

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
UNION COUNTY**

MAUREEN G. WELCH,

PLAINTIFF-APPELLEE,

CASE NO. 14-14-05

v.

ROBERT E. WELCH,

OPINION

DEFENDANT-APPELLANT.

**Appeal from Union County Common Pleas Court
Domestic Relations Division
Trial Court No. 2013 DR 0070**

Judgment Affirmed

Date of Decision: April 27, 2015

APPEARANCES:

***Alison Boggs* for Appellant**

***Kevin P. Collins* for Appellee**

WILLAMOWSKI, J.

{¶1} Defendant-appellant, Robert Welch (“Robert”), brings this appeal from the judgment of the Common Pleas Court of Union County, Ohio, Domestic Relations Division, which adopted the magistrate’s decision on the complaint for divorce filed by plaintiff-appellee, Maureen Welch (“Maureen”), and Robert’s answer and counterclaim thereto. Robert challenges the trial court’s findings with respect to division of marital property, spousal support, and alleged financial misconduct by Maureen. Additionally, Robert asserts that the magistrate of the trial court acted in an improper and prejudicial manner during the proceedings. For the reasons that follow, we affirm the trial court’s judgment.

Relevant Facts and Procedural History

{¶2} Robert and Maureen were married on April 28, 1979. On April 5, 2013, Maureen filed a complaint for divorce, in which she requested an equitable division of assets and liabilities, as well as temporary and permanent spousal support. (R. at 2, Compl.) Robert answered and filed a counterclaim for divorce on May 9, 2013, requesting a division of assets and liabilities. (R. at 13.) Additionally, in his pretrial statement, Robert asserted that allocation of property “based upon the theory of equal division to each spouse” would be inequitable, suggesting “inequitable conduct or dissipation of assets by one spouse.” (R. at 30.)

{¶3} A magistrate of the trial court conducted a hearing on October 28, 2013. During the hearing, the parties testified about their assets and their wishes as to those assets. Several times, the magistrate interjected itself in the proceedings. For example, upon Maureen's statement that she would like the marital residence sold, Maureen's attorney began questioning her about the value of the residence and about Robert's ability to buy Maureen's share. (Tr. of Proceedings at 9-11, Oct. 28, 2012.) The magistrate interrupted this questioning, called attorneys to the bench, and asked what the parties were proposing with respect to the marital residence. (Tr. at 12.) The following discussion then occurred between the magistrate and Robert's attorney:

THE COURT:¹ Now, what is it your client wants with the house? What are you going to do with it?

MR. JIMENEZ: My client wants to keep the entire house. We –

THE COURT: How is he going to pay her share?

MR. JIMENEZ: Well, she's given her testimony. We believe there's been a substantial dissipation of assets and we're -- we intend to establish that during today's testimony.

THE COURT: Okay.

MR. JIMENEZ: Okay.

THE COURT: But you're arguing dissipation?

MR. JIMENEZ: Yes.

¹ Although the trial transcript references "the court," it was the magistrate of the trial court asking the questions quoted here.

THE COURT: Does he intend to refinance the house or is he going to --

MR. JIMENEZ: There's no debt on the house right now. It's all paid off.

THE COURT: Okay. Then basically he's not going to sell the house under any circumstances?

MR. JIMENEZ: Well, I wouldn't say that. I would say that what my client wants is to retain the home. If, and again, in his view at least, the parties had -- had common investments, common --

THE COURT: All right. Then you're not going to answer my [sic] directly. Go ahead.

MR. JIMENEZ: I'm sorry.

THE COURT: You're not answering my question. You can step back.

MR. JIMENEZ: Okay.

(Tr. at 12-13.) No objections were made to the magistrate's questioning.

{¶4} Maureen testified that she retired from Verizon after working there for thirty-two years. (Tr. at 21-22.) She testified that she had had a pension plan with Verizon, which she took out as "a lump sum." (Tr. at 23.) It had approximately \$265,000.00 in 2007, but at the time of the trial its value was "roughly" 38,000.00. (Tr. at 41-42.) She explained that she "took a \$50,000 payout from [her] retirement. Purchased a new car and the remainder was used on siding for the house, the new windows for the house, and all that that entailed." (Tr. at 25.) She also explained that there was about \$30,000.00 fee on the \$50,000.00 withdrawal.

(*Id.*) Maureen further testified that she took out \$5,000.00 “to pay for food at [their] daughter’s wedding” and additional money “to work on the front porch of [their] home.” (Tr. at 26.) She testified that apart from the car, she did not buy anything for her own benefit with the retirement money. (*Id.*) When she was asked to explain where the rest of the funds from her retirement went, she stated:

I know that I took several large hits when the economy first went down here several years like a lot of people. I also took money out at different times. I did take money out to work on the shed and also when we did the front porch. And I used it to do those items plus normal living expenses.

(Tr. at 42.)

{¶5} Maureen admitted that these withdrawals occurred throughout the years 2008-2013, and that she paid tax penalties for each withdrawal. (Tr. at 27, 44-45, 58; D’s Ex. A-F.) In summary, Maureen agreed that the payouts amounted to “at least 150,000” and that she did not discuss the payouts or withdrawals with her husband. (Tr. at 46.) She did not discuss the tax consequences of the withdrawals or the use of the funds with Robert. (Tr. at 58.) She testified, however, that Robert benefited from the withdrawals because she used the money to pay bills, buy groceries, work on the house, and pay for vacation on which they went together. (Tr. at 57-58.) Maureen testified that she did not feel the need to discuss her financial decisions with Robert because throughout the years they always had separate accounts and made financial decisions separately, without discussing them with each other. (Tr. at 58-59.) Maureen was also asked to

confirm several larger sums of money spent or withdrawn from her retirement account and her checking account. (Tr. at 24-25, 44-54.)

{¶6} Maureen classified the standard of living during the marriage as “Middle class.” (Tr. at 36.) At the time of the divorce proceedings Maureen was working twenty-five hours a week as a teacher’s aide. (Tr. at 21-22.) She admitted, however, that she would be capable of earning more if she worked full time. (Tr. at 33.) She testified that at the time of the trial her spendings exceeded her earnings, and she was requesting about \$300.00 to \$400.00 in spousal support to assist with her bills. (Tr. at 31-32.)

{¶7} Robert testified that he was not aware of the money withdrawals made by his wife. (Tr. at 65.) He testified about the value of the marital assets and confirmed that the marital residence had new windows, new siding, and a shed. (Tr. at 79-81.) He confirmed that Maureen came up with the money to pay for their daughter’s wedding. (Tr. at 81-82.) Throughout his testimony Robert confirmed that he did not ask Maureen how she came up with the money for the new car, siding, windows, and other expenses. (See Tr. at 81-82, 88-89.) Robert testified that throughout the marriage they paid household expenses “50/50,” and he did not contradict Maureen’s testimony that she continued to pay 50% of household expenses even when she was making less money or when she was not working. (Tr. at 89-90, 93-94.) He never questioned how Maureen was covering her share. (See *id.*) Toward the end of his testimony, Robert testified that he did

not have documents to support allegations of Maureen's financial misconduct, other than what was provided at trial. (Tr. at 84.)

{¶8} On November 19, 2013, the magistrate filed its decision. (R. at 34.) As relevant to this appeal, the magistrate's decision addressed Robert's allegations of financial misconduct by Maureen due to her dissipation of her retirement funds "without the consent or knowledge of Husband." (*Id.* at 3.) The magistrate commented that "[t]here was no evidence of profligate spending by Wife for amusement, recreation, or self-indulgence" and that the testimony and records adduced at trial were "insufficient to clearly establish that Wife either profited from the alleged spending misconduct or intentionally acted so as to defeat Husband's distribution of assets." (*Id.* at 4-5.) Considering the appropriateness and reasonableness of spousal support, the magistrate found that Maureen was voluntarily underemployed and imputed income to her in the amount of \$29,000.00 per year. Robert's income was \$43,190.00 per year. After considering statutory factors of R.C. 3105.18, the magistrate recommended that Robert pay spousal support to Maureen in the sum of \$350.00 per month for a period of nine years.

{¶9} At the end of the magistrate's decision a "notice of right to object" was included, advising the parties of the process for filing objections to the magistrate's decision. (*Id.* at 11-12.) The notice included the following language: "the parties are hereby advised that a party may 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 through this process." (*Id.*)

{¶10} Robert raised two objections to the magistrate's decision. (R. at 37.) In the first objection Robert argued that "the trial court failed to find the plaintiff committed financial misconduct; which resulted in diminishing the marital estate substantially hurting the defendant." (*Id.*) As the second objection to the magistrate's decision, Robert alleged that "the court erred in making a spousal support order."² (*Id.*)

{¶11} The trial court overruled Robert's objections, finding that although "it was incredibly bad judgment to use the retirement funds in the manner that Wife did * * * , the law does not define financial misconduct by weighing prudential judgment—no matter how bad it is." (R. at 40.) Therefore, after independent review, the trial court concluded "that the evidence did not support a finding of financial misconduct." (*Id.*) The trial court further considered "Wife's mismanagement of the retirement account and [her] decision to retire at an early age * * * in weighing the equity in an order of spousal support," and concluded that the magistrate's "recommendation on the scope and duration of an order of

² Maureen moved to dismiss Robert's objections, noting that they were filed one day late. (R. at 38.) The trial court agreed that "the objections were not filed within the time allowed by statute and [were] therefore, procedurally defaulted." (R. at 40.) Nonetheless, the court undertook "an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law." (*Id.*) Maureen did not file a notice of appeal to challenge the trial court's decision to independently review the objections. We thus do not address the argument from Brief of Plaintiff-Appellee, in which Maureen asks us to disregard the first and second assignments of error for failure to timely object in the trial court.

spousal support is just and equitable.” (*Id.*) The trial court therefore approved and adopted the magistrate’s decision.

{¶12} Robert filed the instant appeal, asserting the following assignments of error.

- I. THE TRIAL COURT’S DECISION THAT MRS. WELCH DID NOT COMMIT FINANCIAL MISCONDUCT WITH THE FUNDS SHE WITHDREW FROM HER RETIREMENT ACCOUNT FROM THE DATE OF HER RETIREMENT FROM VERIZON THROUGH THE FINAL HEARING IN THIS MATTER WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.
- II. THE TRIAL COURT ERRED IN GRANTING MRS. WELCH SPOUSAL SUPPORT.
- III. THE TRIAL COURT ERRED WHEN IT INSERTED ITSELF IN THE PROCEEDING, WHICH CAUSED CONFUSION AND RATHER NONSENSICAL TESTIMONY THAT RESULTED IN PREJUDICE TO APPELLANT.
- IV. THE TRIAL COURT ERRED WHEN IT DID NOT RECOGNIZE THAT THE ATTORNEYS WERE NOT MAKING A COMPLETE RECORD TO PROPERLY DETERMINE WHAT CONSISTED OF THE MARITAL ASSETS. THE COURT HAD A DUTY TO SUA SPONTE, CONTINUE THE MATTER FOR A PROPER PRESENTATION OF THE EVIDENCE.
- V. THE TRIAL COURT ERRED HOW IT DIVIDED THE MARITAL PROPERTY, GIVING MRS. WELCH A GREATER PORTION BY NOT COMPLETELY CONSIDERING HER CONSTANT WITHDRAWALS FROM HER PENSION WITHOUT PROVIDING DOCUMENTATION BY WAY OF RECEIPTS TO SUPPORT HER CLAIMS THAT MR. WELCH BENEFITTED FROM HER SPENDING.

First Assignment of Error—Financial Misconduct

{¶13} In this assignment of error, Robert argues that the trial court’s finding regarding alleged financial misconduct by Maureen was against the manifest weight of the evidence. The finding of financial misconduct is relevant to the division of marital property, as R.C. 3105.171 allows the trial court, upon a finding of financial misconduct, to “compensate the offended spouse with a distributive award or with a greater award of marital property.” R.C. 3105.171(E)(4); *accord Huener v. Huener*, 110 Ohio App.3d 322, 324, 674 N.E.2d 389 (3d Dist.1996). It is well-established that the trial court has discretion to determine whether a spouse engaged in financial misconduct. *Walker v. Walker*, 3d Dist. Marion No. 9-12-15, 2013-Ohio-1496, ¶ 14; *Eggeman v. Eggeman*, 3d Dist. Auglaize No. 2-04-06, 2004-Ohio-6050, ¶ 19. We must presume that the findings of the trier of fact are correct, because the trier of fact is in the best position to evaluate the witnesses’ credibility when it views the witnesses, observes their demeanor, gestures, and voice inflections. *Id.* Therefore, we will not reverse the trial court’s decision as being against the manifest weight of the evidence if it is supported by some competent, credible evidence. *Id.*

{¶14} It is important to note that the burden of proving financial misconduct is on the complaining party. *Smith v. Emery-Smith*, 190 Ohio App.3d 335, 2010-Ohio-5302, 941 N.E.2d 1233, ¶ 50 (11th Dist.); *Bostick v. Bostick*, 8th

Dist. Cuyahoga No. 90711, 2008-Ohio-5119, ¶ 23; *Mikhail v. Mikhail*, 6th Dist. Lucas No. L-03-1195, 2005-Ohio-322, ¶ 25; *Jacobs v. Jacobs*, 4th Dist. Scioto No. 02CA2846, 2003-Ohio-3466, ¶ 25. “Financial misconduct includes, but is not limited to, the dissipation, destruction, concealment, or fraudulent disposition of assets.” *Eggeman* at ¶ 18, citing R.C. 3105.171(E)(3) (currently R.C. 3105.171(E)(4)). But a trial court should not find that financial misconduct occurred under R.C. 3105.171 unless there is evidence of “some type of ‘wrongdoing.’ ” *Id.* at ¶ 24. Furthermore, the trial court will not apply R.C. 3105.171(E)(4) to compensate the offended spouse for the other’s misconduct unless the evidence clearly shows “that the offending spouse either profited from the alleged misconduct or intentionally defeated the other spouse’s distribution of assets.” *Id.*; *see also Bostick* at ¶ 23 (“Financial misconduct implies some type of wrongdoing in that the offending spouse will either profit from the misconduct or intentionally defeat the other spouse’s distribution of marital assets.”); *Wideman v. Wideman*, 6th Dist. Wood No. WD-02-30, 2003-Ohio-1858, ¶ 34; *Kita v. Kita*, 9th Dist. Summit No. 19256, 1999 WL 1068450, *2 (Nov. 24, 1999).

{¶15} Our review of the record supports the trial court’s conclusion that there was insufficient evidence to find financial misconduct by Maureen. Robert did not contradict Maureen’s testimony about spending her retirement funds toward various marital expenses and a car purchase. He confirmed her testimony about tax penalties, which further diminished the funds. He admitted at trial that

he never discussed finances with his wife. Furthermore, although Robert questioned Maureen's financial decisions, he admitted that he did not have any documentation to support his allegations of financial misconduct. His claim on appeal that the trial court failed to give full consideration to all exhibits lacks merit. Even though some exhibits show that Maureen spent larger amounts of money from her checking account between 2011 and 2013, Robert provided no evidence to show that she used this money in a manner amounting to "the dissipation, destruction, concealment, or fraudulent disposition of assets," rather than for legitimate living expenses and other needs. *Eggeman* at ¶ 18, citing R.C. 3105.171(E)(3) (currently R.C. 3105.171(E)(4)).

{¶16} Therefore, we agree with the trial court that Robert did not satisfy his burden of proving financial misconduct and we overrule the first assignment of error.

Second Assignment of Error—Spousal Support

{¶17} Robert challenges the trial court's order of spousal support, alleging that the trial court considered the standard of living the parties enjoyed before Maureen's retirement instead of the post-retirement standard of living. Robert further claims that the trial court erred because it failed to find that he "had 'sufficient income to satisfy the spousal support award.' " (App't Br. at 19, quoting *Detlef v. Detlef*, 6th Dist. Lucas No. L-00-1137, 2001 WL 1590095, *8 (Dec. 14, 2001)). When reviewing these challenges, we are required to defer to

the trial court's judgment because a trial court has broad discretion on issues concerning awards of spousal support, and its order will not be reversed absent an abuse of that discretion. *Siekfer v. Siekfer*, 3d Dist. Putnam No. 12-06-04, 2006-Ohio-5154, ¶ 15; *see also Kunkle v. Kunkle*, 51 Ohio St.3d 64, 67, 554 N.E.2d 83 (1990). A trial court will not be found to have abused its discretion unless its decision is contrary to law, unreasonable, not supported by the evidence, or grossly unsound. *Muckensturm v. Muckensturm*, 3d Dist. Hancock No. 5-11-38, 2012-Ohio-3062, ¶ 16; *Bruce v. Bruce*, 3d Dist. Marion No. 9-10-57, 2012-Ohio-45, ¶ 13.

{¶18} The award of spousal support is not based solely on the “need” of the party, but on what is “appropriate and reasonable” under many factors, which are listed in R.C. 3105.18(C)(1). *Muckensturm* at ¶ 20. R.C. 3105.18, which governs the trial court's award of spousal support, requires the court to consider all fourteen of the factors listed there when determining whether spousal support is “appropriate and reasonable,” and when determining the nature, amount, terms of payment, and duration of the support. *Strasburg v. Strasburg*, 3d Dist. Auglaize No. 2-10-12, 2010-Ohio-3672, ¶ 26. The factors listed in R.C. 3105.18(C)(1) are:

- (a) The income of the parties, from all sources, including, but not limited to, income derived from property divided, disbursed, or distributed under section 3105.171 of the Revised Code;
- (b) The relative earning abilities of the parties;

- (c) The ages and the physical, mental, and emotional conditions of the parties;
- (d) The retirement benefits of the parties;
- (e) The duration of the marriage;
- (f) The extent to which it would be inappropriate for a party, because that party will be custodian of a minor child of the marriage, to seek employment outside the home;
- (g) The standard of living of the parties established during the marriage;
- (h) The relative extent of education of the parties;
- (i) The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties;
- (j) The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party;
- (k) The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is, in fact, sought;
- (l) The tax consequences, for each party, of an award of spousal support;
- (m) The lost income production capacity of either party that resulted from that party's marital responsibilities;
- (n) Any other factor that the court expressly finds to be relevant and equitable.

R.C. 3105.18(C)(1); *Muckensturm* at ¶ 17. Here, the magistrate listed all factors of R.C. 3105.18(C)(1) and analyzed them in fifteen enumerated paragraphs. (R. at 34, at 8-9.) The trial court then independently reviewed the evidence “as applied to the factors set forth in R.C. 3105.18.” (R. at 40.) Therefore, the magistrate and the trial court satisfied the requirements of R.C. 3105.18(C)(1).

{¶19} Robert contends, however, that the magistrate and trial court neglected to make a specific finding that he had sufficient income to satisfy the spousal support award. He quotes *Detlef*, 6th Dist. Lucas No. L-00-1137, 2001 WL 1590095, *8 (Dec. 14, 2001), to suggest that such a finding was necessary. But in *Detlef*, the Sixth District Court of Appeals merely took note of the trial court’s finding “that appellant has sufficient income to satisfy the spousal support award and continue to meet his own monthly expenses,” which further supported an award of spousal support. *Id.* Neither *Detlef* nor R.C. 3105.18(C)(1) expressly mandate that the trial court consider whether the payor spouse has sufficient income to satisfy the support payment, although consideration of this issue is implied within the factors of R.C. 3105.18(C)(1), to a certain extent.

{¶20} We note that in its decision, the magistrate specifically recognized Robert’s argument that “he does not have the financial means to pay support.” (R. at 34, at 7.) The magistrate then determined that Robert’s income was \$43,190.00 per year (about \$3,599.00 per month); his expenses after the sale of the house would be \$2,500.00 per month; and the payment of spousal support “should result

in a federal income tax savings” of about \$778.00 per year to Robert. (*Id.* at 9.) The magistrate further stated that it gave “special consideration to * * * the budgets and expenses of both parties,” among other factors. (*Id.* at 10.) Therefore, we cannot conclude that the magistrate and the trial court ignored Robert’s ability to pay spousal support, even though no express finding was made that Robert’s income was “sufficient” to satisfy the spousal support.

{¶21} Robert further asserts that the trial court erred in its analysis of factor (g) of R.C. 3105.18(C)(1), because it allegedly awarded spousal support based on the standard of living that he and Maureen enjoyed prior to Maureen’s retirement. Robert does not point to the parts of the magistrate’s decision or the trial court’s judgment entry that support this assertion. The magistrate did not state that he was attempting to allow the parties to maintain the pre-retirement standard of living. Instead, the magistrate found, “The marital standard of living afforded the parties’ [sic] some economic discretion but just provided the parties an ability to maintain themselves consistent with their culture and community standards. The standard of living was middleclass.” (R. at 34, at 9, ¶ 8.) This finding is consistent with Maureen’s uncontested trial testimony. (*See* Tr. at 36.) Neither the magistrate nor Maureen distinguished between the pre-retirement standard of living, as opposed to the post-retirement standard of living. Therefore, there is nothing to support Robert’s assertion that the trial court “considered the parties’ standard of living to

be that standard they enjoyed before the [sic] Mrs. Welch retired.” (App’t Br. at 18.)

{¶22} Furthermore, it is important to note that the trial court imputed to Maureen her pre-retirement income, and the spousal support was based on Maureen’s imputed income, not her actual income. (R. at 34, at 8-10.) Therefore, we cannot conclude that Robert would have been prejudiced by the trial court’s consideration of the standard of living they enjoyed before Maureen’s retirement. Accordingly, we find Robert’s complaint that the trial court erred by considering their standard of living they enjoyed before Maureen’s retirement to have no merit.

{¶23} Our review of the record does not indicate that the trial court abused its discretion when ordering spousal support. Therefore, we overrule Robert’s second assignment of error.

***Third, Fourth, and Fifth Assignments of Error—
Plain Error Analysis***

{¶24} In the third assignment of error, Robert complains about the magistrate’s involvement in the proceedings, alleging that the magistrate’s interruptions “possibly affected the presentation of any other evidence that he intended to introduce.” (App’t Br. at 20.) He further alleges, without any proof of bias or prejudice, that “the magistrate was unable to remain impartial, and had pre-

judged the case regarding financial misconduct.”³ (*Id.* at 21.) He claims that as a result, “evidence was not presented correctly and it is unclear how much did not even make it to the record because of the interference with the proceedings.” (*Id.*)

{¶25} In the fourth assignment of error, Robert faults the magistrate for not, sua sponte, ordering a continuance of the proceedings, when it was allegedly “clear that the attorneys were not providing him with accurate and complete evidence to render a sound decision.” (App’t Br. at 22.) He asserts that the evidence presented at trial was incomplete and as a result, the trial court’s decisions regarding financial misconduct and the division of the property were improperly rendered.

{¶26} In the fifth assignment of error, Robert challenges the trial court’s division of the marital property.

{¶27} None of the challenges raised in these three assignments of error was brought to the attention of the trial court. Accordingly, we decline to address them under the well-established principle that failure to timely advise a trial court of possible error, by objection or otherwise, results in a forfeiture of the issue for purposes of appeal. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 1997-Ohio-401, 679 N.E.2d 1099 (1997); *Am. Builders & Contrs. Supply Co. v. Frank’s*

³ The quoted sections of the trial transcript hardly evidence that the magistrate “had pre-judged the case.” Robert suggests that the magistrate’s questioning regarding whether he would be willing to refinance or sell the house “*clearly alluded* to the fact that [the magistrate] was not going to find financial misconduct before Mr. Welch’s case began.” (Emphasis added.) (App’t Br. at 20-21.) Apart from being an oxymoron, Robert’s assertion of the magistrate “clearly alluding” that he had made up his mind is purely speculative and unsupported by any evidence in the record.

Roofing, Inc., 3d Dist. Marion No. 9-11-41, 2012-Ohio-4661, 979 N.E.2d 15, ¶ 17; *see also* Civ.R. 53(D)(3)(b)(iv). Although the plain error doctrine could be applied in “the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself,” this case does not warrant the plain error analysis. *Goldfuss*, syllabus.

{¶28} The plain error doctrine is not favored in appeals of civil cases. *Id.*; *Am. Builders* at ¶ 17. Therefore, it “should never be applied * * * to allow litigation of issues which could easily have been raised and determined in the initial trial.” *Goldfuss* at 122. Robert does not allege that any of the issues raised in assignments of error III through V, could not have been raised in the trial court. Furthermore, he does not argue that the errors alleged in the case at bar are of such extreme and exceptional nature that the legitimacy of the judicial process is undermined. In Robert’s own words, the alleged errors “possibly affected” judicial proceedings in this case and “and it is unclear how much did not even make it to the record because of the interference with the proceedings.” (App’t Br. at 20, 21.)

{¶29} Robert had an opportunity to present evidence at trial or to request a continuance. He had a chance to object during the proceedings to the alleged interruptions by the magistrate. He also had the right to object to the magistrate’s

decision after being expressly advised of this right and the consequences of a failure to object in the magistrate's decision. He failed to avail himself of the opportunities provided by the adversarial process and now demands that we find fault in the trial court's actions and decisions. Yet, even on appeal Robert fails to assert or argue that a plain error occurred as a result of any of those alleged errors. We refuse to sua sponte undertake a plain error analysis when Robert fails to do so. *See Krill v. Krill*, 3d Dist. Defiance No. 4-13-15, 2014-Ohio-2577, ¶ 70, citing *McMaster v. Akron Health Dept., Housing Div.*, 189 Ohio App.3d 222, 2010-Ohio-3851, ¶ 20-21 (9th Dist.); *In re M.W.R.*, 12th Dist. Butler Nos. CA2007-04-105 and CA2007-04-106, 2007-Ohio-6169, ¶ 15-16, and *McCombs v. Blackert*, 3d Dist. Crawford No. 3-11-03, 2011-Ohio-5079, ¶ 14.

{¶30} Accordingly, we overrule the third, fourth, and fifth assignments of error.

Conclusion

{¶31} Having reviewed the arguments, the briefs, and the record in this case, we find no error prejudicial to Appellant in the particulars assigned and argued. The judgment of the Common Pleas Court of Union County, Ohio, Domestic Relations Division, is therefore affirmed.

Judgment Affirmed

ROGERS, P.J. and SHAW, J., concur.

/jlr