[Cite as *Garrett-Long v. Garrett*, 2016-Ohio-7041.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

KATHERINE W. GARRETT-LONG,	)	CASE NO. 15 MA 0221
	)	
PLAINTIFF-APPELLEE,	)	
	)	
VS.	)	OPINION
	)	
WILLIAM J. GARRETT, IV,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas Division of Domestic Relations, Mahoning County, Ohio Case No. 2011 DR 328

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee:

Atty. Charles Dunlap
7330 Market Street
Boardman, Ohio 44512

For Defendant-Appellant:

Atty. Lynn Bruno
Atty. Charles Strader
Lynn Sfara Bruno Co., LPA., Inc.
412 Boardman-Canfield Road
Youngstown, Ohio 44512

JUDGES:

Hon. Carol Ann Robb
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: September 6, 2016

[Cite as *Garrett-Long v. Garrett,* 2016-Ohio-7041.]
ROBB, J.

{¶1} Appellant William J. Garrett IV ("the father") appeals the decision of the Mahoning County Common Pleas Court, Domestic Relations Division, which overruled his objections and adopted the magistrate's decision. Appellee Katherine W. Garrett-Long (nka Katherine W. Long) ("the mother") wished to relocate with the child over whom she was residential parent. The court denied the father's motion for reallocation of parental rights, permitted the mother to relocate, changed the father's parenting time to a modified long distance schedule, and ordered child support. Due to the trial court's detailed analysis of the case and our deferential review of the trial court's decision on matters of parental rights, parenting time, and child support, the trial court's decision is affirmed.

STATEMENT OF THE CASE

{¶2} The parties were married in August 2005. A son was born in April 2010. The parties separated in 2011. The court issued an agreed divorce decree on January 20, 2012. The mother was named the residential parent. The father was provided parenting time in the following alternating manner: week one provided overnights on Monday and Saturday and four hours on Thursday; and week two provided four hours on Monday, Wednesday, and Friday. The parties agreed that no child support would be awarded as: the mother would use a trust to support herself and the child, which was expected to last through the end of 2015; the father would have the child frequently; and the father was attempting to start a business and maintain the marital residence.

{¶3} The mother and the child lived with the maternal grandmother. Both parties' residences were located in Canfield, Ohio. The mother is a stay-at-home mom. She majored in accounting in college and has a Master's in Business Administration. The father is self-employed as a supported living provider, assisting children and young adults with mental and physical disabilities through contracts with agencies in Mahoning and Stark Counties.

{¶4} On April 10, 2013, the father filed a motion for reallocation of parental rights asking to be designated the residential parent. He alternatively asked for

shared parenting and expanded parenting time. On April 19, 2013, the mother remarried. She filed a motion for child support and a notice of intent to relocate to San Diego, California, where her husband ("the step-father") was stationed. The step-father (a lieutenant commander in the Navy) was working in the medical department of the Navy Seals. He received orders that he would be deployed overseas with the Navy Seals beginning in November 2013. On September 27, 2013, the parties withdrew their cross-motions and entered an agreed judgment entry. The father's parenting time changed to the following schedule: week one provided four hours on Tuesday and a long weekend from Friday at 3:00 p.m. until Monday at 8:00 a.m.; and week two provided an overnight starting on Wednesday at 3:00 p.m. until Thursday at 8:00 a.m.

{¶5} The step-father returned to San Diego from his six months of deployment. On May 30, 2014, the mother filed a "Motion to relocate" asking permission to relocate to San Diego with the child and requested the court adopt the standard long distance parenting schedule or an alternative schedule. She also filed a motion for child support. On June 12, 2014, she filed a form "Notice of Intent to Relocate" under R.C. 3109.051(G). The father filed a motion to be designated the residential parent or for shared parenting and opposed the relocation.

{¶6} On December 15, 2014, the mother amended her filings to change her intended relocation residence to Whispering Pines, North Carolina. The step-father had successfully sought to be stationed closer to Ohio; he secured a three-year position at Fort Bragg and was to report in August 2015. The mother hoped the child, who was in preschool, would start kindergarten at the beginning of the school year at a school near the step-father's new home.

{¶7} The case was tried to a magistrate over the course of nine days in early 2015. The child turned five years old during the trial. The father's fiancée testified that she moved in with him at the end of 2013 and gave birth to a son in April 2014. They became engaged in August 2014. Their son was nine months old at the time of her testimony, and she was pregnant with another child who was due in July 2015. She wanted to wait to get married so she could fit in a certain size dress and so they

would have more money, noting the cost of the litigation. She is a stay-at-home mom and has no income.

{¶8} The father's fiancée testified she has a very positive relationship with the child and noted the child's bond with his half-brother. She praised the father's parenting of the child and spoke of the child's extended family in the local area. She gave her perspective on the mother's exercise of her right to make decisions (as the residential parent) and then mentioned the poor communication between the mother and father. She said the child experienced adjustment issues after being away for two weeks. She expressed a belief that they may move to North Carolina if the child moves.

{¶9} The father testified about his large family in the local area. He pointed out that he maintained the marital residence for the child. He said the child is bonded with his half-brother. He defended the child calling his fiancée "Mammy." He emphasized the amount of time he spent with the child and how he scheduled his work around his time with the child. He pointed out that the mother has been raising the child while living with her mother. He opined the mother was putting her interests before those of the child. He said he could not afford to drive to North Carolina on weekends in order to see the child more than the time specified in the standard long distance order. He said video-phone applications, such as Face Time or Skype, did not work well with a young child, who will run away or hide.

{¶10} The father complained the mother did not visit various preschools with him after he scheduled appointments. She chose a school without his input, enrolling the child in a Montessori preschool (the school she attended as child). He criticized the mother for not letting him pay for preschool after he sent a check to the school. He complained she called him on the first day of preschool instead of giving him advance notice of the event. He arrived just in time for the drop-off. The step-father was in the back seat with the child. The mother invited him into the car while they waited in the line of cars, and he got in the front seat. He complained the step-father did not offer to move out of the back seat.

{¶11} The father testified about coaching his son in T-ball and watching his karate classes. He complained that the mother would only permit the child to attend one karate class per week after school started, instead of the three days per week he enjoyed in the summer. The father believes he should have been included in a parent-child gym class at the YMCA in which the mother enrolled herself and the child.

{¶12} The father criticized the mother for voicing that she preferred e-mail, instead of telephone communication, and for summarizing calls in a follow-up e-mail. He emphasized that the mother was not receptive when he asked her to meet with him at a restaurant "to ask her to become a friend." He stated: "She doesn't explain to me what he's had for dinner, where they went that day, if they went swimming that day. She doesn't tell me anything."

{¶13} He thought the mother was deceptive for not telling him she was getting married; he found out from someone else. He also thought she should have told him when her husband was being deployed in 2014. He believed the step-father (who was in his early 40's) should have retired and moved to Ohio instead of applying for the assignment in North Carolina. He mentioned the child wet his bed after returning from a trip to San Diego. He expressed concern about his son urinating in the same toilet with the step-father; he did not believe it was an appropriate way to teach a male child to stand during urination. (The paternal grandfather also complained about this in his testimony.)

{¶14} The step-father testified that this occurred in 2013 and did not occur again after the father expressed his concern. The step-father said he had a good relationship with the child and wished to enrich the child's life without replacing the father. He purchased a home for $295,000 in Whispering Pines, North Carolina. There was testimony on the features of the area. He acknowledged that in his 24.5 years in the service, he had 22 moves or deployments. He could have retired before taking the three-year Ft. Bragg assignment; three years is the minimum term, which can be extended. He said it was very unlikely he would be deployed during his present position. He expressed an intent to stay on this side of the country for the

rest of his naval career. He was raised in Mahoning County, and his family remains in this area.

{¶15} The step-father's income was expected to be around $7,400 per month; he would also receive a large annual bonus and a housing allowance that would cover his mortgage payment. His health insurance covered the child. He said the child would have his college education paid (if the mother provides over 51% of the child's care). He has extensive sick leave and one month of vacation per year. He mentioned that he and the mother may have another child. He expressed that she could remain a stay-at-home parent due to his income.

{¶16} The mother testified she would not leave the area without the child. She said if she was not permitted to move with the child, she could no longer be a stay-at-home mom. She said the funds in her trust were nearly exhausted and believed her husband could not or should not have to finance two households. She said she never intended to live with her mother permanently after the divorce. She did not know if she could find a job locally since she has been out of the workplace since the child's birth. She expressed concern for her marriage as it is challenging to live so far apart. She voiced a desire for the child to live in a home "with harmony" and learn the dynamics of a healthy relationship. She noted she has always been the primary caretaker for the child.

{¶17} Her husband's new home was approximately 600 miles from the father's residence. The mother did not intend to move prior to the child finishing the preschool year. She wished to prepare her husband's new house in July for his August report date, around the same time kindergarten would begin. She noted the child is experienced in long distance travel, enjoys flying, and adjusts well. She attested she would do all she could to protect the child's relationship with the father. She advised she would provide the father access to the child via Face Time or Skype. She believed the child's ability to use the service has improved. She invited the father and his family to the child's fifth birthday party.

{¶18} The mother explained that she preferred email communication with the father as it leads to less confrontational conversations. She expressed that he

makes her uncomfortable and misconstrues her words. The mother described the father as competitive and believed this prevented him from communicating effectively. She also said there were times he failed to respond to her. She wished for an accurate record of the discussions concerning the child but did not want oral conversations recorded (as previously done by the father). She asked the court to order the parties to use "Family Wizard," a program allowing e-mails to be monitored by a third party.

{¶19} The mother's sister testified that she has three children; her youngest is close in age to the subject child, and the two children are very close. She attested to the mother's parenting abilities and bond with the child. She said the mother encourages the child's relationship with the father and agreed the child is bonded with the father. She confirmed the step-father's devotion to the child as well. She believed the mother would frequently return to the area, enabling the father to see the child.

{¶20} The child's paternal grandmother testified about the child's family bonds; she worried the child's bond with his grandparents would weaken if he could only see them a few times a year. She saw the child almost every weekend he was with the father. She and her husband went to nearly all karate lessons since the child started in June 2014. She said the mother and father do not speak about the child at karate. She believed the father would not be welcome to visit the child in North Carolina and said the mother does not nurture the child's relationship with the father. The paternal grandfather testified to these concerns and the family bonds as well.

{¶21} Dr. Kayne, a custody evaluator, testified that he first became involved in the case in May 2013. He found a very nice father/son bond and said the father is loving. He emphasized the importance of familiarity and continuity. When father's counsel propounded a hypothetical with many months between visits, Dr. Kanye said the situation would not be in the child's best interests in terms of the father/son bond. When asked if the move to North Carolina, where there are no extended family members, was in the child's best interests, Dr. Kayne answered, "In the short run, probably not." At one point, he suggested the child's best interests could be served

by either scenario; he could not definitively answer that a move would be in the child's best interests but would not agree the best interests of the child required the child to remain in Mahoning County. He later said the child's best interest was to remain here given his entire environment and reiterated that to remain here would be in his best interests if viewed "in isolation." He said, "I don't think I'm recommending or not recommending the move."

{¶22} He said the child was happy, very active, and doing well. He also described the child as willful and a little challenging; he has begun to show some aggressive tendencies with the potential to be "a little oppositional." He voiced the ongoing issues and tensions between the parents may be the reason and refused to say this was the best environment for the child. He noted the child may become upset after the initial excitement of the move or may have a less stressful life. He said the child has a predictable and reasonably good life. He noted an initial change could be distressing but also could open up possibilities. He explained that a sociable child beginning kindergarten may develop a new community quickly.

{¶23} Dr. Kayne opined that shared parenting would not be a viable option. He noted the parents' communication with each other was strained and the exchanges of the child were tense. He said both inadvertently engaged in behaviors that negatively impact the child. He said the mother has unshakeable beliefs about the father trying to control her and manipulate her words, and the father believes almost anything the mother does or does not do is part of her desire to alienate him from the child. The father believes she engages in subterfuge and deception, and the mother believes he is intrusive and controlling. Dr. Kayne did not agree that the father's desire to be involved in every aspect of the child's life was important for the child.

{¶24} Dr. Kayne acknowledged that communication appeared to worsen in the months prior to trial. He expressed the mother became increasingly frustrated and drained, feeling a sense of helplessness over her life. He voiced the mother may continue to make unilateral decisions for the child after a move. Or, she may feel the distance is a buffer from what she sees as the father's need for control over her, and

she may drop some of her "psychological guards." He concluded there was no reason to change the child's custody whether the mother moves or not. He explained that removing the child from the mother's care would have a greater negative impact on the child than a relocation.

{¶25} The guardian ad litem, Attorney Hunt, found both parties at fault for the communication problems. He said he understood the mother feeling uncomfortable with certain attempts by the father, such as the invitation to a restaurant. Based upon the parties' past issues, he thought e-mail was the best way for them to communicate at the time of the hearing. He did not recommend shared parenting. He testified the child would miss much by moving and agreed the move would make maintaining the current bond with the father more difficult. He would not say the move was contrary to the child's best interests or that the child would be harmed. He said the child would not be completely cut off from this area. He said "ideally" the mother would not wish to relocate. He opined the child should remain with the mother whether she moves or not. He suggested more than a standard long distance order if relocation occurred.

{¶26} On June 24, 2015, the magistrate's decision was filed. The testimony was reviewed in detail. The father's motion for reallocation of parental rights was denied. The parenting time schedule was changed to a modified long distance order, providing additional rights to the court's regular long distance schedule. (The schedule is set forth infra under the heading addressing the modification of parenting time.) The father was ordered to pay child support in the amount of $278.47 per month, effective July 1, 2015, the first day of the anticipated relocation to North Carolina. The trial court signed an interim order the same day so the filings of objections would not stay the magistrate's decision. *See* Civ.R. 53(D)(4)(e)(ii).

{¶27} On July 2, 2015, the father filed timely objections to the magistrate's decision. He also appealed the interim order to this court. We granted a temporary stay pending a hearing. On August 21, 2015, this court dismissed the appeal for lack of a final appealable order and vacated the temporary stay. *Long v. Garrett*, 7th Dist. No. 15 MA 107, 2015-Ohio-3622.

{¶28} The trial court held a hearing on the objections on September 8, 2015. The trial court overruled the objections and adopted the magistrate's decision in a judgment entry filed December 9, 2015. The father filed the within appeal. In responding to the father's request for a stay, the mother noted she and the child have been living in North Carolina since September 2015 as a result of the trial court's interim order. This court denied the father's stay request.

REALLOCATION OF PARENTAL RIGHTS

{¶29} As aforementioned, the father sets forth three assignments of error. The second assignment of error, which we discuss first, provides:

"The trial court erred in failing to find a change of circumstances exists that would warrant a reallocation of parental rights and responsibilities."

{¶30} In seeking modification of the allocation of parental rights, Appellant proceeded under R.C. 3109.04(E)(1)(a)(iii), which provides:

> 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 * * * [t]he harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

{¶31} To warrant a change in custody, the change in circumstances "must be a change of substance, not a slight or inconsequential change." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997) (the statute does not require a "substantial" change). The threshold for change should be that level which does not

"prevent a trial judge from modifying custody if the court finds it is necessary for the best interest of the child." *Id.* at 420-421.

{¶32} Custody cases present "some of the most difficult and agonizing decisions a trial judge must make." *Id.* at 418. The reviewing court must defer to the trial court's factual findings and cannot reverse the decision absent an abuse of discretion. *Id.* The trial judge has "wide latitude" and "broad discretion" in considering all the evidence. *Id.* at 418, 421. The fact-finder occupies the best position from which to view the witnesses and observe their demeanor, gestures and voice inflections and use these observations in weighing the testimony. *Id.* at 418. "This is even more 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 418-419.

{¶33} At trial, the father set forth changed circumstances as: the mother's remarriage and intended move; the birth of a half-sibling and the expected birth of another half-sibling; the child turning five and attending school; and the child's extracurricular activities of karate and T-ball. The mother urges: she did not move; she would not leave without her child; and the other circumstances are expected everyday events in the life of a child that are not sufficient to constitute a change of circumstances.

{¶34} A parent's remarriage is not a sufficient change of circumstances on its own. *Id.* at 419 (but where the mother and her spouse are hostile to the father's exercise of visitation, unforeseen circumstances may arise). A child's age alone is not a sufficient change either. *Id.* at 419 (but major adjustments to arrangements due to a child's maturing age may constitute a changed circumstance when combined with hostility against the father and a request to wholly terminate his visitation). Here, the mother and step-father never interfered with the father's parenting time.

{¶35} A notice of intent to relocate is required by statute and by the parties' divorce decree. The father acknowledges that the residential parent's mere filing of a notice of intent to relocate outside of the State of Ohio, which reflects the residential parent's desire to relocate, is not a sufficient change of circumstances. *See, e.g.,*

Masters v. Masters, 69 Ohio St.3d 83, 86, 630 N.E.2d 665 (1994) (where the mother had a "desire" to move to Tennessee due to remarriage and a new job); *Campana v. Campana*, 7th Dist. No. 08 MA 88, 2009-Ohio-796, ¶ 33 (noting the mother filed a notice of intent to relocate to see if the father would object and to see if the court would find modification of parenting time to the long distance schedule was in the child's best interests).

{¶36} The father asserts the mother did more than indicate a desire to move, claiming she engaged in substantial steps toward her desire to relocate and to live with her husband. He relies on a case finding that substantial steps in furtherance of an imminent relocation can support a finding of changed circumstances. *See DeVall v. Schooley*, 5th Dist. No. CT2006-0062, 2007-Ohio-2582, ¶ 15. The Fifth District distinguished the case from *Masters* on the grounds that the trial court could reasonably find the move was "fait accompli." *Id.* at ¶ 16. In that case, the mother said she was "in the process" of moving, she obtained a new job in a different state upon her remarriage, and she enrolled the child in the new school. *Id.* at ¶ 15. Citing the trial court's discretion, the appellate court refused to reverse the trial court's decision. *Id.* at ¶ 16.

{¶37} The *DeVall* court upheld an exercise of discretion. This is different from the father asking this court to reverse the trial court's exercise of discretion. In addition, as the mother points out, this court has reversed a trial court's finding of changed circumstances in a case factually similar to the one at bar. *See In re Dissolution of Marriage of Kelly*, 7th Dist. No. 09 CA 863, 2011-Ohio-2642, ¶ 31, 40-41 (distinguishing *DeVall*). Here, the trial court found there was not a sufficient change of circumstances in the mother's request to move with the child.

{¶38} The father focused on the step-father's purchase of a home in North Carolina. We note the house and mortgage were in his name only. Moreover, the step-father accepted a three-year military assignment in North Carolina. As the trial court pointed out in response to an objection on this topic, the step-father "would be living there regardless." The mother had not moved or enrolled her child in school there. In addition, her marriage to the step-father had occurred two years prior to

trial. Finally, she testified she would not move without her son. (Tr. 565-566). The level of her sincerity was a matter for the trial court.

{¶39} In any event, a modification in residential parent status must be necessary to serve the child's best interests and any harm in modification must be outweighed by the advantages of the modification. On this point, the father initially argues the court was barred from making alternative holdings as they constitute an advisory opinion. He claims that a finding of insufficient changed circumstances required the court to stop its analysis. He cites a federal appellate case explaining how the ripeness doctrine generally requires the reviewing court to limit its jurisdiction to ripe cases in order to avoid issuing advisory opinions based upon hypothetical situations. *See Briggs v. Ohio Elections Comm.*, 61 F.3d 487, 493 (6th Cir.1995) (finding the threat of prosecution in that case gave rise to a sufficiently ripe controversy).

{¶40} Contrary to Appellant's suggestion, the trial court's additional findings are not based upon a hypothetical scenario; the facts were presented to the trial court. The court merely provided legal support for its holdings on multiple grounds. This court has upheld a decision of the domestic relations court based upon a similar alternative holding. *See Sunseri v. Geraci*, 7th Dist. No. 10-MA-189, 2012-Ohio-1470, ¶ 49 (finding the trial court erred in finding there was not a significant change in circumstances, but upholding the court's exercise of discretion to find the benefits of a change in custody would not outweigh the harm likely to be caused by the change.) Trial courts regularly make multiple findings in applying a test with multiple elements, even if the court could have stopped after finding one missing element. This is not improper. It allows an appellate court to conduct a complete review if there is error on one finding, e.g. it avoids the potential scenario of multiple remands where a trial court answers a three-pronged test in stages.

{¶41} The trial court concluded the harm likely to be caused by a reallocation of parental rights to the father, by removing the mother from the position of primary caregiver, was not outweighed by the advantages of the requested change. The court found the bond the child shared with the mother and the stability and parenting

she provided was stronger and more critical to the child. The court noted Dr. Kayne and the guardian ad litem both advised against a reallocation of parental rights, whether the mother stayed or moved. Furthermore, the court set forth a very detailed best interest analysis.

{¶42} In determining the best interest of a child upon a motion to modify the allocation of parental rights, the court shall consider all relevant factors, including, but not limited to: (a) the parent's wishes; (b) the child's wishes and concerns, if the court conducted an in chambers interview; (c) the child's interaction and interrelationship with parents, siblings, and any other person who may significantly affect the child's best interest; (d) the child's adjustment to home, school, and community; (e) the mental and physical health of all involved; (f) the parent more likely to honor and facilitate parenting time rights; (g) any failure to make child support payments, including arrearages; (h) whether either parent or any member of the household of either parent previously has been convicted of certain offenses; (i) whether the residential parent continuously and willfully denied court-ordered parenting time; and (j) whether either parent has established a residence, or is planning to establish a residence, outside this state. R.C. 3109.04(F)(1).[1]

{¶43} The court reviewed the parties' wishes and concerns. *See* R.C. 3109.04(F)(1)(a). The court rejected any suggestion that the mother wanted to live with her husband (of two years at the time of the final hearing) in order to remove the child from the father. Some of the father's complaints about the mother were derived from his belief that she should afford him rights under shared parenting, even though they did not have shared parenting. For instance, the choice of a preschool is decided by the residential parent. Declining an offer to accompany the father to appointments at multiple preschools is not the threatening scenario the father makes

[1] As the court was faced with an alternative request for shared parenting, the court also applied the additional factors pertinent to such request: (a) the ability of the parents to cooperate and make decisions jointly, with respect to the child; (b) the ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent; (c) any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent; (d) the geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting; and (e) any recommendation of the guardian ad litem. *See* R.C. 3109.04(F)(2). The denial of the father's shared parenting motion is not raised on appeal.

it out to be. The child's wishes were not relevant: neither party requested an in camera interview, and the court doubted the child had sufficient reasoning ability at his young age. *See* R.C. 3109.04(F)(1)(b).

{¶44} The court discussed the child's interaction and interrelationship with his parents, siblings, and others who may significantly affect the child's best interests. *See* R.C. 3109.04(F)(1)(c). The court found the child has a wonderful relationship with both parents and positive relationships with the step-father, the father's fiancé, and the half-brother. The loving relationship with the paternal grandparents, who testified, was recognized; the relationship with other family members who live in the area was considered. The court reviewed the father's concerns over the loss of these important bonds. The court believed the mother's testimony that she will foster communication between the father and the child. It was anticipated she would return to the area frequently due to her own close family connections and those of the step-father.

{¶45} As for the child's adjustment to home, school, and community, the court noted the child did well at preschool. *See* R.C. 3109.04(F)(1)(d). The court recognized the father remained in the marital residence, and the mother lived with the maternal grandmother. The court acknowledged the child's karate lessons and participation in T-ball, which the father coached. The court found: the child was the kind of child who would adjust to a new situation; the mother would remain a stay-at-home parent for the child in North Carolina; and there was little likelihood the step-father would be deployed from his position. The court rejected any suggestion that the mother and step-father did not have a stable relationship. The court found the step-father would be a positive role model. The child would have started kindergarten two months after the magistrate's decision; as this was adopted as an interim order, the decision was not stayed pending objections (nor was it stayed pending appeal). The testimony on the child's oppositional behavior was attributed to the parties' communication issues and the tension at exchanges.

{¶46} Regarding the mental and physical health of the parties, the court referred to Dr. Kayne's statement that both parties are capable of engaging in

behavior that can negatively affect the child and the guardian ad litem's statement that both parties are at fault for the communication issues. *See* R.C. 3109.04(F)(1)(d). The court adopted Dr. Kayne's theory that the mother could be more willing to communicate openly after relocation. The court noted the child's signs of oppositional behavior. It was pointed out that the father is suspicious of everything the mother does and tends to overreact.

{¶47} The court noted the claims and concerns of each party as to the factor involving the parent more likely to honor or facilitate court-ordered parenting time. *See* R.C. 3109.04(F)(1)(e). Neither party previously denied the other court-ordered parenting time. *See* R.C. 3109.04(F)(1)(i). The father complained about the mother not offering him more than his court-ordered time. The mother did not interfere with his court-ordered time. There is no indication the mother will be unlikely to honor court-ordered parenting time in the future.

{¶48} As child support was not ordered in the divorce, the court found inapplicable the factor dealing with a failure to pay child support. *See* R.C. 3109.04(F)(1)(g). The factor concerning certain convictions was also inapplicable. *See* R.C. 3109.04(F)(1)(h). Finally, as to the factor of whether either parent has established a residence, or is planning to establish a residence, outside this state, the court reviewed the mother's situation.

{¶49} The court pointed out that the demeanor and credibility of the witnesses was considered, especially that of the parties. The report and testimony of Dr. Kayne and the guardian ad litem was also carefully considered. In adopting a theory of Dr. Kayne, the court expressed "optimism" that "as counter-intuitive as it may seem," relocation may prove a positive force on the communication between the parties. The court agreed that it was not in the child's best interests to change the residential parent from the mother to the father, even upon relocation. The court's decision is thorough and supported by sound reasoning.

{¶50} In cases where both parents are loving and bonded to the child, a custody decision is "difficult and agonizing" for the fact-finder. *Davis,* 77 Ohio St.3d at 418. Cases such as this one are distressing to reviewing judges as well.

However, a reviewing court cannot substitute its judgment for the trial court's broad discretion. *Id.* at 418-419, 421. An abuse of discretion is more than a mere error of law or judgment; it requires a finding that the trial court's decision was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). Assigning weight to the parties' concerns and the evidence is primarily a question for the trier of fact, as is the drawing of rational inferences from the testimony. There are myriad observations to be made while presiding over a nine-day custody trial that cannot be transmitted to the written record, including demeanor, gestures, eye movements, and voice inflections. *See Davis,* 77 Ohio St.3d at 418-419. *See also Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988).

{¶51} The trial court did not abuse its discretion in refusing to reallocate parental rights. This assignment of error is overruled.

RELOCATION & PARENTING TIME

{¶52} The father's first assignment of error argues:

"The trial court erred in finding it was in the best interest of the minor child to permit a relocation to the State of North Carolina."

{¶53} After setting forth a notice provision for out-of-state travel,[2] the agreed divorce decree provides: "It is further ordered that if either party intends to move to a residence other than the residence specified in the Decree or Judgment of the Court, that parent shall file a Notice of Intent to Relocate with the Court that issued the Decree." (Jan. 20, 2012 J.E. at 9). It then states, "in the event of relocation by either party, the opposite parent shall be forwarded any notice of new address provided to the Court." This is a reiteration of the pertinent statute, which provides:

> If the residential parent intends to move to a residence other than the residence specified in the parenting time order or decree of the court,

[2] This paragraph says neither party shall remove the child from the State of Ohio for more than 48 hours without first providing the other party with pertinent contact information and a travel itinerary, including dates, methods of travel, and flight numbers. If such travel interferes with the other's time, the time shall be made up when the child returns to the State of Ohio ("so that, for example, no parent would get approximately three weeks in a row with the child.")

> the parent shall file a notice of intent to relocate with the court that issued the order or decree. Except as provided in divisions (G)(2), (3), and (4) of this section [which are not applicable here], the court shall send a copy of the notice to the parent who is not the residential parent. Upon receipt of the notice, the court, on its own motion or the motion of the parent who is not the residential parent, may schedule a hearing with notice to both parents to determine whether it is in the best interest of the child to revise the parenting time schedule for the child.

R.C. 3109.051(G)(1). The mother filed this notice, using an approved form, which notified the parties: "You have the right to file a Motion and request a hearing for the Court to determine whether it is in the best interest of the child(ren) to revise the parenting time schedule." The father opposed modification of his parenting time and (as discussed supra) sought reallocation of parental rights due to the proposed move.

{¶54} R.C. 3109.051(G)(1) is contained within the statute governing parenting time. The statute provides a list of factors to be considered when establishing a specific parenting time schedule and when determining other parenting time matters, such as modification of a prior parenting time order. *See* R.C. 3109.051(C), (D). In modifying parenting time, the court is to consider all relevant factors including, but not limited to, those listed in division (D) of the statute. R.C. 3109.051(C) (and any mediation report); *Braatz v. Braatz*, 85 Ohio St.3d 40, 45, 706 N.E.2d 1218 (1999).

{¶55} The statutory factors to be considered are: (1) the prior interaction and interrelationships of the child with the parents, siblings, and other persons related by consanguinity or affinity; (2) the geographical location of the parents' residences and the distance between those residences; (3) the child's and parents' available time, including employment, school, holiday, and vacation schedules; (4) the child's age; (5) the child's adjustment to home, school, and community; (6) the child's wishes and concerns, if the court interviewed the child in chambers; (7) the health and safety of the child; (8) the amount of time available for the child to spend with siblings; (9) the mental and physical health of all parties; (10) each parent's willingness to reschedule missed parenting time and to facilitate parenting time rights; (11) certain criminal

offenses not applicable here; (12) (related to visitation by a non-parent); (13) whether the residential parent has continuously and willfully denied the other parent's court-ordered parenting time; (14) whether either parent has established a residence or is planning to establish a residence outside this state; (15) (related to visitation by a non-parent); and (16) any other factor in the best interest of the child. R.C. 3109.051(D). Notably, the (D)(14) factor addresses a parent's plan to move out of state.

{¶56} The father complains the court failed to set forth its analysis in modifying his parenting time. He acknowledges a parent has a constitutional right to live anywhere in the country and recognizes the court's authority under R.C. 3109.051(G)(1) deals with revision of the parenting time schedule. He then states R.C. 3109.051(G)(1) does not govern where the divorce decree expressly or implicitly prohibits removal of the child from the court's jurisdiction, citing e.g. *Zimmer v. Zimmer*, 10th Dist. No. 00AP-383, 2001-Ohio-4226. The father says that if the decree explicitly or implicitly prohibits removal of the child from the court's jurisdiction, then the burden is on the relocating party to demonstrate the decree should be modified to permit removal.

{¶57} First, there is no indication the court placed a burden on the father when it considered the child's best interests at any point in the decision. As acknowledged by the father, the court did not refer to burdens on the issue of best interests. By way of comparison, the court expressly placed the burden on the father regarding changed circumstances to support his motion for reallocation of parent rights. In speaking of best interests on reallocation of parental rights, the court noted, "counsel for both parties left virtually no evidentiary stone unturned." Based upon the abundance of evidence presented by both sides, the court made a decision as to the child's best interest.

{¶58} We note the court referred to the fact that its decision "is permitting relocation * * *" and essentially concluded the move would not be contrary the child's best interest. For instance, the court stated, "even assuming that the Court could find that Plaintiff's proposed move to North Carolina with Will was not in the best interests

of Will * * *." This language shows the court disagreed with the father's argument that relocation was against the best interest of the child (and then conducted an alternative analysis). This was in the reallocation of parental rights section, but there is no issue with a blended best interest analysis; where the court is faced with multiple arguments, it need not repeat itself within different sections of its decision.

{¶59} Moreover, the father relies on his assumption that the divorce decree contained an implicit restriction on the relocation of both parents. However, he does not explain how the language of the divorce decree prohibited relocation so as to require an analysis different than the statute concerning relocation. The decree essentially mirrored the statute on filing a notice of intent to relocate.

{¶60} In any event, the father did not specifically object to the magistrate's application of the test for parenting time modification, to the failure to mention burdens, or to the implications of the allegedly implicit language of the divorce decree. Nor did he mention these matters at the hearing on objections. "An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Civ.R. 53(D)(3)(b)(ii). "Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Civ.R. 53(D)(3)(b)(iv).

{¶61} Regardless, contrary to the father's contention, it was not "impossible" to find that modification of parenting time due to a proposed relocation was in the child's best interest. His objections to the magistrate's decision argued the decision on best interest was an abuse of discretion and the magistrate failed to consider the statements of Dr. Kayne and the guardian ad litem regarding the relocation. On this topic his brief contends: the child and the mother had limited contact with the state of North Carolina; the step-father may be deployed; the child will be leaving his extended family; and the child's "constant" contact with the father will be diminished causing bonds to weaken. Appellant believes the court's attitude was inappropriately judgmental toward him while allowing the mother to elevate her interests above those

of the child. The father complains the court expressed "hope" and "optimism" that the communication problems could be resolved if the mother moved with the child to the step-father's home and felt less threatened by what she saw as the father's attempts to control her.

{¶62} The trial court specifically cited to R.C. 3109.051(D) and said it considered the factors contained therein. The court expressly recognized the concerns with the interaction and interrelationships of the child with the parents, siblings, and other relatives. *See* R.C. 3109.051(D)(1). The court also emphasized the factor dealing with the geographic location of the residences and distance between the residences. *See* R.C. 3109.051(D)(2). The distance between residences was discussed elsewhere as well. In considering the other relevant factors for modification of parenting time in R.C. 3109.051(D), the trial court referred back to its detailed discussion of the best interest factors under R.C. 3109.01(F)(1), which contains some equivalent factors. *See, e.g.,* R.C. 3109.051(D)(1),(5),(9),(10),(13),(14) (and other factors inapplicable to this case). We refer to our review of the best interest factors under the prior heading where we highlighted the information placed by the court under each factor.

{¶63} Additional factors in R.C. 3109.051(D), which are not specifically listed in R.C. 3109.04(F)(1), were encompassed by the court's lengthy decision. For instance, the court considered the child had recently turned five. *See* R.C. 3109.051(D)(4). The court considered the health and safety of the child throughout the decision. *See* R.C. 3109.051(D)(7). The court discussed the half-brother, who was nine months old when the father's fiancée testified; the court also recognized the fiancée was pregnant. *See* R.C. 3109.051(D)(8).

{¶64} The court discussed the parties' available time and schedules. *See* R.C. 3109.051(D)(3). The mother was a stay-at-home parent. It was anticipated she would travel back to this area to see family. The court explained the father's job and how he tried to schedule clients around his parenting time. The child was to start kindergarten a couple of months after the magistrate's decision. There was a discussion of the proposed school schedule; the schedule was said to be similar to

that of Canfield's school district schedule. In addition, there was testimony on the rescheduling of parenting time after the child's trips with the mother, and there was no complaint that it was insufficient. *See* R.C. 3109.051(D)(10). Furthermore, the child traveled well and was said to be adaptable.

{¶65} In ruling on the request for modification of parenting time, the court acknowledged the recommendations of Dr. Kayne and the guardian ad litem. The court pointed out that these witnesses recommended "parenting time beyond that which is afforded by the Court's Long Distance Parenting Time Schedule if relocation is permitted." The court agreed that upon the mother's relocation, the child's best interest required more than the regular long distance schedule.

{¶66} The modified long distance schedule provided for: the equal sharing of summer on an alternating three-week basis (instead of split in half); alternating Thanksgiving vacation (which is not part of the regular order); and winter and spring vacation to be shared every year (instead of an entire vacation on an alternating basis). The father was additionally provided long weekends (Friday through Monday) in the months of October and February and at least one day of any weekend the mother visited the area. Under the regular long distance schedule, the father is also permitted to spend time with the child if he travels to the child's area, and a weekend can be scheduled once a month if the child's travel time does not exceed two hours one way.

{¶67} The parties were ordered to meet half-way to exchange the child. The court ordered the mother to facilitate the child's use of a video-phone application to communicate with the father at least twice a week. The mother was ordered to provide weekly updates on the child's progress in school and activities; she was also to advise the father of any significant health issues experienced by the child. The child was permitted to move by the interim order entered in conjunction with the magistrate's decision (from which no stay was permitted pending objections or pending the current appeal).

{¶68} As addressed in the prior assignment, the court refused to reallocate parental rights whether the mother moved or not, finding such reallocation would not

be in the child's best interest and the harm would outweigh any advantages. After Dr. Kayne and the guardian ad litem expressed the mother should remain the residential parent even if she moved to North Carolina, these witnesses made statements indicating it was not in the child's best interest "per se" to move away from the area or that "ideally" the mother would remain in the area. Appellant suggests the court failed to acknowledge this testimony. The mother contends the father is focusing on isolated statements within the testimony in order to contest the court's construction of the testimony as a whole. The mother emphasizes that the framing of an "ideal" situation would not exclude other scenarios from the realm of the child's best interest.

{¶69} In an ideal situation, a child would live near both parents, and the parents would find peace with each other and their respective situations. As indicated in our statement of the case, the testimony wavered on the subject of the child's best interest as related to relocation. At one point, Dr. Kayne refused to say the relocation was contrary to the child's best interest; at another point, he qualified a statement that relocation would not be in the child's best interest with the notation, "in the short term."

{¶70} Contrary to the father's suggestion, the trial court's expression of "optimism" and "hope" that tensions would be alleviated by the move did not render the decision unreasonable. This theory was also expressed by Dr. Kayne and stemmed from his belief that the child's oppositional tendencies may be a reflection of the tension between the parties. There is no dispute the lessening of tension and the increase of stress-free communication will benefit the child.

{¶71} Even under Appellant's relocation arguments and his interpretation of the testimony on the child's best interest, such opinion testimony does not overrule the trial court's exercise of broad discretion. In responding to an objection on the magistrate's interpretation of the opinion testimony, the trial court pointed out that the opinion of a guardian ad litem or a custody evaluator is an aid to the trial court and is but one consideration in evaluating the non-exhaustive list of factors, citing *Collins v. Collins*, 12th Dist. No. CA2000-09-023 (Oct. 15, 2001). The trial court is to consider

the totality of the evidence; the opinion of a psychological expert, custody evaluator, or guardian ad litem is not binding on the court. *Seymour v. Hampton*, 4th Dist. No. 11CA821, 2012-Ohio-5053, ¶ 27, citing *In re RN*, 10th Dist. No. 04AP-130, 2004-Ohio-4420, ¶ 4. *See also Maine v. Jones*, 7th Dist. No. 06 MA 191, 2007-Ohio-5043, ¶ 47, 50.

{¶72} The trial court was required to consider all the relevant statutory factors in R.C. 3109.051(D) and any other factor considered relevant in exercising its sound discretion to determine whether a modification to the parenting time schedule was in the best interest of the child. *See Braatz v. Braatz*, 85 Ohio St.3d 40, 45, 706 N.E.2d 1218 (1999); R.C. 3109.051(D)(16) (any other relevant factor). As set forth above, the court's decision evinces its consideration of the pertinent statutory factors and other relevant matters. The court cited the proper statute in discussing parenting time, highlighted two factors in that statute, specifically incorporated by reference its prior detailed discussion of the best interest factors in another statute (many of which are equivalent), and had earlier set forth findings that encompassed the additional factors.

{¶73} As for the ultimate decision, we cannot substitute our judgment for that of the trial court absent an abuse of discretion. Appellant suggests the court's decision was unreasonable. "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." *AAAA Ents., Inc. v. River Place Community Urban Redev. Corp.*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990). This court concludes the trial court did not err in ruling on the child's best interest or in modifying the father's parenting time to allow for the relocation. This assignment of error is overruled.

CHILD SUPPORT

{¶74} The father's final assignment of error provides:

"The trial court erred in issuing a child support order and said finding was contrary to law."

{¶75} A child support worksheet was attached to the January 20, 2012 divorce decree. It imputed $15,000 of income to the mother, who was a stay-at-home parent, and showed $6,000 in interest/dividends for a gross income of $21,000. The father's gross income was listed as $44,564 (which was $47,364 minus 5.6% or $2,800); after deducting $891.28 for local income tax, his adjusted gross income was listed as $43,672.72. The worksheet showed these figures would have resulted in a monthly child support obligation of $611.39 plus the processing charge.

{¶76} However, the parties agreed to a deviation to $0 for child support in the divorce decree. Pursuant to R.C. 3119.22, the decree found the calculated amount would be unjust and inappropriate and would not be in the best interest of the child, listing the following reasons:

> That each parent shall be responsible for all of the child's needs when in the care of that parent and that Mother states that she has sufficient Trust income for herself and the minor child to adequately provide for all needs of the child until at least December 31, 2015. That Mother stipulates and agrees that Father has the child frequently and will provide for all of his needs while in his care and that child support is not needed as Father is attempting to build his business to better provide for the child and keep the former marital home intact for the child as well. Mother also stipulates and agrees that she is financially capable of providing private pay hospitalization insurance for the minor child until at least December 31, 2015 * * *.

{¶77} The mother filed a motion for child support in conjunction with her motion to modify parenting time. The magistrate's decision, adopted by the trial court, stated: "Since the Court is permitting relocation, and since the extended time of parenting under the parties' divorce order is no longer being exercised by [the father], it is incumbent on the Court to revisit the issue of child support." The court

pointed out the child is insured by the step-father's insurance. The court related the mother's testimony that her trust funds have been exhausted. The court imputed a minimum wage income to the mother of $16,848 per year. The court listed the father's total gross income as $23,500. (His adjusted gross income was $4,000 lower due to his other child). These figures resulted in a monthly child support obligation of $277.94 before the processing charge.

{¶78} The abuse of discretion standard applies in reviewing matters concerning child support. *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 686 N.E.2d 1108 (1997); *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). The statute governing the modification of child support, R.C. 3119.79, provides in pertinent part:

> (A) If an obligor or obligee under a child support order requests that the court modify the amount of support required to be paid pursuant to the child support order, the court shall recalculate the amount of support that would be required to be paid under the child support order in accordance with the schedule and the applicable worksheet through the line establishing the actual annual obligation. If that amount as recalculated is more than ten per cent greater than or more than ten per cent less than the amount of child support required to be paid pursuant to the existing child support order, the deviation from the recalculated amount that would be required to be paid under the schedule and the applicable worksheet shall be considered by the court as a change of circumstance substantial enough to require a modification of the child support amount. * * *
>
> (C) If the court determines that the amount of child support required to be paid under the child support order should be changed due to a substantial change of circumstances that was not contemplated at the time of the issuance of the original child support order or the last modification of the child support order, the court shall modify the

> amount of child support required to be paid under the child support order to comply with the schedule and the applicable worksheet through the line establishing the actual annual obligation, unless the court determines that the amount calculated pursuant to the basic child support schedule and pursuant to the applicable worksheet would be unjust or inappropriate and would not be in the best interest of the child and enters in the journal the figure, determination, and findings specified in section 3119.22 of the Revised Code.

{¶79} First, the father argues the mother did not properly demonstrate exhaustion of the trust. He concludes the court erred in setting the mother's income and in finding a change of circumstances for modification. The mother testified she received $250,000 in a trust from her father just before he died in 2002. (Tr. 604-606). She used $65,000 to repay student loans. (Tr. 604). When the parties separated, she was a stay-at-home mom. The 2012 agreed divorce decree anticipated she would use the trust to support the child in lieu of receiving child support and to support herself. She was also responsible for the child's health insurance under the decree. She did not pay her mother rent but paid her property taxes one year. (Tr. 607). At the 2015 hearing, the mother noted she had expended $70,000 of funds from the trust due to the litigation concerning the child. (Tr. 604). She testified the funds were nearly exhausted. (Tr. 603).

{¶80} The father contends the magistrate was not permitted to accept the mother's "claim" that the trust was exhausted because the mother did not verify this by presenting documentary evidence, such as an income tax return or a trust statement. Although credibility is a matter for the trial court, the father urges a statute governs. When a court is computing the amount of child support: "The parents' current and past income and personal earnings shall be verified by electronic means or with suitable documents, including, but not limited to, paystubs, employer statements, receipts and expense vouchers related to self-generated income, tax returns, and all supporting documentation and schedules for the tax returns." R.C. 3119.05(A).

{¶81} The mother responds that the court believed her testimony as to the exhaustion of the trust and the father presented no contradictory evidence. Although she was the one moving to modify child support, she asserts the burden was on the father to prove her testimony was untrue. The mother argues the court had no burden to conduct its own investigation.

{¶82} This court has concluded the statute does not place a burden on the trial court to investigate the parties' income. *Ellis v. Ellis*, 7th Dist. No. 08 MA 133, 2009-Ohio-4964, ¶ 52-53, 55-56. We have also concluded the statute places a burden on the parents to verify *their respective incomes*. *In re S.S.L.S.*, 7th Dist. No. 12 CO 8, 2013-Ohio-3026, ¶ 25-27, citing *Ellis*, 7th Dist. No. 08 MA 133 (the court used 2006 figures after the father testified to a large income decrease in 2007 but failed to verify the new figure with documentary evidence). Therefore, if a party fails to verify his own income, he cannot complain when the court interprets the testimony to calculate his income. *In re S.S.L.S.*, 7th Dist. No. 12 CO 8 at ¶ 25-27.

{¶83} Here, we have a party complaining the other party did not verify their testimony on a lack of an asset, i.e. the father believes the mother was required to submit a document to show the lack of a trust res. Notably, the mother was a stay-at-home parent, and the court imputed employment income to her in the amount of $16,848. That amount is not being disputed. Only income from a trust res would add to income, not withdrawals of the principal. In addition, the agreed decree anticipated the potential depletion of the trust by 2016.

> In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.

Goldfuss v. Davidson, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), paragraph one of syllabus.

{¶84} The father's July 2, 2015 objections to the magistrate's decision broadly alleged the decision was in error as to the establishment of child support and as to the computation of child support. "An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection." Civ.R. 53(D)(3)(b)(ii). Failure to object to a particular finding of fact or conclusion of law precludes a party from assigning the issue as an error on appeal. Civ.R. 53(D)(3)(b)(iv).

{¶85} As an aside, after a magistrate's decision is entered, the trial court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate. Civ.R. 53(D)(4)(b). Another subdivision also provides that before ruling on an objection to a magistrate's decision, the trial court may hear additional evidence. Civ.R. 53(D)(4)(d). Of course, the court can refuse the request (unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate). *Id.* However, without a specific objection to the lack of documentary evidence on the depleted trust and the legal effect of this failure, the mother had no opportunity to argue against the father's legal assertion or to petition the court to entertain additional evidence.

{¶86} At the September 8, 2015 hearing on objections, the father's counsel addressed the topic of whether a change had occurred. In downplaying the benefits of the remarriage, counsel said she objected at trial to the lack of proof on income, noting there were no pay stubs. Yet, this was related to the benefits the step-father could provide.

{¶87} Finally, in the rebuttal portion of the objection hearing, the father's counsel accused the mother of misrepresentation, saying there was no proof she exhausted her trust fund other than her own testimony. The issue appeared to be framed as a challenge to the mother's credibility. Besides the wording of counsel's oral statement, there is an issue with the timing of the statement. This statement during the closing of the hearing on objections would not appear to timely raise the issue that the magistrate was precluded by R.C. 3119.05(A) from accepting her testimony. Although timely objections can be supplemented where the transcript is not yet complete, this requires leaves of court, and this procedure was not utilized

here. *See* Civ.R. 53(D)(3)(b)(ii). Lastly, objections are to be filed in writing. Civ.R. 53(D)(3)(b)(i).

{¶88} Next, the father contends that, even if the mother exhausted the trust, a change in circumstances has not taken place. Although an explicit basis for an agreed $0 child support order was the mother's trust fund and the parties expressly anticipated the potential exhaustion of the trust by 2016, the father urges there is no change because the mother got remarried, which provides her financial security at least equivalent to what her trust previously provided. He points to the income and other benefits received by the step-father.

{¶89} The step-father's income cannot be used to determine the mother's income. *See* R.C. 3119.05(E) (when the court or agency calculates the gross income of a parent, it shall not include any income earned by the spouse of that parent). It can be considered as a factor if the court is asked to deviate from the presumptive child support figure after completing the worksheet. *See* R.C. 3119.23(G) (disparity in income between parties or households); (H) (benefits that either parent receives from remarriage or sharing living expenses with another person). Deviation from the presumptive amount can occur only if the court considers the factors in R.C. 3119.23 and finds the presumptive amount "would be unjust or inappropriate and would not be in the best interest of the child." R.C. 3119.22.

{¶90} Nevertheless, the father's brief does not mention the court's exercise of discretion in failing to deviate from the presumptive amount on the worksheet; nor does he cite these provisions. Still, he argues the exhaustion of a trust is not a change if the trust recipient finds a way to ensure further financial security.

{¶91} Regardless and contrary to the father's assertion, the trust income was not the only item said to have changed and was not the sole item relied upon by the trial court in conjunction with the modification of child support. The magistrate's decision, adopted by the trial court, additionally explained that the issue of child support was being revisited due to the relocation and modification of parenting time so that the extended parenting time exercised by the father would no longer be in effect. In ruling on objections, the court quoted the reasons for deviation in the

parties' divorce decree and emphasized the depletion of the trust and the child's move resulting in decreased parenting time. In addition, the parties' agreement as to a $0 child support order provided another reason for deviation: the mother's waiver of child support would provide the father the security to start a new business. The father testified that his business opportunity fell through due to his partner being diagnosed with a brain tumor. The trial court's decision that there existed sufficient changed circumstances for modification of a $0 child support order was not lacking in sound reasoning.

{¶92} The father's last argument is that the court abused its discretion in calculating his income. At the January 2015 hearing, the father had no estimate for his 2014 income. (Tr. 227). At the April 23, 2015 hearing, it was reported that the father took an extension to file his 2014 taxes, and thus, there was no 2014 tax return. (Tr. 1501-1502). The father is self-employed. He said his income would be similar to the income in his 2012 and 2013 tax returns. His attorney agreed his net income fluctuated between $22,000 and $25,000. The father estimated his gross income would be between $40,000 and $42,000. The court noted this testimony and set his employment income at $23,500 (line 1a).

{¶93} The mother urges there was no abuse of discretion in using this mid-point figure, which the father was involved in proposing. The father notes the court used his net income (of $23,500) on the 2015 worksheet, whereas the worksheet attached to the January 20, 2012 divorce decree used his gross income (minus 5.6%). His brief mentions he is self-employed with legitimate deductions. He seems to suggest the magistrate should not have calculated the current presumptive amount of support until the 2012 worksheet was revised to use the net figure from the time of the divorce.

{¶94} The father does not explain the effect of such an exercise and does not perform any computations to illustrate his point. Notably, he presents this as an issue with the *calculation* of the current order; he does not present this as an issue with the decision to modify the $0 order due to changed circumstances. As aforementioned, the decision to modify the $0 child support order was based upon

additional changed circumstances as the explicit reasons for the prior deviation no longer applied. Upon the finding of changed circumstances, the court used the presumptive amount in the current worksheet using current figures. In establishing the current order, the court used the net income figure rather than the $20,000 higher gross income figure. Under the circumstances of this case, we cannot see how the figure used in line 1a harmed the father in arriving at the current presumptive amount.

{¶95} Besides the failure to clearly explain his reasoning to this court, he did not elucidate the issue within his objections for the trial court's consideration. The father's written objections broadly took issue with the establishment and computation of child support. The trial court was not presented with a specific written objection about the worksheet figures used for the father's income. *See* Civ.R. 53(D)(3)(b)(ii) (objection shall be specific; state objection with particularity). *See also* Civ.R. 53(D)(3)(b)(iv) (failure to object to a particular finding of fact or conclusion of law precludes a party from assigning the issue as an error on appeal); Civ.R. 53(D)(4)(d) (trial court could have agreed to hear additional evidence). There is no reason the trial court should have discerned this issue on its own review.

{¶96} Likewise, within this argument, the father argues the court failed to account for the parties' local income taxes. He again points to the worksheet attached to the 2012 agreed divorce decree, wherein the parties deducted $891.28 for the father's local taxes and $300 for the mother's local taxes. He does not explain why the completion of the new worksheet would be governed by figures within the prior worksheet. In addition, the father did not testify about local taxes. He was asked for an estimate of his net income, since he failed to file his taxes on time, and his counsel agreed to a range of figures (from which the court chose a mid-range figure). Furthermore, under the section on child support, the magistrate's decision notes that Canfield City tax would be inapplicable to the father's Canfield Township residence.

{¶97} Yet, the father did not specify an argument as to this factual finding, or the worksheet's lack of local taxes, to the trial court where the claim could have been addressed in the first instance. *See id.* This was not an issue the trial court should

have been expected to sua sponte address when reviewing the magistrate's decision. We refer to our prior pronouncements on the importance on objecting with specificity. On these bases, this assignment of error is overruled.

{¶98} The trial court's judgment is hereby affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.