[Cite as *Walton v. Walton*, 2016-Ohio-436.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

AMY M. WALTON	:	
	:	
Plaintiff-Appellee	:	Appellate Case No. 26841
	:	
v.	:	Trial Court Case No. 2010-DR-25
	:	
BRIAN C. WALTON	:	(Civil Appeal from Common Pleas
	:	Court, Domestic Relations)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 5th day of February, 2016

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HALL, J.

{¶ 1} Brian C. Walton appeals from the trial court's August 18, 2015 decision and judgment that, among other things, resolved a dispute with his former wife, plaintiff-

appellee Amy M. Walton, regarding the payment of day-care costs for their two minor children, the school district the children would attend, and the provision of health-insurance for the children.

{¶ 2} Brian advances three assignments of error.[1] First, he contends the trial court erred in finding him responsible for one-half of Amy's day-care expenses for the children after January 18, 2013. Second, he claims the trial court erred in finding that the children shall continue to be educated in the school district where Amy resides. Third, he asserts that the trial court erred in finding that he remains responsible for one-half of Amy's cost of providing health insurance for the children.

{¶ 3} The record reflects that the parties entered into a shared-parenting plan as part of their 2010 divorce. The plan provided, inter alia, for them to share equally certain expenses, including the cost of day care and private tuition at a parochial school in Huber Heights, which the children attended at the time of the divorce. The plan also obligated Amy to provide health-insurance coverage for the children. It obligated Brian to reimburse her one-half of the cost.

{¶ 4} The case came before a magistrate in 2014 to resolve various disputes that had arisen since the divorce. As relevant here, Brian had filed a motion to modify the shared-parenting plan to designate Beavercreek as the children's school district and to allow him to provide health-insurance for the children in lieu of reimbursing Amy one-half of the cost of the insurance she provided. Amy had filed a motion seeking partial reimbursement of certain day-care expenses. The matter proceeded to a two-day hearing

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[1] For purposes of convenience and clarity, we will refer to the parties by their first names.

before the magistrate on the foregoing issues and others. After considering the evidence presented, the magistrate concluded that Huber Heights should remain the children's school district. The magistrate also ruled that Brian remained obligated to reimburse Amy one-half of the cost of the health insurance she provided. Finally, the magistrate concluded that Brian remained responsible for one-half of Amy's day-care expenses after January 18, 2013, which was the date she had sent him an e-mail that he had interpreted as an agreement to pay her own day-care costs. (Doc. #46).

{¶ 5} The parties filed objections to the magistrate's decision. For present purposes, the only relevant ones concern Brian's objections to the magistrate's findings regarding (1) the children's school district, (2) his continued reimbursement to Amy for one-half of the cost of health insurance, and (3) his continued responsibility for one-half of her day-care expenses. The trial court addressed and rejected each of these objections. After independently reviewing the record, the trial court reached the same conclusions as the magistrate.

{¶ 6} With regard to the school district, the trial court noted that the shared-parenting plan provided for the children to attend a parochial school in Huber Heights. The trial court also noted, however, that for the past three years the children had not attended that school because of the cost. Instead, they had attended public school in the Huber Heights School District, where Amy resided. Although Brian also had resided in Huber Heights when the children began attending public school there, he was in the process of moving to the Beavercreek School District and wanted the children to attend school there. The trial court rejected his request, finding it in the best interest of the children to remain in the Huber Heights School District. (Doc. #55 at 4-7).

{¶ 7} With regard to health-insurance costs, the trial court found the shared-parenting plan clear and found no reason to deviate from it. Therefore, the trial court held that Brian remained obligated to reimburse Amy for one-half of her cost of providing insurance for the children. (*Id*. at 7-8).

{¶ 8} Finally, with regard to day-care expenses, the trial court rejected Brian's argument that Amy had agreed in an e-mail to be responsible for her own day-care costs. Therefore, the trial court found Brian responsible for one-half of those costs in accordance with the shared-parenting plan. (*Id*. at 3-4).

{¶ 9} On appeal, Brian challenges each of the foregoing determinations by the magistrate and the trial court.

{¶ 10} This court has recognized that a trial court may not modify a shared-parenting plan without finding that a change in circumstances has occurred and that such modification is in the best interest of the child. *Sutton v. Sutton*, 2d Dist. Montgomery No. 24108, 2011-Ohio-1439, ¶ 14. In making these determinations, a trial court enjoys broad discretion. *Id*. at ¶ 18. We will not reverse a trial court's determination regarding a change in circumstances or the best interest of the child absent an abuse of that discretion. *Id*.

{¶ 11} In support of each of his assignments of error, Brian asserts that the parties have a history of informally modifying various aspects of the shared-parenting plan themselves. In his first assignment of error, he asserts that Amy unilaterally modified the plan with respect to their shared responsibility for day-care expenses when she sent him the January 18, 2013 e-mail mentioned above. In relevant part, the e-mail stated:

> Brian[,] [s]ince you no longer need daycare and I can't afford to pay

> a weekly rate on my own (while I wait for the courts to decide if you should have to still pay ½), I have put in the required 2 weeks' notice with the ymca that I will no longer need their services, starting the week of 4 February. I have made arrangements for childcare elsewhere on my mornings and afternoons.

(Defendant's Hearing Exhibt EE).

{¶ 12} Brian testified below that he interpreted the e-mail to mean "she was going to pay for her half when she had the kids and [he] was going to pay for [his] half when [he] had the kids." (Hearing Tr. at 86-87). In other words, Brian argued below, and asserts on appeal, that the e-mail expressed Amy's intention that each party separately would be responsible for any day-care expenses after January 18, 2013. He also claims it is unconscionable to require him to pay one-half of Amy's day-care expenses after that date when she did not notify him of them until much later.

{¶ 13} Upon review, we see no abuse of discretion in the trial court's rejection of Brian's argument. The trial court correctly found that Amy's e-mail did not reflect an agreement by her to pay her own day-care expenses. It expressed her recognition that Brian no longer needed day care.[2] It also expressed her intention to discontinue using the YMCA because she could not afford it and to obtain day care elsewhere. In her only reference to Brian's obligation to pay half of the cost, Amy mentioned waiting for the court to decide that issue, which, if anything, indicates that she still wanted reimbursed going forward. Nothing in the e-mail establishes Amy's intent to waive Brian's obligation to share

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[2] Although Brian testified that he thought Amy was proposing that the parties pay their own day-care expenses, he admitted not having any need for day care after January 18, 2013. (Hearing Tr. at 69). Amy's e-mail makes clear that she was aware of that fact.

her day-care costs. Because Brian's obligation was imposed under the shared-parenting plan and Amy did nothing to even arguably undo it, the trial court did not abuse its discretion in finding Brian obligated to pay those expenses despite the passage of time. The first assignment of error is overruled.

{¶ 14} In his second assignment of error, Brian challenges the trial court's determination that the children shall remain in the Huber Heights School District. Brian notes that the parties previously had modified the shared-parenting plan themselves and had agreed to send their children to a public school in Huber Heights. At that time, Brian and Amy both resided in Huber Heights. When the hearing commenced below, Brian was in the process of moving to Beavercreek, however, and sought to have the trial court designate Beavercreek as the children's school district.

{¶ 15} Brian argues on appeal that the Beavercreek School District is more highly rated and is "superior" to the Huber Heights School District. He also asserts that the particular school the children would attend in Beavercreek is more highly ranked than the school they attend in Huber Heights. Brian argues too that the children are receiving "As" in Huber Heights and, therefore, are not being challenged to their potential. He additionally maintains that the commute to Beavercreek would be favorable for both parties. Finally, he asserts that transferring to the Beavercreek School District would have no impact on the children's lives "other than actual school attendance[.]" (Appellant's brief at 10).

{¶ 16} Upon review, we see no abuse of discretion in the trial court's determination that the children shall remain in the Huber Heights School District where Amy continues to live. The various issues Brian cites were matters for the trial court to

consider in the exercise of its discretion. The record reflects that the trial court properly did consider them. The trial court also considered the fact that the children had been in the Huber Heights School District for several years. They were excelling academically, had friends at their school, and were involved in sports in the Huber Heights School District. After weighing all of the evidence, the trial court found that Brian's concerns did "not justify a change in districts, and [did] not outweigh the potential harms to the children of uprooting them from their current school, friends, and activities." (Doc. #55 at 7). We see no abuse of discretion in this determination. Accordingly, the second assignment of error is overruled.

{¶ 17} In his third assignment of error, Brian claims the trial court erred in continuing to hold him responsible for one-half of Amy's cost of providing health insurance for the children. Brian argues that he sought to provide health insurance through his new wife's policy and that it would have been better to allow him to provide this "double" coverage than to continue reimbursing Amy for one-half of her insurance cost as required by the shared-parenting plan.

{¶ 18} We see no error in the trial court's ruling. At the time of the hearing, Amy was providing health insurance in accordance with the shared-parenting plan. Under that plan, Brian was obligated to reimburse her roughly $82 per month for the cost. Whether continuing that arrangement was preferable to allowing Brian to provide "double" coverage in lieu of reimbursing Amy was a matter for the trial court to resolve in its discretion. Although Brian contends he provided "compelling reasons" to support his request, his appellate brief fails to identify them.[3] (*See* Appellant's brief at 12). Brian has

[3] At page five of his brief, Brian cites hearing transcript pages 35 and 36. On those

failed to demonstrate an abuse of discretion. The third assignment of error is overruled.

{¶ 19} The judgment of the Montgomery County Common Pleas Court, Domestic Relations Division, is affirmed.

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FAIN, J., and WELBAUM, J., concur.

Copies mailed to:

Christopher B. Epley
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Hon. Timothy D. Wood

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pages, he testified that permitting him to provide double coverage would mean (1) he would not have to pay Amy for the coverage she provided and (2) the children would have coverage if Amy stopped providing it. (Hearing Tr. at 35-36). At the time of the hearing, however, Amy still was providing the required coverage.