[Cite as *Senesac v. Gray*, 2009-Ohio-6237.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

PREBLE COUNTY

MICHAEL SENESAC,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-03-010
	:	O P I N I O N
- vs -		11/30/2009
	:	
SHELLY GRAY,	:	
Defendant-Appellee.	:	

APPEAL FROM PREBLE COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case No. 2005-4141

Edmund H. Kalil, 208 North Barron Street, P.O. Box 655, Eaton, OH 45320, for plaintiff-appellant

K. Brent Copeland, 115 West Main Street, P.O. Box 332, Eaton, OH 45320, for defendant-appellee

Ann Ratcliff, 722 Rockhurst Circle, Troy, OH 45373, guardian ad litem

POWELL, J.

{¶1} Plaintiff-appellant, Michael Senesac, appeals the decision of the Preble County Court of Common Pleas, Juvenile Division, denying his motion to modify a shared parenting plan concerning his minor child. For the reasons set forth herein,

we affirm the trial court's decision.

{¶2} Appellant and appellee, Shelly Gray, are the natural parents of seven-year-old Chayse Gray. In July 2006, following the establishment of appellant's paternity of the child, the trial court adopted a shared parenting plan pursuant to the parties' agreement. According to the terms of the plan, appellant is permitted parenting time with Chayse every other weekend from 6:00 p.m. on Friday to 6:00 p.m. on Sunday, as well as every Tuesday from 5:00 p.m. to 8:00 p.m. Appellant is also permitted parenting time with the child during certain holidays and other events.

{¶3} In January 2008, appellant filed a motion requesting, in part, that the court increase his parenting time with Chayse to "50%-50%."[1] The magistrate held a hearing on the matter in September 2008, and thereafter denied appellant's request for additional parenting time. In doing so, the magistrate found there had been no change in circumstances since the shared parenting plan had been adopted, and that the proposed modification would not be in the child's best interest. Appellant filed objections to the magistrate's decision on January 5, 2009, arguing that the magistrate simply "reiterated" the guardian ad litem's recommendation that since the current arrangement is "working," there is no need to change it. The trial court denied appellant's objection on March 10, 2009.

{¶4} Appellant now appeals the trial court's decision, advancing a single assignment of error for review.

{¶5} Assignment of Error:

{¶6} "THE TRIAL COURT ERRED IN DENYING TO INCREASE APPELLANT'S PARENTING TIME IN THAT IT USED THE INCORRECT

1. Appellant's motion also addressed other matters that are not pertinent to this appeal.

STANDARD OF A 'CHANGE IN CIRCUMSTANCES' AND NOT THE BEST INTEREST'." [SIC.]

{¶7} In his sole assignment of error, appellant argues the trial court erred in applying a "change in circumstances" standard to his motion for additional parenting time, rather than a "best interest" standard. The record demonstrates, however, that appellant failed to object to the magistrate's decision concerning this issue.

{¶8} Pursuant to Civ.R. 53(D)(3)(b)(iv), "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." The record demonstrates that although appellant filed objections to the magistrate's decision on January 5, 2009, appellant failed to raise the issue of whether the court applied an incorrect legal standard in considering his motion to modify. Accordingly, appellant has waived all but plain error on appeal with respect to this matter. See *Doran v. Doran*, Warren App. No. CA2009-05-050, 2009-Ohio-5521, ¶15-16; *In re M.W.R.,* Butler App. Nos. CA2007-04-105, CA2007-04-106, 2007-Ohio-6169, ¶14-15; *Fidler v. Fidler,* Franklin App. No. 08AP-284, 2008-Ohio-4688, ¶17.

{¶9} The plain error doctrine permits an appeals court "to correct errors clearly apparent on their face and prejudicial to the complaining party even though the complaining party failed to object to the error in the trial court." *Jacobsen v. Jacobsen*, Mahoning App. No. 03 MA 3, 2004-Ohio-3045, ¶11; *Reichert v. Ingersoll* (1985), 18 Ohio St.3d 220, 223. In this case, we cannot say appellant was prejudiced where the trial court completed a best interest analysis, in addition to a

change in circumstances analysis, and concluded that appellant's proposed modification was not in Chayse's best interest. See *Castanias v. Castanias*, Warren App. No. CA2007-01-015, 2008-Ohio-2909, ¶16, 18.

{¶10} As this court has previously held, where a party's proposed modification to a shared parenting plan relates to parenting time, a trial court is "required to consider only whether the proposed modification [is] in the [child's] best interest pursuant to R.C. 3109.04(E)(2)(b)." Id. at ¶18, following *Fisher v. Hasenjager*, 116 Ohio St.3d 53, 2007-Ohio-5589. In this case, the record demonstrates that the trial court considered the factors set forth in R.C. 3109.04(F)(1) when ruling on appellant's proposed modification, and evidence was adduced during the hearing on the matter to support the court's findings. The court considered the wishes of both parties concerning Chayse's care and education, noting that appellant's main concern is that the current arrangement does not provide him with enough time with Chayse. The court found, however, that Chayse is doing well in school, is involved in many social activities and has many friends in appellee's neighborhood.

{¶11} The record demonstrates that the court considered Chayse's close relationship with his brother, who resides with appellee, and noted that Chayse would likely resent any modification that would cause him to be away from his brother further. While the court indicated that Chayse has a good relationship with both of his parents, the court found that the current plan is working well for Chayse, and concluded that awarding appellant additional parenting time would create greater instability and discontinuity in the child's life. The court noted appellee's willingness to allow appellant additional parenting time with Chayse, and encouraged the parties to agree upon reasonable additional time appellant may spend with the child.

{¶12} After reviewing the record, we find that the trial court considered the best interest of the child in ruling upon appellant's motion for additional parenting time, and that the record supports the trial court's findings concerning the matter. Accordingly, we find appellant's sole assignment of error is without merit and hereby overrule the same.

{¶13} Judgment affirmed.

BRESSLER, P.J., and HENDRICKSON, J., concur.