[Cite as *Shoenfelt v. Shoenfelt,* 2009-Ohio-6594.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

ROXANNE S. SHOENFELT	:	
	:	Appellate Case No. 23497
Plaintiff-Appellee	:	
	:	Trial Court Case No. 07-DM-137
v.	:	
	:	(Civil Appeal from Common
BENJAMIN L. SHOENFELT	:	Pleas Court, Domestic Relations)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 11th day of December, 2009.

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BROGAN, J.

{¶ 1} This case is before us on Benjamin Shoenfelt's appeal of a domestic relations court's order. He contends that the court should have held Roxanne Shoenfelt, his former wife, in contempt of the dissolution decree because she failed to pay half of the marital residence expenses incurred in the two months before it

sold, which the decree required her to pay. Relatedly, Benjamin contends that the court should have ordered Roxanne to reimburse him these expenses plus his costs associated with the contempt action. Benjamin also contends that the court should have modified the parenting-time order to give him such time with their daughter overnight on Wednesdays. We will affirm.

I

{¶ 2} Benjamin and Roxanne separated on March 1, 2005, and signed a separation agreement that addressed, among other things, the marital residence and the care of their daughter, T.S., who was then three-years old. Roxanne petitioned a domestic relations court in March 2007 for a dissolution of their marriage, and the following month, on April 20, 2007, the court granted the dissolution. The court also approved their separation agreement and incorporated it into the decree of dissolution.

{¶ 3} Near the end of March 2008 Benjamin filed a show-cause motion that asked the court to direct Roxanne to show cause why she should not be held in contempt of the dissolution decree for failing to pay her portion of the property's expenses incurred in October, November, and December 2007. He also requested attorney's fees, costs, and the cost of the process server. The first Wednesday after Roxanne was served with this motion she refused to allow T.S. to stay overnight with Benjamin, which had been their long-standing informal arrangement. Benjamin then filed a motion at the beginning of April 2008 asking the court to modify the Standard Order of Parenting Time to give him parenting time overnight on Wednesdays. In

late January 2009 a magistrate recommended that Roxanne be held in contempt and be ordered to pay half of the expenses for the last three months of 2007 and the fees and costs of the action. The magistrate also recommended that it was in T.S.'s best interest to modify the order as Benjamin asked. Roxanne objected to each recommendation.

{¶ 4} On May 22, 2009, the trial court declined to accept the magistrate's recommendations. The court concluded that because Roxanne divested herself of all interest in the property in November she was required to pay only the expenses incurred through October. The court also declined to hold Roxanne in contempt because Benjamin had never given her written notice of what she owed. Finally, the court agreed to modify the parenting-time order as Benjamin requested but only until August 15, 2009. At that time, said the court, assuming that T.S. enters the first grade, Benjamin was to have her home by 9 p.m. on Wednesdays. Benjamin appeals in two assignments of error each of the trial court's three conclusions.

II

First Assignment of Error

{¶ 5} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY FINDING APPELLANT'S PARENTING TIME SHOULD NOT CONTINUE ON AN OVERNIGHT BASIS AFTER THE START OF THE SCHOOL YEAR, IN CONTRAVENTION TO THE MAGISTRATE'S DECISION, THE DICTATES OF R.C. §3109.051(D), AND THE BEST INTEREST OF THE MINOR CHILD."

{¶ 6} In Benjamin and Roxanne's separation agreement they agreed that

parenting time with T.S. would be governed by the Montgomery County Domestic Relations Court's Standard Order of Parenting Time. Under the standard order Benjamin was entitled to parenting time on Wednesday from 6:00 p.m. to 9:00 p.m. Despite this, Roxanne agreed to allow T.S. to stay with Benjamin overnight on Wednesdays. But, in late March 2008, on the first Wednesday after she was served with Benjamin's motion asking the court to hold her in contempt, Roxanne began to insist that he abide by the standard order and return T.S. to her by 9:00 p.m. on Wednesdays. Wanting the overnight visits to continue, Benjamin asked the trial court to modify the standard order to reflect what had been their informal arrangement. The court on May 22, 2008, agreed to so modify the order but only until T.S. entered the first grade on August 15, 2009. On that day the order reverted back to the standard order and required Benjamin to have T.S. home by 9 p.m. Benjamin contends that in this part of the decision the trial court abused its discretion. This part of the decision, we conclude, is not an abuse of the court's discretion.

{¶ 7} In matters of parenting time we accord a trial court broad discretion. *Utz v. Hatton* (April 9, 1999), Montgomery App. No 17240 (Citations omitted). We review the court's decision by looking only for evidence that it abused its discretion. *Martin v. Martin*, 179 Ohio App.3d 805, 2008-Ohio-6336, at ¶31 (Citation omitted). Such evidence is of an unreasonable, arbitrary, or unconscionable attitude. *Minoughan v. Minoughan* (June 23, 2000), Montgomery App. No. 18089, citing *In re Jane Doe I* (1991), 57 Ohio St.3d 135, 137 ("An abuse of discretion involves more than an error of law or judgment; it implies that the court's attitude was unreasonable,

arbitrary, or unconscionable.").

{¶ 8} The trial court's discretion in parenting-time matters, while broad, is bounded by R.C. 3109.051. See *Braatz v. Braatz* (1999), 85 Ohio St.3d 40, 44 (saying that R.C. 3109.051 "specifically and in detail addresses the granting of parental visitation rights") (Emphasis omitted). The outer bounds set by this section require the court's parenting-time decision to ensure that both parents have the opportunity for "frequent and continuing contact with the child" and to be "just and reasonable." R.C. 3109.051(A). To help ensure a just and reasonable decision, paragraph (D) instructs the trial court to consider fifteen specific factors plus any other factor the court finds is in the child's best interest. *Braatz*, at 45 ("[T]he trial court shall consider the fifteen factors enumerated, and in its sound discretion determine visitation that is in the best interest of the child.") (Citations omitted). These factors include: a child's relationships with her parents and siblings; the geographical locations of the parents' residences; the child's and parents' available time; the child's age; the child's adjustment to home, school, and community; the health and safety of the child; the amount of time the child will spend with siblings; and the mental and physical health of all concerned. R.C. 3109.051(D).

{¶ 9} Before turning to the trial court's decision, we must make two observations about our present review. First, finding no evidence to the contrary, we will presume that the court considered each of the paragraph (D) factors. See *Minoughan*, citing *Cherry v. Cherry* (1981), 66 Ohio St.2d 348, 356 ("A reviewing court will presume that the trial court considered relevant statutory factors in the absence of evidence to the contrary."). And second, we will presume, as we must,

that the trial court's factual findings are correct. *Quint v. Lomakoski*, 167 Ohio App.3d 124, 2006-Ohio-3041, at ¶12 ("We must presume the findings of the trial court are correct because the trial judge is best able to observe the witnesses and use those observations in weighing the credibility of the testimony.") (Citations omitted).

{¶ 10} The trial court's rationale is rather opaque. The court states three factors on which its decision is based. First, the court notes the longstanding informal agreement allowing T.S. to stay overnight with Benjamin. Second, the court observed that in an agreed entry Benjamin may begin his parenting time on Wednesdays (and Fridays) no longer at 6:00 p.m. like the standard order allows but as soon as school ends. So, said the court, since T.S. is out of school in the early afternoon, Benjamin has longer to spend with her on Wednesdays. Finally, the court said that it was Benjamin himself who has caused the limitations on his Wednesday parenting time by deciding to move farther away from T.S. None of these reasons, however, directly addresses the August 15 reversion. Still, we see no evidence of an attitude on the part of the trial court that may fairly be characterized as arbitrary, unconscionable, or unreasonable.

{¶ 11} The arguments in favor of his position that Benjamin offered the trial court and offers us are few and unpersuasive. He argues in essence that there is no reason not to continue the mid-week overnight visits. The only affirmative reason Benjamin offers is that overnight visits give T.S. more time to develop a relationship with her step-siblings. Also, Benjamin had to prove that the existing arrangement was not in T.S.'s best interest. See *Quint*, at ¶12 ("[W]hen a parent seeks to modify

a previous visitation arrangement, it is that party who bears the burden of proof as to whether the prior arrangement was not in the best interests of the [child].") (Citation omitted). The sole argument that he makes concerning T.S.'s best interest is that she is accustomed to staying overnights. Roxanne, however, testified that T.S. has difficulty with change in her routine, and she pointed out that T.S. would have to rise earlier on Thursday mornings to make the drive back to Kettering. Roxanne also noted the big change that half-day kindergarten was for T.S., and though it is not mentioned, we think it would be reasonable to infer the same of full-day first grade.

{¶ 12} Conspicuously absent from Benjamin's argument is the one reason most people would expect to find, that he simply wants to spend as much time with his daughter as possible. (The only expression of this sentiment we could find in the record occurred at the hearing, where Benjamin said that the reason he wants to have her overnight is "One more night with her." (Tr. 48).) Yet, even if he had offered this reason, it would be undermined by the evidence. In particular, Benjamin testified that, when T.S. spent Wednesday nights with him, lights out was always 9:00 p.m. This is the same time that the trial court required Benjamin to have her home on Wednesday nights. While he does not have T.S. Thursday morning under the standard order, the evidence shows that when she was there those mornings Benjamin, she, and the rest of the family were consumed with preparing for a new day, leaving little time for meaningful interaction.[1]

[1]This is not to say that Benjamin and T.S. would derive no value or benefit from overnight visits. We do not doubt that putting T.S. to bed and simply having her in his home, even though she is sleeping, brings Benjamin joy. And though mornings are rushed and chaotic, there is something to be said for experiencing such times together.

{¶ 13} Benjamin also does not offer as a reason for overnight visits the distance between T.S.'s home and his, which he must drive twice each Wednesday night to bring her home–fifty miles round-trip. His timidity here is unfounded. The trial court seems to dismiss the distance as simply a consequence of his choice, but we recognize that such decisions are often more complicated. That said, we hasten to add that this reason is unlikely by itself to demand modification. But, particularly in light of the second statutory factor, we do think it is a valid consideration. See R.C. 3109.051(D)(2) (instructing the trial court to consider "[t]he geographical location of the residence of each parent and the distance between those residences").

{¶ 14} We cannot say that the trial court's decision is an abuse of the court's discretion, so the first assignment of error is overruled.

Second Assignment of Error

{¶ 15} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN VACATING THE FINDING OF CONTEMPT AGAINST THE APPELLEE AND FAILING TO ORDER THE APPELLEE TO REIMBURSE THE APPELLANT FOR ONE-HALF OF THE EXPENSES ASSOCIATED WITH THE MARITAL REAL ESTATE FOR OCTOBER, NOVEMBER, AND DECEMBER 2007, AS WELL AS THE ATTORNEY FEES, FILING FEES, AND PROCESS SERVER FEES IN CONNECTION WITH THE MOTION AND ORDER TO SHOW CAUSE FILED ON MARCH 21, 2008."

{¶ 16} In the decree of dissolution, while they waited for their marital residence to sell, Benjamin and Roxanne agreed to split equally the mortgage,

utilities, and any other such expenses. Benjamin took care of paying the bills and would orally tell Roxanne what she owed him. In September 2007, after being on the market for some time, Benjamin decided that he would buy the house. In November 2007 Roxanne executed a quitclaim deed, and in December Benjamin closed the sale. The following March Benjamin filed a motion asking the trial court to hold Roxanne in contempt of the dissolution decree for failing to pay her share of the expenses in October, November, and December 2007. The court declined to hold Roxanne in contempt because Benjamin never gave her written requests for her share of the expenses. The court also concluded that, because Roxanne relinquished all her interest in the residence in November by executing the quitclaim deed, she was responsible for such expenses only through October. We will review both decisions using the abuse-of-discretion standard. *Porter v. Porter* (June 28, 2002), Montgomery App. No. 19146 (Citation omitted).

{¶ 17} Section 2705.02 of the Revised Code gives a trial court the power to hold one in contempt who violates its orders. R.C. 2705.02 ("A person guilty of any of the following acts may be punished as for a contempt: (A) disobedience of, or resistance to, a lawful * * * order * * * of a court * * * ."); *Porter* ("A court's power to punish for contempt is set forth in R.C.2705.01 et seq."). These orders include a decree of dissolution. *Harris v. Harris* (1979), 58 Ohio St.2d 303, at paragraph one of the syllabus; see, also, *Drake v. Drake* (June 3, 1998), Highland App. No. 97CA934 (Citations omitted).

{¶ 18} We have said that "[a]lthough an individual may be punished for contempt when he or she disobeys a court order, the decision to punish is within the

sound discretion of the trial court." *Donese v. Donese* (Sept. 29, 2000), Greene App. No. 2000-CA-17, citing R.C. 2705.02 and *Denovchek v. Bd. of Trumbull Cty. Commrs.* (1988), 36 Ohio St.3d 14, 16. The trial court has the inherent power to determine what conduct constitutes contempt. *Donese* ("If a trial court has the power and discretion to punish for contempt, it must also have the power to determine what type of conduct will constitute contempt.") (Citation omitted). And even if the court finds that particular conduct constitutes contempt, a reviewing court ought to accord the trial court considerable discretion to decide whether the conduct should be punished. *Donese* ("[C]ourts should be permitted to decide whether punishment for contempt is necessary under the circumstances.") (Citation omitted). So any review of a trial court's contempt proceedings must give due consideration to the trial court's discretion. *Donese*, citing *Denovchek*, at 16 ("Because the purpose of contempt focuses on the court's authority and proper functioning, great emphasis must be placed on the trial court's discretion.").

{¶ 19} Here, the trial court's reason for declining to hold Roxanne in contempt of the dissolution decree rests on its finding that Benjamin did not give her written notice of the expenses that she was to reimburse him for. This lack of notice, says the court, without citing any authority, negates any finding of contempt. The court's reasoning here does not fully convince us. We see nothing in the dissolution decree that requires any notice, let alone written notice. Moreover, the testimony of both parties is that Benjamin orally told Roxanne what she owed him. And, as we will presently discuss, the decree is somewhat ambiguous. We find nothing about the trial court's decision to be unreasonable, arbitrary, or unconscionable.

{¶ 20} Nor do we see an abuse of discretion in the trial court's decision ordering Roxanne to reimburse Benjamin for expenses associated with the marital residence only through October 2007. When there is an ambiguity in a decree, and a trial court resolves it, we will disturb its resolution only if the court abused its discretion. *Browne v. Browne*, Greene App. No. 02CA117, 2003-Ohio-2853, at ¶13 (When there is an ambiguity in a divorce decree and the trial court resolves it, the issue for the appellate court is "whether the trial court abused its discretion in the result to which it arrived."); *Bell v. Bell*, Hancock App. No. 5-04-34, at ¶11 ("[A] [c]ourt must review a trial court's interpretation of ambiguous language in a divorce decree under an abuse of discretion standard.").

{¶ 21} Clear and unambiguous language in the decree of dissolution requires the trial court simply to enforce the decree as written. *Leonhart v. Nees* (Aug. 20, 1993), Erie App. No. E-93-03. But ambiguity requires resolution. *Browne*, at ¶10. It is the trial court that we have vested with the authority to resolve good-faith disputes over the interpretation of decrees. *Saeks v. Saeks* (1985), 24 Ohio App.3d 67, at paragraph one of the syllabus ("[W]here there is a good faith confusion over the requirements of the court's decree (e.g., the separation agreement), the court has the power to enforce its decree, to hear the matter, clarify the confusion, and resolve the dispute."); see, also, *Browne*, at ¶12 (Citation omitted). In clarifying ambiguous language of an incorporated separation agreement, the trial court has broad discretion to "consider[] not only the intent of the parties but the equities involved." *Bell*, at ¶11 (Citation omitted); see, also, *Saeks*, at paragraph three of the syllabus.

{¶ 22} The dissolution decree here is ambiguous–it does not clearly and

plainly contemplate a situation in which one of them purchases the property–and the trial court's resolution is reasonable. The relevant language of the decree is this:

{¶ 23} "The parties hereto agree to immediately list for sale the real estate at 3208 Charlotte Mill Drive, Moraine, Ohio 45418, currently titled in the name of both parties. Each party undertakes to do all things necessary to effectuate such sale for the highest and best price obtainable and shall execute any documents necessary for these purposes. * * * Pending the sale of the real estate described herein, the Husband and Wife shall be obligated to make payment of all expenses incident to ownership including but not limited to mortgage payments, real estate taxes, insurance, utilities and repairs, equally divided between the parties." April 20, 2007 Judgment Entry and Decree of Dissolution, p.6. We note first that after Roxanne executed the quitclaim deed in November 2007 the property was no longer "titled in the name of both parties." We note second that if Roxanne had refused to sign the deed she may have violated the decree by failing "to do all things necessary" and failing to "execute any documents necessary." We note third that, although "Pending the sale" likely means while they wait for the property to sell, and Benjamin did not close on the property until December 2007, the last sentence says they are to pay equally "all expenses incident to ownership." The trial court could have drawn a logical connection between the statement in the last sentence about expenses of ownership and the statement in the first sentence that they both owned the property. Since after Roxanne executed the quitclaim deed in November she no longer owned an interest in the property, under the decree she no longer was obligated to pay any of the expenses of ownership. We note too that because we are unable to find in

the record the date that Roxanne executed the quitclaim deed we cannot comment on whether she was obligated to pay a pro-rated amount for November.

{¶ 24} The trial court decided that, based on the undisputed fact that she executed a quitclaim deed in November 2007, Roxanne is responsible for expenses only through October 2007. In light of the language in the decree and in the absence of the date that Roxanne executed the deed, we cannot say that the court's decision is arbitrary, unconscionable, or unreasonable, in short, we cannot say that the trial court abused its discretion.

{¶ 25} The second assignment of error is overruled.

III

{¶ 26} Having overruled both assignments of error, the judgment of the trial court is Affirmed.

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DONOVAN, P.J., and FAIN, J., concur.

Copies mailed to:

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