



{¶2} B.L.D., dob March 28, 1998, was adjudicated a delinquent child in juvenile court by reason of a theft offense.

{¶3} At the same hearing, the court made findings related to the child's condition and environment and found her a dependent child. Specifically, the court noted that the father, L.D., had not been involved in the child's life and had a criminal history that included domestic violence and illegal drugs. The court found that the mother, T.D., the custodial parent, was on probation and had a "lengthy criminal history" that included a number of theft offenses. The court noted that mother and child were not cooperating with the court's diversion program, and it was reported that numerous individuals with criminal backgrounds, including a sex offender, were spending time at mother's residence. Father was given visitation and Fayette County Children's Services was ordered to provide protective supervision of the child in mother's home.

{¶4} At a subsequent hearing, the juvenile court found that the child's mother made some progress on the case plan, but "much remains undone." The court was told that mother had been arrested for theft in another county and the impact of that arrest on her current probation was not known. The court indicated that it had concerns that mother was continuing to associate with individuals who were not a "positive influence" on both mother and daughter. Children's services was granted temporary custody and the agency placed the child with her father. At a review hearing in August 2010, the juvenile court gave father legal custody of the child.

{¶5} Both the child and mother now appeal; we have consolidated their appeals. While mother did not list assignments of error, the arguments presented by both parties are the same and will be addressed together.

{¶6} The gist of the appeal in this case is that the juvenile court erred in granting legal custody without providing mother notice of the possibility of such determination and

when father had not filed a motion for custody before the review hearing. Both also challenge the best interest determination of the juvenile court.

{¶17} Turning first to the arguments regarding due process and the lack of a legal custody motion, we are mindful that the right to procedural due process is required by the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution. *In re B.L.*, Madison App. No. CA2008-05-013, 2008-Ohio-6385, ¶18, citing *State ex rel. Plain Dealer Publishing Co. v. Floyd*, 111 Ohio St.3d 56, 2006-Ohio-4437, ¶45. Procedural due process requires the government to give reasonable notice and a meaningful opportunity to be heard to those whose interests in life, liberty, or property are adversely affected by a governmental action. *Atkinson v. Grumman Ohio Corp.* (1988), 37 Ohio St.3d 80, 85.

{¶18} According to the record, the award of legal custody occurred at a review hearing of B.L.D.'s case. We note that R.C. 2152.19(A)(1) states that if a child is adjudicated a delinquent child, the juvenile court may make orders of disposition, which include any order authorized by R.C. 2151.353. R.C. 2151.353(A) provides for dispositional alternatives for a child [found to be abused, neglected or dependent] and those dispositional alternatives include protective supervision, temporary custody, and legal custody. However, in this case, the juvenile court took the additional step of finding B.L.D. a dependent child. Therefore, her case squarely falls within the dispositional alternatives of R.C. 2151.353.

{¶19} R.C. 2151.353(A)(3) states that if a child is adjudicated abused, neglected, or dependent, the court may award legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings. See, also, R.C.

2151.417 (court that issues dispositional order under R.C. 2151.353 may review at any time child's placement and custody arrangement).

{¶10} This court stated in *In re Motter* (June 15, 1998), Butler App. No. CA96-12-269, 1998 WL 314362, that, given the case law establishing a parent's inherent right to custody, the parent was not required under R.C. 2151.353 to file a motion for legal custody before the hearing. We are aware of this court's decision in *In re L.R.T.*, 165 Ohio App.3d 77, 2006-Ohio-207, wherein this court reversed a judgment when a relative did not file a motion for legal custody before the hearing. *In re L.R.T.* did not overrule or abrogate *In re Motter*, which was a case that dealt with the grant of legal custody to a parent, as opposed to a nonparent, so we will continue to follow *In re Motter*. But, see, *In re Sauers*, Seneca App. No. 13-07-04, 2007-Ohio-3342. See, also, *In re Moorehead* (1991), 75 Ohio App.3d 711, 717 (court construes the limitation in R.C. 2151.353(A)(3) as merely providing that the trial court may not award custody of a child to a nonparent who has not sought custody before the hearing resulting in the award, reasoning that if the court should award custody to a custodian who was not within the contemplation of any of the parties as a potential custodian when the custody issue was heard, then the parties will not have had adequate notice of the proposed custodian at the hearing at which the custody issue was considered).

{¶11} The record indicates that no objections were voiced at the hearing regarding notice or an opportunity to be heard. Either mother or child could have requested a continuance to bring additional witnesses before the court, but they did not.

{¶12} Therefore, we find that it was not necessary for father to move for legal custody before the hearing, that mother was afforded her due process rights as she was on notice that custody of the child was at issue in this case and father, as a parent, was a potential custodian, and mother was given an opportunity to be heard.

{¶13} And finally, as to the argument relative to the best interest of the child, mother and child argue that father has a history of domestic violence, the bond between mother and child is strong, and mother was not given enough time with the case plan.

{¶14} The juvenile court indicated that children's services requested that its custody be terminated. The court found that: father's home is appropriate and the child has been living with father since earlier in the summer; the child is having daily phone contact, weekly visitation, and some internet communication with mother; the child has consistently expressed the desire to live with mother, the child has reportedly "befriended adult males" on the internet while in the custody of either parent; mother obtained a job at a fast-food restaurant, but didn't know how many hours she would work. The court found that mother is attending counseling and parenting classes; mother had her benefits from the Department of Job and Family Services "sanctioned." The court stated that children's services and a diversion officer have "observed improvements with the minor child" since the child has been residing with father.

{¶15} We have reviewed the findings and conclusions of the juvenile court and the concerns noted in this consolidated appeal and cannot say the court abused its discretion when it found the award of legal custody to father to be in the child's best interest. In custody matters, a juvenile court's discretion will be accorded wide deference, because the court is best suited to determine the credibility of the testimony and the integrity of the evidence. *In re A.L.H.*, Preble App. No. CA2010-02-004, 2010-Ohio-5425, ¶10; see, also, *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 1997-Ohio-260; R.C. 3109.04; see R.C. 2151.42.

{¶16} The assignments of error of mother and B.L.D. are not well-taken and are overruled.

{¶17} Judgment affirmed.

HENDRICKSON and HUTZEL, JJ., concur.