[Cite as *In re A.R.*, 2010-Ohio-526.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93964

IN RE: A.R., ET AL.
MINOR CHILDREN

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. CU 07111250-2

BEFORE: Dyke, P.J., Celebrezze, J., and Sweeney, J.

RELEASED: February 18, 2010

JOURNALIZED:

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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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

ANN DYKE, P.J.:

{¶ 1} This appeal is before the Court on the accelerated docket pursuant to App.R. 11.1 and Loc.App.R. 11.1.

{¶ 2} Appellant, J.W.R., appeals the Juvenile Court's jurisdiction and judgment entered on August 19, 2009. For the reasons set forth below, we affirm.

{¶ 3} In 2005, appellee, J.M.R. filed a complaint for divorce against J.W.R., and J.R., J.M.R.'s mother, later intervened in the case. The Domestic Relations Court issued a final divorce decree on October 3, 2007, as well as a civil protection order ("CPO") after finding neither parent suitable for their three young children. The court further certified all issues relating to the allocation of parental rights and responsibilities of their children to the Juvenile Court pursuant to R.C. 3109.06.

{¶ 4} On October 31, 2007, J.W.R. appealed the CPO and certification to the Juvenile Court, among other things, in *J.M.R. v. J.W.R.*, Cuyahoga App. No. 90614, 2009-Ohio-1236 ("*J.M.R. I*").

{¶ 5} In response, on December 16, 2008, J.M.R. filed a motion to stay any proceedings in the Juvenile Court relating to both the CPO and the court's allocation of parental rights and responsibilities pending disposition of the appeal, which the Juvenile Court granted on February 9, 2009. J.W.R. appealed the stay on January 30, 2009 in *J.M.R. v. J.W.R.*, Cuyahoga App. No. 92737, 2009-Ohio-6310 ("*J.M.R. II*").

{¶ 6} On March 19, 2009, we issued our opinion in *J.M.R. I*. In that case, we affirmed, among other things, the CPO and the certification of issues relating to the

allocation of parental rights and responsibilities to the Juvenile Court. Additionally, on December 3, 2009, in *J.M.R. II*, we affirmed the stay of proceedings.

{¶ 7} Following our decision in *J.M.R. I*, the matter was returned to and proceeded in the Juvenile Court. A pretrial was scheduled for June 17, 2009, and, after J.W.R. failed to appear, was conducted in her absence and placed on the record. At the pretrial, the magistrate scheduled a final pretrial for August 19, 2009 and ordered all parties to make a payment of $750 for the services of the guardian ad litem ("GAL") by July 17, 2009.

{¶ 8} After the court sent the judgment entry detailing the June 17, 2009 pretrial via ordinary mail, J.W.R. failed to appear for the final pretrial scheduled on August 19, 2009. Additionally, she did not make payment for the GAL services until the day of the final pretrial at 2:42 p.m., over an hour after the scheduled start of the proceedings. Accordingly, the trial court held the final pretrial ex parte and noted that she had not, at the time of the hearing, made payment for the GAL services as directed by the court. In response, the court dismissed J.W.R.'s claims for want of prosecution and imposed a visitation schedule for her and her children.

{¶ 9} J.W.R. now appeals and presents three assignments of error for our review. Her first assignment provides:

{¶ 10} "Trial Court erred by conducting trials in the fashion that demonstrate being reckless including violating the Eighth District Court of Appeals jurisdiction, repetitively committing numerous clerical errors."

{¶ 11} Here, J.W.R. appears to argue that the Juvenile Court lacked jurisdiction to render its decision on August 19, 2009. We decline to address the merits of this argument

on the basis that this claim is barred by res judicata. Errors of law that were raised or could have been raised through a direct appeal may be barred from further review pursuant to the doctrine of res judicata. *State ex rel. Carroll v. Corrigan* (2001), 91 Ohio St.3d 331, 332, 774 N.E.2d 771. In *J.M.R. I*, we affirmatively established that the Juvenile Court possessed jurisdiction over issues relating to the allocation of parental rights and responsibilities of the three young children. Accordingly, J.W.R.'s first assignment of error is overruled.

{¶ 12} J.W.R.'s second assignment of error states:

{¶ 13} "Trial Court erred by violating Rule 11, Rule 19, Rule 41 and US Constitutional Amendments I, V, XI and XIV."

{¶ 14} Within this assignment of error, J.W.R. makes a number of assertions that the trial court, J.R., and J.M.R. made numerous Federal Rules and U.S. Constitutional Amendments. The more applicable rules to this case are those from the Ohio Civil Rules, and thus, we will address J.W.R.'s arguments under these corollaries.

{¶ 15} First, J.W.R. maintains that J.R. and J.M.R. violated Civ.R. 11. This rule provides:

{¶ 16} "Every pleading, motion, or other document of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address, attorney registration number, telephone number, telefax number, if any, and business e-mail address, if any, shall be stated. A party who is not represented by an attorney shall sign the pleading, motion, or other document and state the party's address. Except when otherwise specifically provided by these rules, pleadings need not be verified

or accompanied by affidavit. The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served. For a willful violation of this rule, an attorney or pro se party, upon motion of a party or upon the court's own motion, may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule. Similar action may be taken if scandalous or indecent matter is inserted."

{¶ 17} J.W.R. maintains that J.R. and J.M.R. willfully violated Civ.R. 11 when they filed a number of motions to continue and a motion seeking dismissal of J.W.R.'s claims, arguing that she did not pay the GAL fee as directed by the court. J.W.R. asserts that she did in fact pay the fee. A review of the record, however, demonstrates that J.W.R. paid the fee on August 19, 2009, over one month after the due date and also after the final pretrial was held wherein the trial court dismissed her action for want of prosecution. Furthermore, J.W.R. has failed to present, and the record is void of, any evidence indicating J.R. and J.M.R. maliciously intended to delay the proceedings by filing their motions to continue. Accordingly, we find this argument without merit.

{¶ 18} Next, J.W.R. argues that she was not joined as a party pursuant to Civ.R. 19. As she is a party in the matter, we find this argument unfounded.

{¶ 19} J.W.R. also argues in this assignment that the trial court failed to provide her with notice of the final pretrial pursuant to Civ.R. 41.

{¶ 20} Civ.R. 41(B)(1) provides:

"Involuntary dismissal: effect thereof

{¶ 21} "*(1) Failure to prosecute.* Where the plaintiff fails to prosecute, or comply with these rules or any court order, the court upon motion of a defendant or on its own motion may, after notice to the plaintiff's counsel, dismiss an action or claim."

{¶ 22} In addition to Civ.R. 41(B)(1), Loc.R. 21, Part III, of the Cuyahoga County Common Pleas Court, General Division (hereinafter Loc.R. 21), provides the following relevant portions:

"PART III: Final Pretrial Conference

{¶ 23} "(A) The purpose of this conference is to effect an amicable settlement, if possible, to narrow factual and legal issues by stipulation or motion; and to set a date certain for trial. All final pretrial conferences shall be conducted by the assigned judge.

{¶ 24} "(B) All plaintiffs must be present or, with permission of the Court, be available by telephone with full settlement authority. Each defendant or a representative of each defendant must be present or, with permission of the Court, be available by telephone with full settlement authority. If the real party in interest is an insurance company, common carrier, corporation or other artificial legal entity, then the chosen representative must have full authority to negotiate the claim to the full extent of plaintiff's demand. Plaintiff's demand must be submitted to counsel for defendant at least 14 days prior to the final pretrial conference.

{¶ 25} "* * *

{¶ 26} "(H) Any judge presiding at a pretrial conference or trial shall have authority:

{¶ 27} "(1) After notice, dismiss an action without prejudice for want of prosecution upon failure of plaintiff and/or his counsel to appear in person at any pretrial conference as required by Part III(B) of this Rule.

{¶ 28} "(2) After notice, order the plaintiff to proceed with the case and decide and determine all matters ex parte upon failure of the defendant to appear in person or by counsel at any pretrial conference or trial, as required by Part III(B) of this Rule."

{¶ 29} "Before a trial court may dismiss a case with prejudice for failure to appear at a pretrial conference in accordance with a local rule, notice of the dismissal must be given to counsel pursuant to Civ.R. 41(B)(1). *Perotti v. Ferguson* (1983), 7 Ohio St.3d 1, 3, 7 OBR 256, 257, 454 N.E.2d 951, 952. Where a party fails to appear at a pretrial conference, such party must receive notice that the action will be dismissed sua sponte by the court, and if he does not receive such notice, the judgment entered against him may be vacated pursuant to Civ.R. 60(B)(1). See *Moore v. Emmanuel Family Training Ctr.* (1985), 18 Ohio St.3d 64, 18 OBR 96, 479 N.E.2d 879." *Geico Financial Serv., Inc. v. VRR, Inc.* (1990), 69 Ohio App.3d 556, 558, 591 N.E.2d 294.

{¶ 30} In the case at bar, J.W.R. received the type of notice contemplated by Civ.R. 41(B)(1) and dismissal was appropriate under both the Civil and Local rules. The record demonstrates that the trial court sent J.W.R., via ordinary mail, the judgment entry concerning the June 17, 2009 pretrial. In that entry, the court ordered J.W.R., J.M.R., and

J.R. to deposit $750.00 each with the Clerk of Courts by July 17, 2009. Next, the court provided:

{¶ 31} "Failure by any party to do so may result in contempt of court proceedings, dismissal of the recalcitrant party's claims or any other sanction allowed by law."

The court concluded the judgment entry with these words:

{¶ 32} "This matter is continued for final pretrial conference to August 19, 2009 at 1:30 p.m. All parties with respective counsel, if any, must be present."

{¶ 33} The record demonstrates that this judgment entry was sent to J.W.R. on June 23, 2009. Accordingly, despite her assertions to the contrary, J.W.R. received prior notice of the final pretrial and the order to pay for the GAL services. Nevertheless, she failed to appear for the pretrial or pay for the GAL services by July 17, 2009. As such, the trial court was completely within its purview to dismiss her motion for modification for parental rights and responsibilities and to impose the terms of visitation deemed appropriate. In light of the provisions of Civ.R. 41(B)(1), and Loc.R. 21(H), the actions by the trial court were appropriate.

{¶ 34} Finally, J.W.R. argues in this assignment that the trial court violated her U.S. Constitutional rights when it took her children from her and gave them to J.R. The trial court, however, was unable to render a decision regarding this argument as the case was appropriately dismissed for want of prosecution. Accordingly, we cannot now review this issue because we are a court of review. This proposition must first be presented and ruled upon in the trial court. Therefore, we find these arguments without merit.

{¶ 35} Her third assignment provides:

{¶ 36} "Trial Court erred by adopting the Domestic Relation [sic] Court decision that was made based on adopting the Magistrate Joan Pellegrin's decision in which the Magistrate has violated 13 judicial codes, broken the laws of ORC 3101, ORC 2919.21, ORC 2921.52, ORC 2921.13, ORC 2307.50, ORC 2913.01, ORC 2329.66, ORC 3113.31, ORC 3109.04 and issued the sham CPO to the Appellee in the light of fact and laws that the domestic relation [sic] court has no personal jurisdiction over the Appellee's CPO petition let alone the fraudulent one."

{¶ 37} In this assignment of error, it seems that J.W.R. is making two arguments. First, in the actual assignment as stated above, J.W.R. argues that the Domestic Relations Court erred in issuing the CPO and that the court had no personal jurisdiction over her to issue such an order. In *J.M.R. I* , we resolved these issues, finding the trial court did not err in issuing the CPO and that it had jurisdiction at the time. Accordingly, based upon the doctrine of res judicata, we again are without jurisdiction to entertain this argument.

{¶ 38} Within the actual body of her argument under this assignment of error, it appears that J.W.R. is also arguing that the Juvenile Court erred in adopting the visitation schedule first proposed by the Domestic Relations Court. She argues that the Domestic Relations Court no longer has jurisdiction, and thus, their decision is not binding upon the Juvenile Court. J.W.R. is completely correct in this assertion. However, the Juvenile Court may mimic the Domestic Relations Court's order when issuing its own order, which is exactly what the Juvenile Court did in this instance. It did not reimpose the Domestic Relations Court order. Rather, after questioning the parties attending the final pretrial, including the GAL, about the preexisting and current visitation order, the court determined

that the order was legally and logically sound. Therefore, it merely implemented an identical visitation schedule. Such is completely within the purview of the court as long as the order is in the best interests of the children. Hence, J.W.R.'s third assignment of error is overruled.

Judgment affirmed.

It is ordered that J.R. and J.M.R. 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.

ANN DYKE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
JAMES J. SWEENEY, J., CONCUR