**[Cite as *In re Thompson*, 2016-Ohio-1270.]**

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

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| IN THE MATTER OF: | : | Appellate Case No. 2015-CA-78 |
| ROARK D. THOMPSON | : | Trial Court Case No. 10DS1125 |
| and | : | (Civil appeal from Common Pleas Court, Domestic Relations) |
| CHELSEA A. THOMPSON (nka FRANTZ) | : | |

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**O P I N I O N**

Rendered on the ___25th___ day of ____March_____, 2016.

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FROELICH, J.

**{¶ 1}** Chelsea Frantz, formerly known as Chelsea Thompson, appeals from a judgment of the Clark County Court of Common Pleas, Domestic Relations Division,

which denied her motion to terminate a shared parenting arrangement with her former husband, Roark D. Thompson, and found that no order of child support was appropriate. For the following reasons, the judgment of the trial court will be affirmed in part and reversed in part.

**{¶ 2}** The parties were divorced and entered into a shared parenting agreement in 2010, when their son was one year old. Under the shared parenting arrangement in place prior to the current motion, each parent had the child for half of the weekdays each week (roughly Monday through Wednesday with Mrs. Frantz and Wednesday through Friday with Mr. Thompson), with alternating weekends. Pursuant to prior agreements and court orders, Mr. Thompson paid $300 per month in child support, which was a downward deviation from the standard child support calculation to reflect the amount of time he spent with the child.

**{¶ 3}** In 2011, Mrs. Frantz filed a motion to terminate the shared parenting plan, which she subsequently dismissed. In 2012, each party filed a motion to terminate shared parenting and to be named the residential and custodial parent. The trial court denied both motions, but it added a provision that Mr. Thompson would be the residential parent for school purposes (although the child was not yet in school), because the parties no longer lived in the same school district.

**{¶ 4}** In December 2014, Mrs. Frantz filed a motion to terminate shared parenting, to reallocate parental rights and responsibilities such that she would be the residential and custodial parent, and to award visitation to Mr. Thompson and order him to pay child support in accordance with the court's standard orders. The trial court held a hearing on May 7 and July 10, 2015. After the hearing, the trial court overruled Mrs. Frantz's motion

to terminate shared parenting. It also stated that the payment of child support was neither equitable nor in the best interest of the child, considering the parties' respective parenting time and incomes, although neither party had requested that the child support be reduced if shared parenting were continued. Pursuant to the court's order, Mr. Thompson remained the residential parent for purposes of determining where the child would attend school.

**{¶ 5}** Mrs. Frantz appeals from the trial court's order, raising two assignments of error.

**{¶ 6}** The first assignment of error states:

> **The trial court erred and abused its discretion in its determination that it was not in the best interest of the parties' minor child that the shared parenting plan be terminated.**

**{¶ 7}** Mrs. Frantz argues that the trial court erred in concluding that it was not in the child's best interest to terminate the shared parenting plan and designate her as the sole residential parent, when Mr. Thompson had driven with the child in his car during a license suspension imposed following two incidents of alleged drunk or impaired driving.

***Applicable Law and Standard of Review***

**{¶ 8}** R.C. 3109.04 permits a court to modify a decree allocating parental rights, R.C. 3109.04(E)(1), and to terminate a shared parenting decree, R.C. 3109.04(E)(2)(c). Generally, to modify parental rights, the court must first find that there has been a change in circumstances. R.C. 3109.04(E)(1)(a). But a change in circumstances is not required before terminating shared parenting; "nothing in R.C. 3109.04(E)(2)(c) requires the trial court to find a change of circumstances in order to terminate a shared parenting

agreement." *Curtis v. Curtis*, 2d Dist. Montgomery No. 25211, 2012-Ohio-4855, ¶ 7, citing *Brennaman v. Huber*, 2d Dist. Greene No. 97 CA 53, 1998 WL 127081, * 2 (Mar. 20, 1998). To terminate shared parenting, the statute requires only " 'that the court find that it is in the best interests of the minor child.' " *Toler v. Toler*, 2d Dist. Clark No. 10-CA-69, 2011-Ohio-3510, ¶ 11, quoting *Beismann v. Beismann*, 2d Dist. Montgomery No. 22323, 2008-Ohio-984, ¶ 8. *See also Miller v. Hunter*, 2d Dist. Montgomery No. 26545, 2015-Ohio-3377, ¶ 7.

**{¶ 9}** Pursuant to R.C. 3109.04(E)(2)(c), a court may terminate an order of shared parenting upon the request of one or both of the parents or when "it determines that shared parenting is not in the best interest of the children." In determining the best interest of a child, the court must consider all relevant factors, including, but not limited to: the wishes of the child's parents regarding the child's care; if the court has interviewed the child in chambers, the wishes and concerns of the child as expressed to the court; 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; the child's adjustment to the child's home, school, and community; the mental and physical health of all persons involved in the situation; the parent more likely to honor and facilitate court-approved parenting time or visitation and companionship rights; 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; 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; 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; and whether either parent has established a residence, or is planning to establish a residence, outside this state. R.C. 3109.04(F)(1).

**{¶ 10}** A trial court enjoys broad discretion when determining the appropriate allocation of parental rights and responsibilities. *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). Absent an abuse of that discretion, a reviewing court will affirm the custody determination of the trial court. *Id*. Abuse of discretion is a term used to indicate that a trial court's decision is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

***The Evidence in the Trial Court***

**{¶ 11}** At the hearing, Mr. Thompson testified that he lives in Springfield with his wife, earns approximately $40,000 - $42,000 per year as a farmer in his family's farming operation, and does some "custom farming" for additional income. The child at issue in these proceedings is Mr. Thompson's only child.

**{¶ 12}** Mr. Thompson testified that his son is close to his paternal grandmother (Mr. Thompson's mother), "Grammy," who helps care for him during peak farm seasons when Mr. Thompson's work is particularly demanding. Mr. Thompson can also take the child to work with him, and the child loves tractors and playing outside. Mr. Thompson stated that his son has a loving relationship with his new wife and is developing a good relationship with her family. Mr. Thompson testified that he wanted his son to attend school in the district where he lived, in which the farming community was well-represented. Mr. Thompson had enrolled the child in full-day kindergarten in that district, which was to start soon after the second day of the hearing.

**{¶ 13}** Mrs. Frantz lived in Beavercreek at the time of the hearing with her new husband and their new baby, her only other child. She worked as a nurse three shifts per week at local hospitals and had flexibility in arranging her schedule to accommodate time with her son. At the time of the hearing, she earned around $45,000 per year working approximately 27 hours per week. Mrs. Frantz's husband did not have any children other than the child they had together. Mrs. Frantz had moved several times since the parties' dissolution. Prior to her move to Beavercreek, Mrs. Frantz had asked to court to change the child's residence for school purposes to her previous residence in Kettering. Mrs. Frantz stated that the home she and her husband had built in Beavercreek was their permanent home.

**{¶ 14}** The guardian ad litem had been involved in the parties' case on and off for four years, as various motions were filed by the parties. She testified at the hearing and filed an extensive report with the court. The guardian ad litem stated that the child had good relationships with both parents, their new spouses, and family members on both sides of the family. In the guardian ad litem's opinion, Mr. Thompson and Mrs. Frantz have "done a really good job cooperating with each other" on issues related to their child, better than is typically seen in such cases; the parents' ability to communicate effectively about the child had improved since the guardian ad litem first became involved, although there was extra strain when court proceedings were pending.

**{¶ 15}** Two encounters with the police related to Mr. Thompson's driving were the impetus for Mrs. Frantz's motion to terminate shared parenting. The guardian ad litem spent "considerable time" investigating these events. The child was not in the car either time.

**{¶ 16}** Mr. Thompson was first charged with operating a vehicle while intoxicated in Fairborn (Greene County) in August 2014. The police report stated that Mr. Thompson was driving erratically on the road and in the grass; when his car was stopped, an officer observed a prescription pill bottle of oxycodone in the door of the car. According to the police report, the police officers did not observe the erratic driving, but several drivers called to report it and identified the vehicle, including its license plate. The police report further stated that, after locating the vehicle in a parking lot, Mr. Thompson exhibited other signs of impairment. According to the guardian ad litem, however, Mr. Thompson "adamantly insist[ed] that [the erratic driver] was not him." Mr. Thompson denied to the officers and at trial that he had taken the oxycodone in the days prior to this incident. He explained that it had been prescribed for pain after a recent surgery on his hand, but that he was no longer taking it at the time of this citation. He did report taking prescription cough medicine that day, but he later provided a letter from his doctor in which the doctor stated that the medication taken would not have impaired Mr. Thompson's ability to drive.

**{¶ 17}** Mr. Thompson entered a conditional no contest plea to OVI, with the understanding that the charge would be amended to reckless operation if he successfully completed a driver's intervention program at Wright State University, which he did. About 15 days after the citation, Mr. Thompson submitted to a blood test for drugs by his primary care physician, which revealed no drugs in his system, but the guardian ad litem was unsure of the "look-back" period for this test. Mr. Thompson's drivers' license was administratively suspended as a result of the Greene County incident, because he refused to submit to a urine test. Mr. Thompson was given limited driving privileges beginning in September or October 2014.

**{¶ 18}** In November 2014, Mr. Thompson was cited for another OVI, this time in Clark County, after his car hit an icy or snowy spot and slid off the road and into some fence posts. Mr. Thompson again refused to take a breath test, and received another administrative suspension. He pled guilty to an amended charge of driving under suspension (outside of his privileges) and failure to control. According to the guardian ad litem, the Clark County prosecutor "felt he did not have a particularly strong OVI or driving under suspension case against [Mr. Thompson]"; because "the trooper's investigation was somewhat lacking," the prosecutor was not convinced that Mr. Thompson had been impaired.

**{¶ 19}** Mrs. Frantz and her husband found out about Mr. Thompson's convictions and suspensions when this information was published in a local paper. They testified at the hearing that Mr. Thompson had been transporting the child during his suspension, until they confronted him about the suspension around Thanksgiving 2014 and refused to allow the child to leave with him without another driver. After this time, Mr. Thompson's wife or mother transported the child until the suspension ended. Mr. Thompson admitted that he had driven the child during his suspension, but stated that he had believed that his driving privileges included permission to pick up his son for visits.

**{¶ 20}** Mrs. Frantz and her husband testified that Mr. Thompson had transported the child even during the period before he had any privileges, but Mr. Thompson claimed that his wife or mother had transported the child during that period. According to the guardian ad litem, Mr. Thompson's driving privileges had included taking the child to daycare, but not exchanges for visitation, and Mr. Thompson had admitted driving with the child before his privileges were in place. Mrs. Frantz testified that she had been

concerned about Mr. Thompson's decision to disobey the law in front of the child and of the traumatizing effect on the child if Mr. Thompson had been pulled over and arrested for driving under suspension while the child was in the car.

**{¶ 21}** Based on her history of involvement in the case, the guardian ad litem noted that Mrs. Frantz had asserted in the past that Mr. Thompson was a heavy drinker, but the guardian ad litem had found no basis for concern about his alcohol or drug use.

**{¶ 22}** The guardian ad litem recommended that the parties continue to engage in shared parenting because it was in the child's best interest. She suggested that the parenting schedule "be rearranged to allow for more stability through the school week" and for fewer exchanges overall, because the child was entering school. The guardian ad litem also recommended that Mrs. Frantz be named the residential parent for purposes of the school district the child would attend, due to Mr. Thompson's "pick[ing] up two OVI charges within a few months" and driving with the child when he did not have privileges to do so.

**{¶ 23}** Mrs. Frantz sought to terminate shared parenting, to be designated the residential and custodial parent, and for Mr. Thompson to be awarded standard visitation and ordered to pay child support in accordance with her status as residential parent. Mr. Thompson wanted to continue the shared parenting arrangement, but he was receptive to the guardian ad litem's recommendations that the frequency of exchanges be reduced.

***The Trial Court Decision***

**{¶ 24}** Based on the evidence presented at the hearing, the trial court found that it was in the child's best interest to continue shared parenting. The court found that the parties had the ability to cooperate and to make decisions jointly with respect to the child.

The trial court rejected Mrs. Frantz's argument that Mr. Thompson had engaged in conduct constituting abuse or neglect of their child when he drove with the child while under suspension. The court also found that there was not "sufficient credible evidence" to substantiate Mrs. Frantz's implication that Mr. Thompson had unresolved alcohol or substance abuse issues.

**{¶ 25}** The court also reaffirmed that the child would attend school in the father's school district, as previously ordered. The court noted that Mrs. Frantz moved out of the school district in which both parties had originally lived for reasons that had nothing to do with the best interest of the child, that the distance between the parties' current homes (about 20 minutes) was "not insurmountable," and that Mrs. Frantz should bear the inconvenience created by her move out of this school district.

**{¶ 26}** The trial court carefully weighed the statutory factors bearing on the child's best interest, including the child's close relationship with both parents and other family members on both sides, the appropriateness of the homes both parents provide, the absence of physical or mental health issues which would interfere with parenting, the parents' likelihood of honoring and facilitating parenting time, and the absence of abuse and neglect. The court found that the child was "very well adjusted" to the current arrangement. The court did not abuse its discretion in concluding that shared parenting should continue. Moreover, in the absence of a request by the parties that the shared parenting schedule be modified (as the guardian ad litem had suggested), the trial court reasonably chose to leave the current schedule in place.

**{¶ 27}** The court also did not abuse its discretion in reaffirming its prior order that the child should attend school in Mr. Thompson's school district. We note that Mrs.

Frantz's motion did not specifically request a change in the school district if shared parenting continued; it requested that she be named the sole residential parent for all purposes. The guardian ad litem suggested the change with respect only to the school district, out of concern that Mr. Thompson had gotten two citations for OVI in a relatively short period of time, although she testified that she did not have concerns about his drug or alcohol use. Since the trial court also found that the alleged unresolved substance abuse issues were unsubstantiated, it could have reasonably concluded that there was no reason for the proposed change.

**{¶ 28}** The first assignment of error is overruled.

**{¶ 29}** The second assignment of error states:

**The court erred in finding that "neither of the parties are under a current obligation to pay child support for [the child]."**

**{¶ 30}** Mrs. Frantz frames her assignment of error with reference to the trial court's erroneous statement that neither party had previously been under an obligation to pay child support. However, the trial court's statement is not an action taken by the court. The assignment of error is more appropriately directed to the trial court's termination of the existing child support order.

**{¶ 31}** At the end of its judgment, the trial court stated that it was "not equitable or in the minor child's best interest to issue an Order of child support for either of the parties, taking into account their respective parenting time with their son and their incomes as they currently exist." The court had previously stated, in the same judgment, that it had "not received sufficient evidence to suggest that either of the parties are in arrears with respect to any prior child support obligation *and the Court notes that neither of the parties*

*are under a current obligation to pay child support for [the child]*." (Emphasis added.) While it is true that there was no allegation of delinquency in child support, the trial court's statement that neither party was then obligated to pay support was incorrect. Since the time of the parties' decree of dissolution in 2010, Mr. Thompson had been paying $300 per month in child support.

**{¶ 32}** It is unclear from the record whether the trial court 1) intended to modify the amount of child support or 2) was simply under the mistaken belief that there was no existing child support order (in which case its statement about child support was a reflection of this mistaken belief). However, neither party had requested a reduction in child support, no change of circumstances was argued or found to exist with respect to the parties' financial circumstances,[1] and no worksheet was completed to establish a new child support amount. Pursuant to R.C. 3119.79(A), a "change of circumstance substantial enough to require a modification" of child support (defined as a 10% deviation in the amount of child support previously ordered) must be shown to justify a modification of child support. Further, the trial court must include the child support worksheet in the record so that an appellate court can meaningfully review the trial court's order. *Duff v. Duff*, 2d Dist. Montgomery No. 26043, 2014-Ohio-3750, ¶ 10, citing *Johnson v. McConnell,* 2d Dist. Montgomery No. 24115, 2010-Ohio-5900, ¶ 14. Thus, the statutory requirements for a modification were not met.

**{¶ 33}** In addition to the trial court's incorrect statement about existing child

[1] In the interest of clarity, we point out that the change of circumstances required for a modification of child support, as set forth in R.C. 3119.79(A), is different from the change of circumstances (or lack thereof) required for a termination or modification of shared parenting, as discussed in the trial court's judgment and in prior judgments of this court.

support, Mrs. Frantz points out that the court incorrectly observed that there was a third child in her household (a child of her husband from a previous relationship); there was no evidence to support this finding. The trial court's finding with respect to the amount of hours that Mrs. Frantz works each week was also inconsistent with the evidence, although its findings about her income were supported by the record.

**{¶ 34}** Under the circumstances presented here, which include the trial court's conflicting statements about the prior child support obligation, the inaccuracy of some of its other findings (which may have been relevant to a proper modification of child support), the lack of any finding that there had been a change of circumstances, and the absence from the record of a child support worksheet related to the modification, we find that the trial court abused its discretion in terminating Mr. Thompson's child support payments.

**{¶ 35}** The second assignment of error is sustained.

**{¶ 36}** The judgment of the trial court will be affirmed with respect to the denial of Mrs. Frantz's motion to terminate shared parenting. The judgment will be reversed with respect to the modification of child support.

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FAIN, J. and HALL, J., concur.

Copies mailed to:

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