[Cite as *Graham v. Harrison*, 2009-Ohio-4650.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Pamela L. Graham,	:	
Plaintiff-Appellee/ Cross-Appellant,	:	No. 08AP-1073
v.	:	(C.P.C. No. 05DR-05-1732)
James W. Harrison,	:	(REGULAR CALENDAR)
Defendant-Appellant/ Cross-Appellee.	:	

D E C I S I O N

Rendered on September 8, 2009

Andrea R. Yagoda, for appellee/cross-appellant.

Tyack Blackmore & Liston Co., *L.P.A.*, and *Thomas M. Tyack*, for appellant/cross-appellee.

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

SADLER, J.

{¶1} Defendant-appellant, James W. Harrison ("Harrison"), appeals from the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations,

in which that court granted a divorce to him and plaintiff-appellee, Pamela L. Graham ("Graham"). Graham cross-appeals from that judgment.

{¶2} The relevant factual and procedural history follows. The parties were married on August 17, 1997, and one child was born as issue of that marriage on November 19, 1997. The trial court found that the marriage lasted nearly 11 years until April 14, 2008. Graham was 56 years old at the time of trial and is an equestrian and horse trainer. After the marriage, she worked minimally as a horse trainer and consultant until the parties' separation, whereupon she began to work more hours. Harrison was 65 years old at the time of trial and is a veterinarian specializing in small animal orthopedic surgery.

{¶3} After Graham initiated this action the trial court issued temporary orders providing for spousal support, child support, and parenting time with the child. In April 2008, the parties negotiated a shared parenting plan, which they both signed and which the court file-stamped on April 24, 2008. Several days later, however, Graham changed her mind and indicated she would seek sole legal custody of the child. Eventually, the trial of this matter was held over six days, ending on July 29, 2008. The contested issues included assets, debts, spousal and child support, and allocation of parental rights and responsibilities. Following submission of written closing arguments, the trial court journalized its judgment entry and decree of divorce on November 17, 2008. The court divided the parties' assets and debts, named Graham the sole legal custodian and residential parent, established a parenting schedule, and ordered spousal and child support and attorney fees.

{¶4} Harrison timely appealed and advances the following assignments of error for our review:

> I. THE TRIAL COURT ERRED IN FAILING TO RECOGNIZE THE PARTIES' ACKNOWLEDGED SETTLEMENT AS TO PARENTING ISSUES AS SET FORTH IN THE SHARED PARENTING PLAN SIGNED BY THE PARTIES AND ACKNOWLEDGED IN COURT IN APRIL OF 2008.
>
> II. THE TRIAL COURT ABUSED ITS DISCRETION IN ITS JUDGMENT ENTRY WITH REGARD TO THE ALLOCATION OF PARENTAL RIGHTS AND OBLIGATIONS INCLUDING THE IMPOSITION OF CERTAIN FINANCIAL OBLIGATIONS UPON FATHER.
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> III. THE TRIAL COURT ERRED WITH REGARD TO THE DIVISION OF MARITAL PROPERTY BY FAILING TO MAKE FINDINGS AS TO THE VALUE OF CERTAIN MARITAL ASSETS AND DISREGARDING MARITAL DEBT AS TO THE REAL ESTATE LOCATED AT 7641 FENWAY DRIVE.
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> IV. THE TRIAL COURT ERRED IN ORDERING DEFENDANT TO PAY PLAINTIFF SPOUSAL SUPPORT FOR FIVE YEARS IN THE AMOUNT OF $1,375 PER MONTH ($16,500 PER YEAR) AND $20,000 IN ATTORNEY FEES.
>
> V. THE TRIAL COURT ERRED IN ORDERING DEFENDANT TO PAY $61,614 AS AN ARREARAGE OF TEMPORARY SPOUSAL SUPPORT WHEN THE MAGISTRATE'S ORDER WAS PREMISED ON PLAINTIFF'S INCOME BEING $8,000 PER YEAR WHEN IN REALITY HER INCOME WAS AT LEAST FOUR TIMES THAT AMOUNT.

{¶5} In her cross-appeal, Graham advances the following assignment of error for our review:

> THE TRIAL COURT ABUSED ITS DISCRETION IN ITS PARENTING TIME AWARD TO APPELLANT.

{¶6} We begin with Harrison's assignments of error. In his first assignment of error, he argues that the trial court should have accepted the parties' April 2008 shared-parenting agreement because, absent fraud or duress, a settlement agreement between parties in a divorce is enforceable. For support of this proposition he cites the case of *Walther v. Walther* (1995), 102 Ohio App.3d 378, and its progeny.

{¶7} It is true that in *Walther* the court explained, "There are different avenues for the parties to come to their own agreement about the division of their property, allocation of parental rights and responsibilities, and support. They can enter into a separation agreement pursuant to a dissolution of marriage, they can enter into a separation agreement pursuant to a divorce, or they can enter into an in-court settlement agreement. All are contracts and all are permissible [subject to] R.C. 3103.05 and 3103.06." (Footnote omitted.) Id. at 382.

{¶8} But the agreement at issue in the present case concerned shared parenting, which is governed by R.C. 3109.04. Paragraph (G) of that statute provides, inter alia, that "[e]ither parent or both parents of any children may file a pleading or motion with the court requesting the court to grant both parents shared parental rights and responsibilities for the care of the children in a proceeding held pursuant to division (A) of this section." Ultimately, however, pursuant to R.C. 3109.04, the determination whether a shared parenting plan is in the child's best interest is for the court.

{¶9} Pursuant to R.C. 3109.04(A)(1), "if at least one parent files both a pleading or motion and a shared parenting plan under that division *but no plan for shared parenting is in the best interest of the children*, the court, in a manner consistent with the best interest of the children, shall allocate the parental rights and responsibilities for the care of

the children primarily to one of the parents, designate that parent as the residential parent and the legal custodian of the child, and divide between the parents the other rights and responsibilities for the care of the children, including, but not limited to, the responsibility to provide support for the children and the right of the parent who is not the residential parent to have continuing contact with the children." (Emphasis added.)

{¶10} The procedure which the court must follow, after it receives requests for shared parenting and shared-parenting plans from the parties, is set forth at R.C. 3109.04(D)(1)(a)(ii). A court may determine that a submitted plan is in the best interest of the children and adopt that plan verbatim. Barring adoption of a submitted plan, however, a court may only make suggestions to the parties for modification of submitted plans. In the present case, the trial court requested that Harrison modify his shared-parenting plan (the April 2008 plan) by October 10, 2008. The record reflects that he failed to do so. "If the parties do not make appropriate changes or if the court is not satisfied with the changes that are resubmitted following the suggestions for modification, then the court may deny the request for shared parenting of the children. The statute does not give the court authority to create its own shared-parenting plan. A satisfactory plan must be filed with the court for adoption; otherwise, the court will not adopt any plan. R.C. 3109.04(D)(1)(b)." *McClain v. McClain* (1993), 87 Ohio App.3d 856, 857. Pursuant to R.C. 3109.04(D)(1)(b), the court must only approve a plan if it is in the best interest of the child; however, approval of a plan is within the discretion of the court. Thus, the primary concern in approving or rejecting a shared-parenting plan is whether it is in the best interest of the child.

{¶11} In determining whether shared parenting is in a child's best interest, the court must consider the factors enumerated in R.C. 3109.04(F)(1) and 3109.04(F)(2). R.C. 3109.04(F)(1) includes the following factors: the parents' wishes, the child's concerns and wishes, the child's interaction with parents and others, the child's adjustment to home, school, and community, the mental and physical health of involved individuals, the parent more apt to honor and encourage companionship rights, and the failure to make support payments. The other factors listed are whether either parent has committed a criminal offense or a neglect or abuse offense, whether either parent has continuously and willfully denied court-ordered visitation, or whether either parent has plans to reside outside of the state. R.C. 3109.04(F)(2) lists the parents' ability to cooperate and make joint decisions regarding the child, each parent's ability to encourage love and contact with the other parent, any history of domestic violence or child abuse, geographic proximity of the parents, and the recommendation of the guardian ad litem, as factors to consider in ascertaining whether shared parenting is in the best interest of the child.

{¶12} In the present case, the trial court discussed each of the factors enumerated above, and specifically found that any provisions in the April 24, 2008 shared-parenting plan that conflicted with the court's decision for allocation of parental rights and responsibilities were not in the child's best interest. "[U]nder R.C. 3109.04(D), the trial court has authority to order or reject shared parenting, and its decision is discretionary. An abuse of discretion is more than an error of law or judgment; it implies the court's attitude was unreasonable, arbitrary, or unconscionable." (Citations omitted.) *Parker v. Parker*, 10th Dist. No. 05AP-1171, 2006-Ohio-4110, ¶23.

{¶13} Harrison does not challenge any of the trial court's findings or conclusions specifically; he simply argues that because he and Graham had at one time agreed upon the April 2008 plan, the court should have adopted it. In light of the fact that Harrison does not challenge the trial court's application of the statutory factors, and perceiving no abuse of discretion upon our review of the trial court's decision in this regard, Harrison's first assignment of error is overruled.

{¶14} We now consider Harrison's second assignment of error. "If the court does not adopt any shared parenting plan as being in the best interests of the children, the court may proceed as if no plan had been requested or submitted, and proceed to allocate the parental rights and responsibilities according to the children's best interests." *Sancho v. Sancho* (July 15, 1994), 3d Dist. No. 14-94-3. Pursuant to R.C. 3109.04(A)(1), the court:

> [s]hall allocate the parental rights and responsibilities for the care of the children primarily to one of the parents, designate that parent as the residential parent and the legal custodian of the child, and divide between the parents the other rights and responsibilities for the care of the children, including, but not limited to, the responsibility to provide support for the children and the right of the parent who is not the residential parent to have continuing contact with the children.

{¶15} In his second assignment of error, Harrison challenges several of the child support aspects of the trial court's allocation of parental rights and responsibilities. Specifically, he argues that it was an abuse of discretion for the trial court to order, in addition to full guideline child support, that Harrison pay the majority of the child's medical expenses, 70 percent of the child's school-related extracurricular activity expenses, 50 percent of the child's non-school-related extracurricular activity expenses, 50 percent of

any summer camps in which Graham enrolls the child, and one-half of the child's private school tuition. Harrison argues that these requirements represent an upward deviation from guideline child support; thus, R.C. 3119.22 required the trial court to make specific findings supporting the deviation which, according to Harrison, the court failed to make.

{¶16} In response, Graham argues that R.C. 3119.22 does not apply here because the trial court did not deviate from the child support guidelines. She points out that the trial court followed the dictates of R.C. 3119.02, including using a child support guideline worksheet that conformed to that statute. We agree. The trial court utilized the child support guidelines under R.C. 3119.02 and 3119.022, and attached the worksheet to its judgment. The guidelines take into account the cost to Harrison to provide health insurance for the child, as well as the parties' incomes and the amount of spousal support that Harrison was ordered to pay to Graham. Pursuant to R.C. 3119.30(C), the court ordered Harrison to pay cash medical support for any uncovered medical expenses for the child.[1]

{¶17} Private school tuition, extraordinary medical expenses, and extracurricular activities are not addressed in the child support guidelines. However, R.C. 3119.05(F) provides, "The court shall issue a separate order for extraordinary medical or dental expenses, including, but not limited to, orthodontia, psychological, appropriate private

[1] That statute provides, "When a child support order is issued or modified, and the obligor's gross income is one hundred fifty per cent or more of the federal poverty level for an individual, the order shall include the amount of cash medical support to be paid by the obligor that is either five per cent of the obligor's adjusted gross income or the obligor's share of the United States department of agriculture estimated annual health care expenditure per child as determined in accordance with federal law and regulation, whichever is the lower amount. The amount of cash medical support paid by the obligor shall be paid during any period after the court or child support enforcement agency issues or modifies the order in which the children are not covered by private health insurance."

education, and other expenses, and *may* consider the expenses in adjusting a child support order." (Emphasis added.) Here, the trial court complied with R.C. 3119.05(F) by making a separate order regarding extraordinary medical expenses and private school tuition, and was not required to consider adjustment of Harrison's guideline support obligation.

{¶18} With respect to whether the private school tuition order was appropriate, an appellate court may reverse a child support order, including an order to pay private school tuition, if it finds an abuse of discretion. *Hammel v. Klug*, 12th Dist. No. CA2004-04-032, 2004-Ohio-6242, ¶11. In the present case, the shared-parenting plan that Harrison submitted provided that the child would attend his current private school until the fifth grade, and that he would attend a different private school thereafter. It is true that Harrison's plan proposed that Graham pay 100 percent of the tuition, but in light of the approximately $85,000 difference in the parties' incomes, it was not an abuse of discretion to order that Harrison pay one-half of the private school tuition.[2] We also find no abuse of discretion in the trial court's division of extracurricular activity expenses.

{¶19} For all of the foregoing reasons, Harrison's second assignment of error is overruled.

{¶20} In his third assignment of error, Harrison argues that the trial court erred in dividing the marital assets. Specifically, he argues that the court erred in valuing the equity in the marital residence at $123,229, and awarding one-half of that amount to

[2] We further note that the trial court conditioned this obligation upon the child remaining in his current school and then moving to the second private school that Harrison proposed in his shared-parenting plan. Mindful of the fact that Graham was being named the residential parent, the court ordered that should Graham place the child in any other private school and Harrison not agree to such a placement, Graham will be solely responsible for payment of tuition.

Graham, while ordering Harrison to pay the entire second mortgage on the property. He argues this amounted to an inequitable division of assets and debts without the requisite explanation of how the factors contained in R.C. 3105.171 justify such a result.

{¶21} "R.C. 3105.171(C)(1) mandates that a trial court divide marital property equally, or if an equal division is inequitable, the court must divide the marital property equitably." *Hackman v. Hackman*, 10th Dist. No. 08AP-516, 2009-Ohio-820, ¶23, citing *Neville v. Neville*, 99 Ohio St.3d 275, 2003-Ohio-3624, ¶5. A trial court has broad discretion in making divisions of property in domestic cases. *Middendorf v. Middendorf*, 82 Ohio St.3d 397, 401, 1998-Ohio-403.

{¶22} Section 3105.171(F) of the Ohio Revised Code provides:

> In making a division of marital property and in determining whether to make and the amount of any distributive award under this section, the court shall consider all of the following factors:
>
> (1) The duration of the marriage;
>
> (2) The assets and liabilities of the spouses;
>
> (3) The desirability of awarding the family home, or the right to reside in the family home for reasonable periods of time, to the spouse with custody of the children of the marriage;
>
> (4) The liquidity of the property to be distributed;
>
> (5) The economic desirability of retaining intact an asset or an interest in an asset;
>
> (6) The tax consequences of the property division upon the respective awards to be made to each spouse;
>
> (7) The costs of sale, if it is necessary that an asset be sold to effectuate an equitable distribution of property;

> (8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;
>
> (9) Any retirement benefits of the spouses, excluding the social security benefits of a spouse except as may be relevant for purposes of dividing a public pension;
>
> (10) Any other factor that the court expressly finds to be relevant and equitable.

{¶23} In addition, R.C. 3105.171(G) provides, "[i]n any order for the division or disbursement of property * * * made pursuant to this section, the court shall make written findings of fact that support the determination that the marital property has been equitably divided." Review of the trial court's judgment reveals that it made findings of fact as to each of the assets and debts it divided between the parties. Harrison argues that the trial court failed to take the second mortgage into account when it calculated and divided the marital equity in the residence; however, on page four of its judgment, the court specifically quantified the amount of debt associated with the marital residence, and this indicates the court was clearly aware of it. Moreover, on page six of its judgment, the trial court made clear that it considered Harrison's argument that the second mortgage negates any marital equity in the residence, but nonetheless found that its valuation and division of the marital equity in the residence was equitable. It is clear, therefore, that the trial court did not omit to consider the marital portion of the second mortgage debt, and did not abuse its discretion. For this reason, Harrison's third assignment of error is overruled.

{¶24} In his fourth assignment of error, Harrison argues that the trial court erred in ordering him to pay spousal support to Graham in the amount of $1,375 per month for five years, and in awarding Graham $20,000 in attorney fees.

{¶25} Harrison argues that spousal support of any amount is inappropriate because Graham works only three days per week, the parties were only married for 11 years (living together for only eight), and Graham received a $100,000 inheritance. He also argues that the trial court failed to take into account the parties' large age difference and the fact that the court's award will require him to pay spousal support until he is 70 years old.

{¶26} A trial court enjoys wide latitude in determining the appropriateness and the amount of spousal support. *Wilder v. Wilder*, 10th Dist. No. 08AP-699, 2009-Ohio-755, ¶10. We will not reverse an award of spousal support absent an abuse of discretion. *Rodehaver v. Rodehaver*, 10th Dist. No. 08AP-590, 2009-Ohio-329, ¶11.

{¶27} A trial court may determine spousal support is appropriate and reasonable, and it may set the nature, amount, and terms of payment, as well as the duration of the support, only after considering:

> (a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;
>
> (b) The relative earning abilities of the parties;
>
> (c) The ages and the physical, mental, and emotional conditions of the parties;
>
> (d) The retirement benefits of the parties;
>
> (e) The duration of the marriage;

> (f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;
>
> (g) The standard of living of the parties established during the marriage;
>
> (h) The relative extent of education of the parties;
>
> (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;
>
> (j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;
>
> (k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;
>
> (l) The tax consequences, for each party, of an award of spousal support;
>
> (m) The lost income production capacity of either party that resulted from that party's marital responsibilities;
>
> (n) Any other factor that the court expressly finds to be relevant and equitable.

R.C. 3105.18(C)(1)(a)-(n). The trial court must consider all of these factors; it may not base its decision regarding spousal support on any one factor in isolation. *Kaechele v. Kaechele* (1988), 35 Ohio St.3d 93, 96.

{¶28} In support of his argument, Harrison refers to only two factors – the parties' ages and Graham's work hours. But review of the trial court's decision reveals that it considered all of the required factors enumerated above in determining that its award of spousal support was reasonable. Harrison does not quarrel with the court's findings as to

these factors; he merely disagrees with the court's conclusion. But having reviewed the court's entire discussion of the spousal support factors, we find no abuse of discretion in the trial court's spousal support award.

{¶29} "R.C. 3105.73(A) allows a trial court in a divorce proceeding to award attorney fees to a party if the court finds the award equitable. In making that determination, 'the court may consider the parties' marital assets and income, any award of temporary spousal support, the conduct of the parties, and any other relevant factors the court deems appropriate. We review a trial court's award of attorney fees under an abuse of discretion standard." (Citations omitted.) *Taub v. Taub*, 10th Dist. No. 08AP-750, 2009-Ohio-2762, ¶41.

{¶30} Harrison argues that the trial court erred in awarding attorney fees to Graham because the case was "essentially settled until the Plaintiff reversed herself with regard to the issue of shared parenting"[3] and because "the balance sheets demonstrate that Dr. Harrison has no meaningful cash assets whatsoever."[4] Review of the trial court's decision reveals that it considered the factors enumerated in R.C. 3105.73(A) and concluded that the divorce had had little impact on Harrison's financial situation, while the same has not been true in Graham's case. The court noted that Harrison had paid all of his attorney fees and his credit cards were current, while Graham had spent most of an inheritance she received from her mother on attorney fees, and "has incurred a great deal of credit card debt, largely resulting from Dr. Harrison's failure to comply with the temporary orders." (Judgment Entry – Decree of Divorce, 33.)

[3] Brief of Harrison, 20.
[4] Brief of Harrison, 21.

{¶31} The court also noted that Harrison had been ordered to pay certain of Graham's attorney fees on five separate occasions during the pendency of the litigation, and he had not done so. Finally, the court noted that Pat Lappert testified that Harrison had telephoned her shortly after Graham filed the complaint, urging her to speak with Graham because "he would bankrupt [Graham] and take [the child] and that Ms. Graham did not know what she was doing." (Judgment Entry – Decree of Divorce, 33.) The trial court's decision regarding attorney fees reflects a reasonable decision consistent with R.C. 3105.73, and we discern no abuse of discretion.

{¶32} For all of the foregoing reasons, we overrule Harrison's fourth assignment of error.

{¶33} In his fifth assignment of error, Harrison argues that the trial court erred in ordering him to pay $61,614 as an arrearage of temporary spousal support that he had not paid during the pendency of the litigation. He argues that this was an error because the magistrate's temporary spousal support order was based upon Graham's income being $8,000 per year, whereas the evidence at trial revealed that her annual income was between $37,000 and $42,000.

{¶34} Review of the record reveals that on November 2, 2005, the magistrate issued temporary orders in which Harrison was ordered to pay Graham $1,639 per month in temporary spousal support. Following a hearing at which Harrison presented no expert testimony, but Graham did, the magistrate on September 11, 2006, increased the temporary spousal support order to $3,250 per month. This was based upon the testimony of Graham's expert witness, who had testified that Graham's income was $6,968 in 2003, $13,436 in 2004, $8,721.13 in 2005, and in the first half of 2006 she had

a negative net income. Harrison filed objections to the September 11, 2006 magistrate's order, and the trial court overruled them.

{¶35} Graham argues that Harrison is barred from using evidence adduced for the first time at the final hearing to support his argument that the temporary spousal support award was based on incorrect income information. She argues that our review of the trial court's final judgment is limited to the issues litigated *at trial*, on the evidence adduced *at trial*. She argues that the propriety of the temporary spousal support award is res judicata. In the alternative, she contends that we should overrule this assignment of error because the undisputed evidence at the hearing before the magistrate supports the increased temporary spousal support award.

{¶36} We agree with Graham that, even if we were to consider the propriety of the temporary spousal support order, we are limited to review of the income evidence presented at that time; income evidence adduced two years later at trial does nothing to demonstrate that the trial court erred in making the temporary spousal support order. Moreover, the standard of review when considering a trial court's decision with respect to support arrearage awards is whether the trial court abused its discretion. *Doan v. Doan* (Aug. 15, 1997), 1st Dist. No. C-960932. Because we perceive no abuse of discretion in the trial court's order with respect to the spousal support arrearage, we overrule Harrison's fifth assignment of error.

{¶37} We now turn to Graham's single assignment of error contained in her cross-appeal. Therein, she argues that we must reverse the trial court's order with respect to the parenting schedule because the court failed to engage in the required analysis of the

factors under R.C. 3109.051, and as a result, it failed to adhere to the Loc.R. 27 parenting schedule without making any findings justifying an alteration of the standard schedule.

{¶38} We agree. Pursuant to R.C. 3109.051(A), "if the court has not issued a shared parenting decree, the court shall * * * make a just and reasonable order or decree permitting each parent who is not the residential parent to have parenting time with the child at the time and under the conditions that the court directs." Pursuant to R.C. 3109.051(D), "[i]n determining whether to grant parenting time to a parent * * * or * * * in establishing a specific parenting time or visitation schedule * * * the court shall consider all of the following factors:

> (1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;
>
> (2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
>
> (3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;
>
> (4) The age of the child;
>
> (5) The child's adjustment to home, school, and community;
>
> (6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific

parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;

(7) The health and safety of the child;

(8) The amount of time that will be available for the child to spend with siblings;

(9) The mental and physical health of all parties;

(10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;

(11) In relation to parenting time, whether 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 the adjudication; 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;

(12) In relation to requested companionship or visitation by a person other than a parent, whether the person 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 the person, 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 the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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 previously has been convicted of an 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 the person has acted in a manner resulting in a child being an abused child or a neglected child;
>
> (13) 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;
>
> (14) Whether either parent has established a residence or is planning to establish a residence outside this state;
>
> (15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;
>
> (16) Any other factor in the best interest of the child.

{¶39} In *Dannaher v. Newbold*, 10th Dist. No. 03AP-155, 2004-Ohio-1003, ¶114, we noted that R.C. 3109.051(F)(2) "requires each common pleas court to adopt standard parenting time guidelines." Pursuant to that requirement, the Franklin County Court of Common Pleas, Division of Domestic Relations, has adopted Loc.R. 27. A court possesses "discretion to deviate from its standard parenting time guidelines based upon factors set forth in division (D) of this section." Id. In *Dannaher*, while we noted that, "[a] deviation from the standard schedule is, of course, permitted if that deviation will serve the child's best interest," we also determined that where a trial court does deviate from the standard schedule without mention of the R.C. 3109.051 factors and an explanation for the deviation, the case must be remanded for the trial court to do so. Id. at ¶122.

{¶40} The factors enumerated in R.C. 3109.051 are not identical to, or interchangeable with, the factors in R.C. 3109.04 in determining whether shared parenting is in the child's best interest. *Flynn v. Flynn*, 10th Dist. No. 02AP-801, 2003-

Ohio-990. In the present case, while the trial court thoroughly discussed the R.C. 3109.04 factors in determining whether shared parenting was in the child's best interest, it made no mention of the R.C. 3109.051 factors relating to parenting time, and it deviated from the Loc.R. 27 schedule without an explanation therefor. In his response brief, Harrison does not dispute this fact.

{¶41} In accordance with the foregoing authorities, we must reverse the trial court's judgment with respect to the parenting schedule, and remand this case for the trial court to issue a new judgment that includes the required discussion of the factors contained in R.C. 3109.051. Accordingly, Graham's assignment of error in her cross-appeal is sustained.

{¶42} In summary, Harrison's first, second, third, fourth, and fifth assignments of error are overruled, Graham's assignment of error is sustained, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed in part and reversed in part, and this cause is remanded for further proceedings consistent with law and this decision.

Judgment affirmed in part, reversed in part;
cause remanded with instructions.

KLATT and CONNOR, JJ., concur.

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