[Cite as *In re C.H.*, 2015-Ohio-2109.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

IN THE MATTER OF:	)	
	)	
C.H.	)	
	)	CASE NO. 14 CO 29
	)	
	)	OPINION
	)	
	)	
	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from Court of Common Pleas, Juvenile Division of Columbiana County, Ohio Case No. C2013-0222-1&2
JUDGMENT:	Affirmed
APPEARANCES: For Appellee	Attorney Amanda J. Jackson 1265 E. State St. Salem, Ohio 44460
For Appellant	Attorney James E. Lanzo 4126 Youngstown-Poland Road Youngstown, Ohio 44514

JUDGES:

Hon. Gene Donofrio
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: May 28, 2015

[Cite as *In re C.H.*, 2015-Ohio-2109.]
DONOFRIO, P.J.

{¶1} Appellant, Rachel H., appeals from a Columbiana County Common Pleas Court Juvenile Division decision granting custody of her daughter to the child's father appellee, Nathaniel H.

{¶2} Appellant and appellee share one daughter, C.H. (d.o.b. 10/4/08). The parties lived together from the time of C.H.'s birth until April 2013, when they separated.

{¶3} On August 1, 2013, appellee filed a motion requesting custody of C.H. Up until that time, no custody order had been in place. Appellant also filed a motion requesting the court to a make a custody determination. On the parties' requests, the court appointed a guardian ad litem (GAL) for C.H. and ordered the parties to submit to hair follicle drug testing. The court set the custody determination for a hearing on May 27, 2014.

{¶4} On May 14, 2014, appellant's counsel filed a motion for leave to withdraw citing disagreement between appellant and him on how to best proceed with the case. Counsel also filed a motion for a continuance of the hearing. The trial court denied the requested continuance.

{¶5} The hearing went ahead as scheduled on May 27, 2014. Appellant appeared pro se. The court heard testimony from both parties, appellee's girlfriend, and the GAL. The court awarded custody to appellee. It granted appellant a standard order of visitation. In doing so, the court found that appellant has a lack of maturity or emotional stability and has shown a propensity to be rough or physically abusive when she loses emotional control. It also found appellant has failed to adequately address C.H.'s hygiene and dental care. And it found appellant has a history of instability as to her relationships, housing, and employment. On the other hand, the court found appellee has relatively stable employment and housing and is substantially more stable in his personal relationships. It noted that appellee has demonstrated he has a greater level of maturity and understanding of C.H.'s physical, moral, mental, and emotional needs and how his and appellant's conduct affects C.H. The court found appellee was more likely to honor companionship orders. And it

found that while C.H. enjoys a basic amount of bonding with both parents, she looks to appellee as the greater source of safety and security as opposed to appellant.

{¶6} Appellant, having retained new counsel, filed a timely notice of appeal on June 27, 2014.

{¶7} Appellant now raises five assignments of error, the first of which states:

> THE TRIAL COURT ABUSED ITS DISCRETION BY REFUSING TO CONTINUE THE TRIAL AND DENYING MOTHER/APPELLANT THE OPPORTUNITY TO RETAIN NEW LEGAL COUNSEL PRIOR TO A TRIAL ON THE MERITS.

{¶8} Approximately two weeks prior to trial, appellant's counsel filed a motion to withdraw and request for continuance. The trial court denied the continuance citing its busy schedule and asked counsel if that changed his mind about withdrawing. (Tr. 3). The court heard nothing further from counsel. (Tr. 3). On the day of the trial, appellant appeared without counsel and advised the court that her counsel had "basically quit representing her" so she was appearing pro se. (Tr. 3).

{¶9} Appellant now argues that because the court failed to rule on her counsel's motion to withdraw, it effectively prevented her from appreciating the urgency of retaining new counsel or preparing to go forward pro se. She contends that requiring her to proceed pro se greatly prejudiced her case as she was unable to properly raise objections, examine witnesses, and preserve the record for appeal. Appellant contends the trial court abused its discretion in failing to grant a continuance and forcing her to proceed pro se.

{¶10} The decision to grant a continuance is within the trial court's sound discretion, and thus will not be reversed absent an abuse of discretion. *Nationwide Mut. Fire Ins. v. Barrett*, 7th Dist. No. 08 MA 130, 2008-Ohio-6588, ¶19, citing *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981). An abuse of discretion connotes more than an error in law or judgment; it implies that the trial court's

decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶11} The trial court cited its "busy schedule" as its reason for denying the continuance. (Tr. 3). At the trial, appellant advised the court that her attorney quit representing her and she was appearing pro se. (Tr. 3).

{¶12} There is no indication that the trial court "forced" appellant to proceed with the trial pro se. Although the court did not initially rule on appellant's counsel's motion to withdraw, appellant informed the court that her counsel had quit representing her. So appellant was aware that she was without counsel. Also, appellant appeared at the trial without her counsel. So she was also aware that she was going to proceed pro se. Moreover, appellant did not object to going forward with the trial nor did she suggest to the trial court that if she had more time she would like to obtain new counsel.

{¶13} While it would have been more accommodating to appellant to grant her counsel's requested continuance, nothing in the record suggests that the court acted arbitrarily, unconscionably, or unreasonably in denying the continuance. Moreover, appellant did not take issue with the court proceeding with the trial. Accordingly, appellant's first assignment of error is without merit.

{¶14} Appellant's second assignment of error states:

> THE TRIAL COURT ERRED IN FAILING TO CONSIDER ALL OF THE RELEVANT FACTORS REQUIRED BY R.C. 3109.051 AND IN GRANTING FATHER/APPELLEE, NATHANIEL HODGSON, CUSTODY OF THE MINOR CHILD, C.H., AS SAID DECISION WAS AN ABUSE OF DISCRETION AND CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶15} Here appellant contends the trial court failed to properly consider the statutory best interest factors. She states that the court's judgment does not mention the best interest factors at all. Appellant further contends the court failed to discuss

the applicable law or indicate which factors it found persuasive, specifically C.H.'s interactions with her parents, the geographical location of the parents' residences, the parents' available time, and the child's age and adjustment to home, school, and community.

{¶16} A trial court's decision regarding the custody of a child which is supported by competent and credible evidence will not be reversed absent an abuse of discretion. *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 550 N.E.2d 178 (1990), syllabus; *Rohrbaugh v. Rohrbaugh*, 136 Ohio App.3d 599, 603, 737 N.E.2d 551 (7th Dist.2000). A trial court has broad discretionary powers in child custody proceedings. *Reynolds v. Goll*, 75 Ohio St.3d 121, 124, 661 N.E.2d 1008 (1996). This discretion should be accorded the utmost respect by a reviewing court in light of the gravity of the proceedings and the impact that a custody determination has on the parties involved. *Trickey v. Trickey*, 158 Ohio St. 9, 13, 106 N.E.2d 772 (1952).

{¶17} When allocating parental rights and responsibilities for the care of the children, the court shall take into account that which would be in the best interest of the children. R.C. 3109.04(B)(1). In determining the best interest of the children, a court is to consider all relevant factors, including, but not limited to:

> (a) The wishes of the child's parents regarding the child's care;
>
> (b) If the court has interviewed the child in chambers * * * 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;
>
> (c) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;
>
> (d) The child's adjustment to the child's home, school, and community;
>
> (e) The mental and physical health of all persons involved in the situation;

> (f) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;
>
> (g) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;
>
> (h) Whether either parent or any member of the household of 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 [or certain other offenses involving children or domestic violence];
>
> (i) Whether the residential parent * * * has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;
>
> (j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

R.C. 3109.04(F)(1).

{¶18} While not specifically identifying each factor by name, the court addressed many of the statutory factors in its decision.

{¶19} The court noted this was an initial allocation of parental rights and it considered both parents as both parents wished to have custody of C.H. Thus, the court considered R.C. 3109.04(F)(1)(a).

{¶20} The court found that while C.H. enjoys a basic amount of bonding with both parents, she looks to appellee as the greater source of safety and security as opposed to appellant. This finding indicates the court considered R.C. 3109.04(F)(1)(c).

{¶21} The court found that appellant has a lack of emotional stability and maturity and that appellant’s angry, confrontational, and emotional disposition were clear to the court upon observing her demeanor and behavior at trial. This finding demonstrates that the court considered R.C. 3109.04(F)(1)(e).

{¶22} The court found that appellee was the parent more likely to honor court orders of companionship. Thus, the court considered R.C. 3109.04(F)(1)(f).

{¶23} The court noted that when appellant learned that appellee had filed a motion for custody, she cut off appellee's contact with C.H. until the court ordered visitation. This shows the court considered R.C. 3109.04(F)(1)(i).

{¶24} In addition to these factors, the court found several other factors to be relevant. It noted that the GAL was initially concerned with appellee's use of cocaine and marijuana. But the GAL found upon review of further drug testing that her concerns were not paramount in this case given her other concerns. The court noted the GAL's "significant concern" regarding appellant's mental and verbal abuse and a lack of control by appellant. The court found appellant has shown a propensity to be rough or physically abusive with C.H. when she loses emotional control. The court also found appellant has failed to adequately address C.H.'s hygiene and dental care. Moreover, the court found appellant has a history of employment, relationship, and housing instability, thus she has not demonstrated she can maintain a stable and appropriate home environment for C.H. In contrast, the court found appellee has relatively stable employment and housing and is substantially more stable in his personal relationships. And it found appellee has a significantly greater level of maturity and understanding of C.H.'s physical, moral, mental, and emotional needs.

{¶25} Additionally, as to almost all of the factors that the trial court did not mention, there was no evidence presented going to these factors. There was no evidence that either parent was planning a residence outside of Ohio. There was no evidence that either parent was convicted of any criminal offense involving any act that resulted in a child being an abused child or a neglected child. There was no evidence of any child support arrearage. And the court did not interview the child in chambers regarding her wishes. Thus, the fact that the court did not mention these factors does not mean the court erroneously failed to consider them, there simply was no evidence that applied to them.

{¶26} The only factor the court neglected to mention on which evidence was

presented was R.C. 3109.04(F)(1)(d), which is the child's adjustment to her home, school, and community. Its failure to mention one factor does not constitute an abuse of discretion considering that it discussed all of the other factors on which evidence was presented in addition to other factors that it deemed relevant.

{¶27} Importantly, the evidence supports the court's findings.

{¶28} Appellant testified that when she and appellee broke up in April 2013, she and C.H. lived with her mother from April through October 2013. (Tr. 6). She and C.H. then moved to an apartment in October 2013. (Tr. 5). Appellant stated that she dated a man named Jeff after she and appellee broke up and that Jeff lived with her and C.H. for several months. (Tr. 7). She denied that she was currently dating a man named Don. (Tr. 8). However, she admitted that she sometimes spends the night at his house and C.H. spends the night there too. (Tr. 8). In fact, she stated that C.H. had her own room at Don's house. (Tr. 9).

{¶29} Appellant testified that she has had at least seven different jobs over the past few years. (Tr. 14-16). She stated C.H. used to go to daycare but now C.H.'s maternal grandfather babysits when appellant is at work. (Tr. 11-12). Appellant stated that C.H. had been going to the same daycare/preschool since she was two years old. (Tr. 12). Appellant testified she did not like the attitude of the daycare providers so she removed C.H. from the school. (Tr. 12).

{¶30} Appellant testified that after she and appellee broke up, they initially shared custody of C.H. (Tr. 19). But in July 2013, appellee filed the motion for custody and she stopped allowing him to see C.H. on the advice of her attorney. (Tr. 20). Appellant also stated that she wanted to move out of Salem, possibly four hours away to Bryan, Ohio. (Tr. 22). She stated that if she did that she would take C.H. with her and that she believed it was in C.H.'s best interest to be separated from appellee. (Tr. 22).

{¶31} Appellant also testified regarding C.H.'s involvement with activities. She stated that C.H. played soccer at the community center, which she enjoyed. (Tr. 23). She stated C.H. made friends at soccer and at daycare. (Tr. 23). She also

stated C.H. goes to church every Sunday with either her maternal or paternal grandmother. (Tr. 23).

{¶32} Finally, appellant testified regarding an incident where the GAL met her and appellee at a Speedway where they were to exchange C.H. Appellant admitted that she was swearing at appellee and the GAL while C.H. was present and that C.H. likely heard everything. (Tr. 25).

{¶33} Appellee testified that he owns the house he is residing in where he has lived for the last year and a half. (Tr. 28). His girlfriend and her daughter live with him. (Tr. 37). He stated that when C.H. is with him she has her own bedroom, which was her room before he and appellant broke up. (Tr. 37).

{¶34} Appellee stated that he and appellant initially shared custody of C.H. when they broke up. (Tr. 30). But when he filed the custody motion, appellant only allowed him to see C.H. once in approximately two months. (Tr. 30). He stated he would like to have custody of C.H. (Tr. 32).

{¶35} Appellee stated that appellant can be abusive. (Tr. 33). When asked what he meant by that, appellee stated, "mental, yelling, MF-ing." (Tr. 33). He referenced times when he has heard appellant tell C.H. to "get the F out of the vehicle" and when he saw appellant drag C.H. out of a vehicle and pull her across a parking lot so that appellee could not give her a hug. (Tr. 33). Appellee testified that appellant would not let him give C.H. a hug after her soccer game because it was not his day to visit with her. (Tr. 34).

{¶36} Appellee also testified that appellant did not inform him when she stopped sending C.H. to daycare/preschool. (Tr. 39). He stated that he received a phone call from the school asking where C.H. was and if she was ill. (Tr. 39). The school then informed him that C.H. had not attended for over a month. (Tr. 39). Appellee then questioned appellant and appellant told him she had removed C.H. from the school. (Tr. 39). He stated he was aware C.H. had some incidents at school relating to kicking, biting, scratching, and yelling and that she had received a warning stating that if the behavior continued she would not be permitted to attend

anymore. (Tr. 40, 41).

{¶37} Next, appellee testified regarding a time he asked the GAL to meet him when he was to pick up C.H. from appellant because he thought appellant was acting strangely. (Tr. 43-44). When appellant arrived, she began using the "F" word. (Tr. 44). Appellee asked appellant why C.H. had not been at daycare and she told him it was none of his business and he had no right to know. (Tr. 45). Appellant also got out of her car and "was standing up in [appellee's] face." (Tr. 45). Appellee stated that C.H. witnessed all of this behavior. (Tr. 45). He stated C.H. was upset for about an hour by what she witnessed. (Tr. 45).

{¶38} Finally, appellee testified as to C.H.'s care when she is with appellant. He stated that sometimes appellant sends C.H. to him and she is not appropriately dressed for the weather. (Tr. 54). He also stated there have been occasions when C.H. has had a soccer game on Monday and on Tuesday she is still wearing the same clothes and has not showered. (Tr. 54). And he stated there have been times that C.H.'s hair is "a complete mess" and he has to wash it and spend an hour trying to get the knots out. (Tr. 54).

{¶39} Appellee's girlfriend, Erin, also testified. She stated there have been times she has heard appellant use the "MF" word with C.H. present and crying in the car. (Tr. 58-59). She also stated she witnessed appellant tell C.H. to "get the F out of the Jeep" and saw appellant pull C.H. out of the car by her elbow all while yelling obscenities. (Tr. 59). Additionally, Erin testified that when C.H. comes to appellee's house from appellant's house, C.H.'s hair is not always brushed and her body smells. (Tr. 60). She stated that when she asks C.H. when was the last time she bathed, C.H. does not always know and tells her that sometimes appellant does not have time or does not remember to bathe her. (Tr. 60).

{¶40} The GAL was the last witness. The court admitted the GAL's report as its exhibit. (Tr. 65-66). The GAL stated she has been involved with the parties for seven to eight months. (Tr. 67). She recommended the court name appellee as the residential parent. (Tr. 67). She opined appellee was the more stable parent. (Tr.

67). The GAL stated that while appellant clearly loved C.H., appellant was immature as to parenting issues and did not know how to be a good parent at this time. (Tr. 67). She also opined appellant had been neglectful with C.H.'s hygiene and dental care. (Tr. 67). And she believed appellant was verbally abusive to C.H. (Tr. 68). She also stated appellant has dated two different men during the course of her investigation. (Tr. 70). The GAL had concerns because C.H. had stated she loved appellant's ex-boyfriend and then the boyfriend was no longer around. (Tr. 70).

{¶41} The GAL also discussed appellee's drug test results. She stated that appellee initially tested positive for cocaine and marijuana. (Tr. 68). A later drug test for appellee revealed just a small amount of marijuana. (Tr. 68). The GAL discussed these results with appellee. (Tr. 69). Appellee told her that he smokes marijuana on random occasions. (Tr. 69). He told her that the cocaine was a result of a bachelor party he attended where it was available and he had a lapse of judgment in using it. (Tr. 69). The GAL testified that over the course of her investigation she came to believe that appellee was not a regular cocaine user. (Tr. 69). And despite appellee's initial drug test results, the GAL still opined appellee was the more appropriate person to be the primary caretaker for C.H. (Tr. 69). She noted that appellee has a steady job, he has a calm demeanor with C.H., and C.H. is more calm and happy at appellee's house. (Tr. 69).

{¶42} The court also considered the GAL's report. Much of the report mimics the evidence presented. Other significant findings in the report included C.H.'s statements to the GAL that she does not like it when appellant yells and fights and that she wanted to be with appellee because he is "much nicer." Additionally, the GAL reported that she made an unannounced visit to appellant's "friend" Don's house after C.H. reported to her that she and appellant spent many nights there and she may have slept in bed with one of Don's boys. When the GAL arrived at Don's house, appellant and C.H. were there. She stated the kitchen was extremely messy. She also reported Don told her that he has to remind appellant to change C.H.'s clothes. The GAL asked to see where C.H. slept and appellant showed her a small

room with a mattress on the floor with no pillow and no bedding and the floor was covered in dirty clothes. The GAL also reported that C.H. had been complaining of her teeth hurting. Appellant then took C.H. to her first-ever dentist appointment and she learned that C.H. may need four teeth pulled and four teeth capped.

{¶43} The above evidence supports the trial court's findings and its grant of custody to appellee. The evidence indicates appellee will provide a more stable, calm environment for C.H. Both parents have some shortcomings in this case. The trial court took these shortcomings into consideration along with a multitude of other factors, including its own observations, and determined that it was in C.H.'s best interest that it grant her custody to appellee. Competent, credible evidence supports the trial court's judgment. "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." *Miller v. Miller*, 37 Ohio St. 3d 71, 74, 523 N.E.2d 846 (1988). The court acted within its discretion in awarding custody of C.H. to appellee.

{¶44} Accordingly, appellant's second assignment of error is without merit.

{¶45} Appellant's third assignment of error states:

> THE TRIAL COURT ERRED IN RELYING UPON THE REPORT OF THE GUARDIAN AD LITEM AND ADMITTING IT INTO EVIDENCE BECAUSE THE GUARDIAN AD LITEM FAILED TO COMPLY WITH HER DUTIES UNDER SUP.R. 48(D) AND HER CONCLUSIONS ARE THEREFORE NOT SUPPORTED BY THE FACTS AND EVIDENCE.

{¶46} Appellant asserts here that the trial court committed plain error by relying on the GAL's reports and admitting them into evidence. She points out that the GAL initially reported being concerned that appellee's first drug screening came back positive for cocaine and marijuana. She notes that appellee's subsequent drug screens were negative for cocaine but positive for small amounts of marijuana. The GAL testified that appellee had reported that his initial drug screen was positive for

cocaine because he had exercised poor judgment at a bachelor party and that he occasionally used marijuana. (Tr. 68-69). Despite these facts, the GAL still found appellee to be the more suitable parent.

{¶47} Appellant argues the GAL failed to comply with her duties under Sup.R. 48(D)(13)(f) by failing to discover and report a party's criminal background. She asserts appellee has two convictions for drug-related charges in Columbiana County Municipal Court. Appellant argues these convictions, along with the positive drug screens, establish that appellee has a history of drug abuse that the GAL had a duty to discover and report. Because the GAL failed in her duty, appellant urges, the trial court committed plain error in relying on her reports.

{¶48} Appellant did not object to the admission of the GAL reports. Therefore, she has waived all but plain error. Plain error is one in which but for the error, the outcome would have been different. *State v. Long*, 53 Ohio St.2d 91, 97, 372 N.E.2d 804 (1978). The plain error doctrine is only to be used in civil cases with the utmost caution, under exceptional circumstances, and only to prevent a manifest miscarriage of justice. *Cleveland Elec. Illum. Co. v. Astorhurst Land Co*., 18 Ohio St.3d 268, 275, 480 N.E.2d 794 (1985).

{¶49} Sup.R. 48(D)(13)(f) provides:

> (D) In order to provide the court with relevant information and an informed recommendation regarding the child's best interest, a guardian ad litem shall perform, at a minimum, the responsibilities stated in this division, unless impracticable or inadvisable to do so.
>
> * * *
>
> (13) A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. In order to provide the court with relevant information and an informed recommendation as to the child's best interest, a guardian ad litem shall, at a minimum, do the following, unless impracticable or inadvisable because of the age of the child or the specific

circumstances of a particular case:

* * *

(f) Review criminal, civil, educational and administrative records pertaining to the child and, if appropriate, to the child's family or to other parties in the case.

{¶50} Firstly, Sup.R. 48(D)(13)(f) is not as specific as appellant asserts. It does not state that the GAL must investigate a party's criminal background and report any and all convictions to the court. Instead, it provides the GAL should review criminal records pertaining to the parties if appropriate.

{¶51} Secondly, it is generally held amongst the Ohio Appellate Court that the Rules of Superintendence are general guidelines for courts' conduct that do not create substantive rights in individuals or procedural law. *In re K.G.*, 9th Dist. No. 10CA0016, 2010-Ohio-4399, ¶11. Consequently, Sup.R. 48 does not have the force of law. *Nolan v. Nolan*, 4th Dist. No. 11CA3444, 2012-Ohio-3736, ¶26.

{¶52} Thirdly, the GAL may very well have reviewed any criminal convictions appellee had and deemed them irrelevant to her recommendation as they were for misdemeanors many years ago. The GAL gave several detailed reports to the court after she spent time with both parties, the child, and appellant's "friend" Don, and after reviewing C.H.'s counseling records and speaking with staff at C.H.'s preschool. We should not make assumptions that she failed to review any criminal record appellee may have.

{¶53} For all of these reasons, appellant's third assignment of error is without merit.

{¶54} Appellant's fourth assignment of error states:

THE TRIAL COURT ABUSED ITS DISCRETION BY RELYING HEAVILY UPON ITS OWN INDEPENDENT EVALUATION OF THE PSYCHOLOGICAL AND EMOTIONAL STABILITY OF MOTHER/APPELLANT WITHOUT THE PROFESSIONAL OPINION,

BASED ON DIAGNOSTIC TESTS, OF A FORENSIC PSYCHOLOGIST.

{¶55} In its judgment entry the trial court refers to appellant's "lack of maturity or emotional stability," "emotional disposition," and "losing emotional control." It relies on these findings in part in reaching its decision to grant custody to appellee.

{¶56} Appellant argues that if the court intended to rely heavily on her emotional or psychological condition, it should have required a psychological evaluation. She contends the court erred in relying on its independent conclusions without an examination and report from a certified professional.

{¶57} The knowledge a trial court gains through observing the parties during a court proceeding (i.e., by observing their demeanor, gestures, and voice inflections and using these observations in weighing the credibility of the proffered testimony) cannot be conveyed to a reviewing court by a printed record. *Ossco Properties, Ltd. v. United Commercial Prop. Grp., L.L.C.*, 197 Ohio App. 3d 623, 2011-Ohio-6759, 968 N.E.2d 535, ¶7. Therefore, we should be guided by the presumption that the trial court's findings were indeed correct. *Id.*, citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 461 N.E.2d 1273 (1984).

{¶58} The court was in the best position to observe appellant. The record reflects several instances of appellant acting uncooperatively or raising her voice during the trial. (Tr. 9, 16, 23, 63). But the record does not reflect things such as appellant's tone of voice, facial expressions, and overall demeanor during the trial. These are things only the trial court could observe. We will not second-guess the trial court's observations.

{¶59} Moreover, in this case, the court heard testimony from appellee, appellee's girlfriend, and the GAL regarding appellant's emotional, obscenity-filled outbursts. And appellant acknowledged these outbursts. Thus, the court did not rely solely on its observations but also on the evidence presented in making its findings.

{¶60} Accordingly, appellant's fourth assignment of error is without merit.

{¶61} Appellant's fifth assignment of error states:

THE TRIAL COURT ERRED BY IMPROPERLY FOCUSING ON A "REPROVAL OF THE MOTHER" STANDARD IN DETERMINING THE BEST INTEREST OF THE CHILD.

{¶62} In her final assignment of error, appellant contends the trial court considered several non-statutory factors in granting custody to appellee. She points out the court repeatedly addressed her immaturity and emotional stability. She also points out the court found she lacked stability when it came to housing, employment, and relationships. And she asserts the court looked to her income as compared to appellee's income. Appellant argues the trial court failed to address how these factors have had a direct adverse impact on C.H. She asserts the trial court's evaluation of her lifestyle constituted using a "reproval of the mother" test as opposed to a true best interest of the child test.

{¶63} The "reproval of the mother" test improperly focuses on finding fault with the mother in her lifestyle choices instead of focusing on the best interest of the child and whether the mother's choices have direct adverse impact on the child. *Lamont v. Lamont*, 11th Dist. No. 2005-G-2628, 2006-Ohio-6204, ¶40; *Rowe v. Franklin*, 105 Ohio App. 3d 176, 663 N.E.2d 955 (1st Dist.1995).

{¶64} In this case, the trial court did not simply focus on appellant's lifestyle choices. It did consider appellant's instability in housing, employment, and relationships. But that was not the only factor the court considered. The court cited many other factors in reaching its decision. It considered the fact that appellant cut off appellee's contact with C.H. after he filed his motion for custody. It considered appellant's verbal abuse and lack of emotional control. It considered evidence that appellant has failed to adequately address C.H.'s hygiene and dental care. It considered appellant's "angry, confrontational, and emotional" disposition during trial. Moreover, the court considered appellee's stability in his housing, employment, and personal relationships. It considered appellee's level of maturity and understanding of C.H.'s "physical, moral, mental and emotional needs." The court took into consideration that appellee was the parent more likely to honor court orders of

visitation. And the court considered that C.H. looks to appellee as a greater source of safety and security.

{¶65} The court's judgment entry makes clear that it did not simply focus on the "reproval of the mother" test in reaching its decision. While the court did consider appellant's lifestyle, this was just one of a multitude of factors that it considered. It was not the sole basis of the court's decision. As discussed in detail in appellant's second assignment of error, the trial court considered the relevant statutory best interest factors in addition to other factors it found significant in granting appellee's motion for custody.

{¶66} Accordingly, appellant's fifth assignment of error is without merit.

{¶67} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, J., concurs.

DeGenaro, J., concurs.