

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

IN RE: C.D. : APPEAL NO. C-150229
: TRIAL NO. F-062571
: *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Ten-year-old C.D.’s mother appeals the judgment of the Hamilton County Juvenile Court adjudicating the child abused and granting legal custody of the child to his father.

In May 2014, Hamilton County Job and Family Services (“HCJFS”) filed a complaint alleging that C.D. and his two older siblings by a different father were abused and dependent. The juvenile court granted interim custody of the siblings to HCJFS, and granted interim custody of C.D. to his father.

In September 2014, a magistrate adjudicated C.D. abused and dependent following allegations that his mother had caused injury when she forcibly restrained him. The magistrate terminated a 2008 shared-parenting plan between C.D.’s parents and granted legal custody of C.D. to his father. The mother objected to the decision of the magistrate. The juvenile court overruled the objections and adopted the magistrate’s decision.

In her first assignment of error, C.D.'s mother argues that the juvenile court's adjudication of her son as abused was not based upon clear and convincing evidence. *See* R.C. 2151.35(A)(1).

In this case, HCJFS alleged that C.D. was an "abused child" under R.C. 2151.031(D), "because of the acts of his parents, guardian, or custodian," he had suffered "physical or mental injury that harms or threatens to harm the child's health or welfare." At trial, the mother alleged that, in restraining C.D. for misbehavior, she had used a technique that she had learned while working at a daycare. C.D.'s father testified that following the incident, C.D. had complained of pain in his head, arm, and back, and C.D. had some swelling on his head. The child reported that his mother had punched him in the head with her knuckles, and had sat on him, causing him to have difficulty breathing. C.D.'s father took the child to the hospital.

C.D.'s father also reported an incident that had occurred in 2012 where C.D. had had four-inch-long welts and marks on his back. The father presented photographs of the child's injuries.

Following our review of the record, we hold that the court's finding that C.D. was abused was supported by clear and convincing evidence. *See* R.C. 2151.031; *In re Wilkinson*, 1st Dist. Hamilton Nos. C-040182, C-040203 and C-040282, 2004-Ohio-4107. Therefore, the court did not err when it overruled the mother's objections and adopted the magistrate's decision. We overrule the first assignment of error.

In her second assignment of error, C.D.'s mother argues that the juvenile court erred by terminating the shared-parenting agreement and granting custody of C.D. to his father. We will not reverse a juvenile court's award of custody absent an abuse of discretion. *In re Patterson*, 1st Dist. Hamilton No. C-090311, 2010-Ohio-766, ¶ 15.

Under R.C. 3109.04(E)(2)(c), a court may terminate a shared-parenting plan if it determines that shared parenting is not in the best interest of the child. Contrary to the mother's contention, the court need not find that a change in circumstances occurred before it terminates a shared-parenting plan. *See Labuda v. Collins*, 7th Dist. Columbiana No. 13 CO 50, 2015-Ohio-2322, ¶ 10; *Clyburn v. Gregg*, 4th Dist. Ross No. 11CA3211, 2011-Ohio-5239, ¶ 23.

In this case, the court found that termination of the shared-parenting plan and the award of legal custody to the father was in the best interest of the child. *See In re Allah*, 1st Dist. Hamilton No. C-040239, 2005-Ohio-1182, ¶ 10. Despite the mother's arguments to the contrary, the record reflects competent, credible evidence upon which the juvenile court could have found that an award of legal custody to the father was in the child's best interest. C.D. and one of his siblings had been adjudicated abused at the hand of the mother. All three children had been adjudicated dependent. The mother did not have stable housing, and still needed to complete services that had previously been ordered, such as parenting education and mental-health assessment. The child's father had continued to provide financial support, and had provided a stable environment while the child lived with him in the months leading to trial. In addition, the child's attorney guardian ad litem recommended that custody be awarded to the child's father.

Following our review of the record, we conclude that there is competent, credible evidence to support the juvenile court's decision that C.D.'s best interest was served by granting legal custody to his father. We, therefore, overrule the mother's second assignment of error, and affirm the judgment of the juvenile court.

OHIO FIRST DISTRICT COURT OF APPEALS

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

HENDON, P.J., FISCHER and MOCK, JJ.

To the clerk:

Enter upon the journal of the court on October 23, 2015
per order of the court _____.
Presiding Judge