

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Andrew R. Kinnisten,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-173
	:	(C.P.C. No. 10JU-07-10395)
Melissa M. Bingaman,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	
	:	

D E C I S I O N

Rendered on September 11, 2012

Jodelle M. D'Amico, for appellant.

Jeffrey A. Brown, for appellee.

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

TYACK, J.

{¶ 1} Andrew R. Kinnisten is appealing from the judgment entry journalized in the Franklin County Court of Common Pleas, Division of Domestic Relations and Juvenile Branch. He assigns a single error for review:

THAT THE TRIAL COURT ERRED WHEN IT ORDERED
CHILD SUPPORT IN THE AMOUNT OF \$450.00 PER
MONTH PLUS PROCESSING CHARGE PAYABLE FROM
APPELLANT TO APPELLEE.

{¶ 2} The child support order was entered as a result of the filing of affidavits which were reviewed by a magistrate. The magistrate issued a magistrate's decision.

Apparently by agreement of the parties, no objections were filed to the magistrate's decision.

{¶ 3} The agreement of the parties does not overrule the Ohio Rules of Civil Procedure. Those rules provide in Civ.R. 53(D)(3)(b)(iv):

Waiver of right to assign adoption by court as error on appeal. 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, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ. R. 53(D)(3)(b).

{¶ 4} We are therefore required to apply a plain error standard. To constitute plain error, the error must be obvious on the record, palpable, and fundamental such that it should have been apparent to the trial court without objection. *See State v. Tichon*, 102 Ohio App.3d 758, 767 (9th Dist.1995). Moreover, plain error does not exist unless the appellant establishes that the outcome of the trial clearly would have been different but for the trial court's allegedly improper actions. *State v. Waddell*, 75 Ohio St.3d 163, 166 (1996). Notice of plain error is to be taken with utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice. *State v. Phillips*, 74 Ohio St.3d 72, 83 (1995); *State v. Ospina*, 81 Ohio App.3d 644, 647 (10th Dist.1992).

{¶ 5} In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error seriously affects the basic fairness, integrity, or public reputation of the judicial process itself. *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus.

{¶ 6} The affidavits of the parties formed a basis for the magistrate's finding that Kinnisten earns \$128,770 per year, while Bingaman earns \$34,486. This led the magistrate to recommend deviation from the child support guidelines under R.C. 3119.23(G).

{¶ 7} On appeal, counsel for Kinnisten asserts that the magistrate should have offset the deviation factor of the statute by other provisions of the child support statute. This assertion questions a judgment call by the magistrate. Such an assertion should have

been presented to the trial judge. The assertion does not constitute plain error to be first raised on appeal to the court of appeals.

{¶ 8} The assignment of error is overruled. The judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations and Juvenile Branch is affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.
