[Cite as *Glendell-Grant v. Grant*, 2018-Ohio-1094.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105895

MELODY L. GLENDELL-GRANT

PLAINTIFF -APPELLEE

vs.

ROBERT E. GRANT

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-15-356953

BEFORE: Keough, J., E.A. Gallagher, A.J., and Boyle, J.

RELEASED AND JOURNALIZED: March 22, 2018

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KATHLEEN ANN KEOUGH, J.:

{¶1} Defendant-appellant, Robert E. Grant ("Robert"), appeals from the judgment of the trial court overruling his objections to the magistrate's decision and granting the complaint for divorce of plaintiff-appellee, Melody L. Glendell-Grant ("Melody"). Robert's assignments of error challenge the shared parenting plan adopted by the court in the divorce decree.

I. Facts and Procedural Background

{¶2} Robert and Melody were married on May 7, 2008. Two children were born during the marriage, both minors at the time of the divorce proceeding. Melody filed for divorce on April 30, 2015, and the matter was referred to a magistrate.

{¶3} In a judgment entry journalized on September 23, 2015, the parties entered into an agreed judgment entry regarding, among other issues, shared parenting time. On March 16, 2016, Melody filed a proposed shared parenting plan; Robert filed a proposed shared parenting plan on March 22, 2016. On July 5, 2016, the court journalized a second agreed interim

parenting agreement. The agreed schedule provided that when school started in the fall, Robert had parenting time from after school on Thursday through Friday morning every week, and from Thursday after school until the start of school on Monday on alternating weekends.

{¶4} The magistrate held a hearing over three days in August 2016. The magistrate subsequently issued a decision granting the complaint for divorce and, among other things, adopting the shared parenting plan included in Melody's closing argument, which was filed with the court, as ordered, after trial had concluded. The shared parenting plan proposed by Melody and adopted by the magistrate mirrored the interim parenting agreement adopted by the parties in the agreed judgment entry journalized on July 5, 2016.

{¶5} Robert subsequently filed timely objections to the magistrate's decision. His objections, in their entirety, stated, "I, Defendant, Robert E. Grant, object to the ruling on my case rendered Jan. 3, 2017." On March 14, 2017, Grant filed a "Challenge to Jan. 3, 2017 Ruling."

{¶6} The trial court adopted the magistrate's decision in its entirety. It found that Robert's one-sentence objection to the magistrate's decision did not identify any error of law or challenge any specific factual finding by the magistrate. It further found that any supplemental objections were due March 7, 2017, and thus, even if it considered Grant's "challenge" to the magistrate's decision as supplemental objections, it was untimely filed. It further found that Robert's "challenge" did not assert any error of law by the magistrate, did not cite to any testimony or to any of the exhibits admitted at trial, and improperly included unverified documents that were not produced at trial.

{¶7} The trial court found that upon its review of the trial transcripts and exhibits, the evidence "support[ed] the magistrate's conclusion that the minor children were doing well under

the agreed-to interim parenting order, and that it is in the children's best interest to adopt [Melody's] proposed shared parenting plan which continues those arrangements." The trial court further found that the record supported the magistrate's findings regarding the parties' income, expenses, health insurance availability, and the calculation of child support. Accordingly, the trial court adopted the magistrate's decision in its entirety. This appeal followed.

II. Law and Analysis

A. Standard of Review

{¶8} The standard of review on appeal from a decision of a trial court adopting a magistrate's decision is whether the trial court abused its discretion. *Butcher v. Butcher*, 8th Dist. Cuyahoga No. 95758, 2011-Ohio-2550, ¶ 7. Under the abuse of discretion standard, a trial court's decision will be reversed if it is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). An abuse of discretion may also be found when the trial court "applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact." *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, 892 N.E.2d 454, ¶ 15 (8th Dist.).

B. Untimely Filing of Shared Parenting Plan

{¶9} In his first assignment of error, Robert contends that the trial court erred in adopting the proposed shared parenting plan filed with Melody's closing argument because it was not filed at least 30 days prior to the hearing on parental rights and responsibilities, as required by R.C. 3109.04(G).

{¶10} Robert never raised this issue in the trial court. Indeed, the entirety of his objection to the magistrate's decision was one sentence stating that he objected to the decision.

An objection to a magistrate's decision, however, "shall be specific and state with particularity all grounds for objection." Civ.R. 53(D)(3)(b)(ii). Additionally, an objecting party must identify the relevant law supporting the objection. *Id.*

{¶11} It is well settled that a party cannot raise new arguments and legal issues for the first time on appeal, and that failure to raise an issue before the trial court waives that issue for appellate purposes. *Cleveland Town Ctr., L.L.C. v. Fin. Exchange Co. of Ohio, Inc.*, 2017-Ohio-384, 83 N.E.23d 383, ¶ 28 (8th Dist.); *Kalish v. Trans World Airlines, Inc.*, 50 Ohio St.2d 73, 79, 362 N.E.2d 994 (1977) (appellate courts "will not consider a question not presented, considered, or decided by a lower court"). Thus, Robert's failure to raise the issue in the trial court has waived it for appeal.

{¶12} Even if we were to consider the issue, we would find no error. The 30-day time requirement of R.C. 3109.04(G) is directory, not mandatory. *Harris v. Harris*, 105 Ohio App.3d 671, 674, 664 N.E.2d 1304 (2d Dist.1995). Thus, within its discretion, the trial court may relieve a party of the statutory deadline so long as the other party has an opportunity to respond to the plan to protect his due process rights. *Id.*; *Hampton-Jones v. Jones*, 8th Dist. Cuyahoga Nos. 77279 and 77412, 2001-Ohio-4229.

{¶13} We find no denial of Robert's due process rights. He could have objected at the hearing when the magistrate told Melody that she could submit a revised proposed parenting plan with her closing argument. And he could have objected to the adoption of Melody's revised plan in his objections to the magistrate's decision. He raised no objection, however, presumably because he too submitted a revised proposed parenting plan with his closing argument. The record reflects that at trial, Robert asked for equal parenting time with his children as set forth in the shared parenting plan he had submitted to the court (Tr. 64.) In his written closing

argument, however, Robert asked for "no less than 60% custody and 60% time." Robert cannot complain that he was prejudiced by Melody's filing of a new shared parenting plan in her closing argument when he did the same thing. The first assignment of error is therefore overruled.

C. The Best Interest Factors of R.C. 3109.04(F)

{¶14} In his second and third assignments of error, Robert contends that the trial court abused its discretion in applying the best interest factors of R.C. 3109.04(F)(1) and (F)(2) to adopt Melody's shared parenting plan instead of his.

{¶15} Initially, we note that Robert's brief does not comply with App.R. 16 because he does not argue these assignments of error separately. App.R. 16(A)(7) requires "[a]n argument containing the contention of the appellant with respect to each assignment of error." Although an appellate court may jointly consider assignments of error that are related, the parties do not have the same option and are required to separately argue each assignment of error. *Hyde v. Sherwin-Williams Co.*, 8th Dist. Cuyahoga No. 95687, 2011-Ohio-4234, ¶ 12.

{¶16} Under App.R. 12(A)(2), an appellate court "may disregard an assignment of error presented for review if the party raising it fails to * * * argue the assignment separately in the brief, as required under App.R. 16(A)." Thus, it would be within our discretion to simply disregard these assignments of error and summarily affirm the trial court. *Cleveland v. Posner*, 188 Ohio App.3d 421, 2010-Ohio-3091, 935 N.E.2d 882, ¶ 6 (8th Dist.). Nevertheless, in the interest of justice, we will address Robert's second and third assignments of error. Further, we will consider them together because they both relate to the trial court's consideration of the best interest factors contained in R.C. 3109.04(F).

{¶17} We consider Robert's arguments only for plain error, however. In his one-sentence objection to the magistrate's decision, he raised no objection to the trial court's

consideration of the best interest factors contained in R.C. 3109.04(F)(1) and (F)(2). Civ.R. 53(D)(3)(b)(iv), regarding objections to a magistrate's decision, prohibits a party from "assigning as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule." Accordingly, we review for plain error. *Jones v. Jones*, 8th Dist. Cuyahoga No. 81004, 2003-Ohio-871, ¶ 12. In applying the plain error doctrine in a civil case, "reviewing courts must proceed with the utmost caution, limiting the doctrine strictly to those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 679 N.E.2d 1099 (1997).

{¶18} Provisions for the allocation of parental rights and responsibilities are set forth in R.C. 3109.04. In making an allocation of parental rights and responsibilities, the court must consider the best interest of the children. R.C. 3109.04(B)(1).

{¶19} R.C. 3109.04(F)(2) sets forth the factors a court must consider in determining whether shared parenting is in the best interest of the children. We need not consider whether the trial court properly weighed the factors in R.C. 3109.04(F)(2) because Robert concedes that both he and Melody agreed that shared parenting is in the best interest of the minor children. (Appellant's Brief, p. 12.)

{¶20} R.C. 3109.04(F)(1) (a) through (j) sets forth the factors the court must consider when determining what is in the best interest of minor children when allocating parental rights and responsibilities. These factors are (a) the wishes of the child's parents; (b) the wishes of the child, as expressed to the court; (c) the child's interaction with his parents, siblings, and any other person who might significantly affect the child's best interest; (d) the child's adjustment to home, school, and the community; (e) the mental and physical health of all persons involved in the

situation; (f) the parent more likely to honor and facilitate court-approved parenting time; (g) whether either parent failed to make child support payments; (h) whether either parent or member of the household was previously convicted of child abuse, a sexually oriented offense, or an offense involving a member of the household that caused physical harm to the victim; (i) whether one of the parents has denied the other parent's right to court-ordered parenting time; and (j) whether either parent has or is planning to establish residence outside the state.

{¶21} Upon review of the transcript and the relevant factors, the trial court found that it was in the children's best interest to adopt Melody's parenting plan, which continued the schedule as agreed in the interim parenting order journalized by the court on July 5, 2016. The record reflects that the trial court carefully considered all of the relevant factors in making this determination, and that there was competent, credible evidence to support the trial court's decision.

{¶22} The trial court determined that some factors were not applicable (e.g., there was no in camera interview of the children) or that neither party presented evidence concerning factors (i) and (j) — denial of parenting time, establishing a residence outside the state. With regard to the other factors, the trial court found that both parents had filed proposed shared parenting plans. The trial court further found that the children were adjusted normally to their home, school, and community. The court found, however, that one child's grades had dropped from A+ to B during the 2015-2016 school year, and that there had been occasions when the children had not done their homework when they were with Robert. Although Robert testified that his three-hour parenting time was insufficient to transport the children, prepare and serve them dinner, and "address any behavior issues," the court noted that Robert also testified that "homework comes second to discipline."

{¶23} The trial court further found that Robert testified that he had been diagnosed with a mental health disorder when he was 19 years old. Robert testified further that as a result of his disorder, he had difficulty functioning under pressure and had been "angry for eight years."

{¶24} The trial court also found that Melody testified that Robert's mental health issues affect his judgment, and result in an extreme focus on negative discipline and corporal punishment and very little positive reinforcement in his interactions with his minor children. Melody testified further that the older daughter exhibited more aggressive behavior after parenting time with Robert resumed after a short suspension during the pendency of a domestic violence action. The trial court specifically deemed this unrefuted testimony to be credible. In light of this evidence, the trial court concluded that Melody's shared parenting plan was in the best interest of the children.

{¶25} Robert contends, however, that the trial court's findings did not distinguish between him and Melody to any significant degree to warrant adopting Melody's proposed parenting plan instead of his. But contrary to Robert's argument, the trial court's findings were not identical with respect to him and Melody. Specifically, the court found that Melody and Robert had very different beliefs, particularly as to how to best discipline their children — Melody does not use corporal punishment to discipline the parties' children, while Robert does. The trial court further found that Melody and Robert do not agree on the priority homework should take vis-a-vis discipline, or whether one spouse is submissive to the other. The court further found that Robert has mental health issues that may affect his ability to deal with the children. The record supports these findings.

{¶26} And although Robert asserts on appeal that the trial court did not adequately consider Melody's mental health issues, her fraudulent accusations of domestic violence, and her

role in creating marital strife during the marriage, his failure to challenge the magistrate's factual findings in his objections to the magistrate's decision has waived such challenges on appeal. Civ.R. 53(D)(3)(b)(iv); *Watson v. Chapman-Bowen*, 8th Dist. Cuyahoga No. 101295, 2014-Ohio-5288, ¶ 16.

{¶27} We have reviewed the entire record, including the transcripts of the hearing and the exhibits submitted by the parties, and do not find that any plain error occurred in the trial court's adoption of the magistrate's decision. Our review demonstrates that the trial court considered all of the relevant factors in R.C. 3109.04(F)(1) and (F)(2), and that there is competent, credible evidence supporting the trial court's conclusion that Melody's shared parenting plan is in the best interest of the children.

{¶28} R.C. 3109.04(D)(1)(c) states that "[w]henever possible, the court shall require that a shared parenting plan * * * ensure[s] the opportunity for both parents to have frequent and continuing contact with the child * * *." Although the plan adopted by the court does not give Robert as much time with the children as he would like, it does ensure that he continues to have ongoing, regular contact with his children. The second and third assignments of error are overruled.

{¶29} Judgment affirmed.

It is, therefore, considered that appellee recover of appellant her costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, JUDGE

EILEEN A. GALLAGHER, A.J., and
MARY J. BOYLE, J., CONCUR