

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

CARISA N. SMITH,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-L-150
JOHN E. TREADWELL, JR.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 2008 CV 02306.

Judgment: Affirmed.

Robert E. Somogyi, Hans C. Kuenzi Co., L.P.A., Skylight Office Tower, #410, 1660 West Second Street, Cleveland, OH 44113 (For Plaintiff-Appellee).

John E. Treadwell, Jr., pro se, 15911 Corsica Avenue, Cleveland, OH 44110 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, John E. Treadwell, Jr., appeals from the judgment of the Lake County Court of Common Pleas, Juvenile Division, adopting the magistrate’s decision regarding appellant’s child support obligation. For the reasons below, we affirm.

{¶2} On April 11, 2008, appellee gave birth to the parties’ only child together. Appellee is legal custodian of the child. In addition to the child he had with appellee, appellant has three other children with two separate women. The record indicates he is the obligor on support orders for all children.

{¶3} On November 24, 2008, appellee filed a complaint for custody and child support. Appellant filed no responsive pleadings. Appellant waived his right to counsel and the matter proceeded to trial before the magistrate on May 13, 2009. Testimony was taken and exhibits submitted without objection. The magistrate’s decision was filed on August 28, 2009. After considering the evidence introduced at trial, the magistrate recommended that appellant pay appellee ongoing child support in the amount of \$281.50 per month. The magistrate further determined that appellant’s actual arrearages as of June 30, 2009 totaled \$5,081.08. The magistrate recommended appellant pay down the arrearage at a rate of \$37.12 per month until paid in full. The magistrate’s decision concluded with the following advisement:

{¶4} “A party shall not assign as error on appeal the court’s adoption of any finding of fact or conclusion of law in that decision unless the party timely and specifically objects to that finding or conclusion as required by *** Juv.R. 40(E)(3)***.”¹

{¶5} On September 9, 2009, instead of filing objections as required by the juvenile rules, appellant sent an ex parte letter to the magistrate. In the letter, appellant sought a “modification” of the magistrate’s recommendation because, in his estimation, “the court did not have access to pertinent information that should have been considered when calculating the appropriate support amount.” On September 15, the trial court responded to appellant’s correspondence advising him that “[t]he court can only be addressed in writing in the form of a motion or in open court.” The court

1. Juv.R. 40(D)(3)(a)(iii) requires a magistrate’s decision to include conspicuous language indicating that “a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion of law under Juv.R. 40(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Juv.R. 40(D)(3)(b).” The magistrate’s decision actually cites to Juv.R. 40(E)(3), the former rule concerning waiver, which was superseded by Juv.R.40(D)(3)(b)(iv), effective July 1, 2006. Appellant does not assert that notice regarding the procedure for filing objections was defective or insufficient and therefore we need not consider such an argument.

indicated that it would consider appellant's request upon the filing of a proper motion that has been appropriately served upon all parties.

{¶6} On September 28, 2009, a month after the magistrate's decision was issued, appellant filed a pleading entitled "Motion to Obect [sic] to Magistre's [sic] Decision." Similar to his letter, appellant asserted his belief that the magistrate did not possess pertinent information that should have been considered when calculating the appropriate support amount. At no point did appellant order a transcript of the proceeding upon which the magistrate's decision was based. On October 2, 2009, the trial court entered a judgment denying appellant's motion as untimely. On the same date, the trial court filed a separate judgment entry adopting the magistrate's decision in full.

{¶7} Appellant now appeals assigning three errors for our review. His first assignment of error provides:

{¶8} "The trial court erred to the prejudice of the defendant-appellant by denying his motion to object to magistrate's decision."

{¶9} Appellant claims the trial court committed reversible error by denying his motion to object after it led him to believe such motion would be considered if it were filed as a motion and served on all parties. Appellant contends the trial court's advisement implied it was awarding him an extension of time to file his objections pursuant to Civ.R. 53(D)(5).² Appellant alternatively asserts that nothing in the rules governing objections to a magistrate's decision indicates an objection must be made by

2. As this matter went forward in the juvenile court, the rules of civil procedure are inapplicable. Rather, all procedures were governed by the juvenile rules. Juv.R. 40, not Civ.R. 53, is the rule governing procedures relating to magistrates. Juv.R. 40(D)(5), like Civ.R. 53(D)(5), permits a party to move the

motion. Thus, he claims, he met the minimum requirement for filing objections under the rules when he sought a modification of the magistrate's recommendation via ex parte letter. We disagree.

{¶10} Nothing in the court's response to appellant's letter indicates it would consider the *substantive merits* of his request if he filed a proper motion. The letter stated, in very general terms, the court would consider appellant's request if it was filed in the form of a motion and it was served on all parties. When appellant filed his eventual motion, the court considered the same and concluded it was untimely. This action did not run afoul of the September 15, 2009 correspondence.

{¶11} Moreover, appellant fails to acknowledge that the correspondence specifically directed appellant to consult with an attorney if he needed additional information or clarification relating to court procedures. Appellant contends that *he* understood the September 15, 2009 correspondence to mean that the court would consider the merits of his request if he filed it in motion form. However, appellant's lay-interpretation of the letter is irrelevant; in order to be certain that he was following proper procedures, he was obligated to seek legal counsel and obtain a professional opinion regarding his proper course of action. Nothing in the record indicates he proceeded in this fashion.

{¶12} Finally, and perhaps most importantly, the correspondence upon which appellant relies was not a judgment or ruling. At most, the letter was a courtesy mailing sent by the Lake County Juvenile Court's Chief of Staff indicating the court does not accept requests to modify decisions or orders unless they are *properly* submitted. It is

juvenile court for an extension of time to file objections to a magistrate's decision. Thus, even though appellant misidentifies the proper procedural rule, this mistake, unto itself, is not fatal to his argument.

well-settled that “*** a trial court ‘speaks’ solely through the written decisions set forth in its journal.” See, e.g., *State ex rel. Duffy v. Pittman*, 11th Dist. No. 2006-P-0043, 2007-Ohio-346, at ¶8. Given this principle, appellant was not entitled to conclude that the letter, a generic administrative notice, represented a formal, binding action of the court in relation to his case.

{¶13} Appellant’s first assignment of error is overruled.

{¶14} Appellant’s second assignment of error provides:

{¶15} “The trial court erred to the prejudice of defendant-appellant when it relied upon incomplete information when determining the defendant’s-appellant’s monthly child support obligation.”

{¶16} In support of his second assignment of error, appellant claims the trial court erred in failing to consider his “true financial status” in light of the three, pre-existing support orders for which he was already responsible as an obligor. Had it done so, he maintains R.C. 3119.22 and R.C. 3119.23, the statutory sections enabling a trial court to deviate from an amount provided by the child support guidelines, would have required a downward deviation of the total amount ordered. We disagree.

{¶17} We again emphasize that appellant failed to file timely objections to the magistrate’s decision. Moreover, at no point did he move the court for an extension of time for filing his objections pursuant to Juv.R. 40(D)(5). The failure to file timely objections to a magistrate’s decision waives all arguments on appeal except a claim of plain error.

{¶18} However, even if appellant had properly preserved his argument through filing timely objections, the record indicates the trial court did indeed consider his pre-

existing orders. The “Shared Parenting Worksheet” filed with the magistrate’s decision indicates appellant, at the time of the hearing, was already paying \$7,535.53 for “[a]nnual court-ordered support paid for other children.”

{¶19} Moreover, it is within the discretion of the trial court to deviate from the child support guidelines. See R.C. 3119.22. Although a trial court *may* consider certain statutory factors in determining whether to grant a deviation in child support pursuant to R.C. 3119.22 and R.C. 3119.23, the court is not required to deviate from the worksheet and guidelines. See, e.g., *Lawson v. Lawson*, 5th Dist. No. 08-CA-37, 2009-Ohio-248, at ¶91.

{¶20} The record indicates the trial court did not base its decision upon incomplete financial information, as appellant alleges. Moreover, the trial court is not obligated to deviate from the child support guidelines. Hence, appellant was not *entitled* to a downward deviation from the amount calculated by those guidelines. Finally, because appellant failed to file a transcript, we have no way of knowing the full scope of the evidence considered by the magistrate at the hearing, e.g., what monetary amount appellee alleged would be necessary to cover the child’s current needs. Under such circumstances, we must presume the testimony and other evidence submitted during the proceedings below support the award. See, e.g., *Allen v. Allen*, 11th Dist. No. 2009-T-0070, 2010-Ohio-475, at ¶26 (Without a transcript of proceedings, a reviewing court must presume regularity of the proceedings in the trial court). Given these factors, we perceive no plain error in the trial court’s determination.

{¶21} Appellant’s second assignment of error is overruled.

{¶22} Appellant’s third assignment of error asserts:

{¶23} “The trial court erred in determining that the magistrate’s decision was proper in all respects and adopting it in full.”

{¶24} Under his final assignment of error, appellant asserts the trial court erred in adopting the magistrate’s decision because it failed to provide “special provisions” for his parenting time or visitation. We disagree.

{¶25} When no transcript or affidavit is provided to the trial court in support of objections to a magistrate’s decision, an appellate court is limited to determining whether or not the trial court abused its discretion in adopting the magistrate’s decision. *Gorombol v. Gorombol*, 11th Dist. No. 95-L-036, 1996 Ohio App. LEXIS 3366, *4. In the absence of a transcript from a hearing before a magistrate, the scope of a trial court’s review of the factual findings in a magistrate’s decision “is limited to determining whether those findings are sufficient to support *** the conclusions of law ****” reached by the magistrate. *In re Estate of Thut*, 11th Dist. No. 2004-L-138, 2005-Ohio-4647, at ¶28. (Citation omitted). Under such circumstances, therefore, an appellate court will only reverse if it finds the trial court adopted the magistrate’s decision when there was clear error of law or other defect on its face.

{¶26} Here, there is nothing in the record indicating appellant filed a motion for custody or visitation. Rather, the only matter before the court was appellee’s request to determine custody and establish a child support order. Because appellant failed to properly raise the issues of custody and visitation, the trial court was not required to consider them. We therefore hold the trial court did not err in adopting the magistrate’s decision.

{¶27} Appellant’s final assignment of error is overruled.

{¶28} For the reasons discussed in this opinion, it is the judgment of this court that the judgment of the Lake County Court of Common Pleas, Juvenile Division, adopting the magistrate's decision is affirmed.

MARY JANE TRAPP, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.