

[Cite as *Bowling v. Bowling*, 2015-Ohio-2780.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

TIMOTHY BOWLING	:	
	:	Appellate Case No. 2014-CA-53
Plaintiff-Appellant	:	
	:	Trial Court Case No. 2013-DR-53
v.	:	
	:	(Civil Appeal from Common Pleas Court, Domestic Relations)
BETH BOWLING	:	
	:	
Defendant-Appellee	:	
	:	

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OPINION

Rendered on the 10th day of July, 2015.

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FAIN, J.

{¶ 1} Plaintiff-appellant Timothy Bowling appeals from a judgment entry and final

decree of divorce issued by the Greene County Court of Common Pleas, Domestic Relations Division. Mr. Bowling contends that the trial court erred in allocating parental rights and responsibilities. He further contends that the trial court abused its discretion regarding parenting time.

{¶ 2} We conclude that the trial court did not abuse its discretion with regard to its determination of custody or parenting time. Accordingly, the judgment of the trial court is Affirmed.

I. The Course of Proceedings

{¶ 3} Timothy and Beth Bowling were married in 2009. Two children were born of the marriage in February 2012. Mr. Bowling filed a complaint for legal separation on March 5, 2013. At some point, Ms. Bowling was charged with Domestic Violence. On March 11, 2013, the parties entered into an Agreed Order designating Mr. Bowling as temporary legal custodian of the children, and awarding visitation to Ms. Bowling. According to the record, this agreement was made following Mr. Bowling's claims that Ms. Bowling had mental health issues, and that she was a danger to the children. The order required both parties to undergo psychological evaluations.

{¶ 4} In July 2013, Ms. Bowling filed a counterclaim for divorce. She also filed a motion to modify the prior Agreed Order. On July 25, 2013, following a hearing, the trial court entered an order finding that there was no evidence that Ms. Bowling had a mental illness. The order modified the parenting order by requiring that the parents "alternate custody of the two minor children every week from 6 p.m. on Friday to 6 p.m. the following Friday." Dkt. 58.

{¶ 5} A judgment and decree of divorce was entered in November 2014. Of relevance to this appeal, the trial court awarded residential parent and legal custodian status to Ms. Bowling. Mr. Bowling was awarded parenting time pursuant to the court's standard order, with the provision that weekend visitation end on Monday morning rather than Sunday evening.

{¶ 6} Mr. Bowling appeals.

**II. The Trial Court Did Not Abuse its Discretion by
Designating Ms. Bowling as the Residential
Parent and Legal Custodian of the Children**

{¶ 7} Mr. Bowling's First Assignment of Error states:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION
WHEN IT ORDERED APPELLEE BE NAMED CUSTODIAN OF THE
MINOR CHILDREN.

{¶ 8} Mr. Bowling contends that the decision of the trial court regarding custody is not supported by the evidence. He argues that Ms. Bowling has mental health problems. He further claims that Ms. Bowling is abusive, and therefore dangerous to the children.

{¶ 9} 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).

{¶ 10} R.C. 3109.04(F)(1) sets forth the following factors for the court to consider when determining the best interests of a child in allocating parental rights:

- (a) The wishes of the child's parents regarding the child's care;
- (b) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;
- (c) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;
- (d) The child's adjustment to the child's home, school, and community;
- (e) The mental and physical health of all persons involved in the situation;
- (f) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;
- (g) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant

to a child support order under which that parent is an obligor;

(h) 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; * * *;

(i) 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;

(j) Whether either parent has established a residence, or is planning to establish a residence, outside this state.

R.C. 3109.04.

{¶ 11} Although a trial court is required to consider these factors, it retains broad discretion in making a best-interest determination. *Wilburn v. Wilburn*, 144 Ohio App.3d 279, 286, 760 N.E.2d 7 (2d Dist. 2001). We review its determination for an abuse of that discretion. *In re D. W.*, 2d Dist. Montgomery No. 21630, 2007–Ohio–431, ¶ 13.

{¶ 12} In the case before us, both parents wish to be named residential parent. While the children are too young to express an opinion, the Court Investigator assigned to the case recommended that Ms. Bowling be designated residential parent. Both parties are appropriately bonded to the children; each child has been integrated into each parent's home.

{¶ 13} The trial court noted that Mr. Bowling works long hours, requiring the children, who were born prematurely, to be in daycare, where they have contracted respiratory illnesses and ear infections. Mr. Bowling smokes. One of the children has to use a respiratory inhaler. While Mr. Bowling testified that he is vigilant about not

smoking around the children, even to the point of changing clothes after smoking, the trial court found the factor of his smoking to be significant. It appears that the trial court credited Ms. Bowling's testimony that Mr. Bowling had smoked in the car with the children present.

{¶ 14} The Court Investigator found that Ms. Bowling was more likely to facilitate visitation. The Court Investigator also found that Ms. Bowling was more positive about Mr. Bowling in front of the children than he was about her.

{¶ 15} There is also evidence that Ms. Bowling only works a few hours per week, and is able to be with the children more. She also has extended family, who are able to care for the children during the time she does work.

{¶ 16} Despite Mr. Bowling's claim that Ms. Bowling has mental health issues, we note that other than a mention of postpartum depression and "mood disorder," mentioned by the Court Investigator, there is no medical record or expert testimony to indicate or corroborate any current mental health issues. Indeed, an examination with testing performed by a psychologist indicated that Ms. Bowling does not have any mental illness. Mr. Bowling also faults Ms. Bowling for standing on her privilege and declining to disclose records regarding marital counseling that the parties attended. As noted, there is no evidence in this record of any existing mental health issue. Also, the marriage counselor is not a psychologist, and there is no indication that she was competent to opine upon any claims of mental illness.

{¶ 17} Mr. Bowling also contends that the trial court ignored the fact that Ms. Bowling is abusive, having been charged with Domestic Violence. However, the record demonstrates that Ms. Bowling pled guilty to Disorderly Conduct, not to Domestic

Violence. There is evidence that subsequently thereto, Mr. Bowling continued to have contact with Ms. Bowling, with no incidents of any alleged abuse, thereby belying his claim that she is dangerous to him. Finally, there is no evidence of any harm to the children. Indeed, Greene County Children's Services was unable to substantiate any physical abuse. While the agency did make a finding of neglect, the record indicates that this was based solely upon the finding that the children were in the house on the date of the alleged domestic violence incident.

{¶ 18} The record shows that Mr. Bowling works 104 hours every two weeks. While they are with him, the children are placed in a daycare facility. Ms. Bowling has a much lighter work schedule, and has extended family who can care for the children when she does work. There is evidence in the record upon which the trial court could find that Ms. Bowling was the primary caregiver for the children during the marriage. We find no support in the record for the claims that Ms. Bowling is a danger to the children, or that she has any mental illness.

{¶ 19} In this close case, the trial court gave more credence to the testimony of Ms. Bowling and the Court Investigator than to Mr. Bowling. Based upon our review of the record, we conclude that the trial court did not abuse its discretion in reaching its decision. The first Assignment of Error is overruled.

III. The Trial Court's Order of Parenting Time Is Not an Abuse of Discretion

{¶ 20} Mr. Bowling's Second Assignment of Error provides:

THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION

WHEN IT ORDERED APPELLANT TO EXERCISE PARENTING TIME PURSUANT TO THE COURT'S STANDARD ORDER OF PARENTING TIME WITH EXTENDED WEEKEND PARENTING TIME.

{¶ 21} Mr. Bowling disagrees with the trial court's allocation of parenting time. He contends that the evidence demonstrates that the parties should continue the week-to-week schedule that had been in effect for over a year.

{¶ 22} R.C. 3109.051, which governs parental visitation rights, requires the court 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). Section (D) instructs the trial court to consider fifteen specific factors plus any other factor the court finds is in the child's best interest. "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." *Shoenfelt v. Shoenfelt*, 2d Dist. Montgomery No. 23497, 2009-Ohio-6594, ¶ 8.

{¶ 23} "The issue of parenting time is a matter entrusted to the discretion of the trial court. Thus, absent an abuse of that discretion, we will not reverse a trial court's decision on parenting time." *Szeliga v. Szeliga*, 2d Dist. Greene No. 2011-CA-65, 2012-Ohio-1973, ¶ 12. The term "abuse of discretion" implies that the trial court's decision is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 24} The trial court found that the children were of tender years, and that Ms.

Bowling was able to provide full-time care at home without necessitating the use of a daycare facility. If the children continued on the week-to-week schedule, they would remain in daycare during the weeks that Mr. Bowling had parenting time. We conclude that the trial court, in considering these facts, did not abuse its discretion by adopting the standard order of parenting time, with the provision that Mr. Bowling have an additional night of visitation on the weekends he has the children.

{¶ 25} Because the trial court's adoption of the standard order of parenting time is neither an abuse of discretion, nor against the manifest weight of the evidence, we overrule Mr. Bowling's Assignment of Error.

IV. Conclusion

{¶ 26} Both of Mr. Bowling's assignments of error having been overruled, the judgment of the trial court is Affirmed.

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FROELICH, P.J., and HALL, J., concur.

Copies mailed to:

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