

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Charles Townsend,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-598
v.	:	(C.P.C. No. 09JU-01-345)
	:	
Phimmasone Phommarath,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on April 19, 2011

Byron L. Potts and Olivia O. Singletary, for appellant.

Brian S. Piper Co., LPA, and Brian S. Piper, for appellee.

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

BRYANT, P.J.

{¶1} Plaintiff-appellant, Charles Townsend, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, that adopted a magistrate's decision establishing plaintiff's status as father of the child born to defendant-appellee, Phimmasone Phommarath, allocating parental rights, and establishing child support. Because the record fails to demonstrate plain error regarding any of plaintiff's assigned errors, we affirm.

I. Facts and Procedural History

{¶2} On January 8, 2009, plaintiff filed a complaint to establish his relationship as father, and to allocate parental rights and responsibilities, with respect to the child defendant gave birth to on February 17, 2006. Defendant responded with a counterclaim similarly seeking to establish plaintiff as the child's father, but also seeking custody and child support.

{¶3} As a result of the hearing the magistrate conducted on December 17, 18, and 22, 2009, the magistrate issued a decision on May 28, 2010 concluding, based on the joint stipulation submitted, that all issues regarding custody and parenting time were resolved. On the only remaining issue concerning the amount of child support plaintiff should pay to defendant, the magistrate determined plaintiff should pay (1) \$618.86 per month, plus processing charge, as well as (2) \$93.67 per month, plus processing charge, as and for cash medical support. Plaintiff and defendant were ordered to pay 70 percent and 30 percent, respectively, of all ordinary and extraordinary medical and other health care expenses for the child. In the event private health insurance became effective, the magistrate's decision modified the amount of child support to \$643.77, plus processing charge.

{¶4} In addressing arrearages, the magistrate decided plaintiff should receive a credit of \$600 toward child support arrearages based on plaintiff's direct payment to defendant. The magistrate ordered plaintiff to liquidate his arrearages at ten percent of the then-current support order. By judgment entry filed the same day, the trial court adopted the magistrate's decision, finding immediate relief was justified. No objections were filed to the magistrate's decision.

II. Assignments of Error

{¶5} Plaintiff appeals, assigning three errors:

I. THE TRIAL COURT ERRED, ABUSED ITS DISCRETION AND RULED AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHEN IT FOUND APPELLANT'S INCOME TO BE \$64,477 FOR THE PURPOSE OF CALCULATING CHILD SUPPORT.

II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FAILED TO GIVE APPELLANT CREDIT FOR THE STIPULATED AMOUNT OF CHILD SUPPORT PAID.

III. THE TRIAL COURT ERRED WHEN IT INCLUDED DAYCARE EXPENSES NOT INCURRED BY APPELLEE IN THE CALCULATION OF CHILD SUPPORT WHEN THERE WAS INSUFFICIENT EVIDENCE THAT APPELLEE HAD EVER INCURRED DAYCARE EXPENSES.

{¶6} Because plaintiff's three assignments suffer the same procedural deficiencies, we address them jointly. All three in effect challenge the manifest weight of the evidence.

III. No Plain Error

{¶7} According to Juv.R. 40(D)(3)(b)(i), a party may file written objections to a magistrate's decision "within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Juv.R. 40(D)(4)(e)(i)." In objecting to the magistrate's factual finding, a party must support the objection with "a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available." Juv.R. 40(D)(3)(b)(iii). "Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party

has objected to that finding or conclusion as required by Juv.R. 40(D)(3)(b)." Juv.R. 40(D)(3)(b)(iv).

{¶8} Here, plaintiff failed to comply with the provisions of Juv.R. 40(D)(3)(b). At no point did plaintiff file objections to the magistrate's decision and, as a result, waived all but plain error in the trial court's decision. Although plaintiff in his appeal filed a transcript of the proceedings before the trial court magistrate, we generally are precluded from considering it when the trial court did not have the opportunity to review it as part of determining whether to adopt the magistrate's decision. *Forth v. Gerth*, 10th Dist. No. 05AP-576, 2005-Ohio-6619, ¶8, citing *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 1995-Ohio-272 (stating that when a party fails to file a transcript of the proceedings before the magistrate with the trial court, the appellate court is "precluded from considering the transcript of the hearing submitted with the appellate record"). Without question the noted cases involve trial proceedings where objections were filed without a supporting transcript. Here, plaintiff did not object in the trial court and would assert the transcript may be reviewed to determine whether the trial court committed plain error.

{¶9} "In applying the doctrine of plain error in a civil case, reviewing courts must proceed with the utmost caution, limiting the doctrine strictly to those extremely rare cases where exceptional circumstances require" the court to apply it "to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would have a material adverse effect on the character of, and public confidence in, judicial proceedings." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 1997-Ohio-401, citing *Schade v. Carnegie Body Co.* (1982), 70 Ohio St.2d 207, 209; *LeFort v. Century*

21–Maitland Realty Co. (1987), 32 Ohio St.3d 121, 124; *Cleveland Elec. Illum. Co. v. Astorhurst Land Co.* (1985), 18 Ohio St.3d 268, 275. Even if we review the trial court transcript, plaintiff cannot demonstrate plain error.

{¶10} Plaintiff's first assignment of error contends the trial court improperly determined his income for purposes of calculating his child support obligation. Plaintiff points to the testimony of his expert witness that plaintiff's income from "flipping" real estate did not include his capital gains. Plaintiff apparently contends the trial court should not have included his capital gains in establishing his income for purposes of child support. Cf. *Conrad v. Conrad*, 7th Dist. No. 06-MA-128, 2007-Ohio-3186 (concluding the court reasonably included "appellant's capital gains from the sale of real estate as income when computing child support"). The trial court, through its magistrate, explained how the court arrived at a figure for plaintiff's income. Plaintiff's disagreement with how the trial court weighed the credibility of the witnesses concerning the factors properly included in calculating his income for purposes of determining child support does not constitute plain error under *Goldfuss*. See *State v. Cook*, 10th Dist. No. 09AP-316, 2010-Ohio-2726, ¶44 (citing *Goldfuss* and concluding no plain error in credibility determinations).

{¶11} His second assignment of error disputes the amount he paid in child support arising out of other unrelated child support orders. Pointing to the parties' stipulation, plaintiff contends the trial court erred in determining the amount. Plaintiff's contention fails to acknowledge the parties did not stipulate what he paid, but what he was ordered to pay under the other child support orders. No error, much less plain error, is supported under plaintiff's second assignment of error.

{¶12} Plaintiff's last assignment of error contends the trial court committed plain error in awarding child care expenses to defendant. The record, however, contains defendant's testimony about child care expenses. The trial court's finding her testimony credible does not rise to the level of plain error under *Goldfuss*. See *Cook*. Accordingly, plaintiff's three assignments of error are overruled.

{¶13} Having overruled plaintiff's three assignments of error, rendering defendant's motion to dismiss moot, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

*Motion to dismiss moot;
judgment affirmed.*

FRENCH and DORRIAN, JJ., concur.
