[Cite as *In re G.T.*, 2025-Ohio-1338.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE G.T.	:	
	:	No. 114214
A Minor Child	:	
	:	
[Appeal by Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: March 27, 2025

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD21905304

Appearances:

Law Office of Victor O. Chukwudelunzu, LLC and Victor Chukwudelunzu, *for appellant*.

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

EILEEN T. GALLAGHER, P.J.:

{¶ 1} Plaintiff-appellant, Mother, appeals a judgment of the Cuyahoga County Common Pleas Court, Juvenile Division, granting permanent custody of her minor child, G.T., to the Cuyahoga County Division of Children and Family Services ("CCDCFS" or "the agency"). She claims the following errors:

1. The trial court erred and abused its discretion in finding by clear and convincing evidence that it would be in the best interest of the child to terminate the parental rights of Mother and place the child in the permanent custody of the Agency.

2. The trial court erred and abused its discretion in finding that the Agency made reasonable efforts to reunify mother with her child.

3. The trial court erred in allowing inadmissible testimony that did not comport with the rules of evidence.

4. The Guardian ad Litem failed to perform his duties as required pursuant to Superintendence Rule 48. Therefore, the trial court abused its discretion in taking his report into evidence and allowing him to submit testimony and a best interest recommendation.

5. The Juvenile Court's Ruling Granting Permanent Custody of G.T to the Agency and Terminating Mother's Parental Rights Violated State law and Father's Right to Due process as Guaranteed by the Fourteenth Amendment of the United States Constitution and Section 16, Article I of the Ohio Constitution.

{¶ 2} We affirm the juvenile court's judgment.

I. Facts and Procedural History

{¶ 3} In June 2021, CCDCFS filed a motion for predispositional temporary custody and a complaint for neglect and dependency after Mother was arrested following an altercation between Mother and her mother ("Grandmother"). The juvenile court held a hearing the next day where Mother denied the allegations in the complaint but stipulated to a finding of probable cause supporting an order placing G.T. in the predispositional temporary custody of the agency provided that G.T. remained in Grandmother's care pending resolution of the temporary-custody proceedings. The court granted predispositional temporary custody of G.T. to

CCDCFS and held that G.T. would remain in Grandmother's care. The court also appointed a guardian ad litem ("GAL") to represent G.T.

{¶ 4} In September 2021, the juvenile court held an adjudication hearing before a magistrate. After hearing the testimony of multiple witnesses, the magistrate found that G.T. was a neglected and dependent child and committed him to the temporary custody of the agency. Mother filed timely objections to the magistrate's decision, but the juvenile court overruled her objections and adopted the magistrate's decision. Mother appealed the adjudicatory rulings, and this court affirmed the trial court's judgment. *See In re G.T.*, 2022-Ohio-1406 (8th Dist.).

{¶ 5} Two years later, in September 2023, following two extensions of temporary custody, CCDCFS filed a motion to modify temporary custody to permanent custody. Meanwhile, Mother filed a motion asking the court to place G.T. in the legal custody of her mother ("Grandmother"). Mother also filed a motion to remove the GAL on grounds that he failed to perform his duties as required by Cuyahoga C.P., Juvenile Div., Loc.R. 18 and Sup.R. 48. The trial court denied Mother's motion to remove the GAL.

{¶ 6} The juvenile court held a trial on the agency's motion for permanent custody on March 8, 2024, and March 21, 2024. Briana Buckhalter ("Buckhalter"), a social worker with CCDCFS, testified that the agency first became involved with Mother and G.T. in June 2021, because Mother threatened to kill herself and G.T. and because she threatened Grandmother with a knife. (Mar. 8, 2024, tr. 19.) G.T. was three years old at that time. After the agency became involved, it learned that

the family had a history of altercations and domestic violence between Mother and Grandmother. (Mar. 8, 2024, tr. 19.) The agency also had mental-health concerns for Mother and Grandmother. (Mar. 8, 2024, tr. 19 and 22.) The family, which is Congolese, immigrated to the United States from Burundi in 2019.

{¶ 7} Buckhalter explained that the agency approved a case plan for Mother with the goal of reunification. (Mar. 8, 2024, tr. 26 and 28.) Mother was referred to Ohio Guidestone for counseling and medication management. Mother engaged in counseling services but refused psychiatric services even though she has been diagnosed with major depressive disorder and post-traumatic stress disorder, and she had previously been hospitalized for psychiatric reasons. Charlene Edwards ("Edwards"), a behavioral-health specialist at Ohio Guidestone, testified that although Mother was referred for counseling services in December 2021, she did not engage in services until June 2022 because "[s]he believed that she didn't have any mental health issues and that she didn't need help with anything." (Mar. 8, 2024, tr. 101.)

{¶ 8} Sela Gilbert ("Gilbert"), another behavioral-health specialist at Ohio Guidestone, testified that she has worked with Mother since October 2022, and that Mother has shown improvement since that time. Mother also showed progress on her case plan, but her progress stalled in March 2023 (Mar. 8, 2024, tr. 86 and 87.) Jessica Berry ("Berry"), a social worker with CCDCFS, explained that Mother became "hysterical" when she was told that she had not met all of her case-plan

objectives and that Mother "ran into traffic attempting to be hit by cars" traveling down the road. (Mar. 8, 2024, tr. 78 and 79.)

{¶ 9} Edwards testified that Mother had another mental-health episode during a visit at home on March 29, 2023. (Mar. 8, 2024, tr. 108 and 109.) Edwards explained that Mother was "fine" when the visit began but her demeanor changed "out of nowhere," and she grabbed G.T. and held him so tightly that she had to work with another agency worker "to get [G.T.] out of her arms because she was holding him so tightly." (Mar. 8, 2024, tr. 109.)

{¶ 10} Mother grabbed a pair of scissors and tried to cut her hair because she was so angry. (Mar. 8, 2024, tr. 109.) Edwards did not know what triggered Mother's anger, but she managed to remove the scissors from Mother's hands. (Mar. 8, 2024, tr. 109.) Mother then proceeded to knock over the television, a lamp, and other things in the living room. (Mar. 8. 2024, tr. 110.) Thereafter, Mother ran out of her home and into the middle of a three-way intersection. Edwards explained:

> [T]hen she took off running into the middle of the intersection. Where she lives . . . is like a main street[;] there's like a main street and there's like a three-way intersection and she was under the light spinning like with her hands out like this, just spinning in a circle with her eyes closed saying something in Swahili.

(Mar. 8, 2024, tr. 110.) Edwards further explained that Mother "did eventually come to the sidewalk, but then she took off again[.]" Edwards ran after Mother and called 9-1-1 for help. Edwards required medical attention on the scene, and first responders took Mother to MetroHealth Hospital. (Mar. 8, 2024, tr. 113.)

{¶ 11} Hannah Minnich ("Minnich"), a case worker with CCDCFS, testified that Mother was referred to a parenting-education course through Ohio Guidestone in August 2022, to address her erratic behaviors and lack of protective instincts. (Mar. 21, 2024, tr. 9.) Mother never engaged in the parenting classes. Although she worked briefly with a parenting coach during supervised visits, her visits with G.T. were suspended in March 2023, as a result of Mother's mental-health crisis and because "there was an emotional decline in the child." (Mar. 21, 2024, tr. 11.)

{¶ 12} The agency referred Mother to the Community Collaborative for housing assistance, but she continued to lack housing as of October 2023. (Mar. 8, 2024, tr. 28.) Buckhalter testified that she visited Mother in her home in December 2023, and that Mother told her she had just moved in. When Buckhalter asked to see the lease for the home, Mother was unable to provide it. Mother told Buckhalter that she did not have a copy of the lease because the landlord was in Africa. (Mar. 8, 2024, tr. 29.) Mother never produced a copy of the lease despite being asked for it three additional times. (Mar. 8, 2024, tr. 30.) At the time of trial, Mother's housing concern remained unresolved because the agency was unable to verify "if she's even legally able to live there." (Mar. 8, 2024, tr. 30 and 48.)

{¶ 13} After his removal, G.T. was initially placed with Grandmother. G.T. was later removed from Grandmother's custody after an incident at the child's medical appointment on March 9, 2022. Grandmother objected to the child receiving a flu vaccine, and she struck the agency worker who was present for the visit. Security escorted Grandmother out of the office, and Cleveland police were

called to the scene because Grandmother would not return the child to the case worker. (Mar. 8, 2024, tr. 75.) The agency removed G.T. from Grandmother's care after this incident and because the agency was concerned that Grandmother was not ensuring that G.T. attended all of his medical appointments. (Mar. 8, 2024, tr. 73-75.) G.T. requires speech therapy for speech delay and treatment for post-traumatic stress disorder. (Mar. 8, 2024, tr. 90.)

{¶ 14} The agency informed Grandmother that G.T. could be returned to her care if she engaged in mental-health services and if she were able to demonstrate more appropriate engagement with the child during visits. (Mar. 8, 2024, tr. 76-77.) At the time of trial, agency workers did not believe that Grandmother had addressed her mental-health issues because she did not engage in any mental-health services even though she was previously hospitalized with psychiatric issues in 2019. (Mar. 8, 2024, tr. 44-45.)

{¶ 15} According to Buckhalter, Grandmother disputed G.T.'s mental-health needs and she was removed from an agency meeting because she was "over-talking everybody in the meeting." (Mar. 8, 2024, tr. 44.) Both Mother and Grandmother denied that G.T. needed treatment for post-traumatic stress disorder. Mother "stated specifically that he does not need counseling. He just needs to return home." (Mar. 8, 2024, tr. 91.)

{¶ 16} Agency workers observed Mother's interactions with Grandmother during agency meetings and visits with the child. Berry testified that the interactions between Mother and Grandmother "had always been hostile." (Mar. 8, 2024,

tr. 86.) Buckhalter also testified that Mother and Grandmother argue constantly and that G.T. told her "he does not want to talk to grandma or see grandma." (Mar. 21, 2024, tr. 15.) Berry explained that Mother wanted to make progress and made progress, but

> [G]randmother would say things to her about how the Agency is trying to hold her back or keep her child. . . . That [G]randmother would always add fuel to the fire and agitate [Mother] during meetings.

(Mar. 8, 2024, tr. 89.) Berry stated that whenever Mother appeared for meetings without Grandmother, she "was happy and willing and there was no arguments." (Mar. 8, 2024, tr. 84 and 93.)

{¶ 17} Buckhalter and G.T.'s foster mother, described G.T.'s experience with his foster family. G.T. had been in the therapeutic foster home continually since March 10, 2022. Buckhalter testified that G.T. "blended right into the family" and that he loves his caregivers. (Mar. 8, 2024, tr. 30.) When G.T. was first placed with the foster family, he could only speak a few words of broken English, he was not toilet trained, and he was having night terrors. Foster mother testified that G.T. was enrolled in speech therapy and counseling, where he is learning to calm himself. The foster family respected G.T.'s Congolese heritage and incorporated Congolese cooking and traditions into their family life. (Mar. 8, 2024, tr. 130-132.) They also included Swahili learning into G.T.'s routine.

{¶ 18} Buckhalter testified that G.T. is "happy" and "a real child" when he is with his foster family and that he is "more reserved" and "doesn't talk as much" when he is with Mother and Grandmother. (Mar. 8, 2024, tr. 31.) During the months

when no visitation occurred, G.T. "settled down quite a bit and was doing really well." (Mar. 8, 2024, tr. 137-138.) When visitation resumed, G.T. "started having night terrors again[.]" (Mar. 8, 2024, tr. 136-137.)

{¶ 19} Buckhalter testified she believed that permanent custody was in G.T.'s best interest. When asked why she held this opinion, she explained that G.T. has made much progress, Mother lacked "protective capacities," and Mother failed to address G.T.'s developmental and mental-health needs. (Mar. 8, 2024, tr. 46.) Buckhalter also stated:

> And then there's ongoing unstable mental health for mom and grandma that can be confirmed, and the Agency is not very sure if they can co-parent due to the long history of domestic violence between the two.

(Mar. 8, 2024, tr. 46.)

{¶ 20} At the conclusion of the trial, the GAL recommended permanent custody for G.T. The GAL stated that Mother had mental-health problems that remained unresolved "by her own admission" and that she "has not completed her case plan." (Mar. 21, 2024, tr. 139-140.) The GAL also opined that Grandmother was not an appropriate caregiver given her own unresolved mental-health issues and her failure to take seriously the opinions of G.T.'s medical professionals. In his report, the GAL concluded that

> neither [Mother] nor [G]randmother can provide care for the child. This case is over a year old and [Mother] still has the same issues that initially led to the removal of the child. There is no family that in the opinion of the undersigned can provide appropriate care for the child.

{¶ 21} Based on the evidence presented, the magistrate recommended that G.T. be placed in the permanent custody of CCDCFS. Mother filed timely objections to the magistrate's decision. The juvenile court overruled the objections and issued a final order placing G.T. in the permanent custody of CCDCFS. Mother now appeals the trial court's judgment.

II. Law and Analysis

{¶ 22} We take our responsibility in reviewing cases involving the termination of parental rights and the award of permanent custody very seriously. A parent has a "fundamental liberty interest . . . in the care, custody, and management of [his or her child]." *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). The termination of parental rights is regarded as "'the family law equivalent of the death penalty in a criminal case.'" *In re J.B.*, 2013-Ohio-1704, ¶ 66 (8th Dist.), quoting *In re Hoffman*, 2002-Ohio-5368, ¶ 14. Thus, parents "'must be afforded every procedural and substantive protection the law allows.'" *In re Hayes*, 79 Ohio St.3d 46, 48 (1997), quoting *In re Smith*, 77 Ohio App.3d 1, 16 (6th Dist. 1991).

{¶ 23} Nevertheless, a parent's right to the care and custody of his or her child is not absolute. *In re L.G.*, 2022-Ohio-529, ¶ 49 (8th Dist.). "'[T]he natural rights of a parent . . . are always subject to the ultimate welfare of the child, which is the polestar or controlling principle to be observed.'" *In re L.D.*, 2017-Ohio-1037, ¶ 29 (8th Dist.), quoting *In re Cunningham*, 59 Ohio St.2d 100, 106 (1979).

{¶ 24} 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.*, 2013-Ohio-1704, at ¶ 66, quoting *In re Hitchcock*, 120 Ohio App.3d 88, 102 (8th Dist. 1996). When parental rights are terminated, the goal is to create "a more stable life" for dependent children and to "facilitate adoption to foster permanency for children." *In re N.B.*, 2015-Ohio-314, ¶ 67 (8th Dist.), citing *In re Howard*, 1986 Ohio App. LEXIS 7860, 5 (5th Dist. Aug. 1, 1986).

{¶ 25} Ohio statutes governing child custody and protection "'appropriately reflect the need to balance . . . [the] parents' . . . interest in the custody, care, nurturing, and rearing of their own children, and the State's parens patriae interest in providing for the security and welfare of children under its jurisdiction[.]'" *In re P.S.*, 2023-Ohio-144, ¶ 26 (8th Dist.), quoting *In re Thompson*, 2001 Ohio App. LEXIS 1890 (10th Dist. Apr. 26, 2001).

A. Best-Interest Determination

{¶ 26} In the first assignment of error, Mother argues the trial court erred in finding that permanent custody was in G.T.'s best interest. She contends the trial court's judgment is against the manifest weight of the evidence.

{¶ 27} R.C. 2151.414 provides a two-prong analysis to be applied by a juvenile court in adjudicating a motion for permanent custody. *In re S.C.*, 2018-Ohio-2523, ¶ 20 (8th Dist.), citing R.C. 2151.414(B). The first prong authorizes the juvenile court to grant permanent custody of a child to the public agency if, after a hearing, the court determines, by clear and convincing evidence, that any of the following factors apply: (a) the child is not abandoned or orphaned but the child cannot be placed with either parent 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 12 or more months of a consecutive 22-month period; or (e) the child or another child in the custody of the parent or parents from whose custody the child has been removed has been adjudicated an abused, neglected, or dependent child on three separate occasions by any court in this state or another state. R.C. 2151.414(B)(1)(a)-(e).

{¶ 28} "Only one of the factors must be present to satisfy the first prong of the two-part analysis for granting permanent custody to an agency." *In re D.H.*, 2021-Ohio-3821, ¶ 27 (8th Dist.), citing *In re L.W.*, 2017-Ohio-657, ¶ 28 (8th Dist.).

{¶ 29} In accordance with the second prong of R.C. 2151.414, when any one of the above factors exists, the juvenile court must then consider the factors listed in R.C. 2151.414(D) to determine, by clear and convincing evidence, whether it is in the child's best interest to grant permanent custody to the agency pursuant to R.C. 2151.414(D). *In re H.G.*, 2024-Ohio-3408, ¶ 16 (8th Dist.).

{¶ 30} "'Clear and convincing evidence' is evidence that 'will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established.'" *In re T.B.*, 2014-Ohio-2051, ¶ 28 (8th Dist.), quoting *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954).

{¶ 31} Given that R.C. 2151.414 requires a juvenile court to find by clear and convincing evidence that the statutory requirements are met, the Ohio Supreme

Court has held that "the sufficiency-of-the-evidence and/or manifest-weight-of-the-evidence standards of review are the proper appellate standards of review of a juvenile court's permanent-custody determination, as appropriate depending on the nature of the arguments that are presented by the parties." *In re Z.C.*, 2023-Ohio-4703, ¶ 11.

{¶ 32} With respect to the manifest-weight-of-the-evidence standard of review, the Ohio Supreme Court held in *In re Z.C.*:

> When reviewing for manifest weight, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the finder of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *Id.* at ¶ 20. "In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact." *Id.* at ¶ 21. "The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). "'If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.'" *Id.* at fn. 3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 603, at 191-192 (1978).

Id. at ¶ 14.

1. First Prong — R.C. 2151.414(B)

{¶ 33} With respect to the first prong of the permanent-custody analysis, the juvenile court found pursuant to R.C. 2151.414(B)(1)(a) and (d) that G.T. "cannot be placed with either of the child's parents within a reasonable period of time or should not be placed with the child's parents," and that G.T. "has been in the temporary

custody of the one or more public children service agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period[.]" Mother does not contest these findings; she argues the trial court's finding that permanent custody is in G.T.'s best interest is not supported by the evidence. We, therefore, turn to the second prong of our analysis that requires the court to determine, by clear and convincing evidence, whether the order granting permanent custody of G.T. to the agency pursuant to R.C. 2151.414(D) is in the child's best interest.

2. Second Prong – Best Interest of the Child

{¶ 34} In determining the best interest of the child, a juvenile court may apply one of two different tests set forth in R.C. 2151.414(D)(1) and (D)(2). *In re L.V.*, 2024-Ohio 5917, ¶ 62, citing *In re A.F.*, 2023-Ohio-4423, ¶ 41 (8th Dist.). In this case, the juvenile court made the best-interest determination under R.C. 2151.414(D)(1).

{¶ 35} In determining the best interest of the child under R.C. 2151.414(D)(1), the juvenile court must consider all relevant factors, including but not limited to (1) the interaction and interrelationship of the child with the child's parents, siblings, relatives, foster parents, and out-of-home providers, and any other person who may significantly affect the child; (2) the wishes of the child as expressed directly by the child or through the child's guardian ad litem; (3) the custodial history of the child; (4) the child's need for a legally secure placement and whether that type of placement can be achieved without a grant of permanent

custody to the agency; and (5) whether any factors in R.C. 2151.414(E)(7) through (11) are applicable.

{¶ 36} Although a trial court is required to consider each of the R.C. 2151.414(D)(1) factors in making its permanent-custody determination, "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)." *In re A.M.*, 2020-Ohio-5102, ¶ 31. "Consideration is all the statute requires." *Id.*

{¶ 37} Mother argues the trial court's best-interest determination is against the manifest weight of the evidence because there was no evidence of G.T.'s wishes as expressed through the GAL. She also contends the evidence shows that Grandmother could meet G.T.'s need for a legally secure placement and that placement with Grandmother can be achieved without a grant of permanent custody.

{¶ 38} However, in analyzing the best-interest factors listed in R.C. 2151.414(D)(1)(a), "there is not one element that is given greater weight than the others pursuant to the statute." *In re Schaefer*, 2006-Ohio-5513, ¶ 56. Moreover, only one factor needs to be resolved in favor of permanent custody in order to find that permanent custody is in the child's best interest. *In re S.C.*, 2015-Ohio-2410, ¶ 30 (8th Dist.).

{¶ 39} R.C. 2151.414(D)(1)(a) requires the court to consider G.T.'s relationships and interaction with his "parents, siblings, relatives, foster parents, and out-of-home providers, and any other person who may significantly affect the

child." Edwards testified that when Mother first began to have visits with G.T., she would "ignore [the child] a lot" and "[t]here wasn't a lot of interaction between them." (Mar. 8, 2021, tr. 107.) As the case progressed, Mother's visitation was appropriate at times but other times, Mother argued with Grandmother at visits. And, Mother exhibited inappropriate behavior during a March 2023 visit, when Edwards and another case worker had to remove G.T. from Mother's tight grasp, and Mother responded by throwing things around her living room.

{¶ 40} Foster mother testified that while visitation was suspended, G.T. "settled down quite a bit and was doing really well" and his negative behaviors had stopped. (Mar. 8, 2024, tr. 137-138.) When Mother resumed visitation in August 2023, G.T. "started having night terrors again," his fear of traveling on the highway recurred, and he would get "really upset about seeing [Grandmother.]" (Mar. 8, 2024, tr. 136-137.) Visitation was again suspended two months later because G.T. was experiencing emotional distress during the visits. (Mar. 8, 2024, tr. 11, 136-137.)

{¶ 41} Testimony further established that there was not a lot of interaction between G.T. and Grandmother. Foster mother testified that G.T. tried to avoid interacting with Grandmother during visits. He hid behind foster mother or tried to stay across the room from Grandmother. (Mar. 8, 2024, tr. 139-140.) Foster mother testified that G.T. was afraid of Grandmother, and Buckhalter stated that he did not want to converse with her. (Mar. 8, 2024, tr. 16 and 31.) By contrast, Buckhalter testified that when G.T. was with his foster family, "he just seems more like a child." (Mar. 8, 2024, tr. 17.) Buckhalter explained that G.T. loves his foster family, they

love him, and he is "happy" with them. (Mar. 8, 2024, tr. 30-31; 123-124, 126, and 142.) The foster family also incorporated Swahili learning and Congolese cooking and traditions into G.T.'s daily life. Thus, because G.T. is tense around Grandmother but he is relaxed and happy with his foster family, the factor listed in R.C. 2151.414(D)(1)(a) weighs in favor of permanent custody and against legal custody with Grandmother.

{¶ 42} The factor listed in R.C. 2151.414(D)(1)(b) requires the court to consider the child's wishes as expressed directly or through the GAL. Mother contends that G.T. was old enough to express his wishes to the GAL, but the GAL either failed to inquire about his preferences or failed to relay them to the court. However, G.T. was only five years old at the time of trial. Therefore, even if G.T. had expressed a preference, he lacked the maturity to understand the consequences of living with one family or another, and the court would have given the child's expressed preference little to no weight. *See, e.g.*, *In re Cooper*, 2001 Ohio App. LEXIS 3830, fn. 1 (8th Dist. Aug. 28, 2001) ("Given the child's age barely five years his wishes would have had little weight in the court's decision in any case; a child that young lacks the maturity to make a decision of this importance."). For this reason, R.C. 2151.414(D)(1)(b) authorizes the GAL to express the child's wishes on his behalf and, in this case, the GAL opined that permanent custody is G.T.'s best interest. (Mar. 21, 2024, tr. 139-141.) Therefore, despite Mother's argument to the contrary, this factor weighs in favor of permanent custody.

{¶ 43} R.C. 2151.414(D)(1)(c) requires the court to consider the child's custodial history, including whether the child has been in agency custody for 12 or more months of a consecutive 22-month period. The evidence showed that G.T. was placed in agency custody on June 24, 2021, where he remained until the time of trial, a period of nearly three years. G.T. needs a secure and permanent home. Therefore, this factor weighs in favor of permanent custody.

{¶ 44} The factor listed in R.C. 2151.414(D)(1)(d) deals with the child's need for a legally secure placement and whether such can be achieved without a grant of permanent custody. The trial court found that G.T. "cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent." (July 19, 2024, judgment entry p. 2.) In reaching this conclusion, the trial court considered the factors required by R.C. 2151.414(E), including the facts that (1) Mother failed to remedy the conditions that led to G.T.'s removal in the first place; (2) Mother demonstrated a lack of commitment toward G.T. by refusing to consider medication for her mental-health issues and her lack of concern for her serious mental-health episodes; and (3) as a result of Mother's failure to address her case-plan objectives, G.T. could not be placed her within a reasonable period of time.

{¶ 45} Moreover, despite Mother's argument to the contrary, Grandmother failed to demonstrate that she could provide a safe and secure home for G.T. The evidence shows that Grandmother was previously hospitalized for mental-health reasons. Although Grandmother claimed that her mental-health issues resulted from the culture shock she experienced when she immigrated to this country, she

continued to exhibit volatile behaviors that led to her removal from agency staffing meetings. She also did not take Mother's mental-health issues seriously and indicated she would allow Mother to have unrestricted access to G.T. Moreover, Buckhalter and foster mother testified that G.T. was more comfortable and happier with the foster family than he was with Grandmother. Therefore, the evidence supports the trial court's decision to deny granting legal custody of G.T. to Grandmother.

{¶ 46} As previously stated, when analyzing the best interest of the child, "[t]here is not one element that is given greater weight than the others pursuant to the statute." *In re Schaefer*, 2006-Ohio-5513, ¶ 56. Only one factor needs to be resolved in favor of permanent custody in order to find that permanent custody is in the child's best interest. *In re S.C.*, 2015-Ohio-2410, ¶ 30 (8th Dist.). Furthermore, the juvenile court is afforded considerable discretion in weighing the factors. *In re K.P.*, 2019-Ohio-181, ¶ 36 (8th Dist.). After reviewing the evidence, we can only conclude that the trial court's judgment granting permanent custody of G.T. to CCDCFS is supported by clear and convincing evidence and is not against the manifest weight of the evidence.

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

B. Agency's Reasonable Efforts

{¶ 48} In the second assignment of error, Mother argues the trial court erred in finding that CCDCFS made reasonable efforts to reunify G.T. with Mother. Mother contends the agency failed to consider the psychiatric assessment Mother

completed with another mental-health provider that was not an agency referral and failed to call Mother's landlord to verify that she had a valid lease for her home when Mother failed to produce a copy of the lease. Mother also asserts that the agency terminated Mother's visitation, failed to facilitate visitation between Grandmother and G.T., and never visited Grandmother's home to assess its suitability.

{¶ 49} "R.C. 2151.419 requires the court to determine whether the public children services agency that filed the complaint in the case has made reasonable efforts to make it possible for the child to return safely home." *In re C.N.*, 2003-Ohio-2048, ¶ 37 (8th Dist.). The Ohio Supreme Court has held that R.C. 2151.419 "does not apply in a hearing on a motion for permanent custody filed pursuant to R.C. 2151.413." *In re C.F.*, 2007-Ohio-1104, ¶ 43. Because CCDCFS filed the motion to modify temporary custody to permanent custody pursuant to R.C. 2151.413, compliance with R.C. 2151.419 was not required. However, in *In re C.F.*, the Ohio Supreme Court held that "the state must still make reasonable efforts to reunify the family during the child-custody proceedings prior to the termination of parental rights." *Id.*

{¶ 50} R.C. Ch. 2151 does not define "reasonable efforts," but the term has been construed to mean "[t]he state's efforts to resolve the threat to the child before removing the child or to permit the child to return home after the threat is removed." *In re C.F.* at ¶ 28, citing Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U.Pub.Int.L.J. 259, 260 (2003).

{¶ 51} "'Reasonable efforts means that a children's services agency must act diligently and provide services appropriate to the family's need to prevent the child's removal or as a predicate to reunification.'" *In re H.M.K.*, 2013-Ohio-4317, ¶ 95 (3d Dist.), quoting *In re D.A.*, 2012-Ohio-1104, ¶ 30 (6th Dist.). "'"Reasonable efforts" does not mean all available efforts.'" *In re J.B.*, 2020-Ohio-3675, ¶ 21 (8th Dist.), quoting *In re Lewis*, 2003-Ohio-5262, ¶ 16 (4th Dist.). "Otherwise, there would always be an argument that one more additional service, no matter how remote, may have made reunification possible." *Lewis* at ¶ 16; *In re K.W.*, 2018-Ohio-3314, ¶ 45 (8th Dist.) ("Whether an agency . . . made reasonable efforts pursuant to R.C. 2151.419 is based on the circumstances of each case, not whether there was anything more the agency could have done.").

{¶ 52} CCDCFS developed a case plan for Mother that was translated into Swahili, Mother's first language. The case plan required Mother to have psychiatric evaluation, engage in mental-health services, complete parenting education, and obtain housing. Mother never objected to the case plan, nor did she propose any changes to it as provided in R.C. 2151.412(F). The agency later amended the case plan in April 2022, to reflect a change in G.T.'s placement with the foster family. Again, Mother never objected to the amended case plan. Indeed, Mother stipulated multiple times throughout the pendency of the case that the agency made reasonable efforts to assist Mother in meeting her case-plan objectives.

{¶ 53} The agency provided Mother with various referrals to assist her in meeting all of the case-plan objectives, including the psychiatric evaluation. But

meeting the case-plan objectives requires Mother to take responsibility for her own efforts in meeting the requirements of the case plan. Mother did not complete the psychiatric evaluation with the psychiatric provider that the agency referred her to. She claimed it was completed elsewhere with a different provider, but she never gave a report from the evaluation to the agency. Having gone to an outside provider, Mother should have made the effort to produce a report of the evaluation to the agency. The agency made reasonable efforts to assist Mother in obtaining the evaluation but Mother failed to make reasonable efforts to establish that the evaluation was completed.

{¶ 54} Similarly, Mother could have provided a copy of the lease to the agency, but she did not, despite repeated requests to do so by the agency. The agency referred Mother to Community Collaborative to assist her in finding housing. (Mar. 8, 2024, tr. 28.) After receiving the referral, it was up to Mother to actually obtain suitable housing and to prove to the agency that she met the housing component of the case plan. Again, the agency made reasonable efforts to assist Mother in obtaining housing by referring her to Community Collaborative, but Mother failed to make reasonable efforts to show that the housing component of her case plan was completed.

{¶ 55} The evidence demonstrates that the agency made reasonable efforts to assist Mother in remedying the conditions that led to G.T.'s removal. Indeed, the agency sought and obtained two extensions of temporary custody to allow Mother more time to work on her case plan. Unfortunately, Mother failed to make

reasonable efforts to complete her responsibilities with respect to the case plan. Therefore, the second assignment of error is overruled.

C. Evidentiary Rulings

{¶ 56} In the third assignment of error, Mother argues the trial court erred in allowing inadmissible hearsay into evidence.

{¶ 57} Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Evid.R. 801(C). "If either element is missing — (1) a statement or (2) offered for its truth — the testimony is not hearsay." *State v. Washington*, 2024-Ohio-1056, ¶ 18 (8th Dist.), citing *State v. Holt*, 1999 Ohio App. LEXIS 4149, 8 (9th Dist. Sept. 8, 1996).

{¶ 58} A trial judge is presumed to be capable of disregarding improper testimony. *In re S.D-S.*, 2024-Ohio-255, ¶ 36 (8th Dist.), citing *In re Fountain*, 2000 Ohio App. LEXIS 672, 18 (8th Dist. 2000). Thus, even when the trial court improperly admits hearsay into evidence, the parent must show that the court actually relied on that evidence in rendering its judgment. *Id.* Moreover, "'[t]he erroneous admission of hearsay evidence is harmless if other evidence, apart from the erroneously admitted evidence, has been offered to prove that which the challenged evidence was offered to prove.'" *Id.*, citing *In re M.H.*, 2002-Ohio-2968, ¶ 73 (8th Dist.).

{¶ 59} Mother argues the trial court erroneously allowed Buckhalter, Minnich, and Berry to testify about events that predated their involvement in the

case. Their testimonies were based on activity logs maintained by CCDCFS, and Mother contends the information in the activity logs is inadmissible hearsay.

{¶ 60} However, this court has held that a social worker is competent to testify to the contents of the agency's case file pursuant to Evid.R. 803(6) (hearsay exception for records kept in the ordinary course of business) and Evid.R. 803(8) (hearsay exception for public records and reports that set forth the activities of an agency or office and contain matters observed which, pursuant to a duty of law, i.e., R.C. 5153.17, the agency has a duty to report). *In re J.T.*, 2009-Ohio-6224, ¶ 72 (8th Dist.).

{¶ 61} Buckhalter, Minnich, and Berry were agency case workers. The evidence shows that they reviewed the agency case file and relied on its contents when answering questions. We have specifically held that such testimony is admissible as an exception to the hearsay rule pursuant to Evid.R. 803(6) and 803(8). Therefore, the trial court did not err in allowing the case workers to provide such testimony.

{¶ 62} Mother argues the trial court also erred by allowing the foster mother to testify about things that G.T. allegedly said to her. However, the trial court sustained an objection to the out-of-court statements that G.T. allegedly made during counseling. (Mar. 21, 2024, tr. 133.) Mother nevertheless argues that the trial court allowed Berry to testify about what other case workers observed even though she did not personally make the observations herself. Berry testified that other case workers reported to her that Mother and Grandmother "often argue"

during visitation. (Mar. 8, 2024, tr. 96.) However, the trial court struck this testimony. (Mar. 8. 2024, tr. 96.) Therefore, the court did not allow inadmissible testimony into evidence.

{¶ 63} Accordingly, the third assignment of error is overruled.

D. GAL and Sup.R. 48

{¶ 64} In the fourth assignment of error, Mother argues the trial court's judgment should be reversed because the GAL failed to adequately perform his duties in accordance with Sup.R. 48.03(D).

{¶ 65} Cuyahoga C.P., Juv.Div., Loc.R. 15(G) ("Loc.R. 15") governs guardians ad litem and states that "[a] Guardian ad Litem shall comply with all requirements as listed in Sup. R. 48-48.07." However,

> Sup.R. 48(D) is a general guideline, and its directives serve "'to provide the court with relevant information and an informed recommendation regarding the child's best interest[.]'" *Id.*, quoting Sup.R. 48(D). Thus, "a trial court has discretion to consider a guardian's opinion and report even when the guardian does not comply with the directives found in Sup.R. 48(D)(13)."

In re N.B., 2017-Ohio-1376, ¶ 26 (8th Dist.), quoting *In re T.S.*, 2017-Ohio-482, ¶ 36 (2d Dist.).

{¶ 66} Courts generally refuse to find a GAL's failure to comply with Sup.R. 48(D) constitutes grounds for reversal. *Id.* at ¶ 26, citing *Miller v. Miller*, 2014-Ohio-5127, ¶ 17-18 (4th Dist.); *see also In re Matter of C.W.*, 2025-Ohio-282, ¶ 43 (10th Dist.), quoting *In re A.A.*, 2024-Ohio-224, ¶ 50 (10th Dist.), quoting *In re R.P.*, 2021-Ohio-4065, ¶ 31 (10th Dist.) (""Because Sup.R. 48 is a general guideline that lacks the force of statutory law, noncompliance with [Sup.R. 48] is not grounds

for automatic exclusion of a [guardian ad litem's] report, testimony, or recommendation.'"").

{¶ 67} Sup.R. 48.03(D) lists the duties of a guardian ad litem and states:

> Unless specifically relieved by the court, the duties of a guardian ad litem shall include, but are not limited to, the following:
>
> (1) Become informed about the facts of the case and contact all relevant persons;
>
> (2) Observe the child with each parent, foster parent, guardian or physical custodian;
>
> (3) Interview the child, if age and developmentally appropriate, where no parent, foster parent, guardian, or physical custodian is present;
>
> (4) Visit the child at the residence or proposed residence of the child in accordance with any standards established by the court;
>
> (5) Ascertain the wishes and concerns of the child;
>
> (6) Interview the parties, foster parents, guardians, physical custodian, and other significant individuals who may have relevant knowledge regarding the issues of the case. The guardian ad litem may require each individual to be interviewed without the presence of others. Upon request of the individual, the attorney for the individual may be present;
>
> (7) Interview relevant school personnel, medical and mental health providers, child protective services workers, and court personnel and obtain copies of relevant records;
>
> (8) Review pleadings and other relevant court documents in the case;
>
> (9) Obtain and review relevant criminal, civil, educational, mental health, medical, and administrative records pertaining to the child and, if appropriate, the family of the child or other parties in the case;
>
> (10) Request that the court order psychological evaluations, mental health substance abuse assessments, or other evaluations or tests of the parties as the guardian ad litem deems necessary or helpful to the court;

> (11) Review any necessary information and interview other persons as necessary to make an informed recommendation regarding the best interest of the child.

{¶ 68} Mother asserts that the GAL "admitted during his testimony that he did not comply with Sup.R. 48." However, Mother does not provide any citations to the transcript identifying where the GAL allegedly made this admission, and we have not found any such admission in our review of the proceedings. Nevertheless, the GAL admitted that he had never observed Mother and G.T. together, that he never spoke with Grandmother away from the courthouse, and that he never visited the foster family's home in person. (Mar. 21, 2024, tr. 143-144.) He, therefore, failed to fully comply with Sup.R. 48.03(D)(2), (4), and (6).

{¶ 69} Although failure to comply with Sup.R. 48, by itself, is not grounds for reversal, in *In re A.S.*, 2022-Ohio-1861 (10th Dist.) the Tenth District found that the trial court in that case committed plain error by failing to discharge the GAL and replace him with someone else as a result of the GAL's failure to comply with Sup.R. 48.03(D). The GAL failed to properly educate himself about the facts of the case as evidenced by the fact that he referred to the child's father as the "alleged father" even though paternity had been established via genetic testing early on in the case. *Id.* at ¶ 57. The GAL only met with the minor child once during the three-year period from the time that the child was removed from his parents. *Id.* at ¶ 59. The GAL also did not visit the child in the different foster homes where he was placed in the two years prior to the COVID-19 pandemic, and he only conducted one videoconference interview after the COVID-19-related restrictions were imposed.

The GAL did not interview the child alone and never observed the child during any visitation with either parent or both. Therefore, the record in *In re A.S.* clearly established that the GAL's performance in that case was severely deficient.

{¶ 70} For the plain-error doctrine to apply, the party claiming error must establish (1) that "'an error, i.e., a deviation from a legal rule'" occurred; (2) that the error was "'an "obvious" defect in the trial proceedings'"; and (3) that this obvious error affected substantial rights. *State v. Rogers*, 2015-Ohio-2459, ¶ 22, quoting *State v. Barnes*, 2002-Ohio-68. "The elements of the plain-error doctrine are conjunctive: all three must apply to justify an appellate court's intervention." *State v. Bailey*, 2022-Ohio-4407, ¶ 9.

{¶ 71} To show that an error affected an appellant's substantial rights, he or she must show that the outcome of the proceedings would have been different but for the error. *Id.* Therefore, the appellant must show "that the probability of a different result is 'sufficient to undermine confidence in the outcome' of the proceeding." *United States v. Dominguez Benitez*, 542 U.S. 74, 83 (2004), quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 209 (1982) ("A 'plain error' is obvious and prejudicial although neither objected to nor affirmatively waived which, if permitted, would have a material adverse affect on the character and public confidence in judicial proceedings.").

{¶ 72} "Although in *criminal* cases 'plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of

the court,' Crim.R. 52(B), no analogous provision exists in the Rules of *Civil* Procedure." (Emphasis in original.) *Goldfuss v. Davidson,* 79 Ohio St.3d 116, 121 (1997). Thus, the plain-error doctrine is not readily invoked in civil cases. Instead, an appellate court "must proceed with the utmost caution" when applying the plain-error doctrine in civil cases. *Id.*

{¶ 73} The Ohio Supreme Court has set a "very high standard" for invoking the plain-error doctrine in a civil case. *Perez v. Falls Fin., Inc.*, 87 Ohio St.3d 371, 375 (2000). Thus, "the doctrine is sharply limited to the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss* at 122; *accord Jones v. Cleveland Clinic Found.*, 2020-Ohio-3780, ¶ 24; *Gable v. Gates Mills*, 2004-Ohio-5719, ¶ 43.

{¶ 74} The court in *In re A.S.* did not discuss the other evidence presented at the permanent custody trial. We, therefore, have no way of determining if, but for the GAL's deficient performance, the outcome of the proceedings would have been different. Indeed, the dissenting judge in that case acknowledged that the GAL's investigation was deficient, but the judge "did not find this case to be the 'rare circumstance' in which the GAL's deficiencies alone should result in reversal.'" *Id.* at ¶ 80 (Schuster, J., dissenting).

{¶ 75} The GAL in this case did not comply with every single duty outlined in Sup.R. 48.03(D). However, he attended all of the many court hearings and reviewed

all of the court records. He also reviewed all of G.T.'s medical records and publicly available records. He interviewed Mother four times, interviewed the foster Mother three times, and questioned the various assigned case workers on multiple occasions while the case was pending. The GAL also advocated for visitation with Mother to resume after it had been paused, and he requested a "supportive visitation coach" to assist Mother during visitation. Therefore, the record shows that the GAL invested significant time and effort to help Mother be reunited with G.T.

{¶ 76} Although the GAL could have done more, the minor deficiencies in his investigation do not, by themselves, warrant reversal of the trial court's judgment. As outline above, the GAL invested considerable time in his investigation. Moreover, the testimony from multiple agency case workers, the two Ohio Guidestone providers, and the foster mother clearly and convincingly support the trial court's findings without regard to the GAL's testimony. Therefore, unlike the questionable circumstances in *In re A.S.,* it is clear that the GAL's imperfect investigation in this case does not rise to the level of plain error.

{¶ 77} Therefore, the fourth assignment of error is overruled.

E. Due Process

{¶ 78} In the fifth assignment of error, Mother argues the juvenile court violated her right to due process by failing to place G.T. in the legal custody of Grandmother rather than in the permanent custody of CCDCFS. She cites *Mathews v. Eldridge*, 424 U.S. 319 (1976), in support of her argument.

{¶ 79} In *Mathews*, the United States Supreme Court held that in determining whether parental due-process rights have been infringed, the court must consider the following three factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335.

{¶ 80} Mother obviously has a private interest in the care of her child. Parents have a fundamental interest in the care, custody, and management of their children. *Troxel v. Granville*, 530 U.S. 57, 65 (2000); *In re Murray*, 52 Ohio St.3d 155, 157 (1990). However, as previously stated, a parent's right to the care and custody of his or her child is not absolute, and a parent's natural rights are subject to the ultimate welfare of the child. *In re L.G.*, 2022-Ohio-529, ¶ 49 (8th Dist.); *In re L.D.*, 2017-Ohio-1037, at ¶ 29.

{¶ 81} We find nothing in the record to suggest that Mother's right to care for and parent G.T. was erroneously deprived as a result of some procedural deficiencies. The agency worked with Mother for three years. The agency developed a case plan and referred Mother to several professionals to help her remedy the problems that led to G.T.'s removal in the first place. Despite the agency's efforts, Mother failed to remedy those conditions and, as a result, the court reasonably concluded that G.T. could not be placed with her within a reasonable time.

{¶ 82} The agency also endeavored to have G.T. placed with Grandmother, but Grandmother refused to take G.T.'s medical issues seriously. The agency made reasonable efforts to help Grandmother overcome the obstacles that prevented her from taking legal custody of G.T., but she failed to make the changes necessary to ensure that she could provide a safe and secure home for him. Therefore, the court's decision to place G.T. in the permanent custody of the agency was not the result of any due-process violation.

{¶ 83} Accordingly, the fifth assignment of error is overruled.

{¶ 84} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

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

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

_____

EILEEN T. GALLAGHER, PRESIDING JUDGE

MARY J. BOYLE, J., CONCURS;
ANITA LASTER MAYS, J., DISSENTS (WITH SEPARATE OPINION)

ANITA LASTER MAYS, J., DISSENTING:

{¶ 85} I respectfully dissent from the majority's conclusion that there was clear and convincing evidence that it was in G.T.'s best interest to terminate Mother's parental rights and grant permanent custody to the agency.

{¶ 86} The Ohio Supreme Court clarified in *In re Z.C.*, 2023-Ohio-4703, when reviewing a trial court's application of the clear-and-convincing evidence burden of proof as follows: "Where the proof required must be clear and convincing, a reviewing court will examine the record to determine whether the trier of facts had sufficient evidence before it to satisfy the requisite degree of proof." *In re H.G.*, 2024-Ohio-3408, ¶ 13 (8th Dist.), quoting, *In re Z.C.* at ¶ 8. Therefore, I will review the trial court's best-interest findings as directed by the Ohio Supreme Court in *In re Z.C. Id.* When a child has been in the temporary custody of one or more public children services agencies, or private child placing agencies, for 12 or more months within a consecutive 22-month period, and the agency files a motion to modify temporary custody to permanent custody under R.C. 2151.413, the procedures outlined in R.C. 2151.414(B) govern the court's determination of whether to grant the agency permanent custody. *In re T.W.*, 2005-Ohio-5446, ¶ 18 (8th Dist.); *see also id.* at ¶ 23.

{¶ 87} Under these circumstances, the trial court must find, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody to the agency that filed the motion for permanent custody. In making its

determination of the child's best interest, the trial court must consider all relevant factors listed under R.C. 2151.414(D), which include:

1.The child's interaction and relationship with parents, siblings, relatives, and foster caregivers;

2. The child's wishes, if ascertainable;

3. The custodial history of the child;

4. The child's need for a legally secure placement and whether it can be achieved without permanent custody;

5. Any applicable factors under R.C. 2151.414(E)(7)-(11).

{¶ 88} No one factor outweighs the others. *In re N.B.*, 2017-Ohio-1376, ¶ 18 (8th Dist.), quoting *In re Schaefer*, 2006-Ohio-5513, ¶ 56. R.C. 2151.281(B) and Sup.R. 48(B)(1) require that the trial court appoint a GAL in abuse, neglect, and dependency cases to investigate and make recommendations to the court concerning the child's best interest. The GAL's duties include:

1. Investigating all relevant facts and contacting all parties;

2. Observing the child with each parent or guardian;

3. Interviewing the child, if appropriate;

4. Visiting the child's residence;

5. Determining the child's wishes and concerns;

6. Interviewing relevant family members and professionals;

7. Reviewing court documents and relevant records;

8. Recommending evaluations or assessments if necessary.

{¶ 89} While Sup.R. 48 sets forth requirements for GALs, Ohio courts have consistently held that these rules do not create enforceable rights. *In re R.B.*, 2019-Ohio-1656, ¶ 17 (8th Dist.). Even in permanent-custody cases, a GAL's failure to comply with Sup.R. 48 is not, by itself, grounds for reversal. *In re K.S.*, 2021-Ohio-694, ¶ 37 (8th Dist.). However, R.C. 2151.281(D) provides that a GAL who fails to faithfully discharge duties "shall" be removed.

{¶ 90} The record reveals that Mother filed a motion to remove the GAL on September 14, 2023, citing his failure to follow Sup.R. 48 and the local rules. Specifically, the GAL:

1. Never observed G.T. with Mother.

2. Did not consider G.T.'s relationship with Grandmother's other children.

3. Never observed G.T. with Grandmother;

4. Did not visit the foster family's home in person;

5. Failed to interview G.T.'s counselor or medical providers;

6. Did not meet privately with G.T. in person, nor attempt to ascertain G.T.'s wishes.

7. Did not conduct interview with Mother using an interpreter, despite known language barriers.

8. Failed to conduct an interview with Grandmother at all.

{¶ 91} Under these facts, GAL's failure to conduct a thorough investigation deprived the trial court of essential information regarding G.T.'s relationship with his biological family and his cultural background. This information was critical for

determining G.T.'s best interest, under R.C. 2151.414(D)(1)(a). Furthermore, R.C. 2151.281(D) requires the trial court to discharge a GAL who fails to faithfully discharge his guardian ad litem duties and appoint another guardian ad litem. *In re A.S.*, 2022-Ohio-1861 (10th Dist.) (holding that the juvenile court committed plain error under R.C. 2151.281(D) in not requiring the GAL to faithfully discharge his duties and in not discharging the GAL and appointing new GAL for failure to faithfully discharge GAL duties, as well as in admitting GAL's report and testimony).

{¶ 92} Mother filed a motion to remove GAL alleging he failed to discharge his duties under the local rules and the Rules of Superintendence on September 14, 2023, three days after he filed his report. The agency responded to Mother's motion by arguing that the timing of her request was "suspicious." GAL responded to Mother's motion with a brief in opposition and a motion for sanctions, alleging Mother's motion to remove him was filed in bad faith.

{¶ 93} Notably, neither the agency nor the GAL refuted Mother's claims. Instead, GAL claims that he met with and viewed the child with the foster parents and determined that the foster parents were appropriate caregivers. GAL did not address Mother's claim that he never met G.T. in person or that he never interviewed Mother and Grandmother using an interpreter. He testified during trial that the visits with G.T. and his foster family were via Zoom.

{¶ 94} In his report, GAL stated in relevant part, "[t]he undersigned investigated and interviewed the mother in person and came to the conclusion that

the mother is not an appropriate caregiver because of her mental health issues." (Brief in opp., Sept. 15, 2023). Regarding Grandmother, GAL stated in relevant part:

> The grandmother's behavior and mistreatment of her own daughter and professionals involved in the case initially made the undersigned cautious of maternal grandmother. After reviewing grandmother's mental health records, the undersigned concluded that the maternal grandmother was an inappropriate caregiver for a young child.

Id.

{¶ 95} Significant cultural and language barriers impeded the family throughout the proceedings. The GAL's failure to use interpreters to interview Mother and Grandmother and his decision not to assess G.T.'s bond with his biological relatives undermined the trial court's ability to fully evaluate the child's best interest.

{¶ 96} G.T. came to the United States with his Grandmother, Mother, and her two siblings, as refugees fleeing Congo, by way of Burundi, when G.T. was one-year-old and Mother was 17 years old. Mother, her siblings; and G.T. were all minors when they arrived in this country. I determined that the GAL failed to faithfully discharge his duties and pursuant to R.C. 2151.281(D); it was mandatory for the trial court to remove the GAL. Failure to remove and replace the GAL derived the trial court of essential decision-making information.

{¶ 97} During the adjudication hearing, the agency offered testimony of Ms. Lakes, Mother's initial case worker. Ms. Lakes established that family, including G.T., lived together from the time of their arrival in the United States in 2019, until June 23, 2021, when Mother was unable to return to the family home. When Ms.

Lakes was first assigned the case, Mother was still trying to enroll in high school. At the time of the adjudication hearing, Mother was enrolled in the 11th grade, at a public high school in Cleveland. Ms. Lakes also testified that Grandmother was providing all of G.T.'s basic needs.

{¶ 98} Ms. Lakes testified concerning the events that prompted the agency's involvement with the Family. Mother threatened to take G.T. from the home to live on the street. Additionally, Mother made threats to harm herself and G.T. Mother believed Catholic Charities was trying to separate her from her family. Finally, Ms. Lakes testified that the agency offered Mother counseling services through the Community Collaborative and PEP Connections in an effort to prevent the removal of G.T. from Mother's custody.

{¶ 99} The record reveals that the language barrier persisted throughout the case and prevented Mother from meaningfully participating in every phase of the case. For example, Grandmother testified that the events leading up to G.T.'s removal from her care were due to her lack of understanding of what the doctor was doing to G.T. during a vaccination when the interpreter was no longer available. Similarly, Mother testified about cultural differences and significant language barriers they faced after arriving in the U.S. Although Mother was sometimes provided with interpretation services, there were significant issues with translation. The parties acknowledged the issue during the disposition hearing and questioned the worker on direct examination about adding a requirement that Mother learn to read and write English in her case plan.

GAL: In regards to the case plan, is a literacy program, meaning reading and writing classes, for the mother, is that part of the case plan, or is it — do you think it's needed as part of the case plan?

AGENCY COUNSEL: He's asking if there's a literacy component to the case plan, like a reading and writing —

CASE WORKER: To help her understand English.

MOTHER'S COUNSEL: She's in school.

GAL: Well, I know, ma'am. I'm not talking about the mother not being able to read and write. She can read and write in Swahili, but English literacy.

CASE WORKER: So at this time, there is not anything on the case plan in reference to that. If that continues to be an issue, we can add that to be on the case plan to provide a service to mother that will help her get in contact to understand English to be able to navigate services in the community better.

THE COURT: No further questions?

GAL: No.

(Tr. 98-99.)

{¶ 100} Mother's challenges with understanding the proceedings was addressed again on redirect:

AGENCY ATTORNEY: Where does mom currently attend school?

CASE WORKER: Thomas Jefferson High School.

AGENCY ATTORNEY: And is the program that she's in equipped to accommodate her given her — the language barriers?

CASE WORKER: I have not spoken to anyone directly at the school about their current curriculum.

AGENCY ATTORNEY: If they are able to address that language barrier and work with mother, would that be enough to — would that be enough for the Agency?

MOTHER'S COUNSEL: Objection, your Honor.

THE COURT: Basis?

MOTHER'S COUNSEL: You can't make mother learning English a component to force her to do that in order to get her child back. That violates I don't know how many Civil Rights mother has.

{¶ 101} The record demonstrates that during the first semiannual administrative review there were still complications with providing Mother adequate interpretation services. (Tr. 282.) These issues persisted throughout the pendency of the case.

{¶ 102} Grandmother also testified that she raised G.T. as her son. She stated, "He knows now I'm the grandmother, but all along he kept growing up thinking I'm the mother, although his birth parent is [Mother]." (Tr. 436.) Therefore, G.T.'s relationship with the other children who lived with him in Grandmother's home is relevant.

{¶ 103} In this case, GAL testified that he never observed Grandmother or Mother interact with G.T. and never spoke with Grandmother outside of court. In contrast, the GAL stated that he observed G.T.'s foster parents, a number of times, but only on Zoom. GAL testified that G.T. was bonded with his entire foster family. The trial court ultimately relied on GAL's recommendation and report.

{¶ 104} The record here reflects no evidence concerning G.T.'s bond with Mother's siblings, the other children in the home. G.T.'s aunt and uncle are biological relatives who lived with him from the time the family arrived in the United States until the agency removed G.T. from Grandmother's home on March 9, 2022. Under these circumstances, G.T.'s relationships with Grandmother's other two

children were relevant factors requiring consideration under R.C. 2151.414(D)(1)(a). Mother's siblings traveled across the world with G.T. as refugees, spoke his native language, shared his family customs, and lived with G.T. until the agency removed him from Grandmother's home. The record demonstrates no evidence that the trial court considered G.T.'s relationship with the other children in Grandmother's home.

{¶ 105} Furthermore, there were significant challenges caused by the language barrier throughout the case. Ms. Lakes testified during the adjudication hearing that Mother believed Catholic Charities was trying to take her family.

{¶ 106} The record reflects that Mother stipulated to the adjudication of G.T. as neglected and dependent and agreed to accept case-plan services, as long as G.T. could remain with her mother. There is no evidence in the record that Mother was told why G.T. was abruptly removed from Grandmother's care in any language. Mother's counsel filed a motion for an emergency hearing alleging the agency failed to provide notice after removing G.T. from Grandmother's care, in violation of R.C. 2151.412(F)(3).

{¶ 107} As a result of the language barriers evident in this case, GAL's duty to provide direct observations to the trial court, as required by the rules, was necessary for the court's consideration of G.T.'s best interest. The GAL's failure to observe G.T. with his biological family and refusal to use an interpreter to interview Grandmother or Mother, left the court without crucial information about G.T.'s relationships with his closest relatives. R.C. 2151.414(D)(1)(a) requires consideration of "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," but it is within the trial court's discretion to determine the weight to apply to each element.

{¶ 108} Evidence of G.T.'s interaction and interrelationship with these biological relatives is nowhere else within the record. These omissions undermined the integrity of the trial court's best-interest analysis under R.C. 2151.414(D) and violated the statutory mandate requiring a comprehensive assessment of the child's familial relationships. Consequently, there is insufficient evidence that the trial court considered each element of R.C. 2151.414(D)(1)(a). The trial court committed plain error when it failed to comply with the statutory requirements in R.C. 2151.414 and 2151.281(D), before terminating Mother's parental rights.

{¶ 109} For these reasons, I would determine that the trier of facts did not have sufficient evidence before it to satisfy the requisite degree of proof, sustain Mother's fourth assignment of error on the basis of plain error, and reverse the trial court's judgment.

{¶ 110} Finally, a remaining concern that I have in separating G.T. from his biological family, is that he will lose his cultural identity and his native language. In this limited occasion, I equate the trial court's decision as an act of cultural erasure.