

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

IN RE: S.S.  
(DOB 06-29-2012)

Case No. 2026CA00069

Opinion And Judgment Entry

Appeal from the Stark County Common Pleas  
Court, Family Court Division, Case No.  
2024JCV01191

Judgment: Affirmed

Date of Judgment Entry: September 28, 2026

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

**APPEARANCES:** RICHARD D. HIXSON, for Father-Appellant; BRANDON J.  
WALTENBAUGH, for STARK COUNTY JOB AND FAMILY SERVICES, Appellee.

*Montgomery, J.*

{¶1} Appellant E.F. (hereinafter “Father”) appeals the judgment entered by the Stark County Common Pleas Court, Family Court Division, awarding permanent custody of his minor child, S.S. (DOB 6/29/12) to Appellee Stark County Department of Job and Family Services (hereinafter “the Agency”).

## **STATEMENT OF THE FACTS AND CASE**

{¶2} On October 8, 2024, the Agency filed a complaint alleging that S.S. was a dependent and neglected child. The concerns which led to the removal of S.S. from the home included poor home conditions, drug use by both parents, other people using drugs in front of the child, and inappropriate people living in the home. Before the complaint was filed, a safety plan was implemented. Mother tested positive for methamphetamine multiple times during the pendency of the safety plan, leading to the removal of the child from the home. Father is a registered sex offender, having previously been convicted of raping his seven-year-old niece.

{¶3} Father's case plan required him to complete a sex offender risk assessment. Father refused to comply. The case worker assigned to the case sent eight letters to Father and spoke with him on the phone to set up appointments. Father refused to meet with the case worker and did not work on his case plan.

{¶4} A permanent custody motion was filed by the Agency on August 21, 2025. The trial court held a permanent custody hearing on February 24, 2026. Father failed to appear and had not appeared at any hearing after the emergency shelter care hearing on October 9, 2024, at which he stipulated to a finding of probable cause.

{¶5} After the permanent custody hearing, the trial court found Father had abandoned the child because he had not seen the child since before the case began and also found that the child could not be placed with Father within a reasonable period of time. The trial court found permanent custody was in the best interest of the child and awarded permanent custody to the Agency.

{¶6} It is from the March 4, 2026, judgment of the trial court Father prosecutes this appeal, assigning as error:

{¶7} “I. THE TRIAL COURT ERRED WHEN IT GRANTED PERMANENT CUSTODY OF THE MINOR CHILD TO THE AGENCY.”

{¶8} Father argues the evidence was insufficient to establish he had abandoned the child, was insufficient to establish that the child could not be placed with him within a reasonable time, and was insufficient to support the trial court’s finding that permanent custody was in the best interest of the child.

#### **STANDARD OF REVIEW AND APPLICABLE LAW**

{¶9} 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.

{¶10} 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, 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 placement agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.

{¶11} 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.

{¶12} If the child is not abandoned or orphaned, the focus turns to whether the child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents. Under R.C. 2151.414(E), the trial court must consider all relevant evidence before making this determination. The trial court is required to enter such a finding if it determines, by clear and convincing evidence, one or more of the factors enumerated in R.C. 2151.414(E)(1) through (16) exist with respect to each of the child's parents.

{¶13} Because R.C. 2151.414 requires a juvenile court to find by clear and convincing evidence the statutory requirements are met, the 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. *In re Z.C.*, 2023-Ohio-4703, ¶11. “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.” *Id.* at ¶ 7, *quoting Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus.

{¶14} The second prong of the analysis requires the juvenile court to determine, by clear and convincing evidence, it is in the best interest of the child to grant permanent custody to the agency pursuant to R.C. 2151.414(D). R.C. 2151.414(B)(1). In determining the best interest of the child at a permanent custody hearing, R.C. 2151.414(D)(1) mandates the trial court must 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 parents 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; (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; and (e) whether any of the factors in division (E)(7) to (11) of R.C. 2151.414 apply in relation to the parents and child.

#### *Abandonment*

{¶15} Father first argues the trial court erred in finding he abandoned the child.

{¶16} R.C. 2151.011(C) provides that “a child shall be presumed abandoned when the parents of the child have failed to visit or maintain contact with the child for more than ninety days.” Father does not challenge the trial court’s finding that he did not visit the child for more than ninety days. Rather, he argues the Agency did not present evidence that he did not maintain contact with the child in other ways for more than ninety days.

{¶17} Father cites no authority for his proposition that the Agency must present evidence that he had no form of contact with the child during the pendency of the case, when, as in the instant case, Father has been uninvolved with the case throughout its pendency.

Father did not have contact with the Agency during the case and did not attend any hearings in the case after the initial emergency shelter care hearing in October of 2024. Father did not appear for the permanent custody hearing, and there is no evidence in the record to suggest that despite his failure to visit the child, failure to participate in his case plan, and failure to attend hearings in the case, he maintained contact with the child in some manner other than visitation.

{¶18} We find the trial court did not err in concluding, based on the evidence that Father had not visited the child in more than ninety days, that the child was abandoned.

*Reasonable Time*

{¶19} R.C. 2151.414(E) provides in pertinent part:

(E) 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.

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(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

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(10) The parent has abandoned the child.

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(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

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(16) Any other factor the court considers relevant.

{¶20} In the instant case, Father's case plan required him to complete a sex offender risk assessment. He failed to do so and failed to have contact with the case worker throughout

the pendency of the case. He did not visit with the child during the pendency of the case from October of 2024, through February of 2026. He did not attend any hearings after the initial emergency shelter care hearing. We find the evidence was sufficient to support the trial court's finding that the child could not be placed with Father within a reasonable period of time.

*Best Interest*

{¶21} The evidence presented at trial demonstrated that S.S. is a physically healthy child. She has cognitive delays and has an IEP for behavior problems and academic struggles at school. S.S. struggles with mental health concerns and significant behavior issues. She has been diagnosed with bipolar disorder, post-traumatic stress disorder, oppositional defiant disorder, anxiety, and depression. She participates in daily group counseling and individual counseling at her current placement.

{¶22} S.S. resided in six different placements since the beginning of the case. Initially, she was placed in two foster homes with her brother. She moved to a group home in March of 2025, a short-term stabilization center in May of 2025, and a residential facility in June of 2025. She was placed in a residential psychiatric treatment facility in October of 2025, and she was doing better after receiving treatment at this facility. Because Father never visited the child during the pendency of the case, the case worker never observed the child with Father, and no information was available to the trial court regarding any potential bond between S.S. and Father.

{¶23} We find the evidence supported the trial court's finding the permanent custody was in the best interest of S.S.

{¶24} The assignment of error is overruled.

## **CONCLUSION**

{¶25} The judgment of the Stark County Common Pleas Court is affirmed.

{¶26} Costs are assessed to Appellant.

By: Montgomery, J.

King, P.J. and

Popham, J. concur.