



the evidence. As the evidence in the record amply supports this judgment, we affirm the decision of the court below.

{¶2} On August 28, 2008, appellee, Trumbull County Children Services Board, filed a Complaint in juvenile court, alleging J.F. to be a dependent child, as defined in R.C. 2151.04(C).<sup>1</sup> Children Services alleged, as the basis for the Complaint, as follows: “Trumbull County Children Services Board \*\*\* ha[s] been providing services to this family for several months. The Agency states that there has been serious ongoing parent-child conflict between the mother and child. On May 22, 2008, there was an incident where the mother was charged with Domestic Violence for biting the minor child. At that time, the child was placed with an adult half-sister, Crystal Krempasky. \*\*\* Currently, the mother’s mental health therapist has indicated there is a significant safety risk for the mother and child to be together. The mother has on occasion threatened to disrupt the relative placement.”

{¶3} On September 3, 2008, the juvenile court appointed a guardian ad litem/counsel for J.F.

{¶4} On October 30, 2008, the juvenile court entered a Judgment Entry, finding J.F. to be dependent and ordering him to be placed in the temporary custody of Crystal.<sup>2</sup> The court noted that Beverly had pled guilty to Disorderly Conduct as a result of the May 22, 2008 incident.

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1. Pursuant to R.C. 2151.04(C), a “dependent child” is any child “[w]hose condition or environment is such as to warrant the state, in the interests of the child, in assuming the child’s guardianship.”

2. The adjudicatory hearing was held before a magistrate of the juvenile court. In its October 30, 2008 Judgment Entry, the court adopted the Magistrate’s Decision without objections having been filed.

{¶5} On January 6, 2009, following a series of dispositional hearings, the juvenile court entered a Judgment Entry in which the parties stipulated to the temporary custody of J.F. with Crystal.

{¶6} On June 26, 2009, Trumbull Children Services filed a Motion to Terminate Temporary Custody, asking the court to grant Crystal legal custody of J.F.

{¶7} On July 28 and August 18, 2009, permanency hearings were held before a magistrate of the juvenile court. The following testimony was given at the hearings:

{¶8} Paul Gaydosh of the Trumbull County Juvenile Justice Center is J.F.'s probation officer. Gaydosh testified that, in February 2008, J.F. was charged with being an unruly child as a result of Beverly not being able to control him, e.g., J.F. was verbally abusive toward his mother and would leave the home without her knowledge/consent. Gaydosh described J.F.'s progress during the course of the proceedings as "excellent" and reported no probation violations. He stated that he would have terminated J.F.'s probation, but did not want supervision to cease until the pending custody issue was resolved.

{¶9} Kenneth Allen is a child therapist at Valley Counseling and has been J.F.'s counselor since February 2008. Allen testified that he worked with J.F. on the following issues: his temper, family life, adults and authority, and coping with AD/HD (Attention Deficit/Hyperactivity Disorder). Allen testified that there were "severe" conflicts between J.F. and Beverly. For example, J.F. would punch the walls when angry, be uncooperative, and leave home on his bicycle, while Beverly cut his bicycle tires to prevent such behavior. J.F. believed that Beverly was overly physical and abusive with him. Beverly desired to send J.F. to military school to address his behavior issues.

{¶10} In order to address J.F.'s issues, a Wraparound Team was brought together, consisting of J.F.'s counselor (Allen), probation officer (Gaydosh), respite provider (Clarence Jackson of RecPro), Children Services caseworker (Angela Bartlett), J.F. and his mother (Beverly), and J.F.'s half-sister (Crystal). The purpose of the Wraparound Team was "to bring together all of the natural and professional supports and to focus on the strengths of an individual and their family and their systems that they are involved with and focus on how everyone can work together for the best interest of everyone involved and especially, of course, for [J.F.]."

{¶11} Allen testified that Beverly often became "angry and hostile" toward the other members of the Wraparound Team and that her participation became counterproductive. Allen observed Beverly behave threateningly toward one of Children Services caseworkers.

{¶12} Allen reported that J.F. attended counseling with Beverly at PsyCare, but did not feel the counseling was appropriate because Beverly would wear a tape recorder up her sleeve and because the counselor at PsyCare berated Crystal.

{¶13} Allen also reported that J.F. became frustrated with the confrontations at the Wraparound Team meetings and has consistently stated that he does not want to live with Beverly. J.F. has a close relationship with his step-father, Robert Chura, and desires to have contact with him.

{¶14} Allen described J.F.'s progress as "tremendous," so that he is at a point at which counseling services can be terminated. Allen testified that J.F. is stable on his medications, has improved his grades, has completed anger management, and has

been behaving appropriately in Crystal's household. Allen reported that all sources, including J.F.'s school, describe him as a cooperative, well-mannered young man.

{¶15} Diane Harris is a caseworker for Trumbull Children Services and the facilitator for J.F.'s Wraparound Team. Harris testified that the first attempt to establish a Wraparound Team in August 2008 was suspended due to intrafamilial conflicts. A second effort was made beginning in December 2008. After March 2009, Beverly was asked not to participate on account of her disruptive behavior.

{¶16} Angela Bartlett is a caseworker for Trumbull Children Services and was assigned to J.F. She testified that J.F. was diagnosed with AD/HD, ODD (Oppositional Defiant Disorder), and OCD (Obsessive-compulsive Disorder). She testified that J.F. does not wish to reunify with Beverly, and, therefore, is resistant to family counseling with her. Bartlett testified that required family counseling was decreased from weekly to biweekly because of the other demands being made on J.F., such as Wraparound meetings, individual counseling, and anger management.

{¶17} Bartlett testified that Crystal was removed from Beverly's home when she was twelve-years-old and the family resided in Columbiana County. Many of the present issues between J.F. and Beverly are similar to the issues that existed between Crystal and Beverly. J.F. and Crystal have a good relationship. Bartlett reported that J.F. had one behavioral incident while in Crystal's home and that Crystal responded appropriately.

{¶18} Bartlett testified that Beverly has not signed the appropriate releases to ascertain the extent of her compliance with the case plan.

{¶19} Crystal Krempasky, J.F.'s half-sister, is unmarried and living with her (then) five-year-old son. She testified that J.F. attends Howland Schools. She described the chores and responsibilities J.F. has as a resident of her household and the consequences imposed for his disobedience. Crystal denied that she speaks ill of Beverly in J.F.'s presence or that she has discussed her own childhood with him.

{¶20} Beverly Chura testified that she wants J.F. returned to her home. She believes that Crystal is responsible for much of J.F.'s unruly behavior and had hoped that Children Services would help keep J.F. away from Crystal. She testified that one of the caseworkers taunted her that Crystal would obtain permanent custody of J.F. She admitted that she initially executed, but then revoked, the releases so that Children Services would not have access to the information.

{¶21} Robert Chura, Beverly's husband since 1999, testified that J.F.'s hostility toward his mother increased over time. Robert testified that, in 2006, J.F. was sent to Belmont Pines on account of his behavior and, prior to that, was seen at the Cleveland Clinic.

{¶22} Dr. Rose Quinones-DelValle, a clinical counselor at PsyCare, testified on Beverly's behalf by video deposition. She testified that she saw Beverly on twenty-two occasions, J.F. on one occasion, and Beverly and J.F. jointly on nine occasions. Dr. Quinones opined that a child with J.F.'s conditions (AD/HD and ODD) has a limited capacity to make informed decisions about their own custody. She testified that J.F. reported not taking his medication and not allowing Crystal to tell him what to do. Dr. Quinones believed that J.F. has false memories about Beverly. During the joint sessions, J.F. treated Beverly with affection. Dr. Quinones did not believe that Beverly

and J.F. posed a threat to each other, but was not certain if they could coexist successfully.

{¶23} On August 13, 2009, the guardian ad litem/counsel submitted his Report.

The guardian proffered the following recommendation:

{¶24} Since the finding of dependency by this Court, there is little evidence to demonstrate that the situation between mother and son has improved due to counseling. Further, [J.F.], who turns sixteen years old in a few weeks, has maintained adamantly and steadfastly that he does not wish to live with his mother, nor does he wish to visit. In light of this, it is recommended that the Motion to Terminate Temporary Custody \*\*\* be granted and that \*\*\* Legal Custody be vested to Crystal Krempasky.

{¶25} On August 25, 2009, a Magistrate's Decision was issued granting legal custody of J.F. to Crystal.

{¶26} On September 8, 2009, Beverly filed Objections to the Decision of the Magistrate.

{¶27} On January 22, 2010, the juvenile court issued an Opinion, overruling Beverly's Objections.

{¶28} On February 9, 2010, the juvenile court issued a Judgment Entry, adopting the Magistrate's Decision, and granting legal custody of J.F. to Crystal.

{¶29} On February 23, 2010, Beverly filed her Notice of Appeal. On appeal, Beverly raises the following assignments of error:

{¶30} "[1.] Whether the trial court erred in the Magistrate[']s decision of granting temporary custody to Crystal Krempasky and not returning custody to the biological mother, same being against the manifest weight of the evidence."

{¶31} “[2.] The Court below failed to properly account for the Mother’s paramount right to custody or in the alternative make a determination that the Mother was [not] suitable before awarding custody to a non-parent.”

{¶32} “If a child is adjudicated an abused, neglected, or dependent child, the court may \*\*\* [c]ommit the child to the temporary custody of \*\*\* a relative residing within or outside the state \*\*\*.” R.C. 2151.353(A)(2). “Any public children services agency \*\*\* , by filing a motion with the court, may at any time request the court to modify or terminate any order of disposition issued pursuant to division (A) of this section \*\*\*.” R.C. 2151.353(E)(2); R.C. 2151.417(B) (“[t]he court may amend a dispositional order in accordance with division (E)(2) of section 2151.353 [2151.35.3] of the Revised Code at any time upon its own motion or upon the motion of any interested party”). “At any hearing in which a court is asked to modify or terminate an order of disposition issued under section 2151.353 [2151.35.3] \*\*\* , the court, in determining whether to return the child to the child’s parents, shall consider whether it is in the best interest of the child.” R.C. 2151.42(A).

{¶33} “A juvenile court’s grant of legal custody is reviewed under an abuse of discretion standard.” *In re Yates*, 11th Dist. No. 2008-G-2836, 2008-Ohio-6775, at ¶32 (citations omitted); *In re Nice*, 141 Ohio App.3d 445, 455, 2001-Ohio-3214 (“[a]n award of legal custody shall not be reversed on appeal absent an abuse of discretion”); cf. *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21, syllabus (“[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”).

{¶34} In the first assignment of error, Beverly argues that the evidence in the record merely demonstrates that granting legal custody to Crystal is in accord with J.F.'s personal wishes, rather than his best interests. While Beverly has conducted herself as a concerned mother trying to raise a difficult child, Children Services, the counselors, and the juvenile court have enabled J.F. to avoid submitting to parental authority.

{¶35} The evidence in the present case demonstrates that the issues are broader than simply the vindication of a mother's authority over her child. The case began as a result of Beverly's inability to effectively control J.F. without recourse to the police and/or state intervention. J.F. had evident problems with controlling his anger and accepting authority, which were aggravated if not caused by behavioral disorders such as AD/HD and ODD. As a result of the escalating level of conflict with Beverly, J.F. was placed on probation with the Juvenile Justice Center. The evidence demonstrates that Beverly also had issues affecting her parenting ability. As a result of the conflict with J.F., Beverly was convicted of Disorderly Conduct.

{¶36} During the course of these proceedings, J.F. has shown significant progress in overcoming the issues that led to Children Services' intervention. The evidence suggests that his removal from Beverly's household and placement with his half-sister, Crystal, contributed to this progress. Beverly has not demonstrated similar improvement in her ability to parent J.F. The decision to grant Crystal legal custody is in J.F.'s best interest in that it will protect and foster the positive developments in his life. The fact that this placement is consistent with J.F.'s definitively expressed wishes regarding his own placement strengthens the conclusion that it is in his best interests.

Given the facts of the present case, the juvenile court's grant of legal custody to Crystal would have been compelling even if J.F.'s feelings about Beverly had been equivocal.

{¶37} The first assignment of error is without merit.

{¶38} In the second assignment of error, Beverly argues the juvenile court failed “to give appropriate deference to the paramount rights of the natural mother,” in the absence of clear and convincing evidence that she was unsuitable and/or that J.F. could not be placed with her. There is no error in the juvenile court's judgment with respect to Beverly's rights as a natural mother.

{¶39} The Ohio Supreme Court has recognized that “parents who are suitable persons have a ‘paramount’ right to the custody of their minor children.” *In re Murray* (1990), 52 Ohio St.3d 155, 157 (citations omitted). However, “[a] juvenile court adjudication of abuse, neglect, or dependency is a determination about the care and condition of a child and implicitly involves a determination of the unsuitability of the child's custodial and/or noncustodial parents.” *In re C.R.*, 108 Ohio St.3d 369, 2006-Ohio-1191, paragraph two of the syllabus. Accordingly, “the *fundamental* or *primary* inquiry at the dispositional phase of \*\*\* juvenile proceedings is not whether the parents of a previously adjudicated ‘dependent’ child are either fit or unfit,” rather, it is “the best interests and welfare of the child [that] are of paramount importance.” *In re Cunningham* (1979), 59 Ohio St.2d 100, 106 (emphasis sic); *In re D.A.*, 113 Ohio St.3d 88, 2007-Ohio-1105, at ¶11 (“[o]nce the case reaches the disposition phase, the best interest of the child controls”).

{¶40} Moreover, the applicable standard for granting legal custody at the dispositional phase of the proceedings is preponderance of the evidence, rather than

the heightened standard of clear and convincing evidence urged by Beverly. *Nice*, 141 Ohio App.3d at 455; *In re Willmann* (1986), 24 Ohio App.3d 191, paragraph one of the syllabus; cf. *In re Perales* (1977), 52 Ohio St.2d 89, 98 (“parents may be denied custody only if a preponderance of the evidence indicates \*\*\* that an award of custody would be detrimental to the child”).

{¶41} The second assignment of error is without merit.

{¶42} For the foregoing reasons, the decision of the Trumbull County Court of Common Pleas, Juvenile Division, granting legal custody of J.F. to Crystal Krempasky, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.