

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Sylvester Watson, Jr.,	:	
Plaintiff-Appellee,	:	No. 13AP-7
	:	(C.P.C. No. 12JU-12483)
v.	:	
	:	(REGULAR CALENDAR)
Stephanie Slaughter,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 28, 2013

Stephanie Slaughter, pro se.

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

O'GRADY, J.

{¶ 1} Defendant-appellant, Stephanie Slaughter, appeals a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, granting plaintiff-appellee, Sylvester Watson, Jr., the right to claim the parties' minor child as a dependent for federal income tax purposes in even-numbered years, beginning with 2012. For the following reasons, we affirm that judgment.

I. BACKGROUND

{¶ 2} This matter originated as an action for child support filed by appellant. Appellee challenged the Franklin County Child Support Enforcement Agency's child support order, and a hearing on his objection was scheduled before a magistrate on December 13, 2012. In the decision rendered December 18, 2012, the magistrate "consider[ed] the factors in O.R.C. Section 3119.82" and determined it was in the child's best interest for appellant and appellee to claim the child as a dependent for federal

income tax purposes in alternating years. Neither party filed objections to the magistrate's decision, and the trial court adopted the magistrate's decision that same day.

II. ASSIGNMENTS OF ERROR

{¶ 3} Appellant presents two assignments of error for our review:

I. THE TRIAL COURT ERRED, SINCE FAILED TO DETERMINE THAT AWARDING THE EXEMPTION TO THE NON-RESIDENTIAL PARENT WAS IN THE CHILD'S BEST INTEREST.

II. THE TRIAL COURT HAD NO SUBSTANTIAL EVIDENCE THAT REASONABLY SUPPORTED THE PLAINTIFF THE RIGHT TO CLAIM THE CHILD AS A DEPENDENT.

III. DISCUSSION

{¶ 4} Before addressing appellant's assignments of error, we must address two procedural issues that significantly limit the scope of our review in this case. First, appellant failed to file objections to the magistrate's decision. "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 Juv.R. 40(D)(3)(b)." Juv.R. 40(D)(3)(b)(iv). The Supreme Court of Ohio has firmly adhered to this procedural mandate. *McLellan v. McLellan*, 10th Dist. No. 10AP-1105, 2011-Ohio-2418, ¶ 8. 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."¹ *Id.* at ¶ 3.

{¶ 5} Consequently, this court is left only to assess the below proceedings for plain error. *Daniels v. Wolfe*, 10th Dist. No. 10AP-95, 2010-Ohio-4190, ¶ 5; *Lavelle v. Lavelle*, 10th Dist. No. 12AP-159, 2012-Ohio-6197, ¶ 8; *In re D.H.*, 10th Dist. No. 11AP-761, 2012-Ohio-2272, ¶ 6. In doing so, we exercise caution and find plain error only in

¹ The provisions of Juv.R. 40(D) are analogous to those of Civ.R. 53(D). Thus, the same principles applied to Civ.R. 53(D) are applicable to Juv.R. 40(D). *In re A.W.C.*, 4th Dist. No. 09CA31, 2010-Ohio-3625, ¶ 18; *In re W.C.*, 12th Dist. No. CA2012-05-007, 2013-Ohio-153, ¶ 13; *In re T.S.*, 9th Dist. No. 11CA0033-M, 2012-Ohio-858, ¶ 8; *see also In re C.C.*, 10th Dist. No. 07AP-993, 2008-Ohio-2803, ¶ 18.

"extremely rare cases where exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error complained of, if left uncorrected, would not have a material, adverse effect on the character of, and public confidence in, judicial proceedings." *In re Moore*, 10th Dist. No. 04AP-299, 2005-Ohio-747, ¶ 8, citing *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122 (1997).

{¶ 6} Further complicating things, appellant failed to file a transcript of the proceedings before the magistrate. "Upon appeal of an adverse judgment, it is the duty of the appellant to ensure that the record, or whatever portions thereof are necessary for the determination of the appeal, are filed with the court in which he seeks review." *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 19 (1988); App.R. 9(B). "This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record." *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980), citing *State v. Skaggs*, 53 Ohio St.2d 162 (1978). When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and, thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings and affirm. *Id.*; *In re D.H.* at ¶ 7; *McLellan* at ¶ 9.

{¶ 7} With these limitations in mind, we now address appellant's arguments to the fullest extent possible. Under her first assignment of error, appellant argues the court failed to determine that the allocation of the dependency tax exemption was in the best interest of the parties' child. Appellant also claims that the magistrate failed to consider the mandatory factors in R.C. 3119.82 when determining which party was entitled to claim the child for federal income tax purposes.

{¶ 8} Appellant offers *Montgomery v. Montgomery*, 6th Dist. No. H-06-035, 2007-Ohio-2539, in support of her position. In *Montgomery*, the custodial parent filed objections to a magistrate's decision regarding the allocation of a dependency tax exemption. The Sixth District Court of Appeals found that the trial court abused its discretion in allocating the tax exemption to the noncustodial parent. The court noted that the magistrate's decision did not include a determination that the allocation was in the best interest of the child, nor was there evidence in the record to support the allocation. *See id.* at ¶ 25.

{¶ 9} Unlike *Montgomery*, the magistrate's decision in this case states that the R.C. 3119.82 factors were considered, and that the allocation of the tax exemption between the parties furthered the child's best interest. Due to the lack of a transcript, we do not have evidence to the contrary and we must presume the validity of the lower court's proceedings. See *Knapp* at 197, 199. We find no plain error in the trial court's adoption of the magistrate's decision. Accordingly, appellant's first assignment of error is overruled.

{¶ 10} Under appellant's second assignment of error, she argues that the trial court did not have sufficient evidence to support adopting the magistrate's finding that appellee is entitled to claim the parties' child as a dependent.

{¶ 11} As discussed above, "[i]f the appellant intends to present an assignment of error on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, the appellant shall include in the record a transcript of proceedings that includes all evidence relevant to the findings or conclusion." App.R. 9(B)(4); see *In re D.H.* at ¶ 7; *McLellan* at ¶ 9. Without portions of the transcript pertaining to this assignment of error, this court must presume the validity of the lower court's proceedings and affirm. See *Knapp* at 197, 199. Therefore, we do not find plain error, and appellant's second assignment of error is overruled.

IV. DISPOSITION

{¶ 12} For the foregoing reasons, appellant's two 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.

BROWN and DORRIAN, JJ., concur.
