# CAPTION: IN RE: D.K. AND D.K.

**11-17-23**

APPEAL NO.: C-220587

TRIAL NO.: F19-1553Z

KEY WORDS: LEGAL CUSTODY – ABUSE OF DISCRETION – JUV.R. 40 – INDEPENDENT REVIEW – AFFIDAVIT TO SUPPLEMENT AN INCOMPLETE TRANSCRIPT – RECORDING ERROR – DUE PROCESS – BEST INTEREST OF THE CHILD – APP.R. 12(B)

SUMMARY:

The juvenile court did not abuse its discretion in conducting its independent review of the magistrate’s decision where Juv.R. 40(D)(4)(b) expressly authorizes the juvenile court to adopt the magistrate’s findings in their entirety and the juvenile court added additional reasoning in its decision to respond to mother’s objections.

The juvenile court did not abuse its discretion in conducting its independent review by relying on an affidavit of testimony that was presented to the magistrate but not transcribed because of an error where Juv.R. 40(D)(4)(b) expressly authorizes the juvenile court to take additional evidence when acting on objections to a magistrate’s decision.

The juvenile court did not abuse its discretion in conducting its independent review by deferring to the magistrate’s findings of witness credibility, despite taking an affidavit, because the affidavit contained mother’s testimony originally presented to the magistrate.

The juvenile court did not err when it ordered mother to submit an affidavit of the evidence that was presented at the hearing before the magistrate but not transcribed because of a recording error where Juv.R. 40(D) permits an affidavit to supplement a transcript where parts of that transcript are unavailable.

The juvenile court did not violate mother’s procedural-due-process rights by ordering mother to submit an affidavit where an affidavit is a proper cure for a recording error and mother gained the benefit of submitting a 48-page affidavit of testimony without opposing counsel to potentially object or cross-examine mother.

The juvenile court did not abuse its discretion in making its best-interest determination where its judgment addresses all statutory best-interest factors and supports each determination with competent and credible evidence.

It would be inappropriate for a court of appeals to use App.R. 12(B) to dictate legal custody as a matter of law contrary to the juvenile court’s determination where the juvenile court has knowledge gained by observing the witnesses and the parties over five years of proceedings.

JUDGMENT: AFFIRMED

JUDGES: OPINION by WINKLER, P.J.; BOCK and KINSLEY, JJ., CONCUR.