



{¶ 2} The parties, who have never been married to each other, have a minor child, E.L.C., who was born in 2006. In January 2010, Father filed a complaint in the juvenile court for custody of the child. The parties agreed to a shared parenting plan and filed a joint motion for shared parenting, to which they attached their proposed shared parenting plan. The magistrate granted the parties' motion for shared parenting and adopted it as the order of the court. In January 2011, the juvenile court adopted the magistrate's decision and order as the decision and final judgment of the court.

{¶ 3} At the time the parties entered into their shared parenting arrangement, Father was living in Michigan and Mother was living in Hamilton, Ohio. One of the opening paragraphs of the parties' shared parenting plan states that "[t]he geographic proximity of the parties to each other is not considered to be a barrier and makes the concept of shared parenting a realistic alternative." The parties' shared parenting plan contained a term entitled "Physical Living Arrangements" that stated that "[b]oth parents are residential parents of the child when the child is in their care. Mother shall be the residential parent for school purposes. The child shall reside primarily with Mother. Father shall exercise parenting time every other weekend[.]" The shared parenting plan also contained a term entitled "Schools" that stated that "[t]he parties agree they shall consult as to the appropriate school placement for the minor child when [the minor child] attains the appropriate age for compulsory school attendance. The parties agree Mother's residence shall be used for school registration purposes."

{¶ 4} Father and his wife, Erica Dawson, a psychologist, moved to Columbus, Ohio, in order to be closer to E.L.C. In September 2013, Father moved to terminate shared parenting and for legal custody of E.L.C., and in the alternative, to modify shared parenting. In 2014, the magistrate issued a decision granting Father's motion to modify shared parenting and adopting Father's amended proposed shared parenting plan. Under the

amended shared parenting plan, Father was designated as E.L.C.'s residential parent for school purposes. The amended shared parenting plan essentially "flip-flopped" the parties' prior arrangement so that under the amended plan, the child will reside primarily with Father and Mother will have visitation with the child on alternating weekends and for several weeks during the summer.

{¶ 5} In granting Father's motion to modify the parties' shared parenting plan, the magistrate determined that while there was insufficient evidence to show that there had been a "change in circumstances" of the child or either party since the original shared parenting decree was issued that would have allowed for modifying the decree under R.C. 3109.04(E)(1)(a), it was not necessary to find such a change in circumstances in order to modify the terms of the parties' shared parenting plan under R.C. 3109.04(E)(2)(b). The juvenile court overruled Mother's objections to the magistrate's decision and adopted the magistrate's decision as the order of the court.

{¶ 6} Mother now appeals and assigns the following as error:

{¶ 7} Assignment of Error No. 1:

{¶ 8} THE TRIAL COURT ERRED BY GIVING PREFERENCE TO FATHER BECAUSE OF FATHER'S FINANCIAL STATUS AND CONDITION IN CONTRADICTION OF R.C. 3109.04(F)(3).

{¶ 9} Assignment of Error No. 2:

{¶ 10} THE TRIAL COURT ERRED BY FINDING FATHER'S SCHOOL DISTRICT RATING TO BE A RELEVANT FACTOR WEIGHING IN HIS FAVOR IN CONSIDERING THE BEST INTERESTS OF THE CHILD.

{¶ 11} Assignment of Error No. 3:

{¶ 12} THE TRIAL COURT ERRED WHEN IT APPLIED R.C. 3109.04(E)(2)(b) TO CHANGE THE RESIDENTIAL PARENT FOR SCHOOL PURPOSES INSTEAD OF R.C.

3109(E)(1)(a) [sic] IN THIS CASE.

{¶ 13} Assignment of Error No. 4:

{¶ 14} THE TRIAL COURT ERRED BY ACCEPTING THE GUARDIAN AD LITEM'S REPORT AND FINDING THE GAL'S RECOMMENDATION, SUPPORTIVE OF FATHER, TO BE A BEST INTEREST FACTOR IN FAVOR OF FATHER.

{¶ 15} In her first assignment of error, Mother contends that the juvenile court violated R.C. 3109.04(F)(3) by giving preference to Father on the question of which parent to designate as the child's residential parent for school purposes on the basis that Father lives in a more affluent area with a higher-rated school district than does Mother.

{¶ 16} A trial court has broad discretion in custody matters, and its decision in such matters must not be reversed absent an abuse of that discretion. *In re A.D.*, 12th Dist. Fayette No. CA2012-07-023, 2013-Ohio-1308, ¶ 15. An "abuse of discretion" is more than an error of law or judgment; it implies that the trial court acted unreasonably, arbitrarily, or unconscionably. *Id.*, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). When applying the abuse-of-discretion standard, a reviewing court must not substitute its judgment for that of the trial court. *Morrison v. Robinson*, 12th Dist. Fayette No. CA2012-06-019, 2013-Ohio-453, ¶ 26.

{¶ 17} R.C. 3109.04(F)(3) provides that "[w]hen allocating parental rights and responsibilities for the care of children, the court shall not give preference to a parent because of that parent's financial status or condition."

{¶ 18} Mother characterizes the juvenile court's decision as showing that it considered only the rating or ranking of Father's school district vis-à-vis that of Mother's school district. While it is true that the juvenile court noted in its decision that Father's school district is more highly rated than Mother's school district, the juvenile court also noted that both parents have contributed to the problems they have had in implementing the shared parenting plan and

that the parents stand on relatively even ground in weighing the best interest factors in R.C. 3109.04(F)(1). For example, the juvenile court noted that Mother has been the primary custodian and caregiver of E.L.C., that E.L.C. is closely bonded to Mother and Mother's parents, and that any change in E.L.C.'s current home and school environments where the child is comfortable and beginning to make progress would be a significant change and require much adjustment on the child's part.

{¶ 19} The juvenile court also noted that the guardian ad litem (GAL) determined that Father is more likely than Mother to facilitate the other parent's parenting time and that Mother's failure to timely address E.L.C.'s attendance issues and subsequent poor school performance warrants changing the designation of the child's residential parent for school purposes from Mother to Father. While Mother contends that the juvenile court gave preference to Father because of his financial status and condition and that his school district has a higher rating than Mother's school district, our review of the evidence in the record shows that the juvenile court's decision was based mostly on Mother's failures in complying with the terms of the shared parenting plan, including her failure to honor Father's parenting time and to address E.L.C.'s school-related issues and Attention Deficit Hyperactivity Disorder (ADHD) condition.

{¶ 20} Therefore, Mother's first assignment of error is overruled.

{¶ 21} In her second assignment of error, Mother argues the juvenile court erred in finding Father's school district rating to be a relevant factor that weighed in his favor in considering the child's best interest. Mother contends that "[w]ithout a showing that Mother's school district *caused* the child's poor school performance, the fact that Father lives in a highly more rated school district is not relevant." (Emphasis sic.) We find this argument unpersuasive.

{¶ 22} As noted in our response to Mother's first assignment of error, while the juvenile

court stated that Father's school district has a higher rating than Mother's school district, the juvenile court's decision was based mostly on Mother's failures in complying with the terms of the shared parenting plan, including her failure to honor Father's parenting time and to address E.L.C.'s school-related issues and ADHD condition. The juvenile court found credible the determination of the GAL that Father is more likely than Mother to facilitate the other parent's parenting time and that Mother's failure to timely address E.L.C.'s attendance issues and subsequent poor school performance warrants a change in designation of the child's residential parent for school purposes from Mother to Father. Mother has failed to convince us that the trial court abused its discretion in making these determinations.

{¶ 23} Consequently, Mother's second assignment of error is overruled.

{¶ 24} In her third assignment of error, Mother argues the juvenile court erred when it applied R.C. 3109.04(E)(2)(b) to modify the parties' shared parenting plan by changing the designation of E.L.C.'s residential parent for school purposes from Mother to Father, after finding that the modification was in the child's "best interest" and without finding that a "change in circumstances" of the child or either parent had occurred since the original shared parenting decree or order was issued. Mother argues that under the facts and circumstances of this case, Father's request to modify the child's residential parent for school purposes amounted to a request for modification of the "allocation of parental rights and responsibilities" under R.C. 3109.04(E)(1)(a), as that phrase is defined in *Fisher v. Hasenjager*, [116 Ohio St.3d 53, 2007-Ohio-5589]." Therefore, Mother contends, Father was required to prove both that (1) a "change in circumstances" of the child or either parent had occurred since the issuance of the original shared parenting decree or order, *and* (2) that the change was in the child's best interest, in order to obtain his requested modification of the shared parenting decree or order. Mother essentially argues that since the juvenile court expressly found that no such change in circumstances had occurred in this case, then the

juvenile court erred by not denying Father's requested modification of the parties' shared parenting decree or order.

{¶ 25} "[Q]uestions of statutory interpretation are questions of law," and therefore a trial court's determinations on such issues "are to be reviewed de novo." *Sanders-Bechtol v. Bechtol*, 3d Dist. Hancock No. 5-08-08, 2009-Ohio-186, ¶ 10. "In construing a statute, a court's paramount concern is the legislative intent. In determining legislative intent, the court first reviews the applicable statutory language and the purpose to be accomplished." *Fisher* at ¶ 20, quoting *State ex rel. Watkins v. Eighth Dist. Court of Appeals*, 82 Ohio St.3d 532, 535 (1998).

{¶ 26} "Once a shared-parenting decree has issued, R.C. 3109.04(E) governs modification of the decree." *Fisher* at ¶ 11.

{¶ 27} R.C. 3109.04(E)(1)(a) states:

(E)(1)(a) 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.

{¶ 28} R.C. 3109.04(E)(2)(b) provides:

(2) In addition to a modification authorized under division (E)(1) of this section:

\* \* \*

(b) 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.

{¶ 29} In *Fisher*, the Ohio Supreme Court resolved a conflict between appellate districts regarding "the proper application of R.C. 3109.04(E)(1)(a) and 3109.04(E)(2)(b) with respect to the modification of the designation of residential parent and legal custodian of a child." The specific issue presented to the Ohio Supreme Court in *Fisher* was as follows:

Is a change in the designation of residential parent and legal custodian of children a "term" of a court approved shared parenting decree, allowing the designation to be modified solely on a finding that the modification is in the best interest of the children pursuant to R.C. 3109.04(E)(2)(b) and without a determination that a "change in circumstances" has occurred pursuant to R.C. 3109.04(E)(1)(a)?

The Ohio Supreme Court answered this question in the negative. *Id.* at ¶ 1.

{¶ 30} The *Fisher* court noted that R.C. 3109.04(E)(1)(a) allows a court to modify a prior decree "allocating parental rights and responsibilities" if (1) "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"; (2) the modification is in the child's best interest; and (3) one of the three factors listed in R.C. 3109.04(E)(1)(a)(i)-(iii) applies. *Id.* at ¶ at 21.

{¶ 31} The *Fisher* court noted that "parental rights and responsibilities," "residential parent" and "legal custodian" are not defined in R.C. 3109.04(E)(1)(a). *Id.* at ¶ 22.

Nevertheless, the court noted that "parental rights and responsibilities reside in the party or parties who have the right to ultimate legal and physical control of a child[,]" *id.*, and that "the residential parent and legal custodian is the person with the primary allocation of parental rights and responsibilities." *Id.* at ¶ 23. The *Fisher* court stated that "[w]hen a court designates a residential parent and legal custodian, the court is allocating parental rights and responsibilities."<sup>1</sup>

{¶ 32} The *Fisher* court summarized R.C. 3109.04(E)(1)(a) as follows:

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 ¶ 26.

{¶ 33} The *Fisher* court noted that "[w]hile the designation of residential parent and legal custodian can be modified under R.C. 3109.04(E)(1)(a), that designation cannot be modified under R.C. 3109.04(E)(2)(b), which allows only for the modification of the *terms* of a shared-parenting *plan*." (Emphasis added.) *Id.* at ¶ 27.

{¶ 34} The *Fisher* court stated that under R.C. 3109.04(G), a shared-parenting plan must include

provisions covering all factors that are relevant to the care of the children, including, but not limited to, provisions covering factors such as *physical living arrangements*, child support obligations, provision for the children's medical and dental care, *school placement*, and the parent with which the children will be physically located during legal holidays, school holidays, and

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1. The *Fisher* court also noted that "[a] court also allocates parental rights and responsibilities when it issues a shared-parenting order. R.C. 3109.04(A)(2)." *Id.* at ¶ 23, 24. In so stating, the court was referring to a shared-parenting order issued under R.C. 3109.04(A)(2) after at least one parent files both a motion requesting shared parenting and a plan for the exercise of it, under R.C. 3109.04(G). R.C. 3109.04(A)(2) did not apply in *Fisher* and has no application to this case, as this case, like *Fisher*, involves a request to modify the parties' previously issued shared parenting decree, which is governed by R.C. 3109.04(E). *Id.* at ¶ 11.

other days of special importance.

(Emphasis added.) *Id.* at ¶ 28.

{¶ 35} The *Fisher* court noted that while "R.C. 3109.04(E)(1)(a) permits the modification of a prior *decree* allocating parental rights and responsibilities[.]" "R.C. 3109.04(E)(2)(b) permits a court to modify the *terms* of the *plan* for shared parenting[.]" (Emphasis added.) *Id.* at ¶ 29. The court explained that under the custody statute, a "plan" is different from a "decree" or an "order." *Id.* The court stated that "[a] shared-parenting order is issued by a court when it allocates the parental rights and responsibilities for a child[.]" *id.*, citing R.C. 3109.04(A)(2); that "[s]imilarly, a shared parenting decree grants the parents shared parenting of a child[.]" *id.*, citing R.C. 3109.04(D)(1)(d); and that "[a]n order or decree is used by a court to grant parental rights and responsibilities to a parent or parents and to designate the parent or parents as residential parent and legal custodian." *Id.*

{¶ 36} The *Fisher* court stated that by contrast, a shared parenting plan "includes provisions relevant to the care of a child, such as the child's living arrangements, medical care, and school placement[.]" *id.* at ¶ 30, citing R.C. 3109.04(G), and "details the implementation of the court's shared-parenting order," e.g., the plan "must list the holidays on which each parent is responsible for the child and include the amount a parent owes for child support." *Id.* Critically to that case, the *Fisher* court determined that a shared parenting "plan is not used by a court to designate the residential parent or legal custodian; that designation is made by the court in an order or decree." Therefore the designation of residential parent or legal custodian cannot be a term of shared-parenting plan [*sic*], and thus cannot be modified pursuant to R.C. 3109.04(E)(2)(b)." *Id.* at ¶ 31.

{¶ 37} The *Fisher* court concluded by explaining the reasons for "the significantly different standards for modifications" found in R.C. 3109.04(E)(1)(a) and 3109.04(E)(2)(b), as follows:

The requirement [in R.C. 3109.04(E)(1)(a)] that a parent seeking modification of a prior decree allocating parental rights and responsibilities show a change of circumstances is purposeful: "The clear intent of [this section] is 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. The statute is an attempt to provide some stability to the custodial status of the children, even though the parent out of custody may be able to prove that he or she can provide a better environment." *Davis v. Flickinger* (1997), 77 Ohio St.3d 415, 418, 674 N.E.2d 1159, quoting *Wyss v. Wyss* (1982), 3 Ohio App.3d 412, 416, 3 OBR 479, 445 N.E.2d 1153.

\* \* \*

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.

*Fisher* at ¶ 34-36.

{¶ 38} The specific issue presented by Mother in this assignment of error is whether the juvenile court's decision to change the designation of the child's residential parent for school purposes from Mother to Father is a modification of "a prior decree allocating parental rights and responsibilities" under R.C. 3109.04(E)(1)(a), or merely a modification of a "term" of the parties' shared parenting plan under R.C. 3109.04(E)(2)(b). We conclude that by changing the designation of the child's residential parent for school purposes from Mother to Father, the juvenile court merely modified a *term* of the parties' shared parenting *plan* that had been incorporated into the parties' shared parenting decree, and therefore, the juvenile court was not required to find that a change in circumstances of the child or either parent had

occurred at some point after the prior shared parenting decree was issued before modifying this term of the parties' shared parenting plan.

{¶ 39} Mother presents several arguments in opposition to the position taken by this court. The first involves this court's decision in *Castanias v. Castanias*, 12th Dist. No. CA2007-01-015, 2008-Ohio-2909, ¶ 17-18, in which we stated that the Ohio Supreme Court's decision in *Fisher* "appears to limit the statutory definition of 'allocation of parental rights and responsibilities' to the custodian and residential parent determinations."<sup>2</sup> Mother argues that, contrary to what this court stated in *Castanias*, the *Fisher* court did not intend to limit the statutory definition of allocation of parental rights and responsibilities to only the custodian and residential parent determinations. However, Mother's argument ignores the language in *Fisher* at ¶ 26 that expressly states that "[a]n allocation of parental rights and responsibilities is a designation of the residential parent and legal custodian."

{¶ 40} Mother argues that "through statutory interpretation and legislative intent, \* \* \* altering the residential parent for school purposes changes which party has the right to the ultimate legal and physical control of a child, thus altering the allocation of parental rights and responsibilities[.]" and that the "very term 'residential parent for school purposes,' \* \* \* should fall within the definition of residential parent determination, which the *Fisher* court did include in its definition of 'allocation of parental rights and responsibilities.'" Mother also argues the phrase "residential parent for school purposes" "should fall within the definition of "residential parent determination." We disagree with both of these arguments.

{¶ 41} R.C. 3109.04(L) states, in pertinent part, as follows:

(L) For purposes of the Revised Code:

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2. This court observed in *Castanias*, at fn. 1, that "from a practical standpoint," our resolution of that case was not impacted by the Ohio Supreme Court's decision in *Fisher*, since, among other things, the appellant in that case had conceded in his memorandum in support of objections to the magistrate's decision that a change in circumstances had occurred in the case.

\* \* \*

(6) Unless the context clearly requires otherwise and except as otherwise provided in the order, if an order is issued by a court pursuant to this section and the order provides for shared parenting of a child, each parent, regardless of where the child is physically located or with whom the child is residing at a particular point in time, as specified in the order, is the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child.

(7) Unless the context clearly requires otherwise and except as otherwise provided in the order, a designation in the order of a parent as the residential parent for the purpose of determining the school the child attends, \* \* \* does not affect the designation pursuant to division (L)(6) of this section of each parent as the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child.

{¶ 42} Additionally, several appellate districts in this state have reached the same conclusion that we have in this case, i.e., that changing the residential parent for school purposes is a modification of a term of a shared parent plan, and therefore is governed by R.C. 3109.04(E)(2)(b) rather than R.C. 3109.04(E)(1)(a). See, e.g., *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]); *Fritsch v. Fritsch*, 1st Dist. Hamilton No. C-140163, 2014-Ohio-5357, ¶ 21 (following *Ralston*); *Porter v. Porter*, 9th Dist. Summit No. 21040, 2002-Ohio-6038, ¶ 8, (under former R.C. 3109.04[K][6] and [K][7], now R.C. 3109.04[L][6] and [L][7], where a trial court merely changes designation of the residential parent for school purposes, the change does not affect the legal rights of either parent nor does it involve a reallocation of parental rights).

{¶ 43} Mother also argues that the "lower" standard in R.C. 3109.04(E)(2)(b) should not be applied here, because changing the designation of the residential parent for school

purposes "is not so inconsequential" in this case. Mother contends that as a result of the distance between the residences of Mother and Father, "a change of the residential parent for school purposes will inevitably change who the child's residential parent is."

{¶ 44} Mother's argument overlooks the facts that (1) at the time the original shared parenting decree was issued, Mother lived in Hamilton, Ohio while Father lived in Michigan; (2) the parties' original shared parenting plan stated in one of its opening paragraphs that "[t]he geographic proximity of the parties to each other is not considered to be a barrier and makes the concept of shared parenting a realistic alternative"; and (3) when Father and his wife moved to Columbus, Ohio, the distance between the parties became even less of a "barrier" to "the concept of shared parenting," making it an even more "realistic alternative."

{¶ 45} The foregoing notwithstanding, we are sympathetic to Mother's argument. As a result of the modification of the terms of the parties' shared parenting plan, the child will no longer "reside primarily with Mother[.]" as called for in the parties' original shared parenting plan. However, as the Ohio Supreme Court pointed out in *Fisher*, R.C. 3109.04(E)(2)(b) permits a court to modify the terms of the plan for shared parenting without having to find a change in circumstance of the child or either parent. The "term" involved here is a change in the designation of the child's residential parent for school purposes, and the specific point of contention between the parties involves the issue of "school placement." *Fisher* identifies "school placement" as a "term" under R.C. 3109.04(E)(2)(b). *Id.* at ¶ 28, 30. Therefore, we conclude that the juvenile court did not err when it applied R.C. 3109.04(E)(2)(b) to modify the parties' shared parenting plan by changing the designation of the child's residential parent for school purposes from Mother to Father, after finding that the modification was in the child's "best interest" and without finding a "change in circumstances" of the child or either parent.

{¶ 46} Finally, Mother contends that "after a thorough review of the record, it appears

that a Shared Parenting Order or Decree does not exist" in this case. Mother notes that the magistrate's decision and the juvenile court's order approving it "are silent as to who the residential parent and legal custodian are." Mother acknowledges that the juvenile court adopted the magistrate's decision, but contends that the magistrate's decision merely states that it is adopting the "agreed entry" of the parties, and that the only agreed "entry" of the parties appears to be the shared parenting plan itself. Mother contends that, if this is so, the shared parenting plan essentially served as the shared parenting order that allocated parental rights and responsibilities in this case, and that, therefore, in order to obtain a modification of the shared parenting plan in this case, Father should have been required to prove a change in circumstances of the child or either parent. We find this argument unpersuasive.

{¶ 47} As to Mother's assertion that the magistrate's decision and the juvenile court's order approving it "are silent as to who the residential parent and legal custodian are[.]" we note that "[i]f a shared parenting order is issued and the order is silent regarding the residential parent and legal custodian status, and the context does not clearly require otherwise, then each parent is a residential parent and legal custodian of the child[.]" *Fisher* at ¶ 25, discussing and applying former R.C. 3109.04(K)(6), now 3109.04(L)(6).

{¶ 48} Additionally, the record refutes Mother's assertion that a shared parenting order or decree does not exist in this case. The record shows that on January 3, 2011, the juvenile court adopted the magistrate's December 30, 2010 "Decision/Order" that stated that the parties "submitted an agreed entry to the court regarding the issue of Shared Parenting. Said entry shall be adopted as an order of this court." The record does not contain a filing by the parties that is captioned as an "agreed entry." However, the record does contain the parties' "joint motion for shared parenting," in which the parties asked the juvenile court to adopt the shared parenting plan attached to their joint motion. It is reasonable to infer from

the record that the parties' "joint motion for shared parenting" is the "agreed entry" referred to in the magistrate's decision, which the juvenile court adopted as the decision and final judgment of the court. Therefore, we reject Mother's claim that a shared parenting order or decree does not exist in this case.

{¶ 49} In light of the foregoing, Mother's third assignment of error is overruled.

{¶ 50} In her fourth assignment of error, Mother argues the trial court erred by "accepting the GAL's report" and by finding the GAL's recommendation that was supportive of Father to be a "best interest" factor in favor of designating Father as the child's residential parent for school purposes. Mother asserts that the GAL's report and the GAL's testimony at the hearing reveal that the GAL was biased against Mother and her fiancé and that the GAL never attempted to contact Mother or her fiancé to address any concerns the GAL had. Mother also contends that audio recordings produced by Father and given to the GAL to show that Mother's fiancé had a bad character were never presented at trial, nor was the voice on the recording identified as being that of Mother's fiancé. Mother further contends that while the GAL noted that Mother's fiancé "may have mental health issues that have not been addressed," the GAL failed to mention Father's mental health issues. Mother asserts that "[o]nce blatant bias is shown by the guardian ad litem in favor of one party, the guardian ad litem's report should be excluded from being given any consideration or weight by a trial court." These arguments lack merit.

{¶ 51} The issues presented by Mother do not rise to the level of bias that would require the GAL's report to be excluded. The GAL is responsible for looking out for the child's best interest, and simply because the GAL paints one party in a negative light does not mean the GAL is unduly biased. Here, Mother and her fiancé provided the GAL with sufficient evidence to take the positions that the GAL has taken in this matter.

{¶ 52} Father acknowledged during his testimony that he was diagnosed with bipolar

disorder at age 16, that he has a "mood imbalance," and that he takes medication for that condition. Thus, there was evidence to support the GAL's conclusion that Father's mental health issue is "under control and managed." By contrast, there was evidence presented showing that Mother's fiancée has a criminal record that includes convictions for domestic violence, DUI, and possession of drugs. Father testified that Mother's fiancée has been "aggressive to me, he's confronted me before." Father also testified that Mother and her fiancée had dated one another both before and after Father and Mother dated. Father testified that Mother told him when they were dating that Mother's fiancée had been "aggressive towards her, that in some cases he was physically abusive." The evidence also showed that Mother is currently unemployed and pregnant by her fiancée.

{¶ 53} Accordingly, Mother's fourth assignment of error is overruled.

{¶ 54} Judgment affirmed.

PIPER, P.J., and M. POWELL, J., concur.