

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

In re A.M., J.W.

Court of Appeals No. {22}E-25-024
{22}E-25-025

Trial Court No. 2024 JN 0014
2024 JN 0015

DECISION AND JUDGMENT

Decided: August 28, 2026

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney, and
Kristin R. Palmer, Assistant Prosecuting Attorney, for appellee.

Edward F. Borkowski, Jr., for appellant.

* * * * *

DUHART, J.

{¶ 1} In this consolidated appeal, appellant, Ashley Miniard (“Mother”), appeals from two judgment entries of the Erie County Court of Common Pleas, Juvenile Division. For the reasons that follow, the juvenile court’s judgments are affirmed.

Statement of the Case

{¶ 2} Mother has four minor children: N.H., J.M., A.M., and J.W. Mother’s older children, N.H. and J.M. are in the legal custody of relatives after being adjudicated

dependent children. The primary concerns for Mother in those cases were substance abuse and mental health.

{¶ 3} This case involves Mother’s younger children, A.M., born December 6, 2019, and J.W., born December 2, 2021.

{¶ 4} On December 9, 2019, the Erie County Department of Job and Family Services (“the Agency”) filed a complaint alleging that A.M. was abused, neglected, and dependent. That complaint was based on Mother and A.M. testing positive for cocaine at A.M.’s birth. A.M. was placed in the temporary custody of the Agency, and she was subsequently adjudicated a dependent child. The case plan called for Mother to address concerns regarding her mental health, substance abuse, and parenting. On June 14, 2021, the Agency filed a motion for permanent custody of A.M. in that case. Mother began working her case plan, and so the motion never went to trial. A.M. was returned to the legal custody of Mother in May 2022, after having been in the custody of the Agency for 29 months.

{¶ 5} On December 16, 2021, the Agency filed a complaint alleging that J.W. was a dependent child. That complaint was based on the Agency’s involvement with the family after Mother and A.M. tested positive for cocaine at A.M.’s birth. J.W. was adjudicated as a dependent child, and the Agency was granted protective supervision over him. On July 5, 2022, the Agency’s protective supervision of J.W. was terminated and the case was closed, with custody being returned to Mother.

{¶ 6} On March 12, 2024, the Agency filed complaints in the present cases, alleging that A.M. and J.W. were neglected and dependent children. The complaints were

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again based on concerns regarding Mother's mental health and substance abuse. Specifically, the Agency had received a report that while A.M. was hospitalized for RSV, Mother made statements that she had not slept in three weeks due to substance abuse. When the Agency made contact with Mother, she acknowledged having a substance abuse problem and stated that alcohol was a concern for her because she drinks to excess and blacks out.

{¶ 7} Pursuant to judgment entries filed on March 13, 2024, A.M. was placed in the temporary custody of her paternal great-aunt (the "Aunt"), and J.W. was placed in the temporary custody of his father (the "Father"). The Agency was awarded protective supervision over both children. Following a hearing on May 7, 2024, A.M. and J.W. were adjudicated to be dependent children.

{¶ 8} On September 12, 2024, the Aunt filed a motion for legal custody of A.M. Mother initially indicated that she would agree to legal custody with visitation, but she later changed her mind.

{¶ 9} A dispositional review hearing took place on February 25, 2025. Immediately prior to the hearing, A.M.'s father agreed that legal custody of A.M. should go to the Aunt. At the end of the hearing, Mother, through her counsel, moved for a six-month extension in the case "so that Mom can continue working."

{¶ 10} On March 10, 2025, the magistrate issued decisions finding that it was in the best interests of A.M. and J.W. that they be placed in the legal custody of their relatives and that Mother have supervised visitation. Mother did not file objections to the Magistrate's decisions. The juvenile court, after finding no error of law or other defects in

the magistrate's decisions, subsequently issued judgment entries adopting those decisions. The present appeal is from the judgment entries of the juvenile court awarding legal custody of A.M. to the Aunt and legal custody of J.W. to the Father.

Statement of the Facts

{¶ 11} Rebecca Frisch, the family's caseworker, testified that the Agency opened the present cases on March 12, 2024, and that it received protective supervision over A.M. and J.W., who were placed in the temporary custody of their relatives. Frisch testified that the Agency opened the current cases based on concerns about Mother's substance use and mental health after it received the report that while A.M. was hospitalized for RSV, Mother had made statements that she had not slept due to substance use. Frisch met with Mother on January 5, 2024, at which time Mother acknowledged having a substance abuse problem, specifically stating that alcohol was a concern for her because she drinks to excess and blacks out. Also at the January 5, 2024 meeting, Mother agreed to engage in the Ohio START substance abuse program. She entered that program and Becky's House Sober Living on January 11, 2024.

{¶ 12} Mother completed an assessment for Ohio START, which resulted in a recommendation for an intensive outpatient program (IOP). But after Mother left Sober Living in February 2024, the Agency received reports that she was drinking alcohol again. Frisch testified that Mother admitted to relapsing on alcohol, stating that she had consumed "two beers and two shots." Thereafter, it was recommended that Mother attend an inpatient residential program for drug and alcohol treatment. Mother refused this

recommendation. She also asked to be removed from the Ohio START program because she believed she could handle the issue on her own and did not need help.

{¶ 13} Frisch testified that the Agency's concerns for Mother included substance abuse, mental health, pending legal matters, financial and housing instability, and parenting. She testified that Mother had a history of mental health concerns and was initially referred to LICATA for drug and alcohol as well as mental health treatment. At Mother's request, her treatment was moved to Firelands hospital, where she was completing the batterer's intervention program as part of a probation sanction she had received in connection with a domestic violence and child endangering incident.

{¶ 14} Mother began receiving mental health treatment at Firelands in February 2024. She participated in the treatment until August 2024, when she stopped attending. Her reason for stopping was that she wanted to focus on work. Mother did not resume mental health treatment until January 2025, just one month before the February 2025 dispositional review hearing in this case.

{¶ 15} From August 2024 through January 2025, Mother failed to attend in-person meetings with Frisch. She also stopped attending her IOP in August 2024, although she did eventually reengage and complete the IOP at Firelands hospital on January 31, 2025. She also completed parenting classes. Frisch testified that Mother's breaks in attendance show that she lacks "the longevity of participating" in these programs.

{¶ 16} Frisch testified that at the time of the February 2025 hearing, Mother had still failed to complete the mental health component of her case plan, and she lacked stable housing for the children. Mother was living with her mother (the "Grandmother")

at the time. Frisch testified that the Grandmother's home was not approvable due to the Grandmother's history of substance use as well as mental health concerns in the family. The Grandmother had tested positive for cocaine in a prior case. In addition, Frisch testified that Mother's brother (the "Brother") either lived at or had access to the Grandmother's home, and that Mother had stated that he was a "trigger" for her. Frisch also had substance abuse concerns regarding the Brother, whom she had witnessed to be "unsteady on his feet like he might have been under the influence" during one of her home visits. Frisch testified that Mother herself had told her that the Grandmother's home was not an appropriate place for the children to reside. Frisch opined that Mother could not provide adequate permanent housing for the children at the time of the February 2025 hearing, despite maintaining consistent employment during the case.

{¶ 17} Frisch testified that Mother has a loving attachment to the children, but also that she has not been consistent in maintaining visitation with them during the case. Because Mother only sporadically participated in visitations between March and May 2024, the Agency placed her on a call-in policy for future visitations. When this did not solve the problem, the Agency referred Mother to Kinship House for visitation, as it offered evening and weekend visitation hours. The referral to that location was made on October 16, 2024. Mother scheduled her first visit at Kinship House more than 90 days later, on January 19, 2025.

{¶ 18} Mother blamed her failure to visit her children on a lack of transportation, but Frisch testified that the Agency provided her with bus tickets. During Mother's single Kinship House visit, she became argumentative with staff, with the situation escalating to 6.

the point that the facility had to be placed on lockdown and law enforcement was called to the scene. As a result of this incident, Mother was banned from Kinship House.

{¶ 19} Frisch testified that Mother had not shown that she was committed to reunification with the children, citing her lack of stability, failure to complete case plan services, and her failure to visit the children for over 90 days. Frisch opined that Mother could not be safely reunified with the children and that this would not change even if Mother were given an additional six months, due to her long history of substance use, mental health concerns, lack of stability, and ongoing cases.

{¶ 20} A.M. had been in the legal custody of the Aunt since the case began. Frisch testified that the Aunt and A.M. had a healthy bond, and that she had no concerns about the Aunt's ability to care for A.M. Frisch testified that the Agency's recommendation was that the Aunt be awarded legal custody of A.M., and that it was her belief that the Aunt would facilitate any court-approved visitation or parenting rights for Mother. The Aunt testified at the hearing as well, stating that she was willing to facilitate and supervise visits between A.M. and Mother. The Aunt stated that she wanted the visits to occur on a "consistent regular basis," because A.M. would become upset when Mother stopped visiting.

{¶ 21} Frisch testified that the Father has consistently been a part of J.W.'s life and that he had a strong bond with his son. She testified that she had no concerns about the Father's home or his ability to provide for J.W. and that the Agency's recommendation was that the Father be awarded legal custody of J.W. In addition, Frisch

believed that the Father would facilitate any court-approved visitation or parenting rights for Mother.

Assignment of Error

{¶ 22} On appeal, Mother asserts the following assignments of error:

- I. The trial court abused its discretion by granting legal custody of appellant's children to relatives.
- II. Appellant's counsel was ineffective.

Law and Analysis

First assignment of error.

{¶ 23} Mother argues in her first assignment of error that the trial court abused its discretion by granting legal custody of appellant's children to relatives. This court ordinarily reviews a juvenile court's order of legal custody for an abuse of discretion. *In re S.L.*, 2025-Ohio-4608, ¶ 40 (citations omitted). Where, as here, however, a party fails to file objections to the magistrate's decision on legal custody, that party forfeits all but plain error. *In re B.C.*, 2014-Ohio-2748, ¶ 24 (9th Dist.); Juv.R. 40(D)(3)(b)(iv) (providing that "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv.R. 40(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b)"). "Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." (Internal quotation marks omitted.) *In re Amber G.*, 2004-Ohio-5665, ¶ 7 (6th Dist.) (citation omitted). Plain error

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is found in “extremely rare civil cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice and, where the error complained of, if left uncorrected, would have a material adverse effect on the character and public confidence in judicial proceedings.” *Id.*

{¶ 24} “Legal custody proceedings vest in the custodian the right to have physical care and control of the child, subject to any residual parental rights and responsibilities that remain intact with the birth parents.” *In re K.S.*, 2022-Ohio-2810, ¶ 17 (6th Dist.), citing *In re C.R.*, 2006-Ohio-1191, ¶ 14-15. “Although a disposition of legal custody is less drastic than permanent custody because it does not completely sever parental rights, it potentially terminates a parent's constitutional right to custody of her child because that placement is intended to be permanent in nature.” (Internal quotation marks omitted.) *Id.*, citing *In re A.A.*, 2010-Ohio-5735, ¶ 7 (9th Dist.), quoting R.C. 2151.42.

{¶ 25} A trial court determines an award of legal custody based upon proof by a preponderance of the evidence. *Id.* at ¶ 18, citing *In re Nice*, 141 Ohio App.3d 445, 455 (7th Dist. 2001)

{¶ 26} “An award of legal custody is authorized by statute where a child has been adjudicated neglected, dependent, or abused.” *Id.* at ¶ 19, citing R.C. 2151.353(A)(3). “At any hearing in which a court is asked to modify or terminate an order of disposition issued under section 2151.353, 2151.415, or 2151.417 of the Revised Code, the court, in determining whether to return the child to the child's parents, shall consider whether it is in the best interest of the child.” R.C. 2151.42(A). Courts considering an award of legal custody have looked to: 1) the best interest factors of R.C. 2151.414(D), which govern

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permanent custody; 2) the best interest factors of R.C. 3109.04(F)(1), which govern shared parenting; 3) a combination of the two sets of factors; or 4) general notions of what should be considered regarding the best interests of the [child]. *In re E.H.* at ¶ 16, quoting *In re A.K.*, 2012-Ohio-4430, ¶ 25 (9th Dist.).

{¶ 27} Here, the record clearly establishes that the juvenile court considered the best interest factors set forth in R.C. 3109.04(F)(1), which include, inter alia: the wishes of the child's parents regarding the child's care; the wishes of the children, if applicable; the children's interactions and interrelationships with parents, siblings, and others; the child's adjustment to home, school, and community; the mental and physical health of all persons involved; the likelihood of a person to honor parenting time and visitation; child support; parents' criminal backgrounds; and whether there was a willful denial of parenting time or plans by any person to move out of state.

{¶ 28} After reviewing the evidence and applying the R.C. 3109.04(F)(1) factors, the juvenile court found that it was in the best interest of A.M. that she be placed in the legal custody of the Aunt and that it was in the best interest of J.W. that he be placed in the legal custody of the Father. In its findings regarding permanency, the juvenile court noted that A.M., who at the time of the February 25, 2025 dispositional hearing was only five years old, had spent a total of over three years out of Mother's custody, with the last 11 months in the custody of the Aunt, and that J.W., who was only three years old, had spent the last 11 months out of Mother's custody and in the custody of the Father.

{¶ 29} Mother argues on appeal that certain of the juvenile court's findings were not supported by the preponderance of the evidence presented. She specifically takes

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issue with the findings related to the Agency's concerns and her progress in plan compliance.

{¶ 30} As applied to each child, the juvenile court stated the following regarding the Agency's concerns and Mother's case plan compliance:

At time of Dispositional Review Hearing on February 25, 2025, [Mother] has not met the goals established for her in the case plan. Since the Agency was granted protective supervision of her child on March 12, 2024 she has not completed the case plan goals of addressing her mental health, she does not have stable housing, she has been inconsistent in visiting her child, and, most importantly, she has not made the behavioral changes anticipated if she were to have successfully completed the case plan.

Addressing the children's need for permanency and Mother's ability to provide it, the juvenile court found that despite the best efforts of the Agency in providing services and making referrals over the course of three years, Mother "has not satisfied the concerns for her mental health, substance abuse, and lack of stability" and that while Mother "appears to be in suitable physical health[,]...her mental health is suspect[,]...as evidenced by [inter alia] a pattern of substance abuse."

{¶ 31} Upon review, we find the record contains ample evidence to support the juvenile court's best-interest findings. Frisch testified that at the time of the dispositional review hearing, Mother had failed to complete the mental health component of her case plan. She explained that although Mother initially participated in mental health treatment, she stopped attending treatment for five months, from August 2024 to January 2025. At the time of the February 25, 2025 hearing, Mother had been reengaged with mental health services for just one month. Mother claimed that this gap in treatment was so that she could focus on making money, but she also stopped attending in-person meetings with

Frisch and IOP during the same time period. Frisch testified that these breaks in attendance show that Mother lacks “the longevity of participating” in treatment. This was further evidenced by Mother’s withdrawal from the Ohio START program in May 2024.

{¶ 32} Frisch also testified that at the time of the dispositional review hearing, Mother lacked stable housing and could not provide adequate permanent housing for the children. Mother was living with the Grandmother (and potentially the Brother) at the time of the hearing. Frisch testified that the Grandmother’s home was not approvable due to the Grandmother’s history of substance use and mental health concerns in the family. The Grandmother had tested positive for cocaine in a prior case, and the Brother, who either lived at or had access to Grandmother’s home, was a “trigger” for Mother. Frisch also had substance abuse concerns for the Brother, whom she had witnessed to be “unsteady on his feet like he might have been under the influence” during one of her home visits. Frisch testified that Mother herself had told her that the Grandmother’s home was not an appropriate place for the children to reside.

{¶ 33} Frisch also testified that, along with case compliance, the Agency was looking for behavioral changes from Mother. The Agency had worked with Mother across multiple cases, involving multiple children. The primary concerns for Mother in each of those cases over the years have always been substance abuse and mental health. Frisch testified that the incident at Kinship House -- where Mother became argumentative with Kinship House staff to the point that the facility had to be placed on lockdown, with law enforcement called in -- was similar to a prior situation with Mother that involved a mental health episode. In addition, Mother’s lack of participation in mental health

treatment, in-person meetings with Agency staff, and IOP beginning in August 2024 demonstrated her persistent failure to make necessary behavioral changes.

{¶ 34} On appeal, Mother disputes her drug and alcohol abuse. But Frisch testified that the Agency opened the 2024 case upon receiving a report that while A.M. was hospitalized for RSV, Mother made statements that she had not slept due to substance abuse. Frisch further testified that when she met with mother on January 5, 2024, Mother admitted to having a substance abuse problem and stated, in particular, that alcohol was a concern for her because she drinks to excess and blacks out. At the same meeting, Mother agreed to engage in the Ohio START program. Mother submitted to a drug screen in January 2024 and tested positive for THC. She entered the START program on January 11, 2024, which required that she acknowledge having a substance abuse problem.

{¶ 35} Mother completed an assessment for Ohio START, which resulted in a recommendation for IOP. Frisch testified that although Mother initially engaged in IOP, after she left Sober Living in February 2024, the Agency received reports that she was drinking alcohol again. Frisch further testified that Mother admitted to relapsing on alcohol, stating that she had consumed “two beers and two shots.” Mother was then recommended an inpatient residential program for drug and alcohol treatment, which she refused. She also requested that she be removed from the Ohio START program in May 2024. In addition, Mother stopped attending IOP in August 2024. This was the same time she stopped attending mental health treatment. Again, Frisch testified that such breaks in attendance demonstrate that Mother lacks “the longevity of participating” in the programs. And although Mother was reunited with the children in prior Agency cases

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involving A.M. and J.W., she continued to struggle with substance abuse, mental health, and stability, resulting in the March 2024 complaints. The record shows that Mother, despite having years to address Agency concerns, still struggled with the same issues at the time of the February 25, 2025 dispositional review hearing.

{¶ 36} On appeal, Mother argues that “the Agency’s concerns about Mother’s mental health [were] unfounded,” because she “engaged in services, completing mental health IOP...then reengaging in January of 2025,” and she “satisfied the substance abuse portion of the case plan.” As many other courts have observed, however, “a parent's efforts to improve the parent's situation or to comply with a case plan may be relevant, but not necessarily conclusive, factors when a court evaluates a child's best interest.” *Matter of W.W.*, 2024-Ohio-878, ¶ 39 (4th Dist.), citing *In re Ca.S.*, 2021-Ohio-3874, ¶ 39-40 (4th Dist.); *In re B.P.*, 2021-Ohio-3148, ¶ 57 (4th Dist.); *In re T.J.*, 2016-Ohio-163, ¶ 36 (4th Dist.), citing *In re R.L.*, 2014-Ohio-3117, ¶ 34 (9th Dist.) (“although case plan compliance may be relevant to a trial court's best interest determination, it is not dispositive of it”); *In re S.C.*, 2015-Ohio-2280, ¶ 40 (8th Dist.) (“[c]ompliance with a case plan is not, in and of itself, dispositive of the issue of reunification”); *accord In re C.W.*, 2020-Ohio-6849, ¶ 19 (2d Dist.) (“[c]ase-plan compliance is not the only consideration in a legal custody determination”); *In re K.M.*, 2019-Ohio-4252, ¶ 70 (4th Dist.), citing *In re W.C.J.*, 2014-Ohio-5841, ¶ 46 (4th Dist.) (“[s]ubstantial compliance with a case plan is not necessarily dispositive on the issue of reunification”). “Indeed, because the trial court's primary focus in a [legal] custody proceeding is the child's best interest,’ a parent's case plan compliance is not dispositive and does not prevent a trial

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court from awarding legal custody to a nonparent.” *Id.*, quoting *W.C.J.* at ¶ 46. “Thus, a parent's case plan compliance will not preclude a trial court from awarding legal custody to a nonparent when doing so is in the child's best interest.” *In re S.M.*, 2023-Ohio-2686, ¶ 44 (4th Dist.).

{¶ 37} Appellant additionally faults the Agency and the juvenile court for focusing on Mother’s history with the Agency and her past issues, rather than her present performance. Other courts have recognized, however, that “‘a parent's past history is one of the best predictors of future behavior.’” *Matter of W.W.* at ¶ 41, quoting *In re West*, 2005-Ohio-2977, ¶ 28 (4th Dist.), citing *In re B.J.*, 2022-Ohio-3307, ¶ 59 (4th Dist.); *In re B.B.*, 2021-Ohio-2299, ¶ 34 (10th Dist.); accord *In re A.S.*, 2004-Ohio-6323, ¶ 37 (12th Dist.) (“[p]ast history is often the best predictor of future conduct.”); *In re Vaughn*, 2000 WL 33226177, *7 (4th Dist., Dec. 6, 2000) (“[s]ome of the most reliable evidence for the court to consider is the past history of the children and the parents.”); *In re Burchfield*, 51 Ohio App.3d 148, 156-57, (4th Dist.1988), quoting *In re Bishop*, 36 Ohio App.3d 123, 126 (5th Dist.1987) (citations omitted) (“ ‘[t]he unfitness of a parent, guardian or custodian can be predicted by past history’ ”). Thus, when evaluating the children's best interests, the juvenile court, like the Agency, could appropriately consider Mother’s past conduct.

{¶ 38} To the extent that Mother disputes the trial court’s finding that she has had “lengthy involvement with law enforcement” based on a previous OVI and a previous domestic violence incident, we do not find that the trial court’s characterization of Mother’s criminal history -- even if potentially exaggerated -- is sufficient to establish

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that the juvenile court abused its discretion in rendering the award of legal custody in this case. It is certainly not sufficient to establish plain error.

{¶ 39} Mother also disputes the trial court’s finding with respect to her mental health that “[h]er adult life could be characterized as a series of unstable relationships, as evidenced by her four children all having different fathers.” Again, even if we were to find error with this particular statement, such would not be sufficient to render the juvenile court’s otherwise abundantly supported best-interests determination unlawful.

{¶ 40} Mother next contends that the juvenile court should have granted her motion to extend temporary custody and given her additional time to complete her case plan. Citing R.C. 2151.353(G), she argues that the juvenile court was not required to grant legal custody when it did. R.C. 2151.353(G) provides:

Any temporary custody order issued pursuant to division (A) of this section shall terminate one year after the earlier of the date on which the complaint in the case was filed or the child was first placed into shelter care, except that, upon the filing of a motion pursuant to section 2151.415 of the Revised Code, the temporary custody order shall continue and not terminate until the court issues a dispositional order under that section. In resolving the motion, the court shall not order an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any extensions have been previously ordered pursuant to division (D) of section 2151.415 of the Revised Code.

“Pursuant to R.C. 2151.415(D) and Juv.R. 14, a juvenile court may extend a temporary custody order for a period of six months if it determines, by clear and convincing evidence, that the extension (1) is in the best interest of the child, (2) there has been significant progress on the case plan of the child, and (3) there is reasonable cause to

believe that the child will be reunified with one of the parents or otherwise permanently placed within the period of extension.” *In re L.W.*, 2024-Ohio-3228, ¶ 35-36 (12th Dist.), citing *In re T.W.*, 2017-Ohio-8268, ¶ 24 (12th Dist.). “Notably the [extension] statute provides only that the juvenile court *may* extend the temporary custody order, not that it *must* do so.” (Emphasis sic.) (Internal quotations omitted.) *Id.*, citing *In re T.W.* at ¶ 25, quoting *In re H.G.*, 2015-Ohio-1764, ¶ 20 (12th Dist.). “A juvenile court's decision to grant or deny a request for an extension of temporary custody is therefore reviewed under an abuse-of-discretion standard.” *Id.* An abuse of discretion is more than an error of law or judgment; it implies the attitude of the court was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 41} Here, the juvenile court correctly found that the children were in need of permanency. A.M. had been in the temporary custody of the Agency from December 2019 through May 2022 during her first case and had been in the temporary custody of the Aunt from March 2024 through the February 2025 dispositional hearing in the present case. A.M. was five years old at the time of the hearing, yet she had spent more than three of those years out of Mother’s custody.

{¶ 42} J.W. had been in the temporary custody of the Father -- who had consistently been a part of his son’s life -- from March 2024 through the February 2025 hearing. J.W. was three years old at the time of the hearing and had spent 11 months outside of Mother’s custody.

{¶ 43} As the juvenile court correctly noted, the Agency had spent more than three years working with Mother in the various cases involving the family. Mother failed to

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adequately address concerns regarding her mental health, substance abuse, and lack of stability in the 11 months that the present case was open. Frisch opined that Mother could not be safely reunified with the children even if she were given an additional six months.

{¶ 44} Although Mother might one day resolve her problems with mental health, substance abuse, stability, and housing, “the juvenile court did not err by refusing to make her children exchange a distant and speculative hope for stability and permanency now.” (Internal quotation omitted.) *In re L.W.* at ¶ 36.

{¶ 45} Extension was not in the best interest of the children. Mother failed to make significant progress on the case plan, and there is no reasonable cause to believe reunification would occur within the period of extension. Therefore, the juvenile court did not abuse its discretion in overruling Mother's motion to extend temporary custody. Much less was there any plain error.

{¶ 46} For the foregoing reasons, Mother’s first assignment of error is found not well-taken.

Second assignment of error.

{¶ 47} Mother argues in her second assignment of error that her trial counsel was ineffective by not objecting to the magistrate’s decisions below. She contends that this failure was deficient on her attorney’s part and that she was prejudiced because “there is a reasonable probability, based on the evidence presented at the hearing, that if counsel had objected, the trial court would not have adopted the magistrate’s findings and conclusions.”

{¶ 48} Although “Ohio appellate courts agree that parents facing the permanent termination of their parental rights...are guaranteed the right to the effective assistance of counsel,” they “do not...agree whether parents are entitled to the effective assistance of counsel in legal custody cases.” *In re K.P.*, 2025-Ohio-4942, ¶ 27-28 (4th Dist.), citing *In re S.L.*, 2024-Ohio-1989, ¶ 17 (8th Dist.) (“this court has not extended the constitutional guarantee of effective assistance of counsel to legal custody proceedings”); *In re C.L.*, 2024-Ohio-616, ¶ 39 (12th Dist.) (“Father is entitled to effective assistance of counsel in legal custody proceedings.”); *In re L.L.*, 2022-Ohio-4492, ¶ 15-16 (9th Dist.) (evaluating counsel’s effectiveness in a legal custody case); *In re V.H.*, 2019-Ohio-3097, ¶ 33 (8th Dist.) (reviewing ineffectiveness claim in a case involving grants of temporary and legal custody); *In re A.C.*, 2018-Ohio-2687, ¶ 29 (5th Dist.) (noting that the court had “not expanded the doctrine of ineffective assistance of counsel beyond criminal cases and those involving permanent custody”); *In re S.G.*, 2015-Ohio-2503, ¶ 13 (9th Dist.) (“The test for ineffective assistance of counsel used in criminal cases is also applicable to juvenile cases alleging abuse, dependency, or neglect.”); *In re M.I.S.*, 2012-Ohio-5178, ¶ 26 (8th Dist.) (declining to apply the *Strickland* standard when the case did not involve a criminal proceeding or an involuntary termination of parental rights). We note that this court has previously reviewed an ineffective assistance of counsel claim that related to the adequacy of representation during legal custody proceedings. *See In re M.N.*, 2013-Ohio-836, ¶ 42-43.

{¶ 49} In this case, legal custody of the children was awarded pursuant to R.C. 2151.353 (A)(3). R.C. 2151.352 broadly provides that a child’s indigent parents shall be

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entitled to appointed counsel at all stages of the proceedings under R.C. Chapters 2151 and 2152. These proceedings include custody proceedings. *See In re Adoption of Y.E.F.*, 2020-Ohio-6785, ¶ 13, citing *State ex rel. Asberry v. Payne*, 82 Ohio St. 44, 49 (1998). (Additional citations omitted.) But R.C. 2151.352 also provides a number of exceptions to that right, most of which clearly do not apply.

{¶ 50} The only exception that appears on its face to possibly apply involves civil matters where the juvenile court is exercising jurisdiction pursuant to R.C. 2151.23 (A)(2) “to determine the custody of any child not a ward of another court of this state.” This court has recognized, however, that “[c]ourts have invoked that provision only in custody proceedings between private parties, [and] not where there has been a finding of abuse, dependency, or neglect.” *In re S.L.*, 2019-Ohio-815, ¶ 43 (6th Dist.), citing *In re D.R.*, 2003-Ohio-2852, ¶ 10 (9th Dist.) (R.C. 2151.23(A)(2) “applies to private custody actions between presumptively fit parents and nonparents”). (Additional citations omitted.)

{¶ 51} Here, the State-initiated temporary custody proceedings were initiated upon a complaint in dependency, with the juvenile court having exercised its jurisdiction under R.C. 2151.23(A)(1), involving abused, neglected, or dependent children. As R.C. 2151.23(A)(1) is not listed among the exclusions in R.C. 2151.352, the right to appointed counsel is fully applicable in this case.

{¶ 52} “The right to counsel includes the right to effective assistance of counsel.” *Jones v. Lucas County Children Services Bd.*, 45 Ohio App.3d 85 (6th Dist. 1988), citing *McMann v. Richardson*, 397 U.S. 759 (1970). (Additional citation omitted.) “To

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demonstrate ineffective assistance of counsel, appellant must satisfy the two-prong test developed in *Strickland v. Washington*, 466 U.S. 668, 687, (1984).” *In re M.N.* at ¶ 42.

“That is, appellant must show counsel's performance fell below an objective standard of reasonableness, and a reasonable probability exists that but for counsel's error, the result of the proceedings would have been different.” *Id.*, citing *Strickland* at 687–688, 696.

{¶ 53} In this case, Mother has not established that she is entitled to reversal of the juvenile court’s judgment. Even if counsel was deficient by not objecting to the magistrate’s decisions below, Mother has not established a reasonable likelihood that the outcome of the proceedings would have been different if counsel had filed timely objections. Nothing in the record suggests that the juvenile court would have rejected the magistrate’s decisions recommending that A.M. and J.W. be placed in the legal custody of their relatives had Mother’s counsel filed objections. In fact, the juvenile court judge specifically found that Mother had failed to “substantially complete[] the case plan.” As discussed above in our analysis of Mother’s first assignment of error, granting legal custody of the children to their relatives was in A.M.’s and J.W.’s best interests. Mother’s claim that there is a reasonable probability that the juvenile court would not have granted legal custody of the children to their relatives if her counsel had objected to the magistrate’s decisions is nothing more than pure speculation. Accordingly, Mother’s second assignment of error is found not well-taken

Conclusion

{¶ 54} The judgments of the Erie County Court of Common Pleas, Juvenile Division, are affirmed. Appellant is ordered to pay the costs of appeal pursuant to App.R. 24.

Judgments affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.

Christine E. Mayle, J.

JUDGE

Gene A. Zmuda, J.

JUDGE

Myron C. Duhart, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.supremecourt.ohio.gov/ROD/docs/.
