

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

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| DOMINICK DONISI, | : | APPEAL NO. C-180364 |
| Plaintiff-Appellant, | : | TRIAL NO. DR-1101124 |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| ANGELA DONISI, | : | |
| Defendant-Appellee. | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In this post-decree divorce matter, plaintiff-appellant Dominick Donisi appeals the judgment of the trial court finding him in contempt and suspending his parenting time with his daughter.

In his first assignment of error, Dominick challenges the trial court's decision finding him in contempt of the trial court's April 2017 order. At oral argument, Dominick indicated that his appeal as to the trial court's contempt finding was now moot. Therefore, we dismiss his first assignment of error. See *Darr v. Livingston*, 2017-Ohio-841, 85 N.E.3d 1260, ¶ 13-18 (10th Dist.).

In his second assignment of error, Dominick challenges the trial court's decision suspending his parenting time. Dominick argues that the trial court acted unreasonably, especially in conditioning the resumption of his parenting time on the recommendation of his daughter's counselor. Dominick argues that the decision was against the manifest weight of the evidence. Finally, Dominick also argues that the trial court erred in interviewing his daughter in chambers.

R.C. 3109.051 governs parenting time or visitation rights. *See Braatz v. Braatz*, 85 Ohio St.3d 40, 44-45, 706 N.E.2d 1218 (1999). R.C. 3109.051(C) specifically allows the trial court to interview a child in chambers in making a determination with respect to parenting time. In determining whether to modify visitation, the trial court must consider whether a modification is in the child's best interest. R.C. 3109.051; *In re Ross*, 154 Ohio App.3d 1, 2003-Ohio-4419, 796 N.E.2d 6, ¶ 5 (1st Dist.). A trial court's best-interest determination is a question of fact, and should be reversed only if it is against the manifest weight of the evidence. *In re F.B.*, 2018-Ohio-2488, 115 N.E.3d 734, ¶ 29-30 (7th Dist.). Moreover, a trial court's decision modifying the allocation of parental-visitation rights is reviewed for an abuse of discretion. *See Braatz* at 44-45.

At the hearing, defendant-appellee Angela Donisi testified as to her daughter's unwillingness to visit Dominick and the stress and anxiety her daughter experiences before visits with Dominick. Angela testified to an instance during Dominick's parenting time where he had instructed Angela to drop off their daughter's clothes on the front porch of his house. Angela saw their daughter standing inside the house, looking out the window and sobbing. Dominick would not let their daughter talk to Angela. Angela also testified to an incident where her daughter had attempted to get on the school bus after school in an effort to avoid

going to Dominick's home. The school eventually involved Angela and the police to diffuse the situation. One of Dominick's neighbors testified to an incident where Dominick and Angela's daughter had arrived at the neighbor's home in tears and had refused to go back to Dominick's house. The neighbor was so bothered by the daughter's behavior that she thought about calling the police, but she eventually called Angela to take her home.

Based on the testimony at the hearing, we find no abuse of discretion in the trial court's decision to interview the daughter in chambers. As to the evidence supporting the trial court's suspension of Dominick's parenting time, we must presume that the interview of Dominick and Angela's daughter supports the trial court's decision. *See Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980) ("When portions of the transcript necessary for resolution of assigned errors are omitted from the record, 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."). Thus, this court cannot say that the trial court's decision is against the manifest weight of the evidence. Furthermore, we cannot say that the trial court abused its discretion in conditioning the resumption of Dominick's parenting time upon certain conditions. Therefore, we overrule Dominick's second assignment of error.

We affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., MYERS and WINKLER, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on June 26, 2019

per order of the court _____.
Presiding Judge