[Cite as *Venuto v. Pochiro*, 2004-Ohio-2631.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

ANNETTE VENUTO	)	CASE NO. 02 CA 225
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
CHRISTOPHER POCHIRO	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas, Juvenile Division, of Mahoning County, Ohio
Case No. 95 JI 346

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee: Atty. Vincent J. Wloch
412 Boardman-Canfield Road
Youngstown, Ohio 44512

For Defendant-Appellant: Atty. Brian J. Macala
192 South Lincoln Avenue
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JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: May 21, 2004

WAITE, P.J.

{¶1} This appeal arises from the Mahoning County Court of Common Pleas, Juvenile Division's November 1, 2002, judgment regarding custody of the parties' minor child.

{¶2} Appellee, Annette Venuto ("Venuto"), filed her initial complaint in March 1995, naming Appellant, Christopher Pochiro, defendant. Since then, this matter has grown to involve numerous issues surrounding the parties' minor child, Lana Maria Pochiro, who was born November 28, 1994.

{¶3} Venuto has been the minor child's residential parent and legal custodian since May 5, 1999. Venuto married and relocated, with court permission, to the Massillon, Ohio area in the late 1990's. Appellant resides in Boardman, Ohio. The travel distance between the two is approximately one and one-half hours. At the time the issues causing the instant appeal arose, Appellant had alternating weekend and weekly Wednesday night visitation.

{¶4} Some procedural history is necessary to understand certain issues on appeal. Prior to October 18, 2001, Appellant was represented by counsel. However, Appellant filed a pro se motion for the modification of allocation of parental rights and responsibilities on November 28, 2001.

{¶5} Appellant also filed a pro se motion for the recusal of the Mahoning County Court of Common Pleas, Juvenile Division judge on November 28, 2001, and a pro se "motion for immediate appointment of guardian" on December 21, 2001.

{¶6} On January 22, 2002, however, Appellant's counsel filed a motion to continue on Appellant's behalf. The Magistrate's March 6, 2002 decision concerning child support reflects that Appellant was represented by counsel at the February 15, 2002 hearing. His counsel thereafter withdrew his representation on March 12, 2002. Appellant is again represented by counsel in the instant appeal.

{¶7} On February 19, 2002, the Mahoning County Court of Common Pleas, Juvenile Division judge recused herself from this case as a result of a grievance Appellant filed against her. On June 11, 2002, the Supreme Court of Ohio assigned a visiting judge to the instant matter.

{¶8} On June 12, 2002, a Mahoning County Court of Common Pleas judge acting in an administrative capacity ordered the parties to prepare and file briefs within thirty days, outlining the issues to be addressed by the visiting judge at the upcoming hearings. Venuto filed her brief on July 2, 2002. Appellant never filed a brief.

{¶9} However, Appellant filed a motion on July 9, 2002, requesting an order holding Venuto in contempt and requesting an in camera interview with the minor child. Appellant also requested an order for makeup companionship and an order requiring Venuto to attend parenting classes/counseling and a psychiatric evaluation.

{¶10} On August 7, 2002, the visiting judge issued an order with regard to pending motions, which was apparently in response to Appellant's pro se motion for the modification of allocation of parental rights and responsibilities filed on November 28, 2001. The visiting judge's order stated that before even addressing the best interests of the child, the relevant statute requires a finding of change in circumstances

since the date of the last order by the magistrate. The judge further held that: "[i]t is facially apparent from the affidavit of the Defendant [Appellant], filed in support of his motion, that none of the dated violations have occurred since March 11, 2002, and will be determined irrelevant unless the prima facie evidence of eligibility for ancillary relief is demonstrated." (8/7/02 ruling on pending motions.)

{¶11} On August 12, 2002, Venuto filed a motion to restrict, limit or discontinue parenting time or in the alternative to require an in camera interview of the minor child. Venuto filed her request for an in camera interview again on October 21, 2002, relative to the court's upcoming October 24, 2002, trial.

{¶12} The trial was held on October 24, 2002. Appellant was represented by counsel. The visiting judge found that the juvenile judge had ruled on issues regarding parental rights and the best interest of the child on April 26, 2001. Thus, the visiting judge would only consider matters arising from these issues that occurred after April 26, 2001 and before July 9, 2002, the date Appellant's motion was filed. (10/24/02 Trial Tr., pp. 25-27.)

{¶13} At trial, the parties presented evidence and testimony on the issues as identified by the court. The visiting judge issued final judgment on all issues in his November 1, 2002, judgment, which included findings of fact and conclusions of law.

{¶14} Appellant filed timely notice of appeal.

{¶15} In a domestic relations matter, the appropriate standard of review is abuse of discretion. *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144, 541 N.E.2d 1028. A trial court's decision in a domestic relations matter should not be disturbed on appeal

unless the decision involves more than an error of judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. In order to rise to the level of an abuse of discretion, the trial court's attitude must be unreasonable, arbitrary or unconscionable. Id.

{¶16} The Ohio Supreme Court has held:

{¶17} "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." *Miller v. Miller* (1988), 37 Ohio St.3d 71, 74, 523 N.E.2d 846; *Trickey v. Trickey* (1952), 158 Ohio St. 9, 13, 47 O.O. 481, 106 N.E.2d 772. However, while the trial court's discretion is broad, it is in no way absolute. *Miller*, 37 Ohio St.3d 71, 74, 523 N.E.2d 846.

{¶18} Appellant's first assignment of error asserts:

{¶19} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO RULE UPON APPELLANT'S MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM, AND COMMITTED FURTHER REVERSIBLE ERROR BY CONDUCTING AN IN CAMERA INTERVIEW WITH THE MINOR CHILD WITHOUT THE APPOINTMENT OF A GUARDIAN AD LITEM."

{¶20} Appellant asserts that the trial court failed to appoint a guardian ad litem despite his specific request. Appellant, acting pro se, filed a motion seeking the appointment of a guardian on December 21, 2001.

{¶21} Based on the record, it appears that the trial court never specifically ruled on this motion. However, "[a]ny motion not expressly ruled on is deemed overruled." *Takacs v. Baldwin* (1995), 106 Ohio App.3d 196, 209, 665 N.E.2d 736

{¶22} Appellant correctly identifies that the trial court did not appoint a guardian after his December 21, 2001, request. However, it should be noted that two guardian ad litems had previously been appointed in this case; on June 28, 1996, and on September 21, 2000. The second guardian ad litem issued a report and recommendation on March 8, 2001, and filed a supplemental report on March 12, 2001. Neither guardian participated in the October 24, 2002, trial.

{¶23} In support of this assigned of error, Appellant directs this Court's attention to R.C. 3109.04(B)(2)(a), which provides, in part:

{¶24} "(2) If the court interviews any child pursuant to division (B)(1) of this section, all of the following apply:

{¶25} "(a) The court, in its discretion, may and, upon the motion of either parent, shall appoint a guardian ad litem for the child."

{¶26} Appellant also cites *State ex. rel Papp v. James* (1994), 69 Ohio St.3d 373, 632 N.E.2d 889, which holds that R.C. 3109.04(B)(2)(a) imposes a duty on a court to appoint a guardian ad litem upon either parent's motion. Id. In *Papp*, the mother requested the appointment of a guardian ad litem and a stay of the

proceedings during the custody trial. Id. at 374. The judge did not specifically grant or deny her request, and he subsequently determined custody following his in camera interview with the minor child. Id. The Supreme Court held that the trial court erred in so doing.

{¶27} The facts in the instant matter are easily distinguished from *Papp*, supra. First, the visiting judge was not assigned to this case until June 11, 2002—almost six months following the filing of Appellant's pro se motion requesting a guardian. In addition, and in anticipation of the visiting judge's appointment, a Mahoning County Common Pleas judge administratively ordered the parties to file briefs outlining the issues that were required to be addressed at trial. Appellant never filed a brief nor did he identify the guardian ad litem issue in any other fashion prior to trial.

{¶28} Notwithstanding Appellant's non-compliance with the administrative judge's order, the visiting judge provided both counsel with another opportunity to identify the issues before the court at the October 24, 2002 trial. (10/24/02 Trial Tr., pp. 42-45.) When the court addressed Appellant's counsel as to the issues to be addressed, Appellant's counsel stated only that Appellant was seeking reallocation of parental rights and responsibilities. (10/24/02 Trial Tr., p. 43.) Appellant's pro se guardian ad litem request was never mentioned.

{¶29} Further, when the trial court asked Appellant's position regarding the in camera interview by the judge, Appellant's counsel stated, in part: "We do not object to conducting an in-camera interview in this matter. We would encourage it." (10/24/02 Trial Tr., p. 42.)

{¶30} The Ohio Supreme Court has repeatedly held that:

{¶31} "* * * an appellate court will not consider any error which counsel for a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court." *State v. 1981 Dodge Ram Van*, (1988) 36 Ohio St.3d 168, 170, 522 N.E.2d 524, citing *State v. Childs* (1968), 14 Ohio St.2d 56, 236 N.E.2d 545, 43 O.O.2d 119, paragraph three of the syllabus.

{¶32} As in *Papp*, supra, had Appellant requested a guardian ad litem or objected to the in camera interview of the minor in the absence of a guardian, the trial court may have been in error. However, Appellant's trial counsel not only consented to the in camera interview, but in his own words encouraged the interview. (10/24/02 Trial Tr., p. 42.)

{¶33} Based on the foregoing, it is apparent that Appellant's counsel's statements and actions at the trial abrogated and waived Appellant's previous pro se request for the appointment of a guardian ad litem. Appellant clearly consented to the in camera interview of the minor child at the trial without the presence of a guardian ad litem. As such, his first assignment of error lacks merit and is overruled.

{¶34} Appellant's second assignment of error asserts:

{¶35} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT THE APPELLANT HAD NOT MET HIS BURDEN OF SHOWING A CHANGE IN CIRCUMSTANCES NECESSITATING A MODIFICATION OF THE ALLOCATION OF

PARENTAL RIGHTS AND RESPONSIBILITIES IN THE MINOR CHILD'S BEST INTEREST."

{¶36} Appellant's primary argument under this assignment of error is that the trial court erred in concluding that Appellant failed to establish a change in circumstances.

{¶37} The custody of the minor child in the instant matter had previously been addressed. Since the trial court's October 24, 2002, hearing was pursuant to a request for a modification of the prior decree allocating the parental rights and responsibilities for the minor's care, our analysis begins with R.C. 3109.04(E)(1)(a). It states:

{¶38} "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 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, [or] the child's residential parent, * * * 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:

{¶39} "(i) The residential parent agrees to a change in the residential parent * * *

{¶40} "(ii) The child, with the consent of the residential parent * * * has been integrated into the family of the person seeking to become the residential parent.

{¶41} "(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."

{¶42} With regard to the change in circumstance requirement, the Ohio Supreme Court has held:

{¶43} "* * * R.C. 3109.04 requires only a finding of a 'change in circumstances' before a trial court can determine the best interest of the child in considering a change of custody.

{¶44} "* * *

{¶45} "Clearly, there must be a *change* of circumstances to warrant a change of custody, and the change must be a change of substance, not a slight or inconsequential change." (Emphasis in original.) *Davis v. Flickinger* (1996), 77 Ohio St.3d 415, 417-418, 674 N.E.2d 1159.

{¶46} The Supreme Court in *Davis* also stated:

{¶47} "In determining whether a 'change' has occurred, we are mindful that custody issues are some of the most difficult and agonizing decisions a trial judge must make. Therefore, a trial judge must have wide latitude in considering all the evidence before him or her * * *." Id. at 418.

{¶48} In support of his argument requesting a custody change, Appellant's brief relies on certain language employed in the trial court's judgment entry:

{¶49} "The [Appellant] failed to show that the frequent conflicts, misunderstandings, defects and defaults in literal visitation compliance is sufficient prima facie grounds to demonstrate a sufficient change of circumstances as to allow

modification. In fact, these issues appear to have been present for a long time, and are not new." (11/01/02 Findings of Fact and Conclusions of Law, p. 2, ¶7.)

{¶50} Appellant claims that the trial court's findings that Venuto "frustrated" Appellant's companionship with their child are contrary to its conclusion that Appellant failed to prove a change in circumstances. However, a plain reading of the above-quoted language does not reveal that that court concluded that Venuto was frustrating visitation; it merely notes that conflicts between the parties frequently occur, without assigning fault to Venuto or Appellant.

{¶51} Appellant asserts that the trial courts' findings as set forth above establish a change in circumstances. Specifically, Appellant claims that Venuto continuously denied him court-ordered companionship with the minor child. Appellant does not direct this Court's attention to any portion of the record or any evidence in support of his argument that a change in circumstances occurred.

{¶52} Appellant identifies several cases in support of the proposition that one parent's interference with the other's companionship is a factor which may be considered when determining the issue of a change in circumstances. Specifically, Appellant cites *Holm v. Smilowitz* (1992), 83 Ohio App.3d 757, 615 N.E.2d 1047. However, the facts in *Holm* concerned a situation in which the residential mother relocated from Ohio to Utah with the minor child without court approval, and denied the father approximately five months of visitation. Id. at 764. The court concluded that the lengthy denial of visitation was sufficient to support a finding of a change in circumstances. Id. at 744. The court, however, also noted that the psychologist's

testimony that the residential mother's continued difficulty in providing visitation to the father supported the change in circumstances conclusion. Id.

{¶53} The proposition of law that one parent's interference with the other parent's companionship may be considered in finding a change in circumstances is undisputed. Notwithstanding, this first requires a trial court to conclude that there was indeed an interference with companionship and subsequently find that the interference alone or in addition to other conditions is sufficient to constitute a change in circumstances. Id. The trial court did not conclude this occurred in the instant matter.

{¶54} The trial court here never found that Venuto interfered with Appellant's companionship. The trial court noted technical difficulties that the parties encountered in visitation as a result of every day factors. The trial court apparently gleaned these, "frequent defaults in literal visitation," from Appellant's journal and, "almost obsessive commitment," to the minor child. (11/01/02 Findings of Fact and Conclusions of Law, p. 2, ¶6.) The trial court's entry notes that:

{¶55} "* * * as this child gets older the frequent visitation periods that have been studiously exercised by the [Appellant] will become more rancorous and difficult unless he tempers his passion for visitation 'by the book' and without modification or exception.

{¶56} "* * *

{¶57} "Each of the parties have kept a journal (scorecard!) about visitation. * * * For posterity, be it noted that one of the days the [Appellant] steadfastly defends his

claim of court order [sic] visitation violation, the [Appellee] was, in fact, delivering a child." (11/01/02 Findings of Fact and Conclusions of Law, p. 2, ¶6, 9.)

{¶58} Notwithstanding Appellant's failure to specify portions of the record which tend to support the alleged change in circumstances, a review of the trial transcript reveals no evidence that Appellant was denied companionship and does not demonstrate an abuse of discretion by the trial court. The record reflects that certain events, including the child's illness, did hinder "by the book" the visitation. However, and as the trial court points out, every day complications are unavoidable, and inflexible compliance with a visitation schedule is unrealistic. The trial judge also noted that these alleged "interferences" will continue to increase as the minor child matures. (11/01/02 Findings of Fact and Conclusions of Law, p. 2, ¶6-9.)

{¶59} Based on the record and the trial court's findings of fact and conclusions of law, it is clear that the trial court's decision was appropriate.

{¶60} Appellant also asserts two sub-issues under this assignment of error. First, he claims that the trial court erred in bifurcating the, "change in circumstances," and, "best interests of the child," issues. Appellant indicates that the trial court required him to establish that a change in circumstances occurred before it would entertain Appellant's evidence as to whether a custody modification was in the best interest of the child. Appellant claims that the trial court should have assessed both issues as part of the whole analysis.

{¶61} Appellant claims that the trial court's denial of Appellant's ability to even present evidence on the issue of the best interest of the child constitutes reversible

error. However, Appellant essentially concedes in his brief that had he been provided the opportunity to present evidence on this issue, he would have likely been unsuccessful. (Appellant's brief, p. 15.) In addition, Appellant's counsel essentially withdrew this first sub-issue during oral arguments before this Court.

{¶62} Notwithstanding, the law clearly provides that three elements must exist in order for the trial court to properly modify residential parent status: (1) initially, there must be a threshold showing of a change in circumstances; (2) then, if circumstances have changed, the modification of custody must be in the child's best interests; and finally, (3) the advantages of an alteration in the plan must outweigh any resulting harm to the child. *Rohrbaugh v. Rohrbaugh* (2000), 136 Ohio App.3d 599, 604, 737 N.E.2d 551. If the record does not support each of these findings, then a child custody modification is contrary to law. *Davis*, 77 Ohio St.3d 415, 417, 674 N.E.2d 1159.

{¶63} Absent a finding of change in circumstances, there would be no reason for a trial court to consider testimony and evidence as to the best interests of the minor child. Id. Further, R.C. 3109.04(E)(1)(a) creates a rebuttable presumption that retaining the residential parent designated by prior decree is in the child's best interest. *Rohrbaugh*, at 604, 737 N.E.2d 551.

{¶64} Based on our conclusion in Appellant's primary issue under this assignment of error, i.e., that the trial court did not abuse its discretion in finding no change in circumstances, Appellant's first sub-issue under his second assignment of error fails. Without a finding of change in circumstances, the trial court need not consider evidence as to the other issues. Id.

{¶65} Finally, Appellant's second sub-issue under this assignment of error asserts that the trial court improperly imposed a higher burden of proof relative to what evidence will constitute a "change in circumstances." He asserts that the trial court required a showing that the change was significant.

{¶66} As previously set forth, the Ohio Supreme Court has held that: "* * * R.C. 3109.04 requires only a finding of a 'change in circumstances' before a trial court can determine the best interest of the child in considering a change of custody." *Davis*, 77 Ohio St.3d 415, 417, 674 N.E.2d 1159. However, "* * * the change must be a change of substance, not a slight or inconsequential change." Id. at 418.

{¶67} Appellant fails to direct this Court's attention as to what portion of the record reflects that the trial judge required the change in circumstances to be "significant." This alleged heightened standard or burden is not reflected in the trial court's entry. The court did note that the frequent minor disputes relative to strict compliance with visitation failed, "* * * to demonstrate a *sufficient* change of circumstances[.]" (Emphasis added.) (11/01/02 Findings of Fact and Conclusions of Law, p. 2, ¶7.)

{¶68} Despite Appellant's failure to identify within the record support for this alleged heightened burden, a review of the trial transcript reveals that the trial judge indicated:

{¶69} "There has been no substantial change of circumstances that has been demonstrated, and it clearly would not be in the best interest of this child to reallocate

parental rights. The Motion for Reallocation will be overruled." (10/24/02 Trial Tr., p. 217.)

{¶70} The Supreme Court in *Davis*, supra, held that the underlying court of appeals erroneously required a "substantial" change in circumstances to warrant a change of custody. Id. at 417-418. The Supreme Court noted that, "the term 'substantial' appears repeatedly throughout [the court of appeals'] opinion and always in conjunction with [the word] 'change.'" Id.

{¶71} While a substantial change is one that is significant, the requisite "change" must only be one of substance. Id.

{¶72} However, the Court also stated that while clearly the "change" necessary to warrant a modification in custody must be one of substance, "[t]he nomenclature is not the key issue." Id. at 418. The *Davis* Court continued to stress the importance of providing, "some stability to the custodial status of the children, even though the parent out of custody may be able to prove that he or she can provide a better environment." Id. citing *Wyss v. Wyss* (1982), 3 Ohio App.3d 412, 416, 445 N.E.2d 1153.

{¶73} In conclusion, *Davis* reversed the court of appeals' decision because it erroneously substituted its judgment in place of the trial court's. In doing so, the court of appeals also happened to appear to erroneously use a heightened standard relative to evidence necessary to constitute a "change". Id.

{¶74} Contrary to Appellant's argument in the instant matter, the trial court's single use of the word "substantial" in the record does not amount to imposition of a higher burden of proof. The word "substantial" is used only one time with the word

"change" is mentioned, and the trial court also used the word "sufficient" to describe the requisite change in circumstances.

{¶75} Based on the foregoing, it is evident that the trial court was well within its broad discretion when it did not find a sufficient change in circumstances to warrant a change in custody.

{¶76} As such, all of Appellant's arguments under his second assignment of error lack merit and are overruled.

{¶77} Appellant's third assignment of error states:

{¶78} "THE DECISION OF THE TRIAL COURT MODIFYING APPELLANT'S COMPANIONSHIP SCHEDULE WAS ARBITRARY AND CAPRICIOUS, WAS AN ABUSE OF DISCRETION, AND WAS NOT SUPPORTED BY THE EVIDENCE."

{¶79} This assignment of error concerns the trial court's modification of Appellant's weekly Wednesday night visitation. Specifically, Appellant asserts that his Wednesday night visitation is now effectively limited to the Massillon, Ohio area as a result of his having to both pick up and return the minor child from her home.

{¶80} R.C. 3109.051 governs the modification of parental visitation rights. *Braatz v. Braatz* (1999), 85 Ohio St.3d 40, 706 N.E.2d 1218, paragraph one of the syllabus. A party requesting a modification in visitation rights does not have to demonstrate a change in circumstances. Instead, a trial court must consider the fifteen factors enumerated in R.C. 3109.051(D), "and in its sound discretion shall determine visitation that is in the best interest of the child." Id. at syllabus paragraph two.

{¶81} R.C. 3109.051(D) provides in pertinent part:

{¶82} "(D) In determining * * *a specific parenting time or visitation schedule, * * * the court shall consider all of the following factors:

{¶83} "(1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity * * *;

{¶84} "(2) The geographical location of the residence of each parent and the distance between those residences, * * *;

{¶85} "(3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;

{¶86} "(4) The age of the child;

{¶87} "(5) The child's adjustment to home, school, and community;

{¶88} "(6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent * * * as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;

{¶89} "(7) The health and safety of the child;

{¶90} "(8) The amount of time that will be available for the child to spend with siblings;

{¶91} "(9) The mental and physical health of all parties;

{¶92} "(10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights * * *;

{¶93} "(11) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; * * * and whether there is reason to believe that either parent has acted in a manner resulting in a child being an abused child or a neglected child;

{¶94} "* * *

{¶95} "(13) Whether the residential parent * * * has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;

{¶96} "(14) Whether either parent has established a residence or is planning to establish a residence outside this state;

{¶97} "* * *

{¶98} "(16) Any other factor in the best interest of the child."

{¶99} According to Appellant, the only alteration in his Wednesday evening visitation is that he is now solely responsible for the minor child's transportation. Venuto was previously required to transport the child to Appellant's residence at the commencement of the visitation at 5:00 p.m., and Appellant was required to return her at 8:15 p.m.. The distance between the parties' residences is approximately one and one-half hours. Appellant asserts that this alteration effectively eliminates his ability to visit with the minor child in his home.

{¶100} In support of this assigned error Appellant identifies his trial testimony, which reflects the companionship activities enjoyed in his home as well as the interaction with Appellant's extended family. (10/24/02 Trial Tr., pp. 140-141.) He asserts that he is unfamiliar with the Massillon area and does not know anyone in the area, and it is unreasonable for him to be forced to visit there.

{¶101} Appellant claims that Venuto's only identified justification for this modification was that it would reduce the amount of time the minor child was required to spend in a motor vehicle. Appellant also asserts that since Venuto created the distance between the parties when she relocated to the Massillon area, she should not be allowed to use the travel time to her advantage.

{¶102} Appellant does not provide any law or cases in support of this assignment of error. However, he claims that this modification was not supported by the evidence and was arbitrary and capricious.

{¶103} The trial court's record reflects the judge's reasoning for the modification in the minor's Wednesday night transportation as follows:

{¶104} "* * * essentially my goal is to keep [visitation] very close to what we've already done, but I can tell you right now one of the things is going to be in that order is an order that on Wednesdays you pick up and deliver. We're going to change that, sir. It is not fair to this little girl, and my conversation with her makes it very clear to me that it is not in her best interest to be in a car that long on that night unless that's your choice to do that. * * *" (10/24/02 Trial Tr., p. 231.)

{¶105} Venuto properly points out that Appellant's argument in this assignment of error demonstrates his misguided focus on *his* visitation rights and *his* inconvenience. Appellant fails to address the key issue—the best interests of the minor child.

{¶106} The trial court's modification was well within its discretion using the factors found in R.C. §3109.051(D). As such, Appellant's third assignment of error lacks merit and is overruled.

{¶107} Based on the foregoing, all of Appellant's assignments of error lack merit, and the trial court's judgment is affirmed in its entirety.

Judgment affirmed.

Donofrio and Vukovich, JJ., concur.