

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

IN RE: :
 :
 T.P. : CASE NO. CA2012-02-004
 :
 : OPINION
 : 10/5/2012
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APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 20113072

Virginia Vanden Bosch, 9506 West State Route 73, Wilmington, Ohio 45177, Guardian Ad Litem

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John Kaspar, 130 East Mulberry Street, Lebanon, Ohio 45036, for Appellee-Mother

POWELL, P.J.

{¶ 1} A father appeals the grant of temporary custody of his son to the boy's maternal grandmother, arguing that he is prepared to accept custody and that a custody order to a nonparent is not in the child's best interest. Finding the award of temporary custody to

maternal grandmother in the best interest of the child, we affirm the juvenile court's dispositional order.

{¶ 2} The child, T.P., was adjudicated dependent in Clinton County Juvenile Court based on allegations that his mother was using drugs and his half-sibling tested positive for drugs at birth. After holding dispositional hearings, the juvenile court placed the child in the temporary custody of maternal grandmother, required children services to provide protective supervision, and permitted the parties to continue to arrange and accommodate father's visitation.

{¶ 3} Father now appeals, presenting two assignments of error for our review.

{¶ 4} Assignment of Error No. 1:

{¶ 5} THE TRIAL COURT ERRED IN AWARDING CUSTODY TO THE MATERNAL GRANDMOTHER BECAUSE THE AWARD WAS NOT IN THE BEST INTEREST OF THE MINOR CHILD.

{¶ 6} Father argues that it is not in T.P.'s best interest to be placed with the maternal grandmother because it is mother's conduct that caused the child to be dependent and mother previously resided and continues to reside in maternal grandmother's home.

{¶ 7} In making a dispositional order, a juvenile court must consider which situation will best promote the care, protection, and mental and physical development of the child with the understanding that the court should separate a child from his family environment only when necessary for the child's welfare or in the interest of public safety. R.C. 2151.01(A); *In re Decker*, 12th Dist. No. CA94-12-220, 1995 WL 520771 (Sept. 5, 1995); *In re L.C.*, 2d Dist. No. 2010 CA 90, 2011-Ohio-2066, at ¶ 13.

{¶ 8} R.C. 2151.353(A), which concerns the disposition of a child found dependent, neglected, or abused, grants the trial court discretion to award temporary custody of such child to a public children services agency, either parent, a relative residing within or outside

the state, or in any other home approved by the court. In choosing among the alternatives, the best interest of the child is the court's primary consideration. *In re Brown*, 142 Ohio App. 3d 193, 198 (12th Dist.2001); *In re L.C.*

{¶ 9} The discretion granted to the trial court in custody matters should be accorded the utmost respect, given the nature of the proceedings and the impact the court's determination will have on the lives of the parties concerned. *Brown*.

{¶ 10} According to the record, T.P. was five years old at the time of the dispositional hearings and during those five years, father was incarcerated for three years for drug offenses and mother was incarcerated for two years for drug offenses.

{¶ 11} Father indicated he has been "clean" for three years, has a job in construction, and finally obtained suitable housing. Father's live-in girlfriend was convicted of a drug offense within the past year and was receiving disability for mental health issues. Mother, who has been unsuccessful in kicking her drug addiction, was beginning another drug treatment program. Mother has lived on and off with maternal grandmother. Mother said she recently moved back with maternal grandmother after living with her boyfriend at the time, the father of mother's infant child.

{¶ 12} Evidence was presented that T.P. spent a considerable amount of his life at maternal grandmother's house. The child's guardian ad litem (GAL) indicated that the child enjoys visiting with his father and paternal grandmother, but considers the maternal grandmother's house his home. The GAL recommended temporary placement of T.P. with the maternal grandmother.

{¶ 13} The juvenile court noted on the record at the conclusion of the dispositional hearings that both parents had to "get your act together." "So, somehow there has to be a balancing and looking out for [the child's] best interests." The juvenile court noted that father was dealing with "demons," and mother faces long-term drug treatment. It had some

concerns about mother remaining in the same home with the child, but, stated that, in placing the child in maternal grandmother's temporary custody, the maternal grandmother would finally be in a "controlling position" with respect to the children. As previously noted, the juvenile court ordered children services to provide protective supervision over T.P.'s placement with maternal grandmother.

{¶ 14} While the juvenile court's dispositional entry should have included that court's express findings of best interests, the record indicates the juvenile court found temporary custody with maternal grandmother to be in T.P.'s best interest, and that finding is supported by competent, credible evidence. See *In re M.D.*, 10th Dist. No. 07AP-954, 2008-Ohio-4259. Accordingly, father's first assignment of error is not well taken and is overruled.

{¶ 15} Assignment of Error No. 2:

{¶ 16} THE TRIAL COURT ERRED IN GRANTING CUSTODY OF T.P. TO HIS MATERNAL GRANDMOTHER WHEN HIS FATHER CAN PROVIDE A SUITABLE HOME.

{¶ 17} Father argues that he should not be denied custody over a non-parent in light of a parent's paramount right to parent his child, particularly when he was not the reason T.P. was found to be a dependent child. We disagree.

{¶ 18} An adjudication of abuse, neglect, or dependency implicitly involves a determination of the unsuitability of the child's parents, and that implicit unsuitability determination applies to "custodial and/or noncustodial parents." *In re C.R.*, 108 Ohio St.3d 369, 2006-Ohio-1191, ¶ 22-23.

{¶ 19} In *C.R.*, the Ohio Supreme Court was dealing with legal custody, not just temporary custody, when it found that a juvenile court adjudicating a child to be abused, neglected, or dependent had no duty to make a separate finding at the dispositional hearing that a noncustodial parent is unsuitable before awarding [legal] custody to a nonparent." *Id.* at ¶ 24; see also *In re C.S.*, 12th Dist. No. CA2005-06-0152, 2006-Ohio-5198, at ¶ 8; see *In*

re M.D., 10th Dist. No. 07AP-954, 2008-Ohio-4259 at ¶ 11-17.

{¶ 20} Further, we find no due process issues with the juvenile court's order because father had notice of and participated in these proceedings, the custody decision is based on the child's best interests, the award of temporary custody does not permanently deprive father of his parental rights, and he is not precluded from seeking custody and arguing in future proceedings that placement with him is in the child's best interest. See *In re M.D.*, 12th Dist. No. CA2006-09-223, 2007-Ohio-4646; *In re B.C.*, 9th Dist. No. 23044, 2006-Ohio-3286; *In re M.D.*, 2008-Ohio-4259 at ¶ 16 (state has compelling interest in protecting abused, neglected, and dependent children and procedure employed in determining temporary custody of those children is narrowly tailored to serve that interest).

{¶ 21} We find no error by the juvenile court in awarding temporary custody to maternal grandmother after T.P. was adjudicated a dependent child. Father's second assignment of error is overruled.

{¶ 22} Judgment affirmed.

RINGLAND and HENDRICKSON, JJ., concur.