

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

BRETT BEUCLER,	:	
Plaintiff-Appellant,	:	CASE NO. CA2014-05-009
- vs -	:	<u>OPINION</u>
	:	3/23/2015
JENNAH BEUCLER,	:	
Defendant-Appellee.	:	

APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. DRA2012-1068

Julie D. Steddom, 120 Main Street, Ripley, Ohio 45167, for plaintiff-appellant

Susan Mineer, 65 North Second Street, Suite 200, Batavia, Ohio 45103, for defendant-appellee

HENDRICKSON, J.

{¶ 1} Plaintiff-appellant, Brett Beucler (Father), appeals a decision of the Brown County Court of Common Pleas, Domestic Relations Division, designating defendant-appellee, Jennah Beucler (Mother), residential parent of the parties' minor children for school purposes.

{¶ 2} Mother and Father were married and have two young children, a son born in January 2010 and a daughter born in February 2012. In October 2012, Father filed a

complaint for divorce. The parties entered into a separation agreement resolving all property and debt issues. However, Mother and Father failed to agree on parenting time and child support. Both parties filed proposed shared parenting plans, designating themselves the residential parent for school purposes. Mother currently lives in Gallipolis, Ohio, while Father lives a couple hours away in Winchester, Ohio. Due to the distance between the households, the designation of residential parent for school purposes would determine where the children will reside the majority of the time.

{¶ 3} A magistrate conducted a hearing regarding the parenting time and child support issues on February 11, May 30, and August 29 of 2013. At the hearing, Father testified that he is a high school math teacher and has a home-based business, selling AdvoCare products. Father also trains children in basketball in his spare time. During the school year, Father leaves home around 6:45 a.m. and returns at approximately 3:00 p.m. Father stated that in the summer, he has a flexible schedule and is only away from home a couple hours a day for basketball training. Father owns a home in Winchester, Ohio and many of his family members live in the surrounding area, who are available to watch the children if Father is busy.

{¶ 4} Father explained that he met Mother when they were both attending Rio Grande University. The pair lived near the college in Gallipolis, Ohio while Mother was pregnant with their first child. After their son was born, Father obtained a teaching position in Mt. Orab, Ohio, near where Father grew up, and the family moved to that area. The couple decided Mother would remain at home and raise the children while Father would work to support the family. Father explained that during this time, he would return home from work in the afternoon, go to AdvoCare trainings at night, and be home around 5:00 or 6:00 p.m. Once he returned for the night, he would help with the children. At the hearing, Father recognized that Mother was the primary parent during the marriage and he trusted Mother to

take care of the children. The family lived in Winchester, Ohio until the fall of 2012 when the couple separated. Father testified that Mother took the children and their things and moved to Gallipolis, Ohio without giving him any notice.

{¶ 5} Mother testified that she and the children currently live in Gallipolis, Ohio in the lower level of the home of her father and stepmother. The lower level is finished and has a bathroom and living area where she and the children sleep. Mother's family lives upstairs and the children have a strong relationship with their grandfather, stepgrandmother, aunt, and uncle. Mother currently has a part-time job where she works three days a week. Mother explained that she does not plan to start working full-time until the youngest child starts school.

{¶ 6} Mother stated that when she and Father were together, the couple moved from Gallipolis to Winchester because of Father's teaching job. While Father was working, she stayed at home and took care of the children. She testified that Father was never home at 3:00 p.m., instead he would go to basketball training or sell AdvoCare products. Mother stated she felt isolated and did the majority of the work taking care of the children.

{¶ 7} Dr. A. Eugene Smiley, a professional clinical counselor for Life Span Solutions, testified and submitted reports regarding the allocation of parenting time. Dr. Smiley explained he initially counseled Mother and Father for possible reconciliation and if the pair decided to divorce, what the best interest of the children would be in the matter.

{¶ 8} Therefore, Dr. Smiley only met with Mother and Father together or individually and did not do a full custody evaluation. Dr. Smiley stated it is in the best interest of the children to have equal and regular contact with each parent because both Mother and Father are loving and capable parents. However, an equal distribution of time would probably not be possible once the children reach school age due to the distance between the parents' residences. Dr. Smiley stated that from his sessions with the couple, it is apparent Mother

has been the primary care provider for the children since birth and Father spent considerable discretionary time away from the family. Dr. Smiley discussed the importance of maintaining the same primary caretaker in the children's lives and stated "to significantly decrease the number of hours that mom has with the children, could be a big adjustment for the children."

{¶ 9} David Hunter, the guardian ad litem (GAL) appointed in the case, testified and filed a proposed shared parenting plan designating Father as residential parent for school purposes on the last day of the hearing. The GAL explained that he waited until the final hearing day to make his recommendation because both Mother and Father are good parents and he wanted to evaluate each parent's testimony before submitting his proposed parenting plan. The GAL stated he has concerns over Mother's credibility and cited instances where he believed Mother was not forthright. He also stated Mother should not be deemed residential parent for school purposes simply because she is the mother because both parents, male or female, can be nurturing to children. He then stated, "[m]y issue has more to do with the statutory factors that I have to consider, which go to a lot of prospective things, as to what could happen. This case is a result of mom leaving with the children and going a significant distance away." The GAL also noted that while Father has a busy schedule, Mother will eventually have to obtain full-time employment to provide for the children.

{¶ 10} After the conclusion of the hearing, the magistrate took the case under consideration and filed a Decree of Divorce on November 4, 2013. The magistrate found the GAL's proposed shared parenting plan to be in the best interest of the children. Therefore, Father was designated residential parent for school purposes.

{¶ 11} Mother objected to the magistrate's decision. On February 4, 2014, the trial court found Mother's objection well-taken and reversed the magistrate's decision regarding parenting time. The trial court found the shared parenting plan proposed by Mother, designating her residential parent for school purposes, was in the children's best interest and

adopted and approved this plan. In reversing the decision of the magistrate, the trial court noted that both Mother and Father are good parents. However, the court reasoned Mother should be designated residential parent because she is the children's primary care provider, the children are of young age, and the GAL improperly relied on possible future circumstances in his recommendation.

{¶ 12} Father now appeals, asserting a sole assignment of error:

{¶ 13} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY REVERSING THE MAGISTRATE'S DECISION REGARDING PARENTING TIME AS AN ABUSE OF DISCRETION WHEN THE MAGISTRATE'S DECISION WAS BASED UPON THE EVIDENCE, REPORTS, AND TESTIMONY PRESENTED AT A THREE-DAY TRIAL AND WAS NOT UNREASONABLE, ARBITRARY, OR UNCONSCIONABLE.

{¶ 14} Father argues the trial court erred in reversing the magistrate's decision designating Father residential parent for school purposes. Father maintains that because the magistrate was in the best position to evaluate the credibility of Mother and Father and the trial court found both were fit parents, the court should have deferred to the magistrate's determination. Father also contends the trial court was incorrect in stating that the magistrate failed to consider the children's young age and relied on possible future circumstances in his custody determination.

{¶ 15} An appellate court reviews a trial court's custody determination for an abuse of discretion. *Miller v. Miller*, 37 Ohio St.3d 71, 74 (1988); *Ruble v. Ruble*, 12th Dist. Madison No. CA2010-09-019, 2011-Ohio-3350, ¶ 10. An abuse of discretion constitutes more than an error of law or judgment; it requires a finding that the trial court acted unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "The discretion which a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of

the parties concerned." *Miller* at 74.

{¶ 16} In ruling on objections to a magistrate's decision, Civ.R. 53(D)(4)(d) requires a trial court to undertake an independent review of the objected matters to determine whether the magistrate properly determined the factual issues and appropriately applied the law. *Fox v. Fox*, 12th Dist. Clermont No. CA2013-08-066, 2014-Ohio-1887, ¶ 21. In so doing, a court "may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate." Civ.R. 53(D)(4)(b); *Hampton v. Hampton*, 12th Dist. Clermont No. CA2007-03-033, 2008-Ohio-868, ¶ 13. The trial court has the "ultimate authority and responsibility" over the magistrate's findings and rulings. *Hartt v. Munobe*, 67 Ohio St.3d 3, 5 (1993). When a magistrate has failed to properly determine the factual issues and appropriately apply the law, the trial court must substitute its judgment for that of the magistrate. *Hampton* at ¶ 14.

{¶ 17} In divorce proceedings, a domestic relations court must "allocate the parental rights and responsibilities for the care of the minor children of the marriage." R.C. 3109.04(A). If the parties fail to agree on a shared parenting plan or if neither party files a parenting plan that is consistent with the children's best interest, the domestic relations court "in a manner consistent with the children's best interest, shall allocate the parental rights and responsibilities for the children's care primarily to one of the parents, [and] designate that parent as the residential parent and legal custodian." R.C. 3109.04(A)(1).

{¶ 18} In determining a child's best interest, the court must consider all relevant factors, including, but not limited to, the enumerated factors in R.C. 3109.04(F)(1). The relevant factors include, the wishes of the child's parents; the child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest; the child's adjustment to the home, school, and community; the parent more likely to honor and facilitate court-approved parenting time rights; and

whether one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time. R.C. 3109.04(F)(1)(a)-(j).

{¶ 19} This court has recognized that in allocating parental rights and responsibilities, the best interest factors listed in R.C. 3109.04 are not exhaustive. *Seibert v. Seibert*, 66 Ohio App.3d 342, 345 (12th Dist.1990). Instead, the trial court is to consider all relevant factors, including which parent is the child's primary caretaker. *Id.* While R.C. 3109.04(F) precludes a presumptive quality of the primary caretaker factor, this is a relevant factor in allocating parental rights. *Id.* at 346. Similarly, consideration of the child's young age, their "tender years," is a relevant, although not presumptive, factor in a child custody determination. *Id.* See *Terry L. v. Eva E.*, 12th Dist. Madison No. CA2006-05-019, 2007-Ohio-916, ¶ 17; *Shaffer v. Wagaman*, 2d Dist. Clark No. 2012-CA-53, 2013-Ohio-509, ¶ 10. Further, a trial court should not rely on future possibilities in awarding child custody. *Seibert* at 347. It is an abuse of discretion for a trial court to rely on possible future circumstances coupled with the court's failure to consider the primary caretaker of the children and the young age of the children in awarding custody. *Id.*

{¶ 20} Upon a thorough review of the record, we find that the trial court did not abuse its discretion in designating Mother residential parent for school purposes. The evidence demonstrated that both Mother and Father are good parents and the GAL and Dr. Smiley recognized that choosing between Mother and Father as residential parent was a difficult decision. The GAL struggled with whether to endorse Mother or Father as residential parent and in his initial reports regarding custody, he stated he was unable to recommend either parent because "this is a rare case where the best interest factors fail to provide a clear guideline." The GAL waited until he observed both parents testify and on the last hearing day he recommended Father be designated as residential parent. In recommending Father, the GAL cited concerns over Mother's credibility, and future possibilities, such as the fact that

Mother will eventually have to obtain full-time employment to provide for the children.

{¶ 21} On objections to the magistrate's decision, the trial court chose to emphasize Mother's status as the primary caregiver of two young children over the GAL's concerns regarding Mother's return to the area where her family resides and Mother's future employment opportunities. We cannot find this constitutes an abuse of discretion where the evidence clearly demonstrates that both Mother and Father are good parents, Mother is the primary caregiver of the children, and the children are a young age. Dr. Smiley testified that depriving the children of significant time with Mother would be detrimental to the children's well-being because Mother has spent substantial time with the children.¹ Father did not provide any expert testimony refuting Dr. Smiley's conclusions. Both parents testified that Mother remained at home and primarily raised the children during the marriage.

{¶ 22} Additionally, the trial court did not abuse its discretion in dismissing the GAL's concerns over Mother's future employment status as this court has stated that it is error to rely on future circumstances coupled with a failure to consider the primary caregiver of a young child. See *Seibert*. The evidence demonstrated that both Mother and Father are good parents and under the facts of this case, it would be hard to reverse the trial court's decision designating either Mother or Father as residential parent for school purposes.

{¶ 23} Lastly, we note that to the extent Father argues the trial court should have deferred to the magistrate's credibility and parental suitability determinations because the magistrate observed the witnesses testify, he is in error. Civ.R. 53(D)(4)(b) requires the trial court to conduct an independent review of the objected matters to determine whether the

1. Father also argues the trial court erred in its decision on objections to the magistrate's decision when it referenced the conclusion of Dr. Smiley's response report of August 27, 2013 that depriving the children of significant time with Mother would be detrimental to their best interest. Dr. Smiley submitted two reports, one on May 29, 2013 and another on August 27, 2013, but the August report was not admitted into evidence as Dr. Smiley did not testify that day. However, any error in referencing Dr. Smiley's August report is harmless as Dr. Smiley already testified to this statement during the July 22, 2013 hearing. See Civ.R. 61.

magistrate properly determined the factual issues and appropriately applied the law. Consequently, when the evidence established that both Mother and Father are good parents, Mother has been the primary caregiver of the children, and the children are a young age, the trial court did not abuse its discretion in designating Mother residential parent for school purposes.

{¶ 24} Father's sole assignment of error is overruled.

{¶ 25} Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.