

{¶ 2} In April 2008, Hillary Cotton (Hillary) gave birth to J.E. J.E.'s biological father is Jacob Easterling (Jacob). Gia Easterling (Grandmother) is Jacob's mother and J.E.'s biological paternal grandmother. In November 2009, Hillary and Brian Mabry (Brian) had a daughter together named Audrey. Dena Hensley is Brian's mother, but neither she nor Stephen is related to J.E. in any biological manner.

{¶ 3} When Hillary wanted help with the children, the Hensleys often provided care for J.E. despite their lack of blood relation. Even before Audrey's birth in 2009, the Hensleys became involved with J.E. when he was six months old, and took a more involved role when he turned nine months old and Hillary requested help. The Hensleys began to provide more extended care for J.E., often caring for the child for weeks at a time due to Hillary's emotional problems or other issues related to Hillary's drug addiction and extensive drug abuse history.

{¶ 4} J.E. began living almost full time in the Hensleys' household beginning in October 2010. However, Hillary asked to spend time with both J.E. and Audrey on Christmas Eve that year. While in Hillary's care, Audrey drowned in the bathtub on Christmas day. In January 2011, the Hensleys filed for custody of J.E., and they were granted temporary custody through an emergency ex parte order. Grandmother also filed a motion for custody once she learned of the Hensleys' motion and that they had been granted temporary custody of J.E. Hillary contested the custody motions from the Hensleys and Grandmother, but she asked the court to give custody of J.E. to Grandmother if she was found to be an unfit parent. Jacob also requested that Grandmother have custody of J.E., and also stated his belief that Hillary was an unfit mother. The trial court found Hillary and Jacob both to be unfit parents, and then granted legal custody of J.E. to the Hensleys. Grandmother now appeals the trial court's decision, raising the following assignment of error:

{¶ 5} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT, THE PATERNAL GRANDMOTHER, WHEN IT AWARDED CUSTODY OF THE CHILD TO

APPELLEES, WHO ARE LEGAL STRANGERS TO THE CHILD.

{¶ 6} Grandmother argues in her assignment of error that the trial court erred by granting legal custody of J.E. to the Hensleys. Within the trial court's decision, and before granting legal custody of J.E. to the Hensleys, the court found that both Jacob and Hillary are unsuitable parents. Grandmother is not challenging that finding, and therefore we will not address the trial court's finding of unsuitability. Instead, this appeal will focus on the trial court's grant of legal custody to the Hensleys instead of Grandmother.

{¶ 7} R.C. 2151.23 sets forth the original jurisdiction of juvenile courts, and states that "the juvenile court shall exercise its jurisdiction in child custody matters in accordance with sections 3109.04 and 3127.01 to 3127.53 of the Revised Code." R.C. 2151.23(F)(1). "When making the allocation of the parental rights and responsibilities for the care of the children * * * in an original proceeding or in any proceeding for modification of a prior order of the court making the allocation, the court shall take into account that which would be in the best interest of the children." R.C. 3109.04(B)(1).

{¶ 8} In order to determine the best interest of a child, R.C. 3109.04(F)(1) requires the juvenile court to consider all relevant factors. *In re M.M.*, 12th Dist. No. CA2010-12-034, 2011-Ohio-3913, ¶ 9. These factors include, but are not limited to (1) the wishes of the parents, (2) the child's interaction and interrelationship with his parents, siblings, and other persons who may significantly affect the child's best interest, (3) the child's adjustment to home, school and community, (4) the mental and physical health of all persons involved, (5) and the likelihood that the caregiver would honor and facilitate or had honored and facilitated visitation and parenting time. *In re A.L.H.*, 12th Dist. No. CA2010-02-004, 2010-Ohio-5425, ¶ 9.

{¶ 9} Trial courts are entitled to broad discretion in custody proceedings. *Davis v. Flickinger*, 77 Ohio St.3d 415 (1997), paragraph one of the syllabus. As "custody issues are

some of the most difficult and agonizing decisions a trial judge must make," the judge must be given "wide latitude in considering all the evidence" and the decision must not be reversed absent an abuse of discretion. *Id.* at 418. The term abuse of discretion "connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 10} We presume that the trial court's findings are correct because the trial court is "best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Therefore, deferential review in a child custody determination is especially crucial "where there may be much evident in the parties' demeanor and attitude that does *not* translate to the record well." *Flickinger*, 77 Ohio St.3d at 419. (Emphasis in original.)

{¶ 11} Essentially, Grandmother challenges the trial court's decision because she believes that the trial court did not give sufficient weight to the fact that she is J.E.'s blood relative, whereas the Hensleys are not. However, and as this court has stated in the past, "while 'blood relationship' and 'family unity' are factors to consider when determining a child's best interest, neither one is controlling." *In re S.K.G.*, 12th Dist. No. CA2008-11-105, 2009-Ohio-4673, ¶ 12. Instead, a court must focus on the child's best interest when determining which party should have legal custody. The trial court walked through each of the best interest factors and also specifically considered the child's biological relation to Grandmother. However, the trial court noted other important issues to consider, and found after weighing the factors that it was in J.E.'s best interest to remain in the Hensleys' care.

{¶ 12} The trial court considered the first factor, "the wishes of the child's parents regarding the child's care." Hillary and Jacob both indicated that their preference was to have J.E. placed in Grandmother's care. However, the court also considered that Hillary

placed both of her children with the Hensleys in the past, and for extended amounts of time. Also, the court considered that Jacob has never met the Hensleys and therefore cannot speak to their ability to parent the child. The court did not interview the child in camera, and therefore could not consider the second factor regarding the child's wishes.

{¶ 13} The third factor, "the child's interaction and interrelationship with his parents, siblings, and any other person who may significantly affect the child's best interest," was an important factor for consideration. The court heard evidence that Jacob had been incarcerated on a felony conviction, and was serving a four-year sentence at the time of the hearing. Therefore, J.E. had not experienced a relationship with his biological father. Hillary, while she stated she loved the child very much, often left him in the Hensley's care and chose to continue her drug addiction rather than care for J.E.

{¶ 14} The Hensleys met J.E. when he was approximately six months old because Brian began dating Hillary. Hillary then became pregnant and gave birth to the Hensleys' granddaughter, Audrey. The Hensleys began spending significant time with J.E. when he was nine months old, and later increased their caregiver role for J.E. when Hillary would drop Audrey and J.E. off at the Hensleys' home for days or weeks at a time. Since that time, the Hensleys have bonded with J.E. and he has been incorporated into the Hensley family as one of their own. J.E. calls Dena "Nonni" and Stephen "Poppy," and Dena testified that she loves J.E. and considers him to be her grandchild. Dena also testified that, "in every sense of everything we are his grandparents." Stephen testified that J.E. is his "grandson," and that he "raised my kids no different than what I'm doing with [J.E.] right now." The Hensley's 21-year-old son resides in their home with J.E., and acts as an uncle to the child. J.E. also refers to Brian, Audrey's father, as "Daddy" because he has served as J.E.'s father figure since he became involved with Hillary while Jacob was incarcerated. The court also considered that the Hensleys' home is proper and appropriate for the child, and that they

have the financial ability to care for J.E.

{¶ 15} Grandmother has not had a bonded relationship with J.E. for as long as the Hensleys have. Grandmother developed a closer relationship with the child since May 2011. However, in 2010, Grandmother saw J.E. approximately six to eight times the entire year and did not see the child for months because of an argument she had with Hillary. Grandmother did reinstitute a relationship with J.E. once Hillary informed her of Audrey's death and that J.E. was staying with the Hensleys. In May 2011, the Hensleys agreed to Grandmother having visitation with the child six days out of 14, essentially alternating weeks. Grandmother has become more bonded with the child because of this visitation schedule. Grandmother has two daughters who were nine and ten at the time of the hearing. The court heard testimony that J.E. treats Grandmother's children as siblings rather than as aunts. Grandmother also has an adult daughter, Emily, who provides care for J.E. when Grandmother has visitation with the child but cannot provide care due to her work schedule.

{¶ 16} The court also considered the fourth factor, "the child's adjustment to his home, school, and community." The court heard evidence that J.E. has become well-adjusted to the Hensleys' home and had resided there for approximately one year as of the time of the hearing. J.E.'s schedule has become regular since living with the Hensleys, he attends daycare/preschool while the Hensleys work, and he plays with the neighborhood children when he returns from school. The evidence established that J.E. is "thriving" in the Hensley's care and custody.

{¶ 17} The fifth factor required the court to consider "the mental and physical health of all persons involved in the situation." The court considered that while Hillary has substance abuse problems and may also suffer from mental health issues, neither Grandmother nor the Hensleys suffer from any physical or mental health issues. The child has no medical or mental health issues except that the Hensleys have taken J.E. to physical therapy to help

correct a problem he has when he walks.

{¶ 18} The court considered the sixth factor, "the parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights." As previously stated, the Hensleys have agreed to an alternating visitation schedule where Grandmother spends every other week with J.E. The court heard testimony that the Hensleys would continue to facilitate visitation with Grandmother, as well as Hillary and Jacob should visitation with either biological parent become proper. However, Grandmother stated that she is opposed to any court order for the Hensleys to have ongoing visitation with J.E. She also testified that if any party is removed from the visitation schedule, it should be the Hensleys because they are not related to J.E. biologically.

{¶ 19} The parties did not present any evidence regarding the final factors, whether either party has failed to make any child support payments; whether either party had been convicted of any crime that resulted in the child being adjudicated abused or neglected; whether either party denied visitation in the past; or whether either party had plans to move from the state.

{¶ 20} The court also made specific findings regarding other factors it took into consideration when making its decision. The first of those factors was that Grandmother is J.E.'s biological relative, and that "biological bonds are important bonds to maintain." By including this factor in its written decision, the court clearly demonstrated that it considered this factor when reaching its decision. Despite Grandmother's unhappiness over not receiving custody, there is no indication in the record that the trial court downplayed or dismissed the fact that Grandmother is J.E.'s biological relative. Instead, the court considered the biological connection but went on to consider other issues of importance when determining the child's best interest.

{¶ 21} Balanced against the fact that Grandmother is J.E.'s paternal grandmother, the

court considered the parties' work schedule and how such schedules impact the child. Grandmother works as a nursing assistant from 11 p.m. until 7 a.m., every day, every other week, and is a single mother with two young children in her home. Because of Grandmother's work schedule, she relies on her oldest daughter, Emily, to provide care for the children when she is at work. Dena works as a secretary at a middle school, and has regular work hours of 7:30 a.m. until 4:00, Monday through Friday. She also has off the entire month of July. Stephen works as a supervisor at Keystone Foods, and also maintains a consistent work schedule that allows him to end work by 1:00 p.m. most days.

{¶ 22} The court also considered the way in which Grandmother views the importance of the Hensleys in J.E.'s life. Grandmother testified that she does not want the Hensleys to have court-ordered visitation with the child, and that eliminating the nonbiological relationship with the Hensleys would be in J.E.'s best interest, especially once Jacob is released from prison and tries to establish a relationship with J.E. Grandmother also testified that any relationship the Hensleys did have with J.E. would need to be on her terms, and further downplayed the role the Hensleys have played in J.E.'s life because she was unaware that they provided care for the child the majority of his life. Grandmother's testimony showed a lack of acknowledgment of the bond J.E. shares with the Hensleys or how important their relationship is to one another. As pointed out by the trial court, Grandmother "was only able to acknowledge that the Hensleys "probably love" J.E.

{¶ 23} After a thorough review of the record, we cannot say that the trial court abused its discretion by balancing the factors as it did. As stated by the magistrate, "this is, admittedly, a very difficult and close case." While Grandmother would have this court reverse the trial court's decision because she is the biological grandmother, we decline to do so. The court heard extensive testimony from multiple parties, considered each of the best interest factors in great detail, and also took into consideration other important factors before

making its decision.

{¶ 24} Grandmother's request that she be given custody because of her biological connection discounts the fact that the decision of custody is determined by the best interests of the child in question. Leaving J.E. in the Hensleys' care minimizes the disruption to the child and allows him to maintain the bond he has forged with the Hensley family, while also allowing him to maintain the connection he has forged with Grandmother. The court's finding that J.E.'s "best interests are served by placement with the Hensleys whom he knows and loves and who have provided him with a long-term stable environment and can provide a continuing loving and caring environment for him," is not unreasonable, unconscionable, or arbitrary. Having found no abuse of discretion, Grandmother's assignment of error is overruled.

{¶ 25} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.