

COURT OF APPEALS
MORROW COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ROBERT MITCHELL

Plaintiff-Appellee

-VS-

AMBER MANDERS

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

: Case No. 14CA0011

: OPINION

CHARACTER OF PROCEEDING:

Appeal from the Morrow County Court of
Common Pleas, Juvenile Division, Case
No. 2009 PA 00142

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

April 9, 2015

APPEARANCES:

For Plaintiff-Appellee:

ROBERT M. OWENS
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Delaware, OH 43015

For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant Amber Manders appeals the October 14, 2014 judgment entry of the Morrow County Court of Common Pleas, Juvenile Division.

FACTS AND PROCEDURAL HISTORY

{¶2} Defendant-Appellant Amber Manders ("Mother") and Plaintiff-Appellee Robert Mitchell ("Father") are the parents of R.M., born on October 18, 2003. Mother and Father are not married.

{¶3} In 2004, Mother filed a complaint against Father for domestic violence. The charges were dismissed. Mother and Father ended their relationship. Father had sporadic visitation with R.M. in 2004 and 2005 because of Father's work schedule. At the time, Father was employed at Lowes. Father is now self-employed as a carpenter and his workload is dependent on the economy.

{¶4} In 2007, Father claimed his parenting time with R.M. was very limited because he could not contact Mother. Father did not know where Mother was living and did not have a good phone number for Mother. Father did not want to contact Mother's parents ("Grandparents") for information because he did not have a good relationship with her parents. Father did not provide any financial or medical support for R.M.

{¶5} In June 2008, Mother gave birth to premature twins. The father of the twins is Mother's fiancé, Robert Davidson. The twins were hospitalized for two months in Columbus, Ohio and Mother lived in the Ronald McDonald House. Because of the twins' premature birth and Mother's resulting health issues, Mother placed R.M. in the Grandparents' care. For two months, Mother did not visit R.M., but later she called R.M. almost every night and saw him frequently.

{¶6} Since November 2008, Mother has resided with Davidson. Davidson has two children from a previous relationship. Mother, Davidson, R.M., and the twin girls reside in a three-bedroom apartment in Mount Vernon, Ohio. Every other week, Davidson's two children stay with Davidson. Davidson is employed as a drywaller. There was some concern with Davidson's drinking. He would drink eight to twelve beers three to four times per week.

{¶7} While in the Grandparents' care, R.M. presented with a condition diagnosed by his pediatrician as encopresis. Encopresis is condition that results in severe constipation and causes the child to be unable to control his bowel movements, resulting in accidents. The condition is treated with a daily dose of Miralax to relieve the constipation. Stress exacerbates the condition.

{¶8} On July 31, 2009, Father filed a complaint in the Morrow County Court of Common Pleas, Juvenile Division, to establish father child relationship and to allocate parental rights and responsibilities. Father asked for custody of R.M. The trial court ordered that genetic testing be done to determine paternity.

{¶9} Father stated that after he filed his complaint, he encountered the Grandparents at the local gas station. Father spoke with Grandfather and was told that R.M. had been living with the Grandparents since February 2, 2009. While R.M. was in the Grandparents' care, the Grandparents allowed Father to visit with R.M.

{¶10} Grandparents filed a motion to intervene on September 4, 2009.

{¶11} The trial court entered temporary orders on December 16, 2009. Grandparents were permitted to intervene and were named temporary residential and legal custodians.

{¶12} On March 25, 2010, genetic testing determined Father was the biological father of R.M.

{¶13} R.M. went back to live with Mother on May 22, 2010. Mother is employed as a house cleaner. Mother drives all the children to school. While residing with Mother, R.M. was enrolled in kindergarten at Twin Oaks Elementary School in the Mount Vernon City School District. The kindergarten program was from 9:00 a.m. to 11:45 a.m. R.M. was an above-average student in kindergarten. While at Twin Oaks, he did not have many bathroom accidents due to his encopresis.

{¶14} The parties went to mediation, but it was unsuccessful. The trial court entered temporary orders on October 6, 2010 where Mother was named the temporary residential custodian of R.M. The trial court appointed a Guardian Ad Litem ("GAL") for R.M. Parenting time was ordered for both parents.

{¶15} On October 26, 2010, the trial court ordered a hearing on the matter to be scheduled for January 11, 2011. Mother moved to continue the hearing. The hearing was continued until April 26, 2011.

{¶16} The GAL prepared her report in anticipation of the January 11, 2011 hearing. At the time of the GAL's investigation, the GAL did not recommend shared parenting because she did not believe Mother would cooperate with the schedule. The GAL stated in her report that based on her investigation, it was in the best interests of R.M. if the trial court named Father as the custodial parent and Mother had visitation.

{¶17} Father filed a motion for emergency temporary change in custody on February 18, 2011. Father argued that based on the conclusions of the GAL report, Father should have custody of R.M. Father further argued that it was an emergency

because a hearing was not scheduled until April 26, 2011 based on Mother's request for continuance. The trial court granted an Ex Parte Judgment Entry on February 18, 2011 granting Father primary custody of R.M. Mother was granted parenting time pursuant to Local Rule 2.

{¶18} During these issues, Mother placed R.M. in counseling. R.M. had seen the counselor 12 times, from January 2010 to February 2012. The counselor reported that R.M. was traumatized by his removal from Mother's home. He began wetting the bed at night and had tantrums. He was very angry with Father and wanted to return to Mother. The counselor believed that with proper preparation, the transition to Father's home would have been less traumatic to R.M. The counselor noted that as time passed in Father's care, R.M. adjusted and he stopped saying he hated his Father.

{¶19} While in Father's care, R.M. was enrolled in the Highland Elementary School in Sparta, Ohio. R.M. was in kindergarten during the 2010-2011 school year and in first grade during the 2011-2012 school year. Kindergarten is a whole day program at Highland Elementary School and the school days had been extended to 4:30 p.m. to make up for calamity days. R.M. began experiencing more accidents at school due to his encopresis. Father sometimes took R.M. to his neighbors in the morning before school for care. After school, R.M. sometimes stayed with Father's ex-wife and her children, which includes Father's daughter. Father reported that he has a good relationship with his ex-wife and his daughter, as does R.M.

{¶20} Mother participated in many of R.M.'s programs at Highland Elementary School. Highland Elementary School is 25 minutes from Mother's residence.

{¶21} Mother filed a motion for reconsideration on February 22, 2011 and requested an oral hearing. Father filed a response on March 17, 2011 and argued that a hearing was already scheduled on April 26, 2011 so Mother's arguments could be presented at that time. The trial court never ruled on the motion for reconsideration.

{¶22} On April 22, 2011, Mother filed a motion for shared parenting.

{¶23} Mother filed a motion to continue the April 26, 2011 hearing. The trial court rescheduled the hearing for July 12, 2011.

{¶24} On May 24, 2011, Mother's attorney filed a motion to withdraw. The trial court granted the motion on June 27, 2011.

{¶25} On June 27, 2011, Mother filed a motion to conduct an in camera interview of the child.

{¶26} On July 6, 2011, Mother filed a motion to continue the hearing. The trial court continued the hearing until October 25, 2011.

{¶27} On December 21, 2011, the trial court continued the hearing until February 10, 2012.

{¶28} The GAL filed an updated report on April 18, 2012. She stated in the report that the issues that caused her to recommend initially that the child be removed from Mother's home were remedied. She recommended that it was in the best interests of the child that the parents be ordered to do shared parenting, while Father should be named the residential parent for school purposes. She did not feel it was in the best interests of the child to change schools again.

{¶29} The record shows the full hearing went forward before the magistrate on April 26 and 27, 2012. At the time of the full hearing, R.M. was eight years old.

{¶30} At the conclusion of the hearing, Mother brought to the court's attention two pending motions, the motion for reconsideration and the motion for in camera interview. The magistrate stated that she not aware that the motion for reconsideration had been filed. The magistrate ordered an in camera interview with the child on June 27, 2012. The in camera interview was completed but it was not transcribed.

{¶31} Also at the end of the hearing, Mother, Father, and the GAL began discussing a shared parenting schedule. All parties agreed that a week with one parent was too long for R.M. The parties discussed a 2/2/3 custody schedule, where Father had custody on Monday and Tuesday and would bring R.M. to school on Wednesday. Mother would pick R.M. up from school and have him for Wednesday and Thursday. Father would have R.M. on Friday, Saturday, and Sunday. The following week, Mother would have custody on Monday and Tuesday, and so forth.

{¶32} The magistrate issued her Decision on October 15, 2012. She recommended that the parties be ordered to participate in shared parenting pursuant to the 2/2/3 custody schedule. Father was named the residential parent for school purposes.

{¶33} On October 29, 2012, Mother filed a motion for findings of fact and conclusions of law. The parties filed proposed findings of fact and conclusions of law.

{¶34} On January 15, 2013, Mother filed objections to the magistrate's decision.

{¶35} On January 24, 2014, the trial court remanded the matter to the magistrate because it found that the magistrate had failed to rule on the motion to reconsider and did not issue findings of fact and conclusions of law.

{¶36} The magistrate issued her findings of fact and conclusions of law on March 31, 2014. The magistrate also issued a decision based on the trial court's remand. Most relevant to this appeal, the magistrate addressed the motion to reconsider. The magistrate determined that pursuant to the procedural history of the case and the multiple continuances requested by Mother, the matter could not be heard until April 26, 2012.

{¶37} Mother filed supplemental objections on April 30, 2014.

{¶38} On October 14, 2014, the trial court overruled Mother's objections and adopted the magistrate's decision of March 31, 2014.

{¶39} It is from this decision Mother now appeals. At the time of this appeal, R.M. is 11 years old.

ASSIGNMENTS OF ERROR

{¶40} Mother raises eight Assignments of Error:

{¶41} "I. THE TRIAL COURT AND THE MAGISTRATE ERRED AND ABUSED THEIR DISCRETION IN GRANTING AN EMERGENCY CHANGE OF CUSTODY WITHOUT HOLDING AN IMMEDIATE EVIDENTIARY HEARING ON THE GRANTING OF AN EMERGENCY CHANGE IN CUSTODY TO DETERMINE IF THE FACTS WARRANTED A CHANGE PENDING FINAL HEARING TO PROTECT THE HEALTH AND SAFETY OF THE CHILD, IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION AND THE OHIO CONSTITUTION, ARTICLE I, SECTION 16.

{¶42} "II. THE TRIAL COURT AND THE MAGISTRATE ERRED AND ABUSED THEIR DISCRETION IN PERMITTING PLAINTIFF-APPELLEE ROBERT MITCHELL

TO TESTIFY TO IMPRESSION, BASED SOLELY ON HEARSAY, AT PAGES 66 TO 77 OF THE RECORD, THAT SUPPORTED CONCLUSIONS NOT SUPPORTED BY FACTS OR TESTIMONY.

{¶43} "III. THE TRIAL COURT AND THE MAGISTRATE ERRED WHEN THEY SUSTAINED AN OBJECTION TO TESTIMONY PLAINTIFF-APPELLEE ROBERT MITCHELL TOLD DEFENDANT-APPELLANT AMBER MANDERS THAT [R.M.] DID NOT NEED TO TAKE MIRALAX FOR HIS ENCOPRESIS.

{¶44} "IV. THE TRIAL COURT AND THE MAGISTRATE ERRED IN PERMITTING PLAINTIFF-APPELLEE'S COUNSEL TO CROSS-EXAMINE CONCERNING A 7-YEAR OLD ARREST FOR SHOPLIFTING AND CONVICTION FOR UNAUTHORIZED USE.

{¶45} "V. THE TRIAL COURT AND THE MAGISTRATE ERRED IN CONSIDERING THE GUARDIAN AD LITEM'S ORAL AND WRITTEN REPORT WHICH WAS BASED ON FACTS THAT DID NOT IMPACT THE CHILD OR THE CHILD'S BEST INTEREST, AND WHICH WERE INCONSISTENT WITH HER TESTIMONY.

{¶46} "VI. THE TRIAL COURT AND THE MAGISTRATE ERRED AND ABUSED THEIR DISCRETION IN RECOMMENDING THAT PLAINTIFF-APPELLEE ROBERT MITCHELL BE RESIDENTIAL PARENT FOR SCHOOL PURPOSES.

{¶47} "VII. THE MAGISTRATE'S FINDINGS, ADOPTED BY THE TRIAL COURT, ARE INCONSISTENT WITH ACCEPTED FACTS AND ARE PREJUDICIAL, RESULTING IN AN ABUSE OF DISCRETION, PLACING [R.M.] WITH PLAINTIFF-APPELLEE AS RESIDENTIAL PARENT FOR SCHOOL PURPOSES.

{¶48} "VIII. THE TRIAL COURT'S AND MAGISTRATE'S DECISIONS ARE CONTRARY TO LAW AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, IN SO FAR AS DESIGNATING PLAINTIFF-APPELLEE RESIDENTIAL PARENT FOR SCHOOL PURPOSES."

ANALYSIS

{¶49} Before we address Mother's eight Assignments of Error, we note that our review of this appeal shows that Mother's general dispute with the trial court's decision is about the trial court's designation of Father as the residential parent for school purposes. In Mother's appellate brief, she states on page 20 that, "[Mother] does not object to shared parenting, just designation of residential parent for school purposes, * * *." With that in mind, we analyze Mother's Assignments of Error.

I.

{¶50} Mother argues in her first Assignment of Error that Mother's due process rights were violated when the trial court granted the Ex Parte Judgment Entry awarding Father temporary custody of R.M. without holding an immediate evidentiary hearing.

{¶51} The procedural history of this case is relevant to the resolution of this Assignment of Error. Father filed a complaint for allocation of parental rights in 2009. On October 26, 2010, the trial court ordered a hearing on the matter to be scheduled for January 11, 2011. The GAL filed her report on January 7, 2011 in anticipation of the January 11, 2011 hearing. In her report, the GAL recommended that it was in the best interests of the child that Father be named the custodial parent and Mother be granted visitation pursuant to Local Rule 2. Mother filed a motion on January 10, 2011 to continue the hearing. On January 18, 2011, the trial court continued the hearing until

April 26, 2011. Father filed a motion for emergency temporary change in custody on February 18, 2011. In the motion, Father argued that based on the GAL report and that full hearing was continued until April 26, 2011, Father should be granted emergency custody of R.M. The trial court issued an ex parte entry on February 18, 2011 granting temporary custody to Father. Mother filed a motion for reconsideration on February 22, 2011. In the motion, she requested an oral hearing. Father filed a brief in opposition to the motion for reconsideration on March 17, 2011, arguing in part the full hearing was already set for April 26, 2011. On April 22, 2011, Mother filed a motion for shared parenting. On April 25, 2011, Mother filed a motion to continue the full hearing. The full hearing was continued until July 12, 2011. The hearing was continued until it was finally held on April 26, 2012.

{¶52} Mother argues the trial court denied her due process by failing to conduct an immediate evidentiary hearing after the trial court granted Father emergency custody of R.M. The procedural history of this case demonstrates, however, that Mother contributed to the delay of this case being heard by the trial court. While the trial court should have set the matter for an immediate hearing, the trial court did not. The record shows that Mother, as the interested party, made no additional request to the trial court for a hearing nor did she bring to the trial court's attention that she had requested a hearing or that a hearing should be held. The record shows that Mother filed a motion for shared parenting on April 22, 2011 and filed a motion to continue the full hearing scheduled for April 26, 2011. It has been held that a party that does not bring to the trial court's attention the perceived untimeliness of proceedings, the party cannot raise the issue on appeal. *Wood v. Wood*, 11th Dist. Trumbull No. 2009-T-0082, 2010-Ohio-1154,

¶ 28 quoting *Oberlin v. Friedman*, 5 Ohio St.2d 1, 6, 213 N.E.2d 168 (1965) (in order to be availed of as grounds for reversal of a judgment, errors of omission must generally be called to the trial court's attention at a time when they could have been corrected).

{¶53} Mother had the opportunity to be heard, in a somewhat timely fashion on April 25, 2011; but the hearing was continued multiple times without objection until it was finally held one year later on April 26, 2012. Under the factual circumstances and procedural history of this custody action, any remedy this court could provide to correct the error of failing to conduct an immediate hearing in 2011 would be a purely academic exercise. As such, we must overrule Mother's first Assignment of Error.

II., III., IV., V.

{¶54} Mother's second, third, fourth, and fifth Assignments of Error regard the magistrate's ruling on evidentiary issues during the full hearing on April 26 and 27, 2012. We consider the errors together because they require the same standard of review. A trial court possesses broad discretion with respect to the admission of evidence and an appellate court will not disturb evidentiary rulings absent an abuse of discretion. *State v. Roberts*, 156 Ohio App.3d 352, 2004-Ohio-962, 805 N.E.2d 594 (9th Dist.). An abuse of discretion is more than a mere error in judgment; it is a "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993). When applying an abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Id.*

{¶55} Mother argues in her second Assignment of Error that the magistrate erred in allowing Father to testify at the full hearing as to his impressions of R.M.'s home life with Mother. At the hearing, counsel for Mother asked Father if he had any

complaints about Mother's care for R.M. Father began to testify that he had heard there were problems in the home. Counsel for Mother objected on the basis of hearsay. The magistrate overruled the objection and allowed the testimony because Father did not testify as to what someone else said, but rather he testified that he did not have personal knowledge but had a general understanding that there were problems in the home. The extent of Father's testimony was very short and general as to what he believed was going on in the home. Upon a review of the testimony in consideration of the entire evidentiary hearing, we do not find the magistrate abused her discretion in overruling Mother's objection. Mother's second Assignment of Error is overruled.

{¶56} Mother contends in her third Assignment of Error the magistrate erred when she sustained an objection to Mother's testimony. Counsel for Mother asked Mother what happened to R.M. after he was placed in Father's custody. Mother testified that R.M. spiraled out of control so she started taking him to a counselor. She named the counselor, but went on to state that R.M. told her that Father did not give R.M. his Miralax to treat his encopresis. Counsel for Father objected as to what the child told his Mother and the magistrate sustained the objection. Mother went on to testify that she provided Father with R.M.'s medical records and she had made him aware that R.M. needed to take Miralax to treat his encopresis. Mother contends on appeal that the magistrate erred when she sustained the objection because it was pertinent to show how Father cared for R.M.'s health care needs. During Father's direct testimony, he was asked what treatment R.M. got for his medical condition. Father testified that R.M. took one cap full of Miralax every day.

{¶57} As the trier of fact, the magistrate must determine the weight to give the evidence presented and the credibility of witnesses, especially in cases of conflicting testimony. In this case, we cannot say that Mother was prejudiced when the magistrate sustained the objection as to what R.M. said to Mother about his treatment for encopresis. The magistrate also conducted an in camera interview with R.M. on June 27, 2012. Mother's third Assignment of Error is overruled.

{¶58} In Mother's fourth Assignment of Error, she argues the trial court erred in allowing counsel for Father to cross-examine Mother regarding a seven-year-old conviction for shoplifting. Mother testified when she was 19 years old, she was twice arrested for shoplifting, convicted, placed on probation, and had her probation revoked for violating probation. Mother's counsel objected to the line of questioning and the objection was sustained. In the magistrate's October 15, 2012 decision, the magistrate states there was testimony that Mother was arrested for shoplifting when she was 19 years old. The magistrate states that the objection to the relevancy of the offense was sustained and she gave it no weight. We overrule Mother's fourth Assignment of Error.

{¶59} Mother argues in her fifth Assignment of Error that the trial court erred in considering the GAL's report and testimony at the full hearing. Upon our review of the entire record and lengthy procedural history, we disagree. At the inception of this case, the GAL investigation showed that Father provided a more stable environment than Mother and Father would cooperate with visitation more than Mother. However, the GAL admitted at the full hearing that as the case progressed and her investigation continued, she saw that Mother's life stabilized, in housing and employment, and both parents

would now follow a shared parenting order. At the conclusion of the hearing, Mother, Father, and GAL began discussing the terms of a shared parenting order.

{¶60} A review of the lengthy record in this case reflects the GAL's conclusions. We find no error for the trial court to consider the GAL's reports, testimony, and recommendations. Mother's fifth Assignment of Error is overruled.

VI., VII., VIII.

{¶61} Mother's sixth, seventh, and eighth Assignments of Error argue the trial court erred when it named Father the residential parent for school purposes.

{¶62} In this case, there was no prior judicial decree allocating parental rights and responsibilities. Mother's custody of R.M. arose by operation of law pursuant to R.C. 3109.042. The version of the statute effective at the time of the hearing states:

An unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian. A court designating the residential parent and legal custodian of a child described in this section shall treat the mother and father as standing upon an equality when making the designation.

The trial court therefore was not required to find a change of circumstances in order to designate Father as the residential parent. Mother and Father stood on equal ground because custody had never before been litigated, even though R.M. had been with Mother from birth. *Dunn v. Marcum*, 2nd Dist. Clark No. 08-CA-112, 2009-Ohio-3015, ¶¶ 7-8.

{¶63} The issue is whether it was in R.M.'s best interests to designate Father as the residential parent for school purposes at the time of the full hearing. The parties were never married, and the order appealed from is an initial custody decision between the parties. The standard of review in initial custody cases is whether the trial court abused its discretion. *Davis v. Flickinger*, 77 Ohio St.3d 415, 416-471, 1997-Ohio-260, 674 N.E.2d 1159. An abuse of discretion implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Given the nature and impact of custody disputes, the juvenile court's discretion will be accorded paramount deference because the trial court is best suited to determine the credibility of testimony and integrity of evidence. *Gamble v. Gamble*, 12th Dist. Butler App. No. CA2006-10-265, 2008-Ohio-1015, ¶ 28. Specifically, "the knowledge a trial court gains through observing witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record." *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). Therefore, giving the trial court due deference, a reviewing court will not reverse the findings of a trial court when the award of custody is supported by a substantial amount of credible and competent evidence. *Davis, supra* at 418, 674 N.E.2d 1159.

{¶64} The juvenile court must exercise its jurisdiction in child custody matters in accordance with R.C. 3109.04. R.C. 3109.04(F)(1) contains a nonexclusive list of factors the trial court must consider when making a best interests determination:

(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 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.

{¶65} While R.M. was in Mother's exclusive custody, R.M. was enrolled in the Mount Vernon City School District. R.M. attended half-day kindergarten at Twin Oaks Elementary School. Twin Oaks has grades kindergarten through sixth. Mother testified Twin Oaks is five minutes from her residence. She drives the children to school. When Mother's twin daughters are school age, they will attend Twin Oaks Elementary School.

R.M.'s teacher at Twin Oaks testified that R.M. was an above-average student and very well liked by the other students. While he was a student, she did not recall R.M. having many bathroom accidents. The teacher met with Mother at parent-teacher conferences and saw her daily when she brought R.M. to school.

{¶66} When R.M. was placed in Father's custody, Father enrolled R.M. in the Highland Elementary School located in Sparta, Ohio. He started in kindergarten, which was a full day program. At the time of the hearing, he was in first grade. His teacher at Highland Elementary School testified that R.M. was an average student. She did notice that he had bathroom accidents, but R.M. took care of cleaning himself and the other students did not seem to notice. He was social at school and had friends. R.M.'s school records showed that R.M. had 14 tardies and two days absent. Mother testified that it took her 25 minutes to get to Highland Elementary School from her home. She stated that taking R.M. was inconvenient for her because she had to bring her children and Davidson's children to three different schools. R.M.'s teacher testified that she saw Mother quite often at the school. She volunteered at the school and went to class parties. Father attended an open house and has attended parent-teacher conferences.

{¶67} Before school, Father sometimes brought R.M. to the neighbors to get him on the school bus. After school, R.M. sometimes stayed with Father's ex-wife. Mother had also used Father's ex-wife for R.M.'s care. Mother testified that she would be preferable as the residential parent for school purposes because she or family members could watch R.M. before and after school, not neighbors and Father's ex-wife.

{¶68} The GAL recommended that it was not in R.M.'s best interests to move R.M. from Highland Elementary School. It was the GAL's opinion that R.M. needed

stability and at the time of the hearing, he had become accustomed to attending Highland Elementary School.

{¶69} A review of the evidence shows that Mother did not object to Highland Elementary School for the education or socialization it provides to R.M., but because the location of Highland Elementary School was not as convenient for her as Mount Vernon City School District. The evidence shows that Mother, however, was involved with R.M.'s activities at Highland Elementary School as she was when R.M. attended Twin Oaks Elementary School. Mother wanted R.M. to attend Twin Oaks Elementary School because his twin sisters would be in the same school, but R.M. would be in a different grade than his sisters.

{¶70} Custody issues are some of the most difficult decisions a trial judge must make. Therefore, those decisions rest within the sound discretion of the trial court. *Brammer v. Brammer*, 3rd Dist. Marion No. 9-12-57, 2013-Ohio-2843, ¶ 13 citing *Davis, supra*; *Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988). The reason for this standard of review is that the trial judge is in the best position to view the demeanor, attitude, and credibility of each witness and to weigh the evidence and testimony. *Davis, supra*. This is especially true in a child custody case, since there may be much that is evident in the parties' demeanor and attitude that does not translate well to the record. *Id.*

{¶71} This is a challenging case based on the facts in evidence and the passage of time between the inception of the case, the full hearing, and the final order. At the time of the full hearing, R.M. was in first grade for the 2011-2012 school year. At the time of the authoring of this appellate opinion, R.M. is now 11 years old and was on

track to be enrolled in fourth grade for the 2014-2015 school year. The record is clear that Mother and Father both care for R.M. and have his best interests in mind. At the conclusion of the full hearing, the transcript showed that Mother and Father were beginning to work out a shared parenting agreement that would allow R.M. to be with both parents during the week. They understood his need for stability. At the time of the full hearing, there was competent and credible evidence to show that it was in R.M.'s best interests to name Father as the residential parent for school purposes because R.M. had finally become acclimated to his living and schooling arrangements. While the location of the school was understandably inconvenient for Mother for multiple reasons, the consideration of what is in the best interests of R.M. is paramount.

{¶72} Mother's six, seventh, and eighth Assignments of Error are overruled.

CONCLUSION

{¶73} Mother's eight Assignments of Error are overruled.

{¶74} The judgment of the Morrow County Court of Common Pleas, Juvenile Division is affirmed.

By: Delaney, J.,

Hoffman, P.J. and

Farmer, J., concur.