

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

NICKY LEE LISTON,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-P-0068
SHAWN LISTON,	:	
Defendant-Appellant.	:	

Civil Appeal from the Portage County Court of Common Pleas, Domestic Relations Division, Case No. 2003 DR 00178.

Judgment: Affirmed.

Michael A. Giulitto, Giulitto Law Office, L.L.P., 222 West Main Street, P.O. Box 350, Ravenna, OH 44266, and *Michael A. Partlow*, 112 South Water Street, Suite C, Kent, OH 44240 (For Plaintiff-Appellee).

Stephen C. Lawson, 250 South Chestnut Street, Suite 17, Ravenna, OH 44266 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Shawn Liston (“Father”), appeals from a judgment of the Portage County Court of Common Pleas, Domestic Relations Division, granting his and appellee’s, Nicky Lee Liston’s (“Mother”), motions to terminate their shared parenting plan and adopting Mother’s new shared parenting plan.

{¶2} Father and Mother married in 1997. One child (“the minor child”) was born as issue of the marriage in 2001. After being married for about 6 years, Mother filed for

divorce. The parties were granted a divorce in 2003, and a shared parenting plan was adopted. At the time of that agreement, both parties resided in Ravenna, Ohio. Mother's residence served as the minor child's residence for school purposes. The parties agreed to make a good faith effort to spend an equal amount of time with their son. The parties further agreed to communicate with each other and cooperate in all areas of parental decision making affecting the minor child.

{¶3} In 2007, Mother relocated to Macedonia, Ohio, about 30 miles from Ravenna. Mother moved in with her boyfriend, Rob Adkins ("Adkins"). As a result of her relocation, Father and Mother filed an agreed judgment to modify the original shared parenting plan to reflect that Father would be the residential parent for school purposes.

{¶4} Shortly thereafter, Father began a relationship with Shonnie Liston ("Shonnie"), who is now his wife. As Father and Mother began new relationships, communication between them regarding their son became strained. Pick-ups and drop-offs of the minor child became problematic and Father and Mother blamed each other.

{¶5} In 2010, both Father and Mother filed motions to terminate their shared parenting plan and each moved for sole custody. Attorney Jerry Goodwin was appointed Guardian Ad Litem ("GAL") for the minor child. The trial court ordered temporary possession of the minor child to Father and granted Mother standard visitation.

{¶6} A three-day hearing was held in early 2011. On the second day, Mother filed a new shared parenting plan. Mother proposed that each parent, regardless of where the minor child is physically located or with whom he is residing, shall be the residential parent and legal custodian, and that Father's residence shall be deemed the

child's residence for school purposes. Mother also proposed that she and Father shall have alternating weeks of shared parenting.

{¶7} The trial court heard testimony from both Father and Mother. Father did not do well returning phone calls and both Father and Mother sent each other nasty emails. Father learned that Adkins had been charged with domestic violence in an incident dealing with Mother, as well as older domestic violence charges and a DUI. Adkins pled to a felony domestic violence charge involving Mother, was placed on probation, and completed an anger management program. There was no evidence that the minor child was ever in a position of harm as a result. Also, Shonnie had a DUI and filed disorderly conduct charges against Father. Father has a minor criminal record.

{¶8} During the course of the 3-day hearing, numerous other witnesses were called to testify. Counselors for the minor child and Mother each testified. Dr. Edith Todd, a psychologist who counseled the minor child, was unable to provide an opinion as to who should be named residential parent. Anita Demetriades, a licensed professional clinical counselor who counseled Mother, testified that Mother had an alcohol problem following the death of her step-father. However, Ms. Demetriades said that Mother attended AA meetings and was making excellent progress. Mother had no history of alcohol or other abuse problems prior to the death of her step-father.

{¶9} Bill and Melissa Bregant, longtime friends of Father and Mother, both testified that Father and Mother were a good couple when they were together. Mrs. Bregant said that Father's new marriage to Shonnie was difficult for the minor child and that Father was a bit aggressive at times in handling his son's problems.

{¶10} Two of the minor child's teachers, Jennifer Dawson and Andrea Remesnik, also testified. Ms. Dawson said the minor child was a good child but Father was putting pressure on his son, which lead to behavior problems. Ms. Dawson stated that Father made unkind remarks about Mother. Ms. Remesnik opined that Father and Mother were both good parents. However, Ms. Remesnik observed tension between Father and Mother.

{¶11} Mother's father, Terry Lee Thomason, testified against his daughter having custody of his grandson. Mr. Thomason opined that Mother, as an alcoholic, would place the minor child in harm's way.

{¶12} The GAL recommended that it was in the minor child's best interests to be placed with Father as the residential custodial parent. The GAL further recommended that the case should not result in another shared parenting agreement.

{¶13} The trial court granted the parties' motions to terminate their shared parenting plan. The court adopted the new shared parenting plan filed by Mother, finding it to be in the best interests of the minor child. Father filed a timely appeal and raises the following assignment of error:

{¶14} "It was an abuse of discretion for the trial court to impose a shared parenting order upon the parties as a shared parenting order is not in the best interests of the minor child."

{¶15} Custody determinations, including decisions involving shared parenting plans, are reviewed under an abuse of discretion standard. *Duricy v. Duricy*, 11th Dist. Nos. 2009-T-0078 and 2009-T-0118, 2010-Ohio-3556, ¶35. The term "abuse of discretion" is one of art, "connoting judgment exercised by a court which neither

comports with reason, nor the record.” *State v. Underwood*, 11th Dist. No. 2008-L-113, 2009-Ohio-2089, ¶30, citing *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). The Second Appellate District also adopted a similar definition of the abuse-of-discretion standard: an abuse of discretion is the trial court’s “failure to exercise sound, reasonable, and legal decision-making.” *State v. Beechler*, 2d Dist. No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting Black’s Law Dictionary (8 Ed.Rev.2004) 11. When an appellate court is reviewing a pure issue of law, “the mere fact that the reviewing court would decide the issue differently is enough to find error (Of course, not all errors are reversible. Some are harmless; others are not preserved for appellate review). By contrast, where the issue on review has been confided to the discretion of the trial court, the mere fact that the reviewing court would have reached a different result is not enough, without more, to find error.” *Id.* at ¶67.

{¶16} “The discretion which a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court’s determination will have on the lives of the parties concerned. The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record. In this regard, the reviewing court in such proceedings should be guided by the presumption that the trial court’s findings were indeed correct. (Internal citation omitted.)” *Dragon v. Dragon*, 11th Dist. Nos. 2011-A-0037 and 2011-A-0039, 2012-Ohio-978, ¶9, quoting *Miller v. Miller*, 37 Ohio St.3d 71, 74 (1988).

{¶17} A trial court may not approve a shared parenting plan unless it determines that the plan is in the best interests of the child. R.C. 3109.04(D)(1)(b). In determining

whether a shared parenting plan is in the best interests of the child, a trial court must consider all relevant factors, including, but not limited to, the factors set forth in R.C. 3109.04(F)(1) and (2). Where the best interests of a child is at issue, there should be some indication in the judgment entry that the trial court considered the best interests of the child pursuant to R.C. 3109.04(F) when it allocated parental rights and responsibilities.

{¶18} In this case, the trial court made findings of fact and conclusions of law in its judgment entry and considered the minor child's best interests in adopting Mother's new shared parenting plan.

{¶19} Father contends the imposition of Mother's shared parenting plan is contrary to the express recommendation of the GAL. As stated, the GAL recommended that the minor child be placed with Father as the residential custodial parent and that the case should not result in another shared parenting agreement. The GAL had concerns regarding the domestic violence situation and the sobriety of Mother and her boyfriend. This court has held, however, that a trial court is not required to follow a guardian ad litem's recommendation and does not err if it makes a contrary order. *Foxhall v. Lauderdale*, 11th Dist. No. 2011-P-0006, 2011-Ohio-6213, ¶47, citing *In re P.T.P. Custody*, 2d Dist. No. 2005 CA 148, 2006-Ohio-2911, ¶24.

{¶20} The trial court recognized the previous domestic violence situation, which appeared to be rectified, and indicated the minor child was never in a position of harm from either Mother or Adkins. In addition to the terms in the new shared parenting plan, the court also ordered that Mother and Adkins remain in AA, continue to receive

counseling, and have no violations of law as a condition of the shared parenting plan continuing.

{¶21} Furthermore, Father alleges Mother's newly adopted shared parenting plan contains the same terms as the old plan. As stated, the parties agreed under the original plan for Mother to be the residential parent for school purposes. Thereafter, the parties filed an agreed judgment to modify the original shared parenting plan to reflect that Father would be the residential parent for school purposes. All other provisions in the original plan were to remain in full force and effect. Under the new shared parenting plan filed by Mother, Father remained as residential parent for school purposes.

{¶22} However, with regard to companionship, the original shared parenting plan provided that the parties would make a good faith effort to spend an equal amount of time with the minor child. A review of the court's order which adopted the original shared parenting plan reveals that Father and Mother agreed that Mother would have the minor child on Tuesday and Thursday overnight and every other weekend consisting of Friday, Saturday, and Sunday overnight. Father would have the minor child on Monday and Wednesday overnight and every other Friday, Saturday, and Sunday overnight. This arrangement included numerous contacts per week between the parties. The new shared parenting plan filed by Mother, however, provided that Father and Mother would each have alternating weeks of shared parenting time, with the exception of the holiday schedule and days of "special meaning," thereby greatly reducing the number of contacts between the parties per week.

{¶23} Based on the foregoing, we cannot say that the trial court abused its discretion in adopting Mother's new shared parenting plan. Many factors weighed

evenly as to the parties. While Father and Mother have communication issues to work on, the evidence demonstrates that both parties are capable parents who love their son. Thus, the court's determination that it is in the minor child's best interest to implement a shared parenting plan, specifically the new plan filed by Mother, was not an abuse of discretion.

{¶24} For the foregoing reasons, appellant's sole assignment of error is not well-taken. The judgment of the Portage County Court of Common Pleas, Domestic Relations Division, is affirmed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.