[Cite as *In re C.J.*, 2017-Ohio-5782.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

IN RE: C.J.,	:	
	:	Case No. 17CA9
	:	
Adjudicated Dependent Child.	:	DECISION AND JUDGMENT ENTRY
	:	

APPEARANCES:

Frank A. Lavelle, Athens, Ohio, for Appellant.

Keller J. Blackburn, Athens County Prosecuting Attorney, and Merry M. Saunders, Athens County Assistant Prosecuting Attorney, Athens, Ohio, for Appellee.

CIVIL CASE FROM COMMON PLEAS COURT, JUVENILE DIVISION
DATE JOURNALIZED:6-26-17
ABELE, J.

{¶ 1} This is an appeal from an Athens County Common Pleas Court, Juvenile Division, judgment that granted Athens County Children Services (ACCS), appellee herein, permanent custody of one-and-one-half-year-old C.J. A.J., the child's biological mother and appellant herein, raises the following assignment of error for review:

> "THE TRIAL COURT'S FINDING THAT THE CHILD'S BEST INTERESTS REQUIRED A GRANT OF PERMANENT CUSTODY TO THE CHILDREN SERVICES AGENCY WAS NOT SUPPORTED BY SUFFICIENT CLEAR, COMPETENT

AND CONVINCING EVIDENCE."

{¶ 2} In September 2015, appellant presented to the hospital in labor and expressing suicidal ideations. Appellee subsequently obtained emergency temporary custody of the newborn child, C.J., and filed a dependency complaint. The complaint alleged that appellant has a history of mental illness, that children services previously obtained permanent custody of appellant's four other children due to her mental health issues, and that the father has a history of domestic violence.[1] Consequently, appellee requested the trial court to grant it temporary custody of the child.

{¶ 3} On November 25, 2015, the trial court adjudicated the child dependent. The court subsequently entered a dispositional order that placed the child in appellee's temporary custody and that incorporated appellee's case plan. The court's adjudicatory and dispositional orders further found that appellee used reasonable efforts by providing substitute care, visitation, case management, home studies, and follow-up with appellant's mental health treatment providers.

{¶ 4} The case plan required appellant to engage in the following activities: (1) address and appropriately manage her mental health concerns; (2) work with her mental health provider and follow all recommendations; (3) take her prescribed medication and consult with the prescribing physician if she feels she wants to reduce or stop her medication; (4) continue to work with her Hopewell Health Center Case Manager; (5) notify the children services caseworker if the composition of her home changes, or if she believes she is no longer able to care for the child; (6) allow the caseworker into the home for monthly visits; (7) attend all visits

[1] The child's father did not appeal the trial court's judgment.

with the child and follow all recommendations made by the Family Support Unit; and (8) work with parent mentoring services to learn proper child care techniques.[2]

{¶ 5} A March 2016 semiannual review stated that appellant has made "insufficient progress." The review related that appellant's mental health case manager reported that appellant has not been compliant in working with the case manager, her counselor, or the prescribing doctor.

{¶ 6} On September 8, 2016, appellee filed a motion to modify the disposition to permanent custody. Appellee alleged that the child cannot be placed with either parent within a reasonable time and should not be placed with either parent. Appellee asserted that although the parents have maintained housing, they have not completely complied with the case plan. Appellee claimed that appellant continues to struggle with her mental health and has not demonstrated that she can safely care for the child. Appellee further alleged that the parents have not consistently visited the child and that they have not visited at all since May 19, 2016. Appellee asserted that when the parents did visit, they had difficulty providing basic care for the child. Appellee also explained that the parents were unable to receive parent mentoring services due to the irregularity of their visits and their struggles to comply with other aspects of the case plan.

{¶ 7} On February 15, 2017, the trial court held a hearing to consider appellee's permanent custody motion. ACCS caseworker Christopher Imm explained that appellant reported that she has been diagnosed with bipolar schizophrenia and borderline personality

[2] Because the father is not involved in this appeal, we have omitted the case plan activities in which he was to engage.

disorder and that she sees a psychiatrist at Hopewell. He stated that in December 2015, appellant attempted suicide. Imm testified that the case plan required appellant to follow her mental health treatment plan. Imm indicated that appellant did not always agree with the medications her treatment providers recommended.

{¶ 8} Imm stated that the parents have not visited the child since May 19, 2016. He explained that even before that date, the parents had several "no shows" for various reasons, including "mites, lice, kidney stones, medical reasons, being out of town, [and] transportation issues." Imm testified that during a January 28, 2016 visit, appellant "stood up and then firmly put [the child] down into [the] lap of [the father] and said I don't care about you or her."

{¶ 9} Imm stated that he last visited the parents in their home on May 26, 2016, and since that time, he has not been able to make contact with them. Imm related that the parent mentor was unable to provide services to the parents for the following reasons: (1) the parents did not want to engage in the services; (2) the parents did not consistently visit the child; and (3) appellant believed that the father "was cheating on her with the parent/mentor."

{¶ 10} Imm testified that the child is "doing very well in [her] placement" and appears bonded to the foster family. He stated that he believes terminating appellant's parental rights and maintaining the child in the current placement is in the child's best interest.

{¶ 11} Tara Huffman, the child's guardian ad litem, similarly testified that placing the child in appellee's permanent custody is in the child's best interest. Huffman explained that the parents have not made significant progress on the case plan and that appellant's mental health continues to be a concern.

{¶ 12} Appellant testified that she does not believe that her prescribed medications help

her feel better, but instead, she thinks they make her feel worse and cause suicidal ideations. Appellant admitted that three of her four other children were placed in a children services agency's permanent custody. She stated that the fourth child lives with the child's "rich dad in Columbus."

{¶ 13} On February 22, 2017, the trial court granted appellee permanent custody of the child. The trial court determined that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent and that granting appellee permanent custody is in the child's best interest. The court cited R.C. 2151.414(E)(1), (2), (4), and (11) to support its finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. The trial court noted that the child was removed from the parents' custody at birth "due to [the] parents' history and [appellant]'s announced suicidal ideations." The court found that appellant "has significant mental health issues and a failure to address them effectively." The court recognized that none of appellant's mental health professionals testified at the hearing, but noted that appellant "self-reports diagnoses of borderline personality disorder and either schizophrenia, bi-polar type or schizoaffective disorder, bi-polar." The court observed that appellant admits that she is not taking her prescribed medications and that she is not engaged in counseling. The court found that appellant "has a history of disagreeing with medical providers and medications and doing as she chooses. She also reports that in the opinion of her current doctor 'she is not doing well.'"

{¶ 14} The trial court additionally determined that R.C. 2151.414(E)(4) and 2151.414(E)(11) apply. The court found that (1) neither parent visited the child for over eight months, (2) neither parent provides any support, and (3) appellant had her parental rights

involuntarily terminated with respect to a half-sibling of the child.

{¶ 15} The trial court also found that granting appellee permanent custody would be in the child's best interest. The court considered the child's interactions and interrelationships and stated that the child does not have any relationship with her half-siblings "and very little with these parents who visited sporadically, demonstrated little bonding and, in the end, didn't visit for the last eight and a half months of the case." The court found that the child shares a bond with the kinship family placement and that the family may adopt the child. The court did not directly consider the child's wishes due to her young age. The court reviewed the child's custodial history and found that she lived in foster care for the first seven months of her life and that since that time, she has been in her current placement. The court also considered the child's need for a legally secure permanent placement and whether she could achieve that type of placement without granting appellee permanent custody. The court determined that the "child needs and deserves a legally secure placement that can only be assured with an award of permanent custody to ACCS and an adoption into a lifetime family." The court additionally found that "R.C. 2151.414(E)(11) applies in that [appellant] * * * has had her paternal rights permanently terminated as a result of a dependency proceeding in this Court regarding an older half-sibling."

{¶ 16} The trial court next observed that it had previously entered a reasonable efforts finding and that it need not make another reasonable efforts finding before granting appellee permanent custody. The court nevertheless found that appellee's "efforts did not prevent or eliminate the need for removal because the parents refused to meaningfully engage in the case plan, and mother's mental health issues, the single biggest problem, are not being addressed in

spite of all the offers or services."

{¶ 17} The trial court thus granted appellee permanent custody of the child. This appeal followed.

{¶ 18} In her sole assignment of error, appellant asserts that the trial court's decision to grant appellee permanent custody of the child is against the manifest weight of the evidence. In particular, she disputes the trial court's finding that the child needs a legally secure permanent placement and can only achieve that placement by granting appellee permanent custody. Appellant contends that the evidence fails to support a finding that she is incapable of parenting or co-parenting the child. Appellant additionally argues that the trial court did not adequately consider the best interest factors as a whole, but instead, relied upon appellant's "'self-reporting' of current mental health diagnoses and issues with current medications."

{¶ 19} Appellant also contends that appellee failed to use reasonable efforts to reunify the family. Appellant claims that if appellee "had been serious about Reunification, it would have required full Psychological Evaluations, made certain what [appellant]'s Rx regimens were --- [sic] and that she was in compliance."

A

STANDARD OF REVIEW

{¶ 20} Generally, a reviewing court will not disturb a trial court's permanent custody decision unless the decision is against the manifest weight of the evidence. *E.g., In re B.E.*, 4th Dist. Highland No. 13CA26, 2014–Ohio–3178, ¶27; *In re R.S.*, 4th Dist. Highland No. 13CA22, 2013–Ohio–5569, ¶29.

"Weight of the evidence concerns 'the inclination of the greater amount of

> credible evidence, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.'"

Eastley v. Volkman, 132 Ohio St.3d 328, 2012–Ohio–2179, 972 N.E.2d 517, ¶12, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting Black's Law Dictionary 1594 (6th Ed.1990).

{¶ 21} When an appellate court reviews whether a trial court's permanent custody decision is against the manifest weight of the evidence, the court "'"weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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."'" *Eastley* at ¶20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, 750 N.E.2d 176 (9th Dist.2001), quoting *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983); *accord In re Pittman*, 9th Dist. Summit No. 20894, 2002–Ohio–2208, ¶¶23–24.

{¶ 22} The question that we must resolve when reviewing a permanent custody decision under the manifest weight of the evidence standard is "whether the juvenile court's findings * * * were supported by clear and convincing evidence."[3] *In re K.H.*, 119 Ohio St.3d 538,

[3] We recognize that the Ohio Supreme Court recently stated that "a trial court's decision in a custody proceeding is subject to reversal only upon a showing of abuse of discretion." *In re A.J.*, 148 Ohio St.3d 218, 2016-Ohio-8196, 69 N.E.3d 733, ¶27, citing Davis *v. Flickinger*, 77 Ohio St.3d 415, 417, 674 N.E.2d 1159 (1997). However, the issue in *A.J.* concerned a "narrow issue," i.e., "the agency's decision not to place [the child] in [a relative's] care as a substitute caregiver." The court thus did not review "the court's decision to terminate [the mother]'s parental rights and grant permanent custody to the agency." *Id*. at ¶18. Moreover, the *A.J.* court did not overrule its prior holding

2008–Ohio–4825, 895 N.E.2d 809, ¶43. "Clear and convincing evidence" is:

> the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the allegations sought to be established. It is intermediate, being more than a mere preponderance, but not to the extent of such certainty as required beyond a reasonable doubt as in criminal cases. It does not mean clear and unequivocal.

In re Estate of Haynes, 25 Ohio St.3d 101, 103–04, 495 N.E.2d 23 (1986). In determining whether a trial court based its decision upon clear and convincing evidence, "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." *State v. Schiebel*, 55 Ohio St.3d 71, 74, 564 N.E.2d 54 (1990); *accord In re Holcomb*, 18 Ohio St.3d 361, 368, 481 N.E.2d 613 (1985), citing *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954) ("Once the clear and convincing standard has been met to the satisfaction of the [trial] court, the reviewing court must examine the record and determine if the trier of fact had sufficient evidence before it to satisfy this burden of proof.") *In re Adoption of Lay*, 25 Ohio St.3d 41, 42–43, 495 N.E.2d 9 (1986). *Cf. In re Adoption of Masa*, 23 Ohio St.3d 163, 165, 492 N.E.2d 140 (1986) (stating that whether a fact has been "proven by clear and convincing evidence in a particular case is a determination for the [trial] court and will not be disturbed on appeal unless such determination is against the manifest weight of the evidence"). Thus, if the children services agency presented competent and credible evidence upon which the trier of fact reasonably could have formed a firm belief that permanent custody is warranted, then the court's decision is not against the manifest weight of the evidence. *In re*

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in *K.H.* that the essential question is whether clear and convincing evidence supports the court's findings. *K.H.* at ¶43. Unless and until the Ohio Supreme Court provides clearer guidance as to the standard of review that applies to permanent custody decisions, we will continue to apply the manifest-weight-of-the-evidence standard. *See In re R.M.*, 997 N.E.2d 169, 2013-Ohio-3588 (4th Dist.), ¶62 and fn.5.

R.M., 4th Dist. Athens Nos. 12CA43 and 12CA44, 2013–Ohio–3588, ¶62; *In re R.L.*, 2nd Dist. Greene Nos.2012CA32 and 2012CA33, 2012–Ohio–6049, ¶17, quoting *In re A.U.*, 2nd Dist. Montgomery No. 22287, 2008–Ohio–187, ¶9 ("A reviewing court will not overturn a court's grant of permanent custody to the state as being contrary to the manifest weight of the evidence 'if the record contains competent, credible evidence by which the court could have formed a firm belief or conviction that the essential statutory elements * * * have been established.'"). Once the reviewing court finishes its examination, the court may reverse the judgment only if it appears that the fact-finder, when resolving the conflicts in evidence, "'clearly lost its way and created such a manifest miscarriage of justice that the [judgment] must be reversed and a new trial ordered.'" *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). A reviewing court should find a trial court's permanent custody decision against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the [decision].'" *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175; *accord State v. Lindsey*, 87 Ohio St.3d 479, 483, 721 N.E.2d 995 (2000).

{¶ 23} Furthermore, when reviewing evidence under the manifest weight of the evidence standard, an appellate court generally must defer to the fact-finder's credibility determinations. *Eastley* at ¶21. As the *Eastley* court explained:

> "[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. * * *
> 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., quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, at 191–192 (1978).

{¶ 24} Moreover, deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." *Davis v. Flickinger*, 77 Ohio St.3d 415, 419, 674 N.E.2d 1159 (1997); *accord In re Christian*, 4th Dist. Athens No. 04CA10, 2004–Ohio–3146, ¶7. As the Ohio Supreme Court long-ago explained:

> In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and observation of the parties and through independent investigation can not be conveyed to a reviewing court by printed record.

Trickey v. Trickey, 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952).

{¶ 25} Furthermore, unlike an ordinary civil proceeding in which a jury has no contact with the parties before a trial, in a permanent custody case a trial court judge may have significant contact with the parties before a permanent custody motion is even filed. In such a situation, it is not unreasonable to presume that the trial court judge had far more opportunities to evaluate the credibility, demeanor, attitude, etc., of the parties than this court ever could from a mere reading of the permanent custody hearing transcript.

B

PERMANENT CUSTODY STANDARD

{¶ 26} R.C. 2151.414(B)(1) permits a trial court to grant permanent custody of a child to a children services agency if the court determines, by clear and convincing evidence, that the child's best interest would be served by the award of permanent custody and that:

> (a) The child is not abandoned or orphaned or has not been in the temporary custody of one or more public children services agencies or private child placing agencies for twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999, and the child cannot be placed with either of the child's parents 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 twelve or more months of a consecutive twenty-two month period ending on or after March 18, 1999.
>
> (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.

{¶ 27} Thus, before a trial court may award a children services agency permanent custody, it must find (1) that one of the circumstances described in R.C. 2151.414(B)(1) applies, and (2) that awarding the children services agency permanent custody would further the child's best interests.

C

2151.414(B)(1)(a)

{¶ 28} In the case sub judice, the trial court determined that R.C. 2151.414(B)(1)(a) applies. R.C. 2151.414(E) requires a court that is determining whether a child cannot be placed with either parent within a reasonable period of time or should not be placed with the parents to consider all relevant evidence. The statute further specifies that if one or more of the following conditions exist "as to each of the child's parents, the court shall enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent:"

> (1) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.
>
> (2) Chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the child at the present time and, as anticipated, within one year after the court holds the hearing pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code;
>
> * * * *
>
> (4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the child;
>
> * * * *
>
> (11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

{¶ 29} A trial court may base its decision that a child cannot be placed with either parent within a reasonable time or should not be placed with either parent upon the existence of any one of the R.C. 2151.414(E) factors. The existence of one factor alone will support a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. *E.g., In re C.F.*, 113 Ohio St.3d 73, 2007–Ohio–1104, 862 N.E.2d 816, ¶50; *In re William S.*, 75 Ohio St.3d 95, 99, 661 N.E.2d 738 (1996).

{¶ 30} In the case sub judice, appellant does not specifically challenge the trial court's R.C. 2151.414(B)(1)(a) and R.C. 2151.414(E)(1), (2), (4), and (11) findings. We therefore do not address these matters in any detail. We note, however, that appellant admitted that she permanently lost custody of three other children. Moreover, the evidence plainly shows that neither parent visited the child for approximately eight months and that neither offered a valid excuse. Their inexcusable failure to visit displays a lack of commitment to the child. Thus, clear and convincing evidence supports–at a minimum–findings under R.C. 2151.414(E)(4) and (11). The existence of these factors support the trial court's determination that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent.

D

BEST INTEREST

{¶ 31} Appellant contends that the trial court's best interest finding is against the manifest weight of the evidence. She claims that the trial court failed to appropriately consider all of the relevant factors and, instead, focused on her self-reported mental health issues. Appellant additionally argues that the evidence does not support a finding that the child can achieve a legally secure permanent placement only by granting appellee permanent custody. Appellant asserts that appellee did not establish that appellant is incapable of parenting or co-parenting the child.

{¶ 32} R.C. 2151.414(D) directs a trial court to consider "all relevant factors," as well as specific factors, to determine whether a child's best interests will be served by granting a children services agency permanent custody. The listed factors include: (1) the child's interaction and interrelationship 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 child's wishes, as expressed directly by the child or through the child's guardian ad litem, with due regard for the child's maturity; (3) the child's custodial history; (4) the child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency; and (5) whether any factors listed under R.C. 2151.414(E)(7) to (11) apply.[4]

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[4] R.C. 2151.414(E)(7) to (11) state:

> (7) The parent has been convicted of or pleaded guilty to one of the following:
>
> (a) An offense under section 2903.01, 2903.02, or 2903.03 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense was a sibling of the child or the victim was another child who lived in the parent's household at the time of the offense;
>
> (b) An offense under section 2903.11, 2903.12, or 2903.13 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
>
> (c) An offense under division (B)(2) of section 2919.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense is the victim of the offense;
>
> (d) An offense under section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.06 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to an offense described in those sections and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
>
> (e) An offense under section 2905.32, 2907.21, or 2907.22 of the Revised Code or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to the offense described in that section and the victim of the offense is the child, a sibling of the child, or another child who lived in the parent's household at the time of the offense;
>
> (f) A conspiracy or attempt to commit, or complicity in committing, an offense described in division (E)(7)(a), (d), or (e) of this section.
>
> (8) The parent has repeatedly withheld medical treatment or food from the child when the parent has the means to provide the treatment or food, and, in the case of withheld medical treatment, the parent withheld it for a purpose other than to treat the physical or mental illness or defect of the child by spiritual means through prayer alone in accordance with the tenets of a recognized religious body.
>
> (9) The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued pursuant to section 2151.412 of the Revised Code requiring treatment of the parent was journalized as part of a dispositional order

{¶ 33} Determining whether granting permanent custody to a children services agency will promote a child's best interest involves a delicate balancing of "all relevant [best interest] factors," as well as the "five enumerated statutory factors." *In re C.F.*, 113 Ohio St.3d 73, 2007–Ohio–1104, 862 N.E.2d 816, ¶57, citing *In re Schaefer*, 111 Ohio St.3d 498, 2006–Ohio–5513, 857 N.E.2d 532, ¶56; *accord In re C.G.*, 9th Dist. Summit Nos. 24097 and 24099, 2008–Ohio–3773, ¶28; *In re N.W.*, 10th Dist. Franklin Nos. 07AP–590 and 07AP–591, 2008–Ohio–297, 2008 WL 224356, ¶19. However, none of the best interest factors requires a court to give it "greater weight or heightened significance." *C.F.* at ¶57. Instead, the trial court considers the totality of the circumstances when making its best interest determination. *In re K.M.S.*, 3rd Dist. Marion Nos. 9–15–37, 9–15–38, and 9–15–39, 2017–Ohio–142, 2017 WL 168864, ¶24; *In re A.C.*, 9th Dist. Summit No. 27328, 2014–Ohio–4918, ¶46. In general, "[a] child's best interest is served by placing the child in a permanent situation that fosters growth, stability, and security." *In re C.B.C.*, 4th Dist. Lawrence Nos. 15CA18 and 15CA19, 2016–Ohio–916, 2016 WL 915012, ¶66, citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324, 574 N.E.2d 1055 (1991).

{¶ 34} In the case at bar, we disagree with appellant that the trial court failed to appropriately consider all of the best interest factors. Instead, we believe that the trial court's

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issued with respect to the child or an order was issued by any other court requiring treatment of the parent.

(10) The parent has abandoned the child.

(11) The parent has had parental rights involuntarily terminated with respect to a sibling of the child pursuant to this section or section 2151.353 or 2151.415 of the Revised Code, or under an existing or former law of this state, any other state, or the United States that is substantially equivalent to those sections, and the parent has failed to provide clear and convincing evidence to prove that, notwithstanding the prior termination, the parent can provide a legally secure permanent placement and adequate care for the health, welfare, and safety of the child.

decision indicates that the court carefully considered each best interest factor and did not unduly emphasize appellant's mental health issues when analyzing the factors. Furthermore, ample competent and credible evidence supports the trial court's finding that granting appellee permanent custody is in the child's best interests, including the court's finding regarding the child's need for a legally secure permanent placement.

1

Child's Interactions and Interrelationships

{¶ 35} As the trial court noted, the parents did not visit the child for over eight months. The child thus has experienced limited interaction with the parents and has not developed any significant bond with either parent. During a January 2016 visit, appellant abruptly informed the father that appellant does not care about him or the child and left the visit. The child thus does not have positive interactions or relationships with either parent.

{¶ 36} In contrast, the evidence shows that the child has positive interactions or relationships in her current placement. The current placement provides the child with a stable environment, and the family hopes to adopt the child. Additionally, the child shares a bond with the family.

2

Child's Wishes

{¶ 37} The child appears too young to directly express her wishes. The guardian ad litem believes that placing the child in appellee's permanent custody is in her best interest. *In re S.M.*, 4th Dist. Highland No. 14CA4, 2014–Ohio–2961, 2014 WL 3014037, ¶32, citing *C.F.* at ¶55 (noting that R.C. 2151.414 permits court to consider child's wishes as child directly

expresses or through the guardian ad litem).

3

Custodial History

{¶ 38} The child was removed from appellant's custody at birth and has never lived under appellant's care. The child lived in a foster home until she was approximately seven months old. Since that time, she has remained in the same kinship placement.

4

Legally Secure Permanent Placement

{¶ 39} "Although the Ohio Revised Code does not define the term, 'legally secure permanent placement,' this court and others have generally interpreted the phrase to mean a safe, stable, consistent environment where a child's needs will be met." *In re M.B.*, 4th Dist. Highland No. 15CA19, 2016–Ohio–793, 2016 WL 818754, ¶56, citing *In re Dyal*, 4th Dist. Hocking No. 01CA12, 2001 WL 925423, *9 (Aug. 9, 2001) (implying that "legally secure permanent placement" means a "stable, safe, and nurturing environment"); *see also In re K.M.*, 10th Dist. Franklin Nos. 15AP–64 and 15AP–66, 2015–Ohio–4682, ¶28 (observing that legally secure permanent placement requires more than stable home and income but also requires environment that will provide for child's needs); *In re J.H.*, 11th Dist. Lake No. 2012–L–126, 2013–Ohio–1293, ¶95 (stating that mother unable to provide legally secure permanent placement when she lacked physical and emotional stability and that father unable to do so when he lacked grasp of parenting concepts); *In re J.W.*, 171 Ohio App.3d 248, 2007–Ohio–2007, 870 N.E.2d 245, ¶34 (10th Dist.) (Sadler, J., dissenting) (stating that a legally secure permanent placement means "a placement that is stable and consistent"); Black's Law Dictionary 1354 (6th Ed. 1990)

(defining "secure" to mean, in part, "not exposed to danger; safe; so strong, stable or firm as to insure safety"); *id.* at 1139 (defining "permanent" to mean, in part, "[c]ontinuing or enduring in the same state, status, place, or the like without fundamental or marked change, not subject to fluctuation, or alteration, fixed or intended to be fixed; lasting; abiding; stable; not temporary or transient"). Thus, "[a] legally secure permanent placement is more than a house with four walls. Rather, it generally encompasses a stable environment where a child will live in safety with one or more dependable adults who will provide for the child's needs." *M.B.* at ¶56.

{¶ 40} Furthermore, a trial court that is evaluating a child's need for a legally secure permanent placement and whether the child can achieve that type of placement need not determine that terminating parental rights is "not only a necessary option, but also the only option." *Schaefer* at ¶64. Rather, once the court finds the existence of any one of the R.C. 2151.414(B)(1)(a)-(e) factors, R.C. 2151.414(D)(1) requires the court to weigh "all the relevant factors * * * to find the best option for the child." *Id.*

{¶ 41} In the case at bar, we believe that the record contains ample clear and convincing evidence to support the trial court's finding that the child needs a legally secure permanent placement and that she cannot achieve this type of placement without granting appellee permanent custody. Appellant has a long history of mental illness and fails to follow her treatment recommendations. She has not displayed a commitment to the child. Instead, for eight months, she failed to visit the child at all. Due to her failure to visit, appellant was unable to engage in parent mentoring services during which she would have had the opportunity to display whether she possesses parenting skills or whether she could co-parent the child. Appellant did not demonstrate a willingness to treat her mental health conditions, a willingness

to learn parenting techniques, or a commitment to the child. Appellant had opportunities to demonstrate that she would be able to provide the child with a legally secure permanent placement, but unfortunately, her choices (noncompliance with the case plan and failure to visit the child) deprived her of those opportunities.

{¶ 42} Moreover, contrary to appellant's assertion, a trial court need not find that a "child's secure placement could only be achieved with a grant of permanent custody to the agency." In *Schaefer*, *supra*, the court rejected any argument that a trial court must find that terminating parental rights is "not only a necessary option, but also the only option." *Id.* at ¶64. Rather, R.C. 2151.414(D)(1) requires the court to weigh "all the relevant factors * * * to find the best option for the child." *Id.*

5

R.C. 2151.414(E)(7)-(11)

{¶ 43} The trial court also found that appellant had her parental rights involuntarily terminated with respect to a half-sibling of the child, and thus, that R.C. 2151.414(E)(11) applies.

6

Balancing

{¶ 44} In the case at bar, we do not believe that the trial court's best interest determination is against the manifest weight of the evidence. The trial court's decision reflects that it evaluated all of the best interest factors. Based upon the totality of the circumstances, and recalling that the trial court's judgment may rest upon witness demeanor and nuances that do not translate to the written record, we are unable to conclude that this is an exceptional case in which the evidence weighs heavily against the trial court's decision. A reversal is not required in order

to prevent a miscarriage of justice.

E

REASONABLE EFFORTS

{¶ 45} Appellant next argues that appellee failed to demonstrate that it used reasonable efforts to reunify the family and that the trial court thus could not grant appellee permanent custody of the child.

{¶ 46} R.C. 2151.419(A)(1) requires a trial court to determine whether a children services agency "made reasonable efforts to prevent the removal of the child from the child's home, to eliminate the continued removal of the child from the child's home, or to make it possible for the child to return safely home." The statute does not apply, however, "to motions for permanent custody brought pursuant to R.C. 2151.413, or to hearings held on such motions pursuant to R.C. 2151.414." *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶41. Instead, R.C. 2151.419(A)(1) applies only at "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children." *Id.*; *accord In re C.B.C.*, 4th Dist. Lawrence Nos. 15CA18 and 15CA19, 2016-Ohio-916, 2016 WL 915012, ¶72.

{¶ 47} Although R.C. 2151.419(A)(1) does not apply to R.C. 2151.413 permanent custody motions or to R.C. 2151.414 permanent custody hearings, a children services agency is not entirely relieved of the duty to use reasonable efforts. *C.F.* at ¶42. Instead, at prior "stages of the child-custody proceeding, the agency may be required under other statutes to prove that it has made reasonable efforts toward family reunification." *Id.* Additionally, "[if] the agency has not established that reasonable efforts have been made prior to the hearing on a motion for

permanent custody, then it must demonstrate such efforts at that time." *Id.* at ¶43.

{¶ 48} The present appeal does not originate from an "adjudicatory, emergency, detention, and temporary-disposition hearings, and dispositional hearings for abused, neglected, or dependent children." *C.F.*, *supra.* Rather, the appeal originates from a permanent custody hearing held after appellee filed a motion to modify the prior disposition to permanent custody. Appellee therefore was not required to prove at the permanent custody hearing that it used reasonable efforts to reunify the family, unless it had not previously done so. *Id.* at ¶43. The trial court made prior reasonable efforts findings during the pendency of the case. Thus, appellee was not required to prove at the permanent custody hearing that it made reasonable efforts before the trial court could award appellee permanent custody of the child. *See In re D.M.*, 4th Dist. Hocking No. 15CA22, 2016-Ohio-1450, 2016 WL 1329507, ¶19.

{¶ 49} We further note that the trial court found that appellant had her parental rights involuntarily terminated with respect to the child's half-sibling. R.C. 2151.419(A)(2)(e) therefore relieved appellee of the duty to use reasonable efforts towards reunification. *In re M.M.*, 4th Dist. Meigs No. 14CA6, 2014-Ohio-5111, ¶37-38; *see D.M.* at ¶20 (noting that when evidence established parent abandoned child, R.C. 2151.419(A)(2)(d) relieved agency of duty to use reasonable efforts).

{¶ 50} Accordingly, based upon the foregoing reasons, we overrule appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgments be affirmed and that appellee recover of appellant the

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 Athens County Common Pleas Court, Juvenile Division, to carry these judgments into execution.

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

Harsha, J.: Concurs in Judgment & Opinion
Hoover, J.: Concurs in Judgment Only

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.