

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

IN RE: D.B.W. : APPEAL NO. C-240491
: TRIAL NO. F/21/1214 X
:
: *JUDGMENT ENTRY*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Appellant father appeals from the judgment of the Hamilton County Juvenile Court granting permanent custody of D.B.W. to the Hamilton County Department of Job and Family Services (“the agency”). In a single assignment of error, father argues that the juvenile court’s best-interest determination was not supported by sufficient evidence and against the manifest weight of the evidence. He does not challenge the juvenile court’s determination under former R.C. 2151.414(B)(1)(d) that D.B.W. was in the agency’s custody for 12 or more months of a consecutive 22-month period.¹ Thus, only the juvenile court’s best-interest determination is subject to this appeal.

In challenging the juvenile court’s best-interest determination, father—in essence—asserts that the juvenile court erred in finding that D.B.W. was in need of a legally secure placement that could not be achieved without a grant of permanent

¹ R.C. 2151.414 was amended, effective April 3, 2023. *In re P*, 2024-Ohio-2794, ¶ 17 (1st Dist.). “The amendment only made minor changes,” none of which are relevant to this case. *See id.* Nevertheless, “[c]ourts should apply the version of the statute in effect at the time the motion for permanent custody was filed.” *Id.*, citing *In re M., R., & H. Children*, 2017-Ohio-1431, ¶ 15 (1st Dist.). The motion for permanent custody was filed February 22, 2023. Accordingly, we apply the version of the statute that was in effect at that time. *See id.*

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custody to the agency where the agency failed to provide clear and convincing evidence that he could not parent D.B.W. In other words, he argues that the juvenile court should have placed D.B.W. in his custody.

However, father failed to advocate for this position below. At the permanent-custody hearing, father solely advocated that granting custody to stepmother was in D.B.W.'s best interest. Accordingly, after finding that stepmother could not provide a legally secure placement for D.B.W., the magistrate determined that a grant of permanent custody to the agency was in D.B.W.'s best interest as father was not seeking a remand of custody.² Father objected to the magistrate's decision, solely arguing that the magistrate erred in finding that *stepmother* could not provide a legally secure placement for D.B.W. Father did not challenge the magistrate's determination that he was not seeking a remand of custody of D.B.W. Upon the juvenile court's review of the magistrate's decision, the juvenile court made the same finding that father was not seeking a remand of custody of D.B.W.

Father now asks this court to find error in the juvenile court's decision, arguing that the court should have remanded custody of D.B.W. to him. However, because father solely advocated that custody to stepmother was in D.B.W.'s best interest and never objected to the magistrate's determination that he was not seeking a remand of custody of D.B.W., father waived all but plain-error review of this issue. *See* Juv.R. 40(D)(3)(b)(iv) ("Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv.R.40(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as

² The record shows that mother's parental rights were terminated by an Illinois Court.

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required by Juv.R. 40(D)(3)(b).”); *In re J.W.*, 2018-Ohio-1781, ¶ 12 (12th Dist.) (“[Juv.R. 40(D)(3)(b)(iv)] embodies the principle that the failure to draw the trial court’s attention to potential error, where the trial court could have corrected the error, results in a waiver of that argument on appeal.”).

“[T]he plain error doctrine is not favored and may only be applied in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.” *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997); accord *In re C.C.*, 2024-Ohio-5013, ¶ 8 (1st Dist.), citing *In re J.W.*, 2019-Ohio-2730, ¶ 7 (1st Dist.).

“This court has stated that when an appellant fails to develop a plain-error analysis, an appellate court need not create one on the appellant’s behalf and may decline to reach the merits of the claim.” *In re C.C.* at ¶ 10, citing *In re G.W.*, 2024-Ohio-1551, ¶ 24 (1st Dist.).

Father failed to develop a plain-error analysis here. In fact, father failed to argue plain error at all and, as a result, failed to point to any error that “seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.” *See Goldfuss*, 79 Ohio St.3d at 122-123.

Nevertheless, even if this court were to consider father’s arguments in the realm of plain error, the essence of father’s argument is that the juvenile court failed to consider whether he could provide a legally secure placement for D.B.W and we fail to see error, let alone plain error, in the juvenile court’s decision not to consider this issue where father failed to ever advocate for D.B.W. to be returned to his custody—at

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any point below—and never asserted any error in the magistrate’s determination that he was not seeking a remand of custody of D.B.W. Consequently, we hold that the juvenile court did not err in finding that father was not seeking a remand of custody when making its best-interest determination. Therefore, we overrule father’s assignment of error and affirm the judgment of the juvenile court.

The court further orders that 1) a copy of this Judgment constitutes the mandate, 2) the mandate be sent to the trial court for execution under App.R. 27, and 3) costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and KINSLEY, JJ.

To the clerk:

Enter upon the journal of the court on 11/20/2024 per order of the court.

By: _____
Administrative Judge