[Cite as *Antoine v. Lannon*, 2006-Ohio-2354.]

IN THE COURT OF APPEALS OF CLARK COUNTY, OHIO

SASHOON ANTOINE		
Plaintiff-Appellee	**:**	**C.A. CASE NO. 04-CA-0086**
vs.	**:**	**T.C. CASE NO. 00-JUV-0285**
STEVEN LANNOM, JR.		**(Civil Appeal from**
Defendant-Appellant	**:**	**Common Pleas Court)**

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O P I N I O N

Rendered on the 10th day of May, 2006.

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GRADY, P.J.

{¶ 1} This is an appeal from an order and judgment of the juvenile court, adopting a magistrate's decision that named a mother the legal custodian and residential parent of her two minor children and that suspended the natural father's visitation rights.

{¶ 2} Sashoon and Lannom,[1] who were never married, are the parents of two boys, one born on January 29, 1996, and another born on July 28, 1997. Shortly before the birth of the younger boy, Lannom informed Sashoon that he is bi-sexual. In February 2000, the parties separated, and Sashoon moved out with both children.

{¶ 3} In September 2000, Lannom's same-sex partner moved in with Lannom. Sashoon and Lannom subsequently asked the juvenile court to adopt a plan for shared parenting. On March 13, 2001, the court issued a Judgment Entry for Shared Parenting, adopting and approving the plan for shared parenting submitted by Sashoon and Lannom.

{¶ 4} In January 2002, allegations were made that Lannom's partner had sexually abused the parties' younger boy. Sashoon filed a motion to terminate the shared parenting plan. Following a hearing on this motion, Sashoon was designated the boys' sole residential parent and Lannom was limited to supervised visitation. On September 26, 2002, Sashoon filed a motion to terminate all visitation. A hearing was held on March 18, 2004.

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[1]In an attempt to minimize confusion the Plaintiff-Appellee, Sashoon Antoine, is referred to in this Opinion as "Sashoon", and the Defendant-Appellant, Steven Lannom, Jr., is referred to as "Lannom".

{¶ 5} On April 14, 2004, the magistrate issued findings of fact and conclusions of law that, named Sashoon the legal custodian and residential parent of her two minor children and suspended Lannom's visitation rights. Lannom filed timely objections to the magistrate's decision on April 23, 2004. On November 16, 2004, the trial court overruled Lannom's objections and adopted the magistrate's findings of fact and conclusions of law. Lannom filed a timely notice of appeal from the juvenile court's order and judgment.

FIRST ASSIGNMENT OF ERROR

{¶ 6} "THE TRIAL COURT COMMITTED AN ERROR OF LAW IN FAILING TO APPLY THE STANDARD OF 'CLEAR AND CONVINCING EVIDENCE' BEFORE TERMINATING APPELLANT'S VISITATION RIGHTS."

{¶ 7} Lannom argues that the trial court erred by adopting the magistrate's findings of fact and conclusions of law because the magistrate applied the incorrect standard of proof. Specifically, Lannom takes issue with the magistrate's finding that, "to the standard of a preponderance of the evidence the allegation of sexual abuse of both children under these facts and circumstances is meritorious." Lannom argues that the magistrate should have instead applied the "clear and convincing evidence" standard. We will overrule Lannom's assignment of error because he failed to preserve this

argument for appeal.

{¶ 8} Juv. R. 40(E)(3)(a) provides that "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision . . . ." The objections must "be specific and state with particularity the grounds of the objection." Juv. R. 40(E)(3)(b). "A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule." Juv. R. 40(E)(3)(d). As required by Juv. R. 40(E)(2), the magistrate's decision stated conspicuously that a party could not assign as error on appeal the trial court's adoption of any finding of fact or conclusion of law unless the party timely and specifically objected to that finding or conclusion under Juv. R. 40.

{¶ 9} Lannom's only objection that related the standard of proof applied by the magistrate was his second objection, which stated in relevant part: "Plaintiff was required to establish by a preponderance of the evidence, her case against the Defendant. Defendant believes that the burden was not met and fell short of the level of proof required." Lannom failed to specifically object to the preponderance of the evidence standard which the magistrate issued. Instead, he objected to

the result reached when applying the preponderance of evidence standard, not to the use of the standard itself. Indeed, Lannom implicitly endorsed application of the standard of proof to which he now objects. Consequently, Lannom did not preserve this issue for appeal. Juv. R. 40(E)(3)(d).

{¶ 10} Lannom argues that we should rule on the error he assigns, nevertheless, because the waiver provisions of Juv.R. 40(E)(3)(d) do not apply when errors of law are apparent on the face of the magistrate's decision. See: *Group One Realty, Inc. v. Dixie International Company* (1998), 125 Ohio App.3d 767; *Champion v. Dunns Tire and Auto, Inc.* (June 26, 2001), Mahoning App. No. 00CA42. However, that assumes that apparent error exists. For that proposition, Lannom relies on *Pettry v. Pettry* (1984), 20 O.App.3d 350, as authority for his contention that "clear and convincing evidence" is the applicable standard, not a preponderance of the evidence. A careful reading of *Pettry* does not support that contention. *Pettry* merely holds that a natural parent's right of visitation should be denied only on a showing of extraordinary circumstances, which could include a showing that visitation with the non-custodial parent would cause harm to the child. The evidence which the trial court elected to credit comfortably satisfies that standard. There was no apparent

error on the face of the magistrate's decision that the trial court ignored.

{¶ 11} The first assignment of error is overruled.

SECOND ASSIGNMENT OF ERROR

{¶ 12} "THE MAGISTRATE ERRED AND ABUSED HIS DISCRETION IN FAILING TO ORDER PSYCHOLOGICAL EVALUATIONS OF THE PARTIES AND THEIR MINOR CHILDREN."

{¶ 13} Lannom argues that the trial court abused its discretion when it adopted the magistrate's decision that had not ordered psychological evaluations of the parties and their minor children pursuant to our decision in *Kreuzer v. Kreuzer* (Aug. 1, 1997), Greene App. No. 96-CA-131, and the testimony of his expert witness, Dr. Jeffrey Smalldon. However, Lannom failed to preserve this argument for appeal because he did not specifically object on this basis to the magistrate's decision. Juv. R. 40(E)(3)(b) and (d) preclude a party from assigning as error on appeal the trial court's adoption of any finding of fact or conclusion of law unless the party specifically objected to that finding or conclusion.

{¶ 14} The second assignment of error is overruled.

THIRD ASSIGNMENT OF ERROR

{¶ 15} "THE TRIAL COURT'S DECISION TO TERMINATE ALL VISITATION BY APPELLANT WITH HIS CHILDREN IS AGAINST THE

MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 16} **"A trial court has broad discretion in custody disputes, and a reviewing court's authority to reverse the trial court is limited to situations where the trial court's decision is against the manifest weight of the evidence."** ***In re C.W.*****, Montgomery App. No. 20140, 2004-Ohio-2040, at _17. The deference to be accorded the trial court's assessment of conflicting evidence is especially great in child custody disputes where there may be much evidence in the parties' demeanor and attitude that does not translate well to the record.** ***Id.*** **(citing** ***Davis v. Flickinger*** **(1997), 77 Ohio St.3d 415, 1997-Ohio-260).**

{¶ 17} **Lannom argues that the trial court's decision to terminate his visitation was against the manifest weight of the evidence because the only admissible evidence of abuse came from the statements of his older son, which are not credible and cannot constitute clear and convincing evidence. Lannom is incorrect. However, Lannom's contention ignores the abundance of evidence that supports the trial court's decision.**

{¶ 18} **The testimony of Lannom's older son supports the trial court's decision. The magistrate found the child's testimony credible. In fact, Lannom is the only witness that**

the magistrate found to be less than credible. Lannom's disagreement with the child's testimony is insufficient to establish that the trial court's decision is against the manifest weight of the evidence. Also, the trial court's decision is supported by the testimony of Ms. Mary Venrick, Sashoon's expert witness, who had counseled both boys for two years. Further, attorney Alice Thoresen, the Court appointed Guardian Ad Litem, submitted a report and recommendation that essentially paralleled the magistrate's decision. Finally, it is undisputed that Lannom's expert witness, Dr. Jeffrey Smalldon, was unable to opine on whether sexual abuse had occurred or not.

{¶ 19} Under these facts, we cannot say that the trial court's decision is against the manifest weight of the evidence.

{¶ 20} The third assignment of error is overruled. The judgment of the juvenile court will be affirmed.

WOLFF, J. and FAIN, J., concur.

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