

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BRENDA E. HANNA
Plaintiff-Appellee

-vs-

BRIAN P. HANNA
Defendant-Appellant

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. John W. Wise, J.

Case No. 09CA037

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Knox County Court of
Common Pleas, Domestic Relations
Division Case No. 06DV11-0235

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 4, 2010

APPEARANCES:

For Plaintiff-Appellee

MELISSA M. WILL
SCOTT E. TORGUSON
Southeastern Ohio Legal Services
12 W. Locust St.
Newark, Ohio 43055

For Defendant-Appellant

BRIAN P. HANNA, PRO SE
North Central Correctional Institution
#413-750
P.O. Box 1812
Marion, Ohio 43301-1812

Hoffman, J.

{¶1} Defendant-appellant Brian Hanna (“Husband”) appeals the October 1, 2009 Judgment Entry entered by the Knox County Court of Common Pleas, which overruled his objections to the magistrate’s August 19, 2009 Proposed Decision, and granted plaintiff-appellee Brenda Hanna (“Wife”) a divorce.

STATEMENT OF THE CASE AND FACTS

{¶2} On November 15, 2006, Wife filed a Complaint for Divorce in the Knox County Court of Common Pleas, Domestic Relations Division. After being granted an extension of time in which to file an Answer to the Complaint, Husband filed a Preliminary Petition and Motion for Conciliation on December 20, 2006. The trial court filed an Order on January 11, 2007, and granted Husband until February 2, 2007, in which to file his Answer. Husband filed an Answer to the Complaint on January 30, 2007, asking the trial court not to grant a divorce, and to order counseling and reconciliation proceedings. The trial court scheduled the matter for a final hearing before the magistrate on August 12, 2009.

{¶3} The magistrate issued his Proposed Decision on August 19, 2009, recommending Wife be granted a divorce from Husband, no spousal support be awarded, and debt be allocated \$2300 to Wife and \$2000 to Husband. Husband filed objections to the magistrate’s decision, but did not request a transcript of the proceedings. Wife filed a response to Husband’s objections, and Husband filed a response to Wife’s response. Via Judgment Entry filed October 1, 2009, the trial court overruled Husband’s objections and adopted the magistrate’s Proposed Decision.

{¶4} It is from this judgment entry Husband appeals, raising the following assignments of error:

{¶5} “I. TRIAL COURT FAILED TO COMPLY WITH THE LAW AS OUTLINED IN ORC §3117.05 AND ORC 3109. THUS VIOLATING THE CODE OF JUDICIAL CONDUCT AND STATE LAW.

{¶6} “II. THE CLERK FAILED TO COMPLY WITH ORC §3117.05(D).

{¶7} “III. THE CLERK FAILED TO COMPLY AND THE TRIAL JUDGE FAILED TO INSURE THAT THE COMMAND LANGUAGE OF ORC §3117.05(D) REGARDING THE PROCEDURE AND COMMANDS OF THE STATUTE ARE COMPLIED WITH AND FOLLOWED AS REQUIRED.

{¶8} “IV. THE TRIAL COURT VIOLATED STATE INTEREST IN THE SANCTITY OF MARRIAGE.

{¶9} “V. TRIAL JUDGE IGNORED THE AGREEMENT BETWEEN THE APPELLANT AND APPELLEE (THROUGH COUNSEL) REGARDING DIVISION OF COURT COST AND DEBT.

{¶10} “VI. THE TRIAL COURT ERRED IN THE DIVISION PROPERTY AND PROPERTY HELD BY APPELLEE.”

I, II, III, IV

{¶11} Because Husband’s first, second, third, and fourth assignments of error all address the trial court and Clerk’s handling of his petition for conciliation, including the alleged noncompliance with R.C. 3117.05, we shall address said assignments of error together.

{¶12} Initially, in response to Wife's Complaint for Divorce, Husband filed a Preliminary Petition and Motion for Conciliation on December 20, 2006. The trial court denied the petition and motion via Judgment Entry filed May 16, 2007.

{¶13} R.C. 3105.091(A) provides a trial court may order parties to an action of divorce, annulment, or legal separation, or at any time after a petition for dissolution is filed to undergo conciliation. The decision of whether or not to order conciliation is completely within the discretion of the trial court. *Vild v. Vild* (March 23, 2000), Cuyahoga App. No. 75730, unreported. An abuse of discretion is more than an error of law or judgment, it implies that the trial court's attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶14} R.C. Chapter 3117, Conciliation of Marital Controversies, is "applicable only in counties in which the court of common pleas determines that social conditions and the number of domestic relations cases in the county render the conciliation procedures provided necessary to proper consideration of marital controversies. Such determinations shall be made by the judge of the court of common pleas in counties having only one such judge, or by a majority of the judges of the court of common pleas in counties having more than one such judge." R.C. 3117.01.

{¶15} We find the Knox County Court of Common Pleas was without authority to hear Husband's petition. Pursuant to R.C. 3117.01 et seq., conciliation is only available if the county's court of common pleas has adopted the provisions of the statute. In that our research indicates the Knox County Court of Common Pleas has not adopted the statute's provisions, Husband could not seek redress pursuant thereto. Therefore, the trial court had no authority to hear husband's petition, and no choice but to deny such.

Assuming, arguendo, the trial court had authority to hear the petition, we find the trial court did not abuse its discretion in deciding not to do so. Husband had been incarcerated for six years at the time Wife filed for divorce. Husband had four years remaining on his sentence. Husband was incarcerated for raping Wife's daughter. Conciliation under these circumstances would have been highly unlikely, if not impossible.

{¶16} Husband's first, second, third, and fourth assignments of error are overruled.

V, VI

{¶17} In his fifth and sixth assignments of error, Husband challenges the trial court's allocation of property and debt between the parties.

{¶18} Upon filing his Notice of Appeal, Husband filed a praecipe, asking the trial court to order the court reporter to prepare a complete transcript, and an affidavit of indigency. The trial court denied the praecipe and affidavit of indigency, finding such not well taken. Husband did not take any further action to ensure the transcript of the proceedings was prepared for this Court.

{¶19} "The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record. See *State v. Skaggs* (1978), 53 Ohio St.2d 162. This principle is recognized in App.R. 9(B), which provides, in part, that '... the appellant shall in writing order from the reporter a complete transcript or a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record ...' When portions of the transcript necessary for resolution of assigned errors

are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp v. Edwards Labs.* (1980), 61 Ohio St.2d 197, 199.

{¶20} Merely ordering the transcript is not enough. Husband bore the responsibility to ensure the transcript is prepared and timely filed for inclusion in the record. Accordingly, even if the record reflected Husband had properly ordered the transcript, he still failed in his duty to ensure it was included in the record for transmission to this Court. As such, this Court has no choice but to affirm the trial court's judgment pursuant to the Ohio Supreme Court's directive in *Knapp*.

{¶21} Appellant's fifth and sixth assignments of error are overruled.

{¶22} The judgment of the Knox County Court of Common Pleas is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur

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

s/ W. Scott Gwin
HON. W. SCOTT GWIN

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

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

BRENDA E. HANNA

Plaintiff-Appellee

-vs-

BRIAN P. HANNA

Defendant-Appellant

:
:
:
:
:
:
:
:
:
:

JUDGMENT ENTRY

Case No. 09CA037

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Knox County Court of Common Pleas is affirmed. Costs assessed to Appellant.

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

s/ W. Scott Gwin
HON. W. SCOTT GWIN

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