

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

IN RE: C.R. : APPEAL NO. C-250312  
: TRIAL NO. F/20/186 Z  
:  
: *JUDGMENT ENTRY*  
:

**ZAYAS, Presiding Judge.**

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); Loc.R. 11.1.

The instant custody matter is now before this court for a third time. In the first appeal, the juvenile court granted legal custody of C.R. to maternal grandparents (“grandparents”) after finding that father had abandoned C.R. *See In re C.R.*, 2022-Ohio-3540, ¶ 5-6 (1st Dist.). However, this court reversed the juvenile court’s finding of abandonment, and thus reversed the accompanying “premature” finding that custody to father would be detrimental to C.R. *See id.* at ¶ 23. Accordingly, this court remanded the matter for reconsideration of whether custody to father would be detrimental to C.R. under *In re Perales*, 52 Ohio St.2d 89 (1977). More specifically, this court held that father was “entitled to a hearing that adequately considers his ability to parent C.R., without the cloud of the abandonment finding.” *In re C.R.* at ¶ 23. This court also specifically cautioned the juvenile court “that the suitability test does not include a comparison of potential placements; rather, the test is solely focused on whether father is a suitable parent—not whether someone else is more suitable.” *Id.*, citing *In re H.J.H.*, 2019-Ohio-116, ¶ 13-14 (1st Dist.).

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In the second appeal, the juvenile court granted legal custody of C.R. to grandparents after finding that custody to father would be detrimental to C.R. *In re C.R.*, 2025-Ohio-557, ¶ 3-5 (1st Dist.). However, this court declined to review the assignments of error after holding that it could not be determined whether the juvenile court conducted the requisite independent review of the magistrate’s decision. *Id.* at ¶ 1, 16-17. Therefore, this court remanded the matter for the juvenile court to conduct a proper review of father’s objections to the magistrate’s decision under Juv.R. 40(D)(4)(d). *Id.* at ¶ 17.

In this third appeal, the juvenile court again granted legal custody of C.R. to grandparents after finding that custody to father would be detrimental to C.R. Father now appeals, raising the same two assignments of error that this court declined to review in the second appeal. In the first assignment of error, father argues that the trial court erred by placing C.R. in the legal custody of nonparents where a preponderance of the evidence does not show that custody to father would be detrimental to C.R. under Ohio law. In the second assignment of error, father argues that the trial court erred by providing a biological parent limited parenting time not in accordance with the trial court’s standard-parenting-time order or in accordance with R.C. 3109.051.

***First Assignment of Error***

In the first assignment of error, father challenges the juvenile court’s determination that custody to him would be detrimental to C.R. Father argues, “The so-called facts relied on by the Court in this matter to reach the conclusion that it would be detrimental to the child to be in father’s legal custody are dated, based on speculation and wholly fail to reach the level necessary to strip a parent of his fundamental right to raise his child.” Father asserts that, even if the “allegations” were

true, the court is required to focus on a parent’s current situation, rather than focusing on past missteps or speculation about future occurrences.

This court reviews a trial court’s decision on legal custody of a child under an abuse-of-discretion standard. *E.g.*, *In re C.R.*, 2022-Ohio-3540, at ¶ 19 (1st Dist.), citing *In re H.J.H.*, 2019-Ohio-116, at ¶ 3 (1st Dist.). An abuse of discretion occurs when “a court exercise[es] its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.” *Johnson v. Abdullah*, 2021-Ohio-3304, ¶ 35. A trial court abuses its discretion where its decision “is unreasonable, arbitrary, or unconscionable.” *In re C.R.* at ¶ 19, citing *In re H.J.H.* at ¶ 3. “A trial court’s decision is unreasonable and may be reversed if it is not supported by competent, credible evidence.” *Id.*, citing *In re H.J.H.* at ¶ 3.

Father’s argument appears to be a sufficiency argument, claiming that the facts relied upon by the juvenile court are insufficient as a matter of law to show a detriment sufficient to warrant an unsuitability finding. This argument was preserved in father’s objections to the magistrate’s decision.

Sufficiency is test of adequacy and looks to whether the evidence was legally sufficient to support a judgment as matter of law. *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 11, citing *State v. Thompkins*, 1997-Ohio-52, ¶ 23.

The juvenile court in essence found—among other things—that custody to father would be detrimental to C.R.’s medical needs where multiple witnesses testified that he was against C.R. having an eye surgery recommended by two ophthalmologists until father obtained “at least two more opinions regarding the procedure.”

This is supported by the evidence in the record. Counsel for grandparents attempted to call a medical professional as a witness via Zoom. After father objected, the parties instead stipulated to the admissibility of a March 2023 letter from Dr.

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Michael Gray, with the Cincinnati Children’s Hospital Medical Center (“CCHMC”) Division of Pediatric Ophthalmology. The letter details that C.R.’s eye drifting was worse in December 2022 and “constant” when C.R. was looking in the distance. The letter states, “While the drifting is constant like this it can affect binocular vision, or the way the brain is able to see objects with both eyes simultaneously for normal depth perception. Therefore, I recommended eye muscle surgery to improve his ocular alignment and promote more normal development of his binocularity.” Further, an after-visit summary from June 2023 with Dr. Laura Lynn Coyne, M.D., also with the CCHMC’s Division of Pediatric Ophthalmology, shows that C.R. was recommended to “return for surgery with Dr. Gray” after his visit with Dr. Coyne.

Grandfather testified that Dr. Gray first recommended eye patching in February 2022, but they “didn’t really seem to help that much.” He said that C.R.’s eye condition is called exotropia, “where [the eyes] start to wonder in both directions.” He explained, “So they’re both looking outward, especially the left eye has the extreme amblyopia condition where it’s starting to seem loop -- according to the literature, it loses connection with the brain because the brain is favoring the right eye, and that can eventually lead to blindness in that eye.” He said that step-grandmother told father about the surgery when they originally scheduled it in December 2022 when she dropped C.R. off to father the Friday after Christmas, and then, when he went back to pick C.R. up on Sunday, father was “adamant” about not doing the surgery. He testified that, after father filed a motion with the court to stop the surgery, they decided to get an “official” second opinion from Dr. Coyne, even though they also got a second consult with a third ophthalmologist at CCHMC. He said that father “was not satisfied” with the second consult, so they scheduled the earliest appointment with Dr. Coyne in June. He claimed that father showed up an hour and half late for the

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appointment with Dr. Coyne. When father heard Dr. Coyne's recommendation for the surgery, he "talked very loud then," and told the doctor she would be wasting her time, and he was going to "get it stopped" in court. He repeated this "two to four times" in different ways. After the appointment, they scheduled the surgery for the first available date, which was August 23 (the day following the hearing). He testified that there would be "follow-up work" after the surgery, and it was "very possible" that a follow-up surgery could be needed, based on the risk of overcorrection. When asked if it was important for C.R. to have the surgery, he answered, "I think it's vitally important." When asked if father expressed that he would not proceed with the surgery, he replied, "Yes. He told me he didn't want to do it initially, period. He didn't." When asked if he believed father would follow through with the surgery if he obtained custody, he replied, "I don't think he would, not anything that involves surgery."

Step-grandmother also testified that father repeatedly said to Dr. Coyne not to bother scheduling the surgery because he would have the surgery cancelled. Father told step-grandmother that he still might not have the surgery done even if a doctor in Cleveland recommended the surgery.

Mother testified that father "was adamantly against the eye surgery and tried to convince [her] to be against the eye surgery." She said this was "probably over a month ago." When asked how she felt about the surgery, she answered, "I fully believe that [C.R.] needs the surgery, yes. It's clear that he has a problem with his eye and needs it corrected."

This evidence was sufficient to show, by a preponderance of the evidence, that father was unwilling to timely provide necessary medical care to C.R. to address his eye condition, which was impacting his binocular vision and ability to see objects with

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both eyes simultaneously for normal depth perception and could ultimately lead to blindness.

Father argues that the juvenile court ignored his testimony explaining his “reasonable desire” to get a second opinion before proceeding with the surgery. However, the record reflects that father was first alerted to C.R.’s need for surgery in December 2022. The surgery was initially scheduled to occur in February 2023 but was cancelled by grandparents after father filed a motion with the juvenile court to stop the procedure. Grandparents then obtained an additional consultation from a second ophthalmologist and an official second opinion from a third ophthalmologist. Father expressed that these additional opinions were still not enough and he would like at least “one or two” more opinions before proceeding with the surgery. Yet, father only testified as to one attempt to obtain a satisfactory opinion from another doctor, and he failed to follow through with this attempt. When asked if he consulted any other doctors, he said, “I talked to one other doctor. Nothing worked out. But it would cost me \$600. I wanted to take him to Cleveland for a doctor.”

Beyond that, father merely testified that he wanted to wait until the custody proceedings were over so that he could control C.R.’s medical care. However, there is nothing in the record to indicate that grandparents were not cooperative with father when it came to obtaining C.R.’s medical care. In fact, the record shows the opposite where grandparents cancelled the initial surgery and obtained additional opinions from medical professionals at father’s request. So, the record does not reflect any reason why father—when acting in the best interest of C.R.—would need to wait until he had custody in order to obtain the opinions that he felt were needed to proceed with the surgery. Nevertheless, father failed to obtain any additional opinions, or even

attempt to schedule any appointments, in the over-seven-month period of time between when surgery was first recommended and the hearing date.

Based on the foregoing, we hold that the evidence was sufficient to support the juvenile court's finding that custody to father would be detrimental to C.R. where father was unwilling to provide C.R. with the medical care that he imminently needs. Accordingly, we overrule the first assignment of error.

***Second Assignment of Error***

In his second assignment of error, father challenges the juvenile court's award of parenting time and argues that the juvenile court should have awarded him "standard" or "sufficient" parenting time.

However, father failed to raise this issue in his objections to the magistrate's decision and failed to raise a plain-error argument. *See* Juv.R. 40(D)(3)(b)(ii) (requiring an objection to a magistrate's decision to be specific and "state with particularity all grounds for objection"), and 40(D)(3)(b)(iv) ("Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Juv.R. 40(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b).").

Beyond that, father only makes a conclusory assertion that all the parenting-time factors "point to no less than a standard parenting time order." However, he fails to cite to the record or specifically challenge any of the juvenile court's findings under the parenting-time factors. *See, e.g., In re D.W.*, 2019-Ohio-762, ¶ 28 (12th Dist.), quoting *In re A.J.*, 2018-Ohio-4941, ¶ 15 (12th Dist.) ("It is well-established that it is not this court's duty to search the record for evidence to support an appellant's argument as to any alleged assignment of error.").

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Therefore, we overrule the second assignment of error as father failed to show error in the juvenile court's judgment.

Based on the foregoing, we affirm the judgment of the juvenile court.

The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed under App.R. 24.

**NESTOR, J.**, concurs.

**MOORE, J.**, concurs separately.

**MOORE, J.**, concurring.

As the majority correctly explains, in reviewing this case, we must apply an abuse-of-discretion standard. And, under that standard, this court cannot substitute its view of the facts for that of the trial court. Instead, we must defer to the trial court's factual findings if they are supported by competent, credible evidence. *In re C.R.*, 2022-Ohio-3540, ¶ 19 (1st Dist.), citing *In re H.J.H.*, 2019-Ohio-116, ¶ 3 (1st Dist.).

Here, I cannot say the trial court's decision constituted an abuse of discretion, so I must ultimately join the majority in upholding the trial court's judgment. However, I write separately to express my concern with the potential chilling effect the trial court's finding might have on other parents who, not satisfied with the information provided, seek answers to the questions they have regarding the medical care being recommended for their child.

Based on the facts presented below, a reasonable fact finder could conclude that father's behavior was not evidence of a callous disregard for his child's wellbeing, but instead demonstrated a justifiable response of a parent who is being told that his child needs to undergo major surgery and being given, at least in his view, not enough time and not enough information to decide what is in his child's best interest.

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I write separately to simply stress that asking for more time and additional information does not necessarily equate to an outright refusal to provide the child with needed medical care. Nothing in the record below demonstrates that father took any extrajudicial steps to interfere with the procedure that was recommended for C.R. Instead, father properly sought guidance from the court and filed a motion asking for time to gather additional information.

While father's concerns might have been misplaced, nothing in the record suggests that anyone petitioned the court for emergency relief to allow the procedure to go forward to avoid irreparable harm to the health of the child. Instead, the grandparents chose to wait to address father's concerns. A valid choice, but a choice to delay that was made by the grandparents, not father.

Father testified that he never objected to the surgery and would never deny C.R. medical care. The facts also support the conclusion that father was not simply expressing the need for additional opinions to cause delay. Instead, father testified that he had actually tried to secure these additional opinions. These efforts ultimately did not bear fruit, but they could support a finding that father's efforts were not to deny C.R. needed medical care, but only to determine what was in his son's best interest.

The trial court, however, did not see it this way. Instead, the juvenile court acknowledged father's testimony regarding his efforts but concluded that father was not being diligent about C.R.'s medical care. A conclusion that is not unreasonable, arbitrary, or unconscionable. But a conclusion that is also not the only one that can be drawn from these facts. Here, father's questions and concerns about the procedure are likely the same as any parent might have when faced with such a difficult choice. And

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no parent should worry that their need for additional information may result in a determination that they are trying to deny the medical care needed for their child.

Because it is not the role of this court to substitute its view for that of the trial court in determining whether there has been an abuse of discretion, I must join with the majority in upholding the trial court's decision. However, by writing separately, I hope to stress that trial courts should continue to approach these difficult cases with caution and never allow parental concern to be translated into evidence of parental neglect.

**To the clerk:**

**Enter upon the journal of the court on 4/22/2026 per order of the court.**

By:   
Administrative Judge