[Cite as *Craig v. Athey*, 2025-Ohio-336.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

CHRISTINE M. CRAIG FKA ATHEY,

Plaintiff-Appellee,

v.

JEREMY L. ATHEY,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 24 MA 0069

Civil Appeal from the
Court of Common Pleas, Domestic Relations Division, of Mahoning County, Ohio
Case No. 2018 DR 00420

BEFORE:
Cheryl L. Waite, Mark A. Hanni, Katelyn Dickey, Judges.

JUDGMENT:
Affirmed.

Atty. Christopher A. Maruca, The Maruca Law Firm, LLC, for Plaintiff-Appellee

Atty. Jennifer Boyle Beck, and *Atty. Matthew C. Giannini*, for Defendant-Appellant

Dated: January 29, 2025

WAITE, J.

{¶1} Appellant Jeremy L. Athey appeals the trial court's decision to overrule his objections denying three motions to reallocate parental rights. Appellant and Appellee Christine M. Craig (fka Athey) were divorced in 2019. They are the parents of E.A., who was six years old at the time the court issued its most recent judgment, now on appeal. Appellee mother was, and is, the sole residential parent. Appellant filed multiple motions seeking to reallocate parental rights to become the sole residential parent after Appellee moved from Austintown to Canton. After a lengthy magistrate's hearing dealing with the motion to reallocate and a variety of other motions, the magistrate found there was no change in circumstances warranting a reallocation of parental rights. Appellant filed objections. The trial court overruled the objections and adopted the magistrate's decision.

{¶2} Appellant's four assignments of error all argue essentially the same thing: that the court should have found a change in circumstances had occurred and then should have performed a best interests analysis leading to a change of custody in his favor. Appellant argues that in reviewing Appellee's move from Austintown to Canton the court failed to focus on the effects of that move. Appellant contends that in addition to the fact that Appellee moved, many other facts supported a change in circumstances occurred, including problems with visitation and with transfers of the child from one parent to the other. Appellant's contention is not supported by the record. The court thoroughly reviewed the move to Canton, the effects of the move, and the visitation and transfer issues raised at trial. Appellant argues the weight of the evidence is against the trial court's conclusion that there was no change in circumstances. Since the magistrate and the trial judge found that Appellant was not credible, the weight of the evidence was

clearly in Appellee's favor, and the court ruled accordingly. Appellant also argues that the trial court's best interests analysis was cursory, but the record reflects the court's review was anything but cursory, as evidenced by two hearings and issuance of a 26-page judgment. Appellant's four assignments of error are overruled, and the trial court judgment is affirmed.

Facts and Procedural History

{¶3} Appellant and Appellee were married on July 12, 2014. There was one child born of the marriage. Appellee filed for divorce on August 28, 2018. On August 7, 2019, the parties' marriage was terminated by judgment entry. The parties had entered into a shared parenting plan, but soon after the divorce was final, they began filing contempt motions and motions to terminate shared parenting. Shared parenting was terminated on January 29, 2021, and Appellee was designated as the sole residential parent. Appellant was granted visitation rights. On December 29, 2022, an order was issued in which the parties agreed that any third parties brought to custody exchanges would remain in their motor vehicle, and all exchanges would take place at Appellant's and Appellee's respective homes.

{¶4} On May 17, 2023, Appellant filed a motion to reallocate parental rights. On June 20, 2023, Appellee filed a motion for contempt and a motion to reduce visitation. On June 22, 2023, Appellant filed a motion for contempt. On August 7, 2023, Appellant filed a second amended motion for reallocation of parental rights and another contempt motion.

{¶5} On August 22, 2023, the court temporarily modified visitation pending final resolution of the motions to reallocate parental rights. The new order contained detailed

provisions for alternating weekly schedules, holidays, special days, transportation, school pickups, driveway exchanges, and whether the parties could exit their homes or vehicles during exchanges.

{¶6} On October 19, 2023, Appellant filed a notice of intent to relocate to Diamond, Ohio. On November 4, 2023, Appellant filed a third amended motion to reallocate parental rights and a motion for contempt. The various contempt motions by both parties were based on allegations of violations of the parenting time rules.

{¶7} A magistrate's hearing on the pending matters started on January 3, 2024, and terminated on April 19, 2024. The magistrate took evidence from five witnesses. Both parties were represented by counsel and both parties acknowledged violating the parenting time rules.

{¶8} Appellant testified that he moved to Diamond, Ohio in January of 2024. He said that there were times when the child was not present when Appellant arrived to pick up the child. He described an incident when Appellee's father interfered with the exchange and stated he sometimes called the police to be present at an exchange.

{¶9} He testified that Appellee did not always keep him informed about the child's doctor visits.

{¶10} He testified that both he and Appellee made mistakes regarding visitation times, holiday times, and notifying the other party about schedules. He also said there were issues in completing his two allotted weekly phone call times with his son. He assumed Appellee was telling the child not to return calls, and that he would get a return call from the child but his call with the child was cut short. (1/3/24 Tr., p. 123.) He complained that Appellee once unilaterally delayed his exchange from Friday evening to

Saturday morning because she and the child would be arriving home too late from a trip to South Carolina. He testified that Appellee did not inform him she would be late for pickup on June 15, 2023. He stated there were many exchanges when Appellee would violate the visitation order by a few minutes.

{¶11} Appellee testified that she had moved from Austintown to Canton, Ohio. She believed Appellant still lived in Columbiana, and that she now lives an approximate 45-minute drive from Appellant and about an hour drive from Appellant's mother. Appellee also testified about her proposed changes to visitation, that were largely beneficial to Appellant's parenting time and ease of custody exchanges. She acknowledged problems had arisen when her father had been involved in custody exchanges, but she stated that he no longer accompanies her on these trips.

{¶12} Appellee's mother, Colleen Craig, testified that Appellant had called the police five or six times during custody exchanges. She testified that once, when Appellant was supposed to pick up the child from school but he had not confirmed with Appellee he would do so, she went to pick up the child. Appellant usually picked up the child at 1 p.m. She went to the school at 5 p.m. because the child had not yet been picked up, and when she exited the school with the child Appellant was waiting outside with the police.

{¶13} The magistrate issued a decision on May 1, 2024. The entry cited the appropriate statutes and case law regarding modification of parental rights, change in circumstances, and the best interests of the child. The magistrate found that Appellant had not met his burden of proof in establishing that a change in circumstances had taken place. The magistrate also found that even if Appellant had met his burden of proof, the best interests of the child did not warrant a modification of parental rights. The magistrate

expressed concern about Appellant's "motive in contacting the police ahead of time and the lack of communication between the parties." (5/1/24 Mag. Order, p. 11.) The court modified the visitation schedule, denied a motion to modify child support, and found both parties in contempt, with an opportunity to purge the contempt by strictly following the terms of visitation.

{¶14} Appellant filed objections to the magistrate's decision on May 24, 2024. His objections were primarily based on his disagreement with the court's failure to find a change in circumstances had occurred. Appellant believed that three main facts supported finding there had been a change in circumstances: Appellee's move to Canton, Ohio; the disruptive effect of the move; and Appellee's violations of the visitation order. The court held a hearing on Appellant's objections on June 17, 2024, and overruled the objections by judgment entry filed July 1, 2024. The court found no change in circumstances had occurred. The court reminded Appellant that both parties had been held in contempt, not only Appellee, and noted that while the litigation was pending, the parties entered into an agreement to modify visitation. The magistrate had, then, modified the parenting time schedule and terms to alleviate the prior frustrations with scheduling and exchanges, particularly exchanges at the parties' homes. The court found that Appellant had moved to Diamond, Ohio, which was closer to Appellee's home in Canton than when he lived in Columbiana. The court held that Appellee's move to Canton and the effects of the move did not constitute a change in circumstances in this case. Alternatively, even if a change in circumstances had occurred, the court held that it was in the best interests of the child not to reallocate parental rights.

{¶15} Appellant filed a notice of appeal on July 25, 2024, and now raises four assignments of error. The assignments of error are largely repetitive, and are rearranged for the sake of clarity and logic.

ASSIGNMENT OF ERROR NO. 1

> THE TRIAL COURT ERRED IN CONCLUDING THAT NO SUBSTANTIAL CHANGE IN CIRCUMSTANCES OCCURRED, CONTRARY TO R.C. 3109.04(E)(1)(A) AND OHIO CASE LAW.

ASSIGNMENT OF ERROR NO. 3

> THE TRIAL COURT ERRED IN FAILING TO GIVE DUE WEIGHT TO THE ADVERSE IMPACT OF PLAINTIFF-APPELLEE'S ACTIONS ON FATHER'S RELATIONSHIP WITH THE CHILD.

ASSIGNMENT OF ERROR NO. 4

> THE TRIAL COURT ERRED BY OVEREMPHASIZING GEOGRAPHIC DISTANCE IN EVALUATING THE IMPACT OF RELOCATION.

{¶16} In these three assignments of error, Appellant argues that the court should have found a change in circumstances had occurred, which would then have required the court to engage in a complete best interests analysis. Appellant contends that had the court done so, any best interests analysis should have led the court to designate him as the sole residential parent.

{¶17} R.C. 3109.04(E)(1)(a) governs the modification of parental rights and responsibilities and provides:

> 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, the child's residential parent, or either of the parents subject to a shared parenting decree, 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 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.

{¶18} In evaluating a motion to reallocate parental rights and responsibilities and to make a change in the residential parent, a court is required to find: (1) a change in circumstances occurred; (2) a modification of the order is in the child's best interest; and (3) the harm to the child from any modification is not outweighed by its benefits. *Rohrbaugh v. Rohrbaugh*, 136 Ohio App.3d 599, 604 (7th Dist. 2000). The record must adequately support each of these findings. *Id.* at 599. R.C. 3109.04(E)(1)(a) creates a rebuttable presumption that retaining the residential parent in the existing order is in the child's best interest. *Id.*

{¶19} "A change of circumstances must be one of substance, not slight or inconsequential, to justify modifying a prior custody order." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418 (1997). The phrase change in circumstances "is intended to denote an event, occurrence, or situation which has a material and adverse effect upon a child." *Rohrbaugh* at 604. Relocation of a parent, by itself, is not grounds for finding a change in circumstances, but it is a factor in deciding whether a change in circumstances has happened. *Liles v. Liles*, 2023-Ohio-1030, ¶ 42 (7th Dist.). Adverse effects of relocation are such things as: disruption or denial of visitation; time and difficulty reaching the relocated home; cost of traveling to relocated site; diminished access to siblings or other relatives due to the relocation.

{¶20} A finding of a change in circumstances must be based on facts that have arisen since the prior decree. R.C. 3109.04(E)(1)(a); *Lipp v. Lipp*, 2023-Ohio-4741, ¶ 13 (7th Dist.). If the trial court determines that no change in circumstances has occurred, there is no need to conduct a best interests analysis. *Barto v. Barto*, 2008-Ohio-5538, ¶ 31 (3d Dist.).

{¶21} A trial court has broad discretionary powers in child custody proceedings, and a reviewing court must give this discretion a great deal of respect in light of the gravity of the proceedings and the impact that a custody determination has on the parties involved. *Reynolds v. Goll*, 75 Ohio St.3d 121, 124 (1996). If a trial court's decision regarding the custody of a child is supported by competent and credible evidence, it will not be reversed absent an abuse of discretion. *Bechtol v. Bechtol*, 49 Ohio St.3d 21 (1990), syllabus. An abuse of discretion connotes that the trial court's decision was arbitrary, unreasonable, or unconscionable. *Rohrbaugh* at 603.

{¶22} This case involves the trial court's decision to overrule objections to a magistrate's decision. Pursuant to Civ.R. 53(D)(4)(d), in ruling on objections to a magistrate's decision, the trial court "shall 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." In ruling on objections to a magistrate's decision the trial court applies a de novo standard of review. *Calhoun v. Calhoun*, 2021-Ohio-4551, ¶ 14 (7th Dist.). However, an appellate court applies an abuse of discretion standard when reviewing a trial court's decision to adopt, reject, or modify a magistrate's decision. *Id.* at ¶ 15. "The term 'abuse of discretion' means an error in judgment involving a decision that is unreasonable based upon the record; that the appellate court merely may have reached a different result is not enough." *In re S.S.L.S.*, 2013-Ohio-3026, ¶ 22 (7th Dist.).

{¶23} Appellant also contends the weight of the evidence fails to support the trial court's judgment, here. "Where an award of custody is supported by a substantial amount

of credible and competent evidence, such an award will not be reversed as being against the weight of the evidence by a reviewing court." *Bechtol*, syllabus.

{¶24} Appellant argues that it was an abuse of discretion for the court to focus solely on the mere fact that Appellee relocated from Austintown to Canton as the basis for deciding there was no change in circumstances. Appellant claims that the record overwhelming supports that the effect of this relocation was to disrupt the child's relationships and to interfere with parenting dynamics, citing *Duning v. Streck*, 2002-Ohio-3167 (12th Dist.). In *Duning*, the trial court based its decision not to reallocate parental rights solely on the basis that the mother had been the primary caregiver, despite the fact that both the trial court and the court of appeals (which reversed the trial court) recognized that the mother's proposed move across the country and the near total separation of the child from the father was a change in circumstances. *Duning* does not support Appellant's argument regarding whether a change in circumstances took place in this present matter.

{¶25} Strangely, Appellant cites *Rohrbaugh* in support, even though in *Rohrbaugh* the court found no change in circumstances had occurred based on a relocation of 172 miles by the mother. The relocation in this appeal was approximately 45 miles (or a 45-minute drive).

{¶26} Appellant claims the distinction in *Rohrbaugh* was because the relocation in *Rohrbaugh* was motivated by employment. Appellant claims that Appellee moved strictly for personal reasons. The record reflects, however, that Appellee moved to Canton for employment reasons. She was a psychologist for Akron schools, and moving to Canton allowed her to live closer to work and presumably have more time at home with the child. The court found this to be reasonable. Appellant cites to various pages of the

trial transcript that supposedly show Appellee moved to Canton solely to be near her boyfriend. The citations, though, only cite to testimony that Appellee's companion was seen at the Canton residence, not that he was the motivation for the move. Regardless, neither this record nor *Rohrbaugh* support Appellant's argument.

{¶27} Further, Appellant is simply wrong that the court failed to focus on the effects of relocation in deciding there was no change in circumstances. The court's judgment entry specifically identifies that Appellant's argument is that the disruptive effects of the move, as well as the violations of the parenting order, all rose to the level of a change in circumstances. (7/1/24 J.E., p. 1.) The court noted that any issues related to the relocation that adversely affected the child were considered. (7/1/24 J.E., p. 3.) The court found that the move was not substantial, and did not involve a significant amount of extra travel for Appellant. Appellant's parenting time was not adversely affected by the move, and may have improved. He was able to engage in his parenting time on weekdays, weekends, nights, and any other time set forth in the schedule. Transfers would be much easier under the new visitation order. There was no indication that Appellee was attempting to eliminate Appellant from the child's life. The court also noted that both parents had violated the parenting order on occasion, and expressed that the earlier problems with visitation and exchanges had been solved in a new parenting order, so this did not weigh in favor of finding a change in circumstances.

{¶28} The trial court was correct to take into account any beneficial effects that occur when a party relocates as weighing against a finding of a change in circumstances. In *Valentine v. Valentine*, 2012-Ohio-426 (12th Dist.), the Twelfth District determined that the father's proposed move from Ohio to Wisconsin was not a change in circumstances

because the mother's parenting time actually increased under the new visitation order. *Id.* at ¶ 20. The evidence showed no adverse impact on other aspects of the child's life, such as school and medical care. There was also no evidence to show the relationship between the child and any other family member would be adversely affected. *Id*. at ¶ 21.

{¶29} In the instant appeal there was no evidence supporting the conclusion that the move to Canton by Appellee had an adverse effect on the child, and there was evidence given to support that the move would actually improve visitation between Appellant and the child.

{¶30} There is no question that the complicated visitation and exchange provisions in this case were difficult for the parties to follow to the letter, resulting in many minor violations of the visitation order. Although the parties would at times try to accommodate each other, more often than not the parties would rely on the exact requirements of the visitation order to make things more difficult for the other party, to provide an excuse to involve the police, or to act as a catalyst or an excuse for further retaliatory visitation of the order.

{¶31} What was not established at the January 3, 2024, hearing was that these mutual visitation violations had newly arisen since the previous court order. A modification pursuant to R.C. 3109.04(E)(1)(a) must be "based on facts that have arisen since the prior decree . . ." These facts, though, must be compared to the prior history of the parties, because it is this prior history that forms the baseline to determine whether a change has occurred. For example, in *Lipp*, *supra*, the father argued that there was a change in circumstances based on the child's obesity and various health problems arising from the obesity. We held that the father had raised the same issues previously, and that

the child had always been overweight and scored in the highest range for BMI (Body Mass Index). *Id*. at ¶ 13. It was clear that the evidence the father relied on to show a change had occurred was actually evidence of the status quo, supporting that no change had occurred.

{¶32} In this case, the record indicates that the parties' contentious post-divorce relationship started very soon after the divorce in August of 2019. Although they initially entered into a shared parenting plan, very quickly after the divorce they began filing contempt actions against one another, and both parties filed motions to terminate shared parenting in late 2019. The magistrate's decision of November 20, 2020, which terminated shared parenting, stated that problems with exchanges occurred almost immediately. Appellant filed objections to that magistrate's decision, and thus, the final judgment terminating shared parenting did not occur until January 29, 2021, when the trial court overruled the objections. Nevertheless, the record is clear that the parties' inability to cooperate, and the constant (and often de minimus) violations of visitation orders, have remained consistent throughout the post-divorce process.

{¶33} It is apparent from this record that the trial court studied the magistrate's hearing transcript of January 3, 2024, and engaged in a thorough de novo review of the magistrate's decision filed as a result of that hearing. Appellant's argument that the trial court ignored evidence and conducted an inadequate review are not well-taken. Appellant himself is aware that the trier-of-fact (which in this case was the magistrate) was in the best position to weigh evidence, and at multiple points the magistrate found Appellant was not credible or had questionable motives. We cannot second guess findings and conclusions that are supported by the record, nor can we find an abuse of

discretion, here. The record fully supports that no change in circumstances occurred in this matter and therefore, the court did not need to determine whether the best interests of the child required reallocation of parental rights. Appellant's first, third, and fourth assignments of error are without merit and are overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ERRED IN DENYING FATHER'S MOTION FOR REALLOCATION WITHOUT CONDUCTING A THOROUGH BEST INTEREST ANALYSIS AS REQUIRED BY R.C. 3109.04(F).

{¶34} Appellant argues that the trial court failed to conduct a thorough best interests analysis when it ruled on his motions to reallocate parental rights. As stated earlier, If the trial court finds that no change in circumstances has occurred, the trial court's analysis is at an end. There is no need to evaluate the best interests of the child. *Barto*, *supra*, at ¶ 31. Based on our review, the trial court was correct that no change in circumstances had occurred, so the trial court was not required to conduct a best interests analysis. For this reason, Appellant's second assignment of error is overruled.

{¶35} Even so, both the magistrate and the trial court in this matter did conduct a best interests analysis. Appellant does not dispute that the court decided a change in custody was not in the best interests of the child. Appellant nevertheless argues that the trial court's best interests review was inadequate. Our review of this record reveals Appellant is mistaken. The court cited the statutory best interest factors found in R.C. 3109.04(F), and we presume that the trial court properly considered these factors and followed the law. "[A] general principle of appellate review is the presumption of

regularity; that is, a trial court is presumed to have followed the law unless the contrary is made to appear in the record." *Thomas v. Thomas*, 1999 WL 812385, *2 (2d Dist. Sept. 17, 1999). This citation from *Thomas* specifically involves the question of whether the trial court should be presumed to have considered the factors in R.C. 3109.04(F). Appellant can cite to nothing in the record to show the court failed to consider the R.C. 3109.04(F) factors.

{¶36} To the contrary, the lengthy entries by both the magistrate and the trial judge reflect that the court considered all of the evidence presented by the parties, and the relevant law. The trial court was of the opinion that by far the biggest problem the parties were having was with their parental exchanges, and that aspect of visitation was modified to eliminate home exchanges. While the trial court found no issue that rose to the level of a change in circumstances, it recognized the parties did experience some problems. The trial court attempted to resolve the conflict between the parties through a change in the visitation rules, rather than in an unwarranted change of residential parent. This was certainly within the discretion of the trial court, and we do not find this was error, much less reversible error, on appeal. Appellant's second assignment of error is also without merit and is overruled.

Conclusion

{¶37} Appellant appeals the trial court's decision denying his motions to reallocate parental rights. In Appellants' first, third, and fourth assignments of error he argues the court should have found a change in circumstances had occurred. Appellant contends the court failed to focus on the effects of Appellee's move from Austintown to Canton. The record shows the court thoroughly reviewed the effects of the move in determining

that no change in circumstances had occurred, here. It was not an abuse of discretion to deny Appellant's motions to reallocate parental rights. In Appellant's second assignment of error he argues the trial court's best interests analysis was cursory and inadequate. As the trial court did not find a change in circumstances had occurred, there was no need for the court to conduct a best interests analysis. Nevertheless, the court did so, and determined that it was not in the best interests of the child to change custody. The record shows that the court's best interests review was anything but cursory, as evidenced by the multitude of findings contained in the 26-page judgment under review, and by the court's recitation of the best interests factors in R.C. 3109.04(F). Appellant's second assignment of error is not supported by the record. All of Appellant's assignments of error are overruled, and the trial court’s judgment is affirmed.

Hanni, J. concurs.

Dickey, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Domestic Relations Division, of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.