

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE A.D.	:	
	:	No. 113491
A Minor Child	:	
	:	
[Appeal by C.B., Mother]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 3, 2024

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD19907910

Appearances:

The Law Firm of Jesscia A. L. Camargo, LPA, LLC, and
Jessica A. L. Camargo, *for appellant mother C.B.*

Lisa A. Hahn, *for appellee paternal grandmother K.D.*

ANITA LASTER MAYS, J.:

{¶ 1} C.B., mother of A.D. (d.o.b. 6/12/19) (“Mother”), appeals the trial court’s judgment granting the complaint for visitation of K.D. by paternal grandmother (“Grandmother”) and the trial court’s grant of supervised visitation to J.D., father of A.D. (“Father”). Father has not filed an opposing brief.

{¶ 2} We affirm the trial court’s judgment.

I. Background and Facts.

{¶ 3} In June 2019, Cuyahoga County Division of Children and Family Services (“CCDCFS” or “the agency”), filed a complaint for abuse, dependency, and predispositional temporary custody of A.D. who was born addicted to benzodiazepines and opiates. A.D. was placed with Grandmother upon his release from the hospital. Predispositional and subsequently temporary custody was granted to the agency, A.D. was adjudicated abused and dependent, and remained in Grandmother’s custody.

{¶ 4} On January 19, 2021, the agency moved to terminate temporary custody without supervision and to vest legal custody to Mother without restrictions. In a magistrate’s decision dated February 23, 2021, adopted by the court on March 11, 2021, Mother was awarded legal custody of her children without restrictions.

{¶ 5} On March 30, 2022, under the same case number, Grandmother filed a complaint to intervene pursuant to Civ.R. 24(A) and for visitation and companionship rights pursuant to “R.C. 3109.12.” The magistrate’s May 9, 2022 pretrial order granted intervention and ordered a temporary schedule allowing visitation on Wednesdays and Saturdays from 4:00 p.m. to 8:00 p.m. As of August 2022, Mother no longer allowed visitation. On August 18, 2022, the case was assigned to a visiting judge. Grandmother filed multiple motions to show cause while the case was pending.

{¶ 6} On November 26, 2022, Mother’s newly hired counsel filed a “brief in opposition to paternal grandmother’s ‘complaint’ for companionship rights” that has been filed approximately eight months earlier. Mother argued the trial court lacked subject-matter jurisdiction to adjudicate the matter under R.C. 3109.12.

{¶ 7} In February 2023, Father filed pro se an application for shared parenting. In approximately August 2023, Mother’s counsel withdrew from Mother’s case but serves as counsel in the instant appeal.

{¶ 8} The trial court bifurcated the visitation and show cause proceedings. On October 25, 2023, the hearing on Grandmother’s complaint for visitation and Father’s application for shared parenting was held. After appropriate legal advisements, Mother and Father elected to proceed pro se and were allotted time to meet with the guardian ad litem (“GAL”) prior to moving forward. Grandmother was present represented by counsel.

{¶ 9} Grandmother testified that Mother and Father were never married, and she had not met Mother prior to A.D.’s birth though Father informed her of the pregnancy. A.D. was born with ten types of opiates in his system and required detoxification. Grandmother was contacted by the Cuyahoga County Division of Children and Family Services (“CCDCFS” or “the agency”) and accepted the agency’s request for placement. A.D. was released to Grandmother’s custody when A.D. was 19 days old.

{¶ 10} Grandmother cared for A.D. through medical appointments, medical procedures, physical therapy required due to developmental delays, swallowing

issues, and allergies. The first year was challenging as A.D. was up nightly and cried a lot. Grandmother remained at A.D.'s side when he was hospitalized for surgery.

{¶ 11} Father had some degree of contact with A.D. the first year, but Mother's contact was minimal until A.D. was two years old. Father's middle-school-aged daughter also resided with Grandmother.

{¶ 12} Grandmother provided rides for Mother to attend agency-required classes, looked after A.D. and A.D.'s maternal half-siblings, allowed Mother to stay at her house when needed, sometimes loaned Mother her car, and gave her a job. She also purchased a house for Mother to live in at a reasonable rental that Mother stopped paying in August 2022. Mother regained legal custody in April 2021, but A.D. and A.D.'s two half-siblings remained with Grandmother, though Mother picked them up for a few weekends until Mother removed them on March 11, 2022. Mother told Grandmother that children were resilient, and A.D. would forget her.

{¶ 13} The trial court granted temporary visitation in May 2022 for four hours twice a week. The order was followed "with a few misses" until Mother stopped visitation in August 2022. Mother failed to pay rent for five months and moved out in January.

{¶ 14} Grandmother expressed concern that A.D. has been negatively impacted by the separation from Grandmother and his paternal half-sister who still resided with Grandmother. Grandmother requested weekly visitation and some weekends so the three could engage in activities. Neither Mother, Father, nor the GAL cross-examined the witness.

{¶ 15} Grandmother's close friend L.L. testified that she visited Grandmother's house two to three times a week. She personally observed the degree of care that A.D. required and never heard Grandmother complain. L.L. witnessed the strong bond between the two. When cross-examined by Mother and Father, L.L. did not know whether A.D. had been diagnosed with a stomach problem, admitted consuming alcohol during some visits at Grandmother's house, but denied that she was intoxicated.

{¶ 16} Mother confirmed that A.D. was placed with Grandmother upon his release from the hospital but denied A.D. had ten drugs in his system. Mother disagreed that she neglected seeing A.D. and explained she did not visit the hospital during A.D.'s surgery because she was incarcerated. Mother admitted that "pretty much" all of the time she was well-treated by Grandmother and testified to the various ways that Grandmother assisted her. Mother denied that the children were "staying with" Grandmother after custody was restored to Mother but said Grandmother was babysitting at no cost.

{¶ 17} Mother thought the temporary visitation order was just something she agreed "would be fine." She stated that did not recall the hearing officer saying it was a court order nor that she was questioned about her failure to comply with the order during the previous hearing. Mother confirmed that she had not taken A.D. to visit Grandmother for 14 months and that she was moving forward on her motion to terminate the temporary visitation order.

{¶ 18} Counsel inquired whether Mother believed that A.D. “cared for” Grandmother. Mother responded she did not know, stating, “He’s a kid He’s gonna care for whoever is in his presence. Like he’s that little.” She also did not think A.D. had been damaged by no longer seeing Grandmother or his sister and confirmed during cross-examination by Father that A.D. is happy.

{¶ 19} During cross-examination by the GAL, Mother said she did not want Grandmother to have visitation.

Mother: She gave him ice cream which she noted that she knew that he couldn’t have, and he was sick two times when he came home.

He would act differently when he came home. She stalked me. She put a GPS system on my car.

She had somebody following me, which is not safe in a car because I felt like somebody was following me.

There’s a list. I have a whole full list of —

GAL: Okay. So what changed from the beginning of the case where you were agreeable to [Grandmother] having visitation?

Mother: Honestly, she hadn’t shown that side of her character at that point like so much of it. And I didn’t like the confrontation, and he had been there for that time with her.

{¶ 20} During redirect examination, Mother admitted that her attempt to get a civil protection order against Grandmother due to the GPS monitor failed, indicated that her counsel knew why, and said, “I’m not allowed to answer anymore.”

{¶ 21} The GAL testified that it was in A.D.’s best interest to grant Grandmother’s visitation motion based on the GAL’s home visit and the established

relationship. “They had a very strong bond you could tell.” The GAL did not believe that the abrupt termination of visitation was in A.D.’s best interest. The GAL had no concerns about the quality of care that Grandmother provided.

{¶ 22} Conversely, the GAL expressed reservations about Mother’s parenting.

At one point it was indicated to me that there was a GPS tracker on [Mother’s] car and some of the stops that it showed were concerning, and what I mean by that is there would be numerous stops for a short period of time and I felt it was speculative to actually, you know, say what those stops were, but it did seem kinda concerning that someone would be driving like this based on, you know, [Mother’s] history too.

I did make appropriate contacts due to that that I had to, but I found it concerning, but as far as like definite proof of something going on, I don’t think it was, but other than that, the only other thing that I would find concerning is just the history of like the abuse, neglect, dependency case that happened and just [A.D.’s] history meaning that he was born with several substances in his system.

{¶ 23} The GAL also had several conversations with Mother regarding the temporary visitation.

Yes. I remember kind of conversations regarding asking — yeah, mother did bring up some of their reasons, which were basically that she believed that [Grandmother] was actually providing like ice cream intentionally to [A.D.] and that was the reason why, and that she was doing this to harm him because he’s lactose intolerant.

{¶ 24} In support of the motion to terminate visitation, Mother called her sister R.B. to testify and asked whether she knew why Grandmother required Mother to work such long hours cleaning the apartment (apparently owned or managed by Mother) and whether Grandmother said it was to prevent her from

being around her children. R.B. responded “not necessarily,” and Mother decided she could not proceed because she did not know how to ask the questions.

{¶ 25} Father asked R.B. whether Mother and Grandmother got along. R.B. responded affirmatively. Father asked whether R.B. knew what happened between Mother and Grandmother. R.B. explained:

Honestly, it’s an opinion. [Grandmother] did a lot to help [Mother] gain custody of her children. There was a plan that they had as a family including [Grandmother].

[Grandmother] introduced [Mother] to the investor in Colorado for [Mother] to purchase the house. The big picture was for [Mother] to buy that house and then sell it and get a home near . . . [Grandmother] because right, it takes a village.

Once after [Mother] had that house, selling that and using the profits from that to get a house because the kids were in Messiah [school].

[Grandmother] did also employ [Mother] with cleaning and there were some evening contracts and [Mother] was cleaning those, so [Grandmother] said it’s just easier because all the children were in that same school, including her granddaughter

{¶ 26} R.B. continued, “Well, I feel that when [Mother] didn’t want to work nights anymore because she wanted more time with the kids, that’s kinda when everything went south is when [Mother] stopped working for [Grandmother].” “I feel like this could have been handled over a year ago when we were in Court last time down the hall and with the Guardian ad Litem being a mediator and setting a reasonable visitation schedule.”

{¶ 27} Mother called Grandmother to testify. Grandmother denied Mother asked her for a different work schedule so she could spend time with her kids instead of having Grandmother babysit and admitted she put a tracking device on Mother’s

car. Grandmother explained that she permitted A.D.'s older sister to spend a few weekends at Mother's only because Father was at Mother's place at the time. Grandmother also denied that she was requesting visitation because she did not like the fact that Mother was trying to take care of her children.

{¶ 28} In response to Father's query of why Grandmother filed for visitation, Grandmother responded, "Because I love my grandson and I have his sister and we miss him and we love him and we're his family" and "[b]ecause she was not letting me see him."

{¶ 29} Father called Mother to testify regarding Father's motion for visitation. Mother testified Father was good with A.D. and takes A.D. and Father's two stepchildren to places in the neighborhood without supervision. Mother said she had concerns about court-ordered unsupervised visitation with Father because his ankle monitor had only recently been removed, Father was living in a sober program house, and had only been sober for six months. Mother preferred that visitation take place under supervision and would agree to visitation if it took place at Father's sister's home with the sister's consent. Father told the court he sees his son on a regular basis and enjoys spending time with him.

{¶ 30} The trial court granted Grandmother's complaint for visitation and set forth a detailed schedule. Father's motion for visitation was granted with supervision.

{¶ 31} Mother appeals.

II. Assignments of Error and Discussion

{¶ 32} Mother's six assigned errors are set forth below immediately prior to the corresponding analysis. For purposes of judicial economy, we address the assigned errors out of order.

A. Assignment of Error No. I: The trial court abused its discretion when it exercised jurisdiction to hear Paternal Grandmother's Motion for Visitation. Mother timely raised jurisdictional issues upon hiring counsel in November of 2022, but if this Honorable Court finds it was not timely raised, then it is plain error.

{¶ 33} Mother's first assigned error challenges the trial court's subject-matter jurisdiction. Mother argues that her opposition to subject-matter jurisdiction, filed approximately eight months after Grandmother's visitation complaint, was timely. In the trial court's October 25, 2023 journal entry, the trial court ruled that any motions not ruled upon were denied.

{¶ 34} Grandmother counters that Mother filed her jurisdictional challenge to the complaint for visitation more than six months after the complaint was filed without leave of court and that any analysis is subject to plain error. The failure to object to a matter in the lower court forfeits the right to contest the issue on appeal absent plain error. *In re De. D.*, 2020-Ohio-906, ¶ 13 (8th Dist.). Plain error exists only when it can be determined that but for the error, the outcome of the trial would have been different. *In re S.F.*, 2023-Ohio-1900, ¶ 15 (8th Dist.), citing *State v. Moreland*, 50 Ohio St.3d 58, 62 (1990).

The plain error doctrine originated as a criminal law concept. In applying the doctrine of plain error in a civil case, reviewing courts must proceed with the utmost caution, limiting the doctrine strictly to

those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a material adverse effect on the character of, and public confidence in, judicial proceedings.

(Citations omitted.) *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997).

{¶ 35} The issue of subject-matter jurisdiction is a question of law that we review de novo. *In re S.K.L.*, 2016-Ohio-2826, ¶ 13 (8th Dist.); *Bank of Am. v. Macho*, 2011-Ohio-5495, ¶ 7 (8th Dist.); and *Crestmont Cleveland Partnership v. Ohio Dept. of Health*, 139 Ohio App.3d 928, 936 (10th Dist. 2000).

{¶ 36} “Subject-matter jurisdiction is fundamental. It defines the court’s power to decide cases. Subject-matter jurisdiction can never be waived; any decision entered without subject-matter jurisdiction is void.” *S.D. v. K.H.*, 2018-Ohio-1181, ¶ 18 (8th Dist.), quoting *Francis David Corp. v. Scrapbook Memories & More*, 2010-Ohio-82, ¶ 17 (8th Dist.), citing *Pratts v. Hurley*, 2004-Ohio-1980.

{¶ 37} Mother contends the “case was originally a children services case in which the child was ultimately returned to Mother’s custody. Thus, the juvenile court does not have jurisdiction over grandparents’ complaints for custody in causes that were originally an abused, neglect, dependency case.”

{¶ 38} Mother relies on *In re R.G.*, 2021-Ohio-93 (9th Dist.), in support. *In re R.G.* was recently described in *In re S.L.*, 2024-Ohio-117 (9th Dist.), as an action “commenced” in juvenile court by nonparents seeking visitation with a child and holding “that an action filed by a nonparent for visitation or companionship time

with a child is not an action for ‘custody’ of the child under R.C. 2151.23(A)(2).”¹ *In re S.L.* at ¶ 16, 18. The court stated *In re R.G.* was legally distinguishable because it involved an action commenced in juvenile court by nonparents seeking to obtain companionship with a child where the parents were not already involved in custody litigation in that court. *In re S.L.* at ¶ 18.

{¶ 39} The *In re R.G.* court explained: “[b]y its express language, R.C. 2151.23 accords no jurisdiction to the juvenile court to determine grandparent visitation actions initiated pursuant to R.C. 3109.12.” *Id.* at ¶ 26. The idea that R.C. 2151.23(A)(2) which provides jurisdiction for the juvenile court to determine custody matters gives the juvenile court implied jurisdiction over grandparent visitation has been rejected by the Ohio Supreme Court. *Id.*, citing *In re Gibson*, 61 Ohio St.3d 168 (1991), syllabus. *See also In re A.M.S.*, 2019-Ohio-3181, ¶ 28 (8th Dist.), quoting *In re Gibson* at syllabus (“The complaint of a grandparent seeking only visitation with a grandchild may not be determined by the juvenile court pursuant to its authority to determine the “custody” of children under R.C.2151.23(A)(2).”).

{¶ 40} The juvenile court’s jurisdiction in the instant case was invoked in 2019 under R.C. 2151.23(A)(1) governing neglected, abused, and dependent children — not under R.C. 2151.23(A)(2). R.C. 2151.23(A)(1) provides that “[t]he juvenile

¹ R.C. 2151.23 regulates the exclusive original jurisdiction of the juvenile court. R.C. 2151.23(A)(2) addresses the determination of custody of any child who is not a ward of another court in Ohio.

court has exclusive original jurisdiction . . . [c]oncerning any child who . . . is alleged . . . to be . . . [an] unruly, abused, neglected, or dependent child.” *Id.*

{¶ 41} Also enlightening, *In re R.G.*, 2021-Ohio-93 (9th Dist.), distinguished its holding in *In re J.L.M.*, 2018-Ohio-2175 (9th Dist.), a case initiated under R.C. 2151.23(A)(1) as a dependency, neglect, abuse case:

After the children were adjudicated and the great grandparents were ultimately awarded legal custody of the children, the juvenile court *closed the case*. *In re J.L.M.* at ¶ 3. A grandmother subsequently filed a motion for visitation with one of the *children under the prior case number*. *Id.* at ¶ 4. This Court held that the *juvenile court properly exercised its continuing jurisdiction over the children pursuant to R.C. 2151.23(A)(1), which grants exclusive original jurisdiction to juvenile courts concerning children alleged to be dependent, neglected, or abused*. *Id.* at ¶ 11.

(Emphasis added.) *In re R.G.* at ¶ 24.

{¶ 42} The grandmother in *In re J.L.M.*, filed in the juvenile court to intervene under Civ.R. 24 seeking visitation under R.C. 3109.11 and 3109.12 where the mother was both deceased and unmarried. *Id.* at ¶ 12. The court determined that intervention was appropriate under both statutes, the closed case was initiated under R.C. 2151.23(A)(1) governing dependent, neglected, or abused children, and the juvenile court had continuing jurisdiction under R.C. 2151.23(A)(1) and R.C. 2151.353(F)(1). *Id.* at ¶ 10-12.

{¶ 43} Mother also maintains that “Grandmother did not bring her Complaint for Visitation pursuant to R.C. 3109.051 or 3109.11.” R.C. 3109.11 regulates filings where the single mother is deceased, and R.C. 3109.051 governs visitation of a child involved in a divorce, dissolution, legal separation or annulment

proceeding. Grandmother filed the complaint for visitation under R.C. 3109.12. “R.C. 3109.12 is one of the statutory methods grandparents may use to seek visitation rights with a grandchild if the child’s mother is unmarried.” *In re C.W.*, 2020-Ohio-2660, ¶ 15 (9th Dist.). That is exactly the case here. The juvenile court had jurisdiction under R.C. 2152.23(A)(1) and continuing jurisdiction over A.D. under R.C. 2151.353(F)(1) after legal custody was vested in Mother. *In re J.L.M.*, 2018-Ohio-2175, ¶ 11 (9th Dist.); R.C. 2151.353(F)(1).²

{¶ 44} We again find no error, plain or otherwise.

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

B. Assignment of Error No. III: The trial court abused its discretion when it violated Mother’s due process rights when it considered Father’s Motion for Shared Parenting and granted visitation because Father did not file a shared parenting plan, or request visitation or custody. Furthermore, Father did not properly serve Mother or Paternal Grandmother.

{¶ 46} We observe that Father failed to file a responsive brief in this case. “App.R. 18(C) does not impose a form of appellate default judgment where the court of appeals can reverse solely because the appellee failed to file a brief.” *In re S.M.T.*, 2012-Ohio-1745, ¶ 3 (8th Dist.), citing *Hawkins v. Marion Corr. Inst.*, 28 Ohio

² When an agency initiates the underlying case for abuse, neglect and dependency under R.C. 2151.23(A)(1) and adjudicates the child to be so, the dispositional order is issued under R.C. 2151.353(A). Dispositional options include temporary and legal custody. The exclusive jurisdiction granted by R.C. 2151.23(A)(1) ends upon disposition but the continuing jurisdiction granted by R.C. 2151.353(F)(1) and R.C. 2151.417(B) does not. Thus, for example, a probate court’s exclusive jurisdiction over adoption proceedings over a neglected child was not divested by the juvenile court’s continuing jurisdiction. *In re N.M.*, 2017-Ohio-1288, ¶ 15 (8th Dist.), citing *State ex rel. Allen Cty. Children Servs. Bd. v. Mercer Cty. Court of Common Pleas*, 2016-Ohio-7382.

St.3d 4 (1986). “Reversal is warranted only if the arguments in the appellant’s brief reasonably appear to support a reversal.” *Id.*, citing *id.*

{¶ 47} “The right to parent one’s children is a fundamental right’... protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution.” *In re B.W.*, 2015-Ohio-2768, ¶ 21 (8th Dist.), quoting *In re C.F.*, 2007-Ohio-1104, ¶ 28. “A fundamental requirement of due process is the ‘opportunity to be heard’ at a ‘meaningful time and in a meaningful manner.’” *In re B.W.* at *id.*, quoting *In re L.F.*, 2014-Ohio-3800, ¶ 39 (9th Dist.).

{¶ 48} Under the third assignment of error, Mother contends her due process rights were violated by Father’s failure to serve his application for shared custody on Mother’s counsel pursuant to Civ.R. 5(B) and failure to file a shared parenting plan with the application. Civ.R. 5(B)(1) provides that “[i]f a party is represented by an attorney, service under this rule shall be made on the attorney unless the court orders service on the party.”

{¶ 49} The “instructions for service portion” of the juvenile court’s shared parenting form provides that “[p]ursuant to Juv.R. 16 and Civ.R. 4.1, for all first requests for service” the application would be served by certified mail unless otherwise listed. Mother does not deny that she was served by certified mail as instructed on the form or that counsel did not have knowledge of the filing through Mother or the court docket. Mother does concede that the court did not order shared parenting, rendering that segment of the argument moot. “An assignment of error

is moot when it cannot have “any practical legal effect upon a then-existing controversy.”” *SMS Fin. XXVI, LLC v. Waxman Chabad Ctr.*, 2021-Ohio-4174, ¶ 22 (8th Dist.), quoting *State v. Gideon*, 2020-Ohio-6961, ¶ 26, quoting *Culver v. Warren*, 84 Ohio App. 373, 393 (11th Dist.1948), quoting *Ex parte Steele*, 162 F. 694, 701 (N.D.Ala.1908); App.R. 12(A)(1)(c).

{¶ 50} We find Mother’s complaint that the trial court should not have moved forward with visitation moot on the same grounds. Mother agreed to move forward at the hearing and testified that Father was already allowed to see A.D. and had been spending time with him. The trial court clarified that Father was merely requesting a court-ordered visitation schedule. Mother replied that she had no objection to it but requested that visits be supervised and stated that she agreed if Father’s sister supervised visitation. The trial court ordered supervised visitation as agreed to by Mother and Father and set forth a protocol if the parties were unable to agree on times or a visitation supervisor.

{¶ 51} Mother has not demonstrated that she was prejudiced or denied due process. No objections were posed prior to the hearing or during. “[A] party cannot raise new claims, issues, or arguments for the first time on appeal and a failure to raise an issue before the trial court results in a waiver of that issue for appellate purposes.” *Shaker Hts. ex rel. Lake v. Shaker Hts.*, 2024-Ohio-3007, ¶ 28 (8th Dist.), citing *Garrett v. Cuyahoga Cty.*, 2022-Ohio-2770, ¶ 27 (8th Dist.), citing *Lycan v. Cleveland*, 2019-Ohio-3510, ¶ 32-33 (8th Dist.).

{¶ 52} The third assignment of error is overruled.

- C. Assignment of Error No. II: The trial court abused its discretion when it inappropriately analyzed visitation pursuant to R.C. 3109.051.**
- D. Assignment of Error No. IV: The trial court abused its discretion when it violated Mother’s fundamental right to parent the minor child, and the Judge’s Decision was against the manifest weight of evidence when it found it was in the best interest of the minor child to have visitation with Paternal Grandmother.**

{¶ 53} For purposes of judicial efficiency, we combine the second and fourth assigned errors for analysis.

{¶ 54} Mother argues the trial court abused its discretion “when it analyzed the Complaint and granted visitation to . . . Grandmother under [R.C.] 3109.051” “[T]he Complaint was not made pursuant to [R.C.] 3109.051. [T]he Complaint was made pursuant to [R.C.] 3109.12 which the court did not have jurisdiction over.” Mother also argues that the trial court’s finding that visitation with Grandmother was in A.D.’s best interest was against the manifest weight of the evidence. Grandmother responds that Mother has not raised the issue before and any analysis is subject to plain error.

{¶ 55} We construe the argument to challenge the propriety of the best interest analysis along with the manifest weight of the evidence and reiterate that the trial court had subject-matter jurisdiction in this case.

{¶ 56} The complaint for visitation was submitted under R.C. 3109.12 and may be granted if the trial court determines that visitation is in the best interest of the child.

“In determining whether to grant . . . reasonable companionship or visitation rights with respect to any child, the court shall consider all relevant factors, including, but not limited to, the factors set forth in [R.C. 3109.051(D)]. Divisions (C), (K), and (L) of [R.C. 3109.051] apply to the determination of . . . reasonable companionship or visitation rights under this section and to any order granting any such rights that is issued under this section.”

In re C.W., 2020-Ohio-2660, at ¶ 15, (9th Dist.), quoting R.C. 3109.12(B).

{¶ 57} When reviewing the manifest weight of the evidence in a civil case, we weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether in resolving conflicts in the evidence, the jury or factfinder 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.

{¶ 58} We are guided by a presumption that the findings of the trier of fact are correct. *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). This presumption arises because the trier of fact had an opportunity “to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Id.* Judgments supported by competent, credible evidence going to all the essential elements of the claim will not be reversed on appeal as being against the manifest weight of the evidence. *Schneider v. Razek*, 2015-Ohio-410, ¶ 43 (8th Dist.).

{¶ 59} Mother contends the court failed to consider Mother’s concerns that Grandmother (1) gave ice cream to the child twice with knowledge he was lactose intolerant, (2) put a tracker on Mother’s car due to fears that Mother was possibly

involved with drugs again, and (3) admitted to sometimes drinking White Claw alcoholic beverages.

{¶ 60} The trial court cited Mother's concerns.

Mother testified that she does not want Paternal Grandmother to have visitation and based that upon an allegation that the Paternal Grandmother gave the minor child ice cream and he was sick. Further, Mother is upset with Paternal Grandmother for a GPS tracker being placed on her car by an investigative agency. The GPS tracking issue was addressed by Mother in a request for a Protection Order in another case and Court and said [the] motion was denied.

Journal Entry 0917385321, p. 2 (Nov. 21, 2023). On the third issue of occasional consumption of alcoholic beverages, one of Grandmother's witnesses testified that she, not Grandmother, would "sometimes" drink a "cup of White Claw" when visiting Grandmother. Tr. 40.³

{¶ 61} The trial court observed that Grandmother assumed care of A.D. at the age of 19 days when born addicted to drugs and remained with Grandmother until Mother regained custody in April 2021. Grandmother was also raising Father's daughter, A.D.'s older sibling, with whom A.D. had bonded. Grandmother took A.D. to medical appointments to address issues with swallowing and allergy diagnoses and treatment and to physical therapy due to A.D.'s delayed motor skills. Grandmother relinquished her dog because of A.D.'s allergies and changed A.D.'s diet to address stomach problems.

³ White Claw is a hard seltzer that varies from 4.5 alcohol. [<https://ie.whiteclaw.com/#flavours>]. (accessed Sept. 24, 2024)

{¶ 62} The trial court also noted that Mother had little contact with A.D. during his first year but visited during the second year. Grandmother helped Mother obtain transportation, purchased a house for Mother and A.D. to reside in, and employed Mother for a period of time. Grandmother also provided care for A.D. and two of Mother’s older children while Mother was working. Mother stopped paying rent and was evicted by Grandmother. Mother denied visitation to Grandmother and told Grandmother A.D. would forget her because kids are resilient. Grandmother’s witnesses supported her testimony, testifying that A.D. was bonded with Grandmother and his older paternal sibling. The GAL reported that there did not appear to be a valid concern by Mother or Father regarding why Grandmother should not have visitation. Mother’s witness also testified that A.D. and Grandmother had bonded and should have visitation.

{¶ 63} The trial court addressed the best interest factors considered in reaching a decision. “Pursuant to *Harold v. Collier*, 2005-Ohio-5334, in a grandparent visitation case the court is obligated and shall give special weight to the wishes of the parent or parents. The court is also obligated and shall consider the ‘best interests’ of the minor child pursuant to R.C. 3109.041(F)(1).”⁴ Journal Entry 0917385321, p. 2. (Nov. 21, 2023). *See also* R.C. 3109.051(D)(15).

⁴ The *Collier* Court held that “Ohio’s nonparental-visitation statutes — R.C. 3109.11, 3109.12, and 3109.051(D)” are constitutional on their face. *Id.* at ¶ 47. Also, that, “Ohio courts are obligated to afford some special weight to the wishes of parents of minor children when considering petitions for nonparental visitation made pursuant to R.C. 3109.11 or 3109.12. (*Troxel v. Granville*, 530 U.S. 57, followed.)” *Harrold* at paragraph one of the syllabus. “2. The state has a compelling interest in protecting a child’s best interest, and Ohio’s nonparental-visitation statutes are narrowly tailored to serve that

{¶ 64} We recognize that the trial court cited R.C. 3109.04(F) in its entry. This court has explained that the best interest factors listed in R.C. 3109.04(F)(1), regarding the allocation of parental rights and shared parenting, are used for modification of custody motions. R.C. 3109.051(D) is employed for visitation and parenting time modifications. *In re I.L.J.*, 2023-Ohio-2960, ¶ 39 (8th Dist.), citing *Campana v. Campana*, 2009-Ohio-796, ¶ 3 (7th Dist.). Nonetheless, due to the record and the detail of the trial court’s entry that reflect consideration of the factors that correspond to the best interest factors in both R.C. 3109.051(D) and 3109.04(F), we are able to review the trial court’s best interest findings, and thus any error is harmless. *Id.* at ¶ 40, citing *id.* at ¶ 4. *See also Bohannon v. Lewis*, 2022-Ohio-2398, ¶ 31 (1st Dist.).

“While the trial court specifically analyzed the best-interest factors listed in R.C. 3109.04(F)(1) rather than R.C. 3109.051(D), courts have held that the factors set forth in the two sections are quite similar and reliance on the factors in the wrong section is harmless error when the trial court’s decision demonstrates consideration of the relevant factors, . . . *In re Troyer*, 2010-Ohio-3276, ¶ 36 (7th Dist.) (holding trial court’s reliance on R.C. 3109.04(F)(1) factors to be harmless where trial court’s decision “evinced consideration of the relevant factors”); *Braden v. Braden*, 2006-Ohio-6878, ¶ 38 (11th Dist.) (holding that the two sets of factors are “essentially the same” and affirming the parenting-time decision of the trial court despite its reference to R.C. 3109.04 because the pertinent factors were still considered).”

{¶ 65} The trial court held that Mother failed to provide credible testimony to support her position and that Mother’s position regarding visitation was based on her feelings toward Grandmother and not concerns regarding contact with or care

compelling interest. (R.C. 3109.11 and 3109.12, construed and applied.)” *Harrold* at paragraph two of the syllabus.

of A.D. R.C. 3109.041(F)(1)(a) and 3109.051(D)(15). Father's position was considered as addressed in the GAL report. R.C. 3109.041(F)(1)(a) and 3109.051(D)(15). The GAL recommended visitation and said A.D. had a significant bond with Grandmother and his paternal sibling. R.C. 3109.041(F)(1)(a) and 3109.051(D)(15). In fact, Mother's witness testified that A.D. and Grandmother had a close bond and that Grandmother should have visitation. R.C. 3109.041(F)(1)(a) and 3109.051(D)(15). An in camera review was not conducted due to A.D.'s age. (R.C. 3109.04(F)(1)(b); R.C. 3109.051(D)(4).

{¶ 66} The trial court also contemplated A.D.'s bond with Grandmother, both parents and siblings, adjustments to home and community, his health, and the physical and mental health of the parents and Grandmother. R.C. 3109.04(F)(1)(c),(d) and (e); 3109.051(D)(1), (7), (9). In addition, the trial court took note of Mother's violations of the temporary visitation order. R.C. 3109.04(F)(1)(f); 3109.051(D)(10).

{¶ 67} The record evidences the trial court's consideration of the requisite factors including Mother's stated position. This court also recognizes that R.C. 3109.051(D)(16) is a catchall provision that encompasses "any other factor in the best interest of the child." Clearly, the provision does not exclude factors that may be set forth in R.C. 3109.04(F)(1). We, like the First District, "do not hold that the factors in R.C. 3109.051(D) and 3109.04(F)(1) are always interchangeable, but the record demonstrates that the court considered the pertinent factors for this case listed in R.C. 3109.051(D)." *Bohannon*, 2022-Ohio-2398, at ¶ 36.

{¶ 68} This court finds that the decision is supported by competent, credible evidence and that the trial court's judgment is not against the manifest weight of the evidence. The trial court did not abuse its discretion.

{¶ 69} The second and fourth assignments of error are overruled.

E. Assignment of Error No. V: The trial court abused its discretion by placing the burden on Mother instead of Paternal Grandmother.

{¶ 70} Our conclusion that the trial court did not abuse its discretion because the judgment was supported by competent credible evidence and was not against the manifest weight of the evidence renders the fifth assignment of error moot. App.R. 12(A)(1)(c).

{¶ 71} The fifth assignment of error is overruled.

F. Assignment of Error No. VI: The trial court erred and abused its discretion when it permitted Paternal Grandmother to intervene.

{¶ 72} Mother reiterates her argument under the first assignment of error that Mother should not have been permitted to intervene because the case was no longer pending, and Mother should have filed in the domestic relations court. This court's analysis and decision under the first assignment of error renders the sixth assignment of error moot. App.R. 12(A)(1)(c).

III. Conclusion

{¶ 73} The trial court's judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

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

ANITA LASTER MAYS, JUDGE

FRANK DANIEL CELEBREZZE, III, J., CONCURS;
MICHELLE J. SHEEHAN, P.J., CONCURS IN JUDGMENT ONLY