[Cite as *Fichthorn v. Fichthorn*, 2009-Ohio-5138.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
MARY FICHTHORN	:	Hon. Sheila G. Farmer, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	
-vs-	:	
	:	Case No. 09-CA-10
RONALD FICHTHORN	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Civil appeal from the Guernsey County Court of Common Pleas, Domestic Relations Division, Case No. 07DR683
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	September 28, 2009

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
MELISSA M. WILSON 213 North 8th Street Cambridge, OH 43725	MILES D. FRIES Gottlieb, Johnston, Beam & Dal Ponte 320 Main St., Box 190 Zanesville, OH 43702-0190

Gwin, P.J.

{¶1} Defendant-appellant Ronald Fichthorn appeals a judgment of the Court of Common Pleas, Domestic Relations Division, of Guernsey County, Ohio, which overruled his objections to the magistrate's decision regarding a mediation agreement between appellant and plaintiff-appellee Mary Fichthorn. Appellant assigns two errors in the form of propositions of law:

{¶2} "I. AN AGREEMENT PURPORTEDLY ENTERED INTO OUTSIDE THE PRESENCE OF THE COURT IS NOT EFORCEABLE [SIC] IF THERE IS A FACTUAL DISPUTE CONCERNING IT."

{¶3} "II. THE COURT MUST CONSIDER THE BEST INTEREST OF A CHILD WHEN ALLOCATING PARENTAL RIGHTS AND RESPONSIBILITIES."

{¶4} The record indicates the parties participated in a mediation session on November 14, 2008, regarding their pending divorce. The mediator issued a report on November 17, 2008. The matter went before a magistrate, who conducted an evidentiary hearing regarding whether the mediation agreement was binding and enforceable. The magistrate found the matter was binding and enforcible, and the trial court overruled appellant's objections and adopted the magistrate's decision.

{¶5} The parties were married on May 17, 2008, and produced one child, who was nearly fifteen years old at the time of the final hearing. When the parties appeared for a court-ordered mediation on November 14, 2008, appellant was accompanied by his counsel, but appellee's counsel was not present. Appellant's counsel was asked to leave, and the parties proceeded. At the conclusion of the session, appellant and

appellee signed the mediator's hand-written notes. The mediator then prepared a type-written report for the court.

{¶6} At the evidentiary hearing before the magistrate, appellant testified it was his understanding that both parties' counsel would be present to work out all the details at the mediation. Appellant testified he did not realize it was a full-blown mediation, but thought it was simply the first step to pull together all the loose ends into a coherent fashion. He believed the issues were still negotiable. Appellant testified he was never given the opportunity to consult with counsel.

{¶7} Appellant testified he had never before signed a hand-written document. Appellant testified when presented with the mediator's hand-written notes, he was confused about what he was actually signing. Appellant testified when he signed it he did not understand it was a contract or agreement. Appellant testified not all the marital assets or debts and liabilities had been included in the hand-written document. He did not initial any of the places where numbers or letters had been crossed out.

{¶8} Appellant testified he felt pressured to sign the handwritten document because if the contested divorce had been pursued, he would incur great legal expense. He believed he had no option, but to sign the handwritten document, and could not read the entire document because appellee's handwriting is difficult to read. He testified he asked questions but the questions were ignored. Appellant testified when he left the courthouse he believed there would be more to the process. On cross, appellant testified he never asked to speak to his attorney during the mediation, but was not aware he could end the mediation at any time.

{¶9} Appellant testified the agreement regarding custody and visitation of the child was “partly fair”, but not in the child’s best interest.

{¶10} Appellee testified she anticipated it might not be easy to come to an agreement, so at the outset of the mediation she asked the mediator if it would be binding. It was very clear to her that all parts would be binding. Appellee testified one of the major reasons why she wanted mediation was to avoid incurring additional legal bills, and for this reason she assumed the attorneys would not be present at the mediation.

{¶11} Appellee testified her perception was that at any time she could leave the mediation and contact her attorney, or simply state there was not going to be a workable solution. Appellee testified the magistrate asked the parties to review the handwritten statement, and to sign if they were in agreement. Appellee testified her husband had been a business man since 1979 and she had personally observed him signing contracts in the past. Appellee testified when she left the mediation it was her understanding that she and appellant had come to an agreement.

I

{¶12} Our standard of reviewing decisions of a domestic relations court is generally the abuse of discretion standard, see *Booth v. Booth* (1989), 44 Ohio St. 3d 142.. The Supreme Court has repeatedly held the term abuse of discretion implies the court’s attitude is unreasonable, arbitrary or unconscionable, *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217at 219. When applying the abuse of discretion standard, this court may not substitute our judgment for that of the trial court, *Pons v. Ohio State Med. Board,* (1993), 66 Ohio St.3d 619, 621.

{¶13} Here the parties presented conflicting evidence from which the trial court was required to make a determination. A reviewing court will not disturb the trial court's decision as against the manifest weight of the evidence if the decision is supported by some competent, credible evidence. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St. 2d 279. We may not substitute our judgment for that of the trier of fact. *Pons v. Ohio State Med. Bd*. (1993), 66 Ohio St. 3d 619, 621, 614 N.E.2d 748.

{¶14} The magistrate found appellant wished to repudiate the agreement. The magistrate found appellant has been in business for seventeen years, which required him to negotiate and enter into contracts. The magistrate found appellant knew he could leave the negotiations during the mediation session. The magistrate concluded appellant entered into the agreement knowingly and voluntarily, had failed to show fraud, duress, overreaching, or undue influence, and had not shown the agreement was unconscionable. The magistrate found the mediated agreement dealt with all the issues concerning the minor child.

{¶15} The magistrate later conducted a hearing on the issues not fully resolved in mediation.

{¶16} The trial court stated it had made a careful and independent examination and analysis of the magistrate’s findings and decision. The court found there was no error of law or other defect on the face of the decision, and incorporated by reference the magistrate’s decision in the court’s final judgment of divorce.

{¶17} We have reviewed the transcript of the hearing before the magistrate regarding the mediation, and we find the trial court did not abuse its discretion in concluding the parties reached a binding agreement.

{¶18} The first assignment of error is overruled.

II

{¶19} In his second assignment of error, appellant argues the trial court erred because it did not make a finding the mediated agreement was in the child's best interest.

{¶20} The mediation reports states both parents have agreed it is in the best interest of the child that appellee become the residential custodial parent. The mediation report also sets out appellant's parenting time, referencing the court's standard order.

{¶21} The magistrate found both parents agree there should be no order of child support at the time because appellant is disabled. They both agreed this deviation is in the best interest of the child and acknowledged the child is receiving benefits as a result of appellant's disability, which should be in lieu of a child support order. The mediator reported both the parents agreed it is in the best interest of the child for appellee to claim him for tax dependency exemption purposes, and she should provide health care insurance for him.

{¶22} The best interest of the child is of paramount importance in allocating parental rights and responsibilities. Where the parties have entered into an agreement regarding what arrangements will serve the child's best interest, a trial court need not make a specific finding to that effect. Either party may bring any parenting issues to the trial court if a modification of the order is necessary in the future.

{¶23} The second assignment of error is overruled.

{¶24} For the foregoing reasons, the judgment of the Court of Common Pleas, Domestic Relations Division, of Guernsey County, Ohio, is affirmed.

By Gwin, J.,

Farmer, P.J., and

Hoffman, J., concur

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HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER

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HON. WILLIAM B. HOFFMAN

WSG:clw 0914

[Cite as *Fichthorn v. Fichthorn*, 2009-Ohio-5138.]

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO

FIFTH APPELLATE DISTRICT

MARY FICHTHORN Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
RONALD FICHTHORN Defendant-Appellant	:	CASE NO. 09-CA-10

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, of Guernsey County, Ohio, is affirmed

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HON. W. SCOTT GWIN

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HON. SHEILA G. FARMER

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HON. WILLIAM B. HOFFMAN