[Cite as *In re D.D.*, 2020-Ohio-6972.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

IN THE MATTER OF:

D.D. and D.D.

OPINION AND JUDGMENT ENTRY
Case No. 20 MA 0069

Civil Appeal from the
Court of Common Pleas, Juvenile Division, of Mahoning County, Ohio
Case Nos. 2009 JC 01744 JUV; 2016 JH 00146 JUV

BEFORE:
Cheryl L. Waite, Gene Donofrio, Carol Ann Robb, Judges.

JUDGMENT:
Reversed and Remanded.

Atty. Mark Lavelle, 940 Windham Ct., #7, Youngstown, Ohio 44512, for Appellant.

Atty. Frank Cassese, 7330 Market Street, Youngstown, Ohio 44512, for Appellee. No Brief Filed.

Dated: December 16 2020

WAITE, P.J.

{¶1} In this accelerated appeal, Appellant D.D. ("Father") appeals from a judgment of the Mahoning County Court of Common Pleas Juvenile Division granting Appellee J.G.'s ("Mother") objections to the magistrate's decision and to the modification of the parties' shared parenting plan. For the following reasons, we reverse the judgment of the trial court and remand the matter for further proceedings to specifically address the best interest of the minor children.

Factual and Procedural History

{¶2} The parties never married and had a sporadic relationship that began when they were in high school. After graduating high school, Father moved into Mother's home with her family. The parties have two children: a son, D.D., born on December 18, 2007 and a daughter, D.D., born on June 7, 2010. Shortly after their son was born the parties separated. The parties reunited when the child was two years old and remained together until October of 2015, when they ended their relationship and Mother left with both children. Father began another relationship and had another child, and married this child's mother in April of 2018. Throughout, the parties had a tumultuous and contentious relationship that affected their ability to manage parenting time with the children. The matter proceeded to the juvenile court where, on July 31, 2018, the court issued a judgment entry establishing a shared parenting plan ("the plan"), pursuant to a memorandum of agreement signed by the parties, which was incorporated. The plan designated both parties as residential parents of the minor children, with Mother as residential parent for school purposes. (7/31/18 J.E.) The plan also provided the following:

> As agreed for school year companionship time, Minor Children shall enjoy companionship time with Father each Wednesday commencing at 3:00 p.m. until 9:30 p.m. and as follows:
>
> Alternating weeks commencing Saturday at 8:00 p.m. until start of the school day on Monday; and
>
> Opposite alternating weeks commencing Friday at 3:00 p.m. until Sunday at 6:00 p.m.

(7/31/18 J.E.)

{¶3} The plan also ordered alternating weeks of visitation during the summer and provided visitation for holidays, vacations, and days of special meaning in accordance with the court's local parenting time schedule. (7/31/18 J.E.)

{¶4} Less than three months later, on October 9, 2018, Father filed a motion to terminate the plan and a motion seeking to reallocate parental rights and responsibilities, contending that Mother failed to comply with the terms of the plan. Father asserted that this amounted to a change of circumstances and that it would be in the children's best interest for Father to be designated as sole residential parent.

{¶5} On December 13, 2018 while the motions were pending, the trial court ordered the parties to mediation. On January 18, 2019, Father filed an *ex parte* motion seeking interim custody of the minor children. In the motion, Father stated he had filed a police report on January 16, 2019, after his daughter told him that Mother's boyfriend struck her across the face with his hand. Father also contended that this boyfriend had physically threatened the parties' son by saying he would beat the child with a belt. A

copy of the police report, which included a photograph of the parties' daughter, was attached to the motion. That same day the trial court granted Father's *ex parte* motion and ordered Father to have interim custody of the children. At the time of trial, Mother was no longer involved with the boyfriend in question.

{¶6} A shelter care hearing was scheduled for January 22, 2019. On February 19, 2019, a magistrate's order was issued finding probable cause for the *ex parte* interim custody order and ordering Father to be designated temporary residential parent for both children. A guardian ad litem ("GAL") was appointed.

{¶7} On February 21, 2019, Mother filed a motion seeking visitation while the matter was pending. A hearing was held on April 4, 2019 and the court ordered supervised visitation for Mother with both children at Hope House. On April 5, 2019, Father filed a motion to suspend child support and to sequester any funds Father had paid while this motion was pending. The trial court granted Father's motion on May 6, 2019.

{¶8} A pretrial hearing was held on June 4, 2019. At the hearing, the GAL recommended companionship between Mother and daughter be increased. The court ordered Mother to have unsupervised visitation with her daughter every Tuesday from 9:00 a.m. to 5:00 p.m. The court ordered Mother's supervised visitation with her son at Hope House to continue according to the existing schedule. Father was ordered to immediately enroll both children in his employer's healthcare program. (6/26/19 J.E.)

{¶9} A final pretrial was held on August 1, 2019. The trial court ordered Mother's visitation at Hope House terminated, and ordered visitation between Mother and daughter

on alternate weekends and every Wednesday. No visitation was granted between Mother and son.

{¶10} Trial commenced on September 10, 2019 before a magistrate. Testimony was presented over four nonconsecutive days between September 10, 2019 and November 25, 2019. After the second day of trial, September 17, 2019 Father filed a motion for an in-camera interview of both children in order to determine the best interest of the children. Separate in-camera interviews of the children were held on October 3, 2019 and were conducted by the GAL. During trial, Father testified on direct. Mother testified only on cross examination. The GAL also testified and submitted a report with her recommendations. The GAL concluded in her report that shared parenting was feasible between the parties. The GAL acknowledged that while the relationship between Mother and son had deteriorated, shared parenting would be beneficial. According to the GAL, if shared parenting was not maintained, Mother would most likely be excluded from the children's lives. Acknowledging that the relationship between Mother and son was no longer good, she revealed that the child had disclosed that Father told him that his Mother lies and is not to be trusted. It was the GAL's opinion Father was using his dislike for Mother to influence the children. The GAL believed that the parties' son should continue counseling in the hope that his relationship with Mother could be repaired. The GAL recommended midweek unsupervised visitation between Mother and son, every other week, and that Mother not smoke around her son. The GAL recommended Father be named residential parent for school purposes only. The GAL opined that Mother should have alternating weekly parenting time with her daughter. Father should be allowed a midweek overnight with his daughter on his off weeks.

{¶11} Following trial, the magistrate issued a decision on January 31, 2020, concluding:

> 1. RC 3109.04(E)(2)(c) allows a Court to terminate an existing Shared Parenting Decree, upon the request of one or both of the parents if it determines that shared parenting is not in the best interest of the Minor Children. If the Court so finds, pursuant to RC 3109.04(E)(2)(d), it shall terminate the Shared Parenting Decrees [sic] and allocate parental rights and responsibilities to one of the Parties. A finding of change in circumstances is not required.
>
> 2. The Court first reviewed the five factors of RC 3109.04(F)(2) to determine if shared parenting is in the best interest of the Minor Children. Mother and Father do not have the ability to cooperate and make decisions jointly nor do they have the ability to encourage the sharing of love, affection and contact between the child and the other parent. Shared parenting is not in the best interest of the Minor Children.
>
> 3. The Court then reviewed the factors of RC 3109.04 (F)(1) to determine the designation of one parent, as sole Residential Parent, as being in the best interest of the Minor Children. While not all factors apply, the following are instructive:
>
> A. 3109.04(F)(1)(a) – wishes of parents. Both parents wish to be designated Residential Parent.

B. 3109.04(F)(1)(b) – wishes of children. The Children were interviewed in-camera. [Son] wants to live with Father and does not want any contact with Mother. [Daughter] would prefer equal time between the parents to "be fair."

C. 3109.04(F)(1)(c) – children's interaction with parents, siblings and others. As noted above, [Son] has completely terminated his relationship with his Mother. He interacts well with his sister, Father, stepmother and stepbrother. [Daughter] enjoy [sic] a good relationship with her Mother, Father and stepmother and both siblings. Both children relate well to the paternal Grandfather, who assists with child care.

D. 3109.04(F)(1)(d) – children's adjustment to home and school. Since residing exclusively with Father, due to the Ex-Parte Order of January 18, 2019, the children's school records of attendance have improved dramatically. Their grades have also improved. Father recently relocated to a home in Boardman, Ohio and the children seem comfortable. [Daughter] has made friends in the new neighborhood.

E. 3109.04(F)(1)(e) – mental and physical health of all Parties – neither parent reports any health problems. [Son] suffers from Eczema and asthma and takes allergy medication an [sic] uses an inhaler. Father complains that Mother's smoking aggravates the asthma. Mother continues to smoke around [Daughter]. Additionally, [Daughter] recently began having bowel movements, soiling her clothes. Father testified that while this problem has

subsided at home, it continues when [Daughter] visits her Mother. Both children see counselors.

F. 3109.04(F)(1)(f) – facilitation of parenting time and visitation. Mother's Hope House visitation with [Son] has been terminated. Under the current order for [Daughter], Father complains that Mother arrives early and returns late. Mother states that Father refuses additional time and refuses telephone contact. Father "leaves it up to the children" to talk to Mother.

G. 3109.04(F)(1)(g) – child support. Father's child support order was suspended on May 6, 2019, after he gained temporary custody. Previously Father had arrearages on both cases.

H. 3109.04(F)(1)(h) – convictions for child abuse or domestic violence. No records of convictions exist for either parent. An allegation of abuse, upon [Daughter], by Mother's boyfriend, on January 17, 2019, did not result in criminal charges filed or a filing by Children Services, who investigated the matter. However, the incident did result in the Ex Parte Order being issued by the Court on January 18, 2019.

I. 3109.04(F)(1)(i) – denial of parenting time. See paragraph "F" above.

J. 3109.04(F)(1)(j) – relocation. Neither parent has immediate relocation plans.

4. The Court finds it to be in the best interest of the Minor Children that Father be designated Residential Parent of both children.

(1/31/20 Magistrate's Decision.)

{¶12} In its decision, the magistrate granted Mother visitation with her daughter pursuant to the local parenting time schedule, and visitation with her son every Wednesday from 5:00 p.m. until 8:00 p.m. year round. The trial court adopted the magistrate's decision the same day.

{¶13} On February 14, 2020, Mother's counsel filed a motion for an extension of time to object to the magistrate's decision in order to obtain a transcript of the trial proceedings. The trial court granted that motion on February 28, 2020, giving counsel an additional 14 days from the date of the order in which to file objections. On March 13, 2020, Mother filed objections to the magistrate's decision. Mother objected to the court's second conclusion, claiming that termination of the shared parenting plan was against the manifest weight of the evidence. Mother contended that the testimony elicited at trial demonstrated that Father was unwilling to cooperate with the shared parenting plan, but that Mother thought it was in the best interest of the children for both parents to be involved. Mother also cited the testimony of the guardian ad litem, who indicated: (1) that a shared parenting schedule would be in the best interest of the parties' daughter; (2) the parties' son was being "negatively influenced by his father, which created dissention between [the son] and his mother." Mother also objected to the magistrate's determination that she negatively impacted the children's health as being against the manifest weight of the evidence. Mother cited her testimony that she no longer smoked around her daughter and both parents testified that their daughter's issues began while

she was with both parents. Finally, Mother objected to the magistrate's conclusion that it was in the children's best interest for Father to be designated residential parent. A copy of the transcript of the four days of testimony was filed with Mother's motion in support of her objections. Father did not file any opposition to Mother's objections.

{¶14} A hearing on Mother's motion was held on May 22, 2020, by means of video conferencing due to the coronavirus pandemic. Both parties were present with counsel. A transcript of the hearing was made part of the record. Counsel for both parties made arguments to the court. Counsel for Mother directed the court to the report and trial testimony of the GAL. Specifically, that the GAL opined shared parenting should continue. Counsel also argued that Father had received interim custody in the ex parte order because of allegations of abuse by Mother's ex-boyfriend, but that no criminal charges were filed and Children Services had closed their investigation of the matter. Counsel acknowledged that Mother previously smoked in front of the children, which was a "lapse of judgment," but that according to her trial testimony, Mother had stopped smoking around the children contrary to the magistrate's findings. (5/22/20 Tr., p. 7.) Counsel acknowledged the parties have a difficult time interacting and communicate primarily through text messaging. Finally, counsel argued that were it not for the issue with the ex-boyfriend, shared parenting would still be in place and that the evidence did not reflect that Mother did anything to warrant termination of the plan.

{¶15} Counsel for Father argued that Mother had refused to provide their son with an inhaler and eczema cream, forcing Father to buy it. Counsel also argued that Mother testified she had smoked in front of the children in the past and did not directly testify under oath that she would not smoke in her home in their presence. As Mother did not

testify on direct, she did not rebut Father's testimony. Finally, counsel argued that Mother was not able to "corral" their son in the morning to get him to go to school, which led to his tardiness, and that school attendance has been much better during Father's interim custody. (5/22/20 Tr., p. 16.) Counsel also cited to Father's testimony that the parties' daughter was having bowel movements in her clothing even though she was now nine years old. Finally, counsel disagreed with the GAL's recommendation that shared parenting should remain in place because of the evidence that the parties did not communicate well.

{¶16} Counsel for Mother rebutted by directing the court to Mother's testimony on cross-examination that she provided Father with an inhaler for their son and that the child's maternal grandfather took it to Father because she was at work and unable to leave. She also testified that Father threatened to call the police if the children's maternal grandfather ever came to Father's home again. Mother highlighted that Father excluded Mother from communicating with the children's school during his interim custody. Counsel also referred the court to Father's testimony that their daughter's bowel issues went back several years, to the time when the parties were still in a relationship together and, contrary to the magistrate's report, was not a product of the current custody disagreement. Finally, counsel on rebuttal raised Father's testimony that he never intervened in their son's tardiness issue, although he was aware of the problem. At the conclusion of the hearing on the objections, the court asked whether the parties would consider mediation. Counsel for Father said it was not needed because the matter was resolved. Counsel for Mother stated she would be interested in mediation to facilitate a shared parenting schedule. (5/22/20 Tr., p. 26.)

{¶17} On May 29, 2020, the trial court issued a judgment entry, concluding:

> Mother asserted the Magistrate erred in denying shared parenting of the Parties' Minor Children. Counsel for the Parties presented their arguments on behalf of their clients. The transcript and Guardian ad Litem's recommendation indicate a great communication divide between the Parents. Both Mother and Father lack the necessary parenting skills needed to work together for the best interest of their children. It is this Court's opinion that both Mother and Father need personal counseling. The Court offered Mediation to resolve the Parents' differences. Mother's counsel agreed to mediation and Father's counsel did not want to participate. However, this Court finds the Guardian ad Litem's recommendation of value. This Court finds that without intervention, the Mother will be excluded from the Minor Children's lives eventually.

(5/29/20 J.E.)

{¶18} The court vacated the magistrate's decision and adopted the recommendations of the GAL. The court ordered the parties' son to continue counseling "with the hope of mending the relationship between Mother and Son." (5/29/20 J.E.) The court also ordered both parents to get personal counseling and participate in the Parent Project Program through the court. The court also adopted the GAL's recommended parenting time schedule and ordered the parties to avoid discussing issues between each other with the children. The court ordered Mother to refrain from smoking around the

children. The GAL was reappointed and the court retained continuing jurisdiction, setting a review hearing for July 8, 2020.

{¶19} Appellant filed this timely appeal.

ASSIGNMENT OF ERROR

> The trial court abused its discretion, committed reversible error and ruled against the manifest weight of the evidence when overruling the awarding of custody of the minor children to their father as the evidence supported the finding that the mother was unsuitable.

{¶20} Appellant challenges the trial court's judgment, complaining that Mother failed to introduce additional evidence or rebut any of the testimony offered by Father regarding: (1) Mother's failure to provide an inhaler and eczema cream for son; (2) Mother's smoking around the children; (3) excessive tardiness and poor school performance during shared parenting; and (4) cohabitating with "potentially dangerous men." (Appellant's Brf., p. 12.)

{¶21} An appellate court reviews custody and parenting time issues for an abuse of discretion. *Davis v. Flickinger,* 77 Ohio St.3d 415, 421, 674 N.E.2d 1159 (1997). 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. Abuse of discretion implies that the court's attitude is unreasonable, arbitrary or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980); *see also Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Moreover, abuse of discretion describes a judgment

neither comporting with the record, nor with reason. *See, e.g., State v. Ferranto*, 112 Ohio St. 667, 676-678, 148 N.E. 362 (1925). Further, an abuse of discretion may be found when the trial court "applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact." *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, 892 N.E.2d 454, ¶ 15 (8th Dist.).

{¶22} R.C. 3109.04 sets forth the processes for allocating parental rights and responsibilities between parents and their minor children. It provides certain requirements for the trial court when either parent or the court seeks to make changes to a shared parenting decree or plan. These requirements differ depending on whether the court ultimately is confronted with determining whether to modify a decree that allocates parental rights and responsibilities, modify a shared parenting plan, or terminate a shared parenting decree and plan.

{¶23} R.C. 3109.04(E)(1)(a) applies when a trial court is confronted with an issue involving modification of a decree that allocates parental rights and responsibilities, including a judicially-ordered shared parenting decree. This modification involves a two-step process involving determining whether a change of circumstances had occurred and best interest of the children. A court does not proceed to a best interest analysis unless a change in circumstances has occurred.

{¶24} Decrees involving shared parenting plans, where the parties have agreed to the terms and conditions of shared parenting, require a slightly different analysis. When modification is sought, either by the parties own agreement or by the trial court *sua sponte*, the court need only explore and evaluate the best interest of the children. These analyses are undertaken pursuant to R.C. 3109.04(E)(2)(a) and (b) or R.C.

3109.04(E)(2)(b), depending on whether modification is sought by the parties or *sua sponte* by the court. Regardless, no change in circumstances need be present.

{¶25} Lastly, the procedures found in R.C. 3109.04(E)(2)(c) are used by the trial court when deciding whether to terminate a shared parenting decree and plan. This procedure again only involves a "best interests" analysis and no change in circumstances need be proven. We note that the parties in this matter had a shared parenting plan they entered into by mutual agreement. This plan was incorporated into their decree.

{¶26} Here, Father filed a motion to terminate the July 31, 2018, shared parenting plan. Thus, the magistrate and trial court were required to conduct a best interest analysis pursuant to R.C. 3109.04(E)(2)(c). It provides:

> The court may terminate a prior final shared parenting decree that includes a shared parenting plan approved under division (D)(1)(a)(i) of this section 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. The court may terminate a prior final shared parenting decree that includes a shared parenting plan approved under division (D)(1)(a)(ii) or (iii) of this section if it determines, upon its own motion or upon the request of one or both parents, that shared parenting is not in the best interest of the children. If modification of the terms of the plan for shared parenting approved by the court and incorporated by it into the final shared parenting decree is attempted under division (E)(2)(a) of this section and the court rejects the modifications, it may terminate the final shared parenting decree if it determines that shared parenting is not in the best interest of the children.

{¶27} It is settled law that when one or more parent files a motion for termination of a shared parenting plan, R.C. 3109.04(E)(2)(c) applies. *Kougher v. Kougher,* 194 Ohio App.3d 703, 2011-Ohio-3411, 957 N.E.2d 835, ¶ 15 (7th Dist.). Again, in order to terminate a shared parenting plan the trial court is not required to find a change of circumstances has occurred, but must determine the termination of the shared parenting plan is in the best interest of the child. *Id.* When considering the best interest of the child, the trial court must consider the factors outlined in R.C. 3109.04(F) and may consider all other relevant factors, as well. R.C. 3109.04(F)(1). It appears from this record that in reaching its decision the magistrate engaged in a review of each of the factors outlined in R.C. 3109.04(F) before concluding that it was in the children's best interest to terminate the shared parenting plan. (1/31/20 Magistrate's Decision.)

{¶28} However, when timely objections to a magistrate's decision are filed, the trial court must conduct an independent review of any issue of fact or law determined by the magistrate. Juv.R. 40(4)(d). Barring some indication to the contrary, an appellate court presumes that the trial court conducted an independent analysis of the magistrate's decision. *Mahlerwein v. Mahlerwein,* 160 Ohio App.3d 564, 2005-Ohio-1835, 828 N.E.2d 153 ¶ 47 (4th Dist.). Therefore, the party asserting error must affirmatively demonstrate the trial court failed to conduct an independent analysis. *Id.*

{¶29} The trial court in this case conducted a hearing on Mother's objections, and counsel for both parties presented arguments. At the conclusion of the hearing, on May 29, 2020, the trial court issued a judgment entry, finding:

> Mother asserted the Magistrate erred in denying shared parenting of the Parties' Minor Children. Counsel for the Parties presented their arguments

on behalf of their clients. The transcript and Guardian ad Litem's recommendation indicate a great communication divide between the Parents. Both Mother and Father lack the necessary parenting skills needed to work together for the best interest of their children. It is this Court's opinion that both Mother and Father need personal counseling. The Court offered Mediation to resolve the Parents' differences. Mother's counsel agreed to mediation and Father's counsel did not want to participate. However, this Court finds the Guardian ad Litem's recommendation of value. This Court finds that without intervention, the Mother will be excluded from the Minor Children's lives eventually.

(5/29/20 J.E.)

{¶30} Based on these findings, the court issued the following orders:

1. Plaintiff's Objections are hereby granted. The Magistrate's Decision filed on January 31, 2020 is hereby vacated.

2. The Court adopts the Guardian ad Litem's recommendation and hereby orders the Minor Son to continue counseling at the Village Network with the hope of mending the relationship between Mother and Son.

3. Mother shall attain her own counselor to address her issues as well as be included in counseling with the Minor Son, at the appropriate time. Father shall also attain his own counselor and address his issues.

4. Both parents are ordered to participate and complete the Parent Project Program at the Court. The Minor Children are still of tender age and the parental relationships can be repaired and restored.

(5/29/20 J.E.)

{¶31} The court also ordered adjustments to the parenting time schedule, ordered the parents to encourage love and affection between the children and the other parent, and reappointed the GAL. The court retained jurisdiction in the matter and set a review hearing for July 8, 2020. In vacating the magistrate's decision that recommended terminating the shared parenting plan and adopting the GAL's recommendations, the trial court actually modified the terms of the shared parenting plan. Although the court indicated it was adopting the GAL's report, the court did not specifically discuss or analyze the reasons for the recommendations of the GAL included within the report. Those recommendations included that shared parenting be maintained but with modifications, that Father be named residential parent for school purposes only, and that Mother have alternating weekly parenting time with her daughter and Father having a midweek overnight with his daughter on his off weeks. The GAL also recommended midweek unsupervised visitation between Mother and her son every other week. Finally, the GAL recommended that Mother not smoke around her son.

{¶32} As earlier discussed, modification of the terms in a shared parenting plan amount to a modification of the decree allocating parental rights and responsibilities, requiring a best interest analysis under R.C. 3109.04(E)(2)(b), as recently clarified by the Ohio Supreme Court in *Bruns v. Green,* 2020-Ohio-4787. Thus, the trial court was required to consider the factors set out in R.C. 3109.04(F) in determining that the

modifications to the shared parenting plan were in the children's best interest. In the shared parenting plan incorporated into the July 31, 2018 decree, the parents agreed that both parents were named residential parents of both children and that Mother was the residential parent for school purposes. (7/31/18 J.E.) In the May 29, 2020, entry the trial court adopted the GAL's recommendations, which included a number of modifications to the original shared parenting plan. Most notably, Father was named residential parent for school purposes and the children were ordered to attend the school district associated with Father's residence, instead of Mother's. The trial court also modified the parenting time schedule for both parents.

{¶33} The statute does not mandate that the trial court separately address each of the best interest factors, and we can presume the trial court considered the R.C. 3109.04(F) factors absent evidence to the contrary. *Redmond v. Davis,* 7th Dist. Columbiana No. 14 CO 37, 2015-Ohio-1198, ¶ 69-73. However, the record must reflect in some way that the court did, in fact, conduct an analysis of the children's best interest.

{¶34} In *Redmond,* the trial court's judgment entry referred to the child's "best interest" twice. Notwithstanding those passing references, we determined that when reading the entry as a whole, we could not conclude the trial court considered the requisite factors. *Redmond,* ¶ 72-77. Thus, using the phrase "best interest" alone, without some other indication that an actual analysis was undertaken, is insufficient to support a trial court decision in these matters.

{¶35} In this case, the trial court does not even use the phrase "best interest" once in its entry. And while a review of this record, including the transcripts, appears to show that the trial court may have had a sufficient basis to make the modifications and that

these may be in the children's best interest, the trial court did not give any indication that it conducted the relevant analysis. Because there is no indication in the judgment entry that the trial court considered the best interest factors of R.C. 3109.04(F), we cannot presume they were actually applied. *Hise v. Laiviera,* 7th Dist. Monroe No. 18 MO 0010, 2018-Ohio-5399, 127 N.E.3d 460, ¶ 63-64. Hence, we remand the matter to the trial court on the narrow issue of conducting a best interest analysis and indicating in some fashion sufficient for review that relevant factors have been considered.

{¶36} Appellant's assignment of error has merit and is sustained.

{¶37} Based on the foregoing, this matter is reversed and remanded with specific instructions to the trial court to apply the best interest analysis utilizing the R.C. 3109.04(F) factors as well as any other relevant factors.

Donofrio, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is sustained and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Juvenile Division, of Mahoning County, Ohio, is reversed. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.