[Cite as *Bonds v. Bonds,* 2011-Ohio-5867.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

ASHTABULA COUNTY, OHIO

CHRISTOPHER BONDS,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2010-A-0063**
- vs -	:	
JENNIFER BONDS, n.k.a. JENNIFER McGHAN,	:	
Defendant-Appellant.	:	

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2007 DR 379.

Judgment: Affirmed in part, and reversed in part.

Christopher Bonds, pro se, 6105 Kampf Court, Rome, OH 44085 (Plaintiff-Appellee).

Jennifer Bonds, pro se, 81 Oyster Cove, St. Mary's, GA 31558 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Jennifer L. Bonds, nka McGhan, appeals the April 9, 2010 Judgment Entry of the Ashtabula County Court of Common Pleas, designating plaintiff-appellee, Christopher Bonds, primary residential parent and legal custodian of their two minor children and ordering McGhan to pay child support, and the same court's December 6, 2010 Judgment Entry, denying her Motion for New Trial and other post-judgment motions. The determinative issues are whether the trial court had jurisdiction to modify the original decree of divorce, issued by the Superior Court of

Camden County, Georgia, with respect to custody and child support. For the following reasons, we hold that the trial court had jurisdiction to modify the original decree with respect to custody, but not child support. Accordingly, the judgment of the court below is affirmed, in part, and reversed, in part.

{¶2} McGhan and Bonds were married on April 13, 1999. Two children were born as issue of the marriage: Samantha N. Bonds, dob 4/5/01, and Julianna L. Bonds, dob 5/20/04. On May 22, 2006, McGhan and Bonds were granted a divorce from the Superior Court of Camden County, Georgia. The superior court awarded McGhan custody of the two minor children and Bonds was ordered to pay child support.

{¶3} On November 9, 2006, Bonds was awarded temporary custody of the minor children by the 46th Circuit Court, Family Division, of Kalkaska County, Michigan.[1]

{¶4} On August 31, 2007, Bonds filed, in the Ashtabula County Court of Common Pleas, a Notice of Filing of Foreign Judgment, an Emergency Motion for Placement of Children, and a Motion to Modify Parental Rights and Responsibilities for the Minor Children. The matter was docketed as Case No. 07DR365.

{¶5} On September 5, 2007, the trial court dismissed Bonds' filings on the grounds that a Michigan court had already exercised jurisdiction, and so "it would be inappropriate for this Court to attempt to usurp that jurisdiction, at this time."

{¶6} On September 12, 2007, McGhan filed in the Ashtabula County Court of Common Pleas a Notice of foreign judgment, pursuant to R.C. 3127.35(B)(2), and a certified copy of the Final Judgment and Decree of Divorce in the case of *Christopher*

1. For details of the proceedings in Michigan, see *McGhan v. Kalkaska Cty. Dept. of Human Servs.* (W.D.Mich.2009), Case No. 1:08-cv-1113, 2009 U.S. Dist. LEXIS 128688.

Bonds v. Jennifer Bonds, Camden County Superior Court No. 06V0020. The matter was assigned Case No. 07DR379.

{¶7} On September 14, 2007, the Kalkaska County Circuit Court dismissed the action pending before it for "lack of jurisdiction" and to "allow [Bonds] to file for a change of custody in the State of Ohio."

{¶8} Also on September 14, 2007, Bonds refiled his Notice of Filing of Foreign Judgment, an Emergency Motion for Placement of Children, and a Motion to Modify Parental Rights and Responsibilities for the Minor Children. The matter was again docketed as Case No. 07DR365.

{¶9} On September 14, 2007, the trial court entered a Judgment Entry consolidating McGhan's Case No. 07DR379 with refiled Case No. 07DR365.

{¶10} On March 21 and 25, 2008, McGhan filed Notices of Dismissal of her filing a foreign judgment for registration.

{¶11} On March 25, 2008, the trial court issued a Judgment Entry determining that it had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act to modify the Georgia Divorce Decree.

{¶12} On March 27, 2008, the trial court issued a Judgment Entry stating that Bond's Motion to Modify Parental Rights and Responsibilities remained pending and was unaffected by McGhan's Notices of Dismissal.

{¶13} On May 27, 2008, McGhan filed a Petition for Writ of Prohibition in this court, challenging the trial court's jurisdiction to proceed in this case.

{¶14} On November 24, 2008, this court entered judgment in favor of the respondent, and so dismissed McGhan's Petition. See *McGhan v. Vettel*, 11th Dist. No. 2008-A-0036, 2008-Ohio-6063, affirmed, 122 Ohio St.3d 227, 2009-Ohio-2884.

{¶15} On March 22, 2010, a hearing was held in the trial court.

{¶16} On April 9, 2010, the trial court issued a Judgment Entry modifying the Georgia Divorce Decree by adopting a Shared Parenting Plan. According to the Plan, Bonds was designated the primary residential parent and legal custodian of the two minor children and McGhan was ordered to pay $590.66 per month for child support.

{¶17} On April 16, 2010, McGhan filed an Objection to Child Support Order and Motion for its Dismissal based on Lack of Jurisdiction.

{¶18} On the same date, McGhan filed a Motion for New Trial and Motion for Hearing to Determine Defendant's Residency based upon the 11th District Court of Appeals['] Recommendation.

{¶19} On August 5, 2010, a hearing was held on the merits of McGhan's Motions.

{¶20} On December 6, 2010, the trial court denied McGhan's Motions.

{¶21} On December 30, 2010, McGhan filed her Notice of Appeal. On appeal, McGhan raises the following assignments of error:

{¶22} "[1.] The trial court committed prejudicial error when it determined it had Subject-Matter Jurisdiction to hear matters regarding custody and child support between the parties based upon the opinion that the Eleventh District Court of Appeals determined it did have subject matter jurisdiction in a previous Writ of Prohibition."

{¶23} "[2.] The trial court committed prejudicial error when it improperly consolidated the Appellee's closed Case No. 07DR365 with the Appellant's open Case No. 07DR379 on September 14, 2007."

{¶24} "[3.] The trial court committed prejudicial error when on March 27, 2008, it disregarded Appellant's Voluntary Dismissal of Case No. 07DR379 filed on March 20, 2008, subsequently improperly modifying custody and child support on April 9, 2010."

{¶25} "[4.] The trial court committed prejudicial error when it determined that Appellant's residency was not determinative of any issue in the case, and refused to consider evidence regarding the Appellant's residency."

{¶26} "[5.] The trial court committed prejudicial error in ordering Appellant to pay Child Support. Additionally, and alternatively, the trial court committed prejudicial error in its calculations."

{¶27} "[6.] Alternatively, the trial court committed prejudicial error in denying Appellant's Motion for a New Hearing based on new evidence, determining that the outcome of the case would have not changed. The new evidence did not go to a collateral matter, but attacked the very elements required for a change in custody."

{¶28} "[7.] Alternatively, the trial court committed prejudicial error in determining that the Appellee had never denied visitation to the Appellant."

{¶29} "[8.] Alternatively, the trial court committed prejudicial error by finding a change of circumstances in support of Appellee's motion for reallocation of parental rights and responsibilities pursuant to O.R.C. 3109.04(E)(1)(a)."

{¶30} "[9.] The trial court committed prejudicial error in denying Appellant's Motion to Vacate on the basis that the trial court lacked subject matter jurisdiction."

{¶31} "[10.] The trial court committed prejudicial error by re-adjudicating another state's case and basing its custody modification on hearsay testimony and its own preconceived opinions of that case."

{¶32} The assignments of error will be considered out of order. The issues raised by McGhan's assignments of error invoke two distinct standards of review.

{¶33} It is generally recognized that matters pertaining to the custody of children, including the child support obligation, are reviewed under an abuse of discretion standard. *Masters v. Masters*, 69 Ohio St.3d 83, 85, 1994-Ohio-483 ("[i]t has long been a recognized rule of law that for a reviewing court to overturn a trial court's determination of custody, the appellate court must find that the trial court abused its discretion"); *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 1997-Ohio-105 ("[i]t is well established that a trial court's decision regarding child support obligations falls within the discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion").

{¶34} The question of whether a trial court has jurisdiction under the Child Custody Act is determinative of its subject matter jurisdiction to adjudicate the merits of a case. *Rosen v. Celebrezze*, 117 Ohio St.3d 241, 2008-Ohio-853, at ¶44 (citations omitted); R.C. 3127.15(B) (R.C. 3127.15(A), setting forth the requirements for making an initial custody determination, "is the exclusive jurisdictional basis for making a child custody determination by a court of this state"). "Whether a court has subject matter jurisdiction over a given case presents a question of law, which an appellate court reviews de novo, without any deference to the lower court." *Smoske v. Sicher*, 11th

Dist. Nos. 2006-G-2720 and 2006-G-2731, 2007-Ohio-5617, at ¶21 (citation omitted); cf. *Bowen v. Britton* (1993), 84 Ohio App.3d 473, 478 (citation omitted).

{¶35} In her first, fourth, and ninth assignments of error, McGhan argues that the trial court lacked subject matter jurisdiction to modify the Georgia Divorce Decree and, thus, the court's Judgments of April 9 and December 6, 2010, are void ab initio.

{¶36} The procedure for determining when an Ohio court may modify a child custody determination made by a court of another state is set forth in the Uniform Child Custody Jurisdiction and Enforcement Act, codified in Ohio in R.C. Chapter 3127. According to the Act:

> **{¶37}** [A] court of this state may not modify a child custody determination made by a court of another state unless the court of this state has jurisdiction to make an initial determination under division (A)(1) or (2) of section 3127.15 of the Revised Code and one of the following applies:
>
> (A) The court of the other state determines that it no longer has exclusive, continuing jurisdiction *** or that a court of this state would be a more convenient forum ***.
>
> (B) The court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

R.C. 3127.17.

{¶38} An Ohio court has jurisdiction to make an initial determination where "[t]his state is the home state of the child on the date of the commencement of the proceeding." R.C. 3127.15(A)(1). "'Home state' means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of a child custody proceeding." R.C. 3127.01(B)(7).

{¶39} In its March 25, 2008 Judgment Entry, the trial court determined it had jurisdiction under the Child Custody Act as follows: "This Court finds that neither party resides in the state of original jurisdiction; that the minor children have been residents of Ashtabula County, Ohio, and have resided with Plaintiff [Bonds] since November 2006; and, no other State would have jurisdiction."

{¶40} In *McGhan v. Vettel*, 2009-Ohio-2884, the Ohio Supreme Court affirmed the trial court's determination that Ohio was the minor children's home state for purposes of R.C. 3127.15(A)(1). Id. at ¶25 ("[i]t is uncontroverted that on September 14, 2007, the day on which Bonds filed the underlying proceeding, Bonds had had custody of the children since November 2006, i.e., more than six consecutive months"). Thus, it is the law of the case that the trial court satisfied that requirement of R.C. 3127.15(A)(1), that it had jurisdiction to make an initial determination. As to whether Bonds, McGhan, and/or the minor children did not presently reside in Georgia, as required by R.C. 3127.17(B), the Ohio Supreme Court acknowledged this was a factual question within the competency of the trial court to resolve. Id. at ¶28.

{¶41} McGhan raises two specific arguments as to why the trial court lacked jurisdiction.

{¶42} First, McGhan claims that, at all relevant times in the course of these proceedings, she has been a resident of Georgia. Therefore, the trial court's determination that "neither party resides in the state of original jurisdiction" is erroneous, and R.C. 3127.17(B)'s requirement that "the child's parents *** do not presently reside in the other state" which made the original child custody determination is unsatisfied.

{¶43} For the following reasons, we reject this argument.

{¶44} The trial court made the initial determination that it had jurisdiction under the Child Custody Act in a March 25, 2008 Judgment Entry. On February 12, 2010, McGhan filed a Motion to Dismiss, in part, on the grounds that she did reside in Georgia. In support of her Motion, McGhan subpoenaed a lease for rental property in Saint Mary's, Georgia, for the period from March to September 2007.[2] The court held a hearing on McGhan's Motion on March 4, 2010. On March 9, 2010, the court denied the Motion to Dismiss, finding the issues raised to be "*res judicata*, having been decided by the Court of Appeals in its denial of the request for a Writ of Prohibition."

{¶45} McGhan has not filed a transcript of the March 4, 2010 hearing and, therefore, this court is precluded from considering the merits of her argument. It has long been held that a "presumption of regularity *** adheres to all judicial proceedings." *Coleman v. McGettrick* (1965), 2 Ohio St.2d 177, 180. "If 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). Accordingly, when an appellant fails to submit a complete transcript of the evidentiary hearing at issue, the appellate court is "normally required *** to presume the regularity" of the decision under consideration. *State ex rel. Duncan v. Portage Cty. Bd. of Elections*, 115 Ohio St.3d 405, 2007-Ohio-5346, at ¶17.

{¶46} Here, McGhan claims the trial court "never conducted an evidentiary hearing to determine [her] residency, instead it prejudicially relied solely on [Bond's]

2. The subpoenaed lease was not, apparently, produced. On March 3, 2010, a letter from a property manager for Park Place Apartments, in St. Marys, Georgia, was filed in the trial court explaining that the subpoena could not be complied with: "As [McGhan] is not named on said lease, I am not at liberty to produce said lease, as it contains personal information concerning Park Place tenants."

pleadings." In her appellate brief, however, McGhan fails to acknowledge or account for the hearing held on March 4, 2010. Without a transcript, we are unable to determine what evidence, if any, was introduced with respect to her residency and/or what arguments were raised before the court.

{¶47} Moreover, McGhan's assertion that the trial court relied "solely on [Bond's] pleadings" is contradicted by the record before us. McGhan's initial pleading in Case No. 07DR379, the Notice of foreign judgment, identified her address as 1525 Bear Creek Lane, Petosky, Michigan. On September 24, 2007, McGhan was successfully served by certified mail with copies of Bonds' Emergency Motion for Placement of Children and a Motion to Modify Parental Rights and Responsibilities at 1525 Bear Creek Lane, Petosky, Michigan. On October 4, 2007, McGhan filed an Ex Parte Emergency Motion for Companionship Time to be exercised in Michigan. On November 6, 2007, McGhan filed another Ex Parte Motion for Supervised Visitation, to be exercised, according to the attached affidavit, "at my residence in Petosky, Michigan." On November 30, 2007, a Magistrate's Order was issued, containing the parties' interim agreement that they would meet in Dundee, Michigan, to exchange the minor children for visitation. On February 11, 2008, McGhan filed an affidavit in support of another Ex Parte Motion for Emergency Motion for Companionship Time, claiming that it was necessary for the children to be at her home in Michigan for the purposes of a court-ordered forensic custodial examination.

{¶48} In light of the facts that McGhan has failed to produce a transcript of the hearing at which the issue of her residency was raised and that the pleadings and affidavits on record support the trial court's determination that she was not residing in

Georgia when this case began, there exists no justification for reversing the court's exercise of jurisdiction on this basis.[3]

{¶49} We note, moreover, that the trial court may also exercise jurisdiction in this case pursuant to R.C. 3127.17(A), i.e., when "[t]he court of the other state determines that it no longer has exclusive, continuing jurisdiction." On June 20, 2008, the Superior Court of Camden County, Georgia, in a contempt action captioned, *Jennifer L. McGhan f/k/a Jennifer L. Bonds v. Christopher L. Bonds*, Civil Action No. 08CV0574, decreed that the Ashtabula County Court of Common Pleas' March 25, 2008 determination that it had jurisdiction over the parties and the issues "is not in conflict with the terms of the State of Georgia's Uniform Child Custody Jurisdiction and Enforcement Act" and, thus, "it would be improper for this Court to go forward on [McGhan's] Contempt."

{¶50} Second, McGhan claims the trial court lacked jurisdiction because Bonds never registered the Georgia Divorce Decree with the trial court as part of Case No. 07DR365. We summarily reject this argument as there is no requirement in the Uniform Child Custody Jurisdiction and Enforcement Act that the foreign decree be registered before an Ohio court may modify the foreign child custody determination. The issue of whether a copy of the Georgia Divorce Decree was properly registered for the purposes of modifying the child support order contained therein will be discussed under a later assignment of error.

{¶51} The first, fourth, and ninth assignments of error are without merit.

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3. Bond's Appellate Brief has an appendix containing several evidentiary exhibits relating to her residency. Pursuant to Local Appellate Rule 16(B), the content of an appendix is limited to certain types of documents. Moreover, a party is prohibited from supplementing the record with exhibits attached to her appellate brief. *Perko v. Perko*, 11th Dist. No. 2004-G-2561, 2005-Ohio-3777, at ¶21 (citations omitted). Accordingly, this court will not consider the documents contained in the appendix except insofar as they are allowed by Local Appellate Rule 16(B).

{¶52} In her second assignment of error, McGhan argues the trial court erred by consolidating the case she filed on September 12, 2007 (Case No. 07DR379) and the case refiled by Bonds on September 14, 2007 (Case No. 07DR365). McGhan argues that only active cases may be consolidated. See Civ.R. 42(A)(1) ("[w]hen actions involving a common question of law or fact are pending before a court, that court *** may order some or all of the actions consolidated"). When Bonds refiled Case No. 07DR365 on September 14, 2007, he did not include a copy of the Georgia Divorce Decree. According to McGhan, then, Case No. 07DR365 did not exist on September 14, 2007, and could not be consolidated with active Case No. 07DR379. We disagree.

{¶53} First, as noted above, the filing of the foreign divorce decree is not a prerequisite to a trial court exercising jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act. Second, "[a] civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant." Civ.R. 3(A). Here, Case No. 07DR365 was commenced on September 14, 2007, by Bonds filing his Notice of Foreign Judgment, Motion for Placement, and Motion to Modify. Thus, the case was pending and could be properly consolidated with Case No. 07DR379. Any argument that McGhan was not properly served with the refiled Case No. 07DR365 has been waived by McGhan's voluntary appearance and participation in consolidated Case No. 07DR379.[4] See *Maryhew v. Yova* (1984), 11 Ohio St.3d 154, 156 ("personal jurisdiction over the defendant *** may be acquired *** by *** the voluntary appearance and submission of the defendant or his legal representative *** to the jurisdiction of the court").

4. On September 14, 2007, McGhan was served, by certified mail, with the original Notice and Motions filed on August 31, 2007, but dismissed on September 5, 2007.

{¶54} The second assignment of error is without merit.

{¶55} In her third assignment of error, McGhan argues the trial court erred by disregarding her voluntary dismissal of Case No. 07DR379, pursuant to Civ.R. 41(A)(1)(a) ("a plaintiff, without order of court, may dismiss all claims asserted by that plaintiff against a defendant by *** filing a notice of dismissal at any time before the commencement of trial"). McGhan filed Notices of Dismissal on March 21 and 25, 2008. In a March 27, 2008 Judgment Entry, the trial court recognized the voluntary dismissal of McGhan's claim seeking to enforce a foreign decree. However, the court further recognized that Bonds' Motions remained pending and "shall not be affected by [McGhan's] Notice of Dismissal." McGhan argues here that Bonds' Motions could not have remained pending, since Case No. 07DR365 was not properly refiled. In other words, McGhan's position is that her claim was the only valid claim pending before the trial court and that, after its dismissal, there should have been nothing left for the court to adjudicate.

{¶56} We reject McGhan's argument for the reasons stated in the second assignment of error, i.e., Bonds' Motions were properly refiled in Case No. 07DR365. McGhan's voluntary dismissal of her claim to enforce the Georgia Divorce decree had no effect on the trial court's ability to adjudicate Bonds' claims to modify the Decree.

{¶57} The third assignment of error is without merit.

{¶58} In her fifth assignment of error, McGhan asserts that the trial court was without jurisdiction under the Uniform Interstate Family Support Act (R.C. Chapter 3115) to order her to pay child support. We agree.

{¶59} It has been recognized that a trial court's jurisdiction to modify a "child custody determination" under the Uniform Child Custody Jurisdiction and Enforcement Act is distinct from its jurisdiction to modify a "child support order" under the Uniform Interstate Family Support Act. See *Harbison v. Johnston*, 130 N.M. 595, 2001-NMCA-51, at ¶14 ("[a] court's jurisdiction to hear a custody or visitation dispute under the [Child Custody Act] does not confer jurisdiction upon that court to determine issues of child support under the [Family Support Act]"). The statutory definition of a "child custody determination" expressly states that it "does not include an order or the portion of an order relating to child support or other monetary obligations of an individual." R.C. 3127.01(B)(3). "Thus, by its own terms, the court's subject matter jurisdiction under the [Child Custody Act] does not extend to allow it to determine orders related to support." *Smoske*, 2007-Ohio-5617, at ¶25 (footnote omitted).

{¶60} "A party *** seeking to modify *** a child support order issued in another state shall register that order in this state pursuant to section 3115.39 of the Revised Code." R.C. 3115.46. To register a support order in this state, the following documents are to be provided to the trial court: "(1) A letter of transmittal to the tribunal requesting registration and enforcement; (2) Two copies, including one certified copy, of all orders to be registered ***; (3) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage; (4) The name of the obligor ***; (5) The name and address of the obligee ***." R.C. 3115.39(A).

{¶61} McGhan argues in her appellate brief that Bonds did not properly register the Georgia support order with the trial court pursuant to R.C. 3115.39(A). Only a single

registered copy of the order was filed with the court on March 27, 2008, and there was no sworn or certified statement regarding arrearage.[5]

{¶62} Assuming, arguendo, that Bonds' filings were sufficient for the purposes of registering the support order, Ohio courts would nonetheless lack jurisdiction to modify the order.

> **{¶63}** After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify the order only if *** after notice and hearing it finds either of the following applicable:
>
> (1)The child, the individual obligee, and the obligor subject to the support order do not reside in the issuing state, a petitioner who is a nonresident of this state seeks modification, and the respondent is subject to the personal jurisdiction of the tribunal of this state.
>
> (2)The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order.

R.C. 3115.48(A).

{¶64} Neither of these two conditions are applicable in the present case. Subsection (1) does not apply because the petitioner seeking modification, i.e., Bonds, is a resident of this state. Subsection (2) does not apply because McGhan has never filed a written consent for the Ashtabula County Court of Common Pleas to modify the support order. Accordingly, the trial court lacked jurisdiction to modify the Georgia support order. *Smoske*, 2007-Ohio-5617, at ¶37 (citation omitted); *Young v. Rogers*, 12th Dist. No. CA2001-08-183, 2002-Ohio-5135, at ¶9 (R.C. 3115.48 "determines when a registering Ohio tribunal gains jurisdiction to modify an order") (citation omitted).

{¶65} The fifth assignment of error is with merit.

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5. An uncertified copy of the Georgia Divorce Decree was filed with Bonds' Notice of Filing of Foreign

{¶66} In her sixth assignment of error, McGhan asserts the trial court erred by denying her Motion for New Trial, based on newly discovered evidence, pursuant to Civ.R. 59(A)(8). McGhan's Motion was based on a 2009 psychological report for one of the minor children, indicating that the child was struggling emotionally as a result of her separation from her mother. McGhan claims the psychological report was not produced until after the March 22, 2010 hearing on the merits of Bonds' Motions for custody, despite an earlier request for production of documents. McGhan claims the psychological report is material to the following findings of the trial court: "The evidence indicated that, when the children first moved to Ohio, they were sad ***, and that they appeared to be stressed and generally unhappy. *** The Court finds that, after the transition period, the children are now prospering and appear to be happy."

{¶67} On August 5, 2010, the trial court held a hearing on, among other filings, the Motion for a New Trial. McGhan claims that this hearing "brought forth [additional] evidence that [Bonds] had perjured himself in regards to his involvement in the minor children's lives." In its December 6, 2010 Judgment Entry, the court addressed the Motion for New Trial as follows: "The Court finds that the reasons stated for its Judgment Entry, filed April 9, 2010, fully justify and support the Court's holding in that entry. [McGhan's] claims of new evidence would not change the outcome of that Judgment Entry or cause the Court to modify its original findings."

{¶68} This court is precluded from considering the merits of this argument because McGhan has failed to file the transcripts of the March 22 and August 5, 2010 hearings. As noted above, "[w]hen portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass

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Judgment, on September 14, 2007.

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." *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. In the present instance, this court is unable to evaluate the propriety of the trial court's original findings regarding the minor children's happiness and decision to affirm those findings when the only evidence before us is the 2009 psychological report.

{¶69} The sixth assignment of error is without merit.

{¶70} McGhan's seventh, eighth, and tenth assignments of error similarly contest various factual findings by the trial court as being against the weight of the evidence. In the seventh assignment of error, she challenges the court's finding that Bonds has not engaged in parental alienation by continuously and willfully denying her parenting time. In the eighth assignment of error, she claims the evidence does not support the finding of a change of circumstances. In the tenth assignment of error, she contends the court relied on inadmissible hearsay in concluding that the children's living conditions in Michigan were inappropriate and led to their removal from her custody.

{¶71} In order to consider the substance of these arguments, it is necessary for this court to have a record of the evidence before the trial court. As McGhan has not provided this court with such a record, we must affirm the lower court's conclusions on these matters.

{¶72} The seventh, eighth, and tenth assignments of error are without merit.

{¶73} For the foregoing reasons, the April 9, 2010 Judgment of the Ashtabula County Court of Common Pleas, ordering McGhan to pay child support, and the December 6, 2010 Judgment Entry, affirming the order, are reversed. In all other

respects, the April 9 and December 6, 2010 Judgment Entries are affirmed. Costs to be taxed against the parties equally.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.