

[Cite as *In re E.O.T.*, 2019-Ohio-352.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107328

IN RE: E.O.T.

[Appeal By: R.L.T., Jr., Father]

JUDGMENT:
AFFIRMED IN PART; REVERSED IN PART;
REMANDED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Juvenile Division
Case No. CU-17-107440

BEFORE: E.A. Gallagher, J., Boyle, P.J., and Sheehan, J.

RELEASED AND JOURNALIZED: January 31, 2019

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EILEEN A. GALLAGHER, J.:

{¶1} Petitioner-appellant R.L.T., Jr. (“Father”) appeals from a juvenile court order (1) designating respondent-appellee A.W. (“Mother”) primary residential parent and legal custodian of their minor son, E.O.T., and (2) adopting Mother’s proposed parenting plan. Father argues that he should have been awarded legal custody of, or granted more parenting time with, E.O.T. because he was a “stay-at-home parent” for most of E.O.T.’s life. Father contends that the juvenile court “severely limited” his presentation of evidence during the hearing on his application to determine custody, denying him due process and a fair hearing and that it abused its discretion in “rubber stamping” Mother’s proposed parenting plan. For the reasons that follow, we affirm the juvenile court’s decision in part and reverse it in part.

Factual Background and Procedural History

{¶2} E.O.T. was born in March 2010. At the time, Father and Mother were in a relationship and lived together but were not married. Paternity was established on April 5, 2010. In the spring of 2017, the parents terminated their relationship and Father moved out.

{¶3} On May 9, 2017, Father filed, pro se, an application in the Juvenile Division of the Cuyahoga County Court of Common Pleas to (1) determine the custody of E.O.T. (who was then seven years old), (2) establish parenting time and (3) establish a shared parenting plan. Father alleged that he had “consistently been the primary care provider for the child since his birth” and “provided support and all his needs.”

{¶4} Mother filed, pro se, a response, disputing Father’s claims. Mother asserted that she and Father had coparented E.O.T. his entire life and that she had also financially supported their son. Mother indicated that she did not want shared parenting and requested that the court simply establish a visitation schedule with Father.

{¶5} In late June 2017, Father took E.O.T. for parenting time as agreed by the parties. He thereafter refused to return E.O.T. to Mother. On July 18, 2017, Mother (now represented by counsel) filed an emergency motion for the return of E.O.T. and a motion for a temporary restraining order to prohibit Father from removing E.O.T. from the jurisdiction. In August 2017, the juvenile court granted Mother’s motion for a temporary restraining order and entered an order prohibiting either parent from removing E.O.T. from the jurisdiction. Father claimed that he never received that order. In September 2017, the juvenile court ordered that Father return E.O.T. to Mother and established a temporary parenting time schedule. Under the temporary parenting time schedule, Father was to have parenting time with E.O.T. on Wednesday nights and the weekends Mother was working. In November 2017, the juvenile court modified the temporary parenting time schedule. Under the modified schedule, Father was to have

parenting time with E.O.T. Wednesday nights and every second and fourth weekend. The schedule also addressed parenting time for Thanksgiving and Christmas.

{¶6} In December 2017, the guardian ad litem submitted a report in which he recommended that Mother be designated the residential parent for school purposes and that Father be awarded a visitation schedule similar to the existing temporary parenting time schedule. The guardian ad litem's recommendation was based on conversations with E.O.T., Mother, Father, E.O.T.'s teachers and school administrators and visits to both parent's current residences — the home Mother owned and Father's current residence with his mother, sister and brother-in-law. The guardian ad litem explained the rationale for his recommendation as follows:

The child's best interests are best served in an environment that offers the greatest stability and a safe and nurturing environment. Mother has maintained a steady home, and a steady job, for the past five years. The father moved out earlier this year to live in his brother-in-law's home, which individual is a registered sex offender in cases that involved multiple child victims. Father is also content to be supported by his mother without any attempt to find employment. These issues are concerning because he is content to allow others to support him and his family. Father's in-court behavior and out-of-court statements raise concern about a willingness to follow a parenting time schedule unless he dictates the terms. His attitude would also render an equal shared parenting agreement difficult at best due to his inflexible and demanding positions. As such, I would recommend that the mother continue to be designated as the residential parent for school purposes and a visitation schedule resembling the current arrangement be implemented.

{¶7} The guardian ad litem further noted, with respect to E.O.T.'s wishes, that

he is steering clear of any appearance of giving a preference to one parent over the other. He does indicate it was unfair of the father to withhold visitation from his mother this past summer. The child would like to make up the lost time with his mother and if he does [have] a preference, it would be to spend more time with his mother in the short term. He is not opposed to a schedule of parenting time that is closer to an even split down the road, but at present he does not want it.

{¶8} In January 24, 2018, Mother filed a “proposed parenting plan and agreement.” Although Mother’s proposed parenting plan was in the form of an agreement between Mother and Father, Father did not sign the agreement and there is no indication that he had agreed to any of its terms. Father did not submit his own proposed parenting plan.

{¶9} On February 23, 2018, the juvenile court held a hearing on Father’s application to determine custody. Father, who appeared pro se, and Mother, who was represented by counsel, testified at the hearing. A summary of the relevant testimony follows.

{¶10} Father offered limited evidence in his case in chief. He testified that, before he and Mother separated, he took care of E.O.T. during the day and on weekends while Mother worked. Father testified that Mother worked four days a week and every other weekend. Father testified that he was “100 percent the stay-at-home father,” waking E.O.T. up, taking him to and from school, preparing his meals, overseeing his homework and putting him to bed. Father testified that he worked while E.O.T. was in school and in the evenings when Mother was home with E.O.T.

{¶11} Father asked to call the guardian ad litem as a witness in his case in chief, but the juvenile court denied his request, indicating that Father could question the guardian ad litem only after the guardian ad litem heard all of the evidence and offered his report and opinions because “then you’ll know what to ask questions about.” At the conclusion of Father’s direct examination, the juvenile court inquired, “Any further evidence that you wish to present on your behalf?” Father replied, “No.”

{¶12} On cross-examination, Father stated that he and Mother had no parenting arrangement when they separated in 2017. He admitted that for more than two months during the summer of 2017, he kept E.O.T. from his mother and did not allow E.O.T. to have any

overnight visits with her, permitting him to see his mother only for “short durations” while under supervision. Father also acknowledged that he had taken E.O.T. to Niagara Falls in the summer of 2017 and to Columbus for Thanksgiving in November 2017 without notifying Mother. Father indicated that it “wasn’t a secret” and that he did not notify Mother he was taking E.O.T. of out town because he “did not know that [he] had to.”

{¶13} Father acknowledged that Mother was a “good mom” “when’s she there.” He stated that Mother’s home had been safe when he lived there but that mother now had “multiple people living with her” and that he knew “nothing about it now.” Father testified that he was last employed in March 2017 when he worked as a delivery driver, delivering auto parts to businesses. He indicated that he has been looking for another job and that he currently makes a little money “scrapping here and there,” e.g., doing yard work and snow blowing driveways for neighbors. Father further acknowledged that “until just recently” he had been on probation for theft.

{¶14} Father stated that after he left Mother’s home, he moved in with his mother, sister and brother-in-law. He testified that with respect to household expenses, he “chip[s] in probably 100 bucks a month towards * * * necessities,” but does not contribute to housing or utility costs. Although he acknowledged that his brother-in-law is a registered sex offender, Father indicated that he did not have any concerns about his son being around his brother-in-law.

{¶15} Father testified that he had three children from a prior relationship, ages 17, 18 and 19. He stated that these children lived with their mother in Grafton and that, given their ages and activities, they now made their own decisions about when to see Father, “kinda com[ing] and go[ing] as they please.” Father admitted that he was behind in child support payments for his

other children and, aside from the withholding of his 2017 tax refund for unpaid child support, could not remember when he last paid child support.

{¶16} After the conclusion of his cross-examination, the juvenile court asked Father if “there was any question that was asked of you that you did not feel you were able to explain.” Father indicated that there were and he was given an opportunity to address those issues, including issues surrounding visitation for Thanksgiving, odd jobs he has held to pay his bills and issues related to E.O.T.’s shoes and school clothing.

{¶17} After Father finished addressing the issues he wished to address, the juvenile court again inquired whether he had any other witnesses. He indicated that he did not.

{¶18} Mother was the sole witness to testify in her case in chief. Mother testified that several times, Father had taken E.O.T. and refused to return him to her. She stated that in June 2017, Father moved out and went to Florida for two weeks. When he returned, Father took E.O.T. and she had to call the police to have him returned. Mother testified that, on June 28, 2017, she agreed that Father could take E.O.T. with the understanding that Father would bring him back after the weekend. However, Father refused to return the child. Mother testified that she did not see E.O.T. from June 28 to August 5, 2017 and that, when she called, he refused to let her speak to E.O.T., saying that E.O.T. “was busy and doing his time with him.” Mother indicated that the only reason she saw E.O.T. on August 5 was because she went out looking for Father and E.O.T. and happened to see E.O.T. at a yard sale while she was driving. Mother stated that she thereafter “had to like stalk” E.O.T. to see him and that she would drive by Father’s residence, hoping E.O.T. was outside. Mother stated that she did not have E.O.T. overnight until September 20, 2017, when the court ordered that Father return E.O.T. to her.

{¶19} Mother further testified that on Thanksgiving Day 2017, Father failed to return E.O.T. for the holiday as specified in the temporary parenting time schedule¹ and instead took him to Columbus to visit an aunt without informing Mother. Mother indicated that Father had also taken E.O.T. out-of-state without her knowledge earlier that summer.

{¶20} Mother stated that she currently works Monday through Wednesday, 7:30 a.m. to 4:30 p.m., at Keefe Supply.

{¶21} Father cross-examined Mother at length regarding the parties' prior relationship and finances, Mother's home and work schedule, occasions in which Mother had left E.O.T. at his sister's house (notwithstanding her alleged concern regarding contact between E.O.T. and Father's brother-in-law) and communications with E.O.T.'s teacher regarding some behavioral issues he was having at school.

{¶22} Mother testified that she was engaged and that her fiancé sometimes spends the night but that he has his own home. Mother acknowledged that her fiancé had been previously charged with intimidation of a witness but stated that it was a long time ago and the charges were ultimately dropped. Mother testified that a friend and her two daughters were also currently staying with her on a temporary basis.

{¶23} Mother acknowledged that when they were living together, Father brought E.O.T. to school and picked him up from school on the days she worked. Mother further acknowledged that other than one time when Father was late to pick up E.O.T. and the issue with Thanksgiving parenting time, Father had followed the court's temporary parenting time schedule "to a T."

¹Father claimed that he did not receive notice of the court order establishing Mother's Thanksgiving parenting time until after Thanksgiving. The juvenile court's order establishing Mother's Thanksgiving parenting time was journalized on November 22, 2017. Thanksgiving was the following day. Accordingly, the record supports Father's claim.

{¶24} After the parties testified, the guardian ad litem presented his recommendation regarding what was in E.O.T.'s best interest. Consistent with his report, the guardian ad litem recommended that Mother be designated the residential parent and that Father be awarded a visitation schedule similar to the temporary parenting time schedule the parties had been following. The guardian ad litem indicated that he had concerns regarding Father's current employment situation and living arrangements. He noted that Father does not control the rent or the lease at his sister's house such that "[h]e could be moved out of there at any time." He further noted that although Father worked various side jobs under-the-table, he, unlike Mother, did not earn a sufficient income to support a family. The guardian ad litem indicated that Mother's house was large enough to accommodate her friend and her friend's children on a short-term basis, that he did not see the arrangement as detrimental to E.O.T. and that E.O.T. appeared to have a strong relationship with Mother's fiancé.

{¶25} Father cross-examined the guardian ad litem regarding his investigation, the statements and observations he made in his report and the basis for his custody recommendation. Although Father indicated that he had "a lot more questions" for the guardian ad litem, after several warnings, the juvenile court indicated that Father's time was up and terminated Father's questioning of the guardian ad litem.

{¶26} On May 11, 2018, the juvenile court issued a journal entry granting Father's application to determine custody and found that it was in the best interest of E.O.T. that Mother be designated the primary residential parent and legal custodian of E.O.T. The journal entry further stated that "[t]he shared parenting plan attached hereto and incorporated herein as Exhibit A is found to be in the best interest of the child and is therefore approved and adopted as an order of the court" and that Father is to have parenting time in accordance with the schedule set forth in

Exhibit A. The parenting plan attached to the journal entry was a copy of the proposed “parenting plan and agreement” Mother had filed with the court prior to the hearing, with several modifications: (1) the words “and agreement” were stricken from the title of the document, (2) the phrase “[i]t is so agreed” and the signature lines for the parties, counsel for Mother and the guardian ad litem were stricken from the document and (3) the document was signed and “[a]pproved by” the trial judge. Although the juvenile court struck the word “agreement” from the proposed parenting plan, it retained numerous provisions premised on an “agreement” between the parties. For example:

- Father and Mother agree to use their best efforts to discharge [the] responsibility [of parenthood] for the benefit of their child and to discharge their obligations under this Parenting Plan and Agreement in good faith towards the child and each other.
- Father and Mother agree that the child shall be provided free and unhampered access to relatives on both the Father’s and Mother’s sides of the family while taking into consideration the wishes and desires of the child. * * * It is the intent of the parties that the child has reasonable exposure to all of his relatives and that he may be permitted to select those relatives with whom he wishes to establish a closer relationship without the Father or Mother negatively influencing the process or the resultant choices.
- Each parent agrees, as may be reasonable, to forfeit his or her regular time with the child to accommodate the child having access to * * * out-of-town visitation by relatives.
- Father and Mother agree that the child shall not be left alone with [Father’s brother-in-law].
- Father and Mother agree that, notwithstanding their separation, he and she will each faithfully and loyally support the other in all communications and dealings with the child. * * * Father and Mother agree to be forever supportive of the other in his or her respective dealings with the child.
- [E]ach parent agrees to remain flexible in the possession schedule of need be to accommodate the best interests and desires of the child.

- Each party agrees to keep the other informed of [school] conferences and [school] affairs, and each agrees to attend teacher conferences with the other party to the extent such is possible, time permitting.
- [T]he parties agree that should the child attend private school each shall contribute one-half of the cost thereof; said costs to include books, tuition, uniform, activity fees and the like.
- All important school decisions such as placing the child in a remedial or advanced placement class shall be made by mutual agreement as possible, but in the event of a disagreement, the parties agree to follow the recommendation of the child's teacher, advisor, or guidance counselor.
- Father and Mother agree to immediately and regularly communicate with each other regarding any health care emergency and any other health care required by the child.
- In the event of any disagreement between Father and Mother regarding any health care issue, the parties agree to follow the recommendation of the child's treating health care provider.
- Father and Mother agree to fully, candidly and openly communicate with each other about each and every matter of importance concerning the child * * * . Father and Mother agree to keep each other currently informed of the whereabouts of the child.
- Both parents hereby waive any and all confidentiality rights and privileges that may in any way hinder the other parent from obtaining information regarding the whereabouts, welfare, status, or any other circumstances of the child involved * * * .
- The parties stipulate and agree that before any Motion to modify or enforce this Parenting Plan and Agreement is filed with the Court, they shall first mediate any disputes. The parties shall equally divide the costs of the mediation. Failure to comply with this mediation clause shall be grounds for dismissal of any subsequent motion filed.

(Emphasis omitted.)

{¶27} The parenting time schedule ordered by the court was similar to what had been ordered under the temporary parenting time schedule — i.e., Father was to receive parenting time

with E.O.T. on Wednesday nights and the second and fourth weekend of every month, plus other specified parenting time on birthdays, holidays and during school breaks.

{¶28} Father appealed, raising the following two assignments of error for review:

First Assignment of Error: The juvenile court violated petitioner-appellant's due process.

Second Assignment of Error: The juvenile court abused its discretion.

{¶29} Father's assignments of error are interrelated. We, therefore, address them together.

Law and Analysis

{¶30} Father argues that he was denied due process at the hearing on his application to determine custody and that the juvenile court abused its discretion by (1) refusing to allow him to call the guardian ad litem as a witness in his case in chief and thereafter limiting his cross-examination of him, (2) "overly limit[ing] his cross-examination of the other witnesses" and refusing to allow him to present other relevant evidence, (3) failing to consider and to make specific findings regarding all of the relevant R.C. 3109.04 factors and (4) "rubber stamping" and incorporating Mother's proposed "parenting plan and agreement" into its journal entry "when the evidence establishes there was no agreement."² He also contends that there "insufficient proof" in the record that the juvenile court's decision is in E.O.T.'s best interest.

{¶31} We address each of these arguments in turn.

Restrictions on Father's Presentation of Evidence

{¶32} A trial court has discretion to control the mode and order of witness examination. Likewise, the scope and limitation of cross-examination are matters within the sound discretion

² With respect to many of his arguments, Father cites no legal authority supporting his positions. For this reason alone we could overrule his assignments of error. App.R. 12(A)(2); App.R. 16(A).

of the trial court. A trial court abuses its discretion when it acts unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983); *see also Ockunzzi v. Smith*, 8th Dist. Cuyahoga No. 102347, 2015-Ohio-2708, ¶ 9 (“‘Abuse of discretion’ is a term of art, describing a judgment neither comporting with the record, nor reason.”). “A decision is unreasonable if there is no sound reasoning process that would support that decision.” *AAAA Ents. Inc. v. River Place Community Urban Redevelopment*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). 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.).

{¶33} Following a thorough review of the record, we find no abuse of discretion in the juvenile court’s rulings related to Father’s presentation of evidence.

{¶34} First, with respect to the guardian ad litem, the trial judge told Father that he could not call the guardian ad litem as a witness in his case in chief because “the [g]uardian ad [l]item for the child is not a fact witness for your case in chief.” “He’ll give a report” and then “you’re welcome to ask him questions.” The juvenile court explained that the guardian ad litem needed to “hear all the evidence first” because until he heard all the evidence, he could not state whether “his report needs to be amended or opinion needs to be changed” based on the evidence presented at the hearing.

{¶35} Although the trial judge did not allow Father to question the guardian ad litem during his case in chief, the record reflects that Father was given ample opportunity to question the guardian ad litem after the guardian ad litem presented his recommendation to the court. Much of Father’s questioning of the guardian ad litem was repetitive and argumentative.

Although Father contends that the trial judge unfairly “cut off” his cross-examination of the guardian ad litem, by that time, Father had already questioned the guardian ad litem regarding numerous topics, including his statement in his report that Father described the court’s temporary parenting time order to be “ridiculous,” the size of the parents’ respective residences, the guardian ad litem’s visits to each of the parents’ residences, his failure to observe E.O.T. interacting with either of his parents, his discussions with E.O.T. regarding his relationship with each of his parents and the guardian ad litem’s conclusion that Father was satisfied with being supported by his family and was not interested in working. Father has not identified any evidence he was precluded from eliciting from the guardian ad litem and has not shown that he was in any way prejudiced by the juvenile court’s limitation of his cross-examination of the guardian ad litem.

{¶36} With respect to Father’s contention that the juvenile court otherwise unduly “limited his presentation of his case” and “refused to allow him sufficient time to present his evidence,” there is no support for such claims in the record. To the contrary, the record reflects that the trial judge repeatedly asked Father whether he had any additional witnesses or other evidence to present. Once again, Father has not identified any evidence he was prevented from presenting and has not shown that any such evidence would have affected the outcome here.

Consideration of the Relevant R.C. 3109.04(F)(1) Factors

{¶37} Father also contends that the juvenile court failed to comply with R.C. 3109.04.

{¶38} When making an initial custody determination, the trial court must consider what would be in the best interest of the child. R.C. 3109.04(B)(1). R.C. 3109.04(F) contains a nonexclusive list of factors the trial court must consider in determining what is in the best interest of the child.

{¶39} Although a trial court is required to consider these R.C. 3109.04(F) factors in determining what is in a child’s best interest, it retains broad discretion in making a best-interest determination. We review a trial court’s decision in child custody matters for abuse of discretion. *See, e.g., In re C.M.*, 8th Dist. Cuyahoga Nos. 99601 and 99602, 2013-Ohio-5427, ¶ 37 (“[T]he trial court’s discretion with respect to child custody issues should be accorded the utmost respect, especially in view of the nature of the proceeding and the impact the court’s determination will have on the lives of the participants.”); *see also In re J.W.*, 8th Dist. Cuyahoga No. 105337, 2017-Ohio-8486, ¶ 19 (“[A] trial court’s judgment regarding the allocation of parental rights and responsibilities will not be disturbed absent an abuse of discretion.”).

{¶40} Following a thorough review of the record, we cannot say that the juvenile court abused its discretion in designating Mother as primary residential parent and legal custodian of E.O.T. or in adopting the parenting time schedule set forth in Mother’s proposed parenting plan.

{¶41} Although Father indicated in his application to determine custody that he sought a shared parenting order, he did not file a proposed shared parenting plan as required under R.C. 3109.04(G). Because Father failed to follow the statutory procedure for shared parenting, the juvenile court’s “only available option was a determination of custody to either Mother or Father.” *In re J.A.T.*, 8th Dist. Cuyahoga No. 106641, 2018-Ohio-3057, ¶ 25; R.C. 3109.04(A)(1).

{¶42} Not only did Father not file a proposed shared parenting plan, he did not submit any type of proposed parenting plan. Further, although encouraged to do so by the juvenile court, Father failed to identify, either during his testimony or closing argument, what he believed the juvenile court should order with respect to custody and visitation of E.O.T. Based on Father’s comments during the hearing, however, it appears that he desired at least equal time

with E.O.T., including visitation on the days Mother worked (to eliminate the need for E.O.T. to attend precare and aftercare), visitation every other weekend and the right to take E.O.T. on extended family vacations out of state. He argued that he was entitled to substantial parenting time with E.O.T. based on his prior role, before the parties' separation, as a "stay-at-home" dad.

{¶43} Even assuming, as Father contends, that he was the primary caretaker for E.O.T. prior to the parties' separation, that fact does not trump all other factors in determining what is in E.O.T.'s best interest. See, e.g., *In re O.M.*, 2d Dist. Champaign No. 2017-CA-30, 2018-Ohio-2114, ¶ 12 ("[A] party's role as the primary caregiver is not given presumptive weight over other relevant factors."), quoting *Chelman v. Chelman*, 2d Dist. Greene No. 2007 CA 79, 2008-Ohio-4634, ¶ 43.

{¶44} Although Father acknowledges that the juvenile court referenced specific R.C. 3109.04(F) factors in its journal entry, he argues that this "doesn't mean that the Court actually considered this [sic] factors" and that it was an abuse of discretion for the juvenile court to simply assert in its journal entry that it considered these factors without making "findings as to how the evidence applied to the 3109.04 factors." We disagree.

{¶45} While a court is required to consider the factors set forth in R.C. 3109.04(F) in making an initial custody determination, it is not necessary that the trial court discuss its analysis of each factor in its judgment entry. See, e.g., *Chelman v. Chelman*, 2d Dist. Greene No. 2007 CA 79, 2008-Ohio-4634, ¶ 37-38; see also *Giovanini v. Bailey*, 9th Dist. Summit No. 28631, 2018-Ohio-369, ¶ 13 ("A trial court is not required to explicitly make findings of fact as to the factors under R.C. 3109.04(F)(1). * * * 'While [R.C. 3109.04] does mandate consideration of each factor by the trial court, the court need not explicitly reiterate its findings with regard to

those factors absent a Civ.R. 52 request for findings of fact and conclusions of law.”), quoting *Matis v. Matis*, 9th Dist. Medina No. 04CA0025-M, 2005-Ohio-72, ¶ 6; *Brandt v. Brandt*, 11th Dist. Geauga No. 2012-G-3064, 2012-Ohio-5932, ¶ 13 (“Though there should be some indication in the judgment entry that the trial court considered the best interests of the child pursuant to R.C. 3109.04(F), there is no requirement it make specific findings in its entry as to each and every factor.”).

{¶46} In this case, the record reflects that the juvenile court considered the relevant R.C. 3109.04(F) factors in determining what was in E.O.T.’s best interest. The juvenile court’s May 11, 2018 journal entry identifies the specific factors it considered, along with the testimony of the parties, the recommendation of the guardian ad litem and the wishes and concerns of E.O.T. as expressed to the guardian ad litem, in rendering its decision. Further, the juvenile court expressly found that “Father has demonstrated that he is less likely to cooperate or reschedule missed parenting time or facilitate the other parent’s parenting time rights for the court to consider mother’s shared parenting plan.”

{¶47} Based on the record before us, we cannot say that the juvenile court acted unreasonably, arbitrarily or unconscionably in designating Mother the primary residential parent and legal custodian of E.O.T. or in adopting the parenting time schedule proposed by Mother.

{¶48} Competent, credible evidence supports the juvenile court’s conclusion that designating Mother as the primary residential parent and legal custodian is in the best interest of E.O.T. See, e.g., *Dannaher v. Newbold*, 10th Dist. Franklin No. 03AP-155, 2004-Ohio-1003, ¶ 62 (“[A]n appellate court will not reverse a trial court’s decision to allocate parental rights and responsibilities when the record contains substantial credible and competent evidence to support the court’s decision.”). It is apparent from the record that both Mother and Father have been

actively involved in parenting E.O.T. that both Mother and Father are committed to continuing to parent E.O.T. and that E.O.T. has a strong, positive relationship with both of his parents. The record further reflects, however, that Mother has a more stable housing and financial situation than Father. Mother is employed and owns her own home, whereas Father is presently unemployed and resides at his sister and brother-in-law's home. Further, Father has shown a disinclination to honor and facilitate E.O.T.'s relationship and parenting time with Mother, having taken E.O.T. and withheld visitation from Mother for more than two months. The parenting time schedule is reasonable and allows each parent to spend substantial, meaningful time with E.O.T.

{¶49} However, we do find that it was an abuse of discretion for the juvenile court to incorporate by reference, into its journal entry, Mother's proposed parenting plan *and agreement*, given that many of the substantive terms of the parenting plan are premised upon, and expressly reference, an agreement between the parties that does not exist.

{¶50} Accordingly, we overrule Father's first assignment of error. We sustain Father's second assignment of error in part and overrule in it part. We affirm the juvenile court's decision to designate Mother primary residential parent and legal custodian of E.O.T. and to impose the parenting time schedule set forth in Mother's proposed parenting plan, Exhibit A to the journal entry. However, we remand the case for the juvenile court to revise its journal entry and the incorporated parenting plan to remove references to terms having been "agreed to" by the parents to which Father did not, in fact, agree.

{¶51} Judgment affirmed in part; reversed in part; remanded.

It is ordered that appellant and appellee share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cuyahoga County Common Pleas Court, Juvenile Division, 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.

EILEEN A. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR