[Cite as *Halliday v. Halliday,* 2010-Ohio-2597.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92116

NATALIE PRODAN HALLIDAY

PLAINTIFF-APPELLANT/
CROSS-APPELLEE

vs.

BRIAN J. HALLIDAY

DEFENDANT-APPELLEE/
CROSS-APPELLANT

JUDGMENT:
APPEAL AFFIRMED
CROSS-APPEAL DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-291466

BEFORE: Stewart, J., Kilbane, P.J., and Blackmon, J.
RELEASED: June 10, 2010

JOURNALIZED:

ATTORNEY FOR APPELLANT/CROSS-APPELLEE

Vincent A. Stafford
Stafford & Stafford Co., LPA
The Stafford Building
2105 Ontario Street
Cleveland, OH 44115

ATTORNEY FOR APPELLEE/CROSS-APPELLANT

Brent L. English
Law Offices of Brent L. English
M.K. Ferguson Plaza, Suite 470
1500 West Third Street
Cleveland, OH 44113-1422

SUCCESSOR GUARDIAN AD LITEM

Steven E. Wolkin
820 W. Superior Avenue, Suite 510
Cleveland, OH 44113-1384

FORMER GUARDIAN AD LITEM AND APPELLANT IN APPEAL NO. 92748

Cheryl A. Lukacs
The Lukacs Law Firm, LLC
P.O. Box 609
North Olmsted, OH 44070-0609

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MELODY J. STEWART, J.:

{¶ 1} Appellant/cross-appellee, Natalie Prodan Halliday, appeals the judgment of the Cuyahoga County Court of Common Pleas, Division of Domestic Relations, granting appellee/cross-appellant, Brian Halliday, shared parenting of their son. For the reasons stated below, we affirm.

{¶ 2} We first address a procedural issue. The docket reflects that Brian Halliday filed a notice of cross-appeal on October 14, 2008. However, in his appellate brief, he has failed to raise an assignment of error on cross-appeal. Accordingly, we dismiss the cross-appeal, App.R. 18(C), thus making further use of the "cross-appellant" and "cross-appellee" designations unnecessary.

{¶ 3} Appellant and appellee were married on August 31, 2001. Appellant gave birth to their first child on March 26, 2002. Unfortunately, their son suffered from a congenital birth defect and died three weeks after birth. Despite counseling, the marriage did not survive the strain of this loss. Appellant filed for divorce in March 2003 and moved in with her parents the following month. She was pregnant with their second child at the time. On August 28, 2003, appellant gave birth to the couple's son.

{¶ 4} From his son's birth, appellee sought equal parenting time with appellant. He filed his first shared parenting plan on June 6, 2006.

Appellant opposed the plan and sought legal custody of their son for herself. The trial court appointed a guardian ad litem and legal counsel for the child. After protracted litigation and assignment of the case to two different visiting judges, a trial on appellant's complaint for divorce and appellee's counterclaims commenced on September 27, 2006. On the first day of trial, the parties entered into a written settlement agreement that settled all of the issues between them except those relating to their son.

{¶ 5} The trial on the issue of the allocation of parental rights and responsibilities continued with 37 days of trial over an 18-month time period. In addition to the parties' testimony, the court heard the testimony of both sets of grandparents, a psychologist, the child's pediatrician, the guardian ad litem, and appellant's friends.

{¶ 6} On September 12, 2008, the trial court issued a final judgment of divorce that incorporated the September 27, 2006 separation agreement, appellee's July 24, 2008 Second Amended Shared Parenting Plan, and interim decisions of the court dated May 6, 2008, August 6, 2008, and August 11, 2008. Although captioned as a "final judgment," the court indicated that this was not a final order because the issues of child support and financial responsibility for the child's health care remained to be determined. Shortly thereafter, the court issued a nunc pro tunc order that indicated the

incorporated orders were final orders of the court and that included "no just reason for delay" language.

{¶ 7} On September 23, 2008, appellant filed her appeal of the final judgment of divorce. However, as this court noted in an earlier appeal in this case, because issues regarding child support and the allocation of the guardian ad litem fees remained undecided, the trial court's September 12, 2008 final entry of divorce and the orders incorporated therein were not final and appealable. See *Halliday v. Halliday*, 8th Dist. No. 92748, 2009-Ohio-5380. Accordingly, appellant's appeal of the shared parenting plan was premature.

{¶ 8} On November 12, 2008, the court issued judgment on the issues of child support and health related costs for the child. On January 5, 2009, the court issued its ruling on the allocation of guardian ad litem fees.

{¶ 9} Subsequent to trial, appellee filed a timely motion for findings of fact and conclusions of law under Civ.R. 52. The guardian ad litem filed a similar motion on January 16, 2009. The Ohio Supreme Court has stated that "a timely motion for separate findings of fact and conclusions of law under Civ.R. 52 prevents an otherwise final judgment from becoming final for the purposes of App.R. 4 until the findings of fact and conclusions of law are filed by the trial court." *Walker v. Doup* (1988), 36 Ohio St.3d 229, 229, 522 N.E.2d 1072. On August 3, 2009, the court filed its findings under seal. We

granted appellee's motion to supplement the record with the August 2009 findings.[1]

{¶ 10} On appeal, appellant assigns the following four errors for review.

{¶ 11} "I. The Trial Court's Decision Is Against The Manifest Weight Of The Evidence Presented At The Trial Of This Matter, As The Weight Of The Evidence Clearly Mandates Judgment In Favor Of The Appellant, Natalie Prodan Halliday, And Denial Of Shared Parenting To The Appellee."

{¶ 12} "II. The Trial Court Erred And/Or Abused Its Discretion And Acted Contrary To Ohio Revised Code 3109.04 When It Approved The Appellee's Second Amended Shared Parenting Plan Without Due Consideration Of The Best Interests Of The Parties' Minor Child And Without Properly Considering The Appellant's Plan."

{¶ 13} "III. The Trial Court Erred And/Or Abused Its Discretion By Awarding Shared Parenting In This Matter."

{¶ 14} "IV. The Trial Court Erred And Abused Its Discretion By Creating Its Own Shared Parenting Plan In This Matter."

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[1]We find no merit to appellant's assertion that she is prejudiced by appellee's references to the court's long delayed findings. The record reflects that appellee moved this court to supplement the record with the findings on August 12, 2009, putting appellant on notice of his intent to rely upon these findings before she returned her copy of the document to the court. After appellant returned her copy of the document to the court, the original document remained a part of the court's permanent file available for appellant's review. Notably, appellant did not apply to this court for leave to amend or supplement her appellate brief to address any issues relating to the findings.

{¶ 15} We first address appellee's assertion that we should disregard all of appellant's arguments because she failed to separately argue each assigned error and further failed to identify the parts of the record on which she relied in alleging the trial court's errors, in violation of App.R. 12 and App.R. 16.

{¶ 16} App.R. 12(A)(2) states that an appellate "court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)." App.R. 16(A)(7) requires an appellant's brief to contain an argument with respect to *each* assignment of error presented for review with reference to the record in argument supporting each assignment of error. Furthermore, App.R. 16(D) states that "[r]eferences in the brief to parts of the record shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used."

{¶ 17} In the instant case, we find that appellee is correct and this court would be justified in disregarding all of appellant's assignments of error. Appellant has failed to separately argue each assigned error, presenting instead a single argument generally encompassing the assignments of error. Additionally, while appellant makes numerous references to evidence allegedly presented at trial, she makes no reference to where, in the more

than six-thousand pages of transcript contained within 33 volumes, this court might find this evidence. "It is not this Court's job to search the record in an effort to ferret out the basis for Appellant's claims." *State v. Lewis*, 7th Dist. No. 01-CA-59, 2002-Ohio-5025. Finally, we are disturbed that appellant excuses her failure to abide by the clear mandate of the appellate rules of procedure by insisting that if appellee had only made "a careful review" of her assignments of error, he would have found that all four relate to the same basic argument — that the trial court erred in ordering shared parenting in this case.

{¶ 18} The above stated justification notwithstanding, we are conscious of the maxim that "[f]airness and justice are best served when a court disposes of a case on the merits." *Dehart v. Aetna Life Ins. Co.* (1982), 69 Ohio St.2d 189, 193, 431 N.E.2d 644. Therefore, in the interests of fairness and finality, we will not disregard all of appellant's assignments of error. We will, however, disregard the first assignment as appellant offers no argument addressed to this issue. We will exercise our discretion and address the remaining three assignments of error together to determine the central issue of whether the trial court erred in granting shared parenting.

{¶ 19} When reviewing a ruling pertaining to the allocation of parental rights, the trial court is to be afforded great deference. *Miller v. Miller* (1988), 37 Ohio St.3d 71, 523 N.E.2d 846. "The discretion which a trial court

enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned. The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record. In this regard, the reviewing court in such proceedings should be guided by the presumption that the trial court's findings were indeed correct." Id. at 74 (internal citations omitted).

{¶ 20} An appellate court must uphold the trial court's allocation of parental rights and responsibilities absent an abuse of discretion, which implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Mason v. Mason*, 8th Dist. No. 80368, 2002-Ohio-6042, citing *Masters v. Masters* (1994), 69 Ohio St.3d 83, 630 N.E.2d 665. Accordingly, absent a clear showing of an abuse of discretion, we will not reverse the trial court's judgment.

{¶ 21} R.C. 3109.04, the statute governing the allocation of parental rights and responsibilities, "expresses a strong presumption that shared parenting is in the best interests of the child." *Dietrich v. Dietrich*, 8th Dist. No. 90565, 2008-Ohio-5740, quoting *Archer v. Nationwide Ins. Co.* (Aug. 19, 1993), Franklin App. No. 93AP-620. This statute makes different provisions for the trial court's consideration of a shared parenting plan depending on

whether: both parents jointly file a proposed plan, R.C. 3109.04(D)(1)(a)(i); both parents separately file proposed plans, R.C. 3109.04(D)(1)(a)(ii); or, only one parent files a proposed plan, R.C. 3109.04(D)(1)(a)(iii). In all instances, the trial court is required to consider whether a proposed shared parenting plan is in the best interest of the child pursuant to the factors set forth in R.C. 3109.04(F)(1) and (F)(2). R.C. 3109.04(D)(1)(b); *Robinette v. Robinette*, Cuyahoga App. No. 88445, 2007-Ohio-2516.

{¶ 22} In the present case, only appellee filed a proposed shared parenting plan, therefore R.C. 3109.04(D)(1)(a)(iii) applies. Under this section of the statute, the trial court may order the other parent to file a proposed shared parenting plan. The trial court must then review each plan filed to determine if either plan is in the best interest of the child. If the court determines that one of the filed plans is in the best interest of the child, the court may approve the plan.

{¶ 23} If, however, the court determines that no filed plan is in the best interest of the child, the court may state its objections and then order the parents to submit appropriate changes to their plan, or select one plan and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes are submitted to meet the court's objections, and if any of the filed plans with the changes are in the best interest of the child, the court may approve the plan with the changes.

{¶ 24} We find no merit to appellant's argument that the trial court erroneously created its own shared parenting plan. The record reflects that appellee filed a proposed shared parenting plan in accordance with R.C. 3109.04(G). The court gave appellant an opportunity to file her own proposed shared parenting plan. In response, appellant filed a Proposed Order for Allocation of Parental Rights and Responsibilities asking the court to award her sole legal custody and exclusive authority over all decisions related to the child, to the exclusion of appellee. The court reviewed both documents, found shared parenting to be in the child's best interest, but found appellee's plan, as submitted, was not in the child's best interest. The court stated its objections to appellee's plan, and ordered both parties to submit appropriate changes to address those objections. Appellee's second amended plan met all of the court's objections, was found to be in the best interest of the child, and was approved. Therefore, the trial court followed the procedures provided in R.C. 3109.04(D)(1)(a)(iii).

{¶ 25} Regarding the factors a court must consider in determining the best interest of the child in the context of parental rights and responsibilities allocation, R.C. 3109.04(F) states, in relevant part:

{¶ 26} "(1) In determining the best interest of a child * * * on an original decree allocating parental rights and responsibilities for the care of children * * *, the court shall consider all relevant factors, including, but not limited to:

{¶ 27} "(a) The wishes of the child's parents regarding his care;

{¶ 28} "(b) If the court has interviewed the child * * * regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;

{¶ 29} "(c) The child's interaction and interrelationship with his parents, siblings, and any other person who may significantly affect the child's best interest;

{¶ 30} "(d) The child's adjustment to his home, school, and community;

{¶ 31} "(e) The mental and physical health of all persons involved in the situation;

{¶ 32} "(f) The parent more likely to honor and facilitate visitation and companionship rights approved by the court;

{¶ 33} "(g) Whether either parent has failed to make all child support payments * * *;

{¶ 34} "(h) Whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child * * *;

{¶ 35} "(i) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent his or her right to visitation in accordance with an order of the court;

{¶ 36} "(j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

{¶ 37} "(2) In determining whether shared parenting is in the best interest of the children, the court shall consider all relevant factors, including, but not limited to, the factors enumerated in division (F)(1) of this section, * * * and all of the following factors:

{¶ 38} "(a) The ability of the parents to cooperate and make decisions jointly, with respect to the children;

{¶ 39} "(b) The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;

{¶ 40} "(c) Any history of, or potential for, child abuse, spouse abuse, other domestic violence * * *;

{¶ 41} "(d) The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;

{¶ 42} "(e) The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem."

{¶ 43} Here, the record reflects that the court reviewed appellant's repeated requests to have the court designate her solely as residential parent and legal custodian with authority over all decisions related to their son without input or agreement from appellee. The court recognized that while appellant's proposal had certain advantages, being that she lived with her

mother, worked from home, and had her mother available for childcare, it also had the disadvantage of not providing for shared decision making, which the court found would be in the best interest of the child, and denied appellee sufficient parenting time with the child, again to the detriment of the child's interest. The court recognized that appellee's plan addressed the need for shared decision making and more parenting time, but the court objected to appellee's plan to place the child in childcare since appellant was available during the day to care for him while appellant was at work. The court offered the parties the opportunity to submit appropriate changes to the proposed plan for the court's approval. The court specifically addressed each of appellant's objections to appellee's amended plan and found that the evidence did not support her objections. Finding that appellee's second amended plan satisfied all of the court's objections, the court approved the plan.

{¶ 44} The record reflects that in the early part of the case, Dr. Neuhaus, a clinical psychologist, evaluated both parties and interviewed their son, then 13-months-old. After meeting with appellant nine times and with appellee eight times, Dr. Neuhaus found that the parties have the ability to make reasonable decisions about their son and recommended shared parenting be implemented to give each parent an opportunity for equal access to the child. At trial two years later, Dr. Neuhaus refused to confirm his

recommendations due to the age of the report. As a result, the court gave limited weight to this evidence.

{¶ 45} The guardian ad litem, appointed by the court in June 2005, issued her first report in July 2006 in which she recommended shared parenting. At trial in 2008, she continued to recommend shared parenting. She stated that despite appellant's opposition to sharing decision making with appellee, she found the parties regularly changed parenting time to accommodate appellee's job schedule, did not disagree about major medical decisions for their son, and never stopped communicating with one another. She recommended that the court adopt the plan proposed by appellee.

{¶ 46} In its 43-page findings, sealed by the court to protect the child's best interest, the trial court recounted in great detail the evidence presented by both parties during 37 days of trial. The court related that evidence to each of the above stated statutory factors and made specific findings. Without recounting each specific finding, we note that the court found that both parties live within a 15 minute drive of each other and, that "both [parent's] residences are comfortable and safe for [their son]." The court explained that the child's relationship with appellee had progressed over time from supervised visitation from birth until age seven months, to unsupervised visitation and overnights up to age four, and finally to midweek stays with alternating weekends and specific vacation time. The court found, "In his

father's household [the child] is well cared for, safe, loved, and thriving physically." The court also found that the parties have cooperated and made joint decisions about their son's health issues; had engaged professionals to assist them; and that appellee was current with child support payments. We presume these findings are correct. *Miller*, supra.

{¶ 47} We are not persuaded by any of the numerous examples of the court's alleged abuse of discretion cited by appellant. We refuse to substitute our judgment for that of the trial court on issues such as weekend and vacation schedules or whether missed parenting time should be rescheduled or forfeited. Moreover, appellant's claim that the trial court ordered "the withholding of food" from the child is nothing more than hyperbole. The contested clause merely provides that on days when appellee is to pick the child up at 5:30 p.m., he will feed him dinner. Appellant is instructed not to feed him dinner, but may give him a light snack if he is hungry. We do not find that this arrangement "withholds" food from the child.

{¶ 48} It is clear from the record that appellant desires sole legal custody of her son and objects to any shared parenting plan. However, the record demonstrates that the trial court fully complied with the provisions of R.C. 3109.04 and considered all of the statutory factors before adopting appellee's amended shared parenting plan. Appellant has failed to

demonstrate that the court's decision was unreasonable, arbitrary, or unconscionable. Accordingly, appellant's assignments of error are overruled.

{¶ 49} The appeal is affirmed; the cross-appeal is dismissed.

It is ordered that appellee recover of appellant his costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas — Domestic Relations Division to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

MARY EILEEN KILBANE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR