

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE K.T.B.	:	No. 116069
Minor Child	:	
[Appeal by T.H., Father]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: August 27, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. FA24103731

Appearances:

Dean A. Colovas, *for appellant.*

Timothy P. Assaf, *for appellee V.B.*

KATHLEEN ANN KEOUGH, J.:

{¶ 1} Appellant Father T.H. appeals the trial court’s decision granting custody of his minor child to the child’s Maternal Grandmother, appellee V.B., instead of him. Finding merit to the appeal, we reverse the decision of the trial court and remand this matter for the juvenile court to grant legal custody of the child to Father.

{¶ 2} In April 2024, Father filed an application to determine shared parenting, and the matter was referred for mediation. Following the mediation in June 2024, the parties filed a shared parenting agreement that (1) designated both parents as custodial and residential parents, (2) provided that the child would attend school in Mother's school district, and (3) proposed a schedule for shared custody. Without objections from either party, the court memorialized the shared parenting agreement in a court order.

{¶ 3} In August 2024, Maternal Grandmother, who resides in Texas, filed a motion to intervene along with motions for temporary and legal custody. In these motions, Maternal Grandmother averred that Mother had abandoned the child and that Father was living with a woman who did not get along with Mother. She felt that the child's interests would be best served in her care.

{¶ 4} At an emergency custody hearing on August 30, 2024, with all parties present including the child's guardian ad litem ("GAL"), the parties agreed that Maternal Grandmother would take temporary custody of the child pending the resolution of the custody dispute between Maternal Grandmother and Father. Father subsequently amended his application to determine shared parenting to an application seeking legal custody of the child.

{¶ 5} Maternal Grandmother's and Father's respective motions for legal custody were tried before a magistrate on June 25, 2025. A summary of the proceedings follows.

{¶ 6} During Maternal Grandmother's case-in-chief, her ex-husband, who is the child's maternal grandfather, testified that he had no concerns about Maternal Grandmother's ability to care for the child. He testified that despite living in Texas, Maternal Grandmother was travelling to Cleveland to assist Mother with caring for the child, for months at a time, and would likewise take the child to Texas and care for her there for extended periods of time. When describing the relationship between Maternal Grandmother and the child, he testified that Maternal Grandmother was "the closest person to [the child]. They spend a lot of time together because that's her only grandchild." (Tr. 13.) He did not discuss much about the child's relationship with Father and denied knowing much about Father's relationship with the child in general.

{¶ 7} B.S. is a former boyfriend of Mother's sister and testified that he knew Mother well. He testified in Maternal Grandmother's favor, corroborating the child's grandfather's testimony that Maternal Grandmother was constantly in Ohio, "[s]ix months out of the year, sometimes" to care for the child. (Tr. 21.) B.S. had only met Father once but was very familiar with Maternal Grandmother and did not express any concerns about her ability to care for the child.

{¶ 8} Maternal Grandmother testified on her own behalf. She testified that she lives in Texas with her husband of 22 years; they relocated to Texas because her husband's job was transferred there, but she is from the Cleveland area. She testified that despite living in Texas, she had been helping Mother care for the child on a "full-time basis" since the child's birth. (Tr. 26, 30.) She testified that to her knowledge,

Father left Mother while she was seven months pregnant with the child. She stated that Father was currently living with D.H., and five children, two of which were Father and D.H.'s biological children. When asked whether Father had been "around" after the child's birth, Maternal Grandmother answered, "I'm not sure how often, but not often." (Tr.32.) To her knowledge, Father had not been providing any financial support and could recall approximately four overnight visits that the child spent with Father after the shared parenting agreement was established. She stated that while the child was in Texas, Father only called to speak to the child "once or twice" (Tr. 39.)

{¶ 9} Maternal Grandmother recalled an incident that occurred after the shared parenting agreement had been established. She stated that the child had been with Father for "at least four to five weeks" and she had not seen the child during that time. (Tr. 41.) When Maternal Grandmother asked to see the child, Father allegedly told her that she was not "in the co-parent agreement with him." (Tr. 42.) Maternal Grandmother also stated that the child told her that she had been "bullied" while at Father's home and elaborated that after being at Father's home, the child would come home "not the happy child she was." (Tr. 44-45.)

{¶ 10} Since Maternal Grandmother had taken the child to Texas pursuant to the temporary custody order, the child had been enrolled in school where she was doing well. Maternal Grandmother felt that she was meeting the child's needs and that the child was happy in her care. She expressed concerns that Father's new live-

in girlfriend did not get along with Mother and that Father also has a temper of his own.

{¶ 11} Mother also testified on Maternal Grandmother's behalf, agreeing that Maternal Grandmother should receive legal custody of the child and explained that she, as the child's mother, would remain in the child's life and did not have any problems or concerns about traveling to Texas to spend time with the child.

{¶ 12} Father's case-in-chief commenced with testimony from Father's fiancée, D.H. D.H. testified that she had been in a relationship with Father for five years and had known the child since the child was about one year and six months old. When asked about the child being bullied by one of her children at Father's home, D.H. denied observing any bullying and instead stated that the child gets along well with the other children and that they ask about her frequently.

{¶ 13} D.H. answered in the affirmative when asked if Father and her have the means to provide for the child's basic needs. They live in a five-bedroom home. She addressed prior testimony that she did not get along with Mother, admitting that they had not gotten along at one point, but have since "been at functions together, laughed, talked, cried together. So I would say that we were getting along, you know, even leading up to the first court date that started all of this." (Tr. 128.) When questioned about Father's involvement with the child prior to implementing a shared parenting agreement, D.H. testified that Father and Mother "just worked out things where either [Mother] would be at work, or if she had anything to do, or just simply if [Father] wanted . . . [the child] to come over, they had something

worked out where . . . she would either come over for a few hours or [Mother] was allowing her to spend the night” (Tr. 130.)

{¶ 14} Father testified on his own behalf. He agreed with D.H.’s testimony about their suitability and means to care for the child. Father expressed his dissatisfaction with the shared parenting agreement, stating that Maternal Grandmother was never in Cleveland for long periods of time as discussed during her case-in-chief, but instead the child was in Texas and during these times, he was unable to see or contact the child. When asked about his efforts to contact the child, he responded that he was busy with work and that he had a strained relationship with Maternal Grandmother that made communicating difficult.

{¶ 15} Father was asked why he agreed to let Maternal Grandmother have temporary custody of the child during the pendency of this case. He responded:

I felt a little railroaded. I never been in a situation. The Guardian ad Litem was not polite to me at all. She acted as her lawyer. I could tell that they had a relationship already. I didn’t speak to the Guardian ad Litem very much. The first day I met her, it wasn’t, Hey, how you doing? She said, Are you [the child’s] dad? I said, Yes. She said, You wasn’t in your daughter’s life for years. And that’s the initial meeting.

(Tr. 162.)

{¶ 16} Father maintained that if granted custody, he would allow Maternal Grandmother to see the child, stating that she is a “good and lovable grandmother” to the child. (Tr. 169.)

{¶ 17} The GAL testified that her recommendation was “joint custody between [Maternal Grandmother] and Father, with a full schedule, and grandmother residential for school purposes” (Tr. 201.)

{¶ 18} The magistrate issued a decision on August 14, 2025, awarding legal custody to Maternal Grandmother. Father filed objections and a motion for immediate legal custody; Maternal Grandmother filed oppositions to each.

{¶ 19} In October 2025, the trial court sustained Father’s objections to the magistrate’s decision and returned the decision to the magistrate “for further explanation as to whether the change in custody would be detrimental to the child with specific findings of fact.” The decision by the magistrate was reissued in November 2025, and Father again filed objections and asked for immediate custody; this time, the trial court overruled the objections and affirmed, approved, and adopted the magistrate’s November 2025 decision. Father appealed and submits the following issues presented for review that are labeled and treated as assignments of error:

- I. Whether the trial court abused its discretion and erred as a matter of law in awarding custody of minor child to a non-parent over a parent deemed by the court to be suitable, against the manifest weight of the evidence.
- II. Whether the trial court’s findings that an award of custody to Father would be detrimental to the minor child is essentially an improperly disguised “best interest” finding and comes nowhere near satisfying requirements established by the Ohio Supreme Court in *In re Perales* which are necessary to divest custody from a parent to a non-parent. The court’s findings were arbitrary and/or capricious and against the manifest weight of the evidence.

- III. Whether the trial court erred in concluding that the best interest of minor child were for an award of legal custody to Maternal Grandmother as opposed to Father. The finding of the court was contradictory to Ohio law and/or was against the manifest weight of the evidence.

{¶ 20} Father's assignments of error challenge the court's grant of custody to a nonparent in lieu of a parent. He specifically challenges (1) the court's termination of a biological parent's custody in favor of a nonparent even though the court found that Father was suitable, (2) the court's finding that custody with Father would be "detrimental" to the minor child, and (3) the court's conclusion that Maternal Grandmother's custody was in the best interest of the minor child. For ease of discussion, we elect to address these challenges together.

{¶ 21} The United States Supreme Court has long held that the right to raise one's own children is "essential" and a "basic civil right." *In re Murray*, 52 Ohio St.3d 155, 157 (1990), citing *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). Similarly, it has held that parents have a fundamental liberty interest in the care, custody, and management of their children. *Murray* at *id*, citing *Santosky v. Kramer*, 455 U.S. 745, 753 (1982). "[I]t has been deemed 'cardinal' that the custody, care, and nurture of the child resides, first, in the parents." *Murray* at *id*, citing *H.L. v. Matheson*, 450 U.S. 398, 410 (1981); *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944).

{¶ 22} "[T]his court has long stated that parents who are suitable persons have a 'paramount' right to the custody of their minor children." *Murray* at 157,

quoting *In re Perales*, 52 Ohio St.2d 89, 97 (1977). “[P]arents may be denied custody only if the preponderance of the evidence indicates abandonment, contractual relinquishment of custody, total inability to provide care or support, or that the parent is otherwise unsuitable — that is, an award of custody would be detrimental to the child.” *Reynolds v. Goll*, 75 Ohio St.3d 121, 123 (1996), citing *Perales* at 98.

{¶ 23} “[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.” *Hockstok v. Hockstok*, 2002-Ohio-7208, ¶ 18. According to *Perales*, the “unsuitability” finding “allows the court to balance the interests of parent and child.” *Perales* at 98. “As R.C. 2151.23(A)(2) grants juvenile courts jurisdiction to determine child custody cases . . . and contains no ‘best interest of the child’ standard,” the Ohio Supreme Court held that a juvenile court must decide that a parent is unsuitable before awarding child custody to a nonparent in a legal custody proceeding. *Hockstok* at ¶ 19, citing *Perales* at syllabus. If the parent is suitable, they have a “‘paramount’ right to the custody of their minor children unless they forfeit that right by contract, abandonment, or by becoming totally unable to care for and support those children.” *Masitto v. Masitto*, 22 Ohio St.3d 63, 65 (1989), quoting *Perales* at 97. “[T]his court recognized the overriding importance of a trial court’s making a parental unsuitability determination on the record before awarding custody away from a natural parent to a nonparent. Both *Perales* and

Masitto demonstrate the significance of the fundamental rights of natural parents in child custody cases between parents and nonparents.” *Hockstok* at ¶ 24.

{¶ 24} We begin by reviewing the magistrate’s factual findings that the trial court adopted. The magistrate found:

Here, the Court cannot say Father is unsuitable, abandoned the child, or relinquished custody; however, the Court finds that testimony from the hearing demonstrated the minor child is currently thriving in Maternal Grandmother’s care and that Maternal Grandmother ensures that all family members see the minor child ensuring a loving environment, including Father. As such, the Court finds an award of custody to either Mother or Father would be detrimental to the child, given the significant progress she is making while in Maternal Grandmother’s care. The Court also finds concerning [Maternal Grandmother’s] testimony that made [sic] infrequent contact with the minor child after the parties agreed for Maternal Grandmother to be emergency temporary custodian and while the child resided in Texas.

In this case, the parents agreed to Maternal Grandmother having emergency temporary custody of the child on August 30, 2024. Since that time, there have been no reports that the child’s safety and well-being have been impacted while in Grandmother’s care. Testimony also demonstrated that Maternal Grandmother has remained a consistent caregiver in the child’s life despite issues between Mother and Father.

This testimony included how the child is doing very well in school in the State of Texas and other family member testimony speak to open communication and being able to see the child. While the Court believes Father deeply cares for his daughter, changing the child’s life back to Cleveland would be more detrimental at this time. Further, the Court finds Father should be granted a generous amount of parenting time with the minor child during school breaks and the summer vacation so that the child may know her Father’s family.

{¶ 25} Here, the trial court made an explicit finding that Father *was not* unsuitable and instead found that an award of custody would be “detrimental to the

child.” But, per *Hockstok* and its progeny, finding Father unsuitable was necessary before the court could even consider granting custody to a nonparent over a parent.

{¶ 26} We thus find that the trial court abused its discretion by awarding custody to a nonparent over a parent when it explicitly found that Father was suitable. Without finding that Father was unsuitable, had abandoned the child, had relinquished custody, or was totally unable to support the child, the trial court was not permitted to consider placing the child with a nonparent when faced with a custody decision between a parent and nonparent. After reviewing the trial court’s judgment entry, the trial court’s factual findings are inconsistent with placing the child with Maternal Grandmother and such a placement is not supported by a preponderance of the evidence.

{¶ 27} We find that based on the trial court’s own findings, the preponderance of the evidence indicates that Father has a paramount right to the child. We sustain Father’s first assignment of error and need not consider the remaining assignments of error, to the extent they have not already been addressed herein.

{¶ 28} Judgment reversed and remanded. Based on its own factual findings, the trial court is ordered to grant legal custody of the child to Father.

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.

KATHLEEN ANN KEOUGH, JUDGE

SEAN C. GALLAGHER, P.J., and
ANITA LASTER MAYS, J., CONCUR