In re F.W.

2024-Ohio-5431 (2024) | Cited 0 times | Ohio Court of Appeals | November 5, 2024

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

IN RE: : : F.W. and K.W., : Case Nos. 24CA6 : Adjudicated Neglected : and Dependent Children. : : : DECISION AND JUDGMENT : ENTRY : :

APPEARANCES:

Richard D. Hixson, Zanesville, Ohio, for Appellant.

Brittany E. Leach, Athens County Assistant Prosecuting Attorney, Athens, Ohio, for Appellee.

Smith, P.J.

{¶1} Appellant, the father of the minor children F.W., age 15, and K.W., age 13, appeals the trial judgment that placed his two children in the permanent custody of Athens County Children Services In his first assignment of error, Appellant argues that finding that the children cannot be placed with him within a reasonable time or should not be placed with him is against the manifest weight of the evidence. In his second assignment of error, Appellant asserts that the likewise is against the manifest weight of the evidence. In his third assignment of error, Appellant contends that the trial court erred by failing to appoint an attorney to represent the children. Upon review, we do not find any merit to assignments of error.

.

FACTS

{¶2} On June 24, 2021, the agency filed complaints that alleged the children are neglected and dependent. The complaints alleged the following. On April 8, 2021, the agency received a report of educational neglect. Beginning in March 2020, none of the children consistently attended school. During the 2020-2021 school year, F.W. missed at least 94 school days, and K.W. missed at least 69 days of school. An agency caseworker subsequently spoke with the mother, and she admitted that the children had not been attending school. The mother assured the caseworker that the children would attend school, but the mother failed to fulfill her promise. For these reasons, the agency asked the court to grant it protective supervision of the children.

{¶3} On September 8, 2021, the trial court adjudicated the children neglected and dependent. The trial court later entered a dispositional order that granted the agency protective supervision of the children. {¶4} On May 16, 2022, the trial court granted the agency ex parte emergency custody of the children and set the matter for a shelter care hearing to be held on May 17, 2022. The court subsequently continued the ex parte temporary custody order pending a full hearing.

{¶5} On May 17, 2022, the agency filed a motion to modify the protective supervision order to a temporary custody order. The agency asserted that the mother recently tested positive for methamphetamines and suboxone

and that Appellant refused to submit to drug screens. Additionally, the agency had

concerns that parents have an alcohol abuse problem. Their home and the

property they live on is littered with beer The agency further alleged that

(1) the home, small is near deplorable with

trash inside and outside the home, (2) the home lacks running water and receives

from the home next door, (3) Appellant an anger management

problem, and (4) the children have missed a significant number of days of school.

{¶6} On June 28, 2022, the trial court granted the agency temporary

custody of the children.

{¶7} On May 9, 2023, the agency filed a motion to modify the disposition

to permanent custody. 1 The agency asserted that the children cannot be placed

with either parent within a reasonable time or should not be placed with either

1 and unexpectedly passed away. parent and that placing the children in its permanent custody is in their best

interests.

{¶8} On October 20, 2023, the trial court held a hearing to consider the

permanent custody motion. Stephanie Blaine, a kindship program

coordinator, testified that she conducted a home study for a paternal aunt, but the

home did not the minimal safety She sought other potential

relatives but none was available.

{¶9} Caseworker Katie Schlegel likewise testified that she investigated a

potential placement for the children, but the home study was not approved.

{¶10} Caseworker David Driggs testified that he administered several drug tests to Appellant and that Appellant tested positive for methamphetamine, amphetamine, and THC. Driggs did not provide specific dates for these positive test results, but the trial court admitted into evidence copies of the drug test results. This evidence indicated that (1) in April 2023, Appellant tested positive for THC, (2) on January 30, 2023, Appellant tested positive for methamphetamine, amphetamine, and THC, and (3) in July, September, and October 2022, Appellant tested positive for amphetamine and methamphetamine. Driggs stated that he attempted to test Appellant after April 2023, but he was unable to connect with Appellant. Driggs further reported that beginning in July 2023, he did not make any further attempts to test Appellant due to {¶11} Caseworker Rebecca Inboden testified as follows. In April 2021, the agency entered into a voluntary case plan with the family to help resolve school truancy issues. The children not attended school during the majority of the 2020-2021 school The initial case plan objectives focused around ensuring that the children were attending school. Inboden was to the home on a regular basis [and] attempting to talk to the parents about the importance of the children attending school. She informed the parents that the children needed to consistently attend school than otherwise, was possibly going to be some sort of sanctions forthcoming from the The parents never were

able to ensure that the children attended school on a consistent basis.

{¶12} Inboden further testified that the agency had concerns regarding the housing. In September 2021, the family was living in a two-bedroom camper. For electricity, the family used electrical cords that connected to the home next door. Additionally, the camper did not have running water. The agency also had concerns about a lack of food in the home and potential refrigeration issues.

{¶13} In April 2022, the agency received a referral that the parents abusing Inboden completed a home visit with the parents and asked them to submit to drug testing. The mother submitted to a test, and she tested positive for The mother advised Inboden that did not know how those substances would have gotten into her Appellant refused to take a drug test, and he did not explain why he would not submit to a drug test.

Appellant very upset with the and did not believe that the test was necessary. Inboden stated that Appellant very amplified and kicking, knocking over and one point[,] he had threatened to kill his sister-in-

{¶14} In May 2022, the children entered the temporary custody.

Before their removal, the children had been living in home

The parents appeared to be abusing drugs, the older sister (who was 17 at the time but now is over the age of majority) was several months pregnant and had not received prenatal care, and the father of this unborn child (with whom the 17-year-old had an ongoing relationship) known to be drug involved and

domestically

{¶15} Once the children entered the temporary custody, the

agency amended the case plan to include goals related to alcohol and drug

treatment, mental health, and housing. Inboden explained that the family has a

history of multiple moves and or [sic] their housing not being sanitary, organized,

and potentially being a safety

{¶16} The agency also had concerns regarding the 17-year-old child

pregnancy. The parents claimed that they did not know that she was pregnant,

even though would have been difficult for [the child] to hide a pregnancy of that duration because she was nearly ready to give birth by the time the pregnancy was

{¶17} Inboden explained that Appellant wanted to be present for the birth of

the 17-year- child, but the hospital had restrictions regarding the persons

allowed in the room. Appellant was not allowed to be present and had to be

escorted off of the

{¶18} Between July 2022 and July 26, 2023, Appellant tested positive for

methamphetamine, amphetamine, THC, and suboxone. Inboden referred

Appellant for a substance abuse assessment. Appellant was noncompliant between

July 2022 through May 2023. He since has been

{¶19} Inboden also testified that she had heard comments suggesting that

Appellant wanted to harm her. In late May 2022, she heard that Appellant had

stated an to place [Inboden] in a wood As a result, Inboden

contacted her supervisor and the agency decided that Inboden no longer would be

required to personally visit the home.

{¶20} In the summer of 2023, Inboden received a phone call from a mental

health therapist who having a duty to warn as [Appellant] had presented

for a therapy session and verbalized intention for members of family,

or any other Children Services family to, up missing if the

motion for permanent custody was Inboden reported the incident to her supervisor and to law enforcement officials. As a result of

threat, Inboden was advised not to any further face-to-face

contact Appellant.

{¶21} Inboden stated that the case plan also required Appellant to engage in

mental health services. She explained that Appellant a lengthy history of

violent and or [sic] assaultive behavior towards adults that has been adjudicated

Athens County Common Pleas Court. Inboden indicated that Appellant

completed a mental health evaluation, but she does not know the

recommendations She has been unable to determine whether Appellant

emotionally or mentally healthy for due to safety precautions that

have been put in

{¶22} In April 2023, Appellant was living with a paramour in the

house. Inboden explained that the children had difficulty

processing new relationship, given that their mother had passed away

only a few months before Appellant started this new relationship.

{¶23} Inboden was unable to access the home to

determine whether it would be an appropriate home for the children. The agency

nevertheless had received information that were

and going from that property, including teenagers living in a shed behind the {¶24} As of the date of the permanent custody hearing, Inboden did not

know if Appellant had appropriate housing for the children. Moreover, Inboden

did not receive income verification from Appellant. She has told that he

receives social security Inboden thus does not know if Appellant can

provide for the basic needs.

{¶25} Inboden stated that the two children currently live in the same foster

home, where they have lived since May 2022. She reported that the children

If the agency is granted permanent custody, Inboden expects that the

children will remain living in this home. The foster parents have indicated that

they would be willing to adopt the children. Inboden explained that K.W. has been

out hope that she is going to go home, and it will be difficult for [her] to

have that dream essentially go

{¶26} Inboden testified that the children have a long way since

arrived in [the foster] home. She explained: They have a close bond

with their foster family. They attend school every day. They do not evidence any

unexcused absences. They participate in family

{¶27} Inboden explained that the agency requested permanent custody of

the children because the agency had ongoing involvement with this family for

a number of years, and it tends to always be related to the same

lack of resources, . . . allegations of substance use, or dependence, concerns about the mental health of one or both parents. One of the parents being . . . involved

with the criminal justice Additionally, when the children were in

custody, they were not attending school on a consistent basis and their

needs [were] not being met. Inboden does not believe that Appellant

has made sufficient progress with regard to the case plan activities and objectives

in order to recommend Inboden stated that she knows that

Appellant his children but she is for these

safety, and . . . their stability if they were to reunify Appellant.

{¶28} Renee McKee, a clinician at Health Recovery Services, testified as

follows. She has been working with Appellant since May 2023. Appellant

currently takes suboxone, and, other than testing positive for marijuana, he has not

had a positive drug test since July 2023. Appellant also completed a mental health

evaluation.

{¶29} On July 14, 2023, Appellant stated that his children were taken

that other . . . family members would come up McKee reported

the statement to authorities. McKee since has seen an improvement in

behavior, and she believes that he will continue to improve.

{¶30} Kelly Morman, the guardian ad litem (GAL), testified that

she would not permanent custody at this time. The girls are clearly

closely bonded with their extended However, she would not recommend the girls be returned to their father at this Instead, she believed that

lot of still to be made and a lot of concerns around housing . . .

need to be Morman indicated that Appellant has remorse

for past comments that have been She further suggested that Appellant has

made Morman would like to see Appellant continue to have

clean drug screens, continue to engage in treatment, and obtain a stable and safe

home. She recommended that the court give Appellant another three months to

comply with all of the case plan goals.

{¶31} Morman reported that the children clearly to remain

with one another, and they been consistent in their desire to be

In their current placement, the children seem to be and

school They also are engaged in extracurricular activities. Morman

stated that the children to be connected to their foster parents, but [she]

think[s] there is still a remaining kind of distance. Thus, Morman is uncertain

whether keeping the children in the foster home is a good long-term solution

{¶32} Appellant did not testify, but his counsel asked the court to give

Appellant more time to complete the case plan goals.

{¶33} On March 14, 2024, the trial court granted the agency permanent

custody of the two children. The court first found that placing the children in the

permanent custody is in their best interests. With respect to the interactions and interrelationships, the court found that (1) the children

and Appellant have a strong (2) Appellant regularly visits the children and

the visits ; (3) the children have been in the same foster home since May

2022; (4) before entering the temporary custody, children were

struggling with housing security and their (5) since entering the

temporary custody, children have made tremendous strides as they

have a stable environment that allows them to (6) their attendance

has significantly and (7) they a solid bond with their foster

{¶34} The court considered the wishes and found that they would

like to be reunified with Appellant. The court stated that the family a very

strong bond and are very close to each The court further noted that the

GAL that [Appellant] be given more time to complete his case plan

goals for reunification

{¶35} The court additionally reviewed the custodial history. The

court found that the case began on June 24, 2021, when the agency requested a

protective supervision order due to concerns about the educational

neglect. Nearly one year later, the court placed the children in the

temporary custody to a multitude of concerns that included the

substance use, continued educational neglect with the children missing school, and housing instability as the family was residing in a camper that was in a deplorable

The children have been in the continuous temporary custody

since May 16, 2022.

{¶36} The court further found that the children need a legally secure

permanent placement and that they cannot achieve this type of placement without

granting the agency permanent custody. The court noted that Appellant

struggled with case plan but determined that he has made

The court commended Appellant for in substance use

treatment but found that insecurity still looms as well as

ability to provide for the basic The court declared that

children deserve the chance to succeed in life and that they are highly unlikely

to be able to succeed if permanent custody is not granted to the The

court stated that awarding the agency permanent custody allow the children

to be in a safe and stable environment that will provide them with the necessary

resources to continue their

{¶37} The court also concluded that the children cannot be placed with

Appellant within a reasonable time and should not be placed with Appellant. The

court again noted that the is very close and but it determined that

this is not enough for permanent custody not to be granted to the

The court observed that the children entered the temporary custody as a result of their potential substance use, continued educational neglect, and

deplorable housing The court recognized that Appellant taken

steps to address his substance use and hopes that he continues to do so in the

The court additionally noted that the children and Appellant have

through additional trauma during this case as Mother unexpectedly passed

The court nevertheless did not believe that Appellant has made necessary

The court stated that Appellant has anger issues

toward the and his threats of bodily harm have affected the

progress in this case and ha[ve] not been properly The court further

found that these anger issues have his case plan progress and whether he

can adequately and appropriately parent these

{¶38} The court additionally stated that Appellant has not verified that he

has appropriate housing for the children. The court indicated that part of the

problem with verifying housing stemmed from his toward

agency The court found that Appellant could not provide for

the basic needs and that still appears to be the The court stated

that it did feel comfortable that [Appellant] has verifiable income to support

himself and his children as well as providing for their basic every day The

court found that family has historically had the same issues that still remain today. They struggle with housing, lack of utilizing resources provided to them,

substance use, and mental health or anger

{¶39} The court recognized that Appellant his children and has made

progress with his substance but it stated that other issues remain. The court

found that the children to be thriving in their current environment by making strides emotionally, mentally, and educationally. The court indicated that the children are receiving the resources and support that they did not receive while in their care. The court stated that if the children were returned to custody, they would be highly susceptible to falling back into the environment that they were previously removed

{¶40} The court thus found that (1) the children cannot be placed with Appellant within a reasonable time and should not be placed with Appellant and (2) permanent custody is in the best interests. Accordingly, the court granted the permanent custody motions. This appeal followed.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED WHEN FINDING THAT THE MINOR CHILDREN COULD NOT BE PLACED WITH FATHER WITHIN A REASONABLE TIME AND SHOULD NOT BE PLACED WITH HIM, AS SUCH A FINDING WAS UNSUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

II. THE TRIAL COURT ERRED WHEN FINDING THAT PERMANENT CUSTODY WAS IN THE BEST INTERESTS OF THE MINOR CHILDREN, AS SUCH A FINDING WAS UNSUPPORTED BY CLEAR AND CONVINCING EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

III. THE TRIAL COURT ERRED AND FAILED TO AND DUE PROCESS RIGHTS IN FAILING TO APPOINT AN ATTORNEY FOR THE MINOR CHILDREN.

First and Second Assignments of Error

{¶41} first and second assignments of error.

{¶42} In his first two assignments of error, Appellant argues that the trial

appellant asserts that the record fails to contain clear and convincing evidence to

support the tria

within a reasonable time or should not be placed with him and (2) placing the

Standard of Review

{¶43} A reviewing court generally 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 R.M., 2013-Ohio-3588, ¶ 53 (4th Dist.). When an appellate court

reviews whether a trial court s permanent custody decision is against the manifest 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).

{¶44} In a permanent custody case, the ultimate question for a reviewing

s findings . . . were supported by clear and

In re K.H., 2008-Ohio-4825, ¶ 43. In determining whether

court will examine the record to determine whether the trier of facts had sufficient

State v. Schiebel, 55

Ohio St.3d 71, 74 (1990). us, 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

R.M., 2013-Ohio-

3588, at ¶ 55 (4th Dist.).

{¶45} Once the reviewing court finishes its examination, the court may

reverse the judgment only if it appears that the factfinder, when resolving the miscarriage of justice that the [judgment] must be reversed and a new trial

Thompkins, 78 Ohio St.3d at 387, quoting Martin, 20 Ohio App.3d at

175. A reviewing court should find a trial court s permanent custody decision

Id., quoting Martin at

175; see

be reversed or disregarded only if another outcome is obviously correct and the

verdict is clearly unsupported by the eviden .

{¶46} Moreover, deferring to the trial court on matters of credibility is

Davis v.

Flickinger, 77 Ohio St.3d 415, 419 (1997); accord In re Christian, 2004-Ohio-

3146, ¶ 7 (4th Dist.). 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 (1952). Permanent Custody Framework

{¶47} R.C. 2151.414(B)(1) specifies that a trial court may grant a children

services agency permanent custody of a child if the court finds, by clear and

convincing evidence, that (1) the child s best interest would be served by the award

of permanent custody, and (2) any of the following conditions applies:

(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. {¶48} In the case at bar, the agency asserted, and the trial court found, that

R.C. 2151.414(B)(1)(a) applies. 2 Appellant argues that clear and convincing

evidence that the

children cannot be placed with him within a reasonable time or should not be

placed with him.

{¶49} 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

child s parents, the court shall enter a finding that the child cannot be placed with

(E) In determining at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code whether a child cannot be placed with either parent

2 consecutive 22-month period under R.C. 2151.414(B)(1)(d). Neither party disputes this finding on appeal. custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty day In the case at bar, on September 8, 2021, the trial court adjudicated the children neglected and dependent. On May 17, 2022, the children were removed from the home. The statute instructs that the earlier date, September 8, 2021, controls. Thus, if the temporary custody for purposes of R.C. 2151.414(B)(1)(d), for 12 or more months of a consecutive 22-month period. But see In re

Ar.S., 2019-Ohio-5378, ¶ 26 (3d Dist.) (stating that a period of protective supervision following an adjudication does not count for purposes of calculating the 12-month period). However, because the parties and the trial court proceeded as if R.C. 2151.414(B)(1)(a) governs, we will consider whether clear and convincing evidence supports cannot be placed with Appellant within a reasonable time or should not be placed with him. within a reasonable period of time or should not be placed with the parents, the court shall consider all relevant evidence. If the court determines, by clear and convincing evidence, at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) of section 2151.353 of the Revised Code that one or more of the following 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) 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 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.

. . .

(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;

. . .

(16) Any other factor the court considers relevant.

{¶50} A trial court may base its decision that a child cannot or should not be

placed with either parent within a reasonable time upon the existence of any one of

the R.C. 2151.414(E)(1) 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. See In re C.F., 2007-Ohio-1104, ¶ 50;

In re William S., 75 Ohio St.3d 95, 99 (1996); see e.g., In re L.R.B., 2020-Ohio-

6642, ¶ 52 (2d Dist.); In re Hurlow, 1998 WL 655414, *4 (4th Dist. Sept. 21,

1998).

{¶51} In the case before us, competent, clear and convincing evidence

within a reasonable time or should not be placed with him. The evidence indicates

that pursuant to R.C. 2151.414(E)(1), Appellant failed continuously and repeatedly

to substantially remedy the conditions that caused the children to be placed outside

their home. One of the conditions that caused the children to be placed outside

k of suitable housing. Appellant has not remedied

this condition. At the time of the permanent custody hearing, Appellant was living

{¶52}

placement for the children. Thus, although Appellant faults the agency for failing

to visit this residence, he does not recognize that his threats were the reason why

the agency could not visit the residence. {¶53} The evidence also demonstrates that before Appellant moved in with

his paramour, he had not shown a consistent ability to maintain a safe, stable home

for the children. T at the time

{¶54} supports a finding, under R.C. 2151.414(E)(1), that he failed continuously and

repeatedly to substantially remedy the conditions that caused the children to be

placed outside their home. See In re An.M., 2022-Ohio-2873, ¶ 44 (8th Dist.)

In re S.S., 2003-Ohio-319, ¶ 15

(2d Dist.) n the

see also In re B.J.L., 2019-Ohio-555, ¶ 76 (4th Dist.)

(upholding permanent custody judgment when the evidence showed that the

In

re K.J., 2008-Ohio-5227, ¶ 22 (4th Dist.) (upholding permanent custody judgment

In re Barnhart,

2002-Ohio-6024, ¶ 43 (4th Dist.) the child). In re Goff, 2004-Ohio-7235, ¶ 55 (11th Dist.) (upholding permanent

the[] proceedings, ha[d the parent] been able to provide safe and sanitary

that the children cannot be placed with Appellant within a reasonable time or

should not be placed with him. E.g., C.F., 2007-Ohio-1104, at ¶ 50.

{¶55} Appellant nevertheless argues

returned a positive drug screen since July 2023. This clinician further testified that

clinician also indicated that she expected to see Appellant continuing to improve

his situation.

{¶56} Appellant asserts that the GAL likewise had faith in his ability to

improve his situation. Appellant states that given all of the above, the evidence

fails to clearly and convincingly show that the children cannot be placed with him

within a reasonable time or should not be placed with him.

{¶57} We do not agree with Appellant. While the evidence may show that

Appellant has made some progress, the court emphasized his repeated anger issues with the agency caseworkers, which hindered his case plan progress. Furthermore,

living situation would be appropriate for the children stemmed from threats. And even though the agency did not visit this home, the agency received

s teenagers who had been living in a shed. This evidence suggests that this home

would not be a safe and stable home environment for the children. Thus, the

record does not contain any evidence that Appellant secured housing that would be

suitable for the children.

{¶58} In sum, we do not believe that the evidence weighs heavily against a

finding that the children cannot be placed with Appellant within a reasonable time

the manifest weight of the evidence.

Best Interest

{¶59} against the manifest weight of the evidence.

{¶60} R.C. 2151.414(D)(1) requires a trial court to consider all relevant, 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 specific 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.

{¶61} Determining whether granting permanent custody to a children

services agency will promote a child s best interest involves a delicate balancing of

In re C.F., 2007-Ohio-1104, ¶ 57, citing In re Schaefer, 2006-Ohio-5513,

¶ 56; accord In re C.G., 2008-Ohio-3773, ¶ 28 (9th Dist.); In re N.W., 2008-Ohio-

297, ¶ 19 (10th Dist.). However, none of the best interest factors requires a court

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., 2017-Ohio-142, ¶ 24 (3d Dist.); In re A.C., 2014-

Ohio-4918, ¶ 46 (9th Dist.). s best interest is served by

placing the child in a permanent situation that fosters growth, stability, and

In re C.B.C., 2016-Ohio-916, ¶ 66 (4th Dist.), citing In re Adoption of

Ridenour, 61 Ohio St.3d 319, 324 (1991). {¶62} In the case at bar, as we explain below, we do not believe that the trial

court s best interest determination is against the manifest weight of the evidence.

The agency presented substantial clear and convincing evidence that placing the

children in its permanent custody would serve the children s best interest.

Children s Interactions and Interrelationships

{¶63} By all accounts, the children and Appellant share a strong bond. The

court found that the family is to each other.

{¶64} The evidence shows that the foster family has provided the children

with a suitable home. Since being placed in this home, the children consistently

have attended school and have engaged in extracurricular activities. Even if the

foster home is not the desired placement, the foster family appears to be

having a positive effect on the lives.

{¶65} We also recognize that family unity and blood relationship may be

important factors to consider, but neither is controlling. B.J.L., 2019-Ohio-555,

at ¶ 68 (4th Dist.), citing In re J.B., 2013-Ohio-1703, ¶ 31 (8th Dist.). Indeed,

and dependent children are entitled to stable, secure, nurturing and

permanent homes in the near term . . . and their best interest is the pivotal factor in

permanency In re T.S., 2009-Ohio-5496, ¶ 35 (8th Dist.). Thus, while

biological relationships may be important considerations, they are not controlling

when ascertaining a child s best interest. In re J.B., 2013-Ohio-1706, ¶ 163 (8th Dist.); accord In re J.F., 2018-Ohio-96, ¶ 65 (8th Dist.) (stating that the

of a positive by itself, is not determinative of the child s best

interest); In re S.S.-1, 2018-Ohio-1349, ¶ 76 (4th Dist.).

Wishes

{¶66} The children would like to be reunified with Appellant. The GAL did not recommend that the court reunify the children with Appellant, but she did suggest that the court give Appellant more time to demonstrate that he could provide the children with an adequate home. See C.F., 2007-Ohio-1104, at ¶ 55 (R.C. 2151.414 gives the trial court the choice of considering the child s wishes directly from the child or through the guardian ad 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).

Custodial History

{¶67} The children lived with both parents until their May 2022 removal. Before their removal, the agency had protective supervision of the children for around eight months. When the agency filed its May 2023 permanent custody motions, the agency had been involved with the family for approximately two years. Legally Secure Permanent Placement

{¶68} the Ohio Revised Code does not define the term secure permanent this court and others have generally interpreted the phrase to mean a safe, stable, consistent environment where a child s needs will be 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 secure permanent

means a safe, and nurturing 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); In re J.W., 2007-Ohio-2007,

¶ 34 (10th Dist.) (Sadler, J., dissenting) (stating that a legally secure permanent

placement means placement that is stable and Black s Law

Dictionary (6th Ed. 1990) (defining to mean, in part, exposed to

danger; safe; so strong, stable or firm as to insure id. (defining

to mean, in part, 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 Thus, 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 M.B. at ¶ 56.

{¶69} Here, the record indicates that the children need a legally secure

permanent placement and that they cannot achieve this type of placement without

granting the agency temporary custody. As the trial court found, Appellant has a history of being unable to maintain a safe, stable, and sanitary environment for the children. At the time of the permanent custody hearing, he was living with his paramour in the house. The agency had received reports of multiple people living on the property. Additionally, partly due to threats to agency caseworkers, the agency was unable to visit this home. Furthermore, Appellant had not taken other steps to ensure that he would be able to provide the children with a legally secure permanent placement.

{¶70} Appellant nevertheless asserts that the agency could have sought two six-month temporary custody extensions and that the children, therefore, did not need a legally secure permanent placement.

{¶71} We observe that R.C. 2151.415(A)(6) allows an agency to request an

> in division (D)(1) of section 2151.413 of the Revised Code is required to be Except as provided in division (D)(3) of this section, if a 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, the agency with custody shall file a motion requesting permanent custody of the child. . . . The motion shall be filed in the court that issued the current order of temporary custody. For the purposes of this division, a child shall be considered to have entered the temporary custody of an agency on the earlier of the date the child is adjudicated pursuant to section 2151.28 of the Revised Code or the date that is sixty days after the removal of the child from home.

{¶72} If a child is considered to have entered the temporary custody of an

> agency on the earlier of the date the child is adjudicated pursuant to [R.C.] 2151.28 . . . or the date that is sixty days after the removal of the child from home id., then

the children in the case at bar temporary

custody for 12 or more months of a consecutive 22-month period. The court

adjudicated the children neglected and dependent on September 8, 2021. On May

17, 2022, the children were removed from the home. Sixty days after their

removal would have been in July 2022. The statute instructs that the earlier date,

September 8, 2021, controls. Thus, unless an exception applied, 3 R.C.

3 R.C. 2151.413(D)(3) lists exceptions to the requirement that an agency file a permanent custody motion and states as follows: An agency shall not file a motion for permanent custody under division (D)(1) or (2) of this section if any of the following apply: 2151.415(D)(1) seemingly required the agency to seek permanent custody of the

children in September 2022.

{¶73} Moreover, 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.

{¶74} In the case at bar, on June 24, 2021, the agency filed the neglect and

dependency complaints. This date is earlier than May 16, 2022, the date on which

the children were placed into shelter care. Thus, according to R.C.

2151.415(D)(4), the trial court could not have entered an order that continued the

Consequently,

we disagree with argument that the trial court could have granted the

(a) The agency documents in the case plan or permanency plan a compelling reason that permanent custody is not in the best interest of the child.

of the Revised Code, the agency has not provided the services required by the case plan to the parents

of the child or the child to ensure the safe return of the child to the child's home. (c) The agency has been granted permanent custody of the child. (d) The child has been returned home pursuant to court order in accordance with division (A)(3) of section 2151.419 of the Revised Code. agency two six-month temporary custody extensions and that the children,

therefore, did not need a legally secure permanent placement.

{¶75} We also recognize that the evidence indicates that in July 2023,

Appellant was starting to make strides to improve his life and well-being and

began to engage in some of the case plan activities. As we have observed several

not necessarily a conclusive, factor when a court considers a permanent custody

motion. In re E.R., 2023-Ohio-1468, ¶ 45 (4th Dist.); In re B.P., 2021-Ohio-3148,

¶ 57 (4th Dist.); In re T.J., 2016-Ohio-163, ¶ 36 (4th Dist.), citing In re R.L., 2014-

Ohio-3117, ¶ 34 (9th Dist.)

In re S.C.,

2015-Ohio-2280, ¶ 40 (8th Dist.)

accord In re K.M., 2019-Ohio-

4252, ¶ 70 (4th Dist.), citing In re W.C.J., 2014-Ohio-5841, ¶ 46 (4th Dist.)

issue of reunification and does not preclude a grant of permanent custody to a

In re N.L., 2015-Ohio-4165, ¶ 35 (9th Dist.)

W.C.J. at ¶ 46, quoting In re Gomer, 2004-Ohio-1723, ¶ 36 (3d Dist.); accord In re K.J., 2008-Ohio-5227, ¶ 24 (4th Dist.) case plan compliance will not preclude a trial court from awarding permanent

Id. Accordingly, even though Appellant has made some improvements in his life,

those improvements do not override the children

{¶76} While we do not doubt that Appellant loves his children and

desperately wants to reunite with them, his actions regrettably do not show that he

will provide the children with the legally secure permanent placement that their

best interests demand.

{¶77} This court has recognized that a parent s past history is one of the best

predictors of future behavior. In re West, 2005-Ohio-2977, ¶ 28 (4th Dist.), citing

In re A.S., 2004-Ohio-6323, 2004 WL 2698408, ¶ 37 (12th Dist.) often the best predictor of future conduct. While surely people can change, the

facts do not indicate that [the biological parents] have the motivation or ability to

In re Vaughn, 2000 WL 33226177, *7 (4th Dist. of the children, the court must consider any evidence available to it, including a

parent's pattern of conduct. Some of the most reliable evidence for the court to

consider is the past history of the children and th see also In re Brown,

60 Ohio App.3d 136, 139 (1st Dist.1989) (stating that the mother history and her ability to comply with prior reunification plans regarding her other

children were relevant considerations in the juvenile court's dispositional

{¶78} Here, past behavior unfortunately documents that he

failed to maintain any stable, consistent, and sanitary environment suitable for the

children. While he claims that a suitable

residence, the agency was unable to visit the residence. Furthermore, given that

Appellant does not own the residence, the likely permanency of this residence is

unknown.

{¶79} Given the children s progress and stabilization while in the agency s

temporary custody, the trial court could have quite reasonably decided not to

experiment with their welfare by continuing them in custodial limbo to give

Appellant more time to demonstrate that he could provide the children with a

legally secure permanent placement. We repeatedly have recognized that trial

courts need not experiment with a child s welfare: detriment and harm in order to give the * * * [parent] an opportunity to

prove her suitability. To anticipate the future, however, is at most, a difficult basis for a judicial determination. The child s present condition and environment is the subject for decision not the expected or anticipated behavior of unsuitability or unfitness of the * * * [parent]. * * * The law does not require the court to experiment with the child s

W.C.J., 2014-Ohio-5841, at ¶ 48 (4th Dist.), quoting In re Bishop, 36 Ohio App.3d

123, 126 (5th Dist.1987).

{¶80} In the case before us, the trial court determined that the children were

thriving in the foster home, and it did not have any obligation to experiment with

their welfare by providing Appellant additional time to establish a legally secure

permanent placeme

adequate home for the children. The children need . . . to

become productive and well- Ridenour, 61 Ohio St.3d at 324. Their best interests thus C.B.C., 2016-Ohio-916, ¶ 66 (4th Dist.), citing Ridenour. Consequently, the

permanent placement and that they cannot achieve this type of placement without

granting the agency permanent custody. Conclusion

{¶81} Based upon all of the foregoing reasons, we cannot say that the

evidence weighs heavily against the trial judgment granting the agency permanent custody of the children. Accordingly, based upon the foregoing reasons, we overrule first and second assignments of error.

Third Assignment of Error

{¶82} In his third assignment of error, Appellant argues that the trial court erred by failing to appoint an attorney to represent the children.

{¶83} We initially observe that Appellant did not request the trial court to appoint independent counsel for the children. Therefore, Appellant failed to preserve the issue for purposes of appeal. B.J.L., 2019-Ohio-555, at ¶ 41 (4th Dist.), citing In re C.B., 2011-Ohio-2899, ¶ 18. We nevertheless may review this assignment of error for plain error. See Risner v. Ohio Dept. of Natural Resources, Ohio Div. of Wildlife, 2015-Ohio-3731, ¶ 27 (stating that reviewing court has discretion to consider forfeited constitutional challenges). As we explain below, we do not believe that the trial court committed an error, plain or otherwise, by failing to appoint or by failing to inquire whether to appoint independent counsel for the children.

{¶84} child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and, therefore, is entitled to

independent counsel in certain In re Williams, 2004-Ohio-1500, syllabus, citing R.C. 2151.352, Juv.R. 4(A), and Juv.R. 2(Y). Williams does not mandate that a child always have independent counsel in a juvenile court

proceeding to terminate parental rights. Instead, a child is entitled to independent

counsel in a parental-rights termination proceeding only when

exist. Id.

{¶85} The Williams court did not explicitly explain the

that would warrant the appointment of independent counsel.

Instead, the court offered the following guidance for juvenile courts to follow when

ascertaining if exist: should make a determination,

on a case-by-case basis, whether the child actually needs independent counsel,

taking into account the maturity of the child and the possibility of the guardian ad

litem being appointed to represent the Id. at ¶ 17. Furthermore, a juvenile

court must appoint independent counsel for a child a guardian ad litem who

is also appointed as the juvenile s attorney recommends a disposition that conflicts

with the juvenile's Id. at ¶ 18.

{¶86} Consequently, a trial court ordinarily should appoint independent

counsel for a child the child has consistently and repeatedly expressed a

strong desire that differs and is otherwise inconsistent with the guardian ad litem s In re V.L., 2016-Ohio-4898, ¶ 39 (12th Dist.), quoting In re

B.K., 2011-Ohio-4470, ¶ 19 (12th Dist.); accord In re Hilyard, 2006-Ohio-1965,

¶ 36 (4th Dist.).

{¶87} Here, the desires and the recommendations were

consistent. The children wished to be reunified with Appellant, and the GAL

recommended that the trial court give Appellant more time to work toward reunification. Thus, we do not believe that the trial court plainly erred by failing to appoint counsel to represent the children.

{¶88} Accordingly, based upon the foregoing reasons, we overrule third assignment of error.

{¶89} Having overruled all of assignments of error, the decision of the trial court is affirmed.

JUDGMENT AFFIRMED. JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that costs be assessed to Appellant.

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 this judgment into execution.

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

Abele, J. and Hess, J. concur in Judgment and Opinion.

For the Court,

_____ Jason P. Smith Presiding 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.