

[Cite as *O'Brien v. O'Brien*, 2010-Ohio-3258.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

GENTA MORINA O'BRIEN,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-11-289
- vs -	:	<u>OPINION</u>
	:	7/12/2010
EDWARD GREGORY O'BRIEN,	:	
Defendant-Appellee.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR08070892

L. Patrick Mulligan and George A. Katchmer, 28 North Wilkinson Street, P.O. Box 3537, Dayton, Ohio 45401, for plaintiff-appellant

M. Lynn Lampe, 1248 Nilles Road, Suite 7, Fairfield, Ohio 45014, for defendant-appellee

POWELL, J.

{¶1} Plaintiff-appellant, Genta Morina O'Brien, appeals a decision of the Butler County Court of Common Pleas, Domestic Relations Division, regarding the allocation of day care expenses following her divorce from defendant-appellee, Edward Gregory O'Brien. We affirm the decision of the domestic relations court.

{¶2} The parties were married on January 20, 1996, and the marriage produced three children. Appellant filed a complaint for divorce in July 2008. On June 25, 2009, the trial court conducted a final hearing, where the main issue pertinent to this appeal was the cost and allocation of day care expenses. After hearing testimony from both parties, the trial court found that \$15,000 was a reasonable annual day care expense. The court ordered appellant to pay 20 percent of the cost, or \$3,000 per year, and appellee to pay the remaining 80 percent, or \$12,000 per year. The court entered a final judgment and divorce decree on October 21, 2009, which incorporated the day care award. This appeal followed.

{¶3} At the outset, we note that since "it is axiomatic that a trial court must have discretion to do what is equitable upon the facts and circumstances of each case, it necessarily follows that a trial court's decision in domestic relations matters should not be disturbed on appeal unless the decision involves more than an error of judgment." *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144; *Gamble v. Gamble*, Butler App. No. CA2006-10-265, 2008-Ohio-1015, ¶3. We are mindful of this consideration as we address appellant's two assignments of error.

{¶4} Assignment of Error No. 1:

{¶5} "THE DECISION OF THE TRIAL COURT CONCERNING THE ALLOCATION OF DAYCARE COSTS IS NOT SUPPORTED BY THE EVIDENCE AT THE HEARING ON THIS ISSUE[.]"

{¶6} In her first assignment of error, appellant argues that the trial court incorrectly determined reasonable day care expenses based upon figures not supported by the evidence. Appellant argues that "[u]ncontradicted testimony" showed the historical cost of day care was \$26,004 annually, and that no evidence

was offered to support the \$15,000 award.

{¶7} At trial, appellant testified to several different day care options and the varying costs associated therewith. Appellant testified that all three children are currently enrolled in private school, and that day care was necessary to cover the school year, holiday breaks, summer vacation, and any weekends appellant attended college classes.¹ Appellant testified that during the children's school year, she would likely enroll them in Kids-R-Kids, a local day care center, because it was the "most available resource" appellant could find. According to appellant, Kids-R-Kids would cost a total of \$12,096 for the 36-week school year. Appellant also testified that additional day care was necessary to cover approximately four weeks of school holidays and "teacher work days," but she failed to explain how these four weeks were separate from the 36-week school year. Further, for five weeks during the children's summer vacation, appellant testified that she had enrolled them in the local YMCA day care program, totaling \$3,600. Appellant also mentioned additional prospective expenses, including transportation costs of roughly \$100 per month if the children went to Kids-R-Kids during the school year, and an additional \$4,320 of "substitute" day care if appellant took classes at a local college.²

{¶8} In the case at bar, the trial court did not outline the exact reasons underlying its decision to award \$15,000 in day care expenses. However, in the absence of a proper Civ.R. 52 request for findings of fact and conclusions of law, it

1. Appellant testified that she intended to enroll in classes beginning August 31, 2009, which would require 48 additional days of day care while classes were in session.

2. In addition to these day care options, appellant testified that a substitute babysitter (rather than Kids-R-Kids) would cost \$8,100 during the school year. Appellant also submitted her own spreadsheet to the court, estimating that day care would cost between \$26,004 and \$19,620, depending on the type of day care used.

had no independent duty to do so.³ In this case, appellant never asked the trial court to make separate findings of fact or conclusions of law pursuant to Civ.R. 52. Further, when the court subsequently held a hearing on appellee's motion for clarification, appellant did not object to the trial court's decision regarding day care, nor did she request further explanation of the court's decision.

{¶19} A party that fails to request findings of fact pursuant to Civ.R. 52 faces an uphill burden of demonstrating that a judgment is against the manifest weight of the evidence. See *In re Carter* (Nov. 8, 1999), Butler App. No. CA99-03-049, at 4; *Sites v. Sites*, Lawrence App. No. 09CA19, 2010-Ohio-2748, ¶19. As such, we must presume regularity in the proceedings below and affirm as long as there is some evidence from which the court could have reached the ultimate issue. *Carter* at 4. See, also, *Pettet v. Pettet* (1988), 55 Ohio App.3d 128, 130.

{¶10} In the case at bar, the trial court's award fell within the bounds of reasonable day care expenses presented by appellant. It appears as though the trial court accounted for day care expenses during the school year and summer months, which, according to appellant's testimony, would cost approximately \$15,696 in total.

{¶11} Accordingly, we conclude that the trial court's judgment is supported by competent and credible evidence. See *Carter* at 4; *Beaumont v. Albert*, Preble App. No. CA2009-03-006, 2009-Ohio-6176, ¶16. Therefore, appellant's first assignment of error is overruled.

{¶12} Assignment of Error No. 2:

3. Civ.R. 52 states: "Findings by the Court. When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise before the entry of judgment pursuant to Civ.R. 58, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law."

{¶13} "THE DECISION OF THE TRIAL COURT CONCERNING THE ALLOCATION OF DAYCARE COSTS CONSTITUTES AN ABUSE OF DISCRETION[.]"

{¶14} In her second assignment of error, appellant argues that the trial court offered "no rational[e] for its decision to limit day care costs to \$15,000 * * * [and there] is no indication as to why this figure is reasonable."

{¶15} As we previously noted, if it is a thorough explanation appellant seeks, she should "secure separate findings of fact and conclusions of law." *Pettet*, 55 Ohio App.3d at 130. Otherwise, her "already 'uphill' burden of demonstrating error becomes an almost insurmountable 'mountain.'" *Id.* Thus, the lack of a more specific explanation is not a sufficient reason for overturning the trial court's decision in this matter.

{¶16} Further, in designating parental rights and responsibilities, a trial court is vested with broad discretion, and its decision should not be reversed absent an abuse of that discretion. *Johnson v. Johnson*, Butler App. No. CA2009-06-177, 2010-Ohio-1283, ¶6. An abuse of discretion is more than a mere error of law or judgment; it implies that the trial court's decision was unreasonable, arbitrary or unconscionable. *Id.*; *Masters v. Masters*, 69 Ohio St.3d 83, 85, 1994-Ohio-483. Because the trial court is in a far better position to observe the parties and make a decision which is in the best interest of the child, that decision will stand as long as there is competent and credible evidence in the record in support of the parenting determination. See *Johnson* at ¶6.

{¶17} In the case at bar, we cannot say that the trial court abused its discretion in finding that \$15,000 was a reasonable day care expense. Cf. *Glass v.*

Glass (Dec. 22, 2000), Lake App. No. 99-L-120, at *3; *Fisher v. Fisher*, Henry App. No. 7-01-12, 2002-Ohio-1297, at *11.

{¶18} Accordingly, appellant's second assignment of error is overruled.

{¶19} Judgment affirmed.

YOUNG, P.J., and RINGLAND, J., concur.