

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

CHARLES ANDREW,	:	
	:	Case No. 25CA21
Plaintiff-Appellee,	:	
	:	
v.	:	
	:	
RICHARD TIMMIS,	:	DECISION AND JUDGMENT
	:	ENTRY
Defendant-Appellant.	:	
	:	RELEASED: 09/23/2026

APPEARANCES:

James R. Leach, Jim Leach, LC, Parkersburg, WV, for appellant.

Wilkin, J.

{¶1} This is an appeal by defendant-appellant, Richard Timmis (“Timmis”) of a Washington County Court of Common Pleas, Domestic Relations Division judgment entry that granted plaintiff-appellee, Charles Andrew (“Grandfather”), companionship time with his minor grandchild and Timmis’s son, C.T.

FACTS AND PROCEDURAL BACKGROUND

{¶2} On March 20, 2023, Grandfather filed a “Complaint for Visitation Rights of Grandparents and Other Relatives When Child’s Mother is Deceased ORC 3109.11.” In the accompanying affidavit in support, Grandfather indicated that he was the maternal grandfather of C.T. His daughter (C.T.’s mother) and one of her children were killed in a traffic accident in May of 2021. Grandfather’s daughter (Mrs. Timmis) was in the process of divorcing the children’s father, Timmis. At the time of her death, Timmis was to have no contact with Mrs. Timmis. In his complaint, Grandfather asserted that

Timmis had denied him the ability to see his surviving grandson, C.T., since June of 2021, and that was not in the child's best interest.

{¶3} Timmis filed an answer to Grandfather's complaint on May 3, 2023, stating that pursuant to the factors listed in R.C. 3901.051, granting visitation rights with Grandfather was not in C.T.'s best interest.

{¶4} The case was scheduled for a hearing on August 16, 2023, before a magistrate. On September 6, 2023, the magistrate requested the parties to submit findings of fact and conclusions of law to the court by September 15, 2023, and responses by September 22, 2023. Both parties timely submitted their proposed findings of fact and conclusions of law and responses. The magistrate declined to adopt either parties' proposed findings and instead issued its own decision that granted Grandfather visitation with C.T., which was filed on February 20, 2025, at 2:40 p.m. On that same day at 2:41 p.m., the court filed a "judgment entry" that adopted the magistrate's decision.

{¶5} The magistrate found that Grandfather had a close, loving, and beneficial grandparent relationship with the minor child prior to the mother's death, including periods when the child resided with him, and that this weighed in favor of visitation. The magistrate noted the family's grief, longstanding conflict, and a history of domestic violence by Timmis against Mrs. Timmis. The magistrate assigned little weight to hearsay and unsupported opinion testimony presented at the hearing. The magistrate determined, pursuant to R.C. 3109.11 and by considering best-interest factors under R.C. 3109.051, that visitation with Grandfather was in C.T.'s best interest despite Timmis's opposition. The magistrate ordered one weekend of visitation per month from

Friday at 6:00 p.m. to Sunday at 6:00 p.m., defaulting to the last Friday each month if the parties cannot agree, and shifting to the prior weekend when the last Friday falls on a holiday weekend. The magistrate granted two consecutive weeks of summer visitation, defaulting to the third Friday in June at 6:00 p.m., through two weeks if no agreement was reached by May 15.

{¶6} On March 6, 2025, Timmis filed objections to the magistrate's decision. Timmis argued that the magistrate's findings and best-interest conclusion lacked credible evidentiary support and was not in C.T.'s best interest. He argued the magistrate failed to properly weigh R.C. 3109.051(D) and 3109.04(F)(1) factors, including Grandfather's created discord, hostility, and disparagement, which affected C.T. He cited testimony that Grandfather showed little prior interest in the child, engaged in hostile and violent statements and conduct, and contributed to conflict during exchanges. He noted C.T. returned from visits with a negative attitude toward him, which he attributed to disparagement by Grandfather. He emphasized that he, as a fit parent, opposed visitation and that parental wishes and safety concerns were insufficiently considered under R.C. 3109.051(D)(15). He challenged the magistrate's reliance on Grandfather's credibility, noting impeachment by defense witnesses and an independent babysitter. He also pointed to Grandfather's delay in seeking visitation and lack of pursuit of the case as evidence of limited interest. He requested that the objections be sustained, an independent review of the evidence and law be conducted,

including an interview with the minor child as additional evidence pursuant to Civ.R. 53(D)(4)(d), and that the magistrate's decision be vacated or modified to deny visitation.

{¶17} On April 8, 2025, the trial court issued a judgment indicating that Timmis's objections had been timely filed in accordance with Civ.R. 53(D)(4)(e)(i). However, the entry also determined that Timmis failed to provide a transcript of the magistrate's hearing as required under Civ. Rule 53(D)(3)(b)(iii). Thus, the trial court reviewed the objections on their face. The trial court undertook "an independent review as to the objections" and found "no defect in the determination of factual issues and that the law was appropriately applied." Therefore, the court denied Timmis's objections and concluded that "[t]he judgment entry filed on February 20, 2025 shall stand as issued." The court designated the entry as a "final appealable order." It is this judgment that Timmis appeals. Grandfather has not filed an appellate brief in response.

ASSIGNMENTS OF ERROR

- I. The Trial Court erred in adopting the Magistrate's Decision prior to interviewing the minor child upon the request of the Defendant in determining the child's wishes and the best interest of the child.
- II. The Trial Court erred in adopting the Magistrate's Decision despite the Magistrate's failure to afford sufficient deference to the wishes of the Defendant as a fit parent.
- III. The Trial Court erred in adopting the Magistrate's Decision despite the Magistrate's failure to properly weigh all of the factors listed in R.C. 3109.051 that are necessary to determine the best interests of the child, instead relying only on the testimony of Plaintiff.

A. Law

1. Reviewing a Magistrate's Decision

a. A Trial Court's Review

{¶8} “A magistrate's decision is not effective unless adopted by the court.” Civ. R. 53(D)(4)(a). “[A] court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate.” Civ.R. 53(D)(4)(b).

{¶9} “The court may enter a judgment either during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired.” Civ. R. 53(D)(4)(e)(i). If the court enters a judgment prior to the expiration of this fourteen-day period, “the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.” *Id.* However, if an appellant files timely objections,

the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

Civ.R. 53(D)(4)(d).

{¶10} “Civ.R. 53 requires that a party objecting to a factual finding support the objection with ‘a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.’ ” *Redmond v. Wade*, 2017-Ohio-7192, ¶ 14 (4th Dist.), quoting Civ.R. 53(D)(3)(b)(iii). Absent a transcript or affidavit, “ ‘a trial court is required to accept the magistrate's findings of fact and may only determine the legal conclusions drawn from those facts.’ ” *Id.*, quoting *Hopkins v. Hopkins*, 2014-Ohio-5850, ¶ 25 (citations omitted). Thus, “[i]f the objecting

party does not file a proper transcript of all relevant testimony or an affidavit of evidence, “ ‘a trial court’s review is necessarily limited to the magistrate’s conclusions of law.’ ” ” *Id.*, quoting *Allread v. Allread*, 2011-Ohio-1271, ¶ 18 (2d Dist.), quoting *Dayton Police Dept. v. Byrd*, 2010-Ohio-4529, ¶ 8 (2d Dist.).

b. An Appellate Court’s Review

{¶11} “Furthermore, the absence of a transcript or affidavit of evidence limits appellate review of a trial court’s decision adopting a magistrate’s decision.” *Id.* at ¶ 15. A “ ‘predicate[] for appealing a factual finding in a case heard by a magistrate is that the trial judge had an opportunity to fully review the factual findings.’ ” *Id.*, quoting App.R.9, 2013 Staff Notes. Therefore, “ ‘an appellate court will not review factual findings on appeal unless the appellant provided the trial court with’ ‘a transcript or, if a transcript is unavailable, an affidavit describing that evidence.’ ” *Id.*, quoting App.R.9, 2013 Staff Notes, citing *Trammell v. McCortney*, 2011-Ohio-6598, ¶ 9-10 (9th Dist.).

{¶12} “[W]hen a party objecting to a magistrate’s decision does not provide the trial court with a transcript of the magistrate’s proceedings, appellate review ‘ “is limited to whether the trial court abused its discretion in adopting the [magistrate]’s report.” ’ ” *Id.* at ¶ 16 (4th Dist.), quoting *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730 (1995). “ ‘In other words, an appeal under these circumstances can be reviewed by the appellate court to determine whether the trial court’s application of the law to its factual findings constituted an abuse of discretion.’ ” *Id.* quoting *Duncan* at 730.

{¶13} Finally, “[w]hen portions of the transcript necessary for resolution of assigned errors are omitted from the record and the appellant has provided no

acceptable alternative to a transcript, ‘the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm.’ ” *Wade*, 2017-Ohio-7192, at ¶ 16 (4th Dist.), quoting *Henley v. Ohio Dept. of Rehab. & Corr.*, 2016-Ohio-5593, ¶ 7 (10th Dist.), quoting *Knapp* 61 Ohio St.2d at 199 (1980).

2. Grandparent Visitation Rights

a. Standard of Review

{¶14} “ ‘The trial court has broad discretion as to visitation issues, and its decision will not be reversed absent an abuse of discretion[.]’ ” *McClintock v. Gould*, 2013-Ohio-5117, ¶ 21 (4th Dist.), quoting *In re S.K.G.*, 2009-Ohio-4673, ¶ 21 (12th Dist.). Such deference is necessary because oftentimes the crucial evidence lies in the demeanor and attitude of the parties, which cannot be transcribed into the record. See *Davis v. Flickinger*, 77 Ohio St.3d 415, 419 (1997). “An abuse of discretion connotes more than a mere error of judgment; it implies that the court's attitude is arbitrary, unreasonable, or unconscionable.” *State v. Ables*, 2012-Ohio-3377, ¶ 9 (4th Dist.), citing *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

“ ‘A decision is unreasonable if there is no sound reasoning process that would support that decision.’ ” [*State v. Ford*, 2019-Ohio-4539, ¶ 106], quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). “[A]n ‘arbitrary’ decision is one made ‘without consideration of or regard for facts [or] circumstances.’ ” *State v. Beasley*, 2018-Ohio-16, ¶ 12, quoting Black's Law Dictionary 125 (10th Ed. 2014), and citing *Dayton ex rel. Scandrick v. McGee*, 67 Ohio St.2d 356, 359 (1981), quoting Black's Law Dictionary 96 (5th Ed. 1979) (“arbitrary” means “ ‘without adequate determining principle; * * * not governed by any fixed rules or standard’ ”). An unconscionable decision is one “showing no regard for conscience” or “affronting the sense of justice, decency, or reasonableness.” Black's

Law Dictionary (11th Ed. 2019). An unconscionable decision also may be characterized as “[s]hockingly unjust or unfair.” Black’s Law Dictionary (11th Ed. 2019). An unconscionable decision also may be characterized as “[s]hockingly unjust or unfair.” Black’s Law Dictionary (11th Ed. 2019). Moreover, when reviewing for an abuse of discretion, appellate courts must not substitute their judgment for that of the trial court. *E.g.*, *State v. Grate*, 2020-Ohio-5584, ¶ 187; *In re Jane Doe 1*, 57 Ohio St.3d 135, 137-138 (1991). (Bracketed text after first bracketed text in original, ellipses in original)

State v. Sharpe, 2025-Ohio-440, ¶ 7 (4th Dist.).

“When applying the abuse-of-discretion standard of review, appellate courts must not substitute their judgment for that of the trial courts.” *Clay v. Clay*, 2022-Ohio-1728, ¶ 11 (4th Dist.), citing *In re Jane Doe 1*, 57 Ohio St.3d 135, 138 (1991).

2. b. 3109.051

{¶15} “In Ohio, grandparents may file a complaint for visitation with their grandchildren after the occurrence of a disruptive or precipitating event.” *Frazier v. Frazier*, 2003-Ohio-1087, ¶ 15 (4th Dist.), citing *In re Whitaker*, 36 Ohio St.3d 213, 215 (1988). “One such disruptive event contemplated by the legislature concerns the death of either the father or mother of the minor child” pursuant to R.C. 3109.11. *Id.*

{¶16} “R.C. 3109.051(C) provides that

[w]hen determining whether to grant . . . visitation rights to a grandparent. . . pursuant to . . . section 3109.11 . . . of the Revised Code, . . . the court shall consider . . . all . . . relevant factors, including, but not limited to, all of the factors listed in division (D) of this section. In considering the factors listed in division (D) of this section for purposes of . . . visitation matters under . . . section 3109.11 . . . the court, in its discretion, may interview in chambers any or all involved children regarding their wishes and concerns.

{¶17} R.C. 3109.051(B)(1) provides that a trial court may grant reasonable visitation rights to a non-parent if the court determines that such visitation is in the

child's best interests. *McClintock*, 2013-Ohio-5117, at ¶ 19 (4th Dist.), R.C.

3109.051(B)(1). “[I]n order to accurately assess what, in fact, is in the child's best interest, courts are directed to consider ‘all relevant factors’ as well as listed in R.C.

3109.051(D).” *Frazier* at ¶ 16, quoting R.C. 3109.051(D). R.C. 3109.051(D) sets out 16 factors that courts “shall consider” including:

- (1) prior interaction and interrelationship of the child with the parents, siblings, . . . and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;
- (2) . . . if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
- (3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;
- (4) The age of the child;
- (5) The child's adjustment to home, school, and community;
- (6) If the court has interviewed the child in chambers, . . . the wishes and concerns of the child as to . . . visitation by the grandparent . . . as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;
- (7) The health and safety of the child;
- (8) The amount of time that will be 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 the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;
- (11) In relation to parenting time, whether 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 the adjudication; 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;
- (12) In relation to requested companionship or visitation by a person other than a parent, whether the person 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 the person, 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 the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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 previously has been convicted of an 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 the person has acted in a manner resulting in a child being an abused child or a neglected child;

(13) 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;

(14) Whether either parent has established a residence or is planning to establish a residence outside this state;

(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

(16) Any other factor in the best interest of the child.

I. First Assignment of Error

{¶18} In his first assignment of error, Timmis argues the trial court abused its discretion by adopting the magistrate's decision one minute after it was filed, showing no independent review under Civ.R. 53(D)(4)(d). He contends that the court further erred by denying his objections without analysis and refusing to interview the child before ruling.

{¶19} Timmis argues that "[d]espite the minimal evidence and the considerable amount of time that had passed since the death of Mrs. Timmis and C.T.'s interaction with [Grandfather] the trial court chose not to interview [C.T.]." He maintains that an interview could have produced updated evidence to support the factors in R.C.

3109.051(D), including subsection (1) C.T.'s prior interactions with his grandfather and other relatives; subsection (3) the child's and parent's available time; subsection (5) the child's adjustment to home, school, and community; subsection (6) the child's wishes and concerns; subsection (7) the child's health and safety; subsection (8) the child's availability to spend time with siblings; subsection (9) the parties' mental and physical health; subsection (15) the parents' wishes and concerns regarding the requested visitation; and subsection (16) any other relevant best-interest considerations. He contends that, without such an interview, the trial court failed to consider the child's current wishes and present best interests as R.C. 3109.051(D) requires. Accordingly, he requests a remand for an independent review of the magistrate's decision, an interview of the child by the court, and a renewed best-interest determination regarding visitation with the grandfather—while acknowledging that he did not seek the interview until after the evidence had been presented to, and submitted for decision by, the magistrate.

Analysis

1. "Independent Review"

{¶20} Civ.R. 53(D)(4)(e)(i) authorizes a trial court to adopt the magistrate's decision by way of an interim order prior to the filing of any objections and imposes no requirement of the court to conduct independent review of the magistrate's decision at that time. The requirement of the court to conduct an "independent review" of the magistrate's decision arises only if the appellant files objections and requires the court to "undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the

law.” Civ.R. 53(D)(4)(d). Thus, the court’s interim order adopting the magistrate’s decision filed minutes after the magistrate’s decision was filed was authorized by the Civil Rules even if the court did not conduct an independent review at that time.

{¶21} One week after Timmis filed objections, the court issued a final judgment stating that it had conducted an “independent review as to the objections” and found no defect in the factual determinations and that the law was properly applied, and it adopted the magistrate’s decision. The trial court further recognized that its review was limited due to the absence of the transcript of the magistrate’s hearing. We therefore reject Timmis’s argument that the court failed to undertake an independent review of his objections and the magistrate’s decision.

2. Decision to Interview

{¶21} Timmis did not ask the court to interview C.T. until he filed objections to the magistrate’s decision. Under Civ.R. 53(D)(4)(d), before ruling on objections, “the court may hear additional evidence, but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.” Timmis made no showing that, with reasonable diligence, the interview could not have been conducted before the magistrate and ultimately the court exercised its discretion and declined to interview C.T. as detailed below.

{¶22} The law requires a trial court to “consider” the best-interest factors in R.C. 3109.051(D) to determine whether visitation is in the child’s best interest, and the court’s decision reflects that it did so. Whether to interview a child to help determine if visitation is in the child’s best interest is left to the court’s discretion. Even if Timmis is

correct in claiming that an interview could have provided additional information relevant to these factors, as long as the court has considered the required factors and made a best-interest determination that is consistent with those factors, it is not our role to substitute our judgment for that of the trial court's.

{¶23} To the extent Timmis contends that “minimal evidence” demonstrates the trial court failed to properly exercise its discretion in declining to interview C.T., he did not file a transcript of the magistrate's hearing for our review. In the absence of that transcript, we cannot evaluate the evidentiary basis for the trial court's ruling and must presume the regularity of the proceedings and the correctness of the trial court's decision not to interview C.T.

{¶24} Accordingly, we conclude that the trial court's decision to decline to interview C.T. was not unreasonable, arbitrary, or capricious. We therefore overrule Timmis's first assignment of error.

II. Second Assignment of Error

{¶25} In his second assignment of error, Timmis argues that the trial court abused its discretion by adopting the magistrate's decision on grandparent visitation without giving the required “special weight” to the wishes of a fit parent, as mandated by constitutional principles and statutory best-interest standards. The appellant cites *Troxel v. Granville*, 530 U.S. 57 (2000) and *Harrold v. Collier*, 2005-Ohio-5334 (2005) as asserting that a fit parent's decisions are presumed to be in the child's best interests, requiring courts to defer significantly to the parent's wishes unless a compelling rationale is provided for overriding them. Timmis contends that the magistrate and trial court failed to apply this presumption, focusing instead on past incidents and

relationships without adequately considering the father's opposition or explaining why his wishes were not prioritized. Timmis argues that the decision's brief acknowledgment of the father's stance is insufficient under the legal standards set by *Troxel* and related cases. Consequently, Timmis seeks reversal or remand of the decision, asserting that the incorrect legal standard was applied, leading to an unreasonable outcome.

Analysis

{¶26} The United States Supreme Court has held that “if a fit parent's decision [regarding grandparent visitation] becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination.” *Troxel*, 530 U.S. at 70 (2000). Adopting *Troxel*, the Ohio Supreme Court has held that “Ohio courts are obligated to afford some special weight to the wishes of parents of minor children when considering petitions for nonparental visitation made pursuant to R.C. 3109.11.” *Collier*, 2005-Ohio-5334, ¶ 12. The Court determined that “special weight is required by R.C. 3109.051(D)(15), since the statute explicitly identifies the parents' wishes regarding the requested visitation or companionship as a factor that must be considered when making its ‘best interest of the child’s evaluation.” *Id.* at ¶ 43. The Court found that

This requirement is not minimized simply because Ohio has chosen to enumerate 15 other factors that must be considered by the trial court in determining a child's best interest in the visitation context. Ohio's nonparental-visitation statutes not only allow the trial court to afford parental decisions the requisite special weight, but they also allow the court to take into to consideration the best interest of the child and balance that interest against the parent's desires.

Id.

{¶27} The Court continued, “[b]y stating in *Troxel* that a trial court must accord at least some special weight to the parent’s wishes, the United States Supreme Court plurality did not declare that factor to be the sole determinant of the child’s best interest.” *Id.* at ¶ 44. It further noted that “nothing in *Troxel* suggests that a parent’s wishes should be placed before a child’s best interest. The state has a compelling interest in protecting a child’s best interest.” *Id.*

{¶28} “While trial courts must accord special weight to a parent’s wishes, neither the applicable statutes or the relevant case law define what exactly constitutes ‘special weight.’ ” *In re N.S.*, 2022-Ohio-3988, ¶ 27 (1st Dist.). Additionally, the Court in *Collier* recognized that even if a court does not expressly indicate that it afforded a parent’s wishes special weight, it may be implied:

In this case, the trial court properly placed on appellees the burden of proving that visitation would be in the best interest of Brittany, thereby honoring the traditional presumption that a fit parent acts in the best interest of his or her child. Further, the trial court expressly weighed appellant’s opposition to visitation between Brittany and appellees as a factor in its decision, thus protecting appellant’s due-process rights. The court ultimately decided that Brittany’s best interests in maintaining her relationship with appellees outweighed appellant’s desire for no visitation. While the trial court did not use the words “special weight,” it is clear that the court gave due deference to appellant’s wishes and concerns regarding visitation before determining that it was in Brittany’s best interest to grant appellees’ motion for grandparent visitation.

Collier at ¶ 45.

“[T]he record [can] establish[] that the court accorded father’s wishes due deference and provided a meaningful rationale for overriding them.” *In re N.S.* at ¶ 31 (1st Dist.), citing *Celek v. Celek*, 2009-Ohio-4990, ¶ 10-12 (1st Dist.).

{¶29} In the instant case, as the law permits, the trial court's decision recognized that Timmis did not wish for Grandfather to have visitation rights with C.T., but ultimately granted Grandfather visitation, finding it to be in C.T.'s best interest. The trial court's decision did not expressly recognize that Timmis's wishes required special weight. However, as recognized in *In re N.S.*, special weight may also be gleaned from the record. Because we do not have the transcript of the magistrate's decision, we cannot evaluate whether the court afforded Timmis's wishes special weight. Consequently, we must presume the regularity of the trial court's proceedings in this regard.

{¶30} Therefore, because we find his argument lacks merit, we overrule Timmis's second assignment of error.

III. Third Assignment of Error

{¶31} In the third assignment of error, Timmis argues that the magistrate failed to properly consider and weigh all the mandatory best-interest factors under R.C. 3109.051(D) and instead relied primarily on the Grandfather's testimony. Timmis contends that the trial court abused its discretion by adopting this deficient decision. He claims that key omissions included the court's failure to adequately address the wishes and concerns of the fit parent and the child, which are central to the best-interest analysis. Additionally, the magistrate did not evaluate factors such as the parties' schedules, the child's adjustment to home and school, the appellee's willingness to reschedule missed time, and Timmis's residence stability. Timmis criticizes the magistrate's superficial treatment of these factors, arguing that the decision lacked a reasoned analysis. As a result, Timmis claims that the trial court's adoption of the

magistrate's decision constituted an abuse of discretion, warranting reversal of the trial court's judgment.

Analysis

{¶32} Timmis maintains that the trial court did not consider all the factors listed in R.C. 3109.051(D) as it was required to do in determining whether it was in C.T.'s best interest for his Grandfather to have visitation rights. The magistrate expressly stated that, consistent with R.C. 3109.11, she considered C.T.'s best interest pursuant to R.C. 3109.051, reflecting application of the statutory framework and the enumerated factors.

{¶33} As we recognized *supra*, the trial court acknowledged Timmis's wishes, but ultimately determined they were not in C.T.'s best interest. The court also addressed the parties' proximity by noting they reside in different states but only approximately 20 minutes apart. The court also crafted a structured schedule that accounts for school-age logistics and practical feasibility—including default weekend provisions if the parties cannot agree, summer-week parameters, and contingencies modifying the schedule if Grandfather relocates beyond a two-hour drive. Finally, despite generically suggesting that “[t]here is no doubt that the life of an [sic] nine-year old is full of activities, both in sport and socially[,]” Timmis does not assert that C.T. had any actual conflicts with the proposed visitation. On the face of its decision, we find that the court's consideration of the R.C. 3109.051(D) best-interest factors was not unreasonable, arbitrary, or capricious.

{¶34} Timmis also claims that to the extent that the magistrate discussed the R.C. 3109.051(D) factors, it did so with “simple blurbs lacking any real substance or analysis as to how the factors assisted her in making her decision.” Timmis claims that

“[t]he magistrate’s decision is replete with testimony and evidence produced by [Grandfather], while failing to address the testimony and evidence produced by [Timmis[.]]” But evaluating whether these assertions are supported by the record—or whether the magistrate improperly credited Grandfather’s evidence while disregarding Timmis’s—requires review of the transcript of the magistrate’s hearing. Because Timmis did not provide that transcript, we must presume the regularity of the proceedings and reject these arguments.

{¶35} Accordingly, because we find his argument lacks merit, we overrule Timmis’s third assignment of error.

CONCLUSION

{¶36} Having overruled Timmis’s three assignments of error, we affirm the trial court’s judgment

JUDGMENT IS AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court, Domestic Relations Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.