[Cite as *Reed v. Hinkle*, 2009-Ohio-4217.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

George W. Reed, III,	:	
Plaintiff-Appellant,	:	
		No. 09AP-136
v.	:	(C.P.C. No. 07DR02-0600)
Donna Jean Hinkle,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on August 20, 2009

Ray J. King, for appellant.

Donna Jean Hinkle, pro se.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations.

FRENCH, P.J.

{¶1} Plaintiff-appellant, George W. Reed, III, appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, which granted George a divorce from defendant-appellee, Donna Jean Hinkle, and issued a shared parenting plan for the care of their son, Forrest. Having concluded that the court did not err in the issuance of the shared parenting plan, we affirm.

{¶2} During the course of divorce proceedings, George and Donna agreed and stipulated to many issues. While both agreed, in principle, that shared parenting was in Forrest's best interest, they could not agree on the terms of a shared parenting plan. Their disagreements in this respect focused on Forrest's extracurricular activities and his transportation to and from those activities. George lives in Columbus. Donna lives in the Dayton area. In essence, George contended that Forrest's activities should take precedence over Donna's parenting time and that Donna should be responsible for transporting Forrest to and from his activities during her parenting time. Donna contended that George controlled the scheduling of the activities and, given the distance from Dayton to Columbus and the frequency of Forrest's activities, that George should share in Forrest's transportation.

{¶3} Donna submitted a proposed shared parenting plan on September 17, 2008, the first day of a two-day hearing before the trial court. She submitted an amended shared parenting plan on September 18. While the parties had agreed to the majority of provisions in the plan, the parties' testimony focused on the provisions on which they still disagreed. At the end of the two-day hearing, the court stated that it would take the matter under advisement.

{¶4} On October 8, 2008, the court issued a decision and judgment entry. The court referred to Donna's September 18 amended proposed plan and incorporated all of its provisions, with a few noted exceptions. As we detail below, the court directed Donna's counsel to make the ordered changes to the plan and to submit a final shared parenting plan and decree to the court.

{¶5} On January 22, 2009, Donna's counsel submitted a proposed entry-decree for shared parenting and a shared parenting plan. The trial court signed the proposed entry, which adopted Donna's proposed plan, as amended. The judgment stated that the court had considered the parties' testimony, the court's October 8, 2008 decision and entry, and Donna's revisions to her proposed plan. The court found that the plan as amended was fair and equitable and in Forrest's best interest. The court also issued a judgment entry-divorce decree.

{¶6} George filed a timely appeal, and he raises the following assignments of error:

> ASSIGNMENT OF ERROR No. 1
>
> The Trial Court erred in adopting [Donna's] Shared Parenting Plan filed January 22, 2009, which was journalized on January 22, 2009, wherein, [Donna's] Shared Parenting Plan contained language that was stricken by the Court in its Decision and Judgment Entry filed October 8, 2009 [sic].
>
> ASSIGNMENT OF ERROR No. 2
>
> The Trial Court erred in its Decision and Entry regarding the proposed Shared Parenting Plan by identifying the said Shared Parenting Plan as "Agreed Shared Parenting Plan[."]
>
> [ASSIGNMENT OF ERROR No. 3]
>
> The Trial Court erred in failing to set forth Findings of Fact and Conclusions of Law regarding the approval of [Donna's] Shared Parenting Plan as required [by] Revised Code Section 3109.04(D)(1)(a)(ii) [sic].

{¶7} In his first assignment of error, George contends that the trial court erred by including in the final shared parenting plan language that the court had previously ordered stricken. Specifically, George argues that the court's October 8, 2008 decision

ordered Donna's counsel to delete language from her proposed section 3.2 and that the court's final plan contained the language that should have been deleted. We disagree.

{¶8} During George's testimony before the court, his counsel asked him about the following provisions in Donna's proposed section 3.2, which relates to summer vacation:

> If during any of Mother's weeks during summer vacation Forrest has more than one (1) activity, Father shall be responsible for transporting Forrest from Mother's residence to the second (2nd) activity and back to Mother's residence.
>
> If Forrest has two (2) activities on consecutive days during any of Mother's summer vacation weeks, Forrest will stay overnight at Father's residence. In that event, Mother shall transport Forrest to the first activity and Father shall transport Forrest to Mother's residence after the second (2nd) activity.

{¶9} George objected to both of these proposed paragraphs, stating that Donna should be responsible for getting Forrest to and from his activities during her parenting time. In her testimony, Donna contended that requiring George to share in the driving was reasonable because of the distance she had to drive and the frequency of Forrest's activities during the summer. In its October 8, 2008 decision, the court directed Donna to delete her first proposed paragraph, which would have required George to share in the driving if Forrest had more than one activity during any of Donna's weeks. Donna's counsel did so. However, the court did not order Donna to delete, and the final shared parenting plan contained, the second proposed paragraph, which applies if Forrest has two activities on consecutive days during any of Donna's summer weeks. Therefore, we overrule George's first assignment of error.

{¶10} In his second assignment of error, George argues that the trial court erred by referring, once, to Donna's amended proposed shared parenting plan as an "agreed" plan. In response, Donna acknowledges the court's misstatement in its October 8, 2008 decision, but argues that it had no substantive impact on the court's decisions. We agree. It is clear from the court's decisions that it was fully aware of the parties' disagreements. This isolated misstatement caused no harm to George and assigning error based on it was unnecessary. We overrule his second assignment of error.

{¶11} In his third assignment of error, George contends that the trial court erred by failing to make findings of fact and conclusions of law. While George's assignment refers to R.C. 3109.04(D)(1)(a)(ii), it is actually R.C. 3109.04(D)(1)(a)(iii) that requires a trial court, when approving a shared parenting plan where only one parent submits a proposed plan, to "enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval."

{¶12} As George contends, in his testimony before the court, he raised specific objections to Donna's proposed plan. See Tr. 73-87. First, George's counsel asked him about Donna's proposed sections 1.3.4, 1.3.5, and 1.3.6. These sections require the parents to communicate openly and honestly, to plan together, and to consult with one another about their son's care. George complained that Donna was not abiding by these principles. He did not, however, request that they be deleted from a final plan, and they are included.

{¶13} Second, his counsel asked him about Donna's proposed section 3.1.2, which stated: "If Forrest has an activity scheduled during a Friday or Saturday that he

would normally be with Mother, then Mother will pick Forrest up at the activity when it ends." George said that the proposed provision would require him to essentially care for Forrest during Donna's parenting time and that that burden should be on Donna. In her testimony, Donna contended that the proposed provision was fair, given the distance she must drive to get Forrest to and from a weekend activity in Columbus. The court did not delete that provision, which became section 3.1.3 in the final shared parenting plan.

{¶14} Third, George's counsel asked him about Donna's proposed section 3.2, which we quoted and discussed in our consideration of George's first assignment of error. As we stated, the final plan contained one of the proposed paragraphs.

{¶15} Fourth, George's counsel asked him about Donna's proposed section 3.4, which would require George and Donna to divide any required transportation equally. George objected to this provision. Nevertheless, the court included it in the final shared parenting plan.

{¶16} Fifth, George's counsel asked him about one sentence in Donna's proposed section 3.5, which stated: "If Forrest has games, practices or other activities during any Holiday period (as specified in L.R. 27) during Mother's parenting time, Mother's parenting time shall take precedence." George contended that this provision was not in Forrest's best interest. It is included in the final shared parenting plan.

{¶17} Sixth, George's counsel asked him about Donna's proposed section 3.6, which required both parents to keep the other informed of a current telephone number and to have "either voicemail or an answering machine for the number provided."

George said that the plan should require an answering machine and not voicemail. The final shared parenting plan allowed either.

{¶18} Finally, George said that he would like to have Forrest home by 6:00 p.m. on Sundays during the school year, meaning that Forrest would have to leave Dayton by 4:30 p.m. on those days. In its October 8, 2008 decision, the court ordered the shared parenting plan to be revised to accommodate George's request, and the final plan includes that requirement.

{¶19} While we agree with George that the court did not make explicit "findings of fact" concerning his objections to Donna's plan, we have discerned no disputed facts that required findings beyond those contained in the court's October 8, 2008 decision, the January 22, 2009 decrees, and the final shared parenting plan. George raised no objections to the facts contained in Donna's proposed plan, including, for example, the identity of the parties and their son, designation of George as the residential parent, the location of their residences, and Forrest's activities.

{¶20} The objections George did raise concerned the legal conclusions to be drawn from the undisputed facts, that is, whether Donna's plan was in Forrest's best interest and whether it met the requirements of R.C. 3109.04. The court's January 22, 2009 judgment entry-decree for shared parenting included legal conclusions. Specifically, the court found that the amended plan "is fair and equitable and that it would be in the interests of justice and equity to require" its enforcement. While the court also concluded that the amended plan "is in the best interests" of Forrest, the parties disagreed primarily about their own interests, not those of Forrest, and both

George and Donna argued that fairness weighed in his or her favor. The parties' positions are not difficult to ascertain, nor is the court's reasoning. In George's view, it was fair for Donna to be responsible for Forrest throughout her parenting time. In Donna's view, it was fair for George to help with transporting Forrest because he scheduled Forrest's activities, and she lived 90 minutes away. Balancing these views, the court accommodated George in some ways (by adding a return time, for example) and accommodated Donna in others (by requiring George to do half the driving, for example), thus reaching a result it determined to be fair and equitable. We cannot disagree.

{¶21} The court also concluded that the amended plan addressed all relevant statutory factors, including physical living and holiday arrangements, child support obligations, medical and dental care, and school placement. George does not argue that the court erred in drawing this legal conclusion.

{¶22} Ohio courts have held that substantial compliance with R.C. 3109.04(D)(1)(a)(iii) is sufficient if the trial court's reasons for approval or denial of a proposed plan are apparent from the record. See *Clouse v. Clouse*, 3d Dist. No. 13-08-40, 2009-Ohio-1301, ¶45. Here, while additional explanation by the court might have been helpful, we are able to discern from the record the court's reasons for approving Donna's amended plan and, in accordance with R.C. 3109.04(D)(1)(b), determining that the plan was in Forrest's best interest. Therefore, the court complied with R.C. 3109.04(D)(1)(a)(iii). We overrule George's third assignment of error.

{¶23} In summary, we overrule George's three assignments of error. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

BRYANT and TYACK, JJ., concur.