

**COURT OF APPEALS OF OHIO**  
**EIGHTH APPELLATE DISTRICT**  
**COUNTY OF CUYAHOGA**

IN RE S.B.	:	
	:	No. 107966
A Minor Child	:	
	:	
[Appeal by L.S., Mother]	:	

JOURNAL ENTRY AND OPINION

**JUDGMENT: REVERSED AND REMANDED**  
**RELEASED AND JOURNALIZED: August 8, 2019**

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Civil Appeal from the Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. AD-17911375

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*Appearances:*

Timothy R. Sterkel, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, Cheryl Rice and Colleen Cassidy Ulrich,  
Assistant Prosecuting Attorneys, *for appellee,*  
C.C.D.C.F.S.

PATRICIA ANN BLACKMON, J.:

{¶ 1} L.S. (“Mother”) appeals the trial court’s granting legal custody of her daughter S.B. to S.B.’s father. L.S. raises one assigned error for our review:

- I. The trial court committed error when it denied mom’s request for reunification and granted legal custody to dad.

**{¶ 2}** Having reviewed the record and pertinent law, we find that the trial court's granting legal custody of S.B. to S.B.'s father ("Father") was an abuse of discretion not supported by the record. The goal in this case was reunification of S.B. with Mother after Mother completed her case plan. The undisputed evidence in the record shows that Mother completed her case plan. Yet the trial court granted legal custody to Father. Upon review, we find this decision unreasonable. Therefore, we reverse the trial court's judgment and grant legal custody of S.B. to Mother. The apposite facts follow.

**{¶ 3}** On July 31, 2017, the Cuyahoga County Department of Children and Family Services ("CCDCFS") filed a complaint alleging that S.B., whose date of birth is September 13, 2007, was neglected and dependent. Specifically, CCDCFS claimed Mother had an open case against her regarding "excessive discipline" of another child who lived with S.B. and Mother in Mother's house. *See In re: S.S.*, Cuyahoga C.P. Juvenile Division No. AD17907121. In the instant case, the juvenile court appointed a guardian ad litem ("the GAL") to represent S.B.'s interests and, on August 1, 2017, awarded emergency temporary custody of S.B. to S.B.'s father ("Father"). It does not appear from the record that Father was present at the emergency custody hearing.

**{¶ 4}** On August 25, 2017, CCDCFS filed a case plan with the goal of reunification of S.B. and Mother. This case plan had two objectives for Mother: mental health counseling and parenting classes. The GAL filed a report on October 12, 2017, recommending temporary custody to Father. The court held an

adjudication hearing on October 17, 2017, Mother admitted to the allegations in the complaint, and the court found that S.B. was neglected and dependent. The court committed S.B. to the temporary custody of Father with protective supervision.

{¶ 5} On November 1, 2017, CCDCFS filed its semiannual review (“SAR”) of Mother’s case plan, in which it determined that Mother had completed her mental health counseling and was halfway through her parenting classes. Also on November 1, 2017, the court issued a journal entry adopting the October 17, 2017 magistrate’s decision. The court’s journal entry adjudicated S.B. neglected and dependent, ordered temporary custody to Father, and had a permanency plan of reunification with Mother.

{¶ 6} On April 5, 2018, CCDCFS filed a motion to terminate temporary custody of S.B. to Father and for an order vesting legal custody of S.B. to Mother with no restrictions. On April 9, 2018, CCDCFS filed its second SAR, which concluded that Mother completed the mental health and parenting objectives, Mother made “significant progress” and was continuing her services, and CCDCFS had “no concerns” about reunifying S.B. and Mother. This SAR also concluded that the agency had “some concerns” that Father was not cooperating with Mother’s visitation schedule.

{¶ 7} On May 3, 2018, the GAL submitted his second report, which recommended S.B.’s reunification with Mother. On May 8, 2018, the court conducted an in camera interview with S.B. However, S.B.’s wishes and concerns as a result of this interview are not part of the record.

**{¶ 8}** On July 23, 2018, the court held a hearing regarding CCDCFS's motion requesting legal custody to Mother. CCDCFS and the GAL recommended custody to Mother, finding that she complied with her case plan. Father represented himself at this hearing and objected to legal custody of S.B. to Mother.

**{¶ 9}** After the hearing concluded, the magistrate found "that the Agency has made reasonable efforts in attempts to finalize the permanency plan." However, without explanation, the magistrate decided in open court that "I don't agree with that permanency plan of reunification with the mother." The court awarded legal custody of S.B. to Father and granted Mother visitation.

**{¶ 10}** On July 31, 2018, Mother filed objections to the magistrate's decision. On October 30, 2018, CCDCFS filed a brief in support of Mother's objections requesting, per the case plan goal, reunification of S.B. with Mother without restrictions. CCDCFS also noted two concerns with Father. First, Father "spoke poorly" about Mother in front of S.B. Second, Father "failed to meet the mental health needs of [S.B.]" when he refused to have S.B.'s mental health assessed despite CCDCFS's recommendation. CCDCFS also filed its third SAR, which supported custody to Mother, finding that Mother "has demonstrate[d] appropriate skills and \* \* \* is showing a willingness and ability to meet all needs including [S.B.'s] mental health needs."

**{¶ 11}** On October 30, 2018, the court issued a journal entry adopting the magistrate's July 23, 2018 decision. The entry finds that "[t]here has been significant progress on the case plan." However, the court concludes that S.B.'s

“continued residence in or return to the home of Mother will be contrary to the child’s best interest.” The journal entry disposes of the case as follows: “The Motion to Terminate Temporary Custody filed by [CCDCFS] is modified in part and granted. It is \* \* \* ordered \* \* \* that \* \* \* temporary custody to [Father] is terminated. It is further ordered \* \* \* that [S.B.] is committed to the Legal Custody of [Father].” It is from this order that Mother appeals.

{¶ 12} Before reviewing the merits of this case, we note that Mother’s appeal is unopposed. Father has not made an appearance nor filed a brief in this appeal. CCDCFS filed a notice stating that it

has elected to forego the filing of an [appellee] Brief in this matter. The Agency filed a brief in support of Appellant’s initial Objections to the Magistrate’s Decision. However, at this time, it is respectfully submitted that CCDCFS does not wish to take a position on the merits of the claims as raised by Appellant in this appeal and after consideration has determined that it does not wish to participate in the briefing of this matter.

{¶ 13} We review a trial court’s order regarding legal custody of a child under an abuse of discretion standard. *In re S.E.*, 8th Dist. Cuyahoga No. 96031, 2011-Ohio-2042, ¶ 13. In determining whether a lower court abused its discretion, “a reviewing court may not simply substitute its own judgment \* \* \*.” *Baxter v. Thomas*, 8th Dist. Cuyahoga No. 101186, 2015-Ohio-2148, ¶ 21. Rather, an abuse of discretion is an attitude that is unreasonable, arbitrary, or unconscionable. “A decision is unreasonable if there is no sound reasoning process that would support that decision.” *Id.* “Arbitrary” is defined as a decision made “without consideration

of or regard for facts [or] circumstances.” *Black’s Law Dictionary* 125 (10th Ed.2014).

{¶ 14} “Although there is no specific test or set of criteria set forth in the statutory scheme [regarding legal custody cases], courts agree that the trial court must base its decision on the best interest of the child.” *In re N.P.*, 9th Dist. Summit No. 21707, 2004-Ohio-110, ¶ 23.

{¶ 15} Guidance in legal custody determinations is found in the “best interest” test under R.C. 2151.414(D). The court shall consider the following relevant factors: the relationship “of the child with the child’s parents, siblings, [and] relatives \* \* \*; [t]he wishes of the child, as expressed directly by the child or through the child’s guardian ad litem; [t]he custodial history of the child \* \* \*; [t]he child’s need for a legally secure placement \* \* \*;” and various factors relating to the child’s parents, including criminal history, substance abuse issues, compliance with case plan objectives, abandoning the child, and whether the parents have had “parental rights involuntarily terminated with respect to a sibling of the child \* \* \*.” R.C. 2151.414(D) and (E).

{¶ 16} The court may also look to the best interest factors found in R.C. 3109.04(F)(1). *See In re R.L.C.*, 8th Dist. Cuyahoga No. 98283, 2012-Ohio-5893,

¶ 14. These factors include the following, as pertinent to this case:

- (a) The wishes of the child’s parents regarding the child’s care;
- (b) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child’s wishes and concerns as

to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;

(c) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;

(d) The child's adjustment to the child's home, school, and community;

(e) The mental and physical health of all persons involved in the situation;

(f) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;

\* \* \*

(h) Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication; \* \* \*

(i) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court \* \* \*.

{¶ 17} In the case at hand, the following evidence is in the record relating to the best interest of the child: S.B.'s relationship appears to be good with both Mother and Father. S.B. gets good grades in school and has no physical, mental, or developmental challenges. The GAL recommended that Mother get custody of S.B., and in his May 3, 2018 report, he stated that S.B. "now wants to be re-unified with

mother.”<sup>1</sup> The custodial history of S.B. is that she lived with Mother until this case was filed, and she has lived with Father while this case has been pending. There is nothing in the record indicating that either parent has a criminal history or issues with substance abuse or mental health.

{¶ 18} Although there are no known issues with S.B.’s health, CCDCFS recommended that S.B. be assessed during this custody proceeding. The social worker from CCDCFS testified that Father refused to take S.B. for a mental health assessment, and Father stated that he “didn’t feel [S.B.] needed any mental health services.” According to the social worker, Mother would be willing to take S.B. for a mental health assessment.

{¶ 19} The social worker further testified that she has “asked dad to increase the amount of visitation that mom gets and he’s refused.” Both the social worker and the GAL testified that Father is “very hard to have contact with” and can be “uncooperative.” The social worker testified that Mother, on the other hand, was willing to facilitate S.B.’s visits with Father.

{¶ 20} CCDCFS’s goal in this case, from inception, has been reunification of S.B. with Mother. It is important to note that custody to Father was not part of the plan in this case. Although Mother had a pending case involving another child,<sup>2</sup> she

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<sup>1</sup> There is no evidence in the record regarding S.B.’s wishes, as expressed to the court during the in camera interview.

<sup>2</sup> *In re: S.S.*, Cuyahoga C.P. Juvenile Division No. AD17907121, involved Mother’s grandchild, who was living with Mother and S.B. The disposition of that case is not part of the record in the instant matter; however, the CCDCFS social worker testified that S.S.’s



completed her case-plan objectives in the instant matter. CCDCFS and the GAL agree that Mother should be awarded custody of S.B. In fact, the court found that “[t]here has been significant progress on the case plan.” However, the court also found that “the child’s continued residence in or return to the home of Mother will be contrary to the child’s best interest.” The only thing in the record related to this finding is the magistrate’s impetuous statement at the dispositional hearing that she does not “agree with” the reunification plan.

{¶ 21} Upon review, we find that the court abused its discretion in granting custody of S.B. to Father. The decision appears to be both unreasonable and arbitrary. All parties other than Father recommended custody to Mother. Mother had a case plan with two objectives. She completed both objectives without issue or setback. She has been actively working towards reunification with S.B. from the beginning of this case. Reunification with Mother was always the goal, and the court approved this goal in its November 1, 2017 journal entry. Father was given temporary custody of S.B. while Mother worked her case plan. Father did not actively seek custody of S.B., a point he made clear during his closing argument: “The Court brought me into this.”

{¶ 22} Nothing in the record supports the court’s finding that S.B.’s reunification with Mother “will be contrary to the child’s best interest.” Rather, the overwhelming majority of evidence in the record supports that it is in S.B.’s best

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mother, who is Mother’s adult daughter, is pursuing custody of S.S. It appears that Mother is not pursuing custody of S.S.

interest to grant custody to Mother. CCDCFS and the GAL supported custody to Mother during the trial court's proceedings and neither party is opposing this appeal. Father did not even make an appearance in this court.

{¶ 23} Additionally, we are troubled by the court's apparent failure to comply with Juv.R. 40(D)(4)(d) in this case. "In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." *Id.* The court's final judgment adopted the magistrate's decision verbatim, and while this is not per se improper, the record demonstrates that this decision is unsupported by the evidence. Mother was told that she needed to do two things to regain custody of her daughter. Mother did those two things, completely and in a timely manner. Then Mother was told, without explanation, that the plans have changed. It is for these reasons that we find the court's awarding custody of S.B. to Father unreasonable and an abuse of discretion.

{¶ 24} Accordingly, Mother's sole assigned error is sustained. The court's October 30, 2018 journal entry granting legal custody of S.B. to Father is reversed. This case is remanded to the trial court with instructions to grant CCDCFS's April 5, 2018 motion "for an order vesting legal custody of [S.B.] to [Mother] with no restrictions." Furthermore, the order shall include Father's visitation with S.B. and a schedule to be agreed to by the parties and the trial court.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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PATRICIA ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, A.J., and  
EILEEN T. GALLAGHER, J., CONCUR