[Cite as *Meaney v. Meaney*, 2010-Ohio-1969.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

KEVIN M. MEANEY,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-L-050**
- vs -	:	
STACY MEANEY	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 07 DR 000065.

Judgment: Affirmed.

Linda D. Cooper, Cooper & Forbes, 166 Main Street, Painesville, OH 44077-3403 (For Plaintiff-Appellee).

Kenneth J. Cahill, Dworken & Bernstein, 60 South Park Place, Painesville, OH 44077 (For Defendant-Appellant).

MARY JANE TRAPP, P.J.

{¶1} Appellant, Mrs. Stacy Meaney, appeals the judgment of the Lake County Court of Common Pleas, Domestic Relations Division, which named appellee, Mr. Kevin M. Meaney, the residential parent and legal custodian of the parties' minor children, and ordered parenting time pursuant to Loc.R. 23.

{¶2} Contrary to Mrs. Meaney's assertion, we determine the trial court properly considered the factors of R.C. 3109.04 in determining custody, issuing a well-reasoned and cogent analysis under each factor in its judgment entry. As Mrs. Meaney has not

demonstrated the trial court abused its discretion, we find her sole assignment of error to be without merit and affirm the decision of the trial court.

{¶3} **Substantive and Procedural Facts**

{¶4} Mr. and Mrs. Meaney were married in January 1991. The Meaneys have three sons, H.M., born October 4, 1993; L.M., born May 7, 1995; and J.M., born August 4, 1999.

{¶5} In January 2007, Mr. Meaney filed for divorce, claiming incompatibility, which was ultimately stipulated to as grounds for the action. The matter was tried before a magistrate over five trial days.

{¶6} On June 18, 2008, the magistrate issued his decision, which provided a cogent summary and a detailed and well-reasoned analysis as the basis for his decision. Cogent to this appeal, which centers around the allocation of parental rights and responsibilities, the magistrate made significant and comprehensive findings as to why Mr. Meaney should be named the residential parent and legal custodian pursuant to R.C. 3109.04.

{¶7} The parents' divergent views regarding the children's education was the central issue during trial. Mrs. Meaney, who works weekends as a nurse, was the primary caregiver during the week, and was very specific as to her wishes for the children's education. She homeschooled the boys, while simultaneously searching for the "perfect school." Mr. Meaney, however, differed in his view, believing it was more important for the children to have stability, a uniform curriculum, and the social experiences a school can more readily provide. All three children were involved in numerous extracurricular activities.

{¶8} Thus, the children's educational history followed a pattern of homeschooling by Mrs. Meaney herself, interspersed with brief periods of schooling at private schools, which would last sometimes from several days to several months to a full school year. Mrs. Meaney had difficulty finding a school that met her standards, and the children, especially the eldest child, attended at least three different schools between the periods of homeschooling. The court issued an order for the children to be enrolled in a school for the duration of the divorce proceedings in January 2007.

{¶9} Accordingly, the children were enrolled and attended a private school for the remainder of the 2006-2007 school year. The following year, however, Mrs. Meaney refused to allow J.M. to attend, even though Mr. Meaney had paid the tuition in full and all three boys were enrolled to attend. Instead, on the first day of school, after dropping off the two older children at school, Mrs. Meaney took J.M. to the park. Accordingly, Mrs. Meaney was found to be in contempt, and she was able to purge her contempt by reimbursing Mr. Meaney's attorney fees for the motion.

{¶10} Both parties offered their opinions as to who should be named the custodial parent. Mr. Meaney testified that Mrs. Meaney is obsessed with education that "does not make any sense," and that the children need stability. He urged a 50/50 split of parenting time with the children, but Mrs. Meaney did not agree. Mrs. Meaney testified that she should be the custodial parent because she has always been the primary caregiver during the school week since her schedule allowed more flexibility, and that is what the children were used to.

{¶11} The magistrate found that Mrs. Meaney's view regarding the "best school" for the children borders on "obsessive behavior," while Mr. Meaney's wishes seem to be

more centered and balanced. Both parents have strong relationships with the children, and although Mrs. Meaney has been the primary caretaker thus far, the magistrate found the parents to be on "equal footing."

{¶12} The magistrate found the children's adjustment to the school community problematic because all three children have been absent so many times since the court ordered school enrollment, and that these absences not only interfere with their academics but with forming social relationships with the other children. Furthermore, Mrs. Meaney had a difficult time explaining J.M.'s significant absences during the 2006-2007 school year. The following school year, from August 2007 through the November 30, 2007 trial date, the two older children missed nine and one-half days of school and were tardy for eleven, which prompted the school to send the Meaneys a notification letter.

{¶13} The magistrate explained why this "lack of initiative in following through with the children's school attendance is significant. If these children had been in a public school program, the parents would have been in involved in a school truancy; child neglect case in the juvenile court. The mother is responsible for this irresponsible behavior. She cannot be trusted to assure that her children remain on a regular steady learning path. It appears that this may be an intentional act --- in her belief that she alone is the determiner of attendance and compliance. However, this is a nation of the 'rule of law.'"

{¶14} During the proceedings, Mrs. Meaney filed a motion for an in-camera interview with the children, to which Mr. Meaney filed an objection. After questioning

both parties as to their understanding of how stressful such an interview can be for children, the magistrate granted the motion pursuant to R.C. 3109.04(B).

{¶15} It was obvious to the magistrate after the interviews that "from the testimony of the parties themselves, even giving the parties deference, (with an assumption in each attempting to place their testimony at trial in the best possible light), that there were significant coercive discussions with these children before their visit."

{¶16} The magistrate discovered the children to be, as other witnesses for both parties indicated, "extremely polite, well-mannered, and polished." The magistrate also found, however, that the "wishes of the children were stated to him in adult and parental terms." Thus, the magistrate concluded that "[t]heir wishes cannot be, and are not given much weight. Their ages, independent thought, and rationales stated for their beliefs and wishes belie strong consideration."

{¶17} As for allegations of domestic violence and abuse against the children and/or each other, the magistrate found that it was apparent no such abuse occurred. While the magistrate was concerned that Mr. Meaney may have an anger issue, he did not feel it was a factor that weighed as heavily as the other factors considered. In considering this factor, the magistrate took into account that there was an apparent altercation in the home while the divorce proceedings were ongoing, and that both parties have been positing "domestic violence" ever since.

{¶18} The magistrate also found there was extremely contradictory testimony from both parties as to where the children were sleeping and with which parent, and whether it was appropriate due to their ages. During the time of trial, the parties were still living together in the marital home.

{¶19} The magistrate felt the last two factors of R.C. 3109.04(F)(1) had some bearing on the court's decision, but not significantly so as there had been no willful denial of parenting time, nor was either party seeking to move out of state. The magistrate found Mrs. Meaney's testimony regarding moving the children to attend a school in Florida for a "classical" education to be "evasive and contradictory and frankly not believable." Mrs. Meaney later testified that she no longer has this interest as she proposed this while the parties were still married, shortly before Mr. Meaney filed for divorce.

{¶20} Finally, the magistrate considered the disruption of the status quo of the parties in determining the allocation of parental rights. The magistrate found the "status quo is unacceptable ***. The totality of the testimony indicates that the machinations as regarding the mother trying to manipulate the Court order, the schooling, and the environment border on the insidious."

{¶21} The magistrate concluded that designating Mr. Meaney the sole residential parent and legal guardian was in the best interests of the children.

{¶22} After the parties filed their objections, the trial court issued its findings of fact and conclusions of law, adopting, with minor modifications, the magistrate's decision. Specifically, the court designated Mr. Meaney the residential parent and legal custodian of the minor children. Mrs. Meaney was basically given the standard parenting schedule, which generally provides for parenting time on alternate weekends, and every Wednesday. The court also provided more flexibility for Mrs. Meaney since she is required to work on certain weekends, provided she is able to transport the children on time for the beginning of the school day while school is in session.

{¶23} It is from this judgment Mrs. Meaney appeals, raising one assignment of error for our review:

{¶24} "[1.] Whether the trial court erred when it awarded plaintiff-father sole custody of the three minor children without adequately considering all of the statutory factors pursuant to O.R.C. 3109.04."

{¶25} **Allocation of Residential Parent and Parental Rights**

{¶26} In her sole assignment of error, Mrs. Meany contests the court's designation of Mr. Meaney as the residential parent and legal custodian. Specifically, she alleges that several factors under R.C. 3109.04(F)(1) were not adequately considered. Thus, she contends the court erred in determining the wishes of the parents, the wishes of the children as expressed to the court in the in-camera interviews of the children, the children's interactions with their parents and peers, their adjustment to the home, school, and the community, and the domestic violence charges raised against Mr. Meaney during the divorce proceedings. Finally, Mrs. Meaney asserts that the trial court improperly considered her intention to move to Florida to pursue a "classical" education for the children.

{¶27} After reviewing the lengthy testimony in this case, the comprehensive decisions of both the magistrate, which specifically reviewed each and every factor of R.C. 3109.04(F)(1), and the trial court, we cannot say the trial court abused its discretion in awarding sole custody to Mr. Meaney.

{¶28} **Standard of Review in Allocation of Parental Rights and Responsibilities**

{¶29} "In reviewing matters involving the allocation of parental rights and responsibilities of minor children, a trial court is vested with broad discretion; thus, a trial

court's decision will be reversed only upon a showing of an abuse of discretion." *Dexter v. Dexter*, 11th Dist. No. 2006-P-0051, 2007-Ohio-2568, ¶11, citing *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74; *Davis v. Flickinger* (1997), 77 Ohio St.3d 415, 418. An abuse of discretion connotes more than an error of law or judgment; rather, it implies that the trial court's decision is unreasonable, arbitrary or unconscionable. Id., citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. Furthermore, "[d]eference to the trial court on matters of credibility 'is even more crucial in a child custody case, where there may be much evident in the parties' demeanor and attitude that does *not* translate to the record well.'" (Emphasis sic.) Id., quoting *Davis* at 418.

{¶30} With this standard of review in mind, we now consider the merits of Mrs. Meaney's appeal.

{¶31} **"Best Interests" Factors**

{¶32} Mrs. Meaney contends there are six factors the court inadequately considered in determining the best interests of the children pursuant to R.C. 3109.04(F)(1):

{¶33} "(a) The wishes of the child's parents regarding the child's care;

{¶34} "(b) If the court has interviewed the child in chambers *** the wishes and concerns of the child, as expressed to the court;

{¶35} "(c) The child's interaction and interrelationship with the child's parents, siblings, and any other person who may significantly affect the child's best interest;

{¶36} "(d) The child's adjustment to the child's home, school, and community;

{¶37} "***.

{¶38} "(h) Whether either parent *** has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused or neglected child ***;

{¶39} "***.

{¶40} "(j) Whether either parent has established a residence, or is planning to establish a residence outside this state."

{¶41} **Wishes of the Parents**

{¶42} Mrs. Meaney first argues that the trial court did not properly consider the wishes of the parents because Mr. Meaney testified he was willing to split custody and parenting time 50/50, an arrangement to which she would not agree. Mrs. Meaney argues this is evidence that Mr. Meaney does not want sole custody of the children. This testimony was taken out of context as the transcript reveals Mr. Meaney was explaining it was already a travesty that each party could not be with the children 100% of the time. Further, the magistrate specifically found that in regard to the parents' wishes for the children, Mr. Meaney's wishes seem more centered and balanced, while Mrs. Meaney's views, especially regarding education for the children, borders on "obsessive."

{¶43} Thus, the magistrate found that the repeated changes and school disruptions provided the exact opposite of Mrs. Meaney's intentions, providing no stability for the children, which is a "polestar facet of the determination of a child's best interest." The magistrate found that Mr. Meaney's insight into this need for stability outweighed the exact schooling environment the parents ultimately chose for their children. The constant disruption, lack of schedule, and instability of the children's daily

lives were found to negatively impact their ability to make friends and form firm social bonds.

{¶44} It cannot be said that the trial court abused its discretion in its determination that stability is key for the children's educational foundation, and that clearly, given Mrs. Meaney's past history in hyper-controlling the children's education, Mr. Meaney could provide a more stable environment.

{¶45} **In-Camera Interview**

{¶46} Oddly, as she filed the motion seeking an in-camera interview of the children, the next factor Mrs. Meaney contests is R.C. 3109.04(F)(1)(b), the in-camera interviews of the children. The magistrate, after questioning both parents as to their understanding of the impact an interview can have on a child, granted the motion over the objections of Mr. Meaney. The magistrate found that the children gave rehearsed answers, spoke in adult and parental terms, and that each parent influenced the children prior to the interviews. Thus, the magistrate disregarded the interviews to that extent. We can find no abuse of discretion in this determination where the magistrate found coercion on the part of both parents.

{¶47} **Parental Interaction**

{¶48} Third, Mrs. Meaney argues the court improperly failed to consider the relationship she has with the children as the primary caregiver, given her stay-at-home schedule during the week and her active involvement in home schooling. The magistrate found this was not determinative because both parents were actively involved in the children's lives on a daily basis, and therefore, the parents were on "equal footing" in this regard.

{¶49} Despite this specific finding, Mrs. Meaney strongly contends that because she was the primary caretaker, presumptively she should be awarded sole custody. This court, however, has previously held, "'the court *may* take the primary caretaker doctrine into consideration along with the other factors in R.C. 3109.04,' but the doctrine does not rise to the level of a presumption." (Emphasis sic.) *Bradbeer v. Bradbeer* (April 23, 1995), 11th Dist. No. 92-L-057, 1993 Ohio App. LEXIS 2184, 8-9, citing *Schuster v. Schuster* (April 14, 1989), 11th Dist. No. 1947, 1989 Ohio App. LEXIS 1373, 5 (emphasis sic). See, also, *Bechtol v. Bechtol* (1990), 49 Ohio St.3d 21.

{¶50} As in *Bradbeer*, it is clear that the record in this case does not support the assertion that the order of the trial court was unreasonable, arbitrary or unconscionable. The magistrate clearly considered this a major factor, first explaining that both parents have strong relationships with the children. He then expounded upon Mrs. Meaney's erratic behavior towards the children's education, stating: "[t]he magistrate is frankly concerned that the mother has failed in certain areas in such a manner that she is actually incapable of understanding. The father has culpability as well."

{¶51} The magistrate concluded that neither party introduced testimony that the other's relationship with the children have caused them to individually suffer in any way. Rather, the magistrate found that "the children will be attached to either parent," and "that both parents have extended family and friends that will allow the children to continue to develop far-reaching relationships."

{¶52} **Adjustment to Home, School, and the Community**

{¶53} Fourth, Mrs. Meaney takes issue with the court's findings pursuant to R.C. 3109.04(F)(1)(d), the children's adjustment to their home, school, and community. The

magistrate found that the children's adjustment as a whole to the school community is problematic, even though the children have developed good relationships through heavy participation in extracurricular activities.

{¶54} Quite troubling was Mrs. Meaney's continued countenance of the children's absences from school despite the court order. This appeared to the magistrate to be "intentional," and he found that "in her belief she alone is the determiner of attendance and compliance." Mrs. Meaney, herself testified that she pulled the children out of school on days she deemed unnecessary, such as school spirit week, to take them to the science museum. In another instance, she pulled the children out of school to attend a different school for one day when they were supposedly "sick."

{¶55} As for the mental and physical health of the children, the court found that Mrs. Meaney's testimony regarding their second child's repeated "illnesses" should be disregarded, and that most likely the symptoms were due to stress over the divorce.

{¶56} In assessing the credibility and mental health of the parents, the magistrate found that their "behavior frankly borders on the bizarre. The wife's behavior regarding her need for the 'perfect school' and the 'perfect activity' is inexplicable. Yet for the husband's argument of frustration given at trial, the evidence is also clear that for almost 14 years he has either been an active participant in what he now condemns; or he has failed to consider it to be of such importance so as to speak out until now."

{¶57} **Domestic Violence Allegations**

{¶58} Fifth, Mrs. Meaney alleges that the trial court failed to consider the domestic violence charges that were pending against Mr. Meaney that arose during an

altercation shortly after Mrs. Meaney's motion for in-camera interviews of the children was granted. The magistrate found allegations of domestic violence against the children and possible child abuse simply inapplicable because both parties were "positioning" domestic violence since that altercation. While the magistrate was concerned that Mr. Meaney may have some anger issues directed at the wife, he specifically found that "the evidence does not raise this factor or consideration to the same weight as to some of those other factors as discussed above." In addition and most fundamentally, those were simply charges, and Mr. Meaney has not been convicted of domestic violence in the past.

{¶59} **Residence Out of State**

{¶60} Finally, Mrs. Meaney contends the magistrate wrongly considered her intentions to take the children to Florida for a "classical" education at a school she investigated. The judgment entry, however, reveals otherwise, as the entry explicitly states the magistrate did *not* find that Mrs. Meaney "had every intention of moving to Florida ***." The magistrate found, rather, that Mrs. Meaney did testify that she sought to take the children to a school in Florida and investigated the school personally, but that she "testified that she no longer has this interest." The entry goes on to state that "[t]he wife testified that she no longer has this interest," and that "[t]here is no reason not to believe her ***."

{¶61} A review of the transcript reveals there was testimony from both parties and their witnesses that Mrs. Meaney considered moving, as well as contradictory testimony that her intent was to actually open a similar classical school in Ohio. At the time she initially proposed moving, neither party had filed for divorce. Mrs. Meaney

testified that that it would not hurt Mr. Meaney's parenting time as "she felt there was not a marriage," and he could commute on weekends in order to see the children or relocate.

{¶62} It is clear from our review of the record that there is nothing to support Mrs. Meaney's assertion that the order of the trial court in naming Mr. Meaney the residential parent and legal custodian was unreasonable, arbitrary, or unconscionable. The trial court considered all of the factors pursuant to R.C. 3109.04(F)(1) in determining the best interests of the children, and their need for stability and continuity.

{¶63} Moreover, the record demonstrates Mrs. Meaney continually disobeyed court orders. At the time of the divorce decree she still had not attended court-ordered parental education, and was further found in contempt for her failure to follow the court's order to keep their youngest son in school while the divorce was pending. The court was explicit in its final judgment that it was not determining the merits of homeschooling or ordering the children to attend a certain school. That choice remains with the parents, so long as continuity and stability, as well as consistent attendance, are assured.

{¶64} Thus, we cannot agree with Mrs. Meaney's contention that her desire to homeschool the children was a deciding factor in this case. Rather, the linchpin in the trial court's decision was a determination as to which parent was more likely to honor and facilitate court-approved parenting time. The totality of the evidence supported the court's finding in favor of Mr. Meaney as Mr. Meaney testified that he wanted Mrs. Meaney to have at least 50% of the parenting time, which Mrs. Meaney did not reciprocate. Additionally, there was evidence that Mrs. Meaney made many decisions

without consulting Mr. Meaney. The trial court found that a reasonable inference can be drawn that Mrs. Meaney will continue to disobey court orders and deny visitation as she already failed to abide by the court's specific order that all the children attend Cornerstone for the 2007-2008 school year. Indeed, the court found that Mrs. Meaney failed to appreciate the seriousness of the custody issue before the court as she came to trial without even considering the possibility she would not receive sole custody of the children.

{¶65} Therefore, Mrs. Meaney's sole assignment of error is without merit, and the judgment of the Lake County Court of Common Pleas, Domestic Relations Division, is affirmed.

DIANE V. GRENDELL, J.,

TIMOTHY P. CANNON, J.,

concur.