

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CHRISTO LASSITER,	:	APPEAL NO. C-080799
Plaintiff-Appellant,	:	TRIAL NO. DR-9603399
vs.	:	<i>JUDGMENT ENTRY.</i>
SHARLENE W. LASSITER,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Plaintiff-appellant Christo Lassiter (“the Father”) appeals the trial court’s judgment reallocating parental rights and responsibilities. For the following reasons, we affirm.

During the marriage between the Father and Sharlene W. Lassiter² (“the Mother”), two children were born: Lindsey, now age 16, and Ellery, now age 13. The Mother and the Father were divorced in April 2001, with the decree granting custody of the children to the Mother. Four years later, custody was changed to the Father due to the Mother’s relocation to Northern Kentucky and her inability to maintain the children’s school enrollment in Hamilton County, Ohio.

In January 2008, the Mother moved for a change of custody and reallocation of parental rights and responsibilities based on the children’s wishes to live with her, her relocation back to Ohio, and the escalation of controlling behavior exhibited by

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² Defendant was remarried in March 2008. Her new surname is Boltz.

the Father since becoming the custodial parent. The trial court ordered a modified custody investigation and held an in camera interview with each child. While the Mother's motion was pending, the Father encouraged Lindsey to apply to a prestigious boarding school in Michigan, and she was accepted. The Mother then filed for a temporary restraining order, requesting immediate temporary custody of the children, after learning that the Father intended to relocate Lindsey to an out-of-state boarding school, preventing the Mother from having significant parenting time with Lindsey. The Mother also requested a restraining order to prevent the Father from enrolling Lindsey in the boarding school. Eventually, the trial court denied the Mother's motion for temporary custody and entered an order prohibiting the Father from removing either child from the court's jurisdiction to effectuate a change of schooling until the Mother's motion for reallocation of parental rights had been decided. Further, the court ordered that the children remain enrolled in Walnut Hills High School in Cincinnati for the 2008-2009 school year.

At the hearing in August 2008, there was evidence presented that in July 2008, Lindsey had been withdrawn from Walnut Hills High School and enrolled in an out-of-state boarding school. The Father testified that this had been an administrative error, and that as soon as he had discovered the error, he had reenrolled Lindsey in Walnut Hills. The Mother testified that she had spoken with Walnut Hill's registrar, who had indicated that Lindsey had been withdrawn from Walnut Hills because she would be attending an out-of-state boarding school for the 2008-2009 school year.

A one-day hearing was held in August 2008. After considering the testimony, reviewing the social worker's report from the custody investigation, and performing additional in camera interviews with each child, the trial court awarded custody to the Mother, finding that the Father's intent to relocate Lindsey to boarding school in Michigan and the "stress and anxiety the children physically exhibited to the court"

constituted a change in circumstances sufficient to support a change in custody. Further, the court held that it was in the children's best interests to award custody to the Mother.

The Father now appeals this judgment, bringing forth four assignments of error.

In his first assignment of error, the Father contends that the trial court erred, as a matter of law, when it changed custody of the children to the Mother. First, the Father argues that the trial court did not have jurisdiction to modify the prior custody order because the Mother had failed to file an affidavit as required by R.C. 3127.23(A). That section provides that "each party in a parenting proceeding, in the party's first pleading or in an affidavit attached to that pleading, shall give information under oath as to the child's present address, the places where the child has lived within the last five years, and the name and present address of each person with whom the child has lived during that period." The parties are also required to provide notice of any other proceeding involving the children taking place in any other court in Ohio or in any other state.

After reviewing the record, and presuming that R.C. 3109.27 is applicable to the facts here, we conclude that the Mother provided all the requisite information in the additional pleadings and evidence and testimony presented at the hearings on her motion to change custody. The fact that some of this information had been presented in later pleadings and proceedings and had not been submitted with the motion for reallocation of parental rights and responsibilities did not deprive the trial court of jurisdiction to modify custody.³

Father next argues that the trial court failed to first find a change in circumstance before engaging in a best-interest analysis. This assertion is not

³ See *Smith v. Boyd*, 3rd Dist. No. 13-05-49, 2006-Ohio-6931 (holding that the filing of the R.C. 3109.27 affidavit with the complaint is directory, not mandatory).

demonstrated in the record. The court in its decision expressly concluded that that the intent to enroll Lindsay in boarding school out-of-state without the Mother's agreement and against Lindsey's wishes, the Father's future plans to potentially enroll Ellery in boarding school, and the stress and anxiety that the children exhibited since living with their Father, constituted significant changes in circumstances.⁴ The court also set forth findings of fact supporting its conclusions.

Accordingly, because the trial court had jurisdiction to modify custody and properly considered whether a change of circumstance had occurred since its prior custody award, we overrule the Father's first assignment of error.

In his second assignment of error, the Father maintains that the trial court's decision to change custody to the Mother was against the weight of the evidence. In his third assignment of error, the Father contends that the trial court erred when it found that there was a change of circumstance. Finally, in his fourth assignment of error, the Father argues that the trial court erred by relying "almost exclusively" on the in camera interview of the children. Because these assignments of error raise similar issues, we address them together.

Prior to modifying custody, a trial court must first find that a change of circumstance has occurred.⁵ This determination should not be disturbed absent an abuse of discretion.⁶ A change in circumstance must be "substantiated, continuing, and [have] a materially adverse effect upon a child."⁷ In determining whether a change in circumstance has occurred, we are mindful that custody issues are some of the most difficult and agonizing decisions a trial court must make. Therefore, a trial

⁴ See *Lehman v. Lehman* (Feb. 28, 1997), 11th Dist. No. 95-T-5327 (reversing the trial court's modification of custody despite the fact that the record demonstrated that a change of circumstance had occurred when the trial court only indicated that a change of custody was in the best interest of the children and did not find that there had been a change of circumstance).

⁵ R.C. 3109.04.

⁶ *Davis v. Flickinger*, 77 Ohio St.3d 415, 416, 1997-Ohio-260, 674 N.E.2d 1159.

⁷ *Id.*

court must have wide latitude in considering all the evidence before it supporting such a change.⁸

The Father argues that his intent to enroll Lindsey in an out-of-state boarding school is, alone, not a sufficient basis to change custody. While we are aware that the mere possibility of something happening in the future is not a sufficient basis to justify a change of custody, we note that here the Father did enroll Lindsey in the boarding school against her wishes. The Father characterizes this enrollment, though, as giving Lindsey “options,” and he argues that he would not send Lindsey to boarding school if the court prohibited it. Thus, the Father maintained that there was no need to change custody. But the court also cited as a change of circumstance the anxiety and stress exhibited by the children during their in camera interviews.

And the trial court did not indicate that the stress and anxiety observed was due solely to “school placement,” as the Father argues. The court instead indicated that the school placement was one example of how the Father did not listen to the children’s expressed desires. The court connected the children’s exhibited stress and anxiety to the highly structured lives they led, combined with the Father’s high expectations of them. Specifically, the court stated that the Father “exposes the children to a full range of options for the children to develop their potential. And, he expects them to be excellent in everything. To that end, he has the children scheduled almost the entire summer and they are expected to participate in many sporting and academic extracurricular activities during the school year. [The Father] believes that the children have the same desire to excel and are in agreement with everything he plans for them. * * * While [the Father’s] desires and goals for his children are admirable, his failure to see the effect on them is not.”

The Father argues that there is no evidence to support the court’s finding that he is not attuned to the children’s needs, and that the court erred in concluding that

⁸ Id.

a change in custody was in the best interests of the children. But the trial court, after conducting the in camera interviews, did find that the children were subject to anxiety and stress resulting from the Father not listening to their wishes and his high expectations of them. We cannot say that the trial court abused its discretion in giving significant weight to the children's wishes and concerns here, given the age of the children and their maturity. Specifically, the trial court noted, and the record reflects, that "the children present as more adult than their parents."

Finally, the Father argues that the record does not support the trial court's determination that any disadvantage resulting from a change of custody was outweighed by the advantages of a change of custody. Specifically, the Father argues that this finding is contradicted by the report submitted by the social worker who had performed the modified custodial investigation. But the social worker's recommendation that the children remain with the Father was based mainly on the fact that any change in custody "would not likely reduce the animosity between [the Mother and the Father]. In fact, from the history, a change would increase the number of elements about which the parties can disagree. New motions and responses would be generated and Lindsey and Ellery would be even more likely to be in the middle of the combat." Based on the reasoning of this recommendation, we cannot say that the trial court abused its discretion in giving more weight to the children's wishes and concerns, as expressed during the in camera interviews, than to the social worker's report.

There was substantial, credible evidence presented to support the trial court's conclusions (1) that a change of circumstance had occurred, (2) that it was in the best interests of the children to change custody, and (3) that any disadvantage to a change of custody was outweighed by the advantages. We therefore, overrule the Father's second, third and fourth assignments of error.

Accordingly, the judgment of the trial court is affirmed.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 17, 2009

per order of the Court _____.

Presiding Judge