

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

IN RE: A.H. AND J.H. : APPEAL NO. C-170031
TRIAL NO. F06-2572
: *JUDGMENT ENTRY.*

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); 1st Dist. Loc.R. 11.1.1.*

Mother has appealed from the Hamilton County Juvenile Court's judgment granting legal custody of her children A.H. and J.H. to Y.M.

The Hamilton County Department of Job and Family Services ("HCJFS") moved for temporary custody of A.H. and J.H. in October of 2014, following an incident where the children were present during an episode of domestic violence between mother and her live-in boyfriend. Mother suffered a black eye and a broken finger that required surgery. A.H. and J.H. were adjudicated abused and dependent children, and were placed in the temporary custody of HCJFS.

A.H. and J.H. were initially placed with a maternal aunt. But they were removed from their aunt's care after she allowed them to have unsupervised contact with mother. During that unsupervised contact, mother physically abused A.H. by striking her with a shoe. A.H. and J.H. were then placed with the paternal grandmother of A.H. The children were unhappy with that placement, and were removed from grandmother's care because HCJFS feared that they would run away if they remained in her home.

A.H. and J.H. were then placed with Y.M., the wife of A.H.’s alleged father. Y.M. filed a petition for custody of A.H. and J.H. And HCJFS filed a motion requesting that its temporary custody of A.H. and J.H. be terminated, and that legal custody of the children be awarded to Y.M. Following a hearing, the magistrate awarded legal custody of the children to Y.M.

In her first assignment of error, mother argues that the juvenile court erred in adopting the magistrate’s decision that terminated her parental rights and granted custody to Y.M. Contrary to mother’s assertion, her parental rights were not terminated and Y.M. was not awarded “permanent custody” of A.H. and J.H. Rather, Y.M. was awarded legal custody of the children pursuant to R.C. 2151.353. We construe mother’s assignment of error to argue that the juvenile court erred in adopting the magistrate’s decision that granted legal custody of her children to Y.M.

Former R.C. 2151.353(A)(3) provided that, after a child is adjudicated abused, neglected or dependent, the court may “[a]ward legal custody of the child to either parent or to any other person who, prior to the dispositional hearing, files a motion requesting legal custody of the child or is identified as a proposed legal custodian in a complaint or motion * * *.¹ The best interest of the child is the juvenile court’s primary consideration when choosing among various dispositional options, including a grant of legal custody. *In re Allah*, 1st Dist. Hamilton No. C-040239, 2005-Ohio-1182, ¶ 10. The juvenile court has discretion to determine which placement option is in a child’s best interest, and its determination will not be reversed absent an abuse of that discretion. *In re M., R., and H. Children*, 1st Dist. Hamilton No. C-170008, 2017-Ohio-1431, ¶ 30. In this context, the juvenile court

¹ We apply the version of this statute in effect at the time that the motion for custody was filed. *In re M., R., and H. Children*, 1st Dist. Hamilton No. C-170008, 2017-Ohio-1431, ¶ 15.

abuses its discretion if its determination regarding the child's best interest is not supported by competent, credible evidence. *Id.*

Following our review of the record, we find that the juvenile court did not abuse its discretion in determining that a grant of legal custody to Y.M. was in the best interest of A.H. and J.H. The juvenile court's decision cited R.C. 3109.04(F), which provides various factors to be considered when determining what is in a child's best interest in custody matters. *See id.* at ¶ 31. And in its decision, the court made numerous findings in accordance with those factors that supported a grant of legal custody to Y.M.

The juvenile court's decision found that although mother had completed Women Helping Women, an instructional domestic-violence program, she never indicated an appreciation of the harm caused to her children from witnessing domestic violence in their home, and she continued to deny and minimize the domestic violence, eventually marrying her abuser. The court also noted that mother and her husband had each incurred criminal charges relating to assaultive behavior against each other, and that mother had assaulted A.H. during the course of this litigation.

The juvenile court found that mother had not engaged in most of the services offered to remedy the conditions that had led to the children being removed from her home until just before the dispositional hearing. Additionally, the court found that while mother's visits and communication with the children had been inconsistent, they had improved greatly following the children's placement with Y.M.

The juvenile court further found that A.H. and J.H. were being well cared for by Y.M., and were adjusted and comfortable in her home. The court noted that, following a home study, Y.M.'s home was found to be suitable and it was recommended that the children remain there. The children's guardian ad litem additionally recommended that A.H. and J.H. be placed in the legal custody of Y.M.

The juvenile court also considered the children's relationship with mother, specifically finding that neither A.H. nor J.H. wanted to live with mother's boyfriend, but that both wanted to continue some degree of association with their mother. And it found that Y.M. was willing and capable of overseeing the children's visitation with mother.

The juvenile court's determination that a grant of legal custody to Y.M. was in the best interest of A.H. and J.H. was supported by competent, credible evidence. *See In re M., R., and H. Children*, 1st Dist. Hamilton No. C-170008, 2017-Ohio-1431, at ¶ 30; R.C. 3109.04(F). Mother's first assignment of error is overruled.

In her second assignment of error, mother argues that she was deprived of the effective assistance of counsel. Mother specifically contends that counsel was ineffective for failing to file an objection to the magistrate's decision granting legal custody to Y.M., causing mother to file her own pro se objection.

Counsel will not be considered ineffective unless her or his performance was deficient and caused actual prejudice to the defendant. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 141-142, 538 N.E.2d 373 (1989). A defendant is only prejudiced by counsel's performance if there is a reasonable probability that the outcome of the proceedings would have been different but for the deficient performance. *Strickland* at 694; *Bradley* at 142.

Although mother filed a pro se objection to the magistrate's decision, counsel appeared on behalf of mother at the hearing on that objection. And prior to the objection being filed, counsel competently represented mother throughout the custody trial. The record does not indicate whether mother filed a pro se objection because counsel had failed to do so or because she purposely elected to file her own objection. But even if this court were persuaded that counsel was deficient for failing to file an objection, we cannot find that mother suffered any actual prejudice. In

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ruling on mother's objection, the juvenile court conducted a detailed, thorough, and independent review of the record. It did not err in determining that a grant of legal custody to Y.M. was in the best interest of A.H. and J.H., and we cannot say that the outcome of the proceedings would have been different had counsel filed an objection instead of mother.

Mother's second assignment of error is overruled, and the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on November 15, 2017
per order of the court _____.

Presiding Judge