[Cite as *In re R.R.*, 2023-Ohio-2575.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
HURON COUNTY

In re R.R.

Court of Appeals No. H-23-012

Trial Court No. DNA 2021 00053

DECISION AND JUDGMENT

Decided: July 26, 2023

* * * * *

James Joel Sitterly, Huron County Prosecutor and
Richard H. Palau, Assistant Prosecutor, for appellee.

Miles T. Mull, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an expedited appeal from a judgment of the Huron County Court of Common Pleas, Juvenile Division, which terminated the parental rights of appellant-mother, J.V., to the subject minor child, R.R., and granted permanent custody to appellee, Huron County Department of Job & Family Services. The father of the minor child, T.B.,

whose parental rights were also terminated, did not appeal the judgment. For the reasons set forth below, this court affirms the judgment of the juvenile court.

I. Background

{¶ 2} The following facts are relevant to this appeal. On July 15, 2021, appellee filed a complaint alleging dependency of 17-day old R.R. Appellee alleged that appellant-mother previously had parental rights terminated to eight children in 2016, and the conditions causing their removal have not changed. R.R., her ninth child, resided with appellant-mother and soon after birth, R.R. was admitted to the children's hospital for respiratory and cardiac issues. Appellant-mother tested positive for THC at the time of R.R.'s birth. Appellee alleged the conditions created by appellant-mother warranted the finding that R.R. was a dependent child and in danger of being abused or neglected where R.R.'s siblings had previously been abused neglected, or dependent pursuant to R.C. 2151.04(C)[1] and 2151.04(D)(1) and (2).[2]

{¶ 3} The juvenile court immediately held a shelter-care hearing and placed R.R. in the temporary custody of appellee for foster care because, among other findings, "there

[1] R.C. 2151.04(C) defines a "dependent child" as any child "whose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child's guardianship."

[2] R.C. 2151.04(D) defines a "dependent child" as any child "to whom both of the following apply: (1) The child is residing in a household in which a parent * * * committed an act that was the basis for an adjudication that a sibling of the child * * * is an abused, neglected, or dependent child; and (2) Because of the circumstances surrounding the abuse, neglect, or dependency of the sibling * * * and the other conditions in the household of the child, the child is in danger of being abused or neglected by that parent[.]"

is no evidence she has resolved the issues that led to the termination of her parental rights [to R.R.'s eight siblings]." Those issues of neglect, as described by appellee in the record, included a child born with active opiate withdrawal, active drug use by all adults in the home around the children, housing without sufficient beds for the eight children, and:

> two infants needing dental surgery due to rotting teeth, four of the older children having unaddressed cavities which needed treatment, one of the children needing surgery in his eardrum to close a hole, one child needing seizure treatment resulting in being hospitalized and diagnosed with untreated Juvenile Myoclonic Epilepsy, three children needing speech therapy, one child needing physical therapy, occupational therapy, feeding therapy, genetic testing, and leg braces, and four of the children possibly being exposed to alcohol in utero.

{¶ 4} R.R. entered foster care on July 15, 2021. While the initial cardiac issues were successfully treated, R.R. has ongoing issues with the heart and ongoing need to wear a helmet regarding the shape of his head.

{¶ 5} On September 7, 2021, the juvenile court adjudicated R.R. a dependent child under R.C. 2151.04(C) and 2151.04(D)(1) and upon the clear and convincing evidence presented at the hearing. R.R. continued in foster care with the same foster family.

{¶ 6} During the course of the proceedings, a number of relevant events occurred. Appellee's original permanency goal was reunification of R.R. with appellant-mother. Reunification of R.R. with appellant-mother was not possible because she bounced

between two households. In each household was a member with a case of substantiated sexual assault, one of which involved appellant-mother as the child victim, and the other involved appellant-mother's son as the perpetrator. Appellant-mother was granted supervised visitation of R.R., but has missed or cancelled 16 out of 65 scheduled visits. Meanwhile, R.R. thrived in foster care.

{¶ 7} The juvenile court adopted the case plan services appellee offered to appellant-mother, and to which appellant-mother agreed on August 19, 2021, for various areas of concern: complete a mental health assessment and all recommended treatments, which includes drug and alcohol assessments and related treatments; seek and complete appropriate medical treatment for her seizure disorder; obtain and maintain stable housing; and create a housing environment ensuring only safe people have access to R.R.

{¶ 8} However, during the proceedings, appellant-mother repeatedly insisted that she did not need any services because she did not believe her own conduct led to the termination of her parental rights to R.R.'s eight siblings. Appellant-mother insisted that one or more doctors told her to regularly self-medicate by smoking marijuana to control her seizures, including during her pregnancy with R.R., rather than take prescription medication. She then refused to authorize the release of her medical records for appellee to verify her claims. Appellant-mother told appellee's case worker that she opposed taking seizure medications because of weight gain. Appellant-mother sporadically engaged in case plan services, resulting in unsuccessful discharge by each provider.

{¶ 9} Then on August 25, 2022, appellee filed a motion for permanent custody of R.R. pursuant to R.C. 2151.413(A), 2151.413(D)(1) and 2151.414. Appellee argued that terminating parental rights to R.R. and awarding permanent custody with appellee is in the best interests of R.R. Appellee alleged it had temporary custody of R.R. for 12 or more months of a consecutive 22-month period, since July 15, 2021. While the original goal was reunification with appellant mother through the case plan services and other support, the new goal became permanent placement with an adoptive family. R.R. demonstrated significant bonding and attachment to his foster family, and the foster family was interested in adopting R.R. In addition, appellee alleged:

> [Appellant-mother] has openly stated to the intake worker on this case that she has not changed anything since the [2016] removal of her children. [Appellant-mother] shared that she believes everyone made things up and she does not understand why she had lost permanent custody of her other children. [Appellant-mother] is insistent that she has nothing to work on, that she knows how to care for a child, and that without further education she is a safe adult who is capable of being a full time, single parent.

{¶ 10} The dispositional hearing on permanent custody was held on February 14, 2023. The juvenile court heard testimony from four witnesses: appellee's caseworker since the beginning, R.R.'s guardian ad litem ("GAL"), R.R.'s father, T.B., and appellee's case aide who supervised appellant-mother's visits at the agency. The juvenile

court admitted one piece of evidence in the record: the March 2016 judgment entry terminating appellant-mother's parental rights to R.R.'s eight siblings.

{¶ 11} By judgment entry journalized on March 27, 2023, the juvenile court granted permanent custody of R.R. to appellee for adoptive placement and made a number of findings relevant to this appeal. Before reaching various findings, the juvenile court described appellant-mother's ongoing noncompliance with her case plan services to remedy the issues that led to the R.R.'s removal:

> [Appellant-mother] has not met these objectives. She has had several mental health assessments but has not complied with all treatment recommendations. She was unsuccessfully discharged from at least two different counseling agencies for multiple missed appointments. She has denied [appellee] access to different places where she may have been living and was evicted from one residence early in 2023. She may be residing with her own mother, but [appellee] has no had access to this residence. [Appellant-mother] told [appellee] caseworker Brittany Bennet about various alleged incidents that occurred in approximately December 2022 in which she was injured. [Appellant-mother] indicated that she had fallen off a transit vehicle and fractured her wrist and fought off an attempted rape. She was also found unresponsive in her home and administered Narcan by a family member. When [appellee] endeavored to gather medical documentation regarding these events, [appellant-mother] abruptly revoked

an authorization for release of information. [Appellant-mother] continues to lack insight into what contributed to the termination of her parental rights regarding her other 8 children more than 7 years ago.

{¶ 12} Pursuant to R.C. 2151.414(B)(1)(d) and 2151.414(D)(1)(c), the juvenile court found by clear and convincing evidence that R.R. has been in appellee's temporary custody since July 15, 2021, which is more than 12 months of a consecutive 22-month period.

{¶ 13} Pursuant to R.C. 2151.414(B)(1)(a), 2151.414(D)(1)(e), and 2151.414(E)(11), the juvenile court found by clear and convincing evidence that R.R. cannot be placed with appellant-mother within a reasonable period of time and should not be placed with her. In addition, the juvenile court found by clear and convincing evidence that appellant-mother "had parental rights involuntarily terminated with respect to eight of [R.R.'s] siblings in March. 2016, and has not provided clear and convincing evidence that, notwithstanding the prior terminations, she can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of [R.R.]."

{¶ 14} Pursuant to R.C. 2151.414(D), the juvenile court found by clear and convincing evidence that permanent custody with appellee is in the best interest of R.R. The juvenile court explained:

R.R. was not yet 3 weeks old when he was placed in the temporary custody of [appellee] in the * * * foster home. The family was also present with [R.R.] in the neo-natal intensive are unit before his release from the

hospital after birth. The [foster parents] have appropriately addressed and arranged treatment for the child's medical conditions. The child is now developmentally on target and has positive, healthy interactions with all of the occupants of the [foster] home. All of [R.R's] needs are being met, and the [foster parents] are willing to adopt [R.R.] if the agency's motion for permanent custody is granted.

The Court acknowledges that [appellant-mother] has had appropriate supervised visitation with [R.R.]. These visits occur twice per week and for 3 hours per visit. They are closely supervised by a trained staff member at [appellee]. With [appellant mother's] lack of compliance with treatment recommendations and other case plan objectives, however, there has never been a point during the pendency of this case where any unsupervised visitation would have been in [R.R.'s] best interest.

{¶ 15} Appellant-mother timely appealed the juvenile court's decision and set forth one assignment of error in her appeal: "The trial court failed to properly and appropriately consider the best interest of the Child, the determination being against the manifest weight of the evidence presented at trial."

II. Permanent Custody Determination

{¶ 16} Prior to granting appellee's motion for permanent custody of R.R., the juvenile court must make specific findings by clear and convincing evidence pursuant to R.C. 2151.414(B)(1). *In re A.M.*, 166 Ohio St.3d 127, 2020-Ohio-5102, 184 N.E.3d 1, ¶

18. First, "that one or more of the conditions in R.C. 2151.414(B)(1)(a) through (e) applies." *Id.* Second, that the grant of permanent custody to appellee is in the best interest of R.R. *Id.* "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, 471, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

{¶ 17} We review the juvenile court's determination of permanent custody under a manifest-weight-of-the-evidence standard. *In re L.W.*, 6th Dist. Huron No. H-22-017, 2023-Ohio-958, ¶ 24. We must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice that the decision must be reversed. *Id*. We are mindful that the juvenile court, as the trier of fact, was in the best position to weigh the evidence. *In re M.P.*, 6th Dist. Lucas No. L-23-1012, 2023-Ohio-1732, ¶ 38. The juvenile court's decision of the child's best-interest for permanent custody should be accorded the utmost respect due to the nature of the proceeding and the impact the court's determination will have on the lives of the concerned parties. *Id.* A judgment on permanent custody supported in the record by some competent, credible evidence by which the court could have formed a firm belief as

to all the essential elements will not be reversed on appeal as being against the manifest weight of the evidence. *In re D.M.*, 6th Dist. Lucas No. L-03-1337, 2004-Ohio-3982, ¶ 8.

1. R.C. 2151.414(B)(1)(a) through (e) Conditions

{¶ 18} Here, appellant-mother concedes the first prong of the permanent-custody test. "Appellant does not dispute the finding that the factors in R.C. 2151.414(B)(1)(a) and (d) exist," when only one was required to satisfy the first prong. "Appellant disputes only the finding of best interest [of the child.]" Therefore, we will focus our analysis on the juvenile court's best-interest determination. *In re M.P.* at ¶ 35.

2. Best Interest of the Child

{¶ 19} In support of her assignment of error, appellant-mother disputes the determination that permanent custody with appellee is in the best interest of R.R. pursuant to R.C. 2151.414(B)(1), and R.C. 2151.414(D)(1). She argues the trial court failed to properly consider three of the five mandatory factors: R.C. 2151.414(D)(1)(a), (b), and (d). Appellant-mother essentially concedes the other two factors, R.C. 2151.414(D)(1)(c) and (e).

{¶ 20} By conceding R.C. 2151.414(B)(1)(d), we find that appellant-mother also concedes the juvenile court's proper determination by clear and convincing evidence under R.C. 2151.414(D)(1)(c), that R.R. has been in appellee's temporary custody for 12 or more months of a consecutive 22-month period.

{¶ 21} By conceding R.C. 2151.414(B)(1)(a), we find that appellant-mother is conceding that R.R. cannot be placed with appellant-mother within a reasonable period of

time and should not be placed with her. Further, she is also conceding the juvenile court's proper determination by clear and convincing evidence under R.C. 2151.414(E)(11), and, in turn, under R.C. 2151.414(D)(1)(e), that R.R. cannot be placed with appellant-mother within a reasonable period of time and should not be placed with her because her parental rights to eight of R.R. siblings and she has failed to provide clear and convincing evidence that notwithstanding the prior termination, that she can provide a legally secure permanent placement and adequate care for R.R.'s health, welfare and safety. *In re C.N.*, 6th Dist. Lucas No. L-22-1194, 2023-Ohio-659, ¶ 34, citing *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 50 (to support a determination under R.C. 2151.414(B)(1)(a), that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent, the juvenile court need only find the presence of one R.C. 2151.414(E) factor).

{¶ 22} Appellee responds the trial court did not err as there was clear and convincing evidence in the record to support a finding that it is in the best interests of R.R. to terminate appellant-mother's parental rights and award permanent custody to appellee. Appellee argues the evidence of the juvenile court's consideration of the factors is found throughout its opinion, even without any explicit written discussion or factual findings of some of them, citing *In re A.M.*, 166 Ohio St.3d 127, 2020-Ohio-5102, 184 N.E.3d 1. We agree.

{¶ 23} Appellee, as the movant seeking permanent custody, bears the burden of proving by clear and convincing evidence that granting the motion is in R.R.'s best

interest under R.C. 2151.414(D)(1). *In re M.P.* at ¶ 36, citing *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, ¶ 26.

{¶ 24} In order to satisfy the second-prong of the permanent-custody test, the trial court must consider "all relevant factors," including the nonexhaustive list of R.C. 2151.414(D)(1)(a) through (e) factors. *In re A.M.* at ¶ 19. "Consideration is all the statute requires." *Id.* at ¶ 31. The juvenile court considered all relevant factors when it stated in its journalized judgment entry, "After considering the factors delineated in R.C. 2151.414(D), the Court also clearly and convincingly concludes that placing [R.R.] in the permanent custody of [appellee] would be in the child's best interest."

{¶ 25} No further explicit written discussion or findings by the juvenile court were necessary, and we are able to discern from the totality of the judgment entry and the record that it satisfied the statutory requirement to consider the five enumerated factors. *Id.* ("R.C. 2151.414(D)(1) does not require a juvenile court to expressly discuss each of the best-interest factors in R.C. 2151.414(D)(1)(a) through (e)."). "Although a reviewing court must be able to discern from * * * the court's judgment entry that the court satisfied the statutory requirement that it consider the enumerated factors, we may not graft onto the statute a requirement that the court include in its decision a written discussion of or express findings regarding each of the best-interest factors." *Id.*

{¶ 26} Appellant-mother points to no legal authority that any particular best-interest factor outweighs the other factors such that the manifest weight of the evidence in the record could not support the juvenile court's award of permanent custody to appellee.

See In re T.J., 2021-Ohio-4085, 180 N.E.3d 706, ¶ 76 (6th Dist.). In any event, as discussed below, we find there is competent, credible evidence in the record to support the juvenile court's consideration of all R.C. 2151.414(D)(1) best-interest factors.

a. R.C. 2151.414(D)(1)(a)

{¶ 27} Appellant-mother points to evidence supporting the R.C. 2151.414(D)(1)(a) factor in her favor: her positive interaction and interrelationship with R.R. where the caseworker, GAL, and case aide each testified that appellant-mother's visits went well in a supervised setting and that she and R.R. bonded. She further argues, "At no point in the testimony of any witness or within any evidence presented, did the Agency refute [there] was a strong and positive relationship formed between [appellant-mother] and [R.R.]. * * * [The juvenile court] clearly gave no weight to the ongoing positive bond between the Mother and the Child." We are not persuaded.

{¶ 28} Even accepting as true appellant-mother's argument regarding her growing bond with R.R., there is competent, credible evidence of testimonies by the caseworker, GAL, and the child's father that their recommendation was for permanent custody to be awarded to appellee, not appellant-mother. *See id.* at ¶ 46-47.

{¶ 29} The caseworker, who has been involved since the beginning of the case, testified, "While her interactions during visitation are very appropriate, they are supervised. And due to the lack of progress on the case plan, I cannot confidently say that [R.R.] will be safe in her care unsupervised full time."

{¶ 30} The GAL, who has been involved in the case since R.R. left the hospital, conceded that appellant-mother's interactions with R.R. in a controlled, supervised setting were appropriate. Nevertheless, the GAL testified, "In weighing the positives and the negatives, my recommendation is still that [R.R.] should be placed in the Agency's permanent custody. I think the negatives outweigh the positives." The GAL cited appellant-mother's history of consistently and over time imposing severe emotional and medical neglect on her other eight children that led to termination of her parental rights to them. "I think the biggest concern is that mother does not understand, does not have the knowledge base to understand why she's here to begin with, why we are in this situation." Despite appellee providing appellant-mother with "a fair chance" to complete her case plan services and ameliorate her problems, appellant-mother has made little progress. "I have concerns that throughout the length of this case, mother has not done anything to show me that those still shouldn't be concerns." The GAL supported permanent custody with appellee because, "I do not think that [R.R.] could be safely returned to his mother's care. * * * And then also, I don't even at this point know where mother lives." The GAL expressed concerns with how appellant-mother would meet R.R.'s basic needs when her own health issues remain unresolved.

{¶ 31} The GAL directly addressed the scope of R.C. 2151.414(D)(1)(a), for the interaction and interrelationship of R.R. with his foster caregivers, when she testified that based on her personal observations, "They've been able to demonstrate that they're able to safely care and provide for him and they're knowledgeable of his needs."

{¶ 32} Finally, R.R.'s father testified, "I would like to see [R.R.] living in a mentally stable home with a good amount of income and where they can be, where he can grow up in a normal home. * * * I would like * * * for that [motion for permanent custody] to succeed."

b. R.C. 2151.414(D)(1)(b)

{¶ 33} Appellant-mother next argues the juvenile court failed to address R.C. 2151.414(D)(1)(b), the wishes of 20-month-old R.R. at the time of the hearing, as expressed through the guardian ad litem. If it had, appellant-mother argues the factor would be in her favor because it "illustrates a picture of a child that clearly enjoys the time he does get with the Mother." We disagree.

{¶ 34} There is competent, credible evidence in the record of the GAL's testimony of her unequivocal recommendation for permanent custody of R.R. to be awarded to appellee, not appellant-mother. While it is undisputed that R.R. appeared to enjoy his mother's appellee-supervised visits, it is also undisputed that appellant-mother resists case plan services and that R.R. is thriving in foster care. *See In re T.J.*, 2021-Ohio-4085, 180 N.E.3d 706, at ¶ 54.

c. R.C. 2151.414(D)(1)(d)

{¶ 35} Appellant-mother then argues the juvenile court failed to address R.C. 2151.414(D)(1)(d), whether a legally secure placement can be achieved without a grant of permanent custody to the agency. If it had, appellant-mother argues that granting legal custody, rather than permanent custody, to the agency would preserve the mother-child

relationship she "nurtured these past 19 months while at the same time providing [the Child] with a safe, secure, and stable home." A "legally secure placement" under R.C. 2151.414(D)(1)(d) means a safe, stable, consistent environment where R.R.'s needs will be met. *Id.* at ¶ 59.

{¶ 36} Even accepting as true appellant-mother's argument, there is competent, credible evidence in the record where the caseworker, GAL, and R.R.'s father testified their recommendations were for permanent custody to be awarded to appellee, not appellant-mother. Consideration by the juvenile court of the persistent concern by witnesses of appellant-mother's lack of safe, stable, and consistent housing for R.R. was proper under R.C. 2151.414(D)(1)(d). *Id.* at ¶ 62. Both the caseworker and GAL testified appellant-mother bounced between her mother's home, where an alleged sexual assault perpetrator resided, to her aunt's home, where her former sexual assault perpetrator resided, and, possibly, to a mobile home from which she was evicted. Supervised visits at the agency were meant to protect R.R. from being around unsafe people. Yet concerns about appellant-mother's ability to create a safe home for R.R. remained. The police provided the caseworker with recent information that while appellant-mother resided with her mother, the police received a report that appellant-mother was found unresponsive and administered Narcan by her son in an attempt to revive her. The Narcan did not revive her, and she was rushed to the hospital. Appellant-mother then refused to authorize appellee to obtain any medical records related to her treatment there. She simply insists she is a safe, capable parent to R.R. We are not persuaded.

III. Conclusion

{¶ 37} The juvenile court's grant of appellee's motion for permanent custody was not against the manifest weight of the evidence. We find there was some competent, credible evidence by which the juvenile court could form a firm belief, under all factors under R.C. 2151.414(D)(1), that it was in R.R.'s best interest to award permanent custody to appellee. The juvenile court's best-interest determination was supported by clear and convincing evidence under R.C. 2151.414(B)(1). We do not find the juvenile court clearly lost its way to create such a manifest miscarriage of justice as to require reversal of the judgment granting appellee's motion for permanent custody of R.R.

{¶ 38} Appellant-mother's assignment of error is not well-taken.

{¶ 39} The judgment of the Huron County Court of Common Pleas, Juvenile Division, terminating appellant-mother's parental rights to R.R. and granting permanent custody of R.R. to appellee is affirmed. Appellant-mother is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, J. _____
JUDGE

Christine E. Mayle, J. _____
JUDGE

Charles E. Sulek, J. _____
CONCUR.
JUDGE