[Cite as *Meyers-Decator v. Decator*, 2010-Ohio-4699.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

Marcella Meyers-Decator	Court of Appeals No. WM-09-019
Appellant	Trial Court No. 07DV000064
v.	
Bill J. Decator, III	**DECISION AND JUDGMENT**
Appellee	Decided: September 30, 2010

* * * * *

Dennis P. Strong, for appellant.

John S. Shaffer, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} This case is before the court on appeal from a judgment of the Williams County Court of Common Pleas.

{¶ 2} Appellant, Marcella Meyers-Decator, and appellee, Bill J. Decator, were married in 2003. At that time, both parties resided in Bryan, Williams County, Ohio. Bill was working in Bryan. Appellant, however, contracted as an office manager for different gas pipeline companies. Thus, her job required her to be on the construction

sites for periods of up to five months, but were generally for only periods of two to three months. Appellant did not return to her job as an office manager for approximately two and one-half years commencing during her pregnancy and after the birth of the parties' son, William M. Decator ("Will"), born June 6, 2003. After Will's birth, she did, nonetheless, continue to work part-time locally, first as a waitress in 2004 and then with a plumbing company in 2005. In November 2005, appellant began working for the pipeline companies again.

{¶ 3} In 2006, appellant took a job that would require her to be on site in Wisconsin for three to five years. Bill agreed to leave his job in Bryan and move to Wisconsin so that he and Will would be with appellant. Appellee, however, then decided that he did not want to move from Bryan because he has two daughters from a previous marriage who live nearby, and he did not want to leave them. Bill claimed that he also did not want to quit his job. Therefore, appellant returned to Bryan in March 2007. After filing for divorce on March 30, 2007, Marcella returned to her job with Precision Pipeline, working in Minnesota.

{¶ 4} Marcella and Bill were divorced on July 16, 2007. At the time the divorce was final, appellant was living in Wisconsin with her son, and appellee was residing in Fort Wayne, Indiana. The parties entered into a shared parenting plan. They agreed that Will would reside with each parent for alternating two month periods.

{¶ 5} On December 26, 2007, appellant filed a motion to reallocate parental rights and responsibilities, asking the court to name her the residential parent and to allow

appellee to have long distance visitation. When appellant filed this motion, she was living in Oklahoma and working in the state of New York. Bill was working and living in Fort Wayne, Indiana. Subsequently, appellee filed a motion for a modification of the shared parenting plan in which he asked the court to allow Will to reside with him during the school year and with appellant during the summer.

{¶ 6} At the hearing on the parties' motions, Marcella testified that she planned to complete only one more job in the state of New York with a pipeline company and then retire. When she is working, appellant makes approximately $8,000 per month, has a health care plan, and a retirement package. Appellant also stated that she was engaged to a man who also works on the pipeline and has a cattle ranch in Oklahoma. Marcella claimed that upon retiring she would reside with her fiancé on the cattle ranch. Her family lives in Toledo, Ohio.

{¶ 7} Bill worked at L.E. Smith in Bryan for 14 years. His two daughters, Miranda and Haleigh, from a previous marriage, get along very well with their little brother. After his divorce from appellant was final, appellee left his job in Bryan and moved to Fort Wayne, Indiana, where he lived with a girlfriend for a short while. He then moved back to Archbold, Ohio, and stayed with his parents. Currently, Bill is working for Culvan Kitchen and Bathroom in Fort Wayne, Indiana, and lives in New Haven, a suburb of Fort Wayne. He makes approximately $40,000 per year and carries health insurance for Will and his two daughters.

{¶ 8} Appellee has a new girlfriend, but they do not live together. He resides in a three bedroom home, and the girlfriend has a three bedroom home. Nonetheless, they do spend nights together at either his or her house. Will went to preschool in New Haven, and both he and his father visited the school where he will attend kindergarten.

{¶ 9} At the modification hearing, appellee admitted that he "occasionally" takes Will and his half-sisters to Buffalo Wild Wings, a sports bar with "a family dining area" in Defiance, Ohio. This always occurs when appellee is returning his daughters to their mother in Ayersville, Ohio, after weekend visitation. Bill testified that it might be more often during football season, but claimed that he hardly ever takes the children there in the summer. Bill's friend and former co-worker, Corby Jackson, also stated that while he and Bill went to Buffalo Wild Wings "occasionally" to watch a football game Bill never drank any alcohol because he had to take his daughters back to Ayersville.

{¶ 10} Appellee further stated that New Haven is close to his family—only forty minutes to Bryan and an hour and one-half from his daughters' home. He visits with his family at least once per month. Bill expressed a desire to have his son live with him during the school year, but indicated that Will could spend the entire summer and holidays with his mother.

{¶ 11} Both appellee's first wife, Gayle Decator, and his mother, Sherry Decator, testified that family is very important to Bill. Gayle takes Haleigh and Miranda to New Haven every other Friday, and appellee brings them back on Sunday. She acknowledged the fact that appellee and his children do stop at Buffalo Wild Wings once per month.

{¶ 12} Wendy Voight, the family court investigator, also testified at the custody hearing. Due to the fact that both parents were living outside the state of Ohio, Voight engaged in only telephone conversations with each of them and with Will. She also spoke to appellee's first wife and his daughters, who were, at the time, 15 and 12 years old. She recommended that Bill's motion be granted. Part of the rationale for this decision was the fact that Marcella seemed unsure about leaving her job and indicated that "a lot" of people that she works with travel with their children. She noted that appellant spent very little time with her son during the first five years of his life.

{¶ 13} Appellant's trial counsel presented Voight with a hypothetical in which appellant would work only the three months in the summer and be at home with Will for nine months, and asked whether having appellant home every day with Will would be preferable, Voight answered, "I don't know. I would like to see the track record of her doing that for a year before I answer that." Despite further extensive cross-examination along these lines, Voight did not change her opinion.

{¶ 14} Voight also stated that appellee seemed to have the more stable home and that his son was his priority. She added that Will, who she felt was a "delightful kid," considered his home to be with his father, but that he only "visits" with his mother. Finally, when speaking with appellee's first wife, Voight learned that he never missed his visitation with his daughters and always paid his child support. When asked whether the fact that Bill was in a new relationship and that he and his girlfriend, along with their

children, would alternate nights sleeping at each residence, would affect her decision, Voight replied: "I wouldn't say it would be a plus, but I would still think he was the one."

{¶ 15} On September 3, 2008, the court below entered a judgment denying appellant's motion to reallocate parental rights and granting appellee's motion. Bill was named the residential parent of Will for the school year and Marcella the residential parent during the summer. Each were allotted long distance parenting rights during those times that he or she was not the residential parent. The court, however, set the case for further hearing on the amount, if any, of child support to be paid by either of Will's parents. Appellant filed her request for findings of fact and conclusions of law on September 12, 2008. On October 15, 2008, the trial court ordered both parties to file proposed findings of fact and conclusions of law on or before December 15, 2008. Nonetheless, the trial court failed to set forth findings of fact and conclusions of law in its judgment. Appellant appealed that decision and asserted, inter alia, that the trial court erred in failing to make separate findings of fact and conclusions of law as required by Civ.R. 52. See *Decator v. Decator*, 6th Dist. No. WM-08-028, 2009-Ohio-4920, ¶ 7. We, therefore, remanded this case back to the trial court "solely for the purpose of providing separate findings of fact and conclusions of law." Id. at ¶ 12.

{¶ 16} Upon remand, the lower court complied with our directive. Appellant appeals that judgment and asserts the following assignment of error:

{¶ 17} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION FOR REALLOCATION OF PARENTAL RIGHTS

AND GRANTING DEFENDANT'S MOTION TO MODIFY THE SHARED PARENTING PLAN."

{¶ 18} Modification of a child custody order is governed by R.C. 3109.04(E)(1)(a), which "requires that, before a trial court modifies an existing order of custody, it is not only required to find, based on facts that have arisen since the prior decree or that were unknown to it at that time, that a change has occurred in the circumstances of the child, the child's residential parent, or either parent subject to a shared-parenting decree, but also that the modification is necessary to serve the best interest of the child." *In re Brayden James*, 113 Ohio St.3d 420, 2007-Ohio-2335, ¶ 19. "'The clear intent of [R.C. 3109.04(E)(1)(a)] is to spare children from a constant tug of war * * *. The statute is an attempt to provide some stability to the custodial status of the children, even though the parent out of custody may be able to prove that he or she can provide a better environment.'" *Davis v. Flickinger* (1997), 77 Ohio St.3d 415, 418, quoting *Wyss v. Wyss* (1982), 3 Ohio App.3d 412, 416. Determining whether a "change" occurred is a matter within the trial court's discretion. Id. An abuse of discretion occurs when the court's attitude in reaching its decision is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219.

{¶ 19} In deciding what is in the best interest of the child, the court must consider the factors set forth in R.C. 3109.04(F)(1), which provides:

{¶ 20} "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:

{¶ 21} "(a) The wishes of the child's parents regarding the child's care;

{¶ 22} "(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;

{¶ 23} "(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;

{¶ 24} "(d) The child's adjustment to the child's home, school, and community;

{¶ 25} "(e) The mental and physical health of all persons involved in the situation;

{¶ 26} "(f) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;

{¶ 27} "(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;

{¶ 28} "(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;

{¶ 29} "(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;

{¶ 30} "(j) Whether either parent has established a residence, or is planning to establish a residence, outside this state."

{¶ 31} Even though a court must consider the factors set forth above, it is not required to discuss each factor in its judgment entry so long as the judgment entry is supported by some competent, credible evidence. *Bunten v. Bunten* (1998), 126 Ohio App.3d 443, 447, citing *Masitto v. Masitto* (1986), 22 Ohio St.3d 63, 66.

{¶ 32} In the present case, the parties do not dispute the fact that there is a change of circumstances. Appellant, however, sets forth a number of facts which she contends the trial court did not consider in reaching its determination that it was in Will's best interest to award custody to appellee. For example, appellant claims that the court failed to consider that she was not employed and was Will's primary caregiver for the first two and one-half years of Will's life. Contrary to appellant's allegation, the court below noted that appellant left her job in March 2003 and only worked part-time jobs during the first two and one-half years of Will's life. Therefore, the court below, did, albeit sub silentio, find that appellant was Will's primary caretaker during that period.

{¶ 33} Of greater importance is the fact that a trial court does not have to mention each and every fact in support of a decision finding that it is in the best interest of a child to award primary custody of a child to a parent. A complete review of the record of this cause and the trial court's decision in this case reveals that the trial judge did make the factual findings necessary in determining that it was in the best interest of Will to grant appellee's motion to reallocate parental rights and responsibilities to appellee and that these findings are supported by competent, credible evidence. Accordingly, appellant's sole assignment of error is found not well-taken.

{¶ 34} The judgment of the Williams County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE