[Cite as *In re P.M.*, 2021-Ohio-3358.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE P.M.	:	
	:	No. 109968
A Minor Child	:	
	:	
[Appeal by J.M., Father]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: September 23, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. CU-17118112

Appearances:

Christina M. Joliat, *for appellant*.

David S. Bartos, *for appellees* Maternal Grandparents.

EILEEN T. GALLAGHER, J.:

{¶ 1} Appellant-father, J.M. ("Father"), appeals from the trial court's order denying his application to determine custody of his minor child and awarding legal custody of the child to his maternal grandparents, appellees R.S. and L.S. (together the "Maternal Grandparents"). Father raises the following assignment of error for review:

> The trial court's order denying the Father's application to determine custody and awarding legal custody of the [child] to [his] maternal grandparents is against the manifest weight of the evidence and is an abuse of discretion, and is not in the child's best interest and further was the improper standard as Father was not unsuitable.

{¶ 2} After careful review of the record and relevant case law, we reverse the trial court's judgment and remand for further proceedings consistent with this opinion.

I. Factual and Procedural History

{¶ 3} Father and Mother, C.S. ("Mother"), are the biological parents of P.M., born August 17, 2017.

{¶ 4} On November 30, 2017, Father filed an application to determine custody and a motion for emergency temporary custody, alleging that Mother had ongoing substance abuse issues and outstanding warrants for her arrest. Father was awarded parenting time with P.M. while his motions were held in abeyance.

{¶ 5} On September 12, 2018, the Maternal Grandparents filed a motion to intervene pursuant to Civ.R. 24 and Juv.R. 2. Simultaneously, the Maternal Grandparents filed a motion for legal custody, alleging that both parents were unfit to care for the minor child based on Mother's substance abuse issues and Father's "litany of criminal convictions" and history of physical abuse.

{¶ 6} On September 14, 2018, a magistrate granted Father temporary custody of P.M., stating, in relevant part:

> The Magistrate finds that the Mother's current whereabouts are unknown and the Father is in agreement with the Maternal Grandparents having temporary visitation. The magistrate finds and

> the [guardian ad litem] believes that it is in the best interests of the child that the father be granted temporary custody pending further hearing.

{¶ 7} P.M. remained in Father's custody until the child was placed in the emergency temporary custody of the Maternal Grandparents on January 11, 2019. The need for emergency custody was predicated on Father's arrest following a physical altercation between Father and his brother on December 24, 2018. The domestic dispute occurred in Father's residence while P.M. was sleeping in an upstairs bedroom. As a result of this incident, Father was incarcerated for a parole violation. He was released from prison on April 27, 2019.

{¶ 8} While Father was incarcerated, the child's appointed guardian ad litem, James H. Schulz, Jr. (the "GAL"), submitted a written report regarding Father's pending application for determination of custody and the Maternal Grandparents' motion for legal custody. Following extensive review of relevant materials and interactions with the parties, the GAL opined that it was in the child's best interests to award the Maternal Grandparents legal custody. The GAL explained as follows:

> At this time, neither parent is in a position to take custody of the child. Neither parent is fit to have custody of the child. It is the guardian ad litem's opinion that the court should make a finding of parental unfitness as to both parents. Neither parent will be in a position to be appropriate to take custody in the near future. Father faces a warrant and domestic violence charges when he is released from his current sentence. Mother faces rehab and halfway house or prison; neither of which will make her available and appropriate any time soon.
>
> I also note Father's criminal history. In case number CR-14-589892-A, Cuyahoga County Common Pleas Court, Father was convicted of unlawful sexual contact with a minor. In Portage County Common Pleas Court, Father in case number 2010-CR-0332 was convicted of drug trafficking. In the same court in case number 2007-CR-0432,

> Father was convicted of burglary. In Summit County Common Pleas Court in case number 07-CR-093060, Father was convicted of burglary.
>
> The one constant in the child's life has been the Maternal Grandparents. The child has lived most of his life there. He knows that home is his home. The child has a strong bond with the Maternal Grandparents. They are ready, willing and able to take legal custody of the child. They love the child. They have shown their commitment to the child. They always put the needs and well-being of the child first, even when it conflicted with their own daughter. They have financial ability to support the child. They own their home. The home is a beautiful home the child knows as his home. The Maternal Grandparents have had custody of the child since January 10, 2019.

{¶ 9} Evidentiary hearings on the pending motions for legal custody were held before a magistrate on September 27, 2019, November 1, 2019, and December 20, 2019.

{¶ 10} On behalf of Father, Heather Pederson ("Pederson") testified that she is the Dean of Students at Edwins Leadership and Restaurant Institute ("Edwins"), a six-month culinary program located in Cleveland, Ohio. Pederson testified that Father is currently an employee of Edwins, earning an hourly wage, and is enrolled in a management program that seeks to prepare students for high-level management positions in the hospitality industry. Pederson expressed that Father has never exhibited unacceptable behaviors and was one of Edwins's "steadiest workers." (Tr. 21.)

{¶ 11} Father testified on his own behalf. Father testified that he and his current girlfriend live together in a three-bedroom home located in Parma, Ohio. Father has two older children from a prior marriage and, at the time of the custody

hearing, was expecting a child with his current girlfriend. Father has two jobs and works approximately 50 to 60 hours a week. He is employed by Edwins while also serving as a kitchen manager at a Chipotle restaurant.

{¶ 12} Father acknowledged that he has an extensive criminal history. He has been incarcerated on several occasions and has convictions for drug trafficking, drug possession, driving while under the influence, disorderly conduct, burglary, and unlawful sexual contact with a minor. Although Father maintained that his unlawful sexual contact with a minor conviction was predicated on the victim providing him false information, Father generally accepted responsibility for his past criminality. Father further conceded that he previously had a substance abuse problem. However, he maintained that the last time he used drugs was in November 2009.

{¶ 13} Regarding the incident that caused P.M. to be placed in the emergency custody of the Maternal Grandparents, Father testified that on the evening of December 24, 2018, he got into a verbal altercation with his brother after he discovered his brother at his home when he arrived home from work. Father explained that his brother was warned that he was not permitted in Father's home due to his ongoing drug problems. Father testified that he exchanged words with his brother and then threw the first punch, allegedly in self-defense. P.M. was in the upstairs bedroom of Father's home at the time of the altercation. Father was charged with domestic violence in the Parma Municipal Court. Although the domestic violence charge was ultimately dismissed without prejudice due to the

victim's failure to appear, Father was found to be in violation of his probation. He was incarcerated for approximately four months and was released in April 2019.

{¶ 14} Upon being released from prison, Father, on his own accord, enrolled in parenting and anger management classes to address his past behavioral issues. He also began participating in individual counseling on a monthly basis. Father explained that he benefitted greatly from his parenting classes and intends to create a work-life balance that adequately allows him to "be there for [P.M.]." (Tr. 68.) Father testified that if he was awarded custody of P.M., he did not wish to exclude anyone from the child's life and intended to work with Mother to improve their relationship with the Maternal Grandparents. Father expressed that he loves P.M. "with everything that is inside of [him]" and wants P.M. to develop a relationship with Father's other children.

{¶ 15} Father was questioned at length about his visitations with P.M. He stated that he and P.M. enjoy their time together. However, he acknowledged that he and the Maternal Grandparents have had verbal confrontations about the visitation schedule on at least two occasions. These disputes primarily arose due to disagreements concerning the breadth of the Maternal Grandparent's participation in the visits that they were ordered to supervise.

{¶ 16} Maternal Grandfather, R.S., testified that he lives in a three-bedroom home with his wife, L.S., their 18-year old son, A.S, and the minor child, P.M. R.S. confirmed that the Maternal Grandparents have temporary custody of P.M. and supervise visits between Father and P.M. R.S. conceded that P.M. was happy to see

Father during the visits. However, R.S. testified that there was a confrontation with Father during one of the visits that caused R.S. to end the visit in order to avoid an argument in front of the child. R.S. expressed that the confrontation arose from Father's attempts to "push [R.S.]'s buttons" and from tensions that had been building up over time. (Tr. 257.) R.S. testified that Father has a history of making threating statements and, on one occasion, threatened to "beat [R.S.] up" during a holiday party hosted by the Maternal Grandparents. (Tr. 262.) R.S. further testified that Father has a history of abuse and that he has personally observed bruises on Mother's arm, back, and face. R.S. stated that Father continuously denied the accusations of abuse when confronted by the Maternal Grandparents.

{¶ 17} Regarding the physical altercation between Father and his brother that led to P.M. being placed with Maternal Grandparents, R.S. testified that he drove Father's brother and mother to the police station to file a report against Father. R.S. testified that Father's brother had "a busted lip, cuts on his neck, bruising on his neck, and marks on his face." (Tr. 274.)

{¶ 18} Mother testified that she began using marijuana and alcohol when she was 15 years old. Her substance abuse issues eventually escalated to her using opiates, heroin, and fentanyl. Mother testified that the last time she visited P.M. was in August 2019. Her visitation rights ended, however, when Mother "overdosed and [the Maternal Grandparents] decided that [Mother] was not to see [the child] until something was established by the court." (Tr. 315.)

{¶ 19} Mother testified about her relationship with her parents and the appropriateness of their home. She acknowledged the negative impact her drug abuse has had on her relationship with the Maternal Grandparents. Nevertheless, with respect to R.S., Mother testified that there was a history of verbal and domestic abuse. She testified that the last physical dispute occurred in 2012 or 2013. Mother stated that R.S. "pulled [her] by [her] hair, he's choked [her], he's hit [her] in the face." (Tr. 320.) Thus, Mother expressed that she feared R.S. would become violent with P.M., and worried that R.S. would physically punish her child.

{¶ 20} Mother also provided extensive testimony regarding her unstable relationship with Father. Although Mother initially indicated that Father was never "physically aggressive with [her]," she later conceded that Father did exhibit abusive behaviors between August 2016 and January 2017, including incidents where Father has called her names, poured a drink on her head, posted nude photographs of her online, spit in her face, head-butted her, and threw her out of his home while she was nude. Mother further admitted that she wrote a letter that was left in her parents' home that outlines a series of incidents involving Father, including allegations that Father once "ripped a bottle out of P.M.'s mouth and threw it across the room," and once "threatened to slit [Mother's] fucking throat if [she] ever called the police on him because he's not going back to prison." (Tr. 337, 342.) Mother, however, denied that these specific incidents occurred and maintained that she wrote the letter to "hurt" Father after their breakup. (Tr. 356.) Mother expressed

that she believed that Father has since "gotten his life together" and "has his anger in check." (Tr. 353.)

{¶ 21} Thus, despite the unhealthy nature of their romantic relationship, Mother expressed that she would like P.M. to live with Father, stating:

> I know I'm in no position to obtain, you know, residential parenting or anything. I just feel though his father and I can, you know, work things outside of court. We've been civil for at least a year, so I would prefer, you know, him to have [P.M.] for custody, but, you know, I would never want my parents to not be able to see him.

(Tr. 318-319.)

{¶ 22} The child's maternal grandmother, L.S., confirmed that she and R.S. wished to be the legal custodians of P.M., and understood they would be responsible for the care and maintenance of the child until he reached the age of majority. The Maternal Grandparents signed a statement of understanding confirming that they also understood that Father and Mother would continue to have certain parental rights with P.M., such as visitation rights and a communication schedule.

{¶ 23} Relevant to his appeal, L.S. provided extensive testimony regarding Father's pattern of aggressive behavior. She reiterated much of the testimony set forth by R.S. and described various altercations she personally witnessed. For instance, L.S. stated that Father previously threatened to kill her entire family, and has threatened to flee the state with P.M. L.S. also testified about alleged incidents of abuse that were disclosed to her by Mother, including many of the allegations set forth in the letter written by Mother.

{¶ 24} Father's mother, E.M. ("Paternal Grandmother"), testified that she was present in the home during the altercation between Father and his brother in December 2018. She confirmed that P.M. was inside the home during the altercation and that Father struck his brother in the face and began "choking him." (Tr. 490.) Paternal Grandmother stated that she broke the fight up by hitting Father with a lamp and a frying pan. Paternal Grandmother later contacted the police and disclosed the incident to the Maternal Grandparents. During the phone conversation with the Maternal Grandparents, which was recorded by the Maternal Grandparents, Paternal Grandmother stated that Father "couldn't control his rage." (Tr. 504.) Paternal Grandmother also admitted that she told the Maternal Grandparents that P.M. should not be with Father. However, Paternal Grandmother expressed that she said those things "out of anger," stating:

> I [had] time to reflect upon a lot of things and I had — at the time I wasn't on any medication. I think that I took things a little too far with some of the things that I said.

(Tr. 514.) Paternal Grandmother expressed that she only contacted L.S. to "vent" and was worried Father would no longer allow her to live in his home. She opined that Father is "a wonderful father," and did not have any concerns with Father obtaining custody of P.M. (Tr. 533, 538.)

{¶ 25} At the close of the hearing, the GAL conceded that the legal determination of whether Father is a suitable parent is left to the sound discretion of the court. Nevertheless, the GAL expressed that if forced to make a recommendation, he would recommend that the trial court grant Father legal

custody based on "the things that he's done since the incident [in December 2018]." (Tr. 559.) The GAL acknowledged the potential risks associated with Father's "extensive history." (Tr. 557.) However, the GAL emphasized the value of keeping children with their parents and the actions Father has done "in a positive sense" since he was released from jail in April 2019, stating:

> I would have to balance the past versus the things that he has done since then. And if you look at it as [a child and family services] case, Father might very well — the Agency might be filing for reunification at this time, but there's still the issue of history and what are the chances of future violence. Father is now 37. He's advanced his employment. To me it's one, if not the hardest case I've had to try to decide what presently should be the ruling of the court and my recommendation to the court.
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> I tend to feel that giving Father an opportunity would make sense only because of the value of the children being with their parents. I think that's something that's significant. And if it's something that can go either way I tend to think that the value of having a child with a parent might be the deciding factor, but that's up to the court.

(Tr. 558-559.)

{¶ 26} On January 10, 2020, the magistrate issued a decision, denying Father's application to determine custody and granting the motion for legal custody filed by the Maternal Grandparents. The magistrate concluded that "the parents are unsuitable" custodians and that it was in P.M.'s best interests to have the Maternal Grandparents designated as the child's legal custodians. Father was permitted to have parenting time with P.M. on alternating weekends and every Wednesday evening.

{¶ 27} On January 17, 2020, Father filed objections to the magistrate's decision. Father argued that the magistrate abused his or her discretion by (1)

finding he has an extensive history of violence, (2) citing the unreliable testimony of Mother and Paternal Grandmother, (3) failing to find that Father has remedied the issues that caused the child to be removed from his temporary custody, (4) rendering a decision against the recommendation of the GAL, and (5) failing to consider R.S.'s prior convictions and L.S.'s enabling of Mother's substance abuse problem. Father supplemented his objections with citations to the record, arguing "the evidence shows that Father is very capable to serve as an appropriate parent to his son," and the magistrate "ignored the weight of the evidence that Father corrected all bases that may have led to concerns about his past; including parenting classes, anger management, one-on-one counseling, drug treatment and sobriety, steady employment, stable housing, and a sustained successful relationship with [his girlfriend], who is employed."

{¶ 28} The Maternal Grandparents also filed objections to the magistrate's decision, arguing the magistrate abused its discretion by awarding Father visitation time that conflicted with her work schedule, and by allowing Father to have overnight visits despite its finding that he has "an extensive history of violence, multiple prior convictions, and was declared unsuitable."

{¶ 29} On August 24, 2020, the trial court overruled the parties' objections and affirmed, approved, and adopted the magistrate's decision to award legal custody of P.M. to the Maternal Grandparents. The trial court found Father and Mother were unsuitable based on Father's "extensive history of violence which poses a danger to the child should the child be placed in his custody," and Mother's

"history of substance of abuse which has not been remedied." The trial court further addressed the child's best interests, finding, in relevant part:

> Father has an extensive criminal history which includes domestic violence, assault, driving under suspension, burglary, unlawful sexual conduct with a minor and probation violation. The court is most concerned with an incident that occurred while the child was placed in the Father's temporary custody on or about 12/24/18 in which the Father got into a violent physical altercation with his brother. The Father was the aggressor and choked his brother to the point that the paternal grandmother had to intervene by hitting the Father with a lamp. The child was in the upstairs bedroom at the time. The Father was arrested and incarcerated for probation violation which resulted in the termination of father's temporary custody. The child was then placed in the temporary custody of the Maternal Grandparents where the child has remained to this day. The Father was released from jail on 04/26/19. While the Father completed a domestic violence and anger management program in July 2019, the court has serious concerns regarding the Father's anger as there was testimony and evidence presented indicating that the Father has been extremely violent towards the child's mother and other family members in the past, including threats to kill them. The court does recognize that the Father has made significant strides to remedy his past behavior and to put himself in the position to provide for the basic needs of the child, however, the court is not satisfied that these efforts have sufficiently demonstrated his fitness to provide care and keep the child safe in his custody due to father's violent nature. The Mother overdosed on 08/05/19 and has not demonstrated sobriety.
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> Upon due consideration, the court finds that it is in the best interests of the child that [Maternal Grandparents] be designated as the legal custodians of [P.M.].

{¶ 30} Father now appeals from the trial court's judgment.

II. Law and Analysis

{¶ 31} In his sole assignment of error, Father argues the trial court erred as a matter of law by awarding legal custody of P.M. to the Maternal Grandparents.

{¶ 32} A trial court enjoys broad discretion in custody proceedings because "custody issues are some of the most difficult and agonizing decisions a trial judge must make." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997). Thus, a trial court's custody determination will not be disturbed unless the court abused that discretion. *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). An "abuse of discretion" connotes that the court's attitude is "unreasonable, arbitrary, or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983); *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989).

{¶ 33} R.C. 2151.23(A)(2) grants the juvenile courts exclusive original jurisdiction to determine the custody of any child not a ward of another court of this state. When determining custody between a parent and nonparent, the overriding principle "is that natural parents have a fundamental liberty interest in the care, custody, and management of their children." *Hockstok v. Hockstok*, 98 Ohio St.3d 238, 2002-Ohio-7208, 781 N.E.2d 971, ¶ 16, citing *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982), and *In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990). This interest is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and by Article I, Section 16 of the Ohio Constitution. *In re Shaeffer Children*, 85 Ohio App.3d 683, 689-690, 621 N.E.2d 426 (3d Dist.1993).

{¶ 34} Because parents have a fundamental interest in the care, custody, and management of their children, a finding of parental unsuitability is a necessary first step in child-custody proceedings between a natural parent and a nonparent.

Hockstok at ¶ 16-18; *In re Perales*, 52 Ohio St.2d 89, 97-99, 369 N.E.2d 1047 (1977). Only if the trial court determines that the parent is unsuitable, should it then examine which custodial placement would be in the best interest of the child. *In re H.J.H.*, 1st Dist. Hamilton No. C-180019, 2019-Ohio-116, ¶ 4.

{¶ 35} Unsuitability as a parent is established if (1) the parent has abandoned the child, (2) the parent contractually relinquished custody of the child, (3) the parent has become incapable of supporting or caring for the child, or (4) an award of custody would be detrimental to the child. *Hockstok* at ¶ 17; *In re Perales* at syllabus. If the court determines that any one of these circumstances describes a parent's conduct, the parent may be adjudged unsuitable. *Id*.

{¶ 36} As recognized by this court:

> "The suitability test" is deemed to be "a higher standard than the best interest test." *T.A.J. v. G.L.D. (In re D.D.)*, 2017-Ohio-8392, 100 N.E.3d 141, ¶ 13 (7th Dist.). "A pure 'best interest' test looks totally to the best situation available to the child and places the child in that situation." *In re C.V.M.*, 8th Dist. Cuyahoga No. 98340, 2012-Ohio-5514, ¶ 10, citing *Thrasher v. Thrasher*, 3 Ohio App.3d 210, 213, 444 N.E.2d 431 (9th Dist.1981). "The *Perales* test, however, requires that some detriment to the child be shown before he is taken away from an otherwise suitable parent." *Id*.
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> "[T]here is no bright-line test or standard" that defines "what is detrimental to [a] child[.]" *In re C.V.M.* at ¶12. However, a review of Ohio cases "demonstrates that where courts found an award of custody to a parent detrimental, the court found serious problems with the unsuitable parent." *Id*. Cited among the examples is *Slivka v. Sealock*, 5th Dist. Morgan No. 00-CA-13, 2001 Ohio App. LEXIS 2408 (May 18, 2001), where the parent had a history of behavioral and psychological problems and the husband had a history of domestic violence.

In re O.P., 8th Dist. Cuyahoga No. 109335, 2020-Ohio-4835, ¶ 14-15.

{¶ 37} Thus, "simply because one situation or environment is the 'better' situation does not mean the other is detrimental or harmful to the child." *In re C.V.M.* at ¶ 10, quoting *In re Porter*, 113 Ohio App.3d 580, 589, 681 N.E.2d 954 (3d Dist.1996). "Ohio courts have emphasized that 'a finding of parental unsuitability is not to be made lightly.'" *In re H.J.H.*, 1st Dist. Hamilton No. C-180019, 2019-Ohio-116, at ¶ 5, quoting *In re Z.P.*, 2017-Ohio-7397, 96 N.E.3d 1115, ¶ 31 (8th Dist.). The nonparent bears the burden to show parental unsuitability. *Id.* at ¶ 10.

{¶ 38} Because legal custody where parental rights are not terminated is not as drastic a remedy as permanent custody, the trial court's standard of review in a legal custody proceeding is not clear and convincing evidence as in permanent custody proceedings, but merely a preponderance of the evidence. *In re C.V.M.* at ¶ 7, citing *In re D.P.*, 10th Dist. Franklin No. 05AP-117, 2005 Ohio 5097, ¶ 52. "'Preponderance of the evidence' means 'evidence that's more probable, more persuasive, or of greater probative value.'" *In re E.E.*, 8th Dist. Cuyahoga No. 110021, ¶ 68, quoting *In re C.V.M.* at ¶ 7.

{¶ 39} On appeal, Father argues that he "has proven that he is able and willing to provide care for his son" and, therefore, the trial court's judgment is against the manifest weight of the evidence. In support of his position, Father contends that the court "improperly weighed the allegations regarding violence against him and relied on tainted evidence in doing so."

{¶ 40} While the trial court has discretion in custody proceedings, the record must contain sufficient factual evidence to support the court's findings. *In re*

C.V.M., 8th Dist. Cuyahoga No. 98340, 2012-Ohio-5514, at ¶ 6, citing *In re Schwendeman*, 4th Dist. Washington Nos. 05CA18 and 05CA25, 2006-Ohio-636, ¶ 19. We will not reverse a judgment as being against the manifest weight of the evidence when the record contains some competent, credible evidence going to all the essential elements of the case. *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), syllabus. In conducting our review, we must make every reasonable presumption in favor of the trial court's findings of fact. *Myers v. Garson*, 66 Ohio St.3d 610, 614, 614 N.E.2d 742 (1993); *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). We give deference to the trial court as the trier of fact because it 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." *Id.*

{¶ 41} After careful review of the record, we find the trial court's award of legal custody to the nonparents is against the manifest weight of the evidence. Although the evidence demonstrated that Father previously engaged in conduct that was not consistent with an appropriate custodian, the record does not contain competent, credible evidence that Father is *presently* an unsuitable parent.

{¶ 42} In this case, the record does not indicate that Father abandoned P.M., contractually relinquished custody of P.M. or that Father was totally incapable of supporting or caring for P.M. In fact, there was competent, credible evidence in the record establishing that Father was able to care and provide for P.M. However, there

was an issue as to whether granting Father legal custody would be detrimental to P.M. given Father's criminal record and history of violence.

{¶ 43} At trial, the Maternal Grandparents presented extensive testimony regarding alleged conduct that, in their view, established Father's "history of abuse, violence, and anger." Much of the testimony highlighted Father's criminal history and the dysfunctional relationship he shared with Mother while they were romantically involved. However, many of the allegations of abuse levied against Father by the Maternal Grandparents relied on statements made to them by Mother, who currently denies the validity of certain accusations and believes Father is a suitable parent. Moreover, to the extent the Maternal Grandparents personally observed Father's violent outbursts, we note that the majority of these alleged incidents occurred prior to the trial court's award of temporary custody in favor of Father in September 2018. Likewise, the majority of Father's past criminal conduct were drug related and occurred well before P.M. was born.

{¶ 44} With respect to the conduct that occurred after the trial court awarded Father temporary custody of the child, we recognize that Father's violent behavior on December 24, 2018, was inexcusable and inconsistent with the conduct of a suitable parent. Beyond the harm that was caused to Father's brother during the altercation, Father placed the physical and emotional well-being of P.M. at risk by initiating a fight in the home where P.M. was present, on Christmas Eve for that matter. However, when assessing whether it is appropriate to infringe on Father's fundamental liberty interest in the care, custody, and management of his child, this

court must recognize one's ability to remedy the circumstances or issues that may have rendered him or her an unsuitable parent at a point in time. This is not to diminish the relevancy of Father's past conduct or criminal history, but is to say that prior acts should not be viewed in a vacuum without fully considering the efforts Father has taken to successfully improve as a person and as a parent during these proceedings.

{¶ 45} Here, the record establishes that Father has taken responsibility for his actions and, since his release from prison in April 2019, has taken the necessary steps, without court intervention, to address his behavioral and parenting issues. In relevant part, the evidence presented at trial established that Father obtained two sources of stable employment and has proven to be a reliable and productive employee in the culinary industry. In addition, Father successfully completed courses for parenting and anger management, and explained how he has benefitted from those courses and planned to implement important lessons in the future. Father also testified that he is currently participating in one-on-one counseling to fully address his past, while working towards a better future. Finally, the record establishes that Father has a strong bond with his son, and actively participated in his supervised visits with P.M. during the pendency of this case.

{¶ 46} Father's efforts were not lost on the GAL. Although the GAL deferred to the court's discretion, the GAL opined that, if forced to make a recommendation, he "would tend to think that it makes sense to give [Father] a chance because of the things that he's done since the [domestic] incident a year ago." (Tr. 559.)

{¶ 47} We reiterate that the test is not whether the Maternal Grandparents are more suitable legal custodians. The record clearly reflects that the Maternal Grandparents are more than capable of providing P.M. with a safe and stable home. They are, and will continue to be, important figures in P.M.'s life. However, this court may not compare or otherwise contemplate which home is better suited for P.M.'s personal well being absent evidence showing the child's parents are unsuitable. At this time, Father has demonstrated the ability to seek the professional help and guidance necessary to ensure that he can provide P.M. with a safe and stable home. Although the hostile relationship between Father and the Maternal Grandparents is ongoing and must be addressed in an appropriate visitation schedule, minor disagreements between the parties during past visits is not determinative of suitability.

{¶ 48} Based on the foregoing, we find the juvenile court's finding that awarding custody to Father would be detrimental to the child so as to render Father unsuitable was not supported by competent, credible evidence. Consequently, the juvenile court abused its discretion in awarding custody to the Maternal Grandparents. We sustain Father's assignment of error and reverse the juvenile court's judgment. However, because our resolution of the assigned error is premised on the greater weight of the evidence, we remand this matter to the trial court for further proceedings including a new trial on the issue of legal custody of P.M. *See In re Z.P.*, 2017-Ohio-7397, 96 N.E.3d 1115, ¶ 36 (8th Dist.), citing *In re A.C.*, 6th Dist. Lucas No. L-11-1129, 2012-Ohio-826, ¶ 33 (court remanded case for a new trial

when judgment awarding legal custody to maternal grandmother instead of mother was against the manifest weight of the evidence).

{¶ 49} Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile division, 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.

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EILEEN T. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
EMANUELLA D. GROVES, J., CONCUR