[Cite as *DeVall v. Schooley*, 2015-Ohio-2560.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CRYSTAL MICHELLE DeVALL nka FRISCO Plaintiff-Appellant -vs- MATTHEW SCHOOLEY Defendant-Appellee	JUDGES: Hon. Sheila G. Farmer, P. J. Hon. John W. Wise, J. Hon. Craig R. Baldwin, J. Case No. CT2015-0001 O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. JV020040013
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	June 25, 2015

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellee
CRYSTAL MICHELLE DeVALL FRISCO PRO SE 8125 Linda Lane King George, Virginia 22485	MATTHEW SCHOOLEY PRO SE 3320 Creamery Road Nashport, Ohio 43830

Wise, J.

{¶1}. Appellant Crystal Michelle DeVall, nka Frisco, appeals the decision of the Muskingum County Court of Common Pleas, Domestic Relations Division, which modified her child support obligation for the parties' minor daughter, S.M.S. Appellee Matthew Schooley is the child's father and present residential parent. The relevant facts leading to this appeal are as follows.

{¶2}. Appellant (mother) and appellee (father) are the parents of S.M.S., born in 1999. On May 31, 2000, pursuant to an agreed judgment entry, appellant was named the residential parent of S.M.S., while appellee was awarded designated parenting time. Appellant shortly thereafter relocated from Ohio to Morgantown, West Virginia. In April 2002, the trial court issued a judgment entry maintaining appellant as the residential parent, but increasing appellee's parenting time.

{¶3}. Following litigation in mid-2006, stemming largely from appellant's subsequent marriage and relocation from West Virginia to King George, Virginia, the trial court designated appellee as the residential parent and legal custodian of S.M.S. on August 8, 2006. This Court subsequently affirmed the trial court's aforesaid decision, with Judge Farmer dissenting. *See DeVall v. Schooley,* 5th Dist. Muskingum No. CT2006-0062, 2007-Ohio-2582.

{¶4}. In January 2008, appellant filed a motion to reallocate parental rights and responsibilities. Evidence was heard in May 2008, and an *in-camera* interview of the child was thereafter conducted by the trial court. On March 3, 2009, the trial court issued a final judgment entry finding an insufficient change in circumstances to warrant further entertainment of appellant's motion to reallocate. This Court thereafter

unanimously affirmed the decision of the trial court. *See DeVall v. Schooley,* 5th Dist. Muskingum No. CT2009-0017, 2009-Ohio-5915.

{¶5}. In January 2014, the Muskingum County CSEA ("MCCSEA") conducted an administrative review of the child support order for S.M.S., at appellant's request. The reviewing officer issued a recommendation on January 14, 2014 to adjust appellant's child support obligation from the existing figure of $326.11 per month (assuming the provision of private health insurance) to $0 per month, based on a finding in the guideline worksheet of zero income on the part of appellant.

{¶6}. Appellee thereafter requested a court review of the administrative adjustment.

{¶7}. A hearing before the magistrate took place on July 9, 2014. Appellee appeared pro se, and counsel for Muskingum County Job and Family Services appeared on behalf of MCCSEA. The magistrate issued a decision on August 21, 2014, finding that appellant had failed to appear at the hearing, and determining that the modification request should be dismissed for want of prosecution.

{¶8}. On September 2, 2014, pursuant to Civ.R. 53, appellant filed a pro se objection to the aforesaid decision of the magistrate. On September 5, 2014, the trial court referred the matter back to the magistrate for further proceedings.

{¶9}. The case was heard again by the magistrate on November 19, 2014. Appellee was again present pro se, and counsel again appeared on behalf of MCCSEA. Appellant was permitted to participate telephonically from Virginia, where she continues to reside with her husband John Frisco and their children.

{¶10}. On December 10, 2014, the magistrate issued an eleven-page decision finding *inter alia* that appellant was voluntarily unemployed and imputing income to her of $27,147.00 per year. The magistrate recommended child support be modified to $247.68 per month (assuming the provision of private health insurance).

{¶11}. The trial court approved and adopted the magistrate's decision on December 10, 2014.

{¶12}. Appellant filed a notice of appeal on January 7, 2015. She herein raises the following three Assignments of Error:

{¶13}. "I. THE MAGISTRATE ERRED IN DETERMINING THAT I, THE PLAINTIFF, AM VOLUNTARILY UNEMPLOYED PER OHIO REVISED CODE 3119.01.

{¶14}. "II. THE MAGISTRATE DETERMINED THAT I HAD MET THE REQUIREMENTS FOR 'POTENTIAL INCOME' THROUGH INCORRECT AND OUTDATED INFORMATION.

{¶15}. "III. THE MAGISTRATE ERRED IN DETERMINING THAT [S.M.S.] WOULD SUFFER WITHOUT MY CONTRIBUTION."

I., II., III.

{¶16}. Our review of the record indicates that appellant did not object to the magistrate's decision of December 10, 2014. Civ.R. 53(D)(3)(b)(iv) provides that " *** a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." *See, e.g., Stamatakis v. Robinson,* 5th Dist Stark No. 96CA303, 1997 WL 115878.

{¶17}. We nonetheless recognize that an appellant's failure to specifically object to a magistrate's decision does not bar appellate review of "plain error." *See, e.g., Tormaschy v. Weiss,* 5th Dist. Richland No. 00 CA 01, 2000 WL 968685, citing *R.G. Real Estate Holding, Inc. v. Wagner,* 2nd Dist. Montgomery No. 16737, 1998 WL 199628. However, even under a plain error standard, our review is effectively impeded because appellant has failed to provide this Court with a written transcript of the pertinent proceedings before the magistrate. Pursuant to App.R. 9(B)(1), "[i]t is the obligation of the appellant to ensure that the proceedings the appellant considers necessary for inclusion in the record, however those proceedings were recorded, are transcribed in a form that meets the specifications of App.R. 9(B)(6)." In such a situation, we generally must presume the regularity of the proceedings below and affirm. *See, e.g., State v. Myers,* 5th Dist. Richland No. 2003CA0062, 2004–Ohio–3715, ¶ 14, citing *Knapp v. Edwards Laboratories.* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384. *Accord Nester v. Nester*, 5th Dist. Fairfield No. 13 CA 56, 2014-Ohio-1759.

{¶18}. This Court is cognizant that appellant has pursued this appeal without the assistance of counsel; however, "[w]hile insuring that pro se appellants * * * are afforded the same protections and rights prescribed in the appellate rules, we likewise hold them to the obligations contained therein." *State v. Wayt,* 5th Dist. Tuscarawas No. 90AP070045, 1991 WL 43005.

{¶19}. Appellant's First, Second, and Third Assignments of Error are therefore overruled.

{¶20}. For the reasons stated in the foregoing opinion, the judgment of the Court of Common Pleas, Domestic Relations Division, Muskingum County, Ohio, is hereby affirmed.

By: Wise, J.

Farmer, P. J., and

Baldwin, J., concur.

JWW/d 0609