[Cite as *Patrick v. Patrick*, 2017-Ohio-9380.]

STATE OF OHIO, CARROLL COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

VICTORIA D. PATRICK	)	CASE NO. 17 CA 0913
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
ROBERT J. PATRICK	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas, Domestic Relations Division, of Carroll County, Ohio
Case No. 2008 DRC 25458

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee:

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For Defendant-Appellant:

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

Dated: December 18, 2017

[Cite as *Patrick v. Patrick*, 2017-Ohio-9380.]
WAITE, J.

{¶1} Appellant Robert J. Patrick appeals the decision of the Carroll County Court of Common Pleas, Domestic Relations Division, terminating a shared parenting agreement. Appellant and Appellee Victoria D. Patrick agreed to share parenting of the three children born of their marriage at the time they dissolved the marriage in 2008. Shared parenting was modified in 2010 and again in 2012. Two of the children have been emancipated. The parties' minor child, who was ten years old at the time of the trial court hearing on this matter, is the only child subject to this matter.

{¶2} Appellant presents several contentions on appeal. First, that the trial court erred in terminating the shared parenting agreement because there was no change in circumstances warranting termination. Second, that the trial court erred in finding Appellant engaged in domestic violence against Appellee during the marriage. Third, that the trial court erred in concluding termination of shared parenting was in the best interest of the child. Fourth, that the trial court erred in considering the testimony of the guardian ad litem appointed in the matter. Finally, Appellant claims that the trial court exhibited bias against him.

{¶3} A review of the record, including all of the testimony given at trial, reveals that the trial court did not exhibit bias toward Appellant and did not err in considering the testimony of the guardian ad litem. Moreover, the trial court, correctly utilizing a best interest analysis, concluded that it was in the best interest of the minor child to terminate the shared parenting agreement. Accordingly, Appellant's assignments of error are without merit and the judgment of the trial court is affirmed.

Procedural and Factual History

{¶4} The parties were married on March 20, 1998. While the parties had three children, two are emancipated and are not the subjects of this appeal. The third child, born in 2006, was ten years old at the time of the trial court order at issue. The parties filed a petition for dissolution of marriage on April 14, 2008. The dissolution was finalized by agreed judgment entry which incorporated a separation agreement and a shared parenting plan on June 2, 2008.

{¶5} On September 22, 2009, Appellant filed a motion to modify the shared parenting agreement. The original agreement stated that Appellant was to have alternating weekend visitation and visitation around his work schedule. Appellant sought more visitation time and sought to require that Appellee give advanced notice of her planned vacations. A pretrial order was issued requiring the parties to maintain the status quo until the matter came for hearing and to refrain from directly or indirectly speaking about court matters with the children. On January 28, 2010, a guardian ad litem was appointed. This same guardian ad litem has remained in that position throughout the entirety of the parties' proceedings.

{¶6} At the final hearing on the motion on July 14, 2010, counsel for Appellant read an agreed judgment entry into the record which modified the original agreement. Appellee was to continue to be the residential parent for school purposes. The visitation schedule was adjusted to accommodate the parties' schedules. The parties were responsible for transporting the children to and from school and each other's residences for visitation, and the parties agreed that if either

party moved out of Carroll County, that party would be responsible for getting the children to school at the end of their visitation period. The parties also agreed to transport the children to any extracurricular activities scheduled during their respective visitation times. The parties agreed to equally share the cost of the children's uninsured medical and extracurricular activity expenses.

{¶7} On December 15, 2010, less than six months from their agreed modification, Appellee filed a motion in contempt. Appellant, who had moved out of Carroll County, was refusing to transport the children to school. On January, 12, 2011, Appellant filed another motion to modify the shared parenting plan. Attached to the motion was Appellant's affidavit in which he claimed that Appellee had gotten the police involved during exchanges of the children, which was upsetting them and increasing the animosity between the parties. Appellant also stated in the affidavit that Appellee had made disparaging remarks about Appellant to the children. Appellant filed a motion requesting an in camera interview of their younger daughter regarding her desire to attend school in Louisville (where Appellant lived) rather than Carrollton.

{¶8} On December 19, 2011, Appellee filed a motion seeking an immediate hearing because Appellant had refused permission for the parties' oldest child to obtain a passport and join her mother on a mission trip scheduled for early 2012.

{¶9} On January 31, 2012, while Appellant's motion to amend the shared parenting agreement was still pending, Appellee filed a motion for an *ex parte* order requesting the court to issue an order allowing the parties' oldest child to attend a

mission trip with Appellee to the Dominican Republic. The trial court granted Appellee's *ex parte* order on February 1, 2012.

{¶10} On May 4, 2012, Appellant filed a motion to withdraw all pending motions to reallocate parenting rights and responsibilities. Appellant stated that his reason for withdrawing these motions was that the protracted litigation was damaging to the children. As Appellee's motion for contempt was still pending at this time, the trial court scheduled a contempt hearing.

{¶11} On June 14, 2012, Appellee filed to dismiss her contempt action, but also filed a motion to modify custody and/or parental rights and responsibilities, seeking to have the shared parenting agreement terminated due to Appellant's failure to abide by its terms. The original guardian ad litem was once again appointed in the matter.

{¶12} On July 26, 2012, Appellant filed his own motion to amend the shared parenting plan along with a motion requesting an in camera interview of the children by the court. The matter was heard on September 18, 2012, at which time the parties read another agreed judgment entry into the record. This time, the shared parenting plan was modified to a 2-2-5 schedule, where Appellant was to have parenting time every Monday and Tuesday, Appellee was to have parenting time every Wednesday and Thursday, and the parties were to alternate weekend visitation. The parties also agreed to coordinate with Appellee's work schedule.

{¶13} On March 5, 2014, Appellant filed another motion for reallocation of parental rights and responsibilities and a motion to modify and/or terminate the

shared parenting plan. Appellant attached a sworn affidavit to the motion, stating that Appellee alienated the oldest child from him, that the minor child should be transferred from the Carrollton school he was attending to the Louisville school district to join a sibling, who was living with Appellant and attending a Louisville school. Appellant also alleged that Appellee had a number of paramours in her life, which was not in the children's best interest. Appellant asserted that visitation exchanges were becoming emotionally stressful. The guardian ad litem was once again appointed in the matter.

{¶14} While Appellant's motion was pending, Appellee filed a motion *ex parte*, seeking an order that visitation between Appellant and the minor child be immediately terminated. Attached to the motion was an affidavit from Appellee and two letters from the child's long-time counselor. Appellee requested that the letters "not be released to the public or directly to the parties due to the sensitive matters contained therein." (4/17/14 Motion for *Ex Parte* Order). In her motion, she requested the letters be made available for inspection by Appellant but that neither party should be given copies. These letters have not been made part of the record and are not before this Court. In her affidavit, Appellee says the child's counselor told her that contact with Appellant was very stressful for the child and that the child was afraid Appellant was going to kill Appellee.

{¶15} On April 17, 2014, the trial court granted Appellee's *ex parte* motion and ordered all companionship between Appellant and the child to immediately cease until further order of the court. On April 21, 2014, Appellant filed a motion for

immediate review. According to a second such motion filed on June 23, 2014, the guardian ad litem recommended Appellant be given two, four-hour visits with the child, supervised by Appellant's sister before returning to the regular parenting time schedule, but Appellee refused to cooperate with this recommendation. On June 25, 2014 a hearing was held. At the conclusion of the hearing, the trial court issued an entry ordering the parties to adhere to the visitation as recommended by the guardian ad litem.

{¶16} On November 26, 2014, Appellee again filed her own motion to modify and/or terminate the shared parenting agreement. The court once again appointed the original guardian ad litem. On March 19, 2015, Appellee filed a motion requesting an in camera interview with the parties' minor child. On May 14, 2015, Appellant withdrew his motion for reallocation of parental rights and responsibilities and termination of the shared parenting plan. On August 16, 2016, the guardian ad litem filed a motion to submit her report under seal due to the highly contentious nature of the case. Throughout the remainder of the proceedings, the guardian ad litem requested that all of her reports be filed under seal, out of concern that the parties were sharing the contents of her reports with the child and causing additional anxiety. The trial court granted the guardian's requests. A report of the court's in camera interview of the minor child was also filed under seal in this matter. On November 9, 2016, Appellant filed a motion to show cause regarding unpaid medical expenses for the minor child.

{¶17} On November 18, 2016, a hearing was held on Appellee's motion to modify or terminate shared parenting. At the conclusion of the hearing, the trial court ordered the parties to submit proposed findings of fact and conclusions of law. These were submitted by both parties on December 12, 2016. On December 20, 2016, the trial court issued a judgment entry stating that after consideration of all factors, including those set forth in R.C. 3109.04(F)(1)(a)-(j) and R.C. 3109.04(F)(2)(a)-(e), termination of the shared parenting plan was in the best interest of the child. Appellant timely appealed, raising six assignments of error.

{¶18} Appellant's first, second, third, fourth and fifth assignments of error all relate to the termination of the shared parenting agreement and, specifically, the factors on which the trial court relied in ordering termination of shared parenting. Due to the overlapping nature of Appellant's first five assignments of error, they will be addressed together.

ASSIGNMENT OF ERROR NO. 1

WHETHER THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MODIFYING THE TERMS OF THE SHARED PARENTING PLAN OF SEPTEMBER 18, 2012.

ASSIGNMENT OF ERROR NO. 2

WHETHER THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN TERMINATING THE PARTIES' SHARED PARENTING PLAN OF SEPTEMBER 18, 2012.

ASSIGNMENT OF ERROR NO. 3

WHETHER THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN FINDING THAT THERE WAS A HISTORY OF DOMESTIC VIOLENCE BY APPELLANT AGAINST HER DURING THE PARTIES' MARRIAGE.

ASSIGNMENT OF ERROR NO. 4

WHETHER THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MAKING A FINDING THAT A TERMINATION OF THE SHARED PARENTING PLAN WAS IN THE BEST INTERESTS OF THE MINOR CHILD AND NOT INCLUDING ANY FINDINGS RELATED TO APPELLANT'S TESTIMONY OR THE TESTIMONY OF HIS WITNESSES.

ASSIGNMENT OF ERROR NO. 5

WHETHER THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN GIVING THE GUARDIAN AD LITEM'S TESTIMONY ANY WEIGHT WHATSOEVER.

{¶19} In his first assignment of error, Appellant contends the trial court erred in modifying the shared parenting agreement. In the remaining assignments of error Appellant acknowledges that the shared parenting agreement was terminated, but alleges that the judge's decision to terminate was wrong. Thus, Appellant argues both the change in circumstances standard required to modify a shared parenting plan pursuant to R.C. 3109.04(E)(1)(a) and the Ohio Supreme Court's holding in

Davis v. Flickinger, 77 Ohio St.3d 415, 674 N.E.2d 1159 (1997), as well as the best interest standard found in R.C. 3109.04(E)(2)(c).

{¶20} Although Appellant argues against both modification and termination, it is clear from the record that the trial court terminated the shared parenting plan. Although the court did refer to a change of circumstances, the trial court ultimately conducted the appropriate best interest analysis utilizing the correct statutory factors. Therefore, it is apparent that Appellant's first assignment of error, regarding whether there was a change in circumstances warranting modification of the shared parenting agreement is without merit, as shared parenting was terminated. Appellant's first assignment of error is overruled.

{¶21} An appellate court reviews a trial court's decision to terminate a shared parenting plan under an abuse of discretion standard. *See Masters v. Masters,* 69 Ohio St.3d 83, 85, 1994-Ohio-483, 630 N.E.2d 665. A court's determination regarding child custody matters that 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. An abuse of discretion is more than a mere error of judgment; it requires a finding 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).

{¶22} Pursuant to R.C. 3109.04(E)(2)(c), a trial court may terminate a shared parenting plan "upon the request of one or both of the parents or whenever it

determines that shared parenting is not in the best interest of the children." R.C. 3109.04(E)(2)(c).

{¶23} This Court, as well as many of our sister districts, has held that the trial court should utilize the best interest standard in determining whether to terminate a shared parenting agreement. *Kougher v. Kougher,* 2011-Ohio-3411, 957 N.E.2d 835, (7th Dist.). See *Beismann v. Beismann,* 2d Dist. No. 22323, 2008-Ohio-984, ¶ 11-13; *In re J.L.R.*, 4th Dist. No. 08 CA 17, 2009-Ohio-5812, ¶ 28; *Poshe v. Chisler*, 11th Dist. No. 2010-L-017, 2011-Ohio-1165, ¶ 21. In determining whether shared parenting is in a child's best interest, a trial court must consider all of the R.C. 3109.04(F)(1) and (2) factors. This Court noted in *Schmidt v. Schmidt,* 7th Dist. No. 11 MO 6, 2012-Ohio-5252, ¶ 24:

> When allocating parental rights and responsibilities in an original decree or in any proceeding for modification, the court shall consider the child's best interests. R.C. 3109.04(B)(1). To determine best interests, the court shall consider all relevant factors including: (a) the parents' wishes; (b) the child's wishes if the court has interviewed the child; (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 interests; (d) the child's adjustment to home, school, and community; (e) the mental and physical health of all relevant persons; (f) the parent more likely to honor and facilitate court-approved parenting time rights or companionship rights; (g) whether either parent

> has failed to make all child support payments pursuant to a child support order; (h) whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to certain criminal offenses involving children; (i) whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with a court order; and (j) whether either parent has established a residence, or is planning to establish a residence, outside of Ohio. R.C. 3109.04(F)(1)(a)-(j). The allocation of parental rights and responsibilities deals with the designation of the residential parent and legal custodian to one parent or to both (as in many shared parenting decrees). *Fisher v. Hasenjager,* 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 542, ¶ 23-25.

{¶24} The trial court must also consider the factors listed in R.C. 3109.04(F)(2). These include the ability of the parties to cooperate, the ability of each parent to foster love and affection between the child and the other parent, geographic proximity of the parties, the recommendation of the guardian ad litem, and a history of or potential for child abuse, spouse abuse, or other domestic violence or kidnapping by a parent. R.C. 3109.04(F)(2)(a)-(e). While the trial court must consider all relevant factors, there is no requirement that the court set forth its analysis of each of the factors in the judgment entry. However, the court’s findings

must be supported by some competent, credible evidence of record. *In re K.E.C.,* 7th Dist. No. 13 CO 50, 2015-Ohio-2322, ¶ 34.

{¶25} Appellant contends the trial court did not properly consider certain factors in its analysis. He claims that neither parent wanted the shared parenting agreement terminated; that Appellee never expressed a desire to terminate the plan and that the court noted Appellant wanted to continue shared parenting. The record shows, however, that Appellee filed a motion to modify and/or terminate the shared parenting agreement on November 26, 2014. Had Appellee desired only modification she could have filed such a motion. Appellant himself has filed two separate motions to terminate the shared parenting agreement, voluntarily dismissing his most recent motion just months before the hearing in this matter. Finally, pursuant to R.C. 3109.04(E)(2)(c), the trial court may terminate a shared parenting agreement not only on a party's motion, but also if the trial court determines on its own that shared parenting is no longer in the best interest of the child. Here, the trial court determined after analysis of the relevant statutory factors, continuing the shared parenting plan was not in the child's best interest.

{¶26} Appellant also asserts that the trial court erred in considering the child's relationship with his parents and siblings, claiming this was based "solely upon the testimony of Appellee and the Guardian." (Appellant's Brf., p. 16.) In its judgment entry the trial court concluded:

> The child's interaction and interrelationship with his mother is good based upon the testimony of Mother and the Guardian ad Litem. The

> child's interaction with Father is good, but the interrelationship is problematic based on the testimony of Mother and the Guardian ad Litem.

(12/20/16 J.E., pp.3-4.)

{¶27} Appellant claims it was error for the court to disregard the testimony of his sister that he was a good father and had positive interactions with the child. The trial court was in the best position to judge the credibility of the witnesses including their demeanor, inflections and presentation. *McBride v. McBride,* 12th Dist. No. CA2011-03-061, 2012-Ohio-2146, 971 N.E.2d 1007, ¶ 19. The trial court here, after reviewing the evidence, including witness testimony and multiple guardian ad litem reports, concluded that based on this evidence, the minor child's relationship with Appellant was problematic. The trial court's determination was supported by competent, credible evidence and, as trier of fact, the judge was in the best position to decide the credibility of the witnesses.

{¶28} Appellant contends no evidence was presented as to which parent was more likely to honor and facilitate court-approved parenting time. To the contrary, the testimony at trial by Appellee was that, on more than one occasion, Appellee was forced to call police to Appellant's home in order to facilitate transfer of parenting time. On one occasion, the minor child was being hidden from Appellee in Appellant's residence and was not released to her care. Appellant elected to move to Louisville, which was another school district, and sought to have the child relocate and attend school there despite the fact that the child was happy at his current

school. The record is also replete with evidence that Appellant did not facilitate the minor child's ability to participate in extracurricular activities that fell during his parenting time and refused to transport the child to these activities. Moreover, there was testimony by the guardian ad litem that both parties spoke to the child about adult concerns, including legal issues. On at least one such occasion, Appellant interrogated the child during a car ride to the point where the child became upset and began crying. The court found that when Appellant asked for adjustments or additional parenting time, Appellee accommodated him. Appellant never reciprocated or allowed Appellee to have additional parenting time. This record shows that Appellant's second assignment of error is without merit and is overruled.

{¶29} Appellant takes issue with the trial court's finding regarding domestic violence. In its judgment entry the trial court noted:

> Mother testified that there was a history of domestic violence by Father against her during their marriage, but no police reports were ever generated and charges were never levied against Father. Father denied all allegations. Further, Mother and the Guardian ad Litem testified to an incident involving a physical altercation between Father and the oldest child, who was a minor at the time of the incident, but no police report was ever generated and no charges were ever levied against Father. Father denies any physical altercation during the incident in spite of the visible bruises on the child's arm which appeared after she was at Father's.

(12/20/16 J.E., pp. 6-7.)

{¶30} The guardian ad litem reports, filed under seal, were reviewed by this Court. Appellee filed an *ex parte* motion seeking the immediate termination of parenting time between Appellant and the minor child based on the recommendation of the guardian ad litem and the concerns of the child's counselor. Our review of this record does reveal evidence that Appellant exhibited some abusive conduct toward his family members and it had a negative effect on the minor child. The trial court did not abuse its discretion in making this finding and Appellant's third assignment of error is without merit and is overruled.

{¶31} Appellant complains that the trial court should not have terminated shared parenting based on the parties' failure to cooperate and communicate. However, the parents' inability to effectively cooperate or communicate constitutes grounds for terminating a shared parenting decree. *Duricy v. Duricy,* 11th Dist. No.2009-T-0078, 2010-Ohio-3556, ¶ 43. See also *Beismann v. Beismann,* 2d Dist. No. 22323, 2008-Ohio-984, ¶ 44-45 (holding that continuation of shared parenting is not in a child's best interest when a parent refuses to cooperate in sharing the care of the child); *A.S. v. D.G.,* 12th Dist. No. 2006-05-017, 2007-Ohio-1556, ¶ 52-54 (affirming the trial court's decision to terminate a shared parenting decree because the parents could no longer cooperate and communicate with each other regarding the child).

{¶32} Appellant first argues it was error for the court to find that the parties' inability to cooperate with one another constitutes a change in circumstance sufficient

to modify the shared parenting agreement. Again, the trial court did not need to find a change in circumstance had occurred in order to terminate their shared parenting. In evaluating the termination of the shared parenting agreement under the best interest standard, the record shows that the parties were unable to communicate or cooperate with one another. Although Appellant describes the conflict as minimal, because two modifications of the shared parenting agreement where achieved by agreed judgment entries, Appellant mischaracterizes the parties' history. As discussed earlier, after the parties' dissolution was finalized in 2008, the parties have remained in almost constant litigation. Both parties have filed multiple motions to modify and/or terminate the shared parenting agreement; an *ex parte* motion terminating parenting time for Appellant was ordered; the minor child has been in counseling since the parties' dissolution, as well as in ongoing contact with the guardian ad litem who has been appointed and reappointed by the trial court multiple times. In fact, as Appellant notes, the child calls to the guardian ad litem "Aunt," due to the fact that she has remained a constant presence in the child's young life. Thus, Appellant's characterization of the parties' interactions as amicable is belied by the record in this matter.

{¶33} Appellant also takes issue with the child's anxiety being a factor which warranted termination of shared parenting. Although Appellant argues the child's anxiety issues do not involve a change in circumstance, we again note that our review here falls under the best interest analysis. The trial court conducted an in camera interview with the child, filed under seal.

{¶34} In its final judgment entry, the trial court held:

> As testified to by the Guardian ad Litem and Mother, the child has been diagnosed with a clinical case of anxiety. Mother testified that the child is being treated for his anxiety by a medical doctor and a counselor. The issue of the child's anxiety is of particular concern to the Court. The child's anxiety condition is not debatable. It is real and deserving of insightful and competent treatment by medical professionals and acknowledgment by each parent.

(12/20/16 J.E., p. 4.)

{¶35} Appellant contends that in reaching his determination, the trial court relied on improper expert medical testimony by Appellee, who is employed as a registered nurse. The record reflects that the trial court did not attempt to qualify Appellee as a medical professional in her testimony regarding the child's diagnosis. The judge did inquire about her employment as a nurse and how it relates to her familiarity with the child's care and medication. She indicated the child was prescribed medication to help him sleep and that Appellant was not reliable about giving the child the medication. She also testified that without counseling and medication the child was highly anxious, and that Appellant was in denial that the child had any anxiety problems. (Tr., pp. 81-82.) Appellee testified that all three of their children had experienced problems with anxiety. Appellant claims this was improper medical testimony. Our review indicates that Appellee was testifying, not about any expert medical knowledge of anxiety disorders or the efficacy of a

particular drug relative to the child's anxiety, but instead about the medical history of her children and how they behaved in relation to their anxiety. There was no attempt to qualify Appellee as a medical expert. She testified merely as a mother discussing the health issues of her children.

{¶36} Appellant contends that in finding the parties were uncooperative, the trial court failed to take into account the testimony presented by Appellant and his witnesses at trial. Appellant, his girlfriend Angela Farro, and Appellant's sister all testified. Appellant states that each witness opined that Appellant was a great father and that the minor child was comfortable and happy in his presence. The final judgment entry of the court does not mention the testimony of any of these witnesses nor is it required to do so. Again, this is a matter of credibility. An appellate court presumes the findings of the trier of fact are correct on this issue because the trial court had the opportunity, "to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *State v. Wilson,* 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24. Therefore, this record does not reflect that the trial court abused its discretion in making its determination on the credibility of the witnesses. Because the record shows that the parties were unable to adequately communicate or cooperate, Appellant's fourth assignment of error is without merit and is overruled.

{¶37} In his fifth assignment of error, Appellant contends the trial court erred in considering, in any manner, the testimony of the guardian ad litem. Appellant does not argue that the guardian ad litem was not qualified or was biased or incompetent.

Appellant simply argues that the guardian ad litem's testimony should be completely disregarded because it was inconsistent. Specifically, Appellant contends that the guardian ad litem was not certain how much time she had spent with the minor child, but thought it was eight years. Despite having testified that she has spent approximately eight years on this matter, she could not state with certainty how long she had been directly involved. (Appellant's Brf., p. 23.) Appellant claims that the guardian ad litem spent only ten hours with the child over the span of eight years. However, Appellant did acknowledge that the guardian ad litem was referred to "Aunt" because she was so well known to the child. Despite this, Appellant argues that the guardian ad litem was not as involved with the matter as she purported to be. He also contends that the guardian ad litem's testimony at trial differed from the disclosures contained within her report of March 26, 2015.

{¶38} In general, a court appoints a guardian ad litem to a child in order to investigate that child's situation and to make a recommendation to the court regarding the child's best interest. R.C. 3109.04(C); *Ferrell v. Ferrell,* 7th Dist. No. 01AP0763, 2002-Ohio-3019, at ¶ 43, citing *In re Baby Girl Baxter,* 17 Ohio St.3d 229, 232, 479 N.E.2d 257 (1985). However, the ultimate decision on custody matters is for the trial judge. A guardian ad litem appointed in a child custody matter will be deemed to have fulfilled his or her statutory duty where the guardian's conclusions are supported by the evidence presented. *Burnip v. Nickerson,* 7th Dist. No. 07-CO-42, 2008-Ohio-5052, ¶ 49. A trial court's consideration of a guardian ad litem's report does not violate a party's right to due process as long as that party had an

opportunity to cross-examine the guardian ad litem on issues raised in the report. *In re Hoffman,* 97 Ohio St.2d 92, 776 N.E.2d 485, 2002-Ohio-5638, ¶ 25.

{¶39} There is ample evidence in the record before us that the guardian ad litem appointed in this matter was well acquainted with the minor child in this matter. Since her original appointment in 2008, the guardian ad litem filed numerous reports and supplemental reports. After she became concerned that the parties were utilizing disclosures in the reports to question the children about court matters, she consistently requested that her reports be filed under seal. The record contains at least nine full reports as well as supplemental reports. From these, it is clear that the guardian ad litem spent several hours not only with the children but with the parties, their significant others, and with the children's school officials and counselors. She visited numerous locations and interviewed the children one on one without the parents present. The guardian ad litem also attended the in camera interview of the minor child at issue in this appeal. Although in early reports the guardian recommended the parties continue their attempts to communicate and adhere to the shared parenting agreement, in later reports (which included communications with the child's counselor) she changed this view based on her communications.

{¶40} Both parties were given the opportunity to cross-examine the guardian ad litem at trial. Counsel for Appellant conducted a cross-examination and inquired at length regarding these issues, including the guardian's relationship with the minor child and her recommendation that the shared parenting agreement be terminated. Prior to her testimony, the trial court did admonish both parties that, as many of the

reports were filed under seal, the guardian ad litem's testimony would be framed accordingly. Appellant's trial counsel inquired about the guardian's reports, including the earlier recommendations that the parties maintain shared parenting. Counsel also inquired about the guardian's current recommendation, to which she responded that she recommended shared parenting be terminated and that Appellant receive parenting time on alternating weekends. (Tr., p. 24.) She testified that the child experiences a great deal of anxiety and that because two older siblings were emancipated and had moved out of both parties' homes the child's level of anxiety would increase if the shared parenting agreement continued without the support of his siblings. (Tr., p. 26.)

{¶41} Any change of recommendation or opinion as to the termination of the shared parenting agreement by the guardian ad litem was fully addressed by Appellant's trial counsel. Appellant disagrees with the guardian's recommendation, but there is competent, credible evidence in the record to support this recommendation. Hence, the trial court did not err in considering her recommendation. Appellant's fifth assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 6

WHETHER THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN EXHIBITING BIAS TOWARD APPELLANT AND PARTIALITY TOWARD APPELLEE.

{¶42} In his sixth assignment of error, Appellant alleges the trial court was biased against him and partial to Appellee. Specifically, Appellant contends the trial court interrogated him in a combative manner while demonstrating partiality toward Appellee. In support, Appellant cites to trial court questioning regarding Appellant's statement that he was proud of a daughter for choosing to serve in the military. The following exchange occurred:

> [THE COURT]: Did you ever mention [the child's] weight in front of [the minor child]?
>
> [APPELLANT]: Never. I am proud of that girl. She's going to serve this country in May.
>
> THE COURT: She hasn't severed [sic] yet.
>
> [APPELLANT]: She's sworn in.
>
> THE COURT: Were you proud of her before she got sworn in and she was going to serve the country or just about the fact that your child wants to serve?
>
> [APPELLANT]: I have been proud of --
>
> THE COURT: The way you said that, you didn't include the fact that you were proud of her before that. And then you tried to vouch the fact that she's going to in [sic] the active military that that's something to hang your hat on.

> [APPELLANT]: No, that's the not case [sic]. I've always been proud of all my children.
>
> THE COURT: Why didn't you say it that way?
>
> [APPELLANT]: Because I'm here and I'm stressed out thinking I'm going to lose my children.

(Tr., p. 168.)

{¶43} Evid.R. 614(B) permits a trial judge to question a witness as long as the questions are relevant and do not suggest a bias for one side or the other. *State v. Blankenship*, 102 Ohio App.3d 534, 548, 657 N.E.2d 559, 567-568 (1995). Absent a showing of bias, prejudice, or prodding of the witness to elicit partisan testimony, it is presumed that the trial court acted impartially to ascertain a material fact or develop the truth. *Id.* A trial court's interrogation of a witness is not deemed partial for purposes of Evid.R. 614(B) merely because the evidence elicited during the questioning is potentially damaging to the defendant. *Id.*

{¶44} In a jury trial there is a concern that the trial judge may influence the jury by cross-examining the witnesses. However, this was a bench trial. The trial court judge is presumed to have considered only relevant evidence and to remain unbiased. *Jalm Marion, LLC v. Fair Park Enterprises, Inc.*, 3d Dist. No. 9-16-42, 2017-Ohio-4350, ¶ 23.

{¶45} In addition, pursuant to Evid.R. 611, a trial court has discretion to control the flow of a trial. *State v. Prokos*, 91 Ohio App.3d 39, 44, 631 N.E.2d 684, 687 (1993). Since a trial court's powers pursuant to Evid.R. 611 and 614 are within

its discretion, a court reviewing a trial court's questioning of and comments to a witness must determine whether the trial court abused its discretion. *Mentor–on–the–Lake v. Giffin*, 105 Ohio App.3d 441, 448, 664 N.E.2d 557, 561–562 (1995).

{¶46} While that portion of the transcript cited by Appellant may reflect a rather inartful line of questioning, a review of the transcript fails to demonstrate the trial court abused its discretion under Evid.R. 611 or 614(B). The trial court's questions and comments reflect an effort to obtain evidence necessary to determine whether termination of the shared parenting agreement was in the best interest of the child. This isolated example cited by Appellant, when placed in context, simply reflects such evidence gathering and fails to demonstrate the trial court exhibited bias against Appellant. Accordingly, Appellant's sixth assignment of error is without merit and is overruled.

{¶47} In conclusion, Appellant has failed to demonstrate the trial court abused its discretion in terminating the parties' shared parenting agreement. The record contains competent, credible evidence that the trial court examined the relevant statutory factors in determining that a termination of shared parenting was in the best interest of the child. Moreover, the trial court did not err in considering the testimony and reports of the guardian ad litem and Appellant was provided an opportunity to cross-examine the guardian at trial. Finally, the record does not reflect the trial court demonstrated any bias toward Appellant or partiality toward Appellee. Based on the foregoing, all of Appellant's assignments of error are without merit and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

DeGenaro, J., concurs.