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

IN RE: J.R.	:	APPEAL NO. C-250486 TRIAL NO. F/22/568 X
	:	
	:	*JUDGMENT ENTRY*
	:	

This cause was heard upon the appeal, the record, and the briefs.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed in part and reversed in part, and the cause is remanded.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed 75 percent to the appellant and 25 percent to the appellee.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 8/28/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Hensley
Administrative Judge

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		O P I N I O N
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Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed in Part, Reversed in Part, and Cause Remanded

Date of Judgment Entry on Appeal: August 28, 2026

Law Office of Arica L. Underwood LLC and *Arica L. Underwood*, for Appellant Father,

Stagnaro Hannigan Koop, Co., LPA, and *Michaela M. Stagnaro*, for Appellee Mother.

ZAYAS, Presiding Judge.

{¶1} In this appeal, appellant father raises four assignments of error challenging the juvenile court's judgment on custody and contempt. In the first two assignments of error, father challenges the juvenile court's custody determination regarding J.R., arguing that the juvenile court failed to properly apply and weigh the best-interest factors set forth in R.C. 3109.04(F)(1), and asserts that the juvenile court's best-interest determination was against the manifest weight of the evidence. In the third assignment of error, father argues that the juvenile court abused its discretion by failing to find mother in contempt for willful violations of court-ordered parenting time. In the fourth assignment of error, father asserts that the juvenile court abused its discretion by failing to consider or conduct a hearing on father's request for attorney fees arising from mother's contempt of court. For the reasons that follow, we overrule the first, second, and third assignments of error, sustain the fourth assignment of error, reverse the juvenile court's judgment as to father's request for attorney fees, and remand the matter for the juvenile court to hold a hearing to determine the appropriate amount of attorney fees under R.C. 3109.051(K).

I. Background

{¶2} In April 2022, father filed a petition for custody or shared parenting of J.R. in the juvenile court around a week after J.R. was born. Around a year later, the parties reached an agreement wherein mother would be J.R.'s sole residential parent and legal custodian and father would have parenting time (hereinafter referred to as "the April 10, 2023 parenting-time order").

{¶3} Shortly after, father filed a second petition for custody and a request for an emergency hearing. Father alleged that mother was violent around J.R. and said that he was worried about J.R.'s safety. In the supporting affidavit, father detailed an

alleged incident wherein mother was upset and attacked him physically with J.R. in the room. J.R. was allegedly asleep when the altercation began but woke up crying during the incident and mother continued to attack father until he looked at mother "one last time" and asked her to stop and attend to J.R., which is when the attack stopped. After a hearing that same day, the magistrate denied father's request for an emergency order. The magistrate found that J.R. was not harmed during the incident and father "stated Mother has never harmed the child before." The magistrate's entry states, "Both parents have filed criminal charges against the other based on the incident, and both parents have obtained protection orders against one another."

{¶4} A few days later, father filed a motion to set aside the magistrate's order based on "lack of evidence" at the hearing that he claimed to "have now." Further, father stated that mother did not let him see or pick up J.R. on the day of the emergency hearing (May 5, 2023), causing him to worry about J.R.'s safety. Father filed a motion for contempt that same day on the same basis. The motion for contempt indicated that mother was notified "by PD" that the protection order for J.R. "was taken off" and that father would be at the police station to pick him up with a third person.

{¶5} While his motion to set aside was pending, father filed another request for an emergency hearing. In the supporting affidavit, father stated that mother "has been violent on more than one occasion and is now using DV to keep me away from my son." Father said, "I fear for my son and his safety." After a hearing that same day, the magistrate denied father's emergency request. The magistrate found no evidence that J.R. was harmed or in danger.

{¶6} Shortly after, mother filed a motion to modify father's parenting time. The motion stated, "Father has engaged in conduct that leads Mother to believe that

[J.R.] is not safe with Father."

{¶7} The following month, the juvenile court entered an order denying father's motion to set aside the magistrate's order based on lack of transcripts and lack of evidence of harm or danger to J.R.

{¶8} That same month, the parties appeared before the magistrate for a pretrial hearing on the pending motions. Relevant here, the magistrate found that J.R. was no longer a protected party on the protection order and ordered that, unless the parties could produce a superseding order from another court, the parties were expected to follow the juvenile court's parenting-time orders.

{¶9} A couple of months later, in October 2023, father filed a second motion for contempt, alleging that he was denied parenting time each week from May 8, 2023, through October 9, 2023. Attached to the motion is a modified protection order entered by the Hamilton County Municipal Court on May 5, 2023, stating, "[Father] may see child [J.R.] through third party at police station."

{¶10} Shortly after, the parties again appeared before the magistrate for a pretrial hearing. Relevant here, the magistrate acknowledged receipt of the protection orders and stated,

> Mother's position is that even though the child was removed from her protection order against Father, the Judge's entry states there should be a third person present if there is to be an exchange at the police station. If no third person is present, then she has no duty to exchange the child with Father. The Judge's order does not name any third party. The parents cannot have any contact, so there has been no ability for them to agree on a third party. Mother has not provided a third party for the exchange. Mother has not taken the child to the

police station for an exchange.

> Father states Mother has a duty to take the child to the police station for the exchange to occur in the lobby of the police station. He believes the existing order from this court requires Mother to take the child to the police station. The criminal matter is set for a hearing on 10-30-23. Father has had no visitation with the child since the DV charges were filed because Mother has not taken the child to the police station along with a third party. Father states that no third party was named during the protection order hearing.

{¶11} The following month, in November 2023, the parties again appeared before the magistrate for a pretrial hearing. Relevant here, the magistrate stated,

> The parties attended the criminal court case along with Attorney Underwood. The judge stated there was no specific third person to be present, just the officer who mans the desk inside the police station. The court orders Mother and Father along with their attorneys to create a plan to reintroduce Father back into the child's life. They have one week to do so, if that is not able to be accomplished within a week, the parties are ordered to abide by this court's original parenting time order.

(hereinafter referred to as "the November 29, 2023 parenting-time order").

{¶12} Thereafter, the parties filed proposed transition plans and mother filed a motion for shared parenting with a proposed shared-parenting plan.

{¶13} On February 5, 2024, father filed a third motion for contempt, alleging that he was denied parenting time each week from October 9, 2023, through January 29, 2024. Attached to the motion are the judge's sheets from the municipal court action. The most recent sheet shows that the municipal court entered an order on

December 11, 2023, that the parties were to exchange J.R. in the lobby of the "Forest Park PD" and could communicate "through the app called APPCLOSE." Another sheet shows that the order from the court on May 5, 2023, was for the parenting time to be "arranged through 3rd party intermediary @ police station."

{¶14} That same day, the parties appeared before the magistrate for a "'Change of Circumstance' trial." The magistrate found that "there were substantial changes in both Mother's and [J.R.]'s circumstances between [the date of the juvenile court's parenting-time orders] and [the date that J.R. was removed from the protection orders]." The magistrate then set the matter for a "'Best Interest trial," and entered interim parenting-time orders specifying,

> The parents shall exchange the child in the lobby of the Forest Park Police Station. No person other than the Desk Officer in the lobby needs to be present. The parents shall have no other in-person contact pursuant to the parents' TPOs in Municipal Court. The parents shall continue to use the AppClose app if there is any necessary information regarding the child or the parent's situation that needs to be conveyed outside of exchanging the child at the police station. Mother shall not be present during Father's visits except for the exchange of the child at the police station as long as the TPOs are valid.

(hereinafter referred to as "the February 5, 2024 parenting-time order"). Mother also withdrew her motion for shared parenting, and the parties agreed to incorporate the evidence and testimony presented at this hearing into the best-interest trial.

{¶15} On March 29, 2024, father filed a fourth motion for contempt, alleging that mother was in violation of the court's interim parenting-time orders for engaging "in a series of actions designed to prevent [father] from visiting his son."

{¶16} On April 10, 2024, father filed a fifth motion for contempt, alleging that mother refused to bring J.R. for overnight visits on April 6 and 13, 2024.

{¶17} Trial on all pending motions occurred on April 17, May 31, October 23, and December 13, 2024. After submission of written closing arguments, the magistrate entered a decision on December 26, 2024. The magistrate denied father's request for custody but ordered equal parenting time with J.R. The magistrate also denied his first and second motions for contempt but granted father's third, fourth, and fifth motions for contempt.

{¶18} Notably, the magistrate found under R.C. 3109.04(F)(1)(i) that mother had continuously and willfully denied father's right to parenting time. The magistrate stated, "The Court finds Mother's statements that she believed she might be jailed if she showed up to exchange [J.R.] at the police station as disingenuous at best. Mother had counsel to advise her." Nevertheless, the magistrate ultimately said,

> While the Court finds Mother's actions intentional to deprive Father of parenting time with his child, neither parent currently has a filed Proposed Shared Parenting Plan that they wish the Court to consider. Therefore, the Court cannot order Shared Parenting. [J.R.] is well-adjusted to Mother's home where he is being well cared for. He is bonded to Mother's extended family. Mother is and has been monetarily supported by her extended family for any needs for Mother and [J.R.]. Father's housing is less stable and his income has been less stable. His support system is not as sufficient as Mother's support system. Before the 4-13-23 incident, Father had agreed to Mother retaining full legal custody. The Court denies Father's Motion for Custody. Mother retains full legal custody, but the Court orders the

> attached [equal] Parenting Time schedule for Father. Mother and Father SHALL follow that schedule in all of its parts. Any deviations from that schedule SHALL BE IN WRITING that is CONFIRMED by both parents. Each parent is ordered to acknowledge and respond to any AppClose communication from the other parent within 24 hours, no exceptions.
>
> Regarding Father's Contempt Motions, the Court denies Father's Contempt Motions filed prior to 12-11-23. The Court grants all of Father's Contempt Motions filed after 12-11-23. The Court orders Mother to pay all of Father's Attorney's Fees associated with the costs of those Motions. The Court does not find it in the child's best interest to curtail [J.R.]'s parenting time with Mother during the regular year, as the parents now have 50/50 time with [J.R.] and that appears appropriate. However, the Court vacates Mother's ability to have any extended time with [J.R.] for the first full year after this Court order goes into effect. Father is able to exercise his extended time with [J.R.] during the first full year after this order goes into effect.
>
> Any willful disregard or contempt of this order by either parent would show the Court the parent is not able to follow Court orders and possibly not suitable to have custody of [J.R.].

{¶19} Both parties filed objections to the magistrate's decision. Relevant here, father argued that it was in J.R.'s best interest to be placed in his custody. Further, father argued that mother should be held in contempt for the parenting time she denied him from May 2023 to February 2024. In his supplemental objections, father further argued—among other things—that the magistrate failed to properly apply the

best-interest standard when awarding custody to mother where the magistrate focused on "past parental conflict" rather than the present efforts by father to cooperate and co-parent with mother and argued that he is entitled to attorney fees as a result of mother's contempt. Mother challenged the magistrate's contempt findings and the award of attorney fees to father.

{¶20} The juvenile court held oral arguments on the objections on July 16, 2025. Thereafter, the court entered a decision on August 1, 2025. The juvenile court found that the magistrate did not properly determine the factual issues nor appropriately apply the law and therefore did not adopt the magistrate's decision. Nevertheless, the court's order appears consistent with the magistrate's decision.

{¶21} First, the juvenile court found that sole custody to mother was in J.R.'s best interest. The court found under R.C. 3109.04(F)(1)(f) that mother's compliance with court orders has been a persistent issue throughout the case and noted its concern about mother's failure to comply with the court's prior orders and her attitude towards father. The court stated,

> The record is abundantly clear that Mother and Father do not share a positive relationship and are greatly unhappy with the other's actions. However, Mother is the only party that has a history of withholding the child from the other. She has consistently and readily failed to comply with the Court's Orders and has justified her actions with the explanations, such as the child needs a transition plan even though that was not an Order made by the Court. The Court is concerned that Mother desires to be in sole control of the child and is unwilling to co-parent the child with Father despite his role as a parent.

{¶22} Further, under R.C. 3109.04(F)(1)(i), the court stated, "The record is

clear that Mother has continuously and willfully denied Father's right to parenting time in accordance with prior Court Orders. Mother argues that she did so because of concerns about the child's health and safety but the Court disagrees." Nevertheless, after weighing all the factors under R.C. 3109.04(F)(1), the court ultimately found that it was in J.R.'s best interest to remain in mother's custody.

{¶23} As for contempt, the court acknowledged all five of father's motions for contempt. Regarding the first two motions (filed on May 8, 2023, and October 11, 2023), the court declined to find mother in contempt for violating the court's April 10, 2023 parenting-time order "[g]iven the extensive ambiguity within the order from the Hamilton County Municipal Court." The court's resolution of the remaining three contempt motions is less clear. The court expressly purports to grant the third and fifth motions (filed on February 5, 2024, and April 10, 2024) but does not expressly address the fourth motion (filed on March 29, 2024). Nevertheless, we construe the trial court's decision as granting all three motions as, when looking at the context of the juvenile court's order and the orders being discussed, it is clear that the juvenile court found mother in contempt of the parenting-time orders entered on November 29, 2023,[1] and February 5, 2024, and the court indicated that these orders were the subject of the third, fourth, and fifth motions for contempt. Whereas the court stated that the April 10, 2023 parenting-time order was the subject of the first two motions, and the court expressly declined to find mother in contempt for violating this order.

{¶24} Beyond that, the juvenile court declined to award attorney fees to either

[1] The juvenile court's decision purports to discuss an interim order from February 5, 2024, when addressing the third motion for contempt filed on February 5, 2024. This appears to be a typo as the substance of the order that is quoted by the court in this section of the decision is from the November 29, 2023 parenting-time order. Thus, the court appears to grant the February 5, 2024 motion based on mother's violation of the November 29, 2023 parenting-time order. We construe the decision accordingly.

party given that "the parties mutually acknowledge and concede that the Magistrate did not hold a separate hearing to address attorney fees."

{¶25} Father now appeals, raising four assignments of error for this court's review that challenge the juvenile court's custody and contempt determinations.

II. First and Second Assignments of Error

{¶26} In the first assignment of error, father argues that the juvenile court abused its discretion by failing to properly apply and weigh the best-interest factors set forth in R.C. 3190.04(F)(1). In essence, father asserts that the juvenile court's order does not show that the court meaningfully considered the statutory factors under R.C. 3109.04(F)(1) where the court's order does not reflect that it adequately considered mother's past "interference" with the court's parenting-time orders when assessing the child's best interest. He asserts that the juvenile court's judgment entry "does not reflect how those factors were analyzed despite extensive evidence relevant to the statutory criteria."

{¶27} In the second assignment of error, father argues that the juvenile court's custody determination is against the manifest weight of the evidence. He asserts that interference with parenting-time is a significant best-interest factor and the record demonstrates "evidence favoring [him] under the best-interest factors" where it shows that mother interfered with parenting time and he is stable and willing and able to provide care for the child.

{¶28} Because the first and second assignments of error both challenge whether the juvenile court appropriately considered and weighed the best-interest factors under R.C. 3109.04(F)(1), they will be addressed together.

A. Standard of Review

{¶29} "An appellate court reviews a juvenile court's custody determination for

an abuse of discretion." *In re G.W.*, 2024-Ohio-1551, ¶ 18 (1st Dist.), citing *Miller v. Miller*, 37 Ohio St.3d 71, 74 (1988); *accord, e.g., Bohannon v. Lewis*, 2022-Ohio-2398, ¶ 14 (1st Dist.), citing *Saylor v. Saylor*, 2020-Ohio-3647, ¶ 10 (1st Dist.). "An abuse of discretion 'implies that the trial court's decision was unreasonable or arbitrary.'" *Bohannon* at ¶ 14, citing *Kane v. Hardin*, 2019-Ohio-4362, ¶ 6 (1st Dist.). "An abuse of discretion occurs 'when a court exercise[es] its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.'" *In re L.F.*, 2023-Ohio-4199, ¶ 24 (1st Dist.), citing *Johnson v. Abdullah*, 2021-Ohio-304, ¶ 35.

B. Law and Analysis

{¶30} "After a juvenile court determines there is a change in circumstances,[2] it 'must determine whether a modification [of custody] is in the best interest of the child[.]'" *In re L.F.* at ¶ 24, citing *Bohannon* at 20. "When determining what is in a child's best interest, '"the court shall consider all relevant factors, including, but not limited to,"' those specified in R.C. 3109.04(F)(1)." *Id.*, citing *Bohannon* at ¶ 20, citing R.C. 3109.04(F)(1). In other words, the juvenile court's discretion is not absolute; the court must follow the procedures prescribed in R.C. 3109.04 when making custody decisions. *In re G.W.* at 18. Thus, "'it must be apparent from the record that the trial court considered the best interest factors in its decision.'" *Giovanini v. Bailey*, 2018-Ohio-369, ¶ 13 (9th Dist.), citing *Phillips v. Phillips*, 2014-Ohio-248, ¶ 8 (9th Dist.). However, the juvenile court is not required to explicitly make findings of fact, in the absence of such a request under Civ.R. 52, nor is it required to set forth its analysis as to each factor. *Id.*

{¶31} Further, "no one statutory factor controls the juvenile court's best-

[2] The change of circumstances finding in this case is not challenged on appeal.

interest determination." *Davidson v. Hodge*, 2023-Ohio-1638, ¶ 25 (1st Dist.), citing *In re L.L.*, 2020-Ohio-5609, ¶ 8 (1st Dist.). Rather, "'the weight to be given to any factor lies within the trial court's discretion.'" *Id.*, citing *In re L.L.* at ¶ 8.

{¶32} Here, the juvenile court expressly set out the required factors under R.C. 3109.04(F)(1), applied those factors, and found that it was in J.R.'s best interest to maintain custody with mother. *See In re G.W.*, 2024-Ohio-1551, at ¶ 18 (1st Dist.). Further, the juvenile court discussed the relevant factors and explained its ultimate weighing of the factors. *See id.*

{¶33} First, the court considered the wishes of the parents. *See* R.C. 3109.04(F)(1)(a). The court found that mother wished to remain the legal custodian of J.R. with an award of parenting time to father consistent with the initial custody agreement or a "2-2-3" equal parenting-time schedule. The court further found that father wished to be named the sole legal custodian of J.R. with a 50/50 parenting-time schedule.

{¶34} Second, the court explained that J.R. was too young for an in-camera interview. *See* R.C. 3109.04(F)(1)(b).

{¶35} Third, the court considered the interaction and interrelationship with J.R.'s parents, siblings, and any other person who may significantly affect J.R.'s best interest. *See* R.C. 3109.04(F)(1)(c). The court found that J.R. had a positive relationship with mother, father, and maternal grandparents, who provide care to J.R. when mother is unable to do so. The court noted father's testimony that he takes J.R. on outings to the park and to the aquarium for enrichment purposes. The court further noted father's testimony that he brings J.R. to play with a friend's similarly-aged child.

{¶36} Fourth, the court considered J.R.'s adjustment to his home, school, and community. *See* R.C. 3109.04(F)(1)(d). The court found that J.R. has progressed very

well in Mother's home, noting J.R.'s current developmental abilities and mother's reports that J.R. is well-adjusted to her home and church community and has friends in her neighborhood. The court also found that J.R. was well-adjusted to father and his home. The court further indicated,

> While Father's family does not reside in Cincinnati, Ohio and, at the time of the Magistrate's Decision, had not yet met the child, Father indicated that he receives support from his coworkers and neighbors in the student housing where he resides. Given the lack of family in the area, Father's child-care plans while he is at work were also discussed. Father's employer requires him to follow a 24/7 on-call schedule every third week of the month. In response to questions about what he would do with the child while on-call, he testified that either the building police officer or a resident advisor would be able to watch and provide care for the child. These potential babysitters are unknown to the child and to Mother.
>
> Despite Father's positive description of the child's adjustment, Mother continuously raised concerns about the child's temperament upon returning to her after a visit with Father. Mother testified that she has observed behavioral changes in the child when he returns from Father's care, such as the child hiding under tables and being fearful of loud noises. Maternal Grandparents also indicated that the child has appeared hesitant and scared upon his return from Father. Mother also identified incidents when the child has returned to her wearing the same diaper that he was wearing when she dropped him off with Father four hours earlier. Mother testified that the child has been returned with a

> diaper rash, diarrhea, and has been hungry and thirsty upon his return. In an attempt to remedy these concerns, Mother indicated that she attempted to provide Father with diapers and food for the child but that Father refused to accept Mother's offerings. Mother also indicated that she has observed the child use inappropriate language after he is returned to her care, language that she believes Father has taught him. The record shows that Father did not report any similar concerns for the child's behavior in his home. The Court does not dismiss Mother's concerns but finds it appropriate to note that some, not all, of these behavioral concerns could be a product of the child's age and toddlerhood.

{¶37} Fifth, the court considered the mental and emotional health of the parents. *See* R.C. 3109.04(F)(1)(e). The court noted some prior concerns for both mother and father but ultimately found that "[n]either party stated that they are experiencing any present mental health concerns."

{¶38} Sixth, the court considered which parent was more likely to honor and facilitate court-ordered parenting time. *See* R.C. 3109.04(F)(1)(f). The court found,

> Mother's compliance with Court Orders has been a persistent issue throughout this case. As will be discussed later in this Entry, Father has filed four Motions for Contempt against Mother alleging that she repeatedly withheld the child from him. The record shows that Mother conceded that she has withheld the child previously but argued that she did so because it was in the best interest of the child as she had concerns about the child's health and safety in Father's care. The Court has concerns about Mother's failure to comply with the Court's prior

> Orders and about Mother's attitude towards Father. The record is abundantly clear that Mother and Father do not share a positive relationship and are greatly unhappy with the other's actions. However, Mother is the only party that has a history of withholding the child from the other. She has consistently and readily failed to comply with the Court's Orders and has justified her actions with the explanations, such as the child needs a transition plan even though that was not an Order made by the Court. The Court is concerned that Mother desires to be in sole control of the child and is unwilling to co-parent the child with Father despite his role as a parent.

{¶39} Seventh, the court found that there was no current or past child-support order in effect. *See* R.C. 3109.04(F)(1)(g).

{¶40} Eighth, the court considered the prior criminal proceedings for domestic violence involving the parents and J.R. *See* R.C. 3109.04(F)(1)(h). The court explained the competing testimony of mother and father as to what occurred during the event that led to mother and father separately filing criminal charges of domestic violence against one another. The court also noted that J.R. was added to mother's protection order against father but removed on May 5, 2023. The court found that the charges were later dismissed and no current stay-away or protection order was in effect. The court further found that neither party indicated that J.R. was harmed during the altercation.

{¶41} Ninth, the court considered whether mother has continuously and willfully denied father's right to parenting time in accordance with the court's orders. *See* R.C. 3109.04(F)(1)(i). The court found, "The record is clear that Mother has continuously and willfully denied Father's right to parenting time in accordance with

prior Court Orders. Mother argues that she did so because of concerns about the child's health and safety but the Court disagrees."

{¶42} Last, the court considered whether either parent has, or is planning to, establish a residence outside of Ohio. *See* R.C. 3109.04(F)(1)(j). The court found that neither parent indicated that they had any intention of establishing a residence outside of Ohio.

{¶43} Beyond that, the court considered the parents' history of letting their anger influence their decisions with respect to J.R. *See* R.C. 3109.04(F)(1) (requiring the court to consider "all relevant factors").

{¶44} Ultimately, based on consideration of the above factors, the court determined that it was in J.R.'s best interest to be in the sole custody of mother. The court stated,

> Ultimately, the Court is largely led to believe that neither parent currently has the ability to cooperate or make any decisions together, even if those decisions may be in the best interest of the child. Both parents are content to blame the other for the problems while also making decisions that antagonize the other. The Court reviews and discusses these incidents in order to highlight the fact that both parents have acted in ways that have caused great distress toward the other. It is the Court's hope that the parents will be able to set aside their hurt and frustration with the other so that they can work together to parent their child. That being said, upon extensive consideration, the Court believes that it is in the child's best interest to be in the sole Legal Custody of Mother. The record shows that the child is well-adjusted to Mother's home, has a good relationship with Maternal Grandparents,

> and Mother has consistently met all of his needs. In contrast, the Court has concerns with Father's plans to leave the child with his coworkers or neighbors when he has to work. These potential babysitters are unknown to the child and Mother and the Court have [sic] concerns about the sustainability of the plan and the potential harms that the child could potentially be exposed to while in their care.

{¶45} Father first argues that the court did not meaningfully consider the statutory best-interest factors. However, as shown above, there is no indication in the record that the trial court did not meaningfully consider the statutory factors. Rather, what father appears to be arguing is that the juvenile court did not give enough weight to its finding that mother continuously and willfully denied his right to parenting time. However, as stated above, the weight to be given to any factor is within the discretion of the trial court and father has not specifically challenged any of the juvenile court's findings that weigh in favor of custody to mother being in J.R.'s best interest. Beyond that, as shown below, the juvenile court's best-interest finding is ultimately supported by the record.

{¶46} Father argues that the juvenile court's custody decision was against the manifest weight of the evidence.

{¶47} As an initial matter, as argued by mother, father fails to point to the record at all in support of this assertion. "'If an argument exits that can support [an] assignment of error, it is not this court's duty to root it out.'" *In re J.G.S.*, 2019-Ohio-802, ¶ 31 (1st Dist.), citing *State v. Brown*, 2013-Ohio-2722, ¶ 4 (1st Dist.); *accord, e.g., Guthrie v. Guthrie*, 2024-Ohio-5581, ¶ 12 (1st Dist.). Therefore, this court could overrule this argument on this basis alone.

{¶48} Nevertheless, father suggests that the weight of the evidence lies with

him where the record shows that he can provide care for J.R. and mother has repeatedly interfered with his parenting time.

{¶49} Father testified that he works as a facilities manager for off-campus student housing. He lives in a provided four-bedroom apartment at that location. He said his relationship with J.R. has been great since he has been able to spend time with him. He said, "Our relationship is (pause) it's been really good, it's been awesome. It's been no problems. He adapted pretty good from not seeing me for so long." He testified that he wants custody of J.R. because he is going to follow the court order and encourage the parenting time in the order as well as encouraging extra time with mother. When asked about how J.R. was adjusting to spending time with him, he said J.R. adjusted pretty fast and will reach for him and come to him when he picks him up. He said J.R. sleeps "perfectly fine" with him and said playtime is "perfectly fine." He said J.R. is not nervous and does not cry. He stated, "So he adjusted pretty good." He said that he takes J.R. to his home, the park, and to activities during his visits, like the Winton Wood Park activities and taking walks. He also takes J.R. to play dates with his friend's two-year-old daughter. He said that J.R. likes dancing and music, so they "play around a lot."

{¶50} He testified that his work schedule is Monday through Friday, "8:30 to 5." When asked what strengths he felt he would bring as the custodial parent, he answered, "I will be following the court order. I would be able to provide a safe environment for [J.R.], a good healthcare, a good daycare for [J.R.]. Cincinnati Daycare, I believe that's the one that I'm looking at right now, so . . . ." When asked why he wanted full custody of J.R., he said, "Because [mother] will not follow the court order, and she will continue to e [sic] the system, the court system or any way possible to keep me away from [J.R.] as best as she can."

{¶51} When father was asked if he is on call for his position as a facilities manager, he said that he is on call every third weekend. When asked what his plan was if J.R. was with him and he got a call, he said,

> There's officers there that he's more than willing to stay with [J.R.]. He's offered, so he can watch [J.R.].
>
> So like if there's an emergency, I also have the officer there to watch him, until I'm done with the emergency.
>
> I also have access to vendors that I can call in case of an emergency that I'm not able to fix the issue for whatever reason.
>
> Or if I can't make it, I can always call the vendors to come to (inaudible) without me having to go step outside.

{¶52} He further agreed that he would call mother to watch J.R. until he was done "if it came down to it." He said that J.R. would not be left alone for any period as there is an officer in the building and resident advisor. He said, "When there is people in the building I can ask someone or, as I mentioned, it all depends on the emergency now." When asked what he would do if he, the officer, and the resident advisor were all called to an emergency call, he said,

> Okay. So the Ras -- if the RA has to be there, the officer has to be there, and I have to also be there, then that has to be what I would consider a major issue.
>
> As soon as I get the call, I would have to call [mother] to come and pick up [J.R.] because it would be such a big issue where it's involving everybody to come.
>
> So I would have to, at that point, I would have to call her, you know, you have to come down there to pick him up.

{¶53} When asked if not being able to respond immediately would be a violation of his employment agreement, he said, "No. If I can't make it for some reason, I'll have the other guy, one lives five minutes away from me, and I can give him a call."

{¶54} When asked what his plans would be for J.R. during the day, he said, "Daycare, or – yeah, day care. I found -- I was looking into two daycares nearby that I'm sure would be great facility for [J.R.]." Father testified that daycare would be good for J.R. because he could interact with other children and get started with school. He agreed that J.R. is currently developing his communication and education skills in mother's care; however, he added that has also been working with J.R. as well on "a curriculum."

{¶55} When asked what the difference would be between him and mother having custody of J.R., he said, "The difference is that I have followed the court order." He testified that keeping J.R. away from mother would never be his intention. He said, "The difference would be just the communication, the lack of respect for the other parent, for the Court, you know, the constant disregard of everything."

{¶56} Mother testified that J.R. lives with her, her older sister and her parents. She said they are all very close and "have been all together" since J.R. was born. She testified that J.R. normally falls asleep with either her or her mother. J.R. struggles to fall asleep with her father and/or her sister even though J.R. has a close relationship with them. She said, "Me and my mom are normally the ones that do his night routine, and are his lead caretakers in the home, so we know his pattern, you know, to get to bed."

{¶57} When asked how J.R. is adjusting to the change in parenting time with father recently starting overnights, she said J.R. was "taking it harder than expected."

She testified,

> It's very hard for him to deregulate and get used to my household once he's returned.
>
> When he comes back to my house he immediately begins to throw himself on the floor and start crying. He hides under our dining room table.
>
> After the first overnight he began to hide under my bed. He refused to let me take [sic] him baths. He has become very iffy and very -- his activity has decreased.
>
> During the nights he's awakened multiple times throughout the night and begins to have emotional outbursts. Like if he's either having nightmares or night terrors.
>
> He begins to call out frantically "momma," like as if he's just desperately looking for me or just nervous and wants to know where I'm at.
>
> He does this throughout the day, but he does it more while he's sleeping. So I have seen where his sleep has been impacted greatly.
>
> His behavior is changing as far as his tantrums. There's just habits that he didn't have before.
>
> Like I stated, hiding under the tables, hiding in the closet door. He gets very frightened or startled when he hears a loud noise, or if the TV is too loud or he hears yelling. Like that lady that we heard earlier, anything, any commotion he begins to get frantic and call out to me.

{¶58} She said these behaviors are "extremely unusual" for J.R, who just turned two and has "never shown any signs that gave her concern." When asked if she

has any concern that father is not appropriate with J.R., she answered,

> I wouldn't say that he is, you know, not caring for him in any type of way, because I would say I'm not there and I don't have any proof.
>
> But the way that [J.R.] has returned to me, I do see where some neglect is taking place.
>
> There have been over four different incidences where [J.R.] has returned to me with the same diaper after a visit of almost four hours.
>
> He is constantly getting diaper rashes in my home. When he's never struggled with diaper rashes throughout his early years.
>
> And there's a lot of time where he's returned to me as well extremely hungry, eager to drink water, asking for drinks, you know, is asking for things that are normally asked for.
>
> I mean I'm kind of, you know, it could be maybe the routine that is different because we kind of have a schedule, a normal schedule for when he eats at my house, but when he's returned he's extremely tired, especially after the overnights.
>
> I think that would be the biggest concern, as well as some scratch marks that he came home with. He's only two. So when I do take him outside, I've very vigilant.
>
> I don't let him, you know, run too hard or run too far away, but there have been two instances where [J.R.] has been returned to me with huge scratch marks all over his legs and arms, which have also been concern of mine.

{¶59} She claimed that she expressed these concerns to father but her offers of solutions, such as providing the same diapers to him that she uses, have always

"been not considered." She also claimed that J.R. is constantly returning to her with diarrhea. She denied ever providing father with instructions on how to treat J.R.'s diaper rash. She testified that J.R. is on the waiting list to begin "play therapy" for his "behavioral issues." However, she later testified that he was too young to start play therapy.

{¶60} Mother testified about her daily routine with J.R., which includes eating, reading, watching educational videos and church "broadcasts," listening to "worship music," learning to play the piano and drums, going outside, playing with a neighbor of a similar age, bathing, praying, and spending time with her family. She said J.R. is "extremely happy and extremely loved where he's at," and she knows that separation from her home is "going to impact [J.R.] greatly with his behavior, with his emotions, with any type of trauma that can develop in these early years, especially in these early stages until he's five."

{¶61} At the best-interest hearing in May 2024, Mother testified that she feels she is "capable of honoring or facilitating" the court-approved parenting time now that "things," like the criminal charges and father's change of address, are "finally addressed" and "fixed." She said that she thinks she has "proven that [her] intention has never been to not follow the Court order" and that there have been "positive outcomes" since the court order has been "reestablished." She denied any plan to deny father his parenting time moving forward. However, she also claimed that father continues to "abuse [her] emotionally [and] verbally, during interactions in the police station, outside of the police station, and during one event that caused her to request [a new] order of protection."[3] She described father's behavior as telling her to leave,

[3] This request was denied.

telling her to shut up, rolling his eyes, cursing at her, making gestures at her, mimicking her, videoing her, telling her to "just stop talking," and having a "disrespectful demeanor." She claimed that all of this occurs in front of J.R.

{¶62} At the best-interest hearing in October 2024, she further testified that J.R. has picked up "hand gestures" since the last hearing. She said, "I've noticed one particular hand gesture does look very much like one that [father] used to do when he was affiliated with the Latin Kings, which is a gang in New York City." She further testified that J.R. is using "bad words" and no longer wants to sleep in a bed.

{¶63} Maternal grandfather testified that J.R. has lived in his home since he was born and is well-adjusted to his home and the community. He said that mother "cares for [J.R.] very well." He testified that J.R. has a strong bond with him and J.R. trusts his care. He said, "At night, [J.R. is] always looking for mom to sleep with." He denied ever seeing father physically assault mother. He said he would see them arguing, but never saw father being physically aggressive towards her. However, he also said that mother would show him marks and bruises and tell him that they were from arguing with father. He seemed to indicate this was around the time that the domestic-violence charges were filed. Nevertheless, he said that they always speak well of father in their home. He testified that J.R. has cried sometimes when mother is getting him dressed to go with father. He also testified that J.R. is nervous at first sometimes when he comes home from visits.

{¶64} Maternal grandmother also testified that J.R. is well-adjusted to their home and their community. She said she has a strong bond with J.R. and J.R. trusts her. When asked about mother and father's prior relationship, she described it as toxic and said that she has witnessed father verbally assault mother, and she came home one time to mother crying with her glasses broken on the floor after father apparently

hit mother in the face. She testified that mother has always told J.R. that father is a good dad and always "speaks good things" about father to J.R. She said that J.R. is "out of control" when he comes home from visits with father. She explained that J.R. "runs through the entire home," gets under the bed, and does not want to be touched by anybody. She said he screams, yells, and tries to kick mother when she is changing him. She also said he just stood in a corner one time, throws food, and "starts licking the floor like a dog." She claimed that J.R. does not want to bathe or sleep when he is supposed to and is "always asking for ice cream, cupcakes, [or] lollipops." She further claims that he talks a lot and cries in his sleep and starts making gestures with his fingers. When asked about J.R.'s behavior when leaving for a visit, she said he starts crying and screaming and must be distracted with a phone. She testified that J.R. comes home thirsty and hungry from visits with father and "always has a lot of diarrhea," which is causing a lot of diaper rash. She agreed that J.R. was happy to see father in court.

{¶65} Maternal aunt testified that J.R. is well-adjusted to their home and the community. She describes mother as an "excellent mother." She agreed that J.R. was cared for and loved in their home. She testified that J.R. has "affection and care" towards her and trusts her. She described mother and father's prior relationship as "very toxic." When asked if she ever witnesses father physically assault mother, she replied, "I have not seen him, but I have heard. I've been in close proximity to them arguing and fighting, and I have heard strikes and heard like things being thrown and pushes and screams, and things like that." She denied ever hearing mother "badmouth" father in front of J.R. She said that J.R. will cry and sometimes scream when getting ready for visits with father and it is hard for mother to get J.R. in the car. When asked how J.R. comes home from visits with father, she said J.R. isolates

himself and will go in a corner and under the table like he is afraid. She also said that J.R. does not want anyone to touch or hug him and sometimes becomes very hyper and runs around the house. She further said that J.R. will throw fits and cry and scream and come home very hungry or thirsty. She described that J.R. "went straight up to" father in the lobby at the courthouse.

{¶66} Based on the record, the only real concern in the record directly related to J.R.'s care by either parent was father's lack of a stable child-care plan for every third weekend that he is on call. The juvenile court's noted concern about this issue is supported by father's own testimony. However, we note that it is odd for the court to make such a finding regarding custody and then not issue a parenting-time order that takes this concern into consideration. Nevertheless, the record does support the juvenile court's other findings that J.R. is doing well in mother's home, which is the home that he is more familiar with, and mother and her family did testify as to some concerns regarding J.R. when he returns from father's care. The record also supports the juvenile court's finding that J.R. is bonded with mother's family, who assist with his care. Additionally, it appears that father was receiving his parenting time by the final hearing and mother testified that she would comply with parenting-time orders going forward. Accordingly, we ultimately cannot hold that the juvenile court's best-interest determination is not supported by the record. Therefore, based on all the foregoing, we overrule the first and second assignments of error and affirm the juvenile court's custody determination.

III. Third Assignment of Error

{¶67} In the third assignment of error, father argues that the trial court abused its discretion by failing to find mother in contempt for willful violations of court-ordered parenting time. He asserts that the record establishes a prima facie case of

contempt where it reflects that his parenting time did not occur for extended periods, and mother failed to establish any valid defense to the contempt, so the juvenile court's "refusal to find contempt" was unreasonable.

A. Standard of Review

{¶68} "An appellate court reviews a trial court's ruling on a contempt motion for an abuse of discretion." *In re G.W.*, 2024-Ohio-1551, at ¶ 13 (1st Dist.), citing *Morrison v. Walters*, 2023-Ohio-2887, ¶ 19 (1st Dist.), citing *Wolf v. Wolf*, 2010-Ohio-2762, ¶ 4 (1st Dist.).

B. Law and Analysis

{¶69} "A moving party establishes a prima facie case of civil contempt by providing, by clear and convincing evidence, the nonmoving party's failure to comply with an existing order." *Id.*, citing *Morrison* at ¶ 19. "Once the movant establishes a prima facie case of contempt, the burden shifts to the nonmovant to establish a defense for the noncompliance." *Id.*, citing *Wolf* at ¶ 4.

{¶70} Here, the juvenile court denied father's first and second motions for contempt after declining to find mother in contempt for noncompliance with the juvenile court's April 10, 2023 parenting-time order. Presumably, this is what father is challenging.

{¶71} He argues that "the record reflects repeated noncompliance with parenting-time orders, and an absence of evidence establishing a legally sufficient defense."

{¶72} The juvenile court declined to find mother in contempt for noncompliance with the juvenile court's April 10, 2023 parenting-time order based on the "extensive ambiguity" in the municipal court's May 5, 2023 order, and the confusion among the parties as to whether a third party was required to exchange J.R.

at the police station.

{¶73} Father argues that "[m]other's own testimony establishes that she had clear knowledge of the court's orders and deliberately chose not to comply with them."

{¶74} Father testified at the first best-interest hearing that the protection order was amended on May 5, 2023, to remove J.R. from the order. He said he had parenting time one time after that, on May 8, but did not see J.R. for the nine months beyond that. He testified that mother brought J.R. to the police station on May 8 and picked him back up from the police station that same day but did not show up to the police station for the exchanges after that.

{¶75} The parties stipulated that father did not have parenting time between May 9, 2023, to February 5, 2024, "because mother did not bring [J.R.] to the location where he had to be exchanged."

{¶76} Father testified that, after February 5, 2024, he received parenting time but no overnight visits. When asked what happened with the overnight visits, he said that mother refused to bring J.R. for his overnights.

{¶77} Mother agreed that she reached an agreement with father for parenting time on April 10, 2023. She further agreed that she understood that the agreement was adopted by the juvenile court and became the order of the court and that the court could find her in contempt for not complying. She even further agreed this parenting-time order was in effect until the juvenile court's subsequent order on February 5, 2024.

{¶78} However, she testified that her understanding of the municipal court's May 5, 2023 amended protection order was that a third party must be present at the police station for exchanges. She stated, "My attorney advised me that the judge ordered that a third party be at the police station, that the third party would have to

be someone that me and . . . [father] agreed upon, that we both knew and that the third party was willing to follow the current parenting schedule, and be able to do all exchanges at the police station." She claimed that she was told that father had to select someone that they mutually knew and "they would show up to court and basically have to state that they would be willing to do the exchanges." When asked how father was supposed to communicate who he picked if they were not allowed to communicate, she answered, "My attorney just said that whoever [father] selected had to go to Court. So I believe that once I received notification in court of this third party, that that would be the person that we would agree upon would be that person." The court indicated it did not understand mother's answer, so she clarified,

> My attorney told me that once [father] had someone in mind that he wanted to be the third party for exchanges, that that [sic] third party had to go to a criminal court -- or to municipal court and basically state to the judge that they are in agreement with becoming the third party, and that person would be named to do the exchanges as a third party, and they would put them in the order.

{¶79} She denied that she and father ever reached an agreement on a third party or that father ever identified a third party through the municipal court. She claimed that it was both her and her attorney's understanding that a third party was needed for the exchanges. She further claimed that father acknowledged the need for a third party in his first motion for contempt in May 2023 but then started to claim that no third party was needed in July 2023. She discussed a police report from when father called the police to her house on May 5, 2023, that indicated father needed to "arrange a third party to bring the child to the Forest Park Police Department for that visitation" since he is still subject to the protection order from mother. She claimed

that she did not inform the police of this requirement as she had no idea at that point that J.R. was taken off the protection order. She said the police actually informed her of this requirement when they were at her home. She testified that the police told her that father had shown them the documentation and this is where they got the requirement from. She said, "The officer told me throughout our conversation multiple times that [father] had documentation from the Court stating that the TPO was modified and that [J.R.] was able to see him now with a third body."

{¶80} She testified that there was "no way to" comply with both the juvenile court and the municipal court orders. She said, "I mean I understood I had a court order with juvenile court, but I was very concerned about, obviously, my freedom and being [J.R.]'s primary caretaker. And I felt like I was in a hard place in deciding what was (inaudible)." She indicated she was concerned about going to jail for violating the protection order. She agreed she was also aware that she could go to jail for violating the juvenile court's parenting-time order. However, she said that she "knew" she was going to jail if she violated the protection order. She testified that her understanding of the municipal court's later order on December 11, 2023, was that she and father could meet in person at the police station and communicate through the AppClose app.

{¶81} When asked about not letting father have parenting time after the December 11, 2023 order from the municipal court, she testified,

> I told [father] I had every intention to allow him to have his visitation, however, because we were not coming to the same terms or agreement on anything and he still wanted overnights, he was not allowing [J.R.] to have the time to adjust back to his home.
>
> So now that you mention it, I believe this is before he was actually

> having his overnights every weekend. And [J.R.] had not seen his father in over -- I don't even know how long, it was a while, because of what was going on criminally, and [J.R.] did not remember him. [J.R.] had not seen father at his home. So I thought the best option was to allow him time. But because he did not want to just see him and not have his overnights, that's why I replied that.

{¶82} She acknowledged the juvenile court's November 29, 2023 parenting-time order that stated that parenting time will revert back to the April 10, 2023 order if the parents did not reach an agreement on an adjusted schedule but stated that the original order had "more than one overnight" and father "basically did not agree to not getting any overnights."

{¶83} When asked about her denial of father's overnight visits after the February 5, 2023 parenting-time order, she said,

> I was concerned about where [father] was living. So there was an incident where [J.R.] was taken to an exchange at Forest Park, and he was acting very unusual with his behavior.
>
> He was acting extremely nervous. He started throwing a tantrum when he saw us pull up to the parking lot of the police station.
>
> He kept refusing me taking him out of his car seat, and continued to tell me that he didn't want to get out of the car.
>
> I was finally able to take him out, although he was having a tantrum and crying.
>
> And when I got into the Forest Park Police Department, we had to have an officer present to do the exchange, because it took [J.R.] some time to want to go with his father.

> However, because of the way he was acting and how unusual it was, I was concerned for [J.R.], and I requested a wellness check.

{¶84} She testified that this occurred on March 17, 2024. When the officer from Springfield Township went to do the wellness check, he was unable to locate father and was told by a female present that father no longer lived at his address. This was the week that father's overnight visits were set to begin under the juvenile court's new parenting-time order. She testified that she then contacted father through the AppClose app and told him that she needed to know where J.R. was and where J.R. would be spending his overnights. She claims that father never responded, and she did not learn of father's new address until April 2024. She also claimed that she needed proof from father that J.R. was allowed to reside in his new apartment. She further said that she was concerned because J.R. was never alone with father and had issues falling asleep with "anyone that just regularly did not take care of him." She admitted that she only followed the juvenile court's February 5, 2024 order "in part" and did not provide father with any overnights. She said at the hearing in May 2024 that she would allow father to have his overnights since she learned of his residence and inspected the property. She claimed that father had four overnights in May so far.

{¶85} Ultimately, mother said that "every time [J.R.] did not go to visitation it was for a reason; either legally or either safety, just because of what [she] was told by [her] criminal attorney or -- but there has always been a reasonable explanation and documents to back up whatever it is what [her] concerns are."

{¶86} Based on the testimony, the juvenile court found mother in contempt of its parenting-time orders entered on November 29, 2023, and February 5, 2024. However, the juvenile court declined to find mother in contempt of the initial parenting-time order entered on April 10, 2023, due to the confusion surrounding the

municipal court's order.

{¶87} The above testimony supports the juvenile court's finding that there was confusion about the municipal court's order. Notably, father's first motion for contempt does state that he "had a 3rd person to bring [J.R.] for [his] visit." Further, the order from the municipal court in the modified protection order entered on May 5, 2023, could reasonably be interpreted as requiring a third party or as indicating the police could act as a third party. The order stated, "DEFENDANT MAY SEE CHILD [J.R.] THROUGH THIRD PARTY AT POLICE STATION." (Emphasis in original.)

{¶88} Accordingly, the record supports the juvenile court's finding of ambiguity in the municipal court's May 5, 2023 order. Further, the juvenile court found mother in contempt of its November 29, 2023 parenting-time order, which was the first order by the juvenile court stating that no third person was required.

{¶89} "The trial court is empowered to 'determine the kind and character of conduct that constitutes contempt.'" *Bohanon*, 2022-Ohio-2398, at ¶ 47 (1st Dist.), citing *Fisher v. Fisher*, 2018-Ohio-2477, ¶ 25 (1st Dist.). "[S]ince the primary interest involved in a contempt proceeding is the authority and proper functioning of the court, great reliance should be placed upon the discretion of the trial judge." *Id.*, citing *Denovchek v. Bd. of Trumbull Cty. Commrs.*, 36 Ohio St.3d 14, 16 (1988).

{¶90} Because the trial court is empowered to determine the kind and character of contempt and because the record supports the juvenile court's findings, we cannot hold that the juvenile court abused its discretion in declining to find mother in contempt of its initial parenting-time order entered on April 10, 2023. Therefore, we overrule the third assignment of error.

IV. Fourth Assignment of Error

{¶91} In the fourth assignment of error, father argues that the trial court

abused its discretion by failing to consider or conduct a hearing on father's request for attorney fees arising out of mother's contempt of court. He asserts that the juvenile court "neither addressed the request nor conducted a hearing to determine whether attorney fees were warranted as a sanction for contempt," and such "inaction" amounts to an abuse of discretion.

A. Standard of Review

{¶92} "A trial court's award of attorney fees is reviewed for an abuse of discretion." *Kuchera v. Pfalzgraf*, 2026-Ohio-1218, ¶ 92 (1st Dist.), citing *In re Q.R.*, 2026-Ohio-341, ¶ 28 (1st Dist.). "An abuse of discretion occurs 'when a court exercise[es] its judgment, in an unwarranted way, in regard to a matter over which it has discretionary authority.'" *In re L.F.*, 2023-Ohio-4199, at ¶ 24 (1st Dist.), citing *Johnson*, 2021-Ohio-304, at ¶ 35.

{¶93} More specifically, a trial court's determination of reasonable fees under R.C. 3109.051(K) is reviewed for an abuse of discretion. *See, e.g., Rapp v. Pride*, 2010-Ohio-3138, ¶ 32 (12th Dist.).

B. Law and Analysis

{¶94} Under R.C. 3109.051(K), if any person is found in contempt of court for failing to comply with a parenting-time order,

> 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.

(Emphasis added.)

{¶95} Here, father's request for attorney fees was not discussed at the best-interest hearings. However, the record reflects that there was no expectation to address attorney fees at the best-interest hearings.

{¶96} At one point, mother's counsel began to question mother on her attorney fees incurred for discovery-related issues and the following exchange occurred:

Father's Counsel:	Your honor, with regard to this, if we could, I believe [mother's counsel is] about to go into the attorney's fees, and I would just ask if we can have a separate hearing with regard to attorney's fees.
The Court:	Were you about to go into attorney's fees?
Mother's Counsel:	I was going to go into attorney's fees.
The Court:	Oh, okay, yeah, I think that -- I think that would be a separate hearing. Have you filed for attorney's fees, sir?
Mother's Counsel:	With the motion to compel we filed a request for attorney's fees, and that's what the reference for these attorney fees was for. I believe that -- I have spoken to mother, and I believe she will be filing a subsequent motion for attorney's fees after the Court's made its determination.
The Court:	But I think at this point the money part is not

important. Yeah, that can be dealt with in a hearing about attorney's fees.

Mother's Counsel: Yes, your honor.

The Court: So I'll sustain that. I didn't realize you were going for attorney's fees.

{¶97} Thus, no evidence was presented on attorney fees at the hearings in front of the magistrate as father's counsel specifically requested a separate hearing regarding attorney fees. Nevertheless, the magistrate ordered mother to pay "all" of father's attorney fees associated with father's successful contempt motions.

{¶98} Mother objected to the magistrate's award of attorney fees on the basis that no evidence was produced at trial. Mother stated,

> Father requested attorney's fees, but the record does not reflect him ever describing a specific amount he was requesting. He also did not provide documentation of the amount of attorneys fees he incurred in the filing of his contempt motions. The magistrate never made a determination of the reasonableness of Father's attorneys fees.

{¶99} In his supplemental objections, father pointed to R.C. 3109.051(K) and argued that attorney fees were appropriate. Importantly, he stated, "The appropriate remedy in this matter is to have a hearing determining the appropriate amount of attorney's fees. The Court in fact intended to schedule a hearing with regard to attorney's fees, but that never occurred."

{¶100} At oral argument, mother made the same argument that no evidence was presented regarding attorney fees. Father argued,

> With regard to the attorney's fees, the magistrate planned to have a separate hearing with regard to the attorney's fees.

That never occurred, because one of the hearings that we had she got sick, and the entire hearing was canceled.

So toward the end of the case we were kind of in a crunch for time. So she was trying to complete the entire case in the time that she had left, because she planned to retire at the end of December.

And, as a matter of fact, she issued the decision approximately four days before she actually retired from the court.

So she was trying to do all of those things.

The attorney's fees issue was going to be bifurcated. That's why it was not included in the trial -- or, during the trial testimony.

There was just a limited amount of time left while she was still going to be in the court.

She didn't want the parties to have to start all the way over with a new magistrate.

We had a very limited amount of time to present whatever we were going to present to her.

So that's how it came to be that the attorney's fees -- there was no testimony.

There was no evidence presented with regard to the attorney's fees.

{¶101} In response, mother argued,

There were over, I think, five days of trial for this case, over a year.

So she states that time was limited, but in that time there's plenty of time for the attorney to go on the record and testify to her fees, the

reasonableness of those fees.

There's plenty of time to submit an exhibit of those fees. That is the appropriate time to make those requests of fees, and that was never done.

There's also nothing on the record in the pleadings about any hearings scheduled that was canceled for a hearing on attorney's fees.

So now is not the appropriate time to schedule such a hearing. That time has passed.

So we're requesting that -- once again that the attorney's fee award is inappropriate based on Ohio case law, because no evidence was presented at trial.

At trial is the appropriate time to address that, not later after objections.

{¶102} In the juvenile court's order denying either party attorney fees, it cited case law indicating it generally had discretion to assess reasonable attorney fees as part of the costs against a contemnor and then said that, because the parties "mutually acknowledge and concede" that "the magistrate did not hold a separate hearing to address attorney fees," it was declining to award fees to either party.

{¶103} While "reasonable" attorney fees are mandatory under R.C. 3109.051(K), courts have held that a trial court does not abuse its discretion in declining to award attorney fees under this provision to an adverse party upon a finding of contempt where the adverse party fails to put forth evidence sufficient to meet its burden to establish the reasonable fees incurred in relation to the contempt. *See, e.g., Homon v. Curtis*, 2025-Ohio-4322, ¶ 12-19 (3d Dist.); *In re C.L.W.*, 2024-Ohio-1519, ¶ 57-62 (12th Dist.). This is based on the principle that the court must have

sufficient evidence before it to determine the "reasonableness" of the requested fees. *See Homon* at ¶ 14; *C.L.W.* at ¶ 59.

{¶104} The issue here is whether the juvenile court abused its discretion by declining to take additional evidence upon objections to the magistrate's decision where a hearing on fees was requested and the apparent intention at trial was to "bifurcate" the monetary part of the attorney-fee requests.

{¶105} Notably, in father's third, fourth, and fifth motions for contempt (the motions that were granted by the juvenile court), he did request attorney fees as relief for mother's contemptuous behavior.

{¶106} Under Juv.R. 40(D)(4)(d), a juvenile court is permitted to refuse to take additional evidence when ruling on objections "unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced the evidence for consideration by the magistrate."

{¶107} Thus, a juvenile court's discretion to take additional evidence upon objections is limited and the rule requires acceptance of additional evidence if the objecting party demonstrates that with reasonable diligence, it could not have produced the additional evidence for the magistrate's consideration. *See, e.g., Robinson v. Boneta*, 2019-Ohio-667, ¶ 8 (3d Dist.).

{¶108} This court has said that "the crux of this analysis is whether a party was put on notice that they would be reasonably expected to introduce evidence at the hearing before the magistrate." *Maddox v. Maddox*, 2016-Ohio-2908, ¶ 15 (1st Dist.), citing *Johson-Wooldridge v. Wooldridge*, 2001 Ohio App. LEXIS 3319 (1st Dist. July 26, 2001); *accord In re K.S.*, 2020-Ohio-6863, ¶ 9-10 (1st Dist.). Thus, "[i]f a party had notice that they would be reasonably expected to introduce evidence on the subject, then the trial court has discretion to accept or reject the evidence." *Id.*

(collecting cases).

{¶109} Here, the juvenile court did not make any finding as to whether father could have, with reasonable diligence, produced the evidence on attorney fees in front of the magistrate. Rather, the juvenile court said that the parties concede that *the magistrate* did not hold a separate hearing to address the fees. This finding does not address whether father was reasonably expected to present evidence of his attorney fees during the contempt/best-interest hearings despite the apparent impression of the parties and the magistrate that the "money part" of attorney fee requests was not yet at issue. Additionally, the juvenile court only cited case law that discusses its general discretion to assess reasonable attorney fees as part of the costs against a defendant found guilty of civil contempt and did not reference the mandatory award of fees under R.C. 3109.051(K) when entering its decision.

{¶110} Based on the record before us, we hold that the juvenile court should have held a hearing to determine the appropriate amount of attorney fees as nothing in the record shows that there was any expectation to present this evidence prior to the point of objections. Accordingly, we sustain father's fourth assignment of error, reverse the judgment of the juvenile court as to father's request for attorney fees, and remand the matter for the juvenile court to hold a hearing to determine the appropriate amount of attorney fees under R.C. 3109.051(K).

V. Conclusion

{¶111} Based on the foregoing, we overrule the first, second and third assignments of error, sustain the fourth assignment of error, reverse the juvenile court's judgment as to father's request for attorney fees, and remand the matter to the juvenile court to hold a hearing to determine the appropriate amount of attorney fees under R.C. 3109.051(K). The judgment is affirmed in all other respects.

Judgment affirmed in part and reversed in part, and cause remanded.

CROUSE and **MOORE, JJ.,** concur.