

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STACI ANN BECHER,	:	
	:	
Plaintiff-Appellant,	:	No. 108472
	:	
v.	:	
	:	
GARY BECHER,	:	
	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: February 27, 2020

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-17-368817

Appearances:

Stafford Law Co., L.P.A., Joseph G. Stafford, and Nicole A. Cruz, *for appellant*.

Rosenthal Thurman Lane, L.L.C., and James L. Lane, *for appellee*.

MARY J. BOYLE, P.J.:

{¶ 1} Plaintiff-appellant, Staci Ann Becher (“wife”), appeals from a judgment ordering that she and appellee, Gary Becher (“husband”), pay their own attorney fees and litigation expenses and denying her request for reimbursement of

expenses that occurred during the pendency of the divorce relating to the children that she claims husband was obligated to pay under the temporary support order.

She raises three assignments of error for our review:

1. The trial court erred as a matter of law and abused its discretion failing to follow the procedural mandates of Civ.R. 53 concerning magistrate[']s decisions and magistrate's orders.

2. The trial court erred as a matter of law and abused its discretion by denying the appellant's motion for reimbursement of expenses.

3. The trial court erred as a matter of law and abused its discretion by denying appellant's motion for attorney fees and litigation expenses.

{¶ 2} Finding merit to wife's first assignment of error, we reverse and remand.

I. Procedural History and Factual Background

{¶ 3} The parties were married in November 2001 and had two children born during the marriage, one in 2005 and the other in 2006. Husband originally filed for divorce in November 2015, but the trial court dismissed the action in August 2017, for failure to prosecute. Wife filed the instant case in September 2017. At that time, wife also moved for temporary support. The trial court referred the matter to a magistrate. The magistrate held a hearing on wife's motion and subsequently ordered husband to pay \$1,834 per month in temporary child support as well as 66.67 percent of the children's out-of-pocket medical expenses and 50 percent of their extracurricular activities.

{¶ 4} In August 2018, the magistrate modified the temporary support order, ordering husband pay \$1,630 per month in temporary child support, 62.7

percent of the children's out-of-pocket medical expenses, and 50 percent of their extracurricular activities.

{¶ 5} According to the appearance docket, the trial court entered an order on January 10, 2019, stating that a “contested trial” was set for January 10, 2019 before the magistrate on all remaining issues.¹ The parties, however, had come to an agreement on almost all matters and had entered into a shared parenting plan on January 8, 2019.

{¶ 6} The parties appeared before the magistrate on January 10, 2019. The magistrate stated at the outset of the hearing that the case had been set for trial for January 7, 2019, but that the parties had been successful in settling most matters in their divorce. The magistrate indicated that the parties had “a shared parenting plan” and that he had an “agreed judgment entry half sheet” that he had already signed as well as the parties and their counsel. The magistrate stated that “the judge is going to sign [it] this morning” and then they would file it. The magistrate indicated that he would permit the parties to place their agreement on the record.

{¶ 7} The parties informed the magistrate that they had reached an agreement on all matters except payment of attorney fees and litigation expenses

¹ The “appearance docket” does not match the trial court’s official docket that is before us on appeal, and certified to us by the clerk of courts. The trial court’s January 10, 2019 order regarding the contested trial is not in the record on appeal nor is it included on the trial court’s certified docket. We caution the trial court that any order it issues should be included in the official record on appeal. *See* Sup.R. 26.03(A)(2) (“[D]ocket’ means the record where the clerk of the division enters all information historically included in the appearance docket, the trial docket, the journal, and the execution docket.”).

and wife's request that husband reimburse her for half of the children's expenses incurred during the pendency of the divorce, which husband was supposed to pay under the temporary support order. With respect to the children's expenses, wife was requesting the court to order husband to pay \$12,013.

{¶ 8} Wife's attorney then placed the remaining agreement on the record. The parties agreed that husband would pay wife \$500 per month in spousal support for five years, and that the court would retain jurisdiction to modify the spousal support. The parties also agreed that husband would pay \$1,500 per month in child support plus a 2 percent processing charge, \$247.61 in cash for medical support, and 62.7 percent of the children's out-of-pocket medical expenses. The parties further agreed that husband would pay for two extracurricular activities per child per year. They also agreed on the division of all assets and debt.

{¶ 9} Wife's attorney then informed the magistrate:

Now the things that have not been resolved which we'll leave to the court's determination is the issue of attorney fees. My understanding by the end of the month both parties will submit their affidavits or briefs associated with their claims for attorney fees, as well as the court's determination of the expenses for the children's expenses that the parties have not been able to work it out.

* * *

The judgment entry of divorce, your honor, hopefully we'll have it circulated and to you by the end of this month. And so what we would do, your honor, is so that the order would be done in such a fashion, we would present the order to you and carve out at the tail end of the entry those two remaining issues but for the court's determination, so that the judgment entry of divorce the parties could be in fact, divorced and we could wait on your determination on those remaining issues.

We're not — for the record, I'm not bifurcating issues, we're just doing it in such a fashion it's going to be heard and submitted to you on those two issues, and the parties therefore are going to be granted a divorce pursuant to the judgment entry of divorce.

{¶ 10} With respect to one remaining credit card balance that the parties were not sure they had included in their agreement, the magistrate stated, "What I'll suggest, I know we have a time issue. That's \$1,500 here or there. If for some reason you can't hash that out among the two of you, and it's different than what [wife's attorney] said in the record today, include that in your briefs and I'll make a determination on that."

{¶ 11} Husband's counsel then placed a few comments about the parties' agreement on the record. The magistrate addressed the parties to ascertain whether they agreed with what their attorneys placed on the record. The magistrate then stated, "So when we receive those documents I'll sign them. More importantly, I'll have my judge sign them and get them filed."

{¶ 12} The parties again told the magistrate that they would have the documents (the final divorce decree and briefs on the remaining contested issues) "to the court" by the end of the month. The magistrate indicated that he would have his scheduler enter January 31 just as a "delivery of documents date" and told the parties that if they needed more time they should "contact the court."

{¶ 13} According to the appearance docket, "delivery of documents" was set for February 1 and February 8, 2019, before the magistrate. On February 8, 2019, husband submitted his brief in support of his motion for attorney fees and litigation

expenses and his brief in opposition to wife's request for reimbursement of expenses for the children. Wife's counsel submitted the final decree to the court on February 15, 2019. Wife was granted several continuances and submitted her briefs on both issues on March 5, 2019.

{¶ 14} On March 22, 2019, a judgment entry was issued on the remaining contested matters. The judgment entry states that the parties settled all matters except payment of their respective attorney fees and litigation expenses and mother's request for reimbursement of expenses related to the children. The judgment entry then states the following:

The court hereby finds that both plaintiff and defendant should be responsible for their respective attorney fees and litigation costs; and

The court hereby finds each party shall be solely responsible for any out-of-pocket expenses he/she has incurred, and neither party is required to further reimburse the opposing party.

{¶ 15} The judgment entry is signed by both the magistrate and the judge. It is from this judgment that wife now appeals.

II. Civ.R. 53

{¶ 16} In her first assignment of error, wife argues that because the trial court referred the parties' divorce case to a magistrate and the magistrate presided over all of the divorce proceedings, the March 22, 2019 "judgment entry" should have been a "magistrate's decision" to which she could have objected. She asserts that "Civ.R. 53 does not provide a mechanism for a magistrate to issue a 'judgment entry' or for the issuance of an entry signed by both the magistrate and the judge."

{¶ 17} “Where a matter is referred to a magistrate, the magistrate and the trial court must conduct the proceedings in conformity with the powers and procedures conferred by Civ.R. 53.” *Yantek v. Coach Builders Ltd.*, 1st Dist. Hamilton No. C-060601, 2007-Ohio-5126, ¶ 9.

{¶ 18} A court may refer a case, a single matter, or multiple matters to a magistrate. Civ.R. 53(D)(1)(a). In performing their responsibilities, magistrates may regulate all proceedings “as if by the court” and do everything necessary for the efficient performance of those responsibilities, including but not limited to, issuing subpoenas, ruling on the admissibility of evidence, putting witnesses under oath and examining them, and imposing appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate. Civ.R. 53(C)(2).

{¶ 19} A court, however, retains the authority to limit a magistrate’s powers. Civ.R. 53(D)(1)(b). This provision provides:

A court of record may limit a reference by specifying or limiting the magistrate’s powers, including but not limited to, directing the magistrate to determine only particular issues, directing the magistrate to perform particular responsibilities, directing the magistrate to receive and report evidence only, fixing the time and place for beginning and closing any hearings, or fixing the time for filing any magistrate’s decision on the matter or matters referred.

{¶ 20} Under Civ.R. 53(D)(2)(a)(i), magistrates may issue orders without judicial approval only “if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.” But mostly, magistrates must “prepare a magistrate’s decision respecting any matter referred under Civ.R. 53(D)(1).” Civ.R. 53(D)(3)(a)(i). A magistrate’s decision must be in writing, identified as a

magistrate's decision in the caption, and signed by the magistrate. Civ.R. 53(D)(3)(a)(iii). "[A] magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law." Civ.R. 53(D)(3)(a)(ii).

{¶ 21} If a party wishes to request that the magistrate issue findings of fact and conclusions of law, the party must make that request "before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision. If a request for findings of fact and conclusions of law is timely made, the magistrate may require any or all of the parties to submit proposed findings of fact and conclusions of law." *Id.*

{¶ 22} If a party wishes to object to the magistrate's decision, it must do so within 14 days. Civ.R. 53(D)(3)(b)(i). If a party does file timely objections, the court must rule on them. Civ.R. 53(D)(4)(d). In doing so, the court must "undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." *Id.* "Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate." Civ.R. 53(D)(4)(b).

{¶ 23} "An essential component of a trial court's judicial function is to review and to ratify a magistrate's decision before it becomes effective." *Yantek*, 1st Dist. Hamilton No. C-060601, 2007-Ohio-5126, ¶ 11. Indeed, "[a] magistrate's decision

is not effective unless adopted by the court.” Civ.R. 53(D)(4)(a). “A court that adopts, rejects, or modifies a magistrate’s decision shall also enter a judgment or interim order.” Civ.R. 53(D)(4)(e). It is the duty of the trial judge to critically review and verify the correctness of the referee’s report prior to its adoption. *Normandy Place Assoc. v. Beyer*, 2 Ohio St.3d 102, 105, 443 N.E.2d 161 (1982).

{¶ 24} Because a magistrate is an arm of the court and not a separate judicial entity with independent judicial authority, “a trial court may not ‘merely rubber-stamp’ a magistrate’s decision.” *State ex rel Dewine v. Ashworth*, 4th Dist. Lawrence No. 11CA16, 2012-Ohio-5632, ¶ 38; *McCarty v. Hayner*, 4th Dist. Jackson No. 08CA8, 2009-Ohio-4540, ¶ 17, citing *Knauer v. Keener*, 143 Ohio App.3d 789, 793, 758 N.E.2d 1234 (2d Dist.2001). Thus, the trial court should not adopt a magistrate’s “findings of fact unless the trial court fully agrees with them — that is, the trial court, in weighing the evidence itself and fully substituting its judgment for that of the [magistrate], independently reaches the same conclusion.” *McCarty* at ¶ 17, quoting *DeSantis v. Soller*, 70 Ohio App.3d 226, 233, 590 N.E.2d 886 (10th Dist.1990).

{¶ 25} The Ohio Supreme Court explained the relationship between a magistrate and a trial court in *Hartt v. Monobe*, 67 Ohio St.3d 3, 615 N.E.2d 617 (1993):

Civ.R. 53 places upon the court the ultimate authority and responsibility over the referee’s findings and rulings. The court must undertake an independent review of the referee’s report to determine any errors. Civ.R. 53(E)(5); *Normandy Place Assoc. v. Beyer* (1982), 2 Ohio St.3d 102, 2 OBR 653, 443 N.E.2d 161, paragraph two of the

syllabus. Civ.R. 53(E)(5) allows a party to object to a referee's report, but the filing of a particular objection is not a prerequisite to a trial or appellate court's finding of error in the report. *Id.*, paragraph one of the syllabus. The findings of fact, conclusions of law, and other rulings of a referee before and during trial are all subject to the independent review of the trial judge. Thus, a referee's oversight of an issue or issues, even an entire trial, is not a substitute for the judicial functions but only an aid to them. A trial judge who fails to undertake a thorough independent review of the referee's report violates the letter and spirit of Civ.R. 53, and we caution against the practice of adopting referee's reports as a matter of course, especially where a referee has presided over an entire trial.

Id. at 5-6.²

{¶ 26} The Supreme Court's explanation appears to come, at least in part, directly from the 1970 staff notes regarding the enactment of Civ.R. 53, which state:

In addition to describing the powers of the referee (Rule 53(C)) and the proceedings before the referee (Rule 53(D)), the rule requires that the referee file a written report with the court (Rule 53(E)(1)). The parties may object to the report (Rule 53(E)(2)), and the court may adopt, reject, modify, or recommit the report or receive further evidence (Rule 53(E)(2)). Finally, the referee's report is not effective and binding until it is approved by the court and entered as a matter of record. (Rule 53(E)(5)). Rule 53 contemplates that a referee shall aid the court in the expedition of the court's business and not be a substitute for the functions of the court.

{¶ 27} In this case, the magistrate presided over the final divorce hearing where the parties explained that they had reached an agreement on nearly all matters. With respect to the two remaining issues on which the parties could not reach an agreement, they informed the magistrate that they would submit briefs to the magistrate so that the magistrate could decide the matter on the briefs. Wife's attorney stated, "[I]t's going to be heard and submitted to you on those two issues."

² Civ.R. 53 used to refer to magistrates as referees. The rule was changed in 1995.

{¶ 28} Rather than a magistrate’s decision on the remaining two issues, however, the parties received a “judgment entry” that was signed by both the trial court and the magistrate.³ Wife contends that the trial court bypassed the procedural requirements of Civ.R. 53, depriving her of the opportunity to object to a magistrate’s decision. We agree.

{¶ 29} The fact that this judgment was signed by both the magistrate and the judge violates the mandates of Civ.R. 53 in multiple ways. First, the trial court referred this case to the magistrate and while trial courts can limit a magistrate’s power to particular issues, the trial court did no such thing in this case.

{¶ 30} Second, the judgment entry received by the parties deprived them of an opportunity to object. The purpose of requiring a magistrate’s decision is to permit the parties an opportunity to file objections to the magistrate’s decision and to provide the trial court with sufficient information to conduct its own independent analysis. *Richmond v. Evans*, 8th Dist. Cuyahoga No. 101269, 2015-Ohio-870, ¶ 51, citing *Performance Constr., Inc. v. Carter Lumber Co.*, 3d Dist. Hancock No. 5-04-28, 2005-Ohio-151.

{¶ 31} Third, the fact that the trial court and the magistrate both signed the judgment entry is indicative of rubber stamping. A trial court cannot simply defer to the magistrate. It must conduct a de novo review of any magistrate’s decision. Here, the matters were submitted to the magistrate for the magistrate’s

³ According to wife, the trial court issued three judgment entries in this case that were signed by both the trial court and the magistrate.

consideration. By issuing a judgment entry on the matters that was signed by the trial court and the magistrate, it appears as if the trial court simply “rubber stamped” the magistrate’s decision.

{¶ 32} Fourth, Civ.R. 53 does not permit magistrates to sign judgment entries. A magistrate’s decision is an interlocutory order that is “tentative, informal, or incomplete” and is subject to change or reconsideration upon the trial court’s own motion or that of a party. *Yantek*, 1st Dist. Hamilton No. C-060601, 2007-Ohio-5126, ¶ 14. “A magistrate’s decision remains interlocutory until the trial court reviews the decision, adopts or modifies the decision, and enters a judgment that determines all the claims for relief in the action or determines that there is no just reason for delay.” *Id.*

{¶ 33} Finally, magistrates “serve only in an advisory capacity to the court and have no authority to render final judgments affecting the right of parties.” *Nolte v. Nolte*, 60 Ohio App.2d 227, 231, 396 N.E.2d 807 (8th Dist.1978). A magistrate’s power is specifically intended only “to assist courts of record.” Civ.R. 53(C)(1). It is important to remember that the rule limits a magistrate’s authority because the Ohio Constitution vests judicial power in “a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the supreme court as may from time to time be established by law.” Ohio Constitution, Article IV, Section 1. “Magistrates are neither constitutional nor statutory courts. Magistrates and their powers are wholly creatures of rules of practice and procedure promulgated by the Supreme Court.” *Yantek* at ¶ 9, quoting *Quick v. Kwiatkowski*,

2d Dist. Montgomery No. 18620, 2001 Ohio App. LEXIS 3437 (Aug. 3, 2001) (the Ohio Supreme Court has authority to prescribe rules of practice and procedure in Ohio courts that do not affect any substantive right).

{¶ 34} By approving the procedural scheme embodied in Civ.R. 53, the legislature made a policy decision that struck a balance between a court's discretion to manage its docket efficiently and its constitutional duty to decide cases and independently review the decisions of its magistrates. As aptly stated by the Second District: "[W]e cannot lose sight of the functional differences between the trial and appellate courts, the role of the magistrate within the trial court, and the constitutional requirements which govern the creation of courts in Ohio. Those matters require us to support and enforce the distinctions which result from them." *Quick* at 11-12.

{¶ 35} Thus, we agree with wife that the judgment entry in this case that is signed by both the trial court and the magistrate violates the procedures set forth in Civ.R. 53. This court has consistently condemned practices of the domestic relations court that lead to the trial court "rubber stamping" the magistrate's report, dating back to the 1970s. As we stated in *Kapadia v. Kapadia*, 8th Dist. Cuyahoga No. 94456, 2011-Ohio-2255, "Decisions that have condemned 'rubber stamping' have involved situations such as the use of a single document to serve as both the report of the magistrate and the trial court's journal entry[.]" *Id.* at ¶ 10, citing *Nelson v. Nelson*, 8th Dist. Cuyahoga No. 60824, 1992 Ohio App. LEXIS 2740 (May 28, 1992), *Haag v. Haag*, 9 Ohio App.3d 169, 458 N.E.2d 1297 (8th Dist.1983), paragraph two

of the syllabus, *Staggs v. Staggs*, 9 Ohio App.3d 109, 458 N.E.2d 904 (8th Dist.1983), and *Nolte*. That is exactly what occurred in this case. All indications in this case demonstrate that the magistrate decided the remaining contested matters, prepared the judgment entry on them rather than a magistrate's decision, and had the trial court "rubber stamp" it. By doing so, the trial court abused its discretion in attempting to bypass the procedures set forth in Civ.R. 53.

{¶ 36} While we recognize the importance of judicial economy and the discretion afforded trial courts to effectively manage their dockets, that discretion must be exercised within constitutional and statutory constraints. For all these reasons, we cannot condone the trial court's action in this case. It is contrary to the Ohio Constitution and the Ohio Rules of Civil Procedure.

{¶ 37} Wife's first assignment of error is sustained.

III. Reimbursement of Expenses

{¶ 38} Although wife's second and third assignments of error are technically moot in light of our disposition of her first assignment of error, we will briefly address one issue raised by wife because the issue is likely to come up again upon remand. Wife asserts that the trial court erred when it ordered that "each party shall be solely responsible for any out-of-pocket expenses he/she has incurred, and neither party is required to further reimburse the opposing party."

{¶ 39} The parties could not agree on two issues: (1) attorney fees and litigation expenses and (2) reimbursement of out-of-pocket medical costs for the children and extracurricular activities that occurred while the divorce was pending.

After the final divorce decree was filed, and in accordance with what the divorce decree stated as well as what the parties told the magistrate they were going to do, wife submitted her motion for attorney fees and litigation expenses and a separate motion for reimbursement of the expenses relating to the children. Husband also submitted his motion for attorney fees and litigation expenses and an opposition brief to wife's request for reimbursement of the expenses relating to the children.

{¶ 40} According to wife's request for reimbursement of out-of-pocket medical costs for the children and for extracurricular activities that occurred while the divorce was pending, husband was supposed to pay 62.7 percent of the children's out-of-pocket medical expenses and 50 percent of their extracurricular activities under the temporary orders issued by the magistrate. Wife asserted that husband did not do so and thus, she had to pay the entire amount of these costs. Wife attached substantial evidence to her brief, including her affidavit, proof of the expenses incurred, and proof of payment of these expenses. Wife would like to be reimbursed for these costs.

{¶ 41} After reviewing the trial court's judgment, it does appear that the trial court failed to consider wife's request for reimbursement of the children's expenses. In its judgment entry, the trial court first stated that each party be responsible for his and her attorney fees and litigation expenses. The trial court then stated that "each party shall be solely responsible for any out-of-pocket expenses he/she has incurred." But expenses relating to the children, a portion of which husband was required to pay under the temporary support order, are not expenses that wife

incurred. They are expenses the children incurred, which both parents were required to pay.

{¶ 42} Husband points out that many of the items for which wife requested to be reimbursed, such as clothes and teachers' gifts, were not medical costs or extracurricular activities. While we agree that wife did include some of these expenses, she also included many items that do fall under the temporary support order.

{¶ 43} Husband further argues that wife did not properly move for these expenses because she did not file a motion to show cause. Although filing a motion to show cause is one way to obtain these expenses, it is not the only way. A party can wait until the final hearing in a divorce to request these expenses, which is what occurred here.

{¶ 44} Accordingly, upon remand, we instruct the trial court to consider wife's request for reimbursement of expenses relating to the children that accrued during the pendency of the divorce and that husband was supposed to pay pursuant to the temporary order.

{¶ 45} Judgment reversed and remanded based upon the record before us. Upon remand, we instruct the trial court to comply with Civ.R. 53 with respect to the parties' remaining issues. We further instruct the trial court to consider the parties' motions for attorney fees and litigation expenses as well as wife's request to be reimbursed for expenses relating to the children's out-of-pocket medical costs

and their extracurricular activities that occurring during the pendency of the divorce.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court 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.

MARY J. BOYLE, PRESIDING JUDGE

EILEEN A. GALLAGHER, J., CONCURS;
MICHELLE J. SHEEHAN, J., CONCURS IN JUDGEMENT ONLY