

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

IN RE: Q.R. : APPEAL NO. C-220623
 : TRIAL NO. F-19-516Z
 :
 : *JUDGMENT ENTRY.*
 :

The court sua sponte removes this case from the regular calendar and places it on the court’s accelerated calendar, 1st Dist. Loc.R. 11.1(C), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.

Appellant father appeals the judgment of the juvenile court denying his motion for shared parenting and granting custody of his child to appellee mother.

We address father’s first and fifth assignments of error together, as they both challenge the juvenile court’s decision to award custody of Q.R. to mother. In father’s first assignment of error, he argues that the juvenile court erred in its custody decision, and in his fifth assignment of error, he argues that the juvenile court erred in denying his motion for shared parenting. In awarding custody of Q.R. to mother, the juvenile court found that father had a history of drug and alcohol abuse, and that mother had obtained a three-year civil protection order against father. Despite the protection order, mother testified that when she went to their shared apartment to retrieve her belongings, father threw her into a wall, causing her bruising. Father also told an electronic-monitoring officer during a home visit that he wanted to “kill that bitch,” referring to mother. Father

violated the terms of his probation two separate times for failing to report, failing to complete treatment, and failing to provide urine screens. Father violated his probation yet another time for failing to provide urine screens. Father also displayed behavior in the courtroom during trial, which showed that he still harbored anger toward mother and her family, despite attending an anger-management course. Father also had a child-support arrearage. In support of father, the court noted that he completed a treatment program for post-traumatic stress disorder, as well as a father's program. The juvenile court noted that both parents had "flaws." Mother moved several times throughout the litigation, including to North Carolina with her lawyer, which delayed the progress of the case. Ultimately, the juvenile court weighed the best-interest factors in R.C. 3109.04(F)(1) in favor of granting custody of Q.R. to mother, subject to parenting time by father. The juvenile court's analysis is supported by the evidence at trial, and it was not an abuse of discretion. *See Davidson v. Hodge*, 1st Dist. Hamilton No. C-220241, 2023-Ohio-1638, ¶ 12.

In father's second assignment of error, he argues that the juvenile court erred in denying his request for attorney fees. Father argues that he is entitled to attorney fees under R.C. 2323.51 for mother's "frivolous conduct." Although father requested attorney fees in the juvenile court, father failed to raise the frivolous-conduct argument under R.C. 2323.51 in the juvenile court, so he has forfeited that argument on appeal. *See In re J.M.*, 4th Dist. Ross Nos. 18CA3633, 18CA3634, 18CA3635, 18CA3664 and 18CA3665, 2018-Ohio-5374, ¶ 27. Furthermore, father failed to specifically object to the magistrate's decision denying him attorney fees under R.C. 2323.51, and father fails to argue on appeal that the juvenile court committed plain error in failing to award him attorney fees under R.C. 2323.51. *See In re C.T.*, 9th Dist. Summit No. 30156, 2022-Ohio-3464, ¶ 12 (holding that where father failed to comply with Juv.R. 40(D)(3) and failed to argue plain

error on appeal, the court need not consider his argument). At trial, father requested attorney fees related to mother's missed court appearances and contempt, which the magistrate denied because father failed to properly serve mother with the contempt motions. Father has not demonstrated any error in that decision. Therefore, we overrule father's second assignment of error.

In father's third assignment of error, he argues that the juvenile court erred in denying his motion for interim visitation. This court cannot order any effectual relief from the juvenile court's interim order, which is no longer in effect because it has been superseded by the final order granting father parenting time, and so any appeal from that order is moot. *See Hempen v. Bailey*, 1st Dist. Hamilton Nos. C-040014 and C-040479, 2005-Ohio-3039, ¶ 9-10 (appeal as to order suspending visitation is moot because the trial court already granted the resumption of visitation); *Polacheck v. Polacheck*, 9th Dist. Summit Nos. 26551 and 26552, 2013-Ohio-5788, ¶ 38-39 (wife's assignment of error challenging an order allowing husband to take children on a vacation is moot because the vacation already occurred and the court could not provide any relief to correct the alleged error). Father's third assignment of error is moot, and we decline to address it. *See App.R. 12(A)(1)(c)*.

In father's fourth assignment of error, he argues that the juvenile court violated his due process rights. Father essentially claims in his appellate brief and in his objections to the magistrate's decision that the magistrate was biased against him. Juv.R 40(D)(6) provides that "[d]isqualification of a magistrate for bias or other cause is within the discretion of the court and may be sought by motion filed with the court." Therefore, the appropriate avenue to challenge a magistrate's impartiality is to file a motion for disqualification with the trial court, and not through the decision and objection process. *Angus v. Angus*, 2016-Ohio-7789, 73 N.E.3d 1143, ¶ 16 (10th Dist.). Nevertheless, a

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review of the record reveals no bias or impartial conduct on the part of the magistrate during trial or in his decision, or on the part of the juvenile court. We overrule father's fourth assignment of error.

We affirm the judgment of the juvenile court.

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

CROUSE, P.J., WINKLER and KINSLEY, JJ.

To the clerk:

Enter upon the journal of the court on August 9, 2023
per order of the court _____.
Administrative Judge