[Cite as *In re K.K.*, 2021-Ohio-3338.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

IN THE MATTER OF	:	
K.K.	:	
K.B.	:	
	:	Case Nos. 21CA1
	:	21CA2
	:	
	:	DECISION AND JUDGMENT
	:	ENTRY

APPEARANCES:

Christopher L. Trolinger, Petroff Law Offices LLC, Columbus, Ohio, for Appellant.

Johnathon Knisley, Washington Courthouse, Ohio, Pro Se Appellee

Kyle Bean, Wilmington, Ohio, Pro Se Appellee

Smith, P.J.

{¶1} Kendi Sue Jordan, "Appellant," appeals the December 8, 2020 Agreed Order and Entry of the Highland County Court of Common Pleas, Juvenile Division. While Appellant contends the trial court's order and entry is in error and against the manifest weight of the evidence, we view her arguments as essentially challenging the trial court's decision enforcing a settlement agreement. Consequently, based upon our review of the record and the pertinent Ohio case law, we find the trial court did not abuse its

discretion in enforcing the agreement which was negotiated by the parties, read into the record, and agreed upon by the parties. Accordingly, we overrule Appellant's assignments of error and affirm the order and entry of the trial court.

FACTS

{¶2} The record reveals that on November 27, 2018, Highland County Children's Services ("HCCS") filed a motion for emergency temporary custody and a complaint alleging that K.K., K.B., and C.J., were abused, neglected, and dependent children. At the time, the children were in the care and custody of Appellant. Kendi Jordan is the mother of the three children. John Knisley is the father of K.K., born in 2013. Kyle Bean is the father of K.B., born in 2016. C.J. was born in 2018. On November 27, 2018, the trial court granted emergency temporary custody to HCCS.[1]

{¶3} On November 29, 2018, the trial court appointed a Guardian Ad Litem for the children. The case was assigned for adjudication on January 14, 2019, and a dispositional hearing on January 16, 2019. On December 12, 2018, Kyle Bean filed a motion for legal custody of K.B. The motion alleged that HCCS had temporary custody of K.B., who had been placed with Kyle's wife Rachel, as Kyle was on active duty with the U.S. Air Force

[1]The matter as to K.K. was assigned a case number of 21830105. The matter as to K.B. was assigned case number 21830106. The matter as to C.J. was assigned case number 21830107. C.J.'s maternal grandparents were granted temporary custody of C.J. The current appeal does not involve C.J.

and deployed to Kuwait. Appellee Bean also filed a motion to continue the hearing on disposition so that he could attend. On December 14, 2018, Appellee Knisley filed a motion for legal custody of K.K. The dispositional hearing was rescheduled.

{¶4} The adjudication hearing took place on January 14, 2019. On January 28, 2019, the court's entry of adjudication indicates that the Appellant and Appellees knowingly and voluntarily waived the right to a contested adjudicatory hearing and admitted the facts of HCCS's complaint. The court found the children to be dependent.

{¶5} The dispositional hearing took place as re-scheduled. On April 18, 2019, in separate entries, the trial court ordered that legal custody of K.K. be vested with Appellee Knisley and that legal custody of K.B. be vested with Appellee Bean. Appellant was granted parenting time with both children.

{¶6} On August 13, 2019, Appellant, through new counsel, filed a motion to change allocation of parental rights and responsibilities. Appellant alleged that a change of circumstances had occurred and it was now in the children's best interest to have parenting time with her. She requested that the current order be terminated and modified to provide her

with standard visitation/parenting time. The court scheduled her motion for a pretrial on October 2, 2019.

{¶7} On October 3, 2019, Appellee Knisley filed a motion to establish child support. The matter was scheduled for hearing and was continued several times during the rest of 2019 and a good portion of 2020 for various legitimate reasons. The final hearing eventually took place on October 7, 2020.

{¶8} The record reflects the appealed-from judgment entry was signed by Judge Greer and filed on December 8, 2020. The entry is also signed by Appellee Knisley and his attorney, Appellee Bean, and his attorney, and the Guardian Ad Litem per email approval. As to Appellant's attorney, the entry contains two notations: "Seen but not approved." The second notation indicates: "per TLB phone approval 12/4/20." Printed on the blank for Appellant's signature is "Seen but not approved."

{¶9} Appellant filed a timely notice of appeal in the matters involving K.K. and K.B. On March 27, 2021, this court consolidated the appellate cases.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT ERRED AS A MATTER OF LAW BY FAILING TO HOLD AN EVIDENTIARY HEARING TO RESOLVE ANY

DISPUTE ABOUT THE EXISTENCE OF AN AGREEMENT OR ITS TERMS.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW IN ISSUING AN ORDER WHICH DID NOT COMPLY WITH THE STATED IN COURT AGREEMENT AND SUCH FINAL ORDER WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

III. THE TRIAL COURT FINDINGS IN ISSUING AN AGREED ORDER AND ENTRY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AS THE TERMS OF THE AGREED ORDER AND ENTRY DID NOT REFLECT THE TERMS STATED AT THE HEARING.

IV. THE TRIAL COURT ERRED AS A MATTER OF LAW AND FOUND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE THAT THE AGREED ORDER AND ENTRY REFLECTED AN ENFORCEABLE SETTLEMENT AGREEMENT AS THERE WAS NO MEETING OF THE MINDS AS TO FINAL TERMS.

{¶10} Appellant's four assignments of error are interrelated. While Appellant must separately argue each assignment of error, we are free to consider them jointly.[2] For ease of analysis, we will do so. Appellant is

[2]App.R. 16(A)(7) requires that each assignment of error be argued separately. *See O'Rourke v. O'Rourke,* 4th Dist. Athens No. 17CA37, 2018-Ohio-4031, at ¶ 58. Furthermore, App.R. 12(A)(2) authorizes us to disregard any assignment of error that an appellant fails to separately argue. *Id. See Deutsche Bank Natl. Trust Co. v. Sopp,* 10th Dist. Franklin No. 14AP343, 2016-Ohio-1402, at ¶ 23. In the interests of justice, however, we consider Appellant's arguments.

asking this court to reverse the court's December 8, 2020 order and remand for further proceedings. Upon review of the record, the parties' arguments, and the case law, we view the essential issue as being whether the trial court erred in enforcing the parties' in-court settlement agreement. For the reasons which follow, we find the trial court did not abuse its discretion in enforcing the settlement agreement and issuing the December 8, 2020 Agreed Order and Entry.

A. STANDARD OF REVIEW

{¶11} If the terms of a settlement agreement are in dispute, the issue of whether a trial judge should enforce the alleged settlement agreement is reviewed under an abuse of discretion standard. *See Lucas v. Reese,* 4th Dist. Athens No. 05CA2, 2005-Ohio-3846, ¶ 8; *Moore v. Johnson* (Dec. 11, 1997), Franklin App. Nos. 96APE11-1579, 96APE12-1638, and 96APE12-1703, citing *Rulli v. Fan Co.,*79 Ohio St.3d 374, 376, 1997-Ohio-380, 683 N.E.2d 337. The term "abuse of discretion" connotes more than 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, 450 N.E.2d 1140 (1983). In this case, we must determine whether the trial court abused its discretion by approving the December 8, 2020 order and entry.

B. LEGAL ANALYSIS

{¶12} Once a trial court adjudicates a child abused, neglected, or dependent, R.C. 2151.353(A)(3) authorizes the court to "[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 filed prior to the dispositional hearing by any party to the proceedings." Additionally, a trial court may terminate or modify a prior dispositional order and award legal custody to an individual requesting it if doing so serves the child's best interest. *See In re B.S.,*4th Dist. Jackson No. 19CA6, 2019-Ohio-4143, at ¶ 59, *supra,* at ¶ 61; *In re A.L.P.,* 4th Dist. Washington No. 14CA37, 2015-Ohio-1552, at ¶ 17; *In re E.W.,* 4th Dist. Washington Nos. 10CA18, 10CA19, and 10CA20, 2011-Ohio-2123, at ¶ 20; *see* R.C. 2151.417(B) (granting juvenile court authority to amend its dispositional orders). R.C. 3109.04(F)(1) specifies the best interest factors courts must consider when determining whether to award legal custody to a party requesting it. *See B.S.* at ¶ 62; *A.L.P.* at ¶ 17, citing *E.W.* at ¶ 20; R.C. 2151.23(F)(1); *In re Poling,* 64 Ohio St.3d 211, 594 N.E.2d 589 (1992), paragraph two of the syllabus.

{¶13} A settlement agreement is a contract designed to terminate a claim by ending litigation and is highly favored in the law. *See Cochenour v. Cochenour,* 4th Dist. Ross No. 13CA3420, 2014-Ohio-3128, at ¶ 28; *Barstow v. O.U. Real Estate, III, Inc.,* 4th Dist. Athens No. 01CA49, 2002-Ohio-4989, ¶ 37. *See also In re J.S.C.,* 8th Dist. Cuyahoga No. 104548, 2017-Ohio-968, at ¶ 18. "When parties voluntarily enter into an oral settlement agreement in the presence of the court, the agreement constitutes a binding contract." *Id. See also*, *Spercel v. Sterling Indus., Inc.,* 31 Ohio St.2d 36, 285 N.E.2d 324 (1972). Where the agreement is reached by the parties in open court and preserved on the record or reduced to writing and filed, the court may, sua sponte, approve a journal entry that accurately reflects the terms of the agreement, adopting the agreement as its judgment. *Aristech Chem. Corp. v. Carboline Co.,* 86 Ohio App.3d 251, 254-255, 620 N.E.2d 258 (1993).

{¶14} Because settlement agreements are enforceable with the same degree of formality and particularity as contracts, they cannot be unilaterally repudiated. *See Cochenour, supra,* at ¶ 38. "Thus, settlement agreements 'can only be set aside for the same reasons that any other contract could be rescinded, such as fraud, duress, or undue influence.' " *Cochenour, supra,* at ¶ 28, quoting *Barstow, supra,* at ¶ 37.

{¶15} Herein, Appellant acknowledges that there was a presentation of the terms of the agreement on the record. However, Appellant argues that the record and the December 8, 2020 entry simply do not match. Appellant directs our attention to the specific notation on the entry itself that Appellant and her counsel did not approve of the entry as drafted. As such, Appellant argues there was no meeting of the minds as to the existence and terms of the agreement. Specifically, Appellant identifies several items as disputed in the entry and order: (1) Parenting time as relates to extracurricular activities, (2) Drug and Alcohol assessments and additional "hair follicle screens", (3) Parenting time in Phases Four and Five, (4) Transportation responsibilities, (5) Communication deadlines, (6) Child support numbers, and (7) Mother's telephone access. Based on the foregoing, Appellant concludes:

1) The trial court should have held an evidentiary hearing to resolve any dispute regarding the existence of the agreement or its terms;

2) The trial court erred as a matter of law in adopting the proposed entry because the terms did not comply with the stated in-court agreement; and,

3) The court's findings issuing the agreed order were against the manifest weight of the evidence because they were not supported by the record;

{¶16} In the joint answer brief, Appellees contend that all parties agreed on the record; the Agreed Order and Entry did reflect a meeting of the minds

as to all terms stated at the hearing. The parties were given ample time during the two months between the hearing and the journalization of the entry to dispute the agreement or its terms. Thus, the trial court did not err in adopting the order and entry and an evidentiary hearing was not needed.[3]

{¶17} The October 7, 2020 hearing transcript demonstrates that the trial court was planning to hear evidence from the parties however, ultimately, the court took a recess and allowed the parties time to negotiate. When the parties came back on the record, counsel for Appellant stated, "We would basically adopt the recommendation of the Guardian Ad Litem." At this point, Appellant's counsel led the discussion with regard to the key issues: visitation, child support, and communication. The trial court also inquired as to whether unsupervised visitation would be contingent on drug screening, to which Appellant's counsel indicated her agreement.

{¶18} After additional discussion of the key elements, which will be discussed infra, the trial court inquired, "Okay, to the parents present, let me

[3]Specifically, Appellees assert that their attorneys tried for over two months to contact Appellant regarding the status of her signature on the order. After two months of noncompliance, a phone conference was held with all attorneys and the judge agreeing to the order with no disputes. This fact, however true, is not evidenced within the record transmitted on appeal. Therefore, we may not consider it. It is simply not permissible on direct appeal to consider matters outside of the record. *See State v. Purvis-Mitchell,* 4th Dist. Washington No. 17CA30, 2018-Ohio-4032, at ¶ 59; *Morgan v. Eads,* 104 Ohio St.3d 142, 2004-Ohio-6110, ¶ 13, 818 N.E.2d 1157 ("[A] bedrock principle of appellate practice in Ohio is that an appeals court is limited to the record of the proceedings at trial.").

ask the mother first. Do you understand the proposal that the attorneys, the proposed settlement the attorneys have worked out here"?

Mom: Yes, Your Honor.

Court: Okay, have any questions at all?

Mom: Um, I am kind of unclear of when telephone calls should start but other than that no.

{¶19} After lengthy discussion about court rules, the trial court again inquired, "Alright, any other questions from the mother"?

Mom: No, Sir.

Court: And you understand that instead of approving this agreement I can hear evidence and I'll base the decision on the evidence?

Mom: I understand that, Yeah.

Court: Alright, knowing that are you waiving an evidentiary hearing and asking me to approve the agreement as to being in the best interest of your children?

Mom: Yes, please.

{¶20} At this point, the trial court inquired of both Appellees whether either had questions for the court. Both Appellees indicated they had no questions. The trial court also advised Appellees that they were waiving

their right to hear evidence in an evidentiary hearing, to which both Appellees indicated their understanding and waiver. Finally, the trial court asked both Appellees if they were asking that the agreement be approved in the best interest of the children. Both Appellees indicated their assent. The Court further explained:

> Once they've come to an agreement on that written document they are going to submit it to me. I am going to look at my notes and once I believe it accurately depicts what you've agreed to here today, I'll sign it and will mail it out to each of you. So, please read it carefully and then call your attorneys if you have any questions.

{¶21} The trial court then addressed the Guardian Ad Litem, "Mr. Kirk. I know you didn't hear the proposed agreement, basically it's what you recommended with a minor modification. So, I am assuming since you are recommending it, you are okay with it"? The Guardian Ad Litem replied, " Yes, I would be okay with and believe it is in the best interest of the minor children."[4]

{¶22} Appellant directs our attention to *Hatlestad v. Hatlestad,* 4th Dist. Athens No. 94CA1624, 1995 WL 57341 (Feb. 7, 1995), wherein this court recognized the general rule that in-court agreements are enforceable as

[4]We are mindful that while guardians ad litem play important roles in child custody matters and in evaluating the interest of children, a trial court is not bound by their recommendations. *See Gould v. Gould,* 4th Dist. Lawrence No. 16CA30, 2017-Ohio-6896, at ¶ 57; *In re R.N.* 10th Dist. Franklin No. 04AP-130, 2004-Ohio-4420, at ¶ 4.

a matter of law. However, this court further found that there was sufficient evidence for the trial court to find that a verbal agreement entered into the record was not sufficiently specific to constitute a settlement. In *Hatlestad,* the parties and their counsel appeared before the court and indicated they were working on an Agreed Entry and had the divorce action worked out in principal. Counsel for the wife outlined the terms relating to jurisdiction, grounds, spousal support, the marital residence, personal property, mortgages and debts, and pensions. Counsel for the husband advised the court that they would be "working out the exact language," but "we are in agreement in principal with those terms." However, no Agreed Entry was ever drafted or put on the record. The wife retained new counsel and sought to have the matter proceed. The husband objected and sought to have the court enforce the agreement. The trial court conducted a hearing on the issue and found while there was a general agreement, there was no meeting of the minds as to the Agreed Entry.

{¶23} Judge Harsha dissented. He opined the facts were undisputed and the agreement was enforceable with the only task remaining being "one for the scrivener, and not for the negotiator." Judge Harsha also pointed out

it was *not* a case where the parties had expressed an intent not to be bound until a final integrated writing had been drawn, signed, and delivered.[5]

{¶24} Based upon our review of the record and the law as applied in similar Ohio cases, we find that the trial court did not abuse its discretion in enforcing the settlement agreement and entering the December 8, 2020 order. The record demonstrates that Appellant's counsel began the hearing by indicating "[w]e would basically adopt the recommendations of the Guardian Ad Litem." The essential terms of the agreement regarding visitation, child support, communication, and visitation contingent on drug screening were discussed on the record in open court. All parties assented to the oral in-court agreement and waived their rights to present and hear evidence on the record.

{¶25} Furthermore, Appellant's refusal to sign the agreement is not dispositive of the matter. " 'An in-court settlement agreement may be adopted by the court, incorporated into judgment entry, and enforced even in the absence of written approval by one party.' " (Citations omitted.) *DiGiorgio v. DiGiorgio,* 2d Dist. Greene No. 20122-CA-61, 2013-Ohio-807, at ¶ 13, quoting *Gulling v. Gulling,* 70 Ohio App.3d 410, 412, 591 N.E.2d

[5]Judge Harsha authored the more recent opinion in *Reese, supra,* which found that the trial court did not abuse its discretion in signing a judgment entry drafted by mother's counsel, unsigned by father, and which accurately reflected the recorded proceedings despite the court's refusal to add a term requested by the father.

349 (9th Dist.1990). In *Bottum v. Jankovic,* 8th Dist. Cuyahoga No. 99526, 2013-Ohio-4914, the mother refused to sign a shared parenting agreement that had been read into the record and had been agreed to by both parties. The appellate court noted that where the parties negotiated an agreement, set forth the operative provisions of their agreement on the record, and indicated assent to those provisions before the trial court, "the trial court had all that was required to adopt the settlement." *Id*. at ¶ 12. *See also Kohler v. Kohler,* 2d Dist. Miami No. 2009CA3, 2009-Ohio-3434, (despite husband's indication on Agreed Entry of visitation as "submitted but not approved," appellate court found essential terms were clear where agreement was read in court and parties agreed on the record); *Karapando v. Weyer,* 3d Dist. Allen No. 1-18-68, 2019-Ohio-1937, (despite one party's failure to sign divorce decree, trial court and appellate court must rely upon oral agreement entered into by the parties on the record where terms of the agreement were clear and voluntarily assented to in the presence of the trial court, and wife did not claim undue influence, duress, fraud or coercion); *Lucas v. Reese, supra,* (despite father's refusal to sign agreement to which he responded affirmatively in open court, trial court did not abuse its discretion by signing judgment entry).

{¶26} Our finding is further bolstered by our review of the terms and language Appellant claims to be in dispute. First, Appellant takes issue with the order's provision that "Parenting time shall not interfere with either child's extracurricular activities," arguing that this limitation was not part of the in-court agreement. We find no merit to this contention. All parties involved are subject to the Standard Parenting Schedule of the Highland County Common Pleas Court ("Parenting Schedule"). The Parenting Schedule provides at Part 4, General Provisions, Section B, Extracurricular Activities, that "[r]egardless of where the child(ren) are, their continued participation in extracurricular activities shall continue uninterrupted." Therefore, the language about which Appellant complains is not unreasonable. *See Reese, supra,* at ¶ 10. Moreover, this item constitutes a minor issue, not a fundamental element of the agreement. *See Kohler, supra*, at ¶ 22; *Weyer, supra,* at ¶ 21.

{¶27} Appellant also contends that the order's language that "Mother shall be responsible for providing transportation, unless the parties agree otherwise," was not agreed upon. Again, we find no merit to this argument. The order and entry, in its entirety, provides under Section 1(C)(vii), "The parties agree to abide by the General Provisions provided in the Standard Parenting Schedule." The Parenting Schedule provides that, "[t]he parent

receiving the children shall provide transportation unless the other parent has moved more than thirty miles from the other parent." Again, we find this to be a minor issue related to administration of the parties' agreement, not a fundamental element. *See Kohler, supra*, at ¶ 22. Furthermore, based on the court's continuing jurisdiction in this matter, minor issues can be considered by the court at any time. *See Kohler,* at ¶ 25. The December 8, 2020 Agreed Order and Entry explicitly provides that it may be modified by the written agreement of the parties or by future order of the court.

{¶28} Appellant next contends that communication deadlines are not articulated or agreed in the order and entry. The record reflects that Appellant's attorney stated, "[a]nd then Your Honor, if I may, lastly. The parties have agreed to do all communication via Our Family Wizard and so they will each sign up for that within the week time span." The order provides at Section C, Communication, "The parties shall utilize Our Family Wizard to communicate regarding the minor child." Thereafter there are four paragraphs in which communication is discussed. The order specifies that all communication concerning the child's schedule and appointments are to be uploaded to the website. The order also specifies the time parameters regarding use of Our Family Wizard.

{¶29} Relative to communication, Appellant also contends that telephone access is not provided for in the agreement. We first observe that the Guardian Ad Litem report recommendations state, at page 12: "GAL would encourage Ms. Jordan to have some phone call and attend some events or appointments with her children, so she can learn to be more involved." We further observe that the Parenting Schedule provides at Part 4, General Provisions, Section F(13), Miscellaneous Guidelines for Parents, as follows:

> Residential Parent shall encourage frequent communication between the children and Non-Residential Parent and shall not impede or restrict reasonable communication by telephone or email. Such communication should be confidential between children and Non-Residential Parent and not monitored or read by Residential Parent unless the children voluntarily permit it. This applies to Non-Residential Parent when the children are with them.

While it is true that telephone access is not "spelled out," based on the language of the Parenting Schedule and the order and entry, it would appear that telephone access is provided for and Appellant has very liberal telephone access to her children. The trial court's failure to include specific timelines for telephone access is not unreasonable. *See, e.g., Reese, supra*, at ¶ 10; *See Burks v. Burks,* 2d Dist. Montgomery No. 27734, 2018-Ohio-670, at ¶ 13 (Where mother objected to a magistrate's requirement as being

ambiguous, using the legal concept of reasonableness as an example, the appellate court noted it is "not possible (or necessarily desirable) particularly in disputes relating to children, to define every situation to which a law applies." Therefore, "it is left to the courts to resolve borderline cases.") We find no merit to Appellant's contentions regarding communication guidelines and telephone access.

{¶30} Appellant also takes issue with the parenting time as stated in the Agreed Order and Entry at Part 1, Allocation of Parental Rights and Responsibilities, as follows:

> (c)(iv) Phase 4 parenting time shall occur so long as no issues arise with Phase 3. Phase 4 parenting time shall take place at the residence of the Mother for a period of four (4) visits from 9:00 a.m. to 5:00 p.m. on either a Saturday or a Sunday, as agreed upon by the parties. Said visit shall occur on a bi-weekly basis. Mother shall be responsible for ensuring the children attend any and all extracurricular activities.
> After the completion of the four (4) visits mentioned herein, and if no issues arise, Mother shall articulate a plan where everyone will sleep and if Mr. Holderness' children will be present or not. The home cannot currently handle six (6) children comfortably overnight on a regular basis. Construction is reportedly to begin soon on an addition, which would add needed bedroom and bathroom space. Until this project is completed, all six (6) children shall not spend the night together. Mother shall continue Phase 4 parenting time until such plan is articulated.
> (c)(v) Phase 5 parenting time shall occur so long as no issues arise with Phase 4 and Mother articulates a plan to accommodate overnight parenting time. Upon Mother

> articulating said plan and having the ability to accommodate overnight, Phase 5 parenting time shall be overnight visits for a period of four (4) visits from 10:00 a.m. Saturday through 10:00 a.m. Sunday. Said visits shall occur on a bi-weekly basis. Mother shall be responsible for ensuring children attend any and all extracurricular activities.

Appellant argues that the parenting times in Phases Four and Five are provided to be bi-weekly, however that was not articulated in the Guardian Ad Litem's Recommendation or on the record. Additionally, the Agreed Order and Entry provides for Phase Five visits to be four visits bi-weekly, which was not discussed on the record or in the report and recommendation of the Guardian Ad Litem.

{¶31} The hearing transcript indicates that Appellant's counsel made requests for weekly instead of bi-weekly visits. After hearing counsel, the trial court inquired of the parties, "Okay, as recommended by the GAL?" Appellant's counsel assented, as did both Appellees.

{¶32} A review of the GAL recommendations indicates the GAL indicated no objection to weekly visits if the Child Protection Center could accommodate the request. The GAL also indicated that supervised visits would fade into unsupervised visits off site but in a public place. The final phase of visitation could be at Appellant's residence, if no issues arose.

{¶33} Relative to Appellant's complaint regarding the parenting time language, Appellant also takes issue with the language in the agreed order and entry regarding drug and alcohol assessments and additional hair follicle screens. We observe that the GAL recommendations provide as follows:

> GAL also notes Ms. Jordan has not provided documentation of completion of counseling for mental health, or drug and alcohol. Drug screens might need to be built into this schedule as well at first to ensure ongoing sobriety.

{¶34} The hearing transcript indicates after the parenting schedule was discussed, the trial court asked counsel for both Appellees for input. The transcript reflects that an unidentified attorney responded:

> Your Honor, it's my understanding * * * before any unsupervised visitation would take place that if the parties request an additional drug test from mother that would be done.

{¶35} Appellant's counsel thereafter stated: "That is correct, Your Honor."

{¶36} The language of the Agreed Order and Entry regarding the drug and alcohol assessments and hair follicle screens, as well as the language regarding supervised visitation being phased into unsupervised visitation, is lengthy and quite detailed. Having reviewed the record fully, we will not relate it here. However, we are mindful that decisions involving the care and custody of children are accorded great deference upon review. *J.S.C., supra,*

at ¶ 25; *Miller v. Miller,* 37 Ohio St. 3d 71, 74, 523 N.E.2d 846 (1988). Any judgment of the trial court involving the allocation of parental rights and responsibilities will not be disturbed absent a showing of an abuse of that discretion.

{¶37} In light of Appellant's in-court agreement with the recommendations of the GAL as a basis for the settlement agreement, along with her in-court expression of agreement regarding the key element that unsupervised visitation would take place contingent on additional drug screening, we cannot say the trial court abused its discretion in signing the Agreed Order and Entry that provided the above-referenced requirements for drug testing and bi-weekly visitation. The hearing transcript indicates the trial court was well-familiarized with the case. At the beginning of the hearing, the trial court informed: "[W]e had evidentiary hearings three different times in this case. I took about ten pages of notes which I've reviewed. * * * I'm very familiar with all the evidence and information that happened prior to [April 1, 2019]." While the trial court was not bound by the GAL report, it is obvious that the trial court considered it in determining the bi-weekly phases of parenting time and in ordering drug screens in the manner in which it did. In allocating parental rights and responsibilities, trial courts must do so with the best interest of children in mind. *In re*

J.S.C., supra, at ¶ 28. The record indicates the trial court also considered matters on its own and was well-positioned to implement drug screening requirements and parenting time in the children's best interest. *See id*. at ¶ 26. We find no abuse of discretion.

{¶38} Finally, Appellant contends that the child support numbers were not articulated into the record and there is nothing to illustrate the child support issue, as provided in the Agreed Order and Entry, was agreed upon. This argument is disingenuous. As Appellant's counsel articulated the terms of the agreement on the record, Appellant's counsel advised, "We have the numbers, Your Honor." Thereafter, Appellant's counsel inquired as to the effective date for child support purposes. The trial court stated: "That is something that should be negotiated. * * * I typically go back to the date of the filing of the motion. That's just my policy, if that helps negotiate anything here but if you guys want to agree to something different that is fine as well." After further discussion between the attorneys, Appellant's counsel stated, "I believe we have an agreement, Your Honor." We accordingly find no merit to this contention.

{¶39} In this case, it is not alleged nor is there evidence of mutual mistake of fact, fraud or distress. " 'This court has held that a party may not directly or collaterally attack a consent judgment in the absence of

allegations of irregularity or fraud in the procurement of the judgment.' " *Mynes v. Brooks,* 4th Dist. Scioto No. 07CA3185, 2010-Ohio-2126, ¶ 16, quoting *Shanks v. Shanks,* 4th Dist. Ross No. 96CA2252, 1997 WL 114397, *4 (Mar. 10, 1997). Furthermore, a change of heart is not a ground to set aside a settlement agreement. *See Ferreri v. Ferreri,* 11th Dist. Trumbull No. 2017-T-0055, 2018-Ohio-699, citing *Walther v. Walther,* 102 Ohio App.3d 378, 383, 657 N.E.2d 332 (1st Dist. 1995). Based on the foregoing, we find no merit to Appellant's second, third, and fourth assignments of error. We find the trial court did not abuse its discretion in adopting the order and entry submitted by counsel for the parties after the agreement was reached on the record and all parties assented to the agreement. Accordingly, the second, third, and fourth assignments of error are hereby overruled.

{¶40} Under the first assignment of error, Appellant also contends the trial court should have held an evidentiary hearing regarding the existence or non-existence of a settlement agreement between the parties. We disagree. Again, Appellant waived an evidentiary hearing on October 7, 2020. When she subsequently became dissatisfied with the agreement, the record does not indicate a request for an evidentiary hearing was made. " ' "[A]n appellate court will not consider any error which could have been brought to

the trial court's attention, and hence avoided or otherwise corrected." ' " *Matter of Adoption of C.B.B.G.*, 4th Dist. Lawrence No. 19CA26, 2021-Ohio-331, at ¶ 7, quoting *Cline v. Rogers Farm Ents., LLC,* 2017-Ohio-1379, 87 N.E.3d 637, ¶ 47 (4th Dist.), quoting *Schade v. Carnegie Body Co.,* 70 Ohio St.2d 207, 210, 436 N.E.2d 1001 (1982). "Thus, a party forfeits, and may not raise on appeal, any error that arises during trial court proceedings if that party fails to bring the error to the court's attention, by objection or otherwise, at a time when the trial court could avoid or correct the error." *Id*. *See also Monea v. Campisi,* 2005-Ohio-5215, at ¶ 11 (in eviction proceeding which resulted in settlement agreement, appellate court would not consider alleged error in failing to conduct evidentiary hearing where business owner waived right to hearing by failing to request hearing or object to the proceedings at the time any error could have been avoided or corrected).

{¶41} Even if Appellant had properly preserved this argument for appeal, we would find no merit. In *Rulli v. Fan Company,* 79 Ohio St. 3d 374, 1997-Ohio-380,683 N.E.2d 337, the Supreme Court of Ohio held that "[g]iven the lack of finality and the dispute that evolved subsequent to the initial settlement hearing, * * * the trial judge should have conducted an evidentiary hearing to resolve the parties' dispute about the existence of an

agreement or the meaning of its terms as read into the record at the hearing." This case, however, is distinguishable from *Rulli* because *Rulli* involved substantive, disputed major elements of the agreement. As previously indicated herein, we also view Appellant's arguments in this case as relating to minor disputes (which can be resolved in motion practice if need be), not fundamental elements. *See Weyer, supra,* at ¶ 22; *Pfouts, supra* at ¶ 15; *Kohler, supra* at ¶ 22. As noted above, the trial court was well-familiarized with the parties and facts of this case. Therefore, an evidentiary hearing to determine the material elements of the agreement was not required and the failure to conduct one did not result in error.

{¶42} For the foregoing reasons, we find no merit to Appellant's first assignment of error. It is also hereby overruled.

{¶43} Having found no merit to any of Appellant's assignments of error, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court-Juvenile 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.

Abele, J. and Hess, J. Concur in Judgment and Opinion.

For the Court,

_____
Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.