

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

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| DONALD J. FISSE, JR., | : | APPEAL NO. C-160535 |
| Plaintiff-Appellee, | : | TRIAL NO. DR-0600779 |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| TAMATHA L. FISSE, | : | |
| Defendant-Appellant. | : | |

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.

Tamatha L. Fisse (“Tamatha”) appeals the judgment of the Hamilton County Court of Common Pleas, Domestic Relations Division, granting Donald J. Fisse, Jr.’s, (“Donald”) motion for a reallocation of parent rights. We affirm.

The parties’ marriage was ended by a decree of divorce entered on July 24, 2007. Under the terms of the decree, Tamatha was designated the residential parent and legal custodian of the parties’ two children. Donald was awarded parenting time.

In March 2015, Donald filed a motion for the reallocation of parental rights, requesting to be designated the residential and custodial parent. At the same time, he filed a contempt motion, alleging, among other things, that Tamatha repeatedly denied him parenting time and failed to communicate with him.

Pat McGill, a social worker with the domestic relations court, performed a custody investigation. Consistent with McGill’s recommendation, the other evidence admitted at

trial, and the court's in camera interview of the children, the trial court granted Donald's motion to reallocate parental rights and found Tamatha in contempt of the prior parenting order. Of significance, the court also ordered significant therapy for the parties and children and the use of Our Family Wizard. Tamatha now appeals, arguing in her sole assignment of error that the trial court erred by granting the reallocation motion.

As relevant here, parental rights and responsibilities that have been allocated in a prior decree may not be modified unless the court "finds, based on facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child, the child's residential parent, * * * that the modification is necessary to serve the best interest of the child," R.C. 3109.04(E)(1)(a), and that the harm resulting from the change will be outweighed by the benefits. *See* R.C. 3109.04(E)(1)(a)(iii).

The parties presented a significant amount of testimony and other evidence at the trial, which the trial court summarized in its detailed decision in support of its judgment reallocating parental rights. We review the trial court's reallocation of parental rights under an abuse-of-discretion standard. *See Davis v. Flickinger*, 77 Ohio St.3d 415, 418-419, 674 N.E.2d 1159 (1997), citing *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 550 N.E.2d 178 (1990), syllabus.

Tamatha first contends that the trial court erred by finding that a change in circumstances had occurred. A change of circumstances must be a "change of substance, not a slight or inconsequential change." *See Flickinger* at 418.

Here, the trial court found a "significant" change in circumstances based on the "degree" that the parties' acrimony had come to affect the children. Tamatha argues that the effect of the conflict was not an appreciable change, but the record, particularly the trial court's in camera interview of the children, amply supports the trial court's

determination that the rancor was increasingly harming the children, including adversely affecting their emotional development.

Next, Tamatha argues the trial court erred by finding that it was in the best interest of the children to designate Donald as the residential parent and legal custodian. In determining what is in the children's best interest, the trial court shall consider all relevant factors, including those specified in R.C. 3109.04(F)(1). Tamatha argues that the trial court relied upon only three of the ten enumerated factors, and gave too much weight to the factor that involved the wishes of the children.

We first reject Tamatha's claim that the trial court failed to consider all the relevant best-interest factors. Here, the court noted in its decision the three factors that it found most pertinent to its analysis, but also indicated that it had considered all of the factors. The court is not required to provide a written analysis of each of the factors and has discretion in determining which factors are more relevant. *See Brammer v. Brammer*, 3d Dist. Marion No. 9-12-57, 2013-Ohio-2843, ¶ 41 and 43.

We also reject Tamatha's argument that the trial court gave too much weight to the wishes of the children, who were 11 and 12 years old at the time of the trial. The children were articulate about their concerns, unequivocal and sincere about their wishes, and were interviewed in camera, without either parent. Nothing in the record directs us to the conclusion that the trial court abused its broad discretion when assigning the appropriate weight to the concerns and wishes of these children. *See Miller v. Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846 (1988).

And Tamatha's argument that the trial court overlooked Donald's contributions to the acrimony when making the best-interest determination is likewise unfounded. The court recognized the contributions of both parents to the rancor. But the court emphasized the contributions of Tamatha, who had a history of strained relationships and

was in contempt of the prior parenting order as the custodial parent. The court stated, “[i]t is Mother’s obstinate refusal to address Father’s concerns about her care of the children or consistently communicate with him that has resulted in an impasse between these parties that perpetuates the conflict. There is a great deal of pride in Mother’s own parenting ability and very little listening to others.” And the record demonstrates that Tamatha’s self-centered obstinateness left her indifferent to the harm she was causing.

Finally, Tamatha argues that the trial court erred by determining that the harm resulting from the reallocation of parental rights will be outweighed by the benefits. Tamatha maintains that the opposite will happen when Donald has sole custody because he “will have free reign to further alienate these children from their mother.” But the trial court rejected this accusation and argument and found, as the social worker did after an investigation, that the change in custody would reduce the conflict between the parents and benefit the children. This finding is amply supported in the record.

Ultimately, upon our review of the voluminous record, we hold that the trial court did not abuse its discretion when it reallocated parental rights, because it applied the relevant statutory provisions, made the necessary findings, and its findings were supported by credible and competent evidence. Thus, we overrule the assignment of error, and affirm the trial court’s judgment.

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.

CUNNINGHAM, P.J., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on July 28, 2017
per order of the court _____.

Presiding Judge