[Cite as *Collier v. Stubbins*, 2004-Ohio-2819.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Toni Collier nka Ragland,	:	
Plaintiff-Appellee,	:	No. 03AP-553 (C.P.C. No. 96JC-12-1273)
v.	:	(REGULAR CALENDAR)
John M. Stubbins, Jr.,	:	
Defendant-Appellant.	:	

O P I N I O N

Rendered on June 1, 2004

John M. Stubbins, Jr., pro se.

APPEAL From the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

PETREE, J.

{¶1} Defendant-appellant, John M. Stubbins, Jr., a pro se litigant, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, that adopted a magistrate's decision, which sustained in part defendant's objection to a decision of the Franklin County Child Support Enforcement Agency ("FCCSEA") and which overruled defendant's motion to retroactively and prospectively modify defendant's child support arrearage. For the following reasons, we affirm.

{¶2} According to defendant, in late December 1998, defendant voluntarily resigned from a job with Ameritech New Media. Prior to his resignation, defendant had accepted a partial scholarship to attend The Actor's Institute in New York City beginning in January 1999.

{¶3} Defendant submits that, at the time of his resignation, Ameritech New Media had been acquired by SBC, and defendant expected that his position at Ameritech New Media would soon be eliminated due to corporate restructuring. Prior to his resignation, defendant also purportedly applied for another position within Ameritech without success.

{¶4} According to defendant, following his resignation from Ameritech New Media, he provided notice to the domestic court about his change in income and change in employment status. However, defendant further contends that, following his resignation, FCCSEA continued to calculate defendant's child support obligation based upon defendant's former income level despite the fact that defendant's income had changed following his resignation from Ameritech New Media. Additionally, because defendant did not pay his child support obligations, FCCSEA later found defendant to be in arrears.

{¶5} Upon the request of plaintiff and defendant, on August 2, 2002, FCCSEA conducted an administrative modification hearing to review child support obligations. In a decision filed August 23, 2002, FCCSEA recommended that, effective May 1, 2002, defendant's monthly child support payment should be adjusted to $454.43. Because defendant did not agree with FCCSEA's recommended adjustment of his monthly child support obligation, on September 4, 2002, he requested a court hearing to review FCCSEA's recommended adjustment.

{¶6} Additionally, on October 28, 2002, defendant moved the domestic court for an order that would retroactively and prospectively modify defendant's child support arrearage. On October 31, 2002, the domestic court, through a magistrate, appointed an attorney to represent defendant.

{¶7} After granting defendant's motion for a continuance so that he could obtain additional information, on January 28, 2003, the domestic court, through a magistrate, conducted a hearing to consider defendant's objection to the administrative modification hearing decision that was filed on August 23, 2002, and to consider defendant's motion to determine arrearages that was filed on October 28, 2002.

{¶8} In his decision, the magistrate found FCCSEA erred in its calculation of plaintiff's child care adjustment and ordered that, effective May 1, 2002, defendant's support obligation should be modified to $291.20 per month, plus processing charge, and that, effective August 27, 2002, defendant's support obligation should be modified to $416.60 per month, plus processing charge. (May 6, 2003 Magistrate's Decision, at 5.) Accordingly, the magistrate sustained in part defendant's objection to the FCCSEA administrative modification hearing decision of August 23, 2002. However, finding defendant's motion of October 28, 2002, to retroactively and prospectively modify his arrearage was not well-taken, the magistrate overruled this motion.

{¶9} On May 6, 2003, finding there was no error in law or other defect on the face of the magistrate's decision, the domestic court adopted the magistrate's decision and incorporated by reference the magistrate's decision. On June 5, 2003, defendant appealed from the domestic court's judgment of May 6, 2003.

{¶10} Defendant's merit brief fails to comply with App.R. 16 that requires a statement of the assignments of error presented for review and a statement of the issues

presented for review. See App.R. 16(A)(3) and (A)(4). Therefore, because defendant in his brief failed to comply with the requirements of App.R. 16, we independently review defendant's brief to determine the issues presented for our consideration.

{¶11} Based upon our review, we identify the following issues for our consideration: (1) whether the domestic court, through a magistrate, erred in its calculation of defendant's child support arrearage; (2) whether the domestic court, through a magistrate, erred when it purportedly gave no weight to documentation that purportedly supported defendant's claim that he was unable to obtain or maintain employment due to a mental disorder; (3) whether the domestic court, through a magistrate, erred in its calculation of plaintiff's child care expenses; and (4) whether the domestic court, through a magistrate, erred by failing to provide defendant an opportunity to present evidence with respect to prospectively and retrospectively modifying defendant's child support arrearage.

{¶12} Preliminarily, we find defendant failed to object to the magistrate's decision. See, generally, Civ.R. 53(E)(3). Pursuant to former Civ.R. 53(E)(3)(b), which was in effect at the time the magistrate rendered his decision, "[a] party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule." Because defendant failed to object to the magistrate's finding of fact or conclusion of law, defendant has failed to properly preserve the issues that he now raises in this appeal and, therefore, for purposes of appeal defendant has waived these issues. See *McDaniel's Constr. Corp., Inc. v. Century Sur. Co.* (May 20, 1999), Franklin App. No. 98AP-882; *Jones v. Simondis* (Mar. 27, 1998), Trumbull App. No. 97-T-0073. Consequently, defendant's failure to object to

the magistrate's decision is dispositive of the arguments that defendant now raises in this appeal. See *Simondis*, supra.

{¶13} Additionally, defendant has failed to provide this court with a transcript of the hearing of January 28, 2003, along with exhibits that were admitted into evidence at the hearing, or an acceptable alternative.[1] See App.R. 9(C) (statement of the evidence or proceedings when no report was made or when the transcript is unavailable). Absent a transcript, we presume the regularity of the domestic court's proceedings. See, e.g., *Salcedo v. Zdrilich*, Mahoning App. No. 02-CA-38, 2003-Ohio-4607, at ¶1 (presuming the regularity of the trial court's proceedings absent a transcript).

{¶14} Furthermore, as stated in *Knapp v. Edward Laboratories* (1980), 61 Ohio St.2d 197:

> The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record. * * * This principle is recognized in App. R. 9(B), which provides in part, that "* * * the appellant shall in writing order from the reporter a complete transcript or a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record * * *." When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm.

Id. at 199. (Footnote omitted.) See, also, *Sabouri v. Ohio Dept. of Job & Family Serv.* (2001), 145 Ohio App.3d 651, 654 (observing that "[i]t is well established that *pro se* litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel").

[1] See Magistrate's Decision filed May 6, 2003 (stating that defendant's exhibits 1 and 2 that were submitted into evidence are retained in a locked cabinet in the court stenographer's office).

{¶15} Additionally, because we cannot determine whether defendant challenges the domestic court's judgment as being against the manifest weight of the evidence or whether defendant challenges the domestic court's judgment as being supported by insufficient evidence, we review defendant's contentions under both standards of review.

{¶16} As the Supreme Court of Ohio held in *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, syllabus, "Judgments supported by some competent, credible evidence going to all essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." When reversing a judgment as being against the manifest weight of the evidence, an appellate court is guided by a presumption that the findings of the trier of fact were correct. *Seasons Coal Co., Inc. v. Cleveland* (1984), 10 Ohio St.3d 77, 79-80. Furthermore, "an appellate court should not substitute its judgment for that of the trial court when there exists * * * competent and credible evidence supporting the findings of fact and conclusions of law rendered by the trial judge." Id. at 80.

{¶17} Conversely, the standard of review for whether a civil case is supported by sufficient evidence "is similar to the standard for determining whether to sustain a motion for judgment notwithstanding the verdict, which is whether the defendant is entitled to judgment as a matter of law when the evidence is construed most strongly in favor of the prevailing party * * *. In other words, is the verdict one which could reasonably be reached from the evidence?" *Hartford Cas. Ins. Co. v. Easley* (1993), 90 Ohio App.3d 525, 530.

{¶18} In his first issue that is presented for review, defendant asserts the domestic court, through a magistrate, erred in its calculation of defendant's child support arrearage.

{¶19} Defendant maintains the arrearage is incorrect because in 1999 defendant's child support obligation was not properly modified following defendant's resignation from Ameritech New Media. Moreover, according to defendant, whether he voluntarily quit his job at Ameritech New Media is subject to interpretation. Thus, defendant argues the magistrate erred in finding that defendant voluntarily quit his job at Ameritech New Media. Defendant further contends the magistrate's finding is against the manifest weight of the evidence. See, e.g., corrected brief of defendant-appellant, at 2 (arguing that whether defendant voluntarily quit his job is a "question of interpretation" and the magistrate "gave no weight to the facts in this matter and made an assumption that is unfair and bias [sic]").

{¶20} When considering whether to reverse a civil judgment as being against the manifest weight of the evidence, an appellate court is guided by a presumption that the findings of the trier of fact are correct. *Seasons Coal Co.*, supra, at 79-80. Moreover, when portions of the transcript that are necessary for resolution of assigned errors are omitted from the record, an appellate court has nothing to pass upon and therefore, as to those assigned errors, an appellate court must presume the validity of the trial court's proceedings and affirm. *Knapp*, at 199.

{¶21} In his decision, the magistrate found that "[t]here was no testimony presented regarding Defendant's hourly pay rate for any of his jobs subsequent to Ameritech" and "[t]he agency's calculation for Defendant's gross annual income is not unreasonable, and Defendant has not shown error in that regard." (May 6, 2003 Magistrate's Decision, at 4.) The court, through the magistrate, also found that it "[was] not convinced that Defendant cannot work a full-time job or work two part-time jobs in order to meet his support obligation." Id. Additionally, the court, through the magistrate, found that it "[was] unable to determine arrearages in this case as requested by

Defendant, as no evidence was presented regarding payments made through the agency by Defendant since the date of the previous Entry of 3/15/01, setting arrearages at $12,625.11 as of 12/31/2000. Without payment records, an arrearage figure cannot be calculated." Id. at 5.

{¶22} Here, absent a transcript, or some acceptable alternative, and guided by the presumption that the findings of the magistrate or the trier of fact, are correct, we find defendant's contention that the domestic court's calculation of defendant's child support arrearage is against the manifest weight of the evidence is unpersuasive. Moreover, by failing to file a transcript, or some acceptable alternative, defendant has failed to bear his burden of showing error by reference to matters in the record.

{¶23} In his second issue that is presented for review, defendant essentially challenges the weight that the domestic court, through the magistrate, gave to the evidence that defendant offered in support of his claim of unemployability due to a mental disorder.

{¶24} According to the magistrate's decision, at the hearing of January 28, 2003, defendant offered an undated letter that was signed by Winston Harrell, M.S.W. from the Chalmers P. Wylie Outpatient Clinic, Department of Veteran Affairs, in support of defendant's claim that he was unable to work. The letter apparently was written from a medical record progress note dated December 16, 2002. Additionally, this letter supposedly stated, in part, that "* * * due to his Mental Illness he [defendant] is unable to maintain employment at this time." Id. at 3.

{¶25} Additionally, according to the magistrate's decision, at the hearing of January 28, 2003, defendant also offered a progress note dated November 15, 2002, from Dr. Ernesto Castillo, a psychiatrist. This progress note apparently was labeled "work

copy – unofficial – not for medical record." Id. According to the magistrate, this progress note discussed defendant's psychiatric history; listed defendant's symptomatology as related by defendant; and made a diagnosis of defendant's psychiatric condition. However, according to the magistrate, this progress note did not address whether defendant could obtain or maintain employment.

{¶26} In his decision, the magistrate found that, absent further proof of Harrell's background, experience, education, and employment, a master's degree in social work did not qualify Harrell to conclude that defendant was unable to obtain or maintain employment due to mental illness.

{¶27} Generally, in a civil matter, the weight to be given the evidence is primarily for the trier of facts. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Furthermore, when considering whether to reverse a civil judgment as being against the manifest weight of the evidence, an appellate court is guided by a presumption that the findings of the trier of fact are correct. *Seasons Coal Co.*, supra, at 79-80. Cf. *Shesler v. Consol. Rail Corp.*, 151 Ohio App.3d 462, 2003-Ohio-320, at ¶27, appeal not allowed, 99 Ohio St.3d 1438, 2003-Ohio-2902 (stating that "[t]he determination of whether a witness possesses the qualifications necessary to allow expert testimony lies within the sound discretion of the trial court. In addition, the qualification of an expert witness will not be reversed unless there is a clear showing of an abuse of discretion on the part of the trial court").

{¶28} Here, given that Harrell's letter apparently was undated; defendant apparently presented no evidence concerning Harrell's background, experience, education, and employment; Dr. Castillo's unofficial progress note apparently did not address whether defendant could obtain or maintain employment; and on appeal

defendant failed to file a transcript along with exhibits of the hearing, or some acceptable alternative, to support his contention of error, we cannot conclude that under these circumstances the domestic court's finding that there was no medical diagnosis or opinion to support defendant's claim that he was unable to obtain or maintain some employment is against the manifest weight of the evidence. See *Seasons Coal Co.*, at 79-80. See, also, *Knapp*, supra, at 199. Moreover, by failing to file a transcript, or some acceptable alternative, defendant has failed to bear the burden of showing error by reference to matters in the record.

{¶29} Additionally, defendant's assertion that an opinion from a different psychiatrist that was rendered subsequent to the hearing of January 28, 2003, supports defendant's claim that he is unable to obtain or maintain employment is not persuasive. Here, this court is limited to evidence that is contained in the record. See *Napper v. Napper*, Allen App. No. 1-02-82, 2003-Ohio-2719, at ¶5 (stating that "[u]pon review, appellate courts are confined, pursuant to App.R. 12(A), to the record before it as defined in App.R. 9(A). Stated otherwise, an appellate court's review is strictly limited to the record that was before the trial court, no more no less"). (Footnote omitted.)

{¶30} In his third issue that is presented for review, defendant asserts the domestic court, through a magistrate, erred in its calculation of plaintiff's child care expenses. Here, defendant asserts that at the hearing of January 28, 2003, plaintiff provided no evidence of child care expenses and plaintiff testified inconsistently.

{¶31} In his decision, the magistrate found:

> Plaintiff presented no documentation for her day care expenses. She was asked by counsel for Defendant to bring documentation, including receipts, cancelled checks, and provider contracts to the hearing. Plaintiff testified that she had documentation but misplaced it. Without any

> documentation the Magistrate can conclude from Plaintiff's testimony that she pays for daycare for the child during non-school hours when Plaintiff is working. Since Plaintiff didn't work from March 2002 through the summer of 2002, no adjustment will be given for guidelines worksheet purposes for the period of May 1, 2002, to August 27, 2002, and the Magistrate will allow a reasonable adjustment of $60.00 per week, which is one-half of the total cost of day care for her two children, commencing August 27, 2002.

(May 6, 2003 Magistrate's Decision, at 4.)

{¶32} Absent a transcript, or some acceptable alternative, we presume the regularity of the domestic court's proceedings. See, e.g., *Salcedo*, supra, at ¶1. Moreover, when portions of the transcript that are necessary for resolution of assigned errors are omitted from the record, an appellate court has nothing to pass upon and therefore, as to those assigned errors, an appellate court must presume the validity of the trial court's proceedings and affirm. *Knapp*, supra, at 199.

{¶33} Therefore, absent a transcript, or some acceptable alternative, we find defendant's contention that the domestic court, through a magistrate, erred in its calculation of plaintiff's child care expenses is unpersuasive. Moreover, by failing to file a transcript, or some acceptable alternative, defendant has failed to bear his burden of showing error by reference to matters in the record.

{¶34} In his fourth issue that is presented for review, defendant asserts the domestic court, through a magistrate, erred by failing to provide defendant with an opportunity to present evidence with respect to prospectively and retrospectively modifying defendant's child support arrearage.

{¶35} Here, as previously noted, defendant has failed to provide this court with a transcript of the hearing of January 28, 2003, along with those exhibits that were admitted into evidence, or an acceptable alternative. Absent a transcript, or some acceptable

alternative, we presume the regularity of the domestic court's proceedings. See, e.g., *Salcedo*, supra, at ¶1. Moreover, defendant bears the burden of showing error by reference to matters in the record. *Knapp*, supra, at 199. When portions of the transcript necessary for resolution of assigned errors are omitted from the record, an appellate court has no choice but to presume the validity of the trial court's proceedings, and therefore affirm. Id.

{¶36} Therefore, absent a transcript, or some acceptable alternative, we find defendant's contention that the domestic court, through a magistrate, erred by failing to provide defendant with an opportunity to present evidence with respect to prospectively and retrospectively modifying defendant's child support arrearage is unpersuasive. Moreover, by failing to file a transcript, or some acceptable alternative, defendant has failed to bear his burden of showing error by reference to matters in the record.

{¶37} For the above-stated reasons, we therefore conclude that the domestic court's judgment reasonably can be reached from the evidence. We therefore overrule the issues that defendant raised in his appeal and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgment affirmed.

BRYANT and SADLER, JJ., concur.

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