

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

James Theodore,	:	
	:	No. 14AP-718
Plaintiff-Appellee,	:	(C.P.C. No. 06DR-2671)
v.	:	
	:	(REGULAR CALENDAR)
Rene M. Theodore,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 30, 2015

Brian Burrier, for appellee.

Rene M. Theodore, pro se.

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

BROWN, P.J.

{¶ 1} Defendant-appellant, Rene M. Theodore, and plaintiff-appellee, James Theodore, were married on August 2, 1987. Their divorce was granted pursuant to a decree filed February 18, 2009 by the Franklin County Court of Common Pleas, Division of Domestic Relations. An amended decree was filed June 8, 2009. Additional post-decree motions followed and were heard by a court magistrate whose decision the trial court adopted. Appellant filed objections to the magistrate's decision but, before the trial court could consider her objections, appellant appealed the judgment of the trial court. Her appeal was dismissed by this court sua sponte because the trial court had not yet disposed of her objections.

{¶ 2} Upon our dismissal of the appeal, appellant's objections to the magistrate's decision were before the trial court. Appellant's out-of-rule objections to the magistrate's decision were filed 1 day beyond the 14-day time period permitted by Civ.R. 53(D)(3)(b)(i). Appellee had moved that the trial court dismiss appellant's objections to the magistrate's decision for being untimely and also because appellant failed to order a transcript of proceedings in accordance with Civ.R. 53(D)(3)(b)(iii). The trial court scheduled a hearing on August 12, 2014 on appellant's objections, but appellant did not appear for the hearing. The trial court did not adjudicate the substance of appellant's objections, but, rather, dismissed them, stating: "The [appellant] did not file her Objections in a timely manner, nor did she order a transcript as required under Ohio Civil Rule 53. Further, she failed to show for the objection hearing on August 12, 2014."

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

[I.] THE COURT ERRED FACTUALLY AGAINST THE MANIFEST WEIGHT AND CREDIBLE EVIDENCE THAT ESTABLISHED A CHANGE IN CIRCUMSTANCE DID NOT OCCUR IN MR. J. THEODORE'S INCOME.

[II.] THE COURT ERRED AS A MATTER OF LAW BY WITHHOLDING AND NOT ENFORCING PRODUCTION OF SUPPRESSED, EXISTING AND NECESSARY DISCOVERABLE FINANCIAL DOCUMENTS IN SPITE OF APPELLANT'S MOTIONS AND VERBAL PLEAS TO PROTECT HER RIGHT TO THEM.

[III.] THE COURT ERRED IN ITS DISCRETION WHEN [IT] DENIED APPELLANT ACCESS AND POSSESSION OF 2012 DISCOVERABLE DOCUMENTS, HENCE VIOLATING AND PROHIBITING APPELLANT THE OPPORTUNITY TO INVESTIGATE WHAT BECAME HIGHLY RELEVANT DOCUMENTS AFFECTING THE FINAL IMPUTED SPOUSAL SUPPORT.

[IV.] THE COURT ERRED IN ITS DISCRETION OVERRIDING THE COURT APPOINTED AUTHORITY AND EXPERT, FCCSEA, FOR ALLOCATION OF SUPPORTS.

[V.] THE COURT ERRED PREJUDICIALLY AND INEQUITABLY WHEN [IT] ASSIGNED APPELLANT

ATTORNEY FEES TO BE PAID TO APPELLEE'S COUNSEL,
BRIAN BURRIER.

[VI.] THE COURT ERRED PREJUDICIALLY AND
INEQUITABLY WHEN ASSIGNED AN IMPOSING
EXORBITANT CHILD SUPPORT ALLOCATION.

{¶ 4} On review, we agree with the trial court that appellant's objections to the magistrate's decision were untimely under the requirements of Civ.R. 53(D)(3)(b)(i). Additionally, appellant failed to file a transcript and did not appear at the scheduled hearing.

{¶ 5} In general, "a party is barred from raising any error on appeal connected with the trial court's adoption of a magistrate's finding of fact or conclusion of law unless that party timely objected to that decision." *Countrywide Home Loans, Inc. v. Caldero*, 8th Dist. No. 92381, 2009-Ohio-4999, ¶ 8. Further, because appellant failed to provide the trial court with a transcript, appellant "cannot challenge the factual findings of the magistrate's findings on appeal." *Huffer v. Huffer*, 10th Dist. No. 12AP-883, 2013-Ohio-1575, ¶ 7. As such, "this court is bound by the magistrate's factual findings, subject to plain error." *Id.* at ¶ 8. Appellant does not present any arguments regarding plain error on appeal, and we discern no grounds for finding plain error. Accordingly, the trial court did not abuse its discretion in dismissing appellant's untimely objections, particularly given that appellant did not support her untimely objections with a transcript of the hearing before the magistrate and did not attend the scheduled hearing.¹

{¶ 6} Having found that the trial court did not err in dismissing appellant's objections, we hereby overrule appellant's six assignments of error and affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

KLATT, J., concurs.
BRUNNER, J., concurs separately.

¹ Although the last line of the judgment entry states that the objections are "dismissed and overruled," nothing in the entry indicates the trial court considered the merits of the objections. Therefore, we interpret the judgment entry as an entry of dismissal.

BRUNNER, J., concurring separately.

{¶ 7} I concur with the majority in judgment only because I believe there is a need to clarify the operation of Civ.R. 53, involving the use of magistrates by trial courts and in light of the unusual circumstances presented here involving this pro se litigant. I believe this situation is capable of repetition and merits full consideration of the facts, the case process, and the application of the Ohio Rules of Civil Procedure and related law to these circumstances. Accordingly, I offer this separate, concurring decision.

FACTS AND CASE HISTORY:

{¶ 8} Defendant-appellant, Rene M. Theodore, and plaintiff-appellee, James Theodore, were married on August 2, 1987. Their divorce was granted pursuant to a decree filed February 18, 2009 by the Franklin County Court of Common Pleas, Division of Domestic Relations. An amended decree was filed June 8, 2009. Additional post-decree motions followed and were heard by a court magistrate whose decision the trial court adopted. Appellant filed objections after the trial court's decision and thereafter appealed the judgment of the trial court. Her appeal was dismissed by this court sua sponte because the trial court had not yet disposed of her objections. After the trial court filed its judgment entry dated August 13, 2014 dismissing and overruling appellant's objections to the magistrate's decision issued May 7, 2014, appellant appealed again.

{¶ 9} The trial court's magistrate had heard the parties on their competing motions to modify spousal support, appellee's motion being based on a decrease in income, and appellant's motion being for increased spousal support. The magistrate issued a decision granting the former and denying the latter. Appellee was required to pay a decreased amount of \$1,900.00 per month in spousal support and appellant was responsible for \$465.26 per month for support of the parties' unemancipated child. The magistrate also denied appellant's motion for relief from paying guardian ad litem fees and granted appellee's motion for contempt against appellant. Appellant had not pursued refinancing of the former marital residence as was previously decreed, and her motion for extension of time to refinance the marital home was denied. Finding an overpayment balance for support by appellee in the amount of \$19,624.95, the magistrate granted appellee's motion to modify the calculation of support arrearage by the Franklin County

Child Support Enforcement Agency. In adjudicating these post-decree disputes, the magistrate also denied appellant's motions to compel financial and other discovery, and for expenses and contempt, and the magistrate denied or found moot other requested relief not the subject of this appeal.

{¶ 10} Pursuant to Civ.R. 53(D)(3)(a)(iii), the magistrate's decision contained a conspicuous notice to the parties that "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 timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b)." The trial court adopted the magistrate's decision the same day it was filed, in a May 7, 2014 judgment entry, an action permitted by Civ.R. 53(D)(4)(e)(i).

{¶ 11} Appellant filed, on May 22, 2014, out-of-rule objections to the magistrate's decision, 1 day beyond the 14-day time period permitted by Civ.R. 35(D)(3)(b)(i) and after the trial court had adopted the magistrate's decision. Before the trial court ruled on appellant's objections to the magistrate's decision, appellant filed, on June 9, 2014, a notice of appeal from the trial court's May 7, 2014 judgment entry. This notice of appeal was filed more than 30 days after the trial court's entry of judgment and beyond the time permitted by App.R. 4(A)(1). However, because the May 7, 2014 entry of the trial court did not address appellant's pending, late-filed objections, this court, by order of June 16, 2014, sua sponte dismissed the appeal as premature.

{¶ 12} With the first appeal dismissed, the trial court addressed appellant's objections to the magistrate's decision. Appellee had moved that the trial court dismiss appellant's objections to the magistrate's decision for being untimely and also because appellant failed to order a transcript of proceedings in accordance with Civ.R. 53(D)(3)(b)(iii). The trial court scheduled a hearing on August 12, 2014 on appellant's objections, but appellant did not appear for the hearing. Appellant stated that she consulted an attorney who believed and informed her that the hearing date was August 15, 2014. The trial court, speaking through its August 13, 2014 judgment entry, did not adjudicate the substance of appellant's objections, but, rather, dismissed them, stating: "The [appellant] did not file her Objections in a timely manner, nor did she order a

transcript as required under Ohio Civil Rule 53. Further, she failed to show for the objection hearing on August 12, 2014." Appellant had not filed with the trial court a transcript of any proceedings before the magistrate, nor did she file with this court a transcript of any proceedings before the trial court, other than the December 13, 2012 testimony of appellee's accountant and colloquy with the magistrate on June 20, 2013.

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

[I.] THE COURT ERRED FACTUALLY AGAINST THE MANIFEST WEIGHT AND CREDIBLE EVIDENCE THAT ESTABLISHED A CHANGE IN CIRCUMSTANCE DID NOT OCCUR IN MR. J. THEODORE'S INCOME.

[II.] THE COURT ERRED AS A MATTER OF LAW BY WITHHOLDING AND NOT ENFORCING PRODUCTION OF SUPPRESSED, EXISTING AND NECESSARY DISCOVERABLE FINANCIAL DOCUMENTS IN SPITE OF APPELLANT'S MOTIONS AND VERBAL PLEAS TO PROTECT HER RIGHT TO THEM.

[III.] THE COURT ERRED IN ITS DISCRETION WHEN [IT] DENIED APPELLANT ACCESS AND POSSESSION OF 2012 DISCOVERABLE DOCUMENTS, HENCE VIOLATING AND PROHIBITING APPELLANT THE OPPORTUNITY TO INVESTIGATE WHAT BECAME HIGHLY RELEVANT DOCUMENTS AFFECTING THE FINAL IMPUTED SPOUSAL SUPPORT.

[IV.] THE COURT ERRED IN ITS DISCRETION OVERRIDING THE COURT APPOINTED AUTHORITY AND EXPERT, FCCSEA, FOR ALLOCATION OF SUPPORTS.

[V.] THE COURT ERRED PREJUDICIALLY AND INEQUITABLY WHEN [IT] ASSIGNED APPELLANT ATTORNEY FEES TO BE PAID TO APPELLEE'S COUNSEL, BRIAN BURRIER.

[VI.] THE COURT ERRED PREJUDICIALLY AND INEQUITABLY WHEN ASSIGNED AN IMPOSING EXORBITANT CHILD SUPPORT ALLOCATION.

DISCUSSION:

{¶ 14} I agree with the trial court that appellant's objections to the magistrate's May 7, 2014 decision, which were filed one day out of rule, were not filed in accordance with Civ.R. 53(D)(3)(b)(i). Appellant's premature appeal of the trial court's May 7, 2014 decision, filed before the trial court had ruled on her objections, set into play a series of procedural circumstances that I would analyze and address in affirming the trial court's decision on its merits so as to clarify the operation of Civ.R. 53 and Ohio courts' uses of magistrates to effectuate timely and considered decisions in managing litigation.

{¶ 15} Civ.R. 53(D)(4)(e)(i) contains the same requirement as an earlier version of Civ.R. 53 and, in effect, requires a trial court to dispose of a party's objections to a magistrate's decision for its adoption to be a final order:

If the court enters a judgment during the fourteen days permitted by Civ. R. 53(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment *until the court disposes of those objections* and vacates, modifies, or adheres to the judgment previously entered.

(Emphasis added.) *See also Drummond v. Drummond*, 10th Dist. No. 02AP-700, 2003-Ohio-587, ¶ 13 (construing prior Civ.R. 53(E)(4)(b) to impose "a mandatory duty on the court to dispose of a party's objections to a magistrate's report. It is clear that an appellate court may not address an appeal of a trial court's judgment when the trial court has failed to rule on properly filed objections"); *McCown v. McCown*, 145 Ohio App.3d 170, 172 (12th Dist.2001) (where trial court has not yet ruled on objections as required by Civ.R. 53, there is no final order and the appeal is premature).

{¶ 16} Our dismissal of appellant's first notice of appeal necessitated that the trial court dispose of appellant's objections before we could hear any appeal of the trial court's decision on the parties' various post-decree motions. In *Ramsey v. Ramsey*, 10th Dist. No. 13AP-840, 2014-Ohio-1921, we held that when a party fails to file timely objections, they may be dismissed, but a court may sua sponte consider them. *Id.* at ¶ 21-22. The trial court could have simply dismissed appellant's objections upon remand because trial courts have broad discretion in reviewing untimely filed objections or transcripts

concerning Civ.R. 53 proceedings. *Id.* at ¶ 23. The trial court instead sua sponte scheduled a hearing on appellant's objections.

{¶ 17} Since the trial court granted appellant a hearing sua sponte, we should construe it as granting leave to file late objections pursuant to Civ.R. 53 or as the reopening of a matter pursuant to Civ.R. 60(B). *Id.* at ¶ 21 ("We construe the trial court's decision to consider appellant's untimely objections 'in the interests of justice' as the trial court implicitly granting leave to file outside the time constraints of Civ.R. 53. *See, e.g., THC Piketon v. Edwards*, 10th Dist. No. 07AP-554, 2007-Ohio-6601, ¶ 12. The trial court acted within its considerable discretion in considering appellant's untimely objections sua sponte."). *See Patrick v. Ressler*, 10th Dist. No. 04AP-149, 2005-Ohio-4971, ¶ 21, quoting *Baker v. Baker*, 68 Ohio App.3d 402, 405 (6th Dist.1990) (" '[i]f * * * objections are filed after the expiration of the fourteen-day period allowed by Civ.R. 53[E][2], but before the court's entering final judgment, the court may consider them *sua sponte*, and such consideration will be construed as the granting of leave to file late objections pursuant to Civ.R. 60[B]' ").

{¶ 18} Because appellant filed no transcript, the arguments she could have made at the hearing would have been limited. Under *Ramsey*, the hearing provided appellant the opportunity to at least offer additional testimony and to argue her position concerning the magistrate's application of the law to the facts. But appellant did not appear for the hearing. As a result of all three of these factors (late-filed objections, no transcript, and no attendance at the hearing on appellant's objections), the trial court dismissed appellant's objections on August 13, 2014, and appellant appealed this entry.

{¶ 19} While appellant specifically raises abuse of discretion in some of her assignments of error, she does not raise it in relation to the court's August 13, 2014 entry dismissing her objections following the hearing. Rather, she argues her objections to the merits of the trial court's May 7, 2014 judgment entry adopting the magistrate's decision. Appellant could have made those arguments at the August 12, 2014 hearing that she did not attend. When the trial court dismissed her objections, she was barred by Civ.R. 53(D)(3)(b)(iv) from assigning as error before this court the arguments she was prohibited from making before the trial court for failing to file a transcript. Since she could have made limited arguments at the trial court hearing she failed to attend, she

cannot make them now. We are thus limited in our review to plain error and, because of the procedural nuances of this case, abuse of discretion in dismissing and overruling appellant's objections.

{¶ 20} With the exception of plain error, which appellant did not argue, Civ.R. 53(D)(3)(b)(iv) specifically provides that "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)."

{¶ 21} Because the trial court sua sponte granted appellant a hearing on appellant's late-filed objections, it needed not only to dismiss them, but also to reconcile them with the court's earlier filed judgment. Civ.R. 53(D)(4)(e)(i) provides as follows:

[T]he timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections *and* vacates, modifies, or adheres to the judgment previously entered.

(Emphasis added.) After holding the hearing on August 12, 2014, the trial court stated in its judgment entry on August 13, 2014 that "the Defendant's Objections filed on May 22, 2014 are hereby dismissed and overruled." The trial court did not specifically state in its entry that it also thereby "adhere[d] to the judgment previously entered" on May 7, 2014. Civ.R. 53(D)(4)(e)(i) requires both an adjudication of the objections and a statement of how that adjudication affects the earlier entered judgment on the magistrate's decision.

{¶ 22} In *Burns v. Burns*, 6th Dist. No. S-07-019, 2008-Ohio-2483, ¶ 17, the Sixth District Court of Appeals addressed plain error in the context of Civ.R. 53(D), stating:

We are aware that, in rare cases, Ohio courts recognize that a party's failure to object pursuant to Civ.R. 53(D) does not bar review for plain error. *Seaburn v. Seaburn*, 5th Dist. No. 2004CA00343, 2005-Ohio-4722, ¶ 46, citing *In re Lemon*, 5th Dist. No. 2002 CA 0098, 2002-Ohio-6263. (Other citations omitted.) However, those cases are limited to situations in which the error " 'rises to the level of challenging the legitimacy of the underlying judicial process itself.' " *Id.*, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122 [(1997)].

I would not find plain error in the trial court's omitting from its judgment entry that it "adhere[d] to the judgment previously entered." But for the plain language of Civ.R. 53(D)(4)(e)(i), I would find that message to be implicit in the court's August 13, 2014 judgment entry with no further correction needed. However, I would find that nunc pro tunc modification adding the necessary language to the trial court's entry is the appropriate course of action. Its effect is to relate back to the original entry, not replacing it, but by applying retrospectively to the judgment it corrects. *State v. Thompson*, 141 Ohio St.3d 254, 2014-Ohio-4751.

{¶ 23} I would find that, because the trial court sua sponte set appellant's late-filed objections for a hearing, giving them life they did not previously have, and because appellant failed to file a transcript or appear at that hearing, the trial court's actions in dismissing the objections are subject to an abuse of discretion review only as to the procedural considerations in doing so and not as to the substantive merits of appellant's objections that are dismissed as we find them.

{¶ 24} "[A] trial court's decision in domestic relations matters should not be disturbed on appeal unless the decision involves more than an error of judgment. * * * As this court has held many times, an 'abuse of discretion' * * * implies that the court's attitude is unreasonable, arbitrary or unconscionable. * * * See, e.g., *Blakemore* [*v. Blakemore*, 5 Ohio St.3d 217, 219 (1983)]." *Booth v. Booth*, 44 Ohio St.3d 142, 144 (1989).

In general, when reviewing the propriety of a trial court's determination in a domestic relations case, this court has always applied the "abuse of discretion" standard. This has been true in cases reviewing an order relating to alimony, see *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 5 OBR 481, 450 N.E.2d 1140; a division of the marital property, see *Martin v. Martin* (1985), 18 Ohio St.3d 292, 18 OBR 342, 480 N.E.2d 1112; or a custody proceeding, see *Miller v. Miller* (1988), 37 Ohio St.3d 71, 523 N.E.2d 846.

Id.

{¶ 25} I would find no abuse of discretion in the court's dismissing appellant's objections upon remand in its August 13, 2014 entry. When appellant failed to file her objections within the 14-day requirement of Civ.R. 53(D)(3)(b)(i), under the mistaken belief that Civ.R. 6(E) provided her with an additional 3 days, her objections were time

barred. The Supreme Court of Ohio held in *Duganitz v. Ohio Adult Parole Auth.*, 92 Ohio St.3d 556, 557 (2001), that Civ.R. 6(E) does not extend the time for filing objections to a magistrate's decision, and the court does not have to rule on the merits of an objection filed even 1 day out of rule. In *Levy v. Ivie*, 195 Ohio App.3d 251, 2011-Ohio-4055 (10th Dist.), this court held that Civ.R. 6(E) also does not apply to extend the time to request findings of fact and conclusions of law under Civ.R. 53(D)(3)(a)(ii), and, therefore, it does not toll time for objecting to the magistrate's decision. *Id.* at ¶ 14. The trial court did not abuse its discretion in dismissing appellant's objections after having scheduled a hearing for which there was no transcript and for which appellant did not appear.

{¶ 26} I would affirm, finding that the trial court followed the law in dismissing and overruling appellant's objections. It is not an abuse of discretion to follow the law (see, e.g., *Laurino v. Syringa Gen. Hosp.*, 279 F.3d 750, 758 (9th Cir.2002)); thus, the trial court did not abuse its discretion in refusing to consider appellant's late-filed objections. Further, when the trial court sua sponte (see *Ramsey*) offered appellant the opportunity to be heard on her late-filed objections, it exercised its equitable jurisdiction, and this is antithetical to an attitude of "unreasonable, arbitrary or unconscionable" that would be required for a showing of an abuse of discretion. We recognized in *Ramsey* the trial court's ability to sua sponte grant a hearing on late-filed objections when the trial court had not yet entered judgment on the magistrate's decision. I would specifically find that this is also permissible when a trial court has already granted judgment pursuant to Civ.R. 53(D)(4)(e)(i). This is consistent with the decisions in *Patrick* and *Ramsey* and harmonizes our decision with *Levy*.² The trial court's equitable jurisdiction is not limited, but, rather, as described in statute, consists of "full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters. This section is not a determination by the general assembly that such equitable powers and jurisdiction do not

² In *Levy*, the appellant filed 1-day late his motion for findings of fact and conclusions of law (required by Civ.R. 53 to be filed 7 days after the magistrate's decision). The same day, the court entered judgment on the magistrate's decision. The appellant did not appeal the court's judgment, but, rather, the denial of his motion. We found in *Levy* that the appellant should have appealed the court's judgment.

In the case at hand, appellant *did* appeal the trial court's judgment. However, because objections were pending, which, pursuant to Civ.R. 53(D)(4)(e)(i), must be disposed of for there to be a final judgment, we sua sponte dismissed the earlier appeal.

exist with respect to any such matter." R.C. 3105.011. *See also Wareham v. Wareham*, 10th Dist. No. 78AP-118 (Dec. 14, 1978).

{¶ 27} In finding that appellant failed to timely file a transcript under Civ.R. 53(D)(3)(b)(iii), the trial court was by rule permitted to adopt the magistrate's factual findings without further consideration. This is an additional basis for denying appellant as the objecting party (see appellant's first assignment of error) the right to challenge on appeal the merits of the trial court's factual findings. Civ.R. 53(D)(3)(b)(iii) and (iv) and *Wade v. Wade*, 113 Ohio App.3d 414, 421 (11th Dist.1996).

Absent a transcript or appropriate affidavit, the trial court is limited to consideration of the magistrate's conclusions of law in light of the facts found by the magistrate, unless the trial court elects to hold further hearings to take additional evidence. * * * If a transcript or affidavit is not provided, the trial court cannot make a credibility determination regarding the evidence presented to the magistrate, and is therefore required to accept the findings of fact and consider only whether the evidence supported the magistrate's legal conclusions.

Washington v. Ohio Dept. of Rehab. & Corr., 10th Dist. No. 10AP-136, 2010-Ohio-4323, ¶ 12.

{¶ 28} It is clear from the trial court's August 13, 2014 judgment entry that it did not and could not conduct, pursuant to Civ.R. 53(D)(4)(d) an independent review of the magistrate's decision without a transcript or without appellant's attendance at the hearing it scheduled on her objections. Even if appellant had appeared, the trial court, proceeding without the required transcript, would have been limited to either taking testimony as additional evidence and/or hearing arguments on whether the magistrate properly applied the law to the facts. Without a transcript or appellant's appearance, the trial court properly declined to consider appellant's untimely filed objections and dismissed them. *See Levy* at ¶ 15.

CONCLUSION

{¶ 29} Accordingly, I would overrule all of appellant's assignments of error and affirm the August 13, 2014 decision of the trial court, modifying judgment nunc pro tunc

pursuant to App.R. 12(A)(1)(a) to reflect that, in overruling and dismissing appellant's objections, the trial court adheres to the judgment entered on May 7, 2014.
