[Cite as *Catudal v. Catudal*, 2013-Ohio-2748.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Chance Catudal,	:	
		Nos. 12AP-951
Plaintiff-Appellant,	:	12AP-991
		13AP-79
v.	:	and 13AP-94
		(C.P.C. No. 10DR-12-4934)
Anna C. Catudal,	:	
		(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 27, 2013

Chance Catudal, pro se.

Tyack, Blackmore, Liston & Nigh Co., L.P.A., Joseph A. Nigh, and *Courtney A. Zollars*, for appellee.

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

BROWN, J.

{¶ 1} In these consolidated cases, Chance Catudal, plaintiff-appellant, appeals four judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, all of which relate to post-decree motions filed in the divorce proceedings between appellant and Anna C. Catudal, defendant-appellee. Appellant has also filed a motion requesting exception to mootness doctrine.

{¶ 2} Appellant and appellee were married April 1, 2009, and had one daughter, Haley, who was born in March 2006. On October 20, 2011, the parties' marriage was terminated by a decree of divorce. A deluge of filings by appellant followed.

{¶ 3} On October 5, 2012, appellee filed a motion to stay the proceedings, pursuant to 50 U.S.C. 522, the Soldiers' and Sailors' Civil Relief Act of 1940 ("SCRA"), based upon appellee's military status. On October 15, 2012, the trial court granted a stay

for a period of 90 days. On October 18, 2012, the magistrate stayed all proceedings before him based upon the trial court's SCRA stay.

{¶ 4} These consolidated cases involve judgments in four separately filed appeals in case Nos. 12AP-951, 12AP-991, 13AP-79, and 13AP-94. Related to 12AP-951, the trial court issued a judgment on November 7, 2012. In that judgment, the court addressed appellant's March 19, 2012 amended motion to strike and/or deny guardian ad litem ("GAL") Chris Heckert's motion to enforce, and appellant's March 20, 2012 motion to reconsider judgment that resulted in the journal entry restraining him from filing exhibits. With regard to appellant's motion to strike/deny the GAL's motion to enforce, appellant sought to be relieved from his obligation to pay the GAL approximately $450.48. The trial court denied the motion, finding that, because appellant voluntarily dismissed his appeal of the judgment entry decree of divorce, he could not now contest the sufficiency of the GAL's work or the court's findings related to the GAL's recommendations. The court said the proper procedure for contesting these pre-decree matters was in the original appeal, which he dismissed. With regard to appellant's motion to reconsider judgment that resulted in the journal entry restraining appellant from filing exhibits, appellant complained that his constitutional rights to fair hearings had been denied. The trial court denied the motion, finding that appellant had filed an exorbitant number of pleadings and had only filed one appeal, eventually dismissing it. The trial court also pointed out that, insofar as appellant complains that the court terminated his motion to remove the GAL as "moot" before it was reviewed by the court, the magistrate actually granted appellant's motion, so no further hearings were necessary.

{¶ 5} Related to 12AP-991, the trial court issued a judgment on November 27, 2012. In that judgment, the court addressed appellant's October 18, 2012 motion to vacate the judgment granting the SCRA stay; appellant's October 24, 2012 motion to vacate the magistrate's order that stayed proceedings; and appellant's November 13, 2012 motion for a new trial. However, the trial court denied/dismissed all of appellant's motions based upon the 90-day SCRA stay. The court also warned appellant that his behavior was problematic and would likely lead to a vexatious litigator designation pursuant to R.C. 2323.52.

{¶ 6} Related to 13AP-79, the trial court issued a judgment on January 25, 2013. In that judgment, the court addressed appellant's October 5, 2012 motion for emergency

ex parte orders; appellant's October 5, 2012 motion requesting in chambers interview of Haley prior to trial; appellant's November 16, 2012 objection to entry granting attorney Bryan Bowen's leave to withdraw; appellant's November 16, 2012 objection to the sua sponte withdrawal of his objections and motions; appellant's December 28, 2012 motion for leave to file parenting proceeding affidavit; and appellant's January 2, 2013 motion to remove the GAL. However, the trial court denied/dismissed all of appellant's motions based upon the 90-day SCRA stay in effect. The court once again warned appellant that his behavior was problematic and would likely lead to a vexatious litigator designation pursuant to R.C. 2323.52.

{¶ 7} Related to 13AP-94, a hearing was held before a magistrate on January 25, 2013 pursuant to (1) appellant's motions for contempt filed May 16, July 18, July 26, July 31, and October 5, 2012 (comprised of 22 contempt motions), (2) appellant's various other procedural motions pending at the time of the hearing, and (3) appellee's March 1, 2012 motion for temporary restraining order. Appellant was incarcerated at the time of the hearing, and the magistrate granted appellee's motion to dismiss all matters pending before the court and granted her request to withdraw her only pending motion. The court indicated that only appellant's September 24, 2012 motion for relief from judgment and GAL Heckert's February 8, 2012 motion for contempt remained pending. The magistrate's decision was adopted by the trial court on February 1, 2013 without objections having been filed to the magistrate's decision.

{¶ 8} Appellant, pro se, appeals the judgments of the trial court. Appellant has failed to file a brief in 13AP-94. Although we have separated appellant's assignments of error according to appellate number, for ease of reference, we will number such sequentially.

{¶ 9} In 12AP-951, appellant asserts the following "issues," which we construe as assignments of error:

> [I.] The Hearing on August 28, 2012 and Browne's Judgment Entry did not match up with *Appellant's Objection(s) to the Magistrate's Decision(s)*.
>
> [II.] Everything that Chris Heckert as GAL did or did not do was labeled as *res judicata*, Chris Heckert was not present at the hearing of *Appellant's Objection(s) to the Magistrate's*

> *Decision(s)*, and Appellant was not allowed to present or proffer evidence.
>
> [III.] The Hearing on August 28, 2012 had nothing to do with Appellant's *Motion to Strike/Deny* or the *Motion to Reconsider*.
>
> [IV.] Browne ordering Appellant to pay Chris Heckert additional fees.
>
> [V.] Appellant filing exhibits.
>
> [VI.] Appellant being threatened by Browne with the title, "vexatious litigator."
>
> [VII.] Browne quoting from the GAL Report in Judgment.

{¶ 10} In 12AP-991, appellant asserts the following "issues," which we construe as assignments of error:

> [VIII.] The Judgment * * * on November 19, 2012 was in regards to Appellant asking Browne to vacate a *SCRA Stay*. * * * The stay was facilitated by a *SCRA Stay Motion* * * * that had not been properly served pursuant to *Civ. R. 6(A)*, *6(D) 6(E)* or *Civ. R.7(B)(1)*. Furthermore, said motion was supported by exhibits that were both questionable and not properly presented into evidence. * * * This resulted in a judgment that was biased, prejudicial, and unconstitutional. The Court should have vacated its judgment. In the alternative, the Court should have held an evidentiary hearing to consider vacating its judgment.
>
> [IX.] Browne refused to vacate the Magistrate's Order * * * that was based on a *SCRA Stay* that was granted unconstitutionally.
>
> [X.] Browne refused to grant Appellant's *Motion for a New Trial*.
>
> [XI.] Browne threatened Appellant with the vexatious litigator designation.

{¶ 11} In 13AP-79, appellant asserts no true assignments of error. We summarize his assignments of error as the following:

> [XII.] The trial court committed a procedural violation and committed prejudicial and plain error when it found it had no

> jurisdiction to consider appellant's motions when it was aware that the 50 U.S.C. §522 stay was granted unconstitutionally.
>
> [XIII.] The trial court erred when it threatened him with the vexatious litigator designation.

{¶ 12} Appellant argues in his first assignment of error that the trial court's statement in its November 7, 2012 judgment (case No. 12AP-951) incorrectly indicates that the hearing dates were April 24 and August 27, 2012. However, even if appellant is correct, when asserting the language in an entry is the result of a clerical mistake or an error arising from an oversight, the proper means of correcting such mistake or error is pursuant to Civ.R. 60(A), which permits a trial court to correct clerical mistakes that are apparent on the record. *Nyamusevya v. Nkurunziza*, 10th Dist. No. 10AP-857, 2011-Ohio-2614, ¶ 16, citing *Hodory v. Wood*, 1st Dist. No. C-75356 (Nov. 10, 1975); *Ganley v. Ganley*, 2d Dist. No. 85 CA 1 (Jan. 6, 1986). Furthermore, even if the trial court made a clerical error, appellant has failed to show any prejudicial effect, which is a prerequisite to reversible error. *See Smith v. Flesher*, 12 Ohio St.2d 107 (1967), paragraph one of the syllabus (it is elementary that an appellant, in order to secure reversal of a judgment, must not only show some error but must also show that that error was prejudicial). Therefore, appellant's first assignment of error is overruled.

{¶ 13} Appellant argues in his second assignment of error that the trial court erred in the judgment rendered on November 7, 2012 (case No. 12AP-951) when it found GAL Heckert's actions were subject to res judicata. In addressing appellant's motion to strike/deny the GAL's motion to enforce, the trial court indicated that appellant was seeking relief from his obligation to pay the GAL $450.48 for time expended on the case. The court found that it ruled upon the allocation of parental rights and responsibilities in its October 18, 2011 judgment entry decree of divorce, and because appellant voluntarily dismissed his appeal thereof, he was without recourse to belatedly contest the sufficiency of the GAL's pre-decree work.

{¶ 14} We find the trial court did not err. The doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as estoppel by judgment, and issue preclusion, also known as collateral estoppel. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381 (1995). Under the doctrine of res judicata, a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the

transaction or occurrence that was the subject matter of the previous action. *Kelm v. Kelm*, 92 Ohio St.3d 223, 227 (2001), citing *Grava* at syllabus. Furthermore, res judicata operates to bar litigation of all claims which were or might have been litigated in a first lawsuit. *Grava* at 382, citing *Natl. Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62 (1990).

{¶ 15} Here, appellant should have raised any issues related to the GAL's fees in his direct appeal of the trial court's judgment entry decree of divorce. His failure to do so precludes his raising any such errors thereafter. *See, e.g., Babel v. Babel*, 12th Dist. No. CA2005-05-104, 2006-Ohio-4323, ¶ 35, fn. 2 (appellant's post-decree argument that the trial court erred in originally determining the amount of income attributed to her was res judicata because appellant should have raised the issue in her direct appeal from the divorce decree). Therefore, this argument is without merit.

{¶ 16} With regard to the trial court's denial of his March 20, 2012 motion to reconsider the judgment that resulted in the journal entry restraining him from filing exhibits, appellant complains that he was not allowed to present or proffer evidence on his March 19, 2012 amended objections to the magistrate's decision. In its decision, the trial court explained that appellant has filed an exorbitant number of pleadings – most of them incorrectly – and on most occasions, appellant arrives at hearings without knowledge of which of his motions is at bar. The trial court also indicated that appellant has not been denied any opportunities to present evidence, and appellant has never sought appellate review of any determination, except the appeal of the decree of divorce, which he voluntarily dismissed. In the March 16, 2012 journal entry, the trial court found that none of appellant's recently filed exhibits complied with Loc.Dom.R. 11 and were not included as necessary exhibits to any motion. The trial court restrained appellant from filing any further exhibits without approval of the court, and indicated appellant could submit any exhibits at the oral hearings on future motions.

{¶ 17} We concur with the trial court's assessment. Appellant's filings are numerous, are difficult to comprehend, and commonly do nothing to advance the case toward resolution. We can find no abuse of discretion. For these reasons, appellant's second assignment of error is overruled.

{¶ 18} Appellant argues in his third assignment of error that the hearing on August 28, 2012 had nothing to do with his motion to strike/deny or motion to

reconsider, and the November 7, 2012 judgment (case No. 12AP-951) did not address the purpose of the hearing on August 28, 2012 which was to address his amended objections to the magistrate's decision. However, appellant does not explain his argument with sufficient clarity for this court to determine whether it has any merit or whether he was prejudiced by the trial court's alleged action. Therefore, we must overrule appellant's third assignment of error.

{¶ 19} Appellant argues in his fourth assignment of error that the trial court erred in its November 7, 2012 judgment (case No. 12AP-951) when it ordered him to pay GAL Heckert's fees. The precise nature of appellant's argument is not clear. Notwithstanding, as we stated with regard to appellant's first assignment of error, any arguments concerning the fees payable to GAL Heckert are precluded by res judicata. Therefore, we must overrule appellant's fourth assignment of error.

{¶ 20} Appellant argues in his fifth assignment of error that the trial court verbally granted his motion to reconsider in case No. 12AP-951; thus, he was thereafter able to file his exhibits unrestrained. We fail to see where the trial court verbally granted his motion to reconsider. Therefore, we overrule appellant's fifth assignment of error.

{¶ 21} With regard to appellant's sixth assignment of error (related to case 12AP-951), eleventh assignment of error (related to case 12AP-991), and thirteenth assignment of error (related to case 13AP-79), appellant argues that the trial court erred when it threatened him with vexatious litigator status. However, we do not view the trial court's statements as threats but as warnings. We also agree with the trial court that a warning was proper, given the huge number and questionable merits of appellant's filings. The trial court explained that appellant's filings were incoherent; were meant to harass appellee, the GAL, and the court; and had no basis in law. Therefore, we overrule appellant's sixth, eleventh, and thirteenth assignments of error.

{¶ 22} Appellant argues in his seventh assignment of error that the trial court erred in its November 7, 2012 judgment (case No. 12AP-951) when it relied upon GAL Heckert's report because it was not admitted as an exhibit and was illegally provided to the trial court. However, as we had already found above, any arguments related to GAL Heckert's pre-decree actions are subject to res judicata because appellant failed to raise them on direct appeal of the judgment entry decree of divorce. Therefore, appellant's seventh assignment of error is overruled.

{¶ 23} We address appellant's eighth, ninth, and twelfth assignments of error together, as they all relate to the trial court's granting of the stay pursuant to the SCRA. In his eighth assignment of error, appellant argues that the trial court erred when it found in its November 27, 2012 judgment (case No. 12AP-991) that it could not address his October 18, 2012 motion to vacate judgment granting the SCRA stay, his October 24, 2012 motion to vacate the magistrate's order staying the proceedings, and his November 13, 2012 motion for new trial due to the SCRA stay imposed on October 15, 2012. In his ninth assignment of error, appellant argues that the trial court erred in its November 27, 2012 judgment (case No. 12AP-991) when it failed to vacate the October 18, 2012 magistrate's order that was based on a SCRA stay that was granted unconstitutionally. In his twelfth assignment of error, appellant argues that the trial court erred in its January 25, 2013 judgment (case No. 13AP-79) when it failed to consider his motions because the SCRA stay was granted unconstitutionally. Appellant contends he should have been permitted to challenge the stay, which was invoked after an improperly served motion and supported by exhibits not properly presented into evidence.

{¶ 24} However, we find that any matters relating to the stay are now moot, as the period of stay has lapsed. Appellant admits that his arguments regarding the SCRA stay are moot because the stay has lapsed, but he has filed a motion requesting an exception to the mootness doctrine because the issue is capable of repetition yet evading review. A court may hear an appeal when a case is moot if the issues raised in the appeal are "capable of repetition, yet evading review." *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165 (1988), paragraph one of the syllabus. This exception applies only in exceptional circumstances in which the following two factors are present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again. *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 231 (2000).

{¶ 25} However, the exception for "capable of repetition, yet evading review" does not apply here because any new stay will necessarily involve a different set of circumstances and determinations than those forming the basis of the first stay. For these reasons, appellant's eighth, ninth, and twelfth assignments of error are overruled and his motion requesting exception to mootness doctrine is denied.

{¶ 26} Appellant argues in his tenth assignment of error that the trial court erred in its November 27, 2012 judgment (case No. 12AP-991) when it failed to address his motion for new trial. Appellant's only contention is that the trial court should not have addressed his motion for new trial with the other two motions because the motion for new trial was related to Heckert's additional GAL fees, the removal of Heckert as GAL, and the trial court's prohibiting him from filing exhibits, while the other two motions addressed the SCRA stay. However, we find the trial court's decision to address multiple motions in one judgment was well within its discretion. It is well-established that the control of the docket and consideration of motions by the trial court rests within the sound discretion of the court. *Stewart v. Cleveland Clinic Found.*, 136 Ohio App.3d 244, 254 (8th Dist.1999), citing *Pisani v. Pisani*, 8th Dist. No. 74373 (Sept. 24, 1998); *Lucas v. Gee*, 104 Ohio App.3d 423, 429 (10th Dist.1995). *See also Evans v. Sayers*, 4th Dist. No. 04CA2783, 2005-Ohio-2135, ¶ 19 (a trial court has the inherent authority to control its own docket). Appellant's filings in this case are massive, and the trial court had discretion to group the motions together for disposal, particularly because the motions were all dismissed based upon the SCRA stay. Therefore, appellant's tenth assignment of error is overruled.

{¶ 27} Accordingly, appellant's assignments of error are overruled, appellant's motion requesting exception to mootness doctrine is denied, and the judgments of the Franklin County Court of Common Pleas, Division of Domestic Relations, are affirmed.

Motion denied;
judgments affirmed.

CONNOR and DORRIAN, JJ., concur.

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