

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

Cameron M. Sisson

Court of Appeals No. H-13-014

Appellee

Trial Court No. DR 2011 0544

v.

Tonyia M. Sisson

DECISION AND JUDGMENT

Appellant

Decided: May 16, 2014

* * * * *

Curtis J. Koch, for appellee.

Daniel F. Maynard, for appellant.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from the Huron County Court of Common Pleas, Domestic Relations Division, in which the trial court granted appellee, Cameron M. Sisson, a divorce from appellant, Tonyia M. Sisson. For the reasons that follow, the judgment of the trial court is affirmed.

{¶ 2} The parties were married in 2002. They have three minor children.

Appellee filed for divorce on June 24, 2011. Hearings on appellee's complaint were held before a magistrate on August 21 and 22, 2012. On February 19, 2013, the magistrate granted appellee's complaint for a divorce. On February 26, 2013, appellant filed an objection to the magistrate's decision regarding the custody of the minor children. On May 13, 2013, the trial judge overruled appellant's objection and adopted the magistrate's decision in full. Appellant now appeals setting forth the following assignments of error:

I. The trial court erred in permitting appellant-mother's counsel to withdraw from representation of her on the day of trial and over appellant-mother's objection to granting said withdrawal motion.

II. The trial court erred in accepting into evidence and considering the written report and recommendations of the guardian ad litem without taking testimony and allowing the parties the opportunity to cross-examine the guardian ad litem regarding the content of that report and recommendations.

III. The trial court erred in inequitably dividing property against the greater weight of the evidence and determining some property to be separate and other property marital without sufficient competent, credible evidence to determine the present value or status of the property or parties' relative incomes.

IV. The trial court erred in failing to consider back child support for appellant-mother as it related to the parties' youngest child who remained in appellant-mother's custody until the magistrate's decision of 2/2013 was issued.

V. The trial court erred in limiting appellant-defendant from calling any witnesses on subsequent days of trial who were not present and available to testify on the first day of trial.

{¶ 3} Initially, we note that appellant failed to file a transcript of the proceedings before the magistrate when she filed her objection to the magistrate's decision. Under Civ.R. 53(D)(3)(b)(iii), a party objecting to a magistrate's finding of fact, whether or not it is specifically designated as a finding of fact, shall support that objection with 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." In the instant case, appellant failed to file a transcript or affidavit of evidence with her objection to the magistrate's finding of facts. Consequently, the trial court's review of the magistrate's decision was limited to an examination of the conclusions of law predicated on those facts. *Allread v. Allread*, 2d Dist. Darke No. 2010-CA6, 2011-Ohio-1271, ¶ 18; *Sanders v. Wamco, Inc.*, 10th Dist. Franklin No. 10AP-548, 2011-Ohio-1336, ¶ 9. Moreover, if a party fails to comply with any of the provisions of Civ.R. 53(D)(3)(b), he or she, absent a claim of plain error, cannot assign as error on appeal the trial court's adoption of any of the magistrate's factual findings or legal conclusions. Civ.R. 53(D)(3)(b)(iv).

{¶ 4} As for our role, due to the fact that the trial judge was not able to review a transcript of the proceedings before the magistrate, this court is precluded from considering the transcript of those proceedings submitted on appeal. *Sanders* at ¶ 10. (Citations omitted.) Accordingly, the facts set forth in this decision are derived from the filings in the court below and the “Magistrate’s Decision.” Our review of this case is limited to a determination of whether the trial court abused its discretion in adopting the magistrate’s legal conclusions. *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730, 654 N.E.2d 1254 (1995); *Hensley v. Hensley*, 6th Dist. Erie No. E-08-026, 2009-Ohio-1738, ¶ 6.

{¶ 5} In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error seriously affects the basic fairness, integrity, or public reputation of the judicial process itself. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997), syllabus.

{¶ 6} In appellant’s first assignment of error, she contends that the court erred in granting her trial counsel’s motion to withdraw, over her objection, on the day of trial. The decision as to whether to grant a motion to withdraw by counsel rests in the trial court’s sound discretion. *Bennett v. Bennett*, 86 Ohio App.3d 343, 620 N.E.2d 1023 (8th Dist.1993).

{¶ 7} According to the magistrate’s decision, appellant, on her own, filed two motions prior to trial, without her counsel’s knowledge. In one of her motions, she

objected to a joint motion regarding visitation filed by appellant and appellee's counsel.

Appellant claimed she opposed the joint motion. The magistrate stated:

* * * it is difficult to fathom many circumstances whereby representation would be rendered more unreasonably difficult than by the filing of motions by a party without the assistance or knowledge of the party's counsel of record.

Also according to the magistrate's decision, appellant was offered the opportunity to secure new counsel before the trial commenced but she declined. The magistrate granted counsel's motion citing Prof.Cond.R. 1.16(B)(6) which permits counsel to withdraw from the representation of a client if the representation has been rendered unreasonably difficult by the client.

{¶ 8} Based on the foregoing, we find that the trial court did not abuse its discretion in adopting the magistrate's findings on this matter. Appellant's first assignment of error is found not well-taken.

{¶ 9} In her second assignment of error, appellant contends that the court erred in admitting the guardian ad litem's report into evidence. Appellant cites to various evidentiary issues in her assignment of error. None of these issues are addressed in the magistrate's or the trial court's decision. In appellant's third assignment of error, she challenges the magistrate's division of property. Appellant contends that the evidence before the magistrate does not support his conclusion regarding the distribution of the parties' property. In her fifth assignment of error, appellant contends the court erred in

limiting her from calling certain witnesses at the trial. In order to determine the validity of appellant's arguments, this court would need to review the trial court transcript. As such, appellant's arguments are without merit.

{¶ 10} In her fourth assignment of error, appellant contends that the court erred in failing to grant her back child support. Appellant did not raise this issue when objecting to the magistrate's decision. Therefore, she has waived all but plain error. *Peck v. Serio*, 155 Ohio App.3d 471, 2003-Ohio-6561, 801 N.E.2d 890, ¶ 22 (10th Dist.).

{¶ 11} We have thoroughly reviewed the magistrate's decision and we further conclude that his case does not present exceptional circumstances that rise to the level of plain error. Accordingly, appellant's second, third, fourth and fifth assignments of error are found not well-taken.

{¶ 12} On consideration whereof, this court finds that substantial justice was done the party complaining, and the judgment of the Huron County Court of Common Pleas, Domestic Relations Divison, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

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:
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