[Cite as *In re B.J.A.S.*, 2023-Ohio-4514.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

IN THE MATTER OF:

B.J.A.S.

OPINION AND JUDGMENT ENTRY
Case No. 22 MA 0104

Civil Appeal from the
Court of Common Pleas, Juvenile Division, of Mahoning County, Ohio
Case Nos. 2015 JI 00034 & 2021 JG 00650

BEFORE:
Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Michael A. Partlow, P.O. Box 1562, Stow, Ohio 44224, for Appellee

Atty. Mark J. Lavelle, 940 Windham Court, Suite 7, Youngstown, Ohio 44512, for Appellant

Dated: December 8, 2023

WAITE, J.

{¶1} Appellant Father appeals an August 31, 2022 judgment of the Mahoning County Juvenile Court which reversed a magistrate's decision and granted visitation to Appellee maternal grandfather. Appellant argues Appellee exercised poor judgment in persons he allowed in the child's presence and conversations he allowed the child to hear. For the reasons provided, Appellant's argument is without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} This dispute involves visitation issues with a minor child, B.J.A.S. (date of birth June 25, 2014.) Appellant and Mother were unmarried, but cohabitating at the time of the child's birth and for some time thereafter. Their relationship ended sometime in 2015 and Appellee obtained custody of the child as Mother had an addiction that caused her to sporadically spend time in rehabilitation. Mother maintains visitation rights but was not exercising those rights at the time of hearing in this matter.

{¶3} After Appellant obtained sole custody of the child in 2015, he continued to allow Appellee visitation with the child. Appellant and Appellee communicated almost exclusively through text messages. Most of Appellee's visits with the child took place at sporting and school events, but Appellee was permitted to take the child to his home in Macedonia for some weekends. This visitation occurred from 2015 until 2019. Appellant ceased communication with Appellee early in 2020. During the COVID-19 pandemic, Appellee did not attempt to visit the child because of the health concerns of all parties involved.

{¶4} Testimony reveals communications between Appellant and Appellee began to break down following an incident that occurred sometime after May of 2019, when Appellee went to the child's baseball game. According to Appellee's unrebutted testimony, Appellant's ex-wife and her mother were also at the game, however, Appellee did not invite them. At some point, the women apparently disparaged Appellant's current girlfriend in some fashion which the child overheard. Appellee did not overhear this or learn of this until after the game. Appellant does not accuse Appellee of participating in the conversation, but apparently believes Appellee allowed it to happen. Appellant stated that he believed "they were more so concerned with my relationship with my current partner than spending time with their -- with [the child]." (Hrg., p. 47.) Because Appellee was not involved in the conversation it appears Appellant was referring to his ex-wife and her mother.

{¶5} At hearing, Appellant also aired a series of grievances about Appellee, however, he conceded that he did not always voice those concerns at the appropriate time because he "is a nonconfrontational person." (Hrg., p. 49.) Appellant suggested that he was not required to communicate these concerns because Appellee should have understood the basis for his feelings. He conceded that, rather than address many of these issues, he chose to cease communicating with Appellee and withhold visitation with the child. Appellant also concedes the child enjoyed visitation with Appellee.

{¶6} Among his grievances is that Appellee took the child to see Mother while she was in a rehabilitation facility without first discussing his plans. Appellee admitted this visit may have been in poor judgment, but the child was only two years old at the

time. This incident had occurred approximately five years earlier and had not happened again. The record shows that Mother has visitation rights with the child. (Hr., p. 55.)

{¶7} Appellant also complained that Appellee allowed the child to be around his ex-girlfriend's son, who had substance abuse issues. Appellee testified that he no longer has a relationship with this woman, so the issue would never again arise. Appellant did not allege that this son engaged in drug use or was under the influence around the child. Appellant conceded that this incident occurred long before he ceased communications with Appellee.

{¶8} Appellant also complained that Appellee posted pictures of the child on his Facebook page. When asked if he informed Appellee of his desire to keep the child's pictures off of social media, Appellant testified that he "believe[d] so," and that "everyone" knew of his policy. (Hrg., p. 50.) However, Appellee testified that he did not know of Appellant's Facebook policy regarding the child, but immediately deleted the photographs once he learned of Appellant's concerns.

{¶9} Appellant testified that the child had "flare-ups" with eczema which would apparently worsen after a visit with Appellee. (Hrg., p. 48.) The child had "severe eczema" at a young age and maintaining specific diet had helped the issue. Appellant accused Appellee of not following the diet, but without a specific basis for his accusation.

{¶10} Finally, Appellant contended that the child's "routine was trampled" following visitation with Appellee and that it would take the child about three days to recover and readjust. (Hrg., p. 48.) He did not elaborate as to what routines were affected. Later, he explained the child's routine mostly consists of playing outside all day, taking a bath, and then going to bed.

{¶11} The last time Appellee saw the child was in March of 2020, just before the pandemic. He was informed about the child's hockey game by someone other than Appellant, and attended the game. He has not seen the child since, and Appellant does not respond to his communications. Hence, on August 30, 2021, he filed a "Complaint to Establish Companionship or Visitation" with the child.

{¶12} On May 18, 2022, the magistrate overruled Appellee's motion. After Appellee filed objections to the magistrate's decision following review, the trial court granted the motion. In the trial court's August 31, 2022 entry, the court awarded Appellee monthly visitation. It is from this entry that Appellant timely appeals.

ASSIGNMENT OF ERROR

> The trial court abused its discretion when it granted Maternal Grandfather visitation with minor child.

{¶13} Appellant argues that the trial court erred in ordering visitation, since Appellee has allowed the child to visit his mother in a drug rehabilitation facility, had the child in the presence of his former girlfriend's son who abused drugs, and allowed the child to hear negative comments about Appellant's current girlfriend.

{¶14} Appellee responds that most of these concerns were never brought to his attention, and that he immediately corrected any issues that Appellant did raise. Appellee explained that he did not invite his ex-wife or her mother to the baseball game where the negative comments were made and he did not learn of these remarks until after the fact. He also explains that he has bonded with the child over the years and has offered to do anything necessary to continue to visit the child.

{¶15} The Ohio Supreme Court has acknowledged that "grandparents have no inherent visitation rights with grandchildren or a constitutional right of association with them. Indeed, grandparents do not have any legal right to have contact with their grandchildren until a court grants them such a right." *In re Whitaker*, 36 Ohio St.3d 213, 215, 522 N.E.2d 563 (1988). However, the *Whitaker* Court also recognizes "the importance of a grandchild-grandparent relationship and understand[s] that maintenance of this relationship may be in the best interest of the child. Therefore, we hold that grandparents may be granted visitation rights under R.C. 3109.11 and 3109.05(B) if the trial court finds that such visitation is in the child's best interest." *Id.* at 216-217.

{¶16} Pursuant to R.C. 3109.051(D):

> (D) In determining whether to grant parenting time to a parent pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section 3109.11 or 3109.12 of the Revised Code, in establishing a specific parenting time or visitation schedule, and in determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or section 3109.11 or 3109.12 of the Revised Code, the court shall consider all of the following factors:
>
> (1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;

(2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;

(3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;

(4) The age of the child;

(5) The child's adjustment to home, school, and community;

(6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;

(7) The health and safety of the child;

(8) The amount of time that will be available for the child to spend with siblings;

(9) The mental and physical health of all parties;

(10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;

* * *

(12) In relation to requested companionship or visitation by a person other than a parent, whether the person previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; * * *

* * *

(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

(16) Any other factor in the best interest of the child.

Prior Interaction

{¶17} The record reflects that Appellee had a strong relationship with the child prior to Appellant withholding visitation. The evidence demonstrates that it was a positive relationship, and Appellant does not claim otherwise. According to the testimony of both parties, visitation occurred at least monthly and largely involved special events such as birthdays, sporting events, and school functions.

Geographic Location

{¶18} Appellee lives approximately one hour away from the child. However, Appellee had willingly been transporting the child back and forth and offered to continue. Hence, Appellee's geographic location is not at issue.

Child and Parents' Available Time

{¶19} There is no evidence of record that Appellee's visitation had any effect on Appellant's time with the child. As emphasized by the trial court, most of the visits involved Appellee attending special events. Appellant did not take issue at any point as to his loss of time with the child.

Court's Interview of Child

{¶20} No interview of the Child was conducted.

Health and Safety of Child

{¶21} As noted by the trial court, although the child was around people with addiction issues, there is no evidence that he was placed in harm's way. There is no evidence that he observed anyone ingesting drugs in any manner, or observed them under the influence. Even so, the instances of record occurred several years before Appellant ceased communications with Appellee and cannot be found to be the basis for the termination of visits. Further, Mother retains her visitation with the child despite her addiction problems, although she has not exercised visitation.

{¶22} While Appellant complained of issues concerning eczema, a diet, and adhering to a specific schedule, the child's eczema is apparently no longer an issue. There is no evidence Appellee actually failed to follow any specific diet, nor is there evidence as to whether eczema flare-ups also occurred while the child was in Appellant's

care. Regardless, this record contains no actual evidence that Appellee has a negative impact on the child's health or safety.

Amount of Time for Child to Spend with Siblings

{¶23} The child has two half-brothers. One was born to Appellant and his current girlfriend. It appears the child has a strong relationship with this sibling. The child also has a half-sibling born to his mother and an unidentified man. The child does not know this sibling but knows he exists and "he has concerns for his health" because Appellant explained to the child that his sibling was born drug dependent. (Hrg., p. 52.)

Mental Health and Physical Health of All Parties

{¶24} As noted by the trial court, this factor was not a concern and no evidence was presented at hearing regarding the issue.

Willingness to Reschedule

{¶25} Again, this factor was not relevant and no evidence was presented.

Prior Criminal Offenses Involving Child Abuse or Neglect

{¶26} Neither party has a criminal record.

Best Interest

{¶27} Appellant contends that as a "fit parent," his wishes, even though not supported by any articulable and credible reason, must override all other considerations, including the best interests of the child. However, Appellant's assertion is not supported by Ohio law. In Ohio, the wish of the parent is only one consideration that is to be carefully balanced against other factors that affect the best interest of the minor child, who cannot assert his wishes on his own. While in Ohio the wishes of the parent are to be accorded "at least some special weight," the Ohio Supreme Court has clarified that "nothing in

Troxel suggests that a parent's wishes should be placed before a child's best interest." *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d 1165, ¶ 44.

{¶28} The *Harrold* Court determined that while the trial court correctly found the appellees had met their burden of rebutting the wishes of the parent, "the trial court misinterpreted *Troxel* as requiring courts to find 'overwhelmingly clear circumstances' to support forcing visitation for the benefit of the child over the opposition of the parent. *Troxel* did not articulate such a standard." *Harrold* at ¶ 46. In 2012, the Ohio Supreme Court reiterated that a parent's wishes should not be placed before a child's best interests and clarified that the presumption that a fit parent is acting in the best interest of the child is rebuttable on a showing that visitation is in the best interest of the child. *Rowell v. Smith*, 133 Ohio St.3d 288, 2012-Ohio-4313, 978 N.E.2d 146, ¶ 21.

{¶29} Appellant's assertions are also not supported by this record. As noted by this trial court, an extremely positive relationship existed between the child and Appellee prior to the point Appellant ceased visitation. The court found Appellee genuinely loves the child and that the child enjoys and benefits from the relationship. Appellee expressed a willingness to abide by any rules and terms set forth by Appellant.

{¶30} The court found that Appellant abruptly stopped visitation without providing a reason, determining that Appellant "does not appear reasonable for his refusal to grant visitation between Minor Child and [Appellee]. [Appellant] does not set forth any basis for his refusal. His complaints concerning [Appellee] appear fabricated, and after the fact. [Appellee] never willingly and knowingly violated any visitation rule set forth by [Appellant]. The testimony was evident that a positive relationship between [Appellee] and Minor Child exists and should continue in the best interest of Minor Child." (8/31/22 J.E. p., 3.)

{¶31} In summation, as discussed by the trial court, most of Appellant's alleged concerns were not violations of existing "rules," but were reactions by Appellant after the fact. Appellant expressly admitted that he did not inform Appellee about his concerns and is not sure which rules regarding visitation with the child he provided to Appellee. None of Appellant's various complaints addressed recent incidents and he conceded that he essentially expected Appellee to read his mind in this regard. Further, the trial court appeared to find Appellant's testimony regarding these perceived problems to be fabricated, in other words, incredible. The trial court acted entirely within its discretion in deciding that continuing visitation with Appellee is in the best interest of this child, based on the record in this matter. As aptly stated by the *Whitaker* Court, "[i]ndeed, it must be remembered that the single most important individual in a case addressing visitation rights is the child." *Id.* at 217.

{¶32} We note that there is no legal requirement for Mother to exercise her visitation rights in order to allow Appellee the limited visitation he has obtained. Mother apparently believed that her visitation with the child was not in his best interests, at least as of the date of hearing, and she should not be forced to exercise her visitation in order to allow the child to continue to visit with his grandfather on a limited basis. We also note that Mother may be correct in her assessment of her visitation, but the record amply supports a best interest determination allowing her father to maintain a relationship with the child.

Conclusion

{¶33} Appellant argues that the decision to allow Appellee visitation with his grandchild is erroneous, as Appellee exercised poor judgment in persons he allowed in

the child's presence and conversations he allowed the child to hear. The trial court determined that Appellant fabricated many of his complaints and that Appellee complied with Appellant's rules as soon as he was made aware Appellant had concerns. The relevant factors weigh in favor of visitation, and the trial court correctly found that the limited visitation as previously enjoyed was in the child's best interest. Appellant's argument is without merit and the judgment of the trial court is affirmed.

Robb, J. concurs.

D'Apolito, P.J., dissents; see dissenting opinion

D'Apolito, P.J., dissenting.

{¶34} I write separately because I believe the juvenile court and the majority misstate Ohio law, and further, I reach the opposite conclusion applying the abuse of discretion standard to the juvenile court's findings of fact.

{¶35} "[A]t common law, grandparents had no legal rights of access to their grandchildren." *In re Martin*, 68 Ohio St.3d 250, 252, 626 N.E.2d 82 (1994), citing *In re Whitaker*, *supra* at 214, see also *Troxel v. Granville*, 530 U.S. 57, 65-69, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). There is also no constitutional right of association with grandchildren. *Id.*, citing In *re Schmidt*, 25 Ohio St.3d 331, 336, 496 N.E.2d 952 (1986). In Ohio, grandparent visitation rights "must be provided for by statute[.]" *Id.*

{¶36} The General Assembly has provided relatives with visitation rights in limited situations: (1) R.C. 3109.051(B), in divorce, dissolution, separation, or annulment proceedings; (2) R.C. 3109.11, where the parent of the child is deceased; and (3) R.C. 3109.12, where the child is born to an unmarried mother and the father has acknowledged paternity or paternity has been determined in an action under R.C. Chapter 3111. *In re Martin* at 252 (citation omitted.). "These statutes allow a relative visitation in these limited situations because the precipitating, disruptive event might give rise to a situation where a parent would deprive an estranged relative of a continued relationship with the child." *In re Gibson*, 61 Ohio St.3d 168, 169, 573 N.E.2d 1074 (1991), citing *In re Whitaker* at 215.

{¶37} In *Harrold v. Collier*, 107 Ohio St.3d 44, 2005-Ohio-5334, 836 N.E.2d 1165, certiorari denied 126 S.Ct. 1474, 547 U.S. 1004, 164 L.Ed.2d 248, on subsequent appeal 2006-Ohio-5634, 2006 WL 3055496, appeal not allowed 113 Ohio St.3d 1441, 863 N.E.2d 658, 2007-Ohio-1266, the Ohio Supreme Court held "Ohio courts are obligated to

afford some special weight to the wishes of parents of minor children when considering petitions for nonparental visitation made pursuant to R.C. 3109.11 or 3109.12. (*Troxel v. Granville* (2000), 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49, followed.)" *Id.,* paragraph one of the syllabus. The greater weight accorded to the parent's wishes reflects his or her fundamental right to make decisions that concern the care, custody, and control of his or her own child. *Collier* at ¶ 40.

{¶38} Ohio's nonparental visitation statutes survived strict scrutiny review in *Collier* based largely on the presumption in favor of the parent's wishes. *Collier* at ¶ 43 ("[R.C. 3109.051(D)(15)] is not minimized simply because Ohio has chosen to enumerate 15 other factors that must be considered by the trial court in determining a child's best interest in the visitation context.") The *Collier* Court further opined that the statutes were "narrowly tailored" insofar as they limit nonparent visitation to a closely-circumscribed group of minor children.

{¶39} Although the Ohio Supreme Court has not defined the phrase "special weight" as it relates to a parent's wishes, several Ohio intermediate courts including our own have interpreted the phrase to mean "extreme deference." *In re N.S.*, 2022-Ohio-3988, 200 N.E.3d 673, ¶ 27 (1st Dist.); *Boling v. Thacker*, 2d Dist. Clark No. 2018-CA-109, 2019-Ohio-3683, 2019 WL 4389189, ¶ 16; *In re N.C.W.*, 2014-Ohio-3381, 17 N.E.3d 119, ¶ 21 (12th Dist.); *Ford v. Frazier*, 4th Dist. Hocking No. 02CA8, 2003-Ohio-1087, 2003 WL 931296, ¶ 28; *Oliver v. Feldner*, 149 Ohio App.3d 114, 2002-Ohio-3209, 776 N.E.2d 499, ¶ 61 (7th Dist.).

{¶40} Nonetheless, "while *Troxel* states that there is a presumption that fit parents act in the best interest of their children, nothing in *Troxel* indicates that this presumption

is irrefutable," that is, "nothing in *Troxel* suggests that a parent's wishes should be placed before a child's best interest." *Id.* at ¶ 44. Accordingly, a grandparent who seeks visitation rights bears the burden of overcoming the presumption in favor of the parent's wishes by proving that visitation is in the best interest of their minor grandchild. *Id.* at ¶ 45.

{¶41} The Magistrate, who applied the proper analytical framework, concluded that Maternal Grandfather failed to overcome the presumption in favor of Father's wishes. The juvenile court, on the other hand, turned the framework on its head, seemingly starting with the presumption that a relationship with Maternal Grandfather was in B.J.A.S.'s best interest, then requiring Father to disprove the errant presumption. Nevertheless, the majority concludes that the juvenile court acted within its discretion in granting visitation to Maternal Grandfather.

{¶42} However, the Ohio Supreme Court in *Johnson v. Abdullah*, 166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.3d 463, recently revisited the definition in *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983), that "[a]n abuse of discretion is more than an error of law or judgment; it implies that the trial court's attitude, in reaching its decision, was arbitrary, unreasonable, or unconscionable." The *Abdullah* Court cited with favor the Second District Court of Appeals' reasoning in *State v. Boles*, 187 Ohio App.3d 345, 2010-Ohio-278, 932 N.E.2d 345, (2d Dist.) that:

> "[n]o court—not a trial court, not an appellate court, nor even a supreme court—has the authority, within its discretion, to commit an error of law." *Boles* at ¶ 26. This should be axiomatic: a court does not have discretion to misapply the law. A court has discretion to settle factual disputes or to manage its docket, for example, but it does not have discretion to apply the

> law incorrectly. That is why courts apply a de novo standard when reviewing issues of law. See, e.g., *Hudson v. Petrosurance, Inc.*, 127 Ohio St.3d 54, 2010-Ohio-4505, 936 N.E.2d 481, ¶ 30.

Abdullah at ¶ 38.

{¶43} Based on the distinction recognized by the Ohio Supreme Court in *Abdullah*, I would find that the juvenile court committed an error of law by failing to attribute "special weight" to Father's wishes, and by shifting the burden of proof to Father to demonstrate that visitation with Maternal Grandfather is not in B.J.A.S.'s best interest.

{¶44} Turning to the juvenile court's findings of fact, the majority finds no abuse of discretion as the juvenile court ultimately concludes that the evidence in the record establishes that continued visitation with Maternal Grandfather is in B.J.A.S.'s best interest. The juvenile court predicated its "best interest" analysis on the following factual findings:

> Father was not specific for a basis for his refusal to grant grandparent visitation. His refusal to permit visitation appeared irrational and vague. He abruptly stopped visitation without explanation despite Maternal Grandfather's acknowledgement of accepting Father's new visitation terms.
>
> During counsel [sic] statements, Father's attorney added that Father was opposed to any court ordered visitation and preferred to arrange [sic] on his own. The Court inquired for examples of when Father arranged for grandparent visitation between [B.J.A.S.] and Maternal Grandfather on his own, and there were none. Father does not appear reasonable for his

> refusal to grant visitation between [B.J.A.S.] and Maternal Grandfather. Father does not set forth any basis for his refusal. His complaints concerning Maternal Grandfather appear fabricated, and after the fact. Maternal Grandfather never willingly and knowingly violated any visitation rule set forth by Father. The testimony was evident that a positive relationship between Maternal Grandfather and [B.J.A.S.] exists and should continue in the best interest of the child.

(*Id*. at p. 3.)

{¶45} Contrary to the juvenile court's characterization of Father's reason for terminating visitation as "not specific" and "irrational and vague," Father plainly stated at the beginning of the hearing that his main concern with Maternal Grandfather was "the flaw in his judgment." (5/9/22 Hrg. Tr., p. 8.) It is undisputed that Maternal Grandfather exposed B.J.A.S. to three individuals that abused illegal drugs – Mother, Maternal Grandmother, and the son of Maternal Grandfather's previous girlfriend.

{¶46} Next, the juvenile court wrongfully accused Father of fabricating his problems with Maternal Grandfather's decision-making. Maternal Grandfather conceded his errors in judgment during his testimony, but promised not to repeat them in the future.

{¶47} Finally, the juvenile court characterized Father's issues with Maternal Grandfather to be "after the fact." The juvenile court appears to assert Maternal Grandfather's poor decisions were well in the past, however, that conclusion ignores the fact that Maternal Grandfather had not been entrusted with B.J.A.S. since 2018, and had not attended B.J.A.S.'s sporting events since 2020 when the COVID-19 pandemic prevented Maternal Grandfather from attending public events or requesting visitation.

Moreover, it is reasonable after a series of missteps for Father to have lost trust in Maternal Grandfather and decided to terminate visitation.

{¶48} Although not acknowledged by the juvenile court, Father cited B.J.A.S.'s increasing awareness of the world around him as another compelling reason to terminate visitation. Father testified the he and his girlfriend successfully shielded [B.J.A.S.] from the truth about Mother when he was younger because he was not able to comprehend her drug problem. However:

> [I]n probably about the last 12 to 18 months, [B.J.A.S. is] a very smart child, and he actually would call [Father and his girlfriend] out on the fact that he [did not] find his mom to be sick. [Father and his girlfriend] had no other explanation for it other than she was ill and could not come around. So he was starting to seek the truth, and as of the last 12 months, [Father and his girlfriend have] been very honest with [B.J.A.S.] as to substances and what they can do to you and what choice does to you. * * * However now that [the family goes] more out in public and [B.J.A.S. is] more aware, he does start to pick up on the power of choice and where it takes you.

(5/9/22 Hrg. Tr., p. 51.)

{¶49} As B.J.A.S. nears adolescence, Father's unwillingness to trust Maternal Grandfather, who exposed B.J.A.S. to three individuals suffering from substance abuse, is reasonable, particularly considering that two of those individuals were blood relatives. Maternal Grandfather is obviously motivated by a genuine affection for B.J.A.S. However,

Maternal Grandfather has a demonstrated history of carelessly placing sentimentality over B.J.A.S.'s welfare.

{¶50} Based on the forgoing facts, I would find the juvenile court acted unreasonably in concluding that Maternal Grandfather refuted the presumption in favor of Father's wishes and demonstrated that Maternal Grandfather's continuing visitation is in B.J.A.S.'s best interest.

{¶51} Finally, Father is subject to the visitation order in favor of Mother, however, Mother does not exercise her right to visitation. Mother and Maternal Grandfather are not estranged, so the public policy supporting grandparent visitation – where a parent deprives an estranged relative of a continued relationship with the child – is not served here.

{¶52} In summary, I find that the juvenile court committed an error of law and abused its discretion. Accordingly, I would reverse and vacate the judgment entry of the juvenile court and enter judgment in favor of Father.

{¶53} For the foregoing reasons, I respectfully dissent.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Juvenile Division, of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.