

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

C. S. J.,	:	
	:	
Plaintiff-Appellee,	:	No. 109737
	:	
v.	:	
	:	
S. E. J.,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED

RELEASED AND JOURNALIZED: December 10, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-17-369524

Appearances:

S.E.J., *pro se*.

ANITA LASTER MAYS, J.:

I. Introduction

{¶ 1} Defendant-appellant S.E.J. (“Husband”) appears pro se before this court, as he did before the trial court, and appeals the trial court’s denial of Husband’s motion to vacate a void judgment. Plaintiff-appellee C.S.J. (“Wife”) has not filed a brief in this appeal. We affirm the trial court’s judgment.

II. Background

{¶ 2} This case arises from a complaint for divorce filed by Wife on November 9, 2017. One child was born as issue of the marriage. Husband filed two appeals prior to the final decree in the case that were dismissed for lack of final appealable orders.¹

{¶ 3} On March 5, 2019, the trial court issued a decree of divorce, spousal support and sole custody to Wife. The trial court also denied all motions that were not specifically addressed. The decree included a directive that the parties participate in Family Evaluation Services Forensic Case Management (“FES”) to monitor the parenting time schedule. Also, on March 5, 2019, the trial court issued an “Order for FES Case Management Services” and directed that the parties bear the cost of the services equally.

{¶ 4} Husband appealed on April 4, 2019, and proffered a single assigned error:

The trial court erred and abused its discretion ruling in favor of the appellee after the appellant established for the record the appellee had procedural[ly] defaulted by failing to timely answer the admissions as required by Civ.R. 36[A].

C.S.J. v. S.E.J., 8th Dist. Cuyahoga No. 108390, 2020-Ohio-492, ¶ 8 (“*C.S.J. I.*”).

{¶ 5} In an opinion released and journalized on February 13, 2020, this court affirmed the trial court’s judgment. “The trial court did not abuse its discretion

¹ *C.S.J. v. S.E.J.*, 8th Dist. Cuyahoga No. 107446 (dismissed for lack of a final appealable order on July 16, 2018); and *C.S.J. v. S.E.J.*, 8th Dist. Cuyahoga No. 107448 (dismissed for lack of a final appealable order on July 16, 2018).

when it when it allowed [Wife] to proceed at trial and, in effect, permitted her to withdraw her Civ.R. 36(A) admissions.” *Id.* at ¶ 18. On February 24, 2020, Husband filed an application with this court for reconsideration en banc.

{¶ 6} On March 2, 2020, the trial court issued a second order that terminated FES “due to no action being taken with [FES] since April 18, 2019, due to appeal filings by Defendant that suspended services.” Order No. 112709994, p. 1 (Mar. 2, 2020). FES fees incurred to date in the amount of \$139.50 were taxed as costs against both parties equally. On March 9, 2020, Husband filed a motion to vacate the order with the trial court. Husband argued that the order was void because the trial court lacked jurisdiction due to the pending appellate application for reconsideration.

{¶ 7} On April 13, 2020, this court dismissed Husband’s application for reconsideration en banc for failure to comply with App.R. 26(A)(2)(b), Loc.App.R. 26(B)(1)(a) and (b). On May 22, 2020, Husband appealed to the Ohio Supreme Court. On August 4, 2020, the Ohio Supreme Court denied the discretionary appeal in *C.S.J. v. S.E.J.*, 2020-Ohio-3882, 150 N.E.3d 114 (Aug. 4, 2020). On October 15, 2020, the Ohio Supreme Court denied reconsideration pursuant to S.Ct.Prac.R. 7.08(B)(4) in *C.S.J. v. S.E.J.*, 2020-Ohio-4811, 2020 Ohio LEXIS 2318 (Oct. 13, 2020).

{¶ 8} Husband appeals.

III. Assignment of Error

{¶ 9} Husband offers a single assigned error: that the trial court's March 2, 2020 order that appellant pay the FES costs was an abuse of discretion. However, the crux of Husband's argument as set forth in the brief is that the trial court lacked jurisdiction to issue the order due to the pending appellate reconsideration motion pending before this court in *CSJI*.

{¶ 10} We first advise that "[u]nder Ohio law, pro se litigants are held to the same standard as all other litigants." *Bikkani v. Lee*, 8th Dist. Cuyahoga No. 89312, 2008-Ohio-3130, ¶ 29, citing *Kilroy v. B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363, 676 N.E.2d 171 (8th Dist.1996). App.R. 16(A) governs the content and format of appellate briefs. App.R. 16(A)(7) requires that a party cite legal authority to support the party's arguments.

{¶ 11} In addition, Husband has submitted three nonconforming briefs. We elect to address Husband's third amended brief in the interest of justice. Nonetheless, we also caution that "it is not the duty of an appellate court to search the record for evidence to support an appellant's argument as to any alleged error." *Rodriguez v. Rodriguez*, 8th Dist. Cuyahoga No. 91412, 2009-Ohio-3456, ¶ 7.

IV. Discussion

{¶ 12} "A trial court has authority to enforce its judgments in the absence of an order staying execution." *White v. White*, 50 Ohio App.2d 263, 272, 362 N.E.2d 1013 (8th Dist.1977). "[T]he mere filing of a notice of appeal without a stay order does not deprive the trial court of authority to enforce its judgment." *Id.*, citing *In*

re Kurtzhalz, 141 Ohio St. 432, 48 N.E.2d 657 (1943); *Vavrina v. Greczanik*, 40 Ohio App.2d 129, 318 N.E.2d 408 (8th Dist.1974); *Rippel v. Rippel*, 328 N.E.2d 816 (1st Dist.1974).

{¶ 13} In other words, “[a]n order issued by a court with jurisdiction must be obeyed until reversed by proper procedure.” *Ruschel v. Nestle Holdings, Inc.*, 8th Dist. Cuyahoga Nos. 89977 and 90500, 2008-Ohio-2035, ¶ 53, quoting *Strong v. Bauman*, 2d Dist. Montgomery Nos. 17256 and 17414, 1999 Ohio App. LEXIS 2272, *16 (May 21, 1999). The trial court’s “retained jurisdiction includes the authority to take any action which would aid in the execution of the appealed judgment.” *Trumbull Twp. Bd. of Trustees v. Rickard*, 11th Dist. Ashtabula No. 2017-A-0048, 2019-Ohio-2502, ¶ 21, quoting *State ex rel. Klein v. Chorpening*, 6 Ohio St.3d 3, 4, 450 N.E.2d 1161 (1983).

{¶ 14} The following issue was posed on appeal in *C.S.J. I*:

Whether the trial court erred and abused its discretion when it granted C.S.J.’s divorce and found it was in the best interest of their minor child to grant C.S.J. sole custody. Specifically, S.E.J. argues that C.S.J.’s admissions — that were not timely answered — established C.S.J. “did not qualify for sole custody” and based upon those admissions the trial court should have granted joint custody to C.S.J. and S.E.J. S.E.J. also argues that the trial court’s failure to acknowledge the unanswered admissions was “a major error” that violated his equal protection and due process rights under both state and federal law.

C.S.J. I, 8th Dist. Cuyahoga No. 108390, 2020-Ohio-492, ¶ 9. Wife did not file an appellate brief in the action. *Id.*

{¶ 15} We find that the trial court’s jurisdiction to order that Husband bear one-half of the FES costs extended to the date of the order, and the trial court’s

denial of Husband's motion to vacate the order did not interfere with the jurisdiction of this court. The directive that FES manage the exchange of the child for visitation, that was to take place at a local police station, was contained in the original divorce decree. Husband did not challenge the issue on direct appeal. The first FES order issued concurrently with the decree on March 5, 2019, determined that the FES costs would be equally divided between the parties. The *C.S.J. I* appeal had not yet been filed.

{¶ 16} The March 2, 2020 order terminated FES and imposed costs equally against the parties that resulted in a charge of \$69.75 to each. The March 9, 2020 judgment of the trial court properly denied the motion to vacate. Husband did not file a stay in the action, and the trial court retained jurisdiction to take action in aid of execution of the trial court's order for the FES costs. *White*, 50 Ohio App.2d 263, 272, 362 N.E.2d 1013 (8th Dist.1977).

{¶ 17} Husband's sole assignment of error is without merit and overruled.

V. Conclusion

{¶ 18} The trial court's judgment is affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, domestic relations division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

MICHELLE J. SHEEHAN, J., CONCURS;
MARY J. BOYLE, P.J., CONCURS IN JUDGMENT ONLY