[Cite as *Woods v. Best*, 2025-Ohio-357.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

Franklin S. Woods,	:	
	:	
Plaintiff-Appellant,	:	Case No. 23CA8
	:	
v.	:	
	:	DECISION AND
Samantha R. Best,	:	JUDGMENT ENTRY
	:	
Defendant-Appellee.	:	

APPEARANCES:

Franklin S. Woods, Chillicothe, Ohio, Appellant, pro se.

Samantha R. Best, Chesapeake, Ohio, Appellee, pro se.[1]

Smith, P.J.

{¶1} Appellant, Franklin S. Woods, appeals the judgment of the Lawrence County Court of Common Pleas, Probate Juvenile Division, designating Appellee, Samantha R. Best, as the sole residential parent and legal custodian of the parties' minor twin sons, and granting him parenting time at the sole discretion of Appellee. Appellant raises two assignments of error on appeal, contending 1) that the trial court abused its discretion in not ruling in the best interest of the children after it was demonstrated that consistent contact with him, including weekly calls

[1] Appellee has not filed an appellate brief and is not otherwise participating on appeal.

and visitation, were in their best interest; and 2) that the trial court erred and abused its discretion by not fully considering the children's best interests when it did not require production of relevant documents of the children's status in school, documents related to their medical history, did not appoint a guardian ad litem, and did not inquire of the children themselves as part of its best interests analysis.

{¶2} Because Appellant failed to timely file objections to the magistrate's decision, we are limited to a plain error review. Our review is further limited by the absence of a hearing transcript in the record. Ultimately, however, having found no plain error, Appellant's assignments or error are overruled and we affirm the judgment of the trial court.

PROCEDURAL HISTORY

{¶3} This matter began with Appellant's filing of a Complaint for Parental Visitation for a Non-Residential Parent on August 26, 2022. In his complaint, Appellant alleged that he was the father of 11-year old twin boys, that he had had an active role in the children's lives since birth, but that he had been incarcerated since 2016. Appellant alleged that Appellee and the children were living in a house owned by him and that since his incarceration had begun, he had given Appellee $1800.00 for the children. He further alleged in his complaint that he spoke to the children via telephone when permitted by Appellee, and that the children had visited him at the prison three times.

{¶4} The complaint sought in-person visitation with the children, as well as telephone contact, claiming that such contact was in the children's best interest. Appellant stated that he would cover the cost of gas for in-person visits, which he requested take place every 60 days. The complaint contained a request for the appointment of a guardian ad litem, alleged that both children had been required to repeat a grade in school, and claimed that restricting visitation would cause the children to experience social issues and emotional scars. Appellant also claimed that he had "no history of domestic violence nor social issues that would weigh unfavorably to having a closer relationship" with the children than has been permitted by Appellee.

{¶5} The filing of the complaint was followed by the filing of a Motion for Discovery, as well as a pleading entitled "Explanation of Desired Documents" on December 15, 2022. These pleadings requested medical records related to ADHD medications that had been prescribed for the children, documents from the Lawrence County Department of Job and Family Services for the period of time he had been incarcerated, and educational records from the children's school district. Appellant subsequently filed a Motion to Appoint a Guardian Ad Litem on December 27, 2022. The memorandum in support of the motion stated that the appointment of a guardian would "provide a voice for [the children] allowing the court to gain insight on their mind state concerning [their] desire to have a

relationship with" him. He alleged that such appointment would also "allow insight into the children's living conditions, devolvement, education, health and personal well-being."

{¶6} A hearing was held on January 23, 2023 before the juvenile court magistrate. Appellee was physically present for the hearing, without counsel, while Appellant appeared virtually for the hearing, also without counsel. The magistrate received testimony from both parties and noted that no exhibits were admitted during the hearing. The magistrate ultimately found Appellee should be the sole residential parent and legal custodian of the children, and that Appellant should have parenting time with the children at the sole discretion of Appellee. Although Appellant made no request for findings of fact and conclusions of law, the magistrate did set forth some findings in its decision, including that Appellant was presently incarcerated and was "sentenced to a lengthy penal sentence as a result of being found guilty of sexually assaulting his minor child * * * [s]aid child victim is not a child named in these proceeding [sic]."

{¶7} The magistrate also found that Appellant stated "he was serving a 'life sentence.' " The magistrate further found that no person was named on the children's birth certificates, that paternity had not been established by DNA genetic testing, that the parties had never been married, that no prior orders had ever been issued with respect to the children, but that the parties herein had

stipulated that Appellant was the biological father of the children. After receiving testimony from both parties, the magistrate found that Appellant desires daily communication with the children and in-person visits with him inside the prison. The magistrate also found that 1) Appellee permits the children to communicate with Appellant via telephone; 2) per Appellee, the children do not always wish to communicate with their father; and 3) Appellee does not believe that transporting the children to prison to see their father is in the children's best interests. The magistrate further found that the children, age 11 at the time of the hearing, had had no in-person contact with Appellant since age 5 or 6.

{¶8} In reaching its decision, the magistrate stated that it had considered all the evidence before it and had also considered "the best interest factors pursuant to R.C. 3109.04." The magistrate thereafter found all other pending motions were not well-taken and dismissed them. The January 23, 2023 magistrate's decision notified Appellant that written objections to the decision could be filed within 14 days and that parties may not assign as error on appeal the trial court's adoption of any finding of fact or conclusion of law unless the party timely and specifically objected to that finding or conclusion.

{¶9} The trial court issued a final appealable order on February 9, 2023. In issuing it decision, the court noted that more than 14 days had passed without objections having been filed. The court stated that it had conducted an

independent review and had found no errors of law or other defects, and the court therefore approved and adopted the magistrate's decision as the order of the court. The next day, on February 10, 2023, Appellant filed a motion for an extension of the 14-day time period. He then filed his objections to the magistrate's decision on February 16, 2023, without submitting a copy of the hearing transcript. The trial court dismissed Appellant's objections as being untimely filed. Appellant thereafter filed an appeal on March 13, 2023, which this Court found to be timely. In it, Appellant raises the following two assignments of error.

ASSIGNMENTS OF ERROR

I. THE COURT ABUSED ITS DISCRETION IN NOT RULING IN THE BEST INTEREST OF THE KIDS AFTER APPELLANT DEMONSTRATED THAT CONSISTENT CONTACT WAS IN THE BEST INTEREST CONCERNING WEEKLY CALLS AND VISITATION.

II. THE COURT ERRED AND ABUSED ITS DISCRETION BY NOT FULLY CONSIDERING THE CHILDREN'S BEST INTEREST WHERE IT DID NOT REQUIRE PRODUCTION OF RELEVANT DOCUMENTS OF THE CHILDREN'S STATUS IN SCHOOL OR THEIR MEDICAL HISTORY AND BY REFUSING TO APPOINT A GUARDIAN AD LITEM OR NOT INQUIRING FROM THE CHILDREN THEMSELVES TO PROPERLY WEIGH THE CHILDREN'S BEST INTEREST.

ASSIGNMENT OF ERROR I

{¶10} In his first assignment of error, Appellant contends that the trial court abused its discretion in not ruling in the best interests of the children. He argues that he demonstrated that having consistent contact in the form of weekly calls and visitation with him was in their best interests. In support of his argument, Appellant claims that his family has regular contact with the children, that he has obtained an education and has completed various parenting and anger management certificates while incarcerated, and that although he is currently incarcerated for sexually assaulting his minor daughter, he has maintained his innocence and has been appealing his convictions. He further argues that "the facts of his incarceration are irrelevant to the proceedings[,]" and that there is nothing in the best interest factors "authorizing a trial court to adopt a per se rule denying parenting time to incarcerated parents." He argues that it is not in the children's best interest to only allow him contact and visitation at the discretion of Appellee.

{¶11} Initially, we note that Appellee has not filed an appellate brief or otherwise appeared in this appeal. When an appellee fails to file a brief, App.R. 18(C) authorizes this Court to accept an appellant's statement of facts and issues as correct, and then reverse a trial court's judgment if the appellant's brief "reasonably appears to sustain such action." *See In re A.B.*, 2021-Ohio-3660, ¶ 12 (4th Dist.). As explained in *In re A.B.*, "[i]n other words, an appellate court may

reverse a judgment based solely on consideration of an appellant's brief." *Id.*, citing *Harper v. Neal*, 2016-Ohio-7179, ¶ 14 (4th Dist.), citing *Fed. Ins. Co. v. Fredericks*, 2015-Ohio-694, ¶ 79 (2d Dist.); *Sites v. Sites*, 2010-Ohio-2748, ¶ 13 (4th Dist.); *Sprouse v. Miller*, 2007-Ohio-4397, fn. 1 (4th Dist).

{¶12} Here, although Appellee's failure to file an appellate brief would permit us to reverse the trial court's judgment based upon the arguments presented in Appellant's brief, we do not believe that reversing the trial court's judgment will further the interests of justice nor serve the children's best interests. As will be explained more fully below, this is in part due to the limited record we have before us, as well as the limited standard of review that must be employed.

Standard of Review

{¶13} " 'Although a trial court must follow the dictates of R.C. 3109.04 in deciding child-custody matters, it enjoys broad discretion when determining the appropriate allocation of parental rights and responsibilities.' " *Clyburn v. Gregg*, 2011-Ohio-5239, ¶ 20 (4th Dist.), quoting *H.R. v. L.R.*, 2009-Ohio-1665, ¶ 13 (10th Dist.), in turn citing *Miller v. Miller*, 37 Ohio St.3d 71, 74 (1988); *Parker v. Parker*, 2006-Ohio-4110, ¶ 23 (10th Dist.). " 'An appellate court must afford a trial court's child custody determinations the utmost respect, "given the nature of the proceeding[,] the impact the court's determination will have on the lives of the parties concerned[, and the fact that] [t]he 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." ' " *Clyburn* at ¶ 13, quoting *H.R.* at ¶ 13, in turn quoting *Pater v. Pater*, 63 Ohio St.3d 393, 396 (1992). *See also Matter of Ramey*, 1999 WL 1281505, *9 (4th Dist. Dec. 22, 1999.) ("The trial court has broad discretion in determining visitation rights of a non-custodial parent, within the limits provided by R.C. 3109.051(D)); *In re L.R.M.*, 2015-Ohio-4445, ¶ 16 (12th Dist.) ("A juvenile court is vested with broad discretion in determining the visitation rights of a nonresidential parent".)

{¶14} Thus, a juvenile court's determinations with respect to custody and visitation issues regarding nonresidential and/or noncustodial parents are generally reviewed under an abuse of discretion standard. "[A]n abuse of discretion implies that a court's attitude is unreasonable, arbitrary or unconscionable." *State v. Sims*, 2023-Ohio-1179, ¶ 53 (4th Dist.), citing *State v. McKelton*, 2016-Ohio-5735, ¶ 97, in turn citing *State v. Clinton*, 2017-Ohio-9423, ¶ 60; *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "When applying the abuse-of-discretion standard of review, appellate courts must not substitute their judgment for that of the trial courts." *Clay v. Clay*, 2022-Ohio-1728, ¶ 11 (4th Dist.), citing *In re Jane Doe 1*, 57 Ohio St.3d 135, 138 (1991).

Failure to Object to the Magistrate's Decision

{¶15} The juvenile rules require an objecting party to 1) file written objections to a magistrate's decision within 14 days of the decision; 2) state with specificity and particularity all grounds for objection; and 3) support objections to a magistrate's factual finding with a transcript of the evidence submitted to the magistrate or an affidavit of evidence if a transcript is unavailable. Juv.R. 40(D)(3)(b)(i)-(iii). If none of the parties file written objections, a trial court may adopt the "magistrate's decision unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision." Juv.R. 40(D)(4)(c). Here, none of the parties filed written objections to the magistrate's decision in accordance with Juv.R. 40(D)(3)(b) and the trial court adopted the magistrate's decision as its own after an independent review.[2]

Duty to Provide Transcript

{¶16} The purpose of the requirement to support objections with a transcript of the evidence is to allow a court to fulfill its duty under Juv.R. 40(D)(4)(d) to "undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." *See generally* App.R. 9 2013 Staff Notes (trial court cannot undertake

[2] Although Appellant did attempt to file objections to the magistrate's decision, they were filed outside the 14-day limit and after the trial court had already issued final judgment.

independent review "unless the appellant provided the trial court with an adequate description of the evidence presented to the magistrate—either through a transcript or, if a transcript is unavailable, an affidavit describing that evidence"). "In the absence of a transcript or an affidavit, a trial court is required to accept the magistrate's findings of fact and may only determine the legal conclusions drawn from those facts." (Citations omitted.) *Hopkins v. Hopkins*, 2014-Ohio-5850, ¶ 25 (4th Dist.); *accord M.S. v. J.S.*, 2020-Ohio-5550, ¶ 9 (6th Dist.), quoting *In re M.W.*, 2012-Ohio-2959, ¶ 6 (6th Dist.) (stating that "[w]ithout a transcript, 'the trial court is required to accept the magistrate's findings of fact as true, and is permitted to examine only the legal conclusions based on those facts' "); *Allread v. Allread*, 2011-Ohio-1271, ¶ 18 (2d Dist.), quoting *Dayton Police Dept. v. Byrd*, 2010-Ohio-4529, ¶ 8 (2d Dist.) (if the objecting party does not file a proper transcript of all relevant testimony or an affidavit of evidence, " 'a trial court's review is necessarily limited to the magistrate's conclusions of law' ").

Lack of Transcript on Appeal

{¶17} Here, Appellant did not submit a transcript for the trial court's review when he filed his objections to the magistrate's decision, nor did he file an affidavit of the evidence. We recognize that Appellant did request a transcript for purposes of appeal; however, Appellant's "failure to file the transcript with the trial court prevents this court from adding it to the record and deciding this appeal based on

material that was not part of the trial court's proceedings." *In re A.B.*, 2021-Ohio-3660, ¶ 22 (4th Dist.); *see State ex rel. Pallone v. Ohio Court of Claims*, 2015-Ohio-2003, ¶ 11, citing App.R. 9(C) (supplementing the record on appeal with a hearing transcript that the party did not submit to the trial court "is of no consequence"); *accord Morgan v. Eads*, 2004-Ohio-6110, ¶ 13, citing *State v. Ishmail*, 54 Ohio St.2d 402 (1978), paragraph one of the syllabus ("a bedrock principle of appellate practice in Ohio is that an appeals court is limited to the record of the proceedings at trial"); *State v. Williams*, 73 Ohio St.3d 153, 160 (1995) (reviewing court may not consider transcripts that were not part of the trial court's record). "In plain terms, [appellate courts] cannot consider evidence that the trial court did not have when it made its decision." *Pallone* at ¶ 11, citing *Herbert v. Herbert*, 2012-Ohio-2147, ¶ 13-15 (12th Dist.); *see also* App.R. 9(C)(2).

Plain Error

{¶18} Additionally, the juvenile rules prevent a party from assigning "as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b)." Juv.R. 40(D)(3)(b)(iv). This rule "embodies the long-recognized principle that the failure to draw the trial court's attention to possible error when the error could have been corrected results in a waiver of the issue for purposes of

appeal." *In re Etter*, 134 Ohio App.3d 484, 492 (1st Dist. 1998). Thus, under Juv.R. 40(D)(3)(b)(iv), parties who do not object to a magistrate's decision waive all but plain error. *See State ex rel. Neguse v. McIntosh*, 2020-Ohio-3533, ¶ 9, quoting Civ.R. 53(D)(3)(b)(iv) ("failure to object to the magistrate's decision bars [appellant] from 'assign[ing] as error on appeal the court's adoption of any factual finding or legal conclusion' of the magistrate" and appellate review is therefore limited to plain error); *State ex rel. Pallone v. Ohio Court of Claims*, *supra*, at ¶ 11 ("If a party fails to follow the procedures set forth in Civ.R. 53(D)(3)(b)(iii) for objecting to a magistrate's findings by failing to provide a transcript to the trial court when filing objections, that party waives any appeal as to those findings other than claims of plain error."); *In re Z.A.P.*, 2008-Ohio-3701, ¶ 16 (4th Dist.) ("failure to object to the magistrate's decision prevents [appellant] from raising assignments of error related to that decision, other than as plain error").

{¶19} For the plain error doctrine to apply, the party who claims error must establish that 1) " 'an error, i.e., a deviation from a legal rule' " occurred; 2) the error was " 'an "obvious" defect in the trial proceedings;' " and 3) this obvious error affected substantial rights, i.e., the error " 'must have affected the outcome of the trial.' " *State v. Rogers*, 2015-Ohio-2459, ¶ 22, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002); *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 209 (1982) ("A 'plain error' is obvious and prejudicial although neither objected to nor

affirmatively waived which, if permitted, would have a material adverse effect on the character and public confidence in judicial proceedings."). The plain error doctrine is not, however, readily invoked in civil cases. Instead, an appellate court "must proceed with the utmost caution" when applying the plain error doctrine in civil cases. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997).

{¶20} The Ohio Supreme Court has set a "very high standard" for invoking the plain error doctrine in a civil case. *Perez v. Falls Financial, Inc.*, 87 Ohio St.3d 371, 376 (2000). Thus,

> the doctrine is sharply limited to the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself.

Goldfuss at 122; *accord Jones v. Cleveland Clinic Found.*, 2020-Ohio-3780, ¶ 24; *Gable v. Gates Mills*, 2004-Ohio-5719, ¶ 43.

{¶21} Moreover, appellate courts " 'should be hesitant to decide [forfeited errors] for the reason that justice is far better served when it has the benefit of briefing, arguing, and lower court consideration before making a final determination.' " *Risner v. Ohio Dept. of Nat. Resources*, 2015-Ohio-3731, ¶ 28, quoting *Sizemore v. Smith*, 6 Ohio St.3d 330, 332 (1983), fn. 2; *accord Mark v. Mellott Mfg. Co., Inc.*, 106 Ohio App.3d 571, 589 (4th Dist. 1995) ("Litigants must not be permitted to hold their arguments in reserve for appeal, thus evading the

trial court process."). Additionally, "[t]he plain error doctrine should never be applied to reverse a civil judgment * * * to allow litigation of issues which could easily have been raised and determined in the initial trial." *Goldfuss* at 122.

Failure to Request Findings of Fact and Conclusions of Law

{¶22} Finally, we additionally note that the absence in the record of findings of fact and conclusions of law complicates our review of Appellant's argument. This Court has previously explained as follows regarding the failure of a party to request the trial court provide findings of fact and conclusions of law:

> Generally, the failure to request findings of fact and conclusions of law results in a waiver of the right to challenge the trial court's lack of an explicit finding concerning an issue. *See Pawlus v. Bartrug* (1996), 109 Ohio App.3d 796, 801, 673 N.E.2d 188; *Wangugi v. Wangugi* (Apr. 12, 2000), Ross App. No. 2531; *Ruby v. Ruby* (Aug. 11, 1999), Coshocton App. No. 99CA4. "[W]hen a party does not request that the trial court make findings of fact and conclusions of law under Civ.R. 52, the reviewing court will presume that the trial court considered all the factors and all other relevant facts." *Fallang v. Fallang* (1996), 109 Ohio App.3d 543, 549, 672 N.E.2d 730; *see also, In re Barnhart*, Athens App. No. 02CA20, 2002-Ohio-6023. In the absence of findings of fact and conclusions of law, we must presume the trial court applied the law correctly and must affirm if there is some evidence in the record to support its judgment. *See, e.g., Bugg v. Fancher*, Highland App. No. 06CA12, 2007-Ohio-2019, at ¶ 10, citing *Allstate Financial Corp. v. Westfield Serv. Mgt. Co.*, (1989), 62 Ohio App.3d 657, 577 N.E.2d 383.

Wilson v. Wilson, 2009-Ohio-4978, ¶ 18 (4th Dist.).

Legal Analysis

{¶23} In the case sub judice, Appellant failed to file objections to the magistrate's decision. Thus, the trial court did not have an opportunity to review the issues the Appellant now raises on appeal. Consequently, Appellant has forfeited all but plain error. Juv.R. 40(D)(3)(b)(iv). Further, Appellant's arguments are framed under an abuse of discretion standard of review, which is inapplicable here, and he fails to request a plain error review. However, it is not this Court's duty to construct a plain error argument for him.

{¶24} We are mindful that Appellant was pro se below and is also pro se on appeal. However, "[i]t is well-established that pro se litigants are held to the same rules, procedures, and standards as litigants who are represented by counsel." *Matter of H.A.H.*, 2018-Ohio-3446, ¶ 18 (4th Dist.), citing *Gould v. Gould*, 2017-Ohio-6896, ¶ 52 (4th Dist.); *Seymour v. Hampton*, 2012-Ohio-5053, ¶ 30 (4th Dist.), citing *Crown Asset Management, LLC, v. Gaul*, 2009-Ohio-2167, ¶ 15 (4th Dist.), in turn citing *Selvage v. Emnett*, 2009-Ohio-940, ¶ 13 (4th Dist.). "Litigants who choose to proceed pro se are presumed to know the law and correct procedure, and are held to the same standards as other litigants." *Matter of H.A.H.* at ¶ 18, citing *Capital One Bank, v. Rodgers*, 2010-Ohio-4421, ¶ 31 (5th Dist.).

{¶25} Moreover, as set forth above, our review is not only limited by Appellant's failure to file objections to the magistrate's decision, it is hindered by

the lack of a transcript in the record, as well as Appellant's failure to request findings of fact and conclusions of law. However, despite these limitations and hindrances, we do not believe that any error occurred in the case at bar. Although we are missing much, what we do have before us is the order of trial court, which we conclude should be affirmed.

{¶26} "In a custody case between parents, R.C. 3109.04 applies[.]" *Whitesed v. Huddleston*, 2021-Ohio-2400, ¶ 23 (4th Dist.); *see also Lutton v. Briggs*, 2015-Ohio-1910, ¶ 26 (5th Dist.) (holding that in a case involving an unmarried mother, "[t]he juvenile court must exercise its jurisdiction in child custody matters in accordance with R.C. 3109.04"). R.C. 3109.04 provides, in pertinent part, as follows:

> (F)(1) In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:
>
> (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; whether either parent, in a case in which a child has been adjudicated an abused child or a neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the basis of an adjudication; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code or a sexually oriented offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding; whether either parent or any member of the household of either parent previously has been convicted of or pleaded guilty to any offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; 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[.]

{¶27} Here , the order of the trial court demonstrates that the court conducted an independent review of the magistrate's decision and adopted that

decision as its own. In doing so, the trial court found that Appellant was serving a lengthy prison sentence, even a life sentence, as a result of being found guilty of sexually assaulting one of his minor children. The court found that although Appellee permits the children to communicate with Appellant by telephone, the children do not always wish to communicate with their father, and Appellee does not believe it to be in their best interest to be transported to prison to see their father. The court further found that the children, now age 11, had had no in person contact with their father since age 5 or 6.

{¶28} The trial court's order stated that after considering the evidence presented, which necessarily included the testimony of Appellant as he was permitted to participate via video conference, as well as the best interest factors contained in R.C. 3109.04, that Appellee should be designated as the sole residential parent and legal custodian and that she could permit, in her discretion, the children to visit with Appellant. Importantly, there is no evidence in the limited record before us indicating that the trial court denied Appellant in-person visitation or limited telephone contact as part of a blanket policy denying parenting time to incarcerated parents.

{¶29} Again, because Appellant failed to request findings of fact and conclusions of law, the specific reasoning of the trial court is not before us; however, both the magistrate's and trial court's orders stated that all of the

evidence, as well as all of the best interest factors, had been considered. As set forth above, in *Wilson v. Wilson*, *supra*, at ¶ 18, this Court observed that "Civ.R. 52 provides that 'judgment may be general for the prevailing party unless one of the parties in writing requests otherwise.' " Thus, " '[w]hen a party does not request that the trial court make findings of fact and conclusions of law under Civ.R. 52, the reviewing court will presume that the trial court considered all the factors an all other relevant facts.' " *Id.*, quoting *Fallang v. Fallang*, *supra*, at 549.

{¶30} Here, we conclude it is apparent from the record that the trial court considered the best interest factors contained in R.C. 3109.04, despite the fact that it did not make explicit reference to these factors in its order. As such, we must presume the regularity of the proceedings below and we find no plain error in the judgment of the trial court. Accordingly, Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR II

{¶31} In his second assignment of error, Appellant contends that the trial court abused its discretion by not fully considering the children's best interests to the extent that it 1) did not require production of relevant documents; 2) refused to appoint a guardian ad litem; and 3) did not inquire from the children themselves to properly weigh their best interests. Again, because Appellant failed to timely

object to the magistrate's decision below, he has waived all but plain error and our review is limited to the same framework as set forth above.

Legal Analysis

{¶32} As we have already stated, "[i]n a custody case between parents, R.C. 3109.04 applies[.]" *Whitesed v. Huddleston*, *supra*, at ¶ 23; *see also Lutton v. Briggs*, *supra*, at ¶ 26 (5th Dist.) (holding that in a case involving an unmarried mother, "[t]he juvenile court must exercise its jurisdiction in child custody matters in accordance with R.C. 3109.04"). In particular, R.C. 3109.04(B)(1) and (2) provide, in pertinent part, as follows:

> (B)(1) When making the allocation of the parental rights and responsibilities for the care of the children under this section in an original proceeding or in any proceeding for modification of a prior order of the court making the allocation, the court shall take into account that which would be in the best interest of the children. In determining the child's best interest for purposes of making its allocation of the parental rights and responsibilities for the care of the child and for purposes of resolving any issues related to the making of that allocation, *the court, in its discretion, may and, upon the request of either party, shall interview in chambers any or all of the involved children regarding their wishes and concerns with respect to the allocation.*
>
> (2) *If the court interviews any child* pursuant to division (B)(1) of this section, all of the following apply:
>
> (a) *The court, in its discretion, may and, upon the motion of either parent, shall appoint a guardian ad litem for the child.*

(Emphasis added).

{¶33} Here, although Appellant requested the appointment of a guardian ad litem, he did not request that the court interview the children. Moreover, the trial court did not interview the children. Under R.C. 3109.04, it is the interview of the children that triggers the trial court's duty to appoint a guardian ad litem upon the request of a parent. *See Whitesed, supra*, at ¶ 23. Because Appellant did not request the court interview the children, and because the trial court did not actually interview the children, R.C. 3109.04(B)(1) and (2) were not triggered and the appointment of a guardian ad litem was not required. *Id.*

{¶34} Juv.R. 4 is entitled "Assistance of counsel; guardian ad litem" and also provides, in pertinent part, as follows:

> (B) Guardian ad Litem; When Appointed. The court shall appoint a guardian ad litem to protect the interests of a child or incompetent adult in a juvenile court proceeding when:
>
> (1) The child has no parents, guardian, or legal custodian;
>
> (2) The interests of the child and the interests of the parent may conflict;
>
> (3) The parent is under eighteen years of age or appears to be mentally incompetent;
>
> (4) The court believes that the parent of the child is not capable of representing the best interest of the child;
>
> (5) Any proceeding involves allegations of abuse, neglect, or dependency, voluntary surrender of permanent custody, or termination of parental rights as soon as possible after the commencement of such proceeding;

> (6) There is an agreement for the voluntary surrender of temporary custody that is made in accordance with section 5103.15 of the Revised Code, and thereafter there is a request for extension of the voluntary agreement;
>
> (7) The proceeding is a removal action;
>
> (8) Appointment is otherwise necessary to meet the requirements of a fair hearing;
>
> (9) If a court appoints a person who is not an attorney admitted to the practice of law in this state to be a guardian ad litem, the court may appoint an attorney admitted to the practice of law in this state to serve as attorney for the guardian ad litem, child, or ward.

{¶35} Similarly, R.C. 2151.281 is entitled "Guardian ad litem" and provides for the appointment of guardians ad litem when a case involves allegations of abuse, neglect, or dependency. It provides, in pertinent part, as follows:

> (A) The court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent child or unruly child when either of the following applies:
>
> (1) The child has no parent, guardian, or legal custodian.
>
> (2) The court finds that there is a conflict of interest between the child and the child's parent, guardian, or legal custodian.
>
> (B)(1) Except as provided in division (K) of this section, the court shall appoint a guardian ad litem, subject to rules adopted by the supreme court, to protect the interest of a child in any proceeding concerning an alleged abused or neglected child and in any proceeding held pursuant to section 2151.414 of the Revised Code. The guardian ad litem so appointed shall not be the attorney responsible for presenting the evidence alleging that

> the child is an abused or neglected child and shall not be an employee of any party in the proceeding.

{¶36} This Court has held that "[b]ecause these provisions are mandatory, the failure of a court to appoint a guardian ad litem when these provisions require one constitutes reversible error." *In re Slider*, 2005-Ohio-1457, ¶ 9 (4th Dist.), citing *In re Howell*, 77 Ohio App.3d 80, 92, (4th Dist. 1991). However, we further reasoned as follows in *In re Slider*:

> Nevertheless, "the juvenile court is in the best position to weigh the relevant facts in determining whether a potential conflict of interest exists between the parent and child." *In re Sappington* (1997), 123 Ohio App.3d 448, 453-454, 704 N.E.2d 339, citing *Trickey v. Trickey* (1952), 158 Ohio St. 9, 13, 47 O.O. 481, 106 N.E.2d 772. Therefore, an abuse-of-discretion standard applies to the trial court's decision whether to appoint a guardian ad litem. *Sappington* at 454, 704 N.E.2d 339. Thus, the relevant question here is whether the record below "reveals a strong enough possibility of conflict of interest between [the legal guardians] and child to show that the juvenile court abused its discretion" by not appointing a guardian ad litem. *Id*.

In re Slider at ¶ 9.

{¶37} As stated, the trial court was permitted, but not required to interview the children and in this case, it did not interview the children. Therefore, it was not required under R.C. 3109.04(B)(1) to appoint a guardian ad litem. Moreover, Appellant has provided no case law or statutory authority that requires a trial court to appoint a guardian ad litem pursuant to R.C. 2151.281 in a case involving the allocation of parental rights and responsibilities where there are no allegations of

abuse, neglect or dependency. *See Whitesed v. Huddleston*, 2021-Ohio-2400, ¶ 22 (4th Dist). Finally, with respect to the Juv.R. 4 requirements, aside from the mere allegations contained in the pleadings, there is not sufficient evidence indicating that Appellee's interests were in conflict with the interests of the children, or that she was not capable of representing their best interests.

{¶38} Further, although Appellant requested the appointment of a guardian ad litem, he failed to timely object to the trial court's failure to appoint a guardian ad litem. Because Appellant failed to timely file objections to the magistrate's decision, he has waived all but plain error. However, as was the case in his first assignment of error, Appellant has failed to invoke the plain error doctrine on appeal and we will not generally craft a plain error argument for him.

{¶39} Moreover, in light of Appellant's failure to request findings of fact and conclusions of law and his failure to properly make the transcript part of the record, we must presume the regularity of the record below. Reviewing this matter within these constraints and in the absence of any allegations of abuse or neglect, any express finding by the trial court that there was a potential conflict of interest between Appellee and the children, or that Appellee was not capable of representing the children's best interests, we find no plain error on the part of the trial court in refusing to appoint a guardian ad litem.

{¶40} Nor do we find that the court's failure to order the provision of medical and educational records changed the outcome of the proceedings, the main issue of which was whether telephone contact and in-person visitation at the prison with their father is in these children's best interest. Having found that the trial court did not plainly err in failing to appoint a guardian ad litem or in failing to require the production of the requested documents, we likewise find no plain error in the trial court's failure to inquire directly of the children as to their wishes, which was within its discretion to do or not do, considering Appellant did not specifically request that the children be interviewed. Thus, we find no merit to the arguments raised under Appellant's second assignment of error and it is also overruled.

{¶41} Accordingly, having found no merit in the arguments raised under either of Appellant's assignments of error, they are both overruled and the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Common Pleas Court, Probate-Juvenile Division to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hess, J. and Wilkin, J., concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.