

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

IN RE: E.M. & M.M. : APPEAL NO. C-190164
: TRIAL NO. F18-0665Z
:
: *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar. 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.

Appellant mother challenges the judgment of the Hamilton County Juvenile Court adopting the magistrate’s decision awarding legal custody of her minor children, E.M. and M.M., to her mother, the children’s maternal grandmother.

Mother and father have a long history of substance abuse. Mother has admitted to using heroin since 2012. Father has felony convictions for trafficking in heroin and aggravated drug possession. Their children, E.M. and M.M., were born in 2002 and 2010.

On March 1, 2018, mother was arrested for operating a vehicle while impaired. Mother admitted that she was under the influence of fentanyl at the time. Police officers found fentanyl, crack pipes, spoons, blades, syringes, and a small amount of heroin on her person or in the car. M.M., then seven years old, was also in the car. Mother was charged with possession of heroin and drug paraphernalia, and with endangering children.

As a result of this incident, the children were adjudicated abused, neglected, and dependent, and the Hamilton County Department of Job and Family Services (“HCJFS”) was granted interim temporary custody of the children. HCJFS adopted a safety plan for

the children and placed them with their grandmother in March 2018. They had often resided with grandmother during their young lives.

HCJFS offered reunification services to mother and father. While father rejected the services, mother completed the inpatient portion of the ADAPT program at Talbert House. But she has not completed the other portions of the case plan including substance-abuse treatment, therapy, and toxicology screenings. Neither parent has visited the children since March 2018.

On June 22, 2018, the children's guardian ad litem ("GAL") filed a motion to end interim temporary custody and to grant legal custody to grandmother. The magistrate held hearings on the motion. E.M., then 16 years old, testified by closed-circuit television and recounted the impact of his parents' drug abuse and domestic violence on him and his younger sister.

On October 25, 2018, the magistrate filed her written decision on the GAL's motion. She found that the children had been raised largely by grandmother and had resided with her for at least the previous two years. E.M. had testified that the children did not wish to be reunified with their parents even if they achieved sobriety. The children had bonded with their grandmother, felt safe with her, were thriving under her care, and wished to remain with her. The magistrate found that it was in the children's best interest to be placed in grandmother's legal custody.

Mother filed timely objections to the magistrate's decision. The juvenile court reviewed a complete record of the proceeding before the magistrate, overruled the objections, adopted the magistrate's decision without taking additional evidence, and entered judgment awarding legal custody of the children to grandmother.

Mother appealed, and in a single assignment of error, asserts that the juvenile court erred in determining that awarding legal custody to grandmother was in the children's best interest.

After a child is adjudicated abused, neglected, or dependent, the juvenile court may “[a]ward legal custody of the child to * * * any other person who * * * is identified as a proposed legal custodian in a complaint or motion filed prior to the dispositional hearing by any party to the proceedings.” R.C. 2151.353(A)(3). When deciding to whom legal custody should be awarded, the juvenile court should base its determination on the best interest of the child. The factors found in R.C. 2151.414 provide a useful framework for the court's best-interest determination. *See In re A.C.*, 1st Dist. Hamilton No. C-140273, 2015-Ohio-153, ¶ 5-6; *see also In re Z.*, 1st Dist. Hamilton No. C-190026, 2019-Ohio-1617, ¶ 29. These factors include the children's interactions and relationships with their parents and relatives; the wishes of the children, expressed directly or through their GAL; the custodial history of the children; and their need for a legally secure placement. *See In re S.R.*, 1st Dist. Hamilton No. C-170366, 2017-Ohio-8412, ¶ 5.

We will not reverse the juvenile court's award of custody absent an abuse of its broad discretion. *See In re A.C.* at ¶ 6; *see also In re S.R.* at ¶ 4. An abuse of discretion is more than an error of law or judgment; it is a decision that is unreasonable, arbitrary, or unconscionable. *See id.*

Here, the record demonstrates that the magistrate and the juvenile court considered the children's best interest when awarding legal custody to grandmother. The children have bonded with their grandmother and have strong reservations about returning to their mother's care. They have refused to visit their parents. E.M. stated expressly that he wished to remain in the care and custody of his grandmother. The GAL

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stated that M.M. shares that desire. Grandmother has cared for the children for a substantial portion of their lives, and they have thrived under her care.

On the state of this record, we cannot say that the juvenile court abused its discretion in reaching its well-supported decision granting grandmother legal custody of the children. *See In re G/D Children*, 1st Dist. Hamilton No. C-180170, 2018-Ohio-3280, ¶ 27. The assignment of error is overruled.

Therefore the judgment of the juvenile court is affirmed.

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

MOCK, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on June 14, 2019
per order of the court _____.
Presiding Judge