

[Cite as *Gobel v. Rivers*, 2010-Ohio-4493.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94148

TINA GOBEL

PLAINTIFF-APPELLEE

VS.

LOUIS RIVERS

DEFENDANT-APPELLEE

**[APPEAL BY CUYAHOGA SUPPORT
ENFORCEMENT AGENCY]**

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Common Pleas Court
Domestic Relations Division
Case No. D-277003

BEFORE: Boyle, J., Kilbane, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: September 23, 2010

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MARY J. BOYLE, J.:

{¶ 1} Appellant, Cuyahoga Support Enforcement Agency (“CSEA”), appeals from a judgment of the domestic relations court denying its motion to show cause in part and granting it in part, finding that defendant-appellee, Louis Rivers, was not in contempt of court since plaintiff-appellee, Tina Gobel, waived child support arrearages owed, but ordering that he continue to pay child support.

CSEA raises seven assignments of error for our review, arguing that the trial court erred:

{¶ 2} (1) when it adopted findings from the magistrate's decision of February 27, 2009; (2) when it adopted findings from the magistrate's decision of June 4, 2009; (3) by not granting CSEA default judgment on its contempt motion when the parties failed to appear at the August 17, 2009 hearing; (4) by using "Exhibit A," the former agreed judgment entry, that was attached to the magistrate's February and June decisions; (5) when it adopted findings from the magistrate's decision since it was not legally valid; (6) when it issued its final judgment finding that Rivers was not in contempt, after it had informed CSEA at the August 17, 2009 hearing that it would enter a default contempt judgment against Rivers; and (7) when it relied on pleadings as evidence, as well as the February and June magistrate's decisions.

{¶ 3} Finding no merit to the appeal, we affirm.

Procedural History and Factual Background

{¶ 4} Tina Gobel and Louis Rivers were divorced in 2001. At that time, Gobel was named residential parent and legal custodian of the parties' three minor children, and Rivers, who was unemployed, was ordered to pay child support in the amount of \$51 per month. Rivers's support obligation increased in February 2006 to \$237.70 per child per month, equaling \$727.35 per month with a two percent processing fee to CSEA.

{¶ 5} In October 2007, CSEA moved to intervene as a new party defendant and filed a motion to show cause against Rivers for failing to pay child support. The trial court permitted CSEA to intervene and found Rivers to be in contempt of court for failing to pay \$17,943.91 in child support as of November 30, 2007. It sentenced him to 30 days in jail or purge his contempt by meeting certain requirements. Rivers did neither. The trial court also increased Rivers's child support obligation by \$50 per month to be paid toward his arrears, for a total of \$777.35 per month. And it issued a *capias* for Rivers's arrest.

{¶ 6} In November 2008, CSEA filed a second motion to show cause against Rivers. The matter was heard before a magistrate on February 23, 2009. The magistrate's decision stated that all parties appeared and entered into the following agreement:

{¶ 7} "The parties entered into an agreement whereby the parties agreed that the Defendant/Husband had been shot in September 2008 and is now in the process of seeking Social Security Disability whereby the parties agree to waive arrears [which according to CSEA were up to \$26,852.41 as of January 31, 2009] effective 02/23/2009. The Assistant County Prosecutor made an oral motion that the Defendant should be held liable for the processing fee on the waived arrears. A processing fee of 2% of the current

support is charged monthly to process the payments. There are never going to be payments made on the arrears so a processing fee is not in order.” The magistrate then ordered that Rivers continue paying \$727.35 per month in child support for the parties’ three minor children.

{¶ 8} CSEA filed objections to the magistrate’s decision, asserting that it had informed the magistrate prior to the hearing that it was willing to withdraw the motion to show cause since Gobel wished to waive the arrears owed, but that CSEA would not waive the two percent processing fee. CSEA further explained that it left the hearing for “five to ten minutes” to obtain the exact dollar amount owed for the processing fees, and when it returned, the magistrate had sent Gobel and Rivers away after having them sign the agreed judgment entry. The magistrate wanted CSEA to sign the agreed entry, but it refused because the parties had signed the entry without the exact dollar amount of processing fees owed to CSEA. When CSEA refused to sign the agreed entry, the magistrate crossed out “agreed judgment entry,” and made it an exhibit attached to the magistrate’s decision.

{¶ 9} The trial court sustained CSEA’s objections and set the matter for rehearing.

{¶ 10} The matter — which was still CSEA’s motion to show cause filed in October 2008 — was heard again in early June 2009. This time, however,

Gobel and Rivers failed to appear. The magistrate issued a decision explaining that although the parties did not appear that day, they had appeared in February 2009 and submitted an agreement at that time (stating that Gobel had agreed to waive all arrears), which the magistrate again attached as an exhibit to his June magistrate's decision. The magistrate further stated that CSEA had moved for the two percent processing fees on the waived arrears, which it learned at the June hearing were \$571.36, but the magistrate could not determine what the exact amount was because the amount had not been subtracted from what Rivers had paid up to that point. The magistrate reserved jurisdiction on the processing fees if CSEA filed a motion for them.

{¶ 11} CSEA again objected to the magistrate's decision, claiming that since the parties failed to appear, it should have obtained a default judgment against Rivers on its contempt motion. It further objected to the magistrate using "evidence" from the February hearing for the June hearing since the trial court had sustained its objections from the magistrate's decision after the February hearing.

{¶ 12} The trial court again sustained CSEA's objections regarding the magistrate's June 2009 decision and set the matter for rehearing on August

17, 2009. The trial court then heard the matter on that date, not the magistrate.

{¶ 13} On September 25, 2009, the trial court issued its final judgment, which CSEA is now appealing. In it, the trial court adopted, “in part, the findings set forth in the Magistrate’s Decisions filed February 27, 2009 and June 4, 2009.” It indicated that Gobel and Rivers, although properly served, failed to appear. It ordered that CSEA’s motion to show cause, filed in November 2008, was granted in part and denied in part. It found Rivers not to be in contempt of court and ordered that he did not owe any arrears up to February 23, 2009, the date Gobel waived them. It further ordered that Rivers owed CSEA \$576.89 for processing charges up to February 23, 2009. It then ordered that Rivers continue to pay \$727.35 per month in child support, plus a two percent processing fee, and continue paying \$50 per month toward any arrearages that had accrued since February 23, 2009.

Standard of Review

{¶ 14} In all but one of CSEA’s assignments of error (all but the sixth), it essentially argues that the trial court’s judgment was not supported by competent, credible evidence for alleged procedural or evidentiary issues. Thus, we will address them together.

{¶ 15} “Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court.” *C.E. Morris Co. v. Foley Constr. Co.* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578, at syllabus. Further, rulings on evidentiary matters are well within a trial court’s discretion. *McKay Machine Co. v. Rodman* (1967), 11 Ohio St.2d 77, 82, 228 N.E.2d 304.

{¶ 16} Moreover, in accordance with Civ.R. 53, the trial court is required to conduct an independent review of the case, having the “ultimate authority and responsibility over the [magistrate’s] findings and rulings.” *Hartt v. Munobe* (1993), 67 Ohio St.3d 3, 5, 615 N.E.2d 617. The trial court must decide “whether the [magistrate] has properly determined the factual issues and appropriately applied the law, and where the [magistrate] has failed to do so, the trial court must substitute its judgment for that of the [magistrate].” *Inman v. Inman* (1995), 101 Ohio App.3d 115, 118, 655 N.E.2d 199. In light of this discretion, a trial court’s ruling on objections to a magistrate’s decision will not be reversed absent an abuse of discretion. *Remner v. Peshek* (Sept. 30, 1999), 7th Dist. No. 97CA98. This standard requires more than a determination by the reviewing court that there was an error of judgment, but rather that the trial court acted unreasonably, arbitrarily, or unconscionably. *Id.*

Motion to Show Cause

{¶ 17} After reviewing the record in the case before us, we cannot say that the trial court abused its discretion. The only matter before it was CSEA's motion to show cause. Although Gobel did not appear for the August 17, 2009 hearing, she had appeared for the February hearing and waived all arrears as of that date before the magistrate. The magistrate found that Gobel had properly waived her arrears as of February 23, 2009. Although the trial court generally sustained CSEA's objections to that magistrate decision, it did not indicate that it rejected any of the magistrate's findings. Further, CSEA does not assert, nor did it ever assert to the trial court, that Gobel did not waive her arrears.

{¶ 18} Civ.R. 53(E)(4) provides that a magistrate's decision shall be effective when adopted by the court. Upon consideration of any objections to a magistrate's decision, the trial court "may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter." Civ.R. 53(E)(4)(b).

{¶ 19} According to CSEA's objections to the magistrate's decision, it refused to sign the agreed judgment entry solely because the exact dollar amount owed to CSEA as of February 23, 2009 was not included in the entry when Gobel and Rivers signed it. Gobel had not received public assistance

and was within her right to waive arrears owed. The trial court sustained CSEA's objections without comment and ordered the matter be reheard; it did not reject any of the magistrate's factual findings. Thus, it is entirely possible the trial court sustained CSEA's objections and ordered the matter be reheard solely because the magistrate improperly concluded as a matter of law that CSEA was not entitled to the processing fees, when under Ohio law, it clearly was.

{¶ 20} After the second hearing, the magistrate removed the language that CSEA was not entitled to processing fees and stated that CSEA could file a motion for processing fees because they could not be exactly determined at that time. CSEA once again objected. The trial court generally sustained CSEA's objections for the second time and ordered the matter be reheard. This time, the trial court heard the matter. But again, the only matter before the trial court was CSEA's motion to show cause filed in October 2008.

{¶ 21} Finally, after the August hearing, the trial court adopted some of the magistrate's findings from the first two hearings, mainly that Gobel had waived all arrears at the February 23, 2009 hearing because Rivers had been seriously injured from a gunshot wound and was applying for Social Security disability. Thus, since there were no arrears, the trial court found that Rivers was not in contempt of court, but it ordered that he was still

responsible for any arrears that had accrued since February 23, 2009, and further ordered that his child support obligation remain at \$777.35 per month (\$727.35 in support and processing fees and \$50 toward arrearages). And notably, the trial court further ordered that CSEA was entitled to processing fees on the waived arrearages in the amount of \$576.89.

{¶ 22} Accordingly, we find the trial court had competent, credible evidence before it when issuing its decision.

{¶ 23} As for CSEA's sixth assignment of error, arguing that the trial court violated CSEA's due process rights by informing CSEA at the August 2009 hearing that it planned to issue a default contempt judgment against Rivers, but then issued a judgment contrary to that, we find no error. CSEA's reasoning ignores the language of Civ.R. 58, which states that "[a] judgment is effective only when filed with the clerk for journalization." The Ohio Supreme Court has held that "[a] court of record speaks only through its journal and not by oral pronouncement ***." *Schenley v. Krauth* (1953), 160 Ohio St. 109, 113 N.E.2d 625, paragraph one of the syllabus. The judge in this case was free to change her mind between the time of announcing the decision and the filing of the judgment entry.

{¶ 24} Finally, as for CSEA's argument that the magistrate violated Civ.R. 53(D)(7) by failing to record the proceedings before it, we agree. But

we find it to be harmless error in this particular case since CSEA does not assert that the factual finding made by the magistrate — that Gobel waived her arrears — is in error. Further, the trial court was able to adequately review the matter through CSEA’s thorough objections and affidavits as to what had occurred at the hearings.

{¶ 25} We do, however, strongly urge the trial court to comply with the mandates of Civ.R. 53(D)(7). This rule provides:

{¶ 26} “Except as otherwise provided by law, *all proceedings* before a magistrate *shall be recorded* in accordance with procedures established by the court.”

{¶ 27} This rule “was adopted in part to assure that there is no shoddy or irregular practice regarding the recording of magistrate’s hearings throughout the state.” *Moyers v. Moyers* (June 18, 1999), 11th Dist. No. 98-A-0080 (discussing the former provision, Civ.R. 53(D)(2), that was identical in wording). The Eleventh District has stated:

{¶ 28} “This court notes that it has made it abundantly clear to the judges of this trial court that a renewed practice of not providing a formal record of the proceedings before the magistrates of that court would not be countenanced, except under the most narrow of justifiable circumstances, viz. the unknown malfunction of an official reporting device.”

{¶ 29} We agree with the Eleventh District's admonishment to trial courts. Litigants are entitled to have proceedings before a magistrate recorded. Civ.R. 53(D)(7).

{¶ 30} CSEA's seven assignments of error are overruled.

Judgment affirmed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR