[Cite as *He v. Zeng*, 2010-Ohio-2095.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

XIAOWEI HE

Plaintiff-Appellant

-vs-

QINGYU ZENG

Defendant-Appellee

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. Sheila G. Farmer, J.
Hon. John W. Wise, J.

Case No. 2009-CA-00060

O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas, Domestic Relations Division, Case No. 01 DR 00082 RPW
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	May 11, 2010

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
XIAOWEI HE, PRO SE 5027 Hibbs Dr. Columbus, OH 43220	QINGYU ZENG, PRO SE 3389 Prestwyck Lane Richfield, OH 44286

Hoffman, P.J.

{¶1} Plaintiff-appellant Xiaowei He ("Wife") appeals the April 13, 2009 Judgment Entry entered by the Licking County Court of Common Pleas, which affirmed the July 22, 2008 Administrative Termination Hearing Decision and denied her objections to the Magistrate's February 3, 2009 Decision. Defendant-appellee is Qingyu Zeng ("Husband").

STATEMENT OF THE FACTS AND CASE

{¶2} Husband and Wife were married on January 18, 1989, in Shanghai, China. One child, a son, was born as issue of said union, to wit: Feihua Zeng (DOB 11/5/89).

{¶3} On January 23, 2001, Wife filed a Complaint for Divorce in the Licking County Court of Common Pleas, Domestic Relations Division, asserting gross neglected duty, extreme cruelty and incompatibility as grounds. Husband filed an Answer and Counterclaim on March 2, 2001, with leave from the trial court. Upon agreement of the parties, the trial court appointed a guardian ad litem for the child. The trial court issued temporary orders, which required Husband to pay child support in the amount of $856.23/month plus processing charges. At the time of the order, Husband was working for Owens Corning, earning over $87,000 annually.

{¶4} Husband's employment was subsequently terminated due to downsizing. Husband requested a modification of the temporary orders. The trial court did not take any action on the motion until approximately 2 years later. Via Judgment Entry filed May 15, 2003, the trial court modified the child support order as follows: From April 1, 2001, through September 30, 2001, Husband's child support obligation was

$466.07/month plus processing charges; from October 1, 2001, through January 31, 2003, the amount of child support was reduced to $200/month plus processing charges; and commencing February 1, 2003, the amount increased to $231.99/month plus processing charges.

{¶5} The trial court issued its Decree of Divorce and Shared Parenting Plan on May 23, 2003. Pursuant to the Shared Parenting Plan, Husband was obligated to pay child support in the amount of $171.99/month plus processing charges. The child support figure was based upon Husband earning an annual income of $15,034/annually, and imputing an income of $5.15/hour to Wife, for annual income of $10,712. Wife filed a timely Notice of Appeal. This Court affirmed in part; and reversed and remanded in part the decision of the trial court. *He v. Zeng*, Licking App. No. 2003CA00056, 2004-Ohio-2434. Wife did not assign in her prior appeal error as to the trial court's child support order.

{¶6} On October 7, 2005, the Licking County Child Support Enforcement Agency conducted an administrative hearing relative to the child support order. Via Findings and Recommendations filed in the trial court on October 24, 2005, CSEA recommended Husband pay child support in the amount of $738.27/month plus processing charges, commencing October 1, 2005. CSEA found Husband's current income was $82,000/year. The trial court adopted the findings and recommendations of CSEA via Judgment Entry filed November 30, 2005. The trial court found a substantial change in circumstances since the original support order filed May 23, 2003. Neither party appealed this judgment entry.

{¶7} On May 22, 2008, CSEA filed a Notice of Child Support Investigation/Termination of Support, finding Husband's child support obligation should terminate on June 1, 2008, as the parties' son was 18 years of age and/or graduated from high school. Wife disputed CSEA's findings and recommendations, and requested an administrative hearing, which was conducted on July 7, 2008. The hearing officer issued her decision on July 22, 2008, recommending the termination of child support as the parties' son had reached the age of 18, and had graduated from high school on June 5, 2008. Wife appealed the decision of the hearing officer to the trial court. The matter came on for hearing before the magistrate on January 20, 2009. The magistrate issued a decision on February 3, 2009, affirming the termination of Husband's child support obligation.

{¶8} Via Opinion filed February 18, 2009, the trial court adopted the magistrate's decision, noting no objections had been filed. Wife informed the trial court she had filed objections to the magistrate's decision on February 17, 2008, however, such filing did not appear on the trial court's docket. The trial court permitted Wife to file her objections, and vacated the February 18, 2009 Opinion. Husband filed a timely response to Wife's objections. The trial court denied Wife's objections via Opinion dated March 12, 2009. Thereafter, on April 13, 2009, the trial court issued a Judgment Entry, affirming the Administrative Termination Hearing Decision filed July 22, 2008, and again denying Wife's objections to the magistrate's decision.

{¶9} It is from that judgment entry Wife appeals.

{¶10} Initially, we note Wife's brief does not comply with the rules for a proper brief as set forth in App.R. 16(A). Wife's brief does not include a statement of the

assignments of error for review or a reference to the place in the record where each error is reflected, in violation of App.R. 16(A)(3). Her brief does not include a table of cases, statutes, and other authority, in violation of App.R. 16(A)(1) and (2). Wife's brief does not include a statement of the issues presented for review, as required by App.R. 16(A)(4), or a brief statement of the case, as mandated by App.R. 16(A)(5).

{¶11} Pursuant to App.R. 12(A)(2), we are not required to address issues which are not argued separately as assignments of error, as required by App.R. 16(A). *Kremer v. Cox* (1996), 114 Ohio App.3d 41, 60, 682 N.E.2d 1006; *Hawley v. Ritley* (1988), 35 Ohio St.3d 157, 159, 519 N.E.2d 390. Such deficiencies permit this Court to dismiss Wife's appeal. Notwithstanding the omissions in Wife's brief, in the interests of justice and finality, we elect to review what we believe are the issues raised in Wife's appeal.

{¶12} As best we can decipher, Wife is challenging the trial court's approval and adoption of the magistrate's February 3, 2009 decision.

{¶13} Wife raised three objections to the magistrate's decision. First, Wife objected to the magistrate's failure to retroactively modify child support for the time period between 2003, and 2006, based upon a change in Husband's income, which she submits occurred in 2003. Next, Wife objected to the magistrate's finding Husband's child support obligation terminated on June 5, 2008, the graduation of the parties' son. Finally, Wife objected to the magistrate's failure to find Husband was obligated to pay for their son's college education.

{¶14} We find Wife's first objection is to a factual finding.

{¶15} Ohio Civil Rule 53 states, in pertinent part:

{¶16} "(D)(3)(b) *Objections to magistrate's decision.*

{¶17} " * * *

{¶18} "*(iii) Objection to magistrate's factual finding; transcript or affidavit.* An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections."

{¶19} "(D)(4) *Action of court on magistrate's decision and on any objections to magistrate's decision; entry of judgment or interim order by court.*

{¶20} " * * *

{¶21} "(d) *Action on objections.* If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate."

{¶22} When a party objecting to a magistrate's decision has failed to provide the trial court with the evidence and documents by which the trial court could make a finding

independent of the report, appellate review of the court's findings is limited to whether the trial court abused its discretion in adopting the magistrate's decision and the appellate court is precluded from considering the transcript of the hearing submitted with the appellate record. *State ex rel. Duncan v. Chippewa Twp. Trustees* (1995), 73 Ohio St.3d 728, 654 N.E.2d 1254. In order to find an abuse of discretion, we must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217. We must look at the totality of the circumstances in the case sub judice and determine whether the trial court acted unreasonably, arbitrarily or unconscionably.

{¶23} Because Wife did not file a transcript of the proceedings before the magistrate with her objections, the factual findings of the magistrate are deemed established and may not be attacked on appeal. Accordingly, we review Wife's assignment of error only to analyze whether the trial court abused its discretion in reaching specific legal conclusions based upon the established facts. We find no abuse of discretion in the trial court's approval and adoption of the magistrate's decision not to retroactively modify Husband's child support obligation to 2003.

{¶24} Wife's second objection challenges a legal conclusion. Accordingly, our review is limited to whether the trial court correctly applied the law to the facts as set forth in the magistrate's decision. The magistrate found the parties' son turned 18 years of age on November 5, 2007, and graduated from high school on June 5, 2008. The magistrate determined Husband's obligation to pay child support terminated on June 5, 2008; and Husband was not required to pay child support for the entire month of June, 2008.

{¶25} The common law duty imposed on parents to support their minor child terminates when the child becomes emancipated, either reaching the age of majority or graduating from high school. The parties' son became emancipated on the date of his graduation, June 5, 2008. Husband's support obligation ceased on that day. We know of no law requiring a parent to pay the entire monthly support amount during the month of the child's emancipation. Accordingly, we find the trial court did not abuse its discretion in overruling this objection.

{¶26} Finally, we find the trial court properly overruled Wife's third objection as the parties' Divorce Decree did not obligate Husband to pay for their son's college education.

{¶27} Wife's arguments are overruled.

{¶28} The judgment of the Licking County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

XIAOWEI HE	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
QINGYU ZENG	:	
	:	
Defendant-Appellee	:	Case No. 2009-CA-00060

For the reasons stated in our accompanying Opinion, the judgment of the Licking County Court of Common Pleas, Domestic Relations Division, is affirmed. Costs assessed to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W WISE