

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

IN RE: T.M. : APPEAL NO. C-210480  
: TRIAL NO. F11-1719x  
:  
: *OPINION.*

Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: December 22, 2021

*Laursen & Mellott and Erik W. Laursen*, for Appellant Grandmother,

*Adams Law, PLLC, and Aaren E. Meehan*, for Appellee Father,

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *Patsy Bradbury*, Assistant Prosecuting Attorney, for Appellee Hamilton County Department of Job and Family Services,

*Raymond T. Faller*, Hamilton County Public Defender, and *Klarysa Bengé*, Assistant Public Defender, for the Guardian ad Litem.

**WINKLER, Judge.**

{¶1} Appellant grandmother appeals the judgment of the juvenile court denying her motion for legal custody of her grandson, T.M., and granting permanent custody of T.M. to appellee Hamilton County Department of Job and Family Services (“HCJFS”). For the reasons that follow, we affirm.

**Background**

{¶2} HCJFS sought emergency custody of T.M. upon his birth in October 2016. At the time, T.M.’s mother was incarcerated and awaiting trial for the aggravated murder of her daughter, T.M.’s half sibling. T.M.’s mother ultimately pled guilty to the murder charge and was sentenced to 20 years to life in prison.

{¶3} In February 2017, grandmother filed her first motion for legal custody of T.M. A few months later, in May 2017, the juvenile court adjudicated T.M. a dependent child and placed him into the temporary custody of HCFJS. T.M.’s case plan at that time sought reunification of T.M. with his biological father. Grandmother agreed to hold her custody petition in abeyance during the reunification efforts. During this time, HCJFS objected to any visitation of T.M. by grandmother. Although the record is not entirely clear why HCJFS objected to grandmother’s visitation, the home study completed by the HCJFS caseworker asserted that grandmother lacked “protective capacities” and cited to the tragic death of her granddaughter. Grandmother eventually dismissed her first legal-custody motion.

{¶4} In August 2018, HCJFS moved for permanent custody of T.M., although HCJFS continued to work with father toward reunification. Grandmother then filed her second legal-custody motion, and T.M.’s paternal aunt also filed a

motion for legal custody. The court continued T.M.'s case multiple times, until November 2020 when HCJFS's permanent-custody motion and the legal-custody motions proceeded to trial.

{¶5} At trial, father testified that he believed T.M.'s best interests would be served by a permanent placement with his current foster family, and that he did not want T.M. placed with grandmother. T.M.'s therapist testified that T.M. had anxiety disorder, but that he had made great progress with his current foster parents. The therapist opined that T.M. was very bonded to his foster parents, and the therapist believed changing T.M.'s placement would be detrimental to him. T.M.'s guardian ad litem agreed that permanent custody would serve T.M.'s best interests.

{¶6} T.M.'s foster mother also testified. The foster mother testified that T.M. came to live with her and her husband in May of 2019. When he first arrived, T.M. would not talk and communicated only by blinking and hand motions. T.M. also had sensory issues and refused to get into the bathtub or wear short sleeves in the summer. After about three months, T.M. began using small words, and eventually T.M. began to talk more and to socialize with peers. T.M.'s foster mother testified that T.M. has worked with them to overcome a lot of his sensory-integration issues.

{¶7} HCJFS presented testimony from a kinship coordinator, who conducted a home study on grandmother in 2020 in relation to T.M. The coordinator testified that she did not feel grandmother could provide a safe environment for T.M. and lacked "protective capacities," because grandmother minimized her daughter's role in the death of her granddaughter and sought to place blame on T.M.'s father. On cross-examination, the coordinator admitted that

grandmother's home study had been approved in 2013 regarding another of T.M.'s half-siblings, and that grandmother continued to have visitation with that grandchild through the time of trial.

{¶8} Grandmother testified in support of her motion for legal custody, and T.M.'s paternal aunt also testified in support of her own motion for legal custody.

{¶9} After trial, the magistrate issued a written decision granting HCJFS's motion for permanent custody and denying the motions for legal custody filed by grandmother and aunt. The magistrate relied on testimony from T.M.'s therapist, who testified that she would "shudder" to consider the effects on T.M. of a new placement. The magistrate also pointed out that T.M. had been in multiple foster placements prior to his current home. The magistrate acknowledged grandmother's consistent interest in T.M., and grandmother's belief that T.M. should have a relationship with his biological family. The magistrate also refused to cast blame on grandmother for the actions of her daughter and the ultimate cause of T.M.'s custodial history. Nevertheless, the magistrate reasoned that a biological relationship is not a factor to consider in determining statutory best-interests, and that grandmother had no relationship with T.M. The magistrate found that T.M.'s best interests would be served by continuing his current placement in which T.M.'s foster parents had provided a transformative environment for T.M., which had allowed him to thrive.

{¶10} Grandmother filed objections to the magistrate's decision. According to the juvenile court's written decision on grandmother's objections, grandmother argued that T.M.'s best interests would be served by placing him with relatives, and that HCJFS's determination that grandmother could not properly care for T.M. was

flawed. The juvenile court acknowledged grandmother's great desire to care for T.M., and grandmother's understandable reluctance to forcefully intervene in the reunification efforts of T.M. with father; however, the juvenile court reasoned that grandmother's inaction was inconsistent with her repeated claims that father should be investigated for her granddaughter's death. As a result, the juvenile court overruled grandmother's objections, and adopted the magistrate's decision.

{¶11} Grandmother appeals to this court.

{¶12} In a single assignment of error, grandmother argues that the juvenile court erred in granting permanent custody of T.M. to HCJFS, and in failing to grant legal custody of T.M. to her.

### **Standing and Reviewability**

{¶13} Before proceeding to the merits of grandmother's appeal, we note that HCJFS argues in its brief that grandmother does not have standing to appeal the juvenile court's decision to terminate the parental rights of mother and father.

{¶14} In certain circumstances, this court has held that an appealing party cannot raise issues on behalf of a nonappealing party in custody cases. *See, e.g., In re K.C.*, 2017-Ohio-8383, 99 N.E.3d 1061, ¶ 12 (1st Dist.) ("a parent has no standing to appeal an award of permanent custody and a denial of a relative's custody petition where the parent does not challenge the termination of her parental rights and the relative did not appeal the denial of her custody petition."). In this case, neither mother nor father filed objections to the magistrate's decision terminating their parental rights, and neither party has appealed the juvenile court's decision to this court. Thus, grandmother has no standing to appeal the juvenile court's

determination under R.C. 2151.414 to terminate the parental rights of mother and father.

{¶15} No party disputes grandmother's standing to appeal from the denial of her custody motion. Therefore, grandmother's appeal from the juvenile court's decision is limited to the denial of her custody motion, and not whether the juvenile court otherwise complied with R.C. 2151.414 in terminating the parental rights of T.M.'s mother and father.

{¶16} In her appellate brief, grandmother contends that the juvenile court's decision is not sufficiently detailed for this court to determine whether the juvenile court considered all the necessary factors under R.C. 2151.414 before granting permanent custody, and thus the decision is reversible on this basis alone. *See In re N.G.*, 1st Dist. Hamilton Nos. C-130684 and C-130685, 2014-Ohio-720 (holding that the record did not indicate that the juvenile court had considered all the necessary factors under R.C. 2151.414(D) and remanding the case to the juvenile court). Assuming grandmother even has standing to argue that the juvenile court failed to consider all the necessary factors under R.C. 2151.414, her argument is without merit. In its decision, the juvenile court states that the magistrate had properly listed the statutory framework, and the reasoning for each factor, and the juvenile court adopted the magistrate's decision in total. The magistrate issued a lengthy written decision with reasoning as to each applicable factor under R.C. 2151.414. The juvenile court also issued its own independent reasoning in overruling grandmother's objections. Therefore, the juvenile court's decision is sufficiently detailed for this court to conduct a review of grandmother's legal-custody motion.

**Legal Custody**

{¶17} A juvenile court may award legal custody of an abused, neglected, or dependent child to a nonparent who files a motion for legal custody, as an alternative to an award of permanent custody. *See* R.C. 2151.353(A)(3). When determining whether to grant legal custody to a petitioner, the juvenile court takes into consideration the best interests of the child, which can include an examination of the best-interest factors in R.C. 2151.414(D). *In re F.B.D.*, 1st Dist. Hamilton No. C-180356, 2019-Ohio-2562, ¶ 12; *In re M.L.*, 2018-Ohio-750, 106 N.E.3d 926, ¶ 25 (8th Dist.).

{¶18} R.C. 2151.414(D)(1) lists the best-interest factors as follows:

- (a) The interaction and interrelationship of the child with the child's parents, siblings, relatives, foster caregivers and out-of-home providers, and any other person who may significantly affect the child;
- (b) The wishes of the child, as expressed directly by the child or through the child's guardian ad litem, with due regard for the maturity of the child;
- (c) The custodial history of the child \* \* \*;
- (d) The child's need for a legally secure permanent placement and whether that type of placement can be achieved without a grant of permanent custody to the agency;
- (e) Whether any of the factors in divisions (E)(7) to (11) of this section apply in relation to the parents and child.

{¶19} We review a juvenile court's decision regarding legal custody for an abuse of discretion. *In re A.W.*, 1st Dist. Hamilton No. C-140142, 2015-Ohio-489, ¶ 10.

**T.M.'s Best Interests**

{¶20} Grandmother argues that the juvenile court failed to consider the best-interest factor in R.C. 2151.414(D)(1)(d) as to whether a legally secure placement could be made without a grant of permanent custody. Grandmother alleges that the juvenile court failed to consider placement with her. In support of her argument, grandmother cites to *In re E.B.*, 1st Dist. Hamilton Nos. C-190050 and C-190054, 2019-Ohio-3943.

{¶21} In *In re E.B.*, the maternal aunt filed a motion for legal custody. HCJFS completed a home study and supported the aunt's visitation with the child, but the guardian ad litem objected to visitation and filed a motion with the juvenile court. The court agreed to prohibit visitation between the child and the aunt, but also noted that the lack of visitation would not be held against the aunt on the merits of her motion for custody. Eventually, the guardian ad litem filed a motion for permanent custody and HCJFS filed a motion to continue temporary custody. The court ultimately granted the aunt's motion for legal custody, but ordered a transitional plan for E.B. to transition from foster care to the care of the aunt. The guardian ad litem appealed the juvenile court's order to this court, arguing that the juvenile court abused its discretion in awarding custody of E.B. to the aunt.

{¶22} The *E.B.* court acknowledged that E.B. did not have much of a relationship with the aunt because of inconsistent visitation, but the court noted that the guardian ad litem's objections contributed to that result. The court also



acknowledged that E.B. was bonded with his foster family, having been placed with that same family since birth. However, the court noted that E.B.'s placement with the aunt would allow E.B. to establish relationships with his four siblings, who were all in the custody of the maternal grandmother. Ultimately, the *E.B.* court held that the juvenile court could have reached a different conclusion on the record before it, but nonetheless the court could not find the decision constituted an abuse of discretion.

{¶23} Just as the court in *E.B.* held that the juvenile court did not abuse its discretion in weighing the best-interest factors, we find no abuse of discretion has occurred here. Grandmother does not have a relationship with T.M. HCJFS refused to approve grandmother for visitation from the outset of T.M.'s custodial history, because of the tragic events that ensued with grandmother's deceased grandchild—T.M.'s half-sibling—and HCJFS's belief that grandmother lacked protective capacities. Grandmother strongly disputes HCJFS's conclusions, but whether HCJFS's assessment of grandmother was right or wrong, grandmother was never made part of T.M.'s case plan. Grandmother never pursued the visitation issue, most likely due at least in part because it appeared at one point in the case that reunification may occur with father. As a result, T.M. does not know grandmother and is now five years old.

{¶24} T.M. has been in the custody of HCJFS since birth. The record shows that T.M. had moved to several foster homes before placement with his current foster parents in May 2019. T.M.'s therapist testified regarding T.M.'s anxiety disorder, and the therapist's concern for T.M.'s stability. The therapist testified that T.M.'s foster parents have provided an environment which has allowed T.M. to blossom and

progress with respect to his anxiety. T.M.'s foster mother testified that T.M. was nearly nonverbal when he was first placed in her care, but that he now is an energetic and smart child, who could stand up for himself. The undisputed evidence shows that T.M. is bonded to his foster parents, and T.M.'s foster mother indicated that they wish to adopt T.M.

{¶25} The juvenile court weighed the best-interest factors in relation to T.M.'s particular situation, and ultimately concluded that permanent custody was in T.M.'s best interests. The juvenile court was not required to place preference on grandmother's familial relationship and award her legal custody. *See In re Patterson*, 1st Dist. Hamilton No. C-090311, 2010-Ohio-766, ¶ 16 ("No preference exists for family members, other than parents, in custody awards."). The juvenile court did not abuse its discretion in denying grandmother's motion for legal custody of T.M.

{¶26} We overrule grandmother's assignment of error.

### **Conclusion**

{¶27} We affirm the judgment of the juvenile court denying grandmother's motion for legal custody of T.M.

Judgment affirmed.

**CROUSE, P.J.**, and **BOCK, J.**, concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.