

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RUTH L. JUSTICE	:	JUDGES:
	:	William B. Hoffman, P.J.
Plaintiff-Appellee	:	Sheila G. Farmer, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 03-CA-24
LLOYD A. JUSTICE	:	
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Civil Appeal From Fairfield County Court Of Common Pleas, Domestic Relations Division Case
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT ENTRY:	March 17, 2004
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APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
LLOYD A. JUSTICE	RUTH L. JUSTICE
P. O Box 1444	P. O. Box 1335
Lancaster, OH 43130	Lancaster, OH 43130

Edwards, J.

{¶1} Defendant-appellant Lloyd Anthony Justice [hereinafter appellant] appeals from the March 5, 2003, Judgment Decree of Divorce entered by the Fairfield County

Court of Common Pleas, Domestic Relations Division. Plaintiff-appellee is Ruth Loretta Justice [hereinafter appellee].

STATEMENT OF THE FACTS AND CASE

{¶2} This case has a somewhat convoluted history. Therefore, this statement of facts shall be limited to those facts which are relevant to our disposition of this case.

{¶3} Appellant and appellee were married by common law sometime in 1997. Five children were born as issue of the marriage.

{¶4} On May 8, 2000, the Fairfield County Child Support Enforcement Agency filed a complaint in the Fairfield County Court of Common Pleas, Domestic Relations Division, on the behalf of appellee to determine the residential parent and to establish an order of support. Thereafter, on August 17, 2000, appellee filed a Complaint for Divorce in the Fairfield County Court of Common Pleas, Domestic Relations Division. Subsequently, appellee filed a motion to consolidate the two cases. That motion was granted.

{¶5} On May 3, 2001, appellant filed a motion which requested an order transferring the case to a different jurisdiction so that appellant could receive a fair trial. In that motion, appellant asserted that he was “fearful that the negative feelings of the court and this community for the defendant have made it impossible for the defendant to receive a fair trial in this court.” On May 10, 2001, the trial judge assigned to the case recused himself from any further judicial involvement. On July 27, 2001, a judge from the Licking County Court of Common Pleas, Domestic Relations Division, was assigned by the Ohio Supreme Court’s Chief Justice to preside in the Fairfield County Court of Common Pleas, Domestic Relations Division, to hear this case.

{¶6} The final hearing was held on September 10, 2002. The final hearing was conducted in Licking County. From the record, it would appear that a civil protection order petition which had been filed in the Licking County Court of Common Pleas was set to be heard at the same time. Although appellant had been represented by counsel in this case in the past, appellant had terminated that representation and, therefore, appeared pro se at the final hearing.

{¶7} Following the final hearing, the assigned trial judge entered a Judgment Decree of Divorce on March 5, 2003, clearly indicating that it was a Judgment of the Fairfield County Court of Common Pleas, Domestic Relations Division. In that judgment decree, the trial court indicated that appellee's counsel and appellant's prior counsel had verbally suggested and agreed to hold all hearings at the Licking County Domestic Relations Court location. The Judgment Decree further stated that "given the strong aversions by [appellant] to not only the Fairfield County Court system but the community as well (see [appellant's] motion of May 3, 2001 [Motion to Transfer Jurisdiction]), it was presumed this court would proceed with the case under its own local rules but keep the Fairfield County case number."

{¶8} On April 4, 2003, appellant filed a notice of appeal from the March 5, 2003, Judgment Entry of the Fairfield County Court of Common Pleas, Domestic Relations Division. Appellant raises the following assignments of error on appeal:¹

{¶9} "I. THE TRIAL COURT ERRED IN APPLYING THE LOCAL RULES OF THE LICKING COUNTY DOMESTIC RELATIONS COURT, THEREBY DENYING APPELLANT THE ABILITY TO PROVIDE A TRANSCRIPT OF THE FINAL HEARING.

¹ Appellant has filed his brief pro se. As such, appellant's assignments of error have been modified to conform with the practice of this Court.

{¶10} “II. THE TRIAL COURT ERRED WHEN IT DID NOT HEAR THE APPELLEE STATE THAT APPELLEE EARNED APPROXIMATELY \$6.30 PER HOUR AND THERE IS NO RECORD OF THE PROCEEDINGS TO VERIFY APPELLEE'S TESTIMONY.

{¶11} “III. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT COMBINED MONTHLY BENEFITS TOTALED \$23,493.00 PER YEAR.

{¶12} “IV. THE TRIAL COURT ERRED IN DETERMINING CHILD SUPPORT AND ARREARAGES.

{¶13} “V. THE TRIAL COURT ERRED IN DETERMINING THE GUARDIAN'S FEES.

{¶14} “VI. THE TRIAL COURT ERRED IN ITS DETERMINATION OF DISABILITY INCOME.

{¶15} “VII. THE TRIAL COURT DID NOT INQUIRE SUFFICIENTLY AS TO WHY APPELLANT HAD 17 WITNESSES IN THE HALLWAY, MOST OF WHICH WERE PUBLIC OFFICIALS AND POLICE OFFICERS.

{¶16} “VIII. THE TRIAL COURT ERRED WHEN IT STATED THAT ALL MOTIONS WOULD BE RULED ON AT THE TRIAL DATE OF SEPTEMBER 10, 2002, WHEN THE TRIAL COURT DID NOT RULE UNTIL MARCH 5, 2003.

{¶17} “IX. THE TRIAL COURT ERRED WHEN IT CHOSE NOT TO INTERVIEW KEVIN JUSTICE, AGE 17, REGARDING VIOLENT GUN PLAY APPELLEE HAD SUBJECTED HIM TO.

{¶18} “X. THE TRIAL COURT ERRED WHEN IT HAD EX PARTE COMMUNICATIONS WITH APPELLEE AND COUNSEL TO ARRANGE AN INTERVIEW OF TWO OF THE MINOR CHILDREN.

{¶19} “XI. THE TRIAL COURT COMMITTED ERROR WHEN IT DECIDED THIS MATTER IN A BIASED FASHION.

{¶20} “XII. THE TRIAL COURT ERRED WHEN IT CHOSE TO IGNORE ALIENATION PRACTICES AND RULINGS AGAINST SUCH.”

I

{¶21} Appellant presents several assignments of error. However, the first assignment of error is dispositive. In the first assignment of error, appellant contends that the trial court erred when it applied the Licking County Local Rules rather than the Fairfield County Local Rules. We agree.

{¶22} The trial judge in this case sat by assignment of the Ohio Supreme Court after the Fairfield County Judge recused himself. Thus, the trial judge in this case sat as a Fairfield County Judge. The case proceeded as a Fairfield County case despite the fact that the parties and counsel traveled to Licking County for the proceedings. Since this was a Fairfield County case with a trial judge sitting in Fairfield County by assignment, the Fairfield County Local Rules applied. See *Kostrevski v. Kostrevski* (July 1, 1993), Franklin App. No. 92AP-1587.

{¶23} Further, we note that while the trial judge addressed the issue of the local rules in the Divorce Decree, the Divorce Decree stated that it was “presumed” that the case would be heard under Licking County Local Rules. Thus, the Divorce Decree

does not indicate that appellant consented to or had notice of the fact that the Licking County Local Rules would apply.

{¶24} Appellant further asserts that he was prejudiced by the application of Licking County's Local Rules. Appellant asserts that he was denied the opportunity to have a court reporter or otherwise create a record under the Licking County Local Rules because he failed to make a request in advance of the hearing. Appellant asserts that the Fairfield County Local Rules have no such requirement. A review of the Licking County and Fairfield County Local Rules demonstrates that appellant is correct. There is no need to request in advance that a record be kept of a final hearing under the Fairfield County Local Rules while there is such a requirement in the Licking County Local Rules.

{¶25} Accordingly, we find that the trial court committed reversible error in applying the Licking County Local Rules to this case. This case was a Fairfield County case being heard by a trial judge sitting by assignment to Fairfield County. It is irrelevant that the proceedings were physically conducted in Licking County.

{¶26} Appellant's first assignment of error is sustained.

II

{¶27} Pursuant to our holding in assignment of error, I, we find that appellant's remaining assignments of error are moot.

{¶28} The judgment of the Fairfield County Court is reversed. This matter is remanded for a new trial.

By: Edwards, J. and

Farmer, J. concur.

Hoffman, P.J. dissents

Hoffman, P.J., dissenting

While I concur in the majority's decision the trial court erred in not applying Fairfield County Local Rules, I dissent from the majority's opinion such error requires a reversal and remand for a new trial.

While appellant asserts prejudice due to the lack of a court reporter to create a record, his failure to attempt to avail himself of App. R. 9(C) precludes a finding of prejudice.

I would affirm the trial court's decision on the authority of *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197.

JUDGE WILLIAM B. HOFFMAN