[Cite as *In re J.B.*, 2007-Ohio-6088.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In the Matter:	:	
J.B.,	:	No. 07AP-242 (C.P.C. No. 03JU-07-10937)
(R.J.,	:	(REGULAR CALENDAR)
Appellant).	:	

O P I N I O N

Rendered on November 15, 2007

R. J., pro se.

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

McGRATH, J.

{¶1} Plaintiff-appellant, R. J. ("appellant"), appeals from a judgment entry dated March 20, 2007, of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, that adopted the magistrate's decision rendered March 20, 2007.

{¶2} The facts germane to this appeal are as follows. On July 10, 2006, appellant filed a motion to modify visitation; a subsequent amended motion was filed on

October 17, 2006. The court referred the matter to a magistrate, who rendered his decision on November 16, 2006, recommending that the trial court:

> SUSTAIN THE MOTION TO EXERCISE CONTINUING JURISDICTION OVER THIS MATTER.
>
> ORDER MOTHER TO SIGN A RELEASE FOR THE GUARDIAN AD LITEM TO RECEIVE RESULTS OF HER PSYCHOLOGICAL EVALUATION BY JANUARY 15, 2007.
>
> MAINTAIN CURRENT ORDER FOR SUPERVISED VISITATION AT WELCOME TO OUR PLACE.
>
> UPON RECEIPT OF PSYCHOLOGICAL RESULTS AND NO CONCERNS OF GUARDIAN AD LITEM, UNSUPERVISED VISITATION MAY START IMMEDIATELY ON SUNDAYS FROM 1-5 P.M. AT EASTON SHOPPING MALL.

(Magistrate's decision issued Nov. 16, 2006.) On November 21, 2006, the trial court adopted the magistrate's recommendation. On November 27, 2006, appellant objected to the magistrate's decision, which the court overruled on January 29, 2007. No appeal was taken from that decision.

{¶3} On February 5, 2007, appellant filed a motion to find D.B. ("father"), the father of appellant's son, J.B., in contempt for violating the trial court's prior order regarding visitation. In her motion, appellant requested the court order "immediate visitation" or "allow [her] to pick up child, see, or speak to him." (Appellant's motion for contempt, at 1.) In connection with her motion for contempt, appellant also filed a "motion for clarification of visitation order." Therein, appellant alleged that the visitation ordered at "Welcome to Our Place" works a financial hardship upon her, and that father "continues

to not comply with Easton visitation [on Sunday afternoons]." (Appellant's motion for clarification of visitation order, at 2.)

{¶4} The court referred the matter to a magistrate, who held a hearing on March 8, 2007. That same day, the magistrate rendered his decision, recommending the trial court:

> SUSTAIN THE MOTION FILED FEBRUARY 5, 2007, TO EXERCISE CONTINUING JURISDICTION OVER THIS MATTER.
>
> VISITATION BETWEEN MOTHER, [APPELLANT], AND THE MINOR CHILD, [J.B.], IS TO BE SUPERVISED AT WELCOME TO OUR PLACE.

(Magistrate's decision, Mar. 20, 2007.) Although not expressly stated, while the magistrate did recommend that the trial court grant appellant's motion, the import of his recommendation was limited to granting appellant's motion for the purpose of continuing jurisdiction; appellant was not granted the relief she requested. By judgment entry journalized the same day, the court adopted the magistrate's decision. No objections to the magistrate's decision were filed.

{¶5} On March 26, 2007, appellant filed a notice of appeal, asserting the following single assignment of error:

> The trial court erred by granting summary judgment in favor of Defendant when the records presents genuine issues of material fact that demand resolution by the truer [sic] of the fact. The result was termination of Plaintiff's parental rights.

{¶6} At the onset, we note that although appellant's notice of appeal states that she is appealing the court's decision dated March 20, 2007, her brief indicates that she is

challenging a decision rendered on February 25, 2004. The timely filing of a notice of appeal under App.R. 4(A), within 30 days of the entry of the judgment or order appealed, is jurisdictional. As such, this court is without jurisdiction to consider appellant's challenges to the court's decision rendered in 2004.[1]

{¶7} To the extent appellant is appealing the court's decision entered on March 20, 2007, which adopted the magistrate's decision, we note that appellant failed to file any objections thereto. When a party has not filed objections to a magistrate's decision and the trial court has entered judgment, appellate review is limited to plain error analysis. See *Buford v. Singleton*, Franklin App. No. 04AP-904, 2005-Ohio-753. The plain error doctrine is not favored in civil proceedings and "may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116, syllabus. *Goldfuss* makes clear that the plain error doctrine is to be used sparingly and is not warranted in the absence of circumstances raising something more than a mere failure to object. *Brown v. Zurich*, 150 Ohio App.3d 105, 2002-Ohio-6099, at ¶28, quoting *R.G. Real Estate Holding, Inc. v. Wagner* (Apr. 24, 1998), Montgomery App. No. 16737.

[1] Appellant's challenges to a 2004 decision, as well as her failure to file a corrected brief as instructed by this court in an entry dated July 16, 2007, provide technical bases for dismissal of her appeal. Nonetheless, given that the instant appeal was not dismissed prior to oral argument, for which appellant appeared and argued, the majority has chosen to consider and decide this case on its merits, in an effort to dispose of cases in an internally consistent manner. See, e.g., *Citimortgage v. Clardy*, Franklin App. No. 06AP-1011, 2007-Ohio-2940.

{¶8} We fail to find plain error in the case at bar. This is not the extremely rare case that involves exceptional circumstances. Nor do we find any error in law or fact on the face of the magistrate's report. Accordingly, appellant has waived any appellate review of the trial court's adoption of the magistrate's decision.

{¶9} Moreover, even if a full merit review were permissible, appellant fares no better. First, it is axiomatic that a transcript of the proceedings before the trial court is necessary for a thorough review of appellant's contentions, and appellant has failed to provide same. "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." *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. Accordingly, we must presume the regularity of the proceedings below and affirm the trial court's decision. *Edwards v. Cardwell,* Franklin App. No. 05AP-430, 2005-Ohio-6758, at ¶4-6. Second, our review of the record does not disclose that the trial court received appellant's psychological records (or that appellant caused the same to be delivered to the court) for its review and consideration regarding whether unsupervised visitation at Easton should commence. It is clear from the magistrate's decision of November 21, 2006, which was adopted by the trial court, that consideration of appellant's records was a condition precedent to the proposed Easton visitation. Thus, because visitation at Easton was ultimately never ordered, there could be no finding of contempt against father on that basis.

{¶10} For the foregoing reasons, appellant's assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch is affirmed.

Judgment affirmed.

FRENCH, J., concurs.
WHITESIDE, J., dissenting.

WHITESIDE, J., retired of the Tenth Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

WHITESIDE, J., dissenting.

{¶11} Because I would dismiss this appeal rather than affirm the trial court order, for reasons that follow, I must respectfully dissent.

{¶12} The notice of appeal was filed timely on March 26, 2007. Appellant, R.J., appealed from an order entered March 20, 2007, which adopted the magistrate's decision, which was also file-stamped March 20, 2007, and sustained a motion to "exercise continuing jurisdiction over this matter" and also ordered that "visitation between mother [R.J.], and the minor child, [J.B.], is to be supervised at Welcome To Our Place." However, the record reflects that appellant filed no objections to the magistrate's decision. The magistrate's decision filed March 20, 2007, states that the order is effective March 8, 2007, and is dated March 8, 2007. However, the only indication of service upon the parties, including appellant, is an instruction also filed March 20, 2007, ordering ordinary mail service upon the parties, and copies of certified mail receipts filed with the clerk of

the trial court on February 22, 2007. However, appellant did not cause that judgment to be stayed by filing objections within 14 days after journalization. See Civ.R. 53(D)(4) (i).

{¶13} This appeal should be dismissed. While appellant has proceeded pro se in this court, and filed motions pro se in the trial court, she had been represented by counsel in the trial court, one of whom on March 30, 2007, filed a notice of withdrawal, which was sustained by this court on April 5, 2007, and the other of whom filed a motion to withdraw on June 1, 2007, which was granted by this court on June 4, 2007.

{¶14} Appellant requested an extension of time to file her brief, which was granted, and a brief was timely filed on May 3, 2007. However, on May 9, 2007, this court entered an order that appellant file a corrected brief complying with the appellate rules no later than May 14, 2007. Appellant filed a motion for an extension of time to correct her brief, which was granted to the extent that the corrected brief could be filed no later than May 29, 2007. On July 16, 2007, no corrected brief having been filed, this court entered an order that, unless the corrected brief was filed no later than July 20, 2007, this appeal would be sua sponte dismissed. In addition, appellant's single assignment of error in her uncorrected brief refers to a decision of the trial court entered on February 25, 2004 and is not timely for that reason.

{¶15} Also, the record on appeal is not sufficient to demonstrate error. The only transcript of proceedings in the record is one filed September 24, 2003. Nor does the record contain any evidentiary material supporting appellant's argument in her brief. Appellant's failure to present a transcript of proceedings demonstrating the various errors she contends were made by the trial court as required by the Appellate Rules prevents

this court from being able to review the determination of the trial court and determine whether the trial court erred in any respect. It is not sufficient for the appellant to make assertions orally and in writing that the trial court erred in certain respects. Rather, this court must be presented with a record (usually including a transcript of proceedings) demonstrating the evidentiary material and issues presented to the trial court upon which the trial court determination was made. Without such a record, when evidence is presented (usually including a transcript of proceedings), this court has no basis for determining whether the trial court erred.

{¶16} Accordingly, for the foregoing reasons, this appeal should be dismissed.

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