

[Cite as *McClain v. McClain*, 2002-Ohio-4971.]

IN THE COURT OF APPEALS OF CHAMPAIGN COUNTY, OHIO

CAROLE JUNE MCCLAIN :

Plaintiff-Appellant : C.A. CASE NO. 02CA04

vs. : T.C. CASE NO. 97DR183

ROBERT R. MCCLAIN :

Defendant-Appellee :

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DECISION AND ENTRY

Rendered on the 20th day of September, 2002.

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PER CURIAM:

{¶1} This is an appeal from a decree of divorce. Plaintiff-Appellant, Carole June McClain, presents four assignments of error. Each concerns the trial court's failure to grant her request for spousal support.

{¶2} Plaintiff-Appellant and Defendant-Appellee, Robert R. McClain, were married in 1953. June¹ filed for divorce on August 11, 1997. The matter was referred to the court's magistrate, who held hearings on October 20, 1998.

{¶3} The magistrate filed a decision on March 4, 1999. The decision recommended that the parties be divorced and that their property be divided in accordance with their agreement. The

¹For purposes of clarity and economy, the parties are identified by their first names.

decision did not address June's spousal support request, which appeared in the prayer for relief in her complaint. With respect to that matter, the magistrate's decision states: "It is Further Recommended that the issue as to spousal support shall be rendered by this magistrate by a separate decision." *Id.*, pp. 2-3. On that same date, March 4, 1999, the trial court ordered the parties divorced.

{¶4} June filed objections to the magistrate's decision on March 17, 1999, before a separate decision on June's spousal support request was filed as the magistrate had promised. June requested a transcript of the proceedings before the magistrate. A transcript was prepared and it was filed on March 30, 1999. The record fails to reflect that the magistrate ever filed a decision ruling on June's spousal support request.

{¶5} June's objections had two branches. She objected to the magistrate's failure to grant her prayer for spousal support. She also objected to the magistrate's order concerning her right to health insurance coverage pursuant to COBRA.

{¶6} On January 25, 2002, the trial court overruled June's objections. The court's entry states:

{¶7} "This case has been held by the Court awaiting ruling on the objections to the Magistrate's decision filed March 4, 1999. The timely objection filed by Plaintiff resulted in Plaintiff's request for a transcript of the final hearing, and that transcript has been filed in the case.

{¶8} "Upon consideration of all matters in this case, the Court finds that Plaintiff is entitled to COBRA benefits. The

benefit awarded by the Court is that Plaintiff may maintain her medical and hospitalization insurance through Defendant's employment for a period of three years from date of the decree. These benefits shall be maintained at the cost of Plaintiff.

{¶9} "With this ruling, the Court finds that the Plaintiff's objections have been sustained in part and denied in part.

{¶10} "Costs of the objection process will be equally divided.

{¶11} "/s/ Roger B. Wilson, Judge"

{¶12} The court identified its entry as final and appealable. June filed a timely notice of appeal.

{¶13} In her assignments of error, June asks us to find, for various reasons, that the trial court abused its discretion when it denied her request for spousal support. Though the court failed to rule on her objections in that respect, expressly, it nevertheless overruled her objections summarily, with the exception of its clarification of her right to COBRA coverage and obligation to pay for it. The ruling necessarily also overruled June's objection concerning spousal support, if only by implication. What the court's journal entry of January 25, 2002 failed to do, however, was to adopt the magistrate's decision.

{¶14} Civ.R. 53(E)(4) governs the court's action on the magistrate's decision. Paragraph (a) states:

{¶15} "The magistrate's decision shall be effective when adopted by the court. The court may adopt the magistrate's decision if no written objections are filed unless it determines that there is an error of law or other defect on the face of the

magistrate's decision."

{¶16} Paragraph (b) of Civ.R. 53(E)(4) governs the court's disposition of objections. Paragraph (c) provides that "[t]he court may adopt a magistrate's decision without waiting for timely objections by the parties," which must nevertheless be filed within fourteen days thereafter. The court may also make an interim order based on the magistrate's decision before objections are filed where "immediate relief is justified," but the interim order is not effective for more than twenty-eight days.

{¶17} The clear import and plain meaning of Civ.R. 53(E)(4) is that the court, if it intends to rely on the rule to enter a judgment, must state affirmatively that it adopts the decision of its magistrate, as written or as modified by the court. Of course, the court may substitute its own decision for the magistrate's in rendering judgment on any of the claims for relief concerned. In either alternative, or combination of them, however:

{¶18} "[i]t is fundamental that the trial court employ diction which should include sufficient operative, action-like and conclusionary verbiage to satisfy the foregoing fundamental elements. Obviously, it is not necessary for such directive to be encyclopedic in character, but it should contain clear language to provide basic notice of rights, duties, and obligations." *In re Michael* (1991), 71 Ohio App.3d 727, 730, quoting *Cox v. Cox* (Mar. 15, 1991), Trumbull App. No. 90-T-4396.

{¶19} A ruling entered pursuant to Civ.R. 53(E)(4) which

merely overrules and/or sustains objections to a magistrate's decision without also adopting it is not a final, appealable order. *Id.* That is because it does not satisfy the duty imposed on the court by Civ.R. 53(F)(4) to adopt, reject, or modify the magistrate's decision. Absent a final order, we lack jurisdiction to review the error assigned. *General Acc. Ins. Co. v. Insurance Co. of North America* (1989), 44 Ohio St.3d 17.

{¶20} The foregoing finding requires us to dismiss the appeal. We are loath to do that in view of the prolonged proceedings since the complaint for divorce was filed in 1997. We therefore urge the trial court to act as promptly as possible to return the matter to its magistrate to enter the decision on June's spousal support request that the magistrate indicated he would enter, and to thereafter dispose of any objections to that decision and enter a proper final order at the earliest possible time.

{¶21} The appeal is dismissed.

WOLFF, P.J., FAIN and GRADY, JJ. concur.

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