

IN THE COURT OF APPEALS
 TWELFTH APPELLATE DISTRICT OF OHIO
 PREBLE COUNTY

IN THE MATTER OF:	:	
A.L.H.	:	CASE NO. CA2010-02-004
	:	<u>OPINION</u>
	:	11/8/2010
	:	
	:	

APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS
 JUVENILE DIVISION
 Case No. 15542

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RINGLAND, J.

{¶1} Appellant (mother) appeals the decision of the Preble County Court of Common Pleas, Juvenile Division, granting legal custody of her daughter, A.L.H., to the child's maternal aunt (aunt). For the reasons outlined below, we affirm the juvenile court's decision. Mother gave birth to A.L.H. on June 6, 2007. Shortly thereafter, mother

began serving a twelve-month prison sentence for a felony escape charge. During mother's incarceration, A.L.H. lived with her father.

{¶2} In September 2008, mother sought the assistance of the Preble County Job and Family Services, Children Services Division (hereinafter, "the Agency"), based on her concerns that father was no longer taking adequate care of A.L.H. Upon receipt of mother's request, the Agency conducted an investigation and found that father had been evicted from his home and was living with A.L.H. in a barn lacking basic facilities. As a result of this discovery, the Agency took A.L.H. from her father and placed her with aunt.

{¶3} In October 2008, the Agency filed a complaint alleging A.L.H. was a neglected and dependent child based on father's suspected drug activity and mother's incarceration. In January 2009, the trial court found A.L.H. to be a dependent and neglected child and granted temporary custody to the Agency. A.L.H. continued to reside at aunt's home.

{¶4} Following mother's release from prison, the Agency formulated a case plan to reunify her with A.L.H. The Agency initially approved supervised visitation between A.L.H. and mother, which gradually led to unsupervised visits at mother's residence. The Agency subsequently terminated mother's visitation upon discovering she had resumed a relationship with father.

{¶5} In September 2009, the Agency moved to place legal custody of A.L.H. with aunt. After a set of hearings, the juvenile court issued a decision and order granting the Agency's motion and awarding legal custody of A.L.H. to aunt. Mother filed an appeal raising a single assignment of error.

{¶6} "THE COURT'S BEST INTEREST ANALYSIS IMPROPERLY EVALUATED THE TOTALITY OF THE CIRCUMSTANCES AND WENT AGAINST THE

PREPONDERANCE OF THE EVIDENCE WITH AN ARBITRARY AND UNREASONABLE DECISION[.]"

{¶7} In her sole assignment of error, mother argues the juvenile court's decision to award legal custody to aunt was unreasonable and arbitrary and not supported by a preponderance of the evidence. We disagree.

{¶8} "After a child is adjudicated abused, neglected, or dependent, the [juvenile] court may award legal custody to a nonparent upon a demonstration by a preponderance of the evidence that granting legal custody to the nonparent is in the child's best interest." *In re C.K.*, Butler App. No. CA2008-12-303, 2009-Ohio-5638, ¶10, citing R.C. 2151.353(A)(3) and *In re Nice* (2001), 141 Ohio App.3d 445. "A preponderance of the evidence is 'evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.'" *C.K.* at ¶10, quoting *In re M.D.*, Butler App. No. CA2006-09-223, 2007-Ohio-4646, ¶26.

{¶9} A juvenile court must consider all relevant factors, including those enumerated in R.C. 3109.04(F)(1), in making a best interest determination. Pursuant to R.C. 3109.04(F)(1) these factors include, but are not limited to: the wishes of the parents; the child's wishes and concerns, if interviewed; the child's interaction and interrelationship with other family members or others who may significantly affect the child's best interest; the child's adjustment to home, school and community; the mental and physical health of all persons involved; the likelihood that the caregiver would honor and facilitate or had honored and facilitated visitation and parenting time; whether support orders have been followed; whether household members or parents have been convicted or pled guilty to certain offenses; and whether a parent intends to establish an out of state residence.

{¶10} We review a juvenile court's decision in custody cases under an abuse of

discretion standard. *C.K.*, 2009-Ohio-5638 at ¶11, citing *Davis v. Flickinger*, 77 Ohio St.3d 415, 416-417, 1997-Ohio-260. Abuse of discretion implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. "Given the nature and impact of custody disputes, the juvenile court's discretion will be accorded paramount deference, because the [] court is best suited to determine the credibility of testimony and integrity of evidence." *Flax v. Wise*, Fayette App. No. CA2007-05-017, 2008-Ohio-3076, ¶10, citing *Gamble v. Gamble*, Butler App. No. CA2006-10-265, 2008-Ohio-1015, ¶28.

{¶11} Mother argues the juvenile court abused its discretion in awarding legal custody of A.L.H. to aunt. First, mother argues the evidence demonstrated that her home was an appropriate environment for the child. Second, mother argues the juvenile court placed too much emphasis on her relationship with father, especially in light of the fact that father is now incarcerated. Finally, mother argues the juvenile court ignored her testimony that aunt abused her as a child and that aunt lived with a man with a history of drug dependence.

{¶12} After careful review of the record, we find the juvenile court did not abuse its discretion in finding it was in the best interest of the child to grant legal custody of A.L.H. to aunt. The juvenile court clearly considered all relevant statutory factors in making this decision. See R.C. 3109.04(F). Moreover, the juvenile court's decision to make aunt legal custodian is supported by a preponderance of the evidence.

{¶13} The evidence offered shows that A.L.H. is "thriving" at aunt's house, where she has resided since October 1, 2008. A.L.H. also attends a small day care center and appears developmentally stable. While aunt and mother have a contentious relationship, there is no evidence that aunt willfully hinders mother's contact with A.L.H. In fact, the evidence demonstrates aunt's willingness to create a "co-parenting

relationship" with mother in the future, and to permit mother to have certain autonomies over A.L.H.'s upbringing, including choosing a church for the child.

{¶14} CASA representative, Stephanie Garrett, and Julia Millikin, an Agency caseworker, also offered opinions regarding aunt's ability to raise A.L.H. Specifically, Millikin testified aunt adequately provided for all of A.L.H.'s basic needs, and explained A.L.H. was "very clearly bonded" with aunt and her live-in boyfriend. While Millikin acknowledged a bond also existed between A.L.H. and mother, she explained aunt's home was stable, and in her opinion, living with aunt better served A.L.H.'s interests. Similarly, Garrett testified aunt's home was clean and adequately stocked with food and toys, and she had no concerns regarding the people living in aunt's home.

{¶15} Although mother informed the juvenile court that aunt had abused her as a child, the court found mother's testimony lacked credibility. As credibility is a province of the trier of fact, we will not disturb the juvenile court's findings. See *In re A.B.*, Butler App. No. CA2009-10-257, 2010-Ohio-2823, ¶30; *In re P.R.*, Butler App. No. CA2008-12-297, 2009-Ohio-4135, ¶14. Moreover, we find it suspect that mother's allegations of abuse did not surface until more than a year after the child was placed in aunt's custody.

{¶16} While there is no evidence that aunt had mental and physical health issues, there are numerous ongoing concerns regarding mother's mental and physical health issues. The juvenile court noted mother suffers from spina bifida and degenerative disc disease, which require strong pain medications and have continually impeded mother's ability to maintain stable employment. In addition, mother admitted to having "ongoing mental health issues" since the age of fourteen.

{¶17} Moreover, mother's psychological evaluation indicated her "inconsistent medication management and mental health treatment * * * adversely impacted her psychological functioning and abilities," and that individuals with her psychological

profile were "likely to be plagued by worry to the degree that [their] ability to concentrate and attend is significantly compromised." Finally, the evaluation indicated mother saw "little need" to modify her behavior, and overall, her motivation for treatment was "somewhat lower" than individuals in similar treatment.

{¶18} Furthermore, Millikin testified regarding her concerns about mother's "emotional instability" and difficulty managing stressors in her life. In particular, Millikin recalled several instances in 2009 when mother called to cancel visitation with A.L.H. During one of these calls, mother "cursed [Millikin] out and said she couldn't attend the [visitation]," but called back fifteen minutes later and calmly requested visitation.

{¶19} The court also heard testimony from Jayne Jacklin of Safe Team, a home-based service that assists families in reunification efforts. From July to August 2009, Safe Team developed techniques addressing mother's mental health issues and implemented plans to keep mother's apartment safe for A.L.H. However, on August 17, 2009, Safe Team terminated its involvement after mother shut herself in her bedroom while A.L.H. was "pounding on the door for her mommy." Jacklin testified when mother exited the bedroom, she acted "very cold" towards A.L.H.

{¶20} In addition, mother has a history of unstable relationships, and a tendency to prioritize these relationships over the needs of her children. Aunt testified mother was involved in several of these relationships, and had even threatened to kill herself in front of another daughter after a fight with a previous boyfriend. Further, Millikin testified mother failed to make good choices for A.L.H., in part because she placed her own needs ahead of her child's.

{¶21} The juvenile court was concerned with mother's inability to avoid father despite numerous warnings against continuing the violent relationship. Indeed, mother even admitted to conceiving a second child with father during a period that she was to

have "no contact" with him, pursuant to her civil protection order. In addition, mother admitted to visiting father in the Warren County Jail on several occasions following his most recent drug-related arrest. Mother also told Jacklin she had permitted father into her apartment in violation of her protection order, because "where [father] was concerned, she couldn't say no to him."

{¶22} Finally, the juvenile court relied on several additional factors in rendering its custody determination, including A.L.H.'s stable relationship with aunt, mother's irresponsible behavior during visitation, and mother's mental and physical health, emotional issues, financial instability, history of unemployment, social and family issues, and her criminal history, which included child endangerment. The additional remaining factors also advocate strongly in favor of awarding legal custody of A.L.H. to aunt, and not to mother. Thus, despite mother's claim that her relationship with father was the "entire basis for the [juvenile court's] concern," this is clearly not the case.

{¶23} Although it appears mother has made some strides towards improvement through therapy and consistent psychotropic medications, these considerations, alone, do not invalidate the juvenile court's decision.

{¶24} Accordingly, we conclude the juvenile court did not abuse its discretion in awarding legal custody of A.L.H. to aunt. Moreover, the juvenile court's decision was supported by a preponderance of the evidence.

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

{¶26} Judgment affirmed.

YOUNG, P.J., and POWELL, J., concur.