[Cite as *Lavelle v. Lavelle*, 2012-Ohio-6197.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Randall Lavelle,	:	
Plaintiff-Appellant,	:	
		No. 12AP-159
v.	:	(C.P.C. No. 06DR-10-4151)
Tracy L. Lavelle,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on December 28, 2012

Randall Lavelle, pro se.

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

DORRIAN, J.

{¶ 1} Plaintiff-appellant, Randall Lavelle, appeals the February 13, 2012[1] judgment of the Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, wherein the court granted defendant-appellee, Tracy Lavelle's, motion to reallocate parental rights and responsibilities. Because appellant waived all arguments on appeal, and finding no plain error, we affirm.

{¶ 2} Appellant and appellee divorced in 2007. At that time, pursuant to the Agreed Judgment Entry Decree of Divorce, appellant was designated the residential

[1] The notice of appeal filed by appellant indicates thereon that appellant is appealing the judgment entered February 14, 2012. No judgment was entered on that date. However, appellant attached to his brief a copy of the trial court's February 13, 2012 judgment; therefore, we will consider that judgment for purposes of this appeal.

parent and legal custodian for their two children, Kelsey, born in 1994,[2] and Luke, born in 1999. On July 28, 2011, appellee filed a motion for custody. She argued that "it is in the best interest of the minor child(ren) that the custody rights of the parties be determined" and requested that the court name her the residential parent and legal custodian of the children.

{¶ 3} A magistrate of the court ordered the parties to participate in a home investigation. The court's home investigator, Kim Ryan, of the Family Assessment Department, reported to the court that she attempted to contact both parties. Appellant immediately contacted her and was fully compliant with the investigation. Appellee, however, never responded to the investigator's efforts to contact her. On December 13, 2011, Ms. Ryan, in a memo to Magistrate Webber, stated: "As Ms. Lavelle has been noncompliant with the court-ordered investigation, I recommend that her motion be dismissed." The magistrate again ordered appellee to participate. Ultimately she did. On February 13, 2012, another court investigator, Alicia Zanders, recommended to the court a shared-parenting agreement and that appellant should remain the residential parent, "unless drug screens come back positive." (Zander's Report, Exh. B to Magistrate's Decision, at 5.) Ms. Zanders further noted that there were allegations of drug usage by both parties and, therefore, the parties were instructed to submit to a drug test prior to the next court date. Appellee submitted to a drug screen, and the initial screen results came back negative for the drugs which were tested. (Initial Drug Screen Result Form, Exh. A, attached to Magistrate's Decision.)[3]

{¶ 4} The magistrate held a hearing on February 1, 2012 on appellee's motion. Appellee appeared, but appellant did not.[4] The magistrate noted that appellant was properly served and had signed the continuance setting the hearing date. Thus, the

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[2] Kelsey is now 18 years old. Appellant acknowledges that he does not appeal the judgment as to Kelsey because she is now the age of majority.

[3] This summary of the history and facts of this case has been compiled from documents included in the record of this case. Within his brief and at oral argument, appellant offered additional information, including documents showing that he has submitted to several drug screens which have come back clean and letters from persons attesting to his character as a good father. This information was not included in the record. Therefore, we are not permitted to consider this information in view of the fact that it was not presented to the trial court for consideration.

[4] Appellant explained in his brief that he did not appear at the hearing because his mother was in the hospital but concedes that he did not request a continuance and he did not file a motion to vacate based on this explanation of absence.

magistrate concluded that appellant had notice of the hearing. The magistrate conducted the hearings, and a record of the proceedings was made via the recording system in Courtroom 35. Appellee was the only witness.

{¶ 5} The magistrate found that there had been a change of circumstance justifying the modification of parental rights and responsibilities, pursuant to R.C. 3109.04(E)(1). She noted that the current economic circumstance of appellee was that she had an annual income of approximately $24,000; whereas, appellant's annual income was $0. She also found that, pursuant to R.C. 3109.04(F), it is in the best interest of the two minor children to designate appellee as their residential parent and legal custodian. In her February 13, 2012 decision, the magistrate granted appellee's motion and designated her as the residential parent and legal custodian of the children. On the last page of the magistrate's decision is a "NOTICE TO THE PARTIES," which states:

> 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).

Appellant did not object before the trial court to the magistrate's factual findings or legal conclusions. On February 13, 2012, the trial court adopted the magistrate's decision as its own. Appellant filed a notice of appeal on February 24, 2012. Appellant, representing himself, filed a brief; however, appellee did not file a brief.

{¶ 6} Appellant asserts the following assignments of error:

> I. The trail [sic] court erred in its decision in that it did not engage in a proper analysis by reviewing the evidence because it did not set fourth [sic] any evidence to supports [sic] its conclusion and there had been no "change in circumstances."
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> II. The trail [sic] court abused its discretion when it allowed prejudicial hear say [sic] come in and be considered.
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> III. The trail [sic] court's decision to terminate Randall Lavelle's custody of Luke Lavelle was not supported by clear and convincing evidence[.]

> IV. The trail [sic] court abused its discretion and erred in designating Tracy Lavelle the residential parent of Luke Lavelle[.]
>
> V. The trail [sic] court failure to consider Randall Lavelle's equality of parental rights and responsibilities when determining the custody of Luke Lavelle.

{¶ 7} We note initially that App.R. 9(B)(3) requires "[t]he appellant shall order the transcript in writing and shall file a copy of the transcript order with the clerk of the trial court." In this case, appellant failed to file a transcript of any proceedings below.[5] "Therefore, this court is without any transcript of the proceedings before the trial court necessary to exemplify the facts that determined the issues presented. In such absence, we cannot review any of appellant's assignments of error that rely upon factual issues in dispute, and we must presume regularity of the proceedings under such circumstances. Therefore, we may only address arguments in appellant's assignments of error that are based solely on questions of law." *Gomez v. Kiner*, 10th Dist. No. 11AP-767, 2012-Ohio-1019, ¶ 5.

{¶ 8} Regarding any arguments which appellant makes as to questions of law, Civ.R. 53(D)(3)(b)(iv) states that: "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 Civ. R. 53(D)(3)(b)." The Supreme Court of Ohio has firmly adhered to this procedural mandate. *McLellan v. McLellan*, 10th Dist. No. 10AP-1105, 2011-Ohio-2418. In *State ex rel. Findlay Industries v. Indus. Comm.*, 121 Ohio St.3d 517, 2009-Ohio-1674, the Supreme Court dismissed an appeal from a magistrate's decision and affirmed the lower court's judgment, finding "[a]ppellant's arguments derive directly from the conclusions of law provided in the magistrate's decision. Appellant, however, did not object to those conclusions as Civ.R. 53(D)(3)(b) requires. Thus * * * we can proceed no further." *Id.* at ¶ 3. Likewise, here, because appellant failed to object to the magistrate's decision, we can

[5] At oral argument, appellant indicated that he did file a transcript; however, the record does not reflect the same and no transcript was provided to the court.

proceed no further unless we find plain error. Appellant has not asserted plain error, and we do not find plain error.[6]

{¶ 9} Throughout this process, appellant has represented himself and, thus, we say he has proceeded pro se. We have great respect for appellant's desire to remain the residential parent and legal custodian of his children. However, the Supreme Court has held that "the mere fact that he is a pro se litigant does not entitle him to ignore the requirements of the local appellate rule[s]. ' "[P]ro *se* litigants * * * are held to the same standard as litigants who are represented by counsel." ' " *State ex rel. Leon v. Cuyahoga Cty. Court of Common Pleas*, 123 Ohio St.3d 124, 2009-Ohio-4688, ¶ 1, citing *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, ¶ 10, quoting *Sabouri v. Ohio Dept. of Job & Family Servs.*, 145 Ohio App.3d 651, 654 (10th Dist.2001). With this in mind, we are required, as explained above, to overrule appellant's assignments of error.

{¶ 10} Accordingly, appellant's assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.

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[6] Although the trial court did not include in its decision a statement of rationale or explanation for its findings, we have previously said that none is required. See *Alessio v. Alessio*, 10th Dist. No. 05AP-988, 2006-Ohio-2447, ¶ 27 ("although an expression of the rationale underlying this [R.C. 3109.04(E)] finding would benefit a reviewing court, the statute does not require the trial court to express its analysis").