

Children Services Division (BCCS), filed a complaint alleging X.B., born three months premature on February 13, 2010, was a neglected, abused and dependent child. The complaint was filed after it was discovered X.B.'s biological mother, M.B. (Mother), had left X.B. in the care of her then live-in boyfriend, a recovering crack and heroin addict, who admittedly smoked crack while babysitting X.B. After the complaint was filed, the juvenile court awarded emergency custody of X.B. to Grandmother.

{¶ 3} On December 17, 2012, by stipulation of the parties, X.B. was adjudicated an abused and dependent child, with the allegations of neglect withdrawn, naming Mother's then live-in boyfriend as the perpetrator of the abuse. Temporary custody of the child was then awarded to Grandmother, whereas Father received extended visitation time. A case plan was then established. As part of that case plan, it was alleged Father "has some diagnosis that may prevent him from parenting [X.B.] on an ongoing basis." These included, among others, allegations of mild autism, paranoid schizophrenia, and Tourette's syndrome. As a result, Father was ordered to participate in counseling, take any prescribed medications, and submit to random drug screenings.

{¶ 4} On February 25, 2013, Father filed a motion for legal custody of X.B. Approximately one month later, on April 4, 2013, Grandmother also filed a motion for legal custody of X.B. Mother then filed her consent to change legal custody of X.B. to Grandmother. A juvenile court magistrate subsequently held a three-day hearing on the parties' competing motions for legal custody, which ultimately concluded on March 25, 2014. During this time, the magistrate heard testimony from a multitude of witnesses, including, among others, Mother, Father, and Grandmother, as well as Father's counselor, Nicole Hall, and the child's guardian ad litem.

{¶ 5} On May 5, 2014, after considering the guardian ad litem's report and recommendations, as well as numerous other exhibits, including a lengthy history of Father's

various diagnosed mental illnesses, the magistrate issued a decision granting legal custody to Grandmother. As part of that decision, the magistrate found Father had been diagnosed with "serious mental health concerns," including episodic mood disorder, pervasive development disorder, ADHD, Tourette's syndrome, and mild mental retardation, which he "is essentially ignoring because he refuses to take medication." The magistrate also found Father, who dropped out of school in the 11th grade, "cannot support himself financially without the assistance of others."

{¶ 6} The magistrate further noted that Father lived with his mother, had never held a job, had no income, had no driver's license, and was alleged to read at a fourth-grade level. The magistrate also found Father was approximately \$3,700 in arrears on his child support. Therefore, although acknowledging the strong bond between Father and X.B., the magistrate nevertheless determined that granting Grandmother legal custody was in the child's best interest. In so holding, the magistrate determined that "as [X.B.] gets older he will require more than [F]ather has the ability to provide."

{¶ 7} On May 13, 2014, Father filed objections to the magistrate's decision, arguing the magistrate's decision to grant legal custody to Grandmother was not in X.B.'s best interest. Father also argued the magistrate's decision was against the manifest weight of the evidence. Thereafter, following a hearing on the matter, the juvenile court issued a decision denying Father's objections, thereby affirming and adopting the magistrate's decision granting legal custody of X.B. to Grandmother in its entirety.

{¶ 8} Father now appeals from the juvenile court's decision granting legal custody of X.B. to Grandmother, raising three assignments of error for review. For ease of discussion, Father's second and third assignments of error will be addressed together.

{¶ 9} Assignment of Error No. 1:

{¶ 10} THE COURT COMMITTED PLAIN ERROR IN ITS ANALYSIS OF THE

APPLICABLE FACTORS WHEN IT AWARDED CUSTODY TO A NON-PARENT WITHOUT FINDING THE FATHER UNFIT AND VIOLATED HIS CONSTITUTIONAL RIGHTS.

{¶ 11} In his first assignment of error, Father argues the juvenile court committed plain error by granting legal custody of X.B. to Grandmother without first finding he was an unfit and unsuitable parent. However, "as this court has repeatedly stated, '[t]he requirement of finding parent unsuitability does not apply to dispositional hearings following an adjudication that the child is abused, dependent, or neglected.'" *In re C.L.T.*, 12th Dist. Butler No. CA2011-04-073, 2012-Ohio-427, ¶ 13, quoting *In re D.R.*, 12th Dist. Butler Nos. CA2005-06-150 and CA2005-06-151, 2006-Ohio-340, ¶ 14. In other words, and as explicitly stated by the Ohio Supreme Court, "[w]hen a juvenile court adjudicates a child to be abused, neglected, or dependent, it has no duty to make a separate finding at the dispositional hearing that a noncustodial parent is unsuitable before awarding legal custody to a nonparent." *In re C.R.*, 108 Ohio St.3d 369, 2006-Ohio-1191, paragraph three of the syllabus; *In re L.H.*, 5th Dist. Muskingum No. CT2013-0017, 2013-Ohio-5279, ¶ 25.

{¶ 12} In this case, it is undisputed that X.B. was adjudicated an abused and dependent child, a fact that the parties, including Father, all stipulated to at the December 17, 2012 hearing. In turn, because X.B. was adjudicated an abused and dependent child, the juvenile court was not required to find Father to be an unfit and unsuitable parent prior to awarding legal custody of X.B. to Grandmother. This is true despite the fact that X.B. was adjudicated an abused and dependent child based primarily on Mother's actions in leaving the child unattended with her then live-in boyfriend, a recovering crack and heroin addict, who admittedly smoked crack while babysitting X.B. See, e.g., *In re T.P.*, 12th Dist. Clinton No. CA2012-02-004, 2012-Ohio-4614, ¶ 17-21 (finding juvenile court did not err by awarding maternal grandmother legal custody without first making a finding that father was an unfit and unsuitable parent even though father was not the reason why the child was adjudicated

dependent); *In re M.D.*, 12th Dist. Butler No. CA2006-09-223, 2007-Ohio-4646, ¶ 13-20 (finding juvenile court was not required to find a mother unsuitable before awarding legal custody of her daughter to the child's maternal grandparents "as the court's previous adjudication of [the child] as abused and dependent implicitly involved a finding of appellant's unsuitability"). Father's first assignment of error is therefore without merit and overruled.

{¶ 13} Assignment of Error No. 2:

{¶ 14} THE COURT PREJUDICIALLY ERRED IN ITS FACTUAL FINDINGS AS APPLIED TO THE STATUTORY BEST INTEREST FACTORS AND ABUSED ITS DISCRETION WHEN IT AWARDED CUSTODY TO DEBRA BARKER FINDING SUCH TO BE IN THE CHILD'S BEST INTERESTS.

{¶ 15} Assignment of Error No. 3:

{¶ 16} THE COURT'S CUSTODY ORDER IS NOT IN THE CHILD'S BEST INTERESTS AND IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 17} In his second and third assignments of error, Father argues the juvenile court abused its discretion by granting legal custody of X.B. to Grandmother as it was not in the child's best interest. Father also argues the juvenile court's decision awarding legal custody to Grandmother was against the manifest weight of the evidence. We disagree.

{¶ 18} Pursuant to R.C. 2151.353(A)(3), if a child has been adjudicated abused, dependent, or neglected, the juvenile 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." Once that motion has been made, 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 L.A.B.*, 12th Dist. Fayette No. CA2012-03-008, 2012-Ohio-5010, ¶ 12, quoting *In re C.L.T.*, 2012-Ohio-427 at ¶ 10. 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." *In re M.M.*, 12th Dist. Fayette No. CA2010-12-034, 2011-Ohio-3913, ¶ 8.

{¶ 19} In order to determine the best interest of a child, R.C. 3109.04(F)(1) requires the juvenile court to consider all relevant factors. *In re L.E.N.*, 12th Dist. Clinton No. CA2010-11-019, 2011-Ohio-1722, ¶ 11. These factors include, but are not limited to: (1) the wishes of the parents; (2) the child's interaction and interrelationship with his parents, siblings, and other persons who may significantly affect the child's best interest; (3) the child's adjustment to home, school and community; (4) the mental and physical health of all persons involved; (5) the likelihood that the caregiver would honor and facilitate visitation and parenting time; and, (6) whether support orders have been followed. *In re A.L.H.*, 12th Dist. Preble No. CA2010-02-004, 2010-Ohio-5425, ¶ 9.

{¶ 20} An appellate court reviews a juvenile court's custody determination for an abuse of discretion. *In re S.K.*, 12th Dist. Butler No. CA2013-06-108, 2014-Ohio-563, ¶ 12. An abuse of discretion implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *In re B.K.*, 12th Dist. Butler No. CA2010-12-324, 2011-Ohio-4470, ¶ 12, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). The discretion which a juvenile 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.*, 12th Dist. Warren No. CA2008-12-148, 2009-Ohio-4824, ¶ 17, quoting *Miller v. Miller*, 37 Ohio St.3d 71, 74 (1988). Thus, "an appellate court affords deference to a judge or magistrate's findings regarding witnesses' credibility." *In re D.R.*, 12th Dist. Butler Nos. CA2005-06-150 and CA2005-06-151, 2006-Ohio-340, ¶ 12.

{¶ 21} Moreover, as it relates to a manifest weight of the evidence challenge, "a reviewing court must determine whether the finder of fact, in resolving conflicts in the evidence, clearly lost his way and created such a manifest miscarriage of justice that the

judgment must be reversed and a new trial ordered." *In re W.A.*, 5th Dist. Muskingum No. CT2013-0002, 2013-Ohio-3444, ¶ 19. In making this determination, "an appellate court is guided by the presumption that the trial court's findings were correct." *In re M.D.*, 12th Dist. Butler No. CA2006-09-223, 2007-Ohio-4646, ¶ 28, quoting *In re Peterson*, 10th Dist. Franklin. No. 01AP-381, 2001 WL 988013, *3 (Aug. 28, 2001). Thus, "[w]here an award of custody is supported by a substantial amount of credible and competent evidence, such an award will not be reversed as being against the weight of the evidence by a reviewing court." *In re T.M.*, 12th Dist. Butler No. CA2007-01-019, 2007-Ohio-6034, ¶ 28, citing *Davis v. Flickinger*, 77 Ohio St.3d 415, 418 (1997).

{¶ 22} After reviewing the record, including a lengthy history of Father's various diagnosed mental illnesses, we find the juvenile court did not abuse its discretion in granting legal custody of X.B. to Grandmother, nor do we find the juvenile court's decision was against the manifest weight of the evidence. As the record reveals, X.B., who at that time was just four years old, had spent a significant portion of his young life under Grandmother's care, both before and after Grandmother had been granted emergency and temporary custody. During this time, Grandmother provided X.B. with a safe and stable home. This includes providing X.B. with his own bedroom, actively participating in X.B.'s weekly therapy sessions, and even beginning the process of enrolling him in pre-school. As Grandmother testified, she "absolutely love[s] [X.B.] to death" and "[t]here's nothing I wouldn't do for his well-being" or "to help him get ahead in life."

{¶ 23} The record also reveals Grandmother has maintained full-time employment, thereby establishing financial stability to provide X.B. with clothing, toys, and other belongings, as well as the opportunity to take X.B. out to eat with his extended family. There was also testimony that Grandmother has taken X.B. to visit a nearby aquarium and train exhibit, both of which he reportedly enjoyed. The record further establishes X.B. has a strong

relationship with Grandmother's long-term live-in boyfriend, C.G., who X.B. affectionately refers to as "papaw." Mother has consented to awarding legal custody of X.B. with Grandmother, believing it to be in the best interest of her son. The guardian ad litem also recommended Grandmother be granted legal custody of X.B.

{¶ 24} On the other hand, although it is clear that Father loves X.B. and has established a strong bond with his son, just as the magistrate found, the record reveals Father has been diagnosed with "serious mental health concerns," including episodic mood disorder, pervasive development disorder, ADHD, Tourette's syndrome, and mild mental retardation, which he "is essentially ignoring because he refuses to take medication." The record also reveals Father had dropped out of school in the 11th grade, lived with his mother, had never held a job, had no income, had no driver's license, and was alleged to read at a fourth-grade level.

{¶ 25} The record also indicates Father did not visit X.B. during his three-month stay in the hospital following his premature birth, nor did he establish consistent visitation with his son during the first few years of his life. In fact, as Father readily admits, Father never attended X.B.'s weekly therapy sessions until well after he filed his motion seeking legal custody. The record further establishes that Father is approximately \$3,700 in arrears on his child support, only recently making nominal \$10 payments from money he received from his mother and sister.

{¶ 26} In light of the foregoing, although Father's desire to have custody of his son is apparent, we find the evidence presented during the three-day hearing firmly establishes that granting Grandmother legal custody of X.B. was within the child's best interest. We also find the juvenile court's decision was not against the manifest weight of the evidence. Simply stated, even if we were to ignore his serious mental health issues, awarding Father legal custody would still not be in X.B.'s best interest considering Father's complete and total

financial reliance on others to provide him with food, shelter, clothing, and transportation. Therefore, having found no abuse of discretion in the juvenile court's decision awarding Grandmother legal custody of X.B., and concluding the juvenile court's decision was not against the manifest weight of the evidence, Father's second and third assignments of error are overruled.

{¶ 27} Judgment affirmed.

M. POWELL, P.J., and HENDRICKSON, J., concur.