

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE K.P., ET AL.

Minor Children :
[Appeal by J.P., Mother] : No. 116307

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 15, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD23912519 and AD23912520

Appearances:

Richard E. Hackerd, *for appellant.*

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

SEAN C. GALLAGHER, P.J.:

{¶ 1} J.P. (“mother”) appeals the judgment of the Cuyahoga County Court of Common Pleas, Juvenile Division (“juvenile court”), that awarded permanent custody of her minor children K.W. (three years old) and K.P. (seven years old) to the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “the

agency”), thereby terminating K.P.’s father’s and mother’s parental rights. K.P.’s father (“father”) did not appeal the custody determination, although he appeared in the proceedings below. K.W.’s father did not appear or otherwise contest the custody determination. For the following reasons, we affirm the juvenile court’s decision.

{¶ 2} Ordinarily, when reviewing a juvenile court’s award of permanent custody and termination of parental rights, “the proper appellate standards of review to apply . . . 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. Although it is well established that the right to parent one’s child is a fundamental right, the government has broad authority to intervene to protect a child’s health or safety. *In re C.F.*, 2007-Ohio-1104, ¶ 28, citing *Troxel v. Granville*, 530 U.S. 57, 66 (2000); R.C. 2151.01. Ultimately, the natural rights of a parent are always subject to the ultimate welfare of the child, which is the controlling principle to be observed. *In re B.C.*, 2014-Ohio-4558, ¶ 20, citing *In re Cunningham*, 59 Ohio St.2d 100, 106 (1979). To that end, “the best interests of the child are paramount in any custody case” and juvenile courts “are to liberally interpret the statutes” under R.C. Ch. 2151 “to provide for the care and protection of the child[.]” *In re A.B.*, 2006-Ohio-4359, ¶ 32, citing R.C. 2151.01(A).

{¶ 3} Both children were committed to emergency custody in October 2023 after mother resisted arrest, which was based on the execution of a warrant.

In resisting, she used one of the children as a human shield. K.W. had already been adjudicated dependent at the time of mother's arrest because of mother's substance abuse, but the agency had been trying to keep K.W. in mother's home while providing assistance. Following the emergency removal, the agency implemented a case plan promoting reunification, but temporary custody was granted to the agency in March 2024. Two extensions were granted in November 2024 and April 2025. Both children were placed with foster caregivers since October 2023 and regarded the foster parents as "mom and dad" by the time of the final hearing. K.P. is autistic and legally blind in one eye, as a result of Shaken Baby Syndrome. She receives specialized support services.

{¶ 4} "Under R.C. 2151.414(B)(1), a juvenile court may grant permanent custody of a child to the agency that moved for permanent custody if the court determines, 'by clear and convincing evidence, that it is in the best interest of the child' to do so and that one of five factors enumerated in R.C. 2151.414(B)(1)(a) through (e) applies." *In re Z.C.* at ¶ 7, quoting R.C. 2151.414(B)(1). In this case, the juvenile court found clear and convincing evidence that R.C. 2151.414(B)(1)(d) applies because the children had been in temporary custody of the agency for 12 or more months in the last consecutive 22 months. In the alternative, the court concluded that the factor under R.C. 2151.414(B)(1)(a) also applies and that even if the children had not been in the custody of the agency for 12 or more of the last 22 months, "the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with the child's parents."

{¶ 5} As a result of the procedural history, mother does not dispute the juvenile court’s finding under R.C. 2151.414(B)(1)(d). Indeed, “the plain language of R.C. 2151.414(B)(1)(d) is satisfied if, at the time the agency moves for permanent custody, the child has been in the temporary custody of one or more children agencies for a total of 12 months out of a consecutive 22-month period.” *In re N.M.P.*, 2020-Ohio-1458, ¶ 29. Thus, although the parties discuss the applicability of R.C. 2151.414(B)(1)(a), which obviates the 12 of 22 months finding based on the inability to place the children with either parent in a reasonable time, that argument is unnecessary to entertain. *See In re LU.M.-R.*, 2026-Ohio-3344, ¶ 26 (10th Dist.) (string citing cases). There is no dispute that R.C. 2151.414(B)(1)(d) has been satisfied in this case. The sole remaining issue in this appeal focuses on the best interest of the children under R.C. 2151.414(D).

{¶ 6} Although mother participated in the case plan and remained active in the children’s life as permitted under the plan, she has a history of substance abuse that has not abated during the pendency of the custody proceedings. While mother was in a sober-living environment completing her parenting and substance-abuse plan, she relapsed several times. In August 2025, mother tested positive for cocaine, a new drug to her, with further positive results throughout her intensive outpatient treatment. Although mother had a lease on a home in December 2025, there was a pending eviction impacting her ability to provide a stable home for her children as late as January 2026, the time of the permanent-custody hearing.

{¶ 7} Father was incarcerated until March 2023, but was returned on a violation in April 2024. He was ultimately released from prison in July 2025 but took no steps to contact the agency about his daughter K.P. The agency’s family advocate assigned to the case first met father by chance as she was leaving from an unannounced visit to mother’s home shortly after father’s release from prison. There is disputed evidence whether the advocate provided father her contact information — she testified that she did, but he claimed otherwise. Regardless, father took no steps to engage with the agency under the self-proclaimed belief that mother would be able to regain custody of the children. By December 2025, father was added to the case plan for K.P. after making himself available to the agency, three months after the agency filed its motion for permanent custody and approximately a month before the final hearing.

{¶ 8} “A juvenile court may apply one of two different tests to determine the best interest of the child.” *In re C.M.*, 2026-Ohio-2087, ¶ 43 (8th Dist.), citing *In re I.N.*, 2024-Ohio-950, ¶ 43 (8th Dist.). Several factors must be considered under R.C. 2151.414(D)(1) when deciding “whether granting an agency permanent custody of a child is in that child’s best interest.” *Id.*, quoting *In re S.C.*, 2022-Ohio-356, ¶ 38 (10th Dist.), and *In re J.P.*, 2019-Ohio-1619, ¶ 39 (10th Dist.). In the alternative, if all of the four enumerated findings under R.C. 2151.414(D)(2) are made, “permanent custody is per se in the child’s best interest and the court “shall” commit the child to the permanent custody of the agency.” *Id.*, quoting *In re J.P.* at ¶ 39. Thus, the two subdivisions are “alternative means for reaching the best-

interest determination.” *Id.*, quoting *In re J.P.* at ¶ 40. The first test for permanent custody is discretionary, while the second, if all the findings are made, is mandatory and requires the court to grant permanent custody to the moving party. In this case, the juvenile court made both determinations.

{¶ 9} In determining the best interest of the child, the juvenile court considered all relevant best-interest factors under R.C. 2151.414(D)(1)(a)-(e), which are specifically set forth in the juvenile court’s decision. “There is not one element that is given greater weight than the others pursuant to the statute.” *In re Schaefer*, 2006-Ohio-5513, ¶ 56. In this case, the juvenile court recognized the child’s guardian ad litem’s recommendation that the child be committed to the permanent custody of CCDCFS, in part emphasizing the bonded relationship between the children and the foster caregivers and the children’s inability to express their own desires. The juvenile court also concluded that the children’s need for secure permanent placement and the ability of the agency to achieve that through the granting of permanent custody weighed in favor of granting the agency’s motion, especially considering the length of time the children were in temporary custody. Especially pertinent was the specialized services K.P. received. Finally, the court concluded that all of the factors under R.C. 2151.414(E)(7)-(11) weighed in favor of permanent custody to the agency. Thus, the juvenile court considered the factors under R.C. 2151.414(D)(1) and found awarding permanent custody to the agency was in the best interest of the children.

{¶ 10} Additionally, and even though it was not required, the juvenile court determined that all of the factors under R.C. 2151.414(D)(2) applied, in which case the statute mandates that “permanent custody is in the best interest of the child, and the court shall commit the child to the permanent custody of [the agency].”

{¶ 11} In all three assignments of error, mother’s focus is on the R.C. 2151.414(D)(2) and (E) findings regarding the juvenile court’s determination that the children could not be placed with either parent in a reasonable time based on arguments from father’s perspective. Mother claims in this appeal that father was still attempting to engage in a reunification plan because of his late appearance into the custody matter and only failed in that regard because, according to mother, father was not provided reasonable time to complete his case plan. She claims that K.P.’s placement with father would have been a proper, less restrictive placement than an award of permanent custody to the agency. In consideration of that argument, mother claims the granting of permanent custody is against the weight of the evidence. There are several issues with mother’s focus on father’s claims.

{¶ 12} First and foremost, mother does not expressly challenge the weight of the evidence supporting findings under R.C. 2151.414(D)(1) for either child as it relates to her custody rights, which are an independent basis to support the permanent-custody determination when permanent custody is in both children’s best interest and irrespective of whether the children could be placed with either parent in a reasonable time. *See In re C.M.*, 2026-Ohio-2087, at ¶ 43. Instead, on this point, mother argues that she “had maintained a long period of sobriety, was in

appropriate housing, was bonded with the children, and interacted appropriately with them.” Although the latter two issues are considered under R.C. 2151.414(D)(1)(a) (“the interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child”), the juvenile court, after considering the evidence, concluded that the foster caregivers had bonded with the children to such a degree that the children regarded them as mom and dad — which supported the juvenile court’s conclusion granting permanent custody to the agency. The weighing of that evidence compared to mother’s interaction with the children is beyond this court’s review based on the deference afforded the trier of fact. *See In re Z.C.*, 2023-Ohio-4703, at ¶ 14; *State v. Reillo*, 2026-Ohio-2701, ¶ 32 (“[The trier of fact] is in the best position to determine the weight and credibility of the evidence, including inconsistencies, along with witness manner and demeanor, and is in the sole position to believe or disbelieve all or any of the testimony presented at trial.” *Id.*, quoting *State v. Johnson*, 2023-Ohio-2424, ¶ 23 (6th Dist.)).

{¶ 13} As to the first two evidentiary issues raised by mother regarding her sobriety and furnishing a home, the record demonstrates that she was unable to maintain sobriety despite being provided a course of treatment and lacked appropriate housing in light of the pending eviction she faced at the time of the permanent-custody hearing.

{¶ 14} Thus, any argument as it pertains to the R.C. 2151.414(D)(1) factors is overruled. It cannot be concluded that the juvenile court clearly lost its way in its

resolution of evidentiary conflicts and created a manifest miscarriage of justice in finding that permanent custody was in the children's best interests.

{¶ 15} More important, and beyond that conclusion, mother lacks standing to present the arguments presented in the three assignments of error relating to father's custody rights related to K.P. Father did not appeal the permanent-custody determination despite having the opportunity to do so, and importantly, those arguments fail to address the best interest of K.P.

{¶ 16} In general, a party cannot appeal the violation of a nonappealing party's rights. *In re K.K.*, 2019-Ohio-797, ¶ 27 (8th Dist.). There is an exception. "An appealing party may complain of an error committed against a nonappealing party when the error is prejudicial to the rights of the appellant." *Id.*, quoting *In re Smith*, 77 Ohio App.3d 1, 13 (6th Dist. 1991). Notwithstanding that exception, "[a]n appellant cannot raise issues on another's behalf, especially when that party could have appealed the issues appellant posits." *In re D.T.*, 2008-Ohio-2287, ¶ 8 (10th Dist.); see also *In re T.W.*, 2013-Ohio-1754, ¶ 8 (1st Dist.); *In re F.L.H.*, 2024-Ohio-5169, ¶ 11 (5th Dist.). The parties have not addressed the standing question, so it is merely noted.

{¶ 17} Irrespective of standing, the arguments presented by mother on father's behalf address the question of whether K.P. could be placed with father in a reasonable time under R.C. 2151.414(B)(1)(a) and (D)(2). As mentioned above, those findings are not necessary in light of the juvenile court's conclusion that K.P. was in the temporary custody of the agency for 12 of 22 consecutive months under

R.C. 2151.414(B)(1)(d) and that permanent custody was in K.P.'s best interest under R.C. 2151.414(D)(1), which does not require the juvenile court to conclude that K.P. could not be placed with father in a reasonable time. Because none of mother's arguments demonstrate that the best-interest determination under R.C. 2151.414(D)(1) is against the weight of the evidence from father's or her perspective, any arguments regarding whether father could regain custody in a reasonable time under R.C. 2151.414(D)(2) are unnecessary to resolve. *See In re D.H.*, 2021-Ohio-3821, ¶ 41 (8th Dist.) (affirming the permanent-custody determination because after concluding that the juvenile court's best-interest determination was not in error under R.C. 2151.414(D)(1), resolution of the claimed errors with respect to the juvenile court's alternative conclusion under R.C. 2151.414(D)(2) was unnecessary).

{¶ 18} The decision of the juvenile court granting permanent custody of K.W. and K.P. to the agency is 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.

SEAN C. GALLAGHER, PRESIDING JUDGE

DEENA R. CALABRESE, J., and
TIMOTHY W. CLARY, J., CONCUR