

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

IN RE E.G., ET AL. :  
 : No. 112212  
Minor Children :  
 :  
[Appeal by S.G., Mother] :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: DISMISSED**  
**RELEASED AND JOURNALIZED: July 6, 2023**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD21905192, AD219905193, AD219905194, AD219905195, and  
AD219905196

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***Appearances:***

John H. Lawson, *for appellant.*

FRANK DANIEL CELEBREZZE, III, P.J.:

{¶ 1} Appellant S.G., the mother of E.G., Au.M., Z.G., Z.M., and Am.M. (“Mother”), appeals the judgment of the juvenile court terminating her parental rights and awarding permanent custody of the children to the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “agency”).

{¶ 2} Mother’s appointed counsel has filed a motion to withdraw pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), asserting that based on his review, he could not “discern any meritorious issues.” We held the

motion in abeyance and afforded Mother an opportunity to file a pro se brief. Mother has failed to avail herself of that opportunity. Following a thorough independent review of the record, this court grants appointed counsel's motion to withdraw, and we dismiss this appeal.

### **I. Factual Background and Procedural History**

{¶ 3} This matter commenced in April 2021 when CCDCFS filed a complaint alleging abuse, neglect, and dependency with regard to E.G. (d.o.b. 11/24/15), Au.M. (d.o.b. 10/4/16), Z.G. (d.o.b. 4/8/18), Z.M. (d.o.b. 6/30/19), and Am.M. (d.o.b. 12/27/20). Mother has given birth to an additional child since this case has been pending; this child is not part of these proceedings. The complaint alleged that Mother was overwhelmed with caring for the children, was unable to meet their needs, lacked appropriate judgment, and had anger-management issues. She also had been diagnosed with depression and schizophrenia. In addition, the complaint stated that Au.M. had been the subject of inappropriate sexual contact.

{¶ 4} The agency moved for temporary custody of the children, which was denied. The agency was required to return the children to Mother, and a guardian ad litem was appointed for them.

{¶ 5} Two months later, the magistrate conducted an adjudicatory hearing on the agency's amended complaint. Mother stipulated to some of the allegations, and the court heard testimony and evidence. The children were ultimately adjudged dependent. The parties stipulated to protective supervision and legal custody of the children to Mother.

{¶ 6} Several weeks later, the agency again moved for emergency custody of the children. The motion stated that Mother had been arrested for assault on a police officer. In addition, Mother had left the children in the care of a minor, and her home was in deplorable condition.<sup>1</sup> An order of temporary custody to the agency was issued for all five children. The agency later submitted a case plan with the goal of reunification with Mother.

{¶ 7} In November 2021, the agency moved for an emergency order to reduce court-ordered visitation. Mother had previously had five-hour visitation with the children; the motion sought to reduce the visitation to two hours because the children's behavior deteriorated significantly prior to the visits. The motion further noted that Mother was not engaged in any case plan services. The court granted the motion.

{¶ 8} In March 2022, the agency filed an amended case plan, which indicated that Mother had canceled or not shown at eight visits between December 2021 and March 2022. The case plan required Mother to attend all mental health appointments and take her medications as prescribed. She was also to complete updated psychological and psychiatric evaluations.

{¶ 9} In April 2022, the agency moved to modify temporary custody to permanent custody, asserting that (1) Mother had been inconsistent with her mental health services; (2) Mother had been dismissed from anger management classes; (3)

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<sup>1</sup> The complaint and motions also contained allegations regarding the fathers of the children. None of the fathers participated in the proceedings below and are not parties to this appeal.

Mother had been dismissed from her domestic violence classes; (4) Mother had engaged in an altercation with her boyfriend in January 2022; (5) Mother did not have appropriate housing; (6) Mother had failed to benefit from parenting classes; (7) Mother had failed to consistently visit the children; and (8) Mother had a conviction for assault of a correction officer and was on probation with the mental health court until September 2023.

**{¶ 10}** The juvenile court held a trial on the agency's motions regarding each of the five children. The agency presented the testimony of a worker in "supportive visitation" from Catholic Charities, Willisha Sharpe. Sharpe's role was to observe how Mother parented the children through a 16-week program, once a week, for two hours each week. Sharpe testified that Mother did not successfully complete the program and missed a number of visits.

**{¶ 11}** Sharpe further testified that during the visitations, Mother did not really interact with the children and that the children did not listen to her and would run out of the room. Sharpe testified that Mother said it was "overwhelming" and would holler at the children. Sharpe stated that by the end, Mother got "a little better."

**{¶ 12}** The agency further presented the testimony of Ratanya Croom, an extended services worker with CCDCFs. Croom was placed on the case in May 2022 after Mother had threatened the previous case worker, which had resulted in Mother being charged with aggravated menacing.

**{¶ 13}** Croom testified that case plan services for Mother were parenting, mental health, basic needs, and domestic violence.

**{¶ 14}** Mother was referred for mental health counseling at Ohio Guidestone. She did not have a counselor during the summer because hers was on maternity leave. At the time of trial, Mother had recently reengaged in counseling.

**{¶ 15}** Croom testified that Mother completed domestic violence classes but did not complete the parenting component of her case plan. Croom agreed that Mother's visits with the children had gotten better and that Mother began to bring food and activities for the children. Croom testified that during the visits, the children would run around and climb on tables and chairs and that Mother was often on the phone with friends and family, sometimes involving the children, but sometimes having her own conversations.

**{¶ 16}** Croom testified that she had inspected Mother's home via Zoom, but was not permitted to do an in-person visit because of Mother's behavior to the prior case worker.

**{¶ 17}** E.G. is in counseling at Ohio Guidestone. He is developmentally delayed, has an IEP for school, and is in speech therapy. During visits, E.G. often cries, screams, and asks to return to his foster home. The GAL noted that E.G. has PTSD and separation anxiety.

**{¶ 18}** Au.M., Z.G., and Am.M. are also in counseling. Au.M. has made allegations of inappropriate sexual contact. Au.M. and Z.M. enjoy being with Mother, while Z.G. often tells Mother that she is not his mother.

{¶ 19} With the exception of Am.M. and Z.M., the children are in different foster homes because the foster parents cannot handle all of the behavioral issues.

{¶ 20} Croom testified that the agency sought permanent custody because Mother has not actually benefitted or shown actual changes needed to effectively parent the children.

{¶ 21} The court also heard from the guardian ad litem, who recommended that permanent custody be awarded to the agency. The GAL wrote in his report that he was concerned about Mother's ability to care for six young children by herself without any support. He noted her anger-management issues and parenting deficiencies and that Mother has expressed that she will not take any further anger management classes. He opined that the children are in need of a permanent home, which can only be accomplished by granting permanent custody.

{¶ 22} The motions were granted; Mother's parental rights were terminated, and permanent custody was granted to the agency.

## **II. Law and Analysis**

### **A. *Anders* Standard**

{¶ 23} *Anders* outlines the procedure that counsel must follow to withdraw due to the lack of any meritorious grounds for appeal. *Anders*, 386 U.S. at 744, 87 S.Ct. 1396, 18 L.Ed.2d 493. In *Anders*, the United States Supreme Court held that if appointed counsel, after a conscientious examination of the case, determines an appeal to be wholly frivolous, he or she should advise the court of that fact and request permission to withdraw. *Id.* This request, however, must be accompanied

by a brief identifying anything in the record that could arguably support the appeal. *Id.* Counsel must also provide the client with a copy of the brief and allow the client sufficient time to file his or her own brief. *Id.*

{¶ 24} Once the appellant’s counsel satisfies these requirements, this court must fully examine the proceedings below to determine if any arguably meritorious issues exist. *Id.* If the court determines that the appeal is wholly frivolous, the court may grant counsel’s request to withdraw and dismiss the appeal. *Id.*; *see also State v. Sims*, 8th Dist. Cuyahoga No. 107724, 2019-Ohio-4975, ¶ 7-9.

{¶ 25} Although *Anders* arose in a criminal context, this court has applied *Anders* in appeals involving the termination of parental rights. *In re J.L.*, 8th Dist. Cuyahoga No. 109626, 2020-Ohio-5254, ¶ 35, citing *In re A.M.*, 8th Dist. Cuyahoga No. 106789, 2018-Ohio-3186, ¶ 11; *In re C.S.*, 8th Dist. Cuyahoga No. 105700, 2017-Ohio-8664, ¶ 13.

Previously, former Loc.App.R. 16(C) set forth the specific procedure governing *Anders* briefs and motions to withdraw followed by this court. That rule was amended on February 1, 2019, and no longer includes any procedure for the filing of *Anders* briefs. However, as this court has previously stated, “the absence of a local rule governing *Anders* briefs does not prevent this court from accepting these briefs nor from following the procedure the United States Supreme Court outlined in *Anders*.” *Sims* at ¶ 7-14 (discussing “the duties of appellate counsel when filing an *Anders* brief and our duties when ruling on counsel’s motion to withdraw on the grounds that the appeal would be frivolous” even in the absence of former Loc.App.R. 16(C), different Ohio appellate courts’ views on *Anders* briefs and this court’s decision that “until the Ohio Supreme Court resolves the split among the Ohio Appellate Districts regarding the application of *Anders* \* \* \* we will continue to adhere to the procedures outlined in *Anders* pertaining to both counsel and the court when appointed appellate counsel files a motion to withdraw because an appeal would be wholly frivolous”); *see*

also *State v. Lariche*, 8th Dist. Cuyahoga No. 108512, 2020-Ohio-804, ¶ 7.

*Id.* at ¶ 36.

{¶ 26} In the instant matter, Mother’s appointed counsel set forth a detailed analysis of the record and the controlling law. Counsel noted that the juvenile court fulfilled the statutory requirements of R.C. 2151.414(E) and asserted that

[t]his is a very sad case. Mother has had six (6) children, five (5) are which are the subject of this Appeal. Only two (2) of the children are placed together. As they get older, the children will probably not have visitation. Mother indicates that she is overwhelmed at visits. She did not rise to the occasion and engage in the services in a manner which showed she was learning how to parent, how to nurture [sic] how to communicate with her children. According to the Guardian ad litem Report, she was terminated from probation on May 3, 2022 and picked up a new charge on June 13, 2022.

Indeed, she cannot even be present for a home inspection which she scheduled with the social worker.

The trial court appropriately granted permanent custody of the five (5) children.

### **B. Independent Review**

{¶ 27} The right to raise one’s own child is “an essential and basic civil right.” *In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, ¶ 67, quoting *In re Hayes*, 79 Ohio St.3d 46, 48, 679 N.E.2d 680 (1997); see also *In re Murray*, 52 Ohio St.3d 155, 156, 556 N.E.2d 1169 (1990), quoting *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (a parent has a “fundamental liberty interest’ in the care, custody, and management” of his or her child). However, this right is not absolute. It is “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).

{¶ 28} Because termination of parental rights is “the family law equivalent of the death penalty in a criminal case,” *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14, it is “an alternative [of] last resort.” *In re Gill*, 8th Dist. Cuyahoga No. 79640, 2002-Ohio-3242, ¶ 21. It is, however, “sanctioned when necessary for the welfare of a child.” *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 7, citing *In re Wise*, 96 Ohio App.3d 619, 624, 645 N.E.2d 812 (9th Dist.1994). “All children have the right, if possible, to parenting from either natural or adoptive parents which provides support, care, discipline, protection and motivation.” *In re J.B.* at ¶ 66, quoting *In re Hitchcock*, 120 Ohio App.3d 88, 102, 696 N.E.2d 1090 (8th Dist.1996). Where parental rights are terminated, the goal is to create “a more stable life for the dependent children” and to “facilitate adoption to foster permanency for children.” *In re N.B.* at ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, 5 (Aug. 1, 1986).

{¶ 29} Before a juvenile court can terminate parental rights and grant permanent custody of a child to CCDCFS, it must satisfy the two-prong test set forth in R.C. 2151.414. First, the juvenile court must find by clear and convincing evidence

that one of the following conditions set forth in R.C. 2151.414(B)(1)(a) through (e) exists:

(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.

**{¶ 30}** Only one of the factors must be present for the first prong of the permanent custody analysis to be satisfied. *In re S.S.*, 8th Dist. Cuyahoga No. 109356, 2020-Ohio-3039, ¶ 28, citing *In re L.W.*, 8th Dist. Cuyahoga No. 104881, 2017-Ohio-657, ¶ 28.

**{¶ 31}** In this matter, the juvenile court found that the children had been in temporary custody of the agency for twelve or more months of a consecutive twenty-two-month period.

**{¶ 32}** Our review of the record reveals that the children have been in agency custody since October 27, 2021. At the time of trial on November 17, 2022, the children had therefore been in custody for nearly thirteen months. Thus, the first prong was supported by competent and credible evidence. Finding no error with the juvenile court's determination under the first prong, we consider the court's finding under the second prong.

**{¶ 33}** The juvenile court must find by clear and convincing evidence that granting permanent custody to the agency is in the best interest of the child. R.C. 2151.414(B)(1). "Clear and convincing evidence" is that measure or degree of proof that "produce[s] in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus; *In re M.S.*, 2015-Ohio-1028, at ¶ 8. A juvenile court's decision to grant permanent custody will not be reversed as being against the manifest weight of the evidence "if the record contains some competent, credible evidence from which the court could have found that the essential statutory elements for permanent custody had been established by clear and convincing evidence." *In re A.P.*, 8th Dist. Cuyahoga No. 104130, 2016-Ohio-5849, ¶ 16.

**{¶ 34}** In determining the best interest of a child at a hearing held pursuant to R.C. 2151.414(A)(1), the juvenile court must 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 \* \* \*;

(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).

**{¶ 35}** A juvenile court is required to consider each relevant factor under R.C. 2151.414(D)(1) in making a determination regarding permanent custody, but "there is not one element that is given greater weight than the others pursuant to the statute." *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. This court has previously stated that only one of these enumerated factors needs to be resolved in favor of the award of permanent custody. *In re Moore*, 8th Dist. Cuyahoga No. 76942, 2000 Ohio App. LEXIS 3958 (Aug. 31, 2000), citing *In re Shaeffer Children*, 85 Ohio App.3d 683, 621 N.E.2d 426 (3d Dist.1993). Further,

the Supreme Court of Ohio has clarified that “R.C. 2151.414(D)(1) does not require a juvenile court to expressly discuss each of the best-interest factors in R.C. 2151.414(D)(1)(a) through (e). Consideration is all the statute requires.” *In re A.M.*, 166 Ohio St.3d 127, 2020-Ohio-5102, 184 N.E.3d 1, ¶ 31.

**{¶ 36}** Here, the juvenile court stated that it considered the interaction and interrelationship of the children with the children’s parents; the ages of the children; the custodial history of the children; the children’s need for a legally secure permanent placement; and whether that type of placement can be achieved without a grant of permanent custody; and the report of the GAL.

**{¶ 37}** The court further noted the following:

**\*\*Mother has failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside of the children’s home.**

**\*\*There was no evidence of progress in addressing Mother’s mental health needs surrounding depression, anger management, and overall emotional regulations around others and her children.**

**\*\*Despite reasonable efforts through parenting education along with the support of a parenting coach, Mother has not benefited from these services to manage the care and needs of the children.**

**\*\*Mother was unable to provide snacks or activities for the children or engage with them when prompted to do so by the parenting coach.**

**{¶ 38}** The record before us indicates that the juvenile court satisfied the statutory requirements herein. We find that the juvenile court’s termination of parental rights and award of permanent custody to the Agency was supported by clear and convincing evidence. The children could not be placed with Mother, who

failed to engage with the objectives of her case plan and thus failed to remedy the conditions that caused the children's removal.

{¶ 39} Consequently, following a thorough, independent examination of the record as required by *Anders*, we conclude that the juvenile court did not abuse its discretion in determining that an award of permanent custody was in the children's best interest and did not err when it awarded permanent custody to the Agency.

{¶ 40} Accordingly, we agree that there is no merit to the appeal and that this appeal is wholly frivolous. We grant counsel's motion to withdraw and dismiss this appeal.

{¶ 41} Accordingly, the appeal is dismissed.

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

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

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FRANK DANIEL CELEBREZZE, III, PRESIDING JUDGE

MARY EILEEN KILBANE, J., and  
EILEEN T. GALLAGHER, J., CONCUR