

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: M.M.

C.A. Nos. 31798
 31810

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN 23 04 0341

DECISION AND JOURNAL ENTRY

Dated: August 19, 2026

SUTTON, Presiding Judge.

{¶1} Appellants, A.M. (“Mother”) and A.T. (“Custodian”), appeal from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that terminated Mother’s parental rights to her minor child and placed the child in the permanent custody of Summit County Children Services Board (“CSB”). This Court affirms.

I.

{¶2} Mother is the biological mother of M.M., born April 20, 2023. The child’s father (“Father”) has not appealed the trial court’s judgment.

{¶3} CSB received a referral shortly after M.M.’s birth because Mother and Father both had significant cognitive delays, several untreated mental illnesses, and a history of exhibiting verbal and physical aggression toward each other. CSB was particularly concerned that the parents did not seem to understand how to parent a child, as they lacked the ability to internalize information or make appropriate decisions. Before M.M. was released from the hospital, the

agency filed a complaint to allege that he was a dependent child. The juvenile court adjudicated M.M. as a dependent child and later placed him in the temporary custody of CSB.

{¶4} A few weeks later, M.M. was placed in the foster home of Mr. and Mrs. Y. Although reunification with the parents was the initial goal of the case plan, the parents refused to cooperate with CSB or work on the requirements of the court-ordered case plan. CSB later identified a paternal aunt (“Custodian”) as a potential relative placement, and Custodian began regular visits with the child. Although CSB had initially moved for permanent custody of M.M., it later withdrew that motion while it continued to investigate Custodian as a potential legal custodian. M.M. was temporarily placed in Custodian’s home while he remained in the temporary custody of CSB.

{¶5} CSB later moved for M.M. to be placed in the legal custody of Custodian, and the case proceeded to a dispositional hearing. On October 7, 2024, the trial court placed M.M. in the legal custody of Custodian and closed the case “subject to this Court’s continuing jurisdiction over the Child pursuant to R.C. 2151.353.”

{¶6} Less than six months later, CSB accepted an intake transfer from Perry County Children Services because M.M., who then resided in that county with Custodian, had been admitted to Nationwide Children’s Hospital with numerous serious injuries. The child’s injuries included extensive facial lacerations, bruises, and several broken bones in his arms that were in various stages of healing. Although Custodian reported to hospital personnel that M.M. had fallen on the floor and injured his lip and tongue because he often chewed on them, the pediatric assessment team did not believe her explanation. After running numerous tests to rule out other causes, the medical team opined that M.M. had been intentionally harmed or neglected by an adult caregiver.

{¶7} On April 8, 2025, while the child was still hospitalized for his injuries, CSB filed a motion for emergency temporary custody and requested that the trial court modify the prior dispositional order of legal custody to Custodian to an order of temporary custody to CSB pursuant to R.C. 2151.353 and R.C. 2151.42(B). The agency based its motion on M.M.'s extensive physical injuries and the opinion of medical experts that Custodian may have caused those injuries or, at a minimum, failed to protect M.M. from repeated injuries and did not seek timely medical treatment for the child. The medical team was also concerned that M.M. was malnourished and underweight and was not developmentally on track. The juvenile court placed M.M. in the emergency temporary custody of CSB the same day.

{¶8} The following day, the parties appeared with trial counsel for a motion hearing before a magistrate. At the hearing, none of the parties challenged the procedure followed by CSB or the juvenile court in reopening this case and removing M.M. from Custodian's legal custody. In fact, Custodian explicitly waived her right to a contested hearing and agreed that M.M. should be placed in the temporary custody of CSB. The magistrate placed M.M. in the temporary custody of CSB and the trial court adopted that decision without objection from Custodian or either parent.

{¶9} CSB later filed a new case plan, which included reunification goals for Custodian and both parents. The trial court adopted the case plan at a subsequent file review without objection from any of the parties. The case plan again required the parents to engage in services to address their cognitive delays, Mother's schizophrenia, and Father's bipolar disorder; and to demonstrate that they could provide for the basic needs of the child. Father refused to engage in any case plan services and was often combative with the caseworker. Mother was more cooperative, but she did not follow through with case plan services and did not regularly visit M.M. The parents had also failed to visit M.M. for several months while he lived with Custodian.

Throughout this case, CSB remained concerned that the parents were not bonded with M.M., did not know how to care for him, and struggled to meet even their own basic needs.

{¶10} Custodian's initial goal on the case plan was to obtain a parenting assessment and follow through with recommended treatment. Custodian began but did not complete a parenting evaluation. She was not permitted to visit with M.M. after he was removed from her custody because CSB believed that Custodian had harmed the child and she failed to engage in required case plan services. Criminal charges remained pending against Custodian throughout the remainder of this case.

{¶11} After the juvenile court removed M.M. from Custodian's custody, the child returned to the home of Mr. and Mrs. Y., where he had lived for 13 months before he was placed with Custodian. He assimilated back into that home and gradually recovered from his physical injuries and gained weight. M.M. was also enrolled in preschool and Help Me Grow services and was making strides in reaching developmental milestones. The caseworker, guardian ad litem, the child's speech pathologist, and daycare and preschool teachers all observed a strong bond between M.M. and the Y. family and believed that he was happy in their home. Mr. and Mrs. Y. were interested in providing M.M. with a stable permanent home.

{¶12} On July 15, 2025, CSB moved for permanent custody of M.M., alleging that permanent custody was in the child's best interest; and that he could not or should not be returned to the custody of either parent under numerous grounds set forth in R.C. 2151.414(E) and/or that he had been in CSB's temporary custody for more than 12 months of a consecutive 22-month period. *See* R.C. 2151.414(B)(1)(a) and 2151.414(B)(1)(d). The parents and Custodian alternatively sought legal custody of the child or legal custody to a third party, J.G.

{¶13} The final hearing was held over a three-day period in December 2025. Much of the evidence at the hearing focused on the injuries sustained by M.M. before CSB moved to reopen this case. A pediatrician, who specializes in child abuse and pediatric emergency medicine at Nationwide Children's Hospital, testified about his team's assessment of M.M.'s injuries. He explained that the child was admitted to the hospital with bruises and abrasions to his face, multiple broken bones in his arms that were in various stages of healing, significant injury to his upper and lower lips and tongue, and an air pocket in his neck that was consistent with a perforating injury to the back of his mouth.

{¶14} Custodian informed hospital personnel that the child injured himself by falling or throwing himself onto the floor and that his mouth injuries were caused by the child repeatedly chewing on his lips and tongue. The pediatrician testified that the medical team did not believe Custodian's explanations, given the number, location, and extent of the child's injuries. He explained that accidental falls by toddlers usually result in injuries to their shins, not to multiple sides of their face and cheeks. He further emphasized that M.M.'s lip and tongue injuries were highly unusual, as the child was missing pieces of his upper and lower lips. Because those injuries also would have been extremely painful, he opined that a child would not continue to bite or chew on his already injured lips and tongue to cause such extensive injuries. He further explained that the assessment team performed blood testing and imaging to rule out other causes for the child's injuries, such as infection, genetic, or underlying medical causes. He opined that the child's injuries were the result of maltreatment.

{¶15} CSB also offered the testimony of several other witnesses to dispute Custodian's statements that M.M. had accidentally or intentionally harmed himself. The child's speech and language pathologist, his preschool teacher, and the guardian ad litem each testified that they had

never seen M.M. bite his lips or tongue or intentionally harm himself in any way. Mrs. Y. also testified that she had never seen M.M. bite his lips or tongue. M.M. had lived in her home for a total of nearly two years, but he had never suffered an injury that required medical attention.

{¶16} The trial court also considered evidence pertaining to the agency’s specific grounds for permanent custody, including undisputed evidence that Mother, Father, and Custodian had failed to work on the reunification goals of the case plan during this case, had little or no contact with the child, and were not prepared to provide M.M. with a safe and stable home. CSB and the guardian ad litem did not believe that M.M. should be returned to the custody of any of them.

{¶17} After hearing the evidence about M.M.’s extensive injuries that led to his removal from Custodian’s home, the trial court included findings about those injuries in its permanent custody judgment. In the court’s written judgment, it found that “the claims that [M.M.’s] serious injuries were self-inflicted by this toddler to not be credible.” Consequently, the trial court explicitly found “these non-accidental injuries received by the child while in the care of [Custodian] to be a change of circumstances justifying a change of custody.”

{¶18} The trial court also found that CSB had established numerous alternative first prong grounds for permanent custody under R.C. 2151.414(B)(1) and that permanent custody was in the best interest of M.M. Therefore, it terminated parental rights and placed M.M. in the permanent custody of CSB. Mother and Custodian appeal and each raise two assignments of error. Because they raise virtually identical arguments, this Court will address their assignments of error together.

{¶19} Before reaching the merits of the appellants’ assignments of error, this Court emphasizes that Mother and Custodian do not dispute the merits of the trial court’s permanent custody judgment. Instead, their assignments of error challenge the procedure followed by CSB

and the trial court in reopening this closed case and removing M.M. from Custodian's legal custody before ultimately placing him in the permanent custody of CSB.

II.

MOTHER'S ASSIGNMENT OF ERROR I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND PLAIN ERROR IN PROCEEDING TO A PERMANENT CUSTODY TRIAL IN VIOLATION OF MOTHER'S RIGHT TO DUE PROCESS.

CUSTODIAN'S ASSIGNMENT OF ERROR I

THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND PLAIN ERROR IN PROCEEDING TO A PERMANENT CUSTODY TRIAL IN VIOLATION OF LEGAL CUSTODIAN AND PARTIES' RIGHTS TO DUE PROCESS.

{¶20} Through their first assignments of error, Mother and Custodian assert that due process required that, before the juvenile court was authorized to remove M.M. from Custodian's legal custody, CSB was required to file a new complaint and the trial court was required to adjudicate M.M. as an abused, neglected, and/or dependent child. In other words, they assert that the 2023 adjudication of M.M. as a dependent child did not survive the trial court's October 2024 legal custody judgment and closure of the case.

{¶21} At the time the trial court reopened this case, removed M.M. from Custodian's home, and placed the child in the temporary custody of CSB, none of the parties raised any objections to the magistrate's decision in that regard. Juv.R. 40(D)(3)(b)(iv) provides that "[e]xcept for a claim of plain error," a party shall not assign error to the trial court's adoption of a magistrate's decision on appeal unless the party has filed proper objections. The appellants recognize that they did not raise this alleged error in the trial court and, therefore, have forfeited all but plain error. Moreover, Custodian explicitly waived her right to a hearing on this issue.

{¶22} The appellants have failed to demonstrate any error by the trial court, much less plain error. Specifically, they unsuccessfully attempt to analogize this case to two prior appellate decisions from this Court that are currently pending on appeal to the Ohio Supreme Court: *In re A.S.*, 2025-Ohio-1349 (9th Dist.), *motion to certify allowed*, 2025-Ohio-5386, and *appeal allowed*, 2025-Ohio-5386; and *In re A.G.*, 2026-Ohio-26 (9th Dist.), *motion to certify allowed*, 2026-Ohio-1522, and *appeal allowed*, 2026-Ohio-1522.

{¶23} The appellants assert that this case involves the same legal question that was raised in *In re A.S.* and *In re A.G.*, but it does not. In addition to the fact that this Court rejected the appellants' arguments in those appeals, their legal arguments were explicitly premised on facts that do not exist in this case.

{¶24} *In re A.S.* and *In re A.G.* involved legal challenges to the juvenile court reopening dependency cases after the court had returned the children to the legal custody of one or both parents and closed the case. Each case was later reopened under the trial court's continuing jurisdiction by a party seeking to remove the child or children from the parent's legal custody. The parents argued on appeal that, because the juvenile court returned the child or children to the legal custody of a parent and closed the case, it implicitly found that the parent was "fit" or "suitable" to raise the child or children. *See In re A.S.*, 2025-Ohio-1349, at ¶ 16 (9th Dist.); *In re A.G.*, 2026-Ohio-26, at ¶ 14 (9th Dist.). Because the court had implicitly restored the fitness of the custodial parent, they argued that it could not remove the children from the parent's custody again without a new finding of unsuitability or a new adjudication that the child was abused, neglected, or dependent. *Id.*

{¶25} The facts underlying the premise of that legal argument do not exist in this case. M.M. was not returned to the custody of either parent. Despite the appellants' arguments to the

contrary, the juvenile court made no implicit finding that the parents had resolved their parenting problems or that they were again fit or suitable to raise their child. In fact, the record reveals that the parents did not cooperate with CSB to work on the case plan or resolve their parenting problems. The child was placed in the legal custody of Custodian, a nonparent, presumably because the trial court believed that Custodian was able to provide him with a suitable home and his parents were not. Furthermore, the appellants have cited no legal authority that the facts of this case can be analogized to the distinguishable facts of *In re A.S.* and *In re A.G.*

{¶26} The appellants also challenge the constitutionality of R.C. 2151.353(F), which grants the juvenile court continuing jurisdiction over this case, but they fail to articulate an argument as to why it is unconstitutional. They also failed to raise this issue below and this Court will not address the constitutionality of the statute for the first time on appeal. *State v. Awan*, 22 Ohio St.3d 120 (1986), syllabus. The appellants' first assignments of error are overruled.

MOTHER'S ASSIGNMENT OF ERROR II

[MOTHER] RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DUE TO HER TRIAL COUNSEL FAILING TO OBJECT TO THE TRIAL COURT NOT MAKING A FINDING OF "CHANGE OF CIRCUMSTANCES" PURSUANT TO R.C. 2151.42(B) AND DUE TO TRIAL COUNSEL FAILING TO MAKE A MOTION TO DISMISS WHEN THE TRIAL COURT PERMITTED CSB TO PROCEED WITH A MOTION TO MODIFY FINAL DISPOSITIONAL ORDERS FROM THE ORIGINAL COMPLAINT ABSENT A NEW ADJUDICATION WITH THE NEW CONCERNS.

CUSTODIAN'S ASSIGNMENT OF ERROR II

[CUSTODIAN] RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DUE TO HER TRIAL COUNSEL FAILING TO OBJECT TO THE TRIAL COURT NOT MAKING A FINDING OF "CHANGE OF CIRCUMSTANCES" PURSUANT TO R.C. 2151.42(B) AND DUE TO TRIAL COUNSEL FAILING TO MAKE A MOTION TO DISMISS WHEN THE TRIAL COURT PERMITTED CSB TO PROCEED WITH A MOTION TO MODIFY FINAL DISPOSITIONAL ORDERS FROM THE ORIGINAL COMPLAINT ABSENT A NEW ADJUDICATION WITH THE NEW CONCERNS.

{¶27} Next, the appellants argue that their respective trial attorneys were ineffective for failing to timely challenge the reopening of this case and the removal of M.M. from Custodian’s legal custody before he was placed in the permanent custody of CSB. To establish a claim of ineffective assistance of counsel, the appellants must demonstrate that their trial counsel’s performance was deficient and that the deficient performance prejudiced their defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A “deficient performance” is one that fell below an objective standard of reasonableness. *Id.* at 687-88. To establish prejudice, they must demonstrate that there is a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different. *Id.* at 694.

{¶28} The appellants raise two alternative arguments under this assignment of error: 1) that their trial counsel should have challenged the trial court’s failure to conduct a new adjudication or otherwise make a finding of parental unsuitability; and 2) that trial counsel erred in failing to challenge the trial court’s failure to find a change of circumstances under R.C. 2151.42(B).

{¶29} Their first argument, regarding the trial court’s failure to conduct a new adjudication or otherwise find the parents to be unsuitable, fails because they again base their argument on *In re A.S.*, 2025-Ohio-1349 (9th Dist.) and *In re A.G.*, 2026-Ohio-26 (9th Dist.). As explained above, this case is legally distinguishable from those cases and their argument lacks merit.

{¶30} Their second argument is that their trial counsel failed to challenge the trial court’s alleged failure to comply with the requirements of R.C. 2151.42(B). Under this assignment of error, they recognize that, after the trial court adjudicated M.M. dependent and ultimately placed him in the legal custody of Custodian under R.C. 2151.353(A)(3), it retained continuing jurisdiction over him until he is emancipated or adopted. R.C. 2151.353(F)(1). R.C.

2151.353(F)(2) grants “[a]ny public children services agency” explicit authority “at any time” to “request the court to modify or terminate any order of disposition” issued pursuant to R.C. 2151.353(A) “by filing a motion with the court[.]”

{¶31} R.C. 2151.353(F)(2) further provides that “[t]he court shall hold a hearing upon the motion [to modify a dispositional order] as if the hearing were the original dispositional hearing and ... [i]f applicable, the court shall comply with [R.C.] 2151.42[.]” R.C. 2151.42(B) provides, in relevant part:

A court shall not modify or terminate an order granting legal custody of a child unless it finds, based on facts that have arisen since the order was issued or that were unknown to the court at that time, that a *change has occurred in the circumstances of the child or the person who was granted legal custody*, and that modification or termination of the order is necessary to serve the best interest of the child.

(Emphasis added.)

{¶32} The appellants assert that trial counsel was deficient for failing to object to the trial court’s alleged failure to find the requisite change of circumstances before removing M.M. from Custodian’s legal custody and placing him in the permanent custody of CSB. Although trial counsel did not raise this issue during the trial court proceedings, the trial court made the requisite change of circumstances finding in its permanent custody judgment. As set forth above, much of the evidence at the final hearing focused on the injuries that M.M. sustained while in Custodian’s care. After hearing considerable expert and lay testimony about M.M.’s injuries, the trial court evaluated the credibility of the witnesses and rejected Custodian’s “claims that [M.M.’s] serious injuries were self-inflicted[.]” In its final judgment, the trial court explicitly found “these non-accidental injuries received by the child while in [Custodian’s] care to be a change of circumstances justifying a change of custody.” The appellants do not challenge the merits of that finding, which was supported by significant evidence.

{¶33} Because the trial court complied with the change of circumstances requirement of R.C. 2151.42(B) before placing the child in the permanent custody of CSB, the appellants suffered no prejudice from trial counsel's failure to raise the issue earlier. Their second assignments of error are overruled.

III.

{¶34} The assignments of error of Mother and Custodian are overruled. The judgment of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

BETTY SUTTON
FOR THE COURT

STEVENSON, J.
MANNING, J.
CONCUR.

APPEARANCES:

SHUBHRA AGARWAL, Attorney at Law, for Appellant.

KIMBERLY STOUT-SHERRER, Attorney at Law, for Appellant.

ELLIOT KOLKOVICH, Prosecuting Attorney, and HEAVEN R. DIMARTINO, Assistant Prosecuting Attorney, for Appellee.

ALISA BOLES, Attorney at Law, for Appellee.

JOSEPH KERNAN, Guardian ad Litem.