

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

NEEDY KRISINA BRISTOW, :  
 :  
 Plaintiff-Appellant, : CASE NO. CA2009-05-139  
 :  
 - vs - : OPINION  
 : 7/26/2010  
 :  
 DUANE C. BRISTOW, :  
 :  
 Defendant-Appellee. :

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION  
Case No. DR08-02-0161

Fred S. Miller, Baden & Jones Bldg., 246 High Street, Hamilton, Ohio 45011, for plaintiff-appellant

Caparella-Kraemer & Assoc., LLC, Courtney N. Caparella-Kraemer, 4841 Rialto Road, Suite A, West Chester, Ohio 45069, for defendant-appellee

**BRESSLER, J.**

{¶1} Plaintiff-appellant, Needy Krisina Bristow (mother), appeals a decision of the Butler County Court of Common Pleas, Domestic Relations Division, awarding custody and visitation rights in a divorce case. We affirm the decision of the domestic relations court.

{¶2} Mother and defendant-appellee, Duane Charles Bristow (father), were married on May 25, 1990. The marriage produced two daughters, H.B., born May 5,

1992, and G.B., born March 1, 2000. During the marriage, mother and father frequently engaged in heated arguments within the home. As a result of one such argument in July 2008, a temporary protection order was issued against mother, requiring her to vacate the marital residence and to have supervised visitation with both daughters. Although mother was charged with domestic violence stemming from the July 2008 incident, she was found not guilty in the Butler County Juvenile Court.

{¶13} At the final divorce hearing in February 2009, the trial court heard testimony from mother, father, H.B. and the children's guardian ad litem, Elizabeth Yauch. Yauch recommended that mother have visitation with G.B. three weekends per month, plus visitation from 5:00 p.m. until 8:00 p.m. on Mondays following the weekends G.B. remained with father. Regarding H.B., Yauch stated that she was better-off living with father, and recommended "that only through counseling would [H.B.] see her mother until the counselor believes she's ready for something else."

{¶14} The following month, the trial court issued its decision, naming father as the children's legal custodian and residential parent. The decision contained a visitation schedule, restricting mother's time with H.B. to counseling sessions at H.B.'s discretion. Regarding G.B., the trial court granted mother visitation on alternating weekends, pursuant to the Butler County Standard Parenting Time order DR610. All holidays and vacations were also allocated in accordance with order DR610, unless the parties agreed otherwise.

{¶15} Mother now appeals, presenting a single assignment of error for our review:

{¶16} "THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF-APPELLANT WHEN IT GRANTED CUSTODY OF THE PARTIES' YOUNGER DAUGHTER TO DEFENDANT-APPELLEE AND WHEN IT DID NOT ORDER

SIGNIFICANT VISITATION FOR APPELLANT."

{¶7} In her sole assignment of error, mother argues that the trial court abused its discretion in granting custody of G.B. to father or, in the alternative, in failing to grant her the guardian ad litem's recommended visitation time with G.B.<sup>1</sup>

{¶8} We first address the custody issue. R.C. 3109.04 governs the awarding of parental rights and responsibilities, wherein the primary concern is the best interest of the child. *Gamble v. Gamble*, Butler App. No. CA2006-10-265, 2008-Ohio-1015, ¶25. In making this determination, the trial court must consider all relevant factors related to the child's best interest, including but not limited to the factors specified by R.C. 3109.04(F)(1). *Id.* Several factors for consideration include: (1) the child's interaction and interrelationship with his or her parents; (2) the child's adjustment to his or her home, school, and community; and (3) the mental and physical health of all persons involved in the situation. See R.C. 3109.04(F)(1)(a)-(j).

{¶9} An appellate court will not disturb a trial court's decision in a child custody matter absent an abuse of discretion, that is, unless the trial court has acted in an arbitrary, unreasonable or unconscionable manner. See *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144.

{¶10} In the case at bar, the record reveals that mother and G.B. interacted positively during four supervised visitation sessions in early 2009, and that G.B. frequently expressed her desire to see mother more often. During their supervised visits, mother and G.B. would play games, eat, and talk under the observation of a Butler County family unit supervisor.

{¶11} The trial court also heard testimony from the GAL, Elizabeth Yauch, who advised against shared parenting between the parties because "they can't communicate

[and all] they do is argue." Yauch further testified that G.B.'s counselor, Melanie Grosser, recently contacted Yauch to express concerns regarding mother's unsupervised contact with G.B. Grosser explained that during counseling sessions, G.B. expressed fear concerning her mother's future actions toward father.<sup>2</sup> Based upon these observations, Yauch recommended that the court designate father as the residential parent of G.B. Yauch added, however, that her recommendation was influenced in part by the fact that father was the only party currently living within G.B.'s school district, but that she would not be opposed to "more of a 50/50 parenting schedule" if mother also moved into the school district.

{¶12} The trial court also heard evidence that mother had an "explosive temper" and that during the marriage, she engaged father in many "screaming arguments." It was also brought to the court's attention that despite treatment for clinical depression in 1995, mother's temper persisted over the next ten years, prompting father to temporarily remove the children from the home on several occasions.

{¶13} After reviewing the record, we do not find that the trial court abused its discretion in granting custody of G.B. to father. The trial court faced a difficult decision in this matter, noting that the parties were "very different in their personalities and their temperament, and as a result, in the past several years there have been many screaming arguments within the home, with [mother] doing a majority of the screaming."

The record also reflects that several parties, including father and G.B.'s counselor, Melanie Grosser, expressed concern regarding mother's ability to control her anger.<sup>3</sup>

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1. Mother is not contesting the trial court's decisions regarding H.B.

2. Yauch testified that Grosser stated that she "would like to see [mother] interact with [G.B.] before \* \* \* any unsupervised contact happens because \* \* \* [G.B.] has expressed fears \* \* \* about her mother and things that her mother may or may not do to her father."

3. Father testified that he was "absolutely" concerned for his daughters' safety if they spent unsupervised time with mother.

The court also noted that while G.B. and her mother were "getting along better," their supervised visits had become infrequent after the July 2008 temporary protection order was issued against mother. Thus, in light of the foregoing considerations, the trial court did not abuse its discretion in granting custody of G.B. to father.

{¶14} We next address the visitation issue, wherein mother argues that the trial court erred in reducing her visitation time with G.B. Mother argues that "it is simply not understandable why the court did not at least follow the GAL's recommendation regarding visitation of three weekends a month." Mother also asserts that the court's failure to follow the GAL's recommendation is "exacerbated by the court's lack of any findings or conclusions as to why it ordered only every other weekend visitation, as opposed to increased visitation or even custody."

{¶15} Initially, we recognize that in the case at bar, the trial court did not issue detailed findings of fact and conclusions of law. However, because mother did not request the trial court to do so, it had no independent obligation to issue findings of fact and conclusions of law. Civ.R. 52.<sup>4</sup> See, also, *In re D.R.*, Butler App. No. CA2006-12-310, 2008-Ohio-2259, ¶21; *McCarty v. Hayner*, Jackson App. No. 08CA8, 2009-Ohio-4540, fn. 1. Consequently, in the absence of evidence to the contrary, we will presume that the trial court considered all relevant best interest factors and will also presume the regularity of the trial court proceedings. *D.R.* at ¶21.

{¶16} In establishing a specific parenting time schedule, a trial court is required to consider the factors set forth in R.C. 3109.051(D). See *Anderson v. Anderson*, Warren App. No. CA2009-03-033, 2009-Ohio-5636, ¶24; *Braatz v. Braatz*, 85 Ohio St.3d

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4. Civ.R. 52 states: "When questions of fact are tried by a court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise \* \* \* in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law." The failure to request findings of fact and conclusions of law ordinarily results in a waiver of the right to challenge the trial court's lack of an explicit finding concerning an issue. See *Hayner*, 2009-Ohio-4540 at fn. 1.

40, 44, 1999-Ohio-203. These include, in relevant part, the prior interaction and interrelationship between the parent and child; their geographic proximity and available time; the age, health, and safety of the child; the mental and physical health of all the parties; each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights; the wishes and concerns of the child, as expressed to the court; 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 the residential parent has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court; whether the parent has established a residence or is planning to establish a residence outside this state; and any other factor bearing on the best interest of the child. See R.C. 3109.051(D)(1)-(16). After considering the factors listed in this section, the trial court, in its sound discretion, must determine what parenting time schedule is in the best interest of the child. *Anderson*, 2009-Ohio-5636 at ¶24; *Braatz* at 45.

{¶17} The trial court's basic parenting schedule in the case at bar provides visitation for mother and G.B. on alternating weekends beginning at 6:00 p.m. on Friday and ending at 6:00 p.m. on Sunday. Mother contends that it was error for the trial court to deny her the additional parenting time recommended by the GAL. Accordingly, we must consider whether the trial court abused its discretion in fashioning a parenting schedule that excluded an additional weekend each month and from 5:00 p.m. until 8:00 p.m. on Mondays following the weekends G.B. remained with father.

{¶18} We begin by noting that a trial court has broad discretion in deciding visitation issues, and its decision will not be reversed absent an abuse of discretion, i.e., the decision is arbitrary, unreasonable or unconscionable. See, e.g., *Anderson v. Anderson*, Carroll App. No. 01 AP 755, 2002-Ohio-1156, ¶18-19. The court's primary

consideration should always be the best interest of the child. *Shafor v. Shafor*, Warren App. No. CA2008-01-015, 2009-Ohio-191, ¶9. In order to further the child's best interest, the trial court has the discretion to limit or restrict visitation rights. *Id.*; *Anderson*, 2002-Ohio-1156, ¶18. "This includes the power to restrict the time and place of visitation, to determine the conditions under which visitation will take place and to deny visitation rights altogether if visitation would not be in the best interests of the child." *Anderson* at ¶18.

{¶19} Contrary to appellant's argument, the trial court's decision is not lacking in findings or conclusions as to "why it ordered only every other weekend visitation[.]" While it is certainly preferable for the trial court to mention R.C. 3109.051 and its factors, the court need not specifically refer to the statute. *Shafor* at ¶8. However, the trial court's findings and/or the record should indicate that the court considered the statute and its factors when it rendered its decision. *Id.*

{¶20} The record reveals that the trial court took into account several factors under R.C. 3109.051(D). First, the trial court took into account G.B.'s prior interaction and interrelationship with mother by finding that "[G.B.] and her mother are getting along better" during their supervised visitation. Further, the trial court took into account the GAL's recommendation that G.B. have "regular contact" with her mother three out of four weekends per month.

{¶21} We also note that it appears from the record that the trial court considered the parents' available time, including their employment schedules, by finding that during the course of the marriage, mother was the primary caregiver as a result of father's intensive work schedule. The record also indicates that the court took note of mother's anger issues, the resulting "screaming arguments," and the July 2008 temporary protection order and domestic violence charges, thus accounting for matters

surrounding mother's mental health. The court also accounted for G.B.'s mental health by considering her fears about mother's future relationship with father.

{¶22} In sum, although mother appeared to have made progress as a positive parental figure, it is evident that there remained concern for her ability to manage her temper. Thus, we cannot say that the trial court abused its discretion by cautiously granting visitation between mother and G.B. on alternating weekends. We note that pursuant to R.C. 3105.65(B), the trial court retains continuing jurisdiction "to modify all matters pertaining to the allocation of parental rights and responsibilities for the care of the children, to the designation of a residential parent \* \* \*, and to visitation." *Matter of Gilliam* (Mar. 30, 1998), Brown App. No. CA97-11-020, at 5. Thus, nothing prevents the trial court from ordering increased visitation between mother and G.B. in the future, if it would be in the best interest of the child. *Id.*

{¶23} Accordingly, mother's single assignment of error is overruled.

{¶24} Judgment affirmed.

YOUNG, P.J., and HENDRICKSON, J., concur.