

[Cite as *Wielgus v. Wielgus*, 2011-Ohio-1569.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 95214

MARIAGNES WIELGUS

PLAINTIFF-APPELLEE

vs.

EDWARD A. WIELGUS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Domestic Relations Division of the
Cuyahoga County Common Pleas Court
Case No. D-319565

BEFORE: Blackmon, J., Kilbane, A.J., and Rocco, J.

RELEASED AND JOURNALIZED: March 31, 2011

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PATRICIA ANN BLACKMON, J.:

{¶ 1} Appellant Edward A. Wielgus (“husband”) appeals the domestic relations court’s denial of his motion to continue, admission of evidence, and calculation of child support. He assigns four errors for our review.¹

{¶ 2} Having reviewed the record and relevant law, we affirm the trial court’s decision. The apposite facts follow.

Facts

¹See appendix.

{¶ 3} The parties were married on October 11, 1986, and two children were born from the marriage, Christopher (DOB 5/20/1989) and Edward (DOB 11/16/1991). On January 22, 2008, Mariagnes Wielgus (“wife”) filed a complaint for separation, which was later amended four times, ultimately requesting a divorce rather than legal separation. The husband did not respond to the wife’s filed complaints until the court issued an order on December 14, 2008, ordering him to do so; he filed an answer on January 20, 2009.

{¶ 4} The trial court thereafter issued discovery orders and set a trial date of September 23, 2009. The husband failed to respond to the wife’s requests for discovery in spite of the court’s granting him two continuances to do so. Additionally, on June 1, 2009, the court ordered the husband to provide an accounting of funds he removed from the Third Federal Bank; the husband never responded to the order. The trial in September did not go forward because the husband’s counsel withdrew from representation on September 9, 2009. The trial court ordered the husband to obtain new counsel immediately and that the September 23, 2009 trial date would be treated as a final pretrial. The trial date was moved to December 7 and 8, 2009. The trial in December did not proceed because the matter was stayed due to the husband’s filing for personal bankruptcy on September 22, 2009.

{¶ 5} In response to the husband's filing for bankruptcy, the wife's attorney filed a motion for relief from the stay with the bankruptcy court so that the domestic matter could proceed. While the motion was pending, the trial court set the matter for trial on February 22, 2010. However, because the bankruptcy court had failed to rule on the motion for relief, the matter was continued to April 14, 2010. On March 19, 2010, the federal court granted relief from the stay; thus, April 14 remained as the trial date.

{¶ 6} The trial commenced as scheduled on April 14. At this time, the husband requested a continuance to obtain counsel. The trial court denied his request after noting the previous delays caused by the husband and proceeded with the trial. The husband failed to answer most of the questions asked by the wife's counsel due to a pending criminal matter regarding his absconding funds from the wife's financial accounts. Thus, he exercised his Fifth Amendment right to not answer.

{¶ 7} The trial court issued its judgment on April 29, 2010. Approximately two weeks later, the husband retained counsel to file a motion for a new trial due to the fact he was unrepresented at trial. The counsel was the same one that had represented him previously. The trial court denied the motion for a new trial.

Denial of Continuance

{¶ 8} We address the husband’s first and second assigned errors together because they both concern the trial court’s refusal to continue the trial so that the husband could obtain counsel.

{¶ 9} “The decision whether to grant a continuance is within the sound discretion of the trial court.” *Hartt v. Munobe*, 67 Ohio St.3d 3, 9, 1993-Ohio-177, 615 N.E.2d 617. Consequently, “[a]n appellate court will not find error ‘unless it clearly appears, from all the facts and circumstances, that there has been an abuse of discretion, operating to the prejudice of the party in the final determination of the case.’” *Garrett v. Garrett* (1977), 54 Ohio App.2d 25, 34, 374 N.E.2d 654.

{¶ 10} When ruling on a motion for a continuance, “[t]he trial court balances the court’s interest in controlling its docket and the public’s interest in an efficient judicial system with the possibility of prejudice to the defendant.” *Sayre v. Hoelzle-Sayre* (1994), 100 Ohio App.3d 203, 208, 653 N.E.2d 712, citing *State v. Unger* (1981), 67 Ohio St.2d 65, 67, 423 N.E.2d 1078. The trial court may consider factors such as the length of the delay requested, prior requests for continuances, the legitimacy of the request for a continuance, whether the movant contributed to the circumstances that gave rise to the request for a continuance, inconvenience to the parties, counsel, and the court, and “other relevant factors, depending on the unique facts of each case.” *Id.*, citing *Unger*, at 67-68.

{¶ 11} Here, the husband requested the continuance on the day of trial, in spite of knowing for over a month the date the trial was to commence. Although the husband was unrepresented, a party does not have a guaranteed right to counsel in a domestic relations proceeding. *Lentz v. Lentz*, Cuyahoga App. No. 86643, 2006-Ohio-3168; *DiGuilio v. DiGuilio*, Cuyahoga App. No. 81860, 2003-Ohio-2197. Moreover, the trial court stated in its judgment entry:

“Defendant delayed answering any of the complaints with requests for extensions of time. Ultimately, the Court denied further extensions and required Defendant to answer within fourteen days or the Court would proceed with the matter as an uncontested case. Defendant answered December 15, 2008.”

“After the below signed Judge assumed the Court’s docket April 6, 2009, this Court issued discovery orders and set the case for trial in September 2009. There were delays in responding to discovery. On June 1, 2009, the Court ordered the Defendant to provide an accounting of the funds removed from Third Federal Bank, with which order Defendant never complied. The trial did not proceed in September because counsel for Defendant withdrew on September 19, 2009. However, counsel continued to appear informally at pretrials after his

withdrawal. The matter was set for trial in December 2009, but the Court could not proceed on that date due to Defendant's bankruptcy filing. From the onset, the Defendant has engaged in a pattern of delay. After the bankruptcy stay was lifted and the matter was ready to begin, Defendant requested a further continuance, which was denied."

{¶ 12} Thus, given the husband's previous dilatory conduct and refusal to comply with discovery demands, the trial court was within its discretion to deny the continuance. This is especially true because the husband's attorney appeared to be still representing him in spite of the court's granting the motion for the attorney to withdraw from representation. Interestingly, the husband was able to obtain counsel to file a motion for a new trial two weeks after the court's judgment entry. It was the same counsel who had previously withdrawn from his case. Accordingly, the husband's first and second assigned errors are overruled.

Computation of Child Support

{¶ 13} In his third assigned error, the husband contends the trial court's calculation of child support was erroneous because the court attributed an income of \$200,000 to him in calculating child support.

{¶ 14} “It is well established that a trial court’s decision regarding child support obligations falls within the discretion of the trial court and will not be disturbed absent a showing of an abuse of discretion.” *Pauly v. Pauly*, 80 Ohio St.3d 386, 390, 1997-Ohio-105, 686 N.E.2d 1108, citing *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144, 541 N.E.2d 1028. The term “abuse of discretion” implies more than an error of law or judgment; it implies that the court’s attitude was unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 15} The husband argues that the trial court improperly relied on two pages of a 2006 tax return that did not represent the entire tax document. The document submitted to the court by the wife included the first page of the tax return and the attached schedule C, and indicates that the husband had an adjusted gross income of \$215,312. The trial court did not abuse its discretion by relying on the document. By refusing to comply with the wife’s discovery requests for more current information regarding his income, there was no evidence to rebut the information contained in the 2006 tax return. As the court held in its judgment entry:

“There is not evidence from the Defendant what his current income has been. Although the Court could believe that his income in the real estate market has

declined, Defendant never provided any evidence during the entire time this matter was pending or at trial.”

{¶ 16} Additionally, when the information was being admitted into evidence, the husband did not object to its admission. Instead he left the room due to an alleged stomach ache while the wife’s counsel discussed the tax form with the court. This was in spite of the court’s warning that it was not time for a break and that the proceeding would continue in his absence. Accordingly, the husband’s third assigned error is overruled.

Authentication of the Exhibits

{¶ 17} In his fourth assigned error, the husband argues that the court erred by admitting unauthenticated documents into evidence. According to the husband, none of the exhibits offered into evidence were identified or authenticated by the wife.

{¶ 18} A review of the record shows that the exhibits were introduced into evidence during the direct examination of the wife. The trial court thereafter admitted the exhibits into evidence. We conclude this complied with the requirements of Evid.R. 901, which provides in pertinent part:

“(A) General provision. The requirement of authentication or identification as a condition precedent to the admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.”

“(B) Illustrations. By way of illustration only, and not way of limitation, the following are examples of authentications or identification conforming with the requirements of this rule:

“(1) Testimony of the witness with knowledge. Testimony that a matter is what it is claimed to be.”

{¶ 19} “Circumstantial evidence, as well as direct, may be used to show authenticity. Moreover, the threshold standard for authenticating evidence pursuant to Evid.R. 901(A) is low, and ‘does not require conclusive proof of authenticity, but only sufficient foundational evidence for the trier of fact to conclude that * * * [the evidence] is what its proponent claims it to be.” (Citation omitted.) *State v. Young* (Mar. 29, 2002), 2d Dist. No. 18874, ¶15, quoting *State v. Easter* (1991), 75 Ohio App.3d 22, 25, 598 N.E.2d 845.

{¶ 20} We initially note that the husband made no objection to the admission of the documents into evidence. Because the husband failed to object to any of the exhibits, he has waived any issue as to their authenticity. *Passwaters v. Passwaters*, 7th Dist. No. 02 AP 776, 2002-Ohio-6906, at ¶24. However, given the low burden of proof in establishing authenticity, even if he had objected, the trial court did not err in admitting the documents.

{¶ 21} The tax return was a joint tax return filed by the couple in 2006; therefore, the wife was able to authenticate the document. Moreover, the following are also documents that the wife had personal knowledge of: title to

the vehicles were in the wife's name; the text message from her husband indicating the 3.2 carat engagement ring he purchased for his girlfriend was sent to her account; pension fund letter was addressed to the wife; the court document regarding foreclosure on the party's home was a case in which the wife, along with the husband, was a defendant; photographs offered into evidence regarding the damage of the home were taken by the wife and her son; the wife personally compiled the list of the items missing from the home; the wife was able to verify that she did not sign the checks withdrawing money from her Third Federal account; the wife was able to verify she did not sign the document transferring the deeds on two properties owned by her and the husband; and, the brief in which she alleged the filing of the deeds were a forgery of her signature was filed by her through her attorney.

{¶ 22} The only documents that arguably could not be authenticated by the wife were the exhibits depicting the husband's business account with First Merit Bank. However, the admission of the First Merit documents into evidence was harmless in light of the fact the court acknowledged the account was the husband's and gave him the proceeds when dividing the property. Accordingly, the husband's fourth assigned error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant her 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 ANN BLACKMON, JUDGE

MARY EILEEN KILBANE, A.J., and
KENNETH A. ROCCO, J., CONCUR

APPENDIX

Assignments of Error

“I. The trial court erred and abused its discretion by denying the appellant’s request for a continuance as the court had knowledge that the appellant was unrepresented by counsel and was in the process of seeking counsel thereby precluding the trial court from proceeding with the hearing.”

“II. The trial court erred and abused its discretion by denying the appellant’s motions.”

“III. The trial court erred and abused its discretion in its calculation of child support, and in imputing income to the appellant, Edward A. Wielgus.”

“IV. The trial court erred and abused its discretion in admitting into evidence the appellee’s exhibits.”