[Cite as *In re W.N.*, 2026-Ohio-4669.]

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

In re: W.N., C.N., C.N.,	:	Case No. 26CA4208
	:	
Adjudicated Abused/Neglected/	:	DECISION AND
Dependent Children.	:	JUDGMENT ENTRY

RELEASED 11/16/2026

APPEARANCES:[1]

Alana Van Gundy, Bellbrook, Ohio, for appellant.

Shane A. Tieman, Scioto County Prosecuting Attorney, and Elisabeth M. Howard, Assistant Prosecuting Attorney, Portsmouth, Ohio, for appellee.

Hess, J.

{¶1} The mother of W.N. (D.O.B. 1/25/08), C.N. (D.O.B. 11/20/09) ("C.N.1"), and C.N. (D.O.B. 9/17/11) ("C.N.2"), appeals from a judgment of the Scioto County Court of Common Pleas, Juvenile Division, awarding permanent custody of C.N.1 and C.N.2 to Scioto County Children Services (the "Agency").[2] Mother presents one assignment of error asserting that she was denied the effective assistance of counsel when trial counsel failed to request a continuance after she did not appear for the permanent custody hearing. For the reasons which follow, we overrule the assignment of error and affirm the juvenile court's judgment.

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[1] The children's father has not entered an appearance or otherwise participated in this appeal.

[2] At one point in her appellate brief, mother claims the court granted permanent custody of all three children to the Agency. However, W.N. turned 18 before the juvenile court ruled on the Agency's permanent custody motion, and the court terminated the Agency's temporary custody of W.N. at the Agency's request and did not grant the Agency permanent custody of her. Consequently, mother's notice of appeal indicated that her appeal pertained only to the cases of C.N.1 and C.N.2.

I. FACTS AND PROCEDURAL HISTORY

A. Initial Proceedings

{¶2} On November 27, 2023, the Agency filed a complaint alleging the children appeared to be abused, neglected, and dependent children. An Agency employee submitted an affidavit stating that on November 25, 2023, the Agency received a referral regarding the conditions of the family home. The employee went there and found the home to be in deplorable condition. Garbage covered the floor and numerous indoor cats were perched on heaps of debris. The parents were not present, and the children admitted to sleeping on the floor amongst the garbage. The children said they eat once a day, usually having food delivered by DoorDash or ramen noodles their grandmother brought.

{¶3} The Agency obtained an ex parte emergency custody order, which was confirmed after a probable cause hearing for which the parents did not appear. On January 8, 2024, the juvenile court conducted an adjudicatory hearing for which the parents did not appear. The court made an oral determination that the children were abused, neglected, and dependent and issued an entry memorializing that decision on February 5, 2024. A dispositional hearing was scheduled for February 1, 2024. On that day, mother appeared and requested a continuance to have counsel appointed to represent her. The court appointed counsel and continued the hearing to the following day, at which time mother again appeared. On February 20, 2024, the court entered a dispositional order granting temporary custody to the Agency. At the request of the children's Court Appointed Special Advocate ("CASA"), the court also ordered that father have no contact with the children until he began case plan services.

{¶4} On May 23, 2024, the court conducted a review hearing for which the parents did not appear, and the court continued temporary custody with the Agency. On November 26, 2024, the court conducted a review hearing for which the parents did not appear. However, mother's counsel told the court that counsel had been in communication with mother, and mother agreed to continuing temporary custody with the Agency at that time. On May 16, 2025, the Agency filed a motion for permanent custody. On May 22, 2025, the court conducted a review hearing for which the parents did not appear, and the court continued temporary custody with the Agency. On August 6, 2025, the court conducted a pretrial hearing for which the parents did not appear.

B. Permanent Custody Hearing

{¶5} On October 22, 2025, the court conducted the permanent custody hearing. At the start of the hearing, the court stated that "we were to start at nine and it's now about ten minutes after ten" and mother "has not appeared and has not called the court." The bailiff confirmed this was correct. The court stated, "So, we've heard nothing from her with regard to why she isn't present, isn't going to be present, or requesting any sort of a continuance. So alright, are we all ready to proceed?" The Agency's counsel indicated she was, and the court instructed her to do so.

1. Testimony of Ongoing Caseworker

{¶6} Agency employee Joel Patrick testified that he has been the children's ongoing caseworker since December 2023. They were removed from a home in Franklin Furnace because of lack of supervision and deplorable home conditions. The sheriff's department did a safety check on the children. The home was in poor condition, with garbage everywhere. The children were alone and the parents reportedly were out of

town, had been gone a couple days, often left them alone for days at a time, and slept in their car or at a motel when they were in town. The children's grandmother would drop off ramen noodles or mother would send food to the home via DoorDash.

{¶7} Under the case plan, the home was to be cleaned and inspected once cleaned. Due to reports of domestic violence between the parents, they were to have family counseling if they stayed together, but they reported being separated. They were to do mental health assessments and engage in individual counseling services. Mother was supposed to complete domestic violence victim services, which could have been with a therapist. The parents were supposed to complete drug and alcohol assessments. The parents were to follow through with any recommendations from the assessment. They were also supposed to complete parenting classes.

{¶8} The Agency tried to help the parents remedy home conditions by renting a dumpster and providing $150 worth of cleaning supplies, but Patrick did not know whether they had been used to improve conditions. Mother reported improvement but Patrick could not verify it. He made attempts to visit the home but was never able to get inside. Mother gave reasons for not meeting him there or letting him inside, such as being afraid father would be there or that the foundation was unsafe due to damage from a tree. Patrick tried to meet father there once, but father cancelled. The week of the permanent custody hearing, Patrick went there and observed the home from the outside. It did not appear anyone was living there. He saw garbage piled between the house and a storage building, junk in the driveway, and weeds grown up around the house.

{¶9} Patrick had contact with father between January and April 2024 but none since then. Father initially told Patrick that he was "not in a good place right now" and

later said he had turned over the house to mother and moved to West Virginia. Patrick did not know his current whereabouts. He never attended any court hearings. The judge imposed a no-contact order barring father from contacting the children until he complied with the case plan. To Patrick's knowledge, father did not complete any case-plan services. In June 2025, mother told Patrick that father hit her and sent a picture of a black eye.

{¶10} Patrick's last interaction with mother was a few days before the permanent custody hearing. Mother was aware of the hearing and texted him that her lawyer had not called her. Patrick's phone was off because he was on vacation, so he had just seen the message and had not responded.

{¶11} Mother was not compliant with the case plan. Mother had been on long-term Suboxone for an addiction issue. She submitted paperwork from the place which prescribes the Suboxone, but to Patrick's knowledge, she did not complete drug and alcohol or mental health assessments. Mother had tested positive for methamphetamine at the dispositional hearing. She had not been screened since then because she had not shown up at court to be screened, and Patrick did not attempt a random screening because he was waiting for a medical provider to determine if she has a substance abuse problem. Within the last two months, mother told Patrick she was doing online therapy but had not given him any contact information for or notes from the therapist. Patrick gave mother permission to do an online parenting course, and mother said that she completed it but never provided him with a certificate of completion. Later mother said she could not get back into her account, so she had to do the course again. She asked if

there was a place she could do it locally, and Patrick gave her a referral, but he still had not received a certificate of completion.

{¶12} Patrick did not believe mother could provide the children with a stable home at the time of the hearing. He believed she received disability income, and she reported working for DoorDash, but she has had trouble with her car, so Patrick did not know if that work was consistent. The children had reported that mother has sold her medication before. Mother did not have a home for the children. She had been telling Patrick her uncle was working on fixing up the Franklin Furnace home for her but recently told Patrick her uncle sold it. Around spring of 2025, Mother started telling Patrick she was staying in motels, but she knew she could not stay at one with the children. She was currently staying at a motel in Portsmouth, and Patrick could not "say for sure whether she is staying in Franklin Furnace or not." To his knowledge, she applied for housing with the Portsmouth Metropolitan Housing Authority; mother said she was on a waiting list.

{¶13} At the time of the hearing, W.N. was 17, C.N.1 was 15, and C.N.2 was 14. Initially, the children were placed in a foster home together. W.N. was removed a few months later after she threatened to burn the home down. She went to another foster home, which did not work out, and was in a kinship placement from November 2024 until February 2025. She was then moved to the Children's Center of Ohio ("CCO"), a qualified residential treatment program, after she had issues with boys at school, refused to go to school, and threatened suicide. She was struggling to get through the program at CCO, but since going there, she seemed better able to deal with the stress of peers.

{¶14} About a year before the permanent custody hearing, C.N.1 and C.N.2 were removed from the original foster home due to their foster parent's health issues and were

moved to another foster home together, where they still lived. C.N.1 has some cognitive delays but made honor roll last quarter. In the past, C.N.1 was very argumentative with her sisters and threatened one of them with scissors, but she was receiving mental health support services, and that was "not how she is any more." C.N.2 had always done fairly well in school and also made honor roll last quarter. She was on probation for getting into a fight earlier in the year but was also receiving mental health support services and had not had any behavior problems since the fight. C.N.1 and C.N.2 were bonded with each other and their foster parents. C.N.1 and C.N.2 still have contact with W.N., and W.N.'s interactions with her sisters had improved since going to CCO.

{¶15} Mother was allowed to have supervised visits with the children once a week for two hours and usually came but had a lot of problems with being late. She had lots of phone contact with them. She had issues supervising them at visits. They did not respect her as a parent and would "back talk" a lot. Mother tended "to buy them off instead of parent them," and at times they seemed more interested in getting her to order them stuff than visiting. She bought them food and things like phones and Xboxes. Her ability to control them had improved, and there had been visits where they got along better, but Patrick believed this was partially because the children's attitudes had changed.

2. Testimony of Guadian ad Litem

{¶16} The children's guardian ad litem ("GAL") testified that the parents did not respond to contact from him. The children told him that the parents did not live in the home, that it was in horrible condition at the time of removal, and that there was no food in the home—it was delivered from "DoorDash or whatever." When the parents were present, there was physical, emotional, and mental abuse to the point that the children

struggled when they were removed from the home. W.N. struggled at CCO but made some improvements recently. The other children were doing pretty well. All three children told the GAL they did not want to return to mother's custody and had no relationship with father. The GAL believed all the children's needs were being met in their current placements and recommended that the court grant the Agency permanent custody.

C. Post-Hearing Events

{¶17} After the permanent custody hearing, the juvenile court conducted in-camera interviews of the children. Before the juvenile court ruled on the permanent custody motion, W.N. turned 18. The Agency moved to terminate its temporary custody of her, and the court granted the motion and terminated Agency custody of W.N. effective February 2, 2026.

{¶18} On May 6, 2026, the court terminated the parental rights of the parents as to C.N.1 and C.N.2 and granted the Agency permanent custody of them. The court found by clear and convincing evidence that R.C. 2151.414(B)(1)(d) applied because the children had been in the Agency's temporary custody for 12 or more months of a consecutive 22-month period at the time the Agency filed the permanent custody motion and that it was in the best interest of the children to grant the Agency permanent custody. Among other things, the court found father had essentially abandoned the children, and mother had contact with them but tried to be more of a friend than a mother, and the children did not respect her as a parent. The court found that "[i]n nearly two and a half years the parents have not provided proof of completing a single case plan objective." The court found mother could not currently provide a home for the children. In addition, the court found the children had bonded with their current foster parents and expressed

a desire to have permanent custody granted to the Agency and remain in their current foster placement. The court found that the consistency and support that placement provides has contributed to improved behavior and grades.

II. ASSIGNMENT OF ERROR

{¶19} Mother presents one assignment of error:

> [Mother] was denied the effective assistance of counsel when trial counsel failed to request a continuance after [mother] did not appear for the permanent custody hearing.

III. LAW AND ANALYSIS

{¶20} In her sole assignment of error Mother contends trial counsel was ineffective for failing to request a continuance after she did not appear for the permanent custody hearing. Mother asserts that counsel did not create a record concerning his recent communications with her, her intention to contest permanent custody, or whether her absence was inconsistent with her prior participation in the proceedings. She claims that she participated in prior hearings, maintained communication with counsel, attended visitation with the children, and engaged in case-plan services. She asserts that nothing in the record established she abandoned her defense to the permanent custody motion or "knowingly elected not to attend the hearing." Mother maintains that counsel did not state that he tried to reach her, explain why she was not at the hearing, or ask for "even a brief delay" to contact her or additional time to determine her whereabouts, ascertain the reason for her absence, communicate with her, or secure her presence and testimony. She asserts that her absence did not relieve trial counsel of the obligation to affirmatively protect her interests and that competent representation required that counsel, at a minimum "request a continuance and provide the juvenile court an opportunity to

determine whether [her] absence resulted from an emergency, transportation issue, lack of notice, illness, misunderstanding, or other legitimate circumstances." And she observes that the juvenile court did not state that a request for a continuance would have been summarily denied.

{¶21} Mother claims counsel's failure to request a continuance was prejudicial. She maintains that her absence deprived the juvenile court of her testimony about her case-plan progress, relationship and interactions with children, efforts to address the conditions which led to their removal, and ability to provide them with a legally secure permanent placement. She asserts that these matters "directly implicated the findings required under R.C. 2151.414(B), (D), and (E)" and her testimony would be "material evidence relevant to the permanent custody determination."

{¶22} "To overturn a permanent custody judgment on the basis of ineffective assistance of counsel, appellant must establish '(1) deficient performance by counsel, i.e., performance falling below an objective standard of reasonable representation, and (2) prejudice, i.e., a reasonable probability that, but for counsel's errors, the proceeding's result would have been different." *In re K.K.*, 2025-Ohio-1282, ¶ 35 (4th Dist.), quoting *State v. Madison*, 2020-Ohio-3735, ¶ 20, citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 694 (1984). "'A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *Hinton v. Alabama,* 571 U.S. 263, 275 (2014), quoting *Strickland* at 694. "'Failure to establish either element is fatal to the claim.'" *In re K.K.* at ¶ 36, quoting *State v. Jones*, 2008-Ohio-968, ¶ 14 (4th Dist.). "Therefore, if one element is dispositive, a court need not analyze both." *Id.*, citing *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000).

{¶23} In this case, even if we agreed with mother that counsel's performance was deficient, mother has not shown prejudice, i.e., a reasonable probability that, but for counsel's failure to request a continuance, the result of the permanent custody proceeding would have been different. Even if counsel secured a continuance, and even if mother would have appeared and testified, mother makes only a vague claim that she would have testified about her case-plan progress, relationship and interactions with the children, efforts to address the conditions that led to their removal, and ability to provide them with a legally secure permanent placement. She does not direct us to anything in the record indicating what her testimony would have been, let alone articulate why, if the juvenile court heard that testimony, there is a reasonable probability it would not have granted the Agency permanent custody of C.N.1 or C.N.2. To the extent mother's testimony about matters such as case-plan progress would have been consistent with Patrick's testimony about her statements to him, the juvenile court was already aware of the statements and still granted the Agency permanent custody of C.N.1 and C.N.2.

{¶24} For the foregoing reasons, we conclude mother was not denied the effective assistance of counsel when trial counsel failed to request a continuance after she did not appear for the permanent custody hearing, overrule the sole assignment of error, and affirm the juvenile court's judgment. In doing so, we observe that while mother does not assign as error the juvenile court's conclusions that R.C. 2151.414(B)(1)(d) applies and that it was in the children's best interest to grant permanent custody to the Agency, we believe the record contains more than ample evidence to support those conclusions.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

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

The Court finds there were reasonable grounds for this appeal.

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

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

Smith, P.J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.