

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

IN THE MATTER OF: T.K.,  
(DOB: 3/25/19)

(Joshua B., Appellant)

Case No. 2026 CA 00031

Opinion & Judgment Entry

Appeal from the Court of Common Pleas  
of Stark County, Juvenile Division,  
Case No. 2024 JCV 01439

Judgment: Affirmed

Date of Judgment: October 8, 2026

BEFORE: Craig R. Baldwin, Robert G. Montgomery, and David M. Gormley, Judges

APPEARANCES: Richard D. Hixson,\* Zanesville, Ohio, for Appellant Joshua B. (the child’s father); Brandon J. Waltenbaugh, Canton, Ohio, for Appellee Stark County Job & Family Services.

\* After attorney Hixson filed a brief, we granted his request to step off the case. Appellant Joshua B. then filed a reply brief on his own behalf.

*Gormley, J.*

{¶1} Appellant Joshua B. (“Father”) challenges a trial-court judgment awarding permanent custody of his son, T.K., to Stark County Job and Family Services (the “Agency”). Because we see no error in the trial court’s ruling, we affirm the judgment.

**The Key Facts**

{¶2} In December 2024, the Agency — citing concerns about T.K. (then five years old) arriving at school smelling of urine and also perhaps living in a home where a recent domestic-violence incident may have occurred — filed a complaint alleging that T.K. was a dependent child. The trial court granted emergency temporary custody of the child to the Agency.

{¶3} The following month, Father told his appointed counsel that he intended to represent himself in the dependency case. Soon thereafter, the trial judge engaged in a colloquy with Father about the representation issue, noting that replacement counsel was available for him if he wanted to take advantage of that option. The judge also explained that Father, if he chose to represent himself, would be expected to adhere to the rules that attorneys must follow.

{¶4} After a hearing, the trial court determined that the child was dependent. As a result, temporary custody of the child remained with the Agency.

{¶5} The next months were turbulent. Father was found in contempt of court for disclosing a guardian ad litem's report. When Father learned about an allegation of sexual molestation in the child's foster home, Father posted several online comments that were critical of the Agency, an Agency caseworker, and the GAL. Father also handed out leaflets accusing the GAL and caseworker of hiding information from him and others about what he characterized as a sexual assault of his child. The GAL and caseworker in turn stepped off the case, and Father was convicted on a criminal charge of aggravated menacing. The child, meanwhile, was transferred into the care of Father's sister.

{¶6} As for the case plan in the dependency case, Father struggled to comply. He did not attend individual-counseling sessions or a recommended treatment program for domestic-violence offenders. He did not visit or communicate with the child between mid-December 2024 and mid-April 2025 and then again from mid-July 2025 until October of that year. Both periods exceeded 90 days, with the latter gap covering some days when Father was incarcerated on the aggravated-menacing charge. When visits with his child were scheduled, Father repeatedly failed to show up. And when he did attend visits or when he

communicated with Agency staffers, he was often combative. After Father's visits, the child tended to misbehave in school and at home.

{¶7} Roughly 11 months after the initial grant of temporary custody in the dependency case, the Agency asked the trial court to award permanent custody of the child to the Agency. The trial court held a hearing on that request in January 2026.

{¶8} Father represented himself at that hearing rather than relying on the assistance of legal counsel, and the trial judge during the hearing reminded Father several times about the importance of adhering to the Rules of Evidence and behaving professionally in a courtroom. Father was at times argumentative, and he insisted on playing some audio recordings that he had made during his interactions with Agency staffers and the GAL. After Father questioned the trial judge's authority to hold her office, Father left the courtroom.

{¶9} At the conclusion of the permanent-custody hearing, the trial court found that Father had abandoned the child and had not remedied the conditions that led to the child's initial removal from the parents' home, and the judge also found that the child could not and ought not be placed in Father's care and that a grant of permanent custody would be in the child's best interest. Father now challenges the trial court's permanent-custody decision.

#### **Father Voluntarily Waived his Right to Counsel**

{¶10} Father argues first that any waiver on his part of his right to be represented by legal counsel was not voluntary, and he urges us to find that the trial court had an ongoing duty to ensure that he wanted to represent himself at all hearings.

{¶11} Appellate courts review for an abuse of discretion any trial court's failure to appoint substitute counsel for a parent in permanent-custody proceedings. *In re W.J.*, 2022-Ohio-2449, ¶ 36 (3d Dist.). Yet we review with fresh eyes any trial-court finding that a party

did in fact waive a right to counsel. *State v. Smallwood*, 2020-Ohio-5556, ¶ 9 (6th Dist.); *W.J.* at ¶ 35. In doing so, we consider “all of the particular facts of the case.” *In re Children*, 2023-Ohio-588 , ¶ 17 (1st Dist.).

{¶12} Any permanent termination of parental rights is of course one of the gravest decisions a court can make. *In re R.K.*, 2018-Ohio-23, ¶ 1. Parents in this kind of case must therefore be afforded “every procedural and substantive protection the law allows.” *In re Hayes*, 79 Ohio St.3d 46, 48 (1997), quoting *In re Smith*, 77 Ohio App.3d 1, 16 (6th Dist. 1991). Among the parental rights in any permanent-custody case is “the right to be represented by an attorney ‘at all stages of the proceedings.’” *R.K.* at ¶ 1; quoting R.C. 2151.352. And like other legal rights, that right to counsel can be waived by the one who holds it. *R.K.* at ¶ 5.

{¶13} We have explained that such a waiver can be implied and need not be voiced in express terms. *See In re D.C.*, 2026-Ohio-3622, ¶ 17 (5th Dist.). A court weighing whether a parent has waived the right to counsel should assess “the total circumstances of the individual case,” including the “background, experience and conduct of the parent.” *In re M. Children*, 2019-Ohio-484, ¶ 15 (1st Dist.). A parent’s mere absence, without more, does not show that the parent has waived the right to counsel. *R.K.* at ¶ 9.

{¶14} Our review of the record leads us to conclude that Father understood his right to counsel and voluntarily chose to give it up. The dependency case was not his first exposure to courtroom proceedings, as he himself noted in the trial court. And though he had the opportunity to be represented by appointed counsel in the early weeks after the child was removed from his home, Father made clear on the record that he wanted to represent himself. To be sure, his expressed desire to proceed without counsel was driven by his stated concern

that his appointed counsel was going to “sell [him] down the river,” but he rebuffed the trial court’s offer to appoint replacement counsel at the temporary-custody hearing.

{¶15} As for the trial court’s failure to appoint new counsel, we see no abuse of discretion, given that Father never indicated that he wanted a new lawyer after he spurned the first one. Nothing in the record suggests that Father ever had a change of heart about his decision to represent himself, and he certainly never conveyed any such change of heart to the trial judge. Father’s assignment of error concerning his decision to go forward without counsel is overruled.

**Father Failed to Proffer or Otherwise Add to the Record Some Evidence That He Now Says Should Have Been Admitted**

{¶16} Father next argues that his due-process rights were violated when he was not able to cross-examine some witnesses or present evidence of recorded conversations and emails.

{¶17} An appellant bears the burden of providing to us all relevant evidence supporting any claimed errors. *See State v. Ashcroft*, 2021-Ohio-3897, ¶ 11 (5th Dist.) (“an appellant bears the burden of showing error by reference to matters in the record”) (citation and quotations omitted); *State v. Wilson*, 2018-Ohio-396, ¶ 23 (5th Dist.) (“Appellant has the responsibility of providing the reviewing court with a record of the facts, testimony, and evidentiary matters that are necessary to support the appellant’s assignments of error”).

{¶18} “Evid. R. 103(A)(2) requires an offer of proof in order to preserve any error in excluding evidence, unless the excluded evidence is apparent in the record.” *State v. Brooks*, 44 Ohio St. 3d 185, 195 (1989). And the Appellate Rules enable a party whose exhibit has not been admitted to ensure that the exhibit is available to us in any later appeal. *See App.R.*

9(B)(6)(g) (“documentary exhibits offered at trial whose admission was denied shall be included in a separate envelope with a notation that they were not admitted”).

{¶19} We cannot second-guess any trial-court decisions barring Father from presenting certain evidence where he did not make a proffer of the proposed testimony in the trial court or ensure that his proposed exhibits were included in the appellate record. *See State v. Jones*, 2026-Ohio-1749, ¶ 13 (9th Dist.) (“After the municipal court ruled that Mr. Jones could not present [certain] evidence, . . . Jones did not make a proffer of what the evidence would have been,” and he therefore failed to “preserve[] his arguments for appeal”); *State v. Greene*, 2025-Ohio-1096, ¶ 56 (6th Dist.) (“Because Greene did not seek to introduce King’s proposed testimony by proffer or otherwise, the record permits no resolution of this issue”); *State v. Smith*, 2017-Ohio-359, ¶ 19 (9th Dist.) (“When the court’s ruling is one excluding evidence, a party must proffer the evidence at trial to preserve the issue for appeal”).

{¶20} Because the record before us gives us no insight into the role that Father’s emails and audio recordings might have played had they been admitted, we must leave in place the trial court’s rulings excluding them. The same is true of any testimony that Father says he should have been permitted to elicit had objections to his proposed questions not been sustained. His assignment of error raising concerns about the trial court’s evidentiary rulings is not one we can embrace.

{¶21} Missing, too, from our record is any objection by Father to what he describes as an improper trial-court ruling cutting off his cross-examination of a witness even in the absence of any objection to his questioning by the Agency. We tread no new ground when we note that “to preserve a claim or objection for appeal,” a party must first “bring the claim or objection to the trial court’s attention,” and any failure to do so “waives the claim or

objection on appeal.” *Merriman v. Merriman*, 2004-Ohio-3511, ¶ 30 (11th Dist.). Given that Father did not timely object when the trial court directed him to halt his cross-examination of a witness, he cannot raise the issue here now.

### **No Evidence Casts Doubt on the Trial Court’s Abandonment Finding**

{¶22} Father also urges us to find that he did not in fact abandon his child even though the Agency at the permanent-custody hearing presented evidence about two periods of more than 90 days when no contact between Father and the child took place. Yet though he now says that he maintained communication with the child during those two time periods, nothing in the record supports that view. No witnesses testified about any calls or any written communications between Father and the child during the two time periods, and Father himself never claimed in the trial court that he had managed to connect with the child during those time frames. In short, we have no basis for undoing the trial court’s abandonment finding now.

{¶23} Further, in the reply brief that Father has filed here on his own behalf without the assistance of counsel, he lists a new assignment of error focusing on what he describes as the Agency’s “delayed disclosure” to him of what he says was a sexual assault of his child while the child was in the Agency’s temporary custody. Had that disclosure not been delayed, he suggests, he would have communicated more quickly and more frequently with the child during the two 90-day periods and at other times while the dependency case was open.

{¶24} Yet, we again note that no evidence in the record lends support to this view as a factual matter, and we in any event typically will not take up additional assignments of error raised for the first time in a reply brief. *See State v. Wilson*, 2014-Ohio-41, ¶ 38 (5th Dist.). For these reasons, we decline to overturn the trial court’s abandonment finding.

**The Trial Court Did Not Err in Determining That the Child Could Not Be Returned to Father Within a Reasonable Time**

{¶25} In his fourth assignment of error, Father argues that the trial court erred in concluding that at least one of the R.C. 2151.414(E) factors applied in this dependency case. (That statutory provision lists 16 factors that juvenile courts are to consider when deciding whether a child cannot within a reasonable time — or should not — be placed with that child’s parent.)

***A. The R.C. 2151.414(E) Factors***

{¶26} R.C. 2151.414(B)(1) lists five scenarios, any one of which can serve as a prerequisite for a trial court’s consideration of a permanent-custody request. The trial judge in this case found that either R.C. 2151.414(B)(1)(a) or R.C. 2151.414(B)(1)(b) applied.

{¶27} The first of those governs when 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.”

{¶28} And the second one — R.C. 2151.414(B)(1)(b) — fits situations where the child has been “abandoned.”

{¶29} When applying the first one — the R.C. 2151.414(B)(1)(a) cannot-or-should-not scenario — the juvenile court must look to R.C. 2151.414(E). That latter provision in turn lists the 16 factors, any one of which can support a trial judge’s finding that a child cannot or should not be placed with a parent. *See In re A.W.*, 2024-Ohio-5791, ¶ 19 (5th Dist.).

{¶30} The trial judge here focused on 2 of the 16 factors: the ones listed in R.C. 2151.414(E)(1) (the parent has failed continuously and repeatedly to substantially remedy the conditions that led to the child’s placement outside the parent’s home) and R.C. 2151.414(E)(10) (the parent has abandoned the child).

***B. The Record Supports the Trial Court’s R.C. 2151.414(E) Findings***

{¶31} We agree with the trial court's findings on those factors.

{¶32} First, we see clear and convincing evidence in the record that Father failed to remedy the Agency's domestic-violence concerns that triggered the Agency's involvement. Father's case plan called for him to participate in any professionally recommended domestic-violence-offender treatment and to participate in any recommended individual counseling too. Though Father was assessed and though that treatment and the counseling were recommended, he did not engage in those programs.

{¶33} To be sure, Father was not charged with domestic violence, but he was charged with the offense of criminal mischief, and that charge alleged that he created a risk of physical harm to his child. Further, Father's hostility toward the Agency appears to have interfered with his willingness or ability to comply with the case plan, including the goal of regularly communicating with and visiting the child. At the permanent-custody hearing, the Agency presented clear and convincing evidence that reunification of the child with Father was not feasible within a reasonable time period due to his lack of progress on the case plan.

{¶34} We also see in the record clear and convincing evidence of abandonment. Father did not visit or communicate with the child for two periods of more than 90 days, and he offered no evidence to rebut the presumption of abandonment that therefore attached. *See* R.C. 2151.011(C) (a child is "presumed abandoned" when a parent has "failed to visit or maintain contact with the child" for more than 90 days, "regardless of whether the parents resume contact with the child" after that time period); *In re Custody of C.E.*, 2005-Ohio-5913, ¶ 17 (2d Dist.) (construing the abandonment presumption in R.C. 2151.011(C) as a "rebuttable presumption").

{¶35} And though Father’s incarceration during part of one of the 90-day-plus periods likely hampered his ability to communicate with the child, “[i]ncarceration . . . does not rebut the presumption of abandonment.” *In re M.A.*, 2024-Ohio-3432, ¶ 26 (5th Dist.), citing *Matter of M.G.*, 2023-Ohio-696, ¶ 48 (5th Dist.). And again, no evidence in the record points toward any attempts by Father to communicate with the child during either of the two lengthy months-long periods.

{¶36} In sum, we agree with the trial court that at least one of the R.C. 2151.414(E) factors was proven at the permanent-custody hearing, and that proof supports the judge’s conclusion that the child could not, within a reasonable time, be placed with Father. The fourth assignment of error is overruled.

#### **A Grant of Permanent Custody Is In the Child’s Best Interest**

{¶37} Having found that at least one of the circumstances described in R.C. 2151.414(B)(1) was met, we now turn to the trial court’s best-interest analysis. Here again, we find clear and convincing evidence in the record to support the trial court’s conclusion.

{¶38} The child’s needs are complex, the trial court explained. Struggles in school and behavioral issues are affecting the now seven-year-old’s development. When Father visited his son, the boy’s behavior seemed to worsen. And testimony from the permanent-custody hearing indicated that Father during his visits repeatedly made promises of reunion that he had been told by the Agency not to make. Father’s distrust of and hostility toward the Agency and Agency staffers undermined not only his own case-plan compliance but also his ability to provide the child with the kind of supportive nurturing that the child needs.

{¶39} Adoption likely offers the best path for the child’s future. Father’s sister, who cared for the child during a lengthy portion of the temporary-custody period, is a potential

adoptive parent, and she is evidently open to allowing Father to maintain an appropriate relationship with the child going forward. We agree with the trial court that a grant of permanent custody is in the child's best interest.

{¶40} For these reasons, the judgment of the Juvenile Division of the Court of Common Pleas of Stark County is affirmed. Costs are to be paid by Appellant Joshua B.

By: Gormley, J.;

Baldwin, P.J. and

Montgomery, J. concur.