

[Cite as *In re B.J.*, 2011-Ohio-110.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**Nos. 94900 and 95442**

---

**IN RE: B.J.  
A Minor Child**

---

**JUDGMENT:  
AFFIRMED**

---

Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Juvenile Division  
Case No. AD 06901442

**BEFORE:** Blackmon, J., Rocco, P.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** January 13, 2011

**ATTORNEY FOR APPELLANT**

Anita Barthol Staley  
7327 Center Street  
Mentor, Ohio 44060

**ATTORNEYS FOR APPELLEES**

**For C.C.D.C.F.S.**

William D. Mason  
Cuyahoga County Prosecutor  
The Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

BY: Gina S. Lowe  
Assistant Prosecuting Attorney  
8111 Quincy Avenue  
Room 341  
Cleveland, Ohio 44144

**For Martin Keenan**

Martin Kennan  
Buckeye Legal Center  
11510 Buckeye Road  
Cleveland, Ohio 44104

PATRICIA A. BLACKMON, J.:

{¶ 1} Appellant Clifford Johnson (“Johnson”) appeals the trial court’s order requiring him to pay \$500 in attorney fees. Having reviewed the record and pertinent law, we affirm the trial court’s order. The apposite facts follow.

{¶ 2} In November 2006, the trial court assigned counsel to represent Johnson in a complaint filed in juvenile court by the Cuyahoga County Department of Children and Family Services (“CCDCFS”) requesting temporary custody of Johnson’s daughter, “B.J.” After the trial court committed B.J. to the legal custody of a relative, Johnson’s attorney filed a motion for attorney fees. The trial court set the matter for a hearing on November 13, 2009, but continued the hearing so that Johnson could file an affidavit of indigency. The lower court docket indicates that a hearing was held on the motion on February 19, 2010. The trial court issued an order a week later ordering Johnson to pay \$500.00 in attorney fees.

{¶ 3} Johnson filed a notice of appeal and also filed a Civ.R. 60(B) motion for reconsideration with the trial court. The trial court denied the motion for reconsideration and Johnson filed an additional notice of appeal. We have consolidated the two appeals for hearing and disposition.

{¶ 4} In his sole assignment of error, Johnson argues that “[t]he trial court erred in assessing counsel fees of \$500.00 to the appellant and requiring him to reimburse those fees within 90 days.”

{¶ 5} Johnson maintains that the trial court erred in failing to find out if Johnson was indigent prior to assigning counsel to him.

{¶ 6} Juv.R. 4(A) provides a parent's right to counsel arises when the parent becomes a party to a juvenile court proceeding. Pursuant to Juv.R. 4(G), the juvenile court is authorized to order a child's parents to pay the costs for the services of appointed counsel and guardians ad litem. *In re Vaughn* (Oct. 15, 1987), Cuyahoga App. No. 53462. Because the fees are denoted court costs under Juv.R. 4(G), the obligation to pay the fees is a civil obligation. *In re Bailey*, Hamilton App. No. C-060700, 2007-Ohio-4192.

{¶ 7} Johnson argues that because the trial court did not make a specific determination that he was indigent before assigning him counsel, the court should be prohibited from ordering him to pay \$500 towards the cost of that counsel. But the record reflects that Johnson filed an affidavit of indigency and was assigned counsel two months after the original complaint for abuse and temporary custody was filed in September 2006.

{¶ 8} In 2009, Johnson's counsel moved for attorney fees. The docket shows that the matter was continued because "father failed to complete the affidavit of indigency." Two months passed and the court held a hearing on February 19, 2010. The journal entry from that hearing reads that "counsel fees are approved and father to pay \$500.00 directly to Court's cashier within 90 days since he failed to execute the affidavit of indigency."

{¶ 9} It also appears from the record that the February 19, 2010 hearing was not recorded. It is the duty of the appellant to provide this court with an adequate record from which to review the assignments of error on appeal. See App.R. 9. “When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court’s proceedings, and affirm.” *In re Owca*, Cuyahoga App. No. 90292, 2008-Ohio-4578, ¶8, quoting *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 400 N.E.2d 384.

{¶ 10} In the event that the record is incomplete or unavailable, App.R. 9(C) permits the appealing party to prepare a statement of the evidence or proceedings to permit proper appellate review. See *In re G.W.*, Cuyahoga App. No. 87331, 2006-Ohio-5327. Johnson, however, failed to comply with this alternative. Therefore, “[i]n the absence of a complete and adequate record, a reviewing court must presume the regularity of the trial court proceedings and the presence of sufficient evidence to support the trial court’s decision.” *Burrell v. Kassicieh* (1998), 128 Ohio App.3d 226, 714 N.E.2d 442. Thus, we presume regularity in the trial court’s proceedings and cannot consider Johnson’s argument that he is unable to pay the fine.

{¶ 11} Therefore, the sole assignment of error is overruled.

{¶ 12} Accordingly, judgment is affirmed.

It is ordered that appellee 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.

PATRICIA A. BLACKMON, JUDGE

KENNETH A. ROCCO, P.J., and  
MARY J. BOYLE, J., CONCUR