

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

IN RE: T.H. : APPEAL NO. C-180027
 : TRIAL NO. F15-2518z
 :
 : *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In a single assignment of error, appellant mother argues that the Hamilton County Juvenile Court erred in awarding legal custody of her son, T.H., to T.H.'s foster caregiver.

Following a motion for legal custody under former R.C. 2151.353(A)(3), the juvenile court has discretion to determine what placement option is in a child's best interest, and an appellate court will not reverse that decision absent an abuse of discretion. *In re D.M.*, 1st Dist. Hamilton No. C-140648, 2015-Ohio-3853, ¶ 11. A juvenile court does not abuse its discretion if its decision with respect to the best-interest analysis is supported by competent, credible evidence. *See In re M.*, 1st Dist. Hamilton No. C-170008, 2017-Ohio-1431, ¶ 35.

In determining what factors a trial court should consider in analyzing the best interest of the child in legal-custody matters, this court has applied the standard articulated in R.C. 3109.04, the statute applicable to custody matters in the

domestic-relations court. *See id.* at ¶ 31. In this case, the trial court applied the best-interest factors under R.C. 2151.414(D), which apply to permanent-custody motions. However, we have determined that the best-interest analysis applicable to legal-custody motions is subsumed within the analysis applicable to permanent-custody motions. *See id.* at ¶ 29.

After reviewing the record, we cannot determine that the juvenile court abused its discretion in granting legal custody of T.H. to his foster caregiver. The Hamilton County Department of Job and Family Services (“HCJFS”) moved for an interim order of temporary custody upon T.H.’s birth in September 2016, because mother had tested positive for marijuana in February 2016, and because mother’s older child, G.H., was in the temporary custody of HCJFS due to mother’s severe bipolar disorder and abuse toward G.H., and mother had not made significant progress in treatment of her mental-health issues.

At trial on HCJFS’s motion for legal custody, mother’s caseworker testified that mother had not been in compliance with the mental-health portion of her case plan. Mother testified that she had been receiving mental-health services at Central Clinic, but that her case manager and psychiatrist retired, so she switched to another mental-health clinic where she would not have to wait as long for treatment. The caseworker also testified that she had scheduled four random drug screens for mother, but that mother did not attend any of them. Mother testified that she missed the drug screens because she had started a new job and could not leave work on short notice. Mother testified, and the caseworker agreed, that mother had attended all of her scheduled visits with T.H., and that mother continued to provide milk, diapers, clothes, and wipes for T.H.

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The trial court considered all relevant best-interest factors. The trial court acknowledged that mother had made strides in employment and housing, and that mother had been receiving recent counseling and medical treatment. However, the court did not have a way to verify any positive change in mother's mental health, because mother had not complied with the recommended counseling in the months prior. Ultimately, the court placed more weight on mother's extensive mental-health history and on mother's abuse of her older child, G.H. Because the trial court did not abuse its discretion, we overrule mother's assignment of error.

The judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MYERS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on April 11, 2018

per order of the court _____
Presiding Judge