

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
JEFFERSON COUNTY

IN THE MATTER OF: R.A.F.,
DEPENDENT CHILD.

OPINION AND JUDGMENT ENTRY **Case No. 23 JE 0010**

Juvenile Appeal from the
Court of Common Pleas, Juvenile Division
of Jefferson County, Ohio
Case No. 2021 DN 00003

BEFORE:

Carol Ann Robb, David A. D'Apolito, Mark A. Hanni, Judges.

JUDGMENT:

Affirmed.

Atty. Julie Dreher, P.O. Box 405, Killbuck, Ohio 44637, for Appellant and

Atty. M. Catherine Savage Dylewski, 500 Market Street, Suite 316, Steubenville, Ohio 43952, for Appellee.

Dated: July 27, 2023

Robb, J.

{¶1} Appellant Mother, S.M., appeals the April 10, 2023 judgment permanently terminating her parental rights regarding RAF. She raises six assignments of error. Appellee, the Jefferson County Jobs and Family Services, Children Services Division (the Agency), asserts the child’s best interests warrant and support the court’s decision granting it permanent custody. For the following reasons, we affirm.

Statement of the Case

{¶2} This case commenced on February 10, 2021. On this date, the Agency moved for temporary custody of the minor child alleging he was abused, neglected, and dependent. The child was born five days earlier and tested positive for THC and amphetamines at birth.

{¶3} At the hospital, Appellant Mother admitted to illegal drug use while pregnant. She used methamphetamines three days prior to the child’s birth. She also confirmed she did not receive any prenatal care. The child was displaying signs of withdrawal, including tremors, sneezing, increased muscle tone, and irregular sleep patterns before discharge from the hospital. The Agency also noted in its motion that Appellant Mother had two other children regarding whom the Harrison County Department of Job and Family Services had been granted permanent custody. (February 10, 2021 Complaint for Temporary Custody.)

{¶4} Father¹, who is not a party on appeal, was also present at the hospital. He also acknowledged using illegal drugs and knowing that Appellant Mother abused drugs while pregnant. (February 10, 2021 Complaint for Temporary Custody.)

{¶5} The trial court granted the Agency’s ex parte motion and found there were reasonable grounds to believe the infant was in danger. It found there was probable cause to believe the child was neglected, abused, and dependent and that the child’s best interests warranted granting emergency custody to the Agency. (February 10, 2021 Ex Parte Emergency Order.)

¹ Father’s parental rights regarding RAF were also terminated via the trial court’s April 10, 2023 judgment, but he is not a party to this appeal. We include facts pertaining to Father to the extent relevant to address the merits of Appellant Mother’s arguments.

{¶6} The court appointed Appellant Mother and Father separate attorneys and appointed a Guardian ad Litem (GAL).

{¶7} After an evidentiary hearing, during which both parents and counsel appeared, the court determined the child was abused, neglected, and dependent. It also found the Agency had made reasonable efforts to prevent the child's placement outside the home, but found the parents' drug abuse and the infant's positive drug tests at birth made it impossible. RAF was placed in foster care. (March 18, 2021 Judgment Entry.)

{¶8} The GAL's first report updated RAF's status. RAF was experiencing sneezing and quivering, but his symptoms had subsided. The GAL states the child was residing with the foster family who had already adopted RAF's two half-siblings. They were five and two years old at the time. The GAL made contact with Father via Facebook, and he agreed to call her at a certain time, but did not.

{¶9} The GAL recommended the child remain with the Agency but that his parents have regular visitation. She also recommended Father and Appellant Mother complete substance abuse evaluations and that each complete and follow the respective recommendations made by their health care professionals. The GAL also suggested Appellant Mother and Father be required to release their information to allow the Agency to monitor their progress. (March 19, 2021 GAL Report.)

{¶10} The court held a dispositional hearing March 19, 2021. It indicated in its judgment that neither Appellant Mother nor Father were in attendance. The Agency caseworker James Michael Martin testified. The court found the child remained abused, neglected, and dependent. Martin testified that Appellant Mother attended all the weekly in person visits with the child, except one. He also said on the date of the hearing, Appellant Mother was arrested at the Agency on "various felony charges out of Harrison County." Martin also testified that Father had not attended any visits with RAF, except the first one. (March 23, 2021 Judgment.)

{¶11} Martin verified Appellant Mother was enrolled in a treatment program, but she had not been consistently attending. Whereas, Father had not signed the release of his information and had not provided his treatment records. Father had also failed to return Martin's telephone calls. Neither party provided the names or contact information of relatives who could possibly care for RAF. The court again found the Agency had

made reasonable efforts to prevent the child's placement. It granted and continued the Agency's temporary legal custody of the child. (March 23, 2021 Judgment.)

{¶12} In the Agency's request to extend its custody of the child, the caseworker noted in part that Appellant Mother had been incarcerated in November of 2021 "regarding charges of Taking Identity of Another and Possession of Drugs." Her projected release date was November 3, 2025. She was serving a four-year minimum sentence. Regarding Father, the caseworker indicated she did not know his whereabouts, and she had not heard from him since March of 2022. He had not visited RAF since February of 2022. (May 25, 2022 Request for Extension of Temporary Custody.)

{¶13} The trial court granted the Agency's extension after a hearing. Appellant Mother was in attendance at the hearing via Zoom. Father did not appear. Both parents had counsel in attendance representing their interests. (August 17, 2022 Judgment.)

{¶14} The Agency caseworker Nicole Cook testified consistent with the Agency's motion. Cook explained the child was doing well and continued to reside with the same foster family. She explained he was very bonded with the foster parents and his siblings. The court extended the Agency's temporary custody of RAF for an additional six months. (August 17, 2022 Judgment.)

{¶15} In March of 2023, the Agency moved for permanent custody of RAF in light of Appellant Mother's continued incarceration and lack of available family members available to care for him. In support, the caseworker stated in part Appellant Mother testified at a prior hearing that Father had ongoing substance abuse problems and was homeless. The Agency argued an award of permanent custody in its favor was in the child's best interest. It asserted he could remain with the current foster family, who wants to adopt him. (March 10, 2023 Request for Permanent Custody.)

{¶16} The GAL prepared an updated report after the Agency moved for permanent custody. The GAL interviewed the foster mother and the caseworker. The foster mother relayed that based on her experience, RAF may suffer from fetal alcohol syndrome, however, his testing was ongoing. The child was also being tested for diabetes. RAF suffered from mood swings and constant thirst. The GAL did not interview the child since he was only two years old. (March 29, 2023 GAL Report.)

{¶17} The GAL recommended granting the Agency permanent custody of RAF so he could be adopted. She emphasized he was well bonded and had been with the same foster family since his birth. She also concluded Appellant Mother was unable to care for him due to her continued incarceration. (March 29, 2023 GAL Report.)

{¶18} The permanent custody hearing was held on March 30, 2023, and the court issued its judgment granting the Agency permanent custody on April 10, 2023.

{¶19} The testimony at the permanent custody hearing included the following. Caseworker Nicole Cook testified she has worked at the Jefferson County Department of Job and Family Services, Children Services Division for 21 years. She drafts and monitors the case plans and parents' compliance with the plans. (Tr. 7-10.) Cook indicated that Appellant Mother had two other children, who were born in 2016 and 2018. Appellant Mother had previously lost custody of them. They have different fathers than RAF. Their cases were handled by the Harrison County Children Services. Cook also relayed that Appellant had been accused of domestic violence toward her wheelchair-bound mother and she also allegedly had left her young children with her disabled mother. During the prior case, Appellant Mother was noncompliant with her case plan and was abusing illegal drugs. Appellant Mother's two other children have been adopted by the same foster parents who have been caring for RAF since the beginning of the case. He has been secure and with these same foster parents since he was five days old.

{¶20} Both Appellant Mother and Father were using methamphetamines while she was pregnant with RAF. The child tested positive at birth for amphetamines and THC and was in withdrawal. (Tr. 16-17.)

{¶21} The Agency established a case plan with a goal of reunifying RAF with his parents. The plan required both parents to undergo drug and alcohol assessments and follow all recommendations made by the health care professionals. Each parent was also required to secure and maintain suitable housing. Appellant Mother did well with her case plan requirements and regularly attended her in-person visits. Her visits with RAF went well and were appropriate. Further, all of Appellant Mother's drug screens during the pendency of the case have been negative. Cook described Appellant Mother as maturing and growing during the case. Cook believed she was no longer using drugs. Cook did not have difficulty contacting Appellant Mother. However, Appellant Mother was arrested

and her in-person visits ceased as a result. Her criminal offenses occurred before RAF was born. (Tr. 18-24; 32-44.)

{¶22} Father visited with Appellant at the beginning of the case but then his visits stopped. Appellant Mother advised the Agency he was homeless. Cook eventually made contact with him. He did not return her calls or text messages. Cook's last contact with Father was March 7, 2022. (Tr. 20-24.)

{¶23} Cook stated RAF has anger issues and is undergoing further evaluation for fetal alcohol syndrome and diabetes. The foster family wants to adopt him. Cook explained that Appellant Mother will be in prison for at least two more years and there were no relatives available to care for him. Cook testified that Appellant Mother could not provide the permanency or stability the child needed because she will be incarcerated until he is at least four years old. Cook believes the award of permanent custody to the Agency is in his best interests. (Tr. 25-30.)

{¶24} When asked about Appellant Mother's possible early release from prison, Cook had reservations about her ability to care for the child, assuming she was released early. Cook explained that although Appellant Mother successfully completed her treatment, Cook had concerns about her ability to maintain sobriety upon her release, especially when faced with caring for a young child who may have additional medical needs. The child needs permanency, and Cook indicated he would likely be adopted if the Agency were granted permanent custody. (Tr. 47-56.)

{¶25} Appellant Mother testified via Zoom. She read a prepared statement and was also subject to cross-examination. She verified she underwent substance abuse treatment in connection with, and while on release from her Harrison County criminal charges. She successfully completed 71 days of in-patient treatment and followed the aftercare treatment program as well. She has been "clean" since April of 2021. Appellant Mother has been incarcerated since November 10, 2021. She was convicted of drug possession, identity fraud, and obstruction of justice. Her current release date is scheduled for June 1, 2025. Appellant Mother explained how she was able to reduce her sentence by 25% by participating in several groups and prison programs. She also explained how the judge in her criminal case advised her that he would consider a motion for judicial release after she serves two years of her sentence. (Tr. 62-68.)

{¶26} Appellant Mother complained about her lack of communication with the Agency and caseworker Cook after she became incarcerated. Appellant Mother was dissatisfied with the lack of visits. She said she only had two Zoom visits with RAF since she was arrested, and she believed the Agency was “stonewalling” her. Appellant Mother plans to live with her father when she is released from prison. She requested the court and the Agency extend its temporary custody of RAF until her release from prison to avoid terminating her parental rights. (Tr. 70-72; 101.)

{¶27} Appellant Mother acknowledged on cross-examination, however, that if she secures early release from prison after two years, she will still be required to spend at least another 100 days at another facility before she is fully free and released. She was also convicted of petty theft in a different criminal matter but did not receive any jail time in connection with that offense. (Tr. 77.)

{¶28} Appellant Mother introduced three exhibits, her inpatient substance abuse treatment records; the judgment entry convicting her of three counts in the Harrison County Court of Common Pleas and sentencing her to four years in prison; and a letter she wrote to the trial court judge requesting in-person visitation with RAF during her incarceration. (Exhibits 1, 2 & 3.)

{¶29} The foster mother also testified at the hearing. She described her family structure and how she and her husband are both employed and work at home. She works part time and he works full time. They have medical insurance. She described the bond RAF has with her, her husband, and her other children. The foster mother believes his removal from their home would traumatize him since this is the only home and family RAF has known since he was born. She said, “we are all he knows after two years.” She described him as also well bonded with their extended family and his foster grandparents as well. (Tr. 83.)

{¶30} The foster mother also described the amount of time and patience caring for RAF requires. She said her family can and will continue to meet his personal and medical needs. She described his sisters as suffering from ADHD and ODD and indicated that she and her husband are equipped to deal with these issues, and they have experience dealing with them. (Tr. 83-94.)

{¶31} The court terminated Appellant Mother's and Father's rights regarding RAF. The court found in part the child had been in the Agency's custody since February 10, 2021. It also found the child tested positive for marijuana and amphetamines at birth; the mother did not secure prenatal care for the child; and the child suffered withdrawal symptoms after birth. The court also found Father had admitted to using illegal drugs and then denied doing so. (April 10, 2023 Judgment.)

{¶32} Regarding Appellant Mother, the court found she successfully completed substance abuse treatment, and she visited with the child consistently until November of 2021 when she was imprisoned. Appellant Mother did secure suitable housing before her incarceration. Since her incarceration, she had two video visits with the child. She is to be incarcerated until 2025. (April 10, 2023 Judgment.)

{¶33} Regarding the child, the court found he has been living with the same foster family since birth. He has certain anger issues that are still being addressed by medical professionals. It found RAF is well-bonded with the foster family, and they have been meeting all of his needs, including his potential medical issues. They want to adopt RAF. The court did not interview the child because he was too young. (April 10, 2023 Judgment.)

{¶34} The court determined that neither parent could care for RAF within a reasonable time, and RAF is in need of secure and permanent placement, which cannot be accomplished without awarding custody to the Agency. The court also found Father abandoned RAF. (April 10, 2023 Judgment.)

{¶35} Even assuming Appellant Mother secured early release, as she claimed, the court found she must serve two years mandatory time, making her potentially eligible in June of 2023. Upon her early release, if secured, she would then need to spend 100 days in another facility. The court also noted Appellant Mother has two other children regarding whom her parental rights were also terminated. (April 10, 2023 Judgment.)

{¶36} The court found Appellant Mother failed to establish she can provide a legally secure permanent placement for the child. She also failed to show she could adequately care for the child's health, welfare, and safety. It found the award of custody to the Agency was established via clear and convincing evidence and it is in RAF's best

interests to terminate his parents' rights and grant custody to the Agency. (April 10, 2023 Judgment.)

{¶37} Appellant Mother raises six assignments of error.

First Assignment of Error: Visitation After Incarceration

{¶38} Appellant Mother's first assignment of error asserts:

"The trial court erred and abused its discretion in permanently terminating the parental rights of Appellant Mother S.M."

{¶39} R.C. 2151.414 sets forth a two-part test governing whether to award permanent custody to a public services agency. *In re J.S.*, 8th Dist. Cuyahoga Nos. 101991 & 101992, 2015-Ohio-2701, ¶ 47. First, after a hearing, the court must find by clear and convincing evidence that granting permanent custody of the child to the agency is in the best interest of the child upon considering all relevant factors including those in R.C. 2151.414(D). Clear and convincing evidence is evidence sufficient to "produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *In re Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985). The clear and convincing standard does not require clear and unequivocal evidence. *In re Estate of Haynes*, 25 Ohio St.3d. 101, 104, 495 N.E.2d 23 (1986). In determining whether a trial court based its decision upon clear and convincing evidence, a reviewing court must examine the record and determine whether the trier of fact had sufficient evidence before it to satisfy this burden of proof. *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990). The credibility of witnesses and weight of the evidence are primarily issues for the trial court, as the trier of fact. *In re Ohler*, 4th Dist. Hocking No. 04CA8, 2005-Ohio-1583, ¶ 15.

{¶40} Second, a court must make one of the findings delineated in R.C. 2151.414(B)(1)(a)-(e) or proceed under R.C. 2151.414(B)(2). Here the court proceeded under R.C. 2151.414(B)(2), which states:

With respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code, the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section that *the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent*

and determines in accordance with division (D) of this section that permanent custody is in the child's best interest.

(Emphasis added.) R.C. 2151.414(E) states in part:

If the court determines, by clear and convincing evidence, * * * that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time * * *:

* * *

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child * * *, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

(12) The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

In practice, courts usually make the second finding first before embarking on the best interest analysis. *In re D.S.*, 11th Dist. Trumbull No. 2015-T-0062, 2015-Ohio-4548, ¶ 72.

{¶41} The trial court found the child could not be placed with either of the parents within a reasonable time. In making this finding, it emphasized Appellant Mother is incarcerated until 2025; she will not be able to care for the child for eighteen months after the motion for permanent custody or dispositional hearing; she had her rights terminated regarding another child; and she failed to establish she can provide a legally secure permanent placement and adequate care for the child. Regarding Father, the court found he had abandoned the child and that Father failed to comply with his case plan requirements. (April 10, 2023 Judgment.)

{¶42} The findings regarding Father are unchallenged but nevertheless are supported by evidence. The finding regarding Appellant Mother that she previously lost custody of her other children is also unchallenged and is supported by evidence.

Appellant Mother takes issue with the court's findings that she is incapable of caring for the child within 18 months of the dispositional hearing and that she did not establish she could secure permanent placement and adequate care for the health and safety of the child. The hearing was held March 30, 2023.

{¶43} As stated, the trial court found in part she was incarcerated at the time of the permanent custody hearing and will not be able to care for the child 18 months thereafter. (April 10, 2023 Judgment.) At the time of the permanent custody hearing, her release from incarceration was scheduled for June of 2025. It is undisputed that her actual scheduled release date of June 2025 is beyond 18 months after the date of the hearing.

{¶44} At the time of the final hearing, Appellant Mother was incarcerated for drug possession, identity fraud, and obstruction of justice and had a release date of June 1, 2025. She has been incarcerated since November 10, 2021. While she had plans to live with her father after her release and hoped to secure an early release, her living arrangement and early release were wholly tentative. And while she was potentially eligible in June of 2023 for early release, upon her early release, if secured, she would then need to spend 100 days in another facility, making her possible release date in October of 2023. Thereafter, she would still have to establish she could maintain her sobriety and provide a safe and habitable home suitable for a young child.

{¶45} We agree that 18 months after the date of the hearing is October of 2024, and Appellant Mother contends she will be released in October of 2023. While her intentions and efforts seem valid, the facts in evidence do not establish her contentions. Upon reviewing the record, the trial court had clear and convincing evidence before it to produce a "firm belief" that Appellant Mother would be unavailable to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing and that she did not show she could secure permanent placement and adequate care for the health and safety of the child.

{¶46} The trial court also found that the grant of custody to the Agency was in RAF's best interests. We address Appellant Mother's full argument regarding this finding under her third assigned error.

{¶47} Appellant Mother’s limited argument in her first assignment of error is that the Agency curtailed her visitation with the child after she was incarcerated and after it moved for permanent custody. And because her pre-incarceration visits with him went well and were consistent, she claims her reduced visitation made the court’s decision to grant the Agency’s motion for permanent custody an abuse of discretion. Appellant Mother claims that from November 10, 2021 through March 30, 2023, she only had two visits with RAF via Zoom, despite her efforts to see him more and repeated calls to the Agency.

{¶48} Appellant Mother had consistently visited the child until her incarceration; the visits went well; and they were appropriate. The caseworker described Appellant Mother as maturing during the pendency of the case and meeting her plan goals. However, this stopped when Appellant Mother was arrested in November of 2021. Appellant Mother’s incarceration prevented her from visiting RAF in person. The child was less than a year old at the time.

{¶49} Further, RAF’s foster mother testified that he was afraid during the Zoom visits, and the foster parents were strongly opposed to taking him to in-person visits at a prison four hours away. She believed it would traumatize him. (Tr. 85.)

{¶50} Although Appellant Mother criticizes the Agency as failing to provide more visits with RAF via Zoom, there is nothing demonstrating why additional Zoom visits did not occur. While Appellant Mother’s criminal offenses were committed before the child was born, it was her conduct that resulted in the charges and that led to the problems about which she now complains.

{¶51} Moreover, the reduced number of Zoom visits does not appear to have impacted the court’s decision. The court does not rely on the lack of visits or lack of mother-child bond or familiarity in its decision. To the contrary, the court focused on the parents’ instability and that neither parent was able to provide the consistent care and secure home RAF needed. This prevented Appellant Mother’s reunification with the child.

{¶52} Accordingly, this assignment of error lacks merit.

Second Assignment of Error: Agency’s Reasonable Efforts

{¶53} Appellant’s second assignment of error claims:

“The trial court erred and abused its discretion in finding that the Agency made reasonable efforts to reunify Mother with the Child and in granting permanent custody of the Child to the Agency.”

{¶54} Here, Appellant claims the Agency failed to assert reasonable efforts to reunify her with RAF. We disagree.

{¶55} “When the state intervenes to protect a child's health or safety, [t]he state's efforts to resolve the threat to the child before removing the child or to permit the child to return home after the threat is removed are called “reasonable efforts.” ’ ” (Citation omitted.) *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816 ¶ 28. Various sections of the Revised Code set forth an agency's duty to make reasonable efforts; the concept is not encompassed in a single section. *Id.* at ¶ 29.

{¶56} The Supreme Court in *In re C.F.* held that the statutory requirement a court determine whether an agency has made reasonable efforts to return a child to the parents' custody does not apply in a permanent custody proceeding. *Id.* at ¶ 41-42, 862 N.E.2d 816. Instead, the “reasonable efforts” requirement applies at other, earlier stages of the proceeding. *Id.* However, “[i]f the agency has not established that reasonable efforts have been made prior to the hearing on a motion for permanent custody, then it must demonstrate such efforts at that time.” *In re C.F.*, *supra*.

{¶57} In the instant case, the trial court found on several occasions the Agency made reasonable efforts to safely return RAF to Appellant Mother and to prevent the placement of the child with Agency. The court found the Agency made reasonable efforts to safely reunify Appellant Mother and the child in two judgment entries issued in March of 2021. It also made this finding in its final judgment granting permanent custody to the Agency. (April 10, 2023 Judgment.)

{¶58} Consistent with its findings, the evidence reflects Appellant Mother was provided a case plan containing clear objectives with a focus on substance abuse treatment and obtaining safe and suitable housing. She was able to consistently visit RAF, and she made positive steps toward reunification with the child. She also was drug free at each of her screenings. Despite her efforts and those of the Agency, however, she was eventually incarcerated.

{¶59} The focus of her arguments here is the Agency’s alleged reduced efforts after her incarceration, and reduced visitation with RAF once she was in prison. The child was approximately two years old, and Appellant Mother was incarcerated a few hours away, such that in-person visits were not reasonable. Appellant Mother was able to visit with the child via Zoom. However, she only had two Zoom visits with him after she was incarcerated. The caseworker testified that she experienced difficulty in getting the Zoom visits scheduled and the child looked at Appellant Mother during the visits but was too young to really interact over videoconference. (Tr. 23.) There is nothing in evidence detailing the reasons for the few number of Zoom visits, despite Appellant Mother’s testimony about repeatedly calling the Agency to seek additional visitation.

{¶60} As stated, however, we cannot conclude the lack of Zoom visits had any impact on the court’s decision granting custody to the Agency. The court does not rely on the lack of mother-child bond in its decision or make a finding in his regard. Further, the record shows the Agency made reasonable efforts to reunify the child with Appellant Mother by facilitating in-person visits and clear case plan objectives. Its efforts were hindered by Appellant Mother’s incarceration.

{¶61} Based on the foregoing, this assignment of error lacks merit.

Third Assignment of Error: Best Interests of the Child

{¶62} Appellant’s third assignment of error claims:

“To the extent that the trial court determined permanent custody to the Agency was warranted pursuant to R.C. 2151.414(B)(1), the trial court erred and abused its discretion in finding that it is in the best interest of the Child to grant permanent custody of the Child to the Agency.”

{¶63} As stated, a court granting permanent custody to an Agency and terminating one’s parental rights, must find in part that such a decision is in the best interest of the child. This best interest of the child analysis is governed by R.C. 2151.414(D)(1), which states:

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, including whether the child has been in the temporary custody of one or more public children services agencies or private child placing 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 or private child placing agencies for twelve or more months of a consecutive twenty-two-month period * * *;
- (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.

{¶64} Upon weighing the evidence and all reasonable inferences, we do not find that the trial court lost its way and created a manifest miscarriage of justice warranting reversal. Consistent with R.C. 2151.414(D), we agree with the trial court's decision that granting permanent custody of RAF to the Agency is in his best interest.

{¶65} The evidence shows RAF was approximately two years and two months old at the time of the court's permanent custody decision, and Appellant Mother was still seeking more time to be case plan compliant in light of her incarceration. Neither parent offered a relative as an option to care for him, and neither parent was able to provide the secure and stable environment the child needed at any point during the pendency of the case.

{¶66} The child was not consulted or interviewed due to his very young age. However, both the caseworker and his foster mother testified he was well-bonded with the family and his natural siblings. This is the only home and family he knows.

{¶67} Further, granting Appellant Mother an indefinite extension of time to possibly secure an early release and thereafter potentially have secured housing adequate for a young child, is contrary to the child’s best interests. Appellant Mother’s circumstances were too tentative for the court to decide differently. The child needs permanency and consistency of care, not further delay and removal from the only family he knows.

{¶68} RAF’s need for permanency and stability will be furthered by the grant of custody to the Agency and his continued placement with the foster family, who intend to seek to adopt him once the Agency is granted custody. The trial court’s finding that granting permanent custody of the child to the Agency was in the best interest of the child is supported by clear and convincing evidence.

{¶69} Appellant’s third assignment of error lacks merit and is overruled.

Fourth, Fifth & Sixth Assignments of Error: Placement Within a Reasonable Time

{¶70} Because Appellant’s fourth, fifth, and sixth assignments of error are closely related, we address them together. These assignments claim:

“[4.] The trial court erred and abused its discretion when it found by clear and convincing evidence that the Child could not be placed with his Mother within a reasonable time.”

“[5.] The trial court erred in finding that a legally secure placement for the Child cannot be accomplished without the granting of permanent custody to the Agency.”

“[6.] The trial court erred in finding that Appellant Mother will not be available to care for the Child for at least eighteen months after the hearing on the motion for permanent custody and in granting permanent custody to the Agency.”

{¶71} These assigned errors challenge the court’s findings that Appellant Mother was unable to care for RAF within a reasonable time or within eighteen months after the permanent custody hearing and that a secure placement for him cannot be achieved absent an award of custody to the Agency.

{¶72} As stated under the first assignment of error, before a juvenile court can terminate parental rights and award permanent custody to the requesting Agency, it

must conduct a hearing and apply a two-pronged analysis. After determining the grant of custody is in the best interests of the child, a court must make one of the findings delineated in R.C. 2151.414(B)(1)(a)-(e) or proceed under R.C. 2151.414(B)(2). The court here proceeded under R.C. 2151.414(B)(2), which states:

With respect to a motion made pursuant to division (D)(2) of section 2151.413 of the Revised Code, the court shall grant permanent custody of the child to the movant if the court determines in accordance with division (E) of this section that the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent and determines in accordance with division (D) of this section that permanent custody is in the child's best interest.

(Emphasis added.) R.C. 2151.414(E) states in part:

In determining * * * whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing * * * that one or more of the following exist as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:

* * *

(10) The parent has abandoned the child.

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

(12) The parent is incarcerated at the time of the filing of the motion for permanent custody or the dispositional hearing of the child and will not be

available to care for the child for at least eighteen months after the filing of the motion for permanent custody or the dispositional hearing.

(Emphasis added.)

{¶73} Thus, if one of the findings are made and supported as to each of the child's parents, a court is statutorily required to conclude the child cannot be placed with either parent within a reasonable time and is likewise required to grant permanent custody to the movant. R.C. 2151.414(B)(2).

{¶74} Again, the court found Father abandoned RAF. This finding is unchallenged, but is nonetheless established by the caseworker's testimony that he has not visited the child for more than one year. A child is presumed abandoned when a parent has "failed to visit or maintain contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days." R.C. 2151.011(C).

{¶75} Regarding Appellant Mother, the court found (E)(11) and (12) applied. It found her rights regarding another child were terminated, and she has failed to provide clear and convincing evidence to prove, notwithstanding the prior termination, she can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child. R.C. 2151.414(E)(11). The trial court also found Appellant Mother was incarcerated at the time of the hearing and would be unable to care for the child for at least eighteen months after the date of the hearing consistent with (E)(12). (April 10, 2023 Judgment Entry.) The court's finding that Appellant Mother previously had her parental rights terminated regarding another child is supported by the evidence and is not contested.

{¶76} However, Appellant Mother contends the evidence showed she would be released from prison and capable of caring for the child within a reasonable amount of time and within 18 months after the date of the permanent custody hearing. We disagree.

{¶77} At the time of the final hearing, Appellant Mother was incarcerated for drug possession, identity fraud, and obstruction of justice and had a release date of June 1, 2025, which is beyond 18 months after the date of the hearing. She has been incarcerated since November 10, 2021. While she was potentially eligible in June of 2023 for early release, upon her early release, if secured, she would need to spend 100 days

in another facility, making her possible release date in October of 2023. Thereafter, she would still have to establish she could maintain her sobriety and a safe and habitable home suitable for a young child.

{¶78} Appellant Mother’s argument is based on contingencies which have not yet occurred, and which may not occur. Thus, she did not establish that notwithstanding the prior termination of her parental rights regarding her other children, she could provide the legally secure permanent placement and adequate care for RAF. Furthermore, the trial court had clear and convincing evidence before it to produce a “firm belief” that Appellant Mother would not be available to care for RAF for eighteen months after the permanent custody hearing.

{¶79} Moreover, Appellant Mother, notwithstanding the prior termination of parental rights, did not establish she was capable of providing a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

{¶80} Appellant Mother’s fourth, fifth, and sixth assigned errors lack merit.

Conclusion

{¶81} For the reasons stated, Appellant Mother’s assignments of error lack merit and are overruled. The trial court’s decision is affirmed.

D’Apolito, P.J., concurs.

Hanni, J., concurs.

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