

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Cheryl L. Huffer (Swoyer),	:	
Plaintiff-Appellee,	:	No. 12AP-883
v.	:	(C.P.C. No. 06DR-11-4586)
Roy H. Huffer, III,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on April 18, 2013

Stewart E. Roberts, for appellee.

Roy H. Huffer, III, pro se.

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

BROWN, J.

{¶ 1} Roy H. Huffer, III, defendant-appellant, appeals from the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, in which the court granted the motion to dismiss appellant's objections filed by Cheryl L. Huffer (Swoyer), plaintiff-appellee. Appellee has also filed a motion for award of expenses.

{¶ 2} Because appellant failed to file a transcript with the trial court to support his objections to the magistrate's decision, our factual summary is based upon the magistrate's factual findings. Appellant and appellee were divorced on February 17, 2009. The decree of divorce, among other things, indicated that appellant would receive an eight-piece china set, and appellee would receive a Woody Hayes picture. On April 30, 2012, appellant filed a motion for contempt, asserting that he never received the china set.

{¶ 3} A hearing was held before a magistrate on August 2, 2012, on appellant's motion for contempt. Appellee testified at the hearing that many years prior to the divorce, she had moved the china from her parents' home to a crawlspace in the marital home. Appellant and his witness, Lori Hilfinger, testified that the china was not in the marital home at the time appellant moved out after the parties separated, at which time appellee moved back into the marital home. Appellant also testified that he had a Woody Hayes picture in his possession and was willing to exchange it for the china.

{¶ 4} The magistrate issued a decision on December 13, 2012. In the decision, the magistrate found that appellant failed to bring his contempt action with clean hands because he has refused to give appellee the picture of Woody Hayes, which she was to receive pursuant to the decree; therefore, he cannot benefit from a contempt action. The magistrate also noted that appellant brought the action three years after the finalization of the parties' divorce; suggested that the parties exchange the items on their own; and noted that, if appellee really did not have the china, the court had no way to assess a value because neither the brand nor value was presented as evidence, making a purge order impossible.

{¶ 5} Appellant filed objections to the magistrate's decision, but appellant failed to file a transcript of the proceedings before the magistrate. At the hearing on the objections, appellee orally moved for dismissal of the objections based upon appellant's failure to file the transcript, as required by Civ.R. 53(D)(3)(b)(iii) and Loc.R. 9. On December 13, 2012, the trial court issued a decision granting appellee's motion to dismiss appellant's objections based upon his failure to file the transcript. Appellant, pro se, appeals the judgment of the trial court, asserting the following assignment of error:

The lower courts committed error by not finding Plaintiff-Appellee in contempt of court for failure to deliver the fine china to Defendant-Appellant.

{¶ 6} As indicated above, appellant failed to file a transcript of the magistrate's hearing when he filed his objections with the trial court. Civ.R. 53(D)(3)(b)(iii) provides that, "[a]n objection to a factual finding, whether or not specifically designated as a finding of fact * * *, shall be supported by 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." Civ.R. 53(D)(3)(b)(iv) explains that, "[e]xcept 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)." In other words, the failure to raise a proper objection to the magistrate's decision in the trial court waives all but plain error on appeal.

{¶ 7} Here, to the extent that appellant challenges the magistrate's factual findings, he failed to provide the trial court with a transcript, and, therefore, cannot challenge the factual findings of the magistrate's findings on appeal. *See Denittis v. Aaron Constr., Inc.*, 11th Dist. No. 2011-G-3031, 2012-Ohio-6213, ¶ 24, citing *DiNunzio v. DiNunzio*, 11th Dist. No. 2006-L-106, 2007-Ohio-2578, ¶ 17; *Chamberlin v. Chamberlin*, 6th Dist. No. F-10-022, 2011-Ohio-1974, ¶ 20 (the appellant failed to file either a transcript of the proceedings before the magistrate or an affidavit of that evidence; therefore, the appellant cannot challenge any of the magistrate's findings of fact upon appeal, and review of the case is limited to a determination of whether the trial court abused its discretion in adopting the magistrate's legal conclusions), citing *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730 (1995), and *Hensley v. Hensley*, 6th Dist. No. E-08-026, 2009-Ohio-1738, ¶ 6; *Liming v. Damos*, 4th Dist. No. 08CA34, 2009-Ohio-6490, ¶ 17 (when a party fails to file a transcript of evidence or an affidavit with the trial court, our review is limited to determining whether the trial court abused its discretion when applying the law to the facts); *Williams v. Williams*, 7th Dist. No. 08 MA 248, 2009-Ohio-6162, ¶ 19, citing *Duncan* at 730 (the Supreme Court of Ohio has stated in *Duncan* that, where the objecting party fails to provide the trial court with the transcript of the proceedings before the magistrate, the reviewing court is only permitted to determine if the application of the law was proper or if it constituted an abuse of discretion).

{¶ 8} Therefore, because appellant presented no transcript to the trial court for ruling on the objections from the magistrate's decision, this court is bound by the magistrate's factual findings, subject to plain error, and any legal issues raised. *See* Civ.R. 53(D)(3)(b)(iv); *Petty v. Equitable Prod. & E. States Oil & Gas, Inc.*, 7th Dist. No. 05 MA 80, 2006-Ohio-887, ¶ 23-24. In civil cases, the plain error doctrine applies 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*, 79 Ohio St.3d 116 (1997), syllabus. The doctrine implicates errors that are "obvious and prejudicial although neither objected to nor affirmatively waived which, if permitted, would have a material adverse affect on the character and public confidence in judicial proceedings." *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 209 (1982).

{¶ 9} In his appellate brief, appellant presents no argument regarding plain error. However, in short, appellant complains that appellee lied when she testified she did not know the location of the china, and her attorney has been lying for six years about various issues. In support, appellant raises numerous instances of appellee's testimony he claims were inconsistent with her other testimony or that were outright lies. However, our inability to review the transcript testimony from the magistrate's hearing due to appellant's failure to file it before the trial court upon objections makes it impossible for us to overturn the magistrate's credibility determination. *See Taylor v. Ohio Dept. of Job & Family Serv.*, 10th Dist. No. 11AP-385, 2011-Ohio-6060, ¶ 13 (finding that, because the appellant failed to file a transcript with the trial court upon objections pursuant to Civ.R. 53(D)(3)(b)(iii), appellate review of credibility was nearly impossible), citing *Elyria v. Rowe*, 121 Ohio App.3d 342, 344 (9th Dist.1997), and *Murray v. Murray*, 5th Dist. No. 01-CA-00084, 2002-Ohio-2505. We can find no obvious error in the magistrate's determinations, and this case does not represent an extremely rare circumstance requiring application of the plain error doctrine in order to prevent harm that seriously affects the basic fairness, integrity, or public reputation of the judicial process. *See Goldfuss* at syllabus. Therefore, we conclude that the trial court did not commit plain error.

{¶ 10} Appellant also argues that the trial court dismissed his objections based upon a "technicality," and that he should have been afforded latitude because he was representing himself pro se. However, the mandate of filing a transcript found in Civ.R. 53(D)(3)(b)(iii) is not a mere technicality. The obvious and practical reason for Civ.R. 53(D)(3)(b)(iii) is that, without a transcript of the proceedings before the magistrate, it is

not possible for a trial court to review any arguments relating to issues of fact because it has no testimony before it to weigh and assess. Furthermore, this court has before held that an appellant's status as a pro se litigant does not allow the appellant to escape the requirements of Civ.R. 53. *See, e.g., Carter v. Carter*, 10th Dist. No. 05AP-745, 2006-Ohio-1206, ¶ 17 (the fact that a litigant is pro se does not eliminate the requirement that a party comply with Civ.R. 53), citing *Buford v. Singleton*, 10th Dist. No. 04AP-904, 2005-Ohio-753. Other courts are in accord. *See, e.g., Ruble v. Ruble*, 12th Dist. No. CA2010-09-019, 2011-Ohio-3350, ¶ 47 (even though he was pro se, husband was still required to comply with Civ.R. 53), citing *Bamba v. Derkson*, 12th Dist. No. CA2006-10-125, 2007-Ohio-5192, ¶ 14 (addressing party's failure to object to a conclusion of law or finding of fact issued by a magistrate pursuant to Civ.R. 53). It is well-established that pro se litigants are presumed to have knowledge of the law and legal procedures and are held to the same standard as litigants who are represented by counsel. *Sabouri v. Ohio Dept. of Job & Family Serv.*, 145 Ohio App.3d 651, 654 (10th Dist.2001). Therefore, we find the trial court's decision to dismiss appellant's objections based upon his failure to file a transcript was reasonable, and we overrule appellant's assignment of error.

{¶ 11} As for appellee's motion for award of expenses, appellee argues that she should be awarded attorney fees because appellant's appeal was frivolous due to a lack of transcript. We deny appellee's motion, as appellant could have still been successful on appeal had there existed plain error or an error of law.

{¶ 12} For the foregoing reasons, appellant's single assignment of error is overruled, appellee's motion for award of expenses is denied, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

*Motion denied;
judgment affirmed.*

KLATT, P.J., and SADLER, J., concur.
