

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
HANCOCK COUNTY**

SUSAN PNEUMAN

PLAINTIFF-APPELLEE

CASE NUMBER 5-2000-09

v.

TIMOTHY TROUTMAN

O P I N I O N

DEFENDANT-APPELLANT

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court, Domestic Division.**

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: August 15, 2000.

ATTORNEYS:

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For Appellant.**

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For Appellee.**

SHAW, J. Appellant, Timothy E. Troutman, appeals from a judgment entry filed February 16, 2000, which modified his rights to visitation as set forth in Appendix J of the Local Rules of the Hancock County Court of Common Pleas, Domestic Relations Division.

On January 11, 1996, appellant and appellee, Susan M. Troutman (nka Pneuman), were granted a dissolution. The separation agreement as incorporated into the dissolution decree designated appellee as the residential parent of the parties' minor children and granted appellant visitation rights as set forth in the separation agreement.

On August 12, 1997, an agreed judgment entry was filed which disposed of various motions pending in the instant case, including motions to modify custody, contempt regarding visitation, and for an emergency order for visitation rights to be enforced, and other matters at issue between the parties. The agreed entry set forth a visitation schedule, which provided, in summary, the appellant with visitation on every other weekend, weeknight visitations on Tuesday and Thursday nights, a "special Sunday visitation" six months each year, four weeks of visitation which could be exercised in minimum two-day increments, and alternating holidays.

A hearing was subsequently held on May 20, 1999 on various motions pending before the court, including motions for proposed modification of

visitation and clarification of visitation. After considering the evidence, the trial court ordered, *inter alia*, standard visitation in accordance with Appendix J of the local rules. Appellant now appeals to this court, raising the following assignment of error:

The court committed prejudicial error by reducing the appellant's visitation to Appendix J of the local rules.

Appellant argues that the trial court's modification of his visitation rights is erroneous because it fails to take into account the best interests of the minor children or any of the factors set forth in R.C. 3109.051(D) applicable to modification of visitation. Appellant further contends that the reasoning used to adopt Appendix J is not consistent with the evidence.

In *Braatz v. Braatz* (1999), 85 Ohio St.3d 40, 44, the Ohio Supreme Court held that R.C. 3109.051 governs modification of visitation rights. Pursuant to R.C. 3109.051(D), the trial court shall consider the fifteen factors set forth therein, and in its sound discretion determine visitation that is in the best interest of the child. *Id.* at 45. One factor the court shall consider is "[e]ach parent's willingness to reschedule missed visitation and to facilitate the other parent's visitation rights[.]" R.C. 3109.051(D)(10). Further, R.C. 3109.051(D)(15) directs the court to consider "[a]ny other factor in the best interest of the child."

While appellant does not challenge Appendix J itself, such schedule of companionship provides for appellant to have visitation with the children on

alternating weekends, mid-week, on various holidays as well as on days of special meaning, and four weeks vacation time each year. In its judgment entry ordering the standard visitation schedule as set forth in Appendix J, the trial court noted that appellant "has requested that this Court 'fine tune' and 'define' for the parties their own agreements on [the issue of vacations and companionship]." The court also noted that this was covered in the original dissolution decree and that the parties have since modified the original agreement both with and without the aid of the court and/or magistrate. Based on the evidence, the trial court concluded that the parties would never be able to agree on these issues. The court further concluded that the only way to resolve the issues about visitation and the continued requested deviations was to order Appendix J visitation.

The evidence in the record in this case contains testimony from the appellee that she wanted standard visitation as set forth in Appendix J, with the modification of holidays, due to the conflicts and confrontations between the parties created by the existing visitation schedule and due to the impact of confusing the children in terms of what the schedule is. In fact, the record shows the parties have resorted to motions to resolve their disputes as to visitation rights. Given this testimony, as well as the remainder of the record, the trial court's findings and conclusions as to its decision suggest that it did take into account the relevant factors set forth in R.C. 3109.051(D) to determine a modification which is

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in the children's best interests. It is highly likely that the court order adopting the standard local rule visitation schedule can reduce disputes regarding details of the degree raised by the parties under the prior visitation schedule.

Based on the foregoing, appellant's sole assignment of error is overruled and the judgment of trial court is affirmed.

Judgment affirmed.

HADLEY, P.J., and WALTERS, J., concur.

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