

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

In the Matter of: :  
L.D., : No. 12AP-985  
(A.D., : (C.P.C. No. 10JU06-8804)  
Appellant). : (REGULAR CALENDAR)

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D E C I S I O N

Rendered on July 23, 2013

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*Thomas E. Friedman*, for appellee J.N.

*Wesley R. Davis*, for appellees C.D. and B.D.

*Yeura R. Venters*, Public Defender, and *David L. Strait*, for  
appellant A.D.

*Caitlin E. Barbee*, Guardian ad litem for L.D.

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APPEAL from the Franklin County Court of Common Pleas,  
Division of Domestic Relations, Juvenile Branch

KLATT, P.J.

{¶ 1} Appellant, A.D., the mother of L.D., appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, granting legal custody of L.D. to his maternal grandparents, C.D. and B.D. Because the trial court did not abuse its discretion, we affirm that judgment.

**I. Factual and Procedural Background**

{¶ 2} On June 17, 2010, a complaint was filed in the trial court which alleged that L.D., born September 30, 2005, was an abused, neglected, and dependent child. Specifically, the complaint alleged that on or about January 6, 2010, L.D. was in the

custody of his father, J.N., when he received second-degree burns on his hands and that J.N. gave conflicting stories about how the burns were sustained. Further examination discovered bruises on other parts of the child's body, including the inside of his thighs and on his scrotum. The complaint noted that his bruises were not consistent with accidents or routine play, and that L.D. had been seen three years earlier with similar injuries. As a result of his injuries, a safety plan was prepared and L.D. went to live with C.D. and B.D.

{¶ 3} The trial court awarded temporary custody of L.D. to Franklin County Children Services ("FCCS"). After an uncontested adjudicatory hearing, the trial court found L.D. to be an abused child as defined in R.C. 2151.031(D). The trial court dismissed the other allegations of neglect and dependency at the state's request. Maternal grandparents subsequently filed a motion for an award of legal custody of L.D., arguing that such custody was in the child's best interest because neither of his biological parents were equipped to care for and raise L.D.

{¶ 4} After weeks of hearings on the motion for legal custody, a magistrate concluded that the grandparents proved by clear and convincing evidence that an award of legal custody of L.D. to them was in the child's best interest. A.D. filed objections to the magistrate's decision. The trial court overruled those objections and "wholeheartedly" adopted the magistrate's decision that it was in the child's best interest to place him in the legal custody of the maternal grandparents.

## **II. The Appeal**

{¶ 5} A.D. appeals the trial court judgment and assigns the following error:

The trial court committed reversible error by placing the minor child L.D. in the legal custody of his maternal grandparents.

### **A. Standard of Review**

{¶ 6} A.D. appeals from the trial court's decision to grant legal custody of her child to his maternal grandparents. 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). In determining whether to grant legal custody to the parent or movant, the court must comply with R.C. 2151.42, which requires the court to consider the best interest of the child in making the custody determination. R.C. 2151.42(A); *In re Bouska*, 5th Dist. No. 2007AP090063, 2008-Ohio-

3277, ¶ 37 (on appeal from an award of custody to grandparents, focus is on best interest of child).

{¶ 7} Legal custody where parental rights are not terminated is not as drastic a remedy as permanent custody. *In re D.H.*, 10th Dist. No. 11AP-761, 2012-Ohio-2272, ¶ 9; *In re D.R.*, 12th Dist. No. CA2005-06-150, 2006-Ohio-340, ¶ 8. Unlike a grant of permanent custody, when a parent loses legal custody of a child, the parent retains certain residual parental rights and also retains the right to request return of legal custody in the future. *In re D.H.* at ¶ 8. Therefore, the trial court's standard of review in legal custody proceedings is not clear and convincing evidence, as it is in permanent custody proceedings, but is merely preponderance of the evidence. *In re D.P.*, 10th Dist. No. 05AP-117, 2005-Ohio-5097, ¶ 52, citing *In re Nice*, 141 Ohio App.3d 445, 455 (7th Dist.2001). Preponderance of the evidence means evidence that is more probable, more persuasive or of greater probative value. *In re D.R.* at ¶ 9; *In re D.P.* at ¶ 52.

{¶ 8} On appeal, we will not reverse an award of legal custody absent an abuse of discretion. *In re D.H.* at ¶ 9, citing *In re Gales*, 10th Dist. No. 03AP-445, 2003-Ohio-6309, ¶ 12-13. Although an abuse of discretion is typically defined as an unreasonable, arbitrary, or unconscionable decision, *State v. Beavers*, 10th Dist. No. 11AP-1064, 2012-Ohio-3654, ¶ 8, we note that no court has the authority, within its discretion, to commit an error of law. *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶ 70.

### **B. Did the Trial Court Abuse its Discretion?**

{¶ 9} A.D. argues that the trial court's decision was an abuse of discretion because there was no evidence that she ever abused L.D. and there was no proof that her home was an inadequate environment for L.D. or that she was incapable of providing adequate parental care.<sup>1</sup> We disagree.

{¶ 10} While A.D. correctly notes the state of the evidence presented at the hearings in this case, she omits other testimony that was presented indicating serious concerns the trial court could have with her receiving legal custody of L.D. Significantly, A.D.'s relationship with her now-fiancee, D.H., who she now lives with, D.H. himself and

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<sup>1</sup> A.D. also takes issue with the impact of an earlier decision to suspend her visitation with L.D. pending trial. A.D., however, has not assigned that decision as error and it is therefore not before the court. This court address assignments of error, not mere arguments.

his temperament and abusive conduct toward L.D., L.D.'s previous bruises sustained while A.D. was dating another man, A.D.'s refusal to accept her son's allegations of physical abuse even after admitting that D.H. hit her son in the mouth on at least one occasion, and her apparent immature and indifferent attitude towards being a mother when involved with boyfriends. In addition to the concerns about A.D., there is significant testimony highlighting the positive role of the maternal grandparents in L.D.'s life. L.D. has lived with his maternal grandparents for most of his life and they have been consistent caregivers during that time, while A.D. has not been so consistent. No witness expressed any concerns with their care for L.D. The guardian ad litem and L.D.'s biological father both believe that an award of legal custody to the maternal grandparents would be in the child's best interest. In light of this evidence, we cannot say that the trial court abused its discretion by concluding that an award of legal custody of L.D. to his maternal grandparents was in the child's best interest.

### **III. Conclusion**

{¶ 11} Having concluded that the trial court did not abuse its discretion, we overrule A.D.'s assignment of error and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

*Judgment affirmed.*

TYACK and BROWN, JJ., concur.

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