

with the child.

{¶3} On January 17, 2007, father filed a petition for custody of L.E.N. and the parties went back to mediation. A pretrial order was issued August 10, 2007 which set up a temporary shared parenting plan between father and mother. In September of 2007, a few days before the original final hearing date, father filed an emergency motion for custody of L.E.N., alleging the child was in danger at mother's residence. Father also obtained a Civil Protection Order (CPO) against mother and the child's stepfather.

{¶4} The magistrate conducted a final hearing on December 3, 2007 and February 19, 2008. In addition to hearing testimony from father, mother, the court-appointed guardian ad litem, paternal and maternal relatives, the police and a CCCS caseworker, the magistrate heard testimony from a psychotherapist, Francis E. Eckerson, M.Ed., LPCC, who conducted an evaluation of L.E.N. In particular Eckerson testified that L.E.N. suffered from post traumatic stress disorder (PTSD) and found she had been subject to abuse, some of which Eckerson believed was perpetrated by stepfather. Father attempted to have the magistrate review stepfather's juvenile record, "to ensure that the Court consider all potentially material information prior to determining what is in the best interest of the minor child." The magistrate denied father's motion.

{¶5} The magistrate issued a decision on July 11, 2008, which the juvenile court adopted the same day, finding it was in L.E.N.'s best interest to designate mother as the residential parent and legal custodian of the child, and grant father standard visitation. Father filed objections to the magistrate's decision, arguing the decision was against the manifest weight of the evidence, and that the magistrate erred in denying father's request to have stepfather's juvenile record reviewed. On February 24, 2009, the juvenile court overruled father's objections. Basing its decision on the factors in R.C. 3109.04(F)(1), as well as other relevant evidence, the juvenile court found it was in

L.E.N.'s best interest to designate mother as the child's legal custodian and residential parent and allow father standard visitation. The juvenile court also found that the magistrate properly denied father's motion for an inspection of stepfather's juvenile records. Father filed a timely appeal alleging two assignments of error.

{¶6} Because our discussion of the second assignment of error necessarily has bearing on the outcome of our decision, we have elected to address it prior to the first assignment of error.

{¶7} Assignment of Error No. 2:

{¶8} "THE COURT ERRED IN DENYING FATHER'S MOTION FOR AN IN CAMERA REVIEW OF [STEPFATHER'S] CLINTON COUNTY JUVENILE RECORDS."

{¶9} In his second assignment of error, father contends that the juvenile court should have conducted an in camera review of stepfather's Clinton County juvenile records. We agree.

{¶10} In denying father's objection to the magistrate's refusal to conduct an in camera inspection of stepfather's juvenile records, the juvenile court found that stepfather's juvenile records were not admissible, so in camera review of the records was properly denied. The juvenile court based its decision on Evid.R. 609(D) which governs admittance of juvenile records for impeachment purposes, and R.C. 3109.04(F)(1)(h) which requires courts to look at convictions or guilty pleas for certain offenses by a parent or household member.¹ Because delinquency adjudications are not convictions, nor does a delinquent plead "guilty" to an offense, the juvenile court reasoned that stepfather's juvenile records would be inadmissible, and therefore unreviewable.

2. We note that Evid.R. 609(D) is not the only evidentiary provision by which juvenile records may be admissible in custody proceedings. See, e.g., *In the Matter of: Aarika D.* (June 5, 1998), Sandusky App.

{¶11} "The primary concern in a child custody case is the child's best interest." *Seibert v. Seibert* (1990), 66 Ohio App.3d 342, 344, citing *Miller v. Miller* (1988), 37 Ohio St.3d 71. "The child's best interest is to be determined by considering all relevant factors, including those enunciated in R.C. 3109.04[F]." *Seibert* at 344, citing *Birch v. Birch* (1984), 11 Ohio St.3d 85. However, R.C. 3109.04(F) "does not contain an exhaustive list of factors." *Seibert* at 345. Because "all relevant factors" must be considered, R.C. 3109.04(F)(1) clearly contemplates a court must consider anything that has bearing on the best interest of the child. See *Bonar v. Boggs*, Jefferson App. No. 01 JE 33, 2002-Ohio-7173, ¶30 (considering testimony of both parents use of illegal drugs, alcohol and tobacco pursuant to the "catch-all" provision of R.C. 3109.04[F][1]).

{¶12} We are unable to determine whether stepfather's juvenile adjudication is relevant in determining L.E.N.'s best interest, because the juvenile court refused to review the records. By foreclosing any inquiry into stepfather's juvenile adjudication, solely because it found the records inadmissible, we find that the juvenile court failed to ensure that it considered all possible factors that may be relevant in a best interest determination. See R.C. 3109.04(F)(1). Although admissibility is certainly a concern, the first inquiry, in a case of this nature, must be whether the records are relevant to the best interest determination. Indeed, as we stated in *Grantz v. Discovery for Youth*, Butler App. Nos. CA2004-09-216, CA2004-09-217, 2005-Ohio-680, "[t]he proper procedure for determining the discoverability of confidential juvenile records *requires the trial court to conduct an in camera inspection* to determine: 1) whether the records are necessary and relevant to the pending action; 2) whether good cause has been shown by the person seeking disclosure; and 3) whether their admission outweighs the

No. S-97-035, 1998 WL 334216, at *1 (finding admissibility of a juvenile record was a relevancy determination pursuant to Evid.R. 401-403).

confidentiality considerations set forth in R.C. 5153 and R.C. 2151." (Emphasis added.)
Id. at ¶19, citing *Johnson v. Johnson* (1999), 134 Ohio App.3d 579, 585. Although this case essentially relates to the admissibility of juvenile records instead of disclosure of such records, we believe the reasoning in *Grantz* and *Johnson* is sound by requiring a court to conduct an in camera inspection of the records prior to making them available for either purpose. Therefore, we sustain father's second assignment of error and reverse and remand this matter back to the juvenile court for the court to conduct an in camera inspection of stepfather's juvenile records to determine whether they are relevant in determining L.E.N.'s best interest.

{¶13} Assignment of Error No. 1:

{¶14} "THE DECISION GOES AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AS THE EVIDENCE PERTAINS TO THE FACTORS LISTED IN R.C. 3109.04(F)(1)(2) AND MATTERS RELEVANT TO THE BEST INTEREST OF [L.E.N.]"

{¶15} Because our decision regarding the first assignment of error concerns evidence not considered by the trial court, we decline to address father's second assignment of error regarding the manifest weight of the evidence, as it would be advisory in nature, and thus impermissible under well-settled law. See *Egan v. National Distillers and Chemical Corp.* (1986), 25 Ohio St.3d 176, 178.

{¶16} Judgment reversed.

YOUNG, P.J., and HENDRICKSON, J., concur.