

STATE OF OHIO                     )  
  )ss:  
COUNTY OF MEDINA            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

AMBER WILLIAMS

C.A. No.       09CA0080-M

Appellant

v.

FREDERICK ORMSBY

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF MEDINA, OHIO  
CASE No.     09 DV 0113

Appellee

DECISION AND JOURNAL ENTRY

Dated: August 9, 2010

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CARR, Judge.

{¶1} Appellant, Amber Williams, appeals the judgment of the Medina County Court of Common Pleas, Domestic Relations Division. This Court reverses.

I.

{¶2} On May 15, 2009, Amber Williams appeared before a magistrate in the Medina County Court of Common Pleas, Domestic Relations Division, and requested an ex parte domestic violence civil protection order against appellant, Frederick R. Ormsby, in Case No. 09DV0113. Her request was denied by the magistrate at that time based on a lack of evidence. The matter was set for a full hearing on July 21, 2009.

{¶3} At the July 21, 2009 hearing, counsel for Mr. Ormsby orally moved to dismiss the petition on the basis that Ms. Williams was barred from filing the petition under the doctrine of res judicata. Both parties agreed that the full hearing should be continued and that briefs should be submitted regarding Mr. Ormsby's motion to dismiss.

{¶4} Ms. Williams had previously filed a petition for a domestic violence civil protection order on September 22, 2008, in Case No. 08DV0243. On that date, the court had granted an ex parte domestic violence civil protection order. Subsequently, on October 31, 2008, the date of the full hearing in that case, Ms. Williams indicated that she had agreed to dismiss her petition as part of an agreed judgment entry in a separate case involving a contract dispute between Ms. Williams and Mr. Ormsby in Medina County Court of Common Pleas, Case No. 08CIV0869. The order dismissing the petition in Case No. 08DV0243 was entered on November 7, 2008. Mr. Ormsby's motion to dismiss in Case No. 09DV0113 was based on the premise that Ms. Williams was barred from filing a second petition based on her agreement to drop her initial petition in Case No. 08DV0243.

{¶5} On October 7, 2009, the magistrate issued a decision finding that Mr. Ormsby was entitled to a dismissal of the petition as a matter of law because the doctrine of res judicata barred Ms. Williams from filing a second petition based on the same facts. In that same October 7, 2009 journal entry, the trial court adopted the magistrate's decision and made it the order of the trial court.

{¶6} Ms. Williams filed her notice of appeal on November 5, 2009. On appeal, Williams raises one assignment of error.

## II.

### **ASSIGNMENT OF ERROR**

“THE MEDINA COUNTY DOMESTIC RELATIONS COURT IN AMBER WILLIAMS V. FREDERICK ORMSBY, CASE # 09DV0113 ERRED IN GRANTING RESPONDENT’S MOTION TO DISMISS PER CIVIL RULE 56 ON THE GROUNDS OF RES JUDICATA, APPENDIX B, CITING A PRIOR DISMISSAL ENTRY IN AMBER WILLIAMS V. FREDERICK ORMSBY, CASE #08DV0243, WHEN PER RULE 41(A)(2) A DISMISSAL IS WITHOUT PREJUDICE ‘UNLESS OTHERWISE SPECIFIED’, WHERE THE FOUNDATION OF THE DISMISSAL ENTRY IN 08DV0243 WAS A

TEMPORARY ORDER IN A SEPARATE CIVIL CASE INVOLVING THE SAME PARTIES AMBER WILLIAMS V. FREDERICK ORMSBY, CASE NO. 08CIV0869 WHICH STATED, ‘DURING THE PENDENCY OF THIS PROCEEDING’, APPENDIX C.”

{¶7} In her sole assignment of error, Ms. Williams contends that the trial court erred in granting Mr. Ormsby’s motion to dismiss. This Court does not reach the merits of her assignment of error.

{¶8} This matter was referred to a magistrate by the trial court under the provisions of Civ.R. 53 and Civ.R. 75. The magistrate’s decision, which recommended that the petition for a domestic violence civil protection order be dismissed, was rendered on October 7, 2009. In that same entry, the trial judge adopted the magistrate’s decision and made it the order of the trial court.

{¶9} Civ.R. 53(D) governs proceedings in matters referred to magistrates. Civ.R. 53(D)(3)(a)(iii) states:

“A magistrate’s decision shall be in writing, identified as a magistrate’s decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three days after the decision is filed. A magistrate’s decision shall indicate conspicuously that a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ.R. 53(D)(3)(b).”

{¶10} Civ.R. 53(D)(3)(b)(iv) states:

“Except for a claim of plain error, a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).”

{¶11} This Court notes that Ms. Williams did not file objections to the magistrate’s decision in this case. However, the magistrate’s decision contained several procedural defects

which prevented the parties from having a meaningful opportunity to file objections. This Court has previously stated:

“The case law discussing prejudice based upon a trial court’s violation of Civ.R. 53 focuses on two issues: (1) whether the violation prevented the appellant the opportunity of filing objections to the magistrate’s decision; and (2) whether the trial court was able to conduct an independent analysis of the magistrate’s decision. The clear import of Civ.R. 53(E) [current Civ.R. 53(D)] is to provide litigants with a meaningful opportunity to register objections to the [magistrate’s] report and the failure to provide such an opportunity to object is prejudicial error.” (Internal quotations and citations omitted.) *Ulrich v. Mercedes-Benz USA, LLC*, 9th Dist. No. 23550, 2007-Ohio-5034, at ¶13, citing *Ford v. Gooden*, 9th Dist. No. 22764, 2006-Ohio-1907, at ¶13, quoting *Performance Constr., Inc. v. Carter Lumber Co.*, 3d Dist. No. 5-04-28, 2005-Ohio-151, at ¶15.

{¶12} Here, there were two notable procedural defects in the magistrate’s decision. First, the magistrate’s decision did not include a conspicuous warning that failure to object to any findings of fact and conclusions of law in the magistrate’s decision would result in forfeiture of those issues on appeal. Including such a warning in a magistrate’s decision is required under Civ.R. 53(D)(3)(a)(iii). The October 7, 2009 magistrate’s decision was simultaneously adopted in the same journal entry and made the order of the trial court. Because a conspicuous warning about the forfeiture rule was not included in the magistrate’s decision, it cannot be said that Ms. Williams was provided with a meaningful opportunity to file objections and preserve issues for appeal. Furthermore, the October 7, 2009 entry which contained the magistrate’s recommendation was captioned, “RECOMMENDATION AND ORDER DISMISSING PETITION FOR DOMESTIC VIOLENCE CIVIL PROTECTION ORDER.” The trial court specifically referred to this entry as a “Magistrate’s Decision” in adopting it and making it the order of the court. However, an entry which complies with Civ.R. 53(D)(3)(a)(iii) must be identified as a “magistrate’s decision” in the caption. Failing to include this language in the caption created confusion among the parties as to whether they were subject to the mandates of

Civ.R. 53(D). This defect, coupled with the lack of a conspicuous warning regarding the opportunity to file timely objections, resulted in prejudice to Ms. Williams.

{¶13} In light of the foregoing, we decline to address Ms. Williams' assignment of error at this time. The judgment of the Medina County Court of Common Pleas, Domestic Relations Division, is reversed and remanded for the magistrate to prepare and file a decision which comports with Civ.R. 53, giving the parties an opportunity to file timely objections to that decision.

### III.

{¶14} The judgment of the Medina County Court of Common Pleas, Domestic Relations Division, is reversed and remanded for proceedings consistent with this decision.

Judgment reversed,  
and cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

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DONNA J. CARR  
FOR THE COURT

WHITMORE, J.  
MOORE, J.  
CONCUR

APPEARANCES:

L. RAY JONES, Attorney at Law, for Appellant.

PAUL W. HERTRICK and CHRIS D. CAREY, Attorneys at Law, for Appellee.