

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

IN RE J.W. :
A Minor Child : No. 108139
[Appeal by A.M., Mother] :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 12, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD-18905879

Appearances:

Scott J. Friedman, *for appellant.*

Lanter Legal, L.L.C., Joseph J. Lanter, *for appellee.*

PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant, A.M. (“mother”), appeals from the juvenile court’s award of legal custody of thirteen-year-old J.W. to appellee, S.W. (“father”). Mother assigns the following error for our review:

The juvenile court abused its discretion when it awarded legal custody to father because the court’s decision was not supported by a substantial amount of credible and competent evidence.

{¶ 2} Having reviewed the record and the applicable case law, we affirm the decision of the trial court.

{¶ 3} Prior to April 2018, J.W. lived in East Cleveland with mother, mother's boyfriend, mother's younger child, and mother and boyfriend's twins. Father, who resides in Parma, visited J.W. every other weekend. On April 14, 2018, after boyfriend allegedly assaulted mother, the Cuyahoga County Department of Children and Family Services ("CCDCFS") filed a complaint for temporary custody of J.W., alleging that she is a neglected and dependent child.

{¶ 4} The case plan prepared by CCDCFS indicates that mother has no substance abuse issues, is employed, and has reliable family support. However, she "minimize[es] her responsibility for safety and protection as the parent of the children" and "has allowed [the boyfriend] to continue to have access to the children without taking any steps to address the [domestic violence] in the house." The case plan instructed mother to complete domestic violence and psychological assessments, notify the caseworker if the boyfriend contacts her, and develop a plan for emotional and financial independence. The case plan also indicates that J.W. has no developmental, behavioral, or health issues and is able to "self-protect" and report concerns of abuse.

{¶ 5} By July 2018, J.W.'s guardian ad litem ("GAL") reported that since the time of the alleged domestic violence incident, J.M., mother, and the other children have been living with the maternal grandmother. Mother was "seeking independent housing" and reported that she is no longer involved with boyfriend.

The GAL's report also states that mother continues to be employed, "is scheduled to complete her domestic violence classes next month," and is working toward completion of the mental health assessment.

{¶ 6} Several weeks later, however, the GAL submitted a revised report apprising the court that repeated calls to mother have been unanswered and no voicemail is available on her phone. Because mother was "unreachable," the GAL was unable to determine mother's progress on the case plan. The GAL also advised the court that mother obtained independent housing near maternal grandmother, but the GAL could not investigate a claim that mother reunited with the boyfriend. For reasons that were unclear to the GAL, J.W. continued to reside with the maternal grandmother. The GAL also reported that she met with father, and that his residence is free of safety risks and appropriate for J.W. Father has steady employment and is able and willing to provide for J.W. He "has been an active participant in her care over the years and has maintained a relationship with [her]." Ultimately, the GAL recommended that the court award legal custody of J.W. to father and temporary custody of mother's other children to CCDCFS.

{¶ 7} At the September 11, 2018 adjudicatory hearing, CCDCFS amended its complaint from temporary custody to protective supervision of J.W. and the other children. The parties admitted the allegations of the amended complaint, and the court determined that J.W. and mother's younger children were neglected.

{¶ 8} At the dispositional hearing, father moved for legal custody of J.W. The GAL notified that court that mother intended for J.W. to continue to reside with

the maternal grandmother “even though [mother] had the residence and the means at that point in time.” The GAL expressed a concern that during a home visit with A.M. the previous week, there was “no indication that she intended to bring J.W. into [her] residence at any point in time.” The attorney for J.W. stated that J.W. wished to continue to reside with the maternal grandmother due to the close proximity to mother’s home and in order to continue to attend the same school. CCDCFS informed the court that its “official position is protective supervision for all of the children,” but “[if] the court were to grant custody to the father, [CCDCFS] doesn’t feel the need for protective supervision.”

{¶ 9} CCDCFS Social Worker Chris Woodall (“Woodall”) testified that mother completed domestic violence classes but did not complete the mental health portion of the case plan. Mother did not keep an appointment for Woodall to see her new residence, and Woodall later observed two people on the porch of the residence “cussing each other out.” Boyfriend did not complete any case plan services. Maternal grandmother is willing and able to have J.W. continue to reside with her, and her home is appropriate. Father’s home is appropriate, and he has a room for J.W. According to Woodall, CCDCFS has no concerns about father having custody of J.W. Paternal grandmother is also available for additional support.

{¶ 10} Father testified that he lived with mother until J.W. was four or five years old. He maintained contact with J.W. after that time, but it was difficult to do so because mother did not have a working phone and frequently moves. Father is employed.

{¶ 11} Father also testified that he learned of the alleged domestic violence incident through J.W. J.W. reportedly told father that the boyfriend chased A.M. with a knife and threatened to kill her, and that during another incident, he threatened A.M. with a gun. J.W. confided that she was terrified during the incident, and that she has subsequently experienced difficulty sleeping. Father maintained that mother continues to spend time with boyfriend. Father also claimed that mother does not provide for regular dental or medical care for J.W.

{¶ 12} Mother testified that she provides medical care for J.W., and that J.W. is in good health. Although J.W. spends every other weekend with father, mother maintained that paternal grandmother generally picks her up. Mother decided that J.W. would live with maternal grandmother “while the case is going on” because J.W. has been “emotional” and is experiencing difficulties. Mother maintained that she has a room and a bed for J.W. at her home. However, she admitted that during the GAL’s home visit the previous week, she showed the GAL the bedroom for her other children but did not show the GAL J.W.’s bedroom. A.M. stated that at the time of the GAL’s home visit, she had just moved into the home and was redoing a portion of it. A.M. also acknowledged that her oldest child lives with another half-sibling. Mother is contemplating moving from East Cleveland to Bedford or another nearby suburb.

{¶ 13} The magistrate deferred ruling on father’s motion for legal custody in order for the parties to submit an agreed parenting plan. After the parties failed to submit agreed plans, the magistrate recommended that legal custody of J.W. be

awarded to father. Mother filed objections outlining J.W.'s desire to remain at the same school and her age-related need to maintain a close relationship with mother. The court overruled mother's objections and adopted the magistrate's recommendation. The court held that the return of J.W. to mother's residence would be contrary to the child's best interest, and that father should have legal custody of J.W.

Legal Custody

{¶ 14} Once a child is adjudicated abused, neglected, or dependent, a juvenile court may award legal custody of the child to any parent or person who files a motion requesting legal custody. R.C. 2151.353(A)(3). R.C. 2151.011(B)(21) defines legal custody as:

a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities.

The award of legal custody does not divest parents of residual parental rights and responsibilities and does not permanently foreclose the right of either parent to regain custody. *In re G.W.*, 8th Dist. Cuyahoga No. 103706, 2016-Ohio-5242, ¶ 15, citing *In re C.R.*, 108 Ohio St.3d 369, 2006-Ohio-1191, 843 N.E.2d 1188, ¶ 23. See also R.C. 2151.42.

{¶ 15} A trial court must determine the appropriateness of legal custody in accordance with the best interest of the child as supported by the preponderance of

the evidence. *In re G.W.* at ¶ 21; *In re C.V.M.*, 8th Dist. Cuyahoga No. 99426, 2013-Ohio-3361, ¶ 6. A preponderance of the evidence requires evidence that is more probable, more persuasive, or of greater probative value. *Id.*; *In re G.W.*; *In re T.R.*, 8th Dist. Cuyahoga No. 102071, 2015-Ohio-4177, ¶ 44.

{¶ 16} In determining the best interest of the child in a legal custody case, the juvenile court should consider all relevant factors, and may look to the factors listed under R.C. 2151.414(D) for guidance. *In re M.B.*, 8th Dist. Cuyahoga No. 105168, 2017-Ohio-7481, ¶ 11. Those factors include the interaction of the child with the child's parents, relatives, and caregivers; the wishes of the child, as expressed directly by the child or through the child's guardian ad litem; the custodial history of the child; and the child's need for a legally secure permanent placement. R.C. 2151.414(D).

{¶ 17} A reviewing court will not reverse an award of legal custody absent an abuse of discretion. *In re Nice*, 141 Ohio App.3d 445, 455, 2001-Ohio-3214, 751 N.E.2d 552 (7th Dist.). If the court's decision on the child's best interests is not supported by competent, credible evidence, then it is unreasonable and may be reversed. *Id.*; *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 550 N.E.2d 178 (1990), syllabus.

{¶ 18} Upon our review in this matter, we conclude that competent, credible evidence supports the juvenile court's determination that an award of legal custody of J.W. to father is in the child's best interest. The preponderance of the evidence demonstrates that during the pendency of this case, mother did not remain in contact with the GAL and was "unreachable," preventing the GAL from obtaining

information about case plan progress. In addition, from the time of the alleged domestic violence through the time of the dispositional hearing, J.W. was living with maternal grandmother, not mother. Although mother explained that J.W. was “emotional,” J.W. confided in father that she was terrified during the domestic violence incident and was experiencing difficulty sleeping. Mother completed domestic violence classes but did not complete mental health assessments. She acknowledged that she missed an appointment for Woodall to see J.W.’s room, and mother admitted that the room was not ready for J.W. in the week before the hearing. Mother acknowledged that her oldest child lives with another half-sibling.

{¶ 19} The GAL reported that father’s residence is appropriate for J.W. and is free of safety risks. He has steady employment and is able and willing to provide for J.W. The GAL recommended that the court award legal custody of J.W. to father and temporary custody of mother’s other children to CCDCFS. CCDCFS noted no concerns with father having legal custody. Otherwise, CCDCFS requested protective supervision in the event that J.W. returns to mother’s home. Father explained that due to mother’s lack of communication and frequent moves, he had encountered difficulties maintaining contact with J.W. However, he regularly supports, communicates with, and visits J.W. Father manifested a sincere desire to raise J.W. and ensure that she is in a safe home with proper regard for her healthcare, dental care, and overall well-being.

{¶ 20} In accordance with all of the foregoing, the trial court did not abuse its discretion in ruling that the award of legal custody to father is in J.W.'s best interest.

{¶ 21} The assigned error is without merit.

{¶ 22} Judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

**MARY EILEEN KILBANE, A.J., and
EILEEN T. GALLAGHER, J., CONCUR**