

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Kellee C. Laser and
c/o Julie S. Hoffman, Esq.

Appellant

Court of Appeals No. L-12-1263

Trial Court No. DR 2009-0840

v.

Mark H. Laser

Appellee

DECISION AND JUDGMENT

Decided: September 6, 2013

* * * * *

Jeffrey A. Crossman and Julie Hoffman, for appellant.

John James Manore, III, for appellee.

* * * * *

JENSEN, J.

A. Introduction

{¶ 1} This case presents an appeal from a judgment by the Domestic Relations Division of the Lucas County Court of Common Pleas. The trial court denied appellant's motion for reconsideration of an earlier judgment. In that judgment, the trial court

overruled appellant's motion to set aside a magistrate's discovery order as untimely. For the following reasons, we affirm the trial court's judgment.

B. Statement of Facts and Procedural History

{¶ 2} The parties were previously married and have two children together. In October of 2009, the parties were granted a divorce and entered into a shared parenting agreement. In April of 2011, appellee-father, Mark Laser, filed a motion to modify the shared parenting agreement. Appellant-mother, Kellee Laser, filed a similar motion in June of 2011.

{¶ 3} On July 19, 2011, appellee served appellant with interrogatories, requests for production of documents and requests for admissions. On September 7, 2011, appellee filed a motion to compel, citing appellant's failure to respond to his discovery requests. On September 27, 2011, appellant provided discovery responses.

{¶ 4} On September 30, 2012, appellee's counsel requested in writing that appellant "cure substantial and substantive defects" in her discovery responses. That same day, appellee filed another motion to compel arguing that appellant's responses were "incomplete and evasive" with objections that were "without legal basis."

{¶ 5} By order filed on April 13, 2012, the magistrate issued an extensive order on a host of discovery matters. The magistrate granted appellee's motion to compel and ordered that appellant pay attorney's fees in the amount of \$2,500.

{¶ 6} On April 27, 2012, appellant filed "Objections to Magistrate's April 13, 2012 Order." By order dated May 14, 2012, the trial court indicated that it would treat

appellant's prior filing as a "motion to set aside the magistrate's order" as provided by Civ.R. 53(D)(2)(b). The court then overruled appellant's motion as untimely under that same rule. On June 28, 2012, appellant filed a "Motion to Reconsider or Alternatively, to Vacate Order" which the trial court denied on August 16, 2012.

{¶ 7} On September 14, 2012, appellant filed a notice of appeal, claiming two assignments of error.

1. THE TRIAL COURT ERRED BY GRANTING APPELLEE
DISCOVERY SANCTIONS AGAINST THE APPELLANT.

2. ANY SANCTION RELATED TO THE APPELLANT'S
OBJECTION TO PRODUCING EVIDENCE OF HER PHYSICAL AND
MENTAL HEALTH SHOULD BE REVERSED SINCE APPELLEE
NEVER FILED A MOTION DEMONSTRATING GOOD CAUSE FOR
SEEKING SUCH DISCOVERY.

C. Analysis

{¶ 8} Appellant does not address the timeliness issue in her appellate brief. We find, however, that the untimeliness of her motion to set aside the magistrate's order is dispositive to the outcome of this case. We also find that the trial court did not err in adopting the magistrate's order. Therefore, we affirm the trial court's judgment.

{¶ 9} Civ.R. 53(D)(2)(b) provides, "Any party may file a motion with the court to set aside a magistrate's order. The motion * * * shall be filed not later than ten days after the magistrate's order is filed." Here, the magistrate's discovery order was filed on

April 13, 2012. Therefore, any motion to set aside was due no later than April 23, 2012. Appellant did not file her motion until April 27, 2012, four days late. As a result, appellant waived her right to argue the merits of the order on appeal. *See, e.g., O'Brien v. O'Brien*, 8th Dist. Cuyahoga No. 98336, 2012-Ohio-5185, ¶ 8 (“The motion to set aside the magistrate’s order was untimely [by four days] and precludes [appellant] from arguing on appeal that the court erred by refusing to set aside the magistrate’s order.”) and *Nagel v. Nagel*, 9th Dist. Lorain No. 09CA009704, 2010-Ohio-3942, ¶ 26, *appeal not accepted*, 127 Ohio St.3d 1486, 2010-Ohio-6371, 939 N.E.2d 184 (“Having failed to timely move the trial court to set aside the magistrate’s order, [appellant] has forfeited this argument for purposes of appeal.”). Based upon the above, we find that the trial court did not err in overruling appellant’s untimely motion.

{¶ 10} Based on the foregoing, we find that the trial court did not err in adopting the magistrate’s order nor did the trial court err in overruling appellant’s untimely objection. Appellant’s first and second assignments of error are found not well-taken. The judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
