid approximately $4,000 per month. Appellant additionally asserts that her home no longer is cluttered with garbage and bugs, and her case manager testified that appellant is paying her bills regularly and has the financial ability to care for the children. She further contends that she has been attending all of her mental health appointments and participating in treatment. Thus, appellant claims that appellee has "ignored the case plan and the hard work [appellant] put into regaining custody of her children." She also notes that the children's GAL recommended that the court

return the children to her custody, "despite the family's turbulent history."

{¶73} Appellee observes that the trial court found that the children need a legally secure and permanent placement because the parents have not demonstrated "proper parenting techniques" or learned how to prevent "unsafe or risky situations" from arising.

{¶74} "Although the Ohio Revised Code does not define the term, 'legally secure permanent placement,' this court and others have generally interpreted the phrase to mean a safe, stable, consistent environment where a child's needs will be met." *In re M.B.*, 2016-Ohio-793, ¶ 56 (4th Dist.), citing *In re Dyal*, 2001 WL 925423, *9 (4th Dist. Aug. 9, 2001) ("legally secure permanent placement" means a "stable, safe, and nurturing environment"); *see also In re K.M.*, 2015-Ohio-4682, ¶ 28 (10th Dist.) (legally secure permanent placement requires more than a stable home and income, but also requires an environment that will provide for child's needs); *In re J.H.*, 2013-Ohio-1293, ¶ 95 (11th Dist.) (mother was unable to provide legally secure

permanent placement when she lacked physical and emotional stability and father was unable to do so when he lacked grasp of parenting concepts); *In re J.W.*, 2007-Ohio-2007, ¶ 34 (10th Dist.) (Sadler, J., dissenting) (legally secure permanent placement means "a placement that is stable and consistent"); *Black's Law Dictionary* (6th Ed. 1990) (defining "secure" to mean, in part, "not exposed to danger; safe; so strong, stable or firm as to insure safety"); id. (defining "permanent" to mean, in part, "[c]ontinuing or enduring in the same state, status, place, or the like without fundamental or marked change, not subject to fluctuation, or alteration, fixed or intended to be fixed; lasting; abiding; stable; not temporary or transient"). Thus, "[a] legally secure permanent placement is more than a house with four walls. Rather, it generally encompasses a stable environment where a child will live in safety with one or more dependable adults who will provide for the child's needs." *M.B.*, 2016-Ohio-793, at ¶ 56 (4th Dist.).

{¶75} Moreover, as we have observed in the past, a parent's efforts to improve the parent's situation, or to comply with a

case plan, may be relevant, but not necessarily conclusive, factors when a court evaluates a child's best interest. *In re Ca.S.*, 2021-Ohio-3874, ¶ 39-40 (4th Dist.); *In re B.P.*, 2021-Ohio-3148, ¶ 57 (4th Dist.); *In re T.J.*, 2016-Ohio-163, ¶ 36 (4th Dist.), citing *In re R.L.*, 2014-Ohio-3117, ¶ 34 (9th Dist.) ("although case plan compliance may be relevant to a trial court's best interest determination, it is not dispositive of it"); *accord In re S.C.*, 2015-Ohio-2280, ¶ 40 (8th Dist.) ("[c]ompliance with a case plan is not, in and of itself, dispositive of the issue of reunification"); *In re C.W.*, 2020-Ohio-6849, ¶ 19 (2nd Dist.) ("[c]ase-plan compliance is not the only consideration in a legal custody determination"). "Indeed, because the trial court's primary focus in a permanent custody proceeding is the child's best interest," a parent's case plan compliance is not dispositive and does not prevent a trial court from awarding permanent custody to a children services agency. *W.C.J.*, 2014-Ohio-5841, at ¶ 46 (4th Dist.).

{¶76} In the case sub judice, we believe that ample, clear and convincing evidence shows that placing the children in

appellee's permanent custody will provide them with a stable and secure permanent home where their needs will be met. The evidence reveals that appellant has not been able to adopt an appropriate parenting methodology even though she has been receiving services for years. Even the children's father expressed concern about appellant's ability to properly care for the children. Additionally, each upheaval in the children's custodial status exacerbated their emotional trauma and contributed to two of the children requiring mental-health treatment. The trial court thus could have formed a firm belief that the children need a legally secure permanent placement and that they cannot achieve this type of placement without granting appellee permanent custody.

{¶77} In sum, the trial court's finding that placing the children in appellee's permanent custody will serve their best interests is not against the manifest weight of the evidence.

{¶78} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

II

{¶79} In her second assignment of error, appellant asserts that the trial court's decision to deny her motion for legal custody is against the manifest weight of the evidence for the same reason that its decision to grant appellee permanent custody of the children is against the manifest weight of the evidence.

{¶80} Appellee asserts that the trial court's finding that placing the children in its permanent custody serves their best interests also shows that placing them in appellant's custody would not serve their best interests.

{¶81} As we have observed in the past, "'[i]f permanent custody is in the child's best interest, legal custody or placement with [a parent or third party] necessarily is not.'" *In re L.L.*, 2024-Ohio-5219, ¶ 24 (4th Dist.), quoting *In re K.M.*, 2014-Ohio-4268, ¶ 9 (9th Dist.).

{¶82} In the case at bar, as we concluded above, clear and convincing evidence supports the trial court's finding that placing the children in appellee's permanent custody is in the

children's best interest. Thus, placement with appellant necessarily is not.

{¶83} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and 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 Athens 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. & Wilkin, 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.