

{¶ 2} Jennifer Miller (Mother) was married to David Miller, and a son was born issue of the marriage. Mother and David later divorced, and David took full custody of the couple's son, Dylan. David remarried and had two children with his new wife, Lisa. Lisa also brought a child from a previous marriage into the family, so that there are four children within the Miller household.

{¶ 3} Soon after her divorce from David, Mother became pregnant with A.G.M. by a Butler County man whom she never married. Soon after Mother gave birth to A.G.M., she moved to Michigan to live with Grandmother, under somewhat reticent circumstances. However, A.G.M.'s father (Father) never sought custody of A.G.M., but was eventually ordered to pay child support once paternity was established in the Butler County Court of Common Pleas.

{¶ 4} The relationship between the Millers and Mother was contentious. Mother tried to get custody of Dylan after David completed residential drug treatment as part of Intervention in Lieu of Conviction, stemming from his theft of morphine from a paramedic unit in 2006. While the court denied Mother's custody motion, it admonished the parents for their immaturity, as well as their inability to communicate and cooperate for the sake of their son. However, any ill will the parents harbored for one another disappeared when Mother was diagnosed with a terminal illness in April 2008.

{¶ 5} Once Mother was diagnosed, the parents were able to put aside their negative feelings, and work cooperatively for Dylan's sake. Near the end of Mother's life, the Millers offered to help her and Grandmother by bringing A.G.M. to stay at their home so that A.G.M. could spend time with her half-brother, Dylan, rather than staying at the hospital or hospice with Mother. The Millers came to Michigan with Grandmother's consent and cooperation on or around October 17, 2008, and took A.G.M. to stay with their family in Ohio. There was contradicting testimony from the parties as to whether the stay was meant to be permanent.

{¶ 6} Mother died on October 19, 2008. On October 20, 2008, the Millers filed a petition for custody of A.G.M. in the Warren County Court of Common Pleas, and arrived at court with Father, A.G.M.'s biological father, who consented to the Millers' custody petition.

{¶ 7} Nowhere in the Millers' custody motion did they inform the court that A.G.M. had lived in Michigan or that Father had not had contact with A.G.M. while she lived in Michigan. Nor did the Millers inform the court that the contact they had with A.G.M. prior to Mother's death was centered around exchanging Dylan for visitation with Mother. Without all of the pertinent information, the court awarded custody to the Millers based on Father's consent, as well as information regarding Mother's death.

{¶ 8} On November 12, 2008, Grandmother filed a motion for legal custody in the Warren County Court of Common Pleas, Juvenile Division, and was granted visitation with A.G.M. during the pendency of the court proceedings. A hearing was held before a magistrate, who ruled in favor of Grandmother. The Millers then filed an objection to the magistrate's decision, and the trial court ruled in favor of the Millers, granting them custody of A.G.M. Grandmother appealed the trial court's decision to this court, and challenged for the first time on appeal whether Warren County held proper jurisdiction to decide the case. This court remanded the issue back to the trial court to determine whether it held proper jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). *In the Matter of A.G.M.*, 12th Dist. No. CA2010-02-016, 2010-Ohio-4565.

{¶ 9} On remand, the magistrate determined that the court had jurisdiction to decide custody issues pertaining to A.G.M., and Grandmother filed objections to that decision. The trial court asked that the parties brief the jurisdiction issue, specific to the UCCJEA's section on declining jurisdiction and forum non-conveniens, in anticipation of a phone call between the trial court and the Ninth Circuit Court in Kalamazoo County, Michigan. Grandmother filed her brief with the court, but the Millers' brief was stricken as being untimely. During a phone

conversation between the Warren County and Michigan courts, the Michigan court declined jurisdiction because Grandmother had never filed any motions in Michigan and because A.G.M. had been in Ohio for almost two years as of the time of the phone call.

{¶ 10} The trial court found that Ohio was a proper forum to hear the custody issue, and held that the Warren County Court of Common Pleas had jurisdiction over the case. Grandmother now appeals the decision of the trial court, raising the following assignments of error.

{¶ 11} Assignment of Error No. 1:

{¶ 12} [SIC] TRIAL COURT ERRED IN ISSUING CUSTODIAL ORDERS OVER A.G.M. AS OHIO DID NOT HAVE SUBJECT MATTER JURISDICTION PURSUANT TO O.R.C. § 2151.23.

{¶ 13} Grandmother argues in her first assignment of error that the trial court erred in finding that it had jurisdiction to consider custody matters regarding A.G.M.

{¶ 14} Normally, a trial court's decision regarding child custody issues are reviewed by an appellate court under the abuse of discretion standard. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). However, an appellate court reviews de novo the decision of the trial court regarding the existence of subject matter jurisdiction, as such a determination is a matter of law. *In re K.R.J.*, 12th Dist. No. CA2010-01-012, 2010-Ohio-3953.

{¶ 15} Recently, this court reviewed the purpose and development of the UCCJEA, which was adopted by the Ohio General Assembly in 2004 and became effective in 2005. *Mulatu v. Girsha*, 12th Dist. No. CA2011-07-051, 2011-Ohio-6226. In addition to providing consistent results, the UCCJEA was passed in order to guarantee that parents and children had a forum in which to resolve their disputes and to prevent forum shopping or "jurisdictional competition." *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, ¶ 41. In essence, the UCCJEA provides an open door to the judicial system so that issues related to child

custody can be determined and enforced despite a parent's choice to relocate to a different state. Notwithstanding the mobility of parents, there should never be a "no-man's land" for children. Therefore, the UCCJEA is designed to ensure that a forum will always be in existence concerning custody issues that need to be decided, regardless of the parents' circumstances.

{¶ 16} Ohio's UCCJEA "provides four types of initial child-custody jurisdiction: home-state jurisdiction, significant-connection jurisdiction, jurisdiction because of declination of jurisdiction, and default jurisdiction. R.C. 3127.15(A)(1) through (4)." *Rosen*, 2008-Ohio-853 at ¶ 31. R.C. 3127.15 of Ohio's UCCJEA specifically states the following criteria for establishing jurisdiction to make an initial custody decision.

(A) Except as otherwise provided in section 3127.18 of the Revised Code, a court of this state has jurisdiction to make an initial determination in a child custody proceeding only if one of the following applies:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state.

(2) A court of another state does not have jurisdiction under division (A)(1) of this section or a court of the home state of the child has declined to exercise jurisdiction on the basis that this state is the more appropriate forum under section 3127.21 or 3127.22 of the Revised Code, or a similar statute of the other state, and both of the following are the case: (a) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence. (b) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction under division (A)(1) or (2) of this section have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 3127.21 or 3127.22 of the Revised Code or a similar statute enacted by another state.

(4) No court of any other state would have jurisdiction under the criteria specified in division (A)(1), (2), or (3) of this section.

(B) Division (A) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(C) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

{¶ 17} At the time the Millers, or even Grandmother, filed their motions for custody, Ohio was not the home state of A.G.M. because she had lived in Ohio for approximately one month rather than the six-month time frame required by the statute. The magistrate determined that while Michigan would have been the home state, no person acting as A.G.M.'s parent continued to live in Michigan because the Millers, who took over her care and custody before Mother died, lived in Ohio. The magistrate determined that Grandmother was not a person acting as a parent because she had not been given physical or legal custody of the child. The magistrate then went on to determine that in the absence of a home state, Ohio held proper jurisdiction because there were significant connections between Ohio and the child pursuant to R.C. 3127.15(A)(2)(a)-(b).

{¶ 18} Grandmother then filed objections to the magistrate's decision, arguing that the magistrate incorrectly determined that Ohio held jurisdiction. The trial court sua sponte asked that each party brief the jurisdictional issues, and informed the parties that it was going to communicate with the trial court in Kalamazoo County, Michigan, in order to determine the jurisdictional question.¹ This communication was recorded pursuant to R.C. 3127.09, and

1. Grandmother argues that the Ohio court presented the Michigan court with a "misleading set of procedural facts" during the phone call. However, the record is clear that Grandmother submitted a memorandum pursuant to R.C. 3127.21, supporting her position that Michigan properly holds jurisdiction. Within this memorandum, which was submitted to the Michigan court and acknowledged by it as being received, Grandmother set forth a detailed recitation of the facts regarding: (1) whether domestic violence occurred; (2) the length of time the child has resided outside Ohio; (3) distance between the court in Ohio and the court in Michigan; (4) relative financial circumstances of the parties; (5) any agreement of the parties as to which state should assume jurisdiction; (6) the nature and location of the evidence required to resolve the pending litigation; (7) the ability of the court in

made a part of the record with both parties given access to the transcript of the recording.

{¶ 19} During the phone call, the following exchange occurred between the courts:

[Ohio Court] We are working on a decision and I will tell you that at this point, uh, *we are inclined to find that Michigan is the State with jurisdiction*, but prior to finalizing the decision we wanted to talk with you to determine whether Michigan would accept or decline jurisdiction under UCCJA [sic] and so that's what brings us here today. * * *

[Michigan Court] Where does the child live?

[Ohio Court] Uh the child lives here in Warren County, Ohio with Lisa and David Miller * * *.

* * *

[Ohio Court] Did, uh, you receive a copy of the filing by [Grandmother's] attorney that addresses the uh ...

[Michigan Court] The memorandum?

[Ohio Court] Yes.

[Michigan court] I got a memorandum but we don't, we don't have a filing up here. I mean I don't have a case here.

* * *

[Michigan Court] Whenever I've been involved in a UCCJEA [sic] before there's been two competing states, uh so I, I don't even, I don't have a filing, I wouldn't know if they [sic] there would be a right to any jurisdiction here. The child wasn't here. Hasn't been here in six months so. * * * I mean, the child's been down there since 2008. All the information's down there. I don't know what would be relevant up here? * * * Is somebody saying that Michigan should? Is there someone arguing that?

[Ohio Court] [Grandmother] believes that Michigan should have jurisdiction.

each state to decide the issue expeditiously and the procedures necessary to present the evidence; and (8) the familiarity of the court of each state with the facts and issues in the pending litigation. The Michigan court was therefore provided with an accurate factual scenario, one that went uncontested by the Millers because their brief was stricken as untimely. The Ohio court's summary of the facts during its phone call with the Michigan court was in no way misleading.

[Michigan Court] Wow. And, uh, well before, okay but they haven't filed anything up here?

[Ohio Court] To my knowledge they have not.

[Michigan Court] Yeah. I mean they don't, they don't have, geesh, I wouldn't, uh, if it were, if it were filed here and someone made a motion, uh, that we didn't have jurisdiction I'd probably grant it. I don't see how we have it. *I'm looking this over* but uh, especially since you have that child down there all this time.

* * *

[Ohio Court] What I would propose that I do is reflect in a judgment entry that, uh, that we have had this communication and you have indicated to me that, uh, based upon in part upon the fact that there has been no filing in Michigan and the child has been in Ohio for nearly three years now that, uh, you would decline jurisdiction.

[Michigan Court] Correct.

[Ohio Court] So you're, you're satisfied if I would do such a thing?

[Michigan Court] Absolutely.

(Emphasis and punctuation added.) This exchange clearly demonstrates that the Michigan court was aware that the child had lived in Michigan at one time, had reviewed Grandmother's memorandum, and was declining to exercise any jurisdiction that the Michigan courts had to hear the case.

{¶ 20} Grandmother now argues that once the trial court recognized that Ohio was not A.G.M.'s home state, that any decisions made by the Ohio court were void because Michigan remained the child's home state. However, Grandmother's assertion fails to take into consideration R.C. 3127.15(2), which states very clearly that a non-home state can obtain proper jurisdiction when a "court of the home state of the child has declined to exercise jurisdiction on the basis that this state is the more appropriate forum under section 3127.21 or 3127.22 of the Revised Code." According to R.C. 3127.21(A),

A court of this state that has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more convenient forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or at the request of another court.

According to the record, Michigan was the child's home state at the time of the original custody motion, as filed by either the Millers or by Grandmother, because the child lived in Michigan for the six-month time frame prior to the motions. However, the record is patently clear that the Michigan court declined to exercise jurisdiction because there were no filings made in Michigan (and therefore it was not a competing jurisdiction) and because Ohio proved to be the more convenient forum. Like the Michigan court, we too find it dispositive that the child had been living in Ohio for the two-and-one-half-year time frame before the phone call, and that Grandmother had not filed any motions in any Michigan court.² The record is clear that the child had been living with the Millers since October 2008. While the child visited with Grandmother in Michigan, the Millers had legal custody of A.G.M. and she continued to live in Ohio with her half-brother, and her step-siblings. The vast majority of information and evidence pertinent to the custody issue is therefore within Ohio and has been well documented and submitted to the Warren County court in particular.

{¶ 21} Regarding the filings, we agree with Grandmother that jurisdiction cannot be waived. However, Grandmother has availed herself of the Warren County courts by filing her custody motion in Ohio, prosecuting all of her motions and objections in Ohio, and proceeding within Ohio's appellate process. While these actions have not waived jurisdiction, they have nonetheless established a strong basis for finding that Ohio is the most convenient

3. At least in Ohio, the law is clear that the filing of a complaint invokes the jurisdiction of the trial court. *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880. "It follows that if a complaint is not filed in a case, the trial court has not obtained jurisdiction over it." *City of Zanesville v. Rouse*, 126 Ohio St.3d 1, 2010-Ohio-2218, ¶ 5.

forum for deciding the custody issues pertaining to A.G.M. Grandmother filed nothing in Michigan in an effort to gain custody of A.G.M., and thus the two jurisdictions were not simultaneously attempting to exercise subject matter jurisdiction. Despite Grandmother's argument to the contrary, a child's home state designation is not the only factor to be considered in the analysis of proper subject matter jurisdiction pursuant to the UCCJEA.

{¶ 22} We are aware that under normal circumstances, a trial court speaks through its journal entry. In an instance of competing jurisdictions, one court's decision to decline jurisdiction because another forum proves to be more appropriate would normally be journalized within both states' case file. Here, however, the Michigan court noted that no filings had been made, and thus there was no file. Therefore, Michigan did not have a case in which it could formally attach or file its own journal entry declining jurisdiction. However, we note that the lack of a Michigan filing does not create any issues in the case at bar for two reasons.

{¶ 23} First, Michigan has adopted its own version of the UCCJEA, and according to MCLA 722.1207(1),

A court of this state that has jurisdiction under this act to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion, *or the request of another court.* (Emphasis added.)

Therefore, the Michigan court need not have had a pending motion, or even a case or controversy, officially filed in order to broach the jurisdictional issue.³ Second, we also note that the Michigan and Ohio courts exchanged emails regarding Ohio's proposed journal entry

3. For this same reason, Grandmother's argument that the Ohio court did not have the authority to initiate the call lacks merit because the Michigan statute specifically states that Michigan can consider whether it is the appropriate forum at the request of another court.

to set forth the decision reached during the phone call. After the Ohio court sent the journal entry expressing Michigan's decision to decline jurisdiction, the Ohio court asked that the Michigan court approve the order, and to report whether it was satisfied that the journal entry "accurately reflects your view" regarding the declination of jurisdiction. In response, the Michigan court responded, "your proposed order accurately states my position." This email, in addition to the transcript of the phone call itself, demonstrates that the Michigan court's position was made a part of the record and accurately depicted the position of the Michigan court. The statute anticipates the type of communication as it occurred here, and the trial court completely complied with R.C. 3127.09.

{¶ 24} Once the Michigan court declined jurisdiction, Ohio became a possible forum for determining the issues pertinent to the custody and care of A.G.M. Pursuant to R.C. 3127.15(A)(2), Ohio is a suitable forum upon the showing that both of the following criteria are met: "(a) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence [; and] (b) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships."

{¶ 25} The record is clear that A.G.M. and the Millers, who have had legal custody of A.G.M. since October 2008 and have therefore been acting as parents, have had significant connection with Ohio other than mere physical presence. A.G.M. has been living in Ohio since 2008, and is enrolled in Ohio schools. The Millers have lived in Ohio before, during, and after the custody proceedings, and both are employed in Ohio. The Millers had children born issue of their marriage in Ohio, as well as children from previous marriages, and the other Miller children attend Ohio schools.

{¶ 26} Additionally, and as alluded to before, there is substantial evidence available in Ohio concerning A.G.M.'s care, protection, training, and personal relationships. A.G.M. has

been living in Ohio with the Millers since October 2008, and has developed important and lasting relationships with David and Lisa, the other Miller children, as well as a close relationship with her half-brother, Dylan. She is enrolled in Ohio schools, and has received medical attention and care in Ohio. A record of A.G.M.'s life is well chronicled in Ohio, rather than in Michigan, where A.G.M. has only visited periodically with Grandmother over the past three to four years. Therefore, Ohio is a valid forum for deciding issues regarding A.G.M, and the Warren County Court of Common Pleas, Juvenile Division, was correct in determining that it had jurisdiction to proceed with the case.

{¶ 27} Grandmother also argues that Ohio cannot exercise jurisdiction because of the Miller's "unjustifiable conduct" as set forth in R.C. 3127.22. According to that section of Ohio's UCCJEA, a court may decline jurisdiction if jurisdiction was established through a party's unjustifiable conduct.

"[U]njustifiable conduct" means conduct by a parent or that parent's surrogate that attempts to create jurisdiction in this state by removing the child from the child's home state, secreting the child, retaining the child, or restraining or otherwise preventing the child from returning to the child's home state in order to prevent the other parent from commencing a child custody proceeding in the child's home state.

R.C. 3127.22(D).

{¶ 27} Grandmother asserts that the Millers engaged in unjustifiable conduct by providing false information on their affidavit attached to their custody motion, and that their conduct was "deceitful and calculated for the purpose of wrongfully creating jurisdiction in Ohio." While the record is clear that the Millers' custody motion and accompanying affidavit failed to mention Grandmother and A.G.M.'s early life in Michigan, the record is also clear that Grandmother knew of, and agreed with, the Millers taking A.G.M. to Ohio during the final days of Mother's life. The Millers did not surreptitiously remove A.G.M. from Michigan, nor

did they "secret" the child from Grandmother or any other party.⁴ Once the Millers had custody of the child, they did not unlawfully prevent the child from returning to Michigan. In fact, the court granted Grandmother visitation with the child, and she continued to have regular contact with the child during the pendency of the proceedings, which we once again emphasize occurred in Ohio upon Grandmother's filing of her custody motion in Ohio.

{¶ 28} The parties were well aware that A.G.M. was in Ohio and the court was made aware of Grandmother's claim within a month of the initial custody issue. The court determined the best interest factors, knowing full well of the Millers' failure to include all pertinent information on the custody motion, and ultimately determined that other factors weighed more heavily in favor of custody with the Millers. This issue is further developed under Grandmother's second assignment of error. However, as it pertains to the UCCJEA's section on unjustifiable conduct, we cannot say that the Warren County court should have declined jurisdiction based on the Millers' conduct in bringing the child to Ohio, or the way in which the custody proceedings unfolded.⁵

{¶ 29} After reviewing the record, we agree with the trial court that Warren County held proper jurisdiction to hear the custody issues regarding A.G.M. Grandmother's contention that Michigan, as A.G.M.'s original home state, is the only court with jurisdiction ignores the express mandates of the UCCJEA pertaining to instances where a different state can be the proper court to exercise jurisdiction. Ohio is a proper forum given that Michigan

4. While the record does not contain many facts regarding A.G.M.'s birth and early life, there is reference in the record that Mother took A.G.M. to Michigan under somewhat surreptitious circumstances soon after her birth. Of course, Mother is not able to defend her actions, and the record does not imply that Grandmother was responsible for the child's move to Michigan. Nonetheless, we cannot help but note that Mother's conduct may have been, in some aspects, unjustifiable in moving the child to Michigan.

5. Grandmother emphasizes that the first magistrate stated that she would not have granted the Millers' custody motion had she been aware that the child came from Michigan. However, the trial court declined to adopt the magistrate's findings, and is not bound to a magistrate's speculative determinations. *Leach Development, LLC v. Miami Woodworking, Inc.*, 12th Dist. No. CA2009-11-154, 2010-Ohio-2433.

declined jurisdiction, the child and the Millers have significant connections with Ohio, and because there is substantial evidence available in Ohio concerning the child's care, protection, training, and personal relationships.

{¶ 30} The most vital purpose of the UCCJEA is to guarantee that child custody issues can be determined and enforced despite the choices or disagreements of the child's parents. Permanency and stability for A.G.M. should not be denied because of the tragic circumstances surrounding Mother's untimely death and a disagreement between Grandmother and the Millers regarding which court can determine the best interests of the child in selecting one of the parties as legal custodian. Instead, the UCCJEA is designed to ensure that a forum will always be in existence concerning custody issues that need to be decided, regardless of the circumstances. Ohio is that forum, and the Warren County Court of Common Pleas, Juvenile Division, holds proper jurisdiction over this case. Grandmother's first assignment of error is overruled.

{¶ 31} Assignment of Error No. 2:

{¶ 32} THE TRIAL COURT FAILED TO CONSIDER THE DECEITFUL COMMENTS MADE BY APPELLEES IN DETERMINING LEGAL CUSTODY OF A.G.M.

{¶ 33} Grandmother argues in her second assignment of error that the trial court erred by failing to consider that the Millers did not include information regarding Grandmother or A.G.M.'s time in Michigan on their custody motion.

{¶ 34} As previously stated, the Millers did not inform the court that A.G.M. had lived in Michigan or that Father had not had contact with A.G.M. while she lived in Michigan. Nor did the Millers inform the court that the contact they had with A.G.M. prior to Mother's death was centered around exchanging Dylan for visitation with Mother. Without all of the pertinent information, the court awarded the Millers custody based on Father's consent, as well as information regarding Mother's death.

{¶ 35} Once Grandmother filed her motion for custody, the Warren County court decided to consider Grandmother's motion for legal custody without first requiring her to demonstrate that a change of circumstances had occurred. The magistrate held a hearing on the matter, and then granted custody to Grandmother, finding that the Millers had failed to include pertinent information in the affidavit attached to the custody motion. After the Millers filed objections to the magistrate's decision, the trial court sustained the objections and awarded custody to the Millers.

{¶ 36} Grandmother now argues that the trial court's decision fails to take into consideration the magistrate's findings that the Millers did not include information regarding the child's life in Michigan within their original custody motion. However, Ohio law is clear that a trial court has the discretion to adopt, modify, or reject the magistrate's decision. Civ.R. 53(D)(4)(e).

{¶ 37} "When reviewing an appeal from a trial court's decision to adopt, or not adopt, a magistrate's decision, this court must determine whether the trial court abused its discretion." *In re Ratliff*, 11th Dist. Nos. 2001-P-0142 and 2001-P-0143, 2002-Ohio-6586, ¶ 14, citing *In re Woodburn*, 9th Dist. No. 20715, 2002-Ohio-35. An abuse of discretion is more than error of law or judgment, rather it indicates an unreasonable, arbitrary or unconscionable attitude by the court. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 38} Grandmother argues that this court should give great weight to the decision of the magistrate, as it was the magistrate who observed the witnesses and was in the best position to judge the credibility of witnesses and determine the facts. However, when examining the decision by a trial court to adopt or not adopt a magistrate's decision for an abuse of discretion, the focus of this court must be on the trial court's actions and not the decisions of the magistrate. *Ratliff*, 2002-Ohio-6586. The record does not indicate that the trial court failed to consider the facts as established by the magistrate. Instead, the trial court

noted in its decision that it applied the best interest factors, rather than a change of circumstances, because "the Millers failed to disclose [A.G.M.'s] relationship with Grandmother."

{¶ 39} The trial court did not disregard the fact that the Millers had not referenced A.G.M.'s time in Michigan in their custody motion, nor did it disregard any of the other facts as established by the magistrate after the hearing. The trial court walked through the best interest factors of R.C. 3109.04(F)(1), and specifically applied facts regarding the child's relationship with Grandmother.

{¶ 40} Even if the trial court had given great weight to the fact that Millers' custody motion and affidavit did not contain facts specific to Grandmother or the child's time in Michigan, the trial court specifically found that great weight should be given to the fact that the child has spent the vast majority of the last few years with the Millers and "appears to have been integrated into their large family that includes her half-brother Dylan and the other three Miller children. The opportunity for [A.G.M.] to form relationships with the Miller children by being a part of their family will provide her with a rich life both now and into her adult years." We agree with the trial court that this fact is very significant in determining the best interest factors, and renders less significant what the Millers did or did not put in the affidavit attached to their custody motion.

{¶ 41} The written decision is clear that the case was "a difficult decision" for the trial court, and that it made careful consideration of all of the pertinent facts and circumstances before rendering its decision. While Grandmother argues that the trial court should have placed more emphasis on the Millers' affidavit and custody motion, the trial court was under no obligation to view this information as being more dispositive of the custody issue than any of the other best interest factors. The mere fact that the trial court chose to find other evidence more important did not, however, result in a decision that was unreasonable,

arbitrary, or capricious. We see no abuse of discretion in the trial court's decision to reject the magistrate's decision, and therefore overrule Grandmother's second assignment of error.

{¶ 42} Assignment of Error No. 3:

{¶ 43} [sic] TRIAL COURT ERRED IN FAVORING A NON-RELATIVE CUSTODIAN OVER A BIOLOGICAL GRANDPARENT.

{¶ 44} Grandmother argues in her final assignment of error that the trial court erred in not giving her custody because she is A.G.M.'s biological relative where the Millers are not.

{¶ 45} Grandmother is correct in her assertion that the Ohio General Assembly values the relationship a child shares with her biological relatives. Various statutes reference the possibility of placing a child with its biological relatives. However, these statutes most often are specific to an instance where the child is removed from her parents, or has been designated an abused, neglected, or dependent child. Grandmother cites R.C. 3109.11 and 3109.051, which reference a biological grandparent's right to have visitation with a grandchild. Here, however, the issue was which party should be granted legal custody of A.G.M. As previously noted, the standard for determining legal custody is set forth in R.C. 3109.04(F)(1), and is comprised of the best interest factors. "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.

{¶ 46} The trial court made reference to the best interest factors and specifically considered the child's relationship with Grandmother. However, the trial court noted other important factors to consider, and found after weighing the factors that it was in A.G.M.'s best interest to remain in the Millers' custody. We cannot say that the trial court's decision was an abuse of discretion.

{¶ 47} There is no indication that the trial court disregarded the fact that Grandmother is A.G.M.'s biological grandparent. The trial court very carefully weighed the best interest

factors, and determined that it was in the child's best interests to remain integrated in the Miller family, and to continue her close relationship with her biological brother, as well as the other Miller children. The trial court's decision is quite the opposite of one that is unreasonable, arbitrary, or unconscionable. As such, Grandmother's final assignment of error is overruled.

{¶ 48} Judgment affirmed.

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