

[Cite as *Little v. Watkins*, 2012-Ohio-5041.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kimberly L. Little,	:	
Plaintiff-Appellant,	:	
v.	:	No. 12AP-335 (C.P.C. No. 11JU-03-3130)
Stephen E. Watkins,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on October 30, 2012

Kimberly L. Little, pro se.

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

FRENCH, J.

{¶ 1} Plaintiff-appellant, Kimberly L. Little ("Kimberly"), appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, which denied Kimberly's motion to terminate shared parenting. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} In March 2011, Kimberly and defendant-appellee, Stephen E. Watkins ("Stephen"), entered into a shared parenting plan regarding their minor son and daughter. In February 2012, Kimberly moved to terminate shared parenting and to reallocate parental rights and responsibilities. She asked the court to designate her as

the sole residential parent and legal custodian of the children, grant parenting time to Stephen, and order Stephen to pay child support.

{¶ 3} A magistrate of the trial court held a hearing, at which Kimberly, Stephen, and two witnesses testified. Following the hearing, the magistrate issued a decision in which she stated that Kimberly had not met her burden to prove that it is in the best interest of the children to terminate the shared parenting plan. The magistrate also noted that Kimberly's two exhibits were admitted into evidence, but that Kimberly took them with her when she left the courtroom. The trial court adopted the magistrate's decision in a final judgment entry.

II. ASSIGNMENT OF ERROR

{¶ 4} Kimberly filed a timely appeal, and she raises the following assignment of error:

Because of deficient performance at the hearing of [Kimberly] being Pro Se, half the exhibits entered in the [trial] had been misplaced, causing prejudice. This could have injured the final decision of the Magistrate Kripple. Referenced in the final filing, the mother had in fact taken the copy of the exhibit B Cash Medical Order as well as Exhibit A being the critical piece of evidence to reference the lack of communication regarding the minor female party was in activities.

III. DISCUSSION

{¶ 5} Before considering Kimberly's assignment of error, we consider our standard of review. Kimberly asks for our review of the trial court's decision adopting the magistrate's decision. Where a magistrate hears an action, Civ.R. 53 imposes an affirmative duty on parties to make specific, timely objections in writing to the trial court, identifying any factual or legal error in the magistrate's decision. *Howard v. Norman's Auto Sales*, 10th Dist. No. 02AP-1001, 2003-Ohio-2834, ¶ 21. Pursuant to Civ.R. 53(D)(3)(b), a party may not raise on appeal any error pertaining to a trial court's adoption of any finding of fact or conclusion of law by the magistrate, unless that party timely objected to that finding or conclusion, as required by the rule. *State ex rel. Booher v. Honda of Am. Mfg., Inc.*, 88 Ohio St.3d 52, 53-54 (2000).

{¶ 6} Here, consistent with Civ.R. 53, the magistrate's decision contained the following "NOTICE TO THE PARTIES:"

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) or Juv. R. 40(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b) or Juv. R. 40(D)(3)(b).

{¶ 7} Kimberly did not file objections to the magistrate's decision, which the trial court then adopted. This court has held that, when a party fails to file objections to a magistrate's decision, we may still review the decision for plain error. *Brown v. Zurich US*, 150 Ohio App.3d 105, 2002-Ohio-6099, ¶ 27 (10th Dist.); *O'Connor v. Trans World Servs., Inc.*, 10th Dist. No. 05AP-560, 2006-Ohio-2747, ¶ 11. See also Civ.R. 53(D)(3)(b)(iv). The plain error doctrine is not favored in civil appeals, however, and we may apply it "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." *Goldfuss v. Davidson*, 79 Ohio St.3d 116 (1997), syllabus.

{¶ 8} At the hearing before the magistrate, Kimberly complained about the lack of communication between her and Stephen, specifically relating to enrollment of the children in school and their school activities. She called her sister to testify about a picture of Kimberly's daughter in a ballet costume; Kimberly had never been made aware that her daughter was involved in ballet. Stephen and his fiancé also testified. Stephen admitted that he had not communicated about some issues regarding the children, and he knew it was his responsibility to do so.

{¶ 9} In her assignment of error, Kimberly argues that prejudice resulted from her performance, without counsel, at the hearing and her removal of the exhibits. We disagree. Both Kimberly and Stephen acted pro se at the hearing. There is nothing in the magistrate's decision to indicate that her denial of the motion resulted from either party's performance. The magistrate permitted both parties to testify, present and cross-examine witnesses, and submit evidence. She listened carefully to their

testimony, and she prompted them to lay a foundation for their questions. In the end, she determined that Kimberly had not met her burden to show that termination of the shared parenting agreement was in the best interest of the children, as R.C. 3109.04 requires. With or without possession of the exhibits, the magistrate decided the matter based on the evidence presented at the hearing, and the trial court adopted her decision. We discern no plain error. Therefore, we overrule Kimberly's assignment of error.

IV. CONCLUSION

{¶ 10} Having overruled Kimberly's sole assignment of error, we affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgment affirmed.

BRYANT and KLATT, JJ., concur.
