

COURT OF APPEALS  
GUERNSEY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

BROCK CHIDESTER  
Plaintiff-Appellant

-vs-

JESSICA CHIDESTER  
Defendant-Appellee

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JUDGES:  
Hon. Sheila G. Farmer, P.J.  
Hon. Patricia A. Delaney, J.  
Hon. Craig R. Baldwin, J.

Case No. 14 CA 21

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Court of Common  
Pleas, Case No. 14 DR 379

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

March 26, 2015

APPEARANCES:

For Plaintiff-Appellant

BROCK CHIDESTER, Pro Se  
Noble Correctional Institution  
15708 McConnellsville Road  
Caldwell, OH 43724

For Defendant-Appellee

JESSICA CHIDESTER, Pro Se  
122 High Avenue  
Lore City, OH 43755

*Farmer, J.*

{¶1} On May 4, 2012, appellant, Brock Chidester, and appellee, Jessica Chidester, were married. On August 14, 2014, appellant filed a complaint for divorce. At all times during the case, appellant was incarcerated. Appellee was served with a copy of the complaint, but never filed an answer.

{¶2} On October 14, 2014, appellant filed a motion for an uncontested divorce hearing. The hearing was set for November 4, 2014.

{¶3} On October 29, 2014, appellant filed a notice of taking deposition upon written questions and questions to self pursuant to Civ.R. 31.

{¶4} On November 4, 2014, appellant filed the answers to the written questions to self, and the matter was called for hearing before a magistrate. Appellant did not appear as he was incarcerated. Appellee appeared and informed the magistrate that she no longer resided in Guernsey County. By order filed November 4, 2014, the magistrate dismissed appellant's complaint for failure to prosecute. By entry filed same date, the trial court agreed and dismissed the complaint.

{¶5} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶6} "THE TRIAL COURT ABUSED ITS DISCRETION DISMISSING THE PLAINTIFF-APPELLANT'S COMPLAINT FOR DIVORCE FOR FAILURE TO PROSECUTE WHEN HE DILIGENTLY PROSECUTED THE LAWSUIT BY WAY OF FILED WRITTEN QUESTIONS TO SELF, BROCK CHIDESTER PURSUANT TO CIV.R. 31."

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{¶7} Appellant claims the trial court erred in dismissing his complaint for divorce for failure to prosecute. We disagree.

{¶8} Civ.R. 41 governs dismissal of actions. Subsection (B)(1) states: "Where the plaintiff fails to prosecute, or comply with these rules or any court order, the court upon motion of a defendant or on its own motion may, after notice to the plaintiff's counsel, dismiss an action or claim." A dismissal under Civ.R. 41(B)(1) is discretionary. *Pembaur v. Leis*, 1 Ohio St.3d 89 (1982). In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217 (1983).

{¶9} Because appellant was incarcerated, he attempted to prove his case via his own deposition/answers. Civ.R. 31 governs depositions of witnesses upon written questions. Subsection (A) states the following in pertinent part:

After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided by Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating (1) the name and

address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken.\*\*\*

Within twenty-one days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within fourteen days after being served with cross questions, a party may serve redirect questions upon all other parties. Within fourteen days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

{¶10} Appellant filed his notice and questions to self on October 29, 2014, and indicated that he served appellee with same on October 27, 2014 via U.S. mail. The uncontested hearing was held on November 4, 2014, eight days after the service date.

{¶11} While appellant attempted to remedy his incarcerated status by submitting his own testimony via oral examination or upon written questions, he did not properly follow the time mandates of Civ.R. 31.

{¶12} Upon review, we find the trial court did not abuse its discretion in dismissing appellant's complaint for divorce for failure to prosecute.

{¶13} The sole assignment of error is denied.

{¶14} The judgment of the Court of Common Pleas of Guernsey County, Ohio is affirmed.

By Farmer, P.J.

Delaney, J. and

Baldwin, J. concur.

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