

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

IN THE MATTER OF L.W. AND J.W.,
DEPENDENT CHILDREN

OPINION AND JUDGMENT ENTRY

Case Nos. 22 JE 0010, 22 JE 0011

Juvenile Appeal from the
Court of Common Pleas of Jefferson County, Ohio
Case Nos. 2020-DN-00013, 2020-DN-00014

BEFORE:

David A. D'Apolito, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:

Affirmed.

Atty. Christopher P. Lacich, Roth, Blair, Roberts, Strasfeld & Lodge, 100 East Federal Street, Suite 600, Youngstown, Ohio 44503, for Appellant and

Atty. Amanda J. Abrams, Jefferson County Department of Job and Family Services, Children Services Division, 125 South Fifth Street, Steubenville, Ohio 43952, for Appellee.

Dated: September 26, 2022

D'APOLITO, J.

{¶1} Appellant, C.W. (“Father”), appeals from the June 30, 2022 judgments of the Jefferson County Court of Common Pleas, Juvenile Division, terminating his parental rights and granting permanent custody of his two minor children, L.W. (d.o.b. 11/30/2016) and J.W. (d.o.b. 7/24/2014) (together “minor children”), to Appellee, Jefferson County Department of Job and Family Services, Children Services Division (“Agency”), following a hearing.¹ On appeal, Father asserts the juvenile court erred in granting permanent custody of the minor children to Agency. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} On June 17, 2020, Agency filed complaints for temporary legal custody alleging that the minor children were dependent under R.C. 2151.04(C). The juvenile court appointed Court Appointed Special Advocates (“CASA”) as guardian ad litem (“GAL”) for the minor children and appointed counsel for Father, Mother, and Troy Daniels (an interest-party relative).

{¶3} Informal shelter care and probable cause hearings were held. Agency caseworker Kristal Singleton testified that Agency became involved with this family when child abuse and neglect reports came in on June 18, 2017 surrounding the following concerns: deplorable housing conditions; disconnect notice regarding electricity; floors covered in clothes, garbage, broken glass, and piles of dog feces; inadequate sleeping arrangements (no crib); L.W. had severe diaper rash; the minor children smelled, had not been bathed, and their feet were black; and there were concerns that Father and Mother were using drugs (specifically crack cocaine).

{¶4} On September 17, 2018, at approximately 12:15 a.m., Toronto Police Department contacted Agency advising that Father left the minor children unsupervised and a police removal was conducted. The minor children were placed in foster care. Father and Mother were both arrested for child endangerment. Father was also charged

¹ Father and J.M. (“Mother”) also have an adult child, S.W. (d.o.b. 1/5/2003). Mother passed away on July 2, 2021.

with domestic violence as Mother had physical bruises and swelling on her face and body. The juvenile court removed the minor children from Father's and Mother's care and granted emergency temporary custody to Agency.

{¶5} An adjudicatory hearing was held on June 26, 2020. On July 1, 2020, the juvenile court found the minor children to be dependent and granted temporary custody to Agency.

{¶6} On May 3, 2021, Agency filed a motion requesting an extension of temporary custody, which the juvenile court granted on June 14, 2021. The next day, Agency filed a case plan.

{¶7} As previously noted, on July 2, 2021, Mother passed away. On August 12, 2021, Father filed a motion for visitation/parenting time to be added to the case plan. The GAL filed her first report on September 1, 2021. Following a September 3, 2021 hearing, the juvenile court granted Father's request and included parenting time for him in the case plan. The GAL filed a second report on September 17, 2021.

{¶8} A hearing was held on December 17, 2021. The juvenile court granted an extension of temporary custody to Agency. Father was advised that this extension was the second of two available six-month extensions. Agency filed a case review on January 21, 2022.

{¶9} On May 16, 2022, Agency filed a motion for permanent custody. On June 13, 2022, the GAL filed her final report recommending that permanent custody be granted to Agency. The juvenile court held a final hearing on June 17, 2022.

{¶10} At that hearing, Father was present and testified; Father's counsel, Attorney Jerry Boswell, was present via Zoom; Jennifer Reitter was present on behalf of CASA as the GAL (but did not testify); Attorney Amanda Abrams was present on behalf of Agency; Agency caseworker Karina Montague ("Caseworker Montague") was present and testified via Zoom; Agency supervisor Kimberly Thrower ("Supervisor Thrower") was present and testified via Zoom; and the current foster family, Beth and John Westover ("the Westovers"), were present via Zoom.

{¶11} Agency has a history of involvement with this family. The first case that was screened in, and classified as neglect, was in March of 2010. It involved concerns with

drug usage in the home. Thereafter, other cases arose involving, inter alia, physical abuse, domestic violence, and deplorable housing conditions.

{¶12} Agency got involved again on September 17, 2018 because the minor children were being left unsupervised. Supervisor Thrower was assigned to the case and testified, in detail, with respect to the deplorable housing conditions. At that time, Agency requested an ex parte order for shelter care and the minor children were placed into foster care. Father and Mother were both convicted for child endangerment and Father was also convicted for domestic violence.

{¶13} A case plan was initiated on October 11, 2018 and signed by both Father and Mother. The case plan included, inter alia, the following: that Father would not be intoxicated or under the influence and abuse of any substance or prescribed medication; that the home environment would be clean and maintained; that Father would not be involved in any criminal activity and that he would abide by the terms of his probation; and that Father would actively participate with Family Recovery and in parenting classes.²

{¶14} Supervisor Thrower indicated that Father and Mother entered drug treatment programs. Father had both clean and positive test results (including testing positive for cocaine) and various other case plan or treatment/program infractions (including faking drug screens). Father was also reported to be at an inpatient rehab on or about April 30, 2019.

{¶15} The minor children were placed with a foster family on September 17, 2018. However, on October 15, 2018, L.W. was placed with a relative and J.W. was placed with another relative. Mother began trial visits in November 2018. In January 2019, Mother attempted suicide and the minor children were placed with other relatives, Troy and Valerie Daniels (“the Daniels”). In March 2019, visitations were placed back at Agency on a supervised basis. Supervisor Thrower indicated that in May or June of 2019, the Daniels received custody and Agency closed its case. Father and Mother had parenting time with Father having not completed any of his treatment goals of the case plan successfully.

{¶16} The minor children were eventually transferred from the Daniels and placed with another foster family, the Westovers, on June 17, 2020. Agency then assigned the

² Mother’s case plan had similar conditions.

case to Caseworker Montague. A case plan was established with Father in June 2020. Father, who was incarcerated, was released from prison in December 2020. Thereafter, Father was briefly incarcerated again, released from prison in March 2021, and then resumed contact with Agency. Father did not have a residence at that time but expressed his desire for visitation with the minor children.

{¶17} Around this time period, Father tested positive for cocaine again through his probation. Father was not permitted to drink alcohol or be in bars as terms of his probation, but Father admitted to alcohol use and Agency continued to receive reports as to his alcohol use. Father had a mental health assessment following a pink slip and hospitalization in which he was diagnosed with bipolar disorder, severe major depressive disorder, severe cocaine stimulant disorder, moderate opioid use disorder, and moderate cannabis use disorder.

{¶18} Another case plan was established for Father on June 16, 2021. Prior to her passing, Mother was adamant that she did not want the minor children in Father's care. In September 2021, the Toronto County Court granted Agency's request that Father have supervised visitation with the minor children. Father began visitations on a supervised basis. In October 2021, Father obtained housing in Stratton, Ohio. Caseworkers were unable to conduct unannounced home visits due to Father's inconsistent work schedule.

{¶19} During visits at Agency with the minor children in March of 2022, Father appeared intoxicated, smelled of alcohol, and appeared to have been beaten up. During parenting time, Father did not always interact with the minor children. As of June 2022, Father was on social security, did odd jobs cutting grass, had a valid driver's license, and possessed a vehicle. Father testified he could afford having the minor children live with him. Father denied drinking heavily. However, Agency had numerous reports to the contrary, including from his now adult daughter, S.W., revealing that Father drank daily and was often passed out. The minor children have bonded with their foster parents who are willing to adopt them and are willing to maintain contact with Father.

{¶20} On June 30, 2022, the juvenile court terminated Father's parental rights and granted permanent custody of the minor children to Agency following the hearing. In its judgments, the court stated the following:

Upon review of the record and the evidence presented, the Court hereby finds by clear and convincing evidence as follows:

1. That the Court has jurisdiction over the parties and the subject matter of the action and that service of process was perfected upon the parties of the action;
2. That [J.M.] is the natural mother of the minor [children] * * *;
3. That [C.W.] is the natural father of the minor [children];
4. That the Guardian ad Litem submitted a report to the Court prior to the hearing recommending that the Court grant CSD's Motion for Permanent Custody;³
5. That CSD has established a case plan which includes parental involvement and the initial goal of reunification;
6. That CSD has an extensive history with this family dating back years prior to the birth[s] of [these] [children];
7. That CSD's involvement after the birth of [these children] began in June 2017 when a neglect referral was received;
8. That CSD investigated the referral and found the house to be in deplorable conditions, the [children] did not have a place to sleep and a disconnect notice was received by the family for the electric;
9. That the next involvement by CSD was September 2018 when a call was received from the Toronto Police Dept. regarding two children being left alone, the father was being arrested and the mother could not be located;

³ The juvenile court referred to Agency as CSD.

10. The police conducted a police removal that night due to deplorable housing conditions, animal feces throughout the house, clothing strewn everywhere, broken glass in the home and a general disarray of the home as well as the children being left unattended;

11. That on this occasion, the [children were] also observed to have severe diaper rash;

12. That the father stated [L.W.] was allergic to grapes and [L.W.'s] sibling [J.W.] (age 4) was giving grapes to [L.W.];

13. That the father stated the family had ointment for the diaper rash but it could not be located in the home and the father did not know the [children's] medical information;

14. That the father told the police he left the [children] with the [children's] teenage sister;

15. That the [children] smelled, looked like they had not bathed in some time and had black feet;

16. That the mother was eventually located, had a black eye and bruises and was arrested as well;

17. That the father was charged and convicted of domestic violence and child endangerment;

18. That a protection order was put into effect prohibiting the father from having contact with the [children];

19. That the protection order remains in effect to this date;

20. That a case plan was established requiring the mother and father to undergo a drug/alcohol assessment and follow recommendations including

submitting to random drug screens, maintain suitable housing, the father follow his probation and not violate the law, and complete parenting classes;

21. That the parents entered drug treatment;

22. That the parents had both clean and dirty urine screens;

23. That CSD received a report from Family Recovery that the father failed a drug screen on March 25, 2019 wherein he was positive for cocaine;

24. That the father was suspected of faking his urine screens and therefore was required to submit to an oral swab in April 2019;

25. That the father was positive for cocaine through the oral swab in April 2019;

26. That the father did not attend Family Recovery after April 25, 2019;

27. That the father was an inpatient for treatment at East Liverpool City Hospital on April 30, 2019;

28. That a maternal cousin, a non-relative referred to as a “Granny,” and a paternal aunt were identified by the parents as possible placement options;

29. The paternal aunt was unable to take the [children];

30. That [L.W.] was placed with the maternal cousin;

31. That [J.W.] was placed with the non-relative;

32. That the [children] were placed back into the home on trial visits in November 2018;

33. That the mother attempted suicide in January 2019 and the [children] were removed again;

34. That the [children] were placed with relatives who eventually obtained legal custody of the [children];

35. That the [children] came back into foster care in June 2020 due to the medical condition of the relative's wife;

36. That the father had not completed his case plan at that time;

37. That the father was incarcerated at the time the [children] came back into CSD care;

38. That the [children] were placed in foster care in June 2020 and remain in the same foster home as of this date;

39. That the mother was one year clean and had housing so the goal was for reunification with the mother at the time of the foster placement;

40. That the mother completed all of her case plan goals;

41. That the mother began exercising in home parenting time with the [children];

42. That in September 2020, the mother had a mini-stroke and the next day had a full stroke;

43. That it was discovered that the mother had untreated cancer;

44. That the mother eventually passed away on July 2, 2021;

45. That CSD considered relatives for placement but none were in a position to take the [children];

46. That the mother was comfortable with the [children] remaining in the current foster home;

47. That the mother was very concerned for the [children's] safety if placed with the father due to prior domestic incidents;
48. That the father has two prior felony drug convictions;
49. That the first was a felony four Trafficking in Drugs in 2013;
50. That the second was Complicity to Trafficking (F4) and Permitting Drug Abuse (F5) in 2020;
51. That the father was released from incarceration in December 2020;
52. That the father was re-incarcerated until March 2021;
53. That in March 2021, the father did not have a residence;
54. That a case plan was established for the father requiring him to have supervised parenting time, drug/alcohol assessment and follow recommendations including being placed in the color code program, comply with probation/parole, undergo a mental health assessment and follow recommendations, and obtain/maintain suitable housing;
55. That the father did not sign up for the color code program until October 29, 2021 even though he stated he signed up in August 2021;
56. That the father completed anger management in December 2021;
57. That the father gave numerous reasons why he was not in the color code program such as: he denies he has a drug/alcohol problem, no transportation, and never got a call;
58. That CSD has never received a drug/alcohol assessment on behalf of the father;

59. That CSD has never received any progress notes on behalf of the father for drug/alcohol treatment;

60. That CSD has no idea what the father's treatment goals are/were;

61. That as a result of the lack of information received, CSD cannot state that the father complied with his drug/alcohol requirement of the case plan;

62. That the father tested positive for cocaine through his probation in June 2021;

63. That despite the positive test, the father denied using cocaine and blamed the positive result on him having had "relations" with a woman who used cocaine;

64. That despite the father not being permitted to drink alcohol as a result of his probation, CSD continues to receive reports of the father drinking regularly;

65. That the father had a mental health assessment on April 26, 2021;

66. That the assessment occurred after the father was "pink slipped" to the hospital;

67. That the assessment recommended individual counseling and psychiatry services and help with housing but the father stated he did not need it;

68. That the father stated he did not want to go to therapy or be on medications;

69. That the father was diagnosed with major depressive disorder, opioid use/dependence, cocaine dependence, cannabis dependence, and sedative, hypnotic or anxiolytic dependence;

70. That the father never sought any treatment as a result of the assessment or diagnoses;

71. That the father testified he did not follow up because he did not know this was going to follow him;

72. That CSD repeatedly talked to the father about the need for him to seek mental health treatment;

73. That on April 8, 2022, the father underwent a second mental health assessment;

74. That the second assessment is inconsistent with the documentation and information that CSD has in its file and also what the father stated to CSD;

75. That the second assessment recommended no follow up treatment as the father answered no to every question;

76. That the father denied alcohol and drug use in over one year on his assessment;

77. That the father tested positive for alcohol twice in the month before the assessment was completed;

78. That the father did not give an accurate account for the number of children he has;

79. That the father has not complied with the mental health requirement of the case plan;

80. That the father has obtained housing;

81. That CSD has been unable to do unannounced home visits due to the father's inconsistent schedule;

82. That after the [children] came back into CSD care, the father exercised parenting time at CSD;

83. That on two occasions with the most recent being May 2022, the father smelled of alcohol;

84. That the father denies ever smelling of alcohol at CSD visits;

85. That the father denies drinking heavily;

86. That the father denies he had to complete individual or group counseling;

87. That the father denies he had to attend NA/AA meetings;

88. That the father denies a cocaine addiction;

89. That during the father's parenting time, he does not always interact with the [children];

90. That the father has been consistent in his attendance at parenting time;

91. That the [children] have bonded with the foster family;

92. That the foster family has met the needs of the [children] and can continue to meet the needs of the [children];

93. That the [children are] in counseling;

94. That the foster family ensures the [children] maintain contact with the [children's] extended family;

95. That the foster family is willing to adopt if permanent custody is granted to CSD;

96. That the [children are] placed in the same foster home * * *;
97. That the father has failed to comply with the case plan by failing to complete mental health treatment and the other aspects of the case plan;
98. That the minor [children are] too immature based upon the age of the [children] to express [their] desire or for the Court to consider that desire (child stated to Guardian ad Litem she wanted to live “here” while at the foster home);
99. That the natural father has failed to comply with the case plan without justification;
100. That the minor [children] cannot be safely placed with the father within a reasonable period of time as the father has failed to comply with the case plan;
101. That the [children have] been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve (12) or more months of a consecutive twenty-two (22) month period;
102. That the minor [children are] in need of a legally secure permanent placement and said placement cannot be accomplished without the granting of permanent custody to CSD;
103. That the minor [children have] been successfully integrated into the home of the foster parents;
104. That the minor [children’s] needs are being met by the foster parents;
105. That the foster parents are interested in adopting the minor [children];

106. That CSD has made reasonable efforts to reunite the minor [children] with the natural parents and to prevent placement of the minor [children] outside the home of the natural parents;

107. That following the placement of the minor [children] outside the minor [children's] home and notwithstanding reasonable case planning and diligent efforts by CSD to assist the natural parents to remedy the problems that initially caused the minor [children] to be placed outside of the natural parents' home, the natural father has failed continuously and repeatedly to substantially remedy the conditions causing the minor [children] to be placed outside the [children's] home;

108. That clear and convincing evidence has been established to warrant the granting of permanent custody of the minor [children] to CSD;

109. That it is in the best interest of the minor [children] to terminate parental rights and to grant permanent custody of the minor [children] to the Jefferson County Department of Job & Family Services – Children Services Division.

Based upon the foregoing, the Court grants the Motion for Permanent Custody filed by the Jefferson County Department of Job and Family Services – Children Services Division. The Court terminates all parental rights, privileges and obligations of the father, including, but not limited to, all residual rights and obligations, and the right to consent to adoption and the right of visitation.

(6/30/2022 Judgment Entries, p. 1-8).

{¶21} Father filed timely appeals, Case Nos. 22 JE 0010 and 22 JE 0011, and raises a single assignment of error.⁴

⁴ On July 13, 2022, this court consolidated the appeals.

ASSIGNMENT OF ERROR

THE JUVENILE COURT COMMITTED REVERSIBLE ERROR AND ABUSED ITS DISCRETION IN GRANTING [AGENCY’S] MOTION FOR PERMANENT CUSTODY OF THE MINOR CHILDREN L.W. AND J.W., FOR AT THE TIME OF THE FINAL HEARING, THE NATURAL FATHER WAS IN COMPLIANCE WITH THE CASE PLAN AND THE DECISION WAS THUS NOT BASED ON CLEAR AND CONVINCING EVIDENCE AND/OR WAS AGAINST THE MANIFEST WEIGHT OF EVIDENCE AND/OR IMPLICATES PLAIN ERROR.

{¶22} In his sole assignment of error, Father argues the juvenile court abused its discretion and “leapfrogged” in granting permanent custody of the minor children to Agency. (8/17/2022 Father’s Brief, p. 14). Father maintains the court’s decision to terminate his parental rights was not based on clear and convincing evidence and was against the manifest weight of the evidence. Father stresses that he substantially complied with the case plan at the time of the final hearing because he had adequate housing, transportation, a valid driver’s license, primary income from social security, and supplemental income from cutting grass. Father asserts this case stands for the proposition that “past is not prologue,” believing that the court focused too much attention on his problematic past instead of the present and future. (*Id.* at p. 8). Father also stresses that plain error is implicated because the court relied on irrelevant information in the form of hearsay dating back to 2010 or related to the deceased Mother, and improperly relied on the GAL report because it was not admitted into evidence and the GAL did not testify at the final hearing.

“(T)he right to raise a child is an ‘essential’ and ‘basic’ civil right.” *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990), quoting *Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208 (1972). A parent’s interest in the care, custody, and management of his or her child is “fundamental.” *Id.*; *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388 (1982). The permanent termination of a parent’s rights has been described

as, “(* * *) the family law equivalent to the death penalty in a criminal case.” *In re Smith*, 77 Ohio App.3d 1, 16, 601 N.E.2d 45 (6th Dist.1991). Therefore, parents “must be afforded every procedural and substantive protection the law allows.” *Id.*

In re W.W., 7th Dist. Columbiana No. 21 CO 0011, 2021-Ohio-3440, ¶ 26.

“(A) court exercising Juvenile Court jurisdiction is invested with a very broad discretion, and, unless that power is abused, a reviewing court is not warranted in disturbing its judgment.” *In re Anteau*, 67 Ohio App. 117, 119, 36 N.E.2d 47, 48 (1941). “The term ‘abuse of discretion’ connotes more than an error of law or of judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable (* * *).” *In re Jane Doe 1*, 57 Ohio St.3d 135, 137, 566 N.E.2d 1181, 1184 (1990), citing *State v. Adams*, 62 Ohio St.2d 151, 157, 172-173, 404 N.E.2d 144, 148-149 (1980). A juvenile court’s decision to terminate parental rights and transfer permanent custody of a minor child must be supported by clear and convincing evidence. *Santosky*, *supra*, paragraph three of the syllabus. “Clear and convincing evidence is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. It is (an) intermediate (standard), being more than a mere preponderance, but not to the extent of such certainty as is required beyond a reasonable doubt as in criminal cases. It does not mean clear and *unequivocal*.” (Emphasis sic). *Cross v. Ledford*, 191 Ohio St. 469, 477, 120 N.E.2d 118 (1954).

When reviewing the decision of a juvenile court to determine whether it is supported by clear and convincing evidence, “a reviewing court may not as a matter of law substitute its judgment as to what facts are shown by the evidence for that of the trial court” because the “trial judge, having heard the witnesses testify, was in a far better position to evaluate their testimony th(a)n a reviewing court.” *Id.* at 478, 120 N.E.2d 118. “Where the evidence is in conflict, the trier of facts may determine what should be accepted as

the truth and what should be rejected as false.” *Id.* “Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus.

In the Matter of K.J. and S.M.J., 7th Dist. Jefferson Nos. 21 JE 0022 and 21 JE 0023, 2021-Ohio-4299, ¶ 29, quoting *In re T.N.T.*, 7th Dist. Jefferson No. 12 JE 25, 2013-Ohio-861, ¶ 14-15.

“An appellant’s failure to object at trial waives all but plain error.” *Fearer v. Humility of Mary Health Partners*, 7th Dist. No. 06 MA 84, 2008-Ohio-1181, 2008 WL 697761, ¶ 119. Plain error is present when “there is an obvious deviation from a legal rule that affected the defendant’s substantial rights by influencing the outcome of the proceedings.” *In re T.J.W.*, 7th Dist. No. 13 JE 12, 13 JE 13, 13 JE 14, 2014-Ohio-4419, 2014 WL 4959150, ¶ 11. Plain error review is not favored in civil cases and should only be used in the “extremely rare case involving exceptional circumstance where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.” *Kirin v. Kirin*, 7th Dist. No. 08 MA 243, 2011-Ohio-663, 2011 WL 497080, ¶ 19, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), at paragraph one of the syllabus.

In the Matter of S.B.J. v. Connolly, 7th Dist. Mahoning No. 20 MA 0010, 2021-Ohio-1161, ¶ 27, quoting *Andes v. Winland*, 7th Dist. Belmont Nos. 15 BE 0060 and 15 BE 0080, 2017-Ohio-766, ¶ 45.

{¶23} “‘Ordinarily, a GAL’s report is not considered evidence, but is merely submitted as additional information for the court’s consideration, similar to a pre-sentence investigation report in a criminal proceeding.’ *Matter of R.J.E.*, 11th Dist. Portage No. 2016-P-0025, 2017-Ohio-886, ¶ 43.” *In the Matter of S.B.J.*, *supra*, at ¶ 28.

{¶24} In the case at bar, the GAL did not testify at the final hearing. However, as addressed above, the juvenile court took testimony from Caseworker Montague,

Supervisor Thrower, and Father, who were all subject to cross-examination at the final hearing. The Rules of Evidence do not apply to GAL reports, which are specifically excluded. *Id.* at ¶ 28, 30. Contrary to Father’s position regarding an alleged error concerning the GAL, which he did not object to below, there is no showing in the record that “seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.” *Id.* at ¶ 27, quoting *Andes, supra*, at ¶ 45. Based on the facts presented, the juvenile court did not commit plain error regarding any aspect concerning the GAL.

{¶25} When a motion for permanent custody is filed by a children services agency, the juvenile court’s decision whether to grant permanent custody to the agency is governed by R.C. 2151.414(B)(1), the first prong of the permanent custody test, which provides:

“[T]he court may grant permanent custody of a child to [the agency] if the court determines at the hearing * * * by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following apply:

- (a) 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.
- (d) The child has been in the temporary custody of one or more public children services agencies * * * for twelve or more months of a consecutive twenty-two-month period, or the child has been in the temporary custody of one or more public children services agencies * * * for twelve or more months of a consecutive twenty-two-month period and * * * the child was

previously in the temporary custody of an equivalent agency in another state.

(e) The child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state.

For the purposes of division (B)(1) of this section, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code [to be an abused, neglected, or dependent child] or the date that is sixty days after the removal of the child from home.

R.C. 2151.414(B)(1)(a)-(e).

{¶26} In this case, the minor children could not be placed with either parent within a reasonable period of time as Mother had passed away and Father failed to comply with aspects of the case plan, i.e., relating, inter alia, to drug and alcohol treatment, maintaining sobriety, and mental health counseling. The records reveal the minor children have been in the temporary custody of Agency for 12 months of a consecutive 22-month period (from June 2020 to June 2022). See (6/30/2022 Judgment Entries, p. 7, No. 101). Thus, there is clear and convincing evidence to support the juvenile court's termination of Father's parental rights and award of permanent custody to Agency under the first prong of the permanent custody test. R.C. 2151.414(B)(1)(d).

{¶27} In addition to the first prong, "[an] agency [also] bears the burden of proving by clear and convincing evidence that the grant of permanent custody is in the child's best interest." *Matter of J.C.*, 7th Dist. Monroe No. 20 MO 0012, 2021-Ohio-1476, ¶ 6, citing *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308, ¶ 26. R.C. 2151.414(D)(1) sets out a nonexhaustive list of factors the court must consider, and the court is encouraged but not required to address the factors relevant to the decision." *Matter of J.C.* at ¶ 6. R.C. 2151.414(D)(1) provides:

In determining the best interest of a child * * *, the court shall 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 caregivers 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 to the agency;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

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

{¶28} In determining the best interest of the minor children being placed into the permanent custody of Agency, the juvenile court considered the testimony from Caseworker Montague, Supervisor Thrower, and Father from the final hearing and referenced numerous factors in its June 30, 2022 judgments, including: that the GAL submitted a report to the court prior to the hearing recommending that the court grant Agency's motion for permanent custody; Agency became involved when a neglect referral was received in 2017; the house was in deplorable conditions with nowhere for the minor children to sleep; the minor children were left unattended; Father was arrested; Mother could not be located; Father did not know the minor children's medical information; the minor children smelled; Mother was found with a black eye and bruises; Father was charged and convicted of domestic violence and child endangerment; Father had dirty urine screens, was suspected of faking urine screens, failed a drug screen, and tested positive for cocaine through an oral swab in 2019; Father did not attend Family Recovery

after April 2019; Father had not completed his case plan in June 2020; Father was incarcerated; the minor children were placed in foster care in June 2020 where they remained through the final hearing; Mother was very concerned for the minor children's safety if placed with Father due to prior domestic incidents; Mother passed away on July 2, 2021; Father has two prior felony drug convictions; Father was released from incarceration in December 2020; Father was re-incarcerated until March 2021; Father did not have a residence at that time; Father failed to comply with the case plan; Father denies he has a drug/alcohol problem; Father tested positive for cocaine through his probation in June 2021, for which he took no responsibility; Agency continued receiving reports of Father drinking alcohol regularly; Father was diagnosed with major depressive disorder, opioid use/dependence, cocaine dependence, cannabis dependence, and sedative, hypnotic or anxiolytic dependence; Father never sought any treatment; Father underwent another mental health assessment in April 2022; Father tested positive for alcohol twice in the month before the assessment was completed; Father did not give an accurate account for the number of children he has; Father has not complied with the mental health requirement of the case plan; Father obtained housing; Agency has been unable to conduct unannounced home visits; in May 2022, Father smelled of alcohol during exercised parenting time with the minor children; during Father's parenting time, he does not always interact with the minor children; the minor children have bonded with the foster family; the foster family has met and continues to meet the needs of the minor children; the foster family is willing to adopt; Father has failed to comply with the case plan without justification; the minor children cannot be safely placed with Father within a reasonable period of time; the minor children have been in the temporary custody of Agency for 12 or more months of a consecutive 22 month period; the minor children are in need of a legally secure permanent placement which cannot be accomplished without the granting of permanent custody to Agency; Agency has made reasonable efforts to reunite the minor children with Father and to prevent placement outside of Father's home; Father has failed continuously and repeatedly to substantially remedy the conditions causing the minor children to be placed outside the children's home; that clear and convincing evidence has been established to warrant the granting of permanent custody of the minor children to Agency; and that it is in the best interest of the minor children to

terminate Father's parental rights and grant permanent custody to Agency. (6/30/2022 Judgment Entries, p. 2-8).

{¶29} Turning now to determining whether a child can be placed with either parent within a reasonable period of time, or whether a child should be placed with either parent pursuant to R.C. 2151.414(E), a court “shall consider all relevant evidence” and determine “by clear and convincing evidence” that “one or more of the following exist as to each of the child’s parents:”

(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. * * *

(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 [on the motion for permanent custody];

(3) The parent * * * caused the child to suffer any neglect * * *;

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;

* * *

(9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse * * *;

(10) The parent has abandoned the child.

* * *

(13) The parent is repeatedly incarcerated, and the repeated incarceration prevents the parent from providing care for the child.

(14) The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the child or to prevent the child from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

(15) The parent has * * * caused or allowed the child to suffer neglect * * * and the court determines that the seriousness, nature, or likelihood of recurrence of the * * * neglect makes the child's placement with the child's parent a threat to the child's safety.

(16) Any other factor the court considers relevant.

R.C. 2151.414(E)(1)-(16).

{¶30} In granting permanent custody of the minor children to Agency, the evidence establishes, as addressed, and the juvenile court found in its June 30, 2022 judgments: that Agency became involved when a neglect referral was first received; Father was arrested, convicted, incarcerated, and re-incarcerated; Father is dependent on drugs and alcohol; the minor children cannot be safely placed with Father within a reasonable period of time; and Father has failed continuously and repeatedly to substantially remedy the conditions causing the minor children to be placed outside the children's home. (6/30/2022 Judgment Entries, p. 2-8).

{¶31} The records reveal the juvenile court complied with the procedure prescribed by R.C. 2151.414. The court did not err in finding that it was in the minor children's best interest to terminate Father's parental rights and grant permanent custody to Agency. Father fails to establish that the court incorrectly found that the minor children could not or should not be placed with him within a reasonable period of time.

{¶32} Based on the facts presented, the juvenile court's decisions do not go against the manifest weight of the evidence. The court had more than adequate facts

and sufficient testimony, as delineated above and in the judgments granting permanent custody of the minor children to Agency, to proceed with a determination that the minor children remained dependent as previously adjudicated. Clear and convincing evidence existed that the minor children shall be placed into the permanent custody of Agency as the same was in the best interest of the minor children. Thus, because the juvenile court's judgments are supported by some competent, credible evidence going to all the essential elements of the case, they will not be reversed by this court as being against the manifest weight of the evidence. The minor children deserve safety and stability at this time which can only be accomplished through permanent custody to Agency.

{¶33} Accordingly, the juvenile court did not err in finding that it was in the minor children's best interest to terminate Father's parental rights and grant permanent custody to Agency.

CONCLUSION

{¶34} For the foregoing reasons, Father's sole assignment of error is not well-taken. The June 30, 2022 judgments of the Jefferson County Court of Common Pleas, Juvenile Division, terminating Father's parental rights and granting permanent custody of the minor children to Agency following a hearing are affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgments of the Court of Common Pleas of Jefferson County, Ohio, are affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.