

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

JULIE B. GOFFSTEIN,	:	APPEAL NOS. C-140418
	:	C-140702
Plaintiff-Appellant,	:	TRIAL NO. DR-1001501
vs.	:	<i>JUDGMENT ENTRY.</i>
PETER M. GOFFSTEIN,	:	
Defendant-Appellee.	:	

We consider these consolidated appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Julie Goffstein appeals from a decree of divorce and a postdecree entry modifying parenting time. We affirm the judgments of the trial court.

Julie and Peter Goffstein were married in 1998 and have six children. In 2010, Ms. Goffstein filed a complaint for divorce. On June 12, 2012, the domestic-relations court issued an order allocating parental rights. Pursuant to the order, Ms. Goffstein was given custody of all the children. The amount of child support was not determined. On May 22, 2013, the court modified its order to name Mr. Goffstein custodian of the four younger children. That order was modified twice in June 2013. In July 2013, Mr. Goffstein moved to modify the parenting orders. Following a hearing, the court ordered that Ms. Goffstein's parenting time with the four younger children be reduced and that Mr. Goffstein's parenting time with the two older children be increased. The court also ordered Ms. Goffstein not to remove the children from the Cincinnati area without Mr. Goffstein's permission. The parenting

orders were later incorporated into the decree of divorce, which was entered on June 24, 2014. In the appeal numbered C-140418, Ms. Goffstein appeals from the decree of divorce.

Following the entry of the decree of divorce, Mr. Goffstein filed a motion to modify parenting time, citing repeated violations by Ms. Goffstein of the parenting-time provisions of the decree. He also sought attorney fees. Ms. Goffstein filed a motion to dismiss, which was denied by the trial court. The court held a hearing on the motion, which Ms. Goffstein did not attend. The court granted Mr. Goffstein's motion and ordered that Ms. Goffstein's parenting time with the four younger children be supervised and subject to Mr. Goffstein's discretion. The court also awarded Mr. Goffstein attorney fees of \$2,400. In the appeal numbered C-140702, Ms. Goffstein appeals from this order.

C-140418

In the first assignment of error in the appeal numbered C-140418, Ms. Goffstein complains that the court abused its discretion when it allocated parental rights based on the May 22, 2013 and July 30, 2013 orders. She maintains that those orders improperly modified the June 21, 2012 custody order without sufficient demonstration of a change of circumstances as required by R.C. 3109.04(E).

In its May 22, 2013 order, the trial court found that there was a change of circumstances warranting a modification of parental rights. But such a finding was not necessary. Under R.C. 3109.04(E)(1), a “court shall not modify a *prior decree* allocating parental rights” unless it first finds that there has been a change in circumstances. (Emphasis added.) Here, the court's order in June 20, 2012—and its orders in May and July 2013—were temporary orders, subject to modification up until the entry of a decree. *See Robinette v. Bryant*, 4th Dist. Lawrence No. 12CA20, 2013-Ohio-2889, ¶ 23-24. The trial court did not need to find a change in circumstances before modifying the predecree orders.

Instead, the court needed to determine that the allocation of parental rights was in the best interests of the children. R.C. 3109.04(B). R.C. 3109.04(F) provides a nonexhaustive list of factors to consider when making a best-interest determination. Here, the trial court referred to R.C. 3109.04(F)(1) and focused on questionable decisions about secular education made by Ms. Goffstein, such as her failure to enroll one of the children for a semester of the 2012/2013 academic year. *See* R.C. 3109.04(F)(1)(d). The court also noted that Ms. Goffstein had not provided Mr. Goffstein with the children's educational and medical information, and that she had alienated the children from their father. We conclude that the court's findings were supported by the record, and that the court's allocation of parental rights in the decree was not an abuse its discretion. The first assignment of error in the appeal numbered C-140418 is overruled.

In her second assignment of error, Ms. Goffstein asserts that the trial court violated her due-process rights by modifying the May 22, 2013 order and by dismissing her motion to vacate and set aside the decision. She also insists that the court abused its discretion by holding a hearing on Mr. Goffstein's motion to modify six days after the motion had been filed.

Ms. Goffstein appears to take issue with the court's modification of the May 22, 2013 order on June 14, 2013, and June 20, 2013, as well as its modification on July 30, 2013, following Mr. Goffstein's motion. The court dismissed her motion to set aside the July 30 order because that order was under appellate review. We conclude that Ms. Goffstein's argument regarding the modifications is moot because those orders were interim orders that merged within the final decree. *See Colom v. Colom*, 58 Ohio St.2d 245, 247, 389 N.E.2d 856 (1979).

We also are not persuaded by her insistence that the court abused its discretion by holding a hearing six days after Mr. Goffstein's motion was filed. Ms. Goffstein was served by mail at least seven days before the scheduled hearing. *See*

Civ.R. 6(C). Further, she can demonstrate no prejudice as she clearly knew about the hearing. She filed a motion to dismiss the scheduled hearing. The second assignment of error in the appeal numbered C-140418 is overruled.

The final assignment of error in the appeal numbered C-140418 is that the court abused its discretion when it made an inequitable division of property, did not award Ms. Goffstein spousal support and overruled her objections to the magistrate's decision on the division of marital property.

We will not reverse a trial court's property-division order absent an abuse of discretion. *Lanzillotta v. Lanzillotta*, 1st Dist. Hamilton Nos. C-120796 and C-120835, 2013-Ohio-4050, ¶ 3. Here, after considering the factors listed in R.C. 3105.171(F), the trial court concluded that allocation of all the marital assets and all the marital debt to Mr. Goffstein was equitable. *See* R.C. 3105.171(C)(1). As a result, Mr. Goffstein ended up with a negative distribution of \$233,336.06, and Ms. Goffstein was left with no debt from the marriage. Since the distribution was negative, we hardly think it was an abuse of discretion for the court not to order Ms. Goffstein to share the debt.

We likewise find no abuse of discretion with respect to spousal support. For three years during the pendency of the divorce proceedings, Mr. Goffstein paid spousal support amounting to one-half of his income to Ms. Goffstein. In considering whether further spousal support was appropriate and reasonable, the court considered the factors listed in R.C. 3105.18(C). For example, the court observed that there was a disparity in the Goffsteins' relative earning abilities, as Ms. Goffstein had only recently begun to work as a medical assistant earning \$10.75 an hour. *See* R.C. 3105.18(C)(1)(b). The court also noted that there was no evidence that either party had contributed to the education of the other or that either party intended to pursue further education. *See* R.C. 3105.18(C)(1)(j) and (k). Further, the children were at an age where it would be appropriate for the Goffsteins to maintain

full-time employment. We conclude that the court did not abuse its discretion when it determined that further spousal support was not warranted. The third assignment of error in the appeal numbered C-140418 is overruled.

C-140702

Ms. Goffstein's first assignment of error in the appeal numbered C-140702 is that the court abused its discretion when it ordered that Ms. Goffstein's parenting time with the four younger children be supervised and subject to Mr. Goffstein's discretion.

During the hearing on his motion, Mr. Goffstein presented evidence that Ms. Goffstein had violated the parenting-time provisions in the decree of divorce by returning the four younger children two days late after she had spent two weeks of parenting time with them. On another occasion, Ms. Goffstein had removed the four younger children from Ohio and taken them to New York, contrary to the decree. She returned them 16 days later, after Mr. Goffstein involved the police. During the time they were in New York, the children missed eight days of school. Ms. Goffstein's violation of the decree was further demonstrated by a series of text messages to one of the children despite the decree's directive that Ms. Goffstein not communicate with the children about the divorce proceedings. For example, she remarked that "taking a mother away from her children is nothing but cruel behavior" and promised that she was doing everything she could to get the child home for good. In light of Mr. Goffstein's testimony, the court found that "it is no longer in the best interest of [the four younger children] for Mother to exercise unsupervised parenting time." The court thus ordered that Ms. Goffstein's parenting time with the four younger boys should be supervised and at Mr. Goffstein's discretion.

Ms. Goffstein contends that the court essentially denied her parenting time without properly considering the children's best interests as required by R.C.

3109.051(A). But such a reading misinterprets the court's order. The court did not terminate Ms. Goffstein's parenting time with her four younger children: Mr. Goffstein must still allow her reasonable parenting time. How and when that occurs is within his discretion, subject to the court's order that the parenting time be supervised. If Ms. Goffstein is denied parenting time by Mr. Goffstein, she can seek to enforce the court's order through contempt proceedings.

Ms. Goffstein also objects that the court modified her parenting time with the four younger children without taking into account the factors listed in R.C. 3109.051(D). But the court stated that it had considered each of the factors, which are reflected in the court's findings. The court found that the children's education was negatively impacted by Ms. Goffstein's decision to take them from the state in violation of the decree. *See* R.C. 3109.051(D)(3). And while they were out of state, one of the children was not given his prescribed medication. *See* R.C. 3109.051(D)(7). As the court found, Ms. Goffstein exhibited a "complete unwillingness to obey Court Orders[.]" *See* R.C. 3109.051(D)(13). While leaving the exercise of parenting time to the discretion of the residential parent is unusual, under the unique circumstances in this case, we conclude that the court's order was not an abuse of discretion. The first assignment of error in the appeal numbered C-140702 is overruled.

Ms. Goffstein protests in her second assignment of error that the court erred when it ordered her to pay Mr. Goffstein's attorney fees without first having found her in contempt. But the basis of the court's award of attorney fees was not a contempt finding. Instead, the court's order was pursuant to R.C. 3105.73(B) (mistakenly referred to as R.C. 3107.73(B) in the court's decision), which allows a court to award attorney fees in a postdecree motion. Ms. Goffstein did not attend the hearing on the motion to modify parenting time, so Mr. Goffstein's request for attorney fees and his attorney's testimony about the reasonableness of the request

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was uncontested. We are unable to conclude that the court abused its discretion in ordering Ms. Goffstein to pay attorney fees of \$2,400. The second assignment of error is overruled.

We therefore affirm the judgments of the trial court.

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.

FISCHER, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on October 30, 2015
per order of the court _____.

Presiding Judge