

[Cite as *Rodriguez v. Rodriguez*, 2009-Ohio-3456.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91412

NELDA RODRIGUEZ

PLAINTIFF-APPELLEE

vs.

ANTHONY RODRIGUEZ

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-314676

BEFORE: Cooney, A.J., Blackmon, J., and Sweeney, J.

RELEASED: July 16, 2009

JOURNALIZED:

FOR APPELLANT

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Defendant-appellant, Anthony Rodriguez (“Anthony”), pro se, appeals from the trial court’s judgment entry granting plaintiff-appellee, Nelda Rodriguez (“Nelda”), a divorce. Finding no merit to the appeal, we affirm.

{¶ 2} In February 2007, Nelda filed a pro se complaint for divorce from Anthony.¹ In June 2007, counsel entered an appearance as attorney of record for Nelda and filed an amended complaint for divorce.² The matter proceeded to trial in April 2008. During trial, Anthony was found in contempt and sentenced to ten days in jail. In the final divorce decree, Nelda was granted a divorce and designated residential parent and legal custodian of their son.

{¶ 3} Anthony now appeals, raising four assignments of error for our review. In the first assignment of error, he argues that the trial court erred in proceeding with the trial because Nelda’s affidavit was not submitted within twenty-eight days of the filing of her pro se complaint. In the second assignment of error, he argues that the trial court erred in allowing Nelda’s pretrial statement to be submitted on the date of trial. He claims that the pretrial

¹Anthony and Nelda married in August 2001 and have one child as issue of their marriage.

²Prior to July 2007, Anthony represented himself. On July 19, 2007, defense counsel entered an appearance as attorney of record for Anthony and later was granted leave to withdraw as counsel in January 2008.

statement should have been submitted fifteen days before trial as required by Loc.R. 12(A) of the Court of Common Pleas of Cuyahoga County, Domestic Relations Division. Anthony claims that the trial judge “was completing the pretrial statement to the case” during trial. In the fourth assignment of error, he argues that the trial court erred in allowing his prior conviction into evidence.

{¶ 4} However, in setting forth these arguments, Anthony fails to cite any authority and fails to cite to the record in support of his claims. We note that an appellate court may disregard an assignment of error pursuant to App.R. 12(A)(2): “if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A).” See, also, *Hawley v. Ritley* (1988), 35 Ohio St.3d 157, 519 N.E.2d 390.

{¶ 5} App.R. 16(A)(7) requires that appellant include in his brief:

{¶ 6} “An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.”

{¶ 7} Moreover, it is not the duty of an appellate court to search the record for evidence to support an appellant’s argument as to any alleged error. *State v.*

McGuire (Apr. 15, 1996), Preble App. No. CA95-01-001. “An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.” *State v. Watson* (1998), 126 Ohio App.3d 316, 710 N.E.2d 340, quoting *McGuire*. See, also, *Citta-Pietrolungo v. Pietrolungo*, Cuyahoga App. No. 85536, 2005-Ohio-4814, ¶35.

{¶ 8} Because Anthony failed to cite any legal authority or to the record in support of his arguments and failed to separately argue these assignments of error, we decline to review the first, second, and fourth assignments of error.³

{¶ 9} In the third assignment of error, Anthony argues that the trial court erred when it allowed Nelda’s witnesses to testify because her witness list was untimely under Loc.R. 12(B) of the Court of Common Pleas of Cuyahoga County, Domestic Relations Division (“Loc.R. 12(B)”), which provides in pertinent part:

“(1) Each party shall submit to the opposing party or his counsel a list with the names and addresses of all witnesses, including expert witnesses, expected to be called during trial. A copy of each list shall be filed with the Court. Such witness lists shall be exchanged no later than 14 days prior to the trial date or 3 days after the receipt of notice of the trial date, whichever is later. ***

“(2) No party shall be permitted to call any witness, except rebuttal witnesses, whose name was not included on the witness list or any supplement thereto, unless good cause can be shown as to why the need

³Anthony also raises the issue of his contempt finding in his “Statements of the Facts Presented And Statement of the Case,” but he failed to assign this as error, and he has failed to cite to the record as required by App.R. 16(A). Thus, for the same reasons stated above, we also decline to review any arguments regarding his contempt finding.

for such witness was not known to the party until after the time for supplementing his witness list expired, or unless the identity of the witness was otherwise known to the opposing party. The Court may however, in its discretion allow either party to call any witness whose name is not included on a witness list, when doing so will serve the interests of justice.”

{¶ 10} We note that it is within the trial court’s discretion to admit or bar evidence. *Reed v. Hardman*, Cuyahoga App. No. 85272, 2005-Ohio-4394, ¶13. Thus, our responsibility as the reviewing court is “merely to review these rulings for an abuse of discretion.” *Nakoff v. Fairview Gen. Hosp.*, 75 Ohio St. 3d 254, 256, 1996-Ohio-159, 662 N.E.2d 1.

{¶ 11} In reviewing Loc.R. 21.1 of the Court of Common Pleas of Cuyahoga County, General Division (“Loc.R. 21.1”), which is analogous to Loc.R. 12(B), this court has ruled that a trial court has broad discretion in deciding whether to exclude the testimony of expert witnesses who are not properly identified prior to trial.⁴ *Pittock v. Kaiser* (May 14, 1998), Cuyahoga App. No. 72628; *Walworth v. BP Oil Co.* (1996), 112 Ohio App.3d 340, 352, 678 N.E.2d 959. As we stated in *Pittock*, the witness disclosure rule is intended to prevent surprise and to avoid hampering a party who is preparing for trial.

⁴Loc.R. 21.1 provides that “all parties are required to submit a trial witness list *** no later than seven (7) days prior to the final pretrial date,” whereas Loc.R. 12(B)(1) provides that the “witness lists shall be exchanged no later than 14 days prior to the trial date or 3 days after the receipt of notice of the trial date, whichever is later.”

{¶ 12} In the instant case, Anthony claims that he was never given a witness list, nor was he ever notified that he would be subject to cross-examination.⁵ However, it should have been no surprise to Anthony that he and Nelda would testify at their divorce trial. Indeed, Nelda would testify as the plaintiff who initiated the divorce action, and Anthony would be subject to cross-examination as the opposing party in the case. Thus, he has failed to show any surprise regarding Nelda's testimony or his being subject to cross-examination, nor has he alleged his trial preparation was hampered.

{¶ 13} Therefore, we find that the trial court did not abuse its discretion in admitting the parties' testimony.

{¶ 14} Accordingly, the third assignment of error is overruled.

{¶ 15} Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

⁵Nelda concedes that her witness list was filed untimely.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

PATRICIA A. BLACKMON, J., and
JAMES J. SWEENEY, J., CONCUR