

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

In the Matter of: : Case No. 24CA12
: :
A.C.V. 1: R.S. (07-30-15) : :
A.C.V. 2: P.S. (12-28-16) : :
A.C.V. 3: I.S. (11-12-17) : DECISION AND JUDGMENT
A.C.V. 4: R.R. (09-25-19) : ENTRY
A.C.V. 5: D.S. (12-21-20) : :
: **RELEASED: 03/25/2025**

APPEARANCES:

Steven H. Eckstein, Washington Court House, Ohio, for appellant.

Randy Dupree, Jackson County Prosecutor, Jackson, Ohio, and Isaac Beller, Gallia County Assistant Prosecutor, Gallipolis, Ohio, for appellee.

Wilkin, J.

{¶1} Appellant, the children’s mother, appeals a judgment of the Jackson County Court of Common Pleas, Juvenile Division, that granted Jackson County Department of Job and Family Services (“the agency”) permanent custody of her five children: nine-year-old R.S.; seven-year-old P.S.; six-year-old I.S.; four-year-old R.R.; and three-year-old D.S.¹

{¶2} Appellant raises one assignment of error that asserts that the trial court’s judgment placing the children in the agency’s permanent custody is against the manifest weight of the evidence. After our review of the record and the applicable law, we do not find any merit to appellant’s assignment of error. Therefore, we affirm the trial court’s judgment.

¹ The ages listed above were the children’s ages as of the date that the trial court entered its judgment granting the agency permanent custody of the children, August 21, 2024.

FACTS AND PROCEDURAL BACKGROUND

{¶3} Appellant and C.S. are the parents of R.S., P.S., I.S., and D.S. Appellant is the mother of R.R., and R.R.'s father is deceased. On May 5, 2021, the agency filed a complaint that (1) alleged the children were neglected and dependent and (2) requested temporary custody of the children. The agency also sought emergency, temporary custody of the children. The complaint alleged the following.

{¶4} In June 2020, the agency received a report regarding the family. The agency investigated and enacted a safety plan for the children. The children were placed with their maternal grandmother while appellant and C.S. (the father of R.S., P.S., I.S., and D.S.) worked to clean up the house. About one month later, the agency returned the children to the parents and referred the parents to services. The parents did not engage in any services.

{¶5} In April 2021, an agency caseworker made an unannounced home visit. The caseworker immediately detected "a strong musty odor" emanating from the home. When the caseworker entered the home, "the worker's shoes stuck to the floor." Additionally, the home was in disarray, and gnats were flying throughout the home. Three of the children were fighting over food and eating food from the floor. Another child was walking with a knife. The caseworker had to alert appellant that the child had a knife. When the caseworker went upstairs, one of the children opened a window and "began to hang out the window." Appellant intervened and shut the window. Appellant later took a random drug screen and tested positive for methamphetamine.

{¶6} The trial court subsequently granted the agency's request for emergency, temporary custody of the children.

{¶7} On July 22, 2021, the trial court adjudicated the children dependent. The court continued the children in the agency's temporary custody and allowed the parents to visit the children if they returned three consecutive, negative drug screens.

{¶8} The court later entered a dispositional order that placed the children in the agency's temporary custody. The court allowed the parents to have phone contact with the children but stated that appellant could not have in-person visits with the children until she produced three consecutive, negative drug screens. In December 2021, the court suspended visits between C.S. and the children due to sexual abuse allegations.

{¶9} As of late 2022, appellant still had not successfully completed a drug treatment program. Additionally, in December 2022, C.S. entered guilty pleas to four counts of pandering obscenity involving a minor, and the Jackson County Common Pleas Court subsequently sentenced C.S. to serve an aggregate minimum prison term of 8 to 10 years and a maximum prison term of 11 to 13 years. Thus, on February 1, 2023, the agency filed a motion to modify the disposition to permanent custody.

{¶10} On April 3, 2023, appellant filed a motion that asked the court to return the children to her custody. She asserted that she currently is enrolled in a treatment program and is scheduled to complete it on June 16, 2023. She stated that after she finishes this treatment, she will have "fully completed" the case plan. Appellant stated that she will have appropriate housing for the children and that her mother will be able to help. She alternatively asked the court to place the children in her mother's legal custody. She also asked the court to permit video visits, which the trial court granted.

{¶11} A few weeks later, appellant filed a motion to hold the agency in contempt for failing to permit video visits. The agency responded by stating that the children's

counselor indicated that contact with appellant “would be triggering and harmful for the children.” The agency also asked the court to schedule a hearing. The court subsequently vacated its order that allowed video visits and set the matter for an evidentiary hearing. After the evidentiary hearing, the court denied appellant’s request for video visits.

{¶12} On November 8 and 9, 2023, the court held a hearing to consider the agency’s permanent custody motion. Kristina Carlisle, the agency’s social services supervisor, testified as follows. In June 2020, the agency received a referral regarding the family that reported concerns with substance abuse and the cleanliness of the home. At that time, R.R. had been staying with paternal relatives, and D.S. had yet to be born. Thus, the agency’s initial involvement concerned appellant, C.S., and the three oldest children, R.S., P.S., and I.S.

{¶13} As a result of the encounter, Carlisle referred the parents to mental health and alcohol and drug treatment. The agency referred I.S. to protective daycare services, P.S. to Head Start, and R.S. to kindergarten. At the time, R.S. was five years of age and was not toilet trained; perhaps for this reason, appellant did not enroll R.S. in kindergarten. P.S. went to Head Start “a couple of times, but then that was it.” The parents did not follow through with the referral to protective daycare. Carlisle indicated that the parents had trouble “getting the kids up . . . and getting them on the bus.”

{¶14} On June 30, 2020, Carlisle gave both parents drug tests, and both returned positive for methamphetamine and amphetamine. Appellant’s test also returned positive for oxycodone. When Carlisle informed the parents about the positive test results, they stated that they had used drugs the weekend before Carlisle arrived at

their home. The parents' next three drug tests were negative. Appellant returned another positive drug test at the end of August 2020. The parents did not appear to be using drugs consistently, so substance abuse was not a major concern at the time.

{¶15} The parents struggled to control the three children. Carlisle described the home environment as “chaos” and the parenting situation as “one of the worst” that she has seen in her 22 years of experience. The home usually was “in some sort of disarray,” and appellant was “completely and totally overwhelmed with the children.” Appellant “would yell and scream at the children,” and the children yelled, screamed, and cussed at appellant. Appellant would “give up,” and the children continued with the activity that appellant had instructed them not to do.

{¶16} The children also had destructive behaviors. For example, they reportedly broke 12 television sets. When they spent some time at their maternal grandmother's house, they ripped a hole in the couch and pulled the stuffing out.

{¶17} When the agency removed the children, R.S. and P.S. were placed in the same home, and I.S. and D.S. were placed in another home. R.R. had been with a relative placement, but the agency eventually had to remove him from that placement and placed him in the same home as R.S. and P.S. The agency had attempted sibling visits, but the children were “in too much of a turmoil to be able to successfully have those visits.”

{¶18} The five children have various needs, and appellant lacks the ability to simultaneously care for all five children. Due to the children's behavioral issues, the agency does not have a place where all five children could live together. Carlisle does not believe that “anybody could take care of all five of these kids and meet all of their

needs.” She noted that the children have been in therapeutic foster homes that, at times, struggled to maintain more than one child in the home. Currently, only I.S. and D.S. are placed in the same home. The remaining children are in separate foster homes.

{¶19} Carlisle worked with the family until September 1, 2020. At that point, the case was transferred to another caseworker, Tiffany Liles, and her supervisor, Kristin Butts. Liles later left the agency, and Laura Hollback took over the case for a couple of months. Carl Massie became the next caseworker and remained with the family until March 2023, when the case was transferred to Gannon Rippeth.

{¶20} Kristin Butts testified as follows. She worked with the family from October 2020 through April 2022 as the supervisor of the ongoing caseworker, Tiffany Liles, who no longer works at the agency. The agency developed a case plan that required appellant to (1) engage in mental health and substance abuse treatment, (2) visit the children, and (3) obtain housing and employment. During Butts’s tenure, appellant did not successfully complete a drug treatment program. Between 2020 and 2022, appellant tested positive for methamphetamine 13 out of 19 times.

{¶21} Like Carlisle, Butts also stated that the children are unable to be placed in the same home. She explained, “These children all have incredibly sexualized behaviors and when they’re together those sexualized behaviors become amplified, and it’s very hard to work on those behaviors with them when they’re together.” The children are doing well in their placements, and she does not believe that disrupting those placements is in their best interests.

{¶22} Carl Massie, the family’s caseworker from June 2022 through March 2023, testified as follows. He had difficulty communicating with appellant and eventually was able to schedule an in-person meeting with her for October 6, 2022. At the meeting, appellant acknowledged that she needed to seek treatment for her drug addiction and stated that she would. Massie emphasized that appellant needed to enter treatment soon and explained that the agency could file a permanent custody motion if the children have been in its temporary custody for more than 12 months of a consecutive 22-month period. After that meeting, he did not have any other contact with appellant.

{¶23} The five children are “more stable than they’ve ever been” since Massie’s involvement with the family and are “thriving” in their current environments. Reuniting the children with one another “would be a difficult task.” Massie noted that trained professionals have had difficulty attempting to keep the children together. He believes that removing the children from their current placements would be detrimental.

{¶24} Gannon Rippeth testified that he has been the family’s caseworker since February 2023, right after the agency filed its permanent custody motion. He stated that the children “have been flourishing” in their current placements. Rippeth indicated that removing the children from their current placements would “be absolutely detrimental to their well being and their progress.” He reported that maintaining the children in their current placements is “absolutely necessary.”

{¶25} Dr. Brian Bethel, the clinical director and trauma therapist for The Child Protection Center in Chillicothe, Ohio, testified that he provides counseling to R.S., P.S., and I.S. He started seeing I.S. when she was around four or five years of age due to “very significant sexualized behavior,” including public masturbation. Dr. Bethel

explained that children may exhibit this behavior for several reasons, including being exposed to pornography, witnessing other sexual activity, boundary violations, or sexual abuse. Dr. Bethel thus referred I.S. for a forensic interview.

{¶26} He ultimately diagnosed I.S. with posttraumatic stress disorder (PTSD). Dr. Bethel stated that “a significant likelihood of re-traumatization” existed if I.S. were “removed from a home where she seems to be settled.” He indicated that I.S. “is very bonded with her current foster parents” and “appears to be doing well.” I.S. also had expressed to Dr. Bethel “her comfort with the foster parents.”

{¶27} R.S. started seeing Dr. Bethel for “extremely defiant” and “difficulty with toileting” behaviors. The foster parents also had reported “some sexual acting out between” R.S. and P.S. During his initial interaction with R.S., Dr. Bethel found her to “be regressed developmentally both in speech [and] language.” Throughout the time that Dr. Bethel worked with R.S., he observed her transitions between placements: She moved from a foster home where she had been placed with P.S. to her great-grandmother’s home; she later was removed from her great-grandmother’s home and placed in a new foster home. When R.S. lived with her great-grandmother, the school reported “defiant behavior.” Since being placed in the new foster home, R.S.’s behavior has moderated. Dr. Bethel ultimately diagnosed R.S. with PTSD.

{¶28} Dr. Bethel started seeing P.S. for similar defiant and sexualized behaviors, along with concerns regarding “cognitive ability.” Dr. Bethel diagnosed P.S. with autism spectrum disorder. He indicated that P.S. has been placed with incredible foster parents, and they are “very invested” in P.S. P.S. “has flourished” while in their home, and P.S. informed Dr. Bethel that “he wants to stay there forever.”

{¶29} Dr. Bethel agreed that placing the children together “would be very difficult.” He indicated that any caregiver would have difficulty simultaneously caring for all three children and that placing R.S., P.S., and I.S. in the same household would not be in their best interests. Dr. Bethel further stated that allowing the children to have contact with appellant “would be significantly likely” to “create re-traumatization.” He additionally reported that removing the children from their current placements would be detrimental to their mental health.

{¶30} Tammy Davison, the director of Transitions for Youth, testified that she oversees the foster home where R.S. has been placed since the beginning of 2023. The foster parents have “done an excellent job giving [R.S.] structure.” R.S. appears to be “more content” and happier since first entering this foster home.

{¶31} R.S.’s foster parent stated that R.S. has been in her home since February 2023. The foster parent does not plan to adopt R.S. but would allow her to remain in the home until the agency finds a new placement.

{¶32} P.S.’s foster mother testified as follows. P.S. entered her home in August 2022, after being removed from a previous foster home. At first, he appeared “sad,” “defeated,” “very emotional,” and “very angry.” When he first entered the foster mother’s home, P.S. displayed his anger by punching the wall, kicking the family’s pets, biting himself, or pulling his hair. Since being in her home, P.S.’s has “significantly” changed. He smiles, laughs, and talks a lot. When he becomes angry, he talks about his feelings rather than engage in destructive behavior. She would consider making P.S. “a permanent member of [her] family.”

{¶33} I.S. and D.S.'s foster mother testified as follows. The agency placed I.S. and D.S. with her after their May 5, 2021 removal. I.S. engaged in some unusual sexual behaviors. The foster mother contacted the agency to report her concerns, and I.S. subsequently engaged in counseling.

{¶34} In October 2022, I.S. started acting aggressively toward D.S. The foster mother had concerns about protecting D.S., so she asked the agency to find a new placement for I.S. After approximately three months, the foster mother welcomed I.S. back to her home, where she has since remained. I.S.'s behavior has improved, but she continues to have some challenges. The foster mother stated that if the court grants the agency permanent custody of the children, she would provide the children with "a forever home."

{¶35} R.R.'s foster father testified as follows. R.R. has been in his home since August 2021, when he was almost two years of age. When R.R. first entered the home, R.R. had "a very bad diaper rash," was nonverbal, and "could barely walk or support himself." While in the foster home, R.R. has made considerable progress. The foster father and his partner plan to adopt R.R. if the court grants the agency permanent custody of the child.

{¶36} R.R.'s foster parent also explained that when the agency first removed the children from the parents, the agency placed R.S. and P.S. in his home. The two children displayed sexualized and destructive behaviors when they entered his home. Although R.S. and P.S. made some progress while in his home, ultimately, he asked the agency to find a new placement for P.S., after P.S. punched the foster parent's four-

year-old daughter in the face. After P.S. left, R.S.'s behavior become "intolerable," and the agency also found a new placement for R.S.

{¶37} Jason Smith, the general manager of transitional programming at The Counseling Center, testified that appellant attended the program from July to September 2023. However, she missed nine appointments within a 30-day period and violated curfew. Due to the multiple program violations, she was transferred to Stepping Stones.

{¶38} Appellant testified and stated that she started using drugs when she was 23 years old, after the birth of her youngest child, D.S. Between the date of the children's removal, May 5, 2021, and March 2023, she had not been checking in with the agency or trying to obtain a job and housing. In March 2023, she entered an inpatient rehabilitation program and currently is receiving mental health counseling.

{¶39} Appellant has not seen the children since December 31, 2021, and agreed that "some" of her inability to see her children resulted from her conduct. The court told her that she would need to have three consecutive, negative drug screens and enter a rehabilitation program before visits would resume.

{¶40} Appellant believed that sharing a relationship with her children is in their best interests, but she recognized that the children should not be returned to her home immediately. Appellant indicated that she would like an outcome that would be in the children's best interests, but she struggled to articulate whether removing the children from their current placements is in their best interests. She stated that an acceptable option would be for the agency to dismiss the complaint and refile it so that she could have more time to overcome the barriers to reunifying with the children. The agency's

counsel asked appellant whether requiring the children “to continue to wait” is “fair,” and appellant stated, “[n]ot exactly.”

{¶41} The children’s guardian ad litem testified as follows. R.S. stated “that she misses [appellant] and that she loves her.” R.S. would not be opposed to seeing appellant, but “she has no interest in living with” appellant and does not want to leave the home where she currently resides.

{¶42} P.S. has autism spectrum disorder, “needs structure” and “likes for the schedule to be the same.” P.S. does not have “any real memories of either of his parents.” The youngest three children likewise do not have any memories of their parents.

{¶43} The GAL expressed concern that “placing the kids back together would be a triggering event for the oldest three” and might cause a resurgence of negative behaviors. She does not believe that the children “can be maintained safely together.”

{¶44} The GAL recognized that appellant has made progress but further pointed out that she did not start to make progress until after the agency had filed its permanent custody motion. The GAL opined that any attempt to reunify the children with appellant “would need to be a very long and slow process,” and she has “no confidence” that reunification “would ultimately end up being successful.” She explained that the children’s needs “are so great that we have seen . . . therapeutic foster homes fail to be able to meet those needs in a way that is beneficial to the children.” The children are “making very good progress” in their current placements, and the GAL does “not want to see them be re-traumatized or put into a situation where they regressed in their behaviors and their progress.”

{¶45} On August 21, 2024,² the trial court granted the agency permanent custody of the children. The court found that the children have been in the agency's temporary custody for 12 or more months of a consecutive 22-month period and that placing the children in the agency's permanent custody would serve their best interests.

{¶46} With respect to the children's interactions and interrelationships, the court stated that the children have been separated from their parents for more than two years. The court noted that appellant engaged in some case plan activities, but she did not take steps that would have allowed her to visit the children. The court found that the children do not have a relationship with their father due to his incarceration.

{¶47} The court stated that D.S. and I.S. now are placed in a stable home with the foster family, and they have developed a strong bond with the family. The court also found that R.S.'s foster placement is stable and noted that she "has made significant progress." P.S. shares "a positive relationship" with his current family and his behavior has improved. R.R. has a strong bond with his foster parents and "has achieved significant progress."

{¶48} Regarding the children's wishes, the court found that they are too young to understand the proceedings or to express an opinion. The court observed that the children's GAL stated that I.S., D.S., and R.R. are too young to remember their parents, and that P.S. expressed that "he never wants to leave his current foster home." The court noted that "R.S. has some memories of [C.S.] going to jail, knows her father is in prison, misses her mom, but does not want to leave her current placement."

² The record does not reveal a reason for the nearly ten-month delay between the date of the permanent custody hearing and the date of the trial court's judgment.

{¶49} With respect to the children’s custodial history, the court found that (1) they have been in the agency’s temporary custody since May 5, 2021, and (2) when the agency filed its permanent custody motion, the children had been in the agency’s custody for 21 months.

{¶50} The court also determined that the children need a legally secure permanent placement and that they cannot achieve that type of placement without granting the agency permanent custody of the children. The court stated that appellant was “unable to provide any definitive plan or path forward for managing the extreme demands of all five (5) children and acknowledged that she was unsure if reunification served the best interest of her children.” The court recognized that appellant had made some progress after the agency filed its permanent custody motion. The court nevertheless did not believe that appellant’s recent progress established that the children could be placed with her within a reasonable time.

{¶51} The court additionally observed that C.S., the father of R.S., P.S., I.S., and D.S., had entered guilty pleas to four counts of pandering obscenity involving a minor and was imprisoned for at least the next eight years. The court further noted that R.R.’s father had passed away before the agency filed the complaint.

{¶52} The court also found that R.C. 2151.414(D)(2) applied. The court stated that (1) one or more R.C. 2151.414(E) factors apply (i.e., R.C. 2151.414(E)(1), (2), (4), (9), (12), and (16)); (2) the children have been in the agency’s custody for more than two years and no longer qualify for temporary custody; (3) the children do not meet the age requirements for a planned permanent living arrangement; and (4) no relative or

other interested person had filed a motion for legal custody of the children (except a motion that had been withdrawn).

{¶53} The court thus concluded that placing the children in the agency's permanent custody is in their best interests and granted the agency permanent custody of the children. This appeal followed.

ASSIGNMENT OF ERROR

THE TRIAL COURT'S GRANT OF PERMANENT CUSTODY TO THE JACKSON COUNTY JOB AND FAMILY SERVICES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶54} In her sole assignment of error, appellant argues that the trial court's judgment placing the children in the agency's permanent custody is against the manifest weight of the evidence. Appellant recognizes that she "took an inordinate amount of time to face her demons of drug abuse" but states that she made "marked progress over the last months of the case." She contends that courts and the Ohio General Assembly fail to understand "what it takes to overcome drug addiction."

{¶55} Appellant also challenges the trial court's finding that she failed to visit the children and had no relationship with them throughout the pendency of the case. She claims that the trial court "tied [her] hands and then took her children."

{¶56} Appellant further contests the trial court's finding that the children need a legally secure permanent placement. She again contends that her inability to provide the children with a legally secure permanent placement stemmed from the trial court's orders prohibiting visitation with the children. Appellant asserts that the "case could have gone on for several more years with steady improvement by [appellant] if only the trial court had not obstructed the path." She concludes by stating that the trial court's

findings that she “had not seen her children and that she could not provide a legally secure placement are unreasonable.”

A. Standard of Review

{¶57} Generally, a reviewing court will not disturb a trial court’s permanent custody judgment unless the judgment is against the manifest weight of the evidence. *E.g., In re B.E.*, 2014-Ohio-3178, ¶ 27 (4th Dist.); *In re R.S.*, 2013-Ohio-5569, ¶ 29 (4th Dist.); *accord In re Z.C.*, 2023-Ohio-4703, ¶ 18. When an appellate court reviews whether a trial court’s permanent custody judgment 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 v. Volkman*, 2012-Ohio-2179, ¶ 20, quoting *Tewarson v. Simon*, 141 Ohio App.3d 103, 115 (9th Dist. 2001), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). We further observe, however, that issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. As the court explained in *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984): “The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” 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 (1997); accord *In re Christian*, 2004-Ohio-3146, ¶ 7 (4th Dist.).

{¶58} The question that an appellate court 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.” *In re K.H.*, 2008-Ohio-4825, ¶ 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 (1986).

{¶59} 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 (1990); accord *In re Holcomb*, 18 Ohio St.3d 361, 368 (1985), citing *Cross v. Ledford*, 161 Ohio St. 469 (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.”).

{¶60} Thus, if a 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 judgment is not against the manifest weight of the evidence. *In re R.M.*, 2013-Ohio-3588, ¶ 62 (4th Dist.); *In re R.L.*, 2012-Ohio-6049, ¶ 17 (2d Dist.), quoting *In re A.U.*, 2008-Ohio-187, ¶ 9 (2d Dist.) (“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.' "). A reviewing court should find a trial court's permanent custody judgment 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; see *Black's Law Dictionary* (12th ed. 2024) (the phrase "manifest weight of the evidence" "denotes a deferential standard of review under which a verdict will be reversed or disregarded only if another outcome is obviously correct and the verdict is clearly unsupported by the evidence").

B. Permanent Custody Procedure

{¶61} Before a court may award a children services agency permanent custody of a child, R.C. 2151.414(A)(1) requires the court to hold a hearing. The primary purpose of the hearing is to allow the court to determine whether the child's best interests would be served by permanently terminating the parental relationship and by awarding permanent custody to the agency. R.C. 2151.414(A)(1). Additionally, when considering whether to grant a children services agency permanent custody, a trial court should consider the underlying purposes of R.C. Chapter 2151: "to care for and protect children, 'whenever possible, in a family environment, separating the child from the child's parents only when necessary for the child's welfare or in the interests of public safety.'" *In re C.F.*, 2007-Ohio-1104, ¶ 29, quoting R.C. 2151.01(A).

C. Permanent Custody Framework

{¶62} 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 any of the following circumstances apply:

(a) The child is not abandoned or orphaned, 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, 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 if, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state, 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, or 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 and, as described in division (D)(1) of section 2151.413 of the Revised Code, the child was previously in the temporary custody of an equivalent agency in another state.

(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.

{¶63} Additionally, R.C. 2151.414(D)(2) states that permanent custody is in a child's best interest and requires a trial court to commit a child to an agency's permanent custody if all of the following apply:

(a) The court determines by clear and convincing evidence that one or more of the factors in division (E) of this section exist and the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either parent.

(b) The child has been in an agency's custody for two years or longer, and no longer qualifies for temporary custody pursuant to division (D) of section 2151.415 of the Revised Code.

(c) The child does not meet the requirements for a planned permanent living arrangement pursuant to division (A)(5) of section 2151.353 of the Revised Code.

(d) Prior to the dispositional hearing, no relative or other interested person has filed, or has been identified in, a motion for legal custody of the child.

{¶64} In the case at bar, the trial court determined that both R.C. 2151.414(B)(1) and (D)(2) apply. Neither party has suggested that we review this matter using the framework provided in R.C. 2151.414(D)(2). Therefore, we review this matter using the R.C. 2151.414(B)(1) framework.

1. R.C. 2151.414(B)(1)(d)

The trial court found, in accordance with R.C. 2151.414(B)(1)(d), that the children have been in the agency's temporary custody for 12 or more months of a consecutive 22-month period. Appellant does not challenge this finding, and nothing in the record indicates that the court's finding regarding this issue is against the manifest weight of the evidence.

2. Best Interest

{¶65} 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 interest 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 GAL, 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.

{¶66} Deciding whether a grant of permanent custody to a children services agency will promote a child's best interest involves a balancing of "all relevant [best interest] factors," as well as the "five enumerated statutory factors." *C.F.*, 2007-Ohio-1104, at ¶ 57, citing *In re Schaefer*, 2006-Ohio-5513, ¶ 56. However, none of the best interest factors requires a court to give it "greater weight or heightened significance." *Id.* Instead, the trial court considers the totality of the circumstances when making its best interest determination. *In re K.M.S.*, 2017-Ohio-142, ¶ 24 (3d Dist.); *In re A.C.*, 2014-Ohio-4918, ¶ 46 (9th Dist.). 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.*, 2016-Ohio-916, ¶ 66 (4th Dist.), citing *In re Adoption of Ridenour*, 61 Ohio St.3d 319, 324 (1991).

{¶67} In the case at bar, as we explain below, we believe that the record contains ample, clear and convincing evidence to support the trial court's decision that placing the children in the agency's permanent custody is in their best interests. The record does not support a finding that the trial court committed a manifest miscarriage of justice. Therefore, the trial court's best interest determination is not against the manifest weight of the evidence.

a. Children's Interactions and Interrelationships

{¶68} The evidence shows that the children are thriving in their respective foster homes and that the foster homes provide the children with safe, stable, and secure environments in which to develop. D.S. and I.S. are placed in the same foster home, but the remaining three children are each placed in separate homes. None of the providers involved with the children recommended placing them in the same home.

{¶69} The evidence further establishes that appellant loves her children. However, the evidence also demonstrates that her substance abuse prevented her from engaging in any meaningful relationship with her children. At the time of the permanent custody hearing, appellant had not seen her children in almost two years. Although appellant faults the trial court for preventing her from visiting the children, she overlooks the court-mandated requirement that she return three consecutive, negative drug screens before the court would allow her to visit the children. Moreover, R.S., P.S., and I.S.'s counselor stated that permitting visits would be detrimental to the children's progress and well-being. Additionally, the children's GAL reported that only the oldest child, R.S., had concrete memories of appellant. P.S. had some vague memories, but none of the three youngest children had any memories of appellant.

b. Children's Wishes

{¶70} The oldest child, R.S., informed the GAL that she did not want to return to living with appellant and that she wished to remain in her current placement. The four younger children were too young to express their wishes. The children's guardian ad litem recommended that the court place the children in the agency's permanent custody. *C.F.*, 2007-Ohio-1104, at ¶ 55 (R.C. 2151.414 "unambiguously gives the trial court the choice of considering the child's wishes directly from the child or through the

guardian ad litem”); *In re S.M.*, 2014-Ohio-2961, ¶ 32 (4th Dist.) (recognizing that R.C. 2151.414 permits juvenile courts to consider a child’s wishes as child directly expresses or through the GAL).

c. Custodial History

{¶71} The children have been in the agency’s temporary custody since May 2021, and have remained in its continuous temporary custody since that time. When the agency filed its February 2023 permanent custody motion, the children had been in its temporary custody for more than 18 months, far longer than 12 or more months of a consecutive 22-month period. At the time of the November 2023 permanent custody hearing, the children had been in the agency’s temporary custody for more than two years.

d. Legally Secure Permanent Placement

{¶72} “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.*, 2016-Ohio-793, ¶ 56 (4th Dist.), citing *In re Dyal*, 2001 WL 925423, *9 (4th Dist. Aug. 9, 2001) (implying that “legally secure permanent placement” means a “stable, safe, and nurturing environment”); see also *In re K.M.*, 2015-Ohio-4682, ¶ 28 (10th Dist.) (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.*, 2013-Ohio-1293, ¶ 95 (11th Dist.) (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). 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.

{¶73} In the case before us, clear and convincing evidence supports the trial court's finding that the children need a legally secure permanent placement and that they can only achieve this type of placement by granting the agency permanent custody. In October 2022, the agency caseworker emphasized to appellant that she needed to seek treatment for her substance abuse. However, appellant did not begin to address the agency's concerns until March 2023, the month after the agency had filed its permanent custody motion. Thus, for over a year and a half, appellant took little to no action to ensure that the children would be able to return to her care.

{¶74} At the time of the permanent custody hearing, appellant had completed some treatment. However, the five children cannot safely be placed with one another in the same home. Thus, even if appellant had successfully completed treatment and obtained a physically appropriate home, she still would be unable to provide the children with a safe, stable, consistent environment where all of the children's needs will be met. Keeping the children safe unfortunately means keeping R.S., P.S., and I.S. apart so that they can continue to heal from the past trauma associated with living with appellant and C.S. Moreover, multiple witnesses testified that removing the children from their current placements would be detrimental to their mental health and well-being.

{¶75} The record thus supports the trial court's finding that the children need a legally secure permanent placement and that they cannot achieve this type of placement without placing them in the agency's permanent custody.

{¶76} We recognize appellant's concern regarding her struggle to overcome drug addiction. However, for nearly two years, appellant did little to engage in a treatment program. Even when the agency caseworker warned her, in October 2022, that failing to seek treatment likely would lead to the agency filing for permanent custody, appellant did not seek treatment until March 2023. The agency thus gave appellant ample opportunity, and she unfortunately did not seriously engage in treatment until it was too late. By the time that she became serious about treatment, she had not seen the children in more than one year and could not visit them due to her failure to submit three consecutive, negative drug screens.

{¶77} We certainly do not minimize the progress that appellant has made. Her commendable progress since the agency filed its permanent custody motion is not, however, sufficient to override the children's best interest. As all of the agency's witnesses testified at the permanent custody hearing, the children are fragile and disrupting their lives may reignite trauma-induced behaviors. Thus, although we do not overlook the progress that appellant appears to have made, we cannot allow her progress to override the children's best interests or permit the children to languish in the agency's temporary custody, contrary to the dictates of R.C. 2151.415(D)(4).³

³ R.C. 2151.415(D)(4) states as follows:

No court shall grant an agency more than two extensions of temporary custody pursuant to division (D) of this section and the court shall not order an existing temporary custody order to continue beyond two years after the date on which the complaint was filed or the child was first placed into shelter care, whichever date is earlier, regardless of whether any extensions have been previously ordered pursuant to division (D) of this section.

{¶78} Based upon all of the foregoing, the trial court could have formed a firm belief that placing the children in the agency's permanent custody is in their best interests. Thus, its judgment is not against the manifest weight of the evidence.

{¶79} Accordingly, based upon the foregoing reasons, we overrule appellant's sole assignment of error.

CONCLUSION

{¶80} Having overruled appellant's sole assignment of error, we affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and the appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Jackson County 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.

Smith, P.J., and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, 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.