

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

IN RE M.S.	:	
	:	No. 108567
A Minor Child	:	
	:	
[Appeal by Mother]	:	

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: December 12, 2019**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. AD-17909379

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***Appearances:***

Wargo Law, L.L.C. and Leslie E. Wargo, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Michael F. Kulcsar, Assistant Prosecuting Attorney, *for appellee Cuyahoga County Division of Children and Family Services.*

EILEEN A. GALLAGHER, J.:

{¶ 1} Appellant-mother L.H. (“Mother”) appeals the decision of the Cuyahoga County Court of Common Pleas, Juvenile Division (the “juvenile court”) granting legal custody of her son, M.S., to his father. For the reasons that follow, we affirm the juvenile court’s decision.

## **Factual Background and Procedural History**

**{¶ 2}** On June 15, 2017, appellee Cuyahoga County Division of Children and Family Services (“CCDCFS” or “the agency”) filed a complaint, alleging that M.S. (born February 24, 2007) and his half-brother J.H. (born June 18, 2009)<sup>1</sup> were neglected and dependent and requested that M.S. be placed in the temporary custody of his father, appellee W.S. (“Father”), and that J.H. be placed in the temporary custody of his father, B.M. Specifically, the complaint alleged that (1) Mother had failed to enroll the children in school for the 2016-2017 school year, (2) the children had not attended school since April or May 2016, (3) Mother was living in a homeless shelter and did not have safe and stable independent housing and (4) Mother had a substance abuse problem, specifically PCP and marijuana, and had been diagnosed with bipolar disorder and depression, which prevented her from providing adequate care for the children. On July 5, 2017, M.S. was committed to the predispositional temporary custody of Father, and J.H. was committed to the predispositional temporary custody of B.M.

**{¶ 3}** On August 15, 2017, Mother stipulated to the allegations of an amended complaint<sup>2</sup> and the juvenile court thereafter adjudicated M.S. to be

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<sup>1</sup> The disposition of J.H. is not part of this appeal.

<sup>2</sup> Mother stipulated to the following allegations of the amended complaint:

1. Mother failed to enroll the children into school for the 2016-2017 school year. The children have not attended school since April/May of 2016.
2. Mother does not have safe and stable independent housing; she is currently living with her brother and is currently on the waiting list for CMHA.

neglected and dependent. At the dispositional hearing, Mother and Father stipulated to a disposition of temporary custody to Father and the juvenile court granted temporary custody of M.S. to Father.

{¶ 4} CCDCFS filed a case plan that required Mother to (1) participate in a domestic violence program or counseling to address anger management and other issues associated with being a victim of domestic violence, (2) participate in mental health services, (3) obtain and maintain safe, stable and appropriate housing, (4) ensure that her children have all of their basic needs met, including food, clothing, shelter, medical care and education and (5) comply with any drug treatment recommendations, maintain a drug-free lifestyle and submit to random drug screens. The permanency goal was reunification of the children with Mother. The juvenile court approved the case plan.

{¶ 5} On October 23, 2018, the guardian ad litem (“GAL”) submitted a report and recommendation. With respect to Mother, the GAL reported that Mother had secured a two-bedroom apartment, that Mother was receiving mental health services and taking medication for bipolar disorder, PTSD and depression and that

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3. Mother had a substance use disorder, specifically PCP and marijuana, which prevented her from providing adequate care for the children. Mother tested positive for PCP and marijuana on June 5, 2017. She is in the process of linking with an agency \* \* \*.
  4. Mother has been diagnosed with bipolar disorder and depression which interferes with her providing adequate care for the children. Mother has sought assistance for these issues and is in counseling presently.
  5. Father of M.S. \* \* \* is willing and able to care for the child.

Mother was participating in a work program and working to get her SSI benefits reinstated. The GAL further reported that Mother had completed parenting and anger management classes. The GAL stated that Mother had regular visitation with M.S. every other weekend and wanted M.S. returned to her care and custody but that “Mother’s ability to maintain her mental health and sobriety while parenting two active boys is unknown at this time.”

{¶ 6} With respect to Father, the GAL reported that Father lived in an apartment with his mother and M.S. and that he had a job opportunity in Atlanta, Georgia but had postponed moving to Atlanta until he was granted full custody of M.S. The GAL stated that M.S. had been “doing well” while in Father’s care, had benefited from the “structure and consistency” of Father’s home and that his grades had improved with improved school attendance. The GAL indicated that M.S. had “mixed feelings” about remaining with Father and moving to Atlanta because he loves both his parents and wants to spend time with both parents and J.H. The GAL recommended that legal custody be granted to Father and that Mother be granted an out-of-state parenting schedule once Father moved to Atlanta.

{¶ 7} On October 30, 2018, CCDCFS filed a motion to terminate temporary custody and grant legal custody to Mother with protective supervision. The agency asserted that it was in the best interest of M.S. to be returned to Mother’s care and custody because she had “substantially complied with the case plan and ha[d] reduced the risk that initially caused the children to be removed.” Specifically, the agency noted, Mother had completed a substance abuse assessment, was engaged in

mental health counseling and had secured and maintained appropriate housing. The agency maintained that protective supervision was warranted because all of Mother's case plan objectives had not yet been completed.

**{¶ 8}** On November 30, 2018, Father filed a motion for legal custody of M.S. Father argued that it would be in M.S.'s best interest for him to be granted legal custody of M.S. because (1) M.S. had been living with Father "without any problems" for over a year, (2) Father had been "consistently meeting M.S.'s basic needs and providing him with a nurturing home" without the need for any ongoing services or supervision, (3) M.S. had "settled comfortably into Father's family," bonding with his other half-siblings and excelling in school and (4) protective supervision would be necessary to ensure M.S.'s safety and well-being in Mother's care.

**{¶ 9}** On December 18, 2018 and January 22, 2019, Mother tested positive for PCP. Mother denied using PCP. According to CCDCFS, Mother attributed the positive drug screens to her "mistaken" use of old cigarettes laced with PCP.

**{¶ 10}** In February 2019, the magistrate appointed counsel for M.S. due to a conflict between M.S.'s wishes and the recommendation of the GAL. Based on "new concerns \* \* \* regarding Mother's ability to maintain her sobriety," CCDCFS filed (1) a motion to withdraw its prior motion to terminate temporary custody and award legal custody with protective supervision to Mother and (2) a motion to modify temporary custody to legal custody to Father.

**{¶ 11}** On February 19, 2019, the GAL submitted an updated report and recommendation in which the GAL again recommended that legal custody of M.S.

be granted to Father. The GAL reported that Mother continued to reside in the same two-bedroom apartment and to engage in mental health services but that she had “relapsed into substance abuse in December 2018, when she tested positive” and “needs to reengage in substance abuse treatment and demonstrate that she can maintain her sobriety.” The GAL indicated that “Mother’s substance abuse issues are a long standing challenge that really requires [M]other to make and maintain lifestyle changes” and that “[M]other’s relapse into substance abuse leads this GAL to have serious concerns about her ability to regain her sobriety and maintain it long term.”

{¶ 12} With respect to Father, the GAL reported that Father continued to provide appropriate care for M.S., ensuring that he receives a “solid education” and that CCDCFS had investigated an allegation related to marijuana use by Father’s older children. The GAL stated that M.S. was “very clear” that he loves both of his parents but that he would prefer to live with Mother and visit Father. The GAL stated that this was “partly due” to Father’s plan to move to Atlanta after the custody issue was resolved, which “complicates things even further.”

{¶ 13} On March 4, 2019, the magistrate held a hearing on the pending motions. M.S. was then 12 years old. Rhonda Parmer, one of the CCDCFS social workers who handled M.S.’s case, testified at the hearing.

{¶ 14} Parmer testified that, prior to CCDCFS’s involvement, Mother was the primary caregiver of M.S. She indicated that the agency became involved when

Mother was in a shelter, had a “mental health breakdown” and was taken to a hospital where she tested positive for PCP.

{¶ 15} Parmer stated that when she was assigned to the case in December 2017, a case plan was in place, with the goal of reunifying M.S. and J.H. with Mother. The plan required Mother to secure and maintain appropriate housing, take domestic violence classes and participate in mental health and substance abuse services. Parmer testified that Mother completed a drug and alcohol assessment in January 2018, that there were no recommendations for drug treatment at that time and that a random drug screen to which Mother submitted in April 2018 was negative. Parmer stated that by June 2018, Mother had obtained appropriate housing, had completed domestic violence classes and had consistently complied with the mental health aspects of her case plan, including engaging in recommended behavioral therapy and taking prescribed medications. Parmer indicated that Mother appeared to benefit from the services she had received and that Mother had also voluntarily taken parenting classes, which had not been required as part of her case plan.

{¶ 16} Parmer testified that in June 2018, based on Mother’s progress with her case plan objectives, she recommended that Mother be granted legal custody of M.S. That changed, however, after Mother tested positive for PCP in December 2018 and January 2019.

{¶ 17} Parmer testified that after the agency received the results of Mother’s first positive drug screen, she discussed them with Mother. She stated that Mother

denied using PCP and told her it was a “mistake,” i.e., that she “could have used a cigarette that \* \* \* could have been exposed to PCP when \* \* \* she did use from like a year ago, a year and a half ago.” Parmer stated that she had never seen Mother smoke and had never smelled cigarette smoke or seen any signs of smoking at Mother’s residence.

{¶ 18} After her positive drug screens, Mother completed another substance abuse assessment, resulting in a recommendation that Mother participate in an intensive outpatient drug treatment program (“IOP”). In mid-February 2019, Mother began a 90-day IOP treatment program. As of the date of the hearing, Mother had completed 2-3 weeks of IOP treatment. Parmer indicated that Mother was drug tested twice a week while in treatment and that she had not had any positive drug screens since starting IOP treatment. Parmer stated that CCDCFS was not comfortable with reunifying M.S. with Mother at that time “just due to the substance abuse piece” and that the agency “would need to see more” from Mother, i.e., that she was “maintaining her sobriety and following through,” before the agency would be comfortable reunifying M.S. with Mother.

{¶ 19} Parmer testified that although CCDCFS was not comfortable returning M.S. to Mother’s care, it was comfortable with Mother retaining custody of his younger brother, J.H., who had been reunified with Mother before the agency received the results of Mother’s positive drug screens. Parmer indicated that by the time the agency learned of Mother’s positive drug screens, in-home family preservation services had already been engaged, J.H. was “active and enrolled” in

school and “for him, you know, and mom’s, you know, participation in her mental health,” the agency decided to keep J.H. in Mother’s custody with protective supervision rather than seek to remove him again. Parmer indicated while living with Mother, J.H. was attending school and Mother was providing for his basic needs.

{¶ 20} With respect to Father, Parmer testified that Father had been an “involved father” prior to the agency’s involvement. Parmer stated that the agency had no concerns regarding how Father was parenting M.S., that Father had never been referred for any services, that M.S.’s basic needs were being met while living with Father and that there had been no issues with school attendance while M.S. was in Father’s care. Parmer acknowledged that an incident had occurred in the parking lot outside Father’s home in November or December 2018 in which one of Father’s other children, who was up from Atlanta visiting Father, had offered M.S. marijuana. She indicated that the incident was investigated, that there was no indication that M.S. had used marijuana and that there were no signs of neglect by Father, i.e., that “anything that happened \* \* \* as far as discipline of the other children or them using marijuana,” Father handled the situation “appropriately.” Parmer stated that the incident did not impact her opinion that Father could be an appropriate caregiver for M.S. She indicated that Father had stated that he was willing and able to care for M.S. and that CCDCFS had no reason to believe otherwise.

**{¶ 21}** Mother and Father did not testify or offer any testimony from any witnesses at the hearing. However, the magistrate heard from the GAL, the attorney for M.S. and the attorneys for Mother and Father at the hearing. The GAL stated that although M.S. wished to live with Mother, the GAL believed it was in M.S.'s best interest for legal custody to be granted to Father. The GAL indicated that M.S. had been with Father for over a year and was "doing well" there, that Father meets his needs and that Father encourages him to visit and have a meaningful relationship with Mother. The GAL further stated that Mother's relapse to using PCP — "her drug of choice" — was "extremely concerning," that it was unclear as to "what happened that caused the relapse" and that the GAL had "concerns about sending a child home when [the] mother has relapsed."

**{¶ 22}** Counsel for M.S. indicated that M.S. had stated "very clearly that he misses his mother and prefers to be with his mother."

**{¶ 23}** Mother's attorney argued that Mother should be granted legal custody of M.S. with protective supervision, just as she had for J.H. He indicated that despite the fact Mother tested positive for PCP, J.H. was still in her care and custody. He asserted that J.H. had been attending school regularly, that Mother had been meeting his basic needs and that there was no evidence that Mother would not be able to meet the basic needs of M.S. as she had been doing for J.H. Mother's counsel noted that, aside from the IOP she had recently been asked to complete and in which she was actively participating, Mother had completed all of the case plan services to which she had been referred.

**{¶ 24}** Counsel for Father argued that Father should be granted legal custody of M.S. because he had “stepped up to the bat” to care for M.S. in 2017 and was willing to “continue to support the needs” of M.S. and encourage reasonable visitation with Mother.

**{¶ 25}** At the conclusion of the hearing, the magistrate issued her decision, terminating temporary custody and granting legal custody of M.S. to Father. The magistrate determined that a continuation of temporary custody was “not necessary” and that it would be in M.S.’s best interest to grant legal custody to Father. The magistrate found that Mother had made progress on her case plan but that “progress ha[d] not been made in alleviating the cause for removal of the child from the home.” The magistrate further found that the agency had “complied with the rules and regulations pertaining to removal of the child from the home, changes in placement, and/or determinations affecting parental visitations rights” and that the agency had made reasonable efforts to make it possible for M.S. to safely return to Mother’s home. The magistrate indicated that Mother was to have visitation on alternating weekends and otherwise as agreed by the parties.

**{¶ 26}** After setting forth her findings, the magistrate explained her decision at the hearing as follows:

Mother, I want to commend you on what you have done on your case plan. You do need to understand that, first of all, the child has two parents. And this is a wonderful thing. A lot of times children do not even have the luxury of being able to reside with another parent.

This father has been caring for this child properly for almost two years, at least a year and a half. And to my understanding, you have been having visitation with this child.

The Court has certainly given you the opportunity to do what you needed to do on the case plan so that the child could be returned to you.

However, the Court is not going to just continue to just keep giving you more and more time if there is a father who is here and ready, willing, and able to continue to provide care for the child.

Especially, this is a boy child, and I think it's wonderful that he's able to have his father in his life.

So I do, again, want to commend you and I want to encourage you to continue to work your case plan as it relates to the other child.

But as this — as far as this child is concerned, I do believe it's in his best interest for him to be in the custody of his father. You need to continue to work on whatever issues you have.

And I do consider it to be a little problematic that if your explanation to a social worker was that you had a regular cigarette and it just happened to be laced with PCP, that's a problem. And if that's the case, I don't even know how you're around anywhere where your cigarette would be laced with PCP. \* \* \* So at any rate, that is my decision.

{¶ 27} In her written magistrate's decision, the magistrate further explained

her decision, setting forth additional findings, as follows:

The Cuyahoga County Division of Children and Family Services has made reasonable efforts to finalize the permanency plan for the child. These efforts are substance abuse assessment and treatment as recommended, mental health services, and assistance in finding adequate housing. The Mother completed domestic violence counseling and has been consistent with mental health services. The Mother has stable and appropriate housing. The Mother completed a substance abuse assessment which did not recommend treatment. The Mother was required to submit to random drug screens. The Mother tested positive drug screen on 12/18/18. The Mother has now been recommended to complete IOP. There were no required case plan services for the father. The child has been residing with the Father

since 9/2017. The Father is willing and able to provide for the basic needs of the child.

**{¶ 28}** Mother filed objections to the magistrate’s decision, arguing that “the weight of the evidence produced at the motion hearing” supports a finding that granting legal custody of M.S. to Father is not in his best interest because: (1) Mother had substantially complied with her case plan services, alleviating the conditions that caused the removal of M.S.; (2) Mother had maintained stable, safe and appropriate housing since June 2018; (3) Mother was complying with the IOP treatment recommended following her updated substance abuse assessment; (4) Mother had legal custody with protective supervision of her younger son, J.H., and was providing appropriate care for him; (5) prior to CCDCFS involvement, Mother was the primary caregiver for M.S. and (6) M.S. wished to live with Mother and J.H.

**{¶ 29}** On April 24, 2019, the juvenile court overruled Mother’s objections and approved and adopted the magistrate’s findings and decision, with minor amendments. The juvenile court’s journal entry adopting the magistrate’s decision added a prohibition stating that M.S. “shall not be permanently removed from the jurisdiction of the court” and requiring each parent to file a notice of intent to relocate prior to moving from the jurisdiction of the court.

**{¶ 30}** Mother appealed the juvenile court’s decision, raising a single assignment of error for review:

The trial court’s judgment granting CCDCFS’s motion for legal custody to the father and its determination that legal custody was in M.S.’s best interest are against the manifest weight of the evidence.

## Law and Analysis

{¶ 31} “Legal custody” is

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.

R.C. 2151.011(B)(21).

{¶ 32} An award of legal custody is “significantly different” than the termination of parental rights. Unlike a case in which parental rights are terminated, where a parent loses legal custody of his or her child, the parent retains residual parental rights, privileges and responsibilities and is not permanently foreclosed from regaining custody. *In re T.R.*, 8th Dist. Cuyahoga No. 102071, 2015-Ohio-4177, ¶ 32; *In re G.M.*, 8th Dist. Cuyahoga No. 95410, 2011-Ohio-4090, ¶ 14; *see also* R.C. 2151.353(A)(3)(c). Accordingly, a less stringent standard is applied to the juvenile court’s factual findings. *In re G.M.* at ¶ 14; *In re C.V.M.*, 8th Dist. Cuyahoga No. 98340, 2012-Ohio-5514, ¶ 7. When a juvenile court awards legal custody following an adjudication of abuse, neglect or dependency, “it does so by examining what would be in the best interest of the child based on a preponderance of the evidence.” *In re T.R.* at ¶ 44, quoting *In re M.J.M.*, 8th Dist. Cuyahoga No. 94130, 2010-Ohio-1674, ¶ 11, 14. A “preponderance of the evidence” means evidence that is “more probable, more persuasive, or of greater probative value.” *In re C.V.M.* at ¶ 7, quoting *In re D.P.*, 10th Dist. Franklin No. 05AP-117, 2005-Ohio-5097, ¶ 52.

**{¶ 33}** The decision whether to grant or deny a request for legal custody is within the sound discretion of the juvenile court. Accordingly, when reviewing a juvenile court’s “ultimate decision on whether the facts as determined would make it in the child’s best interests to be placed in legal custody,” we apply an abuse of discretion standard. *In re W.A.J.*, 8th Dist. Cuyahoga No. 99813, 2014-Ohio-604, ¶ 2, quoting *In re G.M.* at ¶ 14.

**{¶ 34}** An abuse of discretion occurs where a juvenile court’s decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). A decision is unreasonable if there is “no sound reasoning process that would support that decision.” *In re C.D.Y.*, 8th Dist. Cuyahoga No. 108355, 2019-Ohio-4262, ¶ 8, quoting *Baxter v. Thomas*, 8th Dist. Cuyahoga No. 101186, 2015-Ohio-2148, ¶ 21. A decision is arbitrary if it is made “without consideration of or regard for facts [or] circumstances.” *In re C.D.Y.* at ¶ 8, quoting *Black’s Law Dictionary* 125 (10th Ed.2014).

**{¶ 35}** There is no “specific test or set of criteria” that must be applied or considered in determining what is in a child’s best interest in a legal custody case. *In re T.R.*, 2015-Ohio-4177, at ¶ 48. In contrast to permanent custody cases in which the juvenile court must consider the factors outlined in R.C. 2151.414(D) in deciding whether to terminate parental rights, R.C. 2151.353(A)(3) does not specify factors the juvenile court should consider in determining what is in a child’s best interest on a motion for legal custody. *In re G.M.*, 2011-Ohio-4090, at ¶ 15. Nevertheless, this court has held that the R.C. 2151.414(D) best interest factors may be

“instructive” in making that determination. *See, e.g., In re R.B.*, 8th Dist. Cuyahoga No. 107709, 2019-Ohio-1656, ¶ 48, 52; *In re D.T.*, 8th Dist. Cuyahoga Nos. 100970 and 100971, 2014-Ohio-4818, ¶ 20, citing *In re E.A.*, 8th Dist. Cuyahoga No. 99065, 2013-Ohio-1193, ¶ 13; *see also In re B.D.*, 8th Dist. Cuyahoga No. 105650, 2017-Ohio-8663, ¶ 26 (“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.”), citing *In re M.B.*, 8th Dist. Cuyahoga No. 105168, 2017-Ohio-7481, ¶ 11. These factors include: the interaction of the child with the child’s parents, relatives, caregivers and any other person who may significantly affect the child; 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).

**{¶ 36}** Where a decision regarding legal custody is supported by relevant, competent, credible evidence, it will not be reversed as being against the manifest weight of the evidence. *In re T.R.* at ¶ 46; *In re S.D.*, 8th Dist. Cuyahoga Nos. 99410, 99411, and 99412, 2013-Ohio-3535, ¶ 13.

**{¶ 37}** Mother contends that the juvenile court’s decision to award legal custody to Father was against the manifest weight of the evidence because the evidence presented at the hearing showed that: (1) prior to CCDCFS’s involvement, she was M.S.’s primary caregiver and his primary source of support; (2) M.S. has stated that he loves Mother and wants to return home to Mother and J.H.; (3) Mother substantially complied with her case plan prior to the failed drug screens

and has done everything the agency asked of her after the failed drug screens and (4) Mother has legal custody with protective custody of J.H. and is adequately and appropriately caring for him. Based on the record before us, none of these considerations warrants a reversal of the juvenile court's decision. We cannot say that the juvenile court's decision granting legal custody of M.S. to Father is against the manifest weight of the evidence.

**{¶ 38}** Although Mother was the primary caregiver of M.S. prior to the agency's involvement, the record reflects that Father was also an "involved" parent with an active role in M.S.'s life. It is undisputed that M.S. has good relationships with both Mother and Father and loves both of his parents and J.H. very much. Although M.S. had indicated that he preferred to live with Mother and J.H. and to visit Father, this preference appeared to be based, at least in part, due to the fact that Father had been considering moving to Atlanta. According to the GAL, M.S. was concerned that if he continued to live with Father, he would have to move away from his home and Mother, J.H. and other family members who lived in Cleveland. However, no evidence was presented at the hearing that Father still planned to move to Atlanta. Further, the juvenile court placed restrictions in its judgment entry precluding the "permanent[] remov[al]" of M.S. "from the jurisdiction of the court" and requiring each parent to file a notice of intent to relocate before moving from the jurisdiction of the court.

**{¶ 39}** The record shows that M.S. was removed from Mother's care and custody placed in Father's care in July 2017. As such, M.S. had been living with

Father for more than one-and-one-half years by the time of the hearing. Although Mother had made substantial progress on her case plan prior to her positive drug screens in December 2018 in January 2019, her relapse (and her implausible explanation for her failed drug screens) appropriately raised concerns regarding whether Mother was the most suitable caregiver for M.S. — particularly given that M.S. had a loving father who was willing and able to care for him. Although Mother had been granted legal custody of J.H., J.H. had been returned to her care and custody shortly before her relapse. We cannot address the specific considerations that led to the return of J.H. to Mother or that resulted in Mother retaining custody of J.H. following her relapse as those considerations are not part of the record in this case.

**{¶ 40}** It was undisputed that M.S. was thriving while in Father’s care and custody. While living with Father, M.S. was regularly attending school and his grades were improving. Although the juvenile court granted legal custody to Father, it granted Mother visitation every other weekend and otherwise as agreed by the parties. The evidence shows that Father promoted M.S.’s relationship with Mother and encouraged regular visitation between M.S. and Mother.

**{¶ 41}** Based on a thorough review of the record before us, we find that the juvenile court’s determination that it was in M.S.’s best interest to be placed in the legal custody of Father was supported by a preponderance of competent, credible evidence and was not arbitrary, unconscionable or unreasonable. Accordingly, the

juvenile court did not abuse its discretion in awarding legal custody of M.S. to Father.

{¶ 42} Mother's assignment of error is overruled.

{¶ 43} Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue of this court directing the Cuyahoga County 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.

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EILEEN A. GALLAGHER, JUDGE

MARY EILEEN KILBANE, A.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR