

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

In the Matter of:	:	Case Nos.	26CA04
	:		26CA05
A.H.Q.S. (DOB 12-31-2023)	:		
R.R.E.S. (DOB 12-06-2024)	:	<u>DECISION AND</u>	
	:	<u>JUDGMENT ENTRY</u>	
	:		
	:	RELEASED 10/08/2026	

APPEARANCES:

Richard D. Hixson, Zanesville, Ohio, for appellant mother.

Kelsey R. Riffle, Washington County Assistant Prosecuting Attorney, Marietta, Ohio, for appellee.

Hess, J.

{¶1} The mother of A.H.Q.S. and R.R.E.S. appeals judgments of the Washington County Court of Common Pleas, Juvenile Division, terminating her parental rights and granting permanent custody of the children to the Washington County Department of Job & Family Services (the “Agency”). Mother presents two assignments of error. First, she asserts that the trial court erred when it found that R.R.E.S. had been in the temporary custody of the Agency for 12 months of a consecutive 22-month period in satisfaction of R.C. 2151.414(B)(1)(d). She contends that, at the time the Agency filed its motion for permanent custody, R.R.E.S. had not yet been in the temporary custody of the agency for the required period. Second, mother asserts that the trial court erred in finding that there was clear and convincing evidence that it would be in the best interest of the minor

children to permanently terminate the parental rights and place them in the Agency's custody.

{¶2} For the reasons that follow, we sustain the mother's first assignment of error and overrule her second assignment of error. We affirm A.H.Q.S.'s judgment in whole. We affirm in part, reverse in part, and remand the judgment in R.R.E.S.'s case.

I. FACTS AND PROCEDURAL HISTORY

{¶3} In A.H.Q.S.'s case, on December 31, 2023, the date of the child's birth, the trial court granted the Agency emergency custody and subsequently granted continued temporary custody several days later, following a complaint filed by the Agency alleging that the child was dependent under R.C. 2151.04(C) and (D). Under R.C. 2151.04(C), the Agency alleged the child's "condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship" because the trailer in which she was to reside was in disrepair, had rotting floors that gave way to the weight of the people walking on them, was filled with clutter and trash, and was not appropriate for a child. Under R.C. 2151.04(D) (governing a child "residing in a household in which a parent . . . committed an act that was the basis for an adjudication that a sibling of the child . . . is an abused, neglected, or dependent child"), the Agency had alleged that A.H.Q.S.'s father had sexually abused another of his children (with a different mother), had served prison time for the offense, and was a Tier II sex offender. The Agency alleged that permanent custody of that other child had been granted to the Agency and it was concerned that mother was planning a home delivery of A.H.Q.S. to avoid Agency involvement. The Agency alleged that it subsequently learned that mother traveled to Athens County from Washington County to give birth.

{¶4} An adjudicatory hearing was held in February 2024 and the child was found dependent under R.C. 2151.04(C) and (D). A dispositional hearing was held in March 2024 and the child was continued in the Agency's temporary custody. Review hearings and semi-annual review and reunification assessments were held in July and December 2024 and June and July 2025, and A.H.Q.S. continued in the temporary custody following each review hearing and assessment.

{¶5} On October 31, 2025, the Agency filed a motion for permanent custody of A.H.Q.S. pursuant to R.C. 2151.413(A) and R.C. 2151.414(B)(1)(d) on the grounds that the child had been in the Agency's temporary custody for 12 or more months of a consecutive 22-month period and permanent custody to the Agency was in the child's best interest.

{¶6} In R.R.E.S.'s case, on December 6, 2024, the date of the child's birth, the trial court granted the Agency emergency custody and subsequently granted continued temporary custody several days later, following a complaint filed by the Agency alleging that the child was dependent due to the same unresolved issues with father that existed in A.H.Q.S.'s case. However, because of time constraints concerning the scheduling of the adjudication and dispositional hearings, the complaint was dismissed.¹ Prior to the dismissal, a new emergency custody order was granted on April 22, 2025 and a complaint was filed on April 23, 2025 alleging dependency under R.C. 2151.04(C). The trial court subsequently granted continued temporary custody. An adjudicatory hearing was held in June 2025, at which the parents admitted dependency, and a dispositional hearing held in July 2025, at which the parents admitted that the child should remain in the temporary

¹ The documents pertinent to this procedural history are not in the record, but the trial court's judgment entry describes this history and the Agency and mother have each provided it in their briefs.

custody of the Agency. Semi-annual review and reunification assessments were held in June and December 2025 and R.R.E.S. continued in the temporary custody of the Agency.

{¶7} On October 31, 2025, the Agency filed a motion for permanent custody of R.R.E.S. pursuant to R.C. 2151.413(A) and R.C. 2151.414(B)(1)(a) and (E). Under R.C. 2151.414(B)(1)(a), the Agency acknowledged that R.R.E.S. had not been in its temporary custody “for twelve or more months of a consecutive twenty-two-month period,” but that “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.” Under R.C. 2151.414(E), which provides findings the trial court must enter when the child cannot be placed with the parents within a reasonable time or should not be placed, the Agency argued that R.C. 2151.414(E)(1) and (E)(7)(d) applied. R.C. 2151.414(E)(1) provides:

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.

R.C. 2151.414(E)(7)(d) provides:

The parent has been convicted of or pleaded guilty to one of the following:

An offense under section 2907.02 [rape], 2907.03 [sexual battery], 2907.04 [unlawful sexual contact with a minor], 2907.05 [gross sexual imposition], or 2907.06 [sexual imposition] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the

victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

The Agency also argued in the motion that it was in the best interest of R.R.E.S. to be placed in the Agency's permanent custody under R.C. 2151.414(D)(1)(a), (d), and (e), which provide:

(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶18} A hearing on the Agency's motions for permanent custody of A.H.Q.S. and R.R.E.S. was held February 24, 2026.

{¶19} The Agency presented the testimony of Ms. Alisha Riddle, an Agency employee familiar with the children's cases. Ms. Riddle testified that A.H.Q.S. was born on December 31, 2023 and R.R.E.S. was born on December 6, 2024 and both children have been in the Agency's continuous temporary custody since birth. Ms. Riddle testified that the Agency became involved after they learned that mother had given birth to A.H.Q.S. and was with father, a registered sex offender, who had his three other children (with a different mother) removed from his custody and placed with the Agency. The Agency introduced a certified copy of a judgment entry from the Washington County Court of Common Pleas convicting father of one count of attempted gross sexual imposition in violation of R.C. 2907.05(A)(4) & (C)(2) and R.C. 2923.02. Father was sentenced to a nine-month prison term, a five-year period of mandatory post-release control, and was

classified as a Tier II sex offender. Ms. Riddle testified that the victim in the case was the father's child.

{¶10} Ms. Riddle testified that after R.R.E.S. was born and the Agency gained temporary custody, the Agency amended the case plan to include both children. The case plan goals for both parents were similar. They were to participate in a parenting education course and demonstrate learned skills in visits with their children, which they did. They were to complete the required course and homework and submit it to the Agency, which they did. They were to follow all visitation rules. Ms. Riddle testified that both parents "have done a fantastic job with visits." Mother attended 142 out of 144 visits and father attended 141 out of 144 visits. However, they struggled with one of the visitation rules that required them to bring things from home in sealed clear bags to prevent them from bringing in bugs. The parents attended visits together except during August 2025 through December 2025 when mother had a restraining order against father arising from a domestic violence situation. Mother eventually advocated for the dismissal of the charges and they were ultimately reduced to criminal mischief to which the father pleaded guilty.

{¶11} They were to allow announced and unannounced home visits by the Agency. Ms. Riddle testified that when the case first began, there were concerns about housing because mother was living with father and father's parents. The Agency told mother she needed to find separate housing from father to assure the safety of the children for reunification. Ms. Riddle testified that at times mother has had separate housing but currently she is residing with father and father's parents again. Ms. Riddle testified that home visits with mother and father have occurred but they have not been consistent. For approximately a year, Ms. Riddle has attempted to visit but has been

denied access to the home. During the time that mother was living separately from father, mother allowed Ms. Riddle access to her home and there were no safety or other concerns with mother's separate home. Ms. Riddle testified that mother was living independently in July 2025 but was evicted and then lived with a paramour until November 2025, when she moved back in with father. Ms. Riddle testified that mother has the goal of maintaining safe, stable, independent housing to accommodate the children and has not achieved that goal.

{¶12} The parents were to take responsibility for any current, pending or new criminal charges. Ms. Riddle testified that father pleaded guilty to the gross sexual imposition charge, but claims that he was wrongly convicted and set up by his ex-wife, so father took no accountability for the sexual offense. Additionally, the charges for domestic violence were reduced to criminal mischief and father pleaded guilty to that. The mother has no criminal charges against her.

{¶13} The parents were to obtain and maintain a legal source of employment with benefits to be able to take care of their children, but neither parent was employed at the time of the hearing. Mother obtained employment from the end of May/beginning of June 2025 through December 2025, but she had not provided the Agency with any proof of employment since then. Father has not provided Ms. Riddle with any proof of employment for the past year.

{¶14} The parents were to obtain mental health assessments and follow through with whatever recommendations were given to them. Ms. Riddle testified that both parents initially signed releases so that the Agency could verify and confirm mental health information and providers. Father and mother both completed the mental health

assessments. But then at some point both parents revoked their releases. Ms. Riddle testified that between October and November 2025 she asked them to re-sign the releases, then she asked again in December 2025 and January 2026, but neither parent signed new releases. Ms. Riddle testified that during the time she did have an active release for father he was not attending sex offender treatment. However, father had attended bi-weekly and some once-per-month counseling after his assessment was completed in April 2025 up to approximately September 2025. Mother was diagnosed with PTSD, anxiety, and depression. When she spoke to mother, Ms. Riddle testified that mother had been engaged in the recommended mental health treatment, but advised Ms. Riddle in September 2025 that both mother and father had stopped going to treatment. Both parents were also not to be discharged or terminated from any of the service providers but because they refused to provide releases, Ms. Riddle had no access to records to determine whether they had been discharged or terminated from treatment.

{¶15} The parents were to submit to random urine or saliva tests, which they have complied with. Ms. Riddle testified that drug use has not been a concern in the case. They were also to notify the Agency of any address or phone number changes, which father complied with but Ms. Riddle testified that there were times when the Agency has not known where mother was residing. Additionally, mother informed Ms. Riddle that she had Ms. Riddle's work phone number blocked so it has been difficult to reach mother. Ms. Riddle testified that the Agency provided mother with referrals to housing and food assistance resources, but Ms. Riddle did not believe mother was working on following up with the referrals. Mother was also to refrain from subjecting herself to individuals that could be harmful to her or her children. However, mother continued to have a relationship

with father and she also developed a relationship with a man who had an active warrant outstanding from Arkansas for domestic battery.

{¶16} Ms. Riddle testified that the case plan included goals for father so that he could address concerns the Agency had about his prior gross sexual imposition conviction and Tier II registration status. Father was to attend an intensive sex offender group program, but father never attended. Father was also to be open and honest with his discussions about the past victimization of his child so that he was addressing it, learning from it, and moving forward from it. Mother was also to learn techniques and abilities to protect her children. However, Ms. Riddle testified that mother admitted she was aware of father's conviction and was trying to separate from him, but then she would be back together with him. Mother was also to develop community support outside of father and his family, but she has not achieved this goal. Ms. Riddle testified that mother would have periods where she would use community housing services and obtain separate housing, but mother was not able to do this consistently throughout the history of the case.

{¶17} Ms. Riddle testified that the Agency from the beginning had concerns because of father's past sexual offense conviction against his child and implemented plan goals to allow father to show to the Agency that he has made changes and may be appropriate to be around the children, but father completed none of the plan goals geared toward overcoming the presumption that he was inappropriate around children. Mother continues to reside with father and neither parent will allow access to the home in which they reside. As a result, Ms. Riddle testified that she believes it is in the children's best interest to be placed in the permanent custody of the Agency.

{¶18} Ms. Katy Biehl testified that she was a foster care caseworker with the Agency. Ms. Biehl testified that she is familiar with A.H.Q.S. and R.R.E.S.'s foster care placement. They are placed together in the same home, which is a foster-to-adopt situation, with five other adopted children, including A.H.Q.S. and R.R.E.S.'s three half-sisters. The children have no serious medical concerns. Ms. Biehl has no concerns with the foster placement and testified that the children are "happy babies."

{¶19} H.G. testified that she is the foster care mother for A.H.Q.S. and R.R.E.S. and both children have been in her home since shortly after their births. H.G. testified that she has the financial means to care for the children and that she works part-time and her parents help take care of the children, too. H.G. testified that she has no concerns about the children and that they are bonded well with her and with the other children in her home. H.G. testified that she is divorced and has a shared parenting plan with her ex-husband that extends to the five adopted children, but not A.H.Q.S. and R.R.E.S.

{¶20} Mother testified that she is currently living with father and his parents and she started living there in January 2026. Before that she lived elsewhere with a friend for approximately six months. Mother testified that she eventually told the Agency where she had been living, but the Agency never visited while she lived there. Mother testified that she had employment with Boys and Girls Club from the end of July 2025 through the end of December 2025. Mother testified that she was concerned about the care her children were receiving in foster care. Specifically, the children had bruises and their clothes and diapers were too big or too small. Mother testified that she raised these concerns with the Agency and she was not satisfied with the Agency's response.

{¶21} Mother testified that her current housing situation with father and his parents is not permanent and she plans to move to Boone County, West Virginia, “either this weekend or next weekend.” She also plans to file for a dissolution from father, “we’ve been talking about it for a couple days.” Mother testified that she felt she was getting mixed messages about what the Agency wanted her to do concerning her relationship with father. Mother also testified that she was encouraged by the Agency to get a protective order against father and press criminal charges. Mother also felt that there was an instance where she believed she was being stalked by an employee of the Agency. Mother testified that she believes that she should be given more time to work on getting her children back and that the children belong with her. Mother testified that father has been helping her try to get the children back and giving her motivation to do it, helping her find jobs, and paying for her housing.

{¶22} William Adams, the guardian ad litem for both children, testified that he has been involved in both cases since they commenced. Mr. Adams testified that the two concerns when the cases commenced were the father’s criminal conviction for gross sexual imposition against his daughter and the living conditions. When A.H.Q.S.’s case commenced, the mother and father were living in a trailer that everyone agreed was unsuitable. The next time he returned for a visit, the trailer had been torn down and mother and father were living with father’s parents. Mr. Adams testified that his understanding was that father would need to have some sex offender-related counseling and an assessment to determine that there was no chance of sexual offenses reoccurring in this case. Father needed to make progress “along those lines before there could be a discussion of somehow trying to keep the family as it were together.” Mr. Adams testified

that, while mother has a strong desire to parent the children, the problem is that mother has not been able to set up and maintain a separate residence from father. Mr. Adams testified that he has visited the foster home and it is clean, safe, and appropriate. The children are closely bonded. Based on everything he has witnessed in the cases, Mr. Adams testified that it is his opinion that it is in the best interest of the children to be placed in the permanent custody of the Agency.

{¶23} Following the hearing the trial court granted the Agency permanent custody of both children.

{¶24} Mother appealed.

II. ASSIGNMENTS OF ERROR

{¶25} Mother presents two assignments of error:

1. The trial court erred and abused its discretion when it found that R.R.E.S. had been in the temporary custody of the Agency for twelve months of a consecutive twenty-two month period, in satisfaction of R.C. 2151.414(B)(1)(d).
2. The trial court erred and abused its discretion in finding by clear and convincing evidence that it would be in the best interest of the children to permanently terminate the parental rights of their parents and place them in the permanent custody of the Agency.

III. LAW AND ANALYSIS

A. The Motion for Permanent Custody of R.R.E.S.

{¶26} Mother contends that when the Agency filed its motion for permanent custody of R.R.E.S., the child had not been in the Agency's temporary custody for 12 months of a consecutive 22-month period because the Agency took temporary custody of the child on December 6, 2024 and filed its motion for permanent custody on October 31, 2025. Because the period of temporary custody is measured from the initial date of

custody until the date of filing the motion, the trial court could not award permanent custody on the grounds set forth in R.C. 2151.414(B)(1)(d) (12 out of 22) even though by the time of the permanent custody hearing, that time period was satisfied.

{¶27} The Agency agrees that R.R.E.S. had not met the 12 out of 22-month time frame in R.C. 2151.414(B)(1)(d). Thus, the Agency brought its motion under R.C. 2151.414(B)(1)(a), which applies when the child has not met the 12 out of 22-month time frame. In this case, the Agency's motion alleged that R.R.E.S. "cannot be placed with either of the child's parents within a reasonable time or should not be placed with the child's parents" under R.C. 2151.414(B)(1)(a).

1. Legal Provisions Governing Permanent Custody Motion

{¶28} R.C. 2151.413 allows the Agency to file a motion for permanent custody. The provisions in R.C. 2151.414(B) govern when a court may grant permanent custody to the Agency. It is undisputed that the Agency's motion for permanent custody over R.R.E.S. was governed by R.C. 2151.414(B)(1)(a):

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

{¶29} R.C. 2151.414(E) identifies one or more of the findings a court shall enter when determining that the child cannot be placed with either parent within a reasonable

time or should not be placed with either parent. The Agency argued in its motion that two findings under R.C. 2151.414(E) were applicable. R.C. 2151.414(E)(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.

And, R.C. 2151.414(E)(7)(d):

The parent has been convicted of or pleaded guilty to one of the following:

An offense under section 2907.02 [rape], 2907.03 [sexual battery], 2907.04 [unlawful sexual contact with a minor], 2907.05 [gross sexual imposition], or 2907.06 [sexual imposition] of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;

{¶30} In its order granting permanent custody of R.R.E.S. to the Agency, the trial court made the following factual finding:

7. At the time of the filing of the Motion for Permanent custody, [R.R.E.S.] had been out of the parents' home and in the Temporary Custody of Washington County Department of Job & Family Services for 10 actual months and 25 days. Between the filing and the date of the hearing, the child had continued in the Temporary Custody of the agency for another 3 months and 24 days totaling 14 ½ months actual time as of the date of the Permanency Hearing. Pursuant to the statutory time frame, the child has been in the temporary custody of the agency for a total of 12 ½ months counting 60 days from the earlier of the removal or the adjudication and as such R.C. 2151.414(B)(1)(d) is applicable.

The trial court's determination that R.C. 2151.414(B)(1)(d) was applicable is incorrect. For purposes of R.C. 2151.414(B)(1)(d), "a child shall be considered to have entered the

temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.” R.C. 2151(B)(1). Here, R.R.E.S. was removed from the parents on December 6, 2024, 60 days thereafter was February 4, 2025, and the date she was adjudicated dependent was June 18, 2025. The earlier date is February 4, 2025. When the Agency filed its motion for permanent custody on October 31, 2025, R.R.E.S. had been in the temporary custody of the Agency for 8 months and 27 days. However, the trial court erred when it added the additional 3 months and 24 days that R.R.E.S. was in the Agency’s custody from the filing of the motion on October 31, 2025 to the hearing date on February 24, 2026. “[T]he time that passes between the filing of a motion for permanent custody and the permanent-custody hearing does not count toward the 12-month period set forth in R.C. 2151.414(B)(1)(d).” *In re C.W.*, 2004-Ohio-6411, ¶ 26.

{¶31} Because R.R.E.S. had not been in the temporary custody of the Agency for 12 or more months of a consecutive 22-month period, R.C. 2151.414(b)(1)(d) was not applicable. Instead, R.C. 2151.414(B)(1)(a) applied. The court was required to determine that the child cannot be placed with either of the child’s parents within a reasonable time or should not be placed with the child parents before awarding the Agency permanent custody. This determination required the trial court to make, by clear and convincing evidence, one or more of the findings listed in R.C. 2151.414(E)(1) – (16). The determinations under R.C. 2151.414(B)(1)(a) and R.C. 2151.414(E) were required in addition to the trial court’s best interest of the child determination in R.C. 2151.414(D)(1)(a) – (e).

{¶32} Here the trial court incorrectly found that the “twelve of twenty-two” provision in R.C. 2151.414(B)(1)(d) applied and then determined that it was in the child’s best interest to grant the Agency permanent custody. The trial court did not discuss R.C. 2151.414(B)(1)(a), nor did it enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent as required by R.C. 2151.414(E). A trial court’s failure to enter an appropriate finding under R.C. 2151.414(B)(1) constitutes plain error. *In re McCain*, 2007-Ohio-1429, ¶ 25 (4th Dist.).

{¶33} “Trial courts have the mandatory duty to fully comply with the permanent custody statutes and may not award permanent custody without making the requisite findings.” *Id.* Because the trial court’s finding regarding R.C. 2151.414(B)(1)(d) is erroneous, there is no R.C. 2151.414(B)(1) factor supporting the trial court’s permanent custody award. The Agency argues that there was sufficient evidence set forth in the trial court’s factual findings to support a finding under R.C. 2151.414(B)(1)(a) and asks us to shift through the decision and match them with the appropriate findings under R.C. 2151.414(E). “We, however, do not believe that an appellate court should be making an initial determination in this regard. This is a matter that the trial court, as the trier of fact, must first decide.” *Id.*

{¶34} We sustain mother’s first assignment of error.

B. The Best Interest of the Children

{¶35} Mother contends that it was not in the best interest of either child to be placed in the permanent custody of the Agency because (1) the interaction and interrelationship of the children with her and with the foster care parent weigh in favor of mother; (2) the children could not express their opinions; (3) R.R.E.S. had only been in

the Agency's temporary custody at the time it sought permanent custody for between 10 and 11 months; and (4) mother had shown she was capable of providing a legally secure placement for the children and was planning to move to West Virginia to do so. Given these factors, mother argues that the trial court should have found that it was in the best interest of the children to permit reunification with the mother.

1. Standard of Review

{¶36} “A reviewing court will not reverse a trial court's judgment in a permanent custody case unless it is against the manifest weight of the evidence.” *In re C.S.*, 2019-Ohio-5109, ¶ 21 (4th Dist.). We have explained:

To determine whether a permanent custody decision is against the manifest weight of the evidence, an appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving evidentiary conflicts, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. In reviewing evidence under this standard, we defer to the trial court's determinations of matters of credibility, which are crucial in these cases, where demeanor and attitude are not reflected well by the written record.

In a permanent custody case the dispositive issue on appeal is “whether the trial court's findings . . . were supported by clear and convincing evidence.” “Clear and convincing evidence” is “that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” “[I]f the 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, then the court's decision is not against the manifest weight of the evidence.” The essential question we must resolve when reviewing a permanent custody decision under the manifest weight of the evidence standard is whether the amount of competent, credible evidence presented at trial produced in the court's mind a firm belief or conviction that permanent custody was warranted.

(Citations omitted.) *In re T.J.*, 2016-Ohio-163, ¶ 25-26 (4th Dist.).

C. Statutory Framework and Analysis

{¶37} Under R.C. 2151.414(B)(1), a trial court may grant permanent custody to a public children services agency if the court determines by clear and convincing evidence that (1) any of the circumstances in R.C. 2151.414(B)(1)(a) through (e) apply, and (2) it is in the best interest of the child. In this case, the trial court found that R.C. 2151.414(B)(1)(d) (the “12 out of 22” provision) applied to both children. As we discussed, the trial court erred when it applied that section to R.R.E.S., but the mother concedes it applies to A.H.Q.S. Thus, we must affirm the permanent custody award of A.H.Q.S. unless the juvenile court's best interest determination is against the manifest weight of the evidence. In R.R.E.S.'s case, our review of the trial court's best interest determination will determine the scope of the remand. See *In re McCain*, 2007-Ohio-1429, ¶¶ 25-26 (4th Dist.) (trial court erred in finding that R.C. 2151.414(B)(1)(d) applied to permanent custody decision, but the court's best interest determination was supported by the manifest weight of the evidence, thus a remand of the matter to the trial court was properly limited to the consideration of whether other R.C. 2151.414(B)(1) factors justified a permanent custody award).

{¶38} R.C. 2151.414(D)(1) states:

In determining the best interest of a child . . . the court shall consider all relevant factors, including, but not limited to, the following:

(a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;

(c) The custodial history of the child, including whether the child has been in the temporary custody of one or more public children services agencies .

. . for twelve or more months of a consecutive twenty-two-month period . . .
;

(d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;

(e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

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

No one factor has “greater weight or heightened significance.” *In re C.F.*, 2007-Ohio-1104, ¶ 57.

1. Interactions and Interrelationships of the Children

{¶39} The trial court found that both children were in the same foster home and were happy and well. Their half-siblings were also in the home and were adopted by the foster mother. The foster mother was willing to adopt the children. The trial court found that both children were doing well in the foster mother’s home and all of their needs were being met by the foster mother.

{¶40} Mother argues that she visited the children 142 out of 144 visitations and that she found questionable bruises and ill-fitting clothing on the children. However, several of the Agency’s witnesses testified that they witnessed the children in the foster mother’s care and that they were well-bonded, happy, and being appropriately cared for. None of the witnesses expressed concern or gave testimony that supported or bolstered the mother’s concerns. The trial court was in the best position to make credibility

determinations. The trial court's finding that the children were doing well in the home they shared with their other siblings was supported by the evidence.

2. Wishes of the Children

{¶41} The children were very young (approximately 2 years old and 15 months old) and unable to express their wishes. Mother concedes that the children were too young to express their wishes. In lieu of this, the trial court considered the guardian ad litem's opinion, which was that it would be in the best interest of the children to have permanent custody granted to the Agency. This finding was supported by the evidence.

3. Custodial History

{¶42} Both children were removed from the parents' custody at birth and remained in the Agency's temporary custody throughout the entire case. A.H.Q.S. was in the temporary custody of the Agency for 12 or more months of a consecutive 22-month period. At the time the Agency filed its motion for permanent custody of her, A.H.Q.S. had been in the Agency's custody continuously for over 18 months. Though R.R.E.S. had not been in the temporary custody of the Agency for 12 or more months of a consecutive 22-month period, she had been in the Agency's custody for nearly 9 months at the time the Agency filed its permanent custody motion. During the time between the filing of the Agency's motion and the hearing, neither parent was able to secure custody or a less restrictive visitation arrangement. To the contrary, they were back where they were when the cases first commenced – living with father's parents, unemployed, unengaged in mental health services, with father unable to assure the Agency that he would not repeat his sexually abusive criminal behavior against these children and mother unable to show she can protect the children by consistently living separate from father.

{¶43} Although the trial court erred in calculating R.R.E.S.’s custodial history as it pertains to R.C. 2151.414(B)(1)(d), when considering more broadly “the custodial history of the child” under this best interest factor, the children were never in their parents’ custody during their entire lives. For A.H.Q.S., this meant she had not been in her parents’ custody for two years and for R.R.E.S., this meant one year and two months.

{¶44} The evidence supported the trial court’s determination that the custodial history of the children supported an award to the Agency.

4. Legally Secure Permanent Placement

{¶45} The Ohio Revised Code does not define the phrase “legally secure permanent placement,” but “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.). “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.” *Id.*

{¶46} The trial court found that the children “need a safe, appropriate and legally secure permanent placement which the mother and father cannot provide. Permanency and stability cannot be achieved without a grant of permanent custody.”

{¶47} The trial court found that neither parent had successfully achieved the Agency’s plan goals. Specifically, the mother had 12 plan goals and failed 9 of them. Mother failed to “follow rules of visitation; allow agency home visits; provide safe and stable housing; follow through with mental health counseling; not terminate service providers; sign releases for agency; provide agency address changes; work with agency

referrals; and not associate with others who might be a danger to the child[ren].” The trial court found that mother moved back in with father and his parents in November 2025 and the Agency has denied visits since that date. Both parents “have no ability to financially provide for” their children “as neither is employed.” The trial court also found that the mother has not “willingly worked with the agency towards reunification” of the children with her. And though mother testified she is getting a dissolution and moving out of state, the trial court found she provided no details and did not elaborate on with whom she would be living. The trial court found as to each child, “Neither parent is able to support the child nor provide a safe, permanent, suitable home.”

{¶48} Mother argues that she could provide a legally secure placement for the children “within a reasonable time.” She argues that at the permanency hearing she testified that she would be obtaining separate housing in West Virginia and intended to file a dissolution from father. However, these plans are entirely speculative and futuristic. Mother had over two years to achieve this goal, yet on the date of the permanency hearing she was no closer to it than the day A.H.Q.S. was born. Similarly, mother had over a year since R.R.E.S.’s birth to obtain a legally secure placement. The trial court found that mother has had enough time to attempt reunification, “Additional time is not warranted.”

{¶49} The permanent custody statutes do not contemplate leaving children in custodial limbo for an extended period of time while a parent attempts to establish that the parent can provide the child with a legally secure permanent placement. *Matter of S.S.-1*, 2018-Ohio-1349, ¶ 72 (4th Dist.), citing R.C. 2151.415(D)(4). Keeping children in limbo is not in their best interests. *In re B.C.*, 2014-Ohio-4558, ¶ 20. Thus, the trial court had no obligation to continue to hold the children in custodial limbo while the mother

attempted to implement plans to dissolve her marriage and move out of state. *Matter of Z.M.*, 2019-Ohio-2564, ¶ 35 (4th Dist.) (“trial courts need not experiment with a child’s welfare”). The evidence supported the trial court’s determination that neither parent could provide a legally secure placement for the children.

5. R.C. 2151.414(E)(7) to (E)(11) Factors

{¶50} Mother concedes that certain of the factors in R.C. 2151.414(E)(7) to (11) applied to the father. The trial court found that father pled to an amended count of attempted gross sexual imposition in March 2021, which involved a different daughter of his by a different mother. The trial court noted that father’s guilty plea was part of a plea agreement in which two other counts, including a rape count, were dismissed. Additionally, the trial court found that father had his parental rights terminated in October 2021 as to his three other children by a different mother as a result of his March 2021 guilty plea and April 2021 conviction. Those three children were placed in the permanent custody of the Agency. As a result, the trial court found that R.C. 2151.414.(E)(7) and (E)(11) applied to father.

{¶51} The trial court did not identify any factors in R.C. 2151.414(E)(7) to (E)(11) applicable to mother. However, the Agency argues that it is still a best interest factor applicable to the trial court’s decision and it is applicable to the mother “such that her unwillingness or inability to separate herself from father since he refused to address these issues does impact the best interest of the children.”

{¶52} We agree and find that it bears on the mother’s ability to keep a safe and secure home for her children. The father’s criminal history and loss of custody of his other

children coupled with the mother's inability or unwillingness to separate herself from father to ensure her children's safety weighs in favor of a permanent custody award to the Agency.

6. Totality of the Circumstances

{¶53} Based on the foregoing, we conclude the trial court's best interest finding as to both A.H.Q.S. and R.R.E.S. is not against the manifest weight of the evidence. The Agency presented competent and credible evidence upon which the trial court reasonably could have formed a firm belief that a grant of permanent custody to the Agency was in the best interest of the children.

{¶54} Accordingly, we overrule mother's second assignment of error.

IV. CONCLUSION

{¶55} As to A.H.Q.S, we find that the permanent custody award of A.H.Q.S. to the Agency is not against the manifest weight of the evidence and affirm the trial court's judgment. As to R.R.E.S., we overrule mother's second assignment of error as it relates to the court's best interest determination but sustain the mother's first assignment of error as it relates to the trial courts findings under R.C. 2151.414.(B)(1)(d) and reverse and remand the trial court's judgment so that it can enter an appropriate R.C. 2151.414(B)(1) finding for R.R.E.S.

JUDGMENT AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED and that appellant and appellee shall split the costs equally.

The Court finds there were reasonable grounds for this appeal.

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

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Wilkin, J.: Concurrency in Judgment and Opinion.

Judge Peter B. Abele concurred in this Judgment and Opinion prior to his death on September 25, 2026.²

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

This document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

² The Ohio Constitution requires the concurrence of at least two judges when rendering a decision of a court of appeals. Therefore, this announcement of decision is in compliance with constitutional requirements. See *State v. Pembaur*, 69 Ohio St.2d 110 (1982).