

HCJFS proceeded under R.C. 2151.413(A) for permanent custody of H.L. Once a R.C. 2151.413(A) motion is filed, the court must follow R.C. 2151.414. *In re C.F.*, 113 Ohio St.3d 73, 2007-Ohio-1104, ¶ 22. A trial court may grant the agency's motion for permanent custody if it determines by clear and convincing evidence that: (1) one of the five conditions outlined in R.C. 2151.414(B)(1)(a)-(e) applies; and (2) it is in the child's best interest. R.C. 2151.414(B)(1). Clear and convincing evidence is evidence "which will produce in the mind of the trier of facts a firm belief or conviction as to the facts sought to be established." *In re W.W.*, 1st Dist. Hamilton Nos. C-110363 and C-110402, 2011-Ohio-4912, ¶ 46, quoting *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

In this case, the trial court granted HCJFS's motion on that basis the H.L. could not be placed with either of her parents within a reasonable time and that a grant of permanent custody to HCJFS was in her best interest. Evidence presented at the hearing established that appellant will be incarcerated for 13 years based on guilty pleas to five counts of sexual assault of H.L. and physical abuse of his son. Additionally, appellant stipulated that he would be unable to parent his child due to his incarceration, and agreed to the motion terminating his parental rights. The evidence also established that H.L.'s mother, Tonya Rowe, had abandoned H.L. when she was a baby and has not seen her for more than a year.

In considering H.L.'s best interest, the trial court reviewed the factors under R.C. 2151.414(D)(1)(a)-(e). Evidence established that H.L. had been abused and neglected by both of her parents. Appellant sexually assaulted H.L. for years, resulting in a pregnancy in 2015. During her pregnancy, appellant would punch H.L. in the stomach daily in an attempt to induce a miscarriage. H.L. gave birth to her baby in 2015, and appellant forced her to place the baby for adoption. H.L. and her brother

were often physically assaulted by appellant, who punched them in the stomach and face, and hit them with belts. H.L. and her brother reported that there was little food or furniture in the home. H.L.'s wishes, as expressed through her guardian ad litem, are for the parental rights of her father and mother to be terminated due to years of abuse and neglect. H.L.'s guardian ad litem indicated that H.L. could not obtain a legally secure placement without a permanent commitment to HCJFS. H.L. had been in the custody of HCJFS for more than 22 months at the time of the trial court's decision. Additionally, appellant stipulated that permanent custody would be in H.L.'s best interest. The record supports the trial court's decision to terminate appellant's parental rights, to which appellant stipulated. Therefore, appellant's first assignment of error is overruled.

In appellant's second assignment of error, he claims that the trial court erred by overruling his objections to the magistrate's decision requesting that certain language be stricken from the record. Specifically, appellant objected to the magistrate's findings of fact regarding the history of his children's abuse, claiming that no evidence was presented at the permanent-custody hearing to substantiate the allegations. In ruling on objections to a magistrate's decision, Civ.R. 53(D)(4)(d) requires a trial court to undertake an independent review of the objections to determine whether the magistrate properly determined the factual issues and appropriately applied the law. *Evergreen S.W. Behavioral Health Servs., L.L.C. v. Clark*, 1st Dist. Hamilton No. C-130149, 2014-Ohio-2843, ¶ 9. The decision to modify, affirm or reverse a magistrate's decision lies within the sound discretion of the trial court and should not be reversed on appeal absent an abuse of discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). "An abuse of discretion means an error in judgment involving a decision that is unreasonable based upon the record; that the appellate court merely

may have reached a different result is not enough.” *Downie v. Montgomery*, 7th Dist. Columbiana No. 12 CO 43, 2013-Ohio-5552, ¶ 50.

Here, the trial court heard oral arguments on appellant’s objections, reviewed the record, and wrote a decision offering its own analysis of the flaws in appellant’s objections. The trial court then denied appellant’s objections, adopted the magistrate’s decision, and incorporated the magistrate’s findings of fact and conclusions of law into its judgment. The trial court properly performed its review function and was under no obligation to strike certain findings from the record. Appellant’s second assignment of error is overruled.

In appellant’s third assignment of error, he argues that the trial court erred by failing to rule on his request to be present at the second day of the permanent-custody hearing, and then allowing the hearing to resume and conclude without him. Appellant was present on the first day of the permanent-custody hearing via a live video feed from the correctional institution; however, the feed was discontinued after appellant purportedly made a threatening gesture towards the prosecutor. Appellant did not appear again at the hearing, and argues that this violated his right to due process.

Parents have a constitutionally protected fundamental interest in the care, custody, and management of their children. *Santosky v. Kramer*, 455 U.S. 745 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). “Consequently, when the state seeks to terminate parental custody, parents are entitled to due process guarantees under the Fourteenth Amendment to the United States Constitution, including a hearing upon adequate notice, assistance of counsel, and (under most circumstances) the right to be present at the hearing itself.” *Id.* Ohio has incorporated these due process requirements into the statutes and rules governing juvenile adjudications and dispositions, which are reflected in the extensive statutory framework expressed in R.C. 2151.413 and

2151.414. *In re Thompson*, 3d Dist. Defiance No. 4-06-05, 2003-Ohio-580, at ¶ 23. However, a parent's rights are not absolute. Instead, they are subject to a balancing test, and are ultimately subordinated to the welfare of the child. *See, e.g., In re S.W.*, 10th Dist. Franklin No. 05AP-1368, 2006-Ohio-2958, ¶ 7. Thus, the procedural due process afforded to a parent in appellant's position is assessed according to the facts and posture of the case under the established three-part balancing test comprised of: (1) the private interest at stake, (2) the risk of erroneous deprivation of such interest through the procedures used, and (3) the government interest involved. *Angus v. Angus*, 10th Dist. Franklin No. 14AP-22, 2014-Ohio-4225, ¶ 18, citing *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976).

With regard to the first factor, or "the private interest that will be affected by the official action," *Mathews* at 335, appellant had no remaining private interest following his stipulations at the permanent-custody hearing when he was present. As discussed above, appellant stipulated that he would be unable to parent his child due to his incarceration for sexually assaulting his daughter and abusing his son, and he agreed with HCJFS's motion terminating his parental rights. His subsequent removal from the hearing for making a threatening gesture had no bearing on appellant's surrendered interest in parenting his child.

The second *Mathews* factor evaluates the risk of erroneous deprivation of appellant's interest under the current procedures and the probable value, if any, of additional or substitute procedural safeguards. *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, 21 N.E.3d 308. Appellant appeared before the magistrate and voluntarily surrendered all of his parental rights. The magistrate continued the hearing and made the statutory findings necessary to grant HCJFS permanent custody. Throughout the proceeding, even after his removal, appellant was represented by counsel and had a

statutory right to appeal, which he now exercises. A consideration of the record leads us to conclude that risk of error in this case, if any, was minimal under existing procedures, and that a new permanent-custody hearing is not necessary to protect against an erroneous deprivation of appellant's forfeited interest.

The final *Mathews* factor is the government's interest, including the function involved and the fiscal or administrative burdens of providing additional or substitute procedural requirements, i.e., a new hearing. To mandate a new permanent-custody hearing for a parent whose parental rights have been stipulated away would introduce needless delay into the process of placing H.L. in a permanent home and postpone resolution of custody, contrary to her best interest. Appellant did not have an absolute right to be present for the remainder of the hearing. He forfeited his private interest before the magistrate; thus, the second and third *Mathews* factors weigh against requiring a new permanent-custody hearing. Appellant's third assignment of error is overruled.

The judgment of the trial court is affirmed.

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.

ZAYAS, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on March 28, 2018

per order of the court _____.
Presiding Judge