[Cite as *Bonn v. Bonn*, 2013-Ohio-2313.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Brenda Bonn,	:	
Plaintiff-Appellee,	:	No. 12AP-1047 (C.P.C. No. 11DR-06-2241)
v.	:	(REGULAR CALENDAR)
John Bonn,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 4, 2013

Tyack, Blackmore, Liston & Nigh Co., L.P.A., Jefferson E. Liston, and *Elizabeth R. Werner*, for appellee.

John Bonn, pro se.

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

BROWN, J.

{¶ 1} John Bonn, defendant-appellant, appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, in which the court issued a judgment regarding child support. Brenda Bonn, plaintiff-appellee, has filed a motion to dismiss John's appeal.

{¶ 2} John and Brenda were married on August 27, 1994, and had one daughter together. On July 29, 2011, the parties' marriage was terminated by a decree of dissolution, which incorporated a separation agreement and shared parenting plan.

{¶ 3} On September 20, 2011, Brenda filed a motion to reallocate parental rights and responsibilities, based upon what Brenda claimed were John's false allegations of her

and her family's sexual abuse of their daughter. The matter was originally set for a hearing on August 28, 2012, but the record is unclear what occurred, if anything, on that date. Nevertheless, on August 30, 2012, both parties appeared before the court with counsel, and John's counsel requested a continuance, which the court denied. The parties subsequently executed a memorandum of agreement, resolving the issues of parenting time and telephone contact, while leaving the issue of child support for determination by the magistrate via affidavits. The memorandum of agreement was journalized by the trial court in an agreed judgment entry on October 23, 2012.

{¶ 4} On November 19, 2012, the magistrate issued a decision, which was adopted by the trial court on the same date. In the decision, the magistrate modified John's child support order, ordered Brenda to maintain health insurance for their daughter, and ordered that Brenda be permitted to claim their daughter for tax purposes. John, pro se, appeals the judgment of the trial court, asserting the following five assignments of error:

> I. Err in the Agreed Entry. By not granting an extension, the trial court erred. Events of the court beyond the defendants influence affecting trial preparedness whilst expecting vigilance with less than three hours notice to appear violate conviction of due process.
>
> II. Err in the Trial Court Mechanics. Ex Parte modus operandi erred. Adjudicator predisposition in Ex Parte procedural communication infrastructure wherefrom discretionary presumptions manifest principal determinates without evidence necessitate inclusive proviso notice thereof.
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> III. Err in Childs Visitation. Trial Court suspension of paternal visitation erred. The court has provided plaintiff protection from the reckoning of discovery by denying due process entitled to the defendant, issuing degrading paternal supervised visitation to the extent of alienation without supportive evidence thereto justify cause.
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> IV. Err in the Childs Best Interest. Evidential assignment erred. Guardian Ad Litem minimized the importance of the best interest of Taylor. GAL, Vicki Johnston disregarded evidence that indicated mistreatment/abuse by her mother's family.

> V. Err in Defendants Representation. Officials cohesion of the court erred. Defendant's attorneys did not represent their client's best interest. They engaged in deceptive, intimidating and aggressive manipulations at critical times during the court process. These manipulations proved to be against the Defendant and created an unfair advantage to the Plaintiff. (*Sic passim*.)

{¶ 5} We first address Brenda's motion to dismiss. In her motion, Brenda argues that John's appeal should be dismissed because (1) the appeal was filed untimely, (2) John failed to object to the magistrate's decision pursuant to Civ.R. 53(D), and (3) John failed to prosecute the appeal by failing to file the necessary transcripts from the trial court.

{¶ 6} With regard to Brenda's assertion that the appeal was untimely, she contends that several of John's assignments of error relate to custody and parenting time addressed in the October 23, 2012 agreed judgment entry, and John failed to file an appeal of that judgment. However, the agreed judgment entry was not a final, appealable order, as other issues remained pending, and the entry did not contain any language pursuant to Civ.R. 54(B). When a trial court disposes of fewer than all of the claims for relief and does not include Civ.R. 54(B) language indicating there is "no just reason for delay," no part of the order appealed is final. *Columbus, Div. of Taxation v. Moses*, 10th Dist. No. 12AP-266, 2012-Ohio-6199, ¶ 12, citing *Internatl. Bd. of Elec. Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, ¶ 8, citing *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, ¶ 6. Thus, this ground does not support a dismissal of the appeal.

{¶ 7} With regard to Brenda's ground that John failed to object to the magistrate's November 19, 2012 decision, Brenda points out that Civ.R. 53(D)(3)(b)(iv) requires 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)." However, none of John's arguments on appeal relate to the November 19, 2012 decision, which addressed

only child support, healthcare expenses, and the tax dependency exemption. Therefore, the prohibition found in Civ.R. 53(D)(3)(b)(iv) is not implicated.

{¶ 8} As to Brenda's ground that John failed to prosecute the appeal by failing to file the necessary transcripts from the trial court, after being granted leave to do so, John has now filed at least some transcripts of the trial court's proceedings. For these reasons, we deny Brenda's motion to dismiss.

{¶ 9} With regard to John's assignments of error, we first note that John's arguments in his assignments of error raise numerous contentions unrelated to the respective assignments of error under which they are raised. Several of the assignments of error also intermingle arguments that relate to other assignments of error. Pursuant to App.R. 12(A)(1)(b), appellate courts must " 'determine [an] appeal on its merits on the assignments of error set forth in the briefs under App.R. 16.' Thus, this court rules on assignments of error only, and will not address mere arguments." *Ellinger v. Ho*, 10th Dist. No. 08AP-1079, 2010-Ohio-553, ¶ 70, quoting *In re Estate of Taris*, 10th Dist. No. 04AP-1264, 2005-Ohio-1516, ¶ 5. Accordingly, we will address each assignment of error as written and disregard any superfluous arguments not raised by the actual assignment of error under review.

{¶ 10} In his first assignment of error, John argues that the trial court erred when it failed to grant a continuance, which we presume relates to the trial court's failure to grant an oral motion to continue the August 30, 2012 hearing. The granting or denial of a continuance is a matter that is entrusted to the broad, sound discretion of the trial judge, and an appellate court must not reverse the denial of a continuance unless there has been an abuse of discretion. *State v. Unger*, 67 Ohio St.2d 65, 67 (1981). An abuse of discretion implies that the trial court acted unreasonably, arbitrarily, or unconscionably. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). When applying the abuse of discretion standard, a reviewing court may not simply substitute its judgment for that of the trial court. *Id*.

{¶ 11} In the present case, we have no reason to disturb the trial court's decision to deny John's motion for a continuance. The transcript of the August 30, 2012 hearing indicates only that the magistrate had earlier denied the oral motion for continuance by John's counsel during an in-chambers conference. No other details regarding the

continuance appear in the record. However, the record does reveal that Brenda filed her motion on September 20, 2011, and the trial court issued the scheduling order on May 11, 2012, which indicated a hearing on the motion would be held August 28 through August 31, 2012. Thus, John had sufficient notice of the hearing in order to prepare his case. The record further reveals that his third attorney withdrew from representation on July 24, 2012 after John terminated him. John's termination of his attorney on the eve of trial was voluntary and undertaken at his own risk. John hired a fourth attorney at some point thereafter, but neither he nor his fourth attorney ever sought a continuance prior to the date of the hearing. Under these circumstances, we can find no abuse of discretion when the magistrate denied his motion for continuance. Therefore, we overrule John's first assignment of error.

{¶ 12} John argues in his second assignment of error that the trial court erred when it conducted ex parte proceedings. Apparently, John's arguments concern two ex parte orders issued on November 20 and December 16, 2011, relating to custody and parenting time. However, a temporary order allocating custody between parents is not a final judgment but, rather, is an interlocutory order. *See, e.g., State ex rel. Thompson v. Spon*, 83 Ohio St.3d 551, 554 (1998); *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 50-51 (1997). Thus, the court's final order supersedes the temporary orders and corrects any error. *Long v. Long*, 3d Dist. No. 14-10-01, 2010-Ohio-4817, ¶ 16, citing *Wyss v. Wyss*, 3 Ohio App.3d 412, 413 (10th Dist.1982); *Smith v. Quigg*, 5th Dist. No. 2005-CA-001, 2006-Ohio-1494, ¶ 36; *Eichenberger v. Eichenberger*, 10th Dist. No. 97APF12-1599 (Oct. 29, 1998). Here, the temporary ex parte orders modifying John's parenting time were merely interlocutory and merged with the agreed judgment entry regarding parenting time and the November 19, 2012 final judgment. Because the temporary orders merged into the final judgment, any possible error contained therein is now moot. *See Huffer v. Huffer*, 10th Dist. No. 09AP-574, 2010-Ohio-1223, ¶ 12, citing *In re J.L.R.*, 4th Dist. No. 08CA17, 2009-Ohio-5812, ¶ 29. For these reasons, John's second assignment of error is overruled.

{¶ 13} John argues in his third assignment of error that the trial court erred when it suspended his visitation and ordered supervised visitation. John's argument, in this respect, is exceedingly vague. If John is referring to the trial court's ex parte orders, the

trial court's orders regarding his parenting time and supervised visitation, as explained above, were temporary and interlocutory. Therefore, when John entered into the memorandum of agreement, which was journalized and made final by the trial court's judgment entry and the November 19, 2012 judgment, any errors in those temporary orders became moot. *See Huffer* at ¶ 12.

{¶ 14} Insofar as John may be referring to the October 23, 2012 agreed judgment entry, this entry merely journalized the parties' August 30, 2012 memorandum of agreement, and there is no evidence in the record that John's participation in executing the memorandum of agreement, while represented by counsel, was anything but voluntary. At the August 30, 2012 hearing, the magistrate elicited sworn testimony from John that he understood the terms of the agreement and was not threatened in any way to enter into the agreement. John indicated that the agreement was the best decision for him on that day and he was "okay" with the agreement. John's counsel also indicated that she had discussed the terms of the agreement with him, he understood each of the terms of the agreement, and he believed it was in his best interest. Where a party voluntarily enters into an agreed entry resolving an issue of contention, that party cannot later complain about the terms of the agreement, absent evidence of fraud, mistake, or misrepresentation, of which there is no evidence in the present case. *See Mitchells Salon & Day Spa, Inc. v. Bustle,* 187 Ohio App.3d 336, 2010-Ohio-1880, ¶ 13 (1st Dist.), citing *Doan v. Doan*, 1st Dist. No. C-960932 (Oct. 2, 1997), citing *Popovic v. Popovic*, 45 Ohio App.2d 57 (8th Dist.1975). Therefore, John's third assignment of error is overruled.

{¶ 15} John argues in his fourth assignment of error that the trial court erred by relying upon the report of the guardian ad litem ("GAL") that disregarded their daughter's abuse by Brenda and her family. However, John's arguments, in this respect, concern parenting time and custody, which were issues resolved by the parties in the memorandum of agreement, which was journalized by the court's judgment entry. The trial court's November 19, 2012 final judgment concerned only child support, health insurance, and the tax dependency exemption, and the GAL's report had no bearing on these issues. Thus, we must overrule John's fourth assignment of error.

{¶ 16} John argues in his fifth assignment of error that his trial attorneys were ineffective because they acted against his best interest and engaged in deceptive,

intimidating, and aggressive manipulations. Specifically, John asserts that, on September 27, 2011, his first attorney, John Neil Lindsey, wrongly accused him of verbally abusing his daughter and then coerced him into signing the agreed entry that ordered supervised visitation and psychological testing. He also asserts that his second attorney, Jaclyn Bowe, agreed to a continuance on December 1, 2011 without his consent and later e-mailed him an article about "delusion." John contends that his third attorney, Jim Hill, suppressed discussion of his photographic evidence of incest and abuse concerning Brenda's family and misrepresented the contents of the magistrate's May 1, 2012 order. Finally, John contends that his fourth attorney, Stephanie Gussler, filed his motions to modify parental rights untimely and then withdrew from representation.

{¶ 17} However, " '[w]hile the law clearly allows a reversal for incompetent or inadequate representation of counsel in criminal actions, such allegations cannot constitute a basis for reversal in civil matters.' " *Marcus v. Seidner*, 12th Dist. No. CA2010-12-103, 2011-Ohio-5592, ¶ 52, quoting *McGlothin v. Stout*, 12th Dist. No. CA89-03-050 (Aug. 14, 1989). Therefore, a claim of ineffective assistance of counsel is not a proper ground on which to reverse the judgment of a lower court in a civil case that does not result in incarceration when the attorney was employed by a civil litigant. *Phillis v. Phillis*, 164 Ohio App.3d 364, 2005-Ohio-6200, ¶ 53 (5th Dist.), citing *Roth v. Roth*, 65 Ohio App.3d 768, 776 (6th Dist.1989). For the foregoing reasons, John's fifth assignment of error is overruled.

{¶ 18} Accordingly, John's five assignments of error are overruled, Brenda's motion to dismiss is denied, and the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

Motion to dismiss denied;
judgment affirmed.

SADLER and DORRIAN, JJ., concur.

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