[Cite as *In re K.R.*, 2011-Ohio-1454.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

IN RE: K.R., A MINOR CHILD	**:** **:**	**O P I N I O N** **CASE NO. 2010-T-0050**

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 2005 JP 776.

Judgment: Affirmed.

Deborah L. Smith, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482-4270 (For Appellant Jodi Lynn Aho).

Jonathan P. Morgan, J.P. Morgan, Esquire, LTD., 173 West Market Street, Warren, OH 44481 and *Elise M. Burkey*, Burkey, Burkey & Scher Co., L.P.A., 200 Chestnut Avenue, N.E., Warren, OH 44483-5805 (For Appellee Paul R. Rollins).

Jeffrey V. Goodman, Fowler & Goodman L.P.A., Inc., 119 West Market Street, Warren, OH 44481 (Guardian ad litem).

MARY JANE TRAPP, J.

{¶1} Appellant, Jodi Lynn Aho, appeals the judgment of the Trumbull County Court of Common Pleas, Juvenile Division, granting her motion to terminate the parties' shared parenting plan, but granting appellee, Paul R. Rollins', motion to be designated the residential parent and legal custodian of the parties' minor child, K.R. At issue is whether the trial court abused its discretion in terminating the parties' shared parenting

plan and in designating Paul as the child's residential parent and legal custodian. For the reasons that follow, we affirm.

{¶2} **Procedural History**

{¶3} Jodi and Paul lived together in Girard, Ohio, from approximately 2002 until 2005, but were never married. They had one child together, a daughter, K.R., who was born on June 7, 2005, and is now five years old. Later that year, Jodi and Paul's relationship ended.

{¶4} On November 16, 2005, Paul filed a complaint requesting that the court establish paternity, a shared parenting plan, and child support for the parties' child.

{¶5} In 2006, the court found Paul to be the child's father, ordered him to pay child support, and established a visitation schedule for Paul. Later that year, the court modified its visitation order and awarded visitation to Paul pursuant to the court's standard guidelines. The court later modified its visitation order, establishing for the parties a "week on/week off" visitation schedule for the summer of 2006. In 2007, the court repeated this schedule for the summer of that year.

{¶6} In September 2007, the court ordered the parties to submit a shared parenting plan that would provide for a week on/week off schedule, holidays, and a vacation with the child for each party. Paul submitted a proposed plan that included the terms required by the court, but Jodi refused to sign it.

{¶7} On December 17, 2007, the court entered an order approving Paul's proposed shared parenting plan, pursuant to which each parent had visitation with the child during alternating weeks. The plan also provided for holidays and an annual two-

week vacation with the child. The parties abided by this shared parenting order for about one and one-half years.

{¶8} In March 2009, Paul filed a motion to terminate the parties' shared parenting plan and to designate him as the child's residential parent. In support of his motion, he alleged the child had reported being the victim of physical and verbal abuse while in Jodi's possession. In June 2009, Jodi responded by filing her own motion to terminate shared parenting and to designate her as the sole residential parent. She alleged a "substantial change of circumstances regarding the living conditions, care and treatment of the minor child while in [Paul's] custody ***." In support, Jodi alleged that Paul "continuously makes false and malicious statements to the parties' minor child about the Mother and her boyfriend, Dale Lantz ***."

{¶9} **Evidence Presented at the Hearing**

{¶10} A magistrate's hearing was held on the parties' motions on October 23, 2009. Paul testified that after he separated from Jodi in 2005, he married Donna Rollins, who had previously been married to his friend, Dale Lantz. Ironically, after the parties separated, Jodi began living with Paul's friend, Dale. Dale Lantz says that he and Paul used to be friends, but he does not get along with Paul anymore because Paul thinks that he, Dale, stole his family from him.

{¶11} Paul testified that he filed his motion to terminate the parties' shared parenting plan because K.R. told him that on January 23, 2009, Dale left a "boo-boo" on her leg. She said that Dale had burned her leg with a cigarette while she was staying with Jodi and Dale. Paul said he also filed his motion because K.R. told him that Dale was hitting and yelling at her and that she is afraid of Dale. Dale denied the allegation

that he burned K.R. He never saw the burn injury on K.R.'s leg, and in fact, claimed he was out of town on the day of the incident.

{¶12} When Paul asked Jodi about the burn, she said that K.R. had bumped into a vaporizer in her room at 3:30 a.m. and was burned by the hot vapors. Paul identified a photograph of the child's burn injury on her inner thigh, which is consistent with the size and shape of the end of a cigarette.

{¶13} Dale suggested that Paul had coached K.R.'s complaints about him. Dale said that on one occasion, after a visit with Paul, K.R. said, "Daddy tells me that Dae [her name for Dale] is mean to me. Daddy tells me that Dae hits me in the head."

{¶14} Jodi has never noticed K.R. being afraid of Dale. K.R. never told her that Dale had hit her, and she never heard him yell at her. She described Paul as a "wonderful father."

{¶15} Paul kept a contemporaneous log of events between September 22, 2006, and May 1, 2009, describing specific entries prompted by reports from K.R. K.R. related to him that Dale was hitting her in the back and on her buttocks, but he did not find any bruises on the child at that time. According to his log, Paul told Jodi that he did not want Dale hitting K.R. However, Jodi told him that while Dale is watching K.R., he can discipline her any way he wants. Another entry reveals that K.R. told Paul and Donna that Dale was yelling at her and hitting her.

{¶16} Paul asked the court to terminate the shared parenting plan because he believes that Dale has physically and mentally abused K.R., and that he and Jodi are not able to communicate with each other at a level that would allow the plan to work. Donna Rollins, Paul's wife, testified that she has a close relationship with K.R. Donna

said that K.R.'s complaints about Dale hitting and yelling at her and making her cry have become constant and that K.R. "is begging for help."

{¶17} Donna identified a September 2008 photograph of a scrape injury on K.R.'s forehead. K.R. told her and Paul that she sustained this injury when Dale pushed her down while she was playing on the sidewalk.

{¶18} Kathleen Coffelt, Jodi and Dale's elderly neighbor, with whom they share a duplex, has been babysitting K.R. since she was born, and they have a close relationship. Kathleen testified that she has heard Dale screaming at K.R. if she does something he does not like. One night Dale woke Kathleen up at 3:00 a.m. because he was screaming at K.R. to "shut up and go to sleep." K.R. told Kathleen that "Dae hits me." Kathleen said, "Dae doesn't hit you." K.R. said, "Yeah, Nanny, he goes just like this," while making a backhand motion with her hand.

{¶19} Kathleen testified that Dale's actions toward K.R. are inappropriate and "harmful," and that K.R. is afraid of him. Interestingly, Jodi told the court that K.R.'s relationship with Kathleen, who she described as an "integral part" of K.R.'s life, will continue, despite Kathleen's testimony against Dale, because the relationship is in K.R.'s best interest.

{¶20} Jodi presented various witnesses in support of her motion to terminate shared parenting, including her mother, Joy Aho, who said she has never witnessed Dale screaming at K.R. or hitting her, nor has K.R. related such treatment to her. Joy does not believe K.R. is afraid of Dale.

{¶21} Jodi asked the court to terminate the parties' shared parenting plan, claiming the plan cannot work because it creates confusion for K.R. and is not good for her.

{¶22} The guardian ad litem, Jeffrey Goodman, has "concerns about the emotional stability of the living environment at [Jodi's] house." He said that he does not have "any concerns about [Paul's] house. I think [Paul] is a wonderful father." He said, "I never heard anyone say anything negative about [Paul's wife Donna]. And I have had nothing but positive impressions and positive experiences with [Donna]. And I have seen her interacting with K.R. and they interact on a parent-child basis *** in a very positive way." With respect to the troubled relationship between Paul and Dale, Mr. Goodman testified, "[t]he only real hostility that I sense regarding that situation has really come from Dale." The magistrate asked Mr. Goodman for his opinion as to who should be the residential parent if the shared parenting plan was terminated. Mr. Goodman said, in that event, Paul would provide a more stable environment for K.R. than Jodi. Mr. Goodman said that Paul has a greater capacity to care for and to parent K.R. on a daily basis.

{¶23} **The Magistrate's Decision**

{¶24} Following the hearing, on November 4, 2009, the magistrate terminated the parties' shared parenting plan, finding that its termination was in K.R.'s best interest. The magistrate reviewed R.C. 3109.04(F)(1)(a)-(j), and found that it was in K.R.'s best interest to designate Paul as K.R.'s residential parent and legal custodian. The magistrate gave Jodi visitation with K.R. on alternating weekends with a mid-week visit

each week. Summer vacation was to be on a week on/week off basis. Holiday visits were to be arranged pursuant to the court's standard guidelines.

{¶25} On November 17, 2009, Jodi filed objections to the magistrate's decision. On February 19, 2010, Jodi filed supplemental objections. By its judgment, dated March 16, 2010, the trial court overruled Jodi's objections and approved the magistrate's decision. Jodi appeals the court's judgment, asserting three assignments of error. For her first assigned error, Jodi alleges:

{¶26} "The trial court committed reversible error in modifying a prior custody order and changing the designation of the residential parent and legal custodian of the minor child without complying with Ohio R.C. 3109.04(E)(1)(a)."

{¶27} **Standard of Review**

{¶28} This court has held that decisions involving the custody of children are accorded great deference on review. *Bates-Brown v. Brown*, 11th Dist. No. 2006-T-0089, 2007-Ohio-5203, at ¶18, citing *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74. Thus, any judgment of the trial court involving the allocation of parental rights and responsibilities will not be disturbed absent a showing of an abuse of discretion. *Bates*, supra, citing *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 1997-Ohio-260. Further, we review a judgment of the trial court adopting the decision of its magistrate for an abuse of discretion. *Rutherford v. Rutherford*, 11th Dist. No. 2009-P-0086, 2010-Ohio-4195, at ¶10. In addition, an appellate court reviews the trial court's termination of a shared parenting plan for an abuse of discretion. *Matis v. Matis*, 9th Dist. No. 04CA0025-M, 2005-Ohio-72, at ¶4.

{¶29} This court has recently stated that the term "abuse of discretion" is one of art, connoting judgment exercised by a court, which does not comport with reason or the record. *Gaul v. Gaul*, 11th Dist. No. 2009-A-0011, 2010-Ohio-2156, at ¶24, citing *State v. Ferranto* (1925), 112 Ohio St. 667, 676-678. The Second Appellate District recently adopted this definition of the abuse-of-discretion standard in *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, at ¶65, citing Black's Law Dictionary (4 Ed.Rev.1968) 25 ("[a] discretion exercised to an end or purpose not justified by and clearly against reason and evidence").

{¶30} The highly deferential abuse-of-discretion standard is particularly appropriate in child custody cases since the trial judge is in the best position to determine the credibility of the witnesses and there "may be much that is evident in the parties' demeanor and attitude that does not translate well to the record." *Wyatt v. Wyatt*, 11th Dist. No. 2004-P-0045, 2005-Ohio-2365, at ¶13. In so doing, a reviewing court is not to weigh the evidence, "but must ascertain from the record whether there is some competent evidence to sustain the findings of the trial court." *Clyborn v. Clyborn* (1994), 93 Ohio App.3d 192, 196.

{¶31} **Modification/Termination of Shared Parenting Plan**

{¶32} R.C. 3109.04(E) authorizes the modification or termination of a shared parenting plan. That section provides, in pertinent part, as follows:

{¶33} "(E)(1)(a) The court shall not modify a prior decree allocating parental rights and responsibilities for the care of children unless it finds, based on facts that have arisen since the prior decree ***, that a change has occurred in the circumstances of the child, *** and that the modification is necessary to serve the best interest of the

child. In applying these standards, the court shall retain the residential parent designated by the prior decree ***, unless a modification is in the best interest of the child and one of the following applies:

{¶34} "***

{¶35} "(iii) The harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child.

{¶36} "***

{¶37} "(2) In addition to a modification authorized under division (E)(1) of this section:

{¶38} "***

{¶39} "(c) The court may terminate a prior final shared parenting decree that includes a shared parenting plan *** *upon the request of one or both of the parents* or *whenever it determines that shared parenting is not in the best interest of the children*. The court may terminate a prior final shared parenting decree that includes a shared parenting plan *** if it determines, upon its own motion or upon the request of one or both parents, that *shared parenting is not in the best interest of the children*. ***

{¶40} "(d) Upon the termination of a prior final shared parenting decree under division (E)(2)(c) of this section, the court shall proceed and issue a modified decree for the allocation of parental rights and responsibilities for the care of the children under the standards applicable under divisions (A), (B), and (C) of this section as if no decree for shared parenting had been granted and as if no request for shared parenting ever had been made." (Emphasis added.)

{¶41} In *Williamson v. Williamson*, 2d Dist. No. 2003 CA 30, 2003-Ohio-6540, the Second Appellate District, in analyzing R.C. 3109.04(E)(2)(c), stated:

{¶42} "A domestic relations court may terminate a shared parenting order either upon the motion of either parent or simply whenever the court determines that shared parenting is no longer in the best interest of the children. *Meyer v. Anderson*, [2d Dist.] No. 01CA 53, 2002-Ohio-2782; R.C. 3109.04(E)(2)(c). We have stated that due to R.C. 3109.04(E)(2)(c), a trial court is not required to find a change in circumstances before terminating a shared parenting plan. *Massengill v. Massengill* (Mar. 23, 2001), [2d Dist.] No. 18610, 2001 Ohio App. LEXIS 1326 citing *Quesenberry v. Quesenberry* (Nov. 6, 1998), [2d Dist.] No. 98 CA 1, 1998 Ohio App. LEXIS 5294 and *Goetze v. Goetze* (Mar. 27, 1998), [2d Dist.] No. 16491, 1998 Ohio App. LEXIS 1147. Further in *Massengill*, we distinguished *Miller v. Miller* (1996), 115 Ohio App.3d 336, stating that *Miller* involved the modification of a shared parenting plan rather than the termination of a shared parenting plan. *Massengill*, supra. We stated that *Miller* stood for the principle that a change in circumstances must be found before a trial court could modify a shared parenting plan, but that the trial court need not make such a finding in order to terminate a shared parenting plan. Id." *Williamson*, supra, at ¶15.

{¶43} The Eighth Appellate District followed the Second District's holding in *Williamson*, supra, in *Tomaszewski v. Tomaszewski*, 8th Dist. No. 86976, 2006-Ohio-3357, in which the Eighth District held:

{¶44} "Pursuant to R.C. 3109.04(E)(2)(c), a domestic relations court may terminate a shared parenting order either upon the motion of either parent or simply whenever the court determines that shared parenting is no longer in the best interest of

the children. *** Under R.C. 3109.04(E)(2)(c), *a trial court is not required to find a change in circumstances before terminating a shared parenting plan*. ***" (Emphasis added and citations omitted.) *Tomaszewski*, supra, at ¶10.

{¶45} The Ninth Appellate District reached the identical result in *Matis*, supra, as follows:

{¶46} "*** R.C. 3109.04(E)(2)(c) *** permits a court to terminate a shared parenting plan *** upon the request of either parent or 'whenever it determines that shared parenting is not in the best interest of the children.' In the instant case, Appellee requested termination of the shared parenting plan during an August pre-trial and the trial court determined that shared parenting was not in the best interests of the children. The mandates of the statute in this regard have been met." *Matis*, supra, at ¶5.

{¶47} Jodi argues that the trial court erred in modifying the parties' shared parenting plan because the court did not find a change in circumstances had occurred in addition to finding that the modification was in the best interest of the child. However, this argument conflates the concepts of *modification* and *termination* of a shared parenting plan. R.C. 3109.04(E)(1)(a), which addresses modification of a shared parenting plan, requires the trial court to find (1) a change in the circumstances of the child and (2) that the modification is necessary to serve the best interest of the child before modifying a decree allocating parental rights and responsibilities. In contrast, R.C. 3109.04(E)(2)(c), which addresses termination of a shared parenting plan, merely requires the trial court to find that shared parenting is not in the best interest of the child. Thus, while modification requires the court to find a change in circumstances in addition

to the child's best interest, termination only requires the court to find that termination of the plan is in the child's best interest.

{¶48} Jodi's reliance on *Fisher v. Hasenjager*, 116 Ohio St.3d 53, 2007-Ohio-5589 is misplaced. In that case, the Supreme Court of Ohio held: "A *modification* of the designation of residential parent and legal custodian of a child requires a determination that a 'change in circumstances' has occurred, as well as a finding that the modification is in the best interest of the child. R.C. 3109.04(E)(1)(a)." (Emphasis added.) Id. at syllabus. The Supreme Court's holding in *Fisher* is inapposite because, there, the Supreme Court based its holding on the appellate court's finding that the trial court had not terminated the parties' shared parenting plan, but rather had modified it. Id. at 55. Contrary to Jodi's argument, the Supreme Court did not hold in *Fisher* that a trial court must find a change of circumstances has occurred before modifying or terminating a shared parenting order that includes a designation of the residential parent.

{¶49} The Second Appellate District in *Beismann v. Beismann*, 2d Dist. No. 22323, 2008-Ohio-984, distinguished *Fisher*, supra. The parties in *Beismann* filed motions with the trial court requesting that their shared parenting order be terminated, not modified. The original shared parenting order contained language that made both parties residential parents of their child. Pursuant to the trial court's termination order, the mother was made the sole residential parent, while the father received visitation. The Second District held:

{¶50} "Simply put, the plan was terminated. In light of the foregoing material changes in [the child's] custodial status, we are unpersuaded by [the father's] argument that the trial court merely modified the shared parenting plan. Thus, the trial court acted

properly when it exercised its discretion and terminated the shared parenting plan based on the best interests of [the child] pursuant to R.C. 3109.04(E)(2)(c)." *Beismann*, supra, at ¶13.

{¶51} Likewise, in *Rogers v. Rogers*, 6th Dist. No. H-07-024, 2008-Ohio-1790, the Sixth District distinguished *Fisher*, supra, as follows:

{¶52} "The record in this case shows that the parties, as in *Beismann*, sought termination rather than modification of their shared parenting plan. As in *Beismann*, one parent was made sole residential parent of the children giving that parent, appellee, the right to make any decisions regarding the care, welfare, and education of the children. Following *Beismann*, we conclude that the trial court in this case was not required to find a change in circumstances in addition to a finding that termination of the parenting plan was in the best interests of the children." *Rogers*, supra, at ¶13.

{¶53} Further, Jodi's reliance on this court's holdings in *Willoughby v. Masseria*, 11th Dist. No. 2002-G-2437, 2003-Ohio-2368 and *Salisbury v. Salisbury*, 11th Dist. Nos. 2005-P-0010 and 2005-P-0084, 2006-Ohio-3543 is equally misplaced because, in both cases, the appellant had moved to *modify* the allocation of parental rights and responsibilities, rather than to terminate a shared parenting plan.

{¶54} Turning to the facts of the instant case, it cannot reasonably be disputed that the trial court terminated the parties' shared parenting plan. Pursuant to the December 17, 2007 shared parenting order, the parties equally shared custody of the child during alternating weeks. R.C. 3109.04(K)(6). Both Jodi and Paul moved to terminate, rather than to modify, their shared parenting plan. Further, both parties testified that shared parenting cannot work and asked the court to terminate it. In

addition, the court in its judgment expressly terminated the shared parenting plan and designated Paul as the sole residential parent. Moreover, Jodi concedes in her appellate brief that the trial court terminated the December 17, 2007 shared parenting order. As a result, it was not necessary for the court to find a change in circumstances of the child before terminating the shared parenting plan. It was only necessary that the court find that it was in K.R.'s best interest that the parties' shared parenting plan be terminated. Jodi concedes in her appellate brief that the trial court "made a determination as to the child's best interest ***."

{¶55} We note that there was evidence in the record of a change in circumstances of the child that occurred since the trial court's entry of the December 17, 2007 shared parenting order. Paul testified that, beginning in July 2008, K.R. complained that Dale was hitting her. Further, Paul and Donna testified that K.R. reported that Dale had burned her with a cigarette and had inflicted a scrape injury to her forehead. K.R.'s nanny, Kathleen Coffelt, testified that K.R. told her that Dale hits her. Both Paul and Kathleen testified that K.R. is afraid of Dale.

{¶56} Further, contrary to Jodi's argument, the trial court was not required to make any of the findings required under R.C. 3109.04(E)(1)(a)(i)-(iii). That section applies only to a modification of a shared parenting plan, not to a termination.

{¶57} In view of the foregoing, we hold that the trial court did not abuse its discretion in terminating the parties' shared parenting plan and in designating Paul as K.R.'s residential parent.

{¶58} Jodi's first assignment of error is overruled.

{¶59} For her second assigned error, Jodi maintains:

{¶60} "The trial court erred in terminating the shared parenting plan and designating the father as the residential parent and legal custodian, where the determination was against the manifest weight of the evidence."

{¶61} **Manifest Weight of the Evidence**

{¶62} The Supreme Court of Ohio in *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, explained the civil manifest-weight-of-the-evidence standard as follows:

{¶63} "*** [T]he civil manifest-weight-of-the-evidence standard was explained in *C.E. Morris Co. v. Foley Constr. Co.* [(1978)], 54 Ohio St.2d 279, syllabus ('Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence'). We have also recognized when reviewing a judgment under a manifest-weight-of-the-evidence standard, a court has an obligation to presume that the findings of the trier of fact are correct. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 80-81. This presumption arises because the trial judge had an opportunity 'to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' Id. at 80. 'A reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.' Id. at 81." *Wilson*, supra, at 387.

{¶64} Jodi argues that the court's decision was against the manifest weight of the evidence because the only evidence presented that Dale had abused K.R. was

Paul's alleged hearsay testimony concerning the statements K.R. made to him. We do not agree.

{¶65} First, Paul's written log of events and his testimony concerning same, to which Jodi failed to object, corroborated K.R.'s statements. The failure to object to the admission of allegedly improper documentary evidence or testimony constitutes a waiver of any alleged error. *State v. Hill* (Nov. 27, 1989), 11th Dist. Nos. 3720 and 3745, 1989 Ohio App. LEXIS 4462, *54, citing *State v. Wade* (1978), 53 Ohio St.2d 182, paragraph one of the syllabus; Evid.R. 103(A). This corroborative evidence was therefore properly before the court. Second, the photographs of K.R.'s burn and scrape injuries, to which Jodi, again, failed to object, corroborated K.R.'s allegations. Because Jodi failed to object to this evidence, it was properly before the court. *Hill*, supra. Third, Kathleen Coffelt testified that K.R. told her that Dale hits her. Because Jodi failed to object to this testimony, it was also properly before the court.

{¶66} Moreover, the testimony of the guardian ad litem, Jeffrey Goodman, supported the trial court's custody determination. While Mr. Goodman stated he did not believe Dale would "intentionally harm" K.R., Mr. Goodman said he had "concerns about Dale." Mr. Goodman also testified that if the court were to terminate the shared parenting plan, he believed that Paul would provide a "more stable environment" for the child.

{¶67} Jodi argues that her testimony suggests that K.R. made "certain statements at the prompting of the Father." However, Paul's testimony contradicts this argument. Moreover, Kathleen expressly testified that she did not encourage K.R. to talk about Dale and, in fact, initially challenged her when she said that Dale hits her. As

a result, conflicting evidence was presented on this issue. This court in *In re Savchuk*, 180 Ohio App.3d 349, 2008-Ohio-6877, held:

{¶68} "When assessing witness credibility, 'the choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact.' *State v. Awan* (1986), 22 Ohio St.3d 120, 123. 'Indeed, the factfinder is free to believe all, part, or none of the testimony of each witness appearing before it.' *Warren v. Simpson* (Mar. 17, 2000), 11th Dist. No. 98-T-0183, 2000 Ohio App. LEXIS 1073, *8. If the evidence is susceptible to more than one interpretation, a reviewing court must interpret it in a manner consistent with the verdict. Id." *Savchuk*, supra, at 357.

{¶69} Next, contrary to Jodi's argument and as outlined above, Paul was not required to prove the elements of modification since the trial court terminated the shared parenting plan.

{¶70} Based on our thorough and complete review of the record, competent, credible evidence was presented that termination of shared parenting and the designation of Paul as K.R.'s residential parent and legal custodian were in K.R.'s best interest.

{¶71} Jodi's second assignment of error is overruled.

{¶72} For her third and final assignment of error, Jodi alleges:

{¶73} "The trial court erred in repeatedly permitting the admission of [inadmissible] and unreliable hearsay evidence."

{¶74} **Hearsay Testimony**

{¶75} It is well-settled that hearsay is not permitted in adversarial juvenile court proceedings. *Adorante v. Wright*, 7th Dist. No. 98-BA-56, 2001-Ohio-3207, 2001 Ohio App. LEXIS 1206, *14; *In re Brofford* (1992), 83 Ohio App.3d 869, 873; *In re Barzak* (1985), 24 Ohio App.3d 180, 184. However, the judge is presumed to be able to disregard improper testimony. *In re Sims* (1983), 13 Ohio App.3d 37, 41. The admission of hearsay in an adversarial juvenile court proceeding in which parents may lose custody of a child is not prejudicial unless it is shown that such evidence was relied on by the judge in making his decision. *Adorante*, supra, at *14-*15, citing *In re Vickers Children* (1983), 14 Ohio App.3d 201, 206. The mere reference to hearsay testimony in a decision is not proof that a trial court relied on such testimony. *Adorante*, supra, at *15.

{¶76} We note that the trial court in its judgment did not indicate that it relied on any hearsay evidence. In fact, the judgment does not even refer to any hearsay evidence. Contrary to Jodi's argument, the magistrate made efforts to avoid the introduction of hearsay testimony during the evidentiary hearing. We note that, in ruling on an objection by Jodi on hearsay grounds, the magistrate advised Paul, "You can't testify what somebody else said." We must therefore presume that only properly admissible evidence was considered by the magistrate in reaching the decision.

{¶77} Further, as noted above, Paul kept a contemporaneous log of events, which corroborated K.R.'s claims of abuse. Because Jodi never objected to this log or Paul's testimony concerning same, both were properly admitted in evidence. As a result, Paul's testimony concerning the statements K.R. made to him were merely cumulative of evidence that was properly admitted and therefore not prejudicial.

{¶78} Next, Jodi's challenge to Kathleen's testimony as hearsay fails because Jodi failed to object to it at trial. She is therefore precluded from challenging it on appeal. *Hill*, supra.

{¶79} Further, Jodi argues that Paul's hearsay testimony was unreliable because it was not corroborated by any bruises, marks, or otherwise. Such argument, however, ignores Paul's log; Kathleen's testimony; and the photographs of K.R.'s injuries that were admitted at the hearing.

{¶80} It is worth noting that in his direct testimony, Dale denied K.R.'s allegation that he had burned her leg with a cigarette. Likewise, on direct, Jodi denied that K.R. had made this allegation. Dale and Jodi thus independently put K.R.'s allegations into evidence. For this additional reason, any error arising from the admission of Paul's testimony concerning K.R.'s allegation was waived.

{¶81} Jodi's third assignment of error is overruled.

{¶82} For the reasons stated in the opinion of this court, the assignments of error are without merit. The judgment of the Trumbull County Court of Common Pleas, Juvenile Division, is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDELL, J.,

concur.