

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

IN RE S.P., ET AL. :  
Minor Children : No. 111081  
[Appeal by M.P., Mother] :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: June 30, 2022**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD18911813, AD18911814, AD18911815, AD18911816, and AD18911818

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***Appearances:***

Edward F. Borkowski, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Joseph C. Young, Assistant Prosecuting Attorney, *for appellee.*

MARY EILEEN KILBANE, J.:

{¶ 1} Appellant M.P. (“Mother”) appeals from the juvenile court’s order granting permanent custody of her minor children, L.P. (d.o.b. 12/30/2007), V.P. (d.o.b. 05/18/2009), C.P. (d.o.b. 01/18/2011), Mi.P. (d.o.b. 01/02/2012), and S.P.

(d.o.b. 04/10/2015) to the Cuyahoga County Division of Children and Family Services (“agency”). For the following reasons, we affirm.

### **Factual and Procedural History**

{¶ 2} The agency first became involved with Mother and N.P. (“Father”), the children’s father, in 2008 and again in 2011 and 2012 due to concerns about parenting, mental health, domestic violence, and homelessness. In 2011 and 2012, the juvenile court determined a resolution of the problems had been reached and placed the children under protective supervision.

{¶ 3} On September 25, 2018, the agency filed a complaint in Cuyahoga J.C. Nos. AD18911813, AD18911814, AD18911815, AD18911816, and AD18911818 that alleged the children — L.P., V.P., C.P, Mi.P., and S.P. — were abused, neglected, and dependent and requested temporary custody to the agency. The complaint stemmed from a physical altercation between Mother and the oldest child, L.P., that allegedly placed the children at risk of harm. The complaint alleged Mother suffered from mental issues, post-traumatic stress disorder, anxiety, and depression that prevented her from providing appropriate care for the children. The complaint also alleged that Mother and Father did not have stable housing. The complaint stated that L.P., V.P., C.P., and Mi.P. were previously adjudicated dependent and committed to the agency’s temporary custody.<sup>1</sup>

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<sup>1</sup> The prior cases include AD15909636, AD15909637, AD12900101, and AD11901114.

**{¶ 4}** On October 11, 2018, the agency filed a motion that requested predispositional temporary custody of the children to the agency pending resolution of the complaint. An affidavit attached to the motion stated the following factors necessitated the agency's predispositional care:

1. On October 11, 2018, Father handcuffed C.P. to a table leg and brutally beat her with a cord, causing extensive bruising on her arms, legs, back, and stomach.
2. Mother and Father failed to seek medical treatment for C.P.'s severe injuries.
3. Due to the incident with C.P., Father was charged with domestic violence, felonious assault, child endangering, and kidnapping.
4. Father uses excessive and inappropriate discipline with the children, striking them with a belt or his open hand.
5. Mother lacks appropriate judgment and allows Father to care for the children despite his propensity to violence. Mother minimizes Father's use of inappropriate discipline. Father and Mother engage in domestic violence, and they have an ongoing relationship.
6. Mother has mental health issues. Mother receives mental health treatment but has not yet benefited from them.
7. Mother and Father do not have stable housing.

**{¶ 5}** On that same date, the magistrate appointed a guardian ad litem ("GAL") for the children and conducted a hearing. Based upon the evidence, the magistrate granted the motion for predispositional temporary custody and thereby committed the children to the emergency temporary care and custody of the agency.

**{¶ 6}** The agency filed a case plan for the children on October 26, 2018. Reunification was the permanency goal for each child. The agency recommended

mental health services and domestic violence counseling and services for Mother. The agency also recommended that it was in the children's best interest to place them in foster care to reduce the risk of abuse and neglect. Mother's case plan also shows that during the summer of 2018, Mother's boyfriend lived with Mother and her children. The boyfriend raped the four oldest children and is serving a 40-year prison sentence for those offenses. Mother was permitted weekly supervised visits. Father was included within the case plan, but he is not a party to this appeal and, therefore, we will not address his participation in the case plan or his involvement with this case. On December 4, 2018, the court appointed a GAL for Mother.

**{¶ 7}** On March 20, 2019, the agency filed an amended complaint. Mother admitted the allegations of the amended complaint that stated Mother completed domestic violence classes and was engaged in parenting classes; Mother could benefit from continued services to minimize conflict in the home; Mother completed a mental health assessment and was engaged in counseling; and Mother needed to maintain appropriate housing. On the same date, the magistrate adjudicated the children neglected and dependent; the abuse allegation was not proven by clear and convincing evidence. The juvenile court adopted the magistrate's decision on April 4, 2019, and the judgment entry was docketed on April 5, 2019.

**{¶ 8}** On June 20, 2019, the magistrate held a hearing and found it was in the children's best interests to commit them to the temporary custody of the agency. The agency previously provided Mother referrals for various services and, therefore, made reasonable efforts to eliminate the continued removal of the children from

their home or make it possible for them to return home. The juvenile court adopted the magistrate's decision on July 8, 2019, and the judgment entry was docketed on July 9, 2019.

**{¶ 9}** The agency filed Mother's amended case plan on August 23, 2019, that included referrals for counseling, domestic violence programming, anger management classes, psychological evaluation and associated services, and home management services. Mother was to execute a release to allow the agency access to her providers. Mother signed the amended case plan and on August 27, 2019, the magistrate approved the amended case plan.

**{¶ 10}** In anticipation of the expiration of the agency's temporary custody on September 25, 2019, the agency filed a motion on September 9, 2019, that requested the first extension of temporary custody and a request for specific findings. On September 19, 2019, Mother agreed to temporary custody to the agency and the trial court found the children's return to the home of Mother was contrary to their best interests. On October 30, 2019, the magistrate held a dispositional review hearing after which she granted the agency's first extension of temporary custody and request for specific findings. On November 27, 2019, the juvenile court adopted that decision.

**{¶ 11}** On March 16, 2020, Vi.P. ("Grandmother"), paternal grandmother to the children, filed a motion to intervene and sought legal custody of the children. On March 18, 2020, the agency filed a motion to modify temporary custody to permanent custody. On November 12, 2020, Grandmother moved for legal custody

of the children. On January 21, 2021, the magistrate granted Grandmother's motion to intervene.

**{¶ 12}** On May 14, 2021, the juvenile court held a hearing on the agency's motion to modify temporary custody to permanent custody and Grandmother's motion for legal custody. In attendance were Mother, Father, Grandmother, and GALs for the children and Mother.

**{¶ 13}** Testimony was presented by the agency's social worker, Joyce Butler ("Butler"), who was assigned to this case in October 2018. Butler testified that since 2008, the agency was concerned about Mother's untreated, undiagnosed mental health concerns. Butler testified that Mother's current case plan included parenting and mental health services. Butler further testified that Mother received services from five providers over the years, sometimes seeking assistance from more than one provider at the same time. Mother had two providers at the time of the custody hearing. Butler testified that if Mother did not like the outcome of one provider, she would seek assistance from another provider. Butler asked Mother to share all information, including her case plan, with all her providers so that they were all well-informed on her case, but Mother did not do so. Butler testified that Mother contacted her mental health providers and requested they delete certain information prior to submission of their status reports to the agency. Butler had continuing concerns about Mother's mental health.

**{¶ 14}** Butler testified that Mother divorced Father following the 2018 incident with C.P. and the agency had no continuing concerns about domestic

violence. Similarly, Mother had secured housing although there was a question as to whether she was residing with her parents at the time of the custody hearing.

{¶ 15} Butler testified that she had continuing concerns about Mother's parenting. The agency referred Mother to a number of services, and Mother earned four parenting certificates. Butler testified that the agency measures progress in parenting based upon the parent's visits with social workers, conversations between the parents and children, and the children's interactions rather than the completion of a certificate. Butler testified that earning a certificate does not necessarily mean an individual changed or improved their parenting skills.

{¶ 16} Butler testified that Mother had inappropriate conversations with her children. Mother spoke negatively to the children about Butler; told one of the children she had a sexually transmitted disease; discussed the fact that Mother lived with a sexual offender; and threatened the children that no one would want to adopt them. Butler also testified that Mother's ability to discuss appropriate topics had improved.

{¶ 17} Counselors for Mi.P., S.P., and C.P. testified that the three girls receive specialized services. According to their counselors, Mi.P. and S.P. would prefer to live with Mother. C.P.'s therapist testified that the child experienced physical, emotional, and verbal abuse by Mother, Father and Mother's boyfriend. C.P. informed her counselor that her Grandmother knew about the ongoing abuse she endured, but failed to report it. C.P. told her counselor she did not want to speak with Mother.

**{¶ 18}** Mother’s co-workers, life coach, and therapist testified on her behalf. Mother’s co-worker testified she is more energetic and happier than she was five years ago, takes more responsibility for her actions, and is more engaged with parenting. Another co-worker, who had observed Mother with her children, testified that Mother had “turned her life around” and wanted custody of her children. Mother’s life coach helped Mother complete her case plan and guided her to make better daily decisions. The life coach testified that Mother has made great improvements, including better decision-making and problem-solving choices, but will need ongoing support from services and mental health treatment. According to the life coach, Mother informed her that the agency had custody of her children because they were molested by Mother’s former boyfriend. Mother’s therapist testified that Mother experienced sexual abuse and domestic violence as a child and requires continuing therapy. The therapist did not observe Mother with her children and stated Mother is still working on boundaries, parenting, and developing skills to keep the children safe. Around the time of the custody hearing, Mother’s therapist learned that Mother was treating with another counselor. Mother’s therapist testified she did not promote such an arrangement.

**{¶ 19}** Grandmother testified in support of her motion for legal custody of the five children. Grandmother testified that she has the support of her job, church, extended family, and neighbors and she wants the children to stay out of foster care. Grandmother testified that Butler coached C.P to state that she does not want to see or live with her parents, sisters, or Grandmother. Grandmother believes C.P.’s



therapist simply repeated what C.P. was instructed to tell her therapist. Grandmother testified that in a conversation with Butler, Butler told her the agency would not return the children to Mother, Father, or any relative. Grandmother testified that she was with C.P. immediately following the 2018 incident and observed welts on C.P.'s body. Grandmother did not call the police "because [she had] seen whips on children before." The testimony demonstrated that law enforcement had to become involved and compel Grandmother to return C.P. to her home so that the child could receive the necessary medical treatment. Grandmother last saw the children in December 2019, although she testified she subsequently contacted the children by telephone.

**{¶ 20}** The children's GAL testified. She acknowledged Mother was engaged in parenting, had made "positive strides," and she tried to do her best. Further, the GAL stated that L.P., V.P., and Mi.P. voiced their preference to live with their Mother. The GAL did not believe legal custody to Grandmother was appropriate. Due to the trauma and damage endured by the children while living under Mother's care — and for which they receive ongoing therapy — the GAL found it was in the children's best interests to grant permanent custody to the agency.

**{¶ 21}** On September 8, 2021, Mother filed a motion for relief from judgment requesting that the juvenile court set a hearing whereby she could provide additional information on the care of her children. On September 14, 2021, the juvenile court denied this motion.

{¶ 22} On October 27, 2021, pursuant to the evidence introduced at the custody hearing, the juvenile court terminated the prior order that committed the children to the temporary custody of the agency and committed the children to the permanent custody of the agency thereby terminating all parental rights and responsibilities.

{¶ 23} On November 22, 2021, mother filed a timely notice of appeal stating the following assignments of error for review:

Assignment of Error I: The trial court abused its discretion by granting permanent custody of appellant's children to CCDCFS against the manifest weight of the evidence.

Assignment of Error II: The trial court abused its discretion by denying paternal grandmother's motion for legal custody.

## **Legal Analysis**

### **Permanent Custody**

{¶ 24} In her first assignment of error, Mother argues that the trial court's grant of permanent custody to the agency was an abuse of discretion.

{¶ 25} A parent has a fundamental interest in the care and custody of her children. *In re L.W.*, 8th Dist. Cuyahoga No. 107708, 2019-Ohio-1343, ¶ 20. However, parental rights are not absolute: "The natural rights of a parent are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed." *In re L.D.*, 2017-Ohio-1037, 86 N.E.3d 1012, ¶ 29 (8th Dist.), quoting *In re Cunningham*, 59 Ohio St.2d 100, 106, 391 N.E.2d 1034 (1979). "By terminating parental rights, the goal is to create 'a more stable life' for dependent

children and to ‘facilitate adoption to foster permanency for children.’” *In re R.G.*, 8th Dist. Cuyahoga No. 104434, 2016-Ohio-7897, ¶ 21, quoting *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, 5 (Aug. 1, 1986).

**{¶ 26}** Here, the agency obtained temporary custody of the children and then filed a motion for permanent custody under R.C. 2151.413. For a motion for permanent custody sought under R.C. 2151.413, a juvenile court must satisfy the two-prong test set forth in R.C. 2151.414 before it can terminate parental rights and grant permanent custody to the agency. The juvenile court must find by clear and convincing evidence that any one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) apply and that it is in the best interest of the child to grant permanent custody to the agency. *In re R.G.*, 8th Dist. Cuyahoga No. 108537, 2020-Ohio-3032, ¶ 19-20.

**{¶ 27}** Clear and convincing evidence has been defined as “that measure or degree of proof which is more than a mere ‘preponderance of the evidence,’ but not to the extent of such certainty as is required ‘beyond a reasonable doubt’ in criminal cases, and which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 42, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

**{¶ 28}** We examine the record to determine whether the juvenile court had sufficient evidence to meet the required degree of proof. “Judgments supported by

competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence.” *In re L.W.*, 8th Dist. Cuyahoga No. 107708, 2019-Ohio-1343, at ¶ 24, citing *In re T.S.*, 8th Dist. Cuyahoga No. 92816, 2009-Ohio-5496, ¶ 24, citing *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990).

{¶ 29} The juvenile court must find by clear and convincing evidence that one of the following conditions applies:

(a) The child is not abandoned or orphaned, has not 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 has not 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 if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, and the child cannot be placed with either of the child’s parents within a reasonable time or should not be placed with the child’s parents.

(b) The child is abandoned.

(c) The child is orphaned, and there are no relatives of the child who are able to take permanent custody.

(d) 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, 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.

R.C. 2151.414(B)(1).

**{¶ 30}** Here, the juvenile court satisfied the first prong of the statutory test by finding that the children were in the agency's custody for 12 months or longer for a consecutive 22-month period. R.C. 2151.414(B)(1)(d). Mother does not dispute this finding.

**{¶ 31}** Once the trial court found that one of the enumerated R.C. 2151.414(B)(1) factors was present, the court then conducted an analysis of the children's best interest. The juvenile court had to find by clear and convincing evidence that it was in the children's best interest to grant permanent custody to the agency. *In re L.W.*, 8th Dist. Cuyahoga No. 107708, 2019-Ohio-1343, at ¶ 36.

**{¶ 32}** On appeal, the court reviews a trial court's best interest analysis for an abuse of discretion. *Id.* at ¶ 37. "An abuse of discretion is more than a mere error of law or judgment; it implies that the court's decision was unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

**{¶ 33}** To determine the best interests of the children, the trial court considers all relevant factors including, but not limited to, those listed in R.C. 2151.414(D)(1)(a)-(e):

(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 and, as described in (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state;

(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.

Not one factor listed in R.C. 2151.414(D)(1) is given greater weight than any other factor. *In re L.W.* at ¶ 39. Only one of the statutory factors needs to be found in favor of the award of permanent custody. *Id.* The focus of a best interest determination is the child, not the parent. *In re R.G.*, 8th Dist. Cuyahoga No. 104434, 2016-Ohio-7897, at ¶ 28, citing *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 59.

**{¶ 34}** The record reflects that all the children, except C.P., have been in foster homes since 2018. C.P. was placed in two foster homes before moving to residential care. The children are placed outside of Cuyahoga County and all, except C.P., see each other at monthly supervised visitations. L.P., V.P., Mi.P., and S.P. are somewhat adjusted to foster care. L.P. experiences “disruption sometimes, but she’s

doing fair.” V.P. performs well in school although she appears angry at times and strikes out at other students; her foster parents work with her on these issues. Mi.P. does not listen well to her foster parents who have a difficult time with the child. Mi.P. reportedly performs well in school. S.P. was disruptive within her foster home and was moved to another home. The social worker described C.P. as an emotional wreck. When C.P. was transferred to her second foster home, she attempted to run away because she thought she was to be reunited with her parents. For the first year of the agency’s temporary custody, a no-contact order was in place between C.P. and her parents. C.P. has not interacted with Mother since 2018 nor does she ask to visit with Mother. C.P. and her sisters have not interacted since C.P.’s placement in the residential facility.

**{¶ 35}** L.P., V.P., C.P., and Mi.P. all suffered physical and sexual abuse. L.P. has difficulty understanding the trauma she experienced, and V.P. acts out sexually and requires close supervision. C.P. was diagnosed with autism, ADHD, anxiety, and a sexually transmitted disease, and she currently resides in a residential care home and has no contact with her family. All of the children, including S.P., receive specialized therapy.

**{¶ 36}** The record reflects that L.P., V.P., and Mi.P. expressed a desire to return to Mother’s care. According to Butler and C.P.’s therapist, C.P. does not wish to interact with Mother. S.P., age five at the time of the hearing, was too young to express her wishes as to custodial placement. Under such a scenario, the juvenile court properly considers the GAL’s recommendation as part of the R.C.

2151.414(D)(1) analysis. *In re R.A.*, 8th Dist. Cuyahoga No. 110541, 2021-Ohio-4126, ¶ 52, citing *In re B/K Children*, 1st Dist. Hamilton No. C-190681, 2020-Ohio-1095, ¶ 45. Here, S.P.'s GAL recommended permanent custody to the agency.

**{¶ 37}** The record further shows that Mother completed an assessment and engaged in mental health treatment as required by her case plan. Yet, she sought treatment from numerous providers, failed to share all relevant information pertaining to her case plan with those providers, and sought the care of different providers when she disagreed with a therapist. Mother's therapist objected to the use of multiple therapists because such behavior hinders the development of the relationship between the provider and client. Mother's therapist also testified that while Mother progressed on her ability to admit she made mistakes as a parent and demonstrated insight on how her behavior impacted her children, she requires ongoing treatment for her own past trauma as well as for treatment and improvement of skills to keep her children safe.

**{¶ 38}** Mother completed multiple parenting courses, but she has not benefitted from them. This court has found that

[a] parent can successfully complete the terms of a case plan yet not substantially remedy the conditions that caused the children to be removed -- the case plan is simply a means to a goal, but not the goal itself. Hence, the courts have held that the successful completion of case plan requirements does not preclude a grant of permanent custody to a social services agency. *In re J.L.*, 8th Dist. [Cuyahoga No. 84368, 2004-Ohio- 6024, at ¶ 20; *In re Mraz*, 12th Dist. [Brown] Nos. CA2002-05-011 and CA2002-07-014, 2002-Ohio-7278.]



*In re C.C.*, 187 Ohio App.3d 365, 2010-Ohio-780, 932 N.E.2d 360, ¶ 25 (8th Dist.). Mother has received services from the agency off and on since 2008. Despite the children being raped by Mother's boyfriend during the summer of 2018, Mother still chose to reside with a sex offender in January 2021 and discuss that information with L.P. Mother has had inappropriate conversations with her daughters. Additionally, L.P. was caught sending explicit pictures of herself using a mobile phone provided by her Mother. Mother was advised to take the phone from L.P., but Mother refused to do so. These actions show Mother has not substantially remedied the conditions that caused the removal of her children.

{¶ 39} Mother's argument that she was unable to fully engage in her case plan services due to COVID-19 restrictions is unpersuasive. Mother's therapist and the children's GAL acknowledged that Mother's parenting abilities improved with the services, but her actions demonstrate the improvements are not sufficient to make sound decisions that take into consideration the children's well-being. The record shows that Mother participated in the enumerated services but failed to gain the needed benefits from those services.

{¶ 40} The record further shows Mother regularly participated in visitation with her children, both in-person and virtually, and is bonded with the children that attended visitation. Yet, "the mere existence of a good relationship is insufficient. *In re Holyak, supra*. Overall, we are concerned with the best interest of the child, not the mere existence of a relationship." *In re R.N.*, 8th Dist. Cuyahoga No. 83121, 2004-Ohio-2560, citing *In re Holyak*, 8th Dist. Cuyahoga No. 78890, 2001-Ohio-

App. LEXIS 3105, 10 (July 12, 2001). “A child’s best interests require permanency and a safe and secure environment.” *In re Holyak* at 10. In this case, the juvenile court recognized that the children’s relationship with Mother was outweighed by their need for a safe and secure environment.

{¶ 41} The record demonstrates that the juvenile court complied with the statutory requirements of R.C. 2151.414(B)(1) and 2151.414(D) when it determined (1) the evidence showed that the children were in the agency’s custody for 12 months or longer for a consecutive 22-month period and (2) it was in their best interests to be placed in the permanent custody of the agency. The juvenile court’s findings are supported by clear and convincing evidence. We find the record supports the juvenile court’s decision to grant permanent custody of the children to the agency and, therefore, we overrule Mother’s first assignment of error.

### **Legal Custody**

{¶ 42} In her second assignment of error, Mother argues that the trial court’s denial of legal custody to Grandmother was an abuse of discretion.

{¶ 43} Pursuant to R.C. 2151.353(A)(3), a juvenile court may award legal custody of a child who has been adjudicated abused, neglected, or dependent “to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings.”

{¶ 44} “Legal custody” is

a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities.

R.C. 2151.011(B)(21).

{¶ 45} Legal custody is significantly different than the termination of parental rights — despite losing legal custody of a child, the parents of the child retain residual parental rights, privileges, and responsibilities. R.C. 2151.353(A)(3)(c). Thus, “[w]hen a juvenile court awards legal custody following an adjudication of abuse, neglect, or dependency, ‘it does so by examining what would be in the best interest of the child based on a preponderance of the evidence.’” *In re A.C.*, 8th Dist. Cuyahoga No. 108442, 2019-Ohio-5127, ¶ 15, quoting *In re T.R.*, 8th Dist. Cuyahoga No. 102071, 2015-Ohio-4177, ¶ 44, quoting *In re M.J.M.*, 8th Dist. Cuyahoga No. 94130, 2010-Ohio-1674, ¶ 11. Preponderance of the evidence is evidence that is more probable, more persuasive, or of greater value. *In re C.V.M.*, 8th Dist. Cuyahoga No. 99426, 2013-Ohio-3361, ¶ 6, quoting *In re M.F.*, 5th Dist. Ashland No. 12-COA-036, 2013-Ohio-1755, ¶ 30, quoting *State v. Finkes*, 10th Dist. Franklin No. 01AP-310, 2002-Ohio-1439, ¶ 81.

{¶ 46} On appeal, a trial court’s custody determination will not be disturbed unless the court abused its discretion. *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988).

**{¶ 47}** No specific factors are applied or considered by the trial court when determining a child's best interest on a request for legal custody. *In re G.M.*, 8th Dist. Cuyahoga No. 95410, 2011-Ohio-4090, ¶ 15. The R.C. 2151.414(D) best interest factors that are mandatory in a permanent custody analysis are instructive in a legal custody determination. *In re T.R.*, 8th Dist. Cuyahoga No. 102071, 2015-Ohio-4177, ¶ 48, citing *In re D.T.*, 8th Dist. Cuyahoga Nos. 100970 and 100971, 2014-Ohio-4818, ¶ 20, citing *In re E.A.*, 8th Dist. Cuyahoga No. 99065, 2013-Ohio-1193, ¶ 13; *In re S.G.*, 8th Dist. Cuyahoga No. 108711, 2020-Ohio-4060, ¶ 24.

**{¶ 48}** Given the evidence presented at the custody hearing, we cannot say that the juvenile court's determination that it would not be in the best interests of the children to be placed in the legal custody of Grandmother was an abuse of discretion.

**{¶ 49}** The evidence introduced at the custody hearing demonstrated that Grandmother failed to examine C.P. after she was severely beaten by Father. A reasonable person in Grandmother's situation would have or should have known that C.P.'s injuries required care.

**{¶ 50}** The testimony demonstrated a lack of support by Grandmother. Grandmother testified she was close with the children prior to 2018 when she spent every other weekend with them. Grandmother last saw C.P. in September 2019. Grandmother has not visited the other four children since December 2019. While Grandmother testified she spoke with some of the children on the telephone, she did not offer the frequency of those phone calls nor with whom she spoke.

**{¶ 51}** The record demonstrates Grandmother had stable housing and steady employment that provided experience in childcare and mental health services. However, these factors were not sufficient to grant legal custody of the children to Grandmother. Further, the children's GAL testified that legal custody to Grandmother was inappropriate and permanent custody to the agency was in the children's best interests.

**{¶ 52}** The juvenile court's order that denied Grandmother's motion for legal custody was not an abuse of discretion, and the trial court's findings were supported by a preponderance of the evidence. Thus, Mother's second assignment of error is overruled.

**{¶ 53}** Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY EILEEN KILBANE, JUDGE

KATHLEEN ANN KEOUGH, P.J., and  
MARY J. BOYLE, J., CONCUR