[Cite as *Eitutis v. Eitutis*, 2011-Ohio-2838.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

JUDITH EITUTIS,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-L-121**
- vs -	:	
MICHAEL EITUTIS,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Domestic Relations Division, Case No. 05 DR 000016.

Judgment: Affirmed.

John P. O'Donnell, John P. O'Donnell, L.L.C., 38109 Euclid Avenue, Willoughby, OH 44094 (For Plaintiff-Appellee).

Michael Eitutis, pro se, 7970 Mentor Avenue, N-3, Mentor, OH 44060 (Appellant).

DIANE V. GRENDELL, J.

{¶1} Appellant, Michael Eitutis, appeals the Judgment Entry of the Lake County Court of Common Pleas, Domestic Relations Division, denying Michael's Motion for Designation as Residential Parent, Motion for Parenting Time, and his April 24, April 30, and August 21, 2008 Motions to Show Cause, and granting Michael's December 2, 2008 Motion to Show Cause and appellee, Judith Burr's, Motion for Supervised Parenting Time. For the following reasons, we affirm the decision of the trial court.

{¶2} Michael was married to Judith on May 20, 2000. On January 23, 2004, they had a daughter, J.E.

{¶3} On February 1, 2006, the trial court issued a Judgment Entry of Divorce, terminating the parties' marriage on the grounds of incompatibility. The Entry also granted Judith legal custody of J.E. Michael was awarded parenting time with J.E., pursuant to Local Rule 23, allowing Michael visits during the middle of the week and on alternating weekends.

{¶4} On February 3, 2006, Michael filed a Motion for Shared Parenting and a Motion to Show Cause, alleging that Judith had denied him visitation with J.E. On March 1, 2006, Judith filed a Motion to Suspend Overnight Parenting Time, asserting that Michael did not have a crib or heat in his apartment. These motions were subsequently voluntarily withdrawn by both parties and dismissed by the court.

{¶5} Judith married James Burr in September of 2007. J.E. and Judith's other child, H.S., live with the Burrs.

{¶6} On September 28, 2007, Judith filed an Emergency Ex Parte Motion to Modify Parenting Time, asserting that Michael had overdosed on drugs and requesting that he be allowed only supervised visitation.

{¶7} On October 6, 2007, Michael was charged with Criminal Damaging, resulting from an incident where he damaged Judith's car. Michael subsequently pled guilty to Criminal Damaging and paid restitution to Judith. Judith sought a temporary protection order against Michael as a result of this incident.

{¶8} On October 9, 2007, Michael filed a Motion to Show Cause. On December 21, 2007, Michael filed another Motion to Show Cause and a Motion for Immediate Parenting Time, again asserting that Judith was denying him visitation. The court granted Judith's Motion to Modify Parenting Time on February 21, 2008, and

dismissed Michael's Motion to Show Cause and Motion for Parenting Time on February 26, 2008.

{¶9} Michael married Melinda Eitutis on May 2, 2008. Melinda has an eleven-year-old son, A.M., who lives with her and Michael.

{¶10} In the summer of 2008, Judith took J.E. to the doctor and claimed that J.E. may have been sexually abused by either A.M. or Michael. These claims were investigated by Lake County Job and Family Services, but were found to be unsubstantiated.

{¶11} On June 8, 2009, Michael sent an e-mail to Judith, which Judith felt was threatening. Judith took the e-mail to the Painesville Police Department and an investigation was conducted. Michael was subsequently charged with Domestic Violence and Aggravated Menacing. Additionally, a temporary protection order was issued against Michael, protecting Judith and James Burr, as well as J.E. and H.S.

{¶12} On August 29, 2008, Michael filed a Motion to Appoint Sandra McPherson for Psychological Evaluation, requesting that the court appoint Dr. Sandra McPherson to prepare a psychological evaluation regarding custody and the allegations made by Judith. The court granted this Motion on September 25, 2008, and also ordered Michael to advance the costs of Dr. McPherson's retainer fee, with the costs for her services to be "apportioned at the conclusion of the trial."

{¶13} Throughout 2008 and 2009, both parties filed various motions that are the subject of the current appeal. On April 24, 2008, and April 30, 2008, Michael filed Motions to Show Cause, which were supplemented on June 5, 2008, and August 15, 2008. He filed an amended Motion for Designation as Residential Parent on August 21, 2008. He filed two Motions to Show Cause and Motions for Attorney's Fees on August

21, 2008, and December 2, 2008. He filed a Motion for Reimbursement of Expert Witness Fees on May, 15, 2009. On July 8, 2009, he filed an Ex Parte Motion for Parenting Time.

{¶14} On June 18, 2009, Judith filed a Motion for Supervised Parenting Time.

{¶15} On July 20, 21, 22, and 23, 2009, hearings were held with respect to Michael's Motions to Show Cause, Motion for Parenting Time, Motion for Reimbursement of Expert Witness Fees, and Motion for Designation as Residential Parent, as well as Judith's June 18, 2009 Motion for Supervised Parenting Time. At the hearings, the juvenile court heard testimony from the following persons: Michael and Melinda Eitutis, Judith and James Burr, Dr. Sandra McPherson, Dr. James Davidson, Detective John Levicki, Marian Ruckert, Denise Jones, and Attorney Linda Cooper. The substance of the testimony presented is as follows.

{¶16} Judith testified that in 2005, she denied Michael visitation because he did not have proper bedding for J.E. and did not have heat in his apartment.

{¶17} Judith testified that she became aware that Michael had been abusing prescription drugs in 2007 and that this drug use led to his hospitalization. She expressed concern about his ability to properly parent J.E. during visitation because of his drug use.

{¶18} Judith described an incident that occurred on October 6, 2007, during which she attempted to drop J.E. off for parenting time with Michael. She stated that Michael approached her car in an intimidating manner and "was very edgy." Judith decided to leave, without dropping off J.E. for the visit. Judith testified that as she turned her car around, Michael "ran, [and] jumped onto the hood of [her] car." She called the police and subsequently sought a temporary protection order in the

Painesville Municipal Court and a civil protection order in the Lake County Court of Common Pleas.

{¶19} Judith also testified that she was informed by J.E. in the summer of 2008 that Michael's stepson, eleven-year-old A.M., had touched her inappropriately. Regarding A.M., Judith testified that J.E. stated A.M. had put his hands down her underwear. Subsequently, Judith was informed by J.E. that Michael was also touching her in the crotch area. Judith took J.E. to her doctor and then to Hillcrest Hospital to investigate this potential sexual abuse. The report from Hillcrest noted that there was an absence of injury. Judith testified that from July 2008 to August 2008, Michael did not have visitation with J.E. because of ongoing investigations by Job and Family Services regarding the sexual abuse claims.

{¶20} Judith admitted that she cancelled two visits between Michael and J.E. in November of 2008. She cancelled the first because J.E. was sick and the second because her attorney advised her to do so, based on a potential threat that Michael made.

{¶21} Judith also testified that in April of 2009, she took a picture of a red mark on J.E.'s neck that she noted after J.E. had visited with Michael. Judith believed that this mark looked like a hickey.

{¶22} Judith testified that on June 8, 2009, she received an e-mail from Michael, which made her feel that both she and her family were "in danger." Judith presented this e-mail to Detective John Levicki of the Painesville Police Department.

{¶23} James Burr testified that he read the June 8 e-mail sent by Michael to Judith and that he considered it to be threatening to his family. James also testified that, prior to J.E.'s statement that Michael had been touching her inappropriately, J.E.'s

behavior had changed. James described an incident where J.E. purposely "grabbed his crotch." On the same night, J.E. started screaming and informed Judith about "things happening at her father's house," which involved Michael touching J.E.'s crotch area.

{¶24} Michael testified that Judith had a history of making allegations of sexual abuse. He stated that she made previous statements about her other child, H.S., being molested, prior to making allegations about J.E.

{¶25} Michael stated that his parenting time with J.E. proceeded normally, with a few exceptions, after the divorce until the summer of 2007. He testified that he was injured during the spring of 2007 and needed prescription medication to treat his pain. He admitted that he became addicted to this medication. Shortly thereafter, Michael had "an adverse reaction to the medication and was admitted to the hospital." Michael went to a detox program in August of 2007. After exiting this program, Michael had supervised visits with J.E., first at his parents' house and then at a friend's house.

{¶26} Michael stated that on October 6, 2007, Judith was dropping J.E. off for visitation. At this time, Michael informed Judith that he would be taking her to court regarding custody issues. Michael testified that Judith became upset, got back into her car, and did not let Michael take J.E. Michael stated that he believed he "was not going to be seeing [his daughter] until [Michael and Judith] got back to court." Michael then stated that he sat on the hood of Judith's car and called the police, seeking to have them enforce visitation. He admitted that damage occurred to Judith's car as a result of the weight of his body. Michael testified that subsequent to this incident, he did not see J.E. for several months.

{¶27} Michael also stated that in February of 2008 to May of 2008, he received very few visits with J.E. He testified that Judith would not allow visitation, due to a

problem with Michael providing the results of court-ordered drug tests. Michael's doctor, Dr. Moss, was to fax the results of Michael's drug tests to Judith every two weeks. Judith claimed that she did not always receive these results. Michael admitted that during this period, in April of 2008, he modified an old drug test result by changing the date on a negative test. He stated that he purposely modified the test results but did not intend to send them to Judith. He asserted that he accidentally sent them instead of sending a different set of results.

{¶28} Michael also testified that visitation stopped in July of 2008, due to alleged instances of abuse by A.M. against J.E. Michael began having supervised visitations at Crossroads for two hours a week, starting in August of 2008 and ending in November of 2008. He testified that two visits were missed during this time period because Judith did not take J.E. to Crossroads for visitation, as required by court order.

{¶29} Michael testified that he never sexually abused J.E. He also stated that the red mark on her neck was not from a hickey, but instead from an incident where he was playing with J.E. and rubbed his face on her neck. He believes that his facial hair caused the mark on J.E.

{¶30} Michael stated that he frequently asked Judith about J.E.'s schooling and activities, but Judith would not give him any information about these matters. Michael asked J.E. these questions and discovered that J.E. was enrolled in preschool, played soccer, and took horseback riding lessons.

{¶31} Michael stated that he believed he should have custody of J.E. because he would be more willing to facilitate visitation between J.E. and Judith.

{¶32} Michael admitted during cross-examination that he has held several jobs over the past three years and owed a $3,000 arrearage in child support.

{¶33} Melinda Eitutis, Michael's current wife, testified that J.E. and Michael have a "really good relationship" and that J.E. likes to be around Michael. She also testified that her son, A.M.'s, relationship with J.E. is very good, but the two children do not interact very often.

{¶34} Dr. McPherson, a forensic psychologist who was appointed by the court in this case, testified that she evaluated Michael, Judith, and J.E. She determined that Michael had used testosterone and other drugs in the past and has "addictive potentials and really needs to be in a strong 12-step program." She further stated that Michael had not "taken the necessary steps to address [addiction] issues." She also testified that Michael had been diagnosed with bipolar effective disorder in 2005, by Dr. Hussain. Dr. McPherson stated that Judith appeared depressed, tests performed showed signs of anxiety, and that she was "defensive".

{¶35} Dr. McPherson also testified that J.E. informed her that Michael "poked" her in the "butt" with his finger. J.E. stated that A.M. had done the same thing. After Dr. McPherson viewed J.E. interact with both parents, she testified that J.E. got along well with both of her parents.

{¶36} Although Dr. McPherson had recommended shared parenting in her December 2008 report, she stated that she was "not sure I can sustain that [Judith and Michael] can manage a shared parenting, given the communication issue." She recommended that Michael be allowed to have a "regular visitation schedule," such as a standard order with visitation every other weekend and during the middle of the week. She also stated that she had questions of Michael's credibility, after learning that he had falsified the drug test results.

{¶37} In Dr. McPherson's written report to the court, dated December 5, 2008, she noted that it would "be a drastic remedy to remove the child from the familiar caretaking environment of the mother and family and would itself be a major stressor in the child's life." She recommended that regular visitation resume, that "a structured shared parenting is recommended" under certain conditions, that J.E. continue therapy, and that both parents be involved in therapy. She also recommended that Michael participate in an active 12-step program. Dr. McPherson also noted that although shared parenting was recommended, it may not be successful if the "same patterns of behavior continue to present."

{¶38} Dr. Davidson, a forensic and clinical psychologist, was assigned by the court to be a parent coordinator in this case. In this capacity, he acted to help resolve disputes between the parties and implement the court's visitation orders. He testified that he held eleven joint sessions with Michael and Judith. During these sessions, the parties discussed altering of visitation times, who would provide J.E. with lunch and dinner on visitation days, and other issues pertaining to visitation. Dr. Davidson testified that he had not been made aware of physical or sexual abuse by either of the parties. He stated that he was aware of Michael's potential drug problem and tested a sample of Michael's urine. The results were negative and provided to both Judith and Michael. Dr. Davidson also stated that Judith typically behaved appropriately during sessions, while Michael was more likely to be "combative."

{¶39} Detective Levicki, of the Painesville Police Department, testified regarding the June 8 e-mail, sent from Michael to Judith. According to Levicki, Judith brought the e-mail to the police department on June 10, 2009, and requested that the police investigate the e-mail to see if it was threatening. Levicki read the e-mail and

interviewed Michael and Judy. Based on the information gathered, Levicki went to the prosecutor regarding the threatening nature of the e-mail. Levicki noted that Judith felt threatened and that she signed the complaint against Michael. Ultimately, charges of Aggravated Menacing and Domestic Violence were filed against Michael and a temporary protection order was issued.

{¶40} Levicki testified about several portions of the e-mail which he found to be threatening. He testified that the portion of the e-mail discussing that Judith would be better off to have a millstone tied to her neck and be thrown to the bottom of the sea appeared threatening. Levicki noted that Michael told him that portion was a reference to a biblical scripture. Levicki also noted several places where Michael had written "you need to stop now," which Levicki perceived to be threatening. Levicki noted that in several passages, Michael stated things that God may do to Judith. Levicki found these threatening because they may have been meant to convey what Michael intended to do to Judith.

{¶41} Jones, a friend and employee of Judith's, testified that she had observed visits between J.E. and Michael and did not observe anything that raised concerns regarding Michael's parenting. Jones felt J.E. and Michael interacted in a normal manner. Michael's attorney asked Jones questions related to sexual abuse that may have occurred during Judith's childhood. Judith objected to this testimony as irrelevant. The court sustained this objection and did not allow Jones to testify regarding this issue.

{¶42} Attorney Cooper, Michael's attorney, testified regarding attorney's fees involved in her representation of Michael. She presented records of services performed on his behalf and showed the hours she had billed. She testified that Michael owed a

total of $14,834 for her services, excluding the costs of trial preparation that occurred after July 17, 2009.

{¶43} At the hearings, Michael's attorney offered Mary Sacchini, Judith's counselor, as a witness who would testify regarding sexual abuse that may have occurred during Judith's childhood and about related anger issues. Judith objected to this testimony as irrelevant and protected by privilege. The court ruled that the testimony was not admissible and Sacchini did not testify at the hearings.

{¶44} In the trial court's Judgment Entry, it found that regarding the April 24 and April 30, 2008 Motions to Show Cause, Michael failed to sustain his burden of proof by clear and convincing evidence. The court found that Michael was unable to provide testimony or evidence as to the dates and times that Judith failed to provide him with visitation.

{¶45} As to Michael's December 2, 2008 Motion to Show Cause and for Attorney's Fees, the court found that it had merit and that Michael had proven Judith failed to bring J.E. to Crossroads for visitation on November 23 and 30, 2008. The court granted the Motion and sentenced Judith to 30 days in the Lake County Jail. The court suspended this sentence, subject to Judith paying the costs of the Crossroads visitation for four consecutive visits, paying $740 in attorney's fees and the costs for filing the Motion.

{¶46} In addressing Michael's Motion for Designation as Residential Parent, Motion for Parenting Time, and Judith's Motion for Supervised Parenting Time, the court considered each of the factors in R.C. 3109.04(F)(1) and R.C. 3109.051(D).

{¶47} Regarding R.C. 3109.04(F)(1), the court found that J.E. has a positive relationship with both parents, that Michael has had mental and physical health

problems, that the parents have "significant issues" with each other and have difficulty sharing parenting time, and that there have been past orders restricting Michael's parenting time with J.E. because of actions taken by Michael.

{¶48} In discussing the factors in R.C. 3109.051(D), the court noted many of the same issues, but also stated that Michael is more accommodating in working with Judith on scheduling parenting time. The court also found that Michael needs rigorous treatment for his drug addiction and needs "education as to basic parenting skills and child development." The court noted that Michael himself had been the cause of his limited parenting time over the past several years, as he had a drug addiction that required hospitalization, had falsified drug report results, and had thrown himself on Judith's car. The court expressed concern regarding Michael's lack of good judgment as a parent, and failure to seek adequate treatment for his drug addiction.

{¶49} The court granted Judith's Motion for Supervised Parenting Time and ordered that parenting time should continue at Crossroads. It denied Michael's Motions for Designation as a Residential Parent and for Parenting Time.

{¶50} The court ordered that Judith undergo therapy with a psychologist of her choosing. The court also ordered that J.E. continue counseling with her therapist, Dr. Nancy Davidson. The court ordered Michael to undergo counseling with a psychologist of his choosing. It also ordered that he participate in periodic drug testing and continue in a 12-step program. Michael was also ordered to attend parenting education classes. The court further stated that "[u]nsupervised parenting time shall not be considered unless and until [Michael] has a record of intense, regular participation in a 12-step program, regular mental health counseling, and a letter of completion as to a parenting skills class."

{¶51} Michael appeals and asserts the following assignments of error:[1]

{¶52} "[1.] The trial court erred by leaving out critical information when [it] quoted Dr. McPherson as saying that she no longer recommended shared parenting, as they gave no explanation as to why, implying it may be due to parental unsuitability.

{¶53} "[2.] The trial Court erred in stating that the altering of the date on my drug test affected Dr. McPherson's recommendation in her December 2008 report.

{¶54} "[3.] The tr[ia]l Court erred in saying that I am in addiction and need help managing it, implying I was currently addicted to drugs at the time of tr[ia]l.

{¶55} "[4.] The Trial Court erred in citing that my past testosterone use was potentially behaviorally hazardous, putting this statement in a present tense, but neglects to state that Dr. Mc[P]herson no longer feels this was of any significance in regards to my behavior or my ability to parent.

{¶56} "[5.] The trial Court erred in stating that Melinda asked Cher[yl] McAndrews to pray for Judy and J.E. instead of for me and my daughter.

{¶57} "[6.] The Trial Court erred by neglecting to state that both Dr. McPherson and Dr. Davi[d]son found no threats of harm towards Judy or J.E. in the E-mail.

{¶58} "[7.] The trial Court erred by stating that my e-mail resulted in criminal charges being brought against me in the Municipal Court, but neglected to state the Municipal Court dropped all charges prior to trial.

1. Michael filed his Notice of Appeal on September 25, 2009. The appeal was dismissed on March 22, 2010, for failure to prosecute. Michael filed a Motion to Reinstate and his Motion was granted by this court on April 23, 1010.

{¶59} "[8.] The trial court erred in stating that I failed to attend the mandatory parenting class 'For our children' in a timely fashion and was ordered to d[o] so, when in fact I did take and pass that class within the acceptable period of time.

{¶60} "[9.] The trial court erred in stating that many of the denials of visitation from Feb[ruary] of [2006] and onward were accompanied by suspensions and periods of supervision, but neglects to admit that all of these suspensions and supervisory period[s] were due to false allegations, which were later proven false in Court.

{¶61} "[10.] The Trial Court erred by stating I became re-addicted to drugs in the summer of 2007, instead of stating they were prescription medicines, portraying my actions in an untrue light.

{¶62} "[11.] The trial Court erred by implying that I was putting my daughter in a dangerous situation by driving while taking my prescription, even though there were no doctors['] orders that I could not do so.

{¶63} "[12.] The trial court erred by stating I was prohibited by court order from seeing J.E. from October 2007 to January 2008.

{¶64} "[13.] The trial Court erred by neglecting to say that I was no longer seeing Dr. Moss by Spring of 2008 because of Judy's actions and instead simply stated Dr. Moss discontinued services with me.

{¶65} "[14.] The Court erred in saying that I had not forwarded a copy of my E-mail to Dr. Davidson, that I originally sent to Judy.

{¶66} "[15.] The trial court erred in stating that only Judy behaved appropriately in parental coordinating session and that I was combative with Dr. Davidson.

{¶67} "[16.] The trial court erred in stating that Dr. McPherson was firm in her December 2008 report that Judy remains residential parent.

{¶68} "[17.] The trial Court erred in stating that the mother does not have to be responsible for any of the costs involved with Dr. McPherson which began in August of 2008 for sexual abuse allegations, even though it was Judy's false allegations which resulted in Dr. McPherson being retained.

{¶69} "[18.] The Court erred in neglecting to state why visitation was limited in early 2008, once it was restored after appearing in Court, leading to a possible misrepresentation as to why there was limited visitation.

{¶70} "[19.] The trial Court erred in stating that I excessively question J.E. during visits, implying that this is detrimental to J.E. The Court has no evidence for supporting the claim that I excessively question J.E., or that I question her in a way that is harmful[] or stressful[] to her in any way. What does Dr. McPherson have to say about this?

{¶71} "[20.] This court erred by ordering additional drug tests for me, as well as testosterone tests, despite no evidence at all for doing so.

{¶72} "[21.] This court erred in not allowing either Denise Jones or Marcy Zachini (sic) to testify to Judy's molestation as a child by her father.

{¶73} "[22.] This Judge has a history of picking and choosing which recommendations of Dr. McPherson's she accepts and doesn't accept, choosing to implement what she wants and that which fits with her agenda, which is her bias towards the Mother.

{¶74} "[23.] The Court erred in citing mental health as being a reason as to why supervised parenting was implemented, as she had said in her Judgment Entry that Mental health counseling was required before she would consider unsupervised parenting.

{¶75} "[24.] The Judge states that I acknowledged that I am lax in attending a 12-[step] program, but [is] this true according to the transcript?"

{¶76} Although assignments of error one through sixteen, eighteen, nineteen, and twenty-two through twenty-four are raised separately, we note that they all involve the court's factual findings. We will consider these assignments of error together.

{¶77} "[W]hen reviewing the propriety of a trial court's determination in a domestic relations case, [the Ohio Supreme Court] has always applied the 'abuse of discretion' standard." *Lake v. Lake*, 11th Dist. No. 2009-P-0015, 2010-Ohio-588, at ¶66, citing *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144.

{¶78} The highly deferential abuse of discretion standard is particularly appropriate in child custody cases, since the trial judge is in the best position to determine the credibility of the witnesses and there "may be much that is evident in the parties' demeanor and attitude that does not translate well to the record." *Wyatt v. Wyatt*, 11th Dist. No. 2004-P-0045, 2005-Ohio-2365, at ¶13 (citation omitted). A reviewing court is not to weigh the evidence, "but must ascertain from the record whether there is some competent evidence to sustain the findings of the trial court." *Clyborn v. Clyborn* (1994), 93 Ohio App.3d 192, 196.

{¶79} "Modification of visitation rights is governed by R.C. 3109.051." *Braatz v. Braatz*, 85 Ohio St.3d 40, 1999-Ohio-203, at paragraph one of the syllabus (citation omitted). "Pursuant to R.C. 3109.051(D), *** the trial court shall consider the fifteen factors enumerated therein, and in its sound discretion determine visitation that is in the best interest of the child." Id. at 45.

{¶80} A "court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen

since the prior decree ***, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child." R.C. 3109.04(E)(1)(a). The court shall consider the factors in R.C. 3109.04(F)(1) to determine the best interests of the child. *Smith v. Smith*, 11th Dist. No. 2009-T-0064, 2010-Ohio-3051, at ¶10.

{¶81} We recognize the importance of a father's relationship with his child and of his ability to visit with his child. "A noncustodial parent's right of visitation with his children is a natural right and should be denied only under extraordinary circumstances." *Moline v. Moline*, 11th Dist. No. 2009-A-0013, 2010-Ohio-1799, at ¶59, citing *Pettry v. Pettry* (1984), 20 Ohio App.3d 350, at paragraph one of the syllabus. Moreover, the "need of a child for visitation with a [divorced] parent is a natural right of the child and is as worthy of protection as is the parent's right of visitation with the child." *Porter v. Porter* (1971), 25 Ohio St.2d 123, 128.

{¶82} Before addressing each specific factual determination that Michael alleges were made in error, we note that the court appropriately considered the factors found in R.C. 3109.051 when making a determination as to whether there should be a change in visitation. The trial court addressed and weighed each factor prior to reaching its decision.

{¶83} Similarly, in determining whether Michael should be J.E.'s residential parent, the court considered each of the R.C. 3109.04(F)(1) factors. The court found no change in circumstances such that Michael should be granted custody of J.E.

{¶84} Assignments of error one, two, sixteen and twenty-two all relate to recommendations made by Dr. McPherson, the court-appointed psychologist in this

case. Michael asserts that the trial court improperly interpreted Dr. McPherson's recommendations and failed to adopt certain recommendations that were favorable to him.

{¶85} A trial court is not required to adopt the recommendations of a psychologist, in full or in part. See *Dunkle v. Dunkle*, 2nd Dist. No. 10743, 1988 Ohio App. LEXIS 2186, at *1 (the court must only consider the results and recommendations of a psychological evaluation because "it is merely a recommendation," and the trial court must make the ultimate decision in a custody case). In this case, the trial court acted properly by considering Dr. McPherson's recommendations and applying all of the other testimony and evidence presented at trial to reach its judgment. Since it is evident that the trial court considered Dr. McPherson's testimony and report, the court did not err in adopting only certain recommendations.

{¶86} Although Michael asserts that the court misrepresented Dr. McPherson's recommendations regarding custody, the record shows otherwise. Dr. McPherson's recommendation was that J.E. should not be removed from her current living arrangement, as it would be a major stressor to do so. The court properly represented this in its Judgment Entry. Moreover, although Michael asserts otherwise, Dr. McPherson did state during her testimony that shared parenting may not be feasible due to the lack of communication between the parties. Therefore, the court did not err when determining that shared parenting was not appropriate and that Judith should retain custody of J.E.

{¶87} In assignments of error three, four, nine, ten, eleven, thirteen, eighteen, and twenty-three, Michael asserts that the trial court failed to mention certain facts in its Judgment Entry that would be favorable to Michael.

{¶88} However, the trial court is not required to include a discussion of the exact details of every witness' testimony and every fact presented at trial; to do so would be impractical. Moreover, at the appellate level, we need only find that the trial court's decision is supported by competent, credible evidence, not that each and every fact presented at trial supports the trial court's decision. See *Clyborn*, 93 Ohio App.3d at 196. Therefore, Michael's argument, found in assignments of error nine, thirteen, eighteen, and twenty-three, that the trial court did not properly outline all of the details that led to his limited or supervised visitation through the past several years, fails.

{¶89} Regarding Michael's assertion in error ten that the trial court failed to state in its Judgment Entry that Michael was addicted to prescription medications instead of other types of drugs, such a distinction is unnecessary. Regardless of the type of drugs used by Michael, the evidence shows, and Michael himself admitted, that he was addicted to prescription medication and was hospitalized for this addiction. The trial court did not err in finding that such an addiction could be harmful to J.E.

{¶90} Similarly, Michael asserts in error eleven that the court improperly concluded that he put his daughter in danger by driving while under the influence of prescription drugs. However, the court had credible evidence before it that Michael had a drug problem which could cause him to behave improperly at times, including the testimony of Judith and Dr. McPherson.

{¶91} Michael also asserts, in errors three and four, that the trial court failed to find that he had stopped using drugs and was no longer a risk to himself or J.E. However, the testimony presented throughout the course of the trial shows that Michael has had an ongoing problem with drug use for several years. Although Michael may not have been using drugs at the time of the trial, the court did not err in considering

Michael's drug use. Even if such drug use was not directly relevant, the court did not indicate that Michael's drug use was the main reason for denying his motions for visitation and custody, but instead indicated that his poor judgment and lack of parenting skills were key factors in its decision. See *In re Fair*, 11th Dist. No. 2007-L-166, 2009-Ohio-683, at ¶68 (the trial court did not abuse its discretion when it referenced appellant's past drug use but considered all appropriate factors for custody).

{¶92} Michael also argues, in error twenty-four, that the court erred in finding that he was "lax" in attending a twelve-step program for his drug addiction. However, the evidence supports the court's finding. Michael testified that he attended a twelve-step program once or twice a week but has had "brief periods of time where [he] was very busy and was not able to go every week." Dr. McPherson also expressed concern that he was not fully committed to the program. Based on Michael's admitted drug use, the court properly expressed concern about the necessity for him to be fully committed to treatment.

{¶93} In error five, Michael argues that the court erred in finding that Melinda told Cheryl McAdams to pray for J.E. and Judith, when Melinda actually testified that she asked Cheryl to pray for J.E. and Michael.

{¶94} While Michael is correct that the trial court erred by improperly representing Melinda's testimony, the court was merely relaying the testimony that occurred during trial. There is no indication that the court considered this statement in reaching its decision regarding the custody of J.E and therefore, this was a harmless error.

{¶95} In errors six, seven, and eight, Michael alleges that the trial court failed to recognize that the e-mail he sent was not threatening and did not result in a criminal

conviction. However, the trial court did not make a finding as to whether the e-mail was threatening. Instead, the court found that sending the e-mail was not a good parenting choice. Testimony from Dr. McPherson, who stated that the e-mail was "an extremely improper communication," as well as the testimony of Detective Levicki, supports this conclusion. Regardless of whether the e-mail was threatening, there was sufficient evidence to support the finding that the e-mail showed Michael's lack of parenting and decision-making skills. Parenting skills are a relevant consideration when determining a child's best interests for the purposes of custody under R.C. 3109.04(F)(1). See *Baker v. Baker*, 6th Dist. No. L-03-1018, 2004-Ohio-469, at ¶29.

{¶96} Moreover, although the charges against Michael were ultimately dismissed, this dismissal did not occur until January 25, 2010, well after the trial court had entered judgment on the present matter.

{¶97} In error twelve, Michael asserts that the trial court erred when stating that he was prohibited by court order from seeing J.E. from October 2007 to January 2008. Although the record does not show that there was a court order prohibiting visitation, there was a protection order in place regarding Judith. Moreover, the record indicates that Michael did not see his child from October 2007 to January 2008, regardless of whether this lapse in visitation was court ordered. It is immaterial why Michael did not visit with his child, as the court expressed concern not with the lack of visitation time but instead with Michael's conduct in October precipitating the protective order. Therefore, any error here is harmless.

{¶98} In error fourteen, Michael argues that the trial court erred in stating that he had not forwarded a copy of the June 8, 2009 e-mail to Dr. Davidson. While the trial court did state that Michael failed to copy this e-mail to Dr. Davidson, Dr. Davidson

testified that Michael did in fact send him the e-mail. We again find that while the court made this statement in error, it had no bearing on the final outcome of this case and was a harmless error. Whether Michael did or did not send this e-mail to Dr. Davidson was not a consideration in determining whether Michael should have custody or visitation with his daughter.

{¶99} Regarding assignment of error fifteen, Michael alleges that the trial court erred in stating that Dr. Davidson testified that Michael was combative during sessions. However, the record shows Dr. Davidson did testify that Judith typically behaved appropriately during sessions, while Michael was more likely to be "combative." The trial court correctly represented Dr. Davidson's testimony.

{¶100} In error nineteen, Michael asserts that the trial court improperly found that he questioned J.E. excessively. However, there was sufficient evidence supporting the court's conclusion, as Michael testified that he asked his daughter a stream of questions, including whether she went to preschool, where her school was located, who her teacher was, and about her involvement in certain activities. Additionally, the court found that Michael's demeanor and testimony supported this conclusion. The trial court was in the best position to make such a determination. See *Wyatt*, 2005-Ohio-2365, at ¶13 (a party's demeanor and attitude "does not translate well to the record").

{¶101} Assignments of error one through sixteen, eighteen, nineteen, and twenty-two through twenty-four are without merit.

{¶102} In error seventeen, Michael asserts that the trial court erred in finding that Judith did not have to reimburse him for the fees he paid to Dr. McPherson. The trial court found that Judith should not have to pay for the cost of Dr. McPherson when Michael had been the party that moved for Dr. McPherson's appointment.

{¶103} "The trial court may order an investigation in custody cases, and it has broad discretion in appointing a guardian ad litem and ordering a psychological examination. See Civ.R. 75(D); R.C. §3109.04(C). Additionally, the trial court has broad discretion to order the costs of the investigation to be included as court costs. Id." *Fisher v. Fisher*, 9th Dist. No. 7-05-03, 2005-Ohio-5615, at ¶¶9-10 (finding that the court may require one party to pay the costs of a psychological evaluation and may take into consideration that the party requested the psychological evaluation to be performed).

{¶104} In this case, the court determined that Michael should be responsible for paying the costs of the evaluation and noted that Michael had filed a Motion requesting the appointment of Dr. McPherson. We find that the court did not abuse its discretion in denying Michael's Motion for Reimbursement of Expert Witness Fees, as he requested Dr. McPherson to be appointed.

{¶105} The seventeenth assignment of error is without merit.

{¶106} In assignment of error twenty, Michael argues that the trial court erred by ordering him to submit to periodic drug testing.

{¶107} However, "[d]rug testing may be ordered or agreed to when the best interest of a child is at stake." *Raney v. Raney*, 12th Dist. No. CA98-07-084, 1999 Ohio App. LEXIS 231, at *7, citing, inter alia, *Fish v. Fish*, 11th Dist No. No. 95-T-5377, 1996 Ohio App. LEXIS 4353, at *2-*3. As discussed previously, the testimony of several witnesses, including Michael himself, indicated that Michael has had an ongoing drug problem. Additionally, Michael admitted that he falsified drug test results on one occasion and Judith indicated that she did not receive test results several times. Based on this evidence, Michael's drug problem may have been detrimental to J.E.'s best interest and the trial court did not err in ordering Michael to continue taking drug tests.

{¶108} The twentieth assignment of error is without merit.

{¶109} In assignment of error twenty-one, Michael asserts that the trial court erred by failing to allow the testimony of Denise Jones and Mary Sacchini regarding prior incidents of sexual abuse that may have occurred during Judith's childhood.

{¶110} Judith objected to the admission of such testimony and asserted that the testimony was not relevant. She argues that because such evidence was available at the time of the Judgment Entry of Divorce, the issue of Judith's childhood abuse is not a change in circumstance and would not affect a change in custody or visitation time.

{¶111} "[A] trial court is vested with broad discretion in determining the admissibility of evidence in any particular case, so long as such discretion is exercised in line with the rules of procedure and evidence." *Rigby v. Lake Cty*. (1991), 58 Ohio St.3d 269, 271. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401.

{¶112} "The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, [or] the child's residential parent, *** and that the modification is necessary to serve the best interest of the child." R.C. 3109.04(E)(1)(a).

{¶113} In order for an issue to be relevant in a proceeding where a parent is seeking a modification of parental rights, there must be a change in circumstances that warrants a judgment in his or her favor. In this case, sexual abuse that occurred during Judith's childhood would have been previously addressed in the initial determination of

custody. Any sexual abuse that occurred during Judith's childhood was known prior to the Judgment Entry of Divorce filed on February 1, 2006. Additionally, any counseling that occurred between Sacchini and Judith took place in 2002, well before that Entry. The information related to sexual abuse in Judith's past has not arisen since the prior decree and therefore was not relevant to the current proceedings. The court did not act outside of its discretion when ruling that testimony related to Judith's childhood abuse was not admissible.

{¶114} The twenty-first assignment of error is without merit.

{¶115} Finally, during oral argument, Michael expressed his concern about his "inability" to pay for visitation at Crossroads, which had led to a lack of visitation with J.E. Michael did not raise this before the trial court so we decline to rule on this issue. We note that the lower court, in its Judgment Entry, provided: "The Court shall consider alternative professional supervision of [Michael's] parenting time by a third party or agency upon motion filing by either party."

{¶116} For the foregoing reasons, the Judgment Entry of the Lake County Court of Common Pleas, Domestic Relations Division, denying Michael's Motion for Designation as Residential Parent, Motion for Parenting Time, and his April 24, April 30, and August 21, 2008 Motions to Show Cause, and granting Michael's December 2, 2008 Motion to Show Cause and Judith's Motion for Supervised Parenting Time, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.