

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

IN RE: G.P. : APPEAL NO. C-180678
 : TRIAL NO. F-18-0881Z
 :
 : *JUDGMENT ENTRY.*

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.

Mother appeals the judgment of the juvenile court granting legal custody of her son, G.P., to his father. In her first and second assignments of error, mother argues that the trial court erred by terminating the parties' shared-parenting plan and granting legal custody of her son to his father. She contends that the judgment was against the manifest weight of the evidence because there was no change in circumstances to warrant the termination of shared parenting and termination was not in the child's best interest.

Although mother contends that neither party asked the court to terminate shared parenting, the record reveals that mother did ask the court to do so in a motion. In addition, at trial, mother testified that shared parenting had not "been working since day one." And even if neither party had requested the termination of shared parenting, the court had the authority to terminate it on its own under R.C. 3109.04(E)(2)(c).

While this case has been pending on appeal, this court released *In re A.C.*, 1st Dist. Hamilton No. C-180088, 2019-Ohio-2891, which is dispositive of many of the issues before us. In *In re A.C.*, we held that where the trial court considers

termination of shared parenting pursuant to R.C. 3109.04(E)(2)(c), the court need only consider the best interest of the child and is not required to find a change in the circumstances of the child. In making the best-interest determination, the court must consider all relevant factors, including those enumerated in R.C. 3109.04(F)(1) and (2). *Id.* at ¶ 19. In the case before us, the trial court did not have the benefit of our decision in *In re A.C.*, and it considered only the best-interest factors in R.C. 3109.04(F)(1). Therefore, we remand this matter to the trial court for it to determine in accordance with R.C. 3109.04(F)(2) whether termination of shared parenting and award of custody to father was in the child's best interest. The first and second assignments of error are sustained.

In her third assignment of error, mother argues that the trial court erred by failing to find father in contempt.¹ In her fourth assignment of error, mother argues that the trial court's attorney-fee award to father was exorbitant and should have been offset by an award of attorney fees to her. Because she argues the assignments of error together, we will discuss them together.

To establish civil contempt, the party seeking to enforce a court order must show by clear and convincing evidence that a court order exists and that the nonmoving party has not complied with the terms of that order. We review the denial of a motion for contempt for abuse of discretion. *Wolf v. Wolf*, 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, ¶ 4.

In mother's motion for contempt, she alleged that father had failed to abide by requirements in the shared-parenting plan with respect to mediation, health insurance, mother's right of first refusal, and the encouragement of love and affection. However, because mother failed to demonstrate father's lack of

¹ The third assignment of error states: "The Magistrate[']s decision did not address or rule on mother's motion for con[t]empt against father and her request for attorney fees." The arguments presented within the assignment of error, however, address the denial of the motion by the trial court.

compliance with the provisions of the shared-parenting plan, we hold that the trial court did not abuse its discretion in denying mother's contempt motion. *See id.*

As to mother's argument concerning attorney fees, although mother claims that the attorney-fee award to father was exorbitant, she does not challenge the award itself or the evidence supporting the amount of the award. In addition, given the denial of her contempt motion, there was no attorney-fee award to mother that would offset the attorney-fee award to father. Therefore, we overrule the third and fourth assignments of error.

In her fifth assignment of error, mother argues that the trial court erred by terminating the parties' obligation to communicate using the Our Family Wizard website. We review such an order for an abuse of discretion. *See Robinette v. Bryant*, 4th Dist. Lawrence No. 14CA28, 2015-Ohio-119, ¶ 14. Given evidence that the parties had continued to communicate by other means and that their use of the website had not substantially benefitted their communication, we find no abuse of discretion by the trial court. We overrule the fifth assignment of error.

Therefore, we reverse the trial court's judgment with respect to the termination of shared parenting and remand this matter to the trial court for it to consider the factors of R.C. 3109.04(F)(2) in determining whether termination of shared parenting and award of custody to father was in the child's best interest. We affirm the trial court's judgment in all other respects.

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

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

To the clerk:

Enter upon the journal of the court on October 25, 2019,
per order of the court _____.
Presiding Judge