

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE M.S. :
A Minor Child : No. 116098
[Appeal by J.A., Father] :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 2, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-24909332

Appearances:

Wargo Law, LLC, and Leslie E. Wargo, *for appellant.*

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

ANITA LASTER MAYS, J.:

{¶ 1} Appellant J.A. (“Father”) appeals from the judgment of the Cuyahoga County Court of Common Pleas, Juvenile Division, that terminated his parental rights and granted permanent custody of his minor child, M.S., to appellee Cuyahoga County Division of Children and Family Services (“CCDCFS”). Father contends that the juvenile court’s decision was not supported by sufficient clear

and convincing evidence, was against the manifest weight of the evidence, and was not in M.S.'s best interest and that the juvenile court erred when it denied his oral motion for a first extension of temporary custody. After a thorough review of the record and the applicable law, we affirm the judgment of the juvenile court.

I. Facts and Procedural History

{¶ 2} M.S. was born in April 2024. On September 10, 2024, the juvenile court issued an ex parte telephonic order removing M.S. from her mother, T.S. ("Mother"). On September 11, 2024, CCDCFS filed a complaint alleging that M.S. was neglected and dependent and requested an order of temporary custody. The complaint identified concerns relating to Mother's mental health, housing instability, and parental judgment. It further alleged that Father had not established paternity, visited, supported, or communicated with M.S. since her birth. M.S. was formally placed in the custody of CCDCFS on that date and was placed in a foster home.

{¶ 3} On September 26, 2024, M.S.'s caregiver, C.K., filed a motion to intervene. The juvenile court considered that motion at a preliminary hearing held on November 14, 2024, and denied it. Tr. 4, 31.

{¶ 4} The adjudicatory and dispositional hearing was held on January 10, 2025. Mother entered an admission to the complaint as amended, and Father, who was then incarcerated, entered his agreement through his trial counsel. Tr. 8-12, 15-16. The court was advised at that hearing that Father and Mother were involved in a domestically violent relationship and that Father was incarcerated. Tr. 15-16.

M.S. was adjudicated dependent and was committed to the temporary custody of CCDCFS. Tr. 17-18, 30-31; Journal Entry No. AD-24909332 (Jan. 13, 2025). M.S. was placed in the home of C.K. on January 13, 2025, and remained there continuously through the date of trial. Tr. 20.

{¶ 5} On July 22, 2025, CCDCFS filed a motion to modify temporary custody to permanent custody. On July 31, 2025, Father filed a motion requesting that M.S. be placed in his legal custody. On October 20, 2025, CCDCFS filed an amended case plan and a motion to convert the trial to a final pretrial. At the outset of the proceedings, on October 22, 2025, Father withdrew his motion for legal custody, the trial court denied the motion to convert the trial to a final pretrial, and Father made an oral motion for a first extension of temporary custody. Tr. 4-6. The trial proceeded on the motion for permanent custody, and the court heard testimony from C.K., CCDCFS social worker Arlethia Levison (“Levison”), Father, and the guardian ad litem (“GAL”). Tr. 3, 12-55, 56-99, 100-128, 129-132. Mother did not participate in the trial.

{¶ 6} C.K. testified that she was employed as a patrol officer in Pine Mountain, Georgia and that she had previously served as a patrol officer with the Richfield Police Department in Ohio. Tr. 12-13. She first encountered M.S. and Mother on July 28, 2024, when she responded in her capacity as a Richfield officer to a call involving Mother and Father. Tr. 13-14, 32-33. Father was not present when she arrived; she testified that he was seen walking out into the woods. Tr. 14. In the course of her investigation, C.K. learned that Father had active warrants for

his arrest in North Carolina and Florida. Tr. 14-15. She testified that M.S. was in Ohio with Mother and Father because Father was “running from the law” and the family was “trying to live off the grid.” Tr. 17.

{¶ 7} C.K. testified that at the conclusion of that incident, she transported Mother and M.S. to a shelter and the following day, after they were required to leave the shelter, she brought them into her own home. Tr. 13-16, 33. Mother and M.S. lived with C.K. until M.S. was removed by CCDCFS on September 11, 2024. Tr. 16, 35, 47. C.K. testified that during that time, she provided for M.S.’s basic needs and that she continued to visit and provide for M.S. during the months M.S. spent in the foster home before returning to C.K.’s home in January 2025. Tr. 17, 83-84. C.K. and her husband subsequently relocated to Georgia, and C.K. testified that they were licensed as foster-to-adopt caregivers. Tr. 21. She testified that M.S. had a very close relationship with the members of her household, that M.S. had a sibling bond in the home, and the family treated M.S. as their own. Tr. 29.

{¶ 8} As to Mother, C.K. testified that she had offered Mother frequent opportunities to visit with M.S. but, Mother had not availed herself of them and had last seen M.S. on May 17, 2025. Tr. 20-22. C.K. testified that her last contact with Mother was on June 30, 2025, and she did not know where Mother was living. Tr. 21-22. C.K. described Mother’s conduct during visits, testifying that Mother “was always on her phone” and did not really pay attention to M.S. until C.K. addressed it. Tr. 44. C.K. testified that she had initially been willing to accept legal custody of M.S., but after Mother made threats to end her own life and the lives of

her children, C.K. was no longer willing to accept legal custody and preferred to provide M.S. with permanency through adoption. Tr. 30-31, 38-39, 50.

{¶ 9} As to Father, C.K. testified that her first contact with him occurred on September 19, 2025, and, since that date, Father had three virtual visits with M.S., each approximately 20 minutes in length. Tr. 22-24. She testified that M.S. did not appear to recognize Father during those visits, that Father largely watched M.S. play, and that there was “no real connection there.” Tr. 23-24, 48. C.K. acknowledged that Father lived in a rural area and the visits were affected by technical difficulties. She testified that despite those difficulties, Father contacted her to ask about M.S. Tr. 37. C.K. went on to state that she was aware Father had been hospitalized and was laid up for a period of time and that she would allow Father to remain in M.S.’s life. Tr. 38-39. C.K. testified that Father told her that he was in the process of fixing a motorcycle, that he was trying to get a job, that he could not provide her with an address because he did not have one at that time, and was looking for a place to live, and that he was on probation and could not cross state lines. Tr. 24, 27, 48. C.K. further testified that Father never offered any support or assistance for M.S.’s care. Tr. 37. Regarding paternity, C.K. testified that Father knew he needed to establish paternity but was reluctant to take any test that did not go through the court. C.K. had indicated a willingness to cover the cost of an at-home test but Father declined. Tr. 26-27.

{¶ 10} Levison testified that she was the CCDCFS social worker assigned to the case in October 2024. Tr. 56. She testified that CCDCFS became involved with

the family in August 2024 because of Mother's volatile behavior, that M.S. was removed and placed in agency custody in September 2024, and that M.S. had remained in agency custody continuously since that time. Tr. 60-61. Levison testified that CCDCFS attempted to reunify M.S. with Mother by locating a shelter that could accommodate both of them but Mother declined that opportunity. Tr. 62-63. She also testified that Mother had another child who was removed from her care in North Carolina. Tr. 59.

{¶ 11} Levison also testified that a case plan was developed after M.S.'s removal and was amended as necessary. Tr. 63. She acknowledged that the amended case plan was not reviewed with either parent and the only changes reflected on the amended plan were the location of the child and the status of the child's custody. Tr. 64. Levison testified that she sent the case plan to Father by electronic mail. Tr. 64.

{¶ 12} Levison further testified that Father's case plan included case management services through which he would be linked to a case manager and referred for other services and his objectives encompassed domestic violence classes, parenting, housing, proof of income, provision of basic needs for M.S., and the establishment of paternity. Tr. 72-74. She testified that Father "did not agree to work case plan services." Tr. 66. Levison testified that her attempts to communicate with Father were frustrated because he had phone issues and three different telephone numbers. She testified that Father "said he was in a wooded area when I tried to talk to him about services. The communication was always

bad. So we were not able to actually talk to him about services.” Tr. 66. She testified that she also had no success reaching Father by text message or at the two electronic mail addresses he had provided. She described the pattern of contact as one in which Father would send a random email and then not respond for weeks or months and would answer text messages days later. Tr. 73-75, 88-90. As a result, Levison testified, CCDCFS was unable to assess Father for his individual service needs or to make referrals for services. Tr. 72-74.

{¶ 13} As to paternity, Levison testified that no test had been completed because CCDCFS was unable to obtain the birth certificate required for agency testing. Tr. 57-58. She explained that Mother completed the initial application to the Bureau of Vital Statistics incorrectly and it was rejected, the agency resubmitted the request, and the request was rejected again because M.S. was born in North Carolina. Tr. 57-58. Levison testified that CCDCFS attempted to obtain the documentation from North Carolina but had not succeeded as of the date of trial. Tr. 58. She testified that an at-home paternity test was offered as an alternative and Father refused to submit to it. Tr. 85-87. Levison acknowledged that she did not know whether such a test would be accepted in court, and she acknowledged that no other man had come forward to CCDCFS as a possible father of M.S. Tr. 74, 87.

{¶ 14} Levison further testified that Father was incarcerated at the time she was assigned to the case in October 2024 and was released in February 2025, that he did not contact her to request visitation until August 2025, and after she

provided him with the caregiver's contact information, he did not respond until September 19, 2025, at which time video visitation was arranged. Tr. 56, 75-77. Levison testified that Father was prohibited by the conditions of his probation from traveling across state lines to Georgia, that he had not seen M.S. in person in the 15 months preceding trial, and he had only three virtual visits with M.S. before trial. Tr. 96-98. She testified that there was no bond between M.S. and Father. Tr. 96. Levison finally testified that Father provided no support for M.S. and he never verified a source of income or employment. Tr. 75, 90.

{¶ 15} Regarding Mother, Levison testified that Mother refused to engage in case-plan services, did not complete any of the services for which she was referred, and did not provide CCDCFS with her address after relocating out of state. Tr. 65-72, 93-95. She testified that Mother was subject to a no-contact order at the time of trial and had not seen M.S. since May 2025, that Mother had failed to provide appropriate care for M.S. during the visits that did occur, and that there was no actual bond between Mother and M.S. Tr. 77-79. Levison testified that CCDCFS attempted to identify an appropriate relative caregiver for M.S. but those efforts were unsuccessful. Tr. 80-81. Finally, Levison testified that M.S. was a year and a half old at the time of trial, she was thriving in her placement, all of her needs were being met, and that she had bonded with her caregivers who treated her as family. Tr. 28, 81-83, 97.

{¶ 16} Father testified that he was M.S.'s father. Tr. 100. He testified that he had been on probation and had "been on the run," that he was on probation for

a conviction for manufacturing marijuana, and that his supervision was scheduled to end on October 29, 2025, seven days after the date of trial. Tr. 101, 106. He testified that he was incarcerated for approximately nine and a half months and was released from prison on February 1, 2025. Tr. 102, 106. Father testified that since his release, he had incurred no violations, had met with his supervising officer regularly, and had followed the rules of his supervision but that he was prohibited from traveling outside North Carolina, where he resided in what he described as “the hollow of a mountain.” Tr. 102, 106-107, 116.

{¶ 17} Father testified that he purchased an electric scooter to commute to work and to run errands. Father stated that on February 14, 2025, less than two weeks after his release, he was run over by a car. Tr. 106-108. He testified that he fractured his tibia and fibula, was hospitalized for two days, required crutches and physical therapy over a recovery period of several months, and was unable to walk until August 2025, at which time he returned to work. Tr. 103, 106-111. He testified that the nature of his occupation as a handyman doing construction-related work limited his ability to work during that recovery. Tr. 109-111. Father testified that at the time of trial, he was working consistently and had two job opportunities, the full-time position he then held and a second position he could perform in conjunction with it, and he intended to stabilize his life so that he could provide for M.S. Tr. 103-104, 120-122.

{¶ 18} Father testified that his driver’s license had been revoked when he was 19 years old; that he continued to drive for years and incurred numerous

charges for driving under revocation and other offenses, including unpaid fines that resulted in his being jailed between February and March until the week before he was run over and that it would cost approximately \$3,000 to have his license restored. Tr. 111-113. Father testified that he had retained an attorney to assist him and was awaiting a court date. Tr. 112-113. Father also acknowledged that there was an active warrant for his arrest in Florida on grand theft auto and firearm charges. Tr. 123, 125. He testified that he owned a car that was drivable. Tr. 126.

{¶ 19} As to housing, Father testified that he researched housing programs on his own, applied to a program for assistance in obtaining housing, and attempted to have his housing application fast-tracked because of his need to provide a home for M.S. Tr. 114. As to paternity, Father testified that he did not recall ever refusing a paternity test and that he wanted a test that a court would recognize as legitimate. Tr. 115-116. As to communication, he testified that he lived in a rural Appalachian area with poor telephone service, that he had to travel five miles up the road before he could obtain any service, and that his phone was destroyed in the February accident. Tr. 116-117. Father testified that he lived approximately four hours from the caregivers, that he could not visit in person while his travel restriction remained in place, that he had coordinated with C.K. around their work schedules to arrange virtual visits, that he intended to visit M.S. in person as soon as the restriction was lifted, and that he had people who could help facilitate his travel. Tr. 118-120.

{¶ 20} The GAL presented his report and recommendation to the court. Tr. 129-132. He stated that neither parent had established the requisite level of stability to support placement and that neither appeared to be on the brink of establishing it in the foreseeable future. Tr. 129-132. As to Mother, he stated that she had not followed her case plan at all, had essentially removed herself from the situation, was not following through with her mental-health services, and had not availed herself of the unusually generous visitation opportunity created by M.S.'s placement with C.K. Tr. 129-132. As to Father, the GAL acknowledged that Father had encountered roadblocks along the way but stated that Father had not provided any type of support for M.S., that there did not appear to be any relationship between Father and M.S., and that Father was not in a position to take custody nor could it be surmised that he would be in a position within the next year even to begin establishing a relationship with a child who did not appear to recognize him as her father. Tr. 129-132. In his written report, the GAL observed that Father had virtually no relationship with M.S. and was essentially a stranger to her, that Mother had not seen M.S. since May 17, 2025, that M.S. was in an extremely stable setting in which she was thriving, and that there was significant concern that removing M.S. from that setting could cause her significant psychological damage. The GAL recommended that the court grant the motion for permanent custody. Tr. 132. The court afforded all counsel the opportunity to question the GAL regarding his report and recommendation, and all counsel declined. Tr. 132.

{¶ 21} Following closing arguments, the presiding jurist took the matter under advisement. Tr. 137. A magistrate's decision was thereafter issued recommending that M.S. be placed in the permanent custody of CCDCFS. On November 4, 2025, Father filed objections to the magistrate's decision, and CCDCFS filed a brief in opposition to those objections.

{¶ 22} On January 2, 2026, the trial court journalized an entry overruling Father's objections, terminating all parental rights, and committing M.S. to the permanent custody of CCDCFS. Journal Entry No. AD24909332 (Jan. 2, 2026). The court found that M.S. could not be placed with either parent within a reasonable time or should not be placed with either parent under R.C. 2151.414(B)(1)(a) and further found that M.S. had been abandoned under R.C. 2151.414(B)(1)(b). *Id.* In support of the finding that M.S. could not or should not be placed with either parent, the court made findings under R.C. 2151.414(E)(1), (2), (4), (10), and (14), including that Father had seen M.S. for approximately one hour by means of virtual visits in more than a year; that neither parent had visited, supported or communicated with M.S. for significant periods of time; that Mother had failed to visit M.S. since May 17, 2025, and that Father had begun virtual visits only in September 2025; and that neither parent had provided any support for M.S. since the case was initiated. *Id.* The court further denied Father's oral motion for a first extension of temporary custody. *Id.*

{¶ 23} Father filed a timely notice of appeal on January 29, 2026, and assigns two errors for our review:¹

1. The trial court’s judgment granting permanent custody to the Agency was not based upon sufficient clear and convincing evidence and was against the manifest weight of the evidence, and the finding of permanent custody is not in the best interest of the child.
2. The trial court erred in denying the Father’s Motion for First Extension of Legal Custody.

II. Best Interest of the Child

A. Standard of Review

{¶ 24} Our responsibility in reviewing cases involving the termination of parental rights and the award of permanent custody is taken very seriously. Ohio courts have long recognized that termination of parental rights is “the family law equivalent of the death penalty in a criminal case.” (Cleaned up.) *In re D.A.*, 2007-Ohio-1105, ¶ 10. Parents have a constitutionally protected, fundamental interest in the management, custody, and care of their children. *Troxel v. Granville*, 530 U.S. 57, 66 (2000). The right to raise one’s own child is “an essential and basic civil right.” *In re N.B.*, 2015-Ohio-314, ¶ 67 (8th Dist.), quoting *In re Hayes*, 79 Ohio St.3d 46, 48 (1997). 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, ¶ 29 (8th Dist.), quoting *In re Cunningham*, 59 Ohio St.2d 100, 106 (1979).

¹ Mother is not appealing the trial court’s decision.

{¶ 25} “The proper appellate standards of review to apply in cases involving a juvenile court’s decision under R.C. 2151.414 to award permanent custody of a child and to terminate parental rights are the sufficiency-of-the-evidence and/or manifest-weight-of-the-evidence standards, as appropriate depending on the nature of the arguments that are presented by the parties.” *In re Z.C.*, 2023-Ohio-4703, ¶ 18. When reviewing for manifest weight, the appellate court weighs and resolves conflicts in the evidence, considers witness credibility, and determines whether the fact finder clearly lost its way, resulting in a manifest miscarriage of justice. *Id.* at ¶ 14, citing *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 20.

B. Law and Analysis

{¶ 26} Father’s first assignment of error challenges both the sufficiency and the manifest weight of the evidence supporting the juvenile court’s January 2, 2026 judgment terminating parental rights and committing M.S. to the permanent custody of the agency.

{¶ 27} R.C. 2151.414(B)(1) establishes the two-prong test a juvenile court must apply before granting a motion for permanent custody. The court must find, by clear and convincing evidence, that (1) one of the conditions set forth in R.C. 2151.414(B)(1)(a) through (e) applies, and (2) an award of permanent custody is in the child’s best interest. *In re A.M.*, 2020-Ohio-5102, ¶ 18. Clear and convincing evidence is “that measure or degree of proof which is more than a mere “preponderance of the evidence,” but not to the extent of such certainty as is required “beyond a reasonable doubt” in criminal cases, and which will produce in

the mind of the trier of facts a firm belief or conviction as to the facts sought to be established.” *In re Z.C.* at ¶ 7, quoting *Cross v. Ledford*, 161 Ohio St. 469 (1954), paragraph three of the syllabus. A finding under any one of the subsections of R.C. 2151.414(B)(1) is sufficient to satisfy the first prong. *In re J.B.*, 2013-Ohio-1705, ¶ 80-81 (8th Dist.). Because a determination that a judgment is supported by the manifest weight of the evidence necessarily includes a determination that it is supported by sufficient evidence, this court addresses Father’s arguments together. *See In re R.M.*, 2024-Ohio-1885, ¶ 46 (8th Dist.).

{¶ 28} At the outset, the agency observes that although Father filed objections to the magistrate’s decision, he did not challenge in those objections the findings the court made under R.C. 2151.414(E)(1), (4), (10), and (14), and he has not argued plain error on appeal. Under Juv.R. 40(D)(3)(b)(iv), “[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion. . . unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b).” *See In re T.R.*, 2025-Ohio-2531, ¶ 24 (8th Dist.); *In re C.F.*, 2026-Ohio-1457, ¶ 49 (8th Dist.). Given the gravity of a permanent custody judgment, however, this court has reviewed the findings against the trial record, and they are amply supported.

{¶ 29} The juvenile court made findings under both R.C. 2151.414(B)(1)(a) and (B)(1)(b). The abandonment finding under R.C. 2151.414(B)(1)(b) standing alone satisfies the first prong. R.C. 2151.011(C) provides that “a child shall be presumed abandoned when the parents of the child have failed to visit or maintain

contact with the child for more than ninety days, regardless of whether the parents resume contact with the child after that period of ninety days.” *See In re A.H.*, 2026-Ohio-467, ¶ 30 (8th Dist.). M.S. was placed in agency custody on September 11, 2024. At the October 22, 2025 trial, the caseworker, Levison, testified that she was assigned to the case in October 2024, that Father was incarcerated, that he was released in February 2025 and that he did not contact her to request visitation until August 2025. Tr. 56, 75-76. She further testified that when Father emailed her in August 2025 and she responded with the caregiver’s contact information, Father did not respond until September 19, 2025, at which point virtual visitation was arranged. Tr. 75-77. The caregiver, C.K., testified that her first contact with Father was on September 19, 2025, and since then Father had three 20-minute virtual visits with M.S. Tr. 23-24. Father himself acknowledged that he had not seen M.S. in person since before her removal. Tr. 118, 126. On this record, Father failed to visit or maintain contact with M.S. for far more than 90 days and the statutory presumption of abandonment attached. We determine that the finding is supported by clear and convincing evidence.

{¶ 30} The record likewise supports the court’s findings under R.C. 2151.414(E), which required the court to enter the finding under R.C. 2151.414(B)(1)(a) that M.S. cannot be placed with either parent within a reasonable time or should not be placed with either parent. *See In re N.A.-S.*, 2025-Ohio-5050, ¶ 33-35 (8th Dist.). As to R.C. 2151.414(E)(1), Levison testified that Father’s case-plan objectives addressed domestic violence, parenting,

housing, income, provision of the child's basic needs, and establishment of paternity, tr. 72, 74; that Father "did not agree to work case plan services," tr. 66; and that the agency was never able to assess him for services or make referrals because he did not communicate. Tr. 72-73. She described her efforts: Father had "three different numbers," told her he "was in a wooded area" when she attempted to discuss services, and did not respond to text messages or to email at two addresses he had provided. Tr. 66, 73-74, 88-90. She testified that "he had sent me a random email, and then when I contact him, I don't hear from him for weeks or a few months. And then I'll send a text message, and he wouldn't text back until days later." Tr. 74-75. Paternity was never established; when the agency was unable to obtain the North Carolina birth certificate necessary to test through agency process, an at-home test was offered and Father declined, stating he did not want to spend money on it, notwithstanding C.K.'s willingness to cover the cost. Tr. 26-27, 57-58, 85-87. As to R.C. 2151.414(E)(4) and 2151.414(E)(14), Father had not seen M.S. in the year following her removal, provided no support of any kind, and verified no income or employment. Tr. 37, 75, 90, 126. As to R.C. 2151.414(E)(10), the abandonment evidence set out above applies. Any one of these findings supports the court's conclusion under R.C. 2151.414(B)(1)(a).

{¶ 31} Father's central argument is that his failures were not his own doing but the product of circumstances beyond his control: he was incarcerated until February 1, 2025; he was struck by a vehicle on February 14, 2025, fracturing his tibia and fibula; he required crutches and physical therapy and could not walk

again until August 2025; his phone was destroyed in that accident; he lives in a rural area of North Carolina with poor telephone service; and his conditions of probation barred him from leaving the state until October 29, 2025. Tr. 101-103, 106-111, 116-117. Father argues that once these obstacles were removed, he came forward, secured visits that went well, obtained work, and was pursuing housing, and that he was “well on his way” to a relationship with his daughter.

{¶ 32} This court does not doubt that Father faced genuine difficulties, and the GAL acknowledged as much at trial. Tr. 130-131. But the trial court was entitled to weigh that explanation against the rest of the evidence, and the evidence does not bear the weight Father places on it. Father was released from incarceration on February 1, 2025, and was hospitalized after the accident for two days. Tr. 108. He testified that he could obtain telephone service by traveling “up the road five miles,” tr. 117, and that he maintained regular contact with his parole officer throughout, tr. 102. He nevertheless made no request for visitation with M.S. until August 2025, some six months after his release, tr. 56, 75-76, and made no offer of support at any point during the case, tr. 37, 75, 126. Difficulty with a telephone does not explain the refusal of the at-home paternity test, which was the threshold step toward establishing any legal relationship with M.S. and which the caregiver offered to fund. Tr. 26-27, 57-58, 85-87. Nor does it explain his acknowledgment that he had an outstanding warrant in Florida on grand theft auto and firearm charges. Tr. 123, 125. It was the duty of the trial court, which heard Father testify, to determine what weight his explanations deserved, and this court

is mindful of the presumption in favor of the finder of fact. *In re Z.C.*, 2023-Ohio-4703, at ¶ 14, 21.

{¶ 33} Father’s related contention that the agency failed to make reasonable efforts toward reunification fares no better. Levison’s testimony details repeated attempts to reach Father by telephone, text message, and two email addresses, and to engage him in services, all frustrated by his lack of response. Tr. 66, 72-75, 88-90. The court expressly found in its January 2, 2026 entry that reasonable efforts were made to prevent removal, to return the child home, and to finalize a permanency plan of reunification. We find that finding is supported by the record. That the agency could not obtain the out-of-state birth certificate does not undercut it, particularly where an alternative means of establishing paternity was offered and refused.

{¶ 34} Turning to the second prong, R.C. 2151.414(D)(1) requires the juvenile court to consider all relevant factors, including (a) the interaction and interrelationship of the child with the child’s parents, siblings, relatives, and foster caregivers; (b) the child’s wishes, expressed directly or through the guardian ad litem; (c) the child’s custodial history; (d) the child’s need for a legally secure permanent placement and whether that placement can be achieved without a grant of permanent custody; and (e) whether any of the factors in R.C. 2151.414(E)(7) through (11) apply. No one factor is given greater weight than the others, *In re Schaefer*, 2006-Ohio-5513, ¶ 56, and “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.*, 2020-Ohio-5102, at ¶ 31. Only one of the factors need be resolved in favor of permanent custody. *In re D.H.*, 2022-Ohio-2780, ¶ 46 (8th Dist.).

{¶ 35} The January 2, 2026 entry recites the court’s consideration of each factor, and the record supports its determination. As to R.C. 2151.414(D)(1)(a), Levison testified that M.S. had no relationship or bond with Father. Tr. 96. C.K. testified that during the three virtual visits M.S. did not appear to recognize Father, tr. 23-24, and that he merely watched her play with “no real connection there.” Tr. 48. The GAL’s report states that Father “has virtually no relationship with M.S.” and “is essentially a stranger” to her. By contrast, Levison testified that M.S. was thriving with her caregivers, who met all of her needs and were bonded with her, tr. 81-83, 97, and C.K. testified, “it’s like if she’s ours. We treat her like ours as well. She has a very great sibling bond and everything in the house.” Tr. 29. As to R.C. 2151.414(D)(1)(b), M.S. was a year and a half old at trial and too young to express her wishes, tr. 28, 97, and the GAL recommended permanent custody. Tr. 129-132. As to R.C. 2151.414(D)(1)(c), M.S. was removed on September 10, 2024, and had been in agency custody continuously for more than a year at the time of trial. Tr. 20, 35, 47, 60-61. As to R.C. 2151.414(D)(1)(d), Levison testified that the agency’s efforts to identify an appropriate relative caregiver were unsuccessful, tr. 80-81, the mother had not visited since May 17, 2025, and was under a no-contact order. Tr. 20-22, 77-78. Father withdrew his motion for legal custody on the day of trial, tr. 6, and C.K., who had initially been willing to accept

legal custody, testified that she preferred to provide M.S. permanency through adoption. Tr. 30-31, 38-39, 50. Finally, as to R.C. 2151.414(D)(1)(e), the court's abandonment finding under R.C. 2151.414(E)(10) applies.

{¶ 36} Father's suggestion that the juvenile court should instead have returned M.S. to him under an order of protective supervision or continued temporary custody overlooks that no motion for legal custody remained pending after he withdrew his own, tr. 6, and that the court's findings under R.C. 2151.414(E) compelled the conclusion that M.S. could not or should not be placed with either parent within a reasonable time. Nor does the record suggest that a legally secure permanent placement was otherwise available to this child. Father is, in substance, asking this court to reweigh the evidence and adopt his construction of it. "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." *In re Z.C.*, 2023-Ohio-4703, at ¶ 14, quoting *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, fn. 3 (1984).

{¶ 37} Having weighed the evidence and all reasonable inferences and considered the credibility of the witnesses, this court cannot say that the juvenile court lost its way or created a manifest miscarriage of justice. The findings under R.C. 2151.414(B)(1)(a) and 2151.414(B)(1)(b) and the best interest determination under R.C. 2151.414(D)(1) are each supported by clear and convincing evidence, and the judgment is not against the manifest weight of the evidence.

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

III. Failure to Raise Issue in the Trial Court

A. Standard of Review

{¶ 39} As the Supreme Court held in *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 210 (1982), the fundamental rule is that an appellate court will not consider any error that could have been brought to the trial court's attention and thereby avoided or otherwise corrected. *See N.A.-S.*, 2025-Ohio-5050, at ¶ 20.

B. Law and Analysis

{¶ 40} Father's second assignment of error is captioned as a challenge to the denial of a "Motion for First Extension of Legal Custody." The record reflects that Father filed a motion for legal custody on July 31, 2025, that he withdrew that motion at the outset of the October 22, 2025 trial, and that he then made an oral motion for a first extension of temporary custody. Tr. 6. The trial court denied that oral motion in its January 2, 2026 judgment entry. This court therefore construes the assignment as a challenge to the denial of the oral motion for a first extension of temporary custody.

{¶ 41} Father's argument is a sympathetic one, and this court states it at its strongest. He contends that the trial occurred at a critical moment in his progress and that the impediments to his participation were not of his making. He testified at the October 22, 2025 trial that he was incarcerated until February 1, 2025; that he was struck by a car on February 14, 2025, fracturing his tibia and fibula; that he was hospitalized and then required months of physical therapy; and that he was

unable to walk until August 2025. Tr. 102, 106-109. He testified that he lives in a rural area where he must travel approximately five miles to obtain telephone service and his phone was destroyed in the accident. Tr. 116-117. He testified that his conditions of probation prohibited him from leaving North Carolina until October 29, 2025, seven days after trial. Tr. 101. He further testified that he had returned to full-time handyman and construction work, had applied on his own initiative to a housing program and sought to have his application expedited so that he could provide a home for the child, and had retained counsel to restore his driving privileges. Tr. 103-104, 109-114, 120-121. Virtual visitation began in September 2025, and Father testified that he intended to visit in person as soon as his travel restriction was lifted. Tr. 118-119. On that record, he argues, a six-month extension would have allowed him to demonstrate that he could serve as the child's permanent placement.

{¶ 42} The difficulty with the argument is that it was not presented to the trial court in the manner the rules require. Following trial, the magistrate issued a decision recommending permanent custody and Father filed objections to that decision on November 4, 2025. The trial court overruled those objections and, in the same entry, found that “mother and [Father] have not made significant progress on the case plan, as required by ORC 2151.415(D)(1) and therefore a first extension of temporary custody cannot be ordered and would not be in the best interest of the child,” and further found that there was not reasonable cause to believe that the child would be reunified with a parent or otherwise permanently

placed within the period of the extension. Father has not identified any place in his objections where he challenged the denial of the oral motion or the findings on which that denial rests, and the record before this court does not reflect that any such challenge was made.

{¶ 43} Juv.R. 40(D)(3)(b)(iv) provides that “[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv.R. 40(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b).” That rule “embodies the long-recognized principle that the failure to draw the trial court’s attention to possible error when the error could have been corrected results in a waiver of the issue for purposes of appeal.” *In re T.R.*, 2025-Ohio-2531, at ¶ 24 (8th Dist.). *See also In re C.F.*, 2026-Ohio-1457, at ¶ 49 (8th Dist.); *In re H.C.*, 2026-Ohio-189, ¶ 33-34 (8th Dist.). Father does not argue plain error on appeal, and this court will not construct that argument on his behalf. *In re N.A.-S.*, 2025-Ohio-5050, at ¶ 15 (8th Dist.). An objection identifying the extension issue would have permitted the trial court to reconsider the magistrate’s recommendation and to correct any error before the permanent custody judgment issued. The claimed error was therefore one that could have been brought to the trial court’s attention and avoided or corrected, and it is waived.

{¶ 44} Even were this court to reach the merits, the result would be the same. R.C. 2151.415(D)(1) authorizes an extension of temporary custody only

where the court determines by clear and convincing evidence that the extension is in the best interest of the child, that there has been significant progress on the case plan, and that there is reasonable cause to believe that the child will be reunified with a parent or otherwise permanently placed within the period of extension. Even when those requirements are satisfied, a court may extend the order but is not required to do so. *In re D.H.*, 2025-Ohio-748, ¶ 18 (8th Dist.).

{¶ 45} The record supports the trial court's determination that significant progress had not been made. At the October 22, 2025 trial, agency social worker Levison testified that Father "did not agree to work case plan services," that her attempts to reach him by telephone, text message, and two electronic mail addresses were unsuccessful or went unanswered for weeks at a time, and as a result the agency had been unable to assess Father for services or to make referrals. Tr. 66, 72-75, 88-90. Paternity had not been established as of the date of trial, and Levison testified that Father declined an at-home paternity test, although the child's caregiver had indicated a willingness to pay for it. Tr. 26-27, 57-58, 85-87. Father provided no support for the child at any point during the case and verified no income or employment. Tr. 37, 75, 90, 126. He told the caregiver that he did not have an address and was looking for a place to live. Tr. 27, 48. Although the child was placed in agency custody in September 2024 and Father was released from prison on February 1, 2025, he did not contact Levison to request visitation until August 2025 and his first contact with the caregiver occurred on September 19, 2025. Tr. 23-24, 56, 75-77. Thereafter, he had three 20-minute

virtual visits during which the child did not appear to recognize him, and in the caregiver's words, there was "no real connection there." Tr. 23-24, 48. Father also acknowledged an active warrant for his arrest in Florida. Tr. 123, 125. The GAL, who recommended permanent custody, told the court that Father "has had some roadblocks along the way" but he was not in a position to have the child placed with him, nor could it be surmised that he would be able "even within the next year to even begin establishing a relationship" with a child who did not appear to recognize him. Tr. 130-132.

{¶ 46} To the extent Father asks this court to weigh his explanations for these gaps differently than the trial court did, that is not this court's function. It is for the trier of fact to resolve disputes of fact and to weigh the testimony and credibility of the witnesses, and where the evidence is susceptible of more than one construction, a reviewing court is bound to give it the interpretation most favorable to sustaining the judgment. *In re Z.C.*, 2023-Ohio-4703, at ¶ 14. The trial court heard Father's account of his incarceration, his injury, his telephone difficulties, and his travel restriction, and it nonetheless found that he had not made significant progress and that there was no reasonable cause to believe that the child, who had been in agency custody since September 2024 and who was thriving in a placement where her caregivers wished to provide permanency through adoption, would be reunified or otherwise permanently placed within a six-month extension. Tr. 30-31, 38-39, 50, 81-83, 97. Those findings are supported by the record, and the statutory predicates for an extension were therefore not established.

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

{¶ 48} 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.

ANITA LASTER MAYS, JUDGE

SEAN C. GALLAGHER, P.J., and
DEENA R. CALABRESE, J., CONCUR