[Cite as *Wilson v. Farahay*, 2015-Ohio-2509.]

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

AMANDA WILSON,	:	
Plaintiff-Appellant,	:	Case No. 14CA994
vs.	:	
MICHAEL FARAHAY,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellee.	:	

APPEARANCES:

COUNSEL FOR APPELLANT: Jon C. Hapner, 127 North High Street, Hillsboro, Ohio 45133

COUNSEL FOR APPELLEE: David E. Grimes, 108 East Mulberry Street, West Union, Ohio 45693

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 6-15-15
ABELE, J.

{¶ 1} This is an appeal from an Adams County Common Pleas Court, Juvenile Division, judgment that modified a prior decree allocating parental rights and responsibilities between Amanda Wilson, plaintiff below and appellant herein, and Michael Farahay, defendant below and appellee herein.

{¶ 2} Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE DECISION OF THE COURT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED IN CONSIDERING THE DEFICIENT REPORT OF THE GAL."

THIRD ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED IN NOT PERMITTING THE PLAINTIFF TO SUGGEST QUESTIONS FOR THE IN CAMERA INTERVIEW."

{¶ 3} Appellant and appellee's relationship resulted in the birth of one child, M.F., born May 20, 2000. After the parties' relationship ended in 2003, appellant filed a complaint to establish child support. Since that time, appellant remained the child's residential parent and appellee visited the child. Between 2008 and 2011, appellee requested various modifications to the parties' parenting arrangement, but the court retained appellant as the child's residential parent.

{¶ 4} On April 11, 2013, appellee filed a motion to modify the prior order that designated appellant the child's residential parent. Appellee asserted that a change in circumstances had occurred because appellant is not able to provide a stable environment for the child, that appellant's behavior does not provide a good example for the child, and that the child's school progress has rapidly declined.

{¶ 5} On November 4, 2013, the guardian ad litem filed his report and, at that juncture, recommended that appellant remain the residential parent as long as she enrolls the child in a tutoring program. On November 5 and December 3, 2013, the magistrate held a hearing to consider appellee's motion. Appellee testified that he would like to be the child's residential parent because he has concerns about her safety while living with appellant and because she is not performing well in school.

{¶ 6} Matthew Iler testified that he and appellant were married, but divorced in January

2013. He stated that appellant and the child currently live with David Hughes. Iler explained that appellant returned to his house twice since the parties divorced due to "domestic problems in the household" and that he has observed bruises on appellant's back and arms.

{¶ 7} Chase Gleason, who dates appellant's ex-husband, Matt Iler, testified that she has also observed bruises on appellant's arm. Gleason also explained that appellant sent her text messages that stated:

> "He was gritting his teeth and talking like the devil. The other day both kids unfortunately witnessed him holding me down on the ground and literally ripping my hair out of my scalp, because I disrespectfully talked to him in an unacceptable manner. [Appellant's son] said * * * that's my mom and you're not supposed to be mean to her. * * * I've never been so humiliated in my life to know my kids who see me as strong and independent to be weak and helpless."
> * * * *
> [M.F.] came in the bedroom and whispered[,] I fucking hate him. I didn't even scold her for saying a bad word. She never talks like that, and she needed to release it."

{¶ 8} Tyler Cantrell, the child's guardian ad litem, testified that he initially recommended that the court retain appellant as the child's residential parent, but that appellant's "body language" and "overall reactions" displayed during the hearing caused him to change his opinion. He stated that although he initially could not determine whether physical altercations had occurred in appellant's home, appellant's behavior during the hearing caused him to conclude that they had. Cantrell stated that he is concerned about violence in the home and its impact upon the child's well-being. He thus believed that the trial court should designate appellee the child's residential parent. The guardian ad litem further explained that the child is ordinarily "very open" with him, but when he asked about domestic violence she acted "noticeably different."

{¶ 9} Appellant testified that since September 2012, she and the child have lived with

David Hughes. She denied, however, that any domestic violence occurred in her home and further claimed that she did not send the text messages to Gleason and that they were "falsified."

{¶ 10} David Hughes testified and also denied that any domestic violence occurred in the home.

{¶ 11} On March 18, 2014, the magistrate recommended that the trial court designate appellee the child's residential parent. The magistrate determined that a change in circumstances occurred:

> "The child is older, the mother has had changes in her living situation regarding her relationship, and moving twice to a another residence, there are concerns about domestic violence occurring in her household and there is a continuing problems [sic] in the judgment of the Magistrate regarding [appellant]'s combative attitude, dishonesty and other issues regarding the care, control and welfare of the child."

The magistrate found that appellant's testimony regarding her relationship with Hughes is "dishonest" and that appellant "has significant relationship problems with her live in friend and that domestic violence has occurred in the home thereby making it, in addition to everything else, an unsafe environment for the child." The trial court adopted magistrate's decision that same day.

{¶ 12} On March 21, 2014, appellant filed eleven objections to the magistrate's decision.[1]

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[1]Appellant's objections stated:

> "1. The decision is against the manifest weight of the evidence.
>
> 2. The decision fails to establish facts on which a decision may be based.
>
> 3. The 'concerns' about domestic violence lack a finding of any domestic violence in fact, and no actual facts establishing domestic violence were made.
>
> 4. The allegations alleging domestic violence are based on hearsay testimony.
>
> 5. The Magistrate's finding of domestic violence in [appellant]'s home ignores the fact that the significant other, a public official, also denied any domestic violence.
>
> 6. There was never any finding of any specific instance wherein the child was ever in any

Appellant additionally noted that the November 5, 2013 transcript had been filed, but that the December 3, 2013 transcript had not yet been prepared. On May 9, 2014, appellant filed seven supplemental objections.[2]

{¶ 13} On June 26, 2014, the trial court overruled appellant's eleven objections filed on March 18, 2014. The trial court rejected appellant's claims that the evidence fails to show that domestic violence occurred in her home. The court found "ample evidence of domestic violence,"

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danger.

7. The testimony by the GAL is contrary to his written report, and also fails to establish any domestic violence.

8. Any finding by the GAL or the Court that the child is lacking in school work ignores the direct testimony of the teachers.

9. By statute, R.C. 3109.04(E)(1)(a)[,] there is a presumption to retain the party having custody unless a modification is in the best interest of the child and there has been a change of circumstances. In this case a change of circumstances has not been established.

10. A reading of the Magistrate's Decision seems to indicate that he does not believe the mother, and intends to punish her for her lack of credibility. This is not a change of circumstances.

11. There is no evidence that a change of circumstances is in the best interest of the child, and/or the mother's behavior has adversely affected the child."

[2] Appellant's supplemental objections state:

"1. The actions of the GAL in changing his position is in conflict with the child's position, thereby depriving her of a voice in the matter and denying her representation.

* * * *

3. The admission of the text message without verification was hearsay, and error.

4. The finding that a change of circumstances is in the best interest of the child is lacking in evidence and is insufficient to be determined.

5. Any finding of domestic violence in the child's home lacks sufficient evidence in that (1) none was established; (2) no showing was made or established that the child ever saw any; (3) no showing that the child was ever harmed or in danger of any domestic violence.

6. The Magistrate's finding on the credibility of the mother ignores the direct testimony of the significant other, who is a public official.

7. The Magistrate erred in refusing to address the questions proposed to be asked of the child during the in camera interview."

and that this violence constituted a substantial change in circumstances. The court noted that both appellant and her current boyfriend denied any domestic violence and that appellant claimed that Chase Gleason's text messages were "falsified evidence." The court found, however, that appellant is the "less credible witness" based upon her "combative attitude" displayed at trial. The court thus determined that domestic violence did occur in appellant's home, and that the child witnessed the domestic violence. According, the court overruled appellant's eleven objections and "affirmed" the magistrate's decision.[3] This appeal followed.

I

{¶ 14} In her first assignment of error, appellant argues that the trial court's decision to modify the prior order regarding parental rights and responsibilities is against the manifest weight of the evidence. In particular, she asserts that the record does not show that a change in

[3] It is well-established that a trial court cannot merely adopt a magistrate's decision, but must enter its own separate and independent judgment that sets forth "the outcome of the dispute and the remedy provided." Harkai v. Scherba Indus., Inc., 136 Ohio App.3d 211, 218, 736 N.E.2d 101 (9th Dist. 2000). In the case at bar, the trial court immediately entered a judgment that adopted the magistrate's March 18, 2014 decision and that set forth the outcome of the dispute and the remedy provided.

Furthermore, we observe that when appellant filed her March 21, 2014 objections, execution of the court's March 18, 2014 judgment was automatically stayed until the court ruled on the objections and vacated, modified, or adhered to the judgment it previously entered. Juv.R. 40(D)(4)(I). The trial court's June 26, 2014 decision ruled on appellant's objections. Additionally, the court stated that it "affirmed" the magistrate's decision, thus implicitly indicating its adherence to its March 18, 2014 judgment. Thus, even though the court's June 26, 2014 decision that overruled appellant's objections and stated that it "affirmed" the magistrate's decision is not a final, appealable order, the court already had entered a final judgment subject to appeal.

We also note that the trial court did not address appellant's May 9, 2014 supplemental objections. As we explain, infra, however, appellant's supplemental objections did not comply with Juv.R. 40(D)(3)(b). Thus, because appellant's supplemental objections did not comply with Juv.R. 40(D)(3)(b), the trial court was not obligated to rule upon them. Consequently, the absence of a ruling on appellant's supplemental objections does not affect the finality of the trial court's judgment. We also note that at least one court has indicated that a court's failure to rule on timely filed supplemental objections does not affect the appealability of an otherwise final judgment. Miller v. Miller, 9th Dist. Medina No. 10CA0034-M, 2011-Ohio-4299, 18, citing App.R. 4(B)(2).

circumstances occurred so as to warrant a modification.

A

STANDARD OF REVIEW

{¶ 15} Appellate courts generally review trial court decisions regarding the modification of a prior allocation of parental rights and responsibilities with the utmost deference. Davis v. Flickinger, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997); Miller v. Miller, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). Consequently, absent an abuse of discretion, we will not disturb a trial court's decision to modify parental rights and responsibilities. Davis, 77 Ohio St.3d at 418. "'Abuse of discretion' has been defined as an attitude that is unreasonable, arbitrary or unconscionable." AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp., 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990), citing Huffman v. Hair Surgeon, Inc., 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985). "It is to be expected that most instances of abuse of discretion will result in decisions that are simply unreasonable, rather than decisions that are unconscionable or arbitrary." Id. "A decision is unreasonable if there is no sound reasoning process that would support that decision. It is not enough that the reviewing court, were it deciding the issue de novo, would not have found that reasoning process to be persuasive, perhaps in view of countervailing reasoning processes that would support a contrary result." Id.

{¶ 16} In Davis, the court more specifically defined the standard of review that applies in custody proceedings as follows:

> "'Where 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. (Trickey v. Trickey [1952], 158 Ohio St. 9, 47 O.O. 481, 106 N.E.2d 772, approved and followed.)' [Bechtol v. Bechtol (1990), 49 Ohio St.3d 21, 550 N.E.2d 178, syllabus].

> The reason for this standard of review is that the trial judge has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page. As we stated in Seasons Coal Co. v. Cleveland (1984), 10 Ohio St.3d 77, 80–81, 10 OBR 408, 410–412, 461 N.E.2d 1273, 1276–1277:
>
> 'The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that the trial judge is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony. * * *
>
> * * * *
>
> * * * A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not. The determination of credibility of testimony and evidence must not be encroached upon by a reviewing tribunal, especially to the extent where the appellate court relies on unchallenged, excluded evidence in order to justify its reversal.'"

Id. at 418–419.

{¶ 17} Additionally, 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." Id. at 419. Furthermore, "custody issues are some of the most difficult and agonizing decisions a trial judge must make. Therefore, a trial judge must have wide latitude in considering all the evidence." Id. at 418. As the Ohio Supreme Court long-ago explained:

> "In proceedings involving the custody and welfare of children the power of the trial court to exercise discretion is peculiarly important. The knowledge obtained

through contact with and observation of the parties and through independent investigation can not be conveyed to a reviewing court by printed record."

Trickey, 158 Ohio St. at 13. Thus, this standard of review does not permit us to reverse a trial court's decision if we simply disagree with it. We may, however, reverse a trial court's custody decision if the court made an error of law, if its decision is unreasonable, arbitrary, or unconscionable, or if substantial competent and credible evidence fails to support it. Davis, 77 Ohio St.3d at 418-419, 421 (explaining "abuse of discretion standard" and stating that courts will not reverse custody decisions as against the manifest weight of the evidence if substantial competent and credible evidence supports it, courts must defer to fact-finder, courts may reverse upon error of law, and trial court has broad discretion in custody matters).

B

LEGAL STANDARD GOVERNING CUSTODY MODIFICATION

{¶ 18} R.C. 3109.04(E)(1)(a)[4] governs the modification of a prior custody decree and states:

> The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that the modification is necessary to serve the best interest of the child. In applying these standards, the court shall retain the residential parent designated by the prior decree or the prior shared parenting decree, unless a modification is in the best interest of the child and one of the following applies:
>
> (I) The residential parent agrees to a change in the residential parent or both

[4] The parties have not raised any issue as to whether R.C. 3109.04(E)(1)(a) applies in the case at bar and appear to agree that there was a prior court order allocating parental rights and responsibilities.

> parents under a shared parenting decree agree to a change in the designation of residential parent.
>
> (ii) The child, with the consent of the residential parent or of both parents under a shared parenting decree, has been integrated into the family of the person seeking to become the residential parent.
>
> (iii) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

{¶ 19} The statute thus creates a strong presumption in favor of retaining the residential parent and precludes a trial court from modifying a prior parental rights and responsibilities decree unless the court finds all of the following: (1) a change occurred in the circumstances of the child, the child's residential parent, or a parent subject to a shared-parenting decree, (2) the change in circumstances is based upon facts that arose since the court entered the prior decree or that were unknown to the court at the time of the prior decree; (3) the child's best interest necessitates modifying the prior custody decree; and (4) one of the circumstances specified in R.C. 3109.04(E)(1)(a)(I)-(iii) applies. In re Brayden James, 113 Ohio St.3d 420, 2007-Ohio–2335, 866 N.E.2d 467, ¶14; accord Sites v. Sites, 4th Dist. Lawrence No. 09CA19, 2010-Ohio-2748, ¶17. Thus, the threshold question in a parental rights and responsibilities modification case is whether a change in circumstances has occurred.

{¶ 20} In the case sub judice, appellant limits her argument to the trial court's change-in-circumstances finding (and does not specifically challenge the court's best interest finding or its R.C. 3109.04(E)(1)(a)(iii) finding). We, therefore, limit our review to the trial court's change-in-circumstances finding.

C

CHANGE IN CIRCUMSTANCES

{¶ 21} The change in circumstances requirement is intended "'to spare children from a constant tug of war,'" and "'to provide some stability to the custodial status of the children,'" even if the nonresidential parent shows that "'he or she can provide a better environment.'" Davis, 77 Ohio St.3d at 418, quoting Wyss v. Wyss, 3 Ohio App.3d 412, 416, 445 N.E.2d 1153 (1982). The change in circumstances requirement also is intended "'to prevent a constant relitigation of the issues raised and considered when the trial court issued its prior custody order.'" Price v. Price, 4th Dist. Highland No. 99CA12, 2000 WL 426188, *2 (Apr. 13, 2000).

{¶ 22} Because a child needs stability, parents should not "view final orders allocating parental rights and responsibilities as subject to easy revision as the child's life develops." Averill v. Bradley, 2nd Dist. Montgomery No. 18939, 2001 WL 1597881, *5 (Dec. 14, 2001). Easy revision of final orders allocating parental rights and responsibilities conflicts "with the principle of finality that attaches to all final orders, even those that may be modified." Id. Furthermore, "[i]t perpetuates instability into the child's life" and "promotes antagonisms between the child's parents." Id. It also "treats the court as a kind of supernumerary third parent that is available to resolve disputes which the parties should resolve themselves." Id. Thus, a party seeking to reallocate parental rights and responsibilities carries a significant burden to show that a change in circumstance has occurred. See Fisher v. Hasenjager, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, ¶33 (explaining that change in circumstance standard is "high"). Appellate courts must not, however, "make the threshold for change so high as to prevent a trial judge from modifying custody if the court finds it necessary for the best interest of the child." Davis, 77 Ohio St.3d at 420–421. Accordingly, the change need not be "substantial," but it must be more than "slight or inconsequential." Id. at 417–418; Bragg v. Hatfield, 152 Ohio App.3d

174, 2003-Ohio-1441, 787 N.E.2d 44, ¶23 (4th Dist.) ("The change must be significant—something more than a slight or inconsequential change."). A change in circumstances must be one of consequence—one that is substantive and significant—and it must relate to the child's welfare. Davis, 77 Ohio St.3d at 418; In re D.M., 8th Dist. Cuyahoga No. 87723, 2006–Ohio–6191, ¶35, quoting Rohrbaugh v. Rohrbaugh, 136 Ohio App.3d 599, 604–05, 737 N.E.2d 551 (7th Dist., 2000) (explaining that a change in circumstance generally means an event, occurrence, or situation that materially affects a child's welfare); Beaver v. Beaver, 143 Ohio App.3d 1, 10, 757 N.E.2d 41 (4th Dist., 2001), quoting Holtzclaw v. Holtzclaw, Clermont App. No. CA92–04–036 (Dec. 14, 1992) ("'Implicit in the definition of changed circumstances is that the change must relate to the welfare of the child.'"). Additionally, the change in circumstances must be based upon facts that have arisen since the prior allocation or that were unknown at the time. R.C. 3109.04(E)(1)(a); Brammer v. Brammer, 194 Ohio App.3d 240, 2011–Ohio–2610, 955 N.E.2d 453, ¶17 (3rd Dist.).

{¶ 23} Initially, we observe that appellant does not dispute that domestic violence occurring in a residential parent's household may constitute a change in circumstances. Theurer v. Foster♥Theurer, 12th Dist. Warren Nos. 2008-06-074 and 2008-06-083, 2009-Ohio-1457, ¶3 and 46 (upholding trial court's finding that marital difficulties, including domestic violence, constituted a change in circumstances); In re Gentile, 5th Dist. Stark No. 2006CA00123, 2006-Ohio-5684, ¶30 (concluding that trial court did not abuse its discretion by concluding domestic violence constituted change in circumstances). Instead, appellant challenges the trial court's finding that domestic violence occurred in her home and that this domestic violence constituted a change in circumstances. She contends that the record does not contain sufficient credible evidence to

establish that domestic violence occurred in her home. She further argues that even if the evidence shows that one domestic violence incident occurred, this one incident is insufficient to establish a change in circumstances.

{¶ 24} After our review of the record, we do not agree with appellant that the evidence adduced during the trial court proceeding fails to support the court's finding that domestic violence occurred in her home. The trial court based its finding upon testimony from appellant's ex-husband and her ex-husband's girlfriend, both of whom testified that they observed appellant's bruises. Appellant's ex-husband stated that since his January 2013 divorce from appellant, appellant had returned to his home twice due to "domestic problems." The ex-husband's girlfriend also stated that appellant sent her a text message describing a domestic violence incident that the child had witnessed.[5]

{¶ 25} The trial court additionally indicated that the child's in camera interview led it to believe domestic violence had occurred in appellant's home. The court also referred to appellant's demeanor during the hearing to support its finding. The court noted that appellant and her boyfriend both denied that domestic violence occurred in the home, but the court specifically discredited appellant's testimony. Moreover, appellant's demeanor during the hearing caused the guardian ad litem to change his recommendation. The guardian ad litem initially recommended that the court maintain appellant as the residential parent based upon his inability to ascertain whether domestic violence actually occurred, but during the hearing he testified that appellant's

[5] Although appellant asserts the message constitutes hearsay, she has not raised an assignment of error challenging the court's consideration of this evidence or any argument explaining whether she believes the statement is inadmissible hearsay evidence. We therefore decline to address this particular issue.

courtroom demeanor led him to believe that domestic violence had indeed occurred. The guardian ad litem thus recommended that the court designate appellee the child's residential parent, even knowing that the child wished to remain with appellant. Obviously, he must have observed something significant about appellant's behavior that caused him to reverse his position.

{¶ 26} Furthermore, although appellant claims that the record shows, at most, one isolated domestic violence incident, her ex-husband testified that since their January 2013 divorce, appellant returned to his house twice due to "domestic problems." Additionally, the ex-husband's and his girlfriend's testimony indicate that they observed appellant's bruises on more than one occasion. The trial court thus could have rationally concluded that more than one domestic violence incident occurred in appellant's home. Moreover, we find nothing in the record to indicate that the trial court failed to engage in a sound reasoning process when it determined that a change in circumstances had occurred. Consequently, the court did not abuse its discretion by modifying the prior custody order.[6]

{¶ 27} Appellant nevertheless asserts that a change in circumstances requires a showing that a child is in danger and that the evidence in the case sub judice fails to show that the alleged domestic violence placed her child in danger. To support her assertion, appellant cites Gardini v. Moyer, 61 Ohio St.3d 479, 575 N.E.2d 423 (1991). Gardini held:

> "Pursuant to former R.C. 3109.04(B)(1)(c), a party seeking a modification of custody must show that some action by the custodial parent presently endangers the child or, with a reasonable degree of certainty, will manifest itself and endanger the child in the future if the child is not removed from his or her present environment immediately."

[6] We again note that appellant has not challenged the trial court's best interest or R.C. 3109.04(E)(1)(a)(iii) findings on appeal.

The version of R.C. 3109.04(B) that Gardini considered stated:

> "'(1) * * * [T]he court shall not modify a prior custody decree unless it finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, [or] his custodian * * * and that the modification is necessary to serve the best interest of the child. In applying these standards, the court shall retain the custodian * * * designated by the prior decree, unless one of the following applies:
> * * *
> (c) The child's present environment endangers significantly his physical health or his mental, moral, or emotional development and the harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.'"

Id. at 483-84, quoting former R.C. 3109.04(B)(1)(c). The current statute (R.C. 3109.04(E)) does not contain the same language as former R.C. 3109.04(B)(1)(c). Therefore, we do not agree with appellant that a change in circumstances always requires a finding that the child's present environment endangers the child's physical health or mental, moral, or emotional development. We further observe that even though R.C. 3109.04(E)(1)(a) does not require a finding that the child's present environment endangers the child, we believe that the trial court in the case at bar could have rationally determined that a child who witnesses a parent being physically abused suffers emotional trauma.

{¶ 28} Additionally, we point out that the trial court's decision rested largely upon its belief that appellant's ex-husband and his girlfriend were more credible than appellant. Because the trial court was in the best position to observe the witnesses, including their voice inflection and demeanor displayed during the trial, we must defer to its credibility assessment and cannot simply substitute our judgment for the trial court's. Appellant's courtroom demeanor obviously spoke

words, as the guardian ad litem's changed recommendation indicates. Her courtroom demeanor is something we simply cannot gauge from the written record. For this reason, we will not second-guess the court's determination that appellant's denials of domestic violence were not credible and that domestic violence did indeed occur in her home.

{¶ 29} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's first assignment of error.

II

{¶ 30} For ease of analysis, we jointly consider appellant's second and third assignments of error. In her second assignment of error, appellant asserts that the court erred by considering the guardian ad litem's report because the report is deficient. Appellant argues that the report is deficient because the guardian ad litem did not timely file the report, did not discuss the child's school activity with school personnel, and did not discuss "the situation" with appellee or other adults. Within her second assignment of error, appellant further contends that the court erred by failing to appoint counsel for the child. Appellant argues that the court should have appointed counsel for the child once the guardian ad litem made a recommendation contrary to the child's wishes. In her third assignment of error, appellant argues that the court erred by declining to use her suggested questions during the court's in camera interview with the child.

{¶ 31} Initially, we point out that appellant did not raise these specific arguments in compliance with Juv.R. 40(D)(3). Juv.R. 40(D)(3)(I) requires a party to file any objections to a magistrate's within fourteen days of the decision. The rule permits a party to file supplemental objections, but only with leave of court. Juv.R. 40(D)(3)(iii); Beasley v. Beasley, 4th Dist. Adams No. 06CA821, 2006-Ohio-5000, ¶¶13-14 (construing substantially similar Civ.R. 53 and

explaining that a court may grant leave to supplement objections upon request). Additionally, objections must be "specific" and a party must "state with particularity all grounds for objections." Juv.R. 40(D)(3)(b)(ii). The failure to timely file specific objections and to state with particularity all grounds for objection results in a waiver of those particular issues on appeal. Juv.R. 40(D)(3)(iv); State ex rel. Muhammad v. State, 133 Ohio St.3d 508, 2012–Ohio–4767, 979 N.E.2d 296, ¶3 (noting that party waives argument on appeal if party failed to specifically raise issue in objections to magistrate's decision); Walters v. Walters, 9th Dist. Medina No. 12CA0017–M, 2013–Ohio–636, ¶15 (explaining that a party's failure to raise a particular issue when objecting to a magistrate's decision results in a waiver of that issue on appeal); McClain v. McClain, 4th Dist. Athens No. 10CA53, 2011–Ohio–6101, ¶7. See State v. Awan, 22 Ohio St.3d 120, 122, 498 N.E.2d 277 (1986) (explaining that appellate courts "will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court.").

{¶ 32} In the case at bar, appellant did not timely file an objection that challenged the magistrate's failure to appoint counsel for the child, or the magistrate's decision to decline to consider appellant's proposed questions for the in camera interview with the child. Although she did raises these issues in her May 9, 2014 supplemental objections, she did not seek leave of court to file those supplemental objections. Thus, her supplemental objections did not comply with Juv.R. 40(D)(3)(b). Additionally, appellant did not, at any time, raise a specific objection to the guardian ad litem's allegedly deficient report. Consequently, absent plain error, appellant cannot raise these issues on appeal.

{¶ 33} Appellate courts recognize plain error "'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.'" State v. Landrum, 53 Ohio St.3d 107, 111, 559 N.E.2d 710 (1990), quoting State v. Long, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph three of the syllabus. For the plain error rule to apply, the trial court must have deviated from a legal rule, the error must have been an obvious defect in the proceeding, and the error must have affected a substantial right. E.g., State v. Barnes, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002).

{¶ 34} In the case sub judice, appellant has not suggested that we review her second and third assignments of error using a plain error analysis. We decline to do so sua sponte. Cooke v. Bowen, 4th Dist. Scioto No. 12CA3497, 2013-Ohio-4771, ¶37 (4th Dist. Scioto); accord State v. Arnold, 9th Dist. Summit No. 24400, 2009–Ohio–2108, ¶8 ("[T]his Court will not construct a claim of plain error on a defendant's behalf if the defendant fails to argue plain error on appeal.").

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

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant 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 Adams County Common Pleas Court, Juvenile Division, to carry this judgment into execution.

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

Hoover, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, 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.