

**APPENDIX TO THE PETITION FOR A WRIT
OF CERTIORARI**

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APPENDIX A

IN THE COURT OF APPEALS OF OHIO TENTH APPELLATE DISTRICT

Catalin S. Badescu, : No. 18AP-947
Plaintiff-Appellee, : (C.P.C. No. 16DR-2436)
v. : (REGULAR CALENDAR)
:
Veronica V. Badescu, :
Defendant-Appellant.

DECISION

Rendered on September 3, 2020

On brief: *Kemp Law Group, LLC*, and *Jacqueline L. Kemp*, for appellee.

On brief: Veronica V. Badescu, *pro se*.

APPEAL from the Franklin County Court of Common
Pleas, Division of Domestic Relations

BROWN, J.

{¶ 1} Veronica V. Badescu, defendant-appellant ("mother"), appeals from the judgment entry of the Franklin County Court of Common Pleas, Division of Domestic Relations, in which the court issued a decision and judgment entry granting a decree of

divorce and allocating parental rights and responsibilities.

{¶ 2} Mother and Catalin S. Badescu, plaintiff-appellee ("father"), were married in March 2010 in Virginia. Both parties had jobs in the Washington, D.C. area. They agreed to move to Centerville, Ohio, in January 2011 because father obtained a job in Dayton, Ohio. In 2012, after failing to find a new job, mother began studying at The Ohio State University in a combined Masters/Ph.D. program. The parties moved to Galloway, Ohio, to facilitate the commutes. In December 2014, mother obtained a master's degree (her second) and discontinued the Ph.D. program at The Ohio State University. Mother's degree is in electrical engineering. Her first master's degree specialty is in space systems operations and her second master's degree specialty is in system-level engineering, which means control systems and some signal processing.

{¶ 3} In February 2015, the parties purchased a home in Dublin, Ohio. Mother testified she did not want to purchase a house and that the parties did not intend to stay in Ohio long term. The parties had a child, M.B., born in March 2015. The parties' marriage began to deteriorate, and they had many disagreements especially concerning parenting styles. These disagreements sometimes disintegrated into emotional and physical abuse by both parties. Mother searched for employment at first in Ohio, but then widened her search. She was unemployed from 2011-2016, other than a research assistant position while pursuing her Ph.D. In April 2016, she received two job offers, one in Dayton and one in San Diego, California. She accepted the job offer in California. After mother accepted the job offer in California, father also looked into employment in California.

However, he did not want to move and start over in California. The parties sought mediation to resolve the parenting issues regarding mother moving to California, but the mediation was unsuccessful.

{¶ 4} On June 20, 2016, father filed a complaint for divorce in which he sought custody of M.B. Mother filed a counterclaim for divorce and custody. On July 14, 2016, a magistrate issued temporary orders granting permission for mother to temporarily take M.B. with her to San Diego and ordered a parenting-time schedule beginning with mother's relocation on July 15, 2016. The parties commenced a parenting schedule where each parent was given alternating 30 days at a time. Also, on July 14, 2016, a guardian ad litem ("GAL") was appointed.

{¶ 5} On April 13 and August 30, 2018, the parties entered into partial divorce settlement agreements, agreeing to property division and spousal support, leaving the allocation of parental rights and responsibilities, visitation, and child support for the trial court to determine. A trial was held on various dates from August 15 to 24, 2018, with both parties represented by counsel. On November 28, 2018, the trial court issued a decision and judgment entry decree of divorce. With regard to the allocation of parental rights and responsibilities, the trial court discussed the best interest of the child and analyzed the factors in R.C. 3109.04 and 3109.051. The trial court found that it was in the best interest of the child that father be named residential parent and legal custodian and found that parenting time should be as the parties agree, but if they could not agree, the court set forth a parenting-time schedule. The court further set forth orders regarding travel, communication, emergency decisions, child support,

division of assets and liabilities.

{¶ 6} Mother, pro se, appeals the trial court's judgment, asserting the following two assignments of error:

[I.] The trial court erred as a matter of law and abused its discretion by placing the initial burden on Mother to demonstrate the necessity of move and placing unfairly prejudicial weight on Mother's decision to live out of state, in violation of R.C. § 3109.03.

[II.] The trial court erred in granting sole custody to Father by failing to assess the best interest of the child properly under Ohio law, including without undue emphasis on Mother's decision to move out of state.

{¶ 7} Mother's two assignments of error are related in that she argues the trial court erred in placing undue emphasis on her decision to move from Dublin, Ohio, to San Diego, California. Mother argues in her first assignment of error that the trial court erred when it placed the initial burden on her to demonstrate the necessity of moving and placed prejudicial weight on her decision to live out of state. Mother argues in her second assignment of error that the trial court erred when it granted sole custody to father by failing to assess the best interest of the child properly under Ohio law and placing undue emphasis on mother's decision to move out of state. Because they are related, we shall address these assignments of error together.

{¶ 8} In *Pallone v. Pallone*, 10th Dist. No. 17AP-409, 2017-Ohio-9324, ¶ 36, citing *Parker v. Parker*, 10th Dist. No. 05AP-1171, 2006-Ohio-4110, ¶ 23, this

court stated that a trial court must follow R.C. 3109.04 when deciding child custody matters but it has broad discretion when determining what is the appropriate allocation of parental rights and responsibilities. An appellate court affords a trial court's child custody determinations with some deference. "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.' " *Pater v. Pater*, 63 Ohio St.3d 393, 396 (1992), quoting *Miller v. Miller*, 37 Ohio St.3d 71, 74 (1988). Therefore, an appellate court will only reverse a trial court's custody determination if the trial court abused its discretion. *Parker* at ¶ 23.

{¶ 9} "The term 'abuse of discretion' connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Even under an abuse of discretion standard, however, " ' 'no court has the authority, within its discretion, to commit an error of law.' ' " *Shaw v. Underwood*, 10th Dist. No. 16AP-605, 2017-Ohio-845, ¶ 25, quoting *JPMorgan Chase Bank, NA v. Liggins*, 10th Dist. No. 15AP-242, 2016-Ohio-3528, ¶ 18, quoting *State v. Akbari*, 10th Dist. No. 13AP-319, 2013-Ohio-5709, ¶ 7. Thus, " '[a] court abuses its discretion when its ruling is founded on an error of law or a misapplication of law to the facts.' " *Independence v. Office of the Cuyahoga Cty. Executive*, 142 Ohio St.3d 125, 2014-Ohio-4650, ¶ 49 (O'Donnell, J., dissenting), quoting *Doe v. Natl. Bd. of*

Med. Examiners, 199 F.3d 146, 154 (3d Cir.1999). See also *Hal v. Dept. of Edn.*, 10th Dist. No. 18AP-301, 2019-Ohio-5081, ¶ 11.

{¶ 10} Mother cites to excerpts of language the trial court used during the pretrial conference held on October 28, 2016. At the pretrial conference, the trial court stated:

[T]he burden is on [mother] to demonstrate why she's upsetting the proverbial applecart.

All right. I take this family as I see them, where they started from, and what decisions were made as a family to be. She's going to have to show me that she absolutely was not going to be able to pursue a career before I even get to the step if I'm going to allow a residential parent to be outside of this jurisdiction.

Again, it's family decisions that I'm going to look at. I'm starting in that basis here because I've heard from at least one side that we have two good parents and two involved parents.

This child absolutely needs both of his parents. The reality is if the parents are going to live in the Midwest and the West Coast, his relationship with one of his parents is going to be significantly affected. That's the reality of it.

So you have a young child who isn't

enmeshed into the community, so to speak, you know, we don't have him in school, we don't have him in Boy Scouts, we don't have all of those other kind of things that we look at, so I am -- you know, motivation for the move, as it were, is the first place I'm going to start looking at.

All I'm saying is that limited information I still have to pull from straws, right, because I don't have a representation here.

I feel [mother] starts with the burden, and then we go from there, because there's no good answers with respect to relocation.

So, of course, you know, the other things you have to look at is is there availability for your client to move closer there, that's going to be of interest to me as well and whether that --

But where I start with the premise that a family made a decision to follow dad somewhere to get a job and then mom went to school -- change the pronouns either way, it doesn't really matter whether it's a mom or dad kind of -- you know, I don't want to make it sound like, you know, I'm only thinking you follow a dad. Could be following a mom somewhere for a job. I think the burden is on the person who's packed up and moved to demonstrate to me why this jurisdiction is not

the appropriate jurisdiction.

(Oct. 28, 2016 Tr. at 11-14.)

{¶ 11} Initially, we note the trial court quoted R.C. 3109.03, as follows: "When husband and wife are living separate and apart from each other, or are divorced, and the question as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children is brought before a court of competent jurisdiction, they shall stand upon an equality as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved." The trial court also cited the 14 factors provided in R.C. 3109.051(D) and provided that it "has considered and addressed all statutory factors and has balanced all in making a determination as to [M.B.'s] best interest." (Emphasis sic.) (Decision at 5-6.)

{¶ 12} Further, we note that "'[i]t is axiomatic that a court speaks only through its journal entries, and not through mere oral pronouncements.' " *State v. Douglas*, 10th Dist. No. 13AP-570, 2014-Ohio-317, ¶ 5, quoting *State v. Huddleston*, 10th Dist. No. 12AP-512, 2013-Ohio-2561, ¶ 7, quoting *In re P.S.*, 10th Dist. No. 07AP-516, 2007-Ohio- 6644, ¶ 12. Our review of the trial court's decision does not reveal any indication that the trial court improperly applied the burdens of proof or improperly placed prejudicial weight on mother's decision to live out of state or improperly applied the best interest of the child.

{¶ 13} Furthermore, when the entire pretrial transcript is read in context, rather than the excerpts mother focuses on, it is clear the trial court felt she

had limited information at that point in the proceedings regarding the family unit and was interested in learning more information before deciding parental rights and responsibilities.

{¶ 14} R.C. 3109.04 provides factors that the trial court must consider in determining the best interest of the child, as follows:

(A) In any divorce, legal separation, or annulment proceeding and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, upon hearing the testimony of either or both parents and considering any mediation report filed pursuant to section 3109.052 of the Revised Code and in accordance with sections 3127.01 to 3127.53 of the Revised Code, the court shall allocate the parental rights and responsibilities for the care of the minor children of the marriage.

(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.

(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;

(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.

(2) In determining whether shared parenting is in the best interest of the children, the court shall consider all relevant factors, including, but not limited to, the factors enumerated in division (F)(1) of this section, the factors enumerated in section 3119.23 of the Revised Code, and all of the following factors:

(a) The ability of the parents to cooperate and make decisions jointly, with respect to the children;

(b) The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;

(c) Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;

(d) The geographic proximity of the

parents to each other, as the proximity relates to the practical considerations of shared parenting;

(e) The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem.

{¶ 15} Further, R.C. 3109.051(C) provides in determining to grant parenting time rights, a trial court shall consider a mediation report that is filed pursuant to R.C. 3109.11 or 3109.12 and shall consider all other relevant factors, including the factors listed in R.C. 3109.051(D), which provides, as follows:

In determining whether to grant parenting time to a parent pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section 3109.11 or 3109.12 of the Revised Code, in establishing a specific parenting time or visitation schedule, and in determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or section 3109.11 or 3109.12 of the Revised Code, the court shall consider all of the following factors:

(1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;

(2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;

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

(4) The age of the child;

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

(6) If the court has interviewed the child in chambers, pursuant to division (C) of this section, regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;

- (7) The health and safety of the child;
- (8) The amount of time that will be available for the child to spend with siblings;
- (9) The mental and physical health of all parties;
- (10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;
- (11) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; 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 the adjudication; 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;
- (12) In relation to requested companionship or visitation by a person other than a parent, whether the person 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 the person, 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 the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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 previously has been convicted of an 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 the person has acted in a manner resulting in a child being an abused child or a neglected child;

(13) 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;

(14) Whether either parent has established a residence or is planning to

establish a residence outside this state;

(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

(16) Any other factor in the best interest of the child.

{¶ 16} In this case, the trial court specifically considered each factor of R.C. 3109.04(F)(1)(a) through (j), 3109.04(F)(2), and 3109.051, weighed the evidence, and made determinations. R.C. 3109.04(F)(1)(j) requires the court to consider whether either parent has established a residence outside the state. Further, R.C. 3109.04(F)(2)(d) requires the trial court when considering whether shared parent is appropriate to consider the geographic proximity of the parents. Thus, the trial court was required to consider the circumstances regarding mother's move to San Diego.

{¶ 17} The trial court thoroughly explored the required factors to determine M.B.'s best interest. The trial court recognized that both parties wanted to be the legal custodian and residential parent for M.B. Each party wished the other would move to live in the same city. The trial court found M.B. was only three years old and too young to express his wishes. The trial court determined that M.B. is well-bonded with both parents and has significant relationships with extended family on both sides. The trial court found M.B. is very adjusted to his home and neighborhood and children in his father's

neighborhood and M.B. is involved in extracurriculars with his daycare. Father limits M.B.'s time on electronics and instead spends time bike riding, playing with neighborhood children, going to the park behind their house, the splash park, COSI, and Franklin Park Conservatory. Father works at keeping M.B. on a schedule.

{¶ 18} With a 30-day visitation schedule, M.B. has also adjusted to mother's home and pre-school in San Diego. Mother lives in a gated community that has two pools and is close to the ocean. M.B. has his own room and they have a dog. Mother takes M.B. to Balboa Park, the beach, the amusement park, the neighboring wildlife preserve, and the petting zoo. Mother arranges play dates for M.B. Mother plans to stay in the area where she currently lives.

{¶ 19} The trial court found that both homes are appropriate and adequate for raising M.B., and both provide wonderful opportunities, excellent infrastructures and high quality of life, such as parks and recreation, good school systems, and extracurricular activities. Both parents advocated that each location was able to provide for M.B.'s best interest. The trial court found that both parents excel in their ability to provide for M.B.'s basic needs. The trial court did find that father's home and neighborhood were more familiar for M.B. and filled with neighbors and children M.B.'s age that he has known for most of his life and will go to the same schools.

{¶ 20} The trial court found both parties and M.B. enjoy good physical health. When examining the mental health of the parties, the trial court acknowledged that both parties expressed concern about the other party's mental health and emotional stabilities. The parties had psychological evaluations

conducted and the psychologist determined that both parents had a good relationship with their son, but father should be designated school placement parent with mother receiving extended visitation time during the summer. The psychologist suggested it would be best for mother to move back to central Ohio and, if so, recommended an equally shared parenting plan. Mother argues this finding by the psychologist demonstrates that the improper burden placed on her to demonstrate the move to San Diego was necessary was adopted by the psychologist. We note that the psychologist's report was a joint exhibit submitted by the parties and mother did not object to its admission and did not call him for cross-examination. The trial court did carefully consider each party's evaluations, especially the personality profiles and tendencies to determine which parent was more likely to consistently put M.B.'s best interest first.

{¶ 21} The trial court observed father was more likely to facilitate parenting rights and visitation based on the finding that father plans and works hard to facilitate mother's SKYPE calls and mother did not do the same. The trial court found R.C. 3109.04(F)(1)(g), (h), and (i) not relevant factors to these facts.

{¶ 22} The trial court acknowledged that mother lives in San Diego and plans to remain there. Father currently lives in Dublin and plans to remain there until M.B. graduates from high school. The trial court specifically found mother was not credible regarding her testimony that she did not agree to purchase a home in Dublin and to raise her son in Dublin. The trial court stated: "[t]hese parties are extremely intelligent and intensely thoughtful individuals who clearly value education and as such, [mother's] contention that she did not fully consent to [father's]

desire to purchase this home and that she/they did not significantly investigate the neighborhood, surrounding daycares and/or make all such considerations regarding raising and educating their child here is simply not credible or in line with [mother's] manner of making life decisions." (Decision at 3-4.) Subsequently the trial court stated: "[t]he [mother] is not credible in her testimony that she did not fully agree to the choice for the parties to purchase their home in Dublin and to raise their son there or in her (now) criticism of [father's] long work commute." (Decision at 12.)

{¶ 23} Despite the fact that mother believes it is in M.B.'s best interest for father to move to San Diego, a vocational expert hired by mother testified that although father could find a reasonable job opportunity, there would be a loss of benefits and specialization. The best fit for his experience and qualifications were at Edwards Air Force Base, approximately three hours outside San Diego. In that situation, father would still be exercising long-distance parenting.

{¶ 24} The trial court found the parties could not cooperate and make joint decisions because mother refuses to communicate with father other than through the My Family Wizard app. Prior to trial, the parties were only communicating via e-mail or text messages. Mother would not answer father's telephone calls.

{¶ 25} The trial court found that father is the parent most cognizant of M.B.'s need to share love, affection, and contact with the other parent. Father testified he focuses M.B. for his SKYPE calls with mother and prepares him emotionally and physically for the exchanges between the households. Mother argues the SKYPE recordings that father made

without her knowledge should not have been shown at trial. However, mother failed to object at trial. *In Dillon v. Waller*, 10th Dist. No. 95APE05-622 (Dec. 26, 1995), this court stated: "[a]lleged errors which arise during the course of a trial, which are not brought to the attention of the court by objection or otherwise, are waived and may not be raised upon appeal." *Dillon citing Stores Realty Co. v. Cleveland*, 41 Ohio St.2d 41, 43 (1975). Moreover, the videotapes were not the only evidence that was a basis for the trial court's decision.

{¶ 26} The trial court found that "it is hard to imagine that [mother's] overt dislike and distancing from [father] does not (even if unconsciously) spill over to [M.B.]. While this trier of fact has tried countless high conflict divorces and custody disputes, the visceral anger and negative reaction of [mother's] body language and voice inflection when talking about [father] stands out as memorable." (Decision at 14.) The trial court noted that mother did not include father as a contact when she enrolled M.B. in daycare in San Diego. Further, the trial court found father credible when he testified that mother's actions during exchanges with M.B. indicates she does not emotionally prepare him for transitioning to his father. *Pallone* at ¶ 26. Such determinations of credibility and the weight to be given to the evidence are for the trial court. *Bechtol v. Bechtol*, 49 Ohio St.3d 21, 23 (1990), syllabus corrected, 51 Ohio St.3d 701 (1990). The trial court as the factfinder may choose to believe or disbelieve any witness, and "court is free to accept or reject, in whole or in part, the testimony or opinions of any witness, whether accepted as an expert or not and determine the weight and credibility to be given thereto." *Pallone* at , ¶ 26 quoting *Jackson v. Jackson*, 5th Dist. No. 03-

CA-17, 2004-Ohio-816, ¶ 21, citing *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. "On the trial of a case, either civil or criminal, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *DeHass* at paragraph one of the syllabus.

{¶ 27} Regarding whether there is a history or potential for abuse, the trial court acknowledged these parties admitted they argued frequently. Several times the arguments escalated and there was mutual inappropriate verbal and inappropriate physical contact. On one occasion, father kicked mother and broke her tailbone. The trial court found it notable that father is able to demonstrate self-awareness and is regretful for his actions and failings during the marriage but there is no sense of that from mother.

{¶ 28} The trial court found the geographic distance between the parties and their inability to make joint decisions make shared parenting an unworkable plan in this case.

{¶ 29} The GAL recommended the current 30-day on/ 30-day off parenting schedule continue until M.B. enters kindergarten and father be named residential parent and legal custodian and then mother's summer parenting time be extended to two full months. During trial, the GAL was specifically asked if mother had stayed and father had moved, whether the GAL would recommend mother as the legal custodian. The GAL responded: "[i]f all the other facts worked the same way, yes." However, he clarified that the distinction for him was not that one party had moved but, rather, "it's about the impact of one parent moving 2,300 miles away on the relationship of the child with the other parent. It's a subtle, but, to

me, a very significant difference." (Tr. Vol. VI at 1008.) Mother argued the GAL did not do a thorough job in this case. The GAL conducted an investigation, visited each home, interviewed family members, issued a report and attended trial, including participating and testifying at trial, subject to cross-examination. The trial judge, as trier of fact, was entitled to believe or disbelieve the GAL's testimony and to consider it in the context of all the evidence before the court. In its role as fact finder, a trial court may choose to believe or disbelieve any witness. *H.R. v. L.R.*, 181 Ohio App.3d 837, 2009-Ohio-665, ¶ 15 (10th Dist.), citing *State v. White*, 118 Ohio St.3d 12, 2008-Ohio-1623, ¶ 71. Mother has failed to point to any particular finding that is unreasonable or otherwise unsupported by the evidence because of improper reliance on the testimony of the GAL.

{¶ 30} When examining M.B.'s, mother's and father's available time, the trial court acknowledged that father lives in Dublin and works in Dayton, therefore, he commutes every day for work, but he does have some ability to adjust his start and stop times to be available for M.B. Mother has more flexibility regarding her schedule and is within walking distance of M.B.'s preschool and is in close proximity of the other schools.

{¶ 31} The trial court found that R.C. 3109.051(D)(8), (14), and (15) were not applicable factors.

{¶ 32} When considering any other factor in the best interest of the child, the trial court considered that both parties made financial arguments regarding which location was better. Each party believed his/her employment was a bigger priority over the other party's employment. The trial court determined that mother's decision to accept

employment across the country from father was a decision made in her best interest, not M.B.'s best interest. However, the trial court stated that this decision/factor should not be viewed as the "only or even as the deciding factor, as there are other factors, including but not limited to the parties' psychological evaluations and as otherwise noted herein which support this Court's final determination of [M.B.'s] best interest." (Decision at 17.) The trial court did not find credible that mother was unable to find employment in the central Ohio area, especially since she had a job offer in Dayton at the time she accepted the job in San Diego. The trial court stated: "[d]espite her arguments to the contrary, while perhaps not as 'perfect fit' as her current employment or as desired of career path it pushes credibility that this intelligent, hard-working, ambitious individual could not have found sustainable employment in the Central Ohio area if she had really wanted to." (Emphasis sic.) (Decision at 5.)

{¶ 33} Given the thorough examination of the factors, the GAL report and testimony, and the psychologist's report and testimony involved in this case, the trial court did not abuse her discretion in determining what is in M.B.'s best interest. Several times the trial court found mother's testimony not credible. "The choice between credible witnesses and their conflicting testimony rests solely with the finder of fact, and an appellate court may not substitute its own judgment for that of the finder of fact." *Doe v. Vineyard Columbus*, 10th Dist. No. 13AP-599, 2014-Ohio-2617, ¶ 24, quoting *Cuyahoga Metro. Housing Auth. v. Davis*, 197 Ohio App.3d 411, 2011-Ohio-6162, ¶ 33 (8th Dist.).

{¶ 34} The trial court made a well-reasoned decision with respect to the custody of M.B. based on

the testimony and evidence produced at trial. The trial court specifically stated that it "carefully observed each witness's demeanor, gestures, and voice inflections during his/her testimony in determining the credibility of and weighing the testimony and evidence presented." (Decision at 3.) The court noted the difficulty it faced in formulating a reasonable parenting plan because of the distance between the parties. In making its custody order, the court relied on the best interest factors contained in R.C. 3109.04 and 3109.051. The court concluded and was well within its discretion that it was in M.B.'s best interest for father to be residential parent and legal custodian. There is no indication the trial court placed a burden on mother to demonstrate the necessity of moving or placed unfairly prejudicial weight on her decision to live out of state. While mother disagrees with the trial court's determination, we have reviewed the record and cannot say the trial court's decision constitutes an abuse of discretion. Mother's first and second assignments of error are overruled.

{¶ 35} Accordingly, we overrule mother's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

KLATT and DORRIAN, JJ., concur.

APPENDIX B

IN THE FRANKLIN COUNTY, OHIO, COURT
OF COMMON PLEAS DIVISION OF DOMESTIC
RELATIONS AND JUVENILE BRANCH

CATALIN S. BADESCU,
Plaintiff, No. 16DR-06-2436

v. **Judge Elizabeth Gill
Magistrate Knisley**

**VERONICA V. BADESCU,
Defendant.**

DECISION AND JUDGMENT ENTRY
DECREE OF DIVORCE

I. RELEVANT PROCEDURAL HISTORY AND BACKGROUND

This cause came on to be heard on August 15, 16, 17, 21, 22, 23 and 24, 2018 on the Plaintiffs Complaint for Divorce filed on June 20, 2016 and the Defendant's Answer and Counter-Claim for Divorce filed on July 7, 2016.

The Plaintiff was present throughout the trial and represented by Jacqueline Kemp, Esq. The Defendant

was present throughout the trial and represented Karen Ball, Esq. The Guardian ad Litem, Ralph Silvestri, Esq. was present on behalf of the minor child.

Brooke Ketner Farthing, James Murphy, Theresa Donnley, Matthew King, Veronica Badescu, Catalin Stefan Badescu, Monica Zins, D. L., Crystal Leukart, C. F. B.-Q., Kathleen Young, and A. B. testified. Initial testimony was elicited from C. C., however, due to the witness' schedule and technical difficulties the testimony was not concluded and there was no opportunity for cross examination. Therefore, his testimony will be stricken.

On or about April 13, 2018 and August 30, 2018 the parties entered into partial Divorce Settlement Memorandums the terms of which are being incorporated herein. Stipulated Jt.

Exhibit IA was admitted into evidence. Plaintiffs Exhibits 1-16, 19, 23-26 and 28 (A) and 28(8) were admitted into the record. Defendant's Exhibit A -G (including all subparts), H(l)(3)(5-9a)(13-14), 1(2)1(3), J-M (including all subparts), N(l)-(3) and N(5), O-R (including all subparts), U(l-3), W, and Aa were admitted into the record. Guardian ad Litem's Exhibit I was admitted into the record.

After full consideration the Court hereby determines the following:

II. FINDINGS OF FACT

A. GENERAL FACTS

1. Prior to the filing of the Complaint and Counter-claim, both parties were bona fide

residents of the State of Ohio for 6 months and were a resident of Franklin County for 90 days.

2. The parties were married on March 27, 2010.
3. One son was born as issue of the marriage, M.B. whose date of birth is 2015.¹
4. The Defendant is not currently pregnant and has not had or adopted any other children during the parties' separation.
5. Neither party is currently in a federal bankruptcy proceeding.
6. Neither party is an active member of the United States Armed Forces.
7. The parties stipulated that they are incompatible.
8. The Court has jurisdiction of the parties and the subject matter.

B. DATES OF MARRIAGE

The dates of the marriage are from March 27, 2010

¹ The name and exact date of birth date of the minor child M.B. are redacted herein pursuant to Rule 34.6 and Federal Rule of Civil Procedure 5.2. Additional redaction has also been applied to irrelevant material and to other personal information.

through August 15, 2018.

C. BRIEF HISTORY AND RELATIVE FACTS

It is not unusual for contested divorce cases to be fraught with "he said she said" conflicting testimony. In the end, it is the Court's responsibility to sift through the body of testimony and evidence presented to endeavor to get to the truth of the matter in attempting to determine an allocation of parental rights and responsibilities in the best interest of the minor child. It is never easy and there is often some sense for this trier of fact, that, "the truth lies somewhere in the middle." In the instant case, the Court has thoughtfully reviewed the entire court file, all pleadings, affidavits and depositions filed in this matter during the course of this litigation, the reports of the Guardian ad Litem, and the testimony/evidence presented at trial herein. The Court has carefully observed each witness's demeanor, gestures, and voice inflections during his/her testimony in determining the credibility of and weighing the testimony and evidence presented. Following herein is a summary of some of the important facts, events and testimony which were considered in reaching a final determination in this matter. The omission of a specific finding as to every piece of evidence or testimony presented does not and should not suggest that this trier of fact did not consider such testimony, fact and/or evidence in arriving at the ultimate decision.

The history of this family has been outlined in both the Report of the Guardian ad Litem and Dr. Lowenstein's Psychological Evaluation. The

testimony and evidence at trial was fairly consistent with the findings of this Court and therefore will not be repeated in detail herein.

The parties met when both were working and living in the Washington DC area. They moved in together in September 2009 and lived in Alexandria, Virginia. As stated above, they were married on March 27, 2010. Both parties were employed at the time and seriously pursuing their respective careers. By agreement of the parties both parties gave up their respective positions and they relocated to Centerville, Ohio (the Dayton Ohio area) when the Plaintiff obtained a position at Wright-Patterson Air Force Base in Dayton, OH in 2011. After relocating to Ohio, the Defendant decided to further her education in the pursuit of a combined Masters/Ph.D program at the Ohio State University. At that time, the Plaintiff encouraged Defendant to consider continuing her education in Dayton for ease of travel and proximity to potential employers. When Defendant insisted on enrolling at the Ohio State University in Columbus, the parties moved to the far west side of Franklin County, Ohio to facilitate each party's respective commute - Plaintiffs commute to Dayton and Defendant's commute to Columbus. Ultimately, the Plaintiff did not earn her Ph.d as she did not complete the program, but did obtain her Masters (her second). (Defendant contends this was due to lack of adequate funding. Plaintiff contends that Defendant's personality had more to do with the change of plans.) Shortly before their child, M.B. was born, the parties purchased a home in Dublin Ohio. Both parties provided detail versions of the decision making, events and thought processes that occurred in their joint decision to purchase this home. Tt is

clear that Defendant never liked living in Ohio. She also preferred the idea of staying in the apartment or buying a condominium as opposed to purchasing a stand-alone home. Defendant disputes Plaintiffs contention that the neighborhood and suburb were chosen after the parties did research on the Dublin Ohio area. However, having reviewed the evidence and listened to the testimony of both parties and their witnesses, the Court finds that Plaintiff's rendition of the facts which lead up to the move from Centerville to Franklin County and ultimately to Dublin, Ohio are more credible. These parties are extremely intelligent and intensely thoughtful individuals who clearly value education and as such, Defendant's contention that she did not fully consent to Plaintiffs desire to purchase this home and that she/they did not significantly investigate the neighborhood, surrounding daycares and/or make all such considerations regarding raising and educating their child here is simply not credible or in line with the Defendant's manner of making life decisions.

Defendant is credible that she felt overwhelmed and extremely stressed by the extended visits of her mother and the Plaintiffs mother immediately following M.B.'s birth. It is also credible that she felt (and still feels) angry that Plaintiff had allowed for these extended in-home grandparent stays despite her expressed desire for that not to happen. Further, although the parties specifically planned to conceive M.B. and attended parenting classes together there was considerable difference in opinion as to how to take care of M.B. after he was born. Both parties were excited to be parents. Although she admits that Plaintiff helped care for M.B. "when he was home," Defendant felt that Plaintiff was absent

much of the time due to work. While the parenting roles certainly were defined on the realities that the Plaintiff was employed full time and Defendant was not, the facts do not indicate the Plaintiff worked excessively and/or was not an active engaged parent when he was not working. At the time of M.B.'s birth the Plaintiff held a contract position and did not have significant leave time. (He is now a permanent employee). Defendant admits that Plaintiff changed M.B.'s diapers, fed him, held him to comfort him, spent time playing with him and took him on walks. At times even though she was not working Defendant would have M.B. in daycare when she needed to go to appointments or interviews. Importantly, Plaintiff is credible in his testimony as to the conflicts which arose between the parents about child rearing and other parenting issues and Defendant's behaviors and actions regarding same. For example, much conflict arose from Defendant's insistence on room sharing with M.B., Defendant's support of "co-sleeping" and Defendant's insistence on breastfeeding for all feedings despite Plaintiff's suggestion that night feedings did not need to be so which would allow Plaintiff to assist and participate while allowing Defendant to get a good night's sleep.

Defendant was not employed from 2011 until 2016 (except for the research assistance position while pursuing her Ph.D). Defendant began seeking employment after Matai was born. It was very important to Defendant that she be given the same opportunity as the Plaintiff to have a career and to earn 'at least' \$85,000. There is much contention and disputed evidence about the unique qualifications of various Engineering degrees and whether or not the Defendant could find employment in her field in the

Central Ohio area. At the time, Plaintiff was aware that Defendant was conducting a nationwide search but strongly encouraged her to look in the Dayton/Columbus area. Plaintiff actively attempted to assist Defendant in obtaining employment in the local area. Defendant had strong negative feelings about Plaintiff's assistance and has expressed concern about nepotism. Despite this, Defendant insists that she followed up with Plaintiffs leads. In April 2016, Defendant received a written offer for employment with SRC in Dayton which would have paid her over \$70,000 per year. Plaintiff did not know that Defendant had applied for her current position at Spawar in San Diego California until Defendant told him that she had received the offer in April 2016. Ultimately, she accepted this position in what Defendant passionately describes as her dream career. Defendant accepted this position without advising Plaintiff of her intent to do so.

Despite her arguments to the contrary, while perhaps not as "perfect fit" as her current employment or as desired of career path it pushes credibility that this intelligent, hard-working, ambitious individual could not have found sustainable employment in the Central Ohio area *if* she had really wanted to. Defendant is adamant that she is entitled to pursue a career in her specific area of expertise and to move where she wishes. Moreover, she has made it clear that although she has only worked in this position for two years, that she has no intentions of leaving this employment *even if* M.B. lives primarily in Ohio.

There is also much contention as to whether the

Plaintiff could transfer and/or obtain employment in California. When Defendant told him that she was going to take the job and move, the Plaintiff researched and considered employment opportunities in San Diego. Certainly, Plaintiff has spent much time vesting and earning seniority in his current position which would be lost if he changed jobs. It is also clear that Plaintiff is very satisfied with his current career which matches his specific area of expertise. However, it pushes credibility that this intelligent, hard-working, ambitious individual could not find sustainable employment in the San Diego area if he *really* wanted to. In fact, the Plaintiff has stated that he will likely give up his career and find alternative employment *if* M.B. lives primarily in California. Defendant is stringent in her position that she should be *entitled* to pursue the career of her choosing *especially* since the Plaintiff has been able to do so and that M.B.'s best interests are served because she is happier, she is more financially able to provide for her son and would have the support of her family who also lives on the west coast. With such rationalization she states with certainty that therefore, her move across country should not be "held against" her in M.B.'s custodial determination. On the other hand, Plaintiff also does not wish to give up his established career here in Ohio as it appears unlikely that he could find equivalent career and would lose the benefits of seniority, the accompanying income and a home/neighborhood that he believes provides for M.B.'s best interest. Certainly, both parties have the right to pursue their career and to live where they want to and both have the right to put forward their best interest arguments as to what allocation of parental rights is in Mate's best interest.

Pursuant to RC §3109.03, "When husband and wife are living separate and apart from each other, or are divorced, and the question as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children is brought before a court of competent jurisdiction, they shall stand upon an equality as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved." Pursuant to RC §3109.05.1 (D) "In determining whether to grant parenting time to a parent....and determining other parenting time matters....the court shall consider all of the following factors:" including "(14) Whether *either* parent has established a residenceoutside this state." (Emphasis added). In its decision herein, the Court has considered and addressed *all* statutory factors and has balanced all in making a determination as to M.B.'s best interest.

After the Defendant decided to move to California, the parties attempted to mediate where M.B. would live. However, because Defendant's *only* option was that M.B. move to California, the parties considered options and scenarios if the Plaintiff acquiesced in the move. The parties also contest whether the Plaintiff at some point (after the Defendant had accepted the position) agreed to M.B.'s permanent move to San Diego. Plaintiff admits that he agreed on an interim basis because M.B. was still breast feeding and he had to travel on the death of his grandfather in July 2016. He also admits to exploring the idea of his own move. However, it is important to note that during those negotiations, Defendant never wavered on her intent to move, had already accepted

employment and decided that her career move was not contingent on the assuredness that M.B. would be allowed to move with her. Plaintiff never consented to M.B.'s permanent move to California and Plaintiffs filing for divorce after in proximity to the parties' unsuccessful mediation is indicative of his disagreement with a permanent move.

The allocation of parental rights and responsibilities have been the central point of the litigation. "Long distant" parenting cases are some of the toughest that this Court must decide. When parents do not live in close proximity to each other, the quality and quantity of the child's relationship with one of his/her parents is likely to be greatly affected. Even after years of practice, this trier of fact has not lost the sense of the immense responsibility in determining what living and parenting arrangement has the best opportunity of providing for the best opportunity for the child to have a quality relationship with each parent despite the distance and what arrangement is in the overall best interest of the child. The Court is directed in its determination in considering the factors enumerated in 3109.04 and 3109.051 as enumerated in more detail below.

D. ASSETS AND LIABILITIES

In the Divorce Settlement Memorandums filed April 13 and August 30, 2018, which have been filed with the Court the parties agreed to a property division and waived his and her rights to written findings of fact pursuant to ORC §3105.171.

E. SPOUSAL SUPPORT: R.C. §3105.1S(C)(1)

In the Divorce Settlement Memorandum filed August 30, 2018, which has been filed with the Court, the parties agreed that neither party would pay spousal support to the other.

F. ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES AND CUSTODY R.C. 3109.04(F)(1) and R.C. 3109.051

In determining the best interest of a child pursuant to this section, whether on an original decree allocating and 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... In determining whether to grant parenting time to a parent... in establishing a specific parenting time or visitation schedule, and in determining other parenting time matters. the court shall consider all of the following factors.

1. The wishes of the child's parents regarding the child's care. (R.C. §3109.04(F)(1)(a) and RC 3109.051(D)(15)).

Plaintiff wants M.B. to reside with him in Ohio. Plaintiff wishes Defendant would move back to Ohio. Plaintiff believes that M.B.'s best interests are served if the parties can make joint decisions. Although he detailed a proposed allocation of parental rights and responsibilities in "the Father's Proposed Joint Shared Parenting Plan" which has been identified as

Exhibit 26, he requested at trial that he be named legal custodian and residential parent of the minor child. In any event, he wishes for Defendant to exercise parenting time pursuant to Franklin County Local Rule 27.1, long distance parenting. He is open to the Defendant having additional parenting time here in Ohio but would like the long- distance schedule to start sooner rather than later in sufficient time for M.B. to be fully prepared for kindergarten. Plaintiff would like 15 to 30 minutes of quality SKYPE calls, 3 times a week between M.B. and his non-residential parent.

Defendant wants M.B. to reside with her in San Diego. Defendant wishes for the Plaintiff to move to California. She details her exact wishes in "Defendant's Proposed Parenting Plan" which has been identified as Exhibit W. For so long as the parents reside a 'significant' distance from each other, she requests that she be named legal custodian and residential parent. In the event Plaintiff relocates to within 5-15 miles of her residence, she proposes that they both be designated as residential parents and legal custodians and that the parents proceed with "parallel parenting" in which each parent can exercise his and her rights and responsibilities associated with custody, independently from one another. Under such an arrangement, each parent may make decisions (subject to a responsibility to secure input from the other) regarding the day-to-day care and control of the child while the child is residing with that parent. As part of this process she requests that the parties be required to do all communication through My Family Wizard (MFW). In addition, the Defendant requests the involvement of a parent coordinator to

resolve any unagreed issues requiring 'mutual" decision making. Defendant proposes that the current temporary arrangement of month on month off basis continue until M.B. is enrolled in Kindergarten which is scheduled to be the fall of 2020. After enrollment in Kindergarten, the Plaintiff would have the option of parenting time during the school year in San Diego twice per month and for the entire summer break (except with Defendant having some periods of time). In the event Plaintiff relocates within 5 to 15 miles of her parenting time would be equal.

2. The wishes of the child.
(R.C.§3109.04(F)(l)(b)) and (R.C.§3109.05l(D)(6)).

M.B. is only three years old and not mature enough to express his wishes.

3. 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.
(R.C.§3109.04(F)(l)(c)) and (R.C.§3109.05.l(D)(l)).

By all accounts, M.B. is well bonded with both of his parents. He uses the Romanian "Tata" for Father and "Boon" and "Boona" for his paternal grandparents. He has significant relationships with his extended family on both sides. Even though they do not live in the same city or country as the Plaintiff or Defendant, M.B.'s maternal and paternal grandparents have assisted with his day to day care and upbringing both before the parties separated and certainly since the parties separated. Both sets of

grandparents have traveled from their homes and stayed for extended periods of time with M.B.. Since the parties' separation, the paternal grandparents alternate 6 months of the year with Plaintiff and M.B. and Maternal grandparents spent significant time in San Diego with Defendant and M.B., especially before he was able to be enrolled in the San Diego daycare when his maternal grandmother would come every month he was there.

Defendant's family originates from the Philippines and she has Aunts and Uncles and (very) extended family in the San Diego/Southern California area. Her parents and her siblings live in Seattle, Washington. Plaintiff's sister is currently living in Laos but has established a relationship with M.B. through SKYPE.

Both parents would like to take M.B. to visit the country of their origin.

4. The child's adjustment to the child's home, school, and community. (R.C.§3109.04(F)(l)(d)) and (R.C.§3109.05l(D)(5)).

M.B. was born while his parents resided together in Dublin, Ohio. He came home from the hospital to the home in Dublin, Ohio that his parents purchased together when they were pregnant and in which father continues to live. He is very adjusted to his home, his daycare and his neighborhood. The neighborhood is in a cul-de-sac and the neighbors are socially close including many children with whom M.B. associates with on a daily basis. Some of the

children in his neighborhood go to his same daycare, the Gardner school. The school has a pre-k and kindergarten program and children go from there into the Dublin and Hilliard schools. M.B. is expected to matriculate into the Dublin schools with children he knows from the neighborhood and his school. Plaintiff expects to maintain this as his home and has no plans on moving until M.B. is through high school.

M.B. has been involved in drama classes, dance classes and music classes while here in Dublin, Ohio. Plaintiff tries to keep M.B. on a schedule. He limits his time on electronics and spends time bike riding, going to the splash park, the Franklin Park Conservatory and COSI. There is a park right behind his house. He makes sure he has a routine, gets his naps, plays games and reads to him in the evening. At his father's home he goes to bed at 8:30 p.m. or 9:00 p.m. (after he SKYPEs with the Defendant) and wakes up at 6:30 a.m. Either his father or his grandfather take M.B. to school. Plaintiff's seniority has provided him with significant amount of days off plus 10 holidays. He has some flexibility to work remotely.

M.B. has spent equal time between his mother and father's home on an approximate 30 day on and off basis since July 2016. As a result, he is now also adjusted to his mother's home and the pre-school she enrolled him into in San Diego. Although she reported some separation anxiety initially, Defendant does not notice any transition issues at this time and his San Diego pre-school reports that he is adjusting well. Defendant lives in a gated community, with two pools where M.B. also has his own room. They have a

pet dog. M.B. loves to go to the beach, to play with his dog, play in the yard and to watch the parrots. Defendant and M.B. read together and play hide and seek. Defendant takes him to Balboa Park, the amusement park, the neighboring wild life preserve, the petting zoo and to get ice cream. Defendant has also worked to establish friendships and relationships for M.B. in California although few if any of these are in the immediate neighborhood. Although she is renting, Defendant testified that she intends to reside in her apartment unless she determines that it is best for her to purchase a condominium in the local area. Defendant's schedule is more flexible than Plaintiffs and she works 5 days one week and 4 days the next.

Both homes are appropriate and adequate for raising M.B.. In addition, both parent's neighborhoods provide M.B. with wonderful opportunities, excellent infrastructures and high quality of life such as parks and recreation, good school systems and extracurricular activities. Not surprisingly both parents are focused on the importance of M.B. obtaining a good education. Each consciously provides him with educational tools. Each parent provided supporting evidence and testimony to support his and her position that M.B. living in Ohio or California is in his best interest. Defendant's presentation is notable as it is evident that in Defendant's mind, California living and the opportunities it avails is far superior than life in Ohio could provide for M.B.. In fact, both parties' residences have positives that support their contentions and that would support M.B.'s best interest. For example, Defendant works in close proximity to M.B.'s daycare and future schools allowing her to use her work flexibility if necessary

for ease of access. Furthermore, the schools in California provide for some flexibility when it comes to M.B. visiting across country and continuity of educational experience. The Plaintiff's home is more familiar to M.B. and is filled with neighbors and children M.B.'s age that he has known his entire life.

There are no concerns about either parent's ability to provide for M.B.'s basic needs. In fact, both parents appear to excel in that regard.

Although M.B. appears to have adjusted to the month on month off long distance schedule and currently transitions fairly easily between his daycares, there is a concern for educational continuity as the day care curriculum starts to focus more on pre-k preparation. At the present time, Plaintiff relates M.B. needs some time to "catch up" when he comes back to Ohio and he has noticed that the time difference leads to adjustments in sleep schedule. Although there are no apparent concerns from either daycare at this time, the Director of the Gardner school expressed concern that the upcoming curriculum would be harder for M.B. to navigate on a 30 day on 30 day off basis, especially as he gets ready to matriculate into kindergarten.

5. The mental and physical health of all persons involved in the situation. (R.C. §3109.04(F)(1)(e)) and (R.C. §3109.051(O)(9)).

Both parents enjoy good physical health. M.B. also is a healthy child.

Both parties expressed concern about the other parent's mental health and emotional stabilities. Dr. David M. Lowenstein conducted psychological evaluations on the parties. While neither party's evaluation is remarkable for mental illness or personality disorder rendering either as unsuitable to parent M.B., the underlying test results and Dr. Lowenstein's findings are significantly consistent with this trier of facts observation of each party and their interpersonal interactions during the course of the trial and the testimony and evidence presented. Therefore, these findings need not be repeated in total here - but have been considered. In making the very difficult decision as to which parent is to be M.B.'s legal custodian, the Court has carefully considered each party's evaluations, especially their personality profiles and tendencies in an effort to determine which parent is more likely to consistently put M.B.'s best interests first and to give the best opportunity for both parents to be significantly involved in his ongoing upbringing.

Plaintiff's score on the MMPI-2 parent-child interaction potentials is notable.

"The depth or Stefan's parent-to-child bonding appears adequate to reasonably good. His measures indicate that he can provide stable bonding and stable bonding should protect the interests of his son over time with his love and caring being seen as (sic) dependable.

Stefan's scores also do not suggest any particular tendency to dichotomized (sic) people as (sic) either being for him or against him. He is not likely to be especially sensitive as to whether his son's comments

are for or against himself or Veronica. That is, Stefan may prefer comments favoring himself, but he would not be unduly quick to jump to the conclusion that positive comments about the other parent reflected that parent's efforts to alienate their son from him." Page 9.

Defendant's score on the MMPI-2 parent-child interaction potentials is notable.

"The depth of Veronica's parent-to-child bonding appears likely to be mostly adequate but sometimes uneven. Observed occasions of positive parent-child interactions are not a guarantee of unconditional parental love as an affection hungry child can be quite responsive to more than usually received care and attention. At other time, Veronica's personal interests may have overridden the interests of her son. Any identifiable past occasion when M.B.'s attachment might have been dampened or to a degree turned off in response to less than then-needed nurturance and protection or possibly some underlying degree of indifference to her son's welfare would merit careful consideration. Such "turning off" moments can have adverse effects on her son's long-term capacity to sustain stable interpersonal bonds. This estimation of Veronica's capacity for bonding may need a more careful evaluation because of her tendency to underreport troubling emotions and possibly unsocial attitudes.

Veronica's scores do indicate a mild tendency to see someone or various others as being for her or against her. Thus, she may be sensitive to her son's comments that favor his father over her. This in turn

might lead to a perception that her former spouse was attempting to turn their son against her. Any efforts to counter this would then tend to have alienating effects against the other parent. In summary, if there were any alienating efforts on her part, they are likely to derive from sincere perceptions (whether accurate or not) that the biasing actions of the other spouse needed to be counterbalanced." Pages 15-16.

As federal employees, both parties have been subjected to extensive background checks.

6. The parent more likely to honor and facilitate and re-schedule court- approved parenting time rights or visitation and companionship rights. (R.C.§3109.04(F)(l)(f)) and (R.C.§3109.051(D)(10)).

Overall both parties have honored the court approved parenting time. Plaintiff complains, and validly so, that Defendant does not give her best effort to facilitate M.B.'s and Plaintiff's SKYPE contact when M.B. is with her in California. This is in stark contrast to Plaintiff who thoughtfully plans out and works hard to assure the Defendant's SKYPE calls with M.B. are as focused and enjoyable as possible for both M.B. and the Defendant given his tender age.

7. 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

the parent is an obligor (R.C. §3109.04(F)(l)(g)).

Not a factor.

8. 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 (domestic violence) 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. (R.C. §3109.04(F)(l)(h)) and

(R.C.§3109.05.1(D)(11) and (12)).

Not a factor.

9. 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. (R.C.§3109.04(F)(1)(i)) and (R.C.§3109.051(D)(13)).

Not a factor.

10. Whether either parent has established a residence or is planning to establish a residence outside this state. (R.C.§3109.04(F)(1)(j) and RC 109.05.01(D)(14)),

Defendant has established a residence in San Diego California and has no intention of moving back to Ohio under any circumstances. Plaintiff remains in lht: marital home in Dublin, Ohio. The Defendant is not credible in her testimony that she did not fully agree to the choice for the parties to purchase their home in Dublin and to raise their son there or in her (now) criticism of Plaintiffs long work commute. Plaintiff has testified that it his intention and desire to remain living in his current home until M.B. gets through high school and that he believes this is in M.B.'s best interest. He has said that although he does not want to and that he believes it will negatively affect his career, he will move to San Diego to be closer to M.B. if the Defendant is named residential parent. Defendant testified that she

believes it is in M.B.'s best interest for Plaintiff to move to San Diego. Kathleen Young a vocational expert hired by the Defendant testified. Although she had not interviewed or interacted with the Plaintiff, Ms. Young testified that in her expert opinion there would be a reasonable opportunity for the Plaintiff to obtain a job in California albeit not without some sacrifice of benefits and/or specialization. She acknowledged that any possibilities may be further limited due to age discrimination as the Plaintiff approaches his mid-50s. She admitted the best fit for his experience and qualifications were outside the San Diego area and that Edwards Airforce Base is approximately 3 hours outside of San Diego. Under such terms, the Plaintiff would still be exercising long distance parenting.

In determining whether shared parenting is in the best interest of the children, the court shall consider all relevant factors including, but not limited to, the factors enumerated in division (F)(l) of this section, the factors enumerated in section RC §3119.23 [deviation from Ohio Child Support Guidelines] of the Revised Code, and all of the following factors:

11. The ability of the parents to cooperate and make decisions jointly with respect to the child. (R.C. §3109.04(F)(2)(a)).

Both parents are and have been very deliberate in the raising of their child. The parents took parenting classes together before M.B. was born. Both parents bring with them their own cultural background under the direct influence of their own respective parents who have been very hands on in helping each to raise

M.B. When the parties were an intact family, Defendant took on many of the primary responsibilities for M.B. including researching options for M.B. such as doctor and daycare arrangements. She would provide the information to the Plaintiff and they would discuss and attempt to make mutual joint decisions. However, it is evident that there was not a lot of "mutual" parenting going on in the short time that the parties resided together after M.B. was born. As noted above, Defendant was very upset that the Plaintiff allowed his and her family to come after M.B.'s birth against her expressed wishes. Defendant decided on a course of action for caring for M.B. which to an extent excluded the Plaintiff. Defendant did not feel supported by the Plaintiff. Plaintiff felt alienated by Defendant. The parties argued often over parenting techniques. Importantly, it is readily apparent that any ability to cooperate in joint decision making has been completely eroded throughout this litigation process. At this point in time the parties communicate only through email or text (at Defendant's insistence). Defendant wishes to further distance herself from the Plaintiff and requests that all communication be through My Family Wizard. Defendant will not answer the telephone if Plaintiff calls. Plaintiff has consistently demonstrated his willingness to attempt to communicate and to make joint decisions. Although Plaintiff remains willing to continue to make efforts to communicate to make joint decisions and optimistic that they will be able to do so, Defendant remains set against it and refuses to make any effort. Defendant does not believe the parties can make joint decisions. Defendant's stance on her lack of willingness to make joint decisions is evidenced as outlined in detail in her proposed parenting plan.

12. The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent. (R.C.§3109.04(F)(2)(b)).

Overall the evidence suggests that Plaintiff is the parent most cognizant of M.B.'s need to share love, affection and contact with the other parent. While there is certainly no loss of love from Plaintiff to Defendant, Plaintiff overtly encourages a relationship between Defendant and M.B.. He focuses him in for quality SKYPE conversations with his mother. He deliberately prepares him emotionally and physically for the exchanges between their households in a positive way. He keeps a picture of mother in M.B.'s room. He has helped M.B. prepare Valentine's for his mother and makes sure he says Happy Mother's Day. On the other hand, it is hard to imagine that Defendant's overt dislike and distancing from Plaintiff does not (even if unconsciously) spill over to M.B. While this trier of fact has tried countless high conflict divorces and custody disputes, the visceral anger and negative reaction of Defendant's body language and voice inflection when talking about the Plaintiff stands out as memorable. The Defendant did not include the Plaintiff as a contact when she enrolled M.B. in daycare in San Diego. Plaintiff credibly reports that Defendant's actions during the exchange of M.B. do not indicate that she has attempted to emotionally prepare him for transitioning to his father. One cannot help but feel for this little boy to have two parents that so clearly do not like each other and who, in fact, cannot stand to be in the same room together.

13. Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping. (R.C.§3109.04(F)(1)(c) and RC 3109.051(D)(11).

The interaction of the parties' personalities resulted in a mutually abusive relationship. The parties argued often. The evidence is credible that there was mutual inappropriate verbal exchanges and inappropriate physical contact during their arguments. As is consistent with her psychological testing, the Defendant reacted poorly to the Plaintiff and says she felt abused by what she perceived as his constant criticism of her and disparate parenting styles. There are credible instances where the Defendant physically struck, kicked or slapped the Plaintiff. Likewise, on Plaintiffs part. On one occasion, the Plaintiff kicked the Defendant in a manner which likely broke her tailbone. It is notable to this trier of fact that in the reflections on their relationship, the Plaintiff is able to demonstrate some self-awareness and is regretful for his actions and failings during the marriage. There is no sense of the same from the Defendant.

Neither party has ever been charged with child abuse, spousal abuse or other domestic violence or parental kidnapping.

14. The geographic proximity of the parents to each other as the proximity relates to the practical considerations of shared parenting and parenting time. (R.C.§3109.04(F)(2)(d)) and (R.C.§3109.051(D)(2)).

The geographic distance between these parents in conjunction with their lack of ability to make joint decisions makes the concept of shared parenting for M.B. unworkable.

15. The recommendations of the *Guardian ad Litem* of the child. (R.C. §3109.04(F)(l)(e)).

One of this Court's most experienced and respected Guardian ad Litem was appointed in this matter. The Guardian ad Litem filed his report and recommendations into the record on April 6, 2018. The Court has carefully reviewed and considered the report. In general, the Guardian's observations and assessments of each party and his and her position is in line with this trier of fact's findings and experience with the parties.

The Guardian ad Litem recommends that the current month on month off parenting schedule remain in place until M.B. matriculates into Kindergarten and that thereafter, the Plaintiff be named his residential parent and legal custodian. The Guardian ad Litem participated throughout and testified at the final trial in this matter. At the conclusion of the testimony his recommendation remained as submitted with one modification - to extend the Defendant's summer parenting time from one half the summer to two full months.

16. The child's and parents 'available time, including but not limited to, each parent's

employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule. (R.C. §3109.051(D)(3)).

Plaintiff is employed in Dayton, Ohio approximately 60 minutes' drive time away from his residence and M.B.'s daycare. To some extent, Plaintiff is able to adjust his start and stop time to make himself available to M.B. and has arranged for emergency contacts closer by, if needed.

Defendant is employed by Sparware. This employment provides her flexibility and is in close proximity to M.B.'s daycare and future schools.

17. The age of the child. (R.C. §3109.051(D)(4)).

M.B. is only three years old.

18. The health and safety of the child. (R.C. §3109.051(D)(7)).

M.B. appears to be well cared for by both of his parents. There are no concerns for his physical health and safety when he is in either parent's care. Defendant has raised some concerns as to the Plaintiffs parents' ability to provide for the child's safety, as a result of the language barriers and not having a valid Ohio Drivers' license. Plaintiffs parents are permanent US residents.

Plaintiffs father is or has obtained his Ohio

Drivers' license which should alleviate her concern in that area. Witnesses testified that there can be some difficulties in the language barriers when dealing with Plaintiff's parents they do not seem insurmountable or placing the child in danger when in their care.

19. The amount of time that will be available for the child to spend with siblings. (R.C.§3109.051(D)(8)).

Not a factor.

20. Whether either parent has established a residence or is planning to establish a residence outside this state. (R.C.§3109.051(D)(14)).

See Paragraph 10 above.

21. The in-court expressed wishes of the parents when companionship is requested by a non-parent. (R.C.§3109.051(D)(15)).

Not a factor.

22. Any other factor in the best interest of the child. (R.C.§3109.051(D)(16)).

Both parties make financial arguments. Plaintiff insists that the cost of living in California is higher and therefore does not justify the salary that

Defendant insisted she needed to make. Defendant insists her overall cost of living is less than Plaintiffs. Plaintiff insists it would be easier for Plaintiffs family to travel to California than to Ohio.

Each parent prioritizes his and her employment over the other's. Much time was spent with Plaintiff arguing that Defendant could have found employment in Ohio and Defendant defending her decisions surrounding the move and arguing that the Plaintiff could find employment in California. To be clear, this Court does not find this to be a case where Plaintiff "tricked" Defendant into moving. Defendant accepted the position without informing Plaintiff. To the parties' credit they worked hard to find a mutual agreement to the situation and were unable to do so. These included considerations of Plaintiff also moving to California.

Plaintiff expressed his embarrassment that they were not able to reach a mutual agreement to keep this matter out of contested litigation.

Defendant decided to accept the position and to move before this case was resolved citing concern for another federal hiring freeze. Although it is evident that Plaintiff controlled the family household finances and was very concerned about the parties' budget while the parties were together, this is not a case that Defendant had no access to funds or would have been economically disenfranchised during the course of the divorce, even if she could not have found a job she could of availed herself to the court process in requesting temporary orders of support and/or assistance with living expenses during the pendency of the case. She did not. Her arguments are rooted in her unwavering belief that she is the overall superior

parent for this child. When in reality, both of these parents are good parents, and each has positive characteristics to impart to their son.

After careful and thoughtful assessment of all of the evidence presented, this Court cannot agree that Defendant's decision to accept a position across the country from the child's father (where the parents had made parental decisions to raise their child) placed the child's best interest above her own career ambitions. However, this is not and should not be viewed as the only or even as the deciding factor, as there are other factors, including but not limited to the parties' psychological evaluations and as otherwise noted herein which support this Court's final determination of M.B.'s best interest.

Given both parties' extended families live abroad, it is going to be essential that both have the ability to travel with M.B. to visit their respective families.

23. Shared Parenting and Proposed Shared Parenting Plans.

Both parties filed proposed parenting plans. Plaintiff requested shared parenting in his Complaint and filed a proposed shared parenting plan on August 2, 2018.

Defendant requests to be named legal custodian as long as the parties live: in Ohio/California, however, in the event the Plaintiff relocates closer (undefined) the parties would have "shared legal custody" and both would be named legal custodian residential

parent with "parallel" parenting rights.

Shared parenting is not in M.B.'s best interest.

G. CHILD SUPPORT

1. Incomes of the parties.

Plaintiff is employed through the Defense Finance & ACTG. He currently earns \$[REDACTED] per year.

Defendant is employed through the Department of Defense and is currently earning \$[REDACTED] per year.

2. Relative earning abilities of the parties.

Both parties are employed to the best of their earning abilities.

3. Resident Child Adjustment.

Not a factor.

4. Availability and Cost to maintain the children on health insurance.

Both parties have health, dental and vision insurance available to them at a reasonable cost at

approximately the same rates.

As to Plaintiff: The cost differential for health insurance is \$3,760.90. The cost differential for dental insurance is \$225.42. The cost differential for vision insurance is \$173.68. The total is \$4,160.

As to Defendant: The cost differential for health insurance is \$3,571.88. The cost differential for dental insurance is \$319.02. The cost differential for vision insurance is \$173.68. The total is \$4,064.58.

5. Work related childcare costs.

Each party incurs work related child care costs.

The Plaintiff has M.B. enrolled at the Gardner school where the Plaintiff must pay full time tuition, even though M.B. is gone every thirty days. The Plaintiff moved M.B. from Mango Place daycare that did not require full tuition. The current annual cost of tuition is approximately \$14,976 per year.

The Defendant has M.B. enrolled at the Navy Child and Youth Program at the cost of \$7,540 per year because she does not have to pay when he is not there.

6. Benefits received by the children due to a parent's disability.

Not a factor.

7. Child Support Pursuant to the Ohio Child Support Guidelines.

The Court has prepared the Ohio Child Support Guideline worksheet which is attached as Decision Exhibit 1A.

8. Deviation factors: In considering the appropriate child support obligation in this case the Court has utilized the factors enumerated O.R.C. §3119.23 and has determined that child support pursuant to the Ohio Child Support Guidelines is unjust, inappropriate and not in the best interest of the minor child.

a. Special and unusual needs of the children. R.C. 3119.23(A).

None noted.

b. Extraordinary obligations for minor children or obligations for handicapped children who are not stepchildren and who are not offspring from the marriage or relationship that is the basis of the immediate child support determination. R.C. 3119.23(B).

None noted.

c. Other court-ordered payments. R.C.

3119.23(C).

Each will have daycare while the child is in his/her care. Once M.B. is full time in one place, the legal custodian will bear the entire cost.

Each will pay for his and her own transportation costs and other costs associated with parenting time such as lodging, food etc. to exercise parenting time.

The parties will divide M.B.'s transportation costs 50%-50%.

The parties will divide the child's uninsured health care, dental and vision expenses 50%-50%.

Each party must maintain an Our Family Wizard account.

d. Extended parenting time or extraordinary costs associated with parenting time provided that this division does not authorize and shall not be construed as authorizing any deviation from the schedule and the applicable worksheet, through the line establishing the actual annual obligation, or any escrow, impoundment, or withholding of child support because of a denial of or interference with a right of parenting time granted by court order. R.C. 3119.23(D).

The costs for transportation long distance parenting can range from

\$600 to \$900 per trip while M.B. is spending 30 days on and 30 days off with each parent. In the future, there will be similar expenses and in addition, each parent will incur additional expenses (such as food and housing) in exercising parenting time with M.B. while he is with the other parent. The non-residential parent will likely bear the greater portion of these expenses.

e. The obligor obtaining additional employment after a child support order is issued in order to support a second family. R.C. 3119.23(E).

Not a factor.

f. The financial resources and the earning ability of the child. R.C. 3119.23(F).

Not a factor.

g. Disparity in income between parties or households. R.C. 3119.23(G).

There is disparity in incomes between the parties' households.

h. Benefits that either parent receives from remarriage or sharing living expenses with another person. R.C. 3119.23(H).

Not a factor.

i. The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both of the parents. R.C. 3119.23(I).

Insufficient evidence presented. Plaintiff will be entitled to claim M.B. for income tax purposes which should benefit his tax obligations.

j. Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing. R.C. 3119.23(J).

Insufficient evidence presented. Unless otherwise agreed, each parent shall pay for extracurricular activities, schooling, clothing, lessons and sports equipment while M.B. is in his or her care.

k. The relative financial resources, other assets and resources, and needs of each parent. R.C. 3119.23(K).

Each party's primary financial resource is his and her employment.

l. The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married. R.C. 3119.23(L).

M.B. will enjoy similar standard of livings in each parent's home. Both parties presented estimated budgets.

m. The need and capacity of the child for an education and the educational opportunities that would have been available to the child had the circumstances requiring a court order for support not arisen. R.C. 3119.23(N).

Not a factor.

n. The responsibility of each parent for the support of others. R.C. 3119.23(O).

Not a factor.

o. Any other factor in the best interest of the child. R.C. §3109.05.1(D)(16); any other relevant factor. R.C. 3119.23(P).

None noted.

III. FINAL ORDERS:

IT IS THEREFOR ORDERED ADJUDGED AND DECREED

1. DIVORCE

Each party is granted a divorce from the other.

Each party is relieved from the obligation of the marriage except as otherwise indicated herein.

2. ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES

A. Residential Parent and Legal Custodian: Plaintiff is named residential parent and legal custodian for M.B.

B. Parenting Time: Parenting time shall be as agreed. In the event the parties are unable to agree:

Unless otherwise agreed, pursuant to the temporary orders of this Court which are incorporated herein, the parents' alternate 30-day schedule shall continue uninterrupted through the last day of the last 30-day period exercised by Defendant in calendar year 2019 before December 1, 2019. Thereafter from that date until January 1, 2020, the remaining period of time shall be approximately equally divided between the parties as agreed between the parties to be no longer than a 16-day period with Plaintiff exercising the first block of time. (For example, if Defendant's last day of the last 30-day period exercised by Defendant is November 30, Plaintiff would have until December 15 and Defendant would have from December 15 through December 31). This is to assure that neither parent has the child for more than thirty consecutive days and that Defendant has holiday time with the child before the onset of the 2020 schedule outlined below. The party commencing their parenting time shall travel and pay for all costs of the exchange. If the

transition time occurs on a weekday, the parties shall exchange the child on the weekend day closest to the thirty-day mark.

Effective thereafter, parenting time shall be pursuant to Franklin County Local Rule 27.1 (excepting Paragraphs 3 and 8) for parents traveling distances over 90 miles (Attached Decision Exhibit 2B).

Effective 2020, Defendant shall have the child every spring break vacation, the day after the child is out to the day before school recommences.

Effective 2020 and even years thereafter, which ever parent did not have the child for Christmas Eve/Christmas 2019 shall have the first half of Christmas break and the other shall have the second half. In odd numbered years the schedule shall be reversed.

The party commencing their parenting time shall travel and pay for all costs of the exchange and parenting time except that the parties shall equally divide M.B.'s direct transportation costs (i.e. airfare or gasoline) which will be advanced paid by the traveling parent and then submitted to OFW for reimbursement.

In the event the parents move within 90 miles of each other, parenting time shall be pursuant to Franklin County Local Rule 27.1, for parents traveling under 90 miles, Option A.

Any parenting time under this order shall be subject to M.B.'s extracurricular activities and he shall attend/participate in same uninterrupted during either parent's in-state visits. Each parent shall carefully avoid the scheduling or arranging of activities for the child which are likely to significantly conflict with time allocated to the other parent. Absent agreement, Plaintiff shall not schedule any extracurricular activities during Defendant's summer parenting time. If any of M.B.'s scheduled extracurricular activities "spill over" into Defendant's summer parenting time he will not be expected to participate. The parent exercising time with M.B. shall be responsible for insuring M.B. attends ongoing activities.

C. Passport and Travel:

Both parents shall be entitled to travel with M.B. so long as they provide a written itinerary (including destination, dates and times of arrival(s) and departure(s), method of travel (airline and flight numbers if air travel is used), address and telephone number at the location to which they are traveling) at least 60 days in advance of travel to the other parent. Travel outside the continental United States shall be no more than 14 days unless otherwise agreed to by the parties. The child's passport shall be maintained with the Plaintiff except during requests by Defendant to travel as indicated herein. Failure to cooperate in the exchange of the child's passport may revoke a parent's ability to travel outside of the continental United States.

D. Notifications about M.B. and

Communication through My Family Wizard:

Each parent shall keep the other advised as to all major decisions concerning M.B. prior to finalizing any decision. Plaintiff as legal custodian will make major decisions regarding M.B. but shall not do so until seeking input from Defendant. Each parent may make the routine day to day decisions and emergency decisions regarding M.B. when he is in his or her care.

Parents shall use Our Family Wizard (OFW), including calendar, expense log, and information bank. Each parent shall be responsible for the cost of his and her separate accounts and shall set up those accounts properly within 14 days of this order. Each shall renew annually. Thereafter, the parents shall post all communication exclusively on OFW. They shall not communicate outside of OFW except regarding matters of true emergency regarding the child or small details that must be acted upon immediately (defined as less than 24 hours), if possible text messaging shall be used. In the rare situation where the parents do have the need to use telephone communication regarding the minor child, or use email, or some other form of communication the substance of that communication shall be confirmed/documentated on OFW immediately thereafter or it will be deemed not to have been agreed upon at all if there is a later dispute. No communication is anticipated or permitted between the parents regarding any matter other than the child.

The parents shall convey information through the

Calendar, Info, Bank, and Expense features offered in OFW whenever possible. If additional clarifications or details are needed, an OFW message will be sent promptly, and the response will be posted on OFW. Attachments will be made in OFW when appropriate (i.e. details about a sports team or extracurricular activity; discharge paperwork from a medical visit, report cards, etc.)

All major activities and/or appointments shall be added to the OFW calendar within 24 hours of scheduling by the scheduling parent. Or upon learning of an activity or appointment made by someone else, that information will be added to the OFW calendar by the first parent who learns of it. If an entry requires a response by the other parent, that parent shall respond as promptly as possible unless it is clear from the entry itself that a longer response time is acceptable.

Each parent shall keep the other informed of his/her current address and telephone number at all times. Both parents shall at all times, regardless of whether the child is with him/her, provide the other parent with a telephone number for contact in the event of an emergency.

E. Emergency Decisions: Each parent is authorized to approve and authorize emergency medical, surgical, hospital, dental, vision and mental health care for the minor child. The parent with whom M.B. is with at the time of an emergency shall promptly notify the other parent as soon as is practical and each shall have the right to access to the child during said emergency, regardless of the

parenting schedule.

F. Communication with M.B.:

M.B. can communicate with either parent as often as he wishes, at reasonable times and frequencies, via telephone or electronic means, (e.g. text, email, SKYPE, FaceTime).

The non-possessory parent shall be able to speak with the child by telephone/SKYPE no less than three times each week for a minimum of fifteen minutes and neither parent shall hamper or interfere with the telephone communication or any other communication between the child and the parent.

G. Mandatory Notice Provisions:

RELOCATION NOTICE: Pursuant to Ohio Revised Code Section 3109.051(G), the parties hereto are hereby notified as follows:

IF THE RESIDENTIAL PARENT INTENDS TO MOVE TO A RESIDENCE OTHER THAN THE RESIDENCE SPECIFIED IN THE PARENTING TIME ORDER OR DECREE OF THE COURT, THE RESIDENTIAL PARENT SHALL FILE A NOTICE OF INTENT TO RELOCATE WITH THIS COURT, ADDRESSED TO THE ATTENTION OF THE RELOCATION OFFICER. UNLESS OTHERWISE ORDERED PURSUANT TO O.R.C. SECTIONS 3109.051(G)(2), (3), AND (4), A COPY OF SUCH

NOTICE SHALL BE MAILED BY THE COURT TO THE PARENT WHO IS NOT THE RESIDENTIAL PARENT. UPON RECEIPT OF THE NOTICE, THE COURT, ON ITS OWN MOTION OR THE MOTION OF EITHER PARTY, MAY SCHEDULE A HEARING WITH NOTICE TO BOTH PARTIES TO DETERMINE WHETHER IT IS IN THE BEST INTEREST OF THE CHILD TO REVISE THE PARENTING TIME SCHEDULE.

RECORDS ACCESS NOTICE: Pursuant to Ohio Revised Code Sections 3109.051(H) and 3319.321(B)(5)(a) the parties hereto are hereby notified as follows:

EXCEPTING AS SPECIFICALLY MODIFIED OR OTHERWISE LIMITED BY COURT ORDER, AND SUBJECT TO O.R.C. SECTIONS 3125.16 AND 3319.321(F), THE PARENT WHO IS NOT THE RESIDENTIAL PARENT, IS ENTITLED TO ACCESS TO ANY RECORD THAT IS RELATED TO THE CHILD, UNDER THE SAME TERMS AND CONDITIONS AS THE RESIDENTIAL PARENT, AND TO WHICH SAID RESIDENTIAL PARENT IS LEGALLY PROVIDED ACCESS. ANY KEEPER OF A RECORD WHO KNOWINGLY FAILS TO COMPLY WITH THIS ORDER IS IN CONTEMPT OF COURT.

DAY CARE CENTER ACCESS NOTICE: Pursuant to Ohio Revised Code Section 3109.051(1), the parties hereto are hereby notified as follows:

EXCEPTING AS SPECIFICALLY MODIFIED OR OTHERWISE LIMITED BY COURT ORDER, AND IN ACCORDANCE WITH O.R.C. SECTION 5104.011, THE PARENT WHO IS NOT THE RESIDENTIAL PARENT, IS ENTITLED TO ACCESS TO ANY DAY CARE CENTER THAT IS OR WILL BE ATTENDED BY THE CHILD WITH WHOM PARENTING TIME IS GRANTED, TO THE SAME EXTENT THAT THE RESIDENTIAL PARENT, IS GRANTED ACCESS TO THE CENTER.

SCHOOL ACTIVITIES NOTICE:
Pursuant to Ohio Revised Code Section 3109.051(J), the parties hereto are hereby notified as follows:

EXCEPTING AS SPECIFICALLY MODIFIED OR OTHERWISE LIMITED BY COURT ORDER, AND SUBJECT TO O.R.C. SECTION 3319.321(F), THE PARENT WHO IS NOT THE RESIDENTIAL PARENT, IS ENTITLED TO ACCESS, UNDER THE SAME TERMS AND CONDITIONS AS THE RESIDENTIAL PARENT, TO ANY STUDENT ACTIVITY THAT IS RELATED TO THE CHILD AND TO WHICH THE RESIDENTIAL PARENT OF THE CHILD LEGALLY IS PROVIDED ACCESS. ANY SCHOOL EMPLOYEE OR OFFICIAL WHO KNOWINGLY FAILS TO COMPLY WITH THIS ORDER IS IN CONTEMPT OF COURT.

All required notices shall be sent to:

Clerk of Courts

**Division of Domestic Relations
Franklin County Courthouse
373 South High Street
Columbus, Ohio 43215**

**Franklin County Child Support Enforcement
Agency**

**80 East Fulton Street
Columbus, Ohio 43215**

H. Child Support

For so long as private health insurance is available at a reasonable cost, the Defendant shall pay to the Plaintiff, as and for child support the sum of \$0 per month, plus 2% processing charge. At such time as health insurance is not available at a reasonable cost, the Defendant shall pay child support in the amount of \$0 per month, plus 2% processing charge and \$126.25, plus 2% processing charge for cash medical support. This is a deviation from the Ohio Child Support Guidelines.

Child support payments, plus the two percent (2%) processing charge, shall be made by withholding or deducting from the income or assets of the obligor pursuant to a withholding or deduction notice or appropriate court order issued in accordance with R.C. §3113.21 or a withdrawal directive issued

pursuant to R.C. §3113.214 and shall be forwarded to the obligee in accordance with R.C. §3113.21 to §3113.213. The payments shall be made through the Ohio Child Support Payment Central, P.O. Box 182372, Columbus, Ohio 43218-2372. The child support amount plus the two percent (2%) processing charge shall be paid through wage withholding consistent with the obligor's normal payroll periods.

The payments shall continue until the occurrence of one of the following events, whichever event occurs first:

1. The child's **attainment of the age of majority** if the child no longer attends an accredited high school on a full-time basis and the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age;
2. The child ceasing to attend an accredited high school on a full-time basis after attaining the age of majority, if the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age;
3. The child's death;
4. The child's marriage;
5. The child's emancipation;
6. The child's enlistment in the armed services;
7. The child's deportation; or
8. Change of legal custody of the child.

It is further ordered:

If the obligor is ordered to pay cash medical support under this support order, the obligor shall begin payment of any cash medical support on the first day of the month immediately following the month in which private health insurance coverage is

unavailable or terminates and shall cease payment on the last day of the month immediately preceding the month in which private health insurance coverage begins or resumes. During the period when cash medical support is required to be paid, the obligor or obligee must immediately inform the Child Support Enforcement Agency that health insurance coverage for the children has become available.

The amount of cash medical support paid by the obligor shall be paid during any period after the Court or Child Support Enforcement Agency issues or modifies the order in which the children are not covered by private health insurance.

Any cash medical support paid pursuant to this order shall be paid by the obligor to either the obligee if the children are not Medicaid recipients, or to the office of child support to defray the cost of Medicaid expenditures if the children are Medicaid recipients. The Child Support Enforcement Agency administering the court or administrative order shall amend the amount of monthly child support obligation to reflect the amount paid when private health insurance is not provided, as calculated in the current order pursuant to section 3119.022 or 3119.023 of the Revised Code, as applicable.

The Child Support Enforcement Agency shall give the obligor notice in accordance with Chapter 3121. of the Revised Code and provide the obligor an opportunity to be heard if the obligor believes there is a mistake of fact regarding the availability of private health insurance at a reasonable cost as determined under division (B) of this section.

EACH PARTY TO THIS SUPPORT ORDER MUST NOTIFY THE CHILD SUPPORT ENFORCEMENT AGENCY IN WRITING OF HIS OR HER CURRENT MAILING ADDRESS, CURRENT RESIDENCE ADDRESS, CURRENT RESIDENCE TELEPHONE NUMBER, CURRENT DRIVER'S LICENSE NUMBER, AND OF ANY CHANGES IN THAT INFORMATION. EACH PARTY MUST NOTIFY THE AGENCY OF ALL CHANGES UNTIL FURTHER NOTICE FROM THE COURT OR AGENCY, WHICHEVER ISSUED THE SUPPORT ORDER. IF YOU ARE THE OBLIGOR UNDER A CHILD SUPPORT ORDER AND YOU FAIL TO MAKE THE REQUIRED NOTIFICATIONS, YOU MAY BE FINED UP TO \$50 FOR A FIRST OFFENSE, \$100 FOR A SECOND OFFENSE, AND \$500 FOR EACH SUBSEQUENT OFFENSE. IF YOU ARE AN OBLIGOR OR OBLIGEE UNDER ANY SUPPORT ORDER ISSUED BY A COURT AND YOU WILLFULLY FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY BE FOUND IN CONTEMPT OF COURT AND BE SUBJECTED TO FINES UP TO \$1000 AND IMPRISONMENT FOR NOT MORE THAN 90 DAYS.

IF YOU ARE AN OBLIGOR AND YOU FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY NOT RECEIVE NOTICE OF THE FOLLOWING ENFORCEMENT ACTIONS AGAINST YOU: IMPOSITION OF LIENS AGAINST YOUR PROPERTY; LOSS OF YOUR PROFESSIONAL OR OCCUPATIONAL LICENSE, DRIVER'S LICENSE, OR RECREATIONAL LICENSE; WITHHOLDING FROM YOUR INCOME; ACCESS RESTRICTION AND DEDUCTION FROM YOUR ACCOUNTS IN FINANCIAL INSTITUTIONS; AND ANY OTHER ACTION

PERMITTED BY LAW TO OBTAIN MONEY FROM YOU TO SATISFY YOUR SUPPORT OBLIGATION.

The residential parent or the person who otherwise has custody of a child for whom a support order is issued is also ordered to immediately notify, and the obligor under a support order may notify, the Franklin County Child Support Enforcement Agency of any reason for which the support order should terminate, including but not limited to, the child's attainment of the age of majority if the child no longer attends an accredited high school on a full-time basis and the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age; the child ceasing to attend an accredited high school on a full-time basis after attaining the age of majority, if the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after

attaining that age; or the death, marriage, emancipation, enlistment in the armed services, deportation, or change of legal custody of the child.

All support under this order shall be withheld or deducted from the income or assets of the obligor pursuant to a withholding or deduction notice or appropriate order issued in accordance with chapters 3119., 3121., 3123., and 3125. of the Revised Code or a withdrawal directive issued pursuant to sections 3123.24 to 3123.38 of the Revised Code and shall be forwarded to the obligee in accordance with chapters 3119., 3121., 3123., and 3125. of the Revised Code.

Regardless of the frequency or amount of support payments to be made under the order, the Franklin County Child Support Enforcement Agency shall administer it on a monthly basis in accordance with sections 3121.51 to 3121.54 of the Revised Code.

Payments under the order are to be made in a manner ordered by the court or agency, and if the payments are to be made other than on a monthly basis, the required monthly administration by the agency does not affect the frequency or the amount of the support payments to be made under the order.

All payments must have the obligor's name and case number and should be mailed to Ohio

CSPC, P.O. Box 182372, Columbus, Ohio, 43218-2372.

I. Medical Insurance and Uninsured health care expenses

For so long as it is available to him at a reasonable cost, the Plaintiff shall maintain current levels of medical, dental and vision insurance for the minor child. Plaintiff shall provide Defendant with health insurance cards and forms necessary to receive reimbursement, payments, or other benefits under the health insurance coverage and an updated summary plan description of the health plan(s). etc. Except as prevented by an emergency, unless otherwise agreed, the parents shall use only approved plan providers; take required steps to secure the available insurance coverage benefits and comply with any plan requirements regarding pre-approval for treatment or care. In the event of cancellation of coverage, the Plaintiff shall immediately notify the Defendant.

The parties shall divide any and all uninsured ordinary and extraordinary health care costs incurred for the child 50% as to the Plaintiff and 50% as to the Defendant. The parents shall provide one another written proof of payment of medical expenses by posting them on OFW within sixty (60) days of the payment of, or incurring, said expenses (whichever is earlier). Whenever possible, each parent shall pay their portion of the expense directly to the service provider or vendor. If a payment plan is needed, each parent shall communicate directly with the provider

to arrange payment, and shall provide details of said arrangements to the other.

If direct payment to the vendor or service provider is not possible, or impractical, and one parent is required to reimburse the other he/she shall reimburse the other within thirty (30) days of receiving proof of payment of the expense as posted in OFW.

Both parents shall fully cooperate in the prompt exchange of documentation and information necessary for each parent to receive reimbursement, payments, or other benefits under the health insurance coverage. Additionally, the parents shall promptly exchange all documentation verifying any uninsured health care-related expenses incurred for the child, and each parent shall promptly reimburse the other parent as set forth above.

J. Work related child care: Each shall pay any work-related child care costs incurred by him or her.

K. Extracurricular activities: The parties shall consult (through OFW) regarding the enrollment of M.B. in extracurricular activities, prior to discussing same with M.B. and before enrolling him in same. Unless otherwise agreed, the parent who enrolls him in extracurricular activities shall bear the cost.

L. Tax dependency exemption: The Plaintiff shall be entitled to claim the minor child for all income tax purposes. The Defendant shall cooperate as necessary to assure this occurs.

3. ASSETS AND LIABILTIES

A. The Plaintiff is awarded [REDACTED] free and clear of any claim by the Defendant. The Plaintiff shall pay and save the Defendant harmless as to any and all debt associated with this real estate. Defendant shall transfer any and all interest she may have in said real estate to the Plaintiff by way of Quit Claim Deed forthwith.

B. The Defendant is awarded [REDACTED] free and clear of claim by the Plaintiff. The Defendant shall pay and save the Plaintiff harmless as to any and all debt associated with this real estate. Plaintiff shall transfer any and all interest he may have in said real estate to the Defendant by way of Quit Claim Deed forthwith.

C. Plaintiff is awarded the 2010 VW Passat free and clear of any claim by the Defendant. Plaintiff shall pay and hold the Defendant harmless as to any and all debt associated with this vehicle. Defendant is awarded the 2003 Toyota Corolla, free and clear of claim by the Plaintiff and she shall pay and save the Plaintiff harmless from any and all debt associated with this vehicle.

D. Each party is awarded any household goods, furnishings and personal property in his and her respective possession, free and clear of any claim by the other.

E. Each party shall retain any and all checking and savings accounts in his or her

individual name, free and clear of any claim by the other.

F. The Plaintiff is awarded his [REDACTED], free and clear of any claim by the Defendant.

G. The Defendant is awarded her [REDACTED], free and clear of any claim by the Plaintiff.

H. [REDACTED]. The parties shall cooperate to assure the distribution of this account to each of them forthwith and shall equally pay any costs associated with the preparation of a QDRO, if necessary.

I. Each party shall pay and hold the other harmless from any and all debt in his or her individual name or incurred by her.

J. Defendant to pay and hold the Plaintiff harmless as to any and all student loans in his name.

4. SPOUSAL SUPPORT:

Neither party shall pay spousal support to the other. The Court shall not retain jurisdiction to modify this order.

5. RESTORATION OF FORMER NAME:

Defendant is restored to her former name of [REDACTED].

6. RELEASE OF RESTRAINING ORDERS:

All restraining orders are hereby vacated.

7. GUARDIAN AD LITEM FEES:

The parties shall divide the Guardian ad Litem fees and expenses, 50% as to Plaintiff and 50% as to Defendant. Unless otherwise agreed to by the Guardian ad Litem, he shall be paid in full within 45 days of this Decree.

8. CIVIL RULE 70 COMPLIANCE:

Unless otherwise indicated herein, this Decree is subject to Civil Rule 70 compliance. Each party shall transfer any, and interest to any, property in his or her possession, title, or name, to the other party within 30 days of this Order.

9. ATTORNEY FEES/COSTS:

The parties stipulated that each party shall pay his and her attorney fees and costs associated with this action.

10. RELEASE OF RESTRAINING ORDERS

Except as otherwise ordered herein, the Temporary Restraining Orders are hereby VACATED.

11. COURT COSTS:

The parties shall equally divide the balance of court costs, if any.

IT IS SO ORDERED. s/ Judge Elizabeth Gill
Judge Elizabeth Gill

Praecipe: To the Clerk of Courts

Pursuant to Civil Rule 58(8), you are hereby instructed to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal in the manner prescribed by the attached instructions for service.

cc:

Catalin Stefan Badescu

Jacqueline Kemp, Esq.
Vernoica Badescu
Karen Ball, Esq.
Ralph Silvestri, Esq.

APPENDIX C

The Supreme Court of Ohio

Catalin S. Badescu

v.

Veronica V. Badescu

Case No. 2020-1270

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Franklin County Court of Appeals; No. 18AP-947)

s/ Maureen O'Connor
Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at
<http://www.supremecourt.ohio.gov/ROD/docs/>

APPENDIX D

SECTION 3109.03 | EQUALITY OF PARENTAL RIGHTS AND RESPONSIBILITIES.

Ohio Revised Code/Title 31 Domestic Relations- Children/Chapter 3109 Children

When husband and wife are living separate and apart from each other, or are divorced, and the question as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children is brought before a court of competent jurisdiction, they shall stand upon an equality as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved.

APPENDIX E

SECTION 3109.04 | ALLOCATING PARENTAL RIGHTS AND RESPONSIBILITIES FOR CARE OF CHILDREN - SHARED PARENTING.

Ohio Revised Code/Title 31 Domestic Relations- Children/Chapter 3109 Children

(A) In any divorce, legal separation, or annulment proceeding and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, upon hearing the testimony of either or both parents and considering any mediation report filed pursuant to section 3109.052 of the Revised Code and in accordance with sections 3127.01 to 3127.53 of the Revised Code, the court shall allocate the parental rights and responsibilities for the care of the minor children of the marriage. Subject to division (D)(2) of this section, the court may allocate the parental rights and responsibilities for the care of the children in either of the following ways:

(1) If neither parent files a pleading or motion in accordance with division (G) of this section, if at least one parent files a pleading or motion under that division but no parent who filed a pleading or motion under that division also files a plan for shared parenting, or if at least one parent files both a pleading or motion and a shared parenting plan under that division but no plan for shared parenting is in the best interest of the children, the court, in a

manner consistent with the best interest of the children, shall allocate the parental rights and responsibilities for the care of the children primarily to one of the parents, designate that parent as the residential parent and the legal custodian of the child, and divide between the parents the other rights and responsibilities for the care of the children, including, but not limited to, the responsibility to provide support for the children and the right of the parent who is not the residential parent to have continuing contact with the children.

(2) If at least one parent files a pleading or motion in accordance with division (G) of this section and a plan for shared parenting pursuant to that division and if a plan for shared parenting is in the best interest of the children and is approved by the court in accordance with division (D)(1) of this section, the court may allocate the parental rights and responsibilities for the care of the children to both parents and issue a shared parenting order requiring the parents to share all or some of the aspects of the physical and legal care of the children in accordance with the approved plan for shared parenting. If the court issues a shared parenting order under this division and it is necessary for the purpose of receiving public assistance, the court shall designate which one of the parents' residences is to serve as the child's home. The child support obligations of the parents under a shared parenting order issued under this division shall be determined in accordance with Chapters 3119., 3121., 3123., and 3125. of the Revised Code.

(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.

(b) The court first shall determine the reasoning ability of the child. If the court determines that the child does not have sufficient reasoning ability to express the child's wishes and concern with respect to the allocation of parental rights and responsibilities for the care of the child, it shall not determine the child's wishes and concerns with respect to the allocation. If the court determines that the child has sufficient reasoning ability to express the child's wishes or concerns with respect to the allocation, it then shall determine whether, because of special circumstances, it would not be in the best interest of

the child to determine the child's wishes and concerns with respect to the allocation. If the court determines that, because of special circumstances, it would not be in the best interest of the child to determine the child's wishes and concerns with respect to the allocation, it shall not determine the child's wishes and concerns with respect to the allocation and shall enter its written findings of fact and opinion in the journal. If the court determines that it would be in the best interests of the child to determine the child's wishes and concerns with respect to the allocation, it shall proceed to make that determination.

(c) The interview shall be conducted in chambers, and no person other than the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of each parent shall be permitted to be present in the chambers during the interview.

(3) No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the child's wishes and concerns regarding the allocation of parental rights and responsibilities concerning the child. No court, 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 or for purposes of resolving any issues related to the making of that allocation, shall accept or consider a written or recorded statement or affidavit that purports to set forth the child's wishes and concerns regarding those matters.

(C) Prior to trial, the court may cause an investigation to be made as to the character, family relations, past conduct, earning ability, and financial worth of each parent and may order the parents and their minor children to submit to medical, psychological, and psychiatric examinations. The report of the investigation and examinations shall be made available to either parent or the parent's counsel of record not less than five days before trial, upon written request. The report shall be signed by the investigator, and the investigator shall be subject to cross-examination by either parent concerning the contents of the report. The court may tax as costs all or any part of the expenses for each investigation.

If the court determines that either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being a neglected child, that either parent previously has been determined to be the perpetrator of the neglectful act that is the basis of an adjudication that a child is a neglected child, or that there is reason to believe that either parent has acted in a manner resulting in a child being a neglected child, the court shall consider that fact against naming that parent the residential parent and against granting a shared parenting decree. When the court allocates parental rights and responsibilities for the care of children or determines whether to grant shared parenting in any proceeding, it shall consider whether either parent or any member of the household of either parent 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 proceeding, has been convicted of or pleaded guilty to any sexually oriented offense or other 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 proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that either parent 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 proceeding, has been convicted of or pleaded guilty to any sexually oriented offense or other 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 proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, it may designate that parent as the residential parent and may issue a shared parenting decree or order only if it determines that it is in the best interest of the child to name that parent the residential parent or to issue a shared parenting decree or order and it makes specific written findings of fact to support its determination.

(D)(1)(a) Upon the filing of a pleading or motion by either parent or both parents, in accordance with division (G) of this section, requesting shared parenting and the filing of a shared parenting plan in

accordance with that division, the court shall comply with division (D)(1)(a)(i), (ii), or (iii) of this section, whichever is applicable:

(i) If both parents jointly make the request in their pleadings or jointly file the motion and also jointly file the plan, the court shall review the parents' plan to determine if it is in the best interest of the children. If the court determines that the plan is in the best interest of the children, the court shall approve it. If the court determines that the plan or any part of the plan is not in the best interest of the children, the court shall require the parents to make appropriate changes to the plan to meet the court's objections to it. If changes to the plan are made to meet the court's objections, and if the new plan is in the best interest of the children, the court shall approve the plan. If changes to the plan are not made to meet the court's objections, or if the parents attempt to make changes to the plan to meet the court's objections, but the court determines that the new plan or any part of the new plan still is not in the best interest of the children, the court may reject the portion of the parents' pleadings or deny their motion requesting shared parenting of the children and proceed as if the request in the pleadings or the motion had not been made. The court shall not approve a plan under this division unless it determines that the plan is in the best interest of the children.

(ii) If each parent makes a request in the parent's pleadings or files a motion and each also files a separate plan, the court shall review each plan filed to determine if either is in the best interest of the

children. If the court determines that one of the filed plans is in the best interest of the children, the court may approve the plan. If the court determines that neither filed plan is in the best interest of the children, the court may order each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections, or may select one of the filed plans and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes. If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court may reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children and proceed as if the requests in the pleadings or the motions had not been made. If the court approves a plan under this division, either as originally filed or with submitted changes, or if the court rejects the portion of the parents' pleadings or denies their motions requesting shared parenting under this division and proceeds as if the requests in the pleadings or the motions had not been made, the court shall enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the rejection or denial. Division (D)(1)(b) of this section applies in relation to the approval or disapproval of a plan under this division.

(iii) If each parent makes a request in the parent's pleadings or files a motion but only one parent files a plan, or if only one parent makes a request in the parent's pleadings or files a motion and also files a plan, the court in the best interest of the children may order the other parent to file a plan for shared parenting in accordance with division (G) of this section. The court shall review each plan filed to determine if any plan is in the best interest of the children. If the court determines that one of the filed plans is in the best interest of the children, the court may approve the plan. If the court determines that no filed plan is in the best interest of the children, the court may order each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections or may select one filed plan and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes. If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court may reject the portion of the parents' pleadings or deny the parents' motion or reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children and proceed as if the request or requests or the motion or motions had not been made. If the court approves a plan under this division, either as originally filed or with submitted changes, or if the court rejects the portion of the

pleadings or denies the motion or motions requesting shared parenting under this division and proceeds as if the request or requests or the motion or motions had not been made, the court shall enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the rejection or denial. Division (D)(1)(b) of this section applies in relation to the approval or disapproval of a plan under this division.

(b) The approval of a plan under division (D)(1)(a)(ii) or (iii) of this section is discretionary with the court. The court shall not approve more than one plan under either division and shall not approve a plan under either division unless it determines that the plan is in the best interest of the children. If the court, under either division, does not determine that any filed plan or any filed plan with submitted changes is in the best interest of the children, the court shall not approve any plan.

(c) Whenever possible, the court shall require that a shared parenting plan approved under division (D)(1)(a)(i), (ii), or (iii) of this section ensure the opportunity for both parents to have frequent and continuing contact with the child, unless frequent and continuing contact with any parent would not be in the best interest of the child.

(d) If a court approves a shared parenting plan under division (D)(1)(a)(i), (ii), or (iii) of this section, the approved plan shall be incorporated into a final shared parenting decree granting the parents the shared parenting of the children. Any final shared parenting decree shall be issued at the same time as

and shall be appended to the final decree of dissolution, divorce, annulment, or legal separation arising out of the action out of which the question of the allocation of parental rights and responsibilities for the care of the children arose.

No provisional shared parenting decree shall be issued in relation to any shared parenting plan approved under division (D)(1)(a)(i), (ii), or (iii) of this section. A final shared parenting decree issued under this division has immediate effect as a final decree on the date of its issuance, subject to modification or termination as authorized by this section.

(2) If the court finds, with respect to any child under eighteen years of age, that it is in the best interest of the child for neither parent to be designated the residential parent and legal custodian of the child, it may commit the child to a relative of the child or certify a copy of its findings, together with as much of the record and the further information, in narrative form or otherwise, that it considers necessary or as the juvenile court requests, to the juvenile court for further proceedings, and, upon the certification, the juvenile court has exclusive jurisdiction.

(E)(1)(a) 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.

(b) One or both of the parents under a prior decree allocating parental rights and responsibilities for the care of children that is not a shared parenting decree may file a motion requesting that the prior decree be modified to give both parents shared rights and responsibilities for the care of the children. The motion shall include both a request for modification of the prior decree and a request for a shared parenting order that complies with division (G) of this section. Upon the filing of the motion, if the court determines that a modification of the prior decree is authorized under division (E)(1)(a) of this section, the court may modify the prior decree to grant a shared parenting order, provided that the court shall not

modify the prior decree to grant a shared parenting order unless the court complies with divisions (A) and (D)(1) of this section and, in accordance with those divisions, approves the submitted shared parenting plan and determines that shared parenting would be in the best interest of the children.

(2) In addition to a modification authorized under division (E)(1) of this section:

(a) Both parents under a shared parenting decree jointly may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree. Modifications under this division may be made at any time. The modifications to the plan shall be filed jointly by both parents with the court, and the court shall include them in the plan, unless they are not in the best interest of the children. If the modifications are not in the best interests of the children, the court, in its discretion, may reject the modifications or make modifications to the proposed modifications or the plan that are in the best interest of the children. Modifications jointly submitted by both parents under a shared parenting decree shall be effective, either as originally filed or as modified by the court, upon their inclusion by the court in the plan. Modifications to the plan made by the court shall be effective upon their inclusion by the court in the plan.

(b) The court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best

interest of the children or upon the request of one or both of the parents under the decree. Modifications under this division may be made at any time. The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children.

(c) The court may terminate a prior final shared parenting decree that includes a shared parenting plan approved under division (D)(1)(a)(i) of this section upon the request of one or both of the parents or whenever it determines that shared parenting is not in the best interest of the children. The court may terminate a prior final shared parenting decree that includes a shared parenting plan approved under division (D)(1)(a)(ii) or (iii) of this section if it determines, upon its own motion or upon the request of one or both parents, that shared parenting is not in the best interest of the children. If modification of the terms of the plan for shared parenting approved by the court and incorporated by it into the final shared parenting decree is attempted under division (E)(2)(a) of this section and the court rejects the modifications, it may terminate the final shared parenting decree if it determines that shared parenting is not in the best interest of the children.

(d) Upon the termination of a prior final shared parenting decree under division (E)(2)(c) of this section, the court shall proceed and issue a modified decree for the allocation of parental rights and responsibilities for the care of the children under the standards applicable under divisions (A), (B), and (C) of this section as if no decree for shared parenting had been granted and as if no request for shared

parenting ever had been made.

(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;
- (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.

(2) In determining whether shared parenting is in the best interest of the children, the court shall consider all relevant factors, including, but not limited to, the factors enumerated in division (F)(1) of this section, the factors enumerated in section 3119.23 of the Revised Code, and all of the following factors:

(a) The ability of the parents to cooperate and make decisions jointly, with respect to the children;

(b) The ability of each parent to encourage the sharing of love, affection, and contact between the child and the other parent;

(c) Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent;

(d) The geographic proximity of the parents to each other, as the proximity relates to the practical considerations of shared parenting;

(e) The recommendation of the guardian ad litem of the child, if the child has a guardian ad litem.

(3) When allocating parental rights and responsibilities for the care of children, the court shall not give preference to a parent because of that parent's financial status or condition.

(G) Either parent or both parents of any children may file a pleading or motion with the court requesting the court to grant both parents shared parental rights and responsibilities for the care of the children in a proceeding held pursuant to division (A) of this section. If a pleading or motion requesting shared parenting is filed, the parent or parents filing the pleading or motion also shall file with the court a plan for the exercise of shared parenting by both parents. If each parent files a pleading or motion requesting shared parenting but only one parent files a plan or if only one parent files a pleading or motion requesting shared parenting and also files a plan, the other parent as ordered by the court shall file with the court a plan for the exercise of shared parenting by both parents. The plan for shared parenting shall be filed with the petition for dissolution of marriage, if the question of parental rights and responsibilities for the care of the children arises out of an action for dissolution of marriage, or, in other cases, at a time at least thirty days prior to the hearing on the issue of the parental rights and responsibilities for the care of the children. A plan for shared parenting shall include provisions covering all factors that are relevant to the care of the children, including, but not limited to, provisions covering factors such as physical living arrangements, child support obligations, provision for the children's medical and dental care, school placement, and the parent with which the children will be physically located during

legal holidays, school holidays, and other days of special importance.

(H) If an appeal is taken from a decision of a court that grants or modifies a decree allocating parental rights and responsibilities for the care of children, the court of appeals shall give the case calendar priority and handle it expeditiously.

(I)(1) Upon receipt of an order for active military service in the uniformed services, a parent who is subject to an order allocating parental rights and responsibilities or in relation to whom an action to allocate parental rights and responsibilities is pending and who is ordered for active military service shall notify the other parent who is subject to the order or in relation to whom the case is pending of the order for active military service within three days of receiving the military service order.

(2) On receipt of the notice described in division (I)(1) of this section, either parent may apply to the court for a hearing to expedite an allocation or modification proceeding so that the court can issue an order before the parent's active military service begins. The application shall include the date on which the active military service begins.

The court shall schedule a hearing upon receipt of the application and hold the hearing not later than thirty days after receipt of the application, except that the court shall give the case calendar priority and handle the case expeditiously if exigent circumstances exist in the case.

The court shall not modify a prior decree allocating parental rights and responsibilities unless the court determines that there has been a change in circumstances of the child, the child's residential parent, or either of the parents subject to a shared parenting decree, and that modification is necessary to serve the best interest of the child. The court shall not find past, present, or possible future active military service in the uniformed services to constitute a change in circumstances justifying modification of a prior decree pursuant to division (E) of this section. The court shall make specific written findings of fact to support any modification under this division.

(3) Nothing in division (I) of this section shall prevent a court from issuing a temporary order allocating or modifying parental rights and responsibilities for the duration of the parent's active military service. A temporary order shall specify whether the parent's active military service is the basis of the order and shall provide for termination of the temporary order and resumption of the prior order within ten days after receipt of notice pursuant to division (I)(5) of this section, unless the other parent demonstrates that resumption of the prior order is not in the child's best interest.

(4) At the request of a parent who is ordered for active military service in the uniformed services and who is a subject of a proceeding pertaining to a temporary order for the allocation or modification of parental rights and responsibilities, the court shall permit the parent to participate in the proceeding

and present evidence by electronic means, including communication by telephone, video, or internet to the extent permitted by the rules of the supreme court of Ohio.

(5) A parent who is ordered for active military service in the uniformed services and who is a subject of a proceeding pertaining to the allocation or modification of parental rights and responsibilities shall provide written notice to the court, child support enforcement agency, and the other parent of the date of termination of the parent's active military service not later than thirty days after the date on which the service ends.

(J) As used in this section:

(1) "Abused child" has the same meaning as in section 2151.031 of the Revised Code.

(2) "Active military service" means service by a member of the uniformed services in compliance with military orders to report for combat operations, contingency operations, peacekeeping operations, a remote tour of duty, or other active service for which the member is required to report unaccompanied by any family member, including any period of illness, recovery from injury, leave, or other lawful absence during that operation, duty, or service.

(3) "Neglected child" has the same meaning as in section 2151.03 of the Revised Code.

(4) "Sexually oriented offense" has the same meaning as in section 2950.01 of the Revised Code.

(5) "Uniformed services" means the United States armed forces, the army national guard, and the air national guard or any reserve component thereof, or the commissioned corps of the United States public health service.

(K) As used in the Revised Code, "shared parenting" means that the parents share, in the manner set forth in the plan for shared parenting that is approved by the court under division (D)(1) and described in division (L)(6) of this section, all or some of the aspects of physical and legal care of their children.

(L) For purposes of the Revised Code:

(1) A parent who is granted the care, custody, and control of a child under an order that was issued pursuant to this section prior to April 11, 1991, and that does not provide for shared parenting has "custody of the child" and "care, custody, and control of the child" under the order, and is the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child under the order.

(2) A parent who primarily is allocated the parental rights and responsibilities for the care of a child and who is designated as the residential parent and legal custodian of the child under an order that is issued pursuant to this section on or after April 11, 1991, and that does not provide for shared parenting has

"custody of the child" and "care, custody, and control of the child" under the order, and is the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child under the order.

(3) A parent who is not granted custody of a child under an order that was issued pursuant to this section prior to April 11, 1991, and that does not provide for shared parenting is the "parent who is not the residential parent," the "parent who is not the residential parent and legal custodian," or the "noncustodial parent" of the child under the order.

(4) A parent who is not primarily allocated the parental rights and responsibilities for the care of a child and who is not designated as the residential parent and legal custodian of the child under an order that is issued pursuant to this section on or after April 11, 1991, and that does not provide for shared parenting is the "parent who is not the residential parent," the "parent who is not the residential parent and legal custodian," or the "noncustodial parent" of the child under the order.

(5) Unless the context clearly requires otherwise, if an order is issued by a court pursuant to this section and the order provides for shared parenting of a child, both parents have "custody of the child" or "care, custody, and control of the child" under the order, to the extent and in the manner specified in the order.

(6) Unless the context clearly requires otherwise and except as otherwise provided in the order, if an order

is issued by a court pursuant to this section and the order provides for shared parenting of a child, each parent, regardless of where the child is physically located or with whom the child is residing at a particular point in time, as specified in the order, is the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child.

(7) Unless the context clearly requires otherwise and except as otherwise provided in the order, a designation in the order of a parent as the residential parent for the purpose of determining the school the child attends, as the custodial parent for purposes of claiming the child as a dependent pursuant to section 152(e) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, or as the residential parent for purposes of receiving public assistance pursuant to division (A)(2) of this section, does not affect the designation pursuant to division (L)(6) of this section of each parent as the "residential parent," the "residential parent and legal custodian," or the "custodial parent" of the child.

(M) The court shall require each parent of a child to file an affidavit attesting as to whether the parent, and the members of the parent's household, have been convicted of or pleaded guilty to any of the offenses identified in divisions (C) and (F)(1)(h) of this section.

APPENDIX F

SECTION 3109.051 | PARENTING TIME - COMPANIONSHIP OR VISITATION RIGHTS.

Ohio Revised Code/Title 31 Domestic Relations- Children/Chapter 3109 Children

(A) If a divorce, dissolution, legal separation, or annulment proceeding involves a child and if the court has not issued a shared parenting decree, the court shall consider any mediation report filed pursuant to section 3109.052 of the Revised Code and, in accordance with division (C) of this section, shall make a just and reasonable order or decree permitting each parent who is not the residential parent to have parenting time with the child at the time and under the conditions that the court directs, unless the court determines that it would not be in the best interest of the child to permit that parent to have parenting time with the child and includes in the journal its findings of fact and conclusions of law. Whenever possible, the order or decree permitting the parenting time shall ensure the opportunity for both parents to have frequent and continuing contact with the child, unless frequent and continuing contact by either parent with the child would not be in the best interest of the child. The court shall include in its final decree a specific schedule of parenting time for that parent. Except as provided in division (E)(6) of section 3113.31 of the Revised Code, if the court, pursuant to this section, grants parenting time to a parent or companionship or visitation rights to any other person with respect to

any child, it shall not require the public children services agency to provide supervision of or other services related to that parent's exercise of parenting time or that person's exercise of companionship or visitation rights with respect to the child. This section does not limit the power of a juvenile court pursuant to Chapter 2151. of the Revised Code to issue orders with respect to children who are alleged to be abused, neglected, or dependent children or to make dispositions of children who are adjudicated abused, neglected, or dependent children or of a common pleas court to issue orders pursuant to section 3113.31 of the Revised Code.

(B)(1) In a divorce, dissolution of marriage, legal separation, annulment, or child support proceeding that involves a child, the court may grant reasonable companionship or visitation rights to any grandparent, any person related to the child by consanguinity or affinity, or any other person other than a parent, if all of the following apply:

(a) The grandparent, relative, or other person files a motion with the court seeking companionship or visitation rights.

(b) The court determines that the grandparent, relative, or other person has an interest in the welfare of the child.

(c) The court determines that the granting of the companionship or visitation rights is in the best interest of the child.

(2) A motion may be filed under division (B)(1) of this section during the pendency of the divorce, dissolution of marriage, legal separation, annulment, or child support proceeding or, if a motion was not filed at that time or was filed at that time and the circumstances in the case have changed, at any time after a decree or final order is issued in the case.

(C) When determining whether to grant parenting time rights to a parent pursuant to this section or section 3109.12 of the Revised Code or to grant companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section 3109.11 or 3109.12 of the Revised Code, when establishing a specific parenting time or visitation schedule, and when determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or section 3109.11 or 3109.12 of the Revised Code, the court shall consider any mediation report that is filed pursuant to section 3109.052 of the Revised Code and shall consider all other relevant factors, including, but not limited to, all of the factors listed in division (D) of this section. In considering the factors listed in division (D) of this section for purposes of determining whether to grant parenting time or visitation rights, establishing a specific parenting time or visitation schedule, determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or under section 3109.11 or 3109.12 of the Revised Code, and resolving any issues related to the making of any determination with respect to parenting time or visitation rights or the establishment of any specific parenting time or visitation schedule, the court, in its discretion, may

interview in chambers any or all involved children regarding their wishes and concerns. If the court interviews any child concerning the child's wishes and concerns regarding those parenting time or visitation matters, the interview shall be conducted in chambers, and no person other than the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of each parent shall be permitted to be present in the chambers during the interview. No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the wishes and concerns of the child regarding those parenting time or visitation matters. A court, in considering the factors listed in division (D) of this section for purposes of determining whether to grant any parenting time or visitation rights, establishing a parenting time or visitation schedule, determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or under section 3109.11 or 3109.12 of the Revised Code, or resolving any issues related to the making of any determination with respect to parenting time or visitation rights or the establishment of any specific parenting time or visitation schedule, shall not accept or consider a written or recorded statement or affidavit that purports to set forth the child's wishes or concerns regarding those parenting time or visitation matters.

(D) In determining whether to grant parenting time to a parent pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights to a grandparent, relative, or other person pursuant to this section or section 3109.11 or 3109.12 of the Revised Code, in establishing a specific

parenting time or visitation schedule, and in determining other parenting time matters under this section or section 3109.12 of the Revised Code or visitation matters under this section or section 3109.11 or 3109.12 of the Revised Code, the court shall consider all of the following factors:

- (1) The prior interaction and interrelationships of the child with the child's parents, siblings, and other persons related by consanguinity or affinity, and with the person who requested companionship or visitation if that person is not a parent, sibling, or relative of the child;
- (2) The geographical location of the residence of each parent and the distance between those residences, and if the person is not a parent, the geographical location of that person's residence and the distance between that person's residence and the child's residence;
- (3) The child's and parents' available time, including, but not limited to, each parent's employment schedule, the child's school schedule, and the child's and the parents' holiday and vacation schedule;
- (4) The age of the child;
- (5) The child's adjustment to home, school, and community;
- (6) If the court has interviewed the child in chambers, pursuant to division (C) of this section,

regarding the wishes and concerns of the child as to parenting time by the parent who is not the residential parent or companionship or visitation by the grandparent, relative, or other person who requested companionship or visitation, as to a specific parenting time or visitation schedule, or as to other parenting time or visitation matters, the wishes and concerns of the child, as expressed to the court;

- (7) The health and safety of the child;
- (8) The amount of time that will be available for the child to spend with siblings;
- (9) The mental and physical health of all parties;
- (10) Each parent's willingness to reschedule missed parenting time and to facilitate the other parent's parenting time rights, and with respect to a person who requested companionship or visitation, the willingness of that person to reschedule missed visitation;
- (11) In relation to parenting time, whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; 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 the adjudication; 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;

(12) In relation to requested companionship or visitation by a person other than a parent, whether the person 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 the person, 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 the adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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 previously has been convicted of an 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 the person has acted in a manner resulting in a child being an abused child or a neglected child;

(13) 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;

(14) Whether either parent has established a residence or is planning to establish a residence

outside this state;

(15) In relation to requested companionship or visitation by a person other than a parent, the wishes and concerns of the child's parents, as expressed by them to the court;

(16) Any other factor in the best interest of the child.

(E) The remarriage of a residential parent of a child does not affect the authority of a court under this section to grant parenting time rights with respect to the child to the parent who is not the residential parent or to grant reasonable companionship or visitation rights with respect to the child to any grandparent, any person related by consanguinity or affinity, or any other person.

(F)(1) If the court, pursuant to division (A) of this section, denies parenting time to a parent who is not the residential parent or denies a motion for reasonable companionship or visitation rights filed under division (B) of this section and the parent or movant files a written request for findings of fact and conclusions of law, the court shall state in writing its findings of fact and conclusions of law in accordance with Civil Rule 52.

(2) On or before July 1, 1991, each court of common pleas, by rule, shall adopt standard parenting time guidelines. A court shall have discretion to deviate from its standard parenting time guidelines based upon factors set forth in division (D) of this section.

(G)(1) If the residential parent intends to move to a residence other than the residence specified in the parenting time order or decree of the court, the parent shall file a notice of intent to relocate with the court that issued the order or decree. Except as provided in divisions (G)(2), (3), and (4) of this section, the court shall send a copy of the notice to the parent who is not the residential parent. Upon receipt of the notice, the court, on its own motion or the motion of the parent who is not the residential parent, may schedule a hearing with notice to both parents to determine whether it is in the best interest of the child to revise the parenting time schedule for the child.

(2) When a court grants parenting time rights to a parent who is not the residential parent, the court shall determine whether that parent has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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 proceeding, has been convicted of or pleaded guilty to any other 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 proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that that parent has not been so convicted and has not been determined to be the perpetrator of an abusive act that is the basis of a child abuse adjudication, the court shall issue an order stating that a copy of any

notice of relocation that is filed with the court pursuant to division (G)(1) of this section will be sent to the parent who is given the parenting time rights in accordance with division (G)(1) of this section.

If the court determines that the parent who is granted the parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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 proceeding, has been convicted of or pleaded guilty to any other 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 proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, it shall issue an order stating that that parent will not be given a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section unless the court determines that it is in the best interest of the children to give that parent a copy of the notice of relocation, issues an order stating that that parent will be given a copy of any notice of relocation filed pursuant to division (G)(1) of this section, and issues specific written findings of fact in support of its determination.

(3) If a court, prior to April 11, 1991, issued an order granting parenting time rights to a parent who is not the residential parent and did not require the residential parent in that order to give the parent

who is granted the parenting time rights notice of any change of address and if the residential parent files a notice of relocation pursuant to division (G)(1) of this section, the court shall determine if the parent who is granted the parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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 proceeding, has been convicted of or pleaded guilty to any other 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 proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child. If the court determines that the parent who is granted the parenting time rights has not been so convicted and has not been determined to be the perpetrator of an abusive act that is the basis of a child abuse adjudication, the court shall issue an order stating that a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section will be sent to the parent who is granted parenting time rights in accordance with division (G)(1) of this section.

If the court determines that the parent who is granted the parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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 proceeding, has been convicted of or pleaded guilty to any other 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 proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, it shall issue an order stating that that parent will not be given a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section unless the court determines that it is in the best interest of the children to give that parent a copy of the notice of relocation, issues an order stating that that parent will be given a copy of any notice of relocation filed pursuant to division (G)(1) of this section, and issues specific written findings of fact in support of its determination.

(4) If a parent who is granted parenting time rights pursuant to this section or any other section of the Revised Code is authorized by an order issued pursuant to this section or any other court order to receive a copy of any notice of relocation that is filed pursuant to division (G)(1) of this section or pursuant to court order, if the residential parent intends to move to a residence other than the residence address specified in the parenting time order, and if the residential parent does not want the parent who is granted the parenting time rights to receive a copy of the relocation notice because the parent with parenting time rights has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code 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 proceeding, has been convicted of or pleaded guilty to

any other 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 proceeding and caused physical harm to the victim in the commission of the offense, or has been determined to be the perpetrator of the abusive act that is the basis of an adjudication that a child is an abused child, the residential parent may file a motion with the court requesting that the parent who is granted the parenting time rights not receive a copy of any notice of relocation. Upon the filing of the motion, the court shall schedule a hearing on the motion and give both parents notice of the date, time, and location of the hearing. If the court determines that the parent who is granted the parenting time rights has been so convicted or has been determined to be the perpetrator of an abusive act that is the basis of a child abuse adjudication, the court shall issue an order stating that the parent who is granted the parenting time rights will not be given a copy of any notice of relocation that is filed with the court pursuant to division (G)(1) of this section or that the residential parent is no longer required to give that parent a copy of any notice of relocation unless the court determines that it is in the best interest of the children to give that parent a copy of the notice of relocation, issues an order stating that that parent will be given a copy of any notice of relocation filed pursuant to division (G)(1) of this section, and issues specific written findings of fact in support of its determination. If it does not so find, it shall dismiss the motion.

(H)(1) Subject to section 3125.16 and division (F) of section 3319.321 of the Revised Code, a parent of a child who is not the residential parent of the child is

entitled to access, under the same terms and conditions under which access is provided to the residential parent, to any record that is related to the child and to which the residential parent of the child legally is provided access, unless the court determines that it would not be in the best interest of the child for the parent who is not the residential parent to have access to the records under those same terms and conditions. If the court determines that the parent of a child who is not the residential parent should not have access to records related to the child under the same terms and conditions as provided for the residential parent, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to those records, shall enter its written findings of facts and opinion in the journal, and shall issue an order containing the terms and conditions to both the residential parent and the parent of the child who is not the residential parent. The court shall include in every order issued pursuant to this division notice that any keeper of a record who knowingly fails to comply with the order or division (H) of this section is in contempt of court.

(2) Subject to section 3125.16 and division (F) of section 3319.321 of the Revised Code, subsequent to the issuance of an order under division (H)(1) of this section, the keeper of any record that is related to a particular child and to which the residential parent legally is provided access shall permit the parent of the child who is not the residential parent to have access to the record under the same terms and conditions under which access is provided to the residential parent, unless the residential parent has presented the keeper of the record with a copy of an

order issued under division (H)(1) of this section that limits the terms and conditions under which the parent who is not the residential parent is to have access to records pertaining to the child and the order pertains to the record in question. If the residential parent presents the keeper of the record with a copy of that type of order, the keeper of the record shall permit the parent who is not the residential parent to have access to the record only in accordance with the most recent order that has been issued pursuant to division (H)(1) of this section and presented to the keeper by the residential parent or the parent who is not the residential parent. Any keeper of any record who knowingly fails to comply with division (H) of this section or with any order issued pursuant to division (H)(1) of this section is in contempt of court.

(3) The prosecuting attorney of any county may file a complaint with the court of common pleas of that county requesting the court to issue a protective order preventing the disclosure pursuant to division (H)(1) or (2) of this section of any confidential law enforcement investigatory record. The court shall schedule a hearing on the motion and give notice of the date, time, and location of the hearing to all parties.

(I) A court that issues a parenting time order or decree pursuant to this section or section 3109.12 of the Revised Code shall determine whether the parent granted the right of parenting time is to be permitted access, in accordance with section 5104.039 of the Revised Code, to any child day-care center that is, or that in the future may be, attended by the children with whom the right of parenting time is granted.

Unless the court determines that the parent who is not the residential parent should not have access to the center to the same extent that the residential parent is granted access to the center, the parent who is not the residential parent and who is granted parenting time rights is entitled to access to the center to the same extent that the residential parent is granted access to the center. If the court determines that the parent who is not the residential parent should not have access to the center to the same extent that the residential parent is granted such access under section 5104.039 of the Revised Code, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to the center, provided that the access shall not be greater than the access that is provided to the residential parent under section 5104.039 of the Revised Code, the court shall enter its written findings of fact and opinions in the journal, and the court shall include the terms and conditions of access in the parenting time order or decree.

(J)(1) Subject to division (F) of section 3319.321 of the Revised Code, when a court issues an order or decree allocating parental rights and responsibilities for the care of a child, the parent of the child who is not the residential parent of the child is entitled to access, under the same terms and conditions under which access is provided to the residential parent, to any student activity that is related to the child and to which the residential parent of the child legally is provided access, unless the court determines that it would not be in the best interest of the child to grant the parent who is not the residential parent access to the student activities under those same terms and

conditions. If the court determines that the parent of the child who is not the residential parent should not have access to any student activity that is related to the child under the same terms and conditions as provided for the residential parent, the court shall specify the terms and conditions under which the parent who is not the residential parent is to have access to those student activities, shall enter its written findings of facts and opinion in the journal, and shall issue an order containing the terms and conditions to both the residential parent and the parent of the child who is not the residential parent. The court shall include in every order issued pursuant to this division notice that any school official or employee who knowingly fails to comply with the order or division (J) of this section is in contempt of court.

(2) Subject to division (F) of section 3319.321 of the Revised Code, subsequent to the issuance of an order under division (J)(1) of this section, all school officials and employees shall permit the parent of the child who is not the residential parent to have access to any student activity under the same terms and conditions under which access is provided to the residential parent of the child, unless the residential parent has presented the school official or employee, the board of education of the school, or the governing body of the chartered nonpublic school with a copy of an order issued under division (J)(1) of this section that limits the terms and conditions under which the parent who is not the residential parent is to have access to student activities related to the child and the order pertains to the student activity in question. If the residential parent presents the school official or employee, the board of education of the school, or the

governing body of the chartered nonpublic school with a copy of that type of order, the school official or employee shall permit the parent who is not the residential parent to have access to the student activity only in accordance with the most recent order that has been issued pursuant to division (J)(1) of this section and presented to the school official or employee, the board of education of the school, or the governing body of the chartered nonpublic school by the residential parent or the parent who is not the residential parent. Any school official or employee who knowingly fails to comply with division (J) of this section or with any order issued pursuant to division (J)(1) of this section is in contempt of court.

(K) If any person is found in contempt of court for failing to comply with or interfering with any order or decree granting parenting time rights issued pursuant to this section or section 3109.12 of the Revised Code or companionship or visitation rights issued pursuant to this section, section 3109.11 or 3109.12 of the Revised Code, or any other provision of the Revised Code, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt, and may award reasonable compensatory parenting time or visitation to the person whose right of parenting time or visitation was affected by the failure or interference if such compensatory parenting time or visitation is in the best interest of the child. Any compensatory parenting time or visitation awarded under this division shall be included in an order issued by the

court and, to the extent possible, shall be governed by the same terms and conditions as was the parenting time or visitation that was affected by the failure or interference.

(L) Any parent who requests reasonable parenting time rights with respect to a child under this section or section 3109.12 of the Revised Code or any person who requests reasonable companionship or visitation rights with respect to a child under this section, section 3109.11 or 3109.12 of the Revised Code, or any other provision of the Revised Code may file a motion with the court requesting that it waive all or any part of the costs that may accrue in the proceedings. If the court determines that the movant is indigent and that the waiver is in the best interest of the child, the court, in its discretion, may waive payment of all or any part of the costs of those proceedings.

(M)(1) A parent who receives an order for active military service in the uniformed services and who is subject to a parenting time order may apply to the court for any of the following temporary orders for the period extending from the date of the parent's departure to the date of return:

(a) An order delegating all or part of the parent's parenting time with the child to a relative or to another person who has a close and substantial relationship with the child if the delegation is in the child's best interest;

(b) An order that the other parent make the child

reasonably available for parenting time with the parent when the parent is on leave from active military service;

(c) An order that the other parent facilitate contact, including telephone and electronic contact, between the parent and child while the parent is on active military service.

(2)(a) Upon receipt of an order for active military service, a parent who is subject to a parenting time order and seeks an order under division (M)(1) of this section shall notify the other parent who is subject to the parenting time order and apply to the court as soon as reasonably possible after receipt of the order for active military service. The application shall include the date on which the active military service begins.

(b) The court shall schedule a hearing upon receipt of an application under division (M) of this section and hold the hearing not later than thirty days after its receipt, except that the court shall give the case calendar priority and handle the case expeditiously if exigent circumstances exist in the case. No hearing shall be required if both parents agree to the terms of the requested temporary order and the court determines that the order is in the child's best interest.

(c) In determining whether a delegation under division (M)(1)(a) of this section is in the child's best interest, the court shall consider all relevant factors, including the factors set forth in division (D) of this

section.

(d) An order delegating all or part of the parent's parenting time pursuant to division (M)(1)(a) of this section does not create standing on behalf of the person to whom parenting time is delegated to assert visitation or companionship rights independent of the order.

(3) At the request of a parent who is ordered for active military service in the uniformed services and who is a subject of a proceeding pertaining to a parenting time order or pertaining to a request for companionship rights or visitation with a child, the court shall permit the parent to participate in the proceeding and present evidence by electronic means, including communication by telephone, video, or internet to the extent permitted by rules of the supreme court of Ohio.

(N) The juvenile court has exclusive jurisdiction to enter the orders in any case certified to it from another court.

(O) As used in this section:

(1) "Abused child" has the same meaning as in section 2151.031 of the Revised Code, and "neglected child" has the same meaning as in section 2151.03 of the Revised Code.

(2) "Active military service" and "uniformed services" have the same meanings as in section 3109.04 of the

Revised Code.

(3) "Confidential law enforcement investigatory record" has the same meaning as in section 149.43 of the Revised Code.

(4) "Parenting time order" means an order establishing the amount of time that a child spends with the parent who is not the residential parent or the amount of time that the child is to be physically located with a parent under a shared parenting order.

(5) "Record" means any record, document, file, or other material that contains information directly related to a child, including, but not limited to, any of the following:

(a) Records maintained by public and nonpublic schools;

(b) Records maintained by facilities that provide child care, as defined in section 5104.01 of the Revised Code, publicly funded child care, as defined in section 5104.01 of the Revised Code, or pre-school services operated by or under the supervision of a school district board of education or a nonpublic school;

(c) Records maintained by hospitals, other facilities, or persons providing medical or surgical care or treatment for the child;

(d) Records maintained by agencies, departments,

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instrumentalities, or other entities of the state or any political subdivision of the state, other than a child support enforcement agency. Access to records maintained by a child support enforcement agency is governed by section 3125.16 of the Revised Code.