[Cite as *Hanzlik v. Hanzlik*, 2010-Ohio-3462.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

ANITA L. HANZLIK,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2009-P-0089**
- vs -	:	
MICHAEL C. HANZLIK,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 97 DR 0347.

Judgment: Affirmed.

Stephen C. Lawson, 250 South Chestnut Street, #17, Ravenna, OH 44266 (For Plaintiff-Appellant).

Theresa M. Farwell, 1001 South Water Street, Kent, OH 44240 (For Defendant-Appellee).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Anita L. Hanzlik, appeals from the December 7, 2009 judgment entry of the Portage County Court of Common Pleas, Domestic Relations Division, adopting the magistrate's decision and granting judgment for appellee, Michael C. Hanzlik, and against appellant for $3,000 in attorney fees.

{¶2} On May 8, 1997, appellant filed a complaint for divorce against appellee. The parties were married on May 19, 1990 and two children were born as issue of the

marriage: Paul, d.o.b., March 26, 1995; and Jacob, d.o.b., December 2, 1996 ("minor children"). Appellee filed an answer to appellant's complaint for divorce on May 21, 1997.

{¶3} On June 25, 1997, the magistrate ordered appellant as the temporary residential parent of the minor children and appellee was granted visitation.

{¶4} On July 2, 1997, following a hearing, the magistrate issued his decision ordering, inter alia, the following: appellee was ordered to pay $825 per month for child support; appellant was designated as the primary residential caretaker of the minor children; and appellee was given visitation.

{¶5} On July 3, 1997, appellant filed an objection to the magistrate's decision concerning the visitation schedule for the parties' minor children. Following a hearing, the trial court modified the visitation schedule on August 26, 1997.

{¶6} The parties were granted a divorce on October 21, 1997. Pursuant to the divorce decree, the trial court ordered, inter alia, the following: appellant shall be the primary residential caretaker and legal custodian of the minor children; appellee shall have reasonable companionship rights; appellee shall pay a total of $825 per month as child support; appellee shall pay $200 per month as spousal support for eighteen months or until appellant shall remarry or die; appellant's attorney fees in the amount of $3,000 are reasonable and necessary; appellee shall pay appellant $1,500 for attorney fees; and the marital residence shall be sold and the net proceeds shall be divided equally between the parties.

{¶7} On November 24, 1997, appellee filed motions for contempt and for relief from judgment, indicating that appellant had frustrated his visitation with the minor

children and that she had failed to maintain payments on household expenses. Following a hearing, the parties filed an agreed judgment entry on February 6, 1998, indicating, inter alia, that appellee withdrew his motions for contempt and for relief from judgment; appellee would quit claim his interest in the marital home to appellant in exchange for $8,500; appellant would waive spousal support; and appellant would pay her own attorney fees.

{¶8} On June 25, 2008, appellee filed motions for shared parenting and for contempt for failure to comply with visitation.

{¶9} On August 4, 2008, following a hearing, the magistrate ordered the parties to submit to mediation and indicated that the court shall conduct in camera interviews with the minor children.

{¶10} On August 11, 2008, appellee filed another motion for contempt, indicating that appellant failed to comply with the trial court's October 21, 1997 judgment entry.

{¶11} Mediation was held with the parties on August 27, September 10, and October 8, 2008. Pursuant to the October 8, 2008 mediator's report, a partial agreement between the parties was reached.

{¶12} On November 18, 2008, appellant filed a motion to have a guardian ad litem appointed for the minor children.

{¶13} Following a hearing, on December 9, 2008, the magistrate ordered, inter alia, the following: Attorney Robert Rosenberg shall be appointed the guardian ad litem ("GAL") for the minor children; and the trial court shall conduct two in camera interviews with the minor children prior to the evidentiary hearing.

{¶14} On January 20, 2009, appellee filed an amended motion for reallocation of parental rights and responsibilities.

{¶15} Following an evidentiary hearing, and pursuant to the January 28, 2009 magistrate's order, the parties made an in-court agreement pertaining to all issues concerning all motions for the reallocation of parental rights and responsibilities; both parties and the GAL indicated that the agreement was in the best interests of the minor children; the parties agreed that they would supplement the record and provide to the court by February 9, 2009, information pertaining to their 2008 income as well as information concerning out-of-pocket costs for providing health insurance for the minor children; and the court shall issue a ruling pertaining to child support, which the parties stipulated would be modified effective January 1, 2009, as well as each party's respective responsibility regarding hospitalization insurance for the minor children.

{¶16} Following an evidentiary hearing, the magistrate issued a decision on February 19, 2009. Pursuant to his decision, the magistrate made, inter alia, the following recommendations to the court: that the court finds that it is in the best interests of the minor children that appellant remain the residential custodial parent of the minor children and that appellee have companionship/visitation; that effective January 1, 2009, appellee's child support obligation shall be modified to a total of $907.36 per month; and appellee shall pay 54 percent and appellant shall pay 46 percent for the health care expenses for the minor children that are not covered by insurance. The trial court adopted the magistrate's decision on March 6, 2009.

{¶17} On April 15, 2009, appellee filed a motion for contempt due to appellant's failure to comply with the trial court's October 21, 1997 and March 6, 2009 judgment

entries. Appellee filed other motions for contempt on May 6, 2009, due to appellant's failure to comply with the magistrate's February 19, 2009 decision and again with the trial court's October 21, 1997 and March 6, 2009 judgment entries.

{¶18} Following other mediation sessions, the mediator issued his report on May 28, 2009, indicating that the parties were unable to reach an agreement.

{¶19} On May 29, 2009, appellee filed a motion for reallocation of parental rights and responsibilities and shared parenting.

{¶20} A hearing was held on July 1, 2009. Pursuant to its August 25, 2009 judgment entry, the trial court adopted the parties' agreement, which dealt with the fact that appellant admitted she was in willful contempt for failure to pay appellee for her share of the medical bills, failure to facilitate visitation between appellee and the minor children, and failure to attend "After the Storm" program.

{¶21} A sentencing hearing and a hearing on the motion to modify parental rights and responsibilities was held on September 8, 2009. Pursuant to his September 9, 2009 order, the magistrate gave appellant a suspended 30 day jail sentence conditioned upon her complying with the amended shared parenting plan as agreed to by the parties in open court.

{¶22} On November 19, 2009, the trial court issued a judgment entry indicating the following: the parties agreed to the shared parenting plan; appellant had purged herself of the contempt of the willful failure to facilitate between appellee and the minor children; appellant had purged herself of the willful contempt of failing to attend the "After the Storm" program by attending the same; and appellant paid $1,083.35 to appellee that she owed for medical bills, thus purging herself of that contempt. The trial

court indicated that all pending issues were resolved, with the exception of attorney fees, guardian ad litem apportionment, and court costs, which would be addressed in a separate entry.

{¶23} On November 19, 2009, the magistrate issued his decision in which he recommended that appellee be granted judgment against appellant for $3,000 in attorney fees and that each party be assessed one half of the guardian ad litem fees and court costs.

{¶24} Appellant did not file objections to the magistrate's decision.

{¶25} Pursuant to its December 7, 2009 judgment entry, the trial court adopted the magistrate's decision, granted judgment for appellee and against appellant for $3,000 in attorney fees, and assessed each party one half of the guardian ad litem fees and court costs. It is from that judgment that appellant filed a timely appeal, asserting the following assignments of error for our review:[1]

{¶26} "[1.] THE FINDING OF CONTEMPT BY THE COURT VIOLATES APPELLANT'S DUE PROCESS RIGHTS AS NO HEARING WAS CONDUCTED ON THE CONTEMPT MOTIONS AS MANDATED IN [R.C.] 2705.05.

{¶27} "[2.] IT WAS ERROR AND ABUSE OF DISCRETION FOR THE TRIAL COURT TO SET PURGE TERMS THAT REQUIRE COMPLIANCE WITH AN ESTABLISHED ORDER.

{¶28} "[3.] THE AWARD OF ATTORNEY FEES FROM APPELLANT TO APPELLEE'S COUNSEL IS UNFOUNDED AND AN ABUSE OF DISCRETION BY THE TRIAL COURT."

1. We note that appellee did not file an appellate brief.

{¶29} Preliminarily, we note that a review of the record on appeal reveals that appellant failed to file objections to the magistrate's November 19, 2009 decision. Civ.R. 53(D)(3) states, in pertinent part:

{¶30} "(b) Objections to magistrate's decision.

{¶31} "(i) Time for filing.

{¶32} "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

{¶33} "(ii) Specificity of objection.

{¶34} "An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.

{¶35} "(iii) Objection to magistrate's factual finding; transcript or affidavit.

{¶36} "An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), 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. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other

good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

{¶37} "(iv) Waiver of right to assign adoption by court as error on appeal.

{¶38} "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, 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)."

{¶39} Pursuant to the foregoing rule, a party's failure to file objections to a magistrate's decision waives all but plain error. Civ.R. 53(D)(3)(b)(iv). This standard of review was averred by the Supreme Court of Ohio in *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116, syllabus:

{¶40} "In appeals of civil cases, the plain error doctrine is not favored and may be applied 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."

{¶41} In her first assignment of error, appellant argues that the finding of contempt by the trial court violates her due process rights.

{¶42} In her second assignment of error, appellant asserts that the trial court erred by setting purge terms that require compliance with an established order.

{¶43} Because appellant's first and second assignments of error are interrelated, we will address them together.

{¶44} In the instant matter, again, following a July 1, 2009 hearing, the trial court issued an August 25, 2009 judgment entry. Pursuant to its entry, the trial court adopted the parties' agreement, which dealt with the fact that *appellant admitted she was in willful contempt*. Following a September 8, 2009 hearing, the magistrate gave appellant a suspended 30 day jail sentence conditioned upon her complying with the amended shared parenting plan as agreed to by the parties in open court. On November 19, 2009, the trial court issued a judgment entry indicating, inter alia, that the parties agreed to the shared parenting plan; *appellant had purged herself of the contempt* of the willful failure to facilitate between appellee and the minor children; *appellant had purged herself of the willful contempt* of failing to attend the "After the Storm" program by attending the same; and appellant paid $1,083.35 to appellee that she owed for medical bills, thus *purging herself of that contempt*.

{¶45} We additionally note that by failing to object, appellant waived any alleged error with respect to the manner in which the contempt proceedings were handled at the trial court level. See *U.S. Bank Natl. Assn. v. Golf Course Mgt. Inc.*, 12th Dist. No. CA2008-08-078, 2009-Ohio-2807, at ¶43. In addition, based on the record before us, we do not agree with appellant that the trial court erred by virtue of its purge condition. We find no plain error on the face of the magistrate's decision.

{¶46} Appellant's first and second assignments of error are without merit.

{¶47} In her third assignment of error, appellant alleges that the award of attorney fees to appellee's counsel is unfounded and an abuse of discretion by the trial court.

{¶48} R.C. 3105.73(B) provides: "[i]n any post-decree motion or proceeding that arises out of an action for divorce, dissolution, legal separation, or annulment of marriage or an appeal of that motion or proceeding, the court may award all or part of reasonable attorney's fees and litigation expenses to either party if the court finds the award equitable. In determining whether an award is equitable, the court may consider the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties' assets."

{¶49} In the case at bar, the magistrate indicated the following in his November 19, 2009 decision:

{¶50} "Pursuant to the voluntary in-court agreement of the parties on September 8, 2009 *** that indicated that the parties had resolved all issues except for attorney fees and allocation of Guardian ad Litem fees and further stipulated that the Court would issue a decision based upon the affidavit by [appellee's] counsel without the necessity of any further evidentiary hearings.

{¶51} "The Court makes the following determinations:

{¶52} "1. The Magistrate finds that over a period of 17 months, [appellee's] counsel, who initiated the contempt motions against [appellant], which eventually resulted in an admission of contempt on several accounts, that [appellee's] counsel expended 89.7 hours prosecuting the actions before the Court and rather than requesting reimbursement at $150.00 [per] hour, which would amount to $13,455.00 in attorney fees, [appellee's] counsel is suggesting that [appellee] be reimbursed for $1,000 per contempt as well as court costs and Guardian as Litem fees that he paid of $900.00 to date.

{¶53} "***

{¶54} "3. The Court further determines that, in accordance with Ohio law that mandates that once there has been a determination of willful contempt that the Court shall determine appropriate attorney fees, that the Court determines that appropriate attorney fees in this matter for the multiple willful contempts against [appellant] should be the sum of $3,000.00.

{¶55} "It is, therefore, the recommendation of the Magistrate to the Court that [appellee] be granted judgment against [appellant] for $3,000.00 in attorney fees.

{¶56} "The Magistrate further recommends that since the parenting issues were resolved amicably between the parties that there be no imposition of Guardian ad Litem fees or court costs other than that each party shall equally share in the responsibility for those two matters. It is, therefore, recommended that each party be assessed one half of the Guardian ad Litem fees and the outstanding court costs and that all sums on deposit that have previously been deposited with the Clerk for Guardian ad Litem fees be released to the Guardian ad Litem since he has filed a motion to that effect and no timely objection to his application of fees has been filed."

{¶57} We note again that appellant did not file objections to the foregoing magistrate's decision, which was ultimately adopted by the trial court on December 7, 2009.

{¶58} Based on the record before us, we disagree with appellant that the award of attorney fees to appellee's counsel is unfounded. We also find no plain error on the face of the magistrate's decision.

{¶59} Appellant's third assignment of error is without merit.

{¶60} For the foregoing reasons, appellant's assignments of error are not well-taken. The judgment of the Portage County Court of Common Pleas, Domestic Relations Division, is affirmed. It is ordered that appellant is assessed costs herein taxed. The court finds there were reasonable grounds for this appeal.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.