[Cite as *Eckstein v. Eckstein*, 2011-Ohio-1724.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

PEGGY ECKSTEIN nka Price,	:	
Plaintiff-Appellant,	:	CASE NO. CA2010-10-097
	:	O P I N I O N
- vs -		4/11/2011
	:	
JOHN ECKSTEIN,	:	
Defendant-Appellee.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS COURT
Case No. 05 DR 29700

Blankenship Massey & Steelman, PLLC, Randy J. Blankenship, 504 Erlanger Road, Erlanger, KY 41018 and Deborah L. McKenery, 106 Harrison Avenue, Cincinnati, Ohio 45030, for plaintiff-appellant

John D. Smith, 140 North Main Street, Suite B, Springboro, Ohio 45066, for defendant-appellee

PIPER, J.

{¶1} Appellant, Peggy Eckstein (Mother), timely appeals a shared parenting decree entered by the Warren County Court of Common Pleas, Domestic Relations Division. Mother argues on appeal that the shared parenting plan adopted by the trial court does not accurately reflect the verbal agreement of the parties. For the reasons discussed below, we affirm the decision of the trial court.

{¶2} In September 2006, Mother and appellee, John Eckstein (Father), were divorced pursuant to a judgment entry and decree of divorce. Mother was designated residential parent and legal custodian of the parties' minor children, and Father was awarded parenting time pursuant to Warren County's basic parenting schedule. On July 28, 2009, Father filed a motion for change of custody or for a modification of allocation of parental rights and responsibilities with respect to the parties' youngest daughter, born January 20, 1999. Thereafter, Mother filed a variety of motions. All pending motions were set for a hearing on June 14, 2010.

{¶3} At the June 14, 2010 hearing, the parties reached an agreement regarding all of the pending motions. Mother and Father agreed to enter into a shared parenting plan, and the specifics of the plan were recited into the record. After the terms of the agreement were read into the record, the court specifically questioned both Mother and Father as to their understanding of the terms. Both parties stated that they had listened to the terms of the agreement, they understood the terms of the agreement, they did not have any questions about the agreement, and they wanted the court to adopt the agreement and make it part of the final court order. Mother's attorney volunteered to draft an entry encompassing the parties' agreed shared parenting plan and submit it to the court.

{¶4} Mother's attorney did not submit a draft of the entry, and on August 5, 2010, the court issued a notice that the case was scheduled for a telephone conference regarding the entry or a consideration of dismissal. On August 18, 2010, following the telephone conference, the magistrate issued a decision recommending that all pending motions be dismissed for lack of entry. On August 26, 2010, Father's attorney served a notice of presentation of an agreed shared parenting decree and shared parenting plan on Mother's counsel. That same day, Mother's attorney filed a motion to withdraw as counsel. Father's notice of an agreed shared parenting decree and plan was filed with the court on August 30,

2010. The shared parenting plan submitted to the court did not contain Father's signature nor Mother's signature.[1]

{¶5} On September 3, 2010, Mother's counsel was permitted to withdraw from the case. On September 20, 2010, the Court journalized the shared parenting decree and shared parenting plan. Mother filed a timely appeal, alleging a sole assignment of error.

{¶6} Assignment of Error No. 1:

{¶7} "THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF/APPELLANT IN ENTERING A DECREE OF SHARED PARENTING, WHICH INCORPORATED AN ALLEGEDLY AGREED UPON SHARED PARENTING PLAN."

{¶8} Mother contends that the trial court erred in entering the shared parenting decree because it adopted a shared parenting plan that did not comport with the parties' in-court agreement. Mother argues that the agreement submitted by Father to the court contains numerous discrepancies and embellishments, and therefore, does not accurately portray the parties' agreement. She further argues that the court erred in journalizing the shared parenting decree and shared parenting plan because it did so without first providing notice of its intent to adopt the decree and plan. Mother contends that the court should have held a hearing first in order to clarify whether the proffered agreement was, in fact, the parties' actual agreement.

{¶9} Father argues that both he and the trial court complied with the local rules of court and that Mother's appeal is, therefore, without merit. He contends that the court did not err in journalizing the shared parenting decree and shared parenting plan because Mother did not object to the presentation of Father's proposed decree and plan and did not present

1. Although neither Father nor Mother had signed the shared parenting plan filed with the court on August 30, 2010, Father had signed the shared parenting decree, which incorporated the shared parenting plan in its entirety. Mother's signature was not obtained on the shared parenting decree.

her own proposed decree and plan. Because Mother did not object to the proposed decree and plan, Father contends that the court was not required to hold an evidentiary hearing. Further, Father argues that the journalized decree and plan reflect the parties' true intent and incorporates the material terms of their agreement.

{¶10} Loc.R. 6.2 provides the following for decrees and judgment entries in agreed matters: "When a matter scheduled for a hearing is settled by agreement, the attorneys shall present an agreed entry endorsed by both counsel, or parties if not represented, within thirty (30) days of the hearing. If counsel (or a party) cannot agree on the entry, they shall schedule a conference with the court. If the agreement was recorded, a transcript must be obtained and presented at the conference." Loc.R. 6.2 of the Court of Common Pleas of Warren County, Domestic Relations Division.

{¶11} "It is well-settled that the enforcement of Local Rules is a matter within the discretion of the court promulgating the rules." *Dvorak v. Petronzio*, Geauga App. No. 2007-G-2752, 2007-Ohio-4957, ¶30. Accordingly, to find a trial court abused its discretion, there must be more than an error of law or judgment; there must be a finding that the court acted unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶12} In the present case, the parties agreed on record to the terms of a shared parenting plan. Mother's counsel offered to draft and file the agreement with the court. When Mother's counsel failed to do so, Father's counsel was entitled to draft the agreement and submit it to the trial court. Although the proposed shared parenting decree and shared parenting plan were not signed by Mother, the court acted within its discretion in adopting and journalizing the decree and plan. At the time the court journalized the decree and plan, Mother had not filed an objection; nor had she filed her own proposed decree and plan. Further, Mother had not requested a hearing on the proposed decree and plan. Under

Loc.R. 6.2, the trial court only has to hold a hearing or conference if the parties request that one be scheduled. Because Mother did not file such a request with the court, the court was not required to hold a hearing.[2]

{¶13} Settlement agreements are generally favored in the law. *Schrock v. Schrock*, Madison App. No. CA2005-04-015, 2006-Ohio-748, ¶13. "Where the parties reach such an agreement in the presence of the court, the agreement constitutes a binding contract and the trial court may properly sign a judgment entry reflecting the settlement agreement." *Dvorak*, 2007-Ohio-4957 at ¶17; *Spercel v. Sterling Industries, Inc.* (1972), 31 Ohio St.2d 36, paragraph one of the syllabus. "[W]hen the terms of a settlement agreement are properly preserved as a result of being read into the record, the trial court has the basic authority to sua sponte adopt a proposed judgment entry that accurately delineates those terms." *Benz v. Benz*, Geauga App. No. 2004-G-2589, 2005-Ohio-5870, ¶14. Further, an in-court agreement "may be incorporated into the judgment entry even in the absence of an agreement in writing, *or an approval of the judgment entry signed by a party or his attorney*." (Emphasis added.) *Holland v. Holland* (1970), 25 Ohio App.2d 98, paragraph two of the syllabus.

{¶14} At the June 14, 2010 hearing, Mother did not raise any objections to the terms of the agreement read into the record. Rather, Mother stated on the record that she wanted the Court to adopt the agreement as part of its final court order.

{¶15} "THE COURT: [Mother] did you have the opportunity to listen to all the terms of the agreement?

{¶16} "[MOTHER]: Yes.

2. In addition, Father, in his notice of presentation of an agreed shared parenting decree and shared parenting plan, specifically requested that a hearing be set if Mother filed an objection or prepared her own decree and plan. Because Mother did neither, the court was not required to hold a hearing.

{¶17} "* * *

{¶18} "THE COURT: * * * Do you have any questions at all [Mother] about the terms of the agreement as it was read into the record?

{¶19} "[MOTHER]: Um. . .no questions.

{¶20} "THE COURT: Do you understand all the terms of the agreement?

{¶21} "[MOTHER]: Um, huh. Yes.

{¶22} "* * *

{¶23} "THE COURT: [Mother] do you wish the Court to adopt the agreement?

{¶24} "* * *

{¶25} "[MOTHER]: Ok. Yes.

{¶26} "* * *

{¶27} "THE COURT: Thank you. Then based upon the evidence before the Court it will be my recommendation that this Court adopt the agreement as it was read into the record and order it incorporated into a Shared Parenting Plan that's to be filed with the Court within thirty days of today's date. * * *"

{¶28} Mother had twenty days from the time Father filed his notice of presentation of an agreed shared parenting decree and shared parenting plan with the court in which she could have filed an objection, filed her own proposed shared parenting decree and shared parenting plan, or requested a hearing on the proposed decree and plan. Mother took no action to indicate any objection to the decree and plan submitted by Father. Because Mother was provided with every opportunity to object to the proposed decree and plan or submit her own proposed decree and plan, and she neglected to do so, we find that the trial court acted within its power, pursuant to its local rules, in adopting and journalizing the shared parenting decree and shared parenting plan. The court was entitled to construe Mother's silence as an acquiescence to Father's proposed entry.

{¶29} Mother's first objection to the shared parenting decree and shared parenting plan occurred after the trial court journalized Father's proposed decree and plan. Accordingly, the trial court was denied the opportunity to hear Mother's arguments concerning the alleged discrepancies and embellishments.[3] We find that Mother waived her right to oppose the specific language adopted by the trial court in its journalized decree and plan because she agreed on record to the shared parenting plan and its terms, failed to object to terms contained within Father's proposed plan, failed to offer contradictory terms or an alternative plan, and failed to request a hearing to discuss her discontent with the proposed plan.

{¶30} For the foregoing reasons, we find that Mother waived the right to object to the court's procedure in adopting and journalizing the decree and plan as well as the right to object to the contents of the entry itself. The trial court did not abuse its discretion in entering a shared parenting decree which adopted Father's proposed shared parenting plan. Mother's assignment of error is overruled.

{¶31} Judgment affirmed.

HENDRICKSON, P.J., and HUTZEL, J., concur.

3. After filing the present appeal, Mother filed a Civ.R. 60(B) motion for relief from judgment of the September 20, 2010 entry journalizing the shared parenting decree and shared parenting plan. In her motion, Mother argued that she did not understand what she had agreed to at the June 14, 2010 hearing, that the agreement was entered into by mistake, that she felt coerced into agreeing to the shared parenting plan, and that the journalized decree and plan contained discrepancies from the agreement placed on record. Mother voluntarily withdrew her Civ.R. 60(B) motion on December 9, 2010.

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