

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CURT STAVER

Plaintiff-Appellee

-vs-

SARAH MILLER-STAVER

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J

Hon. Craig R. Baldwin, J.

Hon. Earle E. Wise, Jr., J.

Case No. 2019CA00057

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Stark County Court of
Common Pleas, Domestic Relations
Division, Case No. 2013DR00178

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

October 31, 2019

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

ROSEMARY G. RUBIN
Victorian Professional Building
1435 Market Avenue, North
Canton, Ohio 44714

TRACEY A. LASLO
325 East Main Street
Alliance, Ohio 44601

Hoffman, P.J.

{¶1} Defendant-appellant Sarah Miller-Staver (“Mother”) appeals the March 13, 2019 Judgment Entry entered by the Stark County Court of Common Pleas, Domestic Relations Division, which approved and adopted the magistrate’s November 14, 2018 decision, recommending no modification be made to the parties’ current parenting time schedule. Plaintiff-appellee is Curt Staver (“Father”).

STATEMENT OF THE FACTS AND CASE

{¶2} Mother and Father were married on July 11, 2009. Two children were born as issue of the marriage, both of whom are still minors. Father filed a Complaint for Divorce on February 13, 2013. Mother filed an Answer and Counterclaim on the same day. The parties were ultimately divorced via Decree of Divorce filed January 2, 2014. Pursuant to the Decree, Mother was named residential parent and legal custodian of the children and Father was awarded parenting time every weekend during the school year¹ and eight weeks during the summer.²

{¶3} The parties currently reside approximately 153 miles away from each other and it takes roughly 3 ½ hours to drive one way between their residences. The parties exchange the children at a midway location in the Polaris area near Columbus, Ohio. Father resides with his parents in Dalton, Ohio, and is on disability leave from his position as a teacher after suffering a stroke. Father has some ongoing medical issues, but is still able to drive and parent the children. Mother lives in Centerville, Ohio, with the children

¹ From Friday at 5:00 p.m. to Sunday at 5 p.m.

² On June 11, 2014, Mother filed a motion requesting clarification of the summer parenting time schedule. The trial court ordered Mother have alternating weekend parenting time with the children during Father’s eight weeks.

and her new husband. She is employed approximately 20 hours/week as a music therapist, both self-employed and as a subcontractor.

{¶4} Both parents have had the children enrolled in extracurricular activities over the years. The children's involvement in these activities has become a major source of contention between the parties. On March 9, 2018, Mother filed a Motion to Modify Companionship, which was predicated upon Father's failure to ensure the children attended their scheduled activities. On May 18, 2018, Father filed a Motion to Modify Child Support and Other Relief as well as a Motion to Dismiss [Mother's] Motion to Modify Parenting Time or, in the alternative, to Change Legal Custody of the Minor Children. The trial court appointed Attorney Mary Lou Sekula as guardian ad litem for the children.

{¶5} The magistrate conducted a hearing on the motions on September 20, 2018. The evidence established the children did not participate in or attend their extracurricular and social activities when they were with Father. Mother felt the children's lack of participation and attendance hindered their social development and also caused them to be ostracized by their peers. However, participation in those activities would result in Father and the children spending 6-7 hours, or more, of Father's parenting time in a vehicle traveling back and forth between Dalton and Centerville in addition to the hours of transport time for the scheduled visitation time. In addition, the minor daughter was involved in competitive dance, which required added travel to competitions as well as financial expenditures for food, lodging, and gasoline. Father is unable to afford these expenses at this time.

{¶6} Attorney Sekula, the guardian ad litem, did not believe the hours spent in a car were the quality time the children and Father deserved. The guardian ad litem

indicated the children were used to the arrangement and wished for it to remain the same. The guardian further stated her position extracurricular activities or weekend socialization with classmates should not take priority over parenting time.

{¶7} Via Decision filed November 14, 2018, the magistrate recommended no modification be made to the parenting time schedule.³ The magistrate found it was in the children's best interest for the current schedule to remain in effect. Mother filed objections to the magistrate's decision. Via Judgment Entry filed March 13, 2019, the trial court overruled Mother's objections to the magistrate's decision, and approved and adopted said decision as order of the court.

{¶8} It is from this judgment entry Mother appeals, raising as her sole assignment of error:

THE TRIAL COURT ERRED IN REFUSING TO MODIFY THE PARENTING TIME SCHEDULE SO THAT THE PARTIES' CHILDREN ARE NOT FORCED TO SPEND SEVEN HOURS EVERY WEEKEND TRAVELING BETWEEN THE HOMES OF THE PARTIES. THIS ARRANGEMENT IS CLEARLY NO LONGER IN THE BEST INTERESTS OF THE CHILDREN NOW THAT THEY ARE AT AN AGE WHEN SOCIALIZATION WITH THEIR PEERS AT WEEKEND EXTRACURRICULAR EVENTS IS CRITICAL TO THEIR DEVELOPMENT.

³ Father withdrew his motion prior to the completion of the hearing.

I.

{¶9} The decision to modify parenting time, which is also referred to as visitation, is within the sound discretion of the trial court. *Booth v. Booth*, 44 Ohio St.3d 142, 541 N.E.2d 1028 (1989). An abuse of discretion implies the court's attitude in reaching its decision was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Moreover, an appellate court will defer to a trial court's factual resolutions of conflicting opinions and testimony, as the trial court is in the best position to observe the witnesses' voice inflections, demeanor, and gestures, to assess credibility. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984).

{¶10} When ruling on a motion to modify visitation, the trial court must determine whether modification is in the child's best interest by utilizing the fifteen factors enumerated in R.C. 3109.051(D). *Braatz v. Braatz*, 85 Ohio St.3d 40, 1999 -Ohio- 203, para. two of the syllabus. The R.C. 3109.051(D) factors are: (1) the prior interaction and interrelationships of the child with the child's parents, siblings and other persons related by consanguinity or affinity; (2) the geographical location of the residence of each parent and the distance between them; (3) the child's and parents' available time for visitation, including the parents' employment schedules, the child's school schedule and holiday and vacation schedules; (4) the age of the child; (5) the child's adjustment to home, school and community; (6) any wishes and concerns the child expressed to the court; (7) the health and safety of the child; (8) the amount of time that will be available for the child to spend with siblings; (9) the mental and physical health of all parties; (10) each parent's willingness to reschedule and accommodate the other parent's parenting time; (11) prior

convictions for certain offenses or acts resulting in abuse or neglect; (13) whether a parent has willfully and continuously denied parenting time rights; (14) whether either parent has or is planning to establish a residence outside the state; and (16) any other factor in the best interest of the child. Factors (12) and (15) relate only to persons other than parents who are seeking visitation and are inapplicable here. R.C. 3109.051(D).

{¶11} The evidence establishes the children were adapted to the current arrangement and wish for it to remain in place. The children are well adjusted and get along well with the people in their lives. The children are doing well in their current school and are happy there. They have friends at school and are involved in extracurricular activities. The children are also actively engaged in the community in which Father resides. They enjoy their activities at both homes. Mother and Father appropriately parent the children. Both Mother and Father abide by and facilitate court ordered parenting time, however, Mother expects Father to give up part of his parenting time in order to transport the children to extracurricular activities which occur during his visitation. The guardian ad litem believed requiring the children and Father to spend 6-7, or more, hours in a vehicle driving to and from extracurricular activities was not appropriate parenting time. In addition, Father is not in a position to incur the financial expenditures associated with the daughter's competitive dance team.

{¶12} Upon review of the record, we find the trial court did not abuse its discretion in overruling Mother's Motion to Modify Companionship. In its original determination regarding the allocation of parental rights, the trial court confronted many of the issues raised herein. The original order was an attempt to maximize the amount of time the children spent with each parent in light of the geographic distance. As relocation by one

or both of the parents is not feasible at this time, modification of the current schedule would not be appropriate.

{¶13} Mother's sole assignment of error is overruled.

{¶14} The judgment of the Stark County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Hoffman, P.J.

Baldwin, J. and

Wise, Earle, J. concur

