

[Cite as *In re J.D.K.B.*, 2017-Ohio-5717.]

STATE OF OHIO, MONROE COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

IN THE MATTER OF: J.D.K.B.

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CASE NO. 16 MO 0012

OPINION

CHARACTER OF PROCEEDINGS:

Appeal from the Court of Common
Pleas, Juvenile Division, of Monroe
County, Ohio
Case No. 4666

JUDGMENT:

Affirmed.

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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JUDGES:

Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: June 22, 2017

[Cite as *In re J.D.K.B.*, 2017-Ohio-5717.]
DeGENARO, J.

{¶1} Appellant-Mother challenges the juvenile court's judgment designating Appellee-Father the residential parent. Mother argues that the change in custody was contrary to law and not in the child's best interests. As Mother's arguments are meritless, the judgment of the juvenile court is affirmed.

{¶2} After briefly dating Father, Mother became pregnant with J.D.K.B (the child) and gave birth on March 17, 2010. On May 4, 2011, the parties entered into an agreed judgment entry designating Mother the residential parent and providing Father with a graduated visitation schedule. This was later modified by the agreement of the parties to give Father additional time in the summer.

{¶3} On March 11, 2015, Father filed a motion to reallocate parental rights and responsibilities which Mother opposed. A merit hearing was held on June 7, 2016. Father testified, as well as his fiancé, Mother's brother, and other witnesses. Mother and Mother's new husband testified on her behalf. The guardian ad litem submitted a report and testified.

{¶4} On July 18, 2016, the juvenile court granted Father's motion and named him the residential parent. Mother was granted companionship time in accordance with the county's standard visitation schedule.

Change of Circumstances

{¶5} In the first of three assignments of error, Mother asserts:

The trial court abused its discretion in finding an alleged change in circumstances which was against the manifest weight of the evidence.

{¶6} It is well settled that a trial court is given broad discretion in its determination of parental custody rights. *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). A trial court's custody determination will therefore not be disturbed unless it involves an abuse of discretion. *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 23, 550 N.E.2d 178 (1990). "The term 'abuse of discretion' means an error in judgment involving a decision that is unreasonable based upon the record; that the appellate court merely may have reached a different result is not enough." *In re*

S.S.L.S., 7th Dist. No. 12 CO 8, 2013-Ohio-3026, ¶ 22.

{¶7} "When a juvenile court in a parentage action issues an order allocating parental rights and responsibilities, that court retains continuing jurisdiction to modify or revoke the order." *Simkins v. Perez*, 7th Dist. No. 11 MA 80, 2012–Ohio–1150, ¶ 13. Regarding modification of a prior order, R.C. 3109.04(E)(1)(a) provides:

The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child. In applying these standards, the court shall retain the residential parent designated by the prior decree or the prior shared parenting decree, unless a modification is in the best interest of the child and one of the following applies:

(iii) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

{¶8} Here the juvenile court found a change in circumstances as a result of Mother disregarding its May 4, 2011 order prohibiting the child from being alone with Mother's father, J.K., a convicted sex offender.

{¶9} Mother argues that the testimony and evidence does not support that she left the minor child alone with J.K. Mother acknowledges that Father and her brother testified that they had personal knowledge of this occurring. However, she discounts the validity and credibility of their assertions by contending Father did not provide a definite time as to when he witnessed this and that her brother was in jail and owes her money for bailing him out. However, it is within the province of the

trier of fact to weigh the credibility of the witnesses.

{¶10} Mother also ignores that the GAL included in her report that the child disclosed that she was alone on occasion with "pappy Jay." Further, Mother told the GAL that since there were court orders issued after the May 4, 2011 order that did not contain any prohibition against the child spending time with J.K., she believed that it was permitted. Finally, Mother told the GAL that she trusts J.K. and admitted in court that he is her best friend. All of these points support the trial court's finding of a change of circumstances. Accordingly, Mother's first assignment of error is meritless.

Best Interests

{¶11} In the second of three assignments of error, Mother asserts:

The trial court abused its discretion in finding a change in custody was in the best interests of the minor child, which was against the manifest weight of the evidence.

{¶12} The statutory best interest factors within R.C. 3109.04(F)(1) are applicable to juvenile custody proceedings. *In re Bell*, 7th Dist. No. 04 NO 321, 2005–Ohio–6603, ¶ 37, 55–56. There is no statutory mandate that a trial court separately address each of the best interest factors and a court is presumed to have considered these factors absent evidence to the contrary. *In re Henthorn*, 7th Dist. No. 00-BA-37, 2001-Ohio-3459, *4. The juvenile court made findings relative to all the factors in its judgment entry.

{¶13} As to the first factor, the wishes of the parents, both Mother and Father wanted full custody of the child. In the alternative, Father requested a 50-50 split of parenting time that Mother opposed. The second factor is not relevant as there was not an in camera interview of the child.

{¶14} Concerning the third factor, the testimony established that the child had lived with Mother her whole life. At the time of trial Father was exercising companionship with the child in accordance with the standard order with minor modifications. The juvenile court specifically stated "[t]he child apparently interacts

appropriately with her parents, siblings, and others who may significantly affect the child's best interest."

{¶15} As to the fourth factor, the child was six at the time of the hearing. The judgment entry provides that "[t]he child appears to be as well-adjusted as could possibly be to her home, school, and community given the continued discord between her parents." Regarding the fifth factor, the mental and physical health of all relevant persons, the juvenile court noted, "No evidence was presented concerning any significant issues concerning the mental and physical health of all persons involved in this situation."

{¶16} As to the sixth factor, the juvenile court specifically found that Father was "clearly the more likely parent to honor and facilitate court approved parenting time rights or visitation and companionship rights." The juvenile court found that "Mother clearly disregarded this court's prior Order by allowing [the child] to be alone with [J.K.]."

{¶17} As to the seventh factor, child support payments, the record reflects that at one point Father was delinquent approximately \$2,000. However, when questioned about this Father indicated that the money had been withheld from his tax refund. Mother provided no evidence to the contrary. The judgment entry found, "While it was suggested at the hearing of this matter that the Father was delinquent in his child support obligations at the time he filed his Motion for Reallocation of Parental Rights and Responsibilities, no evidence was presented to that effect."

{¶18} As to the eighth factor, criminal offenses involving children, the court found that this did not apply to Mother or Father, only J.K. This factor does have some impact in that the juvenile court had ordered in 2011 that Mother was not to permit J.K. to be alone with the child. The juvenile court found Mother had violated this order.

{¶19} As to the ninth factor, shared parenting and visitation, the juvenile court said that based on the evidence at trial Mother has not encouraged a relationship between Father and the minor child, and at times willfully denied Father parenting

time. As to the last factor, the court determined that there was no evidence to suggest that either party has immediate plans to relocate outside of Ohio.

{¶20} Mother argues that the court disregarded that the minor child told the GAL she wanted to remain with her, that Father was going to move the child's school, that Father's work schedule was not conducive to spending time with the child, and that J.K. was not around the child. As noted in the judgment entry, the juvenile court clearly considered all of these factors.

{¶21} Mother represents to this court that one of the times she denied Father visitation was when she had a protection order against him. Mother twice filed for protection orders against Father because he entered a building where her stepson had wrestling practice and took pictures of them to use as evidence of her lying about her availability when denying him visitation. Both protection orders were dismissed by the trial court. Further, Mother admitted Father had not harmed the minor child; that she just wanted him to stay away from her, her husband and stepson, and that it was likely a mistake that she included the minor child in the second protection order.

{¶22} Competent, credible evidence was presented relating to all of the relevant best interest factors. The juvenile court was in the best position to measure credibility of the evidence and witnesses. Based upon the testimony presented, as well as the applicable law and best interest factors, the court did not abuse its discretion in finding that the child's best interests would be served by allocating parental rights to Father and visitation to Mother. Accordingly, Mother's second assignment of error is meritless.

Financial Status

{¶23} In the third of three assignments of error, Mother asserts:

The court abused its discretion in allowing testimony regarding statements of the child and testimony regarding financial status or condition of the parties.

{¶24} As an initial matter, Father argues that Mother waived this argument as

no objection was made during the trial to either subject. As Mother did not object during the trial she has waived all but plain error. Plain error is obvious and but for the error, the outcome of the trial clearly would have been otherwise. *State v. Johnson*, 7th Dist. No. 12 MA 137, 2014-Ohio-4253, ¶ 58. Mother does not allege plain error and none can be found in the record.

{¶25} While Father's fiancé did testify as to her combined income with Father, Mother also testified as to her income with her new husband:

Q. [on Cross] Why are you not working full-time?

A. [Mother] Because I have two children to take care of at home.

Q. You don't think you could take care of your children and work full-time?

A. Yeah, I do. But why? My husband makes ample enough money. We're fine financially. There's nothing wrong with me staying home with the kids.

Q. How much does your Husband make per year?

A. Around ninety thousand.

{¶26} Further, Mother argues that "the Court allowed witnesses to testify numerous times as to statements of the child, without any evidence of a hearsay exception being presented." However, Mother provides no examples of this and merely cites one page of the transcript. The cited page does not support the argument made by her counsel. It is not this Court's duty to search the record for evidence to support Mother's argument as to an alleged error, and it is inappropriate for us to formulate legal arguments in support of her appeal. See *State v. Tuck*, 146 Ohio App.3d 505, 2001-Ohio-7017, 766 N.E.2d 1065, ¶ 19 (9th Dist.). Accordingly, Mother's third assignment of error is meritless.

{¶27} The juvenile court has broad discretion when allocating parental rights and responsibilities. There was substantial competent, credible evidence to support the trial court's finding that there was a change in circumstances and that it was in

the best interests of the minor child for Father to be named the residential parent. Accordingly, the judgment of the juvenile court is affirmed.

Waite, J., concurs.

Robb, P. J., concurs.