



{¶2} We previously set forth the relevant facts of the present case in *In re L.E.N.*, Clinton App. No. CA2009-03-002, 2009-Ohio-6175. A summation of these facts follows.

{¶3} In October 2004, Father filed a complaint for paternity and visitation with the juvenile court regarding the minor child L.E.N., who was born on July 16, 2003. Father and Mother reached a mediated agreement wherein Father was designated as L.E.N.'s natural and biological parent and was awarded visitation rights. Thereafter, Father filed a petition for custody of L.E.N., and an order was issued on August 10, 2007, which established a temporary shared parenting plan between Father and Mother. A few days before the original final hearing date, Father filed an emergency motion for custody of L.E.N., alleging that L.E.N. was in danger at Mother's residence. Father also obtained a Civil Protection Order (CPO) against Mother and the child's Stepfather.

{¶4} At hearings on the custody motion, the court heard testimony from Father, Mother, the court-appointed guardian ad litem, paternal and maternal relatives, the police, a Clinton County Children Services (CCCS) caseworker, and psychotherapist Francis E. Eckerson, M.Ed., LPCC, who conducted an evaluation of L.E.N. Eckerson testified that L.E.N. was an abused child suffering from post-traumatic stress disorder, and it was her belief that some of the abuse was perpetrated by Stepfather. Father filed a motion, requesting that the court review Stepfather's juvenile record so that all potential material information could be considered prior to determining what was in L.E.N.'s best interest. The trial court denied the motion and determined it was in L.E.N.'s best interest to designate Mother as the residential parent and legal custodian, with Father having standard visitation.

{¶5} Father appealed the juvenile court's decision in *In re L.E.N.*, Clinton App. No. CA2009-03-002, 2009-Ohio-6175. On appeal, this court reversed the juvenile court's decision and remanded the case to the juvenile court for an in camera review of Stepfather's

juvenile record for a determination of whether the record is relevant in determining L.E.N.'s best interest.

{¶6} On remand, the magistrate conducted an in camera review of Stepfather's juvenile record, and made a determination that Stepfather's juvenile record was relevant, but not dispositive. The magistrate reviewed its previous decision in light of Stepfather's juvenile record and found that while good cause existed to review the juvenile record in camera, the record was not admissible under Ohio Rules of Evidence. The magistrate found it was in L.E.N.'s best interest to designate Mother as the residential parent and legal custodian, with Father having standard visitation. Father objected to the magistrate's decision and asked the court to review the order and permit Stepfather's juvenile record to be entered in the case as a sealed and permanent exhibit. The juvenile court overruled Father's objections on October 29, 2010. Father timely appealed, alleging a sole assignment of error.

{¶7} Assignment of Error No. 1:

{¶8} "THE DECISION GOES AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AS THE EVIDENCE PERTAINS TO THE FACTORS LISTED IN R.C. 3109.04(F)(1)(2) AND MATTERS RELEVANT TO THE BEST INTEREST OF L.E.N."

{¶9} Within his sole assignment of error, Father raises four essential arguments: (1) the juvenile court failed to recognize that Mother did not meet her affirmative legal duty of protecting L.E.N. from substantial risks to her health and safety; (2) the juvenile court placed improper weight on evidence that penalized Father for past misconduct; (3) the juvenile court failed to give proper weight to the testimony of Eckerson; and (4) the juvenile court failed to properly weigh Stepfather's juvenile record in light of Eckerson's testimony. For purposes of discussion and because they are interrelated, we will address Father's arguments in a consolidated fashion.

{¶10} An appellate court reviews a juvenile court's custody determination for an abuse of discretion. *In re Brown* (2001), 142 Ohio App.3d 193, 198. An abuse of discretion constitutes more than an error of law or judgment; it requires a finding that the trial court acted unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217, 219. "The discretion which a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned." *In re J.M.*, Warren App. No. CA2008-12-148, 2009-Ohio-4824, ¶17, quoting *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74.

{¶11} In order to determine the best interest of a child, R.C. 3109.04(F)(1) requires the trial court consider all relevant factors. These factors include, but are not limited to: the wishes of the parents; the child's interactions and interrelationships with parents, siblings, and other persons 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 in the situation; the parent more likely to honor and facilitate visitation; and whether one parent has denied the other parenting time. See R.C. 3109.04(F)(1).

{¶12} A review of the record indicates that the juvenile court engaged in a detailed evaluation of the relevant factors set forth in R.C. 3109.04(F)(1) before awarding custody of L.E.N. to Mother. The juvenile court found that L.E.N. lacked sufficient reasoning ability to express her desires and concerns regarding the allocation of parental rights and responsibilities. From testimony and evidence, the juvenile court found L.E.N. interacts well and enjoys a good interrelationship with both of her parents, their spouses, her siblings, and her grandparents. Although there was testimony by Eckerson which contradicted that of other witnesses concerning L.E.N.'s interrelationship with Stepfather, the juvenile court gave little weight to her expert opinion. While there was a sufficient foundation for Eckerson's diagnosis that L.E.N. is suffering from post-traumatic stress disorder and may have

experienced abuse, the juvenile court found an insufficient foundation based on the information or data received by Eckerson that would allow her to render an opinion about the identity of a perpetrator of abuse. The juvenile court further found that the only basis for Eckerson's opinion on the matter would be based on L.E.N.'s veracity of representations, and would therefore be impermissible.

{¶13} The juvenile court found no evidence of mental or physical health issues affecting either Mother or Father. The court found Mother to be very involved in L.E.N.'s education. While in Mother's care, L.E.N. attends school regularly. Conversely, when in Father's care, L.E.N. has not consistently attended school. The juvenile court further found that Mother was the parent more likely to honor and facilitate court-approved parenting time rights. In reaching this determination, the juvenile court took notice of Father's ex-parte CPO. The court found that the CPO effectively prevented Mother from having parenting time with L.E.N., even though Father testified at the CPO hearing that he did not believe Mother did hurt or would hurt L.E.N.

{¶14} In addition to the factors set forth in R.C. 3109.04(F)(1), the juvenile court also considered other relevant factors, such as the parties numerous claims against each other alleging abuse and neglect, reports submitted by the CCCS and guardian ad litem, and Stepfather's juvenile record. Specifically, the court examined Father's ex-parte CPO, which alleged that Stepfather abused L.E.N. by burning the child with cigarettes. It considered the fact that the CPO was dismissed after a full hearing and that Stepfather passed a polygraph test to the satisfaction of CCCS. The court further considered reports by CCCS that Father's home contained dangerous items which were within reach of small children, and reports by the guardian ad litem which expressed concerns about the cleanliness, safety, and appropriateness of Father's home. Finally, the court reviewed, in camera, Stepfather's juvenile record and found it to be relevant, but not dispositive. Consideration of all the

evidence presented at the December 3, 2007 and February 19, 2008 custody hearings, together with Stepfather's juvenile record, led the court to conclude that it is in L.E.N.'s best interest that Mother be designated as the residential parent and legal custodian.

{¶15} After a review of the record, we cannot say that the juvenile court abused its discretion in granting custody to Mother. Although Father maintains that placing L.E.N. in Mother's care creates a danger to L.E.N.'s health and safety, there is evidence to support the juvenile court's decision finding the contrary. Father contends that Mother knowingly allows L.E.N. to be in dangerous proximity to individuals who he believes have abused L.E.N. in the past, most notably Stepfather and a former household member who now lives just a few doors down from where Mother resides. However, evidence submitted to the juvenile court demonstrates that no criminal charges have been brought against the former household member. Moreover, there is evidence that Mother immediately removed L.E.N. from the premises where the abuse allegedly occurred and immediately sought a CPO against the former household member.

{¶16} Likewise, there have been no criminal charges brought against Stepfather for abusing L.E.N. Father's concerns that Stepfather burned L.E.N.'s back with a cigarette were unsubstantiated. The CPO taken out against Stepfather was dismissed. Stepfather passed a polygraph test to the satisfaction of CCCS. A review of L.E.N.'s medical records indicates that the treating doctor was unable to conclude what made the mark on L.E.N.'s back. According to the doctor, the mark could have been from a bug bite, from dry skin, or perhaps from a healing burn. Further, a written report by the guardian ad litem states that she did not believe that L.E.N. had been burnt, and she was of the opinion that L.E.N. may have been coaxed on what to say in regard to the alleged incident.

{¶17} Regardless of the fact that no charges have been brought against Stepfather, Father continues to maintain that L.E.N. has been abused by Stepfather while in Mother's

home. Father relies heavily on the testimony of Eckerson in support of his position. He contends that the juvenile court did not give enough weight to Eckerson's findings, especially in light of Stepfather's juvenile record.

{¶18} While the examination of juvenile adjudications is not explicitly set forth in R.C. 3109.04(F)(1), this section of the statute permits the court to consider "*all relevant factors.*" (Emphasis added.) While examining one's juvenile record is permissible under R.C. 3109.04(F)(1), admitting the juvenile record into evidence is not necessarily permitted under the Ohio Rules of Evidence. "Evidence of juvenile adjudications is not admissible except as provided by statute enacted by the General Assembly." Evid.R. 609(D). Further, "[e]vidence of a judgment rendered and the disposition of a child under the judgment is not admissible to impeach the credibility of the child in any action or proceeding." R.C. 2151.357(H). In the present case, the juvenile court correctly determined that Stepfather's juvenile record is not admissible under the Ohio Rules of Evidence. Further, it was within the court's discretion to find that "[F]ather's request to make that record an exhibit in the instant case file is outweighed by juvenile law confidentiality considerations and should be denied."

{¶19} Although the court found Stepfather's juvenile record inadmissible, the court clearly took the record into consideration. The record reflects that the juvenile court examined Stepfather's juvenile record and found it relevant, but not dispositive. Our own review of the record indicates that the juvenile court acted within the bounds of its discretion in reaching this determination.

{¶20} The juvenile court's determination that Stepfather's juvenile record was of some relevance does not necessarily give Eckerson's testimony and expert opinion more credibility. In the present case, the juvenile court found no credible independent corroborating evidence to support Eckerson's testimony that Stepfather abused L.E.N. The court found that the only evidence Eckerson had to form such an opinion about the identity of Stepfather as the

perpetrator of abuse came from her own determination of the veracity of L.E.N.'s representations, and, as such, is impermissible.

{¶21} The law on this issue is well established. While an expert witness may testify as to whether a child was abused following an examination and interview, the expert witness "may not testify as to the expert's opinion of the veracity of the statements of a child declarant." *State v. Boston* (1989), 46 Ohio St.3d 108, 129, modified on other grounds by *State v. Dever* (1992), 64 Ohio St.3d 401. Other than Eckerson's own testimony, the record is devoid of any evidence suggesting that Stepfather abused L.E.N. Because the record does not contain a permissible evidentiary foundation for Eckerson's testimony that Stepfather was a perpetrator of abuse, we find the juvenile court gave proper weight to Eckerson's testimony.

{¶22} Father further contends that Mother places L.E.N.'s health and safety at risk by permitting L.E.N. to reside in an overpopulated home that is overrun by family pets. Father seems to be especially concerned that while in Mother's care, L.E.N. will be residing in a three bedroom, single-wide trailer with six other people and with eight cats. Because L.E.N. is sometimes scratched by the cats, Father is concerned that L.E.N. may succumb to cat scratch fever. Father feels he has created an environment more suitable for L.E.N. and that the juvenile court failed to take notice of the improvements he has made to his home to ensure L.E.N.'s safety.

{¶23} The record indicates that Mother provides a safe, clean, and appropriate home for L.E.N. The child shares a bedroom with her two siblings, Mother and Stepfather share a second bedroom, and Stepfather's mother and her fiancé share the third bedroom. In her report recommending Mother be designated the residential parent and legal custodian, the guardian ad litem specifically indicates that while Mother's home is crowded, it is appropriate for L.E.N. There is nothing in the guardian ad litem's report regarding a concern for L.E.N.'s

safety due to the cats residing in Mother's home. Further, the juvenile court found that there was no foundation laid for the court to draw any conclusion about any medical risks or dangers posed by the cats.

{¶24} The record further indicates that there are concerns about the cleanliness, safety and appropriateness of Father's home. Not only were there reports of dangerous items being left within L.E.N.'s reach, but the guardian ad litem testified at the initial final custody hearing, held on December 3, 2007, that the house was dirty, that laundry, dishes, and alcoholic beverage cans were piled high throughout the house, and that the ceiling above L.E.N.'s bed was in an unsafe condition. Father presented evidence at the February 19, 2008 final custody hearing that he had remedied many of these problems following the guardian ad litem's last visit to his home, and he called his mother and grandmother to testify to that effect. Father's mother testified that Father had recently made many improvements to his home, which included putting up a new ceiling, new front porch, new wall paneling, improving the home's plumbing, and having a lock placed on the family's medicine cabinet. Father contends that the court did not take these improvements into consideration and gave too much weight to his past misconduct.

{¶25} Father was provided with the opportunity to present evidence detailing his home improvements. The court had the right to consider this evidence in light of the testimony of the guardian ad litem and her report. Issues relating to the credibility of witnesses and the weight to be given the evidence are primarily for the trier of fact. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80. While we commend Father for taking the initiative to make improvements to his home, based on evidence in record, we cannot say that juvenile court abused its discretion in maintaining concerns about the environment L.E.N. would be placed in if custody were awarded to Father.

{¶26} Based on the foregoing, we conclude that the juvenile court did not abuse its discretion. The juvenile court's decision was supported by competent, credible evidence. Father's assignment of error is overruled.

{¶27} Judgment affirmed.

HENDRICKSON, P.J., and RINGLAND, J., concur.

[Cite as *In re L.E.N.*, 2011-Ohio-1722.]