[Cite as *In re F.T.*, 2020-Ohio-1624.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE F.T., ET AL.	:	
	:	Nos. 108934 and 108935
Minor Children	:	
	:	
[Appeal by S.T., Father]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: April 23, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. CU 16111661 and 16111662

Appearances:

Joyce E. Barrett and James P. Reddy, Jr., *for appellant*.

Armstrong Law Offices and Erin Adams Armstrong, *for appellee* S.S.

MARY J. BOYLE, P.J.:

{¶ 1} Appellant, S.T. ("father"), appeals from a judgment modifying the parties' shared-parenting agreement, naming appellee S.S. ("mother") the residential parent and legal custodian of their children, F.T. (d.o.b. Jan. 21, 2014)

and A.T. (d.o.b. Apr. 7, 2016), for school purposes. Father raises one assignment of error for our review:

> The trial court erred and abused its discretion in designating [mother] the residential parent and legal custodian of F.T. and A.T. for school purposes.

{¶ 2} Finding no merit to his appeal, we affirm.

I. Procedural History and Factual Background

{¶ 3} The parties entered into a shared-parenting plan on July 8, 2016, which resulted from the parties filing competing petitions for civil protection orders against one another. Father moved for the juvenile court to adopt the shared-parenting plan, which it did without a hearing on October 12, 2016.

{¶ 4} According to the shared-parenting plan, mother and father agreed to equally share parental rights and responsibilities. Regarding the issue of schooling, the shared-parenting plan stated: "The children may attend school in the district of either parent's residence. Selection of the district shall be agreed upon or mediated no later than [F.T.] reaching the age of 4 years (1 year prior to the normal age of kindergarten enrichment)."

{¶ 5} On November 21, 2017, mother moved to terminate the shared-parenting plan and make her the sole residential parent and legal custodian. Mother moved alternatively to modify the shared-parenting plan to name her the residential parent and legal custodian for school purposes. On December 27, 2017, father moved to adopt a new shared-parenting plan that he attached to his motion.

{¶ 6} The juvenile court held hearings on the parties' motions on three days in May 2018 and on February 20, 2019. Mother testified and presented three other witnesses in her case in chief: (1) father as if on cross-examination, (2) Deanna Schaffer from the Clifton Early Learning Center in Lakewood, and (3) a detective from the Parma Police Department. Father testified in his case in chief and presented mother as if on cross-examination.

A. Mother's Case in Chief

{¶ 7} Deanna Schaffer testified that she was a Family Advocate at the Clifton Early Learning Center ("Clifton Center"). She identified an exhibit, stating that it was an application for a child to attend the Head Start preschool at the Clifton Center. Schaffer said that father signed the application on January 24, 2017. Schaffer explained that Head Start is funded through the government, which requires proof of eligibility. To determine eligibility, Schaffer explained that they need proof of family size, birth, address, income, and the child's "current shot record." The parent completing the application is required to provide the required information.

{¶ 8} Schaffer testified that the form has a section labeled, "Secondary Caregiver General Information." Shaffer stated that although father provided the birth certificate, which listed mother, he only listed himself on the application as a single parent and said that "it was just him and the child." Schaffer stated that F.T. was approved but was placed on a waiting list.

{¶ 9} Schaffer testified that she received a call from mother in August 2017, and that is when she learned that mother was "involved" in F.T.'s life. Once Schaffer confirmed mother's identity, Schaffer told mother that F.T. was on a waiting list for the fall session. Schaffer said that mother told her that she did not know about the enrollment and "did not want [F.T.] to attend that center."

{¶ 10} Father testified that he emailed mother to tell her that he was going to enroll F.T. at the Clifton Center. He stated that he told the Clifton Center that mother could pick up and drop off the child in an emergency. But when mother's counsel showed father the application, he could not say where he placed mother's name.

{¶ 11} Father testified that he told the Clifton Center that he would bring F.T only on the days that F.T. was in his care. Father explained that is why he wrote "single parent" and did not inform the Clifton Center that he and mother had a shared-parenting plan. Father also stated that the Clifton Center did not ask him for a shared-parenting plan. Father agreed that above his signature on the application for the Clifton Center it stated: "I declare under penalty and perjury and the laws of the state of Ohio that the above information is true and correct to the best of my knowledge."

{¶ 12} Father denied that he did not tell mother the name of the karate studio where F.T. has karate lessons. He said that he told mother on Our Family Wizard.

{¶ 13} Father identified an exhibit titled, "Lakewood City School District Student Registration Form." Despite the name of the form, father insisted that it was a "daycare program at Lakewood." Father agreed that he signed the form on January 21, 2018. Father stated that where the form asked for who the "student lives with," he checked the box for "father." Father agreed that right after the box for "father," the form states "Court Journal Entry" with a blank line after it. Father agreed that he left that line blank. Father stated that he did not fill in anything on that line because he "worked with the Board of Education." Father also agreed that he did not check a box that stated, "Juvenile Court." Father also agreed that under "Parent Guardian Information," he left "mother" blank and under "emergency contact information" he only listed himself.

{¶ 14} Father testified that although he did not disclose to mother that he applied for F.T. to enroll in the Clifton Center (contradicting what he stated earlier in the hearing), he did tell mother about F.T.'s preschool registration for Lakewood schools.

{¶ 15} Father identified another registration form for Lakewood City School District. Father testified that he signed this "corrected" form on March 7, 2018. On the "corrected" form, he stated that he listed mother as an emergency contact and included her phone number but he did not include mother's email address. Further, father did not include mother as someone who could pick F.T. up from school when there was a medical emergency; he only listed himself and his mother.

{¶ 16} Father was shown another form titled, "Lakewood City Schools Early Childhood Education Public Preschool Family Assessment." Father agreed that he filled out the form. Under Section A for "Family Composition," father had the option of choosing, "two parent, natural two parent, one step, single parent mother, single parent father or other with a blank." Father chose "single parent father." He agreed that he did not disclose the shared-parenting agreement. He stated, "They didn't ask for it." Father testified that the next page of the document was titled "Ohio Department of Job & Family Services Family Information For Step Up To Quality Programs." He said that on this page he wrote that F.T.'s family consisted of "grandmother, father, sister." Father stated that those are the ones who are F.T.'s family in father's house. The form continues to ask questions about F.T., including questions about F.T.'s strengths, weaknesses, and personality. Father stated that he did not think that the school needed to hear from mother on any of these points.

{¶ 17} Mother testified that she learned that father enrolled F.T. in preschool at the Clifton Center when she received a call in August 2017 from the doctor's office telling her that F.T.'s shot records for preschool were ready. Mother stated that father never discussed enrolling F.T. at the Clifton Center with her. Mother believed that their shared-parenting plan required that he do so because it stated:

> The parties shall consult with each other with respect to the education and religious training of the children, their illnesses and operations (except in emergencies), their welfare and other matters of similar importance affecting the children, whose well-being, education and development shall, at all times, be of paramount consideration and importance to both mother and father.

{¶ 18} Mother further testified that she also learned that father had applied to enroll F.T. in preschool at Lakewood School District from the doctor in February 2018 when they told her that F.T.'s shot records for Lakewood were available. Mother stated that Lakewood schools did not have a problem with father's application because once they received the shared-parenting agreement, it stated that father was a residential parent and legal custodian of the child when the child was in father's care.

{¶ 19} Mother stated that she "just found out" the name of F.T.'s karate studio and where it was located a couple of days before the hearing (which was on May 16, 2018). She said that she was driving past it with F.T. in the car and he pointed it out to her. Although mother stated that father told her she could take F.T. to karate on the days that she had him, he refused to tell her the name of the studio and never told her of any scheduled days or times of karate lessons.

{¶ 20} Mother testified that she and father had been using Our Family Wizard for approximately one-and-a-half years. She stated that the program has an information bank where a parent can input communications about the child into the system to tell the other parent information about the child. She identified a document that she printed on May 9, 2018, from the information bank on Our Family Wizard. She stated that nowhere in the information bank did father tell her about karate, the Clifton Center, or the Lakewood preschool.

{¶ 21} Mother testified that when the children were in her care, she and the children lived with her parents, an older sister, and two younger siblings who were

11 and 12 years old. She said that F.T. and A.T. were very close to their young aunt and uncle. She said that her parents helped support her and the children, but that she planned to get an apartment in North Royalton before F.T. reached the age for kindergarten so that she could enroll him in school there.

{¶ 22} Mother testified that father called the police on her multiple times. She said the most recent time was Easter 2018 (approximately one month before the hearing). She explained that although it was her weekend, father was supposed to pick up the children at 10:00 a.m. on Easter Sunday. She stated that normally when it is her weekend, she keeps the children until Monday. She said that she forgot that father was supposed to have the children on Easter. Mother testified that at 10:15 a.m., father showed up at her parents' house with three police officers. Mother said that father did not call or text her ahead of time, although she later admitted that he communicated with her on Our Family Wizard but she did not check that until later. Mother stated that the police made F.T. scared and anxious.

{¶ 23} Mother further testified to allegations that father made against her and her family. Mother stated that father told children services that mother physically abused F.T. on his stomach. She said that police were also involved. Mother explained that F.T. had rug burns on his stomach from playing, and nothing came of the allegations.

{¶ 24} Mother testified to another incident in October 2016 where father alleged that mother's father was sexually abusing F.T. Mother stated that police and children services were involved and that nothing came of the allegations. Mother

testified that father also made more allegations against her or her family in 2017, including sexual and physical abuse allegations involving A.T. and more sexual and physical abuse allegations involving F.T. in 2017. She said that neither she nor her father were ever charged with a crime and that children services never opened a case with her family or the children.

{¶ 25} Mother testified that father made other allegations against her that she abused and neglected the children. Mother stated that father made allegations so many times that she cannot "even count [them] on [her] fingers." She said that each time father made an allegation, children services and the Parma Police Department call her. Mother stated that each time, neither children services nor the police brought a case against her.

{¶ 26} Detective Amanda Kaniecki testified she investigated the sexual-abuse allegations that father made against maternal grandfather in October 2016. She interviewed witnesses. She said that no charges were filed against the grandfather. She said the case was suspended in November 2016 and nothing further has occurred since that time. Detective Kaniecki also stated that she investigated other allegations against mother, but she could not state when any of them occurred.

B. Father's Case in Chief

{¶ 27} Mother identified several conversations between she and father where they worked together and accommodated the other regarding parenting time with the children.

{¶ 28} Mother agreed that education was important for the children. She also agreed that she was not opposed to the children attending preschool. She further agreed that father took the initiative and enrolled F.T. in preschool. She admitted that she "disenrolled" F.T. from preschool at the Clifton Center. She did not, however, "disenroll" F.T. from the preschool through the Lakewood School District. Mother admitted that she was not happy that father enrolled F.T. without telling her.

{¶ 29} Mother stated that she was not going to buy a house in North Royalton. She hoped to rent an apartment in North Royalton and said that her parents planned to help her. She stated that she was looking only at two-bedroom apartments. Mother agreed that it would be in the children's best interest if she moved to North Royalton because the schools were better.

{¶ 30} The juvenile court did not hold another hearing on father's case in chief until February 20, 2019, nine months after the May 2018 hearings. Father had just recently moved to Strongsville at the time of the hearing. He stated that he did so "because it was better for the children." He said that there was more space in Strongsville and opined that Strongsville schools were superior to Lakewood and Parma school systems. He testified that he also felt that it was important for the children to have their own bedrooms, which they did not have in his home in Lakewood but did now in Strongsville. Father stated that he also got married "almost a year ago" and he and his wife lived in the Strongsville home. His wife was

pregnant and due in August 2019. He said F.T. and A.T. were very excited at the prospect of having another sibling.

{¶ 31} Father submitted a series of photos into evidence showing the children with father and father's family as well as showing the children doing various activities with father and while in father's care.

{¶ 32} Father stated that F.T.'s last day of preschool in Lakewood was the day before the hearing (which would have been February 19, 2019). Father explained that he enrolled F.T. in preschool in Strongsville. Father testified that when he filled out the application for Strongsville, he informed them that he had shared parenting and he gave them mother's contact information. He also notified mother of the Strongsville preschool and said that mother agreed to take F.T. to that preschool even on the days when F.T. is at her house. Father stated that mother had also been taking F.T. to preschool in Lakewood when F.T. was at her house and that when mother could not do so because she did not have a vehicle, father picked him up in Parma and took him to preschool in Lakewood. Father said that F.T. was thriving in preschool.

{¶ 33} When asked why he believed it was in his children's best interest to go to school in Strongsville, father replied, "Because the ratings and how well they do. I've done tons of research on schools. Their state report card, their academics, their achievements, how they prepare the kids, the teachers are phenomenal. The facilities are state of the art and it's a great community and they have a reputation for their schools."

{¶ 34} Father stated that he compared Parma School District's state report card with that of Strongsville's. Father explained that he also did other research regarding extracurricular activities, levies, and other matters. He also obtained the state report card for a private school in Parma, Constellation, that mother had talked about sending the children to. He said that he and mother had been discussing different possibilities of where to send F.T. to kindergarten. He said that mother had also suggested sending the children to a Muslim school in Rocky River, but father said that he wanted a more traditional school. Father stated that based upon all of the research that he did, he believed that Strongsville was a superior school system to Parma. He submitted the state report cards into evidence.

{¶ 35} Father testified that when he went to Palestine to get married the previous year, he asked mother if she would keep the children while he was gone for three weeks. He believed it would be in the children's best interest to be with their mother.

{¶ 36} Father said that he and mother had been making arrangements outside of court and outside of the shared-parenting agreement. He stated they had been communicating and compromising well with each other. He submitted into evidence communications between he and mother from November 3, 2017, to May 15, 2018. He identified many of them that showed they were successfully communicating and compromising.

{¶ 37} Father testified that he "begged" mother to go to mediation for this dispute. He stated that he tried to accommodate whatever time mother could go to

mediation. He said that they went to one session in February 2018 with an agreed-upon mediator. After that, however, father said that mother refused to attend mediation.

{¶ 38} Father stated that he believed he would be the better parent for school purposes because he "demonstrated and took the initiative to participate in [F.T.'s] academics, his extracurricular activities from day one and the mother has not participated or even took him to preschool in her city in Parma." He said that he had involved F.T. in karate, music, and art, and had involved A.T. in story time at the library, music, and art. He said although mother participates in some of the activities, she has not "invest[ed] in [F.T.'s] school."

{¶ 39} Father explained that mother never moved to North Royalton like she said she was going to do nine months earlier.

{¶ 40} On cross-examination, father stated that he told mother about the new preschool in Strongsville. But he admitted that mother texted him the night before the February 20, 2019 hearing and asked him, "So F.T. is not going to Lakewood anymore" because she found an information packet for Strongsville preschool in F.T.'s backpack. Father also admitted that he signed the preschool enrollment application for the Strongsville preschool on February 14, 2019.

{¶ 41} Father then identified text messages that showed on January 16, 2019, mother texted father and told him that F.T. told her that he was moving to Strongsville. Father responded, "He may be talking about your sister's house in Parma Heights." Mother's counsel asked father, "Isn't it true that you had already

secured the house in Strongsville?" Father stated that he was not sure. He then identified a document showing that the deed for his Strongsville home was recorded on November 9, 2018, and that it was owned by a corporation. Father testified that he thought his mother owned the corporation. He said that he did not discuss it with mother because he was not sure what his mother intended to do with the home. Father stated he thought his mother might rent the house to someone else. Father also stated that as soon as he knew he was moving to Strongsville, he told mother that he "may" be moving there.

C. Juvenile Court's Oral Ruling and Judgment

{¶ 42} After all of the evidence was submitted, father orally moved to dismiss mother's motions. The juvenile court granted father's motion in part, finding that mother had not established that there had been a change of circumstances that the parties had not contemplated at time they entered the shared-parenting plan. The juvenile court noted that when the parties entered into the shared-parenting plan, they contemplated F.T. reaching school age and that they would have to determine where he would go to school. Therefore, the juvenile court dismissed mother's motion in part; i.e., her request to terminate the shared-parenting plan. The juvenile court stated that it would consider the remaining motions and issue its judgment at a later time.

{¶ 43} In August 2019, the juvenile court denied father's motion to adopt his proposed shared-parenting plan, but it granted mother's motion to modify the shared-parenting plan. The court modified the shared-parenting plan with respect

to one issue: it named mother the residential parent and legal custodian of the children for school purposes.

{¶ 44} The juvenile court found that the state report cards for the schools that father submitted into evidence, Parma where mother lives and Strongsville where father lives, do not explain the performance criteria for each letter grade or method by which the department assigned each letter grade. It further noted that both school districts had the same rating for kindergarten through third grade. The juvenile court further found that there was no evidence that F.T. had special needs or that the parents' standard of living would indicate that the child would be enrolled in private school.

{¶ 45} The juvenile court also found it significant that the child had been living in Parma with mother since the parties' separation in July 2016, but noted that father had just recently moved to Strongsville and the child had not spent much time in that community.

{¶ 46} It is from this judgment that father now appeals.

II. Modification of Shared-Parenting Plan for School Purposes

{¶ 47} In his sole assignment of error, father contends that the juvenile court abused its discretion when it named mother the residential parent and legal custodian of the children for school purposes.

{¶ 48} Father cites only to R.C. 3109.04(G) in support of his argument that the juvenile court abused its discretion. This provision provides that either parent or both parents of a child may request that the court grant both parents shared-

parenting rights and responsibilities for the care of a child. In this case, however, the juvenile court had already approved the parties' shared-parenting plan in October 2016. Once a shared-parenting decree has been issued, R.C. 3109.04(E) governs its modification. *Fisher v. Hasenjager*, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, ¶ 11.

{¶ 49} Under R.C. 3109.04(E), there are four ways that a court can modify a shared-parenting decree. First, R.C. 3109.04(E)(1)(a) generally requires that before a court modifies a prior allocation of parental rights and responsibilities, it must find that (1) there has been a change in circumstances of the child, residential parent, or either parent, (2) the modification is in the child's best interest, and (3) the benefits resulting from the change will outweigh any harm. Second, R.C. 3109.04(E)(2)(a) permits parents to jointly modify the terms of a shared-parenting plan by filing the modifications with the court, and then the court must find that they are in the child's best interest. Third, R.C. 3109.04(E)(2)(b) allows a court to modify the terms of a shared-parenting plan upon its own motion if the court finds that the modifications are in the best interest of the child, or upon the request of one or both parents. Finally, R.C. 3109.04(E)(2)(c), although not technically a modification, permits a court to terminate a shared-parenting plan if the court finds that shared-parenting is not in the best interest of the child.

{¶ 50} In this case, the parents did not jointly request to do anything, and the juvenile court declined to terminate the shared-parenting decree. Thus, R.C. 3109.04(E)(2)(a) and R.C. 3109.04(E)(2)(c) do not apply. The juvenile court

specifically found that a change in circumstances had not occurred that the parents had not contemplated at the time they entered into the shared-parenting plan. Notably, neither party appeals that determination. Thus, the question becomes whether the juvenile court could modify the shared-parenting decree by designating the residential parent and legal custodian for school purposes by simply determining what was in the best interest of the children under R.C. 3109.04(E)(2)(b) and not finding that a change in circumstances occurred under R.C. 3109.04(E)(1)(a).

{¶ 51} 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:
>
> (i) The residential parent agrees to a change in the residential parent or both parents under a shared parenting decree agree to a change in the designation of residential parent.
>
> (ii) The child, with the consent of the residential parent or of both parents under a shared parenting decree, has been integrated into the family of the person seeking to become the residential parent.
>
> (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.

{¶ 52} R.C. 3109.04(E)(1)(a) applies to motions to change the designation of residential parent and legal custodian. "Typically, this arises when a parent wishes to change legal custody or become the sole residential parent and legal custodian rather than sharing custody." *Gessner v. Gessner*, 2d Dist. Miami No. 2017-CA-6, 2017-Ohio-7514, ¶ 36. In interpreting this section, the Ohio Supreme Court stated that "[a] modification of the designation of residential parent and legal custodian of a child requires a determination that a 'change in circumstances' has occurred, as well as a finding that the modification is in the best interest of the child." *Fisher*, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, at the syllabus (construing R.C. 3109.04(E)(1)(a)).

{¶ 53} R.C. 3109.04(E)(2) states that "[i]n addition to a modification authorized under division (E)(1) of this section," R.C. 3109.04(E)(2)(b) provides:

> The court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. Modifications under this division may be made at any time. The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children.

{¶ 54} The Ohio Supreme Court explained in *Fisher* that R.C. 3109.04(E)(1)(a) and R.C. 3109.04(E)(2)(b) contain "significantly different standards for modification." *Id.*, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, ¶ 33. This is because the General Assembly intended the standard under R.C. 3109.04(E)(1)(a) to be "a high standard" because it was attempting to "spare

children from a constant tug of war between their parents who would file a motion for change of custody each time the parent out of custody thought he or she could provide the child a 'better' environment." *Id.* at ¶ 34.

{¶ 55} "Conversely, R.C. 3109.04(E)(2)(b) requires only that the modification of the shared-parenting plan be in the best interest of the child." *Id.* Regarding the standard in R.C. 3109.04(E)(2)(b), the Ohio Supreme Court explained:

> The standard in R.C. 3109.04(E)(2)(b) for modification of a shared-parenting plan is lower because the factors contained in a shared-parenting plan are not as critical to the life of a child as the designation of the child's residential parent and legal custodian. The individual or individuals designated the residential parent and legal custodian of a child will have far greater influence over the child's life than decisions *as to which school the child will attend* or the physical location of the child during holidays. Further, factors such as the physical location of a child during a particular weekend or holiday or provisions of a child's medical care are more likely to require change over time than the status of the child's residential parent and legal custodian.

(Emphasis added.) *Id.* at ¶ 36.

{¶ 56} The *Fisher* court further explained:

> "Parental rights and responsibilities" is not defined in the statute. However, a majority of this court commented that the General Assembly changed the terms "custody and control" to "parental rights and responsibilities" when it amended R.C. 3109.04 in 1991. *Braatz v. Braatz* (1999), 85 Ohio St.3d 40, 43, 1999 Ohio 203, 706 N.E.2d 1218. "'Custody' resides in the party or parties who have the right to ultimate legal and physical control of a child.'" *Id.* at 44, 706 N.E.2d 1218, quoting *In re Gibson* (1991), 61 Ohio St.3d 168, 171, 573 N.E.2d 1074. Therefore, parental rights and responsibilities reside in the party or parties who have the right to the ultimate legal and physical control of a child.

> R.C. 3109.04 also does not expressly define "residential parent" and "legal custodian." However, subsection (A)(1) states that if one parent is allocated the primary parental rights and responsibilities for the care of a child, that parent is designated the residential parent and legal custodian of the child. Therefore, the residential parent and legal custodian is the person with the primary allocation of parental rights and responsibilities. When a court designates a residential parent and legal custodian, the court is allocating parental rights and responsibilities.
>
> A court also allocates parental rights and responsibilities when it issues a shared-parenting order. R.C. 3109.04(A)(2). A court may allocate parental rights and responsibilities for the care of a child to both parents and issue a shared-parenting order requiring the parents to share all or some of the aspects of the physical and legal care of the child in accordance with the approved plan for shared parenting. Id.
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> * * *
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> In summary, R.C. 3109.04(E)(1)(a) expressly provides for the modification of parental rights and responsibilities in a decree. An allocation of parental rights and responsibilities is a designation of the residential parent and legal custodian. Therefore, R.C. 3109.04(E)(1)(a) controls when a court modifies an order designating the residential parent and legal custodian.

(Emphasis added.) *Id.* at ¶ 22-26.

{¶ 57} The Supreme Court went on to explain that the "terms" of a shared-parenting plan cannot include the designation of residential parent and legal custodian. *Id.* at ¶ 31. "[T]hat designation is made by a court in an order or decree." *Id.* That happens when a court approves a shared-parenting plan and incorporates it into a shared-parenting decree. *Id.* Because of that, the Supreme Court concluded that the designation of residential parent or legal custodian "cannot be modified pursuant to R.C. 3109.04(E)(2)(b)," which explicitly applies to the "terms" of a shared-parenting plan.

{¶ 58} Subsequent to *Fisher*, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, many appellate districts have held that the lower standard under R.C. 3109.04(E)(2)(b) applies when a court only modifies the shared-parenting decree to name the residential parent and legal custodian for school purposes. *See Palichat v. Palichat*, 2d Dist. Greene No. 2015-CA-42, 2019-Ohio-1379, ¶ 14, citing *Gessner*, 2d Dist. Miami No. 2017-CA-6, 2017-Ohio-7514 ("[P]arenting time, child support, and the designation of residential parent for school purposes have all been held to be terms of a shared parenting plan that only require a 'best interest' evaluation for modification."); *In re O.M.R.*, 11th Dist. Trumbull No. 2013-T-0057, 2014-Ohio-4739, ¶ 9 ("R.C. 3109.04(E)(2)(b) controls modifications of a shared parenting plan that change or designate a residential parent for school purposes. * * * This is because such a designation "does not affect the legal rights of either parent nor does it involve a reallocation of parental rights."); *Fritsch v. Fritsch*, 1st Dist. Hamilton No. C-140163, 2014-Ohio-5357, ¶ 20-21 (the trial court properly applied the best interest test in R.C. 3109.04(E)(2)(b) "to modify the designation of the residential parent for school purposes"); *Ralston v. Ralston*, 3d Dist. Marion No. 9-08-30, 2009-Ohio-679, ¶ 17 (where trial court retained both parents as residential parents and only modified the designation of residential parenting as it applied to "school purposes," trial court was required to apply R.C. 3109.04(E)(2)(b) rather than 3109.04(E)(1)(a)); and *In re E.L.C.*, 12th Dist. Butler No. CA2014-09-177, 2015-Ohio-2220, ¶ 42-45 (modification of residential parent for school purposes is evaluated only under "best interest" test).

{¶ 59} Thus, pursuant to *Fisher*, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, the lower standard under R.C. 3109.04(E)(2)(b) applies in this case. Therefore, the juvenile court only had to determine what was in the best interest of the children under R.C. 3109.04(F)(1). This statute provides:

> In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:
>
> (a) The wishes of the child's parents regarding the child's care;
>
> (b) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;
>
> (c) 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;
>
> (d) The child's adjustment to the child's home, school, and 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 rights or visitation and companionship rights;
>
> (g) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;
>
> (h) Whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected

child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;

(i) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;

(j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

{¶ 60} Although a trial court is required to consider the factors set forth in R.C. 3109.04(F), it retains broad discretion in making a best-interest determination. *In re E.O.T.*, 8th Dist. Cuyahoga No. 107328, 2019-Ohio-352, ¶ 39. We therefore will not disturb the trial court's judgment absent an abuse of discretion. *Id.*; *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."). Abuse of discretion is a term used to indicate that a trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 61} Here, the juvenile court found that father's evidence regarding the different state report cards for the schools did not explain the criteria or method for arriving at each grade. It further noted that for kindergarten through third grade, the schools received the same grade. Thus, the court did not find much value in father's submitted documents.

{¶ 62} The juvenile court further found that the children had been residing with mother in Parma since the parties' separation in 2016. Although father had equal parenting time with the children under the shared-parenting plan, the court noted that father had just moved to Strongsville. Thus, the court noted that the children had not spent much time in Strongsville.

{¶ 63} The juvenile court further stated that it considered the best interest factors and "[t]he ability of the parents to cooperate and make decisions jointly" with respect to the children, as well as their geographic proximity to each other as it "relates to practical considerations of [the] current shared parenting schedule." Indeed, "'[s]uccessful shared parenting requires at least two things. One is a strong commitment to cooperate. The other is a capacity to engage in the cooperation required.'" *Kauza v. Kauza*, 12th Dist. Clermont No. CA08-02-014, 2008-Ohio-5668, ¶ 27, quoting *Meyer v. Anderson*, 2d Dist. Miami No. 01CA53, 2002-Ohio-2782.

{¶ 64} Mother presented endless testimony about father's refusal to notify preschools that F.T. had a mother who was very involved in his life. Moreover, father was not truthful through much of his testimony regarding his attempts to inform the

schools about mother and to inform mother about the schools. Father had also made serious allegations against mother and her father that subjected mother, her father, *and* the children to countless interviews with the police and children services – none of which amounted to any charges or cases being filed against mother or her father. Father had not even told mother that he was moving to Strongsville just before the last court hearing. Mother found out that F.T. had started a new preschool in Strongsville by finding an information packet in F.T.'s backpack.

{¶ 65} Father contends that mother did not present any evidence as to why she should be designated the residential parent for school purposes. In this case, the juvenile court listened to the testimony that each party presented over a four-day hearing. Mother testified about the children's bonds to her family. She also explained how she would be able to be flexible with the children's school schedules once they started school.

{¶ 66} Father asserts that mother "cavalierly chose not to follow" the court's mediation order since the court had adopted their shared-parenting plan. Mother attended one session of mediation, however, and it failed. Thus, we find that she did not ignore a court order.

{¶ 67} Despite the harassment to which father subjected mother, father and mother testified that they had recently been able to communicate with one another and compromise regarding their parenting time with the children and transporting the children to their various activities.

{¶ 68} In this case, although the parents had established that they both had the children's best interest at heart, father did not consult mother about enrolling F.T. in preschool in Lakewood or Strongsville. And not only did he not communicate with mother, he was not forthcoming with the preschools about the shared-parenting plan or mother's involvement in F.T.'s life.

{¶ 69} Moreover, the juvenile court did not alter father's status as coresidential parent and legal custodian of the children for all other purposes. It also did not alter father's parenting time with the children; he and mother still shared equal parenting time. While father would have to drive to Parma to take F.T. to school (and A.T. when she started) when he had the children in his care, father stated that he had already been driving to Parma to pick F.T. up from mother's house to take him to preschool in Lakewood, and then driving back to Parma after preschool was over to take F.T. back to mother's house. Lakewood and Strongsville are about the same distance from Parma and thus, father should not have a problem transporting F.T. to and from school in Parma as well.

{¶ 70} After thoroughly reviewing the record in this case and the applicable law and evidence, we find no abuse of discretion on the part of the juvenile court for modifying the shared-parenting plan to name mother the residential parent and legal custodian of the children for school purposes and keeping the remaining provisions of the shared-parenting plan in place.

{¶ 71} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the 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.

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MARY J. BOYLE, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
MARY EILEEN KILBANE, J., CONCUR