

STATE OF OHIO)
)ss:
COUNTY OF MEDINA)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

WILLIAM P. VAUGHAN

C.A. No. 10CA0014-M

Appellee

v.

JENNY L. VAUGHAN n.k.a. JESINA

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF MEDINA, OHIO
CASE No. 08 DR 0157

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 6, 2010

CARR, Presiding Judge.

{¶1} Appellant, Jenny Vaughan, nka Jesina (“Mother”), appeals the judgment of the Medina County Court of Common Pleas, Domestic Relations Division. This Court affirms.

I.

{¶2} On April 1, 2008, William Vaughan (“Father”) filed a complaint for divorce against Mother. Father also filed a motion for appointment of a guardian ad litem (“GAL”) for the couple’s minor children and a motion for a psychiatric evaluation of Mother because he believed that her mental and emotional state would be at issue in the case. On April 14, 2008, Mother filed an answer and counterclaim for divorce. Father filed an answer to the counterclaim. The domestic relations court appointed a GAL and a psychologist, Dr. Robin Tener, to prepare a custody evaluation report.

{¶3} The parties, counsel, and the GAL participated in settlement negotiations on October 6, 2008. On November 4, 2008, Father filed a notice of filing of a proposed order

reflecting the agreement reached by the parties. The record does not contain the proposed order. Father further notified the court that Mother's counsel agreed that the proposed order accurately reflected the parties' agreement; however, Mother had rescinded her authorization allowing her attorney to sign the order. On November 5, 2008, Mother objected to Father's proposed order and requested a hearing on the matter. The trial court scheduled a hearing for December 22, 2008. Forty-two minutes before the hearing was scheduled to begin, Mother filed a motion for a continuance because she was snowbound in Boston. Mother had relocated to Massachusetts some time in late November 2008. The trial court rescheduled the hearing until February 6, 2009.

{¶4} On March 26, 2009, Mother filed a motion to adopt a shared parenting plan. Mother attached a proposed plan and requested a hearing. On March 30, 2009, Father filed a brief in opposition to Mother's motion for shared parenting. The trial court scheduled a hearing on the motion on April 13, 2009.

{¶5} On April 13, 2009, the domestic relations court heard matters regarding the parties' complaints for divorce. On the same day, the trial court issued a judgment entry of divorce, incorporating the terms of the parties' separation agreement. All matters were resolved except for the issue of the allocation of parental rights and responsibilities involving the two minor children of the marriage. The trial court referred that matter for mediation to occur the next day. On April 16, 2009, the magistrate issued a mediation report, in which she asserted that the parties had been unable to reach an agreement as to any parenting issues. On April 21, 2009, the domestic relations court issued a notice of hearing on the allocation of parental rights and responsibilities to occur on May 28, 2009.

{¶6} On May 5, 2009, Mother’s counsel filed a motion to continue the May 28 hearing for the reason that “it is counsel’s understanding that [Mother] does not have the necessary funds to return to Ohio for the hearing.” Father opposed a continuance. The trial court denied the motion for a continuance on May 12, 2009. On May 27, 2009, Mother’s counsel filed a renewed motion to continue the hearing, asserting “it is counsel’s understanding that [Mother] recently confirmed again that she does not have the necessary funds to return to Ohio for the hearing.” The trial court denied the renewed motion.

{¶7} The final hearing proceeded on May 28, 2009. On January 4, 2010, the domestic relations court issued a judgment entry in which it named Father as the residential parent and legal custodian of the children and awarded Mother supervised parenting time in Ohio as the parties would agree. The court denied Mother’s motion to adopt a shared parenting plan. Father was ordered to provide health insurance coverage for the children and to pay 100% of the reasonable and ordinary uninsured and unreimbursed medical and dental expenses. Mother was ordered to pay \$0 (Zero Dollars) for child support. Mother filed a timely appeal, raising two assignments of error for review.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT DENIED [MOTHER’S] REQUESTS FOR A CONTINUANCE DUE TO [MOTHER’S] FINANCIAL INABILITY TO ATTEND THE TRIAL.”

{¶8} Mother argues that the domestic relations court abused its discretion by denying her motions to continue the hearing on the allocation of parental rights and responsibilities. Additionally, Mother argues that the denial of her request for a continuance violated her right to due process of law. This Court disagrees.

{¶9} It is well settled that “[t]he grant or denial of a continuance is a matter which is entrusted to the broad, sound discretion of the trial judge. An appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion.” *State v. Unger* (1981), 67 Ohio St.2d 65, 67, citing *Ungar v. Sarafite* (1964), 376 U.S. 575, 589. The United States Supreme Court emphasized that “not every denial of a request for more time [] violates due process even if the party fails to offer evidence or is compelled to defend without counsel.” *Ungar*, 376 U.S. at 589. Whether a denial of a request for a continuance is so arbitrary as to violate due process depends on the circumstances of the case, particularly the reasons articulated to the trial court in support of the request. *Id.* The Ohio Supreme Court adopted a balancing test in which any potential prejudice to the moving party is to be weighed against the trial court’s right to control its docket and the public interest in the timely and efficient dispatch of justice. *Unger*, 67 Ohio St.2d at 67. To that end, the high court set out a non-exclusive list of factors for the trial court’s consideration when ruling on a motion for a continuance. Those factors include:

“the length of the delay requested; whether other continuances have been requested and received; the inconvenience to litigants, witnesses, opposing counsel and the court; whether the requested delay is for legitimate reasons or whether it is dilatory, purposeful, or contrived; whether the defendant contributed to the circumstance which gives rise to the request for a continuance; and other relevant factors, depending on the unique facts of each case.” *Id.* at 67-8.

{¶10} On April 13, 2009, the parties informed the trial court that they had reached an agreement as to all issues arising out of their divorce except for the issues regarding the allocation of parental rights and responsibilities. At the divorce hearing, the trial court stated that “by agreement of the parties, the child issues will be bifurcated and will be addressed first with a mediation scheduled for 2:30 tomorrow.” Both Father and Mother asserted on the record that they understood that issues regarding the allocation of parental rights and responsibilities would not be resolved until a later date. The parties were unable to reach an agreement at the mediation

and the trial court scheduled the matter for hearing, giving the parties five weeks' notice of the May 28, 2009 hearing.

{¶11} Mother's first motion for a continuance, filed on May 5, 2009, contained merely a vague assertion by counsel that he understood that Mother did not have sufficient monetary resources to travel to Ohio for the hearing which would take place three weeks later. Mother's counsel did not append an affidavit or other evidentiary support to substantiate Mother's asserted need for a continuance. Neither did the motion indicate when Mother would expect to have sufficient funds to travel to Ohio for a hearing.

{¶12} Mother's second motion for a continuance, filed on May 27, 2009, again contained only counsel's vague assertion of his understanding that Mother could not afford to travel to Ohio for the hearing. Mother's counsel next orally moved the trial court on May 28, 2009, immediately prior to the hearing, for a continuance for the reason that Mother could not afford to travel to Ohio. Counsel asserted that Mother had informed him in an email that she could not afford to travel to Ohio for the hearing because Father had not made a recently due spousal support payment. Father's attorney informed the court that Father had in fact erroneously paid \$500 more than required in spousal support due to recent changes in his employer's computer system. Father's attorney informed the trial court that Mother had received between \$7000 and \$8000 in spousal support to date, and that she had received the same amount during the last year from oil and gas royalties. The trial court denied the motion for a continuance.

{¶13} Mother moved three times for a continuance of the May 28, 2009 hearing, each time alleging a lack of funds to travel to Ohio from her new residence in Boston. Mother moved to Boston during the pendency of the divorce, in large part to attempt to establish a relationship

with the Kennedy family because she believed that she was related to them. The domestic relations court denied each motion and reaffirmed the date scheduled for hearing. Mother failed to substantiate her assertion that she could not afford to travel to Ohio from Boston. The only reason put forth by counsel was that Father had not made a recent spousal support payment. Father and his attorney both asserted that Father had in fact made an extra payment due to a glitch in his employer's computer system. Moreover, Mother's counsel did not dispute that his client had been receiving spousal support as well as gas and oil royalties. In addition, it is evident from the trial court's orders during the case authorizing the release of the parties' investment monies to them that Mother had received \$67,566.25 during the past eight months. The trial court had ordered the release of \$74,000 to each party, although Merrill Lynch was ordered to distribute \$6,433.75 from Mother's share to her attorney. Accordingly, there was evidence that Mother had received substantial income during the past year.

{¶14} Mother failed to explain why, given her substantial income during the past year, she was unable to afford to travel to Ohio from Boston. She failed to give any indication of when she would be able to afford to travel to Ohio for the hearing. Mother agreed to a bifurcation of the issues of the allocation of parental rights and responsibilities from all other issues arising out of the divorce, so she knew that this matter would implicate her additional participation in Ohio if the parties could not reach an agreement during mediation.

{¶15} Two professionals, an attorney guardian ad litem and a psychologist who was also the director of Northeast Ohio Behavioral Health, had arranged their schedules so that they would be present in court to testify on May 28, 2009. The trial court recognized the inconvenience to those witnesses if the matter was continued.

{¶16} There was evidence that the two children of the marriage had suffered a great amount of stress, fear, and frustration in regard to the uncertainty of their custodial dispositions. Pending resolution of the case, the trial court granted temporary custody of the children to Father and allowed Mother to have supervised visitation as the parties might agree. Nevertheless, Mother had informed the children that she wished to bring them to Boston, giving rise to the possibility for drastic change in the children's lives.

{¶17} Based on a review of the circumstances of this case, this Court cannot say that the domestic relations court abused its discretion by denying Mother's repeated requests for a continuance of the May 28, 2009 hearing on the allocation of parental rights and responsibilities. Mother relocated to Massachusetts during the proceedings with the knowledge that the issues relevant to the parties' divorce would be litigated in Ohio. She failed to explain why, despite having received a substantial sum of money during the past year, she could not afford to travel to Ohio for the hearing. She further failed to identify a time when she would have sufficient funds to travel to Ohio. Mother agreed to bifurcate the issue of the allocation of parental rights and responsibilities instead of litigating it while the parties were present in court on the remaining issues relevant to their divorce. The trial court, counsel, Father, and all witnesses were available to proceed with the hearing as scheduled. The children desired and deserved a resolution of custodial issues without further delay.

{¶18} Given the indefinite nature of the requested continuance, Mother's role in creating the circumstances giving rise to her request, the inconvenience to witnesses and the court should a continuance be granted, and the children's interest in certainty in their custodial dispositions, the trial court's right to control its docket and the public interest in the timely and efficient dispatch of justice outweighs the potential prejudice to Mother. See *Unger*, 67 Ohio St.2d at 67.

Accordingly, the denial of a continuance did not violate Mother's right to due process, and the domestic relations court did not abuse its discretion by denying Mother's motion for a continuance. Mother's first assignment of error is overruled.

ASSIGNMENT OF ERROR II

“THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DETERMINING THE ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES.”

{¶19} Mother argues that the trial court abused its discretion by denying her motion to adopt a shared parenting plan, instead naming Father as the residential parent and legal custodian of the children. This Court disagrees.

{¶20} R.C. 3109.04 governs the allocation of parental rights and responsibilities, including shared parenting. Where any parent has moved for shared parenting and submitted a plan, the trial court must review the plan to determine whether it meets the best interest of the children. The trial court shall not approve any shared parenting plan that is not in the best interest of the children. R.C. 3109.04(D)(1)(b). If a shared parenting plan is not in the best interest of the children, the trial court “shall allocate the parental rights and responsibilities for the care of the children primarily to one of the parents, designate that parent as the residential parent and the legal custodian of the child[ren], and divide between the parents the other rights and responsibilities for the care of the children, including, but not limited to, the responsibility to provide support for the children and the right of the parent who is not the residential parent to have continuing contact with the children.” R.C. 3109.04(A)(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.” R.C. 3109.04(F)(1).

{¶21} Moreover, in addition to the factors above, in determining whether shared parenting is in the best interest of the children, the trial court must consider the following:

“(a) The ability of the parents to cooperate and make decisions jointly, with respect to the children;

“(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;

“(e) The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem.” R.C. 3109.04(F)(2).

{¶22} To assist the trial court in its determination regarding the best interest of the children, “the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of each parent and may order the parents and their minor children to submit to medical, psychological, and psychiatric examinations.” R.C. 3109.04(C).

{¶23} As a preliminary matter, Mother argues that the trial court was deprived of the opportunity to consider all evidence relevant to its best interest determination because it denied Mother’s motions to continue the proceedings. We have already determined that the trial court did not abuse its discretion by denying her motions and that, under the circumstance, the trial court’s refusal to grant a continuance did not violate Mother’s due process rights. Moreover, Mother cites no authority for the proposition that the domestic relations court could not make a determination regarding the allocation of parental rights and responsibilities in her absence. On the other hand, where the absent parent does not stand to be permanently divested of parental rights and her interests are otherwise protected by the representation of counsel, the trial court is not precluded from making a determination in regard to the allocation of parental rights and responsibilities. See *In the Matter of Holewinski* (May 14, 1993), 6th Dist. No. L-92-216.

{¶24} Here, Mother did not face the possibility that she would be divested of her parental rights; rather, she would retain at a minimum residual parental rights and responsibilities, including companionship rights with the children. In addition, Mother's attorney was present to cross-examine witnesses and present other evidence on Mother's behalf. Mother's desire for shared parenting was well known, as evidenced by her motion and proposed plan. The bulk of the evidence on matters germane to the issues before the court was presented through two witnesses for the court, specifically, the guardian ad litem and the psychologist who were both appointed and involved in investigating the family's circumstances. Accordingly, the trial court was not precluded from making a determination regarding the allocation of parental rights and responsibilities merely because Mother was not present to give testimony.

{¶25} A trial court enjoys broad discretion in its determination regarding the allocation of parental rights and responsibilities, and that decision will not be reversed absent an abuse of discretion. *Rice v Higgins*, 9th Dist. No. 07CA009247, 2008-Ohio-2246, at ¶7. An abuse of discretion is more than an error of judgment; it means that the trial court was unreasonable, arbitrary, or unconscionable in its ruling. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion demonstrates "perversity of will, passion, prejudice, partiality, or moral delinquency." *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621. When applying the abuse of discretion standard, this Court may not substitute its judgment for that of the trial court. *Id.*

{¶26} At the hearing, Dr. Robin Tener, a clinical psychologist and director of Northeast Ohio Behavioral Health, testified that she performed an assessment of Mother, Father, and both children. Dr. Tener submitted a report, which the trial court admitted into evidence.

{¶27} Dr. Tener testified that the children were very upset and distressed about their family's situation during the past several years. She testified that the children reported that Mother was engaging in unusual behaviors and having unusual perceptions. For example, the children reported that Mother repeatedly awoke them during the night, opened windows and doors even in the winter, and made repeated calls to the police, all because she smelled "vapors" that she thought were harmful. No one else smelled anything unusual. The children reported that Mother told them that Father was a drug dealer and that someone was aiming a laser at their house from the woods. Dr. Tener testified that the children felt overwhelmed by Mother's unusual perceptions, and they were distressed because Mother told them that she planned to take them away to live with her in Boston.

{¶28} Dr. Tener testified that it was very difficult to get any family, marriage, or educational history from Mother because she was focused on issues such as poisonous gas in the home, her belief that she was related to the Kennedy family in Massachusetts, or her belief that her real children had been replaced with replicas. Dr. Tener testified that Mother experienced other unusual perceptions, such as hearing "carnies" moving around in her attic, and believing that people were breaking into her home and replacing her possessions, like a piano and china, with replicas. She testified that unusual ideas typically surfaced with Mother within the first few minutes of conversation. Dr. Tener testified that Mother declined to finish the assessment process, thanking the psychologist for her time but asserting that she would be moving on with her life elsewhere. Mother consistently denied that she misperceived things or needed medication to bring her thoughts into reality.

{¶29} Based on her assessment, Dr. Tener diagnosed Mother with Schizoaffective Disorder with Mixed Episodes. She described the diagnosis as consisting of two disorders: a

schizophrenic process, evidenced by delusions, suspicions, and unusual perceptions which have no basis in reality; and a mood disorder, evidenced by vacillating mood changes. Dr. Tener testified that Mother has no insight regarding her unusual behavior, that Mother refuses treatment, and that the prospects that Mother will obtain treatment are minimal.

{¶30} Dr. Tener testified that Father was somewhat defensive on the standardized tests, so those results were only marginally valid. She testified that she relied in great part on her interviews with Father. She testified that Father was responsive to the children's issues and that he sought counseling for both the children and himself. Dr. Tener testified that Father was responsive to issues regarding the children. On the other hand, she testified that Mother "had a great deal of difficulty focusing on the children," instead asserting that the children were replacements for her real children.

{¶31} Dr. Tener testified that she found Father to be an appropriate parent. She recommended that the children be placed in the full custody of Father, that Mother have supervised visitation with the children, and that the children be removed from visitation if Mother's bizarre verbalizations began to upset the children. Dr. Tener further recommended that the children continue with counseling.

{¶32} The guardian ad litem, Attorney Scott Deliman, testified that he met with Father, Mother, and the children. He testified that the children discussed unusual behaviors by Mother. Mr. Deliman testified that the older child was distraught and frustrated because of Mother's perceptions that no one else saw, smelled, or heard. He testified that the younger child was more resilient but that neither child wanted to live with Mother because of her behavior.

{¶33} Mr. Deliman testified that Father provided him with a written narrative regarding Mother's unusual behaviors. He testified that the children verified that Mother engaged in

unusual behaviors, including sitting on their beds in the middle of the night and talking to someone who was not there.

{¶34} The guardian ad litem testified that Mother was polite and well spoken but that she lapsed into topics beyond the scope of his questions. For example, Mother discussed smelling vapors in the home and her belief that her children and husband had been replaced. For proof, Mother showed Mr. Deliman photographs of the children and told him that they were not her children. She informed the guardian ad litem that Father was not her husband because his penis was significantly different from the penis of the man she married. In addition, Mother discussed a relationship that she believed that she had with the Kennedy family and her desire to move to Boston to pursue her family's roots.

{¶35} Mr. Deliman observed the children alone and with Father. He admitted that he had not observed the boys with Mother, because Mother was unable to return to Ohio for a visit at which he could observe.

{¶36} The guardian ad litem recommended that Father be named as the sole residential parent for the children. In support, he testified that Father recognized how the situation in the home affected the children and that the boys need on-going counseling to learn to adjust. He testified that Father asserted that he was willing to facilitate visitation between Mother and the children. On the other hand, he testified that Mother never expressed a concrete plan as to how she would allow Father to be involved in the children's lives if she was awarded custody because Mother would consistently divert the topic from the children to the plans she had for herself on the east coast. The guardian ad litem testified that Mother exhibited erratic thoughts. He recommended that Mother have only supervised visitation with the children and telephone contact only if the children wanted it. Attorney Deliman opposed Mother's request for shared

parenting because he believed it would be disruptive for the children, because Mother was not likely to maintain the children in counseling, and for the same reasons that he believed Father should be named the sole custodian.

{¶37} Father testified that Mother began having increasingly severe delusional episodes beginning in the summer of 2007. He testified that she would slam doors and break things. He testified that in the winter of 2007, Mother was having frequent olfactory and auditory hallucinations, insisting that she could smell gas, sweet odors, and people having sex in the home, and that she heard people in the home. He testified that Mother insisted that the doors and windows be open, which resulted in temperatures in the home falling below 50 degrees. Father testified that by January 2008, Mother was having episodes every night. He testified that both he and the boys found the episodes to be traumatic. Father testified that Mother's episodes became worse in March and April 2008, when she insisted that he and the children had been replaced.

{¶38} Father testified that there was an immediate benefit to the boys once Mother left the family home. He testified that, since she has been out of the home, the children smile again and their grades are improving. Father admitted that he did not initially want a divorce, but tried to reconcile through counseling and family interventions. However, he maintained his desire to be named the residential parent and legal custodian for the children. He testified that he would work with Mother to facilitate visitation between her and the children in Ohio.

{¶39} Based on a review of the record, this Court concludes that the domestic relations court did not abuse its discretion by concluding that Mother's shared parenting plan was not in the best interest of the children. In addition, the trial court did not abuse its discretion by concluding that it was in the best interest of the children that Father be named the residential parent and legal custodian for the children, and that Mother have supervised visitation. The

children were in the temporary custody of Father pending resolution of this matter. Father has strived to meet their physical, emotional, and psychological needs. The children are well adjusted to their home, school, and community environments. Father expressed a willingness to facilitate visitation between Mother and the children. Both the psychologist and guardian ad litem recommended that Father be awarded custody of the children. Mother, on the other hand, caused distress, anger, fear, and frustration for the children because of her unusual perceptions. Although dually diagnosed with a schizophrenic mood disorder, Mother refuses to seek treatment and denies that she is out of touch with reality. Although Dr. Tener testified that she does not believe that Mother poses a threat of harm to herself or others, there is ample evidence that Mother's behavior has caused significant stress for the children. Both children wish to live with Father in the home they know and the stable environment that Father provides. While Father has articulated a plan for helping the children adjust to their situation, Mother has never been able to focus long enough on the children to articulate such a plan.

{¶40} While it is true that Mother played a significant role as the children's caregiver later in their lives, both Father and Mother shared that role when the children were very young. In addition, Father was the temporary custodian of the children pending the divorce, while Mother moved hundreds of miles away, having limited contact with the children. Because of her misperceptions of reality, Mother was unable to focus on the needs and lives of her children. There is nothing to indicate that the trial court failed to give due consideration to evidence which was favorable to Mother. Moreover, based on a review of the evidence as applied to all the relevant factors, the domestic relations court did not abuse its discretion by concluding that Mother's shared parenting plan was not in the children's best interest and that it was in their best

interest to name Father as residential parent and legal custodian. Mother's second assignment of error is overruled.

III.

{¶41} Mother's assignments of error are overruled. The judgment of the Medina County Court of Common Pleas, Domestic Relations Division, is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

GERALD D. PISZCZEK, Attorney at Law, for Appellant.

JANIS HUTCHINS ZACHMAN, Attorney at Law, for Appellee.