

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ahmad Williams,	:	
Plaintiff-Appellee,	:	
v.	:	No. 14AP-761
Jasmine Sardari,	:	(C.P.C. No. 08JU 15855)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on June 23, 2015

Golden & Meizlish Co., LPA, and Keith E. Golden, for appellant.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch

TYACK, J.

{¶ 1} Jasmine Sardari is appealing from orders allocating parental rights and responsibilities for the two minor children fathered by Ahmad Williams. She assigns two errors for our consideration:

I. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN DENYING APPELLANT'S MOTION TO STRIKE THE REPORT OF THE GUARDIAN AD LITEM.

II. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN TERMINATING SHARED PARENTING AND ALLOCATING SOLE CUSTODY TO APPELLEE.

{¶ 2} This litigation began in 2008 when Ahmad Williams filed an action asking for allocation of parental rights of one of the children. Later, Williams initiated a similar

action with respect to the other child. The cases bounced back and forth between courts in Cuyahoga County and Franklin County. Eventually, evidentiary hearings were held before a magistrate in Franklin County beginning in March 2012. In May 2013, the magistrate issued a magistrate's decision containing findings of fact and conclusions of law. The magistrate's decision included a recommendation that Williams be designated the residential parent of the children.

{¶ 3} Jasmine Sardari filed objections to the magistrate's decision. The parties agreed that the trial court judge should interview the children to help the judge resolve the contested issues. A guardian ad litem ("GAL") was appointed to at least attend the interviews. The interviews occurred and the guardian ad litem subsequently issued a report.

{¶ 4} Counsel for Jasmine Sardari filed a motion asking that the GAL's report be stricken. The trial court judge overruled that motion, finding that nothing in the court's order appointing the guardian precluded the guardian from making a written report or from doing an investigation of the facts underlying the dispute between the parties.

{¶ 5} We find no fault with the trial court's handling of issues regarding the GAL. The March 12, 2014 order from the trial court appointing the guardian ad litem did not in fact preclude any written report. (R. 171, Entry Appointing GAL.) The GAL was expected to represent the best interests of the children and did so. An investigation and written report are a normal part of the guardian's duties and in line with the Rules of Superintendence for the Courts of Ohio. A GAL may file pleadings, motions, and other documents as appropriate under the applicable rules of procedure. Supp.R. 48(D)(6). A GAL shall make reasonable efforts to become informed about the case, in order to provide the court with relevant information and an informed recommendation as the child's best interest. Supp.R. 48(D)(13).

{¶ 6} We overrule the first assignment of error.

{¶ 7} The second assignment of error alleges that the trial court abused its discretion in its allocation of parental rights and responsibilities with respect to the children. The allocation of parental rights and responsibilities are governed by R.C. 3109.04.

{¶ 8} A trial judge's determination under R.C. 3109.04 that warrants a change of custody should not be disturbed absent an abuse of discretion. *David v. Flickinger*, 77 Ohio St.3d 415 (1997)(a trial judge, as the trier of fact, must be given wide latitude to consider all issues which support such a change, including a change in circumstances because of a child's age and consequent needs, as well as increased hostility by one parent which frustrates cooperation between the parties on visitation issues).

{¶ 9} "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). An abuse of discretion connotes more than an error of judgment; it implies a decision that is arbitrary or capricious, one that is without a reasonable basis or clearly wrong. *Pembaur v. Leis*, 1 Ohio St.3d 89 (1982); *Wise v. Ohio Motor Vehicle Dealers Bd.*, 106 Ohio App.3d 562, 565 (9th Dist.1995); and *In re Ghali*, 83 Ohio App.3d 460, 466 (10th Dist.1992).

{¶ 10} Shared parenting of either child is no longer viable for these two parents. R.C. 3109.04(F) lists the factors that shall be considered when determining whether shared parenting is in the best interest of the child including: the ability of the parent to cooperate and make decisions jointly, with respect to child; the ability to encourage love and affection and contact between the child and the other parent; geographic proximity; and likelihood in following court orders pertaining to time or visitation rights. R.C. 3109.04(F). The relationship between Williams and Sardari has been tumultuous in recent years. At the pertinent times, they lived in different cities approximately two hours drive time apart. Sardari pursued sexual abuse charges against a step-son of Williams.¹ The parties have not diligently abided by court orders. The parties did not communicate well on matters involving the children, including medical issues and educational issues.

{¶ 11} Since shared parenting was not a realistic option, the trial court had to decide whether the best interests of the children were best served by having both be cared for with the father as the residential parent or with the mother as the residential parent.

¹ The GAL was aware of the allegations and inquired of the older child, father and step-mother regarding the same. The GAL noted the older child feels safe at his father's house and concluded it is in the best interest of the children for the father to be named sole legal custodian and residential parent.

Having the children be in separate homes also was not considered to be a viable option. Neither Williams nor Sardari support that option.

{¶ 12} The trial court, based on the factors in R.C. 3109.04(F), decided that having the children be with their father as the residential parent and with their mother under the extended time provided by Loc.R. 22 was in the best interests of the children. We cannot fault that decision, let alone call it an abuse of discretion.

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

{¶ 14} Both assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

DORRIAN and BRUNNER, JJ., concur.
