[Cite as *Kohler v. Kohler*, 2009-Ohio-3434.]

IN THE COURT OF APPEALS FOR MIAMI COUNTY, OHIO

ELIZABETH KOHLER :

Plaintiff-Appellee : C.A. CASE NO. 2009 CA 3

v. : T.C. NO. 03 DR 452

ANTHONY KOHLER : (Civil appeal from Common Pleas Court, Domestic Relations)

Defendant-Appellant :

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O P I N I O N

Rendered on the 10th day of July, 2009.

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FROELICH, J.

{¶ 1} Anthony Kohler appeals from a judgment of the Miami County Court of Common Pleas, which found that the objections Mr. Kohler had filed to an Agreed Entry were a "nullity" and had "no legal effect" and which, in refusing to consider those objections, adopted an Agreed Entry presented by his former wife, Elizabeth Kohler. The Agreed Entry related to

visitation between Mrs. Kohler and the parties' children, C. and A., for whom Mr. Kohler is the residential parent.

{¶ 2} We conclude that the trial court erred in finding that the Agreed Entry was not a magistrate's decision within the meaning of Civ.R.53(D) and that, as such, Mr. Kohler had no right to object to it. However, the trial court's refusal to consider Mr. Kohler's objections related to future visitation issues, which remain under the continuing jurisdiction of the trial court, was harmless. Most of Mr. Kohler's other objections to the Agreed Entry involved attempts to insert additional terms, rather than to correct discrepancies with the agreement that was read into the record or to show that the agreement was contrary to law. Such modifications were not properly raised as objections to an agreement that had been read into the record. The judgment will be affirmed.

I

{¶ 3} When the parties divorced in 2004, Mr. Kohler was named the residential parent of their two children, C. and A., and Mrs. Kohler was given supervised visitation. On May 28, 2008, Mrs. Kohler filed a "Request for Definate [sic] Parenting Schedule," seeking to implement the standard order of visitation. The matter was referred to a magistrate and, on October 2, 2008, a hearing was held. At the hearing, the parties stated that they had reached an agreement regarding visitation, and they read that agreement into the record. Under the agreement, Mrs. Kohler's visitation with both children would gradually increase. The timetables differed as to each child, with the daughter's visitation increasing more quickly. After the agreement was read at the hearing, both parties stated that they understood the agreement, had had sufficient time to consider everything that was in the agreement, and wanted

the court to adopt the agreement. They also agreed that Mrs. Kohler's attorney would prepare an entry reflecting the parties' agreement for the magistrate's signature.

{¶ 4} After Mrs. Kohler's attorney drafted the Agreed Entry, he submitted it to at least one of Mr. Kohler's attorneys, who indicated that Mr. Kohler had some problems with the Agreed Entry and proposed some modifications. The attorneys had a telephone conversation about the Agreed Entry, which was followed by a letter in which Mr. Kohler's attorney indicated that he did not believe Mr. Kohler would approve the Agreed Entry even if the requested changes were made. Mr. Kohler's attorney instructed Mrs. Kohler's attorney to file the document with the notation "submitted, not approved" on the signature lines for Mr. Kohler and his counsel. In response, Mrs. Kohler's attorney made some, but not all, of the requested modifications.

{¶ 5} On November 19, 2008, the Agreed Entry was filed, signed by Mrs. Kohler and her attorney and with the notation that Mr. Kohler and his attorneys had not approved the document. The Agreed Entry was also signed by both the magistrate and the trial court judge. On December 1, 2008, Mr. Kohler filed objections to the Agreed Entry, claiming that it contained several errors. Mrs. Kohler responded to the objections, claiming that Mr. Kohler was being "malicious" and "non-cooperative" and asking for attorney fees. On December 22, 2008, the trial court filed a "Decision/Order" in which it refused to consider Mr. Kohler's objections because the Agreed Entry "is simply <u>not</u> a magistrate's decision as defined in Civil Rule 53." The court concluded that "[i]n the absence of a magistrate's decision, objections filed by Mr. Kohler have no legal effect and are a nullity." No attorney fees were awarded to Mrs. Kohler.

{¶ 6} Mr. Kohler appeals from the December 22, 2008, judgment, raising five

assignments of error. The first four assignments of error are related, and we will address them together.

II

{¶ 7} Mr. Kohler's first, second, third, and fourth assignments of error state:

{¶ 8} "I. "THE TRIAL COURT ERRED WHEN IT ACCEPTED FOR FILING AN AGREED ENTRY AND ORDER IN CONTRAVENTION OF THE AGREEMENT READ INTO THE RECORD TO THE COURT ON OR ABOUT OCTOBER 2, 2008."

{¶ 9} "II. "MIAMI COUNTY LOCAL RULE 8.23 MUST BE SET ASIDE AS ARBITRARY, CAPRICIOUS AND VAGUE."

{¶ 10} "III. "MIAMI COUNTY LOCAL RULE 17.01 THAT SETS FORTH THE POWERS AND DUTIES OF MAGISTRATES IN DOMESTIC RELATIONS CASES WAS WHOLLY IGNORED BY THE TRIAL COURT."

{¶ 11} "IV. "THE TRIAL COURT VIOLATED ESTABLISHED OHIO SUPREME COURT PRECEDENT IN CAUSING AN AGREED ENTRY TO BE FILED KNOWING THAT THE PARTIES HAD A CLEAR DISPUTE AS TO THE TERMS."

{¶ 12} In these assignments of error, Mr. Kohler contends that the Agreed Entry was inconsistent with the agreement read into the record in several respects and that the trial court should have conducted a hearing to resolve these inconsistencies. He contends that Miami County Loc.R. 8.23, which sets forth the procedures to be followed for Settled Judgment Entries, is arbitrary, capricious, and vague and "encourages uncertainty and speculation" because it does not expressly require a hearing when the parties disagree about the content of an agreed entry. He also contends that the trial court violated Civ.R. 53 and Miami County Loc. R.

17.01 because it did not independently review the magistrate's decision to adopt the Agreed Entry. Finally, he argues that Supreme Court precedent precludes the enforcement of an agreement that is disputed by the parties.

{¶ 13} As discussed above, Mrs. Kohler's attorney drafted the Agreed Entry and, in response, Mr. Kohler's attorney requested several modifications on behalf of his client. For example, Mr. Kohler requested that the agreement state, "[Mr. Kohler] shall supply a phone number to reach [A.]" instead of stating more generally that "[Mrs. Kohler] can call [A.] anytime she wants," as stated in court. Mr. Kohler apparently wanted to be sure that Mrs. Kohler would not be given his home phone number. Mrs. Kohler's attorney modified the agreement accordingly. Also, Mr. Kohler wanted to accomplish visitation by having his daughter C. drive herself to Mrs. Kohler's house or by his taking her to Mrs. Kohler's house or to a neutral location; he did not want Mrs. Kohler coming to his house to pick up C. This was not mentioned in the agreement read in court, and the Agreed Entry filed with the court did not accommodate this request. The letter from Mr. Kohler's attorney acknowledged the contentiousness of the parties' interaction.

{¶ 14} Mr. Kohler claims that the trial court's approval of the Agreed Entry, notwithstanding his objections to it, was improper in several respects. We begin with his argument that the trial court erred in refusing to consider his objections.

{¶ 15} The trial court's judgment cited three reasons for its conclusion that Mr. Kohler's objections had "no legal effect" and were a "nullity": the Agreed Entry was not styled as a magistrate's decision; there was no hearing from which the magistrate was required to issue a decision; and the Agreed Entry was not the type of decision referenced in Civ.R. 53(D)(3)(i),

which requires a magistrate to "prepare a magistrate's decision respecting any matter referred under Civ.R. 53(D)(i)." In our view, none of these reasons precluded the court from considering Mr. Kohler's objections.

{¶ 16} We have held that "there is nothing in Civ.R. 53(E), nor are we aware of any other rule of law, that would cause a submission of an agreed entry to constitute a waiver of the fourteen-day time period for filing objections." *Kontir v. Kontir*, Champaign App. No. 2003-CA-12, 2003-Ohio-4845, at ¶11. We observed that an agreed entry might be contrary to law or, through a clerical mistake, might not reflect the actual agreement of the parties. "In either case, a timely objection, pursuant to Civ.R. 53, would give the trial court an opportunity to cure any error." Id. at ¶12. The trial court erred in concluding that the reading of an agreement into the record before a magistrate precluded the parties from filing objections.

{¶ 17} Mr. Kohler also asserts that the trial court erred in failing to hold a hearing to resolve the parties' disagreement. He cites no authority in support of his claim that the trial court was required to conduct a hearing to resolve this issue. Instead, he claims that Loc.R. 8.23, entitled "Settled Judgment Entries," is arbitrary, capricious, and vague because it does not require a hearing.

{¶ 18} Miami County Loc.R. 8.23(B) provides:

{¶ 19} "The Court may order either counsel to prepare the judgment entry setting forth the agreement of the parties. Said judgment entry shall be submitted to the opposing counsel prior to the submission to the Court. If counsel are unable to agree upon the judgment entry, the opposing counsel shall notify in writing, within five (5) days, the counsel who prepared the entry. Both counsel may thereafter submit an entry to the Court within ten (10) days of the

written notice, and the Court shall direct which entry shall be filed. A judgment entry sent for signature which is not returned or rejected by opposing counsel within five (5) days, may be submitted to the Court without the signature of the opposing counsel or party, if the agreement was read on the record. All judgment entries not signed by both parties or legal counsel shall be accompanied by a copy of the transmittal letter indicating the date sent to the opposing counsel or party."

{¶ 20} Loc.R. 8.23 sets forth a reasonable manner in which to resolve disputes regarding an agreed entry which gives both parties an opportunity to express their views to the court. In our view, there is nothing arbitrary, capricious, or vague about this approach. For reasons that are unclear, Mr. Kohler did not avail himself of this procedure. Mr. Kohler suggests that the only way to proceed in such circumstances is for the magistrate to hold another hearing. In many situations, such a requirement would be unnecessarily burdensome to the parties and to the court and would unnecessarily drag out an already-protracted procedure.

{¶ 21} Mr. Kohler also contends that supreme court precedent prohibits a trial court from forcing a disputed settlement agreement on the parties without a hearing, citing *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 1997-Ohio-380. In *Rulli*, a settlement agreement was read into the record, but no entry was filed. The oral agreement required the parties to enter into a purchase agreement with one another, the terms of which seemed clear when the settlement agreement was made. However, when the parties tried to draft the purchase agreement, they could not agree on the meaning and effect of the terms. The Supreme Court of Ohio held that, to constitute a valid settlement agreement, the terms of the agreement must be reasonably certain and clear; where the parties dispute the meaning or existence of a settlement agreement, a court

may not force an agreement upon them without holding a hearing to resolve the dispute.

{¶ 22} *Rulli* is factually distinguishable and not dispositive of Mr. Kohler's claim. Although *Rulli* held that the trial court should have conducted a hearing before resolving the terms of a disputed settlement agreement, the misunderstanding at issue in *Rulli* was substantive; the parties "disputed nearly every major element of the purported agreement." Id. at 377. Mr. Kohler, on the other hand, is attempting to expand upon the parties' agreement by adding new terms after stating that he accepted the agreement that was read in court. Moreover, the points of contention raised by Mr. Kohler address very minor issues related to the administration of the agreement, not the fundamental elements of the agreement itself. In our view, Mr. Kohler's introduction of these "disputes" in his objections did not require the trial court to conduct a hearing. The essential terms of the Kohlers' settlement agreement were clear. *Rulli* reenforces our view that objections to settlement agreements are sometimes appropriate and should be allowed, but it does not support Mr. Kohler's assertion that a hearing is required for even very minor disputes about the terms of a settlement agreement.

{¶ 23} We must next determine whether Mr. Kohler suffered any harm as a result of the trial court's erroneous conclusion that it could not consider his objections. An appellate court will not reverse a judgment on the basis of any error that is harmless. *Knor v. Parking Co. of Am.* (1991), 73 Ohio App.3d 177, 189. Thus, we turn to the substance of the issues raised in his objections.

{¶ 24} First, Mr. Kohler objected to the following provision in the Agreed Entry, which related only to C.: "Either [Mrs. Kohler] can pick up and drop off the minor child or C. will be allowed to drive over during these periods." In his objections, Mr. Kohler stated that he

"prefers" to do any picking up and dropping off himself or that a neutral site should be used; he did not want Mrs. Kohler to come to his house. This preference was not expressed at the hearing nor incorporated into the settlement agreement that was read into the record. Moreover, because of the trial court's continuing jurisdiction over visitation, any problems with pick up and drop off can be brought to the court's attention by motion at any time. *Pulice v. Collins*, Cuyahoga App. No. 86669, 2006-Ohio-3950, at ¶10 (holding that, in a domestic relations case, the trial court retains jurisdiction over certain issues, including child support and visitation, even though disputes in these areas may not arise for months or years).

{¶ 25} Mr. Kohler also contends that the Agreed Entry misstates the parties' agreement regarding the allowable length of time before A.'s frequency and length of visitation rises to the level set forth in the standard order. At the hearing, one of Mr. Kohler's attorneys stated the parties' agreement that the standard order would be implemented "within six months[,] understanding it may be a shorter period of time depending on how successful the counseling goes. It may be longer. We're hoping that it's shorter than longer." The Agreed Entry stated that the standard order would be implemented "on or before six months." We find, however, that this semantic discrepancy was insignificant in light of the court's continued involvement in the case. The Agreed Entry stated that a hearing would be held on March 11, 2009, to review the progress of A.'s counseling and the success of the reunification process. Thus, the court continued to play a role in determining the pace at which Mrs. Kohler's visitation with A. would be implemented. Also, as discussed above, visitation issues can be considered by the trial court at any time. In light of the trial court's commitment to review the matter before the six months had elapsed and its continuing jurisdiction over visitation, we cannot conclude that Mr. Kohler

suffered any prejudice as a result of the trial court's refusal to consider this objection.

{¶ 26} Mr. Kohler's final two objections can be addressed summarily. He disputed the precise hour at which Mrs. Kohler's visitation with C. would begin on December 26, 2008. This issue is moot. Mr. Kohler also sought the inclusion of a provision that the magistrate would hear the matter quickly if difficulties in the visitation arrangement arose, as the magistrate had offered to do at the hearing. In our view, the speed with which the magistrate will address problems that arise as a result of settlement agreement is not an appropriate matter for inclusion in an Agreed Entry. The trial court and magistrate, not the parties, manage the court's docket.

{¶ 27} The first four assignments of error are overruled.

III

{¶ 28} Mr. Kohler's fifth assignment of error states:

{¶ 29} "APPELLANT WAS NOT PROPERLY NOTIFIED OF THE NOVEMBER 19, 2008, 'AGREED ORDER & ENTRY' BECAUSE THE CLERK OF COURTS CERTIFIED THAT THE RULING WAS SENT TO AN ADDRESS WHERE APPELLANT HAS NOT RESIDED SINCE BEFORE THE DECREE OF DIVORCE WAS ISSUED IN NOVEMBER, 2004."

{¶ 30} Mr. Kohler claims that he was not "properly notified" of the Agreed Entry after it was signed by the magistrate and trial court because an incorrect former address was used, despite the fact that his residence and business addresses were well-established. Although he acknowledges that his attorneys received the entry, he asserts that the trial court "ruling" should be reversed.

{¶ 31} Mr. Kohler recognizes that Civ.R. 5(B) provides for service on one's attorney;

the Rule requires service on the attorney of record unless service upon the party is ordered by the court. Mr. Kohler does not dispute that his attorneys received the Agreed Entry and responded to it promptly. There is no basis for a reversal on these grounds. Whether his attorneys failed to send copies to him because they "anticipated" that he would be served by the court, as he claims, is immaterial.

{¶ 32} Although it involves an unrelated issue, Mr. Kohler also argues under this assignment of error that the provisions of Loc.R. 8.23 for Settled Judgment Entries "encourage" litigants to try all cases and to avoid settlement because they create ambiguity and insecurity about one's remedy if an agreed entry does not actually reflect the parties' agreement. We disagree. As discussed above, Miami County Loc.R. 8.23 provides a reasonable manner for resolving disputes over agreed entries that have been read into the record. Mr. Kohler did not avail himself of these proceedings. The trial court always has the authority to set a hearing if it believes a hearing is necessary. In our view, Loc.R. 8.23 cannot reasonably be interpreted to encourage litigation over settlement; in fact, it appears to be designed to resolve matters efficiently without additional litigation.

{¶ 33} The fifth assignment of error is overruled.

IV

{¶ 34} The judgment of the trial court will be affirmed.

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BROGAN, J. and FAIN, J., concur.

Copies mailed to:

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