

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MARY FALVEY

Plaintiff-Appellant

-vs-

ROBERT FALVEY

Defendant-Appellee

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 09-CA-0061

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Common
Pleas Court, Domestic Relations Division,
Case No. 07-DR-533.

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

May 12, 2010

APPEARANCES:

For Plaintiff-Appellant

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Southeastern Ohio Legal Services
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For Defendant-Appellee

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144 E. Main Street, P.O. Box 667
Lancaster, Ohio 43130

Hoffman, P.J.

{¶1} Plaintiff-appellant Mary Falvey appeals the judgment of the Fairfield County Court of Common Pleas vacating and denying her an extension of time to file objections to the magistrate's decision in favor of Defendant-appellee Robert Falvey.

STATEMENT OF THE CASE

{¶2} Appellant filed a complaint for divorce on December 5, 2007. On May 11, 2009, a hearing was conducted before Magistrate Jeffrey Bender on the amount of child support owed by Appellee, the distribution of healthcare costs and on the issue of spousal support. Magistrate Bender filed his decision on July 10, 2009.

{¶3} On July 24, 2009, Appellant moved the trial court for an extension of time to file objections to the magistrate's decision. The trial court issued a judgment entry granting the extension the same day.

{¶4} On July 28, 2009, Appellee filed a motion to dismiss the motion for extension of time. Via Entry of July 29, 2009, the trial court vacated the July 24, 2009 entry granting the extension.

{¶5} On August 7, 2009, Appellant filed a renewed motion for extension of time to file objections to the magistrate's decision. The trial court set the matter for a non-oral hearing on September 16, 2009. Appellee filed a motion to dismiss the renewed motion on September 15, 2009. Via Entry of September 24, 2009, the trial court denied the renewed motion for an extension of time to file objections to the magistrate's decision. On the same date, the trial court issued a Judgment Entry/Decree of Divorce. Appellant now appeals, assigning as error:

{¶6} “I. THE TRIAL COURT ERRED WHEN IT FAILED TO ALLOW APPELLANT AN EXTENSION OF TIME TO FILE OBJECTIONS TO THE MAGISTRATE’S DECISION WHEN AN EXTENSION WAS NECESSARY FOR HER TO OBTAIN A TRANSCRIPT, A PREREQUISITE TO FILING HER FACTUAL OBJECTIONS.”

{¶7} In the sole assignment of error, Appellant maintains the trial court abused its discretion in denying her motion for an extension of time to file objections to the magistrate’s decision. Specifically, Appellant maintains an extension of time was necessary for her to obtain a transcript of the proceedings before the magistrate, as the transcript is a “prerequisite” to filing her factual objections.

{¶8} Ohio Civil Rule 53 governs the filing of objections to a magistrate’s decision, and reads in pertinent part:

{¶9} “(D) Proceedings in Matters Referred to Magistrates

{¶10} “***

{¶11} “(b) *Objections to magistrate's decision.*

{¶12} “(i) *Time for filing.* A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

{¶13} “***

{¶14} “(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.*” (Emphasis added.)

{¶15} Subsection (D)(5) reads:

{¶16} “(5) *Extension of time.* For good cause shown, the court shall allow a reasonable extension of time for a party to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. “Good cause” includes, but is not limited to, a failure by the clerk to timely serve the party seeking the extension with the magistrate's order or decision.”

{¶17} Fairfield County Local Rule 20.3 provides:

{¶18} “**Transcripts.** If a transcript, or parts thereof, is required to support a party's objections, the party shall request by written motion an extension of time in which to have the transcript prepared. A transcript shall be required if the parties objections relate to the magistrate's findings of fact, unless the parties stipulate as to the facts in issue. If there is a delay caused by the preparation of a transcript, the Court

may make such temporary orders as is deemed necessary and just including the requirement that the party requesting the extension post bond to cover any damages the opposing party may suffer because of the delay.”

{¶19} Upon review of the above, Civil Rule 53 provides for the filing of objections within fourteen days of the magistrate’s decision. If a transcript is required, the objecting party then must file the transcript within thirty days, unless otherwise extended for good cause. The rule allows for the party to file the objections based on the magistrate’s findings of fact and conclusions of law and to supplement the objections when the transcript is available.

{¶20} Local Rule 20.3 does not modify the provisions of Civil Rule 53; rather, reflects the provision for filing objections once the magistrate issues a decision with findings of fact and conclusions of law, which objections may later be supplemented by the transcripts. Both rules allow for an extension of time to file the transcripts for good cause shown, but do not modify the requirement for filing initial objections within fourteen days of the magistrate’s decision.

{¶21} Civil Rule 53(D)(5) does provide for an extension of time to file objections for “good cause” in situations similar to the clerk’s failure to timely serve a party. Here, Appellant has not demonstrated the trial court abused its discretion in failing to find good cause why objections could not be filed within the 14 day time period.

{¶22} Appellant's sole assignment of error is overruled.

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 FAIRFIELD COUNTY, OHIO
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MARY FALVEY

Plaintiff-Appellant

-vs-

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JUDGMENT ENTRY

Case No. 09-CA-0061

For the reasons stated in our accompanying Opinion, the judgment of the
Fairfield County Court of Common Pleas is affirmed. Costs 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