

[Cite as *Cuvar v. Cuvar*, 2009-Ohio-4114.]

IN THE COURT OF APPEALS OF GREENE COUNTY, OHIO

HOLLY M. CUVAR :
Plaintiff-Appellee : C.A. CASE NO.08CA0056
vs. : T.C. CASE NO. 06DR341
CHRISTOPHER A. CUVAR : (Civil Appeal from
Common Pleas Court
Defendant-Appellant : Domestic Division)

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HOLLY M. CUVAR :
Plaintiff-Appellant : C.A. CASE NO.08CA0059
vs. : T.C. CASE NO. 06DR341
CHRISTOPHER A. CUVAR : (Civil Appeal from
Common Pleas Court
Defendant-Appellee : Domestic Division)

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O P I N I O N

Rendered on the 14th day of August, 2009.

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GRADY, J.:

{¶ 1} This is an appeal from a final judgment and decree of divorce.

{¶ 2} Christopher Cuvar and Holly Cuvar were married in 2002. Two children were born of the marriage: one in 2003 and the other in 2006.

{¶ 3} Holly¹ filed a complaint for divorce in 2006. Christopher filed an answer and counterclaim. Both parties asked to be designated the residential parent of their two minor children. Neither party asked for shared parenting or filed a shared parenting plan.

{¶ 4} The domestic relations court filed its final judgment and decree of divorce on July 7, 2008 (Dkt. 141). The court granted a divorce to both parties. The court also allocated the parental rights and responsibilities for their two children by designating Christopher the residential parent of the two children during the school year and Holly their residential parent during the summer. The court also ordered other relief associated with those designations.

{¶ 5} Christopher filed a timely notice of appeal, and presents the following four assignments of error for review.

¹For clarity and convenience, the parties are identified by their first names.

Holly also filed a notice of appeal, but she presents no assignments of error for our review. Therefore, Holly's appeal in Case No. 2008CA59 will be Dismissed.

FIRST ASSIGNMENT OF ERROR

{¶ 6} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ORDERED SHARED PARENTING EVEN THOUGH NEITHER PARTY REQUESTED IT AND FAILED TO RECOGNIZE CHRISTOPHER CUVAR AS THE RESIDENTIAL PARENT."

{¶ 7} In any divorce proceeding, the court shall "allocate the parental rights and responsibilities for the care of the minor children of the marriage." R.C. 3109.04(A). If neither parent files a pleading or motion in accordance with R.C. 3109.04(G) requesting the court to grant both parents shared parental rights and responsibilities for care of the children, the court "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." R.C. 3109.04(A)(1).

{¶ 8} "[T]he 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." *Fisher v. Hasenjager*, 116 Ohio St.3d 53, 2007-Ohio-5589, at ¶23. If neither parent requests shared parenting or files a shared parenting plan pursuant to R.C. 3109.04(G), and the court fails to allocate parental rights and responsibilities for care of the children primarily to one of the parents, and to designate that parent as the residential parent and legal custodian of the child or children, the court fails to comply with the requirements of R.c. 3109.04(A). That error is not avoided by designating both parents the residential parent. *Emmert v. Aronson* (March 5, 1997), Summit App.No. 17878.

{¶ 9} In the present case, the court designated Christopher the residential parent of the children during the school year and Holly their residential parent during the summer months.

Though they do not share the status of the residential parent simultaneously, we construe the duty that R.C. 3109.04 imposes to require the court in making an order to confer the status of residential parent on but one parent. Thereafter, any award of that status to the other must be by way of a modification

of the prior order, on a showing of changed circumstances.
R.C. 3109.04 (E) (1) (a) .

{¶ 10} The domestic relations court erred when it failed to designate either Christopher or Holly the residential parent of one of both of their minor children. Because the domestic relations court must first make a proper order in that regard, we decline to address Christopher's argument that the court erred when it failed to designate him the residential parent and legal custodian of the parties' two children.

{¶ 11} The first assignment of error is sustained, in part.

SECOND ASSIGNMENT OF ERROR

{¶ 12} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT IMPROPERLY CALCULATED THE CHILD SUPPORT PURSUANT TO SHARED PARENTING, WHEN NEITHER PARTY REQUESTED IT AND IMPROPERLY DEVIATED FROM MS. CUVAR'S CHILD SUPPORT OBLIGATION."

THIRD ASSIGNMENT OF ERROR

{¶ 13} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT AWARDED A TAX EXEMPTION TO MS. CUVAR, AS THE ACTUAL NON-RESIDENTIAL PARENT, WITHOUT DOING A BEST INTEREST ANALYSIS AND WITHOUT MAKING A FINDING THAT SUCH IS IN THE BEST INTERESTS OF THE CHILDREN."

FOURTH ASSIGNMENT OF ERROR

{¶ 14} "THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT AWARDED

MS. CUVAR THIRTEEN WEEKS OF UNSUPERVISED PARENTING TIME IN CONTRAVENTION OF THE BEST INTERESTS OF THE CHILDREN."

{¶ 15} Having found that the domestic relations court failed to allocate parental rights and responsibilities as statutorily required, we must vacate the predicate dual residential parent designations upon which the court granted the relief these assignments of error implicate. The errors assigned are therefore sustained, to that extent.

{¶ 16} The final judgment and decree of divorce of the trial court is reversed with respect to the allocation of parental rights and responsibilities, child support, and tax exemptions, and the case will be remanded for further proceedings on those issues. The judgment and decree of divorce is otherwise affirmed.

FAIN, J. And FROELICH, J., concur.

Copies mailed to:

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Hon. Steven L. Hurley