

[Cite as *White v. White*, 2009-Ohio-4311.]

IN THE COURT OF APPEALS FOR CLARK COUNTY, OHIO

RONALD C. WHITE	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2009 CA 17
v.	:	T.C. NO. 07 DR 0544
STACY L. WHITE	:	(Civil appeal from Common Pleas Court, Domestic Relations)
Defendant-Appellant	:	

OPINION

Rendered on the 21st day of August, 2009.

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FROELICH, J.

{¶ 1} Stacey White appeals from a Judgment Order and Decree of Divorce of the Clark County Court of Common Pleas, Domestic Relations Division, which named Ronald C. White as the residential parent of the parties' minor son, B.

{¶ 2} The trial court's findings, which were based largely upon its assessment of the parties' credibility, supported its determination that Mr. White should be the residential parent. The judgment of the trial court will be affirmed.

I

{¶ 3} Mr. and Mrs. White were married in October 2000, and their son, B., was born in November 2001. The parties separated and Mr. White filed a complaint for divorce in June 2007. The parties were able to agree on some issues related to their property settlement and on spousal support. The court held a hearing to resolve disputed issues, including the allocation of parental rights and responsibilities. The hearing was held over five days, beginning on February 8, 2008, and ending on June 13, 2008. On July 22, 2008, the trial court filed a Decision in which it resolved several disputed issues, including the allocation of parental rights and responsibilities. This Decision was incorporated into the trial court's Final Judgment and Decree of Divorce, which was filed on January 12, 2009.

{¶ 4} Mrs. White raises one assignment of error on appeal.

II

{¶ 5} Mrs. White's assignment of error states:

{¶ 6} "THE TRIAL COURT'S JUDGMENTS DESIGNATING THE APPELLEE/FATHER AS THE CHILD'S RESIDENTIAL AND CUSTODIAL PARENT AND LIMITING AND RESTRICTING THE APPELLANT'S/MOTHER'S PARENTING TIME TO THE STANDARD ORDER OF VISITATION WERE CONTRARY TO THE MANIFEST WEIGHT OF THE EVIDENCE, WERE BASED ON INCOMPLETE AND INSUFFICIENT EVIDENCE, WERE OTHERWISE ABUSIVE OF DISCRETION,

CONTRARY TO LAW AND CONSTITUTED REVERSIBLE ERROR.”

{¶ 7} Mrs. White asserts that, for several reasons, the trial court’s judgment was against the manifest weight of the evidence, supported by insufficient evidence, and an abuse of discretion. She identifies the following specific errors: 1) the guardian ad litem failed to fully investigate the issues relevant to the court’s determination; 2) the trial court erred in failing to order psychological evaluations; and 3) the trial court erred in failing to interview B. in chambers. She also claims, more generally, that the trial court erred in its weighing of the statutory factors and of the strengths and weaknesses of each party as a parent.

{¶ 8} An award of custody will not be reversed by a reviewing court where the judgment is supported by competent, credible evidence. *Goldsboro v. Goldsboro*, Miami App. No. 2006-CA-48, 2007-Ohio-2135, at ¶32, citing *Lamoreaux v. Lamoreaux* (Mar. 29, 1993), Miami App. No. 92 CA 7. Weight and credibility of evidence, and factual disputes in the testimony, are matters for the trial court to resolve. *Id.* “The discretion which a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court’s determination will have on the lives of the parties concerned. The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record.” *Miller v. Miller* (1988), 37 Ohio St.3d 71, 75 (citations omitted). Indeed, the trial court’s determination of credibility is “even more crucial in a child custody case, where there may be much evident in the parties’ demeanor and attitude that does *not* translate to the record well.” (Emphasis sic.) *Davis v. Flickinger* (1997), 77 Ohio St.3d 415, 419. Thus, a reviewing court will not reverse a custody determination unless the trial court has

abused its discretion by acting in a manner that is arbitrary, unreasonable, or unconsionable. *Pater v. Pater* (1992), 63 Ohio St.3d 393, 396; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶ 9} It is well-established that trial courts are guided by the factors set forth in R.C. 3109.04(F)(1) when making custody decisions, but they also are permitted broad discretion. *Caldas v. Caldas*, Montgomery App. No. 20691, 2005-Ohio-4493, at ¶9, citing *Miller*, 37 Ohio St.3d at 74. See, also, *Hamilton v. Hamilton*, Montgomery App. No. 22005, 2008-Ohio-3711, at ¶39. R.C. 3109.04(F)(1) provides that a court shall consider all relevant factors, including those outlined by this section, when determining the best interest of a child involved in a custody dispute. These factors include the following:

{¶ 10} “(a) The wishes of the child’s parents regarding the child’s care;

{¶ 11} “(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;

{¶ 12} “(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;

{¶ 13} “(d) The child’s adjustment to the child’s home, school, and community;

{¶ 14} “(e) The mental and physical health of all persons involved in the situation;

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

{¶ 16} “(g) Whether either parent had failed to make all child support payments, ***.”

{¶ 17} The parties presented conflicting evidence at the hearing about their respective parenting abilities and other factors affecting B.’s best interests. Both parties have a job that provides them with a living wage and health insurance for B. and a supportive family that helps with childcare while they are at work. Both are in good health and have appropriate housing for B. Mrs. White has been married three times and has three older children from prior relationships, two of whom live with her. Mr. White has had no other marriages and no other children.

{¶ 18} Several witnesses, including Mrs. White, testified that, on at least one occasion, she had a physical confrontation with one of her daughters when she was angry, and that she has used corporal punishment on the children. Mrs. White’s oldest daughter, H., with whom she had a very strained relationship at the time of the hearing, testified that Mrs. White was not a warm mother and was abusive. Mr. White’s mother and a neighbor testified that Mrs. White yelled at the children a lot and was generally angry and impatient with them.

{¶ 19} Mrs. White, H., and a neighbor testified that Mrs. White had taken several of her children with her to a hotel parking lot to meet a man she had met over the Internet. H. testified that Mrs. White had flirted with several men while the children were present and while she was still living with Mr. White. Mr. White, H., and the neighbors also testified that Mrs. White frequently left B. in the care of the

older girls and that the activities of the older girls, who were 18 and 12 at the time of the hearing, were not well supervised.

{¶ 20} Other witnesses, including Mrs. White's mother, some of her friends, and her daughter Br., testified that Mrs. White was a good parent and B.'s primary caregiver, and that B. was "always" around her. These witnesses described Mr. White as antisocial and bad-tempered, although they acknowledged that he worked a third shift which caused him to sleep at times when others were engaged in social activities. Several of these witnesses also testified that Mr. White listened to inappropriate music with sexual themes in B.'s presence, and Br. stated that she had seen pornography on his computer a couple of times. Mrs. White's mother denied that her daughter used corporal punishment.

{¶ 21} The parties each testified that, when Mrs. White moved out of the marital residence in June 2007, she did not inform Mr. White where she and B. were going, and that Mr. White did not see B. for about eleven days thereafter. According to Mrs. White, she attempted to arrange for B. to visit with his dad on the weekend, but Mr. White did not contact her in time to finalize the arrangements. Mr. White disputed this account. Mrs. White attributed her actions, in part, to Mr. White's "stalking" behavior during a prior separation. Regarding a separate incident, Mr. White claimed that he had tried to take B. out to lunch after school one day around Thanksgiving to spend a little more time with him, but that Mrs. White's mother, who usually picked B. up from school, had not allowed him to do so because Mrs. White had not given her prior approval.

{¶ 22} The guardian ad litem did not testify at trial, but in his report he

recommended that Mr. White have custody of B., with generous visitation for Mrs. White. He described the case as a “leaner,” or a close call.

{¶ 23} In its decision, the trial court found that the parties “clearly lack the ability to cooperate and make joint decisions” and that it would be in B.’s best interest for Mr. White to be the residential parent. The court concluded that Mrs. White was not a good role model for B. or her other children and that she “spends much more time fulfilling her own fantasies and serving her own interests than she does focusing her attention towards the needs of her children.” The court stated that Mrs. White had exhibited “extremely poor” judgment over the years, especially in her relationships, which had had an adverse effect on her children. The court further concluded that both parties were quick-tempered, but that Mr. White was better at controlling his temper and set a better example for the children in doing so. The court found that Mr. White was more likely to facilitate visitation than Mrs. White.

{¶ 24} Neither party had requested that the court interview B. in camera. The trial court expressly stated that it had not interviewed B., due in part to his young age.

{¶ 25} In rendering its decision, the trial court fully considered and discussed the relevant factors set forth in R.C. 3109.04(F)(1). The wishes of the parents were clear, and the court weighed the quality of the parent’s relationships with B. in determining that Mr. White was the better role model. The court determined that Mr. White had the better support system in place in terms of family, friends, and professional services, although it acknowledged B.’s family ties on both sides of the

family. The court found no persuasive evidence that either party had mental or physical health issues that were pertinent to its determination, that Mr. White was current on his child support obligation, and that Mr. White would be more cooperative with visitation. In weighing the factors as it did, the trial court noted that it found Mr. White's testimony to be credible, while much of Mrs. White's testimony was not.

{¶ 26} As stated above, credibility determinations are for the trier of fact. The trial court gains knowledge through observing the witnesses and the parties in a custody proceeding which cannot easily be conveyed to a reviewing court. *Miller*, 37 Ohio St.3d at 74. Thus, we defer to the trial court's determination of the witnesses' credibility and of the appropriate weight to be given to the statutory factors.

{¶ 27} Mrs. White argues that the trial court erred in failing to interview B. in camera. Neither party requested such an interview and, in the absence of a request from the parents, the trial court has discretion in determining whether such an interview will be helpful. R.C. 3109.04(B)(1). B. was six years old at the time of the hearing, and the court cited his young age as the basis for its decision not to interview him. We find no abuse of discretion in the court's failure to interview B.

{¶ 28} Mrs. White also faults the trial court for failing to order psychological evaluations of the parties and B. Again, we note that Mrs. White did not ask the court to do so. R.C. 3109.04(C) permits, but does not require, the court to order such psychological evaluations. In this case, the evidence did not compel the conclusion that such an evaluation would have been dispositive or even helpful.

As such, the trial court acted within in discretion in not ordering such tests.

{¶ 29} Mrs. White also claims that the guardian ad litem failed “to fully perform his investigative duties.” Specifically, she claims that he spent insufficient time with her and never visited her permanent residence; thus, she claims that his investigation into B.’s living conditions at her home was inadequate. The trial court, however, found that Mrs. White’s residence was “clean, spacious and more than adequate” to meet B.’s needs. In other words, this is not a factor that weighed against Mrs. White in the trial court’s decision. Thus, it does not appear that further investigation or reporting on the living conditions that Mrs. White could offer the child would have served any useful purpose.

{¶ 30} The guardian ad litem recommended that custody be awarded to Mr. White, with “liberal visitations” for Mrs. White. Although the trial court considered this recommendation, it does not appear to have played a substantial role in the trial court’s determination that Mr. White would be the better residential parent. Indeed, as Mrs. White has mentioned repeatedly in her brief, the guardian ad litem described the case as a “leaner,” or a close call. The trial court heard ample evidence at the hearing from which it could have reached its own conclusion on custody.

{¶ 31} Finally, Mrs. White contends that the trial court erred in failing to properly weigh Mr. White’s use of pornography and sexually explicit music, unstable work history, and financial irresponsibility, including his failure to pay child support. Although there was evidence offered on each of these points at trial, the weight to which it was entitled depended on the trial court’s assessment of the witnesses’

credibility. We cannot conclude that it abused its discretion in weighing all the evidence as it did.

{¶ 32} The assignment of error is overruled.

III

{¶ 33} The judgment of the trial court will be affirmed.

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DONOVAN, P.J. and GRADY, J., concur.

Copies mailed to:

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