[Cite as *In re E.R.*, 2026-Ohio-4521.]

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

IN THE MATTER OF: E.R. (D.O.B. 8-27-2009)	Case No. 2026CA00100 Opinion And Judgment Entry Appeal from the Stark County Court of Common Pleas, Family Court Division, Case No. 2024JCV01265 Judgment: Affirmed Date of Judgment Entry: November 13, 2026

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

APPEARANCES: AARON KOVALCHIK, for Plaintiff-Appellant; BRANDON J. WALTENBAUGH, for Defendant-Appellee.

Montgomery, J.

{¶1} Appellant M.R. (hereinafter "Father") appeals the judgment of the Stark County Common Pleas Court, Family Court Division, awarding Appellee Stark County Job and Family Services (hereinafter "SCJFS") permanent custody of his daughter, E.R. (hereinafter "the Child").

STATEMENT OF THE FACTS AND CASE

{¶2} The Child was born on August 27, 2009. On October 28, 2024, SCDJFS filed a complaint alleging the Child was dependent, neglected, and/or abused. SCJFS received concerns that two other families were living with the Child and her parents. Father is a convicted sexual offender, and several people living in the home disclosed that Appellant was sexually abusing them. During transport after she was removed from the home, the Child expressed suicidal ideations and claimed the following day was her "death day." Tr. 13. The Child had multiple knives with her which she intended to use to commit suicide. She was admitted to a psychiatric facility for treatment. The trial court found the Child to be dependent and placed her in the temporary custody of SCJFS.

{¶3} SCJFS had extensive concerns about the educational, dental, and mental health care of the Child while in the custody of Father and Mother. The Child was fifteen years old when she was removed from the home. She had been homeschooled from third grade on, and her math skills remained at a third-grade level. The Child needed three root canals and surgery for a tongue-tied condition. The Child blamed Father and Mother for her lack of social skills, educational neglect, and poor mental health.

{¶4} Father's case plan required him to complete a sexual abuse risk assessment and comply with its recommendations. He admitted to raping a woman in 1989 and spending more than a decade in prison. The evaluator recommended that Father complete truth verification and participate in family counseling. Appellant completed truth verification, in which he denied sexually abusing a woman and child living in the home, and he passed the verification. During a visit with Father, the caseworker observed interactions between the Child and Father which she found concerning. The Child would sit on Father's lap, which

was unusual for a child of her age. The Child would place her fingers in Father's mouth. At one visit, the Child put her head in Father's lap, and the visitation supervisor noticed Father had what appeared to be an erection, which he adjusted multiple times in an attempt to hide it.

{¶5} Father is required to register as a sex offender. He is still registered at the Stark County address from which the Child was removed but told the caseworker from SCJFS he no longer lives there and was living in his van. When the caseworker went to the address, she was told both Mother and Father still lived in the home.

{¶6} Mother allows homeless families to live in the home with the Child, believing God has called her to do so. Some of the people Mother allows to live in the home have criminal history and past involvement with Child Protective Services. During a forensic interview, the Child reported that she walked in on her Father and a girl living in the home in a room, at night, when Mother was not home. The door to the room was closed. When the Child walked in, the girl was lying back on the bed with her legs dangling over the edge, and Father was on his knees in front of the girl. The Child feared Father would have to go back to jail.

{¶7} The Child repeatedly expressed to the guardian ad litem that she does not wish to be reunited with her parents. While there is affection between the Child and her parents, the Child feared that if she returned home, she would not be able to attend counseling and receive medication for her mental health. The Child expressed that while in her current foster home, she was the happiest she has ever been and she wished to be adopted.

{¶8} On September 18, 2025, SCJFS filed a motion for permanent custody of the Child. The case proceeded to trial.

{¶9} Father had been represented by Attorney Grant throughout the proceedings. At the beginning of the trial, Father fired Attorney Grant, who was asked to stay and act as co-counsel for Father. Throughout the trial, Father cross-examined some witnesses for SCJFS, while Attorney Grant cross-examined some of the witnesses.

{¶10} The trial court found that Father and Mother had failed to remedy the conditions which led to the removal of the Child from the home, and the child could not be placed with either parent in a reasonable time. The trial court found permanent custody to be in the best interest of the Child and granted the motion for permanent custody.

{¶11} Father assigns three errors to the April 30, 2026, judgment of the trial court:

{¶12} "I. THE JUDGEMENT 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."

{¶13} "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."

{¶14} "III. APPELLANT WAS DENIED HIS RIGHTS TO DUE PROCESS AND OF ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTIONS 10 AND 16 OF THE OHIO CONSTITUTION, BECAUSE HIS TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE."

STANDARD OF REVIEW AND APPLICABLE LAW

{¶15} 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 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.

{¶16} 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.

{¶17} 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.

{¶18} 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.

{¶19} 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.

{¶20} 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).

{¶21} 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.

I.

{¶22} Father argues that SCJFS failed to prove the Child cannot be placed with him within a reasonable time. R.C. 2151.414(E) sets forth the following factors the trial court is to consider when determining if a child can be placed with a parent within a reasonable time, 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.

(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[.]

{¶23} The trial court found R.C. 2151.414(E)(1) applicable to both parents, and R.C. 2151.414(E)(2) applicable to Mother.

{¶24} The evidence presented at trial demonstrated that Father completed the sex offender risk assessment as required by his case plan. The evaluator noted that Father denied all allegations of inappropriate sexual conduct against him, and Father passed truth verification. However, Father failed to engage in family counseling, which was recommended after he completed truth verification. Father also failed to engage in anger management counseling, which was added to his case plan after he appeared to be growling in the courtroom during a hearing, and eventually left the courtroom to pace and continue to

growl in the hallway. Further, the Child disclosed during her evaluation that Father had anger issues.

{¶25} In addition, SCJFS presented evidence that the Child suffered years of neglect from both parents. She suffered from lack of dental care, the refusal of her parents to fix her tongue-tied condition, and lack of care for her mental health conditions. The Child was severely delayed in schooling because despite the parents' decision to homeschool her, neither parent made sure she was learning. The Child indicated during her evaluation that she did not view her parents' home as a safe place. While she stated that she loves Father, his anger issues scare the Child.

{¶26} Further, the caseworker testified to concerning interactions between Father and the Child during visits. Despite the fact she was a teenager, the Child sat on Father's lap during visits and put her fingers in Father's mouth. At one visit, the visitation supervisor observed Father having an erection while the Child put her head on his lap. The Child further reported witnessing what appeared to be inappropriate sexual behavior with Father toward a young girl living in the home.

{¶27} Father reported living in different locations during the pendency of the case, although his sex offender registration indicated he lived in Stark County. SCJFS presented testimony that Father reported living in Akron at one point, and in his van in another point. Father has not allowed the caseworker to view his residence, but she noted that the outside of Father's home was cluttered with trash. Father failed to regularly meet with the caseworker regarding the Child's case management services.

{¶28} We find that SCJFS proved by clear and convincing evidence that the Child could not be placed with Father within a reasonable period of time. The first assignment of error is overruled.

II.

{¶29} Father argues SCJFS failed to prove by clear and convincing evidence that permanent custody was in the best interest of the Child.

{¶30} SCJFS presented the testimony of the guardian ad litem that while the Child loved her parents, she did not desire to return home. The Child was concerned about her mental health, and now that she is in a foster home and taking appropriate medication, she is happier and has minimal suicidal thoughts. The Child was on a waiting list for in-person counseling and was engaging in counseling through telehealth. The Child was doing well in a traditional school setting. The Child feared that if she returned home, her life would go back to the way it was before. The family with which the Child resides wishes to adopt the Child. Both the caseworker and the guardian ad litem testified that permanent custody was in the best interest of the Child. While the caseworker acknowledged that there would be damage to the Child from permanent custody, she testified that in her opinion, the benefits of permanency in the Child's placement would outweigh the damage.

{¶31} We find that SCJFS proved by clear and convincing evidence that permanent custody was in the best interest of the Child.

III.

{¶32} Father argues that his trial counsel was ineffective. On the morning of trial, Father attempted to discharge his attorney. Father claimed counsel had not contacted him and Father was not confident in Attorney Grant's performance to date. Attorney Grant

responded that he had been present for all hearings in the case and had communicated with Father through mail and phone calls. The trial court indicated that the trial was going forward that day whether Father continued to be represented by Attorney Grant or represented himself. The transcript reflects that at times, Father represented himself by cross-examining SCJFS's witnesses while at other times Attorney Grant cross-examined witnesses.

{¶33} "A parent is entitled to the effective assistance of counsel in cases involving the involuntary termination of his or her parental rights." *In re B.J. & L.J.,* 2016-Ohio-7440, ¶ 68 (12th Dist.). This is because "parental rights involve a fundamental liberty interest, procedural due process, which includes the right to effective assistance of counsel * * *." *In re Tyas,* 2002-Ohio-6679, ¶ 4 (12th Dist.), *citing In re Heston,* 129 Ohio App.3d 825, 827 (1998). "In permanent custody proceedings, where parents face losing their children, we apply the same test as the test for ineffective assistance of counsel in criminal cases." *In re E.C.,* 2015-Ohio-2211, ¶ 40 (3d Dist.).

{¶34} To prove an allegation of ineffective assistance of counsel, an appellant must satisfy a two-prong test. First, an appellant must establish counsel's performance has fallen below an objective standard of reasonable representation. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Bradley*, 42 Ohio St.3d 136, (1989), paragraph two of the syllabus. Second, an appellant must demonstrate he or she was prejudiced by counsel's performance. *Id*. To show he or she has been prejudiced by counsel's deficient performance, an appellant must prove that, but for counsel's errors, the result of the trial would have been different. *Bradley*, at paragraph three of the syllabus.

{¶35} Father has pointed to an apparent breakdown of the relationship between himself and his attorney, claiming this breakdown led to ineffective assistance of counsel.

However, Father has not cited this Court to any place in the record demonstrating specific errors by counsel, nor has he raised any argument as to how he was prejudiced by the performance of his attorney. Father has not proven that but for counsel's errors, the result of the trial would have been different, and therefore, we find counsel was not ineffective.

{¶36} The third assignment of error is overruled.

CONCLUSION

{¶37} The judgment of the Stark County Common Pleas Court, Family Court Division, is affirmed.

{¶38} Costs are assessed to Appellant.

By: Montgomery, J.

King, P.J. and

Popham, J. concur.