



{¶ 3} Though the details are not clear from the record, the parties' amicable relationship broke down. Soon after R.A.S.'s birth, Father filed a motion for visitation with the child, and Mother fled with R.A.S. to Texas. Mother eventually returned to Ohio, and moved to Yellow Springs, in Greene County, and Father had visitation with R.A.S. When the child was approximately three years old, Mother began to make allegations that Father, or people associated with Father, sexually abused R.A.S. Father filed a motion for custody, which was denied by the trial court on May 28, 2009, and he continued to have regular visitation with the child every other weekend.

{¶ 4} Mother continued to make allegations that Father sexually abused R.A.S. to various county agencies, law enforcement, hospitals, as well as people from her community. Mother would often speak openly about the sexual abuse claims, as well as other issues inappropriate for children, in front of the child. Mother continued to disparage Father on countless occasions and to multiple persons.

{¶ 5} Father filed a second motion for custody in December 2010, and a hearing was held on the matter. At the time of the motion and hearing, R.A.S. was five years old. During the hearing, Father submitted evidence that Mother made 13 allegations to Greene County Children Services that Father was sexually abusing R.A.S., as well as six allegations to the Yellow Springs Chief of Police that Father molested R.A.S. Mother also took the child to the hospital four times, where the child was subjected to multiple physical examinations. The child was also subjected to four forensic interviews where investigators questioned the child about the sexual abuse allegations. Mother had also taken R.A.S. to three different clinical psychologists. All of the investigations and allegations were deemed unsubstantiated, and Father had not once been charged with any wrongdoing.

{¶ 6} At the time of trial, Green County Children Services had an open investigation against Mother, alleging emotional maltreatment of R.A.S. based on Mother involving the

child in repeated unsubstantiated allegations of sexual abuse.

{¶ 7} After the hearing, the magistrate found that a change of circumstances had occurred, and that it was in the best interest of the child that Father have custody. The magistrate also ordered Mother to pay child support, and ordered that Father have immediate custody of R.A.S. The magistrate also found Mother in contempt for impeding Father's visitation rights with the child. Mother filed objections to the magistrate's decision, and Father moved for and was granted an interim order allowing him to retain custody of the child pending the trial court's decision on Mother's objections.

{¶ 8} During the pendency of the proceedings on Mother's objections, another allegation of sexual abuse was made against Father. Father moved for and was granted an emergency order by the trial court suspending Mother's visitation with the child. Mother claimed that she had not made the allegation, and had otherwise complied with court orders regarding visitation. Father and Mother entered into an agreed entry whereby Mother agreed not to allege any further claims of sexual abuse by Father, and Mother's visitation was reinstated.

{¶ 9} After considering Mother's objections, the trial court overruled each, but found that the magistrate erred in finding Mother in contempt because she was not given proper notice of the contempt motion. Mother appeals the decision of the trial court regarding the custody issues, raising the following assignments of error. For ease of discussion, we will combine some of the assignments during our analysis.

{¶ 10} Assignment of Error No. 1:

{¶ 11} THE TRIAL COURT ERRED IN FAILING TO CONSIDER ALL OF THE FACTORS LISTED UNDER R.C. §3109.04(F).

{¶ 12} Assignment of Error No. 3:

{¶ 13} THE TRIAL COURT ERRED IN AWARDING FATHER CUSTODY OF THE

MINOR CHILD.

{¶ 14} Mother argues in her first and third assignments of error that the trial court erred in granting custody of R.A.S. to Father because the trial court failed to consider the best interest factors pursuant to R.C. 3109.04(F); there was not a change in circumstances to warrant a change in custody; and granting custody to Father was not in R.A.S.'s best interests.

{¶ 15} When reviewing a custodial issue, an appellate court will apply an abuse of discretion standard of review so that the trial court's decision will not be reversed unless it is unreasonable, arbitrary, or unconscionable. *Smith v. Smith*, 12th Dist. No. CA2005-04-091, 2006-Ohio-2136, citing *Blakemore v. Blakemore* 5 Ohio St.3d 217, 219 (1983). We presume that the trial court's findings are correct because the trial court is "best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Therefore, deferential review in a child custody determination is crucial because there may be "much evident in the parties' demeanor and attitude that does not translate to the record well." *Jones v. Jones*, 4th Dist. No. 06CA25, 2007-Ohio-4255, ¶ 33, citing *Davis v. Flickinger*, 77 Ohio St.3d 415, 419, 1997-Ohio-260.

{¶ 16} As previously stated, Father moved for custody in 2009, but his motion was denied and Mother retained custody of R.A.S. Father again moved for custody in 2010.

{¶ 17} According to R.C. 3109.04(E)(1)(a), a trial court asked to re-designate parental rights and responsibilities is required to first find that a change in circumstances occurred to warrant a change in legal custodianship. *Fisher v. Hasenjager*, 116 Ohio St.3d 53, 2007-Ohio-5589. "R.C. 3109.04 does not define 'changes in circumstances'; however, courts have generally held the phrase to note 'an event, occurrence, or situation which has a material and adverse effect upon a child.'" *Lindman v. Geissler*, 171 Ohio App.3d 650, 2007-Ohio-2003, ¶

33 (5th Dist.) citing *Rohrbaugh v. Rohrbaugh*, 136 Ohio App.3d 599, 604-605 (7th Dist.2000).

{¶ 18} According to R.C. 3109.04(E)(1)(a), if a change of circumstances has been established, the court can change custody if "the modification is necessary to serve the best interest of the child." R.C. 3109.04(E)(1)(a) goes on to state,

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

(i) The residential parent agrees to a change in the residential parent or both parents under a shared parenting decree agree to a change in the designation of residential parent.

(ii) The child, with the consent of the residential parent or of both parents under a shared parenting decree, has been integrated into the family of the person seeking to become the residential parent.

(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.

### **Change of Circumstances**

{¶ 19} The magistrate found that there had been a change of circumstances from the time of Father's 2009 custody motion to Father's motion in 2010, and the trial court adopted that decision. This court, as well as other appellate courts in Ohio, has found that a pattern of unsubstantiated allegations of sexual abuse is a factor to consider when determining whether there is a change of circumstances. *Barton v. Barton*, 12th Dist. No. CA89-08-013, 1990 WL 14797 (Feb. 20, 1990). See also *Beekman v. Beekman*, 96 Ohio App.3d 783 (4th Dist.1994); and *Wheeler v. Wheeler*, 2nd Dist. No. 2000 CA 27, 2000 WL 1547203 (Oct. 20, 2000).

{¶ 20} The record is clear that Mother engaged in a pattern of accusing Father, and those associated with him, of sexually abusing R.A.S., and that the accusations increased since Father's 2009 custody motion was denied.

{¶ 21} As previously stated, Father presented evidence of Mother's accusations, and that each allegation was deemed unsubstantiated. Mother has taken R.A.S. to Children's Medical Center on four separate occasions, and on each occasion, R.A.S. was subjected to a physical exam. Mother has made 13 referrals to Greene County Children's Services, alleging in each that Father, or those associated with him, sexually abused R.A.S. The child has been subjected to four different forensic interviews in which he was questioned about the sexual abuse allegations. Mother has also made six allegations to the Yellow Springs Chief of Police that Father was molesting R.A.S. Mother also took R.A.S. to three different child psychologists for therapy related to the sexual abuse allegations. None of the county agencies, law enforcement, physical exams, forensic interviews, or psychological evaluations have led to Father being charged for sexually abusing R.A.S., and instead, Mother's allegations were found to be unsubstantiated on each occasion.

{¶ 22} This court is not saying that a parent is wrong to stalwartly protect its child if there is a belief the child is the victim of sexual abuse. Quite conversely, a parent is encouraged to seek the help of agencies, medical experts, or law enforcement to investigate allegations of sexual abuse. However, this case is particularly unique in that Mother continued to accuse Father of sexually abusing R.A.S. after multiple initial allegations went unsubstantiated and no charges were brought. There are at least 30 different documented allegations against Father, and on each occasion, Mother knew that the allegations were unsubstantiated. This case is so extreme that at the time of trial, Green County Children Services had an open investigation against Mother, alleging emotional maltreatment of R.A.S. based on Mother involving the child in repeated unsubstantiated allegations of sexual abuse.

{¶ 23} The unsubstantiated allegations have a greater impact on the change of circumstances determination beyond the mere fact that Mother has made them. Mother's

pattern of making the claims is compounded by the fact that she continually involves R.A.S. in the process of investigating the allegations. R.A.S. has been subjected to several invasive exams and interviews, and the impact of such repetitive investigations on a young child is patently detrimental. Moreover, Mother would speak about the sexual abuse allegations to other people in the community, and would speak of the adult-issues surrounding the investigations in the presence of R.A.S.

{¶ 24} The magistrate found Mother's behavior harmful to R.A.S, and we agree. Mother's choice to speak so freely of the unsubstantiated allegations in front of members of her community was designed to damage the relationship between Father and R.A.S. Mother's pursuit of openly disparaging Father and continually casting accusations of base, criminal activities upon him has continued since the time of Father's 2009 custody motion, and has increased substantially.

{¶ 25} Father called as a witness a member of the Yellow Springs community who testified that Mother spoke to her about the allegations while R.A.S. was present, even after she had suggested to Mother that the child go to a different room. The witness also testified that she heard Mother discuss the allegations in the local supermarket on different occasions. On one occasion, R.A.S. looked "very disturbed" as his mother spoke about the allegations while they stood in the vegetable section of the store. The witness also testified that Mother spoke of the abuse allegations while at the community pool, when R.A.S., other children, and strangers were present. The witness stated that Mother's behavior was also upsetting because Mother choose to speak of the abuse allegations in front of the witness' special-needs daughter who would become upset at hearing the accusation that R.A.S. was being sexually abused.

{¶ 26} The fact that Mother has made these accusations has also impacted how she and Father relate to one another. "Increased hostility between the parents and the frustration

of visitation are factors which can support a finding of a change in circumstances." *In re Nentwick*, 7th Dist. No. 00 CO 50, 2002-Ohio-1560, ¶ 39, citing *Davis v. Flickinger*, 77 Ohio St.3d 415, 416-417, 1997-Ohio-260.

{¶ 27} As Mother continued to make the accusations, her relationship with Father deteriorated even more than before the 2009 custody motion, and visitation exchanges became more contentious. For example, Mother video-taped an exchange, during which R.A.S. showed resistance in going with Father for his scheduled visitation. The tape was entered into evidence at the hearing, and showed how difficult the exchange was on R.A.S. and Father. Father enlisted the help of Yellow Springs police officers for the exchange, and Mother had several visitors in her home at the time. Mother can be heard on the video calling Father a "sexual predator" and telling R.A.S. that she did not want him to go with Father on the visit. Mother's visitors could also be heard telling R.A.S. that Mother did not want him to go. Mother also directed the child to ask Father if he would be safe on his visit, and encouraged R.A.S. to hug her and her visitors, but refused to encourage R.A.S. to hug Father when Father decided to leave without forcing R.A.S. to go with him. Mother testified that she does "not believe in directing my child to express affection toward [Father.] Um, I want him to organically run up and hug his father." By the time of the hearing, the parties exchanged the child for visitation at the police station.

{¶ 28} The trial court also considered the impact the strained relationship between Mother and Father had on R.A.S. Before the hearing, R.A.S. had a psychological evaluation performed. The evaluator indicated his belief that R.A.S. felt pulled between his parents, and had "pressure and anxiety" due to "his parents' resentment of one another." Mother and Father's intensified resentment had a marked impact on R.A.S. and constituted a change in circumstances from the time of Father's 2009 custody motion.

{¶ 29} Based on the foregoing, we cannot say that the trial court abused its discretion



in finding that a change of circumstances had occurred since the time of Father's 2009 custody motion to warrant reconsideration of the custody issue.

### **Best Interest Factors**

{¶ 30} According to R.C. 3109.04(E)(1)(a), if a change of circumstances has been established, the court can change custody if "the modification is necessary to serve the best interest of the child." Factors that must be considered when making a best interest determination are listed in R.C. 3109.04(F)(1)(a)-(j).

(a) The wishes of the child's parents regarding the child's care;

(b) If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;

(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;

(d) The child's adjustment to the child's home, school, and community;

(e) The mental and physical health of all persons involved in the situation;

(f) The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights;

(g) Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;

(h) Whether either parent or any member of the household of 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 \* \* \* ;

(i) Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent's right to parenting time in accordance with an order of the court;

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

{¶ 31} Mother argues that the trial court failed to consider all of the factors listed in R.C. 3109.04(F)(1) because in its judgment entry, the trial court stated, "when determining what is in the best interest of a child when allocating custody, a court may consider any or all of the factors listed in R.C. 3109.04(F)(1)." The trial court then went on to state what it considered to be the most relevant factors, and analyzed each in turn.

{¶ 32} Mother's argument essentially challenges (1) the fact that the trial court stated that it "may" consider the factors, rather than stating that it was under a statutory obligation to review all of the factors; and (2) that the trial court specifically addressed only three factors. However, we see no abuse of discretion in the current case. Despite the trial court's verbiage that it "may" consider the factors, the record is clear that the trial court *did* consider all of the factors as is required by the statute. "There is no requirement that the trial court set out an analysis of each factor in its judgment entry, so long as the judgment entry is supported by some, competent credible evidence that the best interest of the child was considered." *Hewitt v. Hewitt*, 3rd Dist. No. 14-08-48, 2009-Ohio-6525, ¶ 29, citing *Bunten v. Bunten*, 126 Ohio App.3d 443, 447 (3rd. Dist.1998).

{¶ 33} The fact that the trial court specifically referenced factors (d), (e), and (f) does not mean that it failed to take into consideration the other factors, as the trial court must have considered all of the factors in order to determine that (d), (e), and (f) were worth special attention. The trial court's written decision is nine pages of single-spaced fact finding and application. While the trial court chose to focus on three specific factors, the opinion contains the trial court's discussion of facts that go to the other factors listed in R.C. 3109.04(F)(1). For example, Mother argues that the trial court failed to consider factor (c), mainly her relationship with R.A.S., and the positive aspects of the way they relate to one another.

However, the trial court recognized in its analysis that R.A.S. "has been in the custody of Mother since birth and is accustomed to being in her care." The court also considered Mother's arguments that R.A.S. is "thriving in his current home and is well ingratiated into her neighborhood," and that R.A.S. is "doing incredibly well in her care." The fact that the trial court did not find that factor (c) favored Mother does not mean that the trial court failed to uphold its statutory duty to consider such factor.

{¶ 34} After reviewing the record specific to the best interest factors, we cannot say that the trial court abused its discretion in granting custody to Father. Regarding the first factor, the wishes of the child's parents regarding the child's care, the parties both want custody of the child. Mother testified that she is the primary caregiver when R.A.S. is with her, and Father testified that he has a flexible work schedule that would permit him to be primary caregiver if he received custody. Father lives with his partner, who would be home to provide care for R.A.S. during the times that Father did have to work.

{¶ 35} Regarding the second factor, the trial court did not interview R.A.S. and there was not a guardian ad litem appointed to represent the child's interests. However, the trial court did note that R.A.S.'s psychological evaluation indicated that R.A.S. feels "caught between his parents," and that he desires for them to get along.

{¶ 36} Regarding the third factor, 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, the trial court heard testimony that neither Mother nor Father have any other children, but R.A.S. has built friendships with children and family while living with Mother, and while visiting with Father. Mother testified that she is involved with R.A.S.' school activities, and that she believes that R.A.S. is doing well in her care. Mother also called one of her friends as a witness, and the witness testified that Mother is a caring and attentive mother. Father also testified that he has an "awesome" relationship with R.A.S. and that he is

involved in R.A.S.'s schooling and development. Father's partner favors Father gaining custody, and the record indicates that the relationship between Father's partner and R.A.S. is positive.

{¶ 37} The trial court also heard evidence regarding factor (d), the child's adjustment to his home, school, and community. Mother testified that R.A.S. attends kindergarten in the Yellow Springs school system, and that the school receives the highest educational ratings. Mother also testified that she is the president of the school's Parent Teacher Organization, and that R.A.S. attends many birthday parties and special functions of his classmates and friends. Father testified that he would enroll R.A.S. in the Lima school district until he could move back to Bath, Ohio, which has a better school system.

{¶ 38} Regarding factor (e), the mental and physical health of all persons involved in the situation, the trial court specifically questioned Mother's mental state. Even after Mother lost custody of R.A.S. based partly on her making unsubstantiated allegations, she made another allegation against Father. The court made specific note of its concern that Mother did not understand how her repeated allegations were negatively impacting R.A.S. The court noted that "this concerns the Court and again brings into question Mother's mental health." The trial court also heard testimony that Mother's family has a history of mental illness, including schizophrenia and bipolar disorder. The trial court did not question Father's mental or physical situation.

{¶ 39} The trial court also considered extensive testimony and evidence regarding factor (f), the parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights, as well as factor (i), 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. As previously discussed, Mother did not facilitate Father's visitation rights with R.A.S, and has willfully denied Father's visitation in the past. Mother testified that

she did not encourage any affection between the child and Father unless it was "organic."

{¶ 40} The video offered into evidence also demonstrates that Mother did not honor or facilitate Father's visitation rights, as she told R.A.S. that she did not want him to go on the visitation and Mother's visitors told R.A.S. that Mother did not want him to go on the visitation. When asked about her statements, Mother testified that she believed she was "empowering" R.A.S. and that she felt the "need to make it clear" to R.A.S. that she was "not the person making the calls \* \* \* when he has to go." Mother further compounded the issue by calling Father a "child molester" in front of R.A.S. and making numerous allegations of sexual abuse against Father. It is a reasonable to infer that Mother wanted to end R.A.S.'s visitation with Father, and tried desperately to end the visitation through repeated allegations of sexual abuse.<sup>1</sup> The trial court specifically found that Mother was "being deceitful" in regard to her claim at trial that she wanted R.A.S. to have a relationship with Father.

{¶ 41} Conversely, Father encouraged R.A.S. to show affection to Mother when it was time for the visitation exchanges, and allowed R.A.S. to communicate with Mother during Father's visitation time on the cell phone that she gave the five-year-old child. Father did request that Mother cease visitation with R.A.S. due to what he perceived as her mental health issues compelling her repeated allegations of sexual abuse against him. However, Father did cite supervised visitation between Mother and R.A.S. as a viable alternative to stopping visitation altogether.

{¶ 42} Regarding factor (g), whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor, the trial court heard evidence that Father

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1. The record indicates that when Mother first made the sexual abuse allegations, visitation between Father and R.A.S. was suspended by court order until the allegations were investigated. However, the record is unclear when the visitation was suspended or when it was reinstated.

was behind in his child support obligation.

{¶ 43} Factor (h) is not at issue, whether either parent or any member of the household of 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 because the record does not indicate that either party has ever been convicted of any such offense. Factor (j) is also not at issue because neither parent has established a residence, or is planning to establish a residence, outside Ohio.

{¶ 44} After reviewing the record, and balancing the factors, we cannot say that the trial court's decision was unreasonable, arbitrary, or unconscionable. The factors that weigh in favor of Mother retaining custody are definitively outweighed by the factors that weigh in favor of Father having custody. Mother is involved in R.A.S.'s schooling and extracurricular activities, and is undoubtedly protective of her son. However, the record is clear that Mother fails to appreciate the negative impact her actions have on R.A.S., and how the child's best interest is being disregarded by her attempts to stigmatize Father as a child molester.

#### **Advantage of Change Outweighs Harm**

{¶ 45} The trial court found, and we agree, that the harm likely to be caused by a change of environment is outweighed by the advantages of the change of environment to the child according to R.C. 3109.04(E)(1)(a)(iii).

{¶ 46} The harm to R.A.S. caused by the change of environment would be specific to him leaving the primary care-giver and home he has known throughout his childhood. Mother did provide a stable home where R.A.S. was fed, clothed, and cared for. The evidence also established that R.A.S. was doing relatively well in school. He also had an existing group of friends and classmates, and the Yellow Springs school district receives excellent ratings. Undeniably, moving to a new home and school district would present challenges to any child. However, given Mother's fixation on involving R.A.S. in allegations of

sexual abuse and her inability to relate to Father in a positive manner, this harm is outweighed by the advantages of the change of environment.

{¶ 47} The trial court found, and we agree, that there is a strong correlation between R.A.S.'s emotion and mental health and the repetitious sexual abuse allegations Mother made against Father. The psychological evaluator reported that R.A.S. feels pulled between his parents, and wants them to get along. There is no question that Mother's continued allegations were a main reason Mother and Father fought and litigated custodial issues frequently. Each time, R.A.S. was pulled into the fight.

{¶ 48} The trial court also found that R.A.S. was "overly familiar" with sexual knowledge, and that this was due to his exposure to the investigative process and the fact that Mother conversed about the abuse allegations in front of R.A.S. Mother continued to discuss the issue around R.A.S., other people's children, members of the community and random strangers. Mother also thrust R.A.S. into the investigative process time and again where R.A.S. was forced to undergo physical and mental exams, and had to discuss very sensitive subject matter with police officers, psychologists, social workers, and medical personnel. From all indications, and as a result of over 30 allegations, R.A.S. is being pulled into a situation that no child should face, and manipulated by Mother to continually engage in discussions of unsubstantiated sexual abuse claims. Whatever damage was done to Father's relationship with R.A.S. because of these allegations would only continue to compound. We agree with the trial court's unwillingness to "wait until [R.A.S.] is exhibiting extreme psychological issues before removing him from Mother's custody."

{¶ 49} The trial court properly found that there was a change of circumstances, that a balancing of the best interest factors weighed in favor of Father receiving custody, and that the advantages of the change in R.A.S.'s environment was not outweighed by the likely harm. Having found no abuse of discretion in the granting of custody to Father, Mother's first and

third assignments of error are overruled.

{¶ 50} Assignment of Error No. 2:

{¶ 51} THE TRIAL COURT ERRED IN GRANTING IMMEDIATE RELIEF AND ISSUING AN INTERIM ORDER EFFECTIVE JANUARY 1, 2011.

{¶ 52} Mother argues in her second assignment of error that the trial court erred in making its custody change order effective as of January 1, 2011, and for permitting Father to retain custody during the time-frame that the trial court considered Mother's objections to the magistrate's decision.

{¶ 53} The magistrate's decision was filed on December 27, 2010, and Father filed a motion to request that the orders be effective as of January 1, 2011. The trial court granted the motion on December 30, 2010, and named Father custodial parent. Mother now argues that the "severe nature of [the trial court's] swift justice" has "severely prejudiced" her right to a de novo review by the trial court.

{¶ 54} Pursuant to Juv.R. 40(D)(4)(e)(2), "the court may enter an interim order on the basis of a magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified." Although Mother argues that immediate relief was not justified, we disagree. Every day that R.A.S. remained with Mother was a day that he was subjected to the negative environment she had created regarding the sexual abuse claims. The record indicates that Mother was not going to change her approach, or to cease her efforts to stigmatize Father at the expense of R.A.S. Mother made an allegation of abuse approximately a month before trial, and one was made after custody was changed. Moreover, when Mother was asked on cross-examination whether she would ever quit her pursuit against Father, she answered that she "will always seek protection for my child and what is best [for] him \* \* \*."

{¶ 55} Moreover, there is no indication that the trial court failed to conduct a de novo



review of the magistrate's decision as is required by Juv.R. (D)(4)(d). In fact, the trial court sustained Mother's objection regarding the contempt motion and did not adopt that portion of the magistrate's decision. As previously stated, the trial court wrote a lengthy and detailed opinion, which incorporated facts from the transcripts and the exhibits admitted at the hearing. The trial court considered each of Mother's objections and fully analyzed each, without any indication that it was prejudiced against Mother. The mere fact that the trial court adopted the magistrate's decision to grant custody to Father does not mean that the trial court made that decision based on any prejudice it felt against Mother. Mother's second assignment of error is therefore overruled.

{¶ 56} Assignment of Error No. 4:

{¶ 57} THE COURT ERRED IN CALCULATING THE CHILD SUPPORT WHEN FAILING TO CONSIDER NECESSARY INFORMATION REQUIRED UNDER R.C. §3119.05.

{¶ 58} Mother argues that the trial court erred in failing to consider her income at the time of the hearing when ordering child support obligations.

{¶ 59} The record is clear that the trial court did not accept new financial information from the parties in order to calculate the parties' child support obligations, and instead used financial information that had previously been submitted to the court in 2007. This court has found that under certain circumstances, a trial court can use financial income previously submitted to determine child support obligations. *Pettit v. Pettit*, 12th Dist. No. CA2011-08-018, 2012-Ohio-1801. However, the case at bar differs because the trial court was aware that Mother was unemployed at the time of the hearing, and therefore, aware that the previous financial figures were no longer applicable.

{¶ 60} According to R.C. 3119.05(A), "the parents' *current* and past income and personal earnings shall be verified by electronic means or with suitable documents \* \* \*." (Emphasis added.) The child support calculations, as determined by the magistrate and

adopted by the trial court, included a salary of \$36,000 for Mother and a salary of \$25,792 for Father. While Father testified that he is a security guard and earns income, Mother was unemployed. Mother testified that she had previously taught kindergarten, and at one point, helped open a Montessori school in the Yellow Springs area. The record is not clear whether the \$36,000 salary was attributed to Mother's employment with a particular school.<sup>2</sup>

{¶ 61} Once the trial court acknowledged that Mother was no longer employed, it should have held a hearing to permit the parties to submit the most current financial information. We therefore sustain Mother's final assignment of error, and remand this issue to the trial court for further proceedings.

{¶ 62} Judgment affirmed in part, and reversed in part, and remanded for further proceedings consistent with this opinion.

HENDRICKSON, P.J., and RINGLAND, J., concur.

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2. As previously stated, the trial court limited the evidence to the time-frame after Father filed his 2009 custody motion because Father had to prove a change of circumstances from the time of the 2009 motion forward. Therefore, the circumstances surrounding the 2007 hearing are not included in the record.