

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

IN RE: A.B. : APPEAL NO. C-150743  
: TRIAL NO. F10-2190X  
: *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.

Appellant is the father of A.B., who was born in 2007. A.B. was born addicted to opiates due to the drug use of her mother. Mother's home was next door to the home of appellees, the maternal grandparents of A.B. Grandparents have been actively involved in A.B.'s care from the time of her birth. During the timeframe between A.B.'s birth and 2013, mother went through a series of treatment programs for her heroin addiction. During much of this time, the juvenile court put safety plans in place for A.B., which involved grandparents providing the primary care for the child. Appellant father, who had previously been convicted of kidnapping and attempted rape, claimed that he was actively involved in A.B.'s care through this period. Grandparents disputed his level of involvement, noting that he had been unaware that the Hamilton County Department of Job and Family Services was involved in A.B.'s care, did not know how extensively involved mother was in drugs afterward, and had never visited A.B.'s school.

Mother died in 2014, and grandparents filed for legal custody of A.B. The trial court granted interim custody to grandparents, and set the matter for a full custody trial. After the trial, a magistrate issued a decision awarding custody to grandparents. The trial court overruled father's objections and adopted the decision of the magistrate.

In one assignment of error, father claims that the trial court abused its discretion when it awarded legal custody to grandparents. "In proceedings involving

the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important.” *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988), quoting *Trickey v. Trickey*, 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952). Thus, a trial court retains broad discretion in child custody matters, and this court will only reverse the trial court upon a showing of an abuse of discretion. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

The Ohio Supreme Court has held that, in a custody proceeding between a parent and a nonparent,

the hearing officer may not award custody to the nonparent without first making a finding of parental unsuitability--that is, without first determining that a preponderance of the evidence shows that the parent abandoned the child, that the parent contractually relinquished custody of the child, that the parent has become totally incapable of supporting or caring for the child, or that an award of custody to the parent would be detrimental to the child.

*In re Perales*, 52 Ohio St.2d 89, 369 N.E.2d 1047 (1977), syllabus.

Father argues that the trial court misapplied the standard in *Perales*. Specifically, he claims that the trial court considered whether an award of custody to him would be merely temporarily unpleasant or unsettling for A.B., as opposed to being detrimental to her as required by *Perales*. This court disagrees.

The magistrate’s decision, adopted by the trial court, expressly concluded that an award of custody to father would be detrimental to the child. A.B.’s transition to a residence hours away would be more than temporarily unpleasant for her. The trial court noted that A.B. had been involved with the grandparents since birth and had

become “tremendously bonded” to them. Moving her would remove her “from the environment that she has known and loved for most of her life,” moving “from her friends, her school, her therapist, her siblings, and her primary caregivers” to a home in “an entirely different city.” Simply put, moving her would be “detrimental to her,” especially considering the fact that “she is still very much dealing with the upheaval in her life caused by the death of her mother.” A.B.’s in-camera interview “reinforced the great attachment that she had to her home environment.” And while the magistrate considered what would be in the best interest of the child, that analysis was expressly considered “after determining by a preponderance of the evidence that it would be detrimental to place her in her father’s custody as required under *Perales* and its progeny.”

A.B. has had a tremendously difficult childhood. She has had to watch as her mother struggled with addiction over the course of years, and then lost her when she was only six years old. Through all of this, she has been given a stable home environment through the love and support of her grandparents. The trial court properly applied the *Perales* standard in this case, and it did not abuse its discretion when it awarded custody of A.B. to grandparents. We overrule father’s sole assignment of error, and affirm the judgment of the trial court.

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

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

To the clerk:

Enter upon the journal of the court on September 30, 2016  
per order of the court \_\_\_\_\_.  
Presiding Judge