

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

IN RE: A.W. and T.W. : APPEAL NO. C-140142
 : TRIAL NO. F-09-1771Z
 :
 : *OPINION.*

Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: February 11, 2015

Kendo, Alexander, Cooper, & Engel LLP and *Christine Cooper*, for Appellant Mother,

Christy L. Wesselman, Attorney Guardian ad Litem for A.W. and T.W.,

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Ernest W. Lee, Jr.*, Assistant Prosecuting Attorney, for Appellee Hamilton County Department of Job and Family Services,

Please note: this case has been removed from the accelerated calendar.

FISCHER, Judge.

{¶1} Mother appeals from the judgment of the Hamilton County Juvenile Court, which adopted the magistrate’s decision awarding legal custody of her minor sons, A.W. and T.W., to their maternal great aunt and great uncle, Althea and David Barnett. Because competent, credible evidence supports the juvenile court’s determination that it was in the best interests of A.W. and T.W. to award legal custody to the Barnetts, we cannot conclude that the juvenile court’s decision was unreasonable. We, therefore, affirm its judgment.

Factual and Procedural Background

{¶2} In May 2009, A.W. and T.W. were placed in the care of the Hamilton County Department of Job and Family Services (“HCJFS”) after mother, who was unemployed and soon to be homeless, called 241-KIDS and stated that she was overwhelmed and could no longer care for the boys. Mother was admitted to the hospital for suicidal thoughts. A.W., who was eight years old, and T.W., who was three years old, were placed in the Barnett’s home for a couple of months. The Barnetts, who worked full-time, could not afford daycare for T.W., so the boys were placed in foster care.

{¶3} In August 2010, the boys were adjudicated dependent, and HCJFS was granted temporary custody. Mother was ordered to obtain housing and employment and to engage in chemical-dependency assessment and treatment, individualized counseling, supervised visitation, and parenting education so that she could reunify with her sons.

{¶4} In December 2010, HCJFS moved for permanent custody of the boys. The guardian ad litem (“GAL”) filed a report supporting permanent commitment as in the boys’ best interest. Because the boys had expressed a desire to leave foster

care and to return to their mother's custody, or alternatively to the custody of another relative, the magistrate appointed independent counsel to represent them during the permanent-custody proceedings. See *In re Williams*, 101 Ohio St.3d 398, 2004-Ohio-1500, 805 N.E.2d 1110, syllabus. The permanent-custody trial began on March 29, 2011, and was completed in March 2012. During the permanent-custody trial, the GAL filed a motion requesting that the court award legal custody to the Barnetts, but later withdrew the motion in February 2012.

{¶5} On September 6, 2012, the GAL filed a motion asking the magistrate to reopen the trial, to terminate temporary custody, and to grant legal custody of A.W. and T.W. to the Barnetts. The magistrate reopened the trial. David and Althea Barnett and mother testified. On September 29, 2012, the magistrate issued a detailed decision denying HCJFS's motion for permanent custody and awarding legal custody to the Barnetts.

{¶6} Both mother and the *In re Williams* attorney for the boys filed timely objections to the magistrate's decision. At the August 20, 2013 hearing on the objections, the *In re Williams* attorney orally withdrew her objections to the magistrate's decision. The juvenile court took the matter under submission for a written opinion. Shortly thereafter, the Ohio Supreme Court assigned the case to a visiting judge to complete the ruling on the objections. On January 29, 2014, the visiting judge permitted additional oral argument on mother's objections. On February 24, 2014, the visiting judge overruled mother's objections and adopted the magistrate's decision.

Legal Custody Was Properly Awarded to the Barnetts

{¶7} In a single assignment of error, mother contends that the juvenile court abused its discretion by granting legal custody of A.W. and T.W. to the

Barnetts. She argues that because she has completed the majority of her case-plan services, she is willing to parent the boys, and the boys have expressed a desire to live with her, the juvenile court should have awarded her legal custody.

{¶8} When a child has been adjudicated abused, neglected, or dependent, the juvenile court has a number of dispositional alternatives available to it. *See* R.C. 2151.353(A). These dispositional alternatives include, among other things, committing the child to the permanent custody of the children-services agency, or awarding legal custody to a relative or any other person who has filed a petition for legal custody. *Id.* When choosing among these dispositional alternatives, the juvenile court's focus is on the best interests of the child. *In re Allah*, 1st Dist. Hamilton No. C-040239, 2005-Ohio-1182, ¶ 10. Although the statutory scheme does not delineate a specific set of factors or criteria that the juvenile court must apply when determining the best interests of a child in a legal-custody proceeding, this court has held that the factors set forth in R.C. 2151.414(D) are instructive. *See In re A.C.*, 1st Dist. Hamilton No. C-140273, 2015-Ohio-153, ¶ 6; *see also In re D.T.*, 5th Dist. Stark No. 2013CA00252, 2014-Ohio-2495, ¶ 20-21.

{¶9} Because an award of legal custody does not divest parents of their residual parental rights, privileges, and responsibilities, appellate courts apply a preponderance of the evidence standard to the juvenile court's factual findings. R.C. 2151.353(A)(3)(c); *In re C.R.*, 108 Ohio St.3d 369, 2006-Ohio-1191, 843 N.E.2d 1188, ¶ 17; *In re Perales*, 52 Ohio St.2d 89, 98, 369 N.E.2d 1047 (1977); *In re Nice*, 141 Ohio App.3d 445, 455, 751 N.E.2d 552 (7th Dist.2001).

{¶10} As an appellate court, we review a juvenile court's decision to grant legal custody under an abuse-of-discretion standard. *See In re A.C.* at ¶ 5. An abuse of discretion connotes more than an error of law or judgment. It implies that the

trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). A juvenile court's decision regarding a child's best interest in a legal-custody proceeding, if supported by competent, credible evidence, is not unreasonable. *In re Wilkenson*, 1st Dist. Hamilton Nos. C-010402 and C-010408, 2001 Ohio App. LEXIS 4589, *5-6 (Oct. 12, 2001).

{¶11} Despite mother's arguments to the contrary, the record reflects competent, credible evidence upon which the trial court could have found that an award of legal custody to the Barnetts was in the best interests of A.W. and T.W. In March 2012, at the close of the permanent-custody trial, mother had obtained housing and employment, but she had not completed significant portions of her case-plan services, which would have remedied the drug- and alcohol-related issues that had caused the boys' removal from her home. She had not completed the HOPE parenting program. Mother had also been terminated from her mental-health services and substance-abuse treatment for missing appointments.

{¶12} Mother self-reported using marijuana and drinking alcohol. She had been convicted of misdemeanor assault in June 2009, for punching her nephew in the mouth when he talked back to her, and was still on probation as of March 20, 2012. Mother had also been placed on probation for drug charges and had failed to take drug screens. While mother had visited the boys during the pendency of the juvenile court proceedings, she had never progressed past supervised visits with them.

{¶13} The caseworker and mother's HOPE parenting coach testified that mother did not understand how her use of alcohol and substances had affected the boys, and that she refused to acknowledge that both boys were suffering from Fetal

Alcohol Syndrome. Mother also refused to acknowledge that A.W. had been diagnosed with ADHD and needed medication to help with his impulse control. They also expressed concern that mother minimized the boys' behavior problems, including A.W.'s fire-setting behavior, believing it to be the result of their separation from her and that their behavior would improve once they were returned to her custody.

{¶14} Mother also failed to appreciate the risk of continuing her children in foster care while she attended to her needs. A.W. and T.W. had been in the custody of HCJFS for over three years. While in foster care, both boys exhibited sexualized behaviors and were referred for assessment. A.W. was suspected of inappropriately touching his foster mother's grandchild and had also been suspended from school for setting a fire in the boys' bathroom.

{¶15} As the juvenile court acknowledged in its decision, the Barnetts have maintained consistent contact with the boys throughout these proceedings. The boys were initially placed in their home in 2009, but the Barnetts were unable to keep them because of daycare costs. When the boys were placed in foster care, the Barnetts continued to visit the boys at least once a month or once every other month.

{¶16} In September 2012, the Barnetts testified they were willing to accept custody of the boys because T.W. no longer needed full-time daycare. Both children attended school full-time and any daycare costs would be minimal. The Barnetts testified that they are prior foster and adoptive parents. They work full-time and have the means and ability to support the boys. They signed a proposed legal custody statement of understanding, which was filed with the trial court. Both testified that they are willing to maintain a relationship and companionship between

mother and the boys, which, as the juvenile court noted, would not be possible if the boys remained in foster care or were permanently committed to HCJFS.

{¶17} The Barnetts testified that they love the boys, and that the boys have bonded with them. While A.W. and T.W. initially expressed a desire to be returned to mother's custody, their *In re Williams* attorney withdrew her objection to the magistrate's decision, stating that the boys were happy with the Barnetts and they no longer expressed a clear desire to be returned to mother. The boys are attending school on a regular basis and are involved in extracurricular activities. The Barnetts testified they are able to attend to the boys' medical and educational needs. HCJFS's home study and the boys' GAL supported granting legal custody of A.W. and T.W. to the Barnetts.

{¶18} Given our review of the record, we conclude that there is competent credible evidence to support the juvenile court's decision that A.W.'s and T.W.'s best interests were served by granting legal custody to the Barnetts. We, therefore, overrule mother's sole assignment of error, and affirm the judgment of the juvenile court.

Judgment affirmed.

HENDON, P.J., and DEWINE, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.