

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

IN THE MATTER OF: K.N., JR.  
(DOB: 1-30-26)

(Christina S., Appellant)

Case No. 2026 CA 00088

Opinion & Judgment Entry

Appeal from the Court of Common Pleas  
of Stark County, Juvenile Division, Case  
No. 2026 JCV 00117

Judgment: Affirmed

Date of Judgment: October 19, 2026

BEFORE: Andrew J. King, Robert G. Montgomery, and David M. Gormley, Judges

APPEARANCES: Richard D. Hixson, Zanesville, Ohio, for Appellant Christina S. (the child’s mother); James B. Phillips, Canton, Ohio, for Appellee Stark County Job & Family Services.

*Gormley, J.*

{¶1} The mother of the child identified in the case caption above challenges the trial court’s award of permanent custody of the child to Stark County Job and Family Services (the “Agency”). According to Mother, the trial court should not have found her child to be dependent, and she faults the trial court, too, for failing to explain whether the Agency made any reasonable efforts to return the child to Mother’s home after the child’s initial removal. Mother’s appeal also asks us to overturn the trial court’s finding that permanent custody is in the best interest of the child, and Mother questions, as well, whether the trial court properly addressed the child’s heritage under the Indian Child Welfare Act (ICWA). Because we see no error in the trial court’s ruling, we affirm.

**The Key Facts**

{¶2} Born prematurely in January 2026, the child weighed less than two pounds at birth. Mother evidently used marijuana throughout her pregnancy, and the child showed some possible signs of withdrawal during his first few days after exiting the womb.

{¶3} The Agency was familiar with Mother, whose six older children had all been placed permanently with other adults due to Mother's struggles with substance abuse and mental-health issues as well as her history of living in homes where domestic violence was an ongoing risk. Mother had been unable to complete Agency-developed case plans on multiple occasions while working with the Agency over the course of several years, and her history of parental ups and downs with the older children evidently prompted the Agency to file a complaint seeking permanent custody of the latest child just a week after his birth.

{¶4} The trial court placed the newborn child in the Agency's temporary custody in February 2026 and then held the permanent-custody hearing two months later.

{¶5} At that hearing, testimony from an Agency caseworker indicated that the child was still in the hospital then due to complications tied to his premature birth. That caseworker also testified about Mother's extensive history with the Agency, recounting how Mother's other six children had been removed from her home due to Mother's substance abuse, her difficulty in providing a safe home environment, and the Agency's concerns about domestic violence.

{¶6} The caseworker also noted that Mother had never completed any of her case plans in the juvenile-court cases for the six older children, and she was still maintaining her relationship with an abusive boyfriend. At the time of the hearing, Mother was living in a home that the caseworker deemed unfit for any child due to clutter, animal feces, and a pervasive smell of urine. Both that caseworker and another one who had previously worked

with Mother testified that Mother could probably not provide a safe home for her latest child, and both caseworkers opined that placement of the child with the adoptive parents of one of the newborn's older sisters give the child the best opportunity to receive the care he needed.

{¶7} Days after the hearing, the trial court found that the child was dependent, that he could not within a reasonable time or should not be placed with his mother, and that his best interests would be served by an award of permanent custody to the Agency. The trial court ordered the termination of Mother's parental rights and awarded custody of the child to the Agency. Mother now appeals.

### **The Record Supports the Trial Court's Finding that the Child Was Dependent**

{¶8} Mother's first assignment of error attacks the trial court's dependency finding. Our review of such a finding is distinct from our review of any related grant of permanent custody. *In re D.M.*, 2026-Ohio-3524, ¶ 80 (5th Dist.). A court's conclusion that a child is dependent must rest on the child's own condition and environment, not on any fault attributable to a parent or on any parental conduct toward the child. *In re N.T.*, 2026-Ohio-2997, ¶ 15 (5th Dist.). Ensuring that a child receives adequate care and support is a court's focus in a dependency case — see *In re R.C.*, 2023-Ohio-146, ¶ 19 (5th Dist.) — and a dependency finding can lead to a change in the temporary or permanent custody of a child. R.C. 2151.353.

{¶9} To find a child dependent, a trial court must find that one of four statutory circumstances applies to the child. R.C. 2151.04. The first one applies where the child is "homeless or destitute or without adequate parental care, through no fault of the child's parents." R.C. 2151.04(A). The second dependency circumstance can arise where the child "lacks adequate parental care by reason of the mental or physical condition of the child's

parents.” R.C. 2151.04(B). The third one applies where the child’s “condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship.” R.C. 2151.04(C).

{¶10} The one other circumstance that can justify a dependency finding has two parts, and both must be proven for the finding to be made. R.C. 2151.04(D). The child must be residing in a household in which a member of the household committed an act that led to “an adjudication that a sibling of the child . . . is an abused, neglected, or dependent child,” and the same circumstances or conditions that led to the other child’s abuse, neglect, or dependency finding must present a similar danger to the sibling in question. R.C. 2151.04(D). That statutory provision allows a trial court to make a dependency finding based on prior acts by the parent rather than on any actual harm the child has suffered. *In re P.L.*, 2026-Ohio-3596, ¶ 16 (5th Dist.). As this court has reiterated, “the law does not require the juvenile court to experiment with the health and safety of a newborn baby where the state can show by clear and convincing evidence that placing the child in such an environment would be threatening to the health and safety of that child.” *Id.*

{¶11} A trial-court finding of dependency under any one of the four requisite statutory circumstances must be based on “clear and convincing evidence.” R.C. 2151.35(A). And when reviewing such a finding, we must ““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, quoting *State v. Schiebel*, 55 Ohio St.3d 71, 74 (1990).

{¶12} An appellant challenging a dependency finding can present both sufficiency-of-the-evidence and manifest-weight arguments. The two are often presented together, as they are in this case, but they are legally distinct. *In re Z.C.* at ¶ 13. For manifest-weight review,

an 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 ¶ 14. Our review of a sufficiency-of-the-evidence challenge, on the other hand, “is generally limited to considering whether sufficient credible evidence exists to support the juvenile court’s determination.” *In re D.P.*, 2020-Ohio-6663, ¶ 13 (12th Dist.).

{¶13} Although more than one of the R.C. 2151.04 dependency-circumstances provisions may have fit the facts of this case, the trial court appears to have focused on the fourth one described above: the one in R.C. 2151.04(D). The trial court, in its judgment entry, notes the earlier termination of Mother’s parental rights involving at least one of the child’s older siblings. The entry also addressed what the trial judge described as Mother’s inability to provide a secure placement for the child and her limited capacity to adequately care for the child once he leaves the hospital. That discussion touches on both parts of an R.C. 2151.04(D) dependency finding: a prior termination of parental rights and a current similar danger to a sibling.

{¶14} In our view, sufficient credible evidence supports the trial court’s dependency finding under R.C. 2151.04(D). Mother has given birth to seven children. At the time of the permanent-custody hearing in this case, none of the six older children were still in her custody. In previous cases with the Agency, Mother never completed an assigned case plan. Instead, she exhibited a pattern time and again of starting strong before falling by the wayside.

{¶15} The Agency’s concerns in the cases involving the older children were Mother’s drug use, her reluctance to extricate herself from physically abusive relationships, and the

inadequacy of her housing. In this case, the same dangers persisted at the time of the permanent-custody hearing. Mother admitted to continued marijuana use during and after her latest pregnancy. Her abusive relationship with the child's purported father was ongoing (though he was incarcerated at the time of the hearing). And a home visit by Agency staff identified Mother's residence as unfit, with several piles of animal feces visible on the home's main floor and a strong odor of urine throughout the home.

{¶16} To be sure, the trial court neglected to expressly identify which of the four R.C. 2151.04 dependency circumstances led that court to conclude that the child is dependent. But while that information would have been helpful to the parties and to us, the trial court's omission of it does not warrant reversal of the dependency finding where sufficient evidence of the clear-and-convincing variety is in the record before us. That evidence supports the trial court's ultimate finding of dependency, so we overrule Mother's assignment of error challenging that finding.

#### **The Trial Court's Omission of a Reasonable-Efforts Finding is Harmless Error**

{¶17} Mother's second assignment of error focuses on the trial court's failure to make a reasonable-efforts finding under R.C. 2151.419. To protect a parent's rights during custody proceedings, that statutory provision calls for trial courts to determine whether any government agency (or private child-placing agency), before removing a child from a home, made reasonable efforts to prevent that removal and also whether that agency, after a removal, has made reasonable efforts to return the child safely to a parent's home. That statutory requirement, we have explained, applies at "adjudicatory, emergency, detention, and temporary-disposition hearings" as well as at final dispositional hearings for abused, neglected, or dependent children. *In re A.M.*, 2026-Ohio-1986, ¶ 50 (5th Dist.).

{¶18} There are, however, five statutory exceptions listed in R.C. 2151.419(A)(2) that obviate the need for the government (or a private agency) to undertake those reasonable efforts. According to one of those five exceptions — the one in R.C. 2151.419(A)(2)(e) — no reasonable efforts need be made to prevent removal or to end removal of a child where “the parent from whom the child was removed has had parental rights involuntarily terminated with respect to a sibling of the child.”

{¶19} As with her dependency-finding argument, Mother has here again identified a shortcoming in the trial court’s entry. Just as the trial judge neglected to note the R.C. 2151.04 provision that justified the judge’s dependency finding, the judge also said nothing at all about the reasonable-efforts issue. As Mother notes in her argument here, even when one of the R.C. 2151.419(A)(2) exceptions appears to eliminate any burden on the government (or a private agency) to make reasonable efforts to prevent or to end a child’s removal, the trial court still has an obligation to address the issue. *See* R.C. 2151.419(A)(2) (“If any of the following apply, the court *shall* make a determination that the agency is not required to make reasonable efforts to prevent the removal of the child from the child's home” or to “return the child to the child's home”) (emphasis added).

{¶20} Although the trial court should have made a no-reasonable-efforts-were-required finding, the absence of any language to that effect in the trial judge’s final entry can rightly be characterized in this case as harmless error, given that no evidence in the record calls into doubt the trial judge’s finding that Mother’s parental rights for one of her other children — an older sibling of the child whose custody is at issue in this case — were involuntarily terminated by the same trial court in an earlier case. The trial court’s failure to mention R.C. 2151.419(A)(2)(e) or to explain that the earlier parental-rights termination for

an older sibling removed any obligation on the part of the Agency in this case to make any reasonable efforts to prevent the child's removal or to end that removal does not undercut the validity of the trial court's judgment granting permanent custody of the child to the Agency. In other words, where the record tells us that reasonable efforts by the Agency were not in fact required under the statute, the trial court's failure to expressly state that reasonable efforts were not required caused no harm to either party and had no effect on the judgment that the trial court issued. For that reason, we overrule Mother's assignment of error faulting the trial court for not including the required best-efforts language in the judgment entry.

### **A Grant of Permanent Custody Is in the Child's Best Interest**

{¶21} In her third assignment of error, Mother challenges the trial court's finding that a grant of permanent custody to the Agency was in the child's best interest.

{¶22} A permanent termination of parental rights has been described as the family-law equivalent of the death penalty, and we have expressed the view that parents facing such a termination must be afforded every available legal protection. *In re L.A.*, 2024-Ohio-3436, ¶ 42 (5th Dist.).

{¶23} The Supreme Court has explained that the appropriate appellate standard of review of a trial court's permanent-custody decision is the manifest-weight standard or a sufficiency-of-the-evidence standard (or both), depending on the nature of the arguments presented by the parties. *In re Z.C.*, 2023-Ohio-4703, ¶ 11. As noted above, these are distinct legal standards that turn on different considerations. *Id.* at ¶ 13. Put simply, a sufficiency challenge alleges that insufficient evidence has been presented to prove the government's allegation. *In re D.P.*, 2020-Ohio-6663, ¶ 13 (12th Dist.). A manifest-weight challenge, on the

other hand, calls for us to determine whether the trial-court finder of fact made egregious errors when considering the weight or credibility of the evidence. *In re Z.C.* at ¶ 14.

{¶24} A trial court may grant permanent custody of a child to a requesting public or private agency if the court determines — by what R.C. 2151.414(B)(1) calls “clear and convincing evidence” — that (1) the best interest of the child will be furthered by a grant of permanent custody and (2) any one of the five factors enumerated in R.C. 2151.414(B)(1)(a) through (e) applies. As we have said, then, R.C. 2151.414(B) “establishes a two-pronged analysis.” *In re K.H.*, 2025-Ohio-21, ¶ 30 (5th Dist.). “In practice, the trial court will usually determine whether one of the . . . 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.” *Id.* Here, Mother does not challenge any of the trial court’s five-factor findings and instead questions only the trial court’s conclusion that permanent custody is in the child’s best interest. We therefore likewise focus only on that latter issue.

{¶25} In determining whether granting permanent custody of a child to an agency is in that child’s best interest, a trial court must consider all relevant factors, including, but not limited to, the ones listed in R.C. 2151.414(D)(1). Those statutory factors include (1) the child’s interactions and relationships with the child’s family members and persons who may significantly affect the child, (2) the wishes of the child (with due regard to the maturity of the child), (3) the custodial history of the child, and (4) the child’s need for a legally secure and permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency. R.C. 2151.414(D)(1)(e) also directs a court to consider whether any of the factors delineated in R.C. 2151.414(E)(7) through (11) are applicable, including whether the parent has abandoned the child.

{¶26} The trial court must also consider any other evidence available to it when deciding whether permanent custody is in a child’s best interest. See *In re Schaefer*, 2006-Ohio-5513, ¶ 56 (“The court must consider all of the elements in R.C. 2151.414(D) as well as other relevant factors”); *In re Stephens*, 2002-Ohio-3057, ¶ 27 (7th Dist.) (“To further the interests of the children,” the trial court must consider “any evidence available to it” when determining whether permanent custody is in the children’s best interest).

{¶27} R.C. 2151.414(D)(1) does not require a trial court to make specific findings on each factor listed in that provision, and the statute likewise does not require the court to include in its judgment entry a written discussion of each factor. *In re A.M.*, 2020-Ohio-5102, ¶ 31, 33 (“Consideration [of the factors] is all the statute requires”).

{¶28} “A child’s best interests are served” when the child is placed in a permanent situation that “fosters growth, stability, and security.” *In re M.K.*, 2023-Ohio-3786, ¶ 36 (5th Dist.). “The discretion” that the juvenile court enjoys in determining whether a permanent-custody order best serves a child’s interest “should be accorded the utmost respect, given the nature of the proceeding and the impact the court’s determination will have on the lives of the parties concerned.” *Id.*, quoting *In re E.H.*, 2022-Ohio-1682, ¶ 101 (5th Dist.).

{¶29} In this case, we find that clear and convincing evidence supported the trial court’s conclusion that granting permanent custody to the Agency would best serve the child’s interest.

{¶30} The first factor (focusing on the child’s interactions and relationships with family members and other key persons) does not in this case point strongly in any one direction. A caseworker testified at the permanent-custody hearing that Mother visited the hospitalized child just ten times during the few short months of the child’s life before the

hearing, though Mother evidently was hampered by the fact that she had no transportation and had limited funds to pay a taxi service to take her to the hospital. Addressing the issue at the permanent-custody hearing, the caseworker expressed uncertainty as to whether the child had formed any special bond with his mother.

{¶31} Given the child’s young age, no conclusions can of course be drawn about the second best-interest factor — the child’s own wishes — and, similarly, the third R.C. 2151.414(D)(1) factor calling for a trial court to consider the custodial history of the child in question is of little guidance in this case, given the child’s months-long hospitalization due to his health issues stemming from his premature birth.

{¶32} The fourth R.C. 2151.414(D)(1) factor — the one calling for the trial court to consider the child’s need for a legally secure and permanent placement and whether that type of placement is achievable without a grant of permanent custody to an agency — was the determinative best-interest factor in this case. Courts interpret a “legally secure [and] permanent placement” to mean “a safe, stable, [and] consistent environment where a child’s needs will be met.” *In re M.B.*, 2016-Ohio-793, ¶ 56 (4th Dist.).

{¶33} Mother’s history with the Agency and her ongoing personal issues support the trial court’s finding that she cannot provide the child with the kind of safe and stable home that will allow the child to thrive. As we have already noted, Mother has never been able to complete an Agency case plan, and six of her older children have been permanently placed outside her home. She admitted that she used marijuana while pregnant, and though she did pursue substance-use treatment in the weeks before the permanent-custody hearing, she also continued to use marijuana then. Her home is unclean, with animal feces in the family’s living spaces. And she has expressed her intention to maintain her relationship with a

boyfriend whose violent past raises questions about Mother's own physical safety and perhaps the safety of other persons who might live with her.

{¶34} An alternative placement appears to be available with the adoptive parents of one of the child's older sisters. Those foster parents had already started visiting the hospitalized child when the permanent-custody hearing took place, and they have evidently expressed an interest in adopting the child if that opportunity is given to them.

{¶35} In sum, clear and convincing evidence in the record supports the trial court's view that a grant of permanent custody to the Agency is in the child's best interest.

### **The Trial Court Adequately Addressed Whether ICWA Applied**

{¶36} In her final assignment of error, Mother argues that the trial court violated the federal Indian Child Welfare Act by not determining whether the child is a member of a federally recognized Indian tribe. As we explain below, we see no such error.

{¶37} "The Indian Child Welfare Act was enacted 'for the protection and preservation of Indian tribes and their resources.'" *In re K.Y.*, 2025-Ohio-1117, ¶ 33 (5th Dist.), quoting 25 U.S.C. 1901(2). Under ICWA, "state courts are required to 'ask each participant in an emergency or voluntary or involuntary child-custody proceeding whether the participant knows or has reason to know that the child is an Indian child. The inquiry is made at the commencement of the proceeding[,] and all responses should be on the record.'" *Id.*, quoting 25 C.F.R. 23.107(a).

{¶38} The failure of a state court to identify children covered by ICWA "'can nullify court proceedings that have not been conducted in accordance with the Act.'" *Id.*, quoting *In re L.M.*, 2024-Ohio-5549, ¶ 13 (12th Dist.). A child is covered by ICWA if that child is unmarried and "under age eighteen and is either (a) a member of an Indian tribe or (b) is

eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe[.]” 25 U.S.C. 1903(4).

{¶39} The failure of a parent to raise an ICWA objection in the trial court forfeits all but plain error. *In re K.Y.* at ¶ 34. Plain-error review of course sets a high hurdle for the party alleging the error, and we recognize and act on plain error only where the error is an egregious one. *Id.*

{¶40} Where no evidence of tribal heritage exists in the record, we have repeatedly declined to categorize as plainly erroneous a trial court’s failure to mention ICWA. *See In re B.M.*, 2025-Ohio-1786, ¶ 44 (5th Dist.) (finding no plain error in a trial judge’s failure to make an ICWA inquiry where the parent failed to raise an ICWA objection at the trial-court level); *In re R.M.*, 2025-Ohio-1421, ¶ 35 (5th Dist.) (same).

{¶41} We reach the same outcome in this case. Mother did not raise an ICWA objection during the permanent-custody hearing. And though the child’s father evidently did, before the hearing, claim possible Native American heritage, no evidence supporting that suggestion was presented at the hearing. When the trial court at the hearing inquired into the applicability of ICWA, an Agency staffer testified that “the proper letters” had been sent as part of the Agency’s effort to investigate the issue, but no one had responded to the letters. We are at a loss to see what more the trial court could or should have done, and certainly we cannot say that the trial court overlooked the issue. With no evidence and nothing more than a seeming rumor to go on, the trial court surely fulfilled its duty under the federal law, and we therefore overrule Mother’s ICWA-related assignment of error.

{¶42} For the reasons explained above, the judgment of the Juvenile Division of the Court of Common Pleas of Stark County is affirmed. Costs are to be paid by appellant Christina S.

By: Gormley, J.;

King, P.J. and

Montgomery, J. concur.