[Cite as *Bishop v. Bishop*, 2009-Ohio-4537.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

KEITH BISHOP,	:	
	:	
Plaintiff-Appellee,	:	Case No. 08CA44
	:	
vs.	:	
	:	
KELLY BISHOP,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	File-stamped date: 8-31-09

APPEARANCES:

Ralph A. Kerns and Ryan D. Kuhn, Ralph A. Kerns & Associates, Worthington, Ohio, for Appellant.

Michael D. Buell, Buell & Sipe Co., L.P.A., Marietta, Ohio, for Appellee.

Kline P.J.:

{¶1} Kelly M. Bishop (hereinafter "Kelly") appeals the judgment of the Washington County Court of Common Pleas. The trial court modified the allocation of parenting time under a shared parenting plan between Kelly and her ex-husband, Keith H. Bishop (hereinafter "Keith"). Initially, Kelly contends that the trial court's divorce entry did not properly establish a shared parenting plan under R.C. 3109.04(D)(1)(a). Because we find that Kelly has engaged in an improper collateral attack on the Divorce Entry, we reject her arguments about the validity of the shared parenting plan. Next, Kelly contends that the trial court did not have the power to unilaterally amend the allocation of parenting time. We disagree. A trial court may modify the terms of a shared parenting plan pursuant to R.C. 3109.04(E)(2)(b). Further, because the reasons for the modification are

apparent from the record, we find that the trial court did not abuse its discretion by modifying the terms of the shared parenting plan. Finally, Kelly contends that the trial court erred by not designating her as the Child's legal custodian. Because the divorce entry established shared parenting, and because the trial court did not abuse its discretion by modifying the allocation of parenting time, we disagree. Accordingly, we overrule all of Kelly's assignments of error and affirm the judgment of the trial court.

I.

{¶2} Kelly and Keith were married on June 27, 1998. They had one child (hereinafter the "Child") together. The Child was born on November 19, 2000.

{¶3} On September 12, 2002, Keith filed for divorce on the grounds of Gross Neglect of Duty and Extreme Cruelty.

{¶4} On February 27, 2003, the trial court ordered Kelly and Keith to submit to psychological evaluations. Dr. Michael Harding performed these evaluations and also interviewed the Child.

{¶5} Kelly and Keith entered into a Separation Agreement and Property Settlement. In its March 23, 2004 Journal Entry in Divorce (hereinafter the "Divorce Entry"), the trial court found the agreement to be fair and equitable. The trial court further stated that Kelly and Keith have "reached agreement with regard to the allocation of parental rights and responsibilities stating the same on the record and shall *share the parenting of the minor child* to wit: [The Child] born November 19, 2000, on the following terms:

{¶6} RESIDENCE AND SCHOOL DISTRICT: [The Child] shall reside with the parents on a substantially equal basis with the mother designated residential parent for school purposes.

{¶7} * * *

{¶8} VISITATION: The father shall be entitled to this Court's standard visitation with the minor child in accordance with the Policy Statement concerning Visitation as journalized in the Court of Common Pleas, Washington County, Ohio on June 3, 1998 incorporated herein by reference and as modified thereafter.

{¶9} In addition to standard visitation the parties agree to expand the Father's weekend visitation by allowing earlier pick up on Friday if Father's work allows and the return of the child at 8:30 p.m Sunday evening.

{¶10} Father shall have mid-week visitation with the minor child Wednesday one week and Tuesday and Wednesday on alternate weeks until school adjourns for the summer. Thereafter he will have two nights each week to match up with Mother's teaching schedule. Father may pick the child up for mid-week visitations early if his work allows and shall return the child each morning to the mother's home for day care purposes.

{¶11} Each party shall be entitled to two weeks in the summer with no visitation to allow for vacations. Each party shall use the other as a preferred sitter.

{¶12} * * *

{¶13} The Court has specifically reviewed the provisions with regard to the allocation of parental rights and responsibilities and finds those to be in the best interest of the minor child." Divorce Entry at 2-3 (emphasis added).

{¶14} In December 2005, Keith married Milagros Bishop (hereinafter "Milagros"). Keith and Milagros have one child together.

{¶15} On April 27, 2006, Keith filed a motion for contempt against Kelly. Keith asserted that Kelly had "persisted in a pattern of behavior, elevated since [Keith's] remarriage, designed to interfere with [Keith's] rights under the parties' shared parenting plan." After a hearing, the trial court found Kelly in contempt of court.

{¶16} On January 22, 2007, Kelly filed a motion to (1) modify the existing parenting schedule and (2) clarify the Divorce Entry's order regarding midweek visitation. Subsequently, Keith filed a motion to terminate the shared parenting plan and designate Keith as the Child's custodial parent.

{¶17} On April 18, 2007, Keith filed another contempt motion against Kelly.

{¶18} In August 2007, the trial court held a hearing on all pending motions. And the following month, Kelly and Keith both filed their proposed findings of fact and conclusions of law.

{¶19} Before the trial court could rule on the pending motions, Kelly filed a motion for leave to present new evidence. Apparently, Milagros filed a complaint for divorce on October 22, 2007. In that case, Milagros filed an affidavit claiming that Keith had been acting erratically and threatening suicide. Milagros further claimed that she feared for her own safety and for the safety of her child. The

trial court granted Kelly leave to present additional evidence and, as a result, the trial court held additional hearings on July 10, 2008 and August 19, 2008.

{¶20} At the July 10, 2008 hearing, Milagros downplayed her earlier affidavit. She testified that she now got along with Keith and that Keith caused her no fear. Keith's attorney asked Milagros the following question: "[T]o the extent that there may have been issues back in October, you've resolved within your own mind, that there are no issues of that nature today?" And Milagros responded, "[y]es." Transcript at 503.

{¶21} In light of the new evidence, Dr. Harding evaluated Kelly and Keith once again. At the August 19, 2008 hearing, Dr. Harding testified that Keith did not pose a risk to himself or to others. Dr. Harding further testified that, consistent with his earlier findings, he still recommended shared parenting with a fairly even split of parenting time. When asked about an alternating week parenting schedule, Dr. Harding testified, "If -- if such an arrangement were made, and if both parties agreed to respect each other[,] * * * I think it would work." Transcript at 520. (Dr. Harding also testified that an alternating week parenting schedule was not "the only way to -- to do that [accomplish shared parenting with a fairly even split of parenting time].")

{¶22} On September 8, 2008, the trial court issued a ruling on all pending motions (hereinafter the "Decision"). In the Decision, the trial court (1) denied Keith's motion to terminate shared parenting, (2) retained Kelly as the Child's residential parent, (3) modified the allocation of parenting time, and (4) found Kelly in contempt of court for denying Keith his extra visitation.

{¶23} In relevant part, the trial court modified the shared parenting plan as follows: "The parties shall have parenting time with the child on alternating weeks, exchanging the child each Sunday at 6:00 p.m. with the parent keeping the child for the coming week to pick the child up at the home of the other parent. * * * Each parent is granted two (2) consecutive weeks each summer for a vacation. * * * [And t]here is no midweek visitation, early pickup or preferred sitter arrangement except by mutual agreement of the parties." October 17, 2008 Journal Entry at 2.

{¶24} Kelly appeals, asserting the following four assignments of error: I. "THE COURT ERRORED [sic] BY FINDING THAT THE MARCH 23, 2004 JOURNAL ENTRY IN DIVORCE CONSTITUTED A SHARED PARENTING ORDER OR DECREE. THERE IS NO SUCH THING AS DE FACTO SHARED PARENTING. EITHER A SHARED-PARENTING DECREE EXISTS OR IT DOES NOT." II. "THE PROPER INQUIRY WAS NOT WHETHER TERMINATION OF THE SHARED PARENTING PLAN WAS PROPER, BUT WHETHER IMPLEMENTATION OF A SHARED PARENTING PLAN WAS PROPERLY REQUESTED AND, IF SO, WAS THE PLAN IN THE BEST INTERESTS OF THE MINOR CHILD." III. "THE COURT ERRORED [sic] IN SUSTAINING FATHER'S MARCH 14, 2007 MOTION FOR MODIFICATION OF PARENTAL RIGHTS AND RESPONSIBILITIES. THE COURT FURTHER ERRORED [sic] IN MODIFYING THE PARTIES' PARENTING TIME SCHEDULE." And, IV. "THE COURT ERRORED [sic] BY FAILING TO

DESIGNATE MOTHER RESIDENTIAL PARENT AND LEGAL CUSTODIAN OF THE MINOR CHILD."

II.

{¶25} We will address Kelly's first and second assignments of error together. In her first and second assignments of error, Kelly essentially contends that the Divorce Entry did not properly establish a shared parenting plan under R.C. 3109.04(D)(1)(a).

{¶26} A trial court has broad discretion in determining parental custody rights. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144. This is due, in part, to the fact that "custody issues are some of the most difficult and agonizing decisions a trial judge must make." *Davis v. Flickinger* (1997), 77 Ohio St.3d 415, 418. Therefore, we will not disturb a trial court's custody determination unless the court abused its discretion. *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74. An "abuse of discretion" connotes that the court's attitude is "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219; *Booth* at 144. "[A]lthough a trial court's discretion in a custody proceeding is broad, it is not absolute. The trial court must follow the procedure described in R.C. 3109.04." *Rice v. Lewis*, Scioto App. No. 08CA3238, 2009-Ohio-1823, at ¶41, citing *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74.

{¶27} Initially, we find that the plain language of the Divorce Entry does indeed establish a shared parenting plan. The Divorce Entry states that Kelly and Keith will "share the parenting" and that the Child "shall reside with the parents on a substantially equal basis." Furthermore, we note the following: (1)

Kelly and Keith agreed to the shared parenting arrangement; (2) the trial court found the shared parenting arrangement to be in the Child's best interest; and (3) in the proceedings below, Kelly treated the existing arrangement as a shared parenting plan.

{¶28} However, in this appeal, Kelly for the first time argues that the Divorce Entry did not establish shared parenting because R.C. 3109.04 "requires a written shared parenting plan, modified to the court's approval, and prepared and maintained separately from the general decree of divorce. [She] further asserts that that [sic] the shared parenting plan may not be oral and must be filed thirty days in advance of the final hearing." Brief of Appellant at 13. Because of these alleged flaws, Kelly argues that a shared parenting plan cannot exist. However, we find that Kelly's arguments are an improper collateral attack (also known as an indirect attack) on the Divorce Entry.

{¶29} "Black's Law Dictionary (8th Ed.2004) 278 defines 'collateral attack' as '[a]n attack on a judgment in a proceeding other than a direct appeal; esp., an attempt to undermine a judgment through a judicial proceeding in which the ground of the proceeding (or a defense in the proceeding) is that the judgment is ineffective. * * * Also termed *indirect attack.* Cf. Direct Attack (1).'" *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, at ¶17. See, also, *Black v. Aristech Chem. Co.*, Scioto App. No. 07CA3155, 2008-Ohio-7038, at ¶14 (discussing the various definitions of "collateral attack"). "The objective of a collateral attack is to modify a previous judgment because it is allegedly ineffective or flawed for some fundamental reason." *Ohio Pyro* at ¶19.

{¶30} Here, if Kelly wanted to attack the alleged procedural flaws in the Divorce Entry, the proper avenue would have been a direct appeal from that judgment. See App.R. 3. The time limit for a direct appeal from the Divorce Entry expired nearly five years ago. See App.R. 4. Nevertheless, Kelly has indirectly challenged the validity of the Divorce Entry for the first time in this appeal – an appeal from the trial court's decision to modify the terms of the shared parenting plan. "In our jurisprudence, there is a firm and longstanding principle that final judgments are meant to be just that-final. * * * Therefore, subject to only rare exceptions, direct attacks, i.e., appeals, by parties to the litigation, are the primary way that a civil judgment is challenged. For these reasons, it necessarily follows that collateral or indirect attacks are disfavored and that they will succeed only in certain very limited situations." *Ohio Pyro* at ¶22 (internal citation omitted). The Supreme Court of Ohio "has determined that the reasons for disfavoring collateral attacks do not apply in two principal circumstances-when the issuing court lacked jurisdiction or when the order was the product of fraud (or of conduct in the nature of fraud)." Id. at ¶23. We can find no evidence that (1) the trial court lacked jurisdiction over this case or (2) the Divorce Entry was fraudulently procured. Moreover, after reviewing the record in this case, we can find no other fundamental deficiencies in the Divorce Entry that would warrant a collateral attack on the decree's validity. Therefore, we find that the Divorce Entry's shared parenting plan is not subject to collateral attack.

{¶31} Accordingly, we overrule Kelly's first and second assignments of error.

III.

{¶32} In her third assignment of error, Kelly contends that the trial court did not have the "power to unilaterally amend the parenting time schedule contained in an order issued pursuant R.C. § 3109.04(A)(1) [sic]." Brief of Appellant at 15. Kelly bases her arguments on the belief that the Divorce Entry did not establish a shared parenting arrangement. However, we have already found that the Divorce Entry did indeed establish shared parenting. Thus, our inquiry is whether the trial court had the power to modify the shared parenting plan.

{¶33} To resolve this issue, we must first interpret R.C. 3109.04. Interpreting a statute is a question of law, and "[w]e review questions of law de novo." *State v. Elkins*, Hocking App. No. 07CA1, 2008-Ohio-674, at ¶12, quoting *Cuyahoga Cty. Bd. of Commrs. v. State,* 112 Ohio St.3d 59, 2006-Ohio-6499, at ¶23.

{¶34} Initially, we must examine the manner in which the trial court modified the shared parenting plan. In his Motion for Modification of Parental Rights, Keith asked the trial court to terminate the shared parenting plan and designate Keith as the Child's residential parent and legal custodian. And in its journal entry, the trial court stated that it was granting, in part, Keith's Motion for Modification of Parental Rights. However, the trial court refused to terminate the shared parenting plan or designate Keith as the Child's residential parent for school purposes. Therefore, the trial court did not actually grant any part of Keith's motion (although the trial court's modification of the shared parenting plan somewhat resembles the terms found in Keith's Proposed Findings of Fact and Conclusions of Law).

{¶35} Instead, on its own motion, the trial court essentially modified the allocation of parenting time between Kelly and Keith. "The allocation of parenting time is a 'term' of a shared parenting plan[.]" *Herdman v. Herdman*, Marion App. No. 9-08-32, 2009-Ohio-303, at ¶6, citing *Fisher v. Hasenjager,* 116 Ohio St.3d 53, 2007-Ohio-5589, at ¶29-33. See, also, *Picciano v. Lowers*, Washington App. No. 08CA38, 2009-Ohio-3780, at ¶23-24. And pursuant to 3109.04(E)(2)(b), a "court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. Modifications under this division may be made at any time." Therefore, because the allocation of parenting time is a term of a shared parenting plan, we find that the trial court had the power to modify the allocation of parenting time between Kelly and Keith.

{¶36} Having found that the trial court had the power to modify the allocation of parenting time, we must now determine whether the trial court properly exercised that power.[1] "[W]e review the merits of a trial court's R.C. 3109.04(E)(2)(b) modification of the terms of a shared parenting plan under an

[1] Although Kelly contends that the trial court erred in modifying the allocation of parenting time, she does not make any specific arguments about the best interest of the Child. Rather, Kelly bases her arguments on the mistaken belief that the Divorce Entry did not establish shared parenting. However, any modification to the terms of a shared parenting plan must be in the Child's best interest. "This requirement is for the benefit of the children, not the parties, and it can not be waived by the parties." *In re Docie* (Mar. 24, 1998), Athens App. No. 97CA19, unreported. Therefore, we choose to review whether the modification was in the Child's best interest even though Kelly did not specifically make such an argument on appeal.

abuse of discretion standard." *Picciano* at ¶25. See, also, *Herdman* at ¶7 (applying an abuse of discretion standard to R.C. 3109.04(E)(2)(b)).

{¶37} "The court shall not make any modification to [the terms of a shared parenting plan], unless the modification is in the best interest of the children." R.C. 3109.04(E)(2)(b). To determine the child's best interest, a trial court must "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 * * *, 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 or any member of the household of 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(F)(1)(a)-(i). See, also, *Picciano* at ¶27 (applying the best interest factors in R.C. 3109.04(F)(1) to a R.C. 3109.04(E)(2)(b) modification); *Herdman* at ¶6-10 (same); *Ralston v. Ralston*, Marion App. No. 9-08-30, 2009-Ohio-679, at ¶18 (same); *Sanders-Bechtol v. Bechtol*, Hancock App. No. 5-08-08, 2009-Ohio-186, at ¶23 (same); *Taylor v. Hamlin-Scanlon*, Summit App. No. 23873, 2008-Ohio-1912 at ¶22 (same).

{¶38} The trial court's Decision contains an extensive factual discussion and references to R.C. 3109.04(E)(1)(a), 3109.04(E)(2)(c), and 3109.04(E)(2)(d). However, the trial court's ruling does not provide a detailed analysis of the factors in R.C. 3109.04(F)(1). Despite this apparent defect, we find the present case analogous to a trial court's decision to approve or deny a shared parenting plan pursuant to R.C. 3109.04(D)(1)(a)(iii). "In determining whether a shared parenting plan is in the best interest of the children, a trial court must consider all relevant factors, including, but not limited to, the factors set forth in R.C. 3109.04(F)(1) * * *." *In re Minnick*, Madison App. No. CA2003-01-001, 2003-Ohio-4245, at ¶22. Nevertheless, when approving or denying a shared parenting plan, a trial court does not necessarily have to provide a detailed analysis of the relevant statutory factors. Instead, a "trial court may substantially comply with R.C. 3109.04(D)(1)(a)(iii), without providing a detailed analysis, if its reasons for approval or denial of the shared parenting plan are apparent from the record." *Erwin v. Erwin*, Union App. No. 14-04-37, 2005-Ohio-1603, at ¶12. See, also, *Swain v. Swain*, Pike App. No. 04CA726, 2005-Ohio-65, at ¶18; *Clouse v. Clouse*, Seneca App. No. 13-08-40, 2009-Ohio-1301, at ¶45; *Hardesty v.*

Hardesty, Geauga App. Nos. 2004-G-2582, 2005-G-2614, 2006-Ohio-5648, at ¶56. Therefore, so long as it is apparent from the record that a shared parenting plan is in the child's best interest, a trial court may approve a shared parenting plan without necessarily providing a detailed analysis of the factors in R.C. 3109.04(F)(1). And if a trial court may approve a shared parenting plan without providing a detailed analysis of the child's best interest, it stands to reason that a trial court may modify the terms of a shared parenting plan in the same manner. Therefore, we hold that a trial court substantially complies with R.C. 3109.04(E)(2)(b) if its reasons for modifying the terms of a shared parenting plan are apparent from the record; i.e., if it is apparent from the record that the modification is in the child's best interest.

{¶39} Here, we find that the trial court's reasons for modifying the terms of the shared parenting plan are apparent from the record. First, the trial court noted that the Child was "diagnosed with an adjustment disorder caused by a failure to successfully acclimate to the parent's divorce." Decision at 5. Because of this diagnosis, Children's Hospital in Columbus recommended a predictable, regular schedule for the Child. The trial court agreed and found "that there is a need for added stability and predictability for the child in terms of scheduling. * * * [A] schedule easy to understand and regular in all respects would be in the child's best interest." Id. at 8-9. Therefore, it is apparent from the record that the trial court considered the Child's mental health pursuant to R.C. 3109.04(F)(1)(e).

{¶40} Moreover, the trial court discussed Kelly's history of denying Keith his right to parenting time under the shared parenting plan. "To be sure, there is

ample evidence that [Kelly] resists attempts to communicate with [Keith] to set up visitation and then refuses to acceded [sic] to his requests because she has not been previously informed." Decision at 5. And on two separate occasions, the trial court found Kelly in contempt for denying Keith his visitation rights. Therefore, it is also apparent from the record that the trial court considered R.C. 3109.04(F)(1)(f)&(i).

{¶41} Finally, when determining the best interest of the child, a trial court must consider all relevant factors – including any relevant factors that may not be delineated in R.C. 3109.04(F)(1). And in considering these additional factors, the trial court found that Kelly's lack of cooperation and communication "endangered [Keith's] relationship with the child and had a potentially damaging effect on the child herself." Decision at 6. Specifically, the trial court took note that Kelly never informed Keith about the Child's adjustment disorder. As a result, the trial court stated that Kelly "apparently does not see that changes to benefit the child which require cooperation and coordination between the parents[] are more likely to occur if *both* parents are aware of what is at stake from failure to take the appropriate steps." Id. (Emphasis sic.)

{¶42} Based on the foregoing discussion, we find that the trial court adequately considered the best interest of the Child. Furthermore, we find that the trial court modified the terms of the shared parenting plan for the following reasons: (1) the trial court believed that a more predictable schedule would benefit the Child's mental health; (2) because Kelly had already denied Keith his rightful parenting time and may have continued to do so; and (3) because Kelly

had attempted to endanger Keith's relationship with the Child. All of these reasons are readily apparent from the record. Therefore, we find that the trial court substantially complied with R.C. 3109.04(E)(2)(b).

{¶43} We further find that the trial court did not abuse its discretion by modifying the terms of the shared parenting plan. The trial court could have reasonably concluded that the changes to the shared parenting plan were in the Child's best interest. First, it is reasonable to assume that the predictability of the alternating-week schedule may help alleviate the Child's adjustment disorder. And second, the trial court could have reasonably determined that Keith needed additional parenting time because Kelly had attempted to endanger Keith's relationship with the Child. We can find nothing unreasonable, arbitrary, or unconscionable about the trial court's decision to modify the allocation of parenting time.

{¶44} Accordingly, for the foregoing reasons, we overrule Kelly's third assignment of error.

IV.

{¶45} In her fourth assignment of error, Kelly contends that the trial court erred by not designating her as the Child's legal custodian. Again, Kelly bases this argument on the belief that the Divorce Entry did not establish shared parenting. Essentially, Kelly argues that, because the trial court did not find a change in circumstance, she should have retained her designation as the Child's primary residential parent and legal custodian.

{¶46} We have already found that the Divorce Entry did indeed establish shared parenting. Therefore, Kelly's arguments are all irrelevant because she was never the Child's "legal custodian" to begin with. Furthermore, in resolving Kelly's third assignment of error, we found that the trial court did not abuse its discretion by allocating more parenting time to Keith. Here, we could not simultaneously find that the trial court acted unreasonably, arbitrarily, or unconscionably by failing to designate Kelly as the Child's primary residential parent and legal custodian.

{¶47} Accordingly, we overrule Kelly's fourth assignment of error. Having overruled all of Kelly's assignments of error, we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

Harsha, J., concurring:

{¶48} In addition to the reasons stated in the principal opinion, I reject Ms. Bishop's arguments that the shared parenting provisions of the decree are flawed because she invited any errors that might exist, i.e. she joined in the submission of the content and structure of the very plan the court adopted.

{¶49} I concur in judgment only on the opinion's resolution of Assignment of Error IV.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED, and appellant pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Harsha, J.: Concurs with Concurring Opinion.
Abele, J.: Concurs in Judgment and Opinion.

For the Court

BY: _____
Roger L. Kline, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.