

[Cite as *In re L.B.-R.*, 2015-Ohio-2622.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

IN RE: L.B.-R.

C.A. No. 27201

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. DN 12-04-0241

DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

MOORE, Judge.

{¶1} Lady R. (“Mother”) appeals the judgment of the Summit County Court of Common Pleas, Juvenile Division, which granted legal custody of her minor child, L.B.-R. to Samuel B. (“Father”). We affirm.

I.

{¶2} On April 20, 2012, Summit County Children Services (“CSB”) filed a complaint in the trial court alleging that Mother’s autistic daughter, L.B.-R., and L.B.-R.’s younger half-sister, A.O.-R., were neglected and dependent, and requesting the trial court to issue an order of protective supervision. This appeal pertains only to L.B.-R. Upon agreement of the parties and information before it, the court determined that L.B.-R. was a neglected and dependent child, and it ordered that she remain in the custody of Mother subject to protective orders granted to CSB. After learning that Mother planned to leave Ohio to reside with a friend in New York, CSB filed

a motion requesting the court to grant Father emergency temporary custody of L.B-R. under CSB's protective supervision. The court granted the motion.

{¶3} Thereafter, Father and Mother each moved for legal custody of L.B-R. After several days of hearings on this matter, the magistrate issued a decision, which the trial court adopted, granting legal custody to Father. Mother filed objections to the magistrate's decision. On December 5, 2013, the trial court overruled Mother's objections. Mother timely appealed from the trial court's order overruling her objections, and she now raises one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN GRANTING FATHER'S MOTION FOR LEGAL CUSTODY AND DENYING MOTHER'S MOTION FOR LEGAL CUSTODY.

{¶4} In her sole assignment of error, Mother argues that the trial court erred in granting Father's motion for legal custody and denying her motion for legal custody. We disagree.

{¶5} Generally, this Court reviews a trial court's action with respect to a magistrate's decision for an abuse of discretion. *Fields v. Cloyd*, 9th Dist. Summit No. 24150, 2008-Ohio-5232, ¶ 9. However, "[i]n so doing, we consider the trial court's action with reference to the nature of the underlying matter." *Tabatabai v. Tabatabai*, 9th Dist. Medina No. 08CA0049-M, 2009-Ohio-3139, ¶ 18. "The decision to grant or deny a motion for legal custody is within the juvenile court's sound discretion," and therefore this Court will not reverse an order granting or denying a motion for legal custody absent an abuse of discretion. *In re M.S.*, 9th Dist. Summit No. 22158, 2005-Ohio-10, ¶ 11, citing *In re Jones*, 9th Dist. Summit No. 20306, 2001 WL 458682, *5 (May 2, 2001). An abuse of discretion implies that a trial court was unreasonable,

arbitrary, or unconscionable in its judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶6} In regard to the trial court’s decision to grant legal custody to Father, “[a]lthough there is no specific test or set of criteria set forth in the statutory scheme” for a trial court’s disposition of legal custody, “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, citing *In re Fulton*, 12th Dist. Butler No. CA2002-09-236, 2003-Ohio-5984, ¶ 11. In making this determination, “courts have looked to the best interest factors of R.C. 2151.414(D), R.C. 3109.04(F)(1), a combination of the two, or general notions of what should be considered regarding the best interests of the children.” (Citations omitted.) *In re A.K.*, 9th Dist. Summit No. 26291, 2012-Ohio-4430, ¶ 25. R.C. 2151.414(D)(1) provides as follows:

In determining the best interest of a child * * *, the court shall consider all relevant factors, including, but not limited to, the following:

- (a) The interaction and interrelationship of the child with the child’s parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child’s guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child * * *;
- (d) The child’s need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

R.C. 3109.04(F)(1) provides:

In determining the best interest of a child pursuant to this section * * * the court shall consider all relevant factors, including, but not limited to:

- (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;

(g) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;

(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; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;

(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;

(j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

{¶7} Here, the legal custody hearings occurred over five separate days spanning from September of 2012 through January of 2013. In support of his motion for legal custody, Father

provided the testimony of Matt McClung, Cynthia Ortiz, Katie Saro, Father, Father's grandmother ("Great-grandmother"), and Ashley Mick.

{¶8} Matt McClung, the property manager at Cascade Village, an apartment complex where Mother resided with the children from December 10, 2009 until April 1, 2012, testified regarding his experiences with Mother and the children. Mr. McClung recalled the incident that led to CSB's involvement in this matter. On that day, Akron Metropolitan Housing Authority ("AMHA") was scheduled to inspect Mother's apartment. Mr. McClung called the police when he was informed that Mother was not answering the door. He was advised that L.B.-R. had come to the door, which was unlocked, but upon which a latch was hooked from the inside, allowing the door to open only slightly. When Mr. McClung then went to the apartment, he observed a police officer pounding on the door and yelling for Mother, who was asleep inside. After five or ten minutes of yelling through the door, Mother unlocked the latch. When they went inside, Mr. McClung observed empty liquor and wine bottles lying around the apartment. Mr. McClung stated that Mother acknowledged having a party until approximately 3:00 a.m. that morning.

{¶9} Mr. McClung also testified that Mother had requested a child proof stove for the home. The stove had arrived, but Mother had not provided access for the stove to be installed. After the child-proof stove arrived, but prior to its installation, the stove in Mother's apartment was turned on, resulting in a fire. He further testified that he had received calls from residents about L.B.-R. being left unsupervised in the apartment complex.

{¶10} Mr. McClung explained that, due to the most recent event of having to call the police regarding the AMHA inspection, and a history of complaints against Mother regarding noise disturbances and unsupervised children, he provided her with a thirty-day notice of

termination of her lease. Mother decided to move out of the complex on her own accord before the expiration of thirty days.

{¶11} Cynthia Ortiz, the paternal grandmother of A.O.-R., testified in regard to her observations of L.B.-R. and Mother. Ms. Ortiz had observed Mother's parenting of L.B.-R. when they had previously lived with Ms. Ortiz and when Ms. Ortiz frequently visited Mother's apartment. Ms. Ortiz testified that when Mother and L.B.-R. lived with her, Mother tended to sleep a lot and kept L.B.-R. in their shared bedroom. When Ms. Ortiz would offer to take L.B.-R. shopping, Mother would respond that L.B.-R. was okay in the room, where they normally stayed with the television on. When L.B.-R. would come out of the room, Ms. Ortiz observed that L.B.-R.'s diaper would at times be so full that it made her walk oddly, causing L.B.-R. to remove it herself. Ms. Ortiz met Father when he would come to visit L.B.-R.

{¶12} Ms. Ortiz recalled several other instances that concerned her regarding Mother's parenting. During the time period when Mother was still breastfeeding L.B.-R., Ms. Ortiz noticed a bruise on L.B.-R.'s cheek. Mother explained to Ms. Ortiz that she gave L.B.-R. a "hickey" because L.B.-R. had given Mother some "hickeys" on her breasts while Mother was asleep, and Mother wanted her to know what it felt like. Based upon the testimony of Ms. Ortiz, L.B.-R. was approximately three years old at that time.

{¶13} After Mother moved out of Ms. Ortiz' home, Ms. Ortiz would often come to Mother's apartment. Sometimes, Ms. Ortiz would knock at the door, and the girls would come to the door without Mother, and Ms. Ortiz would tell her granddaughter to wake up Mother. Ms. Ortiz further maintained that many times L.B.-R. would be naked when Ms. Ortiz came to the apartment. When she did have clothes on, there were times when they were too small and stained. Her hair was not kept and smelled. Ms. Ortiz stated that "[t]he girls' room was

scattered with clothes and toys all over, where you would have to tiptoe through the stuff. It wasn't functional as a room that a child would sleep in." She also observed ashtrays with cigarette butts and cups containing alcohol left around the apartment. Sometimes she observed Father at the apartment.

{¶14} Ms. Ortiz further recalled information relayed to her by Mother concerning L.B.-R. Mother had told Ms. Ortiz that, when L.B.-R. was four or five years old, L.B.-R. made margaritas in the blender, and Mother appeared to think it was funny. On another occasion, Mother relayed to her that she was having some people over drinking, and she noticed one or two men no longer in the area of the party. She went to her room, where L.B.-R. was watching television, and the door was closed. When she opened it, there was a man lying in the bed, and L.B.-R. was on top of him, kissing him. Mother told Ms. Ortiz that she yelled at the man and broke a mirror with her hand. Mother further informed Ms. Ortiz that the therapist that came to their apartment had prescribed melatonin to L.B.-R. to help her sleep. One day at approximately 5:00 p.m., Ms. Ortiz observed that L.B.-R. appeared "zoned out[,]" and Mother explained that they were going to take a nap, and so Mother had given L.B.-R. some medication.

{¶15} Ms. Ortiz further testified as to other issues that concerned her regarding Mother's parenting of L.B.-R. On two occasions, L.B.-R.'s school bus driver called Ms. Ortiz to pick up L.B.-R. because the driver could not get in contact with Mother to get L.B.-R. off of the bus at her apartment. On another occasion, when Ms. Ortiz was at the apartment, she noticed something on the second floor balcony of the apartment building. Mother explained that L.B.-R. was throwing clothes and toys out of the window, which were landing on the balcony below. In addition, Ms. Ortiz recalled that, when walking through stores with Mother and L.B.-R.,

sometimes Mother would give L.B.-R. store merchandise to put on, and they would forget about it. They would then leave with it on L.B.-R. without paying for it.

{¶16} However, Ms. Ortiz observed a change in L.B.-R. since temporary custody was granted to Father. L.B.-R. came to visits with Mother clean and well kept. In addition, prior to this case, L.B.-R. used only one word to relay what she wanted, which was how Mother spoke to her. Ms. Ortiz had now heard her vocalize in phrases, and at one of the visits she urged, “Come on, [Sister],” to Ms. Ortiz’ granddaughter.

{¶17} Katie Saro, a teacher in the early learning program of the Akron Public Schools, testified that L.B.-R. was her student during the 2011-2012 school year, when L.B.-R. was in Mother’s care. She testified that out of 166 schooldays, L.B.-R. attended only 107.

{¶18} Father testified that his grandparents, L.B.-R’s great-grandparents, (“Great-Grandmother” and “Great-Grandfather”) had raised him, and he and L.B.R. were currently residing with Great-Grandmother and Great-Grandfather. However, when L.B.-R. was born, Mother was living with Father and Father’s biological father (“Grandfather”) for about four months, and they then separated. When L.B.-R. was about two years old, she was diagnosed with autism. Father testified as to changes in L.B.-R. that had occurred since residing with Father and his grandparents. During that time, L.B.-R. had begun kindergarten and was doing wonderfully in school. Previously, L.B.-R. communicated by throwing a tantrum. Father maintained that L.B.-R.’s communication skills had improved, and she had begun vocalizing her wishes. For instance, she would now come to him and say, “Daddy,” and she would take him to point at something that she wanted. She had also begun to use nouns to identify objects. Further, when L.B.-R. came to live with him, she was overweight and could not walk up the

stairs without breathing heavily. Since then, she had lost about twenty pounds of excess weight. She now ate balanced meals, and she had become very energetic.

{¶19} Father further testified that he had gone to classes to learn about autistic behavior, and he engaged in techniques for effectively disciplining L.B.-R., which include holding her tightly or sending her to a time-out chair.

{¶20} Father sought legal custody because he believed that L.B.-R.'s time in his home was the most structure and stability that L.B.-R had ever experienced. After visits with Mother, Father noted that L.B.-R. tended to act out more, scratched herself, and became scared to go to the bathroom or sleep by herself. However, he did not believe that Mother's visitations should end. Further, although he and the child lived some distance away from Mother, he maintained that the distance to transport her for visitation was not a problem.

{¶21} Father acknowledged that he had previously faced a criminal charge in high school. At that time, the sister of his girlfriend alleged that he had groped her. When he found out about the allegation, he caused a disruption in the school. Charges were brought as a result, and he maintained that, when they went to court, everybody acknowledged that Father had never groped the girl. Father believed he pleaded guilty to disorderly conduct. However, he maintained that the clerk and the sheriff's office made a mistake, and as a result, he was subjected to efforts to cause him to register as a sexual offender. He later obtained an attorney who was able to unveil what had happened, and the situation was resolved.

{¶22} Great-Grandmother testified that L.B.-R. was doing well in their home. Great-Grandmother pointed to instances where L.B.-R. had begun to verbally express her wishes. For instance, L.B.-R. would sit at the dinner table, fold her hands, and say, "Papa," to indicate to Great-Grandfather to say the prayers. She would say "Grandma, are you hungry?" to indicate

when L.B.-R. was hungry. Great-Grandmother testified that a total of nine people lived in their home. However, their house contained five bedrooms, with plenty of room for Father and L.B.-R., and she indicated that Father and L.B.-R. were welcome to live there for as long as they wanted.

{¶23} Ashley Mick, a caseworker for CSB, testified concerning her involvement in this case. Ms. Mick testified that CSB did not object to Father's motion for legal custody because L.B.-R. was doing well under his care. He interacted with her, worked with her, and engaged her in school. Ms. Mick noted that she observed a bond between Mother and L.B.-R., but not an extremely close one. During visits, Ms. Mick noted that L.B.-R. was sometimes close to Mother, but L.B.-R. preferred to be on her own.

{¶24} Ms. Mick also testified regarding Mother's progress on the case plan as of September of 2012. She identified four areas in which the case plan required action by Mother: engaging in services pertaining to L.B.-R.'s autism diagnosis, addressing Mother's mental health, addressing Mother's alcohol use, and obtaining independent housing.

{¶25} In regard to addressing L.B.-R.'s autism, Ms. Mick testified that, since residing with Father, L.B.-R. had begun kindergarten and obtained an IEP. Therefore, Ms. Mick stated that Father and L.B.-R. were working on the objective pertaining to addressing L.B.-R.'s autism.

{¶26} With respect to Mother's mental health, Ms. Mick stated that, to her knowledge, Mother had not completed the mental health assessment. Although she had not been able to confirm this, Mother had indicated that she had attended two mental health assessment sessions prior to the September hearing.

{¶27} In regard to Mother's alcohol use, Ms. Mick acknowledged that Mother had engaged the services of Urban Ounce of Prevention ("Urban Ounce"). Mother had received

treatment there for about three months, and she had completed urine screens, all of which had been negative for alcohol. Pursuant to Urban Ounce's report, Mother had been compliant in treatment.

{¶28} With respect to obtaining independent housing, Ms. Mick testified that Mother obtained an apartment in mid-July, and Ms. Mick had assessed the home. It was appropriate, clean, and contained no hazards. From Ms. Mick's understanding, Mother had no income, and she was paying for the home with a voucher from AMHA, which Ms. Mick believed was valid for one year.

{¶29} Ms. Mick stated that Father was originally on the case plan but was removed because CSB did not note any concerns with him.

{¶30} At the December and January hearings, Mother presented the testimony of herself, employees from Urban Ounce of Prevention ("Urban Ounce"), and her friend Pamela Keys.

{¶31} Mother testified that, when she was pregnant with L.B.-R., she lived with Father and his biological father ("Grandfather"). In November of 2006, Grandfather's girlfriend told Mother that Grandfather and Father were sex offenders. Mother then confirmed that both men were registered on the sex offender list. Mother confronted Father about this, and, in response, Father made her move from the home at 3:00 a.m. on a November morning. However, she did come back to reside with Father and Grandfather in January of 2007, because Father's sister had moved into Grandfather's home, and she was willing to help care for L.B.-R. A couple weeks after moving back to the home, Mother again moved from the home because she did not have a good relationship with Father, and he had kicked her in the stomach. She had lived separate from Father since that time. Father assured Mother that he would pay child support, but after

waiting for one year for Father to do so voluntarily, she sought a court order for support. Mother maintained that Father did not see much of L.B.-R. prior to CSB's involvement in this matter.

{¶32} Mother acknowledged that she had a problem with alcohol, although she would not characterize her consumption of alcohol as abusing alcohol. She was treating her problem through the services of Urban Ounce. Mother admitted that previously she had parties in her apartment, where guests would drink, and where L.B.-R. would be present, but sleeping.

{¶33} During her testimony, Mother also responded to some of the incidents raised in Mr. McClung and Ms. Ortiz' testimony. In response to Mr. McClung's testimony, Mother denied that she was passed out on the couch when the police showed up for the inspection, and instead stated that she was in the bathroom. She further maintained that L.B.-R. did not wander the halls unsupervised at Cascade Village.

{¶34} In response to Ms. Ortiz' testimony, Mother maintained that the mark that Ms. Ortiz had observed on L.B.-R's face was the result of Mother disciplining L.B.-R. by kissing L.B.-R. hard on the cheek after she had bitten Mother's breast. Mother acknowledged that L.B.-R. had made non-alcoholic pina coladas, and she thought that was because L.B.-R. liked the way the drinks looked with the straw umbrellas. She further stated that she had only missed getting L.B.-R. off of the bus one time. Mother explained that the bus driver usually called her when she was there, but Mother's phone had been disconnected on that day. Mother also maintained that L.B.-R. had only once walked out of a store with an item without paying for it. After she did so, Mother conferred with Ms. Ortiz, and they decided not to return the item. Mother further testified that she remembered that she had broken a mirror at her apartment, causing injury to hand, but she could not recall why she broke the mirror.

{¶35} In addition, Mother testified as to issues raised with regard to the case plan. In regard to her alcohol and mental health objectives, Mother testified that she was receiving treatment, and she was compliant. As to independent housing, Mother testified that she had been living in her current apartment since mid-July. However, she confirmed that she was not employed, and the last job she had was more than a year ago at Walmart. Mother quit that job because she was not used to the type of work required of her in that position. She acknowledged that, because she no longer received child support or L.B.-R.'s social security check, she relied on the help of other people to support her.

{¶36} Alisa Forney, an employee at Urban Ounce, an outpatient drug center, testified at the December 27, 2012 hearing that she assessed Mother in May of 2012, and Urban Ounce was currently providing services to her. Mother had received thirty-one sessions of individualized counseling and forty-one sessions of intensive outpatient services. Further, Mother had completed twenty-three of twenty-eight non-intensive sessions. Urban Ounce had randomly required Mother to submit to urine screens, and all of her urine screens had been negative for alcohol and drugs.

{¶37} Ms. Forney further testified that she had obtained a report from Greenleaf, the agency which performed a mental health assessment on Mother. She testified that the report indicated that Mother was being seen on a weekly basis since August and was compliant in her treatment. Ms. Forney also obtained a report from another Urban Ounce employee as to parenting classes given through their agency. Mother had completed fifteen of eighteen sessions, and she was an active participant in the sessions.

{¶38} Pamela Keys testified that she met Mother about three years ago when they both lived at Cascade Village. Ms. Keys explained that Mother was asked to move out because

Cascade Village failed to install a child-proof oven, resulting in L.B.-R. causing the fire in the apartment. Ms. Keys further explained that Cascade Village also failed to child proof the windows, which allowed L.B.-R. to twice throw items out of the window. Mother had expressed concern to Ms. Keys about L.B.-R. residing with Father because of her limited speaking ability and because of Father's past physical and mental abuse toward Mother.

{¶39} After Mother presented her witnesses, the guardian ad litem advised the court that she recommended that legal custody of L.B.-R. be granted to Father. The guardian explained that L.B.-R. was doing wonderfully in Father's care. The guardian recognized that Mother had been compliant and progressed in her case plan, but she opined that it would be very detrimental to L.B.-R. to take her from Father's home, where she was thriving.

{¶40} In her merit brief, Mother argues that (1) there was no need for permanency at the time of the hearings, and she was burdened by not having sufficient time to complete her case plan objectives, (2) it was not in L.B.-R.'s best interest to be placed with Father due to Father's and Grandfather's previous criminal convictions and due to Father's history of domestic violence, (3) the trial court failed to properly consider Mother's testimony regarding Father's failure to be involved in L.B.-R.'s life prior to CSB involvement, and (4) the trial court erred in its best interest analysis by not considering Father's failure to provide support for L.B.-R.

Case Plan Compliance

{¶41} In regard to Mother's argument that the decision of the trial court was premature because there was no need for permanency at the time of the hearings, and she was burdened by having to complete her case plan in a short period of time, "This Court has emphasized * * * that although a parent's case plan compliance may be relevant to the trial court's determination of the child's best interest when evaluating competing motions for legal custody, 'it certainly is not

dispositive.” *In re M.S.*, 9th Dist. Summit No. 24711, 2009-Ohio-5795, ¶ 10, quoting *In re B.G.*, 9th Dist. Summit No. 24187, 2008-Ohio-5003, ¶ 21, citing *In re C.M.*, 9th Dist. Summit No. 21372, 2003-Ohio-5040, ¶ 10; *see also* R.C. 2151.414(D)(1)(d) (“[t]he child’s need for a legally secure permanent placement” is a factor to be considered in a best interest analysis).

{¶42} At the hearing, the guardian recognized Mother’s progress on her case plan. In the magistrate’s decision, the magistrate acknowledged that Mother had made progress in complying with the requirements of the case plan. The trial court was aware of the length of time between CSB’s involvement in this case and the hearings in this matter, and it could consider that information in making its determination. Further, the trial court’s decision focused upon the progress that L.B.-R. had made while in Father’s care in determining that it was in L.B.-R.’s best interest to grant legal custody to Father. The court noted that the guardian ad litem recommended that L.B.-R. reside with Father, and that L.B.-R. had adjusted well to Father’s home. Father was actively addressing L.B.-R.’s autism, and she had become healthier while in his custody. Further, the court noted that Father would facilitate visitation with Mother.

{¶43} Having reviewed the record, we cannot say that the trial court’s decision was unreasonable, arbitrary, or unconscionable in this respect. *See In re M.S.*, 2009-Ohio-5795, at ¶ 10, and *Blakemore*, 5 Ohio St.3d at 219.

Mother’s Concerns Regarding Paternal Family

{¶44} Mother additionally argues that awarding legal custody to Father was not in L.B.-R.’s best interest because of Father’s past criminal offense and his history of domestic violence and because of Grandfather’s past criminal conviction. However, the court noted that, although there was testimony that Father was originally charged with a sexual offense, Ms. Mick’s investigation revealed that Father was not convicted of the sexual offense. The trial court noted,

in regard to Mother's allegations against Father pertaining to past domestic violence, that it found little evidence of domestic violence.

{¶45} In regard to Mother's allegations regarding Grandfather's prior conviction, the court also found "limited evidence in the record supporting Mother's concerns about paternal grandfather's alleged sexual offense[,]" and it noted that L.B.-R. and Father do not reside at Grandfather's home.

{¶46} Based upon the record, it appears that the trial court considered Mother's testimony regarding these issues and gave it the weight it deemed appropriate given the evidence before it. We cannot say that the trial court improperly failed to consider the above evidence pertaining to the paternal family in its best interest analysis.

Father's Past Involvement in L.B.-R's Life

{¶47} Mother maintains that Father did not regularly see L.B.-R prior to CSB's involvement in this matter. However, Father and Ms. Ortiz both testified that Father would visit L.B.-R. In the magistrate's decision, the magistrate specifically noted that he had found the testimony of Father and Ms. Ortiz to be compelling. We cannot say that the trial court failed to give the weight it deemed appropriate to the competing testimony regarding previous visitation, nor can we say that the trial court did not properly consider such testimony in determining the best interest of L.B.-R.

Father's Support Payments

{¶48} Mother lastly argues that the trial court misapplied the law by failing to consider, in its best interest analysis, Mother's testimony regarding Father's failure to pay child support. Mother argues that the trial court must consider R.C. 3109.04(F)(1)(g), pertaining to a parent's past payment of support, when determining a child's best interests. Mother cites the trial court's

order stating “Father’s child support payments are moot,” and maintains that this language indicates that the trial court improperly discounted Father’s failure to pay support when conducting its analysis.

{¶49} However, this Court has explained that, “[a]lthough this Court has recognized that consideration of the best interest factors set forth in R.C. 3109.04(F)(1) may be appropriate in the juvenile court’s evaluation of competing motions for legal custody, it also held that a trial court does not abuse its discretion by confining its consideration to the best interest factors set forth in R.C. 2151.414(D).” *In re J.D.*, 9th Dist. Summit No. 24915, 2010-Ohio-1344, ¶ 7, citing *In re B.G.*, 2008-Ohio-5003, at ¶ 9. Further, in context, it appears that the court’s statement that support was moot merely indicated that Father was no longer required to pay support, as the court then recognized that the evidence adduced at the hearings demonstrated that “he regularly paid child support once it was court ordered.” Therefore, it does appear that the trial court considered Father’s child support payments in the best interest analysis.

{¶50} Based upon the evidence presented, we cannot say that the trial court abused its discretion in granting legal custody of the child to Father. *See In re M.S.*, 2009-Ohio-5795, at ¶ 10, and *Blakemore*, 5 Ohio St.3d at 219. Accordingly, Mother’s sole assignment of error is overruled.

III.

{¶51} Mother’s sole assignment of error is overruled. The decision of the Summit County Court of Common Pleas, Juvenile Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

DEREK CEK, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.

JASON WALLACE, Attorney at Law, for Appellee.

JOSEPH KERNAN, Guardian ad Litem.