[Cite as *Bates v. Gould*, 2004-Ohio-571.]

IN THE COURT OF APPEALS
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY, OHIO

PATRICK J. BATES, :

Plaintiff-Appellant, :

-v- : Case No. 03CA12

RHONDA K. GOULD, :

Defendant-Appellee. : DECISION AND JUDGMENT ENTRY

APPEARANCES

COUNSEL FOR APPELLANT: Richard L. Goettke, 213 North Broadway, Blanchester, Ohio 45107

COUNSEL FOR APPELLEE: James D. Hapner, 127 North High Street, Hillsboro, Ohio 45133

CIVIL APPEAL FROM COMMON PLEAS, JUVENILE DIVISION
DATE JOURNALIZED: 2-2-04

ABELE, J.

{¶1} This is an appeal from a Highland County Common Pleas Court, Juvenile Division, judgment that allocated parental rights and responsibilities of Rhonda K. Gould, defendant below and appellee herein, and Patrick J. Bates, plaintiff below and appellant herein.

{¶2} Appellant raises the following assignments of error for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT IN DETERMINING THAT THE BEST INTEREST OF THE MINOR CHILD WOULD BE SERVED BY DESIGNATING THE APPELLEE AS THE RESIDENTIAL

PARENT AND LEGAL CUSTODIAN OF THE MINOR CHILD."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLANT IN NOT PROVIDING ADDITIONAL PARENTING TIME WITH RESPECT TO THE MINOR CHILD."

{¶3} During the early part of 2001, appellant and appellee dated. In March of 2001, appellee discovered that she was pregnant. In May of 2001, the parties' relationship terminated and appellee subsequently married Kenneth Gould, a former boyfriend with whom she had had a child. On December 3, 2001, appellee gave birth to Kerry Matthew Gould, the child she conceived with appellant.

{¶4} On December 28, 2001, appellant filed a complaint and requested the trial court to find that he is Kerry's father. On May 15, 2002, the trial court found appellant to be Kerry's natural father and granted appellant standard parenting visitation time.

{¶5} On July 31, 2002, appellant requested the court to declare him the child's residential parent and legal custodian. On December 12, 2002, the guardian ad litem reported that both appellee's and appellant's homes are suitable for the child. The guardian ad litem noted, however, a "very serious concern with the step-father's obvious alcohol abuse problem." The guardian ad litem stated:

> "Based upon Mr. Gould's own admission, the mother's candid statement, and certain Court records of several jurisdictions, this abuse problem is chronic, extensive, and of little concern to either Mr. Gould or the mother. Both the mother and Mr. Gould have an attitude that this alcohol abuse is acceptable and requires no remedial action in the future. This is readily apparent by the fact that Mr. Gould during the pendency of this matter, has managed to become arrested for a DUI here in Highland County wherein the B.A.C test was very high. Due to this long history of tolerating this problem the G.A.L. has serious concerns about the safety and welfare of the child in this environment."

The guardian ad litem also stated that because appellant had no prior experience raising a

child, the guardian ad litem had concerns about appellant's parenting skills. Thus, the guardian ad litem could not recommend to the court which of the parents would better serve the child's best interests.

{¶6} On June 12, 2003, the trial court designated appellee the child's residential parent and legal custodian. The court recognized the guardian ad litem's concern regarding appellee's husband's alcohol abuse, but concluded that appellee adequately explained that her husband's alcohol abuse would not adversely affect the child or place the child in danger. The court noted that: (1) appellee stated that her husband does not get drunk in the house or harm the children when drinking; (2) appellee has safely raised a four year old child in the same household in which her husband resides; and (3) appellee's husband stated that he does not provide care for the children when he is drinking. The court then determined that the best interest factors weighed in appellee's favor "primarily due to the fact that the child has resided with [appellee] with his entire life with the consent of [appellant]." The court also awarded appellant standard parenting visitation time.

{¶7} Appellant filed a timely notice of appeal.

I

{¶8} In his first assignment of error, appellant asserts that the trial court erred by designating appellee the child's residential parent and legal custodian. Appellant argues that a proper analysis of the R.C. 3109.04(F)(1) factors demonstrates that the trial court should have designated him the residential parent and legal custodian. He asserts that the child is in danger when left in appellee's husband's care.

{¶9} We initially note that when "an award of custody is supported by a substantial amount of credible and competent evidence, such an award will not be reversed as being

against the weight of the evidence by a reviewing court." Bechtol v. Bechtol (1990), 49 Ohio St.3d 21, 550 N.E.2d 178, syllabus; see, also, Davis v. Flickinger (1997), 77 Ohio St.3d 415, 418, 674 N.E.2d 1159. Furthermore, a reviewing court should afford the utmost deference to a trial court's decision regarding child custody matters. See, e.g., Miller v. Miller (1988), 37 Ohio St.3d 71, 74, 523 N.E.2d 846. Consequently, absent an abuse of discretion, a reviewing court will not reverse a trial court's decision regarding child custody matters. See, e.g., Bechtol, supra. When applying the abuse of discretion standard, a reviewing court may not simply substitute its judgment for that of the trial court. Blakemore v. Blakemore (1983), 5 Ohio St.3d 217, 219, 5 OBR 481, 482-483, 450 N.E.2d 1140, 1142. Moreover, deferring to the trial court on matters of credibility is "crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does not translate to the record well." Davis, 77 Ohio St.3d at 419. Thus, reviewing courts should give great deference to trial court child custody decisions. Pater v. Pater (1992), 63 Ohio St.3d 393, 396, 588 N.E.2d 794. Moreover, because child custody issues involve some of the most difficult and agonizing decisions that trial courts are required to decide, courts must have wide latitude to consider all of the evidence and appellate courts should not disturb a trial court's judgment absent a showing of an abuse of that discretion. See Davis, 77 Ohio St.3d 418; Bragg v. Hatfield, 152 Ohio App.3d 174, 787 N.E.2d 44, 2003-Ohio-1441, at ¶ 24; Hinton v. Hinton, Washington App. No. 02CA54, 2003-Ohio-2785, at ¶ 9; Ferris v. Ferris, Meigs App. No. 02CA4, 2003-Ohio-1284, at ¶ 20.

{¶10} When allocating parental rights and responsibilities, R.C. 3109.04(F)(1) requires the trial court to consider the child's best interests. The statute provides:

> "(F)(1) In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of

children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:

"(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; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and whether there is reason to believe that either parent has acted in a manner resulting 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.

{¶11} In the case sub judice, appellant did not file a Civ.R. 52 request for findings of fact and conclusions of law. Pursuant to Civ.R. 52, a trial court's judgment entry may be general unless one of the parties requests findings of fact and conclusions of law.[1] See Morrison v. Morrison (Nov. 15, 2000), Wayne App. No. 00CA0009; Wirt v. Wirt (Apr. 10, 1996), Wayne App. No. 95CA0041, unreported. Absent a Civ.R. 52 request for findings of fact, a reviewing court will presume that the trial court considered all the relevant statutory factors.[2] Wangugi v. Wangugi (Apr. 12, 2000), Ross App. No. 99CA2531; see, also, Sayre v. Hoelzle Sayre (1994), 100 Ohio App.3d 203, 211-12, 653 N.E.2d 712.

{¶12} In the case at bar, the trial court stated that it considered the best interest factors and found those factors to weigh in favor of designating appellee the residential parent and legal custodian. Because appellant did not file a Civ.R. 52 request for findings

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[1] Civ.R. 52 applies to custody proceedings. See State ex rel. Papp v. James (1994), 69 Ohio St.3d 373, 377; Werden v. Crawford (1982), 70 Ohio St.2d 122, syllabus.

[2] As the court explained in Pettet v. Pettet (1988), 55 Ohio App.3d 128, 130, 562 N.E.2d 929:

> "* * * [W]hen separate facts are not requested by counsel and/or supplied by the court the challenger is not entitled to be elevated to a position superior to that he would have enjoyed had he made his request. Thus, if from an examination of the record as a whole in the trial court there is some evidence from which the court could have reached the ultimate conclusions of fact which are consistent with his judgment the appellate court is bound to affirm on the weight and sufficiency of the evidence. The message is clear: If a party wishes to challenge the custodial judgment as being against the manifest weight of the evidence he had best secure separate findings of fact and conclusions of law. Otherwise his already 'uphill' burden of demonstrating error becomes an almost insurmountable 'mountain.'"

of fact and conclusions of law, we presume that the trial court properly considered and weighed all of the factors to conclude that the child's best interests would be served by designating appellee the child's residential parent and legal custodian.

{¶13} Moreover, we disagree with appellant that appellee's husband's alcoholism is so severe as to pose a threat to the child's safety and well-being. Although the record shows, and the trial court found, that appellee's husband suffers from chronic alcoholism, the record further shows, and the trial court found, that his alcoholism does not adversely affect the child. We must defer to the trial court's factual finding.

{¶14} Appellant further claims that appellee's husband "is a very violent person and is abusive of people around him." The record, however, does not appear to support appellant's claim. No evidence exists that appellee's husband is, or ever was, violent or abusive to the child or to any other child in his care. We hasten to add, however, that we agree with the appellant in principle that when a parent chooses to expose his or her child to another person who creates a dangerous atmosphere for the child, courts may consider this factor when resolving child custody or visitation issues. For example, a step-parent's inappropriate violent, criminal, reckless or negligent behavior could adversely impact a minor child and should be considered when making a custody determination.

{¶15} Based upon the foregoing reasons, we find that the trial court did not abuse its discretion in determining the residential parent issue. Thus, we hereby overrule appellant's first assignment of error.

II

{¶16} In his second assignment of error, appellant asserts that the trial court erred by not awarding him sufficient parenting time. He argues that the arrangement should be

structured so that at no time is the child left solely in appellee's husband's care. He also contends that he should have parenting time with the child during the times when appellee is unable to care for the child.

{¶17} As we noted above, trial courts have a great deal of discretion in resolving child custody issues and those judgments should not be reversed absent an abuse of discretion. In the case at bar, we do not believe that the trial court abused its discretion. As we stated under appellant's first assignment of error, the record supports the trial court's finding that appellee's husband's alcohol use does not pose a danger to the child. Thus, the trial court was not required to structure the parenting time schedule so as to prevent the child from being left in appellee's husband's care. While we may well have viewed this decision differently and awarded appellee more parenting time, our standard of review does not permit us to simply substitute our judgment for that of the trial court. Additionally, the appellant may, in the future, again raise the issue concerning an increased amount of visitation if the situation warrants a modification of the trial court's visitation order. Further, we encourage the parties to cooperate and to facilitate visitation for the child's benefit and well-being.

{¶18} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

Kline, P.J.: Concurs in Judgment Only
Evans, J.: Concurs in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele

Judge