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SLIP OPINION NO. 2026-OHIO-3906

IN RE A.S.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *In re A.S.*, Slip Opinion No. 2026-Ohio-3906.]

Child custody—When a natural parent has, through a court order in a dependency case, regained legal custody of his or her child who previously was determined to be a dependent child and the juvenile court closes that dependency case, a juvenile court may not terminate that custody order under R.C. 2151.42(B) without first finding that since the order was issued, the natural parent has become unsuitable—A natural parent’s constitutional rights to the care, custody, and control of his or her child are violated when a juvenile court awards custody to a nonparent without first finding the natural parent unsuitable—Court of appeals’ judgment reversed and cause remanded to juvenile court.

(Nos. 2025-1224 and 2025-1225—Submitted June 30, 2026—Decided October 7, 2026.)

APPEAL from and CERTIFIED by the Court of Appeals for Summit County,

No. 31183, 2025-Ohio-1349.

KENNEDY, C.J., authored the opinion of the court, which FISCHER, DEWINE, BRUNNER, DETERS, HAWKINS, and SHANAHAN, JJ., joined.

KENNEDY, C.J.

{¶ 1} This is a discretionary appeal from a judgment of the Ninth District Court of Appeals and a certified-conflict case in which we have recognized that a conflict exists between the Ninth District’s judgment and a judgment of the Eighth District Court of Appeals. We consider whether after returning custody of a child to a natural parent, a juvenile court may award custody of the child to a nonparent without first finding that the natural parent is presently unsuitable. The answer to that question is no.

{¶ 2} The child at issue in this case is A.S., who was born in December 2012. In 2017, the appellant in this case, A.S.’s mother, C.S. (“Mother”), stipulated that A.S. was a dependent child, *see* R.C. 2151.04, and the child’s paternal grandparents, appellees D.H. (“Grandfather”) and D.H. (“Grandmother”) (collectively, “Grandparents”), were granted temporary custody of A.S. in December of that year. Mother completed her case plan, and in March 2019, she was granted shared legal custody of A.S. with A.S.’s father (“Father”) and the case was closed. In August 2021, the juvenile court modified the order, making Mother the residential parent for school purposes.

{¶ 3} Two years later, Grandparents moved to intervene and to modify the custody order. Without first finding Mother unsuitable, the juvenile court granted Grandparents legal custody of A.S. On appeal, the Ninth District held that the juvenile court did not need to find Mother unsuitable, since A.S. had previously been determined by the juvenile court to be a dependent child. 2025-Ohio-1349, ¶ 20 (9th Dist.). This holding conflicted with a decision by the Eighth District

holding that a parent to whom legal custody of a child had been returned must be found unsuitable before a court may grant legal custody to a nonparent, *In re B.K.*, 2013-Ohio-1190, ¶ 15-17 (8th Dist.).

{¶ 4} Mother appealed the Ninth District’s judgment, and the Ninth District certified that a conflict exists between its judgment and that of the Eighth District. We accepted the discretionary appeal, agreed that a conflict exists, and consolidated the jurisdictional appeal and the certified-conflict case. 2025-Ohio-5386.

{¶ 5} A natural parent’s constitutional rights to the care, custody, and control of his or her child are violated when a juvenile court awards custody to a nonparent without first finding the natural parent unsuitable. When a juvenile court returns custody of a child to a natural parent after a finding of dependency, the court has found that that parent is suitable, which reinstates the parent’s constitutional rights regarding that child, necessitating that a court make an unsuitability determination before subsequently awarding legal custody of the child to a nonparent. We therefore reverse the Ninth District’s judgment and remand the case to the juvenile court for further proceedings consistent with this opinion.

I. Facts and Procedural History

A. First Custody Proceeding

{¶ 6} On September 22, 2017, appellee Summit County Children Services¹ received a report that Mother had tested positive for cocaine and methamphetamines at the time she gave birth to a baby boy, who subsequently experienced medical issues. Because of Mother’s positive drug test, children services held a meeting with Mother, Father, and other family members, and it was decided that children services would request that it be awarded emergency temporary custody of Mother’s three sons and that A.S., her only daughter, be placed in the emergency temporary custody of Grandparents.

1. No brief was filed on behalf of Summit County Children Services in this case.

{¶ 7} Children services subsequently filed a complaint in the juvenile division of the Summit County Common Pleas Court (“juvenile court”) asserting that under R.C. 2151.04(B) and (C), A.S. was a dependent child because she “lack[ed] adequate parental care by reason of the mental or physical condition of [her] parents [or that her] condition or environment [was] such as to warrant the state, in the interests of the child, [to] assum[e her] guardianship.” It also requested that the juvenile court place A.S. in the emergency temporary custody of Grandparents.

{¶ 8} A magistrate ordered that Grandparents be granted emergency temporary custody of A.S., finding that to be in A.S.’s best interest. Mother entered a treatment facility, and children services created a case plan with the goal of reunifying the family. While represented by counsel, Mother stipulated to a finding of dependency, waived her trial rights, and agreed to participate in the case plan. Accordingly, the juvenile court adjudicated A.S. dependent and ordered Mother to participate in the case plan. It then, in December 2017, with the agreement of Mother and Father, granted Grandparents temporary custody of A.S.

{¶ 9} A year later, Mother and Father agreed to Father’s taking temporary custody of A.S. while Mother continued her substance-use program, and the juvenile court granted Father temporary custody. Shortly thereafter, upon successfully completing her substance-use program, Mother moved for shared parenting of A.S. with Father. In March 2019, the juvenile court granted shared parenting and adopted a shared-parenting plan naming Father the residential parent for school purposes and Mother the residential parent for state-aid purposes. Neither was responsible for child support, and they alternated claiming the tax benefits for A.S. The juvenile court closed the case on March 22, 2019.

B. Second Custody Proceeding

{¶ 10} On August 18, 2021, Mother and Father moved the juvenile court to modify the shared-parenting plan, asking that Mother be named the residential

parent for school purposes and that she be entitled to the child-tax-credit deduction. The magistrate found that Father was undergoing treatment for a terminal illness and that this modification to the shared-parenting plan would be in A.S.'s best interest, so he granted the motion on August 19. The juvenile court adopted the magistrate's decision.

C. Third Custody Proceeding

{¶ 11} On September 6, 2023, Grandmother filed a motion asking the juvenile court to grant her legal custody of A.S. After being advised that she could not move to modify the shared-parenting plan as a nonparty, she moved to intervene. The magistrate granted her motion to intervene because she had previously served in the capacity of in loco parentis for A.S. The magistrate also appointed a guardian ad litem for A.S.

{¶ 12} Before the legal-custody hearing, Grandmother moved for emergency temporary custody, citing concerns for A.S. given Father's inability to care for the child because of the progression of his illness, Mother's history of drug addiction, Mother's having married a sex offender, and A.S.'s truancy issues while living with Mother. Mother failed to appear at the November 9, 2023 hearing, and the magistrate, finding it to be in the best interest of A.S., granted Grandmother's motion for emergency temporary custody. Grandfather then moved to intervene (that motion was later granted), and Grandparents moved for legal custody.

{¶ 13} Father died in January 2024. The hearing on Grandparents' motion for legal custody was held on March 22, 2024. Grandparents and Mother were represented by counsel.

{¶ 14} During the hearing, multiple witnesses testified on various subjects, including about what occurred when A.S. was living with Mother as residential parent for school purposes under the 2021 shared-parenting plan. Once, when A.S. was in Mother's care, Mother left her four children with a 16-year-old male family member who was mentally unwell and sometimes smoked marijuana. When A.S.

refused to give her phone to him, he slapped her across the head. Also while in Mother's care, A.S. missed school so often that Father and a truant officer were contacted. These truancy issues resulted in A.S.'s being returned to Father's care approximately three months after moving in with Mother. Since that time, A.S. has not lived with Mother or had overnight visits with Mother. Nevertheless, Mother continued to receive government benefits for A.S. until Grandparents obtained temporary custody in November 2023.

{¶ 15} Other testimony revealed Mother's lack of interaction with A.S. since Grandparents were granted temporary custody in November 2023. On February 21, 2024, in response to Mother's claim that Grandparents had prevented her from visiting A.S., the juvenile court ordered that Mother be permitted to have visitation with A.S. for a minimum of two hours on Sundays. In the time between the issuance of the visitation order and the hearing, Mother had the opportunity for four visits with A.S. She canceled the first visit, claiming illness. Mother was supposed to bring A.S.'s brothers for the siblings to play together at a park for the second visit, but Mother arrived at the park alone and sat at a picnic table with A.S. for an hour and a half. For the third opportunity to visit, Mother and A.S. were scheduled to meet at a roller rink, but Mother canceled that visit at the last minute after first changing the time and place to meet. For the fourth visit, Mother arrived late, citing a traffic accident.

{¶ 16} In addition to in-person visitation, the court's visitation order permitted Mother to call A.S. three times a week, for a total of 13 possible phone calls between the issuance of the visitation order and the hearing. But Grandmother testified that Mother had called A.S. only four times during that period; Mother testified that she had called more than four times, but she admitted that she had failed to call several times. Each time Mother did not show up or call, A.S. became depressed and disappointed.

{¶ 17} There was also evidence submitted concerning the possibility that Mother had relapsed into drug use. A neighbor of Mother's testified that in November 2023, she saw Mother, through a window, put a crack pipe to her mouth and that Mother covered the window when she saw the neighbor.

{¶ 18} Finally, many witnesses testified about W.D. ("Stepfather"), Mother's husband. He is a convicted child sex offender who had spent time on the sex-offender registry for a sexual offense committed against a girl under the age of 13—a crime to which he pled guilty. Mother's relationship with him resulted in another children services' investigation, this one in the fall of 2023, since her three sons were around Stepfather, who at the time had failed to register as a sex offender. However, children services did not deem him a risk to the three boys, based on Stepfather's nearing completion of a program for sex offenders; his nearing the end of his registration term; and the caseworker's interviews with the three boys, Mother, and Stepfather. But the caseworker never spoke to Stepfather's probation officer or anyone in law enforcement about his registration status as a sex offender. She was ignorant of his pending charges, whether he had received any treatment in prison, and his likelihood of recidivism.

{¶ 19} Mother knew of Stepfather's status as a sex offender when they married and had seen the paperwork concerning his conviction, but she testified that she did not believe he was guilty of the crime, because she had known him for a long time and he "never really came off as a person that would do that to a child." Additionally, Stepfather had told her that the victim was 16. Mother claimed that she had investigated Stepfather, but when questioned, she admitted that she had merely reviewed his driving record and that she was unaware of his other crimes, which included drug possession, failure to register, and violent felonies, such as felony domestic violence. In fact, at the time of the hearing, Stepfather was out of jail on a bond and had recently tested positive for cocaine. Mother claimed not to know what Stepfather's new charges were.

{¶ 20} A.S. told her guardian ad litem that she would want to live with Mother if Stepfather were not living with her and she said that she believed Mother cared more about Stepfather than her children. A.S. told several people that she did not feel safe around Stepfather; she had witnessed him yell at and hit her brothers, and she had nightmares that he was beating her. Additionally, Mother's neighbor testified that she often heard Stepfather threaten to physically harm the children if they did not stop doing something that he did not want them to do. Mother knew that A.S. was uncomfortable around Stepfather, and she testified that in general, she agreed that A.S. should be afraid of convicted sex offenders, but Mother said she had no concerns about Stepfather's being around her children.

{¶ 21} In fact, Mother went to great lengths to keep Stepfather around, letting him live with her in her public-housing apartment despite his not being permitted by the housing authority to live there. His presence led to her receiving an eviction notice and the family's moving to a new house.

{¶ 22} After considering all the evidence, the magistrate examined the case solely under R.C. 2151.42(B), which prohibits a juvenile court from modifying a legal-custody order unless it finds (1) a change in the circumstances of the child or the person who was granted legal custody and (2) that the modification would be in the best interest of the child. Following the statute, the magistrate found that there had been a change in the circumstances of both A.S. and her parents since the shared-parenting order was issued and that it was in the best interest of A.S. to grant Grandparents legal custody.

{¶ 23} Specifically, in support of the finding that a change in circumstances had occurred in relation to both A.S. and her parents, the magistrate found that A.S. had moved back in with Father despite Mother's being the designated residential parent under the shared-parenting plan, Father had died, and Mother had married a sex offender. In support of the finding that it was in the best interest of A.S. to grant legal custody to Grandparents, the magistrate found that although Mother had not

relapsed, she had married Stepfather, a known drug user, which would make it more difficult for Mother to maintain her sobriety. But the magistrate said that “[t]he single biggest factor” in his decision was that Mother had married Stepfather, who made A.S. feel unsafe and who had committed a sexual offense against a female child under the age of 13.

{¶ 24} Mother timely filed objections to the magistrate’s decision, arguing, among other things, that her parental right to the custody of A.S. could not be extinguished without first finding her unsuitable. The juvenile court disagreed. Since Mother had stipulated to A.S.’s dependency in the 2017 proceedings, the juvenile court found that Mother had already been found unsuitable, negating the need for another unsuitability determination. Therefore, it overruled Mother’s objections and adopted the magistrate’s decision.

D. Appeal to the Ninth District

{¶ 25} Mother appealed to the Ninth District, arguing, among other things, that the juvenile court had to find her unsuitable before awarding custody of A.S. to nonparents. The Ninth District disagreed. 2025-Ohio-1349 at ¶ 16-20 (9th Dist.).

{¶ 26} The appellate court noted that Ohio has an extensive statutory scheme governing child custody in dependency, neglect, and abuse cases; that under the appellate court’s prior case law, modification of a prior order granting legal custody is governed by R.C. 2151.42(B); and that juvenile courts have continuing jurisdiction in these cases. *Id.* at ¶ 18-19. Therefore, it reasoned, R.C. 2151.42(B) controlled in this case, and that statute does not “distinguish between legal custody orders that return a child to the legal custody of her parents from ones that place the child in the legal custody of non-parents.” *Id.* at ¶ 19. And since the statute does not mention suitability, the Ninth District determined that the juvenile court did not need to make an unsuitability finding before awarding custody of A.S. to

nonparents. *See id.* at ¶ 16-20. Accordingly, the Ninth District affirmed the juvenile court's judgment. *Id.* at ¶ 20, 36.

{¶ 27} This judgment conflicts with an earlier decision by the Eighth District, which requires a court to find a parent to whom legal custody of a dependent child had been returned unsuitable before the court may award legal custody to a nonparent. *B.K.*, 2013-Ohio-1190, at ¶ 15-17 (8th Dist.).

{¶ 28} We accepted Mother's jurisdictional appeal on the following propositions of law:

(1) When a natural parent has regained legal custody of her previously dependent child and the juvenile court closes that dependency case, a trial court cannot "infer" the natural parent's present unsuitability from the initial dependency finding in the since-closed dependency case.

(2) When a natural parent has regained legal custody of her previously dependent child and the juvenile court closes that dependency case, a trial court may not terminate that custody order under R.C. 2151.42(B) without first finding that, since the order was issued, the natural parent has become unsuitable.

See 2025-Ohio-5386.

{¶ 29} The Ninth District also certified a conflict between its judgment and the judgment of the Eighth District in *B.K.* This court determined that a conflict exists and ordered the parties to brief the following question: "When, after a child is adjudicated dependent, the child's natural parent regains legal custody and the juvenile court closes the case, may the trial court subsequently award custody to a nonparent without first finding that the natural parent is presently unsuitable?" 2025-Ohio-5386.

{¶ 30} We sua sponte consolidated the jurisdictional appeal and the certified-conflict case. *Id.*

II. Law and Analysis

A. Standard of Review

{¶ 31} Whether after returning custody of a child to a natural parent, a court must find the natural parent unsuitable before awarding legal custody of the child to a nonparent is a question of law, and this court reviews questions of law de novo, *Arnott v. Arnott*, 2012-Ohio-3208, ¶ 17.

B. Mother's Constitutional Liberty Interest in the Custody of A.S. Was Violated

{¶ 32} Grandparents argue that the juvenile court was correct in applying only R.C. 2151.42(B) in making its determination since Mother had been adjudicated unsuitable in 2017 when she stipulated that A.S. was a dependent child. Consequently, they claim, the court did not need to find her unsuitable a second time. However, we hold that by awarding custody to a nonparent without first finding Mother unsuitable, the juvenile court violated Mother's protected liberty interest in the care, custody, and control of her daughter.

{¶ 33} "Parents have a constitutionally protected due process right to make decisions concerning the care, custody, and control of their children, and the parents' right to custody of their children is paramount to any custodial interest in the children asserted by nonparents." *In re Mullen*, 2011-Ohio-3361, ¶ 11, citing *Troxel v. Granville*, 530 U.S. 57, 66 (2000). Specifically, suitable parents "have the 'paramount' right to custody of their minor children." *Reynolds v. Goll*, 1996-Ohio-153, ¶ 8, quoting *In re Perales*, 52 Ohio St.2d 89, 97 (1977). "However, in balancing the interests of both the parent and child, the right of custody by the biological parents is not absolute and can be forfeited." *Id.*

{¶ 34} "Ohio courts have sought to effectuate the fundamental rights of parents by severely limiting the circumstances under which the state may deny parents the custody of their children." *In re Hockstok*, 2002-Ohio-7208, ¶ 17.

Therefore, a court may not award custody to a nonparent unless “a preponderance of the evidence shows that the parent” is unsuitable. *Id.* A parent is unsuitable if “the parent abandoned the child; [the parent] contractually relinquished custody of the child; . . . the parent has become totally incapable of supporting or caring for the child; or an award of custody to the parent would be detrimental to the child.” *Id.*, quoting *Perales* at syllabus. The factual determination of whether a parent is unsuitable is made on a case-by-case basis by examining the record. *See id.* at ¶ 33. “[A]buse, neglect, or dependency adjudications implicitly involve a determination of the unsuitability of the child’s parents.” *In re C.R.*, 2006-Ohio-1191, ¶ 22.

{¶ 35} Only after a child’s parents are adjudged unsuitable may the State “infringe upon the fundamental parental liberty interest of child custody.” *Hockstok* at ¶ 17. “Thus, a finding of parental unsuitability has been recognized by this court as a necessary first step in child custody proceedings between a natural parent and [a] nonparent.” *Id.* at ¶ 18.

{¶ 36} But “[a] parent should be given only one unsuitability determination, which should come at the time of the legal custody hearing.” *Id.* at 38. Once “the legal custody determination is made, the best-interest-of-the-child standard should be used for any custody modification petitions filed by a natural parent.” *Id.* This standard shifts the focus from the rights of the parents to the rights of the child. *Id.* Therefore, after considering the parents’ constitutional rights, courts consider the statutes protecting a child’s interests, such as R.C. 2151.42(B). *See id.* “In this way the rights of parents and children are balanced in child custody disputes.” *Id.* at ¶ 39.

{¶ 37} Courts may return a child to the custody of a natural parent who previously lost or relinquished custody. *See In re Hua*, 62 Ohio St.2d 227, 234-235 (1980) (discussing whether to return custody of a child to a natural parent). But a court must first find that parent suitable. *See id.* at paragraph two of the syllabus

(“In a habeas corpus action filed by a natural parent who seeks the return of her child from a third party, it is error for the court to issue the writ of habeas corpus without first conducting an inquiry into the suitability of the natural parent.”).

{¶ 38} Here, Mother has not been adjudicated an unsuitable parent in a legal-custody proceeding. Although Mother did stipulate in a prior case that A.S. was a dependent child, that case was later closed when the juvenile court granted Mother and Father shared legal custody and shared parenting under a shared-parenting plan, meaning that the juvenile court had found her suitable, *see Hua* at 235. This reinstated her constitutional right to custody of A.S., meaning a court must find her unsuitable before removing her paramount right to the custody of her child, *see Reynolds*, 1996-Ohio-153, at ¶ 8. Therefore, the juvenile court unconstitutionally inferred Mother’s unsuitability from the prior proceeding since it subsequently found her suitable. It also unconstitutionally conducted the statutory review of A.S.’s best interest without first finding Mother unsuitable. *See Hockstok*, 2002-Ohio-7208, at ¶ 18. Consequently, we hold that the juvenile court erred in granting legal custody of A.S. to Grandparents without first adjudicating Mother unsuitable and thereby violated Mother’s constitutional liberty interest in the custody of her child.

{¶ 39} While we hold that when a nonparent seeks legal custody of a child, the juvenile court must first determine whether the natural parents are unsuitable before it applies the statutory requirements of R.C. 2151.42(B), our decision in this case should not be read to mean that the juvenile court is required to hold two separate hearings. The determination whether a natural parent is suitable is a factual determination that must be made on a case-by-case basis based on the evidence presented to the court. Therefore, courts may consider evidence presented at a change-of-circumstances hearing to determine whether a natural parent is suitable.

III. Conclusion

{¶ 40} When a natural parent has regained legal custody of his or her child who previously was determined to be a dependent child and the juvenile court closes the underlying dependency case, a trial court cannot “infer” the natural parent’s present unsuitability from the initial dependency finding in the since-closed dependency case. Similarly, when a natural parent has, through a court order in a dependency case, regained legal custody of his or her child who previously was determined to be a dependent child and the juvenile court closes that dependency case, a juvenile court may not terminate that custody order under R.C. 2151.42(B) without first finding that since the order was issued, the natural parent has become unsuitable. Consequently, in this case, the juvenile court was required to find that Mother was unsuitable before it granted legal custody of A.S. to Grandparents since it had previously deemed Mother suitable. Since it did not make that finding before awarding custody to Grandparents, it violated Mother’s fundamental liberty interest in the custody of her child. Therefore, we reverse the judgment of the Ninth District Court of Appeals, remand the case to the Summit County Juvenile Court for further proceedings consistent with this opinion, and answer the certified question in the negative.

Judgment reversed
and cause remanded to the juvenile court.

Flowers & Grube and Joseph Shell; and Andrew Karas, for appellant.

Ronald T. Gatts, for appellees D.H. and D.H.

Cullen Sweeney, Cuyahoga County Chief Public Defender, and Britta M. Barthol and Erika B. Cunliffe, Assistant Public Defenders, urging reversal for amicus curiae Cuyahoga County Public Defender’s Office.

Mitchell A. Willias, Franklin County Public Defender, and Timothy E. Pierce, urging reversal for amicus curiae Franklin County Public Defender’s Office.

January Term, 2026
