

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

IN THE MATTER OF:

L.H. (D.O.B. 05-24-2023)

Case No. 2026CA00084

Opinion And Judgment Entry

Appeal from the Stark County Court of
Common Pleas, Family Court Division, Case
No. 2024JCV00733

Judgment: Affirmed

Date of Judgment Entry: September 21, 2026

BEFORE: Andrew J. King; Craig R. Baldwin; Kevin W. Popham, Judges

APPEARANCES: BRANDON J. WALTENBAUGH, for Plaintiff-Appellee Stark County JFS; RICHARD D. HIXSON, for Defendant-Appellant.

Baldwin, J.

{¶1} Appellant J.H., the biological father of minor children A.H. (DOB 11/12/2020) and L.H. (DOB 5/24/2023), appeals from the trial court’s decision which found that granting permanent custody of A.H. and L.H. to appellee Stark County Department of Jobs & Family Services (JFS) was in the minor children’s best interests. For the reasons that follow, we affirm the decision of the trial court.¹

¹ B.W., the children’s biological mother, stipulated to the granting of permanent custody of the minor children to the appellee and is not a party to this appeal.

STATEMENT OF FACTS AND THE CASE

{¶2} Appellee first became involved with appellant's family in 2021 due to parental drug use. The matter was handled on a non-court basis and eventually closed. The appellee became involved with the family again in 2022, and a case was filed. A.H. was found to be a dependent child on or about May 5, 2022, due her parents' abuse of opioids, heroin, and methamphetamines. Both parents completed their respective case plans, A.H. was returned to the home on or about September 22, 2023, and the case was terminated. L.H. was born during the pendency of the 2022 case but was permitted to remain in his parents' custody due to the progress they had made on their case plan services.

{¶3} On July 5, 2024, the appellee once again became involved with the family, having received information that the children's parents were using drugs. When a case worker attempted to visit the home and investigate, mother pretended to be a babysitter and told the case worker that both parents were working. A welfare check was thereafter conducted by law enforcement, who searched mother's room with appellant's permission and found evidence of drug use. The case worker contacted a family friend in whose care the children had been placed; the family friend told the case worker that mother was using illicit drugs, and that the appellant had driven the children to the friend's home while under the influence of alcohol. The appellant later admitted to marijuana use but denied any other substance use. In addition, he admitted to alcohol use, but denied driving with the children while under the influence. An investigation established evidence that the children's mother was using fentanyl and xylazine, and had crushed up drugs within reach of the children. Mother lived with the appellant, and the appellee was concerned about the appellant's mental health, drug use,

refusal to protect the children from their mother's drug use, and whether he was able to safely care for the children.

{¶4} The appellee filed separate but identical Complaints for each child on July 9, 2024, alleging that the children were dependent and/or neglected. An emergency shelter care hearing was conducted the same day at which the trial court granted emergency temporary custody of the children to the appellee and set the matter for adjudication. A Guardian Ad Litem ("GAL") was appointed on July 12, 2024. Both parents were appointed counsel. During the adjudication hearing both parents stipulated to a finding of dependency, the appellee deleted the allegation of neglect, and the trial court proceeded to disposition without objection and granted temporary custody of the children to the appellee.

{¶5} A case plan was submitted by the appellee and approved and adopted by the trial court. The case plan, the stated goal of which was reunification, included parenting assessments and drug and alcohol assessments for both parents. In addition, both parents needed to find employment and establish stable housing. A dispositional hearing was conducted on January 3, 2025, at which the court found that the appellant continued to test positive for THC, that he was working, and that he continued to live with the mother. The court noted that while visits with the children went well the appellant had not been consistent with visitation. The court further found that the appellee "had utilized intensive efforts to identify and engage appropriate and willing kinship caregivers" and had "used reasonable efforts to prevent the need for removal." The court approved and adopted the case plan and scheduled the matter for another dispositional hearing on June 6, 2025. The appellee filed a Motion to Extend Temporary Custody on May 30, 2025, and a hearing on the same was also scheduled for June 6, 2025. Another case plan was submitted to the court which focused on

services to address the appellant's drug and alcohol abuse, his need for individual counseling, and his need for parental education to help him develop "the necessary skills to care for his children." The parenting skills portion of the case plan aimed to help the appellant develop the ability to provide the children with daily care; have an understanding of and be able to empathize with the children's needs; use appropriate discipline and family member roles based on age and situation; demonstrate good judgment and reasoning; obtain knowledge of high risk situations and demonstrate the ability to protect the children from potential or actual harm; and, demonstrate how his lifestyle choices may impact his children. The plan provided that a case worker would refer the appellant to the Positive Parenting Program, and referenced the appellant's participation in the Goodwill program.

{¶6} The June 6, 2025, hearing proceeded as scheduled, at which the parents stipulated to the Motion to Extend, and the trial court extended the appellee's temporary custody of the children until January 9, 2026. The court found that the father had completed the Triple P program, but that the appellee also wanted him to complete the Goodwill parenting program. The court found that the appellee had "utilized intensive efforts to identify and engage appropriate and willing kinship caregivers" and had "used reasonable efforts to prevent the need for removal." The court approved and adopted the case plan, and scheduled the matter for a disposition review on December 19, 2025.

{¶7} The appellee filed a Motion for Permanent Custody on November 24, 2025, which was scheduled for trial on February 9, 2026. The December 19, 2025, dispositional review hearing proceeded as scheduled, at which time the trial court found that the appellant continued to test positive for numerous illegal narcotics; that while he went to Brightview for substance abuse and mental health treatment he was discharged for failing to appear; that the

home had been foreclosed on; and that the GAL reported that neither parent was making any progress on their case plans, were not able to support the children, did not have housing, and did not have transportation. The court found that the appellee had “utilized intensive efforts to identify and engage appropriate and willing kinship caregivers” and had “used reasonable efforts to prevent the need for removal.”

{¶8} The permanent custody hearing proceeded on February 9, 2026. The appellee’s case worker testified to the following. A case plan was established for the appellant due to concerns regarding his mental health, drug use, refusal to protect the children from their mother’s drug use, and whether he was able to safely care for the children. The case plan required the appellant to complete a substance abuse assessment and a mental health assessment at Brightview, as well as a parenting assessment at Lighthouse Family Center; to comply with any recommendations for treatment from each assessment; and, to maintain employment and safe, stable housing. The appellant completed the substance abuse assessment, which had no recommendations for treatment. The appellant tested positive for marijuana throughout the case. In addition, he tested positive for methamphetamines in December of 2025, and completed only 16 of 65 required color code screenings (the appellant was provided with bus passes when the lack of transportation hindered his ability to participate in the screenings.) The appellant declined to enter a detox program. He was arrested in September of 2025, charged with possession of drug paraphernalia, and convicted of said offense. The appellant completed his mental health assessment. He entered Sky Point Recovery in December of 2025 and was in said program at the time of the permanent custody hearing. The program consisted of two months of intensive inpatient treatment, then four months of intensive outpatient treatment. The appellant was scheduled to complete the

program in May of 2026, several months after the permanent custody hearing. In addition, the appellant had lost his house to foreclosure, had no housing at the time of the hearing, and had struggled to maintain employment throughout the pendency of the case.

{¶9} Dr. Aimee Thomas, who was qualified as an expert witness in the case in the fields of psychology and professional clinical counseling, testified that she assessed the appellant, and diagnosed him with alcohol use disorder, cannabis use disorder, stimulant use disorder, adjustment disorder with disturbance of mood and conduct, and other specified personality disorder with dependent or codependent traits. She recommended that the appellant resume his participation in substance use treatment, have nine months of sobriety before regaining custody of the children, end his romantic relationship with the children's mother, and complete a parenting skills program. Evidence was presented that the appellant could not be referred to the Goodwill Parenting Program because he could not maintain sobriety and, although he participated in some case plan services, he failed to successfully complete the case plan services.

{¶10} The trial court found that the appellee had engaged in reasonable case planning and diligent efforts for reunification, but that the appellant had continuously and repeatedly failed to substantially remedy the conditions which caused the children to be placed with the appellee. The court further found that clear and convincing evidence had been established that the children could not be placed with either parent, nor should they be placed with either parent; and, that the children had been in the temporary custody of the appellee for a period greater than twelve of the last twenty-two months.

{¶11} The trial court then proceeded to consider the best interests of the children. The case worker testified that A.H. had been so disruptive during day care that she had to leave

the center during nap time; that A.H. was in counseling; that she had been placed in a foster home with her younger brother L.H. since July of 2024; that she had bonded with the foster family and was thriving in their care; and, that the foster family wished to adopt the children. With regard to L.H., the case worker testified that he had no medical or mental health concerns; had been placed in a foster home with his sister A.H. since July of 2024; that he had bonded with his foster family and was thriving in their care; and, that the foster family wished to adopt both children. The case worker further testified that the appellee pursued multiple kinship placements, but ultimately no kinship placements were possible.

{¶12} The CASA/GAL submitted several reports. Her last report before the permanency hearing recommended that it was in the best interest of the children that permanent custody be awarded to the appellee.

{¶13} Based upon the evidence presented, the trial court found that the benefits of permanence in the children's lives outweighed the potential harm caused by severing any bond or potential bond with their biological parents, and awarded permanent custody of the children to the appellee.

{¶14} The appellant filed a timely appeal, and sets forth the following sole assignment of error:

{¶15} "I. THE TRIAL COURT ERRED WHEN IT FOUND THAT PERMANENT CUSTODY WAS IN THE BEST INTERESTS OF THE MINOR CHILD[REN]."

{¶16} The appellant submits that the trial court erred when it found that permanent custody was in the best interest of the minor children. We disagree.

STANDARD OF REVIEW

{¶17} The Ohio Supreme Court addressed the standard of review in permanent custody cases in *In re Z.C.*, 2023-Ohio-4703:

Under 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 any of five factors enumerated in R.C. 2151.414(B)(1)(a) through (e) applies. “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.” *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

We have described an appellate court's task when reviewing a trial court's application of the clear-and-convincing-evidence burden of proof as follows: “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.” *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990), citing *Ford v. Osborne*, 45 Ohio St. 1, 12 N.E. 526 (1887), paragraph two of the syllabus; *accord Cross* at 477, 120 N.E.2d 118.

* * *

. . . sufficiency-of-the-evidence and/or manifest-weight-of-the-evidence standards of review are the proper appellate standards of review of a juvenile court's permanent-custody determination, as appropriate depending on the nature of the arguments that are presented by the parties.

Id. at ¶7-8, 11.

{¶18} The Court went on to define sufficiency of the evidence and manifest weight as follows:

Sufficiency of the evidence and manifest weight of the evidence are distinct concepts and are “ ‘both quantitatively and qualitatively different.’ ” *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 10, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997), paragraph two of the syllabus. We have stated that “sufficiency is a test of adequacy,” *Thompkins* at 386, 678 N.E.2d 541, while weight of the evidence “ ‘is not a question of mathematics, but depends on its *effect in inducing belief* ” (emphasis sic), *id.* at 387, 678 N.E.2d 541, quoting *Black's Law Dictionary* 1594 (6th Ed.1990). “Whether the evidence is legally sufficient to sustain a verdict is a question of law.” *Id.* at 386, 678 N.E.2d 541. “When applying a sufficiency-of-the-evidence standard, a court of appeals should affirm a trial court when “ ‘the evidence is legally sufficient to support the jury verdict as a matter of law.’ ” *Bryan-Wollman v. Domonko*, 115 Ohio St.3d 291, 2007-Ohio-4918, 874 N.E.2d 1198, ¶ 3, quoting *Thompkins* at 386, 678 N.E.2d 541, quoting *Black's* at 1433.

But “even if a trial court judgment is sustained by sufficient evidence, an appellate court may nevertheless conclude that the judgment is against the manifest weight of the evidence.” *Eastley* at ¶ 12. When reviewing for manifest weight, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *Id.* at ¶ 20. “In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact.” *Id.* at ¶ 21. “The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). “ ‘If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.’ ” *Id.* at fn. 3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 603, at 191-192 (1978).

Id. at ¶ 13-14.

ANALYSIS

{¶19} 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 that the trial court schedule

a hearing and provide notice upon the 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.

{¶20} R.C. 2151.414(B)(1) authorizes the juvenile court to grant permanent custody of a child to the public or private agency if the court determines, by clear and convincing evidence, that 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.

(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.

(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.

For the purposes of division (B)(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.

In addition, R.C. 2151.414(B)(2) states that, with regard to a motion requesting permanent custody, “... the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section that the child cannot be placed with one of the child’s parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of this section that permanent custody is in the child’s best interest.”

{¶21} R.C. 2151.414(B) thus 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 (e) is present before proceeding to a determination regarding the best interest of the

child. In this case, the trial court found that R.C. 2151.414(B)(1)(d) factor applied - A.H. and L.H. had been in the temporary custody of the appellee for more than twelve months of a twenty-two month period.

{¶22} The court must also consider all relevant evidence before determining that the child cannot be placed with either parent within a reasonable time or should not be placed with the parents. R.C. 2151.414(B)(2) and (E). The statute also provides that if the court makes a finding under R.C. 2151.414(E)(1)-(15), the court shall determine whether the child cannot or should not be placed with the parent. A trial court may base its decision that a child cannot be placed with a parent within a reasonable time or should not be placed with a parent upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with the parent within a reasonable time. See *In re D.M.*, 2026-Ohio-3524, ¶ 48 (5th Dist.), citing *In re William S.*, 1996-Ohio-182.

{¶23} R.C. 2151.414(E) states in pertinent part:

In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

(1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

(2) Chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;

* * *

16) Any other factor the court considers relevant.

{¶24} In this case, the evidence established that the appellant failed continuously and repeatedly to substantially remedy the conditions which caused the children to be placed outside their home despite the diligent efforts of the appellee, and that he failed to utilize medical, psychiatric, psychological, and other social and rehabilitative services and material

resources that were made available to him. He failed to remain drug-free, failed to maintain safe housing for the children, and failed to register for Goodwill Parenting classes because he was unable to maintain sobriety. In short, he failed to change his conduct such that he could resume and maintain his parental duties. Clear and convincing evidence was presented establishing that the children could not be placed with the appellant within a reasonable time, and should not be so placed. Furthermore, the trial court found that the children had been in the temporary custody of the appellee for more than twelve consecutive months of a twenty-two month period.

{¶25} Furthermore, the trial court correctly found that it was in the children's best interests to be placed into the permanent custody of the appellee. Clear and convincing evidence was presented which established that the appellant failed to substantially remedy the conditions that led to the removal of the children. He did not make substantial progress in addressing his substance abuse issues, nor in addressing his parenting deficiencies, having demonstrated that he was unable to achieve sobriety. In addition, the children were thriving in the stable conditions provided by their foster home placement, and the foster parents indicated a desire to adopt the children and continue with said stability. While the appellant argues that a six-month extension of the case was appropriate in order to enable him to successfully meet his case plan objectives, nothing in the record indicated that he would do so. We find that the trial court correctly found the benefits of permanence in the children's lives outweighed any potential harm that may be potentially caused by severing the parental bond.

CONCLUSION

{¶26} Based upon the foregoing, we find that the trial court's decision to award permanent custody of A.H. and L.H. to appellee Stark County Department of Jobs & Family Services was warranted, was in the best interests of A.H. and L.H., was based upon competent, credible evidence, and was not against the manifest weight or sufficiency of the evidence. The evidence contained in the record supports the trial court's judgment. We therefore overrule the appellant's sole assignment of error and affirm the decision of the Stark County Court of Common Pleas, Family Court Division.

{¶27} Costs to appellant.

By: Baldwin, J.

King, P.J. and

Popham, J. concur.