

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

IN RE L.S.	:	
	:	No. 108666
A Minor Child	:	
	:	
[Appeal by L.H., Father]	:	

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**JOURNAL ENTRY AND OPINION**

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: December 26, 2019**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. AD17905916

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***Appearances:***

Erin R. Flanagan, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Laura M. Brewster, Assistant Prosecuting Attorney, *for appellee.*

ANITA LASTER MAYS, J.:

{¶ 1} The appellant, L.H., appeals an order from juvenile court terminating parental rights of his son, L.S., and placing L.S. in the permanent custody of Cuyahoga County Department of Children and Family Services (“CCDCFS”). L.H.

asks this court to reverse the juvenile court's decision and remand for further proceedings. As required by App.R. 11.1(D), this court has expedited the hearing and disposition of this appeal. We affirm.

## **I. Facts and Procedural History**

{¶ 2} L.S. was born in July 2016, and was initially removed from the care of his mother due to her mental health and substance abuse issues. As a result, L.H. was granted legal custody of L.S. in January 2017. L.S. has several medical issues that include a cleft palate and Pierre-Robin sequence. L.S. also requires a gastric feeding tube. During his time with L.H., L.S. was hospitalized twice for non-organic failure to thrive. When L.S. was ten months old, he weighed only 12 pounds. In April 2017, less than three months after L.H. was awarded legal custody, CCDCFS filed a complaint asking the court to grant temporary custody of L.S. to one of L.H.'s relatives, S.H. At an adjudicatory hearing on July 18, 2017, CCDCFS argued that L.H. had difficulty following up with medical and other services necessary to address L.S.'s medical needs. At that hearing, L.S. was committed to the temporary custody of S.H.

{¶ 3} Three days after L.S. was placed in the temporary custody of S.H., CCDCFS filed a motion requesting an order of emergency custody and an order to modify temporary custody from S.H. to CCDCFS. CCDCFS argues in its motions that L.H. had removed L.S. from S.H.'s care without her permission and then failed to inform S.H. of L.S.'s location. CCDCFS also raised concerns about L.H.'s substance abuse issues, and asked for an assessment. Emergency custody was

awarded to CCDCFS on August 11, 2017, and temporary custody was awarded on January 8, 2018.

**{¶ 4}** On September 26, 2017, CCDCFS filed an amended case plan where L.H. was expected to follow through with L.S.'s medical appointments, complete a drug and alcohol assessment, a psychological evaluation, and comply with any resulting recommendations. In a motion for a first extension of temporary custody filed on March 16, 2018, CCDCFS noted that L.H. still needed to complete an intensive outpatient alcohol treatment program.

**{¶ 5}** On July 19, 2018, CCDCFS filed a motion to modify temporary custody to permanent custody after amending the case plan to reflect an additional objective of obtaining safe and stable housing. L.H. objected to the requirement that he attend intensive outpatient drug treatment. Participation in intensive outpatient treatment was also recommended as a result of an evaluation conducted by the Juvenile Court's Diagnostic Clinic. L.H. later withdrew his objection, and in an order journalized November 2, 2018, the trial court instructed L.H. to comply with the recommendation of his substance abuse assessment.

**{¶ 6}** On January 15, 2019, CCDCFS requested an order from the trial court authorizing L.S. to receive therapeutic treatment through the Help Me Grow organization. Although CCDCFS held temporary custody of L.S., Help Me Grow required L.H.'s approval since he was L.S.'s legal guardian. L.H. refused to approve the therapeutic treatment because he did not believe therapy was necessary. The

trial court overruled L.H.'s objection and ordered L.S. to receive the recommended therapy through Help Me Grow.

{¶ 7} On April 26, 2019, trial was held to determine permanent custody of L.S. in response to CCDCFs's motion. In an order journalized May 14, 2019, the trial court awarded permanent custody to CCDCFs. L.H. appeals this ruling assigning two errors for our review:

- I. The trial court erred to appellant's prejudice by relying on the Guardian ad Litem's report and recommendation where the evidence demonstrated that her investigation failed to meet the basic requirements of Local Rule 18 of the juvenile court and Rule 48 of the Rules of Superintendence; and
- II. The trial court's award of permanent custody to CCDCFs was not supported by clear and convincing evidence and was against the manifest weight of the evidence.

## **II. Guardian ad Litem Report**

### **A. Whether the Guardian ad Litem's Investigation, Report and Recommendation Substantially Complied with the Applicable Local Juvenile Rules and the Ohio Rules of Superintendence**

{¶ 8} In L.H. first assignment of error, he argues that the trial court erred by relying on the guardian ad litem's report, which failed to meet the requirements of the local rules. It has previously been determined that,

[t]he role of a guardian ad litem in a permanent custody proceeding is to protect the child's interest, to ensure that the child's interests are represented throughout the proceedings and to assist the juvenile court in its determination of what is in the child's best interest. *See, e.g., In re C.B.*, 129 Ohio St.3d 231, 2011-Ohio-2899, 951 N.E.2d 398, ¶ 14, citing R.C. 2151.281(B) and Sup.R. 48(B)(1). This is accomplished by the guardian ad litem conducting an investigation of the child's situation and then making recommendations to the court

as to what the guardian ad litem believes would be in the child's best interest. *In re J.C.*, 4th Dist. Adams No. 07CA833, 2007-Ohio-3781, ¶ 13.

*In re G.W.*, 8th Dist. Cuyahoga No. 107512, 2019-Ohio-1533, ¶ 47.

**{¶ 9}** R.C. 2151.281, Sup.R. 48, and Juv.Loc.R. 15, 17, and 18 address the role and responsibilities of a guardian ad litem. R.C. 2151.281(I) provides that a guardian ad litem

shall perform whatever functions are necessary to protect the best interest of the child, including, but not limited to, investigation, mediation, monitoring court proceedings, and monitoring the services provided the child by the public children services agency or private child placing agency that has temporary or permanent custody of the child, and shall file any motions and other court papers that are in the best interest of the child in accordance with rules adopted by the supreme court.

**{¶ 10}** Sup.R. 48(D) provides, in relevant part:

In order to provide the court with relevant information and an informed recommendation regarding the child's best interest, a guardian ad litem shall perform, at a minimum, the responsibilities stated in this division, unless impracticable or inadvisable to do so.

\* \* \*

(13) A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. In order to provide the court with relevant information and an informed recommendation as to the child's best interest, a guardian ad litem shall, at a minimum, do the following, unless impracticable or inadvisable because of the age of the child or the specific circumstances of a particular case:

(a) Meet with and interview the child and observe the child with each parent, foster parent, guardian or physical custodian and conduct at least one interview with the child where none of these individuals is present;

(b) Visit the child at his or her residence in accordance with any standards established by the court in which the guardian ad litem is appointed;

(c) Ascertain the wishes of the child;

(d) Meet with and interview the parties, foster parents and other significant individuals who may have relevant knowledge regarding the issues of the case;

(e) Review pleadings and other relevant court documents in the case in which the guardian ad litem is appointed;

(f) Review criminal, civil, educational and administrative records pertaining to the child and, if appropriate, to the child's family or to other parties in the case;

(g) Interview school personnel, medical and mental health providers, child protective services workers and relevant court personnel and obtain copies of relevant records;

(h) Recommend that the court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the guardian ad litem deems necessary or helpful to the court; and

(i) Perform any other investigation necessary to make an informed recommendation regarding the best interest of the child.

\* \* \*

(16) A guardian ad litem shall perform responsibilities in a prompt and timely manner \* \* \*.

**{¶ 11}** Sup.R. 48(F) further provides:

A guardian ad litem shall prepare a written final report, including recommendations to the court, within the times set forth in this division. The report shall detail the activities performed, hearings attended, persons interviewed, documents reviewed, experts consulted and all other relevant information considered by the guardian ad litem in reaching the guardian ad litem's

recommendations and in accomplishing the duties required by statute, by court rule, and in the court's Order of Appointment.

**{¶ 12}** Juv.Loc.R. 18 also addresses the guardian ad litem's report. It states, in relevant part:

(G) Each Guardian ad Litem Report shall detail the following when disclosure is in the best interests of the child:

- (1) Activities performed;
- (2) Hearings attended;
- (3) Persons interviewed and dates of the interviews;
- (4) Documents reviewed;
- (5) Experts consulted;
- (6) Summary of the child's case;
- (7) Any special needs of the child (e.g., mental health, disabilities, etc.);
- (8) That the Guardian ad litem ascertained the child's wishes or that the child lacked sufficient maturity to express his or her wishes;
- (9) Dispositional and placement options (e.g., relatives, third parties, private placement, etc.)[;]
- (10) Specific recommendations, including recommendations of disposition, and the Guardian ad litem's reasons for that position;
- (11) All other recommendations, suggestions or concerns that the Guardian ad litem can identify as in the child's best interests;
- (12) All other relevant information considered by the Guardian ad litem in reaching the Guardian ad litem's recommendations

and in accomplishing the duties required by statute, by court rule, and in the court's Order of Appointment.

{¶ 13} Although L.H. claims that the trial court incorrectly relied on the guardian ad litem's report,

this court and others have recognized, “Sup.R. 48 provides \* \* \* good guidelines for the conduct of a guardian ad litem in meeting his or her responsibilities in representing the best interest of a child in order to provide the court with relevant information and an informed recommendation.” *In re C.O.*, 8th Dist. Cuyahoga Nos. 99334 and 99335, 2013-Ohio-5239, ¶ 14, quoting *In re K.G.*, 9th Dist. Wayne No. 10CA16, 2010-Ohio-4399, ¶ 12. However, the Rules of Superintendence are only “general guidelines for the conduct of the courts” and “do not create substantive rights in individuals or procedural law.” *In re C.O.* at ¶ 14, quoting *In re K.G.* at ¶ 11. As such, a guardian ad litem's failure to comply with Sup.R. 48 is not, in and of itself, generally grounds for reversal of a custody determination. *See, e.g., In re C.O.* at ¶ 14; *In re N.B.*, 8th Dist. Cuyahoga No. 105028, 2017-Ohio-1376, ¶ 26; *see also In re M.T.*, 12th Dist. Warren No. CA2016-11-100, 2017-Ohio-1334, ¶ 44 (“The Rules of Superintendence for the Courts of Ohio do not have the same force of statute or case law; they are internal housekeeping rules that do not create substantive rights in individuals or procedural law. \* \* \* Therefore, noncompliance with the rules is generally not grounds for reversal.”).

*In re G.W.*, 8th Dist. Cuyahoga No. 107512, 2019-Ohio-1533, at ¶ 53.

{¶ 14} In addition,

courts are “given latitude” in following their own local rules. As such, enforcement of such rules is generally within the sound discretion of the court. *See, e.g., In re K.Z.*, 8th Dist. Cuyahoga No. 107269, 2019-Ohio-707, ¶ 73, citing *Citibank, N.A. v. Katz*, 8th Dist. Cuyahoga No. 98753, 2013-Ohio-1041, ¶ 29 (“So long as a trial court's failure to comply with or enforce its local rules does not affect due process or other constitutional rights, ‘there is no error when, in its sound discretion, the court decides that the peculiar circumstances of a case require deviation from its own rules.’”), quoting *Dodson v. Maines*, 6th Dist. Sandusky No. S-11-012, 2012-Ohio-2548, ¶ 47.



*Id.* at ¶ 54.

{¶ 15} L.H. cites *Nolan v. Nolan*, 4th Dist. Scioto No. 11CA344, 2012-Ohio-3736, to support his argument, and find that the juvenile court abused its discretion in considering the guardian ad litem's recommendation that permanent custody of L.S. be awarded to CCDCFS in light of the guardian ad litem's incomplete report.

{¶ 16} However,

[i]n *Nolan*, the mother filed a motion to terminate the parties' shared parenting plan and designate her the child's residential parent. *Id.* at ¶ 5. At the mother's request, the trial court appointed a guardian ad litem to conduct an investigation and make a recommendation regarding what was in the child's best interest. *Id.* at ¶ 6. The guardian ad litem conducted only a limited investigation and failed to visit the homes of the parents or conduct interviews with several key individuals, including the child, the mother's live-in boyfriend, the child's half-sister, school personnel and medical providers. *Id.* at ¶ 8, 25. The guardian ad litem filed a report in which he recommended terminating the shared parenting plan and designating the mother as residential parent and legal custodian, concluding that this would be in the child's best interest. *Id.* at ¶ 9. The father objected to the guardian ad litem's report and argued that it should be disregarded as "deficient at law." *Id.* at ¶ 12. Following a hearing before the magistrate, the trial court granted the mother's motion. *Id.* at ¶ 16.

The father appealed, arguing that the guardian ad litem's report and testimony should have been stricken because his investigation was below the minimum standards set forth in Sup.R. 48. *Id.* at ¶ 1, 17. The Fourth District agreed and reversed the trial court's decision, stating that while the Rules of Superintendence are "general guidelines for the conduct of the courts" and do not have "the force of law," Sup.R. 48 should not be "ignored." *Id.* at ¶ 26-27. Limiting its holding to "the specific facts of this case," the court held that the guardian ad litem's investigation "fell so far below the minimum standards of Sup.R. 48(D)(13)" that his testimony and report could not be considered "competent, credible evidence of the [c]hild's best interests" and that the trial court, therefore, abused its discretion by considering the guardian ad litem's testimony and report. *Id.* at ¶ 27.

*In re G.W.*, 8th Dist. Cuyahoga No. 107512, 2019-Ohio-1533, at ¶ 56-57.

{¶ 17} Here, L.H. did not object or otherwise raise the issue of the guardian ad litem's deficiencies in her investigation. L.H.'s counsel had the opportunity to cross-examine the guardian ad litem and declined. Accordingly, L.H. has forfeited all but plain error. *See, e.g., In re R.C.*, 8th Dist. Cuyahoga No. 82453, 2003-Ohio-7062, ¶ 22 ("An award of permanent custody will not be disturbed where the guardian ad litem failed to issue a written report and no objection was offered at the hearing."); *see also In re D.H.*, 177 Ohio App.3d 246, 2008-Ohio-3686, 894 N.E.2d 364, ¶ 58-59 (8th Dist.) (even if guardian ad litem failed to comply with local rule regarding service of written report, "mother's failure to object below waives any argument on appeal"); *In re Ch. O.*, 8th Dist. Cuyahoga No. 84943, 2005-Ohio-1013, ¶ 36. ("This court has routinely held that, absent a timely objection in the trial court, no reversible error occurs" where appellant fails to object at trial to the manner in which guardian ad litem's report was filed and presented to the court, "even when no guardian's report is ever filed."). L.H. does not claim plain error, and we find none here. *See Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997) (plain error limited "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").

**{¶ 18}** In the journal entry, the trial court stated,

[t]he parents have not completed the case plan, and have not complied with efforts by CCDCFS to reunify with the child. The mother has not completed drug treatment and her housing situation is unknown. The father has not complied with drug and alcohol treatment. He does not have stable housing. He has not followed the recommendations of the court diagnostic evaluation. And he is not able to meet the medical needs of the child because he has not consistently attended the child's medical appointments. Moreover, based on his actions throughout the case and his testimony, the Court find that he will not consistently and adequately meet the child's medical needs, which are extreme. The Court finds that the child is unlikely to be reunified if temporary custody is extended. The father's Motion for Legal Custody is denied.

The GAL for the child recommends that they be placed in the permanent custody of the agency. The child is doing well with the foster family, and he is very bonded to his foster mother.

Journal entry No. 0912308712 (May 13, 2019).

**{¶ 19}** L.H. argues that because the trial court mentioned the guardian ad litem's recommendation in the journal entry, it erred by considering the report. However, L.H. has not demonstrated that he suffered any prejudice as a result of the trial court's mention of the guardian ad litem's recommendation. The trial court listed numerous other factors for why L.H.'s custody of L.S. was terminated. *See, e.g., In re J.C.*, 4th Dist. Adams No. 07CA833, 2007-Ohio-3781, at ¶ 13. ("[W]hen a parent cannot establish any prejudice arising from the action or non-action of a guardian ad litem, then any potential error constitutes harmless error").

**{¶ 20}** L.H.'s first assignment of error is overruled.

### **III. Best Interest of the Child**

#### **A. Standard of Review**

{¶ 21} It has been determined that

“[t]he discretion that the juvenile court enjoys in deciding whether an order of permanent custody is in the best interest of child should be accorded the utmost respect, given the nature of the proceeding and the impact the court’s decision will have on the lives of the parties concerned.” *In re L.O.*, 8th Dist. Cuyahoga No. 101805, 2015-Ohio-1458, ¶ 22, quoting *In re Awkal*, 95 Ohio App.3d [309,] 316, 642 N.E.2d 424 [(1994)]. We, therefore, review a trial court’s determination of a child’s best interest under R.C. 2151.414(D) for abuse of discretion. *In re L.O.* at ¶ 22. An abuse of discretion implies that the court’s decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St. 3d 217, 219, 450 N.E.2d 1140 (1983).

*In re V.C.*, 8th Dist. Cuyahoga Nos. 102903, 103061, and 103367, 2015-Ohio-4991,

¶ 52.

#### **B. Whether the Trial Court’s Award of Permanent Custody to CCDCFS Was Supported by Clear and Convincing Evidence.**

{¶ 22} L.H. asserts that the trial court’s custody decision was not supported by clear and convincing evidence.

In accordance with R.C. 2151.414(B), a trial court may grant permanent custody of a child to a county children’s services agency if the court determines, by clear and convincing evidence, (1) the existence of at least one of the four conditions enumerated in R.C. 2151.414(B)(1)(a) through (d) and (2) that granting permanent custody to the agency is in the child’s best interest. “Clear and convincing evidence” is that measure or degree of proof that is more than a “preponderance of the evidence” but does not rise to the level of certainty required by the “beyond a reasonable doubt” standard in criminal cases. *In re M.S.*, 8th Dist. Cuyahoga Nos. 101693 and 101694, 2015-Ohio-1028, ¶ 8, citing *In re Awkal*, 95 Ohio App.3d 309, 315, 642 N.E.2d 424 (8th Dist.1994). It “produces in the mind of the

trier of fact a firm belief or conviction as to the facts sought to be established.” *In re M.S.* at ¶ 8.

*In re V.C.* at ¶ 36.

{¶ 23} The juvenile court, in its journal entry, considered the factors in R.C. 2151.414, and determined that one of the four conditions applied. The juvenile court also determined that granting permanent custody to CCDCFS was in the children’s best interest. R.C. 2151.414(B)(1)(a) through (d) states:

(1) Except as provided in division (B)(2) of this section, the court may grant permanent custody of a child to a movant if the court determines at the hearing held pursuant to division (A) of this section, by clear and convincing evidence, that it is in the best interest of the child to grant permanent custody of the child to the agency that filed the motion for permanent custody and that any of the following 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.

**{¶ 24}** We understand that

[i]t is well established that a parent has a fundamental right to raise and care for his or her child. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 28; *In re K.H.*, 119 Ohio St.3d 538, 2008-Ohio-4825, 895 N.E.2d 809, ¶ 40. However, that right is not absolute. *Id.* Government children's services agencies have broad authority to intervene when necessary for a child's welfare. *In re C.F.* at ¶ 28. "All children have the right, if possible, to parenting from either natural or adoptive parents which provides support, care, discipline, protection and motivation." *In re J.B.*, 8th Dist. Cuyahoga No. 98546, 2013-Ohio-1704, ¶ 66, quoting *In re Hitchcock*, 120 Ohio App.3d 88, 102, 696 N.E.2d 1090 (8th Dist.1996). When parental rights are terminated, the goal is to create "a more stable life" for dependent children and to "facilitate adoption to foster permanency for children." *In re N.B.*, 8th Dist. Cuyahoga No. 01390, 2015-Ohio-314, ¶ 67, citing *In re Howard*, 5th Dist. Tuscarawas No. 85 A10-077, 1986 Ohio App. LEXIS 7860, \*5 (Aug. 1, 1986). We recognize, however, that termination of parental rights is "the family law equivalent of the death penalty in a criminal case." *In re J.B.* at ¶ 66, quoting *In re Hoffman*, 97 Ohio St.3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 14.

*In re V.C.* at ¶ 35.

**{¶ 25}** In the journal entry, the trial court stated:

Pursuant to R.C. 2151.414(B)(1)(a), the Court finds by clear and convincing evidence that it is in the best interest of the child to grant permanent custody to the agency that filed the motion for permanent custody and that following apply: The child cannot be placed with the parents within a reasonable time or should not be placed with his parents.

Journal entry No. 0912308712 (May 13, 2019).

**{¶ 26}** We find that the juvenile court relied on clear and convincing evidence when it decided that L.S. could not be placed with either parent within a reasonable time or that L.S. should not be placed with the parents and, therefore, granted permanent custody of L.S. to CCDCFS. The record demonstrates that L.S. has severe medical needs which L.H. had difficulty handling. In addition, L.H. refused to substantially comply with the drug and alcohol assessment recommendations. L.H. argues that he did comply by taking random urine tests. However, he was instructed to complete intensive outpatient treatment, and he failed to complete the program, insisting that he did not need treatment. L.H. admittedly has not been consistent with L.S. medical appointments, and has demonstrated that he is unable to adequately care for L.S.'s extensive and severe medical needs. During a visit with L.H., L.S.'s feeding tube became dislodged and L.H. was unable to reinsert it. In addition, L.S. was unable to articulate how many times a day L.S. should eat, and did not know which medications L.S. was prescribed.

**{¶ 27}** The record reveals that the juvenile court also considered the factors enumerated in R.C. 2151.414(D)(1) to determine if terminating the father's parental rights were in the best interest of the child. R.C. 2151.414(D)(1) states,

(1) In determining the best interest of a child at a hearing held pursuant to division (A) of this section or for the purposes of division (A)(4) or (5) of section 2151.353 or division (C) of section 2151.415 of the Revised Code, the court shall consider all relevant factors, including, but not limited to, the following:

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child, including whether 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;
- (d) 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;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

For the purposes of division (D)(1) of this section, 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.

**{¶ 28}** The trial court journal entry stated:

In considering the best interests of the child, the Court considered the following relevant factors pursuant to 2151.414(D)(1): The interaction and interrelationship of the child with their parents, siblings, relatives, and foster parents; the wishes of the child the custodial history of the child, including whether the child has been in temporary custody of a public child services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period 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; and whether any of the factors in divisions (E) (7) to (11) of this section apply in relation to the parents and child. These factors weigh in favor of permanent custody.

Journal entry No. 0912308712 (May 13, 2019).

**{¶ 29}** In addition, the juvenile court determined that R.C. 2151.414(E)(1), (4), (11), and (16) applied as well. The statute states,

[i]n 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 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) Following the placement of the child outside the child's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the child to be placed outside the home, the parent has failed continuously and repeatedly to substantially remedy the conditions causing the child to be placed outside the child's home. In determining whether the parents have substantially remedied those conditions, the court shall consider parental utilization of medical, psychiatric, psychological, and other social and rehabilitative services and material resources that were made available to the parents for the purpose of changing parental conduct to allow them to resume and maintain parental duties.

\* \* \*

(4) The parent has demonstrated a lack of commitment toward the child by failing to regularly support, visit, or communicate with the child when able to do so, or by other actions showing

an unwillingness to provide an adequate permanent home for the child;

\* \* \*

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

\* \* \*

(16) Any other factor the court considers relevant.

**{¶ 30}** The trial court considered the extreme medical and special needs of the child in regards to R.C.2151.414(E)(16).

**{¶ 31}** Given L.H.'s inability to care for L.S. medical needs, his refusal to participate in the recommended alcohol and drug treatment programs, and his lack of stable housing, we find that the trial court determination was supported by clear and convincing evidence when it awarded permanent custody to CCDCFS.

**{¶ 32}** Therefore, L.H.'s second assignment of error is overruled.

**{¶ 33}** Judgment is affirmed.

It is ordered that the 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.

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ANITA LASTER MAYS, JUDGE

SEAN C. GALLAGHER, P.J., and  
LARRY A. JONES, SR., J., CONCUR