

[Cite as *Pitts v. Jarrells*, 2019-Ohio-4119.]

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

STEPHEN T. PITTS,

:

Plaintiff-Appellee/  
Cross-Appellant,

: Case No. 19CA3864

vs.

:

CHELSEA JARRELLS,

: DECISION AND JUDGMENT ENTRY

Defendant-Appellant/  
Cross-Appellee.

:

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APPEARANCES:

Aaron M. McHenry, Chillicothe, Ohio, for appellant.<sup>1</sup>

George L. Davis, IV, Portsmouth, Ohio, for appellee.

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CIVIL APPEAL FROM COMMON PLEAS COURT

DATE JOURNALIZED: 9-26-19

ABELE, J.

{¶ 1} This is an appeal from a Scioto County Common Pleas Court, Domestic Relations Division, judgment that awarded custody of S.L.P., born September 14, 2014, to Stephen Pitts, plaintiff below and appellee/cross-appellant.

{¶ 2} Chelsea Jarrells, defendant below and appellant/cross-appellee, assigns one error for review:

ASSIGNMENT OF ERROR:

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<sup>1</sup> Different counsel represented appellant during the trial court proceedings.

“THE TRIAL COURT ERRED IN AWARDING CUSTODY OF THE PARTIES’ MINOR CHILD TO APPELLEE/CROSS-APPELLANT.”

{¶ 3} Appellee also assigns two errors for review:

APPELLEE’S FIRST ASSIGNMENT OF ERROR:

“THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED BY DENYING PLAINTIFF’S 1/10/2018 MOTION TO DISMISS OBJECTION TO MAGISTRATE’S DECISION.”

APPELLEE’S SECOND ASSIGNMENT OF ERROR:

“THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED BY DENYING PLAINTIFF’S 1/19/2018 MOTION TO STRIKE SUPPLEMENTAL DEFENDANT’S OBJECTION TO MAGISTRATE’S FINDINGS OF FACT AND CONCLUSIONS OF LAW.”

{¶ 4} This case involves a custody dispute between the child’s mother, Chelsea Jarrells (appellant herein), and the child’s father, Stephen Pitts (appellee herein). On September 14, 2014, S.L.P. was born to the parties while they cohabited. When the parties separated in 2015, appellee moved with S.L.P. to his father and step-mother’s home, where his stepmother, Cheryl Pitts, served as the child’s primary caretaker while appellee worked. After appellee learned that appellant planned to relocate to Florida along with S.L.P., on September 15, 2016 appellee filed (1) a complaint to establish paternity, parenting time, parental rights and responsibilities, and child support, (2) a motion for temporary orders and request for an expedited ruling (stating that appellant, who, appellee alleged, had been only sporadically involved in the child’s life, planned to move to Florida and possibly take the child), and (3) an emergency motion for a restraining order. On September 15, 2016, the magistrate issued an ex parte emergency order and awarded temporary custody to appellee.

{¶ 5} On October 28, 2016, appellant filed a (1) notice of relocation to Florida, (2) motion to

increase parenting time, (3) motion for the appointment of a guardian ad litem, and (4) motion to return S.L.P. to appellant. On November 16, 2016, the trial court ordered that temporary custody remain with appellee until further order, but appellant be entitled to parenting time during the pendency of the action conditioned upon S.L.P. staying in Ohio. The court also appointed a guardian ad litem and granted appellee's request for a protective order.

{¶ 6} On March 24, 2017, the parties appeared in court and acknowledged that they had entered into a temporary agreement for parenting time on a rotating three-week basis. On June 21, 2017, the trial court removed the guardian ad litem, ordered the March 24, 2017 report stricken from the record, and appointed a new guardian ad litem.

{¶ 7} On October 10, 2017, the trial court heard evidence. Cheryl Pitts, appellee's step-mother, testified that she would text appellant and tell her that S.L.P. was "asking for mommy," and appellant would tell her that she was busy and would come "once in a while." "I would ask her to come, I had to take him to the doctor, I had to get his shots and stuff. I'd ask her to come, \* \* \* she was busy so [appellee] had to take off work and go with me." From 2015 until the case was filed, Pitts testified that appellant visited the child 8 to 10 times. Pitts also testified that, while S.L.P. was with the maternal grandparents for a vacation in Tennessee, appellee and Pitts learned that appellant planned to move to Florida. Pitts then called appellant who acknowledged that she intended to move to Florida and that she did not intend to return S.L.P. to appellee. Pitts also testified that the first time S.L.P. had to go to Florida for visitation, he was "very distraught." Pitts acknowledged that S.L.P. "loves his momma too, \* \* \* but he didn't wanna go to Florida." Pitts also stated that although she did not believe it was in the child's best interest to rotate month to month between Florida and Ohio, she believes that the child needs his mother and maternal

grandparents in his life as well. Pitts had previously testified, on March 9, 2017, that since appellant and appellee separated in 2015, appellant had visited S.L.P. approximately eight times.

{¶ 8} Appellant testified that when S.L.P. was born, she worked at a prison, but quit that job to take an “apprenticeship” at a tattoo shop. Appellant further stated that “it’s fine if grandparents are involved but grandparents try to run the show. Um I mean I’ve seen it out of Cheryl and Tom and my own parents. So I’d feel like it’s important for them to be a part of their life but they definitely shouldn’t be calling the shots.” Appellant testified that during the time of her apprenticeship, she visited S.L.P. five days a week. However, Cheryl Pitts stated that at no time did appellant visit her son five days a week. Rather, Pitts testified that appellant visited once every two to three months.

{¶ 9} The guardian ad litem testified that, after his investigation and report, this case presented a very difficult choice, but that he recommended shared parenting, if possible, if the parties lived within fifty miles of each other with the child’s primary residence to continue to be with appellee.

{¶ 10} On December 5, 2017, the magistrate recommended that (1) appellee be designated the legal custodian and residential parent, (2) appellant be awarded parenting time, and (3) appellant pay child support to appellee. Appellant therefore objected to the magistrate’s decision and requested a stay of the proceedings. On January 10, 2018, appellant filed supplemental objections.

{¶ 11} On January 18, 2018, appellee filed a motion to dismiss the objections. In particular, the motion alleged that the objection violated Local Rule 4.02(E)(2) and did not state with particularity all grounds for the objection. Appellee also referred to appellant’s supplemental objection and stated that she filed it without leave of the court and without good cause. Appellant

responded to appellee's motion and filed her own motion to dismiss and claimed that appellee did not timely file his motion. On January 18, 2018, the trial court overruled appellee's motion to dismiss the objections to magistrate's decision and on January 31, 2018, the trial court overruled appellee's motion to strike supplemental objections and appellant's motion to dismiss appellee's motion to dismiss filed on January 23, 2018. On February 15, 2018, appellee filed a memorandum contra appellant's objection to the magistrate's decision.

{¶ 12} On March 15, 2018, appellant filed a motion for emergency ex parte custody and alleged that "Plaintiff has now been charged with Domestic Violence with his new wife \* \* \* The minor child was living with Plaintiff, and therefore was being exposed to a violent relationship, and Defendant is concerned for the safety and well-being of the child." On March 15, 2018, appellee filed a (1) motion to strike the motion for emergency ex parte custody, and (2) motion to dismiss the motion for emergency ex parte custody. On March 19, 2018, appellant's attorney appeared for the emergency hearing, but appellant did not.

{¶ 13} The trial court rescheduled the hearing to May 11, 2018 in order to address the newly discovered evidence issue and the emergency motion for ex parte custody. Additionally, the court ordered the new guardian ad litem to investigate the alleged newly discovered evidence. On March 26, 2018, appellee filed a renewed motion to dismiss. On April 2, 2018, appellant filed a notice of relocation and indicated a change of address to another location in Florida.

{¶ 14} At the April 2, 2018 hearing, appellee admitted that on February 18, 2018 he was charged with domestic violence that involved his pregnant wife, Annabelle Pitts, while S.L.P. visited appellant and her parents in Tennessee. The guardian ad litem stated that he was unaware of this fact when he had previously recommended that custody remain with appellee, and further stated that

if he had known about the domestic violence charge, he would “recommend that the placement be with the mother \* \* \* But I have not completed my investigation clearly.” Appellee, however, testified that the domestic violence was an isolated incident, that he had entered a diversion program and, once he completed the program, the charge would be dismissed. On April 5, 2018, the trial court denied the motion to dismiss the emergency ex parte motion.

{¶ 15} At the May 11, 2018 hearing, appellee testified that he married Annabelle Pitts on December 11, 2017, and was charged with domestic violence on February 18, 2018. Appellee acknowledged that he and his wife obtained their marriage license in late October, although he had denied having a girlfriend. Appellee explained that he and Annabelle were not “exclusive” during the hearings before the magistrate - hence his denial.

{¶ 16} The guardian ad litem stated that his investigation revealed that appellee’s then-girlfriend and now-wife, Annabelle Adkins, had photos of her and appellee on her Facebook page as far back as October 1 and referenced appellee as her boyfriend. The guardian ad litem also stated that, had he known about Annabelle and the domestic violence incident, even though an isolated incident, “it probably would have balanced me the other direction,” i.e., he might have recommended that appellant be awarded custody of S.L.P.

{¶ 17} On May 21, 2018, the trial court ordered the guardian ad litem to file a supplemental report and indicated that the parties may request further hearing based upon the guardian ad litem’s supplemental report. On June 1, 2018, appellee filed a memorandum in response to addendum of the guardian ad litem report and a conditional request for further hearing. On June 4, 2018, the trial court ordered that the matter be set for a re-trial. On August 14, 2018, appellant filed a counterclaim for allocation of parent rights and responsibilities. On August 15, 2018, appellee filed

an objection, motion to strike, and motion in limine.

{¶ 18} On August 16, 2018, the trial court held the final hearing. Head Start Parent Educator Tammy Scott testified that she visits the appellee’s and Annabelle’s residence to perform home visits with Annabelle’s son from a previous relationship. Scott stated that Annabelle is very involved, is a “very wonderful parent \* \* She just does everything she can to be the best she can be.” Scott further testified that appellee and S.L.P. “are awesome together.”

{¶ 19} Annabelle Pitts testified that, since the last hearing, no additional incidents of violence had occurred at their home and that she and appellee were getting along well, and that her child and S.L.P. were also getting along well.

{¶ 20} Portsmouth Police Detective Ron Davis testified that he is a long-time friend of appellee’s father and that he has known appellee since his birth. Davis stated that he observed appellee interact with S.L.P. multiple times and their interaction was always appropriate. When asked if he is familiar with the S.L.P.’s mother, Davis stated, “I’ve never met her or seen her.”

{¶ 21} Colleen Wallace, Cheryl Pitt’s sister, has lived with Cheryl and Tom Pitts for six years. Wallace testified that appellee is an excellent father. Wallace stated that for the past year and a half, she has only seen appellant at the home seven to ten times. Wallace also stated that she has watched Annabelle interact with S.L.P., and described her as “wonderful with that child” and noted “that baby loves her to death.”

{¶ 22} On December 10, 2018, the trial court named the appellee S.L.P.’s residential parent and legal custodian. This appeal followed.

I.

{¶ 23} In her sole assignment of error, appellant asserts that the trial court erred by

designating the appellee the minor child's residential parent and legal guardian.

{¶ 24} “Appellate courts generally review “the propriety of a trial court’s determination in a domestic relations case” under the “abuse of discretion” standard.” *Sarchione-Tookey v. Tookey*, 4th Dist. Athens No. 17CA41, 2018-Ohio-2716, ¶ 21, quoting *Clifford v.*

{¶ 25} *Skaggs*, 4th Dist. Gallia No. 17CA6, 2017-Ohio-8597, ¶ 9, quoting *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989) (abuse of discretion standard applies to child support, custody, visitation, spousal support, and division of marital property); *Todd v. Todd*, 4th Dist. Athens No. 18CA26, 2019-Ohio-1466, ¶ 6. “Under this highly deferential standard, we must affirm the decision of the trial court unless it is unreasonable, arbitrary, or unconscionable.” *Todd*, citing *State v. Beasley*, 152 Ohio St.3d 470, 2018-Ohio-16, 97 N.E.3d 474, ¶ 12.

{¶ 26} When a trial court must determine the allocation of parental rights and responsibilities, the court must consider the child's best interest. R.C. 3109.04(B)(1). To that end, R.C. 3109.04(F)(1) provides that in determining a child's best interest, a court must “consider all relevant factors, including, but not limited to” the following:

- (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 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; 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 or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code or a sexually oriented 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; whether either parent or any member of the household of 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.

{¶ 27} Appellant contends that the evidence presented at the hearings does not support the trial court's judgment. In particular, appellant argues that appellee: (1) did not obtain "stable housing," (2) lied to the court and to the guardian ad litem when he denied being in a relationship, and (3) was charged with domestic violence.

{¶ 28} Our review of the record reveals that, at the time of S.L.P.'s October 27, 2014 birth, the parties cohabitated in Chillicothe, Ohio. Appellant worked the night shift at the Ross Correctional Institute. When appellant returned home from work, she would feed, dress, and pack the child's belongings for daycare, and appellee would take the child to Portsmouth where appellee's

father and stepmother, Tom and Cheryl Pitts, provided daycare. While the child was at the Pitts' home, appellant slept and appellee worked in Scioto County. When finished with work, appellee would pick up the child and return to Chillicothe where appellant would care for him until she put him to bed before she left for work. In June 2015, however, appellant and appellee separated. At that point, S.L.P. began living in Portsmouth with appellee and the Pitts's, where appellant visited the child "as she could." For approximately a year, the trial court noted that Cheryl Pitts and her husband were "providing a lot of help with [S.L.P.]" The maternal grandparents also had access to the child and often visited with the child at their home in Tennessee, but appellant "only sporadically visited."

{¶ 29} With regard to R.C. 3109.04(F)(1)(c), the trial court highlighted that the child lived in Portsmouth with appellee for the majority of his young life. The child also has a strong relationship with his parents, maternal grandparents and paternal grandparents. The court also added that the child has completely adjusted to his Portsmouth family, his community, and his home. In contrast, the child would have no familial ties in Florida other than appellant. R.C. 3109.04(F)(1)(d). The court also emphasized that appellee and Annabelle live near appellee's mother, father, and step-mother, who served as the child's primary caretaker for most of his life. The court again pointed out that appellant now resides in Florida and "allowed her child to reside in Portsmouth, Ohio, for many months in which she could have retrieved the child" when she still lived in Ohio. However, "[b]ecause the childcare was both convenient and free at the home of Plaintiff's father and Plaintiff's stepmother, the Defendant chose to allow her son to live there for an extended period of time." Importantly, the court stated: "The Court places greater weight on the testimony of the Plaintiff [appellee] than that of the Defendant [appellant]." The court went on to highlight that,

although appellee has numerous family members and relatives in Scioto County, appellant does not have any family members or relatives in or near Florida.

{¶ 30} Appellant argues that appellee’s living situation, when he lived with his father and step-mother and occasionally stayed with his mother, who all lived in the same neighborhood, was unstable. However, the fact that this arrangement allowed S.L.P. to continue to live with, and receive care from, various family members who had become familiar to the child, is not a negative, and the court would not characterize this arrangement as “unstable.” *See Kelly v. Frank*, 5th Dist. Licking No. 01CA19, 2001-Ohio-1560, \*2 (court affirming father as residential parent when mother relocated in part because “a more stable system of family interaction exists” where father lives.) Furthermore, the child now lives with appellee and his wife, near his paternal grandparents and appellee’s stepmother.

{¶ 31} Appellant also asserts that (1) when the parties lived together, and when S.L.P visited her after the separation, appellant did serve as the child’s primary caretaker, and (2) appellee is not the child’s primary caretaker when the child is with him. What appellant omits, however, and what the trial court found to be significant, is that the parties lived together very briefly, and, after that, appellant rarely visited the child. Instead, appellant left the child in the appellee’s care and the child’s step-grandmother cared for the child while both parents worked.

{¶ 32} After our review, we believe that competent, credible evidence in the record supports the trial court’s conclusion that appellant was not actively involved in the child’s life when she lived in Ohio. Moreover, the trial court was clearly concerned about the fact that appellant attempted to move the child to Florida without fully disclosing or discussing the plan with the appellee.

{¶ 33} We understand appellant’s argument that appellee did not disclose to the court and the

guardian ad litem that he had a girlfriend, whom he married shortly after the December 5, 2017 magistrate's decision. Although, the trial court considered this deception and found "The Plaintiff purposely failed to disclose the existence of Annabelle Adkins from the Guardian ad Litem and the Court," the court nevertheless concluded that it is in the child's best interest to remain in Ohio with the child's father (appellee) and his Ohio family. The court also indicated "The Court places greater weight on the testimony of the Plaintiff than that of the Defendant."

{¶ 34} With regard to appellee's domestic violence charge, the trial court was fully aware of the charge and, in fact, interviewed both the appellee and his wife about the circumstances. The court indicated that Annabelle described the domestic violence as an "isolated, over-blown event, that occurred while [S.L.P.] was visiting his maternal grandparents in Tennessee." The court also noted that since that incident, the appellee and Annabelle testified that their relationship is "healthy, happy, and that they are living harmoniously together with his child and her child."

{¶ 35} We fully recognize and appreciate that custody determinations are some of the most difficult and agonizing situations that a trial judge will encounter. Therefore, appellate courts will generally afford latitude to a trial court's consideration of the evidence. *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997). Obviously, a trial court is in the best position to assess witness credibility. *Id.* at 418-419.

{¶ 36} After our review of the evidence, and in light of the foregoing discussion of the relevant evidence, we conclude that the trial court's decision to designate appellee the child's residential parent and legal custodian is not unreasonable, arbitrary or unconscionable, and thus, does not constitute an abuse of discretion.

{¶ 37} Accordingly, we overrule appellant's assignment of error and affirm the trial court's

judgment.

### CROSS APPEAL

{¶ 38} Appellee also filed a cross-appeal and raised two issues. First, appellee contends that the trial court erred by denying appellee’s January 10, 2018 motion to dismiss objection to magistrate’s decision. In particular, appellee argues that appellant’s “Objection to Magistrate’s Decision” was not sufficiently specific under Civ.R. 53 (D)(3)(b)(ii) and the trial court should not have considered appellant’s objection. Instead, appellee asserts that the original Magistrate’s Decision and recommendation should have prevailed and that the Decision and Final Judgment should not have been issued. Second, appellee contends that the trial court erred by denying appellee’s January 19, 2018 motion to strike supplemental defendant’s objection to magistrate’s findings of fact and conclusions of law. In particular, appellee argues that appellant did not obtain leave of court to file her January 10, 2018 “Supplemental Defendant’s Objection to Magistrate’s Findings of Fact and Conclusions of Law.”

{¶ 39} In the case sub judice, we believe that our affirmance of the trial court’s judgment on the merits renders appellee’s cross-appeal moot. Consequently, we need not address the appellee’s cross-assignments of error. *See In re Contest of Election Held on Stark Cty. Issue 6*, 132 Ohio St.3d 98, 2012-Ohio-2091, 969 N.E.2d 1172, ¶ 21 (“Because we affirm the judgment of the common pleas court, the [appellees’] cross-appeal is moot and need not be addressed”); *In re Columbus Bituminous Concrete Corp.*, 2018-Ohio-2706, 114 N.E.3d 621, ¶ 41 (4th Dist.), appeal allowed sub nom. *Columbus Bituminous Concrete Corp. v. Harrison Twp. Bd. of Zoning Appeals*, 153 Ohio St.3d 1494, 2018-Ohio-4092, 108 N.E.3d 1103, ¶ 41 (2018) (“Because our affirmance of the court’s judgment on the merits renders [the appellee’s] cross-appeal moot, we need not address it.”). *See*

also *State ex rel. United Auto., Aerospace & Agricultural Implement Workers of Am. v. Bur. of Workers' Comp.*, 108 Ohio St.3d 432, 2006-Ohio-1327, 844 N.E.2d 335, ¶ 59–61.

{¶ 40} Accordingly, having overruled appellant's assignment of error, we 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 Scioto County Common Pleas Court, Domestic Relations 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.

Smith, P.J. & Hess, 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.