

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

IN RE M.A., ET AL., :  
 : No. 112411  
Minor Children :  
 :  
[Appeal by D.P., Mother] :

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: September 11, 2023**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case Nos. AD-18-915161, AD-18-915162, AD-18-915163,  
AD-20-906518

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***Appearances:***

Edward F. Borkowski, Jr., *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Joseph C. Young, Assistant Prosecuting Attorney, *for appellee* Cuyahoga County Division of Children and Family Services.

MICHAEL JOHN RYAN, J.:

{¶ 1} Appellant-mother D.P. (“Mother”) appeals from the decision of the Juvenile Division of the Cuyahoga County Court of Common Pleas (the “juvenile court”) that granted permanent custody of her four minor children to appellee, the

Cuyahoga County Division of Children and Family Services (“CCDCFS” or “the agency”). For the reasons that follow, we affirm.

### **Factual Background and Procedural History**

{¶ 2} Mother has four children: M.A., born February 2014; A.F., born September 2017; R.P., born November 2018; and De.P., born January 2020. On December 12, 2018, CCDCFS filed a complaint for abuse, dependency, and protective supervision. The complaint alleged that there was a protection order in place against A.F.’s father, D.F., which was violated when D.F. went to Mother’s residence, where Mother and the children were present. The complaint also alleged that Mother had tested positive for marijuana when she delivered R.P. in November 2018, that she had a substance-abuse problem and mental-health issues, which interfered with her ability to provide appropriate care for the children, and that Mother had not been taking her prescribed medications.<sup>1</sup>

{¶ 3} The agency filed a case plan that required Mother to complete a domestic-violence assessment and comply with any additional recommended services; have no contact with D.F. pursuant to the protection order she obtained against him; follow up with psychiatric services, comply with any subsequent treatment recommendations and take any prescribed medications; complete substance-abuse treatment and aftercare and submit to random drug screens and

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<sup>1</sup> M.A.’s father is deceased. D.F. is the father of A.F. and De.P. Paternity has not been established for R.P. The children’s fathers are not parties to this appeal.

obtain early childhood mental health services for M.A. The children were placed under the protective supervision of the agency in February 2019.

{¶ 4} On August 3, 2020, the agency moved for immediate custody of the children and to modify protective supervision to temporary custody as to the three older children and, as to De.P., filed a complaint for abuse, neglect, and dependency and for temporary custody. The agency alleged that, on July 31, 2020, the children were found home alone at Mother's home without adequate supervision, requiring police intervention; that "[M]other's home was observed to be in a state of disarray with clothing scattered about, dirty dishes and food on the floor, and an infestation of cockroaches"; that the children were "dressed in inadequate clothing"; that A.F. and R.P. were "in soiled diapers"; and that A.F. had "injuries to her vaginal area" and "lice eggs in her hair." The agency further indicated that, as a result of the incident, a criminal investigation was pending for child endangering. Over Mother's objection, the children were committed to the emergency custody of the agency.

{¶ 5} The agency filed an amended case plan, adding visitation for Mother and additional services, including requiring Mother to complete parenting classes and to demonstrate that she could meet the children's basic needs, provide a "sanitary home" on a consistent basis, and provide appropriate supervision at all times.

{¶ 6} On November 3, 2020, De.P. was adjudicated abused, neglected, and dependent and all four children were committed to the temporary custody of the agency.

{¶ 7} On December 17, 2021, the agency filed a motion to modify temporary custody to permanent custody. The agency argued that it should be granted permanent custody of the children pursuant to R.C. 2151.414(B)(1)(d) and the best interest of the children under R.C. 2151.414(D)(1)(a)-(e) because (1) M.A., A.F., and R.P. had been previously placed under protective supervision of the agency and all the children had been in agency custody since August 2020; (2) Mother had failed to maintain her sobriety despite participation in drug treatment; (3) Mother had failed to “consistently comply with recommended mental health services or to demonstrate a benefit from same”; and (4) Mother had completed a parenting class but had failed to engage in recommended one-on-one visitation coaching and had “failed to demonstrate a benefit from the parenting class she completed.”

{¶ 8} On May 16, 2022, the agency moved to modify its motion for permanent custody to a second extension of temporary custody, indicating that Mother had addressed mental health and substance abuse through treatment, completed parenting classes, and maintained appropriate housing for more than a year but had not yet had an opportunity for overnight or extended visits with the children to demonstrate her parenting abilities. The agency indicated that a second extension of temporary custody would give Mother “more parenting time.” The agency stated that it intended to reunify the children with Mother following the requested extension for temporary custody “if [M]other achieves the remaining objectives of the case plan: continued sobriety, continued participation in mental

health services, and achieving successful overnight and extended visits.” The juvenile court granted the second extension of temporary custody.

{¶ 9} Unfortunately, in June 2022, shortly after the court granted the second extension, Mother tested positive for cocaine and marijuana and was terminated from her drug treatment aftercare program. On July 21, 2022, nine days before the sunset date on the agency’s temporary custody, the agency filed a motion to modify temporary custody to permanent custody, pursuant to R.C. 2151.414(B)(1)(d) and 2151.414(D)(1)(a)-(e), for the same reasons set forth in its first motion to modify temporary custody to permanent custody. The children’s guardian ad litem (“GAL”) noted in his October 5, 2022 report that although Mother appeared to be making “a final effort to regain custody of her children” she had not been able to stay sober for an extended period of time or have extended and overnight visits with the children.

### **Permanent Custody Hearing**

{¶ 10} The juvenile court conducted a hearing on the agency’s motions for permanent custody over three days in December 2022 and January 2023. At the time of the hearing, M.A. was eight, A.F. was five, R.P. was four, and De.P. was two.

{¶ 11} At the beginning of the hearing, Mother’s counsel requested stricken alleged hearsay statements in the GAL’s written report and requested that the agency be precluded from offering any testimony regarding drug-screen results because certified copies had not been provided to him. The juvenile court indicated that it would address the issues as they arose during the hearing and subsequently denied the motion.

## **Testimony of CCDCFS Case Worker**

{¶ 12} Jamila Baugh, an ongoing case worker for CCDCFS, testified that the three older children had been involved with the agency since 2018 and that she was assigned to the case in January 2019.

{¶ 13} Baugh testified that the agency became involved with the family due to concerns regarding Mother exposing the children to domestic violence, her mental health, her substance abuse, and M.A.'s need for early childhood mental health services to address inappropriate behaviors, including being physically aggressive and "sexually acting out" at school. Baugh stated that the children remained in Mother's custody, under protective supervision of the agency, until July 31, 2020. Following the July 31, 2020 incident, where the police found the young children in Mother's home alone and unsupervised, the agency filed a motion to modify protective supervision to temporary custody and obtained temporary custody of the children.

{¶ 14} Baugh testified that the initial case plan required Mother to engage in substance-abuse services, mental-health services, services to address domestic violence between Mother and D.F., and early childhood mental health services for M.A. Following the July 31, 2020 incident, the agency amended the case plan to add parenting services and basic needs/housing requirements.

{¶ 15} Baugh stated that Mother was referred for substance-abuse services and was required to submit to random drug screens. Mother completed a substance-abuse assessment in December 2018 and was referred to an intensive

outpatient program (“IOP”). Baugh stated that Mother did not complete IOP but took regular drug screens: Mother had two positive drug screens in January and February 2019 for marijuana but her remaining drugs screens in 2019 were negative. Baugh testified that because Mother’s remaining 2019 drug test were negative, she was not asked to take another drug test until August 2020.

{¶ 16} Following the removal of the children from Mother’s care on July 31, 2020, Mother was, once again, referred for substance-abuse services. Despite repeated requests that Mother submit to a drug screen, Mother refused. According to Baugh, Mother told her she was “self-medicating” with marijuana and wanted to wait until she “could get herself clean” so “the screens would be negative.” Mother took a drug test in May 2021, which was negative.

{¶ 17} The November 2021 drug screens were positive for cocaine and marijuana. Baugh stated that she discussed the positive test results with Mother and she denied using cocaine, claiming that “must have had some bad marijuana because she would never willingly do cocaine.” Mother tested positive for marijuana in January 2022 and was again referred to IOP. She completed the program in March 2022, tested negative, and began aftercare. Mother did not consistently attend aftercare sessions. The provider terminated Mother’s aftercare after she tested positive for cocaine in June 2022. Mother again denied using cocaine, stating that she had been “around \* \* \* family members” and that the positive test result was due to “residue that she must have touched.”

**{¶ 18}** Mother completed another substance-abuse assessment and began a third IOP program in July 2022.

**{¶ 19}** In October 2022, Mother tested positive via a urine screen for marijuana and via a hair screen for marijuana and cocaine. Baugh explained that a hair screen “goes back much further” than a urine screen, i.e., detecting drug use “anywhere from three to six months” back.

**{¶ 20}** Baugh indicated that Mother had never admitted to using marijuana in the presence of her children, she never observed Mother to be “under the influence,” and that she had never received any reports of Mother being “under the influence” during her parenting time with the children. However, the GAL reported that M.A. had disclosed to his foster parents “seeing Mother engage in behavior consistent with drug use \* \* \* [t]he drug use allegedly happened shortly before M.A. and his siblings were removed from the home.” GAL report (July 18, 2022).

**{¶ 21}** Baugh stated that she did not personally view Mother’s home on July 31, 2020, when the children were taken into custody. As to Mother’s current housing, it is “livable” and has sufficient space for all the children; has food and working utilities; and has furniture, toys, and educational materials for the children. Mother also had stable, full-time employment and was able to meet the children’s basic needs.

**{¶ 22}** With respect to mental health services, Baugh indicated that Mother had been engaged in mental health services when the agency first became involved with the family in 2018 and that the agency thereafter referred Mother to another



provider for mental-health services. Mother completed a mental health and medication assessment in early 2019 and, although Mother was “not always consistent with receiving mental health services” or with taking her medication, had been continuously engaged in mental-health services since that time.

**{¶ 23}** With respect to domestic-violence services, Baugh stated that Mother was referred for domestic violence classes in 2019 and completed them in March 2020. In December 2021, Mother was the victim of another domestic violence incident with D.F. Mother reported the incident to police and obtained an ex parte protection order against D.F. She also took another domestic violence class. Although domestic violence was no longer part of the case plan, Baugh testified that domestic violence was still a “concern” for the agency. The GAL also reported that there were lingering concerns regarding domestic violence after M.A. disclosed that he had also been physically abused by D.F. and it was thought that Mother had had recent contact with D.F., despite the restraining order she had against him.

**{¶ 24}** Mother completed parenting classes in 2022. With respect to parenting, Baugh acknowledged that Mother had been an active participant in her parenting classes and had tried to incorporate the parenting skills she had learned during the classes into her visitation. Baugh stated that although Mother was “definitely at a stage” where she should have had more than four hours of visitation with her children, the agency had not given her an opportunity to extend her parenting time. Mother tested positive shortly after the agency was granted a second

extension of temporary custody, so the agency was not able to set up the extended visitation schedule.

**{¶ 25}** With respect to visitation, Mother has had unsupervised visitation with the children twice a month for four hours each visit. Mother missed “over ten plus visits,” only half of which were for “a good reason,” but had not missed a visit since August 2022. Baugh acknowledged that Mother lived a great distance from the children and had transportation and other barriers but still made an effort to see her children.

**{¶ 26}** Baugh testified that the children have a good relationship with their foster parents and enjoy spending time with them, that the foster parents are “invested” in the children, and that the children were doing well in their care. Baugh stated that she did not anticipate any changes in placement if permanent custody were granted and that the concurrent permanency plan, if the children were not reunified with Mother, was adoption.

**{¶ 27}** Baugh stated that, in her view, based on Mother’s history of positive drug screens, she did not believe Mother had benefited from substance-abuse services and was not “sober enough to be a sober caregiver to her children.” Baugh claimed that, despite her progress, Mother had not remedied the conditions that led to the removal of her children and that permanent custody was in the children’s best interest because the children needed a safe, secure, and stable home.

## **Drug Screen Results**

**{¶ 28}** Mother objected to Baugh’s testimony regarding drug screens, arguing that evidence of the screens should not be admitted without certified copies. Mother argued that Baugh’s testimony on the first day of the hearing “about drug screens that lack a certification” constituted inadmissible “hearsay statements” and should be stricken. Mother asserted that “to be admissible evidence, the drug screens would need a certification so that they can be admissible under the business record exemption provided by Evidence Rule 803(6).”

**{¶ 29}** In response, the agency provided copies of certain drug screen results and related records, certified as business records by a representative of the testing business, to Mother’s counsel and sought to admit the records into evidence. Mother objected to the admission of the drug-screen results on the grounds that they had not been produced prior to the hearing and because several of the pages listed a birth date that was not Mother’s birth date. The juvenile court struck three pages from the exhibit that referenced an incorrect birth date and allowed the admission of the rest of the exhibit. The exhibit consisted of documents related to a November 23, 2021 hair screen that was positive for cocaine and marijuana, a January 24, 2022 urine screen that was positive for marijuana, an October 11, 2022 urine screen that was positive for marijuana, and an October 11, 2022 hair screen that was positive for marijuana and cocaine. The trial court overruled Mother’s objection and admitted the exhibit as amended.

## **Mother's Evidence**

**{¶ 30}** Mother introduced several exhibits that were admitted into evidence without objection: (1) a certificate of completion a domestic violence prevention program dated March 2, 2022; (2) a certificate of completion from a parenting program dated January 27, 2022; (3) an unsigned certificate of completion for nonintensive outpatient drug-treatment program dated January 27, 2023; and (4) a copy of a letter from one of her service providers.

## **GAL's Recommendation**

**{¶ 31}** On October 5, 2022, the children's GAL submitted his written report, recommending that permanent custody of the children be granted to the agency. He supplemented his written report orally at the hearing.

**{¶ 32}** According to report, the children had been in their current placement since August 2020. The GAL reported that the children "love" the town they live in, are "well adjusted," and are doing "very well." The GAL reported that M.A. was "thriv[ing]" in the foster home, that he had met or exceeded his goals on his Individualized Education Plan, and that his behavior in the home had "markedly improved." The younger three children were also "doing pretty well" in their foster placement. He stated that A.F. had mastered several skills, was doing everything she needed to do in kindergarten, and "loves it out there." He also stated that R.P. had some issues with his hearing for which treatment was being sought, a prior sleeping issue was "resolving itself," and both R.P. and De.P. were attending

preschool and “progressing well in everything.” The GAL indicated that the foster family was interested in adopting all four children.

**{¶ 33}** The GAL reported that although Mother had missed several visits in early 2022, she had not missed a visit since August 2022. He indicated that M.A. became angry with Mother when she missed a visit in June 2022 and thereafter refused to attend several visits with Mother. The GAL stated that M.A. “absolutely” “loves his mother very much” but “has struggled with emotional issues regarding mom” and will “shut down” when there is conflict. He indicated that, in July 2022, M.A. had told him that before he had been removed from Mother’s care, D.F. had been physically abusive towards him and that “he didn’t always feel safe being in Mother’s home.” The GAL reported that M.A. had told him that he wished that Mother could “come and live with them” “so they could all be a family.” The GAL stated that the other children were “really too young to express their wishes to him.”

**{¶ 34}** The GAL opined that, “with everything that’s gone on with the drug tests and everything,” it was in the children’s best interest to grant permanent custody to the agency because “the children need and deserve permanency.” Mother has “a pattern of doing things at or close to the last minute,” “a history of shutting down when she gets depressed,” and “functions better as a person and a parent” when taking her prescribed medications. He acknowledged Mother’s compliance with case-plan services but stated that Mother’s July 2022 positive drug test for

cocaine was “a major setback” and that Mother had not yet had overnight visits with the children.<sup>2</sup>

{¶ 35} At the hearing, the GAL supplemented his report with testimony. He testified that it was in M.A.’s best interest to remain in his current placement where he is “getting all kinds of help that he needs \* \* \* and he’s done very, very well \* \* \* . He’s a much different kid than he was a year and half ago.” The GAL acknowledged the other children were too young to express their wishes but testified that A.K “loves” her current placement and is very bright and doing everything she needs to do at school and the youngest two children are also progressing. The GAL kept his recommendation of permanent custody to the agency as in the children’s best interest.

### **The Juvenile Court’s Decision**

{¶ 36} The court granted the agency’s motion for permanent custody, terminating Mother’s parental rights. The court found that the children had been in the temporary custody of CCDCFS for 12 or more months of a consecutive 22-month period; reasonable efforts had been made to prevent the removal of the children from the home, to return the children to the home, and to finalize the permanency plan of reunification; that the children could not be placed with one of their parents within a reasonable time or should not be placed with either parent; and that it was in the children’s best interest to be placed in the permanent custody of the agency.

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<sup>2</sup> The GAL final report is dated October 5, 2022. Mother had another positive screen on October 11, 2022, testing positive for marijuana and cocaine again.

## Assignments of Error

{¶ 37} Mother appealed, raising the following two assignments of error for review:

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

II: The trial court erred by permitting inadmissible hearsay testimony.

## Law and Analysis

### Permanent Custody – Factors

{¶ 38} In her first assignment of error, Mother contends that the juvenile court abused its discretion in terminating her parental rights and granting permanent custody of her children to the agency because its decision was against the manifest weight of the evidence.

{¶ 39} 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, 157, 556 N.E.2d 1169 (1990) (a parent has a “fundamental liberty interest’ in the care, custody, and management” of his or her child), quoting *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). 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).

{¶ 40} Pursuant to R.C. 2151.414(B)(1), a juvenile court may grant a public children services agency's motion for permanent custody if it determines, by clear and convincing evidence, that permanent custody is in the best interest of the child and, as is pertinent to this appeal:

(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 \* \* \*.

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

{¶ 41} This court will not reverse a permanent-custody decision if there is "competent and credible evidence" in the record from which the trial court could have found that the statutory elements for permanent custody were established by clear and convincing evidence. *In re G.W.*, 8th Dist. Cuyahoga No. 107512, 2019-Ohio-1533, ¶ 62, citing *In re A.P.*, 8th Dist. Cuyahoga No. 104130, 2016-Ohio-5849, ¶ 16. In other words, the trial court determines whether there is clear and convincing evidence to support the statutory factors for permanent custody (R.C. 2151.414(B)(1)) and this court determines whether there is competent and credible evidence in the record to support the trial court's findings. The appellate court cannot overturn a trial court's finding "if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements for a termination of parental rights have been established." *In re Adkins*, 5th Dist. Tuscarawas Nos. 2005 AP06-0044 and 2005 AP07-0049, 2006-Ohio-431, ¶ 17, citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118, paragraph three of the syllabus.



{¶ 42} In this case, the agency moved for permanent custody of the children pursuant to R.C. 2151.414(B)(1)(d) and 2151.414(D)(1).<sup>3</sup> Mother contends that the juvenile court abused its discretion in determining that it was in her children's best interest to grant permanent custody to the agency and terminate her parental rights; she does not dispute that CCDCFS met its burden of establishing that one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) existed as to the children.

{¶ 43} Although Mother claims that the children can be placed with her within a reasonable time, because the time requirements under R.C. 2151.414(B)(1)(d) were satisfied, it was unnecessary for the court to determine whether any additional factor under R.C. 2151.414(B)(1) was applicable to the circumstances presented in this case. *In re An.M.*, 8th Dist. Cuyahoga No. 111368, 2022-Ohio-2873, ¶ 33. The trial court did, however, make the additional finding that the children could not be placed with one of their parents within a reasonable time or should not be placed with either parent. The juvenile court found, as to each child, that R.C. 2151.414(E)(1) and (2) applied:

Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the mother and father have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.

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<sup>3</sup> In addition to the best interest factors identified in R.C. 2151.414(D)(1), R.C. 2151.414(D)(2) sets forth a list of circumstances that, if all are found to exist, mandates a finding that permanent custody is in the best interest of the child. Although the children appear to qualify under R.C. 2151.414(D)(2), the agency did not move for permanent custody under that provision; therefore, it does not warrant further discussion.

Mother has a chronic mental illness and chemical dependency that is so severe that it makes the parent unable to provide an adequate, permanent home for the child at the present time and, as anticipated, within one (1) year after the Court holds a hearing in this matter.

### **Best-Interest Determination**

{¶ 44} R.C. 2151.414(D)(1) states that in determining whether permanent custody is in a child’s best interest, the court “shall consider all relevant factors,” including, but not limited to, the following:

(a) The interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;

(b) The wishes of the child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;

(c) The custodial history of the child \* \* \*;

(d) The child’s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; [and]

(e) Whether any of the factors in [R.C. 2151.414(E)(7) to (11)] apply in relation to the parents and child.<sup>[4]</sup>

{¶ 45} The best-interest determination focuses on the child, not the parent.

*In re N.B.*, 8th Dist. Cuyahoga No. 101390, 2015-Ohio-314, at ¶ 59. Under R.C. 2151.414(D)(1), the juvenile court weighs multiple factors to determine whether granting an agency permanent custody of a child is in that child’s best interest. A juvenile court has considerable discretion in weighing these factors. Although the juvenile court is required to consider each statutory factor in determining what is in

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<sup>4</sup> The parties have not claimed that any of the (e) factors apply.

a child's best interest under R.C. 2151.414(D)(1), no one factor is required to be given greater weight than the others. *In re T.H.*, 8th Dist. Cuyahoga No. 100852, 2014-Ohio-2985, ¶ 23, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006-Ohio-5513, 857 N.E.2d 532, ¶ 56. Further, only one of the factors need be resolved in favor of permanent custody to terminate parental rights. *In re J.C.-A*, 8th Dist. Cuyahoga No. 109480, 2020-Ohio-5336, ¶ 80.

{¶ 46} We review a juvenile court's determination of a child's best interest under R.C. 2151.414(D)(1) for abuse of discretion. *In re P.B.*, 8th Dist. Cuyahoga Nos. 109518 and 109519, 2020-Ohio-4471, ¶ 76, citing *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47; *see also In re J.B.*, 2013-Ohio-1704, ¶ 97 (“[T]he discretion that a trial court has in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned.”). A juvenile court abuses its discretion where its decision is unreasonable, arbitrary, or unconscionable. *In re A.A.-V.*, 8th Dist. Cuyahoga No. 111257, 2022-Ohio-1947, ¶ 33, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 47} The juvenile court identified, as to each child, the factors it considered in determining that an award of permanent custody to the agency was in the child's best interest:

Upon considering the interaction and interrelationship of the child with the child's parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private child placing agency under one (1) or more separate

orders of disposition for twelve (12) or more months of a consecutive twenty-two (22) month period; 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; and, the report of the Guardian ad Litem, the Court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the child and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

{¶ 48} The juvenile court did not explain its evaluation of the R.C. 2151.414(D)(1)(a)-(d) factors or specifically indicate upon which factor or factors it concluded that an award of permanent custody was in the children's best interest. However, "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.

{¶ 49} Mother argues that "the evidence does not clearly and convincingly support the termination of [her] parental rights" and that the juvenile court, therefore, abused its discretion in determining that an award of permanent custody to the agency was in the children's best interest. According to Mother, the evidence shows that the children "love spending time with [Mother]" and that Mother had made "progress \* \* \* in establishing meaningful, lasting bonds with her children." She contends that "[t]he record is lacking in evidence that the children wanted to be placed with anyone other than their mother" and the fact that the children were doing well in their foster placement and had a good relationship with their foster parents did not support a finding in favor of permanent custody. Although Mother

acknowledges that the children were in agency custody for a substantial period of time, she asserts that much of the time the children were out of her custody, “COVID-related restrictions and lockdowns were in full effect,” “hinder[ing]” “her ability to engage as fully with the case plan services as she otherwise would have liked.”

{¶ 50} With respect to R.C. 2151.414(D)(1)(d) — the children’s need for a secure permanent placement and whether that type of placement could be achieved without permanent custody — Mother argues that the evidence showed that she had made “significant progress” in her case plan objectives and “established that the children’s need for secure placement could have been achieved without a granting of permanent custody.” Mother points out that (1) she had engaged in substance abuse services and “demonstrated a benefit by way of periods of sobriety,” that there was no evidence Mother had ever exposed her children to her drug use or was ever impaired while they were in her care; (2) she had engaged in mental-health services and demonstrated a benefit from such services as demonstrated by her provider’s discontinuation of her depression and anxiety medication; (3) domestic-violence services were no longer part of her case plan; (4) she had completed and benefited from parenting classes; (5) she had addressed the issues with her housing; and (6) she was employed and financially able to meet her children’s basic needs. Mother acknowledged that she “may have suffered setbacks with respect to drug use” and “may not have performed flawlessly” while “under the Agency’s scrutiny” but

maintains that “[t]he record \* \* \* does not support the position that she would be unable to properly care for her children.”

{¶ 51} The agency asserts that the record supports the determination that permanent custody was in the children’s best interest under R.C. 2151.414(D)(1) because (1) Mother “missed a number of her scheduled visits,” which was “devastating to her oldest child”; (2) the GAL had concluded that permanent custody was in the children’s best interest; (3) the children “could not be maintained in temporary custody as the allowable timeframe had lapsed” under R.C. 2141.415(D)(4) and (4) the juvenile court was precluded from returning the children to Mother based on its finding that the children could not or should not be placed with either of their parents within a reasonable time.

#### **R.C. 2151.414(D)(1)(a) – Relationships**

{¶ 52} Considering the factors under R.C. 2151.414(D)(1)(a), we note that there was evidence presented of a bond between the Mother and the children. M.A., the oldest child, consistently expressed a desire to be reunited with Mother. This court, however, has recognized that the best interest of the child requires permanency and a safe, secure environment, regardless of the strength of the child’s relationship with the biological parent. *In re K.T.*, 8th Dist. Cuyahoga No. 111996, 2023-Ohio-1288, ¶ 57, citing *In re K.M.*, 8th Dist. Cuyahoga No. 95374, 2011-Ohio-349, ¶ 23. The GAL noted in his October 5, 2022 report that M.A. stated he did not always feel safe in Mother’s home and, most recently, his desire for reunification with Mother was expressed as a wish for Mother to come live with him (in his foster

home) so they could “all be a family.” With respect to the relationship of the three younger children with Mother, the record is less clear, given their ages.

{¶ 53} Evidence was also presented that the children have a strong bond with their foster family with whom they have resided since a week after being placed in agency custody in August 2020. The GAL reported that the children “love” the town they live in, are “well adjusted,” and are doing “very well.” The three younger children are too young to express their wishes, but the GAL, who had been involved with the family since 2018, concluded that permanent custody was in the children’s best interest.

**R.C. 2151.414(D)(1)(c)-(d) — Custodial History and Need for Permanency**

{¶ 54} Additionally, the court considered the custodial history of the children and their need for a legally secure placement and whether that type of placement could be achieved without a grant of permanent custody. The children have been in agency custody since August 2020. The juvenile court granted a second extension of temporary custody in May 2022. No other family members have filed motions for legal custody, and the children do not qualify for a permanent planned living arrangement.

{¶ 55} R.C. 2151.415(D)(4) provides:

The court shall not order an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any extensions have been previously ordered pursuant to division (D) of this section.

**{¶ 56}** Based on the length of time the children had been in custody of the agency, another extension of temporary custody was not possible. Thus, unless the children were ready for an immediate return to Mother, the agency had no choice but to file for permanent custody. Because Mother could not show sobriety and had not yet had overnight or extended visitation with her children, the children could not yet be safely returned to Mother. At the time of the permanent custody hearing, Mother had made substantial progress on her case plan; however, there was no evidence that she had remedied the conditions that led to the children's removal.

**{¶ 57}** Mother's last drug test was in October 2022, less than two months before the permanent custody hearing, and Mother tested positive for marijuana and cocaine. Although the record indicates that Mother was to complete an IOP in January 2023, the certificate of completion Mother introduced into evidence at the hearing was for a *non*-intensive outpatient program.<sup>5</sup> The record is devoid of *any* evidence that Mother took drug screens as part of that treatment program, had a negative screen or a drug test after her October 2022 positive test, or was engaged in aftercare.

**{¶ 58}** Mother's history shows an unfortunate inability to maintain sobriety. The record reflects the following:

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<sup>5</sup> Mother submitted into evidence an unsigned certificate of completion from Recovery Resources for a non-intensive outpatient drug treatment program dated the last day of trial, January 27, 2023.



November 18, 2018: Mother tests positive for marijuana. She subsequently tested negative and was sober for the remainder of the year.

January and February 2019: Mother tests positive for marijuana; her drug tests are negative the remainder of the year.

August 2020: Children are removed from Mother's care. Mother refused to submit to drug screens but admitted she was actively using marijuana.

January 2021: CCDCFS refers Mother to IOP.

May 2021: Mother takes her first drug test since 2019 and tests negative.

November 2021: Mother tests positive for marijuana, and, for the first time, cocaine.

January 2022: Mother finally begins IOP, a year after the agency referred her, and tests positive for marijuana.

March 2022: Mother tests negative for drugs.

May 2022: Mother refuses drug test.

June 2022: Mother tests positive for cocaine and is terminated from IOP aftercare.

July 2022: Mother tests negative for drugs.

October 2022: Mother tests positive for cocaine and marijuana.

{¶ 59} Mother tested positive for drugs three times in 2022, twice for cocaine. In the October 5, 2022 GAL report, the GAL noted that the agency decided in April 2022 to “give Mother a final chance” to complete her case plan but Mother subsequently tested positive for drugs, which led to a second filing for permanent custody. The GAL noted that Mother “did not have six months of sobriety,” “at the most, Mother would have approximately four (4) months of sobriety as of the

[October 12, 2022] trial date,” and “[w]hile [Mother] seems to be attempting a final effort to regain custody of her children, she has not been able to stay sober for an extended period of time.” And, again, Mother tested positive shortly after the GAL authored his final report.

{¶ 60} As mentioned, there is also some indication that at least the oldest child was present while Mother abused drugs. M.A. disclosed to his foster parents “seeing Mother engage in behavior consistent with drug use \* \* \* [t]he drug use allegedly happened shortly before M.A. and his siblings were removed from the home.” GAL report (July 18, 2022). Because of her continued drug abuse, Mother had not had overnight or extended visits with her children since their removal from her care. According to Baugh, based on Mother’s history of positive drug screens, she had not benefited from substance-abuse services and was not “sober enough to be a sober caregiver to her children.”

{¶ 61} Mother was referred to drug treatment at least four times, yet has been unable to establish sobriety; therefore, she has not shown that she benefitted from treatment.

{¶ 62} Mother has been involved with the agency since 2018, the children have been in agency custody for over three years, and two of the children have been involved with the agency since birth. During that time, the agency has worked extensively with Mother on her case plan in the hopes of reunifying her with her four young children. It is undisputed that Mother loves her children and has made some real progress on her case plan in certain areas. Mother, however, has failed to

remedy the conditions that led to the removal of the children. She continues to abuse drugs. She admitted to marijuana use but denied any use of cocaine. Her progression from marijuana to cocaine, and denial of its usage despite the positive tests, is especially troubling.

{¶ 63} “A child’s best interests require permanency and a safe and secure environment,” *In re E.W.*, 8th Dist. Cuyahoga Nos. 100473 and 100474, 2014-Ohio-2534, ¶ 29, and that “[t]o protect the child’s interest,” neither the existence of a biological relationship or a “good relationship” is controlling in and of itself. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, ¶ 163, citing *In re T.W.*, 8th Dist. Cuyahoga Nos. 86084, 86109, and 86110, 2005-Ohio-6633, ¶ 15. Preservation of “family unity and blood relationship are vital factors to carefully and fully consider” when determining what is in the best interest of the child. *In re J.F.*, 2018-Ohio-96, 102 N.E.3d 1264, ¶ 65 (8th Dist.); however, what is of the utmost importance is the best interest of the child.

{¶ 64} Although Mother had taken significant steps toward remedying the conditions that caused the children to be removed from the home, she was unable to establish and maintain sobriety. This court has long recognized that “the discretion which the juvenile court enjoys in determining whether an order of permanent custody is in the best interest of a child should be accorded the utmost respect, given the nature of the proceeding and the impact the court’s determination will have on the lives of the parties concerned.” *In re Awkal*, 95 Ohio App.3d 309, 316, 642 N.E.2d 424 (8th Dist.1994). In order for Mother to provide a safe and

stable home for the children, she must be able to establish and maintain sobriety. Notwithstanding Mother's ability to progress on her case plan in other areas, she showed an inability to comply in this main part of her case plan.

{¶ 65} The children deserve a safe and permanent home in which to thrive. There was competent and credible evidence in the record to support the trial court's finding that the agency met its burden in establishing, by clear and convincing evidence, that although given several opportunities, Mother was unable to remedy the conditions that caused the removal of the children.

{¶ 66} The first assignment of error is overruled.

### **Evidence of Drug Screen Results**

{¶ 67} In her second assignment of error, Mother contends that the juvenile court erred in permitting hearsay testimony regarding the results of Mother's drug screens. Mother contends that drug screens did not qualify for admission under Evid.R. 803(6) as a record of regularly recorded business activity.

{¶ 68} The admission or exclusion of evidence, including whether it is inadmissible hearsay, is left to the broad discretion of the trial court. *In re R.H.*, 8th Dist. Cuyahoga No. 111748, 2023-Ohio-78, ¶ 64, citing *Ohio v. Verbanac*, 8th Dist. Cuyahoga No. 111427, 2022-Ohio-3743, 199 N.E.3d 61, ¶ 30. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Evid.R. 801(C). Pursuant to Evid.R. 802, hearsay is inadmissible unless it falls within one of the exceptions listed in Evid.R. 803. *In re R.H.* at ¶ 65, citing *State v. DeMarco*, 31 Ohio St.3d 191, 509 N.E.2d 1256 (1987). Evid.R 803(6) provides an exception to the

hearsay rule for records of regularly conducted business activity as provided by Evid.R. 901 (B)(10). Under Evid.R. 901(B)(10), medical records may be authenticated by “[a]ny method of authentication or identification provided by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio or by other rules prescribed by the Supreme Court.”

{¶ 69} R.C. 2317.422 provides that medical records are self-authenticating if certain conditions are met. R.C. 2317.422 states, in pertinent part:

[T]he records, or copies or photographs of the records, of a hospital, \* \* \* in lieu of the testimony in open court of their custodian, person who made them, or person under whose supervision they were made, may be qualified as authentic evidence if any such person endorses thereon the person’s verified certification identifying such records, giving the mode and time of their preparation, and stating that they were prepared in the usual course of the business of the institution.

{¶ 70} In *In re R.H.*, the appellant argued that the trial court abused its discretion in admitting a copy of drug test results from the same lab, SCT Advantage, arguing that they did not fall under any recognized hearsay exception and the agency should have been required to produce the technician or the person who conducted the tests. *Id.* at ¶ 63. This court disagreed, finding that the records were properly admitted as business records.

{¶ 71} Here, as *In re R.H.*, the test results contained a certificate of medical records signed by an employee of the organization certifying that the attached records were true and authentic copies of the medical records prepared in the usual course of business of that institution. The certification stated, in relevant part:

I \* \* \* certify that the attached documents regarding [Mother] are true, correct and complete reproductions of the original records which are kept in the records file at SCT Medical Clinic. The original records were made in the regular course of business, and it was the regular course of SCT Medical Clinic to make such records at or near the time of the matter recorded.

{¶ 72} This certificate was sufficient under Evid.R. 901(B)(10) and R.C. 2317.422. As such, the juvenile court properly admitted the records. *See In re R.H.*, 8th Dist. Cuyahoga No. 111748, 2023-Ohio-78, at ¶ 68.

{¶ 73} Accordingly, the second assignment of error is overruled.

{¶ 74} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the Cuyahoga County 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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MICHAEL JOHN RYAN, JUDGE

FRANK DANIEL CELEBREZZE, III, P.J., CONCURS;  
EILEEN A. GALLAGHER, J., DISSENTS (WITH SEPARATE OPINION)

EILEEN A. GALLAGHER, J., DISSENTING:

{¶ 75} I respectfully dissent.

{¶ 76} A juvenile court may not terminate a parent’s parental rights and grant permanent custody of a child to the agency unless it determines, by clear and convincing evidence, that permanent custody is in the best interest of the child. R.C. 2151.414(B)(1); *In re G.W.*, 8th Dist. Cuyahoga No. 107512, 2019-Ohio-1533, ¶ 62. “Clear and convincing evidence” is that “measure or degree of proof” that “produce[s] in the mind of the trier of facts 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.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 8.

{¶ 77} Following careful consideration of the evidence presented at the permanent custody hearing,<sup>6</sup> I cannot say that the juvenile court’s best-interest

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<sup>6</sup>I do not agree with the majority’s analysis of the second assignment of error. Hearsay is not admissible in a permanent custody hearing unless it falls within a recognized exception. *See* Juv.R. 34(I); Evid.R. 802; *In re A.E.*, 10th Dist. Franklin Nos. 19AP-782, 19AP-783, and 19AP-784, 2021-Ohio-488, ¶ 46. A trial court does not have discretion to admit inadmissible hearsay. *See, e.g., Herrera v. Phil Wha Chung*, 8th Dist. Cuyahoga No. 109793, 2021-Ohio-1728, ¶ 18. Even assuming the certification provided by a representative of SCT Medical Clinic (“SCT”) was sufficient for admissibility of the documents certified, the agency did not introduce certified copies of all the drug screen results referenced by Baugh and the guardian ad litem. Further, R.C. 2317.422(A), by its terms, applies to “the records, or copies or photographs of the records, of a hospital, homes required to be licensed pursuant to section 3721.01 of the Revised Code, and residential facilities licensed pursuant to section 5119.34 of the Revised Code that provides accommodations, supervision, and personal care services for three to sixteen unrelated adults” and certification by “their custodian, person who made them, or person under whose supervision they were made.” Based on the limited information in the record, it appears that Mother’s urine and hair samples were collected by representatives of SCT, that

determination was supported by proof that “produce[s] in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *Cross* at paragraph three of the syllabus. Accordingly, I would reverse the trial court and remand for further proceedings.

### **Standards for Determining the Best Interest of the Child**

{¶ 78} R.C. 2151.414(D)(1) states that in determining whether permanent custody is in a child’s best interest, the court “shall consider all relevant factors,” including, but not limited to, the following:

- (a) The interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child \* \* \*;
- (d) The child’s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; [and]
- (e) Whether any of the factors in [R.C. 2151.414(E)(7) to (11)] apply in relation to the parents and child.

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SCT forwarded the samples to other labs (Quest Diagnostics and MetroHealth Medical Center) for testing and that the other labs then sent the test results back to SCT, which communicated the results to the agency. Accordingly, it is not clear that the records at issue here meet the requirements of the statute. I do not further address Mother’s second assignment of error because even considering all the evidence the juvenile court admitted regarding drug screen results, I would find that the record lacks clear and convincing evidence that it was in the children’s best interest to grant permanent custody to the agency.



**{¶ 79}** Under R.C. 2151.414(D)(1), the juvenile court weighs multiple factors to determine whether granting an agency permanent custody of a child is in that child's best interest. We review a juvenile court's determination of a child's best interest under R.C. 2151.414(D)(1) for abuse of discretion. *In re P.B.*, 8th Dist. Cuyahoga Nos. 109518 and 109519, 2020-Ohio-4471, ¶ 76, citing *In re D.A.*, 8th Dist. Cuyahoga No. 95188, 2010-Ohio-5618, ¶ 47. A juvenile court abuses its discretion where its decision is unreasonable, arbitrary or unconscionable. *In re R.D.*, 8th Dist. Cuyahoga No. 111798, 2022-Ohio-4519, ¶ 49, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). A decision is unreasonable if there is "no sound reasoning process that would support that decision." *In re C.D.Y.*, 8th Dist. Cuyahoga No. 108355, 2019-Ohio-4987, ¶ 8, quoting *Baxter v. Thomas*, 8th Dist. Cuyahoga No. 101186, 2015-Ohio-2148, ¶ 21. A decision is arbitrary if it is made "without consideration of or regard for facts [or] circumstances." *In re C.D.Y.* at ¶ 8, quoting *Black's Law Dictionary* 125 (10th Ed.2014).

**{¶ 80}** In addition to the best interest factors identified in R.C. 2151.414(D)(1), 2151.414(D)(2) sets forth a list of circumstances that, if all are found to exist, mandates a finding that permanent custody is in the best interest of the child. R.C. 2151.414(D)(2) states:

If all of the following apply, permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of a public children services agency or private child placing agency:

(a) The court determines by clear and convincing evidence that one or more of the factors in [R.C. 2151.414(E)] exist and the child cannot be

placed with one of the child's parents within a reasonable time or should not be placed with either parent.

(b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.

(c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.

(d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

R.C. 2151.414(D)(1) and 2151.414(D)(2) are "alternative means" for determining whether permanent custody is in a child's best interest. *In re J.P.*, 10th Dist. Franklin No. 18AP-834, 2019-Ohio-1619, ¶ 39-40; *In re M.P.*, 10th Dist. Franklin No. 10AP-478, 2010-Ohio-5877, ¶ 35.

### **The Juvenile Court's Best-Interest Determination**

{¶ 81} In its journal entries, the juvenile court identified, as to each child, the factors it considered in determining that an award of permanent custody to the agency was in the child's best interest as follows:

Upon considering the interaction and interrelationship of the child with the child's parents, siblings, relatives, and foster parents; the wishes of the child; the custodial history of the child, including whether the child has been in temporary custody of a public children services agency or private child placing agency under one (1) or more separate orders of disposition for twelve (12) or more months of a consecutive twenty-two (22) month period; 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; and, the report of the Guardian ad Litem, the Court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the child and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

**{¶ 82}** The juvenile court also made certain findings consistent with a best-interest analysis under R.C. 2151.414(D)(2).<sup>7</sup> Determining that the children could not be placed with one of their parents within a reasonable time or should not be placed with either parent, the juvenile court found, as to each child (as it relates to Mother), that R.C. 2151.414(E)(1) and (2) applied:

Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the mother and father have failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home.

Mother has a chronic mental illness and chemical dependency that is so severe that it makes the parent unable to provide an adequate, permanent home for the child at the present time and, as anticipated, within one (1) year after the Court holds a hearing in this matter.

The juvenile court also found that the children had been in temporary custody since November 3, 2020.

**{¶ 83}** With respect to the services provided by the agency and the reasons those services were not successful, the juvenile court further found:

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<sup>7</sup> The juvenile court did not specifically reference R.C. 2151.414(D)(1) or (D)(2) in its judgment entries granting permanent custody of the children to the agency.

Relevant services provided to the mother and the reasons those services were not successful include substance abuse, mental health, and parenting class. Mother participated in drug treatment but has failed to maintain her sobriety. Mother has completed domestic violence program and a parenting course but has failed to demonstrate a benefit from the class she completed. She visits with the children 2 hours every other week.

### **Evidence of Strong Bond Between Mother and Children**

{¶ 84} There is no dispute in this case that the children have a strong, loving relationship with Mother and with each other. The record reflects that, despite the hurdles in doing so — including lengthy travel time, poor locations for visitation and COVID-related restrictions — Mother has had consistent, positive unsupervised visitation with her children.

{¶ 85} No concerns have been raised regarding Mother’s interactions with the children, and there is no evidence that Mother ever physically abused her children, maltreated them or otherwise failed to provide for their basic needs. M.A. has expressed a strong, consistent desire to be reunited with Mother. With respect to the wishes of the other children, the record is less clear, given their ages, but it appears that they too enjoy spending time with Mother. Baugh testified that “mom loves her children and her children love her,” the visits have been “going well” and “[a]ll four children love spending time with their mom.”

{¶ 86} Evidence was also presented that the children have a strong bond with their foster family with whom they have resided for more than two years and that the children have been thriving there. However, a lengthy duration of placement with a foster family is not, in and of itself, dispositive in determining what is in a

child's best interest, particularly, where, as here, a strong bond remains with Mother. *Cf. In re A.T.*, 2d Dist. Montgomery Nos. 28332 and 28355, 2019-Ohio-3527, ¶ 88.

### **Lack of Evidence in the Record Supporting Juvenile Court's Best-Interest Determination**

{¶ 87} Here, it appears that the juvenile court's best-interest determination was based on its findings (as it relates to Mother) that (1) Mother has "failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home," (2) Mother has "a chronic mental illness and chemical dependency that is so severe that it makes the parent unable to provide an adequate, permanent home for the child at the present time and, as anticipated, within one (1) year after the [permanent custody hearing]" and (3) Mother "completed domestic violence program and a parenting course but has failed to demonstrate a benefit from the class she completed." These findings are not supported by the record.

{¶ 88} Little evidence was presented regarding Mother's mental health at the permanent custody hearing. The evidence that was presented showed that Mother had engaged in mental health services the entire time the agency was involved in the case and that, by September 2022, Mother's mental condition had improved such that she was no longer showing symptoms of depression and anxiety and was no longer being prescribed medication for those conditions. Mother introduced a letter from a psychiatric nurse practitioner at The Centers, dated September 8, 2022 —

admitted into evidence without objection — which stated that Mother received mental health services at The Centers, that Mother had been previously prescribed medication to target depression and anxiety symptoms and that, “[a]t this time,” Mother “does not endorse symptoms of depression or anxiety,” Mother “does not meet the criteria for the diagnosis of Depression or Anxiety Disorder,” and Mother’s “medication has been discontinued.” The letter further stated that “Mother endorses improved use of positive coping strategies to deal with negative emotions, has maintained sobriety and continues with full time employment.” No evidence was presented that Mother, at that time, suffered from other mental conditions or had been prescribed medication for other mental conditions. Despite the agency’s (and the guardian ad litem’s) claims to the contrary, no evidence was presented that Mother’s mental condition, at the time of the permanent custody hearing, was such that it impacted her ability to appropriately parent her children.

**{¶ 89}** Likewise, the juvenile court’s finding that Mother had not benefitted from parenting classes and domestic violence services is not supported by the record. Evidence was presented that after the children were removed from Mother’s care on July 31, 2020, Mother cleaned up the home and did what she could to address existing rodent and bug issues by speaking with her landlord about remedying foundation issues with the home that were causing or contributing to the issues and getting a cat to assist with rodent control. The record reflects that Mother had obtained her housing through the EDGE program and that her housing was supposed to be subject to periodic inspections to ensure that the housing met basic

health and safety requirements as part of that program. There is no evidence in the record that the agency offered Mother assistance in obtaining alternative housing or ever directed Mother to seek alternative housing. Baugh testified that Mother's housing was stable and appropriate for the children and that Mother had a full-time job and could financially meet the children's basic needs.

{¶ 90} Although Baugh testified that Mother missed “over ten plus” visits with the children, the record shows that for more than two years Mother regularly travelled two-and-one-half hours each way to visit with her four children in West Unity, Ohio for four hours, unsupervised, twice a month. Baugh acknowledged that several of the missed visits were due to family emergencies or a court hearing and that only a handful of the missed visits were for what Baugh did not consider to be “a good reason.” The record further shows that even though the locations of these visits often were not ideal for family visitation, e.g., a room at the YMCA, Chuck E. Cheese or a skating rink, they were still positive experiences for the children. Although there was never any issue with Mother's visitation with the children, Mother was not offered an opportunity for extended or overnight visitation with the children to further demonstrate her parenting skills.

{¶ 91} With respect to domestic-violence services, the record reflects that domestic-violence services were removed from the case plan after Mother completed a domestic-violence program in 2020. Although Mother was a victim of an additional domestic-violence incident in December 2021, evidence was presented that when this occurred, Mother took appropriate steps. Baugh testified that

because Mother was scheduled to visit with the children, she did not immediately file a police report regarding the incident, but did so when she returned to Cleveland following the visit and thereafter obtained an ex parte protection order against her assailant. The record further shows that after the incident, Mother signed herself up for another domestic-violence program and completed that program in March 2022.

{¶ 92} With respect to Mother’s drug use, the record reflects that Mother has had periods of sobriety. Although the agency introduced evidence of positive urine and hair screens in October 2022, the record reflects that, as of the time of the hearing, Mother had completed an outpatient drug treatment program and had maintained her sobriety for several months.

### **Conclusion**

{¶ 93} After thoroughly considering the evidence in this case, I would find that the juvenile court abused its discretion in determining that it was in the children’s best interest to grant the agency’s motion for permanent custody and terminate Mother’s parental rights. The record lacks clear and convincing evidence that permanent custody is in the children’s best interest based on the factors set forth in R.C. 2151.414(D)(1). The record also lacks clear and convincing evidence that R.C. 2151.414(D)(2)(a), (E)(1) or (E)(2) applies — i.e., that the children cannot be placed with Mother within a reasonable time or should not be placed with Mother.



**{¶ 94}** Mother has completed virtually all the programming required of her. The record reflects that Mother has taken significant steps toward remedying the conditions that caused the children to be removed from the home. She is employed full time and has stable, appropriate housing that meets the children’s basic needs. At the time of the hearing, Mother was continuing to engage in mental health services, no longer required medication to address her mental health issues, had completed outpatient drug treatment and had been sober for several months.

**{¶ 95}** The value of having a biological parent who cares for and loves a child cannot be underestimated. Familial bonds are not easily replaced, if ever, and they should not be permanently severed without careful consideration of all the potential costs. I appreciate that “[a] child’s best interests require permanency and a safe and secure environment,” *In re E.W.*, 8th Dist. Cuyahoga Nos. 100473 and 100474, 2014-Ohio-2534, ¶ 29, and that “[t]o protect the child’s interest,” neither the existence of a biological relationship or a “good relationship” is controlling in and of itself. *In re J.B.*, 8th Dist. Cuyahoga Nos. 98566 and 98567, 2013-Ohio-1706, at ¶ 163, citing *In re T.W.*, 8th Dist. Cuyahoga Nos. 86084, 86109 and 86110, 2005-Ohio-6633, ¶ 15. However, preservation of “family unity and blood relationship are vital factors to carefully and fully consider” when determining what is in the best interest of the child. *In re J.F.*, 2018-Ohio-96, 102 N.E.3d 1264, ¶ 65 (8th Dist.). The plan here has always been reunification. Baugh testified that M.A. was “devastated” when Mother missed a visit. Although no evidence was presented

regarding the issue, it is not hard to imagine what effect permanently severing the strong bond M.A. and his siblings have with Mother could have on them.

{¶ 96} This is a difficult case. These children have been in agency custody for a considerable period of time. There are, without question, some serious issues that remain to be resolved before Mother could be reunited with her children. Mother needs to demonstrate that she can maintain a sober lifestyle, and, although she has had many successful unsupervised visits with her children, Mother has not yet had extended overnight visits with her children. However, there nothing in the record that shows that the necessary remaining objectives could not be achieved and that the children could not be returned to Mother's care within a reasonable time.

{¶ 97} This is not a case in which the “alternative of last resort,” *In re Gill*, 8th Dist. Cuyahoga No. 79640, 2002-Ohio-3242, ¶ 21 — termination of Mother's parental rights and granting permanent custody to CCDCFS — has, at this stage, been shown by clear and convincing evidence to be in the best interest of these children. Accordingly, I would sustain Mother's first assignment of error and reverse the trial court. *C.f. In re A.T.*, 8th Dist. Cuyahoga No. 110689, 2021-Ohio-4306; *In re A.H.*, 8th Dist. Cuyahoga No. 108107, 2019-Ohio-4063; *In re D.F.*, 2019-Ohio-3046, 140 N.E.3d 1081 (8th Dist.); *In re M.S.*, 2015-Ohio-1847, 34 N.E.3d 420 (8th Dist.).