

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

IN THE MATTER OF:	:	
	:	
E.N.,	:	Case No. 21CA5
	:	
Adjudicated Dependent Child.	:	
	:	<u>DECISION AND JUDGMENT</u>
	:	ENTRY

APPEARANCES:

Tyler E. Cantrell, West Union, Ohio, for Appellant.¹

Smith, P.J.

{¶1} Chasity Baldwin (“Appellant”), the biological mother’s first cousin, appeals the trial court’s judgment that granted legal custody of one-and-one-half year old E.N. to K.M., the child’s paternal grandmother. Appellant asserts that the trial court erred by granting K.M.’s motion for legal custody of the child and by denying Appellant’s motion for legal custody of the child. We do not believe that the trial court abused its discretion by granting K.M. legal custody of the child. Likewise, we do not believe that the trial court abused its discretion by denying Appellant’s

¹ None of the other parties involved in the trial court proceedings have entered an appearance in this appeal. When an appellee fails to file an appellate brief, App.R. 18(C) authorizes us to accept an appellant's statement of facts and issues as correct, then reverse a trial court's judgment as long as the appellant's brief "reasonably appears to sustain such action." In other words, an appellate court may reverse a judgment based solely on consideration of an appellant's brief. *Harper v. Neal*, 4th Dist. Hocking No. 15CA25, 2016-Ohio-7179, 2016 WL 5874628, ¶ 14, citing *Fed. Ins. Co. v. Fredericks*, 2nd Dist., 2015-Ohio-694, 29 N.E.3d 313, 330-31, ¶ 79; *Sites v. Sites*, 4th Dist. Lawrence No. 09CA19, 2010-Ohio-2748, 2010 WL 2391647, ¶ 13; *Sprouse v. Miller*, Lawrence App. No. 06CA37,

motion for legal custody of the child. Consequently, we overrule Appellant's assignment of error and affirm the trial court's judgment.

FACTS

{¶2} On December 24, 2019, Highland County Job and Family Services Agency, Children Services Division, ("the agency") filed a complaint that alleged the child is an abused, neglected, and dependent child. The complaint alleged that the child's mother has not provided proper care for the child and that the mother has significant mental health issues. The agency requested the court to grant it emergency temporary custody of the child.

{¶3} The trial court later adjudicated the child dependent and dismissed the neglect and abuse allegations. The court placed the child in the agency's temporary custody for one year.

{¶4} Shortly thereafter, the child's father filed a motion to be joined as a party to the proceeding. The court subsequently found that paternity had been established and joined the father as a party.

{¶5} A few months later, the agency filed a notice that it would be placing the child in Appellant's home. Ten days later, K.M., the paternal grandmother, filed a motion to intervene and asked the court to place the

child in her custody. The agency subsequently requested the court to join Appellant to the proceedings and to grant Appellant legal custody of the child.

{¶6} On January 27, 2021, the trial court held a hearing to consider the motions for legal custody.

{¶7} Caseworker Melissa Lipp testified that the agency developed a case plan for the family and that neither parent has completed the case plan goals. The trial court then interjected and asked whether the parents were attempting to reunify with the child. The father's attorney stated that the father does not believe that he is capable of parenting the child at this point and that the father would like the court to place the child in K.M.'s legal custody. The mother's attorney similarly stated that the mother does not believe that she is capable of parenting the child at this time and pointed out that the mother currently is in a mental hospital.

{¶8} Lipp continued to testify and explained that she spoke with K.M. and visited K.M.'s home. Lipp claimed that K.M. informed Lipp that K.M. would leave the child with the biological parents while K.M. went to work. Lipp also stated that she had concerns about K.M.'s home due to pill bottles sitting in a place where the child could reach them. K.M. advised Lipp that if the child were in her home, she would place them on top of the television.

Lipp stated that pill bottles “need[] to be in a locked box or * * * put up out of [the child’s] reach.”

{¶9} Lipp testified that she also visited Appellant’s home. Appellant lives with her husband and eight children. Lipp explained that the child has lived in Appellant’s home since July 2020, and that he appears to be “a happy little boy.”

{¶10} Lipp indicated that the agency has some concerns about placing the child in K.M.’s legal custody. Lipp stated that her “main concern is that [K.M.] doesn’t understand * * * the seriousness of protecting this child from” the biological parents. Lipp indicated that she believes that it is in the child’s best interest to remain living with Appellant.

{¶11} K.M. stated that she lives with her husband in Pennsylvania. K.M. related that she is retired and that she helps care for an elderly individual about three to four hours each weekday. K.M. explained that if the court granted her legal custody of the child, K.M. would be able to take the child with her when she cares for the other individual. K.M. indicated that she believes that the child should have the opportunity to have contact with the biological parents and declared that she would never leave the child alone with the mother or the father.

{¶12} The child's guardian ad litem testified that she visited K.M.'s home and found it to be appropriate. The guardian ad litem does not have any concerns about K.M.'s ability to care for the child or her protective capacity. The guardian ad litem likewise is not concerned that K.M. would allow the biological parents to have unsupervised contact with the child.

{¶13} The guardian ad litem also visited Appellant's home. Appellant lives in a four-bedroom farmhouse with her husband and seven other children. The child appeared "fine and happy there as well."

{¶14} The guardian ad litem recommended that the court grant K.M. legal custody of the child. She explained that placing the child with K.M. would honor the parents' wishes. The guardian ad litem also believed that placing the child with K.M. would place him "in a very loving, caring environment." The guardian ad litem noted that both K.M.'s and Appellant's homes are safe environments. Yet, she believed that K.M.'s home "is the best place for [the child] to be."

{¶15} Appellant testified that she lives in West Union with her husband and eight children, including E.N. Three of the children are her siblings that she obtained custody of in 2018. Appellant stated that the child appears bonded to the family and that she would like the child to remain in her custody. Appellant does not believe that the child should have as much

contact with his biological parents as K.M. would permit. Appellant thinks that the parents first should demonstrate more stability in their own lives before being allowed to have consistent contact with the child.

{¶16} The child's biological father testified that he would like the child to live with his mother so that he can visit the child every day.

{¶17} On January 28, 2021, the trial court placed the child in K.M.'s legal custody. The court found that both Appellant's and K.M.'s homes would be appropriate for the child. The court determined, however, that placing the child with Appellant would mean that the biological parents would have to drive almost five hours each way to Appellant's home if they wished to visit the child and eventually attempt reunification. On the other hand, K.M. lived closer to the biological parents. The court thus concluded that placing the child with the paternal grandmother would be in the child's best interest and would give the parents a more realistic chance to reunify with the child. This appeal followed.

ASSIGNMENT OF ERROR

- I. THE TRIAL COURT ERRED IN GRANTING THE PATERNAL GRANDMOTHER'S MOTION FOR CUSTODY AND DENYING CHASITY BALDWIN'S MOTION FOR CUSTODY.

ANALYSIS

{¶18} In her sole assignment of error, Appellant asserts that the trial court erred by granting K.M.’s motion for legal custody of the child and by denying Appellant’s motion for legal custody. Appellant contends that maintaining the child in her custody is in the child’s best interest. She alleges that the child needs to be protected from the biological parents and that placing the child in her legal custody will allow the child to be protected and to have a stable homelife. Appellant also points out that the child had been living in her home for more than six months and had become bonded to the family, whereas the child has not spent any time in K.M.’s care. Appellant further faults the child’s guardian ad litem for failing to speak with Appellant on more than one occasion.

STANDARD OF REVIEW

{¶19} We first note that to support her argument, Appellant recites the standard applicable to trial court decisions that grant a children services agency permanent custody. However, because this case is an appeal from a trial court’s decision regarding legal custody, the permanent custody standard does not apply.

{¶20} “A trial court has broad discretion in proceedings involving the care and custody of children.” *In re Mullen*, 129 Ohio St.3d 417, 2011-

Ohio-3361, 953 N.E.2d 302, ¶ 14. Consequently, we review a trial court’s decision to award a party legal custody of an abused, neglected, or dependent child for an abuse of discretion, and we afford its decision “the utmost deference.” *In re E.W.*, 4th Dist. Washington Nos. 10CA18, 10CA19, and 10CA20, 2011-Ohio-2123, ¶ 18, citing *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988); accord *In re A.J.*, 148 Ohio St.3d 218, 2016-Ohio-8196, 69 N.E.3d 733, ¶ 27, citing *Davis v. Flickinger*, 77 Ohio St.3d 415, 417, 674 N.E.2d 1159 (1997) (stating that “a trial court’s decision in a custody proceeding is subject to reversal only upon a showing of abuse of discretion”); *In re A.L.P.*, 4th Dist. Washington No. 14CA37, 2015-Ohio-1552, ¶ 15; *In re C.J.L.*, 4th Dist. Scioto No. 13CA3545, 2014-Ohio-1766, ¶ 12. Ordinarily, “[t]he term ‘abuse of discretion’ implies that the trial court’s attitude was unreasonable, arbitrary, or unconscionable.” *In re H.V.*, 138 Ohio St.3d 408, 2014-Ohio-812, 7 N.E.3d 1173, ¶ 8. In *Davis*, however, the court explained the abuse of discretion standard that applies in child custody proceedings as follows:

The standard for abuse of discretion was laid out in the leading case of *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 8 O.O.3d 261, 376 N.E.2d 578, but applied to custody cases in *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21, 550 N.E.2d 178, syllabus:

“Where 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. (*Trickey v. Trickey* [1952], 158 Ohio St. 9, 47 O.O. 481, 106 N.E.2d 772, approved and followed.)”

The reason for this standard of review is that the trial judge has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page. As we stated in *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81, 10 OBR 408, 410-412, 461 N.E.2d 1273, 1276-1277:

“The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony. * * *

“* * * A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not. The determination of credibility of testimony and evidence must not be encroached upon by a reviewing tribunal, especially to the extent where the appellate court relies on unchallenged, excluded evidence in order to justify its reversal.”

This is even more crucial in a child custody case, where there may be much evident in the parties’ demeanor and attitude that does *not* translate to the record well.

Id. at 418-419.

{¶21} Accordingly, reviewing courts should afford great deference to trial court child custody decisions. *A.L.P.* at ¶ 16; *E.W.* at ¶ 19, citing *Pater v. Pater*, 63 Ohio St.3d 393, 396, 588 N.E.2d 794 (1992). Additionally, because child custody issues involve some of the most difficult and agonizing decisions that trial courts are required to decide, courts must have wide latitude to consider all of the evidence, and appellate courts should not disturb a trial court’s judgment absent an abuse of discretion. *Davis*, 77 Ohio St.3d 418; *Bragg v. Hatfield*, 152 Ohio App.3d 174, 2003-Ohio-1441, 787 N.E.2d 44, ¶ 24 (4th Dist.); *Hinton v. Hinton*, 4th Dist. Washington No. 02CA54, 2003-Ohio-2785, ¶ 9; *Ferris v. Ferris*, 4th Dist. Meigs No. 02CA4, 2003-Ohio-1284, ¶ 20. “In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained through contact with and observation of the parties and through independent investigation can not be conveyed to a reviewing court by printed record.” *Trickey*, 158 Ohio St. at 13.

{¶22} Thus, this standard of review does not permit us to reverse a trial court’s decision if we simply disagree with it. We may, however, reverse a trial court’s custody decision if the court made an error of law, if its decision is unreasonable, arbitrary, or unconscionable, or if substantial competent and credible evidence fails to support it. *Davis*, 77 Ohio St.3d at

418-419, 421 (explaining “abuse of discretion standard” and stating that courts will not reverse custody decisions as against the manifest weight of the evidence if substantial competent and credible evidence supports it, courts must defer to factfinder, courts may reverse upon error of law, and trial court has broad discretion in custody matters).

{¶23} We additionally note that courts generally have applied the preponderance-of-the-evidence standard to trial court decisions granting a party legal custody of a child. *In re R.A.*, 2nd Dist. Montgomery No. 28806, 2020-Ohio-4846, 2020 WL 5989210, ¶ 41, citing *In re R.H.B., L.M.B., and L.M.B.*, 2d Dist. Clark Nos. 2015-CA-12, 2015-CA-14, 2016-Ohio-729, ¶ 7, and *In re A.W.*, 2d Dist. Montgomery No. 21309, 2006-Ohio-2103, ¶ 6. “A ‘preponderance of the evidence’ is ‘evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it.’ ” *In re B.P.*, 191 Ohio App.3d 518, 2010-Ohio-6458, 946 N.E.2d 818, ¶ 43 (4th Dist.), quoting Black’s Law Dictionary 1182 (6th Ed.1998).

LEGAL CUSTODY FRAMEWORK

{¶24} Once a trial court adjudicates a child abused, neglected, or dependent, R.C. 2151.353(A)(3) authorizes the court to “[a]ward legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or

is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings.”

{¶25} R.C. 3109.04(F)(1) specifies the best interest factors courts must consider when determining whether to award legal custody to a party requesting it. *A.L.P.* at ¶ 17, citing *E.W.* at ¶ 20; R.C. 2151.23(F)(1); *In re Poling*, 64 Ohio St.3d 211, 594 N.E.2d 589 (1992), paragraph two of the syllabus (“[w]hen a juvenile court makes a custody determination under R.C. 2151.353, it must do so in accordance with R.C. 3109.04”); *In re Pryor*, 86 Ohio App.3d 327, 333, 620 N.E.2d 973, fn.4 (4th Dist. 1993) (stating that a trial court applies the same best interest standard in child custody disputes originating from a divorce and originating from a neglect, dependency, abuse complaint). Those factors are as follows:

- (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 [certain specified criminal offenses];
- (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.

{¶26} In the case at bar, we do not believe that the trial court abused its discretion by placing the child in K.M.'s legal custody. With respect to the factors listed above, the biological parents would like the child to be placed with the paternal grandmother so that they can play a role in the child's life. If the court placed the child with Appellant, the parents would need to drive about four and one-half hours each way to visit the child. The court did not interview the child, and the child is too young to express his wishes. The guardian ad litem recommended that the court place the child in K.M.'s legal custody.

{¶27} The trial court found that both Appellant's and K.M.'s homes would be suitable placements for the child. The court ultimately determined

that placing the child in K.M.'s home would allow the child to have more frequent contact with the biological parents and offer the parents a more realistic opportunity to work towards reunification. The trial court, faced with a difficult choice between two equally appropriate homes, decided that placing the child in a home where the child could have frequent contact with the biological parents would be in the child's best interest. Based upon our review of the record, we are unable to conclude that the trial court's decision is unreasonable, arbitrary, or capricious.

{¶28} To the extent Appellant asserts that the guardian ad litem's investigation into Appellant's home was inadequate, Appellant has not cited any authority to support her assertion. Moreover, the weight to be afforded the guardian ad litem's recommendation, as well as the guardian ad litem's credibility, falls within the trial court's province. *Tellis v. Tellis*, 2nd Dist. Montgomery No. 29020, 2021-Ohio-1976, 2021 WL 2394569, ¶ 17; *In re A.B.M.*, 8th Dist. Cuyahoga No. 107556, 2019-Ohio-3183, 2019 WL 3764599, ¶ 48. We therefore will not second-guess the trial court's credibility assessment of the guardian ad litem's recommendation. *Flickinger*, 77 Ohio St.3d at 419.

{¶29} Accordingly, based upon the foregoing reasons, we overrule Appellant's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Juvenile Court 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.

Abele, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.