

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

G.H. II

JUDGES:

Hon. John W. Wise, P.J.  
Hon. Patricia A. Delaney, J.  
Hon. Craig R. Baldwin, J.

Case No. 2023 CA 00041

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,  
Juvenile Division, Case No. 2021 JCV  
01297

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 23, 2023

APPEARANCES:

For Appellant Father

DEAN L. GRASE  
700 Courtyard Centre  
116 Cleveland Avenue, NW  
Canton, Ohio 44702

For Appellee SCJFS

BRANDON WALTENBAUGH  
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*Wise, P. J.*

{¶1} Appellant-Father G.H. appeals the judgment of the Stark County Common Pleas Court, Juvenile Division, awarding permanent custody of his minor child G.H. II to Appellee Stark County Department of Job and Family Services.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant-Father G.H. and Mother L.B. are the parents of the minor child G.H. II (DOB 12/28/21).

{¶3} On December 30, 2021, Stark County Job and Family Services ("SCJFS") filed a Complaint alleging the dependency and/or neglect of G.H. II (DOB 12/28/2021).

{¶4} The Agency became involved on a report that Mother, who has a Guardian through Tuscarawas County Probate Court, had given birth but was unable to care for a newborn due to her mental and developmental disabilities.

{¶5} On January 3, 2022, the trial court held an Emergency Shelter Care Hearing and found that probable cause existed for the involvement of SCJFS, that the agency had engaged in reasonable efforts to prevent the need for the removal of the child, that it had utilized intensive efforts to identify and engage appropriate and willing kinship caregivers for the child, that continued residence of the child with Appellant was contrary to his best interest, and approved and adopted the pre-adjudicatory orders requested by SCJFS, and also granted temporary custody of the child to SCJFS. (T. at 7).

{¶6} On January 12, 2022, SCJFS filed an Amended Complaint to reflect that Appellant is the established father of the child.

{¶7} According to the Amended Complaint, Mother's guardian reported that in addition to her mental and developmental disabilities, Mother has anger issues and had

recently hit her roommate and killed a cat due to her anger. (Amended Complaint at 1). She stated that Mother “is explosive and violent with animals when they get on her nerves.” (Amended Complaint at 2). She further stated that Mother has to be prompted by caregivers to bathe and often does not get out of bed until 2:00 p.m. *Id.* She stated that Mother was given \$400 by her payee to purchase a car seat but Mother instead used the money to buy alcohol and have a party. *Id.* At that time, Mother resided in a group home for mentally disabled persons, which employed staff to provide care for its residents but such services do not extend to care of a newborn. (Amended Complaint at 1).

**{¶18}** On January 31, 2022, SCJFS filed another Amended Complaint to reflect the correct spelling of Appellant's name.

**{¶19}** On March 10, 2022, the trial court found the minor child to be dependent and placed him into the temporary custody of SCJFS. (T. at 7-8). The trial court also approved and adopted the initial case plan, found that SCJFS had made reasonable efforts to finalize the permanency planning in effect, SCJFS had utilized intensive efforts to identify and engage appropriate and willing kinship caregivers for the child, and compelling reason existed to preclude a filing of permanent custody.

**{¶10}** On June 29, 2022, the trial court reviewed the case. The trial court approved and adopted the case plan, found that SCJFS had made reasonable efforts to finalize the permanency planning in effect, that SCJFS had utilized intensive efforts to identify and engage appropriate and willing kinship caregivers for the child, and ordered status quo.

**{¶11}** On November 29, 2022, the trial court again reviewed the case. The trial court approved and adopted the case plan, found that SCJFS had made reasonable efforts to finalize the permanency planning in effect, SCJFS had made intensive efforts

to identify and engage appropriate and willing kinship caregivers for the child, and ordered status quo. The trial court also found that there were no compelling reasons to preclude the filing of permanent custody.

**{¶12}** On November 29, 2022, SCJFS filed a motion seeking permanent custody of the child.

**{¶13}** On March 21, 2023, Appellant filed a motion to change legal custody of the child to a third party ("Third Party").

**{¶14}** On March 22, 2023, the Guardian ad Litem for the child filed her final report. In her report, Attorney Maszczak noted several concerns as to the ability of Appellant-Father or Mother to safely care for the child, including, but not limited to, their lack of contact with her or the child throughout the case, their lack of insight about the issues leading to the removal of the child, and their lack of progress in parenting classes. Attorney Maszczak recommended that permanent custody was in the best interest of the child.

**{¶15}** On March 28, 2023, the trial court held a hearing on the motion requesting permanent custody of the child and the motion to change legal custody of the child to Third Party. (T. at 3-95),

**{¶16}** At the hearing, the trial court heard testimony from the ongoing caseworker Wanda Pounds, protective service representative Gabbie Brunton, Goodwill parenting instructor Amy Humrighouse, SCJFS Kinship Care Coordinator Karla Mack, Third Party G.S., Guardian Ad Litem Kayla Maszczak and the Foster Father.

**{¶17}** Appellant did not appear at the hearing. (T. at 3-4). Appellant's counsel, stated both Appellant and Mother were at the Emergency Room because Mother was not

feeling well. (T. at 3). The trial court stated that it had checked with the emergency rooms at the local hospitals and could not find any record of either Appellant or Mother being there.

**{¶18}** Wanda Pounds testified she was employed by SCJFS and that she had been the ongoing caseworker assigned to the case for about one year. (T. at 5). She testified that SCJFS filed its Complaint requesting temporary custody of the child on December 30, 2021, that the child was found to be dependent on March 10, 2022, and placed into the temporary custody of SCJFS, and that the trial court held regular reviews during the case where it found that SCJFS was making reasonable efforts. (T. at 7-8)

**{¶19}** Caseworker Pounds testified that the initial concerns included Mother's mental health and cognitive issues and Appellant's lack of insight into Mother's issues. (T. at 8). She testified that a case plan was developed that was approved and adopted by the trial court wherein Mother was initially to complete a parenting evaluation and mental health treatment. (T. at 9-10). She testified that Mother completed a parenting assessment which raised concerns for Mother's mental health, anger issues, and cognitive abilities. (T. at 10). The parenting assessment was admitted into evidence. (T. at 4). She testified that the parenting assessment concluded that Mother would not be able to parent independently. (T. at 10). She testified that Mother was also ordered to complete parenting classes. (T. at 10).

**{¶20}** Caseworker Pounds testified that Mother's attendance in mental health treatment was "sporadic". (T. at 10). She testified that Mother was prescribed psychotropic medications, but Mother failed to take them consistently. (T. at 10). She testified that Mother has "a lot of anger issues" and is often threatening and explosive. (T.

at 11). She testified that Mother's behavior raises concerns for her ability to safely parent a young child. (T. at 11). Caseworker Pounds testified that Mother failed parenting classes. (T. at 12, A. at 12).

**{¶21}** Caseworker Pounds testified that Mother resides in an individual care facility due to her disabilities, and that Appellant resides there with her. (T. at 12). She testified that Mother refuses to accept assistance. (T. at 13). She testified that she has not been able to see the inside of the home due to the parents not answering the door, but that the outside of the home was full of "junk". (T. at 13).

**{¶22}** Caseworker Pounds testified that Appellant-Father's case plan consisted of completing a parenting assessment, mental health counseling, psychiatric services, and parenting classes. (T. at 13-14, A. at 12). She testified that Appellant completed a parenting assessment. (T. at 14). The parenting assessment was admitted into evidence. (T. at 4, A. at 12). She stated that Appellant failed to gain insight into Mother's issues despite his participation in mental health treatment. (T. at 14). She stated that Appellant also has several serious health issues which he fails to get the proper care. (T. at 14). She testified that Appellant also failed parenting classes. (T. at 15).

**{¶23}** Caseworker Pounds testified that she encouraged Appellant-Father and Mother to successfully complete services, offered to assist them with transportation, and met with them monthly. (T. at 15-16). She testified that Mother and Appellant-Father went long periods of time without visiting the child. (T. at 16-17). She testified that Appellant had only visited the child three (3) times in the last six (6) months. (T. at 18-19). She testified that both Appellant-Father and Mother struggled during visitation, and the child

spent most of the visits crying. (T. at 19-20). She testified that the child is not comfortable with Appellant or Mother, and that they have a "limited" bond. (T. at 21).

**{¶24}** Caseworker Pounds testified that, despite offering services, Appellant-Father and Mother did not make progress during the case, could not provide an adequate home for the child, and had not remedied the initial risks leading to the removal of the child. (T. at 21).

**{¶25}** Ms. Gabbie Brunton testified that she was employed by Advocacy and Protective Services Incorporated (APSI), and that APSI was assigned as Mother's guardian. (T. at 28). She testified that Mother refused to cooperate with services set up by APSI to help her with day-to-day functioning. (T. at 28-29). She testified that Mother was initially involved with DD (developmental delay) services but also refused their help. (T. at 29). She testified that she has been to Mother and Appellant-Father's home and has concerns about the condition of the home, stating that it is "not a safe environment for a one-year-old". (T. at 32). She testified that she is also concerned with Mother's mental health and anger outbursts. (T. at 33-34). She testified that the relationship between Mother and Appellant-Father is "toxic". (T. at 34). She testified that Appellant-Father often tells stories about how he used to change Mother's diaper (when Mother was a baby), and the couple constantly argue. (T. at 34).

**{¶26}** Amy Humrighouse testified that she was a parenting instructor at Goodwill Industries and had worked there for fifteen years. (T. at 41-42). She testified that the class is tailored to improve parenting skills. (T. at 42). She testified that Mother and Appellant-Father participated in the program, and that she completed reports for both parents. (T. at 42-45). The reports were admitted into evidence. (T. at 43).

**{¶27}** Ms. Humrighouse testified that Mother was in the program from August 29, 2022, until October 19, 2022, but was terminated from the program before completion due to her missing several classes and then failing to return. (T. at 44). She testified that Mother did not successfully complete any goals of the program. (T. at 45). She testified that Mother did not internalize any information from the class, that she was "not committed" to the child during visitation, and that she had several issues during visitation. (T. at 45-47). She testified that Mother was not nurturing with the child, and there was no bond between the two. (T. at 47). She testified that Mother appeared at a class upset and using vulgar language and never returned. (T. at 48). She testified that she is concerned for Mother's ability to safely parent a child. (T. at 48-51).

**{¶28}** Mother was diagnosed with Bipolar Disorder, Generalized Anxiety Disorder, PTSD, Borderline Personality Disorder, Intermittent Explosive Disorder, and Mild Intellectual Disability. (Magistrate's Decision, Findings of Fact and Conclusions of Law, at 20). Mother's full-scale IQ is 73. *Id.* The doctor who diagnosed Mother stated that based on her "below-average range of intellectual ability" she "is likely to encounter difficulties understanding and retaining parenting instruction." *Id.* He further stated "this examiner has significant concerns with [Mother] engaging in any unsupervised contact with her son given her mood dysregulation that could result in physical and emotional harm to her child." *Id.* at 21.

**{¶29}** Appellant-Father's intelligence testing indicated he had a full-scale IQ of 86, which indicates he is functioning within the low average range of intellectual ability. *Id.* at 21.



**{¶30}** Ms. Humrighouse testified that Appellant-Father attended the program from July 6, 2022, until September 9, 2022, but that he too failed to successfully complete the class and failed to improve during the class. (T. at 52). She testified that Appellant successfully answered only 30% of the post-test. (T. at 52) She testified that Appellant did not participate during class and "didn't have much to offer". (T. at 53). She testified that Appellant did not successfully complete his program goals. (T. at 53).

**{¶31}** Ms. Humrighouse further testified that Appellant-Father's visitation with the child was "difficult for (Appellant)". (T. at 53). She testified that the child was rarely soothed during visits with Appellant and spent a significant amount of time "pretty much inconsolable". (T. at 53). She stated that Appellant, and all of the items he used for the child during visitation, "reeked" of cigarette smoke. (T. at 54). She also testified that Appellant had several physical health issues that detrimentally impacted his ability to parent a young child. (T. at 55). She testified that Appellant failed to recognize Mother's limitations and took no responsibility for the removal of his child. (T. at 57-58). She testified that she did not recommend for either parent to have unsupervised contact with the child moving forward and did not recommend reunification. (T. at 59-60).

**{¶32}** During the Best Interest portion of the hearing, SCJFS again presented testimony from Caseworker Pounds. She testified that the child is healthy with no developmental or medical issues, that the child has been placed in the same foster home since the initial removal, that the foster family includes two parents and four children, that the child is bonded with the family, that the child is happy in the home and all of his needs are being met, and that the foster family is interested in adopting the child. (T. at 66-67).

**{¶33}** Caseworker Pounds also testified that Parents provided Third Party G.S. as a possible kinship placement for the child earlier in the case. (T. at 68). She testified that Third Party G.S. knew Mother because Mother would sometimes informally stay with her back when she was in foster care. (T. at 68). She testified that initially Third Party G.S. did not want to do a home study to be considered for placement. (T. at 68). She testified that Third Party G.S. stated that she did not believe there were any parenting issues with Mother and that Mother was fine to care for the child. (T. at 68-69). She testified that Third Party G.S. eventually agreed to complete a home study and that it was denied due to concerns as to Third Party's housing, as well as a pending allegation of physical abuse in a different county. (T. at 69). She testified that Third Party is no longer a licensed foster placement. (T. at 70).

**{¶34}** Caseworker Pounds testified that Parents had only visited the child twice since Christmas of 2022, that the child has a "minimal bond" with his parents, that the child views his foster parents as his parents, and that the child would benefit from adoption. (T. at 71-72). She testified that the benefits of permanency would outweigh any detrimental impact caused by the severing of parental rights, and that permanent custody was in the child's best interest. (T. at 72).

**{¶35}** Ms. Karla Mack testified that she was employed by SCJFS as a Kinship Care Coordinator. (T. at 75). She stated that she conducted a home study on Third Party G.S., and that she denied the home study due to concerns regarding Third Party's home, Third Party having a pending physical abuse case, Third Party's history with children services agencies, and the best interest of the child. (T. at 76-78).

{¶36} Third Party G.S. testified for Appellant. Third Party stated that she has not been a licensed foster parent since 2014. (T. at 82). She testified that she knows Mother because Mother was in her foster care for approximately five years, from the time she was fourteen until she was nineteen. (T. at 83). She further testified that she spent approximately 40 to 45 minutes with the child, and that she was willing to take legal custody of the child. (T. at 84-86). She admitted that her home study was denied and further admitted that her house is still cluttered. (T. at 87-89).

{¶37} Attorney Maszczak, the Guardian ad Litem for the child, also made a statement. (T. at 96). Attorney Maszczak stated that she went to Third Party's home the day prior to the hearing and that it was still cluttered. (T. at 96). She further stated that the child is minimally bonded with his parents, that the child is "incredibly" bonded with his foster parents, and that permanent custody was in the child's best interest. (T. at 96).

{¶38} At the conclusion of the hearing, the trial court took the matter under advisement. (T. at 97).

{¶39} On March 31, 2023, the trial court issued its findings of fact granting permanent custody of the child to SCJFS, denying Appellant's motion to change legal custody to Third Party, and terminating the parental rights of Appellant. Specifically, the trial court found that, despite reasonable efforts by SCJFS, the child could not and should not be placed with Appellant within a reasonable amount of time, and the grant of permanent custody was in the child's best interest.

{¶40} On April 6, 2023, the trial court issued an order *nunc pro tunc* to correct the child's date of birth in the prior entry.

{¶41} Appellant-Father now appeals, assigning the following errors for review:

### ASSIGNMENTS OF ERROR

{¶42} “I. THE TRIAL COURT'S DECISION DENYING PLAINTIFF/APPELLANT'S MOTION TO GRANT CUSTODY TO [THIRD PARTY] CONSTITUTES AN ABUSE OF DISCRETION AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶43} “II. THE TRIAL COURT'S DECISION DENYING PLAINTIFF/APPELLANT'S MOTION TO EXTEND TEMPORARY CUSTODY PURSUANT TO O.R.C.§ 2151.415(D) WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶44} This cases come to us on the expedited calendar and shall be considered in compliance with App. R. 11.2(C).

#### I.

{¶45} Appellant-Father argues that the trial court’s decision denying the motion to grant legal custody to “Third Party” was an abuse of discretion and against the manifest weight of the evidence. We disagree.

### **STANDARD OF REVIEW**

{¶46} As Father is appealing the trial court's decision to deny the motion for legal custody to Third Party and grant the motion for permanent custody to the Agency, we must consider the standard of review applicable to both permanent custody and legal custody.

### **PERMANENT CUSTODY**

{¶47} As to our standard of review, generally we review the trial court's decision in this context for abuse of discretion. We would examine the entire record and determine whether there is sufficient competent and credible evidence to support the judgment rendered by the trial court. *Seasons Coal Company v. Cleveland*, 10 Ohio St.3d 77, 80,

461 N.E.2d 1273 (1978). *Trickey v. Trickey*, 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952).

The trial court must resolve disputed issues of fact and weigh the testimony and credibility of the witnesses. *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 23, 550 N.E.2d 178 (1990). We would defer to the trial court's discretion because the trial court had the opportunity to observe the witnesses and parties in weighing the credibility of the proffered testimony in a way a reviewing court cannot.

### **BURDEN OF PROOF FOR PERMANENT CUSTODY**

{¶48} “[T]he right to raise a child is an ‘essential’ and ‘basic’ civil right.” *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990), quoting *Stanley v. Illinois*, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551(1972). A parent's interest in the care, custody and management of his or her child is “fundamental.” *Id.*; *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). The permanent termination of a parent's rights has been described as, “\* \* \* the family law equivalent to the death penalty in a criminal case.” *In re Smith*, 77 Ohio App.3d 1, 16, 601 N.E.2d 45 (6th Dist. 1991). Therefore, parents “must be afforded every procedural and substantive protection the law allows.” *Id.*

{¶49} An award of permanent custody must be based upon clear and convincing evidence. R.C. §2151.414(B)(1). The Ohio Supreme Court has defined “clear and convincing evidence” as “[t]he 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, 103-104, 495 N.E.2d 23 (1986).

**{¶50}** R.C. §2151.414 sets forth the guidelines a trial court must follow when deciding a motion for permanent custody. R.C. §2151.414(A)(1) mandates the trial court schedule a hearing and provide notice upon filing of a motion for permanent custody of a child by a public children services agency or private child placing agency that has temporary custody of the child or has placed the child in long-term foster care.

**{¶51}** Following the hearing, R.C. §2151.414(B)(1) authorizes the juvenile court to grant permanent custody of the child to the public or private agency if the court determines, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency, and that any of the following apply:

(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;

(b) the child is abandoned;

(c) the child is orphaned and there are no relatives of the child who are able to take permanent custody; or

(d) the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, 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.

**{¶52}** Therefore, R.C. §2151.414(B) establishes a two-pronged analysis the trial court must apply when ruling on a motion for permanent custody. In practice, the trial court will usually determine whether one of the four circumstances delineated in R.C. §2151.414(B)(1)(a) through (d) is present before proceeding to a determination regarding the best interest of the child. The statutory best interest test is set out in R.C. §2151.414(D)(1):

**{¶53}** In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, 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 or private child placing agencies for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two-month period and, 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;

(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.

### LEGAL CUSTODY

**{¶54}** Unlike in a permanent custody proceeding where a juvenile court's standard of review is by clear and convincing evidence, the court's standard of review in legal custody proceedings is a preponderance of the evidence. *In re S.D.*, 5th Dist. Stark Nos. 2013CA0081, 2013CA0082, 2013–Ohio–5752, ¶ 32; *In re A.C.*, 12th Dist. No. CA2006–12–105, 2007–Ohio–3350 at ¶ 14; *In re Nice*, 141 Ohio App.3d 445, 455, 751 N.E.2d 552 (7th Dist.2001).



**{¶55}** The statutes regarding an award of legal custody do not include a specific test or set of criteria, and a trial court must base its decision on the best interest of the child. *In re C.R.*, 108 Ohio St.3d 369, 2006-Ohio-1191, 843 N.E.2d 1188; *In re P.S.*, 5th Dist. Stark No. 2012CA00007, 2012-Ohio-3431. When determining the issue of legal custody, the trial court should consider the totality of the circumstances and all factors relevant to the best interest of the child. *In re D.T.*, 5th Dist. Stark No. 2013CA00252, 2014-Ohio-2495. “The statutory best interest test designed for the permanent custody situation may provide some ‘guidance’ for trial courts making legal custody decisions.” *In re A.F.*, 9th Dist. No. 24317, 2009–Ohio–333 at ¶ 7, citing *In re T.A.*, 9th Dist. No. 22954, 2006–Ohio–4468 at ¶ 17; *In re S.D.* 5th Dist. Stark Nos. 2013CA0081, 2013CA0082, 2013–Ohio–5752, ¶ 33.

**{¶56}** We review the trial court's award of legal custody for an abuse of discretion and recognize that a trial court has broad discretion in proceedings involving the care and custody of children. *In re R.D.J.*, 5th Dist. Delaware No. 12 CAF 07 0046, 2013–Ohio–1999, ¶ 29, quoting *In re Gales*, 10th Dist. No. 03AP–445, 2003–Ohio–6309; *In re Nice*, 141 Ohio App.3d 445, 455, 2001–Ohio–3214, 751 N.E.2d 552; *In re Mullen*, 129 Ohio St.3d 417, 2011–Ohio–3361, ¶ 14. Abuse of discretion connotes more than an error of law or judgment; rather, it implies that the trial court's decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

### ANALYSIS

**{¶57}** The trial court resolved two motions, a motion for change of legal custody filed by Appellant-Father, and a motion for permanent custody filed by the Stark County Department of Job and Family Services. Both dispositions require consideration of the

child's best interest, though with different evidentiary standards. Before granting legal custody, the trial court must determine whether the preponderance of the evidence supports that result. Permanent custody, being a more drastic resolution, requires the trial court to find clear and convincing evidence in support of the disposition.

**{¶58}** And, as noted above, we review the trial court's decision for abuse of discretion.

**{¶59}** The issue in this case is whether the preponderance of the evidence demonstrated it was in the best interest of G.H. II to grant legal custody to Third Party G.S.

**{¶60}** Upon review, we find that in determining the best interest of the child, the juvenile court's decision demonstrates that it considered all relevant factors pursuant to R.C. §2151.414(D)(1). There were significant relevant factors that supported the trial court's denial of legal custody to Third Party G.S and award of permanent custody to the Agency.

**{¶61}** As set forth above, testimony was presented that the child has been living with the foster parents since the day he left the hospital after being born and has resided there continuously since that time. The court heard testimony that child is emotional and agitated during visitations with Appellant-Father and Mother. The court also heard testimony that the child is bonded with his foster family, is happy with the family and that they wish to adopt him. Additionally, the GAL recommended that permanent custody be granted to SCJFS.

**{¶62}** Testimony was also presented that Third-party G.S. is no longer a licensed foster parent, that initially she was not interested in legal custody of the child, and that

she has only ever spent at most 45 minutes with the child. The court further heard testimony that the Agency denied the home study due to concerns regarding G.S.' home and that G.S. had a pending physical abuse case.

{¶63} As the Supreme Court of Ohio has explained, “[R.C. 2151.414(D)] requires a weighing of all the relevant factors \* \* \* [and] requires the court to find the best option for the child \* \* \*.” *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, at ¶ 64. Furthermore, “[t]he statute does not make the availability of a placement that would not require a termination of parental rights an all-controlling factor. The statute does not even require the court to weigh that factor more heavily than other factors.” *Id.*

{¶64} Here, the record reflects that the award of permanent custody to SCJFS is supported by competent, credible evidence in the record and is not against the manifest weight of the evidence. Although family unity is an important factor to consider, the paramount consideration is the best interest of the child. *In re J.S.*, 8th Dist. Cuyahoga No. 108406, 2019-Ohio-4467, ¶ 14 (upholding the grant of permanent custody to CCDCFS and denial of legal custody to maternal relatives), citing *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and Cuyahoga Nos. 98567, 2013-Ohio-1706, ¶ 163. As this Court has repeatedly recognized, “ ‘[a] child’s best interests require permanency and a safe and secure environment.’ ” *In re A.R.*, 8th Dist. Cuyahoga No. 103450, 2016-Ohio-1229, ¶ 22 (upholding trial court’s award of permanent custody to the agency and the denial of legal custody to a paternal grandmother when the trial court considered all relevant factors and found it was necessary to avoid any future contact with, or retraumatization caused by either parent), quoting *In re Holyak*, 8th Dist. Cuyahoga No. 78890, 2001 WL 792709, 2001 Ohio App. LEXIS 3105 (July 12, 2001).

{¶65} Based on the foregoing, we find the trial court did not commit error in denying legal custody of the child to Third Party G.S.

{¶66} Appellant-Father's first assignment of error is overruled.

## II.

{¶67} Appellant-Father argues that the trial court's decision denying the motion to extend temporary custody was against the manifest weight of the evidence. We disagree.

{¶68} A trial court's decision to grant or deny an extension of temporary custody is a discretionary one. See R.C. §2151.415(D)(1) and (2). Pursuant to R.C. §2151.415(D)(1), a trial court can extend temporary custody for six months only if it finds, by clear and convincing evidence, (1) that such an extension is in the best interests of the child, (2) that there has been significant progress on the case plan, and (3) that there is reasonable cause to believe that the child will be reunified with a parent or otherwise permanently placed within the period of extension. See *In re McNab*, 5th Dist. Nos.2007 AP 11 0074, 2007 AP 11 0075, 2008–Ohio–1638.

{¶69} Based on our finding in response to Appellant-Father's first assignment of error, that the decision of the trial court denying the motion to change legal custody and granting permanent custody to SCJFS was not against the manifest weight of the evidence, we are constrained by that finding to conclude that the trial court did not abuse its discretion by denying the motion to extend temporary custody.

{¶70} The record supports a conclusion that an extension would not be in the best interest of the child, that there had not been significant progress on the case plans of

either parent, and that there was not reasonable cause to believe that the child will be reunified with Mother or Appellant-Father.

{¶71} The child has been in a temporary placement since birth, and the record supports a conclusion that he will benefit from a permanent placement with his foster parents. Appellant-Father and Mother made little to no progress on their case plans. There is nothing in the record to support an argument that additional time would result in progress or completion of the case plans. Rather, the parents performed so poorly that an extension of temporary custody would not serve the child's best interest.

{¶72} Appellant-Father's second assignment of error is overruled.

{¶73} The judgment of the Court of Common Pleas, Juvenile Division, Stark County, Ohio, is affirmed.

By: Wise, P. J.

Delaney, J., and

Baldwin, J., concur.