**IN THE COURT OF APPEALS**

**FIRST APPELLATE DISTRICT OF OHIO**

**HAMILTON COUNTY, OHIO**

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| IN RE: P. & H. CHILDREN | : | APPEAL NOS. C-190309<br>C-190310 |
| | : | TRIAL NO. F11-1573x |
| | : | *O P I N I O N.* |

Appeals From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 4, 2019

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *Patrick Stapp*, Assistant Prosecuting Attorney, for Appellee Hamilton County Department of Job and Family Services,

*Jeffrey McCormick,* for Appellee Guardian ad Litem for D.H. and Z.P.,

*Christopher Kapsal,* for Appellant Mother,

*Constance Murdock, In re Williams* Attorney for Appellants D.H. and Z.P.

**CROUSE, Judge**.

**{¶1}** Mother and children D.H. and Z.P. have appealed from the Hamilton County Juvenile Court's judgment granting permanent custody of D.H. and Z.P. to the Hamilton County Department of Job and Family Services ("HCJFS").

**{¶2}** Mother argues in one assignment of error that the juvenile court erred and abused its discretion in finding that permanent custody was in the best interests of the children, when that finding was not supported by sufficient evidence and was against the manifest weight of the evidence, and when the best-interest analysis was not properly applied. D.H. and Z.P. argue in one assignment of error that the court erred as a matter of law by granting HCJFS's motion for permanent custody. We consider the assignments of error together, overrule both, and affirm the court's judgment.

### *Factual Background*

**{¶3}** D.H. and Z.P. were fathered by different men, neither of whom is involved in the lives of D.H. or Z.P. Both alleged fathers failed to establish paternity as ordered by the court and thus are deemed to have abandoned their children. They are not parties to these appeals.

**{¶4}** On March 1, 2017, D.H. and Z.P. were placed in the interim custody of HCJFS after mother called HCJFS and reported that she and the children had nowhere to stay and no food, and that she was depressed and wanted to hurt herself. On June 12, 2017, D.H. and Z.P. were adjudicated dependent pursuant to R.C. 2151.353 and placed in the temporary custody of HCJFS.

**{¶5}** On February 1, 2018, HCJFS moved for permanent custody. On November 8, 2018, the juvenile court magistrate granted the motion for permanent

custody. Mother timely objected to the magistrate's decision, and the juvenile court overruled mother's objections and adopted the magistrate's decision on April 18, 2018.

***Standards of Review***

**{¶6}** In a case involving the termination of parental rights, an appellate court reviews the record and determines whether the juvenile court's decision was supported by clear and convincing evidence. *In re W.W.,* 1st Dist. Hamilton No. C-110363, 2011-Ohio-4912, ¶ 46. Clear and convincing evidence is evidence sufficient to "produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established." *Cross v. Ledford,* 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus. Where some competent and credible evidence supports the court's decision, this court will not substitute its judgment for that of the juvenile court. *In re W.W.* at ¶ 46.

**{¶7}** A review of the sufficiency of the evidence is different than a review of the weight of the evidence. *In re A.B.,* 1st Dist. Hamilton Nos. C-150307 and C-150310 2015-Ohio-3247, ¶ 15. To determine if there was sufficient evidence upon which to terminate parental rights, the court determines whether some evidence exists on each element. It is a test for adequacy, and is a question of law. *Id.* at ¶ 15. When conducting a weight-of-the-evidence review in permanent-custody cases, the appellate court must

> weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflicts in the evidence, the [juvenile] court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed.

*Id.* at ¶ 16.

### *The Permanent-Custody Determination*

**{¶8}** When children have been previously adjudicated dependent and temporary custody has been granted to HCJFS, HCJFS may move for permanent custody of the children pursuant to R.C. 2151.413(A) and 2151.414. The juvenile court will grant permanent custody to HCJFS if the court finds that the two-pronged test set forth in R.C. 2151.414 is satisfied.

**{¶9}** This case presents a similar situation as our recently decided case *In re A.M.,* 1st Dist. Hamilton No. C-190027, 2019-Ohio-2028, ¶ 37, in which we complained of a "poorly drafted" magistrate's decision. Prior decisions of this court have "strongly encourage[d] the juvenile court's discussion of each statutory factor." *Id.* at ¶ 26, citing *In Re: K.T.1,* 1st Dist. Hamilton No. C-180335, 2018-Ohio-4312, ¶ 46. In this case, the magistrate often cited to irrelevant facts in support of her findings or did not cite any facts at all. Furthermore, several of the conditions that the magistrate found to be satisfied were not supported by sufficient evidence. The trial court subsequently adopted the magistrate's decision without providing further analysis or addressing these deficiencies.

**{¶10}** Because terminating a parent's right to raise his or her own children is the family-law equivalent of the death penalty, the parents, the children, and society should have confidence in the fairness of the proceedings and in the courts' decisions. In order to instill such confidence, the courts should attempt to thoroughly and correctly evaluate each relevant factor as required by the permanent-custody statute.

**{¶11}** ***First prong—R.C. 2151.414(B).*** The first prong can be satisfied by any one of five conditions. R.C. 2151.414(B). One condition is if a child has been in the temporary custody of the agency for 12 months of a consecutive 22-month period. R.C. 2151.414(B)(1)(d). The start-point for determining when the 12-in-22 clock starts is either the date the child was adjudicated dependent or 60 days after the removal of the child from the home, whichever is earlier. R.C. 2151.414(B)(1)(e). The end-point for the 12-in-22 clock is the date the agency filed the motion for permanent custody, not the date the hearing was held. *In re C.W.,* 104 Ohio St.3d 163, 2004-Ohio-6411, 818 N.E.2d 1176, ¶ 22.

**{¶12}** The magistrate and the juvenile court found that the 12-in-22 condition was satisfied. But the record shows that the 12-in-22 condition was not satisfied, because HCJFS filed its motion for permanent custody nine months after being given temporary custody. The children were removed from the home on March 1, 2017, and adjudicated dependent on June 12, 2017, so the start date of the 12-in-22 clock was May 1, 2017, 60 days after the children had been removed from the home. HCJFS filed the motion for permanent custody on February 1, 2018. The relevant time period for the 12-in-22 condition was the nine-month period from May 1, 2017, to February 1, 2018.

**{¶13}** However, an error on the 12-in-22 determination is not outcome-determinative when the juvenile court made R.C. 2151.414(B)(1)(a) determinations that were supported by the record. *In re A.M.*, 1st Dist. Hamilton No. C-190027, 2019-Ohio-2028, ¶ 19. The first prong may also be satisfied under R.C. 2151.414(B)(1)(a) if the court determines that "the child cannot be placed with one of the child's parents within a reasonable time or should not be placed with either

parent." If the court finds that one or more of the 16 conditions in R.C. 2151.414(E) exists, then the court must enter a finding that the child cannot be placed with either parent within a reasonable time or should not be placed with either parent. R.C. 2151.414(B)(1)(a). The magistrate found that the conditions in R.C. 2151.414(E)(1), (2), (4), (14), and (16) were satisfied as to mother. And the juvenile court adopted the magistrate's findings.

**{¶14}** The R.C. 2151.414(E)(1) condition is satisfied by proof that,

> 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.

In support of its (E)(1) finding, the magistrate cited to mother's sporadic visitation record, which is not relevant to (E)(1), but rather (E)(4). Nevertheless, the magistrate did make findings of fact in other sections of her decision which supported her determination that (E)(1) was satisfied.

**{¶15}** Upon committing D.H. and Z.P. to the temporary custody of HCJFS, the court issued the following orders to mother as part of the plan to reunify her with her children:

> Complete mental health assessments and follow all recommendations;
>
> Complete random toxicology screens;
>
> Obtain and maintain sobriety and shall not test positive for opiates, alcohol, or any other illegal substances. A missed toxicology screen is deemed a positive screen;
>
> If an assessment recommends drug treatment, parent shall complete treatment and recommended aftercare, including AA or NA meetings and obtaining a sober living sponsor;
>
> Obtain and maintain stable income and stable housing;
>
> Complete parenting classes that includes coaching;
>
> Satisfy all warrants.

After completing mental-health and dependency assessments, mother failed to follow up with individual therapy or medication management. Also, mother was ordered to submit to random toxicology screens. She failed to attend the six screens for which she was referred. At trial, she admitted that if she were tested that day she would test positive for marijuana.

**{¶16}** Mother claims that her work schedule and transportation difficulties interfered with her ability to make appointments and screens. But the HCJFS caseworker testified that HCJFS had scheduled mother's appointments around her work schedule and had provided her with bus passes. When asked at trial about her failure to complete parenting classes, mother testified that she was unaware that she

was required to complete parenting classes, but that she did not need classes anyway because there was nothing wrong with her parenting.

**{¶17}** Mother further argues that she remedied the main reasons for which the children were initially removed from the home, because she had stable housing and was working. She testified that she worked full time at a fast food restaurant, and that she had moved into her grandmother's house in May 2018. Both the magistrate and the juvenile court expressed concerns about the stability of mother's employment and housing.

**{¶18}** The Guardian ad Litem ("GAL") for D.H. and Z.P also testified. She went to the home on July 9, 2018, to conduct a home assessment. The home itself was safe and contained no hazards. Children's maternal grandmother lived with mother. Mother told the GAL that grandmother was just visiting because the children's great-grandmother, who owned the home, was in the hospital. However, the GAL learned that grandmother had been living with mother at the house since May, when great-grandmother had died, and that grandmother was now a co-owner of the home. When the GAL confronted mother with information that great-grandmother had died on May 24, 2018, mother said that was the first she had heard of it.

**{¶19}** The HCJFS caseworker also went to the home in early July to conduct her own home assessment. Mother told the caseworker during that visit that she had moved into the home the day great-grandmother died on May 24, 2018. The caseworker then attempted to contact grandmother in order to complete background checks and drug screens for HCJFS. She called and went to the home, but received no response.

**{¶20}** The juvenile court found grandmother's presence in the home concerning, where mother had initially moved away from grandmother in February 2017 because of grandmother's drug abuse. There was no indication that grandmother had stopped abusing drugs, and her failure to respond to HCJFS's attempts to complete drug screens and background checks was concerning. Also, the court found disturbing mother's claim that great-grandmother was just in the hospital, when she had died two months earlier.

**{¶21}** The record contains clear and convincing evidence that mother failed to substantially remedy several of the problems that had initially caused D.H. and Z.P. to be placed outside the home. Of the orders issued by the court pertaining to mother's reunification plan, she only possibly satisfied one—that she obtain stable income—although the juvenile court expressed concern over the stability of her income. The stability of her housing was demonstrably questionable because of grandmother's presence. And mother failed to follow through on her mental-health treatment, to complete toxicology screens, to maintain sobriety, and to complete parenting classes.

**{¶22}** Also, after weighing the credibility of the witnesses and all reasonable inferences, we cannot say that the court clearly lost its way in finding that the R.C. 2151.414(E)(1) condition had been satisfied. The magistrate found facts that supported her decision, even if she didn't specifically cite those facts in the (E)(1)-analysis portion of her decision. The finding is not against the manifest weight of the evidence.

**{¶23}** The R.C. 2151.414(E)(2) condition is satisfied if the chronic mental illness, chronic emotional illness, intellectual disability, physical disability, or

chemical dependency of the parent is so severe that the parent is unable to provide an adequate permanent home for the child at the present time or within one year after the court holds the hearing.

**{¶24}** The magistrate cited, as satisfying (E)(2), mother's failure to follow up on individual therapy or medication management or to attend her toxicology screens. Mother argues that not completing therapy and medication management do not alone mean that her mental condition was so severe that she could not have provided an adequate home now or within one year. There was limited testimony about the severity of mother's mental-health concerns and drug dependency. The children were initially removed from the home in part because mother was depressed and wanted to hurt herself. Mother completed a diagnostic assessment regarding her mental health and substance abuse. She was ordered to take medication and participate in therapy, but she failed to do so. She also continued to use marijuana and skipped all of her drug screens.

**{¶25}** Thus, the record provides clear and convincing evidence that mother's mental illness and chemical dependency were so severe as to prevent her from providing now or within one year an adequate permanent home. Nor was the court's finding against the manifest weight of the evidence. Mother failed to adequately explain why she had missed all of her drug screens, had continued to use drugs, and had failed to follow up with therapy or medication.

**{¶26}** The R.C. 2151.414(E)(4) condition is satisfied when the parent demonstrates a lack of commitment toward the children by failing to regularly support, visit, or communicate with the children when able to do so, or by otherwise showing an unwillingness to provide an adequate, permanent home for the children.

**{¶27}** The magistrate cited to mother's sporadic visitation with children as demonstrating a lack of commitment. Mother chose to not visit the children from May 2017 to June 2018, as she was not prevented from doing so by HCJFS. She provided no explanation for not visiting her children for over a year, except to say that she had, since Mary 2017, demonstrated her commitment to her children and had maintained a bond with them through daily phone calls. Mother visited the children three times in June 2018, but then missed the next two scheduled visits leading up to the trial in July 2018. Mother said she missed her last two visits with D.H. and Z.P. because HCJFS had implemented a new call-ahead policy, and her failure to call ahead and confirm the visitations had caused them to be cancelled.

**{¶28}** Thus, the record provides clear and convincing evidence that mother demonstrated a lack of commitment to the children. She did not visit with D.H. and Z.P. for over a year, even when she had the ability to do so. Then, once visits resumed, she missed two out of the five scheduled visits.

**{¶29}** And while mother's phone calls with the children demonstrated some commitment, the calls were not so substantial as to lead us to conclude that the magistrate clearly lost her way in finding an overall lack of commitment. Accordingly, the finding is not against the manifest weight of the evidence.

**{¶30}** The R.C. 2151.414(E)(14) condition is satisfied if the court finds that the parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the children or prevent the children from suffering physical, emotional, or sexual abuse or neglect.

**{¶31}** Nothing in the record suggests that D.H. and Z.P. were the victims of physical, emotional, or sexual abuse or neglect. Regarding basic necessities, to find

the R.C. 2151.414(E)(14) condition, the juvenile court must find that the parent had the means to provide basic necessities, but was unwilling to do so. *See In re William S.,* 75 Ohio St.3d 95, 100, 661 N.E.2d 738 (1996) (inability to provide an adequate home was not equivalent to an unwillingness to provide an adequate home); s*ee also In re Dylan R.,* 6th Dist. Lucas No. L-021267, 2003-Ohio-69, ¶ 11 (parents used what little money they had to purchase a video-game console instead of paying rent); *In re Briazanna G.,* 6th Dist. Lucas No. L-04-1366, 2005-Ohio-3206, ¶ 5 (parents sold WIC supplies for money to buy drugs, depriving their child of basic necessities such as food). It follows that the R.C. 2151.414(E)(14) condition does not apply once the child is taken into the custody of HCJFS, since at that point the child's basic necessities are being provided for by HCJFS.

**{¶32}** In her decision, the magistrate merely said, "[P]arents have not provided for the children throughout these proceedings." D.H. and Z.P. were initially placed in the care of HCJFS in part because mother told HCJFS that she could not provide basic necessities for the children. The HCJFS caseworker testified that mother had not provided basic necessities during the proceedings, except possibly bringing food to share with the children during the visitations. This evidence is insufficient to establish that mother, when she had custody of her children and was able to provide basic necessities, had been unwilling to do so. Therefore, it was error for the magistrate to find that R.C. 2151.414(E)(14) was satisfied.

**{¶33}** R.C. 2151.414(E)(16) is the catch-all provision and allows the court to consider any other factors it deems relevant in making the R.C. 2151.414(B)(1)(a) determination. The magistrate found the R.C. 2151.414(E)(16) condition satisfied, citing to mother's unstable housing. But the housing condition was relevant to the

R.C. 2151.414(E)(1) condition since it was one of the reasons the children were initially removed, was a part of her case plan, and demonstrated that mother had failed to remedy a problem that caused D.H. and Z.P. to initially be removed from the home. Therefore, it was not properly considered as an additionally relevant factor under R.C. 2151.414(E)(16). Since the magistrate did not cite other relevant facts that did not already fall under one of the other R.C. 2151.414(E) conditions, there is insufficient evidence to find that R.C. 2151.414(E)(16) was satisfied, and it was error for the trial court to find otherwise.

**{¶34}** There was insufficient evidence to support the juvenile court's findings that R.C. 2151.414(E)(14) and (16) were satisfied. Nevertheless, R.C. 2151.414(B)(1)(a) only requires that one R.C. 2151.414(E) condition be met in order for the first prong of the analysis to be satisfied. There is clear and convincing evidence that R.C. 2151.414(E)(1), (2), and (4) were satisfied, and the court's decision with regard to those conditions was not against the manifest weight of the evidence. Therefore, the first prong of the analysis is satisfied.

**{¶35}** ***Second prong—R.C. 2151.414(d)(1) best-interest analysis.*** Under the second prong, the trial court must determine whether granting permanent custody to the agency is in the best interests of the children. *See* R.C. 2151.414(B)(1). Pursuant to R.C. 2151.414(D)(1), the court may find that permanent custody is in the best interest of a child upon consideration of all relevant factors, including,

> (a) the child's relationships with the parents, siblings, foster caregivers, and any other person who may significantly affect the child,
>
> (b) the wishes of the child, with consideration granted for their maturity,

> (c) the custodial history of the child, including whether the child has been in the custody of a public child services agency for 12 or more months in a consecutive 22 month period,
>
> (d) the child's need for a legally secure permanent placement, and
>
> (e) whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

No single factor is given greater weight or heightened significance. *In re C.F.,* 113 Ohio St.3d 73, 2007-Ohio-1104, 862 N.E.2d 816, ¶ 57.

**{¶36}** The magistrate found that R.C. 2151.414(D)(1)(a) was satisfied, but did not specifically cite any facts in support. The HCJFS caseworker testified that D.H. and Z.P. had bonded with the foster parent and called her mom. The caseworker believed the best interests of the children were served by them remaining in the foster home and by awarding permanent custody to HCJFS. Mother testified that when she had visited D.H. and Z.P., they told her that they missed her and that they wanted to come home. The children, through their *In re Williams* attorney, have conveyed that they have a good relationship with their mother and wished to return to her care. With evidence pointing in both directions, and the magistrate failing to cite which facts she found to be persuasive, if any, this factor is essentially neutral.

**{¶37}** In support of her finding that R.C. 2151.414(D)(1)(b) was satisfied, the magistrate cited the GAL's belief that permanent custody was in the best interests of the children. However, subsection (b) addresses the wishes of the child, not the GAL. *See In re M.U.,* 1st Dist. Hamilton Nos. C-130809 and C-130827, 2014-Ohio-1640, ¶ 15 (holding that regardless of the GAL's permanent-custody case recommendation,

R.C. 2151.414(D)(1)(b) required the court to consider the wishes of the children that they be reunited with mother).

**{¶38}** Mother testified that the children wished to be reunited with her. Also, the court appointed an *In re Williams* attorney for D.H. and Z.P. because their wishes conflicted with the recommendation of the GAL. D.H. and Z.P. appealed the court's decision and filed an appellate brief arguing that mother should be given more time to complete her case plan so they can be reunited with her. At the time of trial, D.H. was seven years old and Z.P. was four years old. With due consideration given to their ages, the R.C. 2151.414(D)(1)(b) factor is of minimal value in determining their best interests.

**{¶39}** The magistrate found that R.C. 2151.414(D)(1)(c) was satisfied by the 12-in-22 condition. As discussed previously, there is insufficient evidence to support the magistrate's finding that the 12-in-22 condition was satisfied, and so it was error for the trial court to consider this factor in favor of permanent placement.

**{¶40}** The magistrate found that R.C. 2151.414(D)(1)(d) was satisfied, but did not specifically cite any facts in support. Mother argues that a legally secure placement could have been achieved by returning the children to her, because she had substantially remedied the reasons the children had been removed from the home, and could provide basic necessities for D.H. and Z.P.

**{¶41}** As discussed under R.C. 2151.414(E)(1) above, there was clear and convincing evidence that mother had not substantially remedied the reasons the children had been taken out of the home. She failed to address her mental-health concerns or substance use, and the stability of her housing was questionable due to the presence of the children's grandmother, who was suspected of abusing drugs and

had failed to respond to HCJFS's attempts to get her to complete drug screens and a background check.

**{¶42}** Also, a legally secure permanent placement "is more than a house with four walls. Rather, it generally encompasses a stable environment where a child will live in safety with one or more dependable adults who will provide for the child's needs." *Matter of K.W.,* 2018-Ohio-1933, 111 N.E.3d 368, ¶ 87 (4th Dist.2018); *see In re J.H.,* 11th Dist. Lake No. 2012-L-126, 2013-Ohio-1293, ¶ 95 (parents were unable to provide legally secure permanent placement where mother lacked physical and emotional stability and father lacked grasp of parenting concepts). Mother's failure to comply with her case plan, along with the presence of grandmother at the home, provided clear and convincing evidence that mother was unable to provide a legally secure permanent placement. The finding was not against the manifest weight of the evidence. Accordingly, R.C. 2151.414(D)(1)(d) indicates that permanent custody was in the best interests of the children.

**{¶43}** When analyzing R.C. 2151.414(D)(1)(e), the court must determine if any of the factors in R.C. 2151.414(E)(7) through (11) apply. The magistrate's decision refers to those factors, but does not provide any analysis of those factors or state whether any of them apply. Our review of the record persuades us that none of the R.C. 2151.414(E)(7) through (11) factors applies.

**{¶44}** R.C. 2151.414(E)(7) does not apply because no evidence was provided that mother had been convicted of any of the crimes listed in that section. R.C. 2151.414(E)(8) is only satisfied where the parent has repeatedly withheld medical treatment or food from the child when the parent had the means to provide the treatment or food. Although mother did not provide basic necessities such as food

while the children were in the care of the foster family, there was no evidence that she had *withheld* food or medical treatment where she actually had the means to provide food or treatment.

**{¶45}** R.C. 2151.414(E)(9) is satisfied when the parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued by the court. The magistrate found that mother had failed to follow up with therapy or medication-management related to her chemical dependency, and that she had failed to appear for any of her drug screens. But there was no finding that mother had placed D.H. or Z.P. at substantial risk of harm two or more times due to drug or alcohol abuse. Also, although mother called HCJFS and told them that she could not provide basic necessities for her children, and she admitted at trial that she used marijuana, there was no evidence presented connecting her drug use with any risk of harm the children suffered when they became homeless and foodless.

**{¶46}** R.C. 2151.414(E)(10) is satisfied if a parent has abandoned the child. A parent is presumed to have abandoned the child when the parent has failed to visit or maintain contact with the child for more than 90 days, regardless of whether the parent resumes contact with the child after that 90-day period. R.C. 2151.011(C). The magistrate found the R.C. 2151.414(E)(10) factor satisfied as to the fathers only, saying, "Fathers have not had any contact with their child in at least 616 days. They have abandoned their child." Also, in a separate portion of her decision, the magistrate determined that the children were not completely abandoned, saying "[T]he [children] are not abandoned or orphaned and the [children] cannot be

placed with either parent within a reasonable period of time and should not be placed with either parent."

**{¶47}** Even if a parent is unable to engage in visitations, the parent can maintain contact with the children so as to avoid abandoning them by communicating with them through phone calls, letters, or cards. *In Matters of A.R., B.R., W.R.,* 5th Dist. Stark Nos. 2018CA00091, 2018CA00097 and 2018CA00098, 2019-Ohio-389, ¶ 28; *Matter of S.M.*, 12th Dist. Warren No. CA2018-08-088 through CA2018-08-097, 2019-Ohio-198, ¶ 22.

**{¶48}** Mother testified that she called the children every day between May 2017 and the trial date. Because mother maintained contact with D.H. and Z.P., and so had not abandoned them, the R.C. 2151.414(E)(10) factor was not satisfied as to mother.

**{¶49}** The R.C. 2151.414(E)(11) factor is satisfied when

> the parent 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, * * * 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.

The magistrate found that an older sibling, A.S., had been adjudicated dependent and placed in the temporary custody of HCJFS in 2011, before being placed in the permanent custody of a relative. However, mother voluntarily terminated her parental rights with respect to A.S., and so R.C. 2151.414(E)(11) did not apply.

**{¶50}** And because none of the factors in R.C. 2151.414(E)(7)-(11) was satisfied, R.C. 2151.414(D)(1)(e) did not apply.

**{¶51}** The R.C. 2151.414(D)(1)(d) best-interest factor directly supports an award of permanent custody, since mother was unable to provide a legally secure permanent placement. Thus, the record contains clear and convincing evidence that permanent custody is in the best interests of D.H. and Z.P., and the juvenile court did not create a manifest miscarriage of justice in finding accordingly. We affirm.

**{¶52}** "Although the termination of the rights of a natural parent should be an alternative of 'last resort,' such an extreme disposition is nevertheless expressly sanctioned [under R.C. 2151.353] when it is necessary for the 'welfare' of the child." *In re Cunningham,* 59 Ohio St.2d 100, 105, 391 N.E.2d 1034 (1979), quoting *In re Fassinger*, 42 Ohio St.2d 505, 330 N.E.2d 431 (1975).

**{¶53}** Both prongs of the R.C. 2151.414(B) analysis are satisfied. It is necessary for the welfare of D.H. and Z.P. that permanent custody be granted to HCJFS. The decision to grant permanent custody of D.H. and Z.P. to HCJFS was supported by sufficient evidence and was not against the manifest weight of the evidence. We, therefore, overrule the assignments of error, and affirm the judgment of the juvenile court.

Judgment affirmed.

**MOCK, P.J.,** and **ZAYAS, J.,** concur**.**

Please note:

The court has recorded its own entry on the date of the release of this opinion.