

[Cite as *Neighbor v. Jones*, 2010-Ohio-3003.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CRAIG C. NEIGHBOR

C. A. No. 25050

Appellant

v.

MISTY M. JONES

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2002-11-4272

Appellee

DECISION AND JOURNAL ENTRY

Dated: June 30, 2010

BELFANCE, Presiding Judge.

{¶1} Plaintiff-Appellant Craig Neighbor (“Father”) appeals from decisions of the Summit County Court of Common Pleas, Domestic Relations Division, overruling Father’s objections to the magistrate’s decision, overruling his motion for reallocation of parental rights and responsibilities, and denying Father’s motion to remove the magistrate. For reasons set forth below, we affirm.

BACKGROUND

{¶2} Father and Defendant-Appellee Misty Jones (“Mother”) have never been married to each other. The parties do, however, have one son, C.N, who was born December 1, 1999. In July 2003, Mother was designated as the sole residential parent and legal custodian of the child. Father was given companionship and ordered to pay child support. Father failed to make child support payments as ordered.

{¶3} In November 2006, Father filed an ex parte motion for temporary custody of C.N., as well as a contemporaneous motion for reallocation of parental rights and responsibilities. Father contended that Mother lied when she informed him that she and C.N. were going to visit her family in Florida. Father came to discover that Mother was not in Florida, but was in a residential program at Oriana House following her conviction for unlawful sexual conduct with a minor. Father was granted temporary custody and Mother was subsequently given companionship; initially Mother received one hour of companionship per week, which was subsequently extended to two hours a week. Following an evidentiary hearing, the magistrate overruled Father's motion for reallocation of parental rights and responsibilities concluding Mother should continue to have custody of C.N. Father objected to the decision, but the trial court overruled Father's objections because Father had not demonstrated a change in circumstances. Father appealed to this Court, arguing that the trial court erred in dismissing his motion. *Neighbor v. Jones*, 9th Dist. No. 24032, 2008-Ohio-3637, at ¶4. This Court agreed and concluded "that the trial court abused its discretion by failing to properly consider whether [Mother's] conduct constituted a change in circumstances and whether, in light of the nature of her criminal offense, it was in C.N.'s best interest to remain in her custody." *Id.* at ¶9.

{¶4} Subsequent to our decision, Father filed a second motion for reallocation of parental rights and responsibilities and a motion to remove the magistrate alleging bias. Father's motion to remove the magistrate was denied. The magistrate held another evidentiary hearing on the matter of reallocation and also interviewed C.N. in chambers. The magistrate concluded that a change in circumstances had occurred, namely Mother's conviction for unlawful sexual conduct with a minor and her status as a sexually-oriented offender, but that a reallocation was not in C.N.'s best interest. Father filed objections to the decision, which the trial court overruled.

{¶5} Father has appealed, raising two assignments of error for our review. Mother has not filed an appellate brief, and thus, this Court may “accept [Father’s] statement of the facts and issues as correct and reverse the judgment if [his] brief reasonably appears to sustain such action.” App.R. 18(C).

FATHER’S MOTION FOR REALLOCATION

{¶6} Father argues on appeal that the trial court abused its discretion in overruling his motion for reallocation of parental rights and responsibilities as the decision is against the manifest weight of the evidence and the trial court failed to weigh all of the best interest factors. We disagree.

{¶7} “Generally, the decision to adopt, reject, or modify a magistrate’s decision lies within the discretion of the trial court and should not be reversed on appeal absent an abuse of discretion.” *Barlow v. Barlow*, 9th Dist. No. 08CA0055, 2009-Ohio-3788, at ¶5. In reviewing the trial court’s actions, we consider the nature of the underlying matter. *Id.*, quoting *Tabatabai v. Tabatabai*, 9th Dist. No. 08CA0049-M, 2009-Ohio-3139, at ¶18. Here, Father argues that the trial court’s decision is against the manifest weight of the evidence. In the civil context, “[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.” *C. E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus.

{¶8} R.C. 3109.04(E)(1)(a) provides that the court can modify the designation of residential parent if it finds that a change in circumstances has occurred since the prior allocation and that modification is necessary to serve the best interest of the child. The statute further provides that “[i]n applying these standards, the court shall retain the residential parent designated by the prior decree * * * , unless a modification is in the best interest of the child”

and one of three circumstances applies: (1) either that the residential parent agrees to a change in the residential parent; (2) the child, with the consent of the residential parent has been integrated into the family of the person seeking to become the residential parent; or (3) that the harm caused by a change of environment is outweighed by the advantages of the change of environment to the child. R.C. 3109.04(E)(1)(a). Practically speaking, the court must first make a threshold determination that a change in circumstances has occurred. See *Neighbor* at ¶8. If a change of circumstances is demonstrated, the trial court must then determine whether the modification is in the best interests of the child. *Id.* The factors to be considered with respect to the child's best interest are enumerated in R.C. 3109.04(F)(1)(a)-(j). Father contended, and the court found, that a change in circumstances occurred. Father contends the trial court erred in failing to reallocate parental rights and responsibilities as such was in C.N.'s best interest. Thus, we must determine whether competent, credible evidence was presented at the magistrate's hearing from which the trial court could find that, while change in circumstances had occurred, nevertheless, a reallocation of parental rights and responsibilities was not in the best interest of C.N.

{¶9} The trial court approved the magistrate's findings related to the statutory factors and, inter alia, concluded the following:

"a. Both parents want to be the residential parent and legal custodian.

"b. Both parent's [sic] contribute equally to [C.N.'s] development.

"c. [C.N.] expressed a preference to attend school in Father's district.

"d. [C.N.] stated that he had more friends in Middlefield (Father's home).

"e. [C.N.] interacts well with extended family.

"f. [C.N.] is well adjusted to each home and community.

"g. [C.N.] is excelling in school in Akron.

“h. Both parties are healthy and Mother is dealing appropriately with her bipolar condition and alcoholism.

“i. Father has consistently interfered with [C.N.’s] relationship with Mother even to an extent which resulted in criminal charges being filed against him for interference with custody.

“j. Father and his mother have an extremely negative attitude towards Mother, which predates her criminal case, and the negative attitude will have an adverse impact on [C.N.]

“k. Father has failed to pay child support as ordered and is unwilling to support [C.N.] unless he has custody.

“l. Mother has been convicted of a sexually oriented offense. Mother’s probation officer is satisfied with her progress: she has reported as required; regularly attends AA meetings; completed a drug rehabilitation program; remains free from substance abuse; receives mental health treatment; and is seeking employment.”

The court further concluded that “Father’s long standing pattern of behavior and the harm it does to [C.N.] far outweighs Mother’s single criminal offense.” The court went on to note that aside from Mother’s conviction, “all the other factors considered by the [c]ourt are neutral or weigh in favor of Mother.”

{¶10} We turn to examining the testimony elicited at the 2009 hearing to determine whether the trial court’s findings concerning the best interest factors were against the weight of the evidence.

Evidence Related to Mother

{¶11} Mother has two children, C.N. and an older child J., who lives in Florida with his father. Mother has lived at her current residence since August 2008, but has been at each of her prior residences for two years or less. Gary Lampe testified that he and his son formerly dealt with Mother in a landlord-tenant relationship. Mother rented a house from Mr. Lampe’s son, and Mr. Lampe’s son had to initiate eviction proceedings against Mother in December 2007 or January 2008 when Mother failed to pay rent. Mr. Lampe went over to the house to see if

someone was living there and noticed that the house was in disarray. He noticed empty alcohol cans and bottles in the trash can. After Mother was evicted, Mr. Lampe viewed the house and described it as a “wreck.” Door jams were removed and baseboards were pulled off and the carpet had to be replaced. Mr. Lampe received a judgment against Mother for \$2,200.

{¶12} The guardian ad litem, George Miller, visited Mother’s current home in October 2008, during the time in which Mother was still in the process of moving in and getting things in order. Mr. Miller described Mother’s home as messy, but livable. Overall he believed Mother’s home was adequate, despite it not being as nice as Father’s home. Colin Meeker, Mother’s probation officer, visited Mother’s home four times and indicated that it was well kept and appropriate for her family.

{¶13} Concerning Mother’s employment, Mr. Meeker reported that Mother was actively seeking employment and considering returning to school. Mother and Mother’s boyfriend receive unemployment and Mother receives food stamps. Mother’s financial situation necessitated her declaration of bankruptcy in 2008. Following her conviction, Mother initially had a difficult time obtaining employment but was able to find part-time work and eventually full-time work with Community Legal Aid in September 2008 where she worked until the end of 2008 when the grant under which she was hired expired. Mr. Miller acknowledged he was concerned that both Mother and Mother’s boyfriend were unemployed.

{¶14} Mother’s boyfriend has had multiple DUI convictions and at the time of the hearing still needed to pay to get his license reinstated. Mother admitted that her boyfriend did not submit to a urine or follicle test, but stated that she had never seen him use drugs and that he drank less than she did. Mother testified that her boyfriend was subject to drug testing at work and that she faxed his latest results, which were negative, to the guardian ad litem. Mother

testified that her boyfriend and Father used to be friends and that the friendship ended when Father became aware that Mother's boyfriend was dating Mother.

{¶15} Neither Mr. Miller nor Mr. Meeker had concerns regarding Mother's boyfriend's interactions with C.N. Father claimed that C.N. indicated he did not want to have a relationship with Mother's boyfriend. Father does not believe such a relationship is appropriate because Father knows Mother's boyfriend to be a drug user and an alcoholic. Mother contended that her boyfriend and C.N. have a good relationship.

{¶16} With respect to the incident that led to Mother's conviction, Mother admitted that she was guilty of having sex with the fifteen year-old victim, but asserted that she had no memory of the incident itself. Mother testified she went over to her neighbor's apartment after work as she often did. She indicated that she and the neighbors drank together almost every day. Mother's son J. went over with her to play video games with the victim. Mother indicated that she drank ten beers, one glass of wine and two vodkas with juice. Mother recalled dancing in the basement, becoming dizzy and going to the upstairs bathroom. Mother began vomiting and lay down on the floor. The next thing Mother remembers is being punched in the head by the victim's mother. The victim's mother was yelling that Mother had sex with the victim. Mother does not remember having sex with the victim, but did admit that she must have done so. Mother retrieved her clothes from outside of the victim's room as the victim's mother was screaming at her. Mother contends that J. was sent home prior to the incident. Mother admits that she did not inform Father of her conviction, although she denies that she told him she was going to Florida. While she was serving her sentence, she left C.N. with her boyfriend, whom she had been seeing for eight years.

{¶17} The victim's mother recalled the events of the evening differently than Mother. The victim's mother remembered Mother only having a couple drinks and does not believe that she was impaired. When she went into her son's room that night, she saw Mother naked and on top of her son. The victim's mother testified that Mother's son J. was still at her home at the time the victim's Mother was yelling at Mother about what had occurred. She testified that her son, the victim, was fifteen at the time. She described her son as religious and intelligent. She stated that at the time the incident occurred, her son had never had a girlfriend. The victim's mother testified that the incident caused her son to wet the bed again and to require six months of counseling.

{¶18} Mr. Meeker stated that following Mother's conviction, she successfully completed a drug treatment program at Oriana House. Mother reported that she attends Alcoholics Anonymous each week and that she has not had any alcohol since the incident. Mother was subject to drug testing, which came back negative for all illegal drugs. Mr. Meeker did verify that Mother attends individual mental health counseling and is on medication, but clarified that she is not in a treatment program for sex offenders. Mr. Meeker stated that Mother's previous probation officers did not feel that Mother needed to attend sex offender treatment; because Mother was in mental health counseling, her counselor would refer to a program for sex offenders if the counselor felt it was necessary. Mother has complied with all registration requirements associated with her tier II status.

{¶19} Mr. Meeker did not have any concerns with Mother caring for C.N. and described Mother as a "pretty compliant probationer." Mother's friend, Carrie Lynn Green, spoke positively about Mother's parenting. Ms. Green did not believe that Mother posed a danger to children and stated she would feel comfortable leaving her own children in the care of Mother.

Mr. Miller talked with Mother's probation officer, spoke with C.N. and looked at C.N.'s recent school records. Mr. Miller described C.N. as a well adjusted child who did well in school. Mr. Miller did not believe that C.N. was affected by Mother's conviction. Overall, Mr. Miller believed that C.N. should remain with Mother and that Father should be able to spend the summers with C.N. Mr. Miller felt confident that C.N. was safe with Mother, that C.N. was not likely to be sexually abused by Mother, and that Mother was unlikely to sexually abuse other boys.

{¶20} Mother contended that C.N. was doing well in school, is very intelligent, and has several friends near her home in Akron. While C.N.'s grades declined from the first to second quarter of the school year, Mother attributed the decline to C.N. being bullied during that time. Mother indicated the bullying was resolved. Mother testified that C.N. has not suffered from depression and that none of his friends have shunned him due to her conviction. C.N.'s friends' parents are aware of Mother's conviction and still allow C.N. to play with their children. Mother indicated that she plays chess with C.N. and that he plays football and soccer with the neighborhood children. Mother stated that she disciplines C.N. by grounding him, but that he rarely gets grounded.

{¶21} In contrast, the victim's mother questioned Mother's parenting style. She stated that she had concerns about the way in which Mother disciplined J. and C.N. The victim's mother testified that Mother made J. scrub the basement floor with a toothbrush and she would make C.N. lay in a wet bed if C.N. had an accident during the night.

{¶22} Father contended that Mother regularly denied him visitation. He testified that Mother withheld C.N. from him when she was convicted and then lied about it telling him that she was in Florida when she was at Oriana House. Father became aware of Mother's conviction

and subsequently picked C.N. up on his way to school. Father did not notify Mother or Mother's boyfriend that he had taken C.N., so for some time they were unaware of C.N.'s whereabouts. Instead, Father called the police and the school to let them know C.N. was with him. Concerning Mother's failure to bring C.N. for visitation on an icy day in December, Father testified that the weather was not that bad and did not become problematic until much later that evening. Mother indicated that she did not bring C.N. for the visit because it was icy that day, and she did not feel it was safe to take C.N. from Akron to the meeting point. Mother called Father's mother and explained the situation and Father's mother seemed to understand. Mother allowed Father to make up the time. Mother stated that anytime that she could not take C.N. due to the weather, she always allowed the time to be made up. Father denied receiving make-up visitation for the time missed because of the inclement weather. Mother contended that she had allowed Father extra visitation in the past and would be willing to continue to do so despite Father's contempt motion.

Evidence Related to Father

{¶23} Father testified that two years prior to the hearing, he moved from Streetsboro to Middlefield; both to be closer to work, and because it would benefit C.N. as the school in Middlefield is ranked highest in the state. Prior to living in Streetsboro, Father lived in rental units in North Royalton and Strongsville. On cross-examination, Father was questioned about numerous eviction actions and acknowledged the existence of at least two actions in 1999. Father believes that C.N. performs better at the school near Mother because it is easier. However, Father has not spoken to C.N.'s current teachers or visited his school. Father is self-employed and earns approximately \$30,000 a year. Father has two other children who are over eighteen; Father is not a part of their lives.

{¶24} Mr. Miller described Father's home in Middlefield as nicer than Mother's. When he visited Father's home, Father, Father's mother, and Father's girlfriend were there. Mr. Miller was concerned about the manner in which the three talked about Mother. Father, Father's mother, and Father's girlfriend never said anything positive about Mother and at least one of them referred to her as a pedophile. Although Mr. Miller did not observe the group say negative things about Mother in C.N.'s presence, Mr. Miller was concerned about the impact such negative discussions about Mother would have on C.N. and believed that the child would be exposed to such discussions. Mr. Miller was also concerned about how Father would eventually explain Mother's conviction to C.N.

{¶25} Mr. Meeker stated that Father called him on multiple occasions with concerns about C.N. living with Mother. In response to Father's calls, Mr. Meeker made several home visits to Mother's home. In the summer of 2008, Father called Mr. Meeker alleging that Mother was having sleepovers at her house; this prompted Mr. Meeker and Mother to agree that while Mother was on probation, Mother would inform C.N.'s friends' parents of her status and that no minors aside from C.N. would be in Mother's home. Initially, Father was calm during the phone calls to Mr. Meeker but became progressively more aggressive with Mr. Meeker, to the point where Mr. Meeker had to ask Father's attorney to tell Father to stop calling him. A civil protection order was issued in favor of Mother and against Father after he called neighbors and C.N.'s babysitter about Mother's conviction. Father stated that the civil protection order ultimately lapsed and that an alleged violation of that order was dismissed.

{¶26} Father was convicted of domestic violence against his estranged children's mother eighteen years prior to the hearing and admitted to having a DUI three years prior to the hearing. Mother testified that she and Father had a volatile relationship and Father was physically and

emotionally abusive. Mother's relationship with Father ended when Father slammed her head into a waterbed pole and then pushed her down the stairs.

{¶27} Mother's friend Carrie Lynn Green also testified about Mother's relationship with Father. She indicated that when Father found out Mother was pregnant with C.N., Father wanted Mother to move out or have an abortion. Because of Father's actions, Mother left the home where she resided with Father and stayed with Ms. Green twice, once during her pregnancy and once when C.N. was a baby. Ms. Green testified that she had witnessed Father scream at Mother and threaten to kill her.

{¶28} Sandra Wintz with the Family Court Services Department also testified. She supplied a report dated August 2007, which is not part of the record on appeal. Ms. Wintz acknowledged that she has not had contact with the parties since the report was filed. Ms. Wintz testified that in her 2007 report she recommended that Father should be the residential parent because C.N. was then living with Father. Ms. Wintz testified that as of the 2009 hearing she was aware that C.N. had lived with Mother for over a year. Ms. Wintz stated that "[a]s long as he's doing well in this current placement I would have concerns about him changing again because he has gone back and forth quite a bit during his young life." Wintz further testified that because she had no knowledge of the current situation she could not make a recommendation regarding reallocation one way or the other.

{¶29} Father stated that C.N. told him that C.N. wanted to live with Father. The trial court did not find that C.N. wanted to live with his Father, but instead found that C.N. expressed a preference to attend school in Father's school district. This finding appears to have been based in part upon the court's in camera interview with C.N. However, this Court does not have a transcript from that proceeding. Father testified that he spends time with C.N. during the current

companionship period and that C.N. has friends in his neighborhood. Mother acknowledged that C.N. had a good relationship with Father's mother. Father believes Mother should receive "standard order" visitation and possibly more time in the summer.

{¶30} Concerning companionship, Mother indicated that she did not receive the full two-hour period she was granted by the court following her conviction until the court instructed Father that the companionship was mandatory. In addressing his failure to comply with the court's order, Father explained that Sundays are difficult days for companionship because Sunday is his only day off to spend with C.N. Father stated that on Sundays he was too busy to allow the full companionship period with Mother. Moreover, Father stated that he thought the companionship period was for *up to* two hours and that he was not aware until the parties went back to court that it was a mandatory two hours.

{¶31} At the time of the hearing, Father had not complied with the court order requiring him to pay child support. Father explained his noncompliance with the support order by stating that he does not pay child support because all of his money goes to pay for his home and his attorney fees. Mr. Miller stated that Father indicated he had no intention of paying child support unless he got custody of C.N.

Manifest weight analysis

{¶32} The trial court determined that "[t]here is no doubt in the Court's mind that if Father has custody of [C.N.] he will act to server [sic] any relationship between [C.N.] and his Mother. He has done so in the past, at every opportunity, and will do so in the future." With respect to Mother's prior conviction, the trial court indicated that the guardian ad litem noted that the offense "is a once in a lifetime event which in no event, directly or indirectly, should effect [sic] [C.N.], except as to how it is explained to him by [Father]." The trial court concluded that

Mother's conviction "in and of itself does not warrant a modification of the parenting order where she has complied with all the terms of her community control and all the other factors considered by the Court are neutral or weigh in favor of Mother."

{¶33} Father contends the trial court's decision was against the manifest weight of the evidence. The crux of Father's argument centers on Mother's conviction for unlawful sexual conduct with a minor and the weight he believes that conviction should have in a best interest analysis. It appears that Father believes that Mother's conviction alone should be enough to bar her from being the residential parent. However, as is evident from the trial court's findings, the court was confronted with the issue of whether a single conviction was more harmful to the child than Father's alienation of the child from his mother. In light of its concerns about Father's past conduct, which included an overt and aggressively negative attitude about Mother, and Father's disregard of the companionship and support orders, the trial court did not conclude that a modification of the designation of residential parent was in C.N.'s best interest.

{¶34} R.C. 3109.04(F)(1)(h) provides that as part of the best interest analysis, the court must consider "[w]hether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child[.]" Mother clearly has pled guilty to a crime involving an act whereby a child was abused as defined by the statute. Thus, this factor does weigh against her, as the trial court acknowledges in its entry.

{¶35} Nonetheless, Mother's conviction is not the only factor to consider in determining the child's best interests. Clearly, Mother's conviction evidences conduct that is reprehensible, which troubles this Court and which this Court does not excuse or condone. However, no testimony was presented demonstrating that anyone besides Father believes that Mother poses a

danger to C.N. or other children. Neither Mother's probation officer, nor the guardian ad litem expressed concerns with Mother caring for C.N. Mother's actions after her conviction, including seeking mental health counseling, taking medication for her bipolar condition, abstaining from alcohol, and attending Alcoholics Anonymous, all indicate that Mother appreciates the gravity of her behavior and intends to do whatever is necessary to be a healthy, balanced individual capable of adequately caring for her child. Given the evidence presented, there was competent, credible evidence to support the trial court's finding that "[b]oth parties are healthy and Mother is dealing appropriately with her bipolar condition and alcoholism." We further note that it was Father who initiated the motion to reallocate parental rights and responsibilities. Despite Father's concerns regarding Mother's mental health and parenting ability, he did not request that Mother undergo a court-ordered psychological evaluation nor did he call an expert to weigh in on Mother's parenting abilities. While there is testimony from several witnesses about the sexual incident itself, the record does not reflect that C.N. has been negatively affected by Mother's conviction. See *Smith v. Smith* (Jan. 16, 2002), 9th Dist. No. 01CA0036, at *6 (2002 WL 57973) (Wherein this Court concluded that the trial court did not abuse its discretion in concluding that it was in the children's best interests for mother to be residential parent despite her domestic violence conviction. We stated that "regarding the domestic violence conviction, the court determined that Ms. Smith's version of the incident was more credible, that the incident did not cause any serious harm to Angela, and that it was an isolated event which occurred in the context of ongoing marital and family disputes."). Although Mother's conviction *could* have occurred in a background of poor parenting in general, that is not corroborated by the evidence before us. There was no testimony that Mother neglected the child. There is substantial evidence that C.N. is thriving with Mother as the residential parent. C.N. has been in the primary care of Mother

since 2007 and from the testimony elicited at the 2009 hearing he appears to be a happy, well-adjusted child who loves both parents and who excels in school. The trial court's conclusions that "[C.N.] interacts well with extended family[,] * * * is well adjusted to each home and community[,] and [that] [C.N.] is excelling in school in Akron[,]” are also supported by competent, credible evidence. While these conclusions themselves are neutral, they are based upon the backdrop of Mother being the residential parent and Father having companionship. We can only evaluate Mother from the evidence actually presented, which overall, despite her conviction, does not indicate that her parenting is poor or neglectful.

{¶36} Conversely, the trial court determined that the child would be harmed should Father be designated as the residential parent. The trial court concluded in its entry that if custody was reallocated to Father, Father “will act to se[.]ver any relationship between C.N. and his Mother.” It also determined that “Father has consistently interfered with [C.N.’s] relationship with Mother even to an extent which resulted in criminal charges being filed against him for interference with custody.” The record is clear that Father, Father’s mother, and Father’s girlfriend have an extremely negative view about Mother which they have expressed to many other people. The specific circumstances which resulted in the civil protection order being issued against Father are unclear but appear from the testimony to relate to Father’s inappropriate phone calls made to neighbors and the babysitter about Mother’s conviction.

{¶37} The guardian ad litem, after interacting with Father, his girlfriend and Father’s mother, expressed a strong concern that C.N. would be exposed to disparaging comments about Mother while with Father. Further, Father disregarded the companionship order because he was too busy to allow C.N. companionship of two hours with Mother. This conduct provides

competent, credible evidence to support the trial court's finding that if Father were the residential parent, he would act to sever C.N.'s relationship with his mother.

{¶38} The trial court also determined that "Father has failed to pay child support as ordered and is unwilling to support [C.N.] unless he has custody." No matter how Father feels about Mother, Father has a duty to financially support his child. As noted above, Father also failed to abide by a prior companionship order because he was too busy. Father's continuing pattern of disobedience to court orders was not only material to the trial court's ultimate determination but certainly gave the court insight into Father's overall mentality. In unilaterally deciding how and when he would pay child support, Father's conduct communicates a "my way or the highway" attitude that is so dominant that he is willing to disregard court orders. Father's disregard of both the companionship and support orders further suggests that Father lacks insight concerning C.N.'s best interests.

{¶39} A review of the record before us reveals that there is competent, credible evidence to support the trial court's determination that a reallocation of parental rights and responsibilities was not in C.N.'s best interest. Accordingly, the trial court's decision was not against the manifest weight of the evidence. Father's assignment of error is overruled.

REMOVAL OF THE MAGISTRATE

{¶40} In Father's second assignment of error, he argues the trial court abused its discretion in failing to remove the magistrate, who Father alleges was biased against him.

{¶41} "The removal of a magistrate is within the discretion of the judge who referred the matter to the magistrate[.]" *In re Disqualification of Wilson* (1996), 77 Ohio St.3d 1250, 1251.

{¶42} Father's argument to this Court consists of several paragraphs of factual findings or lack of factual findings that appear to come from the 2009 evidentiary hearings and from the

magistrate's April 14, 2009 entry. Father makes the assertion that the paragraphs of factual findings prove the magistrate's bias, but provides no convincing argument in support of that claim. Further, Father filed his motion to remove the magistrate on February 4, 2009. The trial court overruled Father's motion on February 20, 2009, prior to the hearings and the ruling about which Father complains. Thus, the actions and determinations Father asserts demonstrate bias occurred after Father's motion was overruled and were not even before the trial court. This Court will not conclude that the trial court abused its discretion based upon evidence that the trial court could not have considered.

{¶43} Essentially it appears that Father was unhappy with the magistrate's legal determination which was not in his favor. The Supreme Court of Ohio, however, has stated that "[d]isagreement or dissatisfaction with legal rulings is not grounds for disqualification." *Id.* Father's second assignment of error is overruled.

CONCLUSION

{¶44} In light of the foregoing, we affirm the judgment of the Summit County Court of Common Pleas, Domestic Relations Division.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

RONALD T. GATTS, Attorney at Law, for Appellant.

MISTY JONES, pro se, Appellee.

GEORGE MILLER, Attorney at Law, for GAL.