

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
STARK COUNTY, OHIO

IN THE MATTER OF: L.B.
(D.O.B. 11/24/2015)

Case No. 2026CA00082

Opinion And Judgment Entry

Appeal from the Stark County Court of Common
Pleas, Family Court Division, Case No.
2024JCV01268

Judgment: Affirmed

Date of Judgment Entry: August 26, 2026

BEFORE: Andrew J. King; Robert G. Montgomery; Kevin W. Popham, Judges

APPEARANCES: BRANDON J. WALTENBAUGH, Stark County Job and Family
Services, for Plaintiff-Appellee; AARON KOVALCHIK, for Defendant-Appellant.

Montgomery, J.

{¶1} Appellant-Father, Marvin Butler, appeals from the judgment of the Stark County Court of Common Pleas granting the Stark County Department of Job and Family Services' motion for permanent custody of the minor child, L.B. For the reasons below, we AFFIRM.

STATEMENT OF THE CASE

{¶2} Marvin Butler, ("Father"), is the father of the minor child, L.B., d/o/b November 24, 2015. Mother of L.B. and her sibling (subject of a separate case) is Stacy

Hocker; Mother is not a party to the instant appeal. On October 28, 2024, Stark County Job and Family Services (the “Agency”) filed a complaint alleging dependency, neglect, and/or abuse of L.B. That same day, the trial court granted emergency temporary custody to the Agency and issued several ex-parte orders. On January 16, 2025, L.B. was adjudicated abused, and remained in the Agency’s temporary custody. One year later, on January 15, 2026, the Agency filed a motion for permanent custody. On February 20, 2026, Father countered with a motion to change legal custody of L.B. and requested that a paternal aunt be granted custody. However, Father’s motion did not contain a statement of understating from the named paternal aunt or any affidavit acknowledging her willingness and/or appropriateness to take legal custody of the child. On March 17, 2026, the guardian ad litem (“GAL”), Attorney DeRamus, filed a final written report stating that L.B. was “thriving” in her foster home. The GAL recommended that permanent custody be granted to the Agency.

{¶3} On March 24, 2026, a full hearing was held. Father appeared late for the hearing, and the paternal aunt was not present, nor had Father’s counsel filed the paternal aunt’s statement of understanding acknowledging her desire to take legal custody of L.B. On April 7, 2026, the trial court issued its decision terminating Father’s parental rights and granting the Agency’s motion for permanent custody of L.B. The trial court found that L.B. was abandoned by Father, that L.B. had been in the Agency’s custody for at least 12 of the last 22 months, and that L.B. could not or should not be placed with Father within a reasonable time. The court further concluded that granting the Agency’s motion for permanent custody was in L.B.’s best interest. Father timely filed his Notice of Appeal.

STATEMENT OF FACTS

{¶4} The record supports the following facts. Ongoing Agency caseworker, Hanna Moledor, testified regarding the Agency's continued involvement with the family due to Mother's substance abuse, Mother's involvement with violent relationships, visible marks on Mother's children – including L.B., and educational neglect. In October 2024, the Agency again got involved and filed for emergency temporary custody, after Mother filed a report with police stating she was being repeatedly raped by a roommate, known as "Uncle Michael," while she slept at night. Mother's children, including L.B., slept in the same room as Mother. Upon the Agency's initial investigation, Mother explained she is diagnosed with depression and anxiety and is prescribed multiple medications. Mother indicated she is involved with virtual counseling and psychiatry. Mother admitted she has suicidal ideations but stated she would not act on anything. Mother also disclosed that she has an alcohol problem and stated that she drinks because she is stressed.

{¶5} L.B. disclosed to an initial caseworker, and hospital personnel, that Uncle Michael was sexually abusing her as well. L.B. stated that when she was asleep on the couch, Uncle Michael picked her up and took her to his room. She indicated that Uncle Michael pulled her pants and underwear down. L.B. disclosed that Uncle Michael put his private part next to her private part but did not put his private part inside of her private part. L.B. reported that Uncle Michael stated to her that he must wait until she is bigger. L.B. stated that Uncle Michael told her not to tell anyone. L.B. was unable to pinpoint the most recent time that the abuse occurred but reported that it happens "like every night." L.B. also told the hospital social worker that Uncle Michael has shown her porn to teach her what she needs to do to him.

{¶6} The case worker spoke with Mother about L.B.'s disclosures. Mother declared that L.B. is lying about Uncle Michael. Mother stated that she would know if he was abusing L.B. because she sleeps beside L.B. every night despite previously admitting to the caseworker that she drinks and takes medication at night that makes her drowsy. Due to the concerns, law enforcement placed both of Mother's children into the Agency's temporary custody.

{¶7} When the trial court granted the Agency emergency temporary custody, and later temporary custody, the Agency placed L.B. in Father's home but maintained temporary custody throughout the case. The trial court also approved and adopted an initial case plan, found that the Agency engaged in reasonable efforts to prevent the need for the removal of L.B., found that continued residence of L.B. with Mother was contrary to L.B.'s best interests, and found that the Agency made extensive efforts to identify and engage appropriate and willing kinship caregivers. In May 2025, the Agency moved L.B. to a foster home due to concerns with Father not cooperating with case plan services, including completing a parenting evaluation.

{¶8} Caseworker Moledor testified that, although L.B. was initially placed with Father while the Agency maintained temporary custody, in April 2025, L.B. was placed in a foster home with her sibling due to concerns that Mother was residing in Father's home, Father allowed Mother to have unsupervised contact with L.B., and other inappropriate people with mental health issues and "excessive children services history" had access to L.B. Further, Father was not following through with medical appointments for L.B., and L.B. presented at school with "fresh burn marks on her arm" in addition to old marks on her as well. Tr. at 13.

{¶9} Caseworker Moledor created a case plan that was approved and adopted by the trial court in January 2025. Father was required to complete a parenting evaluation, which recommended participation in a 20-week anger management class, comprehensive mental health treatment, parenting classes, demonstrate the capacity to set healthy boundaries, and cooperate with L.B.'s counseling. Father did not agree with the case plan objectives and/or recommendations and refused to cooperate.¹ Father disclosed that he had been diagnosed with ADHD and schizophrenia as a child and did not comply with his treatment throughout the case. Father routinely missed appointments with service providers and the Agency, and Father did not initiate anger management treatment or parenting classes. Tr. at 25. Father was ultimately discharged from mental health providers for failing to engage.

{¶10} Caseworker Moledor also had concerns with Father's home, including unsecured firearms therein. She has not been able to see the inside of Father's home since L.B. was placed into foster care in April 2025. Father's income is from SSI disability and the Agency helped pay his bills during the case. During visits with L.B., Father was often late and "not very focused on the (child)." Tr. at 29. Importantly, Father did not visit L.B. from September 16, 2025, through December 23, 2025, and has not visited L.B. at all since December 23, 2025. Ultimately, caseworker Moledor testified that despite her efforts to reunify L.B. with Father throughout the case, Father did not make any meaningful changes to his life or successfully complete case plan services.

{¶11} Dr. Aimee Thomas testified on behalf of the Agency. Dr. Thomas was certified as an expert witness upon agreement by all parties. Dr. Thomas conducted parenting evaluations on both parents and said reports were admitted as evidence. The report for

¹Mother continued to use drugs throughout the case.

Father, dated October 8, 2025, stated that prior to L.B.'s removal, Father knew that L.B. and Mother were living with a sex offender and did nothing to address the situation. Father reported that he receives SSI benefits due to childhood mental health diagnoses, but does not believe he needs mental health treatment, and was not participating in treatment. Father did not progress past the eighth grade in school and spent ten years in prison for burglary with a gun specification. Ultimately, Dr. Thomas recommended that Father participate in an anger management program, complete comprehensive mental health treatment, parenting classes, and demonstrate the capacity to set healthy boundaries with people who have access to L.B. Tr. at 55.

{¶12} Ms. Carrie Schnirring ("Schnirring") also testified and was qualified as an expert witness. Schnirring is employed by Lighthouse Family Center and specializes in psychological assessments of children when concerns of abuse or other traumas exist. She completed an initial evaluation and an updated evaluation regarding L.B, and said reports were admitted as evidence. Schnirring testified that L.B. was still living with Father when she began the initial evaluation. L.B. reported to Schnirring that she was sexually abused by Mother's roommate while living with Mother, and that Mother did not believe her. L.B. also disclosed physical abuse by Mother; Schnirring recommended that L.B. engage in trauma therapy.

{¶13} Schnirring completed an updated evaluation of L.B. due to concerns that she was exposed to additional trauma while living with Father. During that evaluation, L.B. disclosed that Father often left her home alone for significant periods of time, L.B. was often hungry in the home, L.B. burned herself after attempting to put out a fire started by another

child while Father was gone, and Father used a belt to “whoop” her, leaving bruises and marks. Tr. at 66-67.

{¶14} Father testified on his own behalf. Father admitted he did not visit L.B. from September 16 until December 23 but claimed he was told that visitation was canceled. Father stated he cannot work because he receives disability benefits. Father denied that he ever left L.B. unsupervised or mistreated L.B. while in his care. Father admitted that he did not engage in necessary services because he did not agree with the Agency’s recommendations and blamed the Agency for his lack of compliance. He testified that the motion to change legal custody to the paternal aunt is in L.B.’s best interest and stated the aunt was “fine with it.”

{¶15} L.B.’s foster mother also testified during the best interest portion of the hearing. She stated that L.B. has made “significant developmental and emotional growth” since being placed with her, and that L.B. could not even count to twenty or recognize her letters upon entering her home, despite being nine years old. Tr. at 120. L.B. now engages in extracurricular activities and is making progress overall with her social and emotional skills. The foster mother stated that she remains deeply committed to providing consistency, care, and encouragement necessary to support L.B. Tr. at 121.

{¶16} On March 17, 2026, the GAL filed an updated report. Therein, she recommends that the Agency’s motion for permanent custody be granted. The report states the following:

[Father] has completed some case plan services but has refused to address mental health concerns to effectively parent the minor children. Referrals were made to local service providers in Cuyahoga County/Cleveland, but Father has failed to engage. He has completed a parenting assessment (LH) but has refused

to complete any recommendations to the point of obtaining a 2nd or 3rd opinion. Father has been non-compliant regarding supervised visits, especially when the visits in Cleveland occur relatively close to his residence. He continues to show up late, even after several warnings of terminating the visits. SCJFS terminated his Cleveland participation sometime in 10/2025. Visits were terminated after the 12/23/2025 visit due to lack of compliance from both parents. He filed a Motion to permit a maternal relative to get custody, but the relative failed to follow through on ICPC requests and documentation. Father has not permitted SCJFS access to his home. There were ongoing concerns of hoarding.

* * *

The children are doing well in their current placement with their basic and special needs being met. Both children have had trauma evaluations and receive counseling. [L.B.] is thriving in the foster home. She performs well in school under an IEP. * * * Both children have expressed wanting to stay with the current caregivers with limited communication access with Mother. Caregivers are open to adoption of the minor children and committed to maintaining a familial relationship with Mother. Both children ha[ve] expressed fear of Father Butler and it is unclear if they would like to maintain a relationship with him.

ASSIGNMENTS OF ERROR

{¶17} “I. THE JUDGMENT OF THE TRIAL COURT THAT THE MINOR CHILD CANNOT AND SHOULD NOT BE PLACED WITH APPELLANT AT THIS TIME OR WITHIN A REASONABLE PERIOD OF TIME WAS NOT PROVEN BY CLEAR AND CONVINCING EVIDENCE.”

{¶18} “II. THE JUDGMENT OF THE TRIAL COURT THAT THE BEST INTERESTS OF THE MINOR CHILD WOULD BE SERVED BY THE GRANTING OF PERMANENT CUSTODY WAS NOT PROVEN BY CLEAR AND CONVINCING EVIDENCE.”

LAW AND ANALYSIS

{¶19} The “right to raise a child is an ‘essential’ and ‘basic’ civil right.” *In re T.C.*, 2020-Ohio-882, ¶ 35 (5th Dist.); *In re Murray*, 52 Ohio St.3d 155, 157 (1990), quoting *Stanley v. Illinois*, 405 U.S. 645 (1972). A parent has a fundamental liberty interest in the care, custody, and management of his or her child and an essential and basic civil right to raise his or her children. *Murray*, at 156.

{¶20} That right, however, is not absolute. “The natural rights of a parent * * * are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.” *In re R.M., Jr.*, 2018-Ohio-395, ¶ 23 (5th Dist.) quoting, *In re Cunningham*, 59 Ohio St.2d 100, 106 (1979). When a court determines whether to permanently terminate parental rights, the court must grant the affected parent “every procedural and substantive protection the law allows.” *In re Smith*, 77 Ohio App.3d 1, 16 (6th Dist. 1991).

{¶21} Importantly, an appellate court does not weigh the evidence nor judge the credibility of the witnesses. “Our role is to determine whether there is relevant, competent and credible evidence upon which the fact finder could base its judgment.” *In re A.R.*, 2026-Ohio-2577, ¶ 20, citing *In re D.R.*, 2024-Ohio-1819, ¶ 28 (5th Dist.). “Where the proof required must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof.” *In re Z.C.*, 2023-Ohio-4703, ¶ 8, citing *State v. Schiebel*, 55 Ohio St.3d 71, 74 (1990)

(other citation omitted). Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence. *Id.*, citing *C.E. Morris Co. v. Foley Constr.*, 54 Ohio St.2d 279, syllabus (1978).

R.C. 2151.414(B)(1)

{¶22} In his first assignment of error, Father challenges the trial court’s finding that the minor could not or should not be placed with him within a reasonable time was not proven by clear and convincing evidence. Father’s argument is without merit.

{¶23} Pursuant to R.C. 2151.414(B)(1), a juvenile court may grant permanent custody of a child to the agency that moved for permanent custody if the court determines, “by clear and convincing evidence, that it is in the best interest of the child” to do so and that one of the five factors enumerated in R.C. 2151.414(B)(1)(a) through (e) applies. *In re A.W.*, 2024-Ohio-5791, ¶ 15 (5th Dist.). The five enumerated factors are as follows:

- (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, * * * 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; * * *

(e) The child or another child in the custody of the parent or Parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

{¶24} Thus, R.C. 2151.414(B)(1) establishes a two-pronged analysis that the trial court must apply when ruling on a motion for permanent custody. *In re T.J.*, 2024-Ohio-110, ¶ 14 (5th Dist.); *In re A.M.*, 2020-Ohio-5102, ¶ 18. First, the court must find by clear and convincing evidence “that one or more of the conditions in R.C. 2151.414(B)(1)(a) through (e) applies.” *Id.* And second, the court must find, by clear and convincing evidence, that the grant of permanent custody is in the best interest of the child. *Id.*

{¶25} Regarding the first prong, the trial court found that R.C. 2151.414(B)(1)(a), (b), and (d) applied. However, these are “alternative findings,” meaning each condition is independently sufficient as a basis to grant the motion for permanent custody. *In re Langford Children*, 2005-Ohio-2304, ¶ 17 (5th Dist.).² Thus, a court's 12-of-22 finding alone, in conjunction with the best interest finding, is sufficient to support the grant of permanent custody. *In re Calhoun*, 2008-Ohio-5458, ¶ 45 (5th Dist.); *In re P.T., et al.*, 2024-Ohio-5022,

² This Court adopts the position that proof of temporary custody with an agency for twelve or more months of a consecutive twenty-two-month period alone is sufficient to award permanent custody. *In re D.H.*, 2022-Ohio-4495, ¶ 59 (5th Dist.). Therefore, finding that grounds existed for permanent custody cannot be against the manifest weight of the evidence. *Matter of L.G.*, 2021-Ohio-743, ¶ 36 (5th Dist.).

¶ 46 (5th Dist.). The “12-of-22 provision reflects the legislature's deliberate balance between reunification efforts and the child's need for timely permanence.” *A.R.*, *supra*, ¶ 25; *In re C.W.*, 2004-Ohio-6411, ¶ 22. Once the statutory time has elapsed, the focus properly shifts from parental opportunity to the child's need for stability. *Id.* at syllabus.

{¶26} While Father disputes the finding that L.B. cannot be placed with him within a reasonable time, he does not dispute the fact that L.B. was in temporary custody of the Agency for 12 or more months of a consecutive 22-month period, as found by the trial court. Pursuant to a finding under 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 * * * or the date that is sixty days after removal of the child from home.” Here, L.B. was removed on October 28, 2024, sixty days from that date was December 27, 2024; and the motion requesting permanent custody of the child was filed on January 15, 2026.

{¶27} Stated differently, L.B. was placed in the Agency’s temporary custody on October 28, 2024, and remained in its custody until the permanent custody hearing took place on March 24, 2026, nearly 17 months out of a 22-month period. Thus, R.C. 2151.414(B)(1)(d) is clearly applicable. Because this reason is alone sufficient as a condition for permanent custody, we need not and will not address whether L.B. could not or should not be placed with Father within a reasonable time. Accordingly, Father’s first assignment of error is overruled.

R.C. 2151.414(D) - Best Interest Determination

{¶28} In determining the best interest of the child, R.C. 2151.414(D) mandates that the trial court consider all relevant factors, including, but not limited to the following: (1) the interaction and interrelationship of the child with the child's Parents, siblings, relatives, foster

Parents and out-of-home providers, and any other person who may significantly affect the child; (2) the 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; (3) the custodial history of the child; (4) the child's need for a legally secure placement and whether that type of placement can be achieved without a grant of permanent custody; and (5) whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the Parents and child.

{¶29} The court must consider each factor enumerated in R.C. 2151.414(D), as well as any other relevant factors, and no one factor is given greater weight than the others. *In re Schafer*, 2006-Ohio-5513. A juvenile court does not need to specifically list or discuss each of the best-interest factors to meet the mandate that it “consider” the factors in R.C. 2151.414(D). *A.M.*, at ¶ 42. However, it must appear from the record that the trial court did in fact consider the factors listed as well as any other relevant factor. *Id.* (holding that although not required, it is preferable for a juvenile court to provide some discussion or analysis of the best-interest factors to aid in appellate review and to increase confidence in its decision).

{¶30} Importantly, the focus of the “best interest” determination is upon the child, not the parent. Indeed, R.C. 2151.414(C) expressly prohibits the court from considering the effect a grant of permanent custody would have upon the parent. *A.W.*, *supra*; *In re Awkal*, 85 Ohio App.3d 309 (8th Dist. 1994). Moreover, a child's best interest is generally served by the child being placed in a permanent situation that fosters growth, stability, and security. *T.C.*, at ¶ 54. Only one of the factors needs to be resolved in favor of permanent custody to find that permanent custody is in the child's best interest. *In re R.M.*, 2024-Ohio-1885, ¶ 60 (8th Dist.).

{¶31} Father claims that because a relative is available to care for L.B., the motion for permanent custody should be denied and his motion for a change of custody should be

granted. However, “the willingness of a relative to care for a child does not alter what the court must consider in determining permanent custody.” *In re B.K.*, 2023-Ohio-1820, ¶ 31 (8th Dist.); *In re P. T., et al*, 2024-Ohio-5022 (5th Dist.). If permanent custody is in a child's best interest, then a change in legal custody is necessarily not in that child’s best interest. *In re S.C.*, 2018-Ohio-2523, ¶ 58 (8th Dist.). Moreover, Father’s motion for a change of custody did not contain a statement of understanding from the named paternal aunt or an affidavit acknowledging her willingness and/or appropriateness to take legal custody of L.B., and the paternal aunt did not appear or testify at the permanent custody hearing. *See* R.C. 2151.353(A)(3).

{¶32} Here, the record demonstrates that the trial court considered the above factors and properly found that it was in L.B.’s best interest to grant permanent custody to the Agency. Regarding the first factor, the evidence established that L.B. was placed in the same foster home as her sibling, L.B. has remained there since removal, and L.B. is currently thriving in her foster home environment and has made tremendous progress socially, academically, and emotionally. L.B. is very bonded to the foster parents and they are interested in adopting L.B. and her sibling. The GAL reported that L.B. wished to stay with her foster family. Regarding custodial history, L.B. and her sibling were removed from Mother's care in October 2024 and remained in the Agency’s custody throughout the course of the proceedings, despite residing with Father for a few months.

{¶33} Further, L.B.'s need for a legally secure permanent placement cannot be achieved without a grant of permanent custody. Ms. Moledor testified that permanent custody is in the best interests of L.B., that L.B. would benefit from adoption, and that the benefit of permanency outweighs any damage in terminating Father’s parental rights. The

GAL also recommended granting the Agency's motion for permanent custody to ensure L.B. receives the care, stability, and safety she needs and deserves. The foster mother testified that L.B. has made "significant developmental and emotional growth" since being placed with her and foster mom is committed to continuing said progress.

{¶34} On the other hand, Father did not agree with the Agency's case plan objectives and/or recommendations, refused to cooperate with the Agency, did not visit L.B. for several months, and made a motion to change legal custody not to him but to a paternal aunt based on the aunt stating she was "fine with it." Upon review, we conclude that without a doubt, competent, credible evidence exists to support the trial court's determination that granting permanent custody to the Agency was in L.B.'s best interest. Father's second assignment of error is overruled.

CONCLUSION

{¶35} Appellant-Father's first and second assignments of error are overruled in their entirety. The judgment of the Stark County Court of Common Pleas, Family Court Division, is AFFIRMED.

{¶36} Costs to Appellant.

By: Montgomery, J.

King, P.J. and

Popham, J. concur.