

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

IN RE: H.W., Jr.	:	APPEAL NO. C-220118
	:	TRIAL NO. F19-167X
	:	
	:	<i>JUDGMENT ENTRY.</i>

Father of H.W., Jr., appeals the trial court’s grant of permanent custody of his child to the Hamilton County Department of Job and Family Services (“HCJFS” or “agency”). H.W., Jr.’s mother has not filed an appellate brief. The child’s guardian ad litem (“GAL”) and HCJFS have filed briefs in support of the grant of permanent custody to the agency. We affirm.

The record shows that H.W., Jr., entered agency care on an emergency basis in February 2019, shortly after his birth with illicit substances in his body. The child was adjudicated a dependent-and-neglected child in June 2019, and the agency was granted temporary custody. The parents failed to engage in the all the services requested by the agency for a return of custody. In January 2020, the agency moved for permanent custody on the grounds that the child could not be placed with either parent within a reasonable time, or should not be placed with either parent, and the child’s best interests dictated the granting of permanent custody to HCJFS.

A magistrate presided over the permanent-custody hearing, held on two separate dates. Father did not appear on the second date, and his attorney was not successful in obtaining a continuance. The child’s GAL filed a report in support of the permanent-

custody motion. The magistrate applied the test set forth in R.C. 2151.414(B)(1) and determined an award of permanent custody was supported by clear-and-convincing evidence. Father objected, solely contending that the evidence did not support an award of permanent custody. The trial court overruled the objection, adopted the magistrate's decision, and entered a judgment granting permanent custody to HCJFS.

Father first assigns as error the denial of his attorney's request for a continuance on the day of the final hearing before the magistrate, claiming it was an abuse of discretion. *See In re M. Children*, 1st Dist. Hamilton No. C-210470, 2022-Ohio-673, ¶ 11. But father failed to give the trial court the opportunity to address the issue and has waived all but plain error. *See In re J.W.*, 1st Dist. Hamilton No. C-190189, 2019-Ohio-2730, ¶ 7.

The facts do not support a finding of an abuse of discretion, much less plain error. Father's attorney could not provide an explanation for father's absence, or a date when father would be available, and confirmed that father was aware of the hearing date. Further, at the time of the continuance request, the child had been in the agency's care for over two years, and the matter had previously been continued due to father's inability to appear in person due to confinement at the Hamilton County Justice Center. Finally, competent counsel represented father's interest at the hearing. Consequently, we overrule the first assignment of error.

In his second assignment of error, father argues the decision to grant permanent custody to the agency was not supported by clear-and-convincing evidence. *See In re P/W Children*, 1st Dist. Hamilton No. C-200103, 2020-Ohio-3513, ¶ 27. His argument is two-fold. First, father argues the trial court erred when it determined that H.W., Jr., could not be placed with him within a reasonable time or should not be placed with him,

a finding that satisfied the first prong of the R.C. 2151.414(B)(1) test. *See* R.C. 2151.414(B)(1)(a). Next, he argues the court erred when it found the child's best interests were served by a grant of permanent custody to the agency, a finding that satisfied the second prong of the R.C. 2151.414(B)(1) test.

Father's arguments are not supported by the record, which shows that father refused to attend domestic-violence classes and toxicology screenings, both necessary for him to gain custody, due to his history of violence and substance abuse. Also, father admitted to continued use of alcohol despite negative, violent consequences stemming from its use. Further, father failed to remedy the absence of a stable home that had contributed to the child's placement in the agency's care at birth. Finally, the child, who had never lived with father, had been well cared for in foster care by a family interested in being a long-term placement for the child, no other family member had come forward seeking custody of the child, and the child's GAL indicated that a grant of permanent custody to the agency was in the child's best interest. Accordingly, we overrule the second assignment of error.

Ultimately, father has failed to demonstrate that the trial court erred by granting HCJFS's motion for permanent custody. Accordingly, we overrule the assignment of error and affirm the trial court's judgment.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**MYERS, P.J., BERGERON and WINKLER, JJ.**

To the clerk:

Enter upon the journal of the court on June 10, 2022,  
per order of the court\_\_\_\_\_.

Administrative Judge