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JAN - 8 2026



COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

[REDACTED]

 Plaintiff

- vs -

JUDGE'S ORDER
GRANTING MOTION TO
SET ASIDE

Judge [REDACTED]

[REDACTED]

 Defendant

On October [REDACTED]

Child's Therapist. On October 24, 2025, Plaintiff (hereinafter [REDACTED]) filed *Motion to Set Aside Magistrate's Order Sua Sponte Removing Minor Child's Therapist Entered on October 16, 2025.* On October 31, 2025, Defendant (hereinafter "Father") filed *Defendant's Memorandum Contra.* On November 26, 2025, Mother filed *Plaintiff's Supplemental Memorandum in Support of Motion to Set Aside Magistrate's Order Sua Sponte Removing Minor Child's Therapist Entered on October 16, 2025.* This matter came before the Court for oral argument from counsel on December 2, 2025. Present via Zoom was Mother, with counsel, and Father, with counsel.

The Ohio Rules of Civil Procedure create separate procedures for contesting magistrates' orders and decisions. A motion to set aside is used to challenge a magistrate's order while an objection is used to challenge a magistrate's decision. Civ.R. 53(D). The Rules do not state what a court must do when a party files a motion to set aside a magistrate's order, but the Rules require a court to conduct an independent review of a magistrate's decision when a timely objection, either to factual findings or legal conclusions, is filed to such a decision. Civ.R. 53(D)(4)(d).

The Court acknowledges that Ohio courts have held that, "where an issue related to minor children is before the trial court, even if not in the form of a motion to modify visitation or custody, the trial court is bound by statute to consider the best interests of the children before making any determination." *Morrow v. Becker*, [REDACTED] ¶9 (9th Dist). See *Braden v. Braden*, 5th Dist. No. [REDACTED] 2006 Ohio 6878, at P13 (finding trial court's sua sponte modification of visitation proper where a motion for custody and to show cause was before the court); *Bouffard v. Bouffard*, 7th Dist. Nos. [REDACTED] and [REDACTED] at *2, 2001 Ohio 3148 (holding that contempt motion and motion to modify visitation permitted the trial court to sua sponte modify custody as being in the best interest of the children). However, unlike the situations in *Braden* and *Bouffard*, the Court does not find that Mother, sole custodian, could reasonably expect that any of the motions heard at trial related to modifications of parenting time and contempt (which include allegations that Father was not taking the child to scheduled therapy appointments) could result in the Court removing the child from her therapist's care.

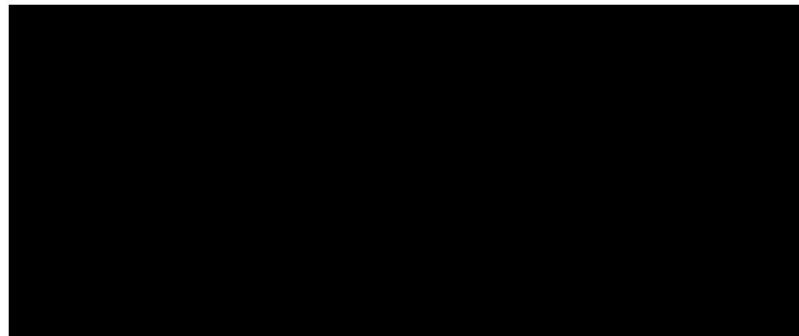
Moreover, while the Court certainly acknowledges the Court's duty and obligation to make orders in the best interest of children, the Court also must strictly consider and balance the fact that parties are undeniably afforded due process of law, with the 'basic thrust' of the clause in the Ohio Constitution being a requirement for notice and an 'opportunity to be heard'. *Myers v. Myers*, [REDACTED] ¶37 (5^h Dist.). See *Ohio Valley Radiology Assoc., Inc. V. Ohio Valley Hosp. Assn.* (1986), 28 Ohio St.3d 118, 124-125, 502 N.E.2d 599. "Unless notice and an opportunity for a fair hearing are given to opposing parties, a trial court has no authority to take action, sua sponte, prejudicial to the opposing party. *Myers* at ¶37, citing *Rice v. Bethel Assoc., Inc.* (1987), 35 Ohio App.3d 133, 520 N.E.2d 26."

This matter was before the magistrate on multiple motions over a trial that occurred over multiple days. None of the motions before the Court requested a removal of the child's therapist or even a modification of custody. Mother, who is the child's sole custodian, did not have adequate notice and an opportunity to be heard before the Court removed the child's therapist.

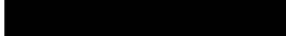
The Court declines to address other arguments made in Mother's *Supplemental Memorandum in Support of Motion to Set Aside* as the Court finds that the *Magistrate's Order Sua Sponte Removing Minor Child's Therapist* entered on October 16, 2025 must be set aside based on lack of due process requirements alone.

Accordingly, based on the above, Mother's *Motion to Set Aside Magistrate's Order Sua Sponte Removing Minor Child's Therapist* is GRANTED and the *Magistrate's Order Sua Sponte Removing Minor Child's Therapist* entered on October 16, 2025 is SET ASIDE.

IT IS SO ORDERED.



Copies sent by Clerk of Courts to:

orney For Plaintiff
Attorney For Defendant