[Cite as *In re I.L.J.*, 2023-Ohio-2960.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

IN RE I.L.J.,	:	
		No. 112239
Minor Child	:	
[Appeal by Father]	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 24, 2023

Civil Appeal from the Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. CU 11 110416 and SU 14 704092

Appearances:

Robert C. Aldridge, *for appellant*.

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Marilyn Orkin Weinberg, Terri Hammons-Brown, and Ben Pandurevic, Assistant Prosecuting Attorneys, *for appellee* OCSS.

Michael B. Telep, *for appellee* S.M.

KATHLEEN ANN KEOUGH, P.J.:

{¶ 1} This is the fourth appeal in this case. I.L.J. was born to Father and Mother, who never married, in 2010, and they have been fighting over his care and custody ever since. The "long and tortured history" of their disagreements is set forth in *In re I.L.J.*, 8th Dist. Cuyahoga No. 104272, 2016-Ohio-7052 (*In re I.L.J. I*);

In re I.L.J., 8th Dist. Cuyahoga No. 108251 (*In re I.L.J. II*); and *In re I.L.J.*, 8th Dist. Cuyahoga No. 109564 (*In re I.L.J. III*). *In re I.L.J. III* at ¶ 2.

{¶ 2} While *In re I.L.J. III* was pending before this court, Father filed a motion to show cause against Mother for her failure to timely report to the Office of Child Support Services ("OCSS" or the "agency") the availability of private health insurance for I.L.J. through her employer, in alleged violation of a 2013 agency child support order. He also filed a motion for retroactive modification of child support premised on Mother's failure to report the availability of private health insurance. Father also filed a motion to show cause related to Mother's alleged failure to pay her share of fees related to I.L.J.'s sports activities and her failure to consult with him regarding vaccinations and counseling for I.L.J., in violation of the May 19, 2016 court-adopted parenting agreement executed by Father and Mother. Father also filed a motion to modify the May 19, 2016 agreement.

{¶ 3} Mother likewise filed a motion to modify the May 19, 2016 agreement, as well as a motion to show cause related to Father's alleged violation of the parenting order over the Christmas holidays in 2021.

{¶ 4} After a two-day evidentiary hearing in August 2022, the trial court denied Father's motions to hold Mother in contempt for failing to timely disclose the availability of private health insurance for I.L.J. to the agency and for retroactive modification of the child support order. It granted Father's motion to show cause regarding Mother's failure to pay her 50 percent share for certain of I.L.J.'s extracurricular activities, but denied the motion with respect to Mother's

consultation with Father regarding vaccines and counseling for I.L.J. The trial court granted Mother's motion to show cause regarding Father's violation of the parties' 2016 parenting agreement over the Christmas holidays in 2021. The trial court denied both Father's and Mother's motion to modify the May 19, 2016 parenting agreement, although it made several "technical changes" to the order that the trial court deemed to be in I.L.J.'s best interest in light of Father's and Mother's obvious inability to cooperate in coparenting I.L.J. Father now appeals.

I. Private Health Insurance

{¶ 5} In his first assignment of error, Father contends that the trial court erred in not finding Mother in contempt for failing to provide information to the agency regarding the availability and cost of private health insurance for I.L.J. for the eight months between November 1, 2012, and July 1, 2013, in violation of an agency child support order issued on February 4, 2013, effective November 1, 2012, that modified the original support order. In his second assignment of error, Father contends that the trial court erred in overruling his motion for retroactive modification of child support because Mother's "fraud upon the agency" in not reporting the availability and cost of private health insurance was a "special circumstance" that allowed retroactive modification of his child support obligations during the eight-month period at issue. He contends that retroactive modification is necessary because if Mother had properly reported the availability of private health insurance, he would not have been subject to the payment of cash medical support to Mother during that time. He also contends that the trial court erred in

denying his motion for retroactive modification of child support because child care expenses paid to I.L.J.'s maternal grandmother, an unlicensed caregiver, were improperly included in the 2013 child support order. Because these assigned errors are related, we consider them together.

{¶ 6} Contempt is a disregard of or disobedience to an order or command of judicial authority. *Phelps v. Saffian*, 8th Dist. Cuyahoga No. 96910, 2018-Ohio-4329, ¶ 52. To establish civil contempt, the complainant must establish by clear and convincing evidence the existence of a valid court order, that the respondent had knowledge of the order, and a violation of the order. *In re K.B.*, 8th Dist. Cuyahoga No. 97991, 2012-Ohio-5507, ¶ 77.

{¶ 7} The determination of contempt is within the trial court's discretion and will not be reversed absent an abuse of that discretion. *Cleveland v. Heben*, 74 Ohio App.3d 568, 573, 599 N.E.2d 766 (8th Dist.1991). "'Abuse of discretion' is a term of art, describing a judgment neither comporting with the record, nor reason." *Klayman v. Luck*, 8th Dist. Cuyahoga Nos. 97074 and 97075, 2012-Ohio-3354, ¶ 12, citing *State v. Ferranto*, 112 Ohio St.667, 676-677, 148 N.E. 362 (1925). "'A decision is unreasonable if there is no sound reasoning process that would support that decision.'" *Klayman* at *id.*, quoting *AAAA Ent. Inc. v. River Place Comm. Urban Redevelopment*, 50 Ohio St.3d 157, 161, 553 N.E.2d 597 (1990).

{¶ 8} A trial court may modify non-delinquent child support obligations retroactively to a date prior to the filing of the motion to modify upon a finding of special circumstances, including a finding of fraud. *In re J.S.*, 2d Dist. Montgomery

No. 24597, 2012-Ohio-421, ¶ 21, citing *Torbeck v. Torbeck*, 1st Dist. Hamilton No. C-010022, 2001 Ohio App. LEXIS 4371 (Sept. 28, 2001). A trial court's decision regarding child support obligations will not be reversed on appeal absent an abuse of discretion. *In re M.L.H.*, 8th Dist. Cuyahoga No. 110031, 2021-Ohio-2681, ¶ 12.

{¶ 9} The trial court's judgment entry contained an extensive explanation regarding why Father's motions were without merit. The trial court incorporated the agency's written closing argument submitted after the hearing into its decision and stated that it agreed with the agency's explanation of the facts, as demonstrated by the extensive record in this case, and its interpretation of the law. We do too.

{¶ 10} As pointed out by the agency,

> For the past eight years, [Father] has repeatedly contended that he was "wrongly charged" for cash medical support when the parties' child support order was modified in 2012. His contention is based on his belief that [Mother] failed to inform OCSS that she had private health insurance available through her employer that was reasonable in cost. Having failed in his attempt to vacate the administrative order that was the basis for his claims, he now contends that the "omission" rose to the level of a "fraud" that is so egregious that it warrants a retroactive modification of his support order. There was no evidence of fraud then, and the facts have not changed.
>
> * * *
>
> In essence, we are talking about an eight-month period — from November 1, 2012 through June 20, 2013. The terms of the [child support] order are set forth in the alternative — with one amount owed when the child is covered by [private health insurance] and another amount owed when he is not. Specifically, the order required child support in the amount of $643.64 per month when the child is covered by [private health insurance], and $599.57 in child support plus $103.45 in cash medical support per month (for a total of $703.02) when the child is not. It is simple math to see that the total difference between the amount owed with and without private health insurance is $59.38/month ($703.02 minus $643.64). [Father] has spent the past

> eight years litigating an issue that amounts to a total difference of $475.05 ($59.38 x 8 months).

{¶ 11} As also pointed out by the agency, the record clearly reflects that during the time Father contends Mother fraudulently withheld the availability of private health insurance for I.L.J., (1) the child was legally qualified for "transitional medical insurance" through Medicaid, (2) the Medicaid coverage actually benefitted Father, and (3) any retroactive modification would unfairly benefit him. As stated by the agency,

> It is important to note that the child was, in fact, covered by Medicaid from November 1, 2012 through June 2013, during which time the cash medical support was assigned to the state. While [Father] wants this court to go back in time and eliminate his duty to pay cash medical support during that eight-month period, [Mother] can't travel back in time to remove the child from Medicaid and put him on her private health insurance for that time. Therefore, a modification retroactive to November 1, 2012, would improperly wipe out monies that were, in fact, assigned to the state for Medicaid reimbursement.
>
> Even if, for the sake of argument, [Mother] could go back in time and put the child on her private health insurance for that eight-month period, it doesn't follow that [Father] would come out ahead. Low cost private health insurance would have provided far less comprehensive coverage than Medicaid. Thus, even if [Father] could have saved $475.05 in child support payments, he would have been responsible for 57.39% of any out of pocket (uninsured) costs under a private health insurance policy. A retroactive modification now would unfairly give [Father] the benefit of saving $475.05 without having to pay any additional uninsured medical expenses because the child was, in fact, covered by Medicaid — a fact that cannot be retroactively modified.

{¶ 12} Mother testified that she advised the agency on the questionnaire she completed prior to the 2013 support modification hearing that she had private medical insurance for herself but that I.L.J. was not enrolled on the policy because based on her income, he still qualified for Medicaid. Mother testified further that

when she was advised that I.L.J. was no longer eligible for Medicaid, she asked Father if he would provide private health insurance for I.L.J. through his employer, but Father refused to do so. Mother then notified the agency that I.L.J. no longer qualified for Medicaid and secured private health insurance for him through her employer. As the agency explained,

> It is undisputed that [Mother] added the child to her private health insurance effective July 1, 2013. When OCSS became aware of the July 1, 2013 coverage in 2014, it immediately adjusted her order in the SETS system to reflect that the child was covered from July 1, 2013. This resulted in [Father] being *credited with the difference* between what was charged and what was owed as a result of the adjustment. Thus, [Father's] claim that he was charged for cash medical support through May 2014 is a misrepresentation of the facts.

(Emphasis sic.) At the hearing, Father admitted that he was credited for overpayments when Mother informed the agency that I.L.J. was now covered under private medical insurance.

{¶ 13} Significantly, Father also admitted that he had private health insurance available to him through his employer in February 2013, when the parties' child support order was modified, and that he, as well as Mother, had an affirmative duty to inform the agency of the availability of private health insurance for I.L.J. *See* R.C. 3119.30. Thus, Father could have remedied the cash medical support issue at any time by notifying the agency that he was including I.L.J. on his private medical insurance but he chose not to do so.

{¶ 14} Mother testified that, due to Father's repeated accusations of fraud, the Cuyahoga County Prosecutor and the agency investigated her for possible

Medicaid fraud. No charges were ever brought because, as the agency informed the court, "there was no evidence of fraud."

{¶ 15} On this record, the trial court did not abuse its discretion in denying Father's motion for retroactive modification of his child support obligation. There is simply no evidence that Mother engaged in fraudulent conduct by waiting to report the availability of private medical insurance for I.L.J. to the agency until he no longer qualified for Medicaid. In fact, the record reflects that Mother informed the agency of the availability of private health insurance in 2013 before the support modification hearing and advised the agency that I.L.J. was not enrolled on the policy because he was covered by Medicaid. Father's attempt to characterize Mother's actions as fraudulent is disingenuous.

{¶ 16} Moreover, Mother's actions with respect to reporting the availability and cost of private medical insurance were no different than Father's. Father, like Mother, had private medical insurance available for I.L.J. but did not inform the agency of its availability and cost, presumably because Father realized he would have been responsible for his portion of any uncovered medical expenses under a private insurance policy during the eight months at issue, unlike with Medicaid, where neither party paid any out-of-pocket expenses. Father has never explained why Mother should be held in contempt of court for actions that were no different than his.

{¶ 17} With respect to child care expenses, Father contends that the trial court erred in denying his motion for retroactive modification of the 2013 child

support order because it improperly included a credit for child care costs paid to I.L.J.'s maternal grandmother, who is not a licensed child care provider. Father contends that child care providers need to be licensed in order to qualify for inclusion in a child support order. As support, he cites the definition of child care set forth in R.C. 5104.01, but that statute governs the requirements for state licensing of child care providers. As the trial court correctly stated in its judgment entry, "[t]here is nothing in the child support guidelines as they existed in 2012-2013 (or today, for that matter) that limited the child care allowance to expenses provided by a *licensed* provider." (Emphasis sic.) Furthermore, even if I.L.J.'s maternal grandmother were required to be licensed, the inclusion of child care costs in the support order was not a "special circumstance" that entitled Father to retroactive modification of the order nearly a decade after it was issued. If Father wanted to challenge the inclusion of child care costs in the 2013 order, his remedy was to seek timely judicial review of the administrative modification findings and recommendations, i.e., within 30 days of the issuance of the order.

{¶ 18} Finally, Father contends that the support order should have been retroactively modified because in 2013, the agency failed to make a proper determination regarding the reasonableness of the cost of private health insurance after Mother disclosed on her questionnaire prior to the support modification hearing that she had private health insurance through her employer. The trial court rejected Father's attempt to blame the agency for not taking steps to verify the cost of private health insurance available to Mother as a justification for retroactive

modification, however, because the only issue raised at the 2013 hearing was Mother's claim for child care expenses. We agree with the trial court's reasoning. The issue of private health insurance was not before the agency at the 2013 modification hearing. Thus, although the agency had the authority to assess the reasonableness of the cost of private health insurance, it was not required to do so.

{¶ 19} In sum, Father failed to demonstrate any "special circumstance" that would justify retroactive modification of the support order. He likewise failed to demonstrate by clear and convincing evidence that Mother's actions with respect to reporting the availability and cost of private medical insurance to the agency, like his, rose to the level of contempt. The first and second assignments of error are overruled.

II. Counseling and Vaccinations for I.L.J.

{¶ 20} In his third assignment of error, Father contends that the trial court abused its discretion by not finding Mother in contempt for violating the clause in the May 19, 2016 parenting agreement regarding decision-making authority that states: "Mother agrees to consult with Father prior to making any decisions, but final authority resides with Mother." Father contends that Mother violated the agreement by enrolling I.L.J. in counseling and obtaining several vaccinations for I.L.J. without first consulting him. Father's argument is without merit.

{¶ 21} Father concedes that Mother "raised the issue of counseling" for I.L.J. with him in January 2022 in an email, but asserts that despite his failure to ever respond to her email, she was in contempt of the parenting agreement when she

scheduled I.L.J. for counseling some five months later because there was "no follow-up" conversation with him after the email. But why would Mother be required to reach out to Father for follow-up conversations when he refused to respond to her first communication? Furthermore, the record reflects that Mother did reach out to Father by text in June 2022, before the counseling began, to advise him that the process had begun and of the dates, times, and details of the counseling sessions.

{¶ 22} With respect to the vaccinations, Father contends that Mother violated the agreement by failing to consult with him regarding three vaccinations administered to I.L.J. on November 12, 2022. At the evidentiary hearing, Father conceded that he had not objected to any of the previous 20 vaccinations administered to the I.L.J. since birth and that he was not opposed to the vaccinations that I.L.J. received on November 12, but he asserted that Mother was in contempt because she did not consult with him prior to this appointment. Father conceded, however, that under the parties' agreement, final authority in these matters resides with Mother.

{¶ 23} On this evidence, the trial court did not abuse its discretion in finding that although the "lack of communication elevated the acrimonious attitude between Mother and Father," Father did not prove by clear and convincing evidence that Mother's conduct regarding the counseling sessions and vaccinations rose to the level of contempt of the parties' agreement. The third assignment of error is overruled.

III. Finding of Contempt Against Father

{¶ 24} The 2016 parenting agreement contains the following clause regarding allocation of parenting time over the Christmas holidays:

> The holiday weeks that school is closed will have the following schedule. The week of Christmas will be with Mother on even years and Father on odd years. The week of New Year's Eve will be with Father on even years and with Mother on odd years. The holiday week for companionship time will begin the evening of the last day of school before the holiday break and last for one week.

{¶ 25} Mother testified that Father picked up I.L.J. from school on December 17, 2021, when his school break for the Christmas holidays began. She said that she emailed Father on December 23, 2021, and advised him that she would pick I.L.J. up the next day at 4 p.m. But when Mother went to Father's home on December 24 and called I.L.J. on his cell phone to advise him that she was there, he told her that he was at Father's sister's home. When Mother asked I.L.J. where the aunt lived, I.L.J responded that he was not allowed to tell her. Mother then tried to call Father, who did not answer his phone, and again called I.L.J., who also did not answer. When Mother checked the GPS location on I.L.J.'s phone, she discovered that it had been turned off. However, because I.L.J.'s phone still pinged at his last location, Mother drove to the street shown on the phone and saw Father's car parked in the driveway of a home on the street. A police cruiser happened to be coming down the road, so Mother flagged down the officer and told him the situation, and he accompanied her to the door of the home. Father came to the door and told the officer that he was not going to release I.L.J. to Mother because he believed, based on the parenting agreement, that he was entitled to have him. Father handed I.L.J.'s

phone to the police officer and asked him to give it to Mother, presumably so she could not make any other calls to I.L.J. The officer then told Mother he could not help any further and suggested she file a motion regarding Father's actions.

{¶ 26} The trial court granted Mother's motion to show cause, ruling that "Father and Father's family not revealing the child's location, Father disabling the child's phone's GPS, and taking the child to an unknown location is willful contempt of the 2016 Agreement. Father had the child from December 17, 2021 until December 24, 2021." The court further found that "Father prohibiting the child from talking to Mother to reassure her of his safety was not in I.L.J.'s best interest and cruel."

{¶ 27} In his fourth assignment of error, Father contends that the trial court's ruling was an abuse of discretion because if a contempt order is premised on a party's failure to obey a court order, the order must be "clear and definite," *In re Contempt of Gilbert,* 8th Dist. Cuyahoga Nos. 64299 and 64300, 1993 Ohio App. LEXIS 5999, 19 (Dec. 16, 1993), and the Christmas holiday clause is "ripe with ambiguity." He further contends that the trial court's findings about his behavior in secreting I.L.J. and turning off his GPS are unrelated to whether he violated the holiday clause because the clause does not address such behavior. Finally, he asserts that because the clause is vague and ambiguous, Mother did not establish by clear and convincing evidence that he knowingly violated the terms of the parenting agreement because, at most, "he made an interpretative miscalculation by assuming

that [the phrase] 'week of Christmas' [in the clause] might include Christmas." Father's arguments are without merit.

{¶ 28} The holiday clause is clear that the holiday week for companionship time begins on the evening of the last day of school before the holiday break and lasts for one week. The term "one week" is not ambiguous; it means seven days. Father does not dispute that he had parenting time with I.L.J. from December 17, 2021, to December 24, 2021, or, in other words, for one week. Likewise, he does not dispute that when Mother came to pick up I.L.J., he refused to release the child to her. He also does not dispute that he concealed I.L.J.'s whereabouts from Mother and disabled the GPS on I.L.J.'s phone so Mother would not know where he was.

{¶ 29} Father's actions demonstrate that he did not engage in a merely innocent "interpretative miscalculation" of the parenting agreement. Instead, his secreting the child from Mother and disabling the GPS on I.L.J.'s phone demonstrate that Father knew his one-week holiday time with I.L.J. was over and that he willfully and knowingly violated the agreement. The trial court did not abuse its discretion in finding Father in contempt of the agreement for his actions, and the fourth assignment of error is overruled.

IV. The Guardian ad Litem's Report

{¶ 30} Father next contends that the trial court abused its discretion in considering the guardian ad litem's report because it was not submitted prior to the evidentiary hearing nor presented as an exhibit at the hearing.

{¶ 31} The trial court appointed a guardian ad litem ("GAL") for I.L.J. following the filing of the parties' respective motions to modify the parenting agreement. The GAL testified at the evidentiary hearing that she had investigated the case for nearly six months and determined that it was in I.L.J.'s best interest to remain in Mother's custody and visit with Father, consistent with I.L.J.'s wishes. The trial court examined the GAL, as did both Father's and Mother's counsel. At the conclusion of the hearing, after speaking with counsel, the trial court advised counsel that because the hour was late, Father and Mother were to submit their closing arguments in written form to the court within 21 days from the date of the hearing. The following colloquy then occurred:

> FATHER'S COUNSEL: I know the GAL testified. I don't know if she's planning to – I think she –
>
> THE COURT: You know, she didn't submit a report and the reason why was her machine ate it. Are you planning on submitting a report?
>
> THE GAL: Yes. I will submit a report.
>
> THE COURT: Can you do that within 14 days?
>
> THE GAL: Yes.
>
> THE COURT: So we'll have that at the time of the argument. Make sure counsel – how many days do you need to submit that?
>
> THE GAL: 14 would be fine.
>
> THE COURT: Okay. 14 will be fine.
>
> THE GAL: Yes.
>
> THE COURT: On the 14th day or before make sure each counsel has a copy of that, and then I'll extend your time to answer for 28 days if you need it.

FATHER'S COUNSEL: Okay. Thank you.

THE COURT: I'll give you time to review the GAL report.

(Tr. 505-506.)

{¶ 32} It is apparent that Father accepted and participated in the admission of the GAL's testimony at trial, despite his knowledge that the GAL had not yet filed a written report. Further, it is apparent that Father agreed to the GAL filing her written report after the evidentiary hearing. Because he did not raise any issue about the report before the trial court, Father has waived all but plain error. *In re L.W.*, 10th Dist. Franklin No. 17AP-586, 2018-Ohio-2099, ¶ 36. In a civil case, plain error is found only in "those extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice and where the error complained of, if left uncorrected, would have a material adverse effect on the character of, and public confidence in, judicial proceedings." *In re Moore*, 10th Dist. Franklin No. 04AP-229, 2005-Ohio-747, ¶ 8, citing *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122, 679 N.E.2d 1099 (1997).

{¶ 33} This case is not one of those extremely rare cases where exceptional circumstances require us to find plain error to prevent a manifest miscarriage of justice. Father offers no argument whatsoever that he was prejudiced by the GAL's submission of her report after the hearing; he merely contends that the trial court should not have considered it. Furthermore, Father now objects to something to which he previously agreed. The fifth assignment of error is overruled.

V. The Trial Court's Modifications to the Parenting Agreement

{¶ 34} Prior to the evidentiary hearing, both Father and Mother filed motions to modify the May 19, 2016 court-adopted parenting plan, each arguing there had been a change in circumstances that required modification of the agreement. During the hearing, both Father and Mother testified regarding their proposed changes. The trial court denied both motions. Instead, citing R.C. 3109.04(E)(1) and (F)(1), it modified the agreement, finding that such modifications were in I.L.J.'s best interest. In his sixth assignment of error, Father contends that the trial court erred in modifying the parenting agreement without explicitly finding that there had been a change in circumstances. He further contends that the trial court erred in finding that the modifications were in I.L.J.'s best interest.

{¶ 35} Under R.C. 3109.04(E)(1)(a), a trial court shall not modify a prior decree allocating parental rights and responsibilities unless it finds that there has been a change in the circumstances of the child or the child's residential parent, and the modification is necessary to serve the best interest of the child. The requirements of R.C. 3109.04(E)(1)(a) apply to motions to change the designation of residential parent and legal custodian of the child, not to modification of parenting time or visitation rights. *In re F.T.*, 8th Dist. Cuyahoga Nos. 108934 and 108935, 2020-Ohio-1624, ¶ 52; *see also Fisher v. Hasenjager*, 116 Ohio St.3d 53, 2007-Ohio-5589, 876 N.E.2d 546, ¶ 26. Here, Father's motion included a request that he be named the sole residential parent but the trial court denied the motion. Further, although the court modified various provisions of the shared-parenting

plan, it made no changes to its earlier decree designating Mother as the residential parent. Accordingly, R.C. 3109.04(E)(1)(a) does not apply to our review of the trial court's modifications to the shared parenting agreement. *See In re A.M.*, 8th Dist. Cuyahoga No. 111603, 2023-Ohio-1366, ¶ 76 (where court denied father's request to modify the allocation of parental rights and responsibilities to name him the sole residential parent, R.C. 3109.04(E)(1)(a) did not apply to appellate court's review of trial court's modifications to the parties' shared-parenting plan).

{¶ 36} Instead, our review is governed by R.C. 3109.04(E)(2)(b), which provides:

> The court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. Modifications under this division may be made at any time. The court shall not make any modification to the plan under this division unless the modification is in the best interest of the children.

{¶ 37} Unlike R.C. 3109.04(E)(1)(a), which states that modification of the designation of residential parent and legal custodian requires a determination that a change in circumstances has occurred and a finding that the modification is in the best interest of the child, "R.C. 3109.04(E)(2)(b) requires only that the modification of the shared-parenting plan be in the best interest of the child." *Fisher* at ¶ 34. The Ohio Supreme Court has explained that the best-interest standard in R.C. 3109.04(E)(2)(b) is lower than that contained in R.C. 3109.04(E)(1)(a) because factors in a shared-parenting plan such as which school the child will attend or the

physical location of the child during holidays are not as critical to the life of a child as the designation of the child's residential parent and legal custodian. *Id.* at ¶ 36.

{¶ 38} Because under the lower standard of R.C. 3109.04(E)(2)(b) there is no requirement that the trial court find a change in circumstances before modifying a shared-parenting plan, Father's argument that the court erred in modifying the plan without finding a change in circumstances is without merit.

{¶ 39} With respect to the best interest determination, we recognize that the trial court incorrectly cited R.C. 3109.04(E)(1)(a) in its entry regarding its modifications to the shared-parenting plan. It also incorrectly cited the best interest factors contained in R.C. 3109.04(F)(1). *See Campana v. Campana*, 7th Dist. Mahoning No. 08 MA 88, 2009-Ohio-796, ¶ 3 (the best interest factors listed in R.C. 3109.04(F)(1) are used only for custody modification motions; the best interest factors in R.C. 3109.051(D) are applied to parenting time and visitation modifications).

{¶ 40} Nevertheless, because of the detail of the trial court's entry, we conclude that the court considered a multitude of facts that correspond to the best interest factors contained in R.C. 3109.051(D) and, thus, we are able to review the court's decision to modify the parenting plan. *See Campana* at ¶ 4 (appellate court could review trial court's modifications to visitation in shared parenting plan even though trial court cited only to best interest factors of R.C. 3109.04(F)(1) where the trial court's judgment entry was detailed and made clear it reviewed facts that coincided with the best interest factors in R.C. 3109.051(D)). In doing so, we

conclude that the trial court's modifications to the shared-parenting plan were not an abuse of discretion.

{¶ 41} As noted in its entry, the trial court modified the parenting agreement only after "listening to the testimony, reviewing the exhibits, the GAL's report, and the pleadings," all of which demonstrated that Father's and Mother's constant "petty bickering," "selfishness, self-serving [actions], and battle for control of the child" since the agreement was adopted made them unable to act in I.L.J.'s best interest without a modification of the agreement. In addition, the trial court found that I.L.J. was no longer 6 years old, as he was in 2016 when the original parenting agreement was adopted by the court, but that he was "now 12 years old" and "a young man who knows his basic needs and goals" and is able to offer his "opinion on matters that affect him." *See* R.C. 3109.051((D)(6). Furthermore, it is apparent from the entry that in modifying the agreement, the trial court considered Father's and Mother's wishes, I.L.J.'s wishes, and I.L.J.'s interactions and relationship with his parents, as well as each parent's willingness to facilitate the other parent's parenting time rights. *See* R.C. 3109.051(D)(1), (6), (10), and (13).

{¶ 42} Father offers no argument why the trial court's modifications to the parenting agreement were not in I.L.J.'s best interest other than to complain that the majority of the modifications made by the court came from Mother's proposed parenting agreement instead of his. The fact that the trial court adopted more of Mother's proposed changes than Father's does not mean the trial court erred in finding those changes to be in I.L.J.'s best interest.

{¶ 43} A reviewing court will not overturn a trial court's modification of a parenting agreement absent an abuse of discretion. *Masters v. Masters*, 69 Ohio St.3d 83, 85, 630 N.E.2d 665 (1994). Because the trial court complied with the requirements of R.C. 3109.04(E)(2)(b) in modifying the 2016 parenting agreement, we find no abuse of discretion. The sixth assignment of error is therefore overruled.

{¶ 44} Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, juvenile 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.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
SEAN C. GALLAGHER, J., CONCUR