[Cite as *Alselaim v. Ahreshien*, 2023-Ohio-2420.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Qamar Alselaim	Court of Appeals No. L-22-1169
Appellee	Trial Court No. DR2019-0906
v.	
Hussam A. Ahreshien	**DECISION AND JUDGMENT**
Appellant	Decided: July 14, 2023

* * * * *

Tonya M. Robinson, for appellee.

Hussam A. Ahreshien, Pro se.

* * * * *

MAYLE, J.

{¶ 1} Defendant-appellant, Hussam A. Ahreshien, appeals the June 21, 2022 judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, granting a divorce in favor of plaintiff-appellee, Qamar Alselaim, designating her the sole residential parent and legal custodian of their children, and dismissing his counterclaim for divorce. For the following reasons, we affirm the trial court judgment.

I. Background

{¶ 2} Qamar Alselaim and Hussam A. Ahreshien were married in Baghdad, Iraq on July 10, 2009. They have two minor children. On December 18, 2019, Alselaim filed a complaint for divorce on grounds of incompatibility, gross neglect of duty, and extreme cruelty. She asked to be designated the sole residential parent and legal custodian of their children. Ahreshien counterclaimed for divorce on grounds of adultery and extreme cruelty and sought shared parenting. In his original answer, which he later sought to amend, he admitted that the parties were incompatible.

{¶ 3} At the time Alselaim filed her complaint, Ahreshien was serving a seven-year prison term for raping, abducting, and assaulting her. He was also subject to a civil protection order, applicable to Alselaim and their two children, in effect until July 9, 2024. Ahreshien requested appointed counsel to represent him in the divorce, but the court denied his request.

{¶ 4} In accordance with the court's procedures for divorces involving children under age 16, a court counselor, Lori Christman, was appointed and conducted an investigation relative to the allocation of parental rights and responsibilities. She submitted a report recommending that Alselaim be named the residential parent and legal custodian of the children. Christman recommended that Ahreshien have no parenting time while incarcerated and instead recommended that he petition the court upon his release from prison.

{¶ 5} After extensive motion practice, the matter proceeded to trial via Zoom on April 18, 2022. Both parties participated in the first day of trial. Ahreshien, who attended from the North Central Correctional Complex, was unable to secure a video connection, but was able to participate by phone. Alselaim, whose primary language is Arabic, was appointed an interpreter who translated the proceedings for her. Christman was examined by both parties.

{¶ 6} Christman testified that she interviewed Alselaim in her office and Ahreshien via telephone from the prison, accessed the case file for the civil protection order, and reviewed the motions that had been filed in the divorce action. She said that Alselaim attended a parenting class required by the court, but due to his incarceration, Ahreshien did not. Christman recommended that Alselaim be named the children's residential parent and legal custodian, and she recommended that Ahreshien have no parenting time until he could petition the court upon his release from prison. Her opinion was based primarily on the fact that the civil protection order remains in effect until July 9, 2024.

{¶ 7} On cross-examination, Christman testified that she did not receive a court order permitting her to provide her report to Ahreshien, therefore, she did not provide him the report. She testified that she finished her recommendation in January of 2020, and was not asked by the court to further investigate. Christman explained that in cases involving parenting time, the parents often have opposing views and it can be difficult to

know who is telling the truth. She said that she relied on her years of clinical training, work experience, and the verifiable data—in this case, the CPO and the prison sentence—to make a recommendation based on the best interest of the children.

{¶ 8} Christman did not interview the children, but knew that Alselaim told her older child that Ahreshien was in prison, but told her younger child that he is overseas. Christman acknowledged some of the things that Alselaim had relayed to her including that Ahreshien trained their daughter to be aggressive towards her, Ahreshien was in prison because he had harmed her, the children used to be fearful of everything because their father did not allow them to be exposed to other people or activities and they witnessed negative interactions between their parents, and the children have become more loving and engaging now that they do not live in a household with domestic violence. Alselaim also told Christman that the children get good grades and are artistic. Alselaim did not tell her that the children love or are engaged with their father.

{¶ 9} In response to questioning from Ahreshien, Christman testified that Alselaim told her that she is in the U.S. on a green card and is seeking U.S. citizenship. Christman was not aware that the children's passports are expired and was not aware of any attempt to take the children overseas after Ahreshien's July 24, 2018 arrest. She reviewed text messages that Ahreshien submitted to the court, which he claims demonstrate that Alselaim has a boyfriend overseas, but Christman explained that information about a

parent's dating or affairs is less relevant to her than issues such as domestic violence, criminal history, abuse, and neglect.

{¶ 10} A confluence of factors—the natural difficulties associated with video conferencing, the language barrier, the fact that the interpreter and Alselaim participated in the Zoom conference from different locations, Ahreshien's participation by telephone, and Ahreshien's repetitious, inartful questioning and failure to heed the court's instructions concerning the proper scope of examination–caused the proceedings to be rather arduous. There was enough time only for Christman's testimony. The court set the second day of trial for the afternoon of May 12, 2022. The court also set aside August 22, 2022, because based on the difficulties of the first day, it anticipated that the trial would not conclude on May 12, 2022. Ahreshien did not appear on May 12, 2022, however, and only Alselaim testified, thereby curtailing the trial.

{¶ 11} Alselaim testified that she and Ahreshien are incompatible and the incompatibility goes to the heart of their marriage. She said that she and Ahreshien have been separated since 2018, and he has provided her and her family no support since then. He was convicted by a jury of felony abduction, rape, and domestic violence and was sentenced to a term in prison of seven years. Alselaim stated that the children were in the home when Ahreshien committed these crimes against her. She claimed that he had been hurting her "for the longest time" and "her kids were victims before she was a victim." When Alselaim lived with Ahreshien, he ruled the house 100 percent and did not allow

her to leave, drive, or interact with anyone. She had no money. Ahreshien told Alselaim she was a maid and nothing else. The children were not allowed to go to the courtyard to play and could not really leave the house. They had to be home strictly at 7:00. There is a CPO protecting her and the kids for five years.

{¶ 12} Since Alselaim has been apart from Ahreshien, she has been able to work. She works at a daycare 60 hours a month earning $10.50 per hour. She gets section 8 housing, Medicaid, and food stamps. Her monthly expenses average $724 per month. She owns a car, which she purchased for $2,500, but owns no other property other than a checking account into which her paychecks are deposited. She and Ahreshien had no joint accounts. She has no debt. Alselaim asked that she be permitted to keep her car, which she bought after she separated from Ahreshien, to be designated the legal custodian of the children, and to be permitted to claim the children for tax purposes. She does not want Ahreshien to have parenting time because she believes it will harm the children and the children do not want to see him. When Ahreshien is released from prison, Alselaim will want child support for the children. She has no objection to Ahreshien keeping anything that was in the apartment they shared, but she asked to be awarded her own personal property. Any personal property in her home is property that she purchased with her own money after she and Ahreshien separated. Alselaim moved for dismissal of Ahreshien's counterclaim.

{¶ 13} The trial, which began at 1:30 p.m., concluded at 2:27 p.m. After the trial concluded, the court's bailiff told the court that she received an email indicating that Ahreshien's case manager called, claimed that she had not received the court order with the dial-in information, and requested the dial-in number. The trial court confirmed with its bailiff that the order had been mailed to Ahreshien and emailed to the court's contact at the prison. After waiting an additional five minutes to see if Ahreshien would call in, the court granted Alselaim's motion to dismiss Ahreshien's counterclaim.

{¶ 14} The court issued a judgment entry of divorce, journalized on June 21, 2022, granting Alselaim a divorce from Ahreshien on the grounds of incompatibility, extreme cruelty, and neglect of duty, and dismissing Ahreshien's counterclaim. It named Alselaim the sole residential parent and legal custodian of the children. Consistent with the civil protection order, the court granted Ahreshien no parenting time or contact with the children until further order of the court. No child support was ordered due to Ahreshien's incarceration, but he was ordered to report to Lucas County Child Support Enforcement Agency upon his release to establish an order of child support.

{¶ 15} Ahreshien appealed. He assigns the following errors for our review:

> FIRST ASSIGNMENT OF ERROR
>
> THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING THE MINOR CHILDREN LEGAL CUSTODY TO THE APPELLEE AND ALLOCATING PARENTAL RIGHTS AND

RESPONSIBILITIES WITHOUT CONSIDERATION OF THE BEST INTEREST OF THE MINOR CHILDREN.

SECOND ASSIGNMENT OF ERROR

APPELLANT WAS DENIED DUE PROCESS WHEN THE TRIAL COURT PERMITTED THE TRIAL TO COMMENCE WITHOUT APPELLANT BEING PROVIDED THE INVESTIGATOR'S REPORT PURSUANT TO CIV.R. 75(D).

THIRD ASSIGNMENT OF ERROR

TRIAL COURT ERRED AND DENIED APPELLANT DUE PROCESS WHEN IT GRANTED APPELLEE DIVORCE BECAUSE HE CANNOT APPEAR PERSONALLY IN COURT VIA ZOOM VIDEO CALL FROM PRISON OF MAY 12, 2022.

FOURTH ASSIGNMENT OF ERROR

TRIAL COURT ERRED WHEN IT DISMISSED APPELLANT'S COUNTERCLAIM BECAUSE HE CANNOT P [sic] APPEAR PERSONALLY IN COURT VIA ZOOM CALL OR PHONE CALL FROM PRISON OF MAY 12, 2022 AND/OR AUGUST 22, 2022.

FIFTH ASSIGNMENT OF ERROR

TRIAL COURT ABUSED ITS DISCRETION WHEN IT GRANTED THE DIVORCE BASED UPON GROSS NEGLECT OF DUTY AND EXTREME CRUELTY.

SIXTH ASSIGNMENT OF ERROR

TRIAL COURT ABUSED ITS DISCRETION WHEN IT GRANTED THE DIVORCE ON THE GROUNDS OF INCOMPATIBILITY.

SEVENTH ASSIGNMENT OF ERROR

TRIAL COURT ERRED WHEN IT GRANTED APPELLEE'S MOTION IN LIMINE TO EXCLUDE EVIDENCE AND FAILED TO PROVIDE APPELLANT ADEQUATE TIME TO RESPOND TO APPELLEE'S MOTIONS.

EIGHTH ASSIGNMENT OF ERROR

TRIAL COURT ABUSED ITS DISCRETION WHEN IT DENIED APPELLANT'S 60(B) MOTIONS FOR RELIEF FROM JUDGMENTS.

II. Law and Analysis

{¶ 16} In his first assignment of error, Ahreshien argues that the trial court erred when it granted custody to Alselaim without considering the children's best interests. In his second assignment of error, Ahreshien argues that the trial court erred and denied his

right to due process when it permitted trial to go forward without providing him access to the investigator's report. In his third assignment of error, Ahreshien argues that the trial court erred when it granted Alselaim a divorce without his being present via Zoom the second day of trial. In his fourth assignment of error, Ahreshien argues that the trial court erred when it dismissed his counterclaim without his appearing via Zoom or telephone on May 12, 2022, and August 22, 2022. In his fifth assignment of error, Ahreshien argues that the trial court erred when it granted Alselaim a divorce on the ground of gross neglect of duty and extreme cruelty, and in his sixth assignment of error, on the ground of incompatibility. In his seventh assignment of error, Ahreshien argues that the trial court erred when it granted Alselaim's motion in limine without allowing him adequate time to respond to her motion. And in his eighth assignment of error, Ahreshien argues that the trial court erred when it denied his Civ.R. 60(B) motion for relief from judgment.

A. The Award of Legal Custody to Alselaim

{¶ 17} In his first assignment of error, Ahreshien claims that the trial court abused its discretion when it designated Alselaim the sole residential parent and legal custodian of their minor children and denied his request for parenting time or visitation. He maintains that Christman's testimony and the trial court's findings do not support the trial court's explanation for its best-interest determination. In particular, he complains that Christman did not interview the children, relied solely on Alselaim's allegations, and ignored that Alselaim had "abandoned her children for four months" while she went to

Iraq and intended to move the children there. Ahreshien denies that he ever physically or mentally abused his children.

{¶ 18} Alselaim responds that a nonresidential parent's imprisonment for a term of years is an extraordinary circumstance that will support the denial of visitation. Moreover, she claims, the civil protection order—effective until July of 2024—prevents Ahreshien from having contact with the children, he failed to attend the court-ordered parenting time seminar, and he admitted that it does not serve the children's best interests to visit him in prison. Finally, Alselaim emphasizes that Christman testified that it was in the children's best interest that Alselaim be named residential parent and legal custodian, therefore, sufficient evidence supports the trial court's judgment awarding custody to Alselaim and denying parenting time to Ahreshien.

{¶ 19} "A trial court's decision concerning visitation rights will not be reversed on appeal except upon a finding of an abuse of discretion." *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). An abuse of discretion connotes that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). An unreasonable decision is one that lacks sound reasoning to support the decision. *Hageman v. Bryan City Schools*, 10th Dist. Franklin No. 17AP-742, 2019-Ohio-223, ¶ 13. "An arbitrary decision is one that lacks adequate determining principle and is not governed by any fixed rules or standard." *Id.* quoting *Porter, Wright, Morris & Arthur, LLP v. Frutta del Mondo, Ltd.*, 10th Dist. No.

08AP-69, 2008-Ohio-3567, ¶ 11. And an unconscionable decision is one "that affronts the sense of justice, decency, or reasonableness." *Id.*

{¶ 20} Ohio courts recognize that "a noncustodial parent's right to see her child is a natural right," therefore, "visitation should be denied only under extraordinary circumstances * * *." *Grant v. Grant*, 6th Dist. Wood No. WD-88-29, 1989 WL 80951, *12 (Jul. 21, 1989), *dismissed sub nom. Fuller-Grant v. Grant*, 47 Ohio St.3d 702, 547 N.E.2d 986 (1989), citing *Pettry v. Pettry*, 20 Ohio App.3d 350, 352, 486 N.E.2d 213 (8th Dist.1984). To that end, where a divorce proceeding involves a child and the court has not issued a shared parenting decree, the court "shall make a just and reasonable order or decree permitting each parent who is not the residential parent to have parenting time with the child at the time and under the conditions that the court directs, unless the court determines that it would not be in the best interest of the child to permit that parent to have parenting time with the child and includes in the journal its findings of fact and conclusions of law." R.C. 3109.051(A).

{¶ 21} But Ohio courts also recognize that "[t]he imprisonment of a parent for a term of years for a crime of violence constitutes an 'extraordinary circumstance.'" *In re Hall*, 65 Ohio App.3d 88, 90, 582 N.E.2d 1055 (10th Dist.1989). In fact, they recognize that "[t]ransporting a young child to a prison on a regular basis to visit with a parent gives rise to an *inference* of harm to the child, and, thus, gives rise to the *presumption* such visitation is *not* in the child's best interest." (Emphasis added.) *Edwards v. Spraggins*,

5th Dist. Licking No. 04CA54, 2005-Ohio-2416, ¶ 17-18, citing *Hall* at 91. Accordingly, "once it is established a parent is imprisoned for a crime of violence, the burden of demonstrating visitation would be in the child's best interest shifts to the incarcerated parent." *Id.*, citing *Hall* at 90–91. "The court should grant visitation between a child and an incarcerated parent only where the incarcerated parent demonstrates the visitation is in the best interest of the child." *Id.*, citing *Hall* at 91.

{¶ 22} Here, the record evidence makes clear that Ahreshien is incarcerated for abducting, raping, and assaulting Alselaim while his children were nearby, and a civil protection order is in effect until July 9, 2024, prohibiting contact between Ahreshien and his wife and children. Alselaim testified that Ahreshien has harmed the children, and Christman unequivocally recommended that the children not be taken to the prison to visit with Ahreshien, primarily because of the CPO. There is no evidence in the record demonstrating that it is in the children's best interest to visit Ahreshien in prison. Ahreshien, therefore, has failed in his burden to rebut the presumption here against visitation. Accordingly, we find no abuse of discretion in the trial court's judgment naming Alselaim the children's residential parent and legal custodian and awarding no parenting time to Ahreshien during his incarceration.

{¶ 23} We find Ahreshien's first assignment of error not well-taken.

B. Failure to Make Christman's Report Available

{¶ 24} In his second assignment of error, Ahreshien claims that the trial court violated his right to due process when it proceeded to trial without providing him a copy of the court counselor's report under Civ.R. 75(D). He contends that he requested the report on November 10, 2020, but the court denied his motion because under the local rule, "the reports may not be copied and disseminated in the manner requested by" Ahreshien. Ahreshien denies that he requested the counselor's report "to copy or disseminate" it, and insists that he requested it to enable him to cross-examine the counselor.

{¶ 25} Alselaim responds that a pro se litigant must follow court procedures and is not entitled to special treatment, therefore, in order to be provided access to the court counselor report, Ahreshien was required to follow Lucas County Domestic Relations Court Local Rule 15. She emphasizes that the trial court repeatedly informed Ahreshien that he needed to comply with the local rule. She argues that because he failed to do so, the court did not err and did not violate his right to due process by denying his request for a copy of the counselor report.

{¶ 26} Lucas County Domestic Relations Court's Local Rule 15.02 (now numbered 15.06) outlines the process for obtaining a court counselor report. Under that rule as it then existed, a self-represented party or counsel of record must submit "the appropriate Release to Make Available Court Ordered Document form," "signed by the

individual making the request." Lucas County Domestic Relations Court Local Rule 15.02(B). Ohio courts recognize that pro se litigants are expected "to abide by the relevant rules of procedure and substantive laws, regardless of their familiarity with them," to the same extent as an attorney and "must accept the results of their own mistakes and errors." (Citations and quotations omitted.) *Thacker v. Thacker*, 12th Dist. Warren No. CA2019-09-099, 2020-Ohio-3319, ¶ 16; *Holman v. Keegan*, 139 Ohio App.3d 911, 918, 746 N.E.2d 209 (6th Dist.2000). *See also State v. Vaduva*, 2016-Ohio-3362, 66 N.E.3d 212, ¶ 42 (2d Dist.) (pro se litigants are held to the same standards as other litigants); *C.W. v. J.S.*, 10th Dist. Franklin No. 21AP-284, 2022-Ohio-1951, ¶ 36 (same); *State ex rel. Gessner v. Vore*, 123 Ohio St.3d 96, 2009-Ohio-4150, 914 N.E.2d 376, ¶ 5.

{¶ 27} Here, Ahreshien filed a written motion requesting a copy of the court counselor's report, but he apparently failed to submit the court-mandated "Release to Make Available Court Ordered Document." We have held before that a trial court does not abuse its discretion by demanding compliance with local rules requiring the utilization of specific forms. *See Strong v. Strong*, 6th Dist. Lucas No. L-01-1464, 2002-Ohio-2693, ¶ 42-43 (finding that trial court did not abuse its discretion where appellee "failed to comply with the local rules and supply the required forms"). *See also State ex rel. Hopson v. Cuyahoga Cty. Court of Common Pleas*, 135 Ohio St.3d 456, 2013-Ohio-1911, 989 N.E.2d 49, ¶ 2-3 (concluding that Eighth District justifiably denied relief to

appellant who failed to follow local rule requiring filing of complaint and affidavit as two separate documents); *Furlong v. Davis*, 9th Dist. Summit No. 24703, 2009-Ohio-6431, ¶ 28-31 (concluding that father's request for reimbursement of medical expenses was properly denied where he failed to fill out the form required by local rules). Because Ahreshien failed to comply with the local rules for obtaining a copy of the counselor's report, we find no error in the trial court's refusal to provide him with a copy of that report.

{¶ 28} We find Ahreshien's second assignment of error not well-taken.

C. Granting Alselaim's Complaint for Divorce and Dismissing Ahreshien's Counterclaim in His Absence

{¶ 29} In his third assignment of error, Ahreshien claims that his right to due process was violated when the trial court granted Alselaim a divorce after conducting the second day of trial via Zoom without his being present. In his fourth assignment of error, he claims that he was denied due process when the trial court dismissed his counterclaim without his personal appearance on May 12 or August 22, 2022.

{¶ 30} Ahreshien explains that his unit manager had access to Zoom and was responsible for facilitating his trial appearance, and he maintains that he appeared at his unit manager's office before 1:30 p.m. on May 12, 2022, as scheduled, but the unit manager was not in the office. He then went to his case manager to try to call in (instead of Zoom), but the case manager "did not provide [him] access to the court via telephone call." By the time a case manager connected Ahreshien with the court, the hearing was

over. Ahreshien contends that the trial court was aware that he had problems establishing contact with the court, so it should have considered this fact and allowed him to present his case on August 22, 2022. He emphasizes that he did not waive his right to appear and participate, and the court could have reasonably continued the matter. In sum, Ahreshien complains that his failure to appear was not his fault, yet he was arbitrarily denied a right to appear in court.

{¶ 31} Alselaim acknowledges that a party has a right to a reasonable opportunity to be present at trial, but she contends that an incarcerated prisoner has no absolute due process right to attend a civil trial to which he is a party and whether a prisoner should be permitted to attend a civil trial in person depends upon the circumstances of each case. She argues that in this case, the trial court ensured that Ahreshien had a reasonable opportunity to participate at trial by allowing him to participate telephonically the first day of trial and giving him an opportunity to attend the second day of trial telephonically or by Zoom. She maintains that it was Ahreshien's responsibility to make sure that he was available and could access the proceedings with the appropriate technology, and she insists that the trial court acted reasonably in providing him an opportunity to participate and expecting him to appear as he had in the past. She insists that it was Ahreshien's absolute burden—not the court's—to ensure his appearance; his failure to successfully arrange his timely appearance did not require the court to rearrange its docket to accommodate him.

{¶ 32} As to Ahreshien's claim that he should have been permitted to present his case on August 22, 2022, Alselaim responds that after she completed her case, the court was prepared to proceed and was not obligated to wait and see if Ahreshien would call in after she rested her case. She argues that the court set aside the August 22, 2022 date to be used only if additional time was needed; because the case concluded on May 12, 2022, the August date was unnecessary.

{¶ 33} "A divorce is a civil proceeding." *Mills v. Mills*, 10th Dist. Franklin No. 10AP-495, 2011-Ohio-2848, ¶ 9. Ohio case law is clear that an incarcerated party has no absolute right to be present in a civil action. *Stokes v. Stokes*, 2d Dist. Champaign No. 2020-CA-12, 2021-Ohio-328, ¶ 7. The decision whether to allow an incarcerated party to be present is left to the discretion of the trial court. *Id.*

{¶ 34} The trial court did not prohibit Ahreshien from attending the second day of trial. It expressly permitted Ahreshien to participate via Zoom or telephone. While Ahreshien thought he had successfully arranged with prison personnel to attend via Zoom, he did not appear on time. Although his absence may have been the fault of prison personnel, we find no abuse of discretion in the trial court's decision to go forward in his absence.

{¶ 35} In *Stokes*, the incarcerated husband asked the trial court to allow him to participate in a hearing either in person or through video conferencing. Because the hearing was scheduled for 2:00 and the room used for video conferencing closed at 2:30

p.m., the court denied the husband's request. On appeal, the Second District found no abuse of discretion. It explained that "[t]he trial court was not obligated to reschedule the divorce hearing to accommodate [husband's] limitations at prison." *Id.* at ¶ 11.

{¶ 36} Here, too, we cannot say that the trial court abused its discretion in proceeding with the second day of trial in Ahreshien's absence. Like the court in *Stokes,* the trial court here was not required to adjust to account for the logistical difficulties experienced by Ahreshien as a result of his imprisonment. And its anticipation of the potential need for a third day of trial did not obligate the trial court to prolong the matter to allow Ahreshien to present his case.

{¶ 37} In any event, we find no prejudice here. Both parties desired that their marriage be terminated; it was. Ahreshien could not have been awarded custody of his children given that he was incarcerated, and the civil protection order prohibited contact with his children, thereby preventing his from exercising parenting time. *See Dale v. Dale,* 10th Dist. Franklin No. 02AP-644, 2003-Ohio-1113, ¶ 12 (finding no prejudice to incarcerated husband stemming from his absence at final divorce hearing given that his imprisonment prohibited him from being allocated parental rights or responsibilities for the parties' minor child). Alselaim no longer lives in the marital residence and did not ask to retain any marital property. *See Carrion v. Carrion*, 9th Dist. Lorain No. 07CA009138, 2007-Ohio-6142, ¶ 8 (finding that incarcerated husband's attendance was not necessary to resolve complaint because wife did not seek support or property from

husband). Ahreshien was not ordered to pay spousal or child support. And Ahreshien may seek parenting time upon his release. *See Mills* at ¶ 15 (finding that incarcerated husband's presence at the final hearing would not have affected the outcome of the divorce proceedings and he was not prejudiced by his absence given that he could not exercise parental rights due to his incarceration and could petition the court for parenting time after his release); *Stokes* at ¶ 9 (concluding that there was little likelihood that the outcome would have been different if incarcerated husband had appeared in person).

{¶ 38} Moreover, it is beyond dispute that Ahreshien was found guilty beyond a reasonable doubt and is currently incarcerated for abducting, raping, and assaulting Alselaim, thus there was no evidence that he could have produced that would have prevented Alselaim from being granted a divorce on grounds of gross neglect of duty and extreme cruelty (*see supra*). *See Mills* at ¶ 15 (finding that wife and incarcerated husband had undisputedly lived separate and apart, without cohabitation, in excess of one year, thus "there was no evidence that [husband] could have produced which would have altered the conclusion that [wife] was entitled to a divorce on that ground"); *Sweet v. Sweet*, 5th Dist. Richland No. 00-CA-99, 2001 WL 1775387, *3 (Mar. 24, 2001) ("The trial court's Judgment Entry, which granted [wife] a divorce, rendered [incarcerated husband's] counterclaims moot.").

{¶ 39} We find Ahreshien's third and fourth assignments of error not well-taken.

D. Trial Court's Finding of Gross Neglect of Duty and Extreme Cruelty

{¶ 40} In his fifth assignment of error, Ahreshien claims that the trial court abused its discretion when it granted Alselaim a divorce on grounds of gross neglect of duty and extreme cruelty because there was no evidence supporting these grounds for divorce. He complains that the trial court relied solely on his incarceration without credible evidence of gross neglect of duty and extreme cruelty.

{¶ 41} Alselaim responds that she testified to "the horrific cruelty and gross neglect of duty" that Ahreshien caused throughout their 13-year marriage, and the record demonstrated that Ahreshien is currently serving seven years for raping, abducting, and assaulting her in the presence of their children, thus there was "a plethora of evidence" supporting the trial court's finding of gross neglect of duty and extreme cruelty. In any event, she insists, even if the trial court erred in finding gross neglect of duty and extreme cruelty, the error would be harmless because "[i]f granting a divorce is proper on one ground, granting a divorce on additional other grounds constitutes harmless error."

{¶ 42} "[A] trial court has broad discretion in determining the proper grounds for a divorce and a reviewing court will not reverse that determination absent a finding that the court's attitude in reaching its decision was unreasonable, arbitrary or unconscionable." *Damschroder v. Damschroder*, 6th Dist. Lucas No. L-96-241, 1998 WL 46376, *4 (Jan. 30, 1998), citing *Buckles v. Buckles*, 46 Ohio App.3d 102, 116, 546 N.E.2d 950 (10th Dist.1988).

{¶ 43} Under R.C. 3103.01, a wife and husband owe each other a duty of respect, fidelity, and support. *Vogt v. Vogt*, 67 Ohio App.3d 197, 200, 586 N.E.2d 242 (6th Dist.1990). "Gross neglect of duty is the failure of one party to perform a marital duty attended by circumstances of indignity or aggravation * * *." *Thyer v. Robinson*, 6th Dist. Lucas No. L-00-1089, 2000 WL 1752885, * 3 (Nov. 30, 2000). This court has recognized that what conduct constitutes "gross neglect of duty" can be difficult to define and depends on the circumstances of each individual case. *Id.* at *2-3 (Nov. 30, 2000); *McLin v. McLin*, 6th Dist. Lucas No. L-87-272, 1988 WL 36371, *1 (Mar. 31, 1988), citing *Glimcher v. Glimcher*, 29 Ohio App.2d 55, 58, 278 N.E.2d 37 (10th Dist.1971). *Compare Moehrman v. Moehrman*, 10th Dist. Franklin No. 18AP-304, 2018-Ohio-5106, ¶ 19 (finding gross neglect of duty where defendant put work above family, worked too many hours for too little pay, provided no emotional support to his wife, was emotionally abusive to wife and children, and treated wife in derogatory and degrading manner) with *Wise v. Wise*, 6th Dist. Lucas No. L-85-002, 1984 WL 14354, *2 (May 17, 1984) (finding no gross neglect of duty, "[e]specially in view of the fact that appellant continued to live in and maintain the family home and continued to support both his wife and son").

{¶ 44} Here, the record evidence makes clear that Ahreshien was convicted of raping, abducting, and assaulting Alselaim, was serving a seven-year prison sentence for these crimes, and was subject to a civil protection order in effect until July 9, 2024. Alselaim testified that Ahreshien "ruled" the house, forbade her from leaving the house

or driving, stripped her of her confidence, told her she was nothing more than a maid, and provided no financial support to the family since 2018. We find that the trial court did not abuse its discretion in concluding that Ahreshien's conduct constitutes a gross neglect of duty.

{¶ 45} As for extreme cruelty, although "extreme cruelty" can also be difficult to define, it "'consists of acts and conduct which destroy the peace of mind and happiness of one of the parties to the marriage and thereby render the marital relationship intolerable.'" *Thyer* at * 3, quoting *Hunt v. Hunt*, 63 Ohio App.3d 178, 181, 578 N.E.2d 498 (1989). It "is not limited in scope to acts of physical violence or the reasonable apprehension thereof * * *." *Buess v. Buess*, 89 Ohio App. 37, 37, 100 N.E.2d 646 (3d Dist.1950).

{¶ 46} Here, we find that the same facts supporting Alselaim's claim of gross neglect of duty also, in this case, support her claim of extreme cruelty.

{¶ 47} We find Ahreshien's fifth assignment of error not well-taken.

E. Trial Court's Finding of Incompatibility

{¶ 48} In his sixth assignment of error, Ahreshien claims that the trial court abused its discretion in granting Alselaim a divorce on grounds of incompatibility. He maintains that divorce cannot be granted for incompatibility if one party disagrees that the parties are incompatible. He insists that he repeatedly denied that he and Alselaim were incompatible and sought to amend his answer where he inadvertently admitted otherwise.

{¶ 49} Alselaim responds that she filed her complaint for divorce on December 18, 2019, Ahreshien admitted in his February 25, 2020 answer and counterclaim that he and Alselaim are incompatible, and he did not seek to amend his answer and counterclaim until August 12, 2021, a year-and-a-half later. She also argues that Ahreshien failed to appear at trial to testify on the topic of the parties' compatibility.

{¶ 50} R.C. 3105.01(H) identifies incompatibility as a proper "cause" for divorce, but only if not denied by either party. Ohio courts hold that it is not so much a "ground" for divorce to be litigated as it is a status upon which both parties agree. *Calvert v. Calvert*, 6th Dist. Ottawa No. OT-12-024, 2013-Ohio-4421, ¶ 10. It cannot be unilaterally declared. *Id.*

{¶ 51} Ahreshien originally admitted that the parties are incompatible, but sought to amend his answer to withdraw this concession; he implored the trial court to grant his counterclaim for divorce on the grounds of adultery. The trial court declined to allow Ahreshien to amend his answer, so effectively, as the record currently stands, Ahreshien failed to deny that the parties were incompatible. Moreover, having failed to appear at trial, there was no trial evidence supporting his challenge to Alselaim's claim of incompatibility.

{¶ 52} In any event, Ohio courts recognize that if granting a divorce was proper on one of the grounds enumerated in R.C. 3105.01, "granting a divorce on additional other grounds would amount to nothing more than harmless error." *Clark v. Clark*, 7th Dist.

Noble No. 03NO308, 2004-Ohio-1577, ¶ 15, citing *Bernard v. Bernard*, 7th Dist. No. 00CO25, 2002-Ohio-552. *See also Thyer* at *3 (explaining that any error in granting divorce on ground of incompatibility instead of extreme cruelty was harmless given that fault is not a consideration in property division). "The fact that other grounds are open to question does not change the fact that a divorce was appropriate." *Gebi v. Worku*, 10th Dist. Franklin No. 17AP-75, 2017-Ohio-8462, ¶ 27. Here, we have already concluded that the trial court properly granted Alselaim a divorce on grounds of gross neglect of duty and extreme cruelty. Any alleged error in granting her a divorce on the additional ground of incompatibility was harmless.

{¶ 53} Accordingly, we find Ahreshien's sixth assignment of error not well-taken.

F. Granting Motion in Limine without Allowing Ahreshien Time to Respond

{¶ 54} In his seventh assignment of error, Ahreshien claims that the trial court erred when it granted Alselaim's motion in limine to exclude evidence without allowing him adequate time to respond. He argues that due process required that he be given time to oppose Alselaim's motion, but the trial court granted her motion three days after he received it. He insists that without allowing him a reasonable opportunity to provide a written response, there could have been no reasonable consideration by the court of the issues involved. He further claims that the evidence he intended to offer—copies of text messages and nude photographs of Alselaim—demonstrated that he should have been

granted a divorce on the ground of adultery, and the court's decision rendered him unable to support his claim.

{¶ 55} Alselaim responds that the trial court properly granted her motion to preclude the evidence and contends that in Ahreshien's criminal case, this evidence was found to be "manufactured" evidence. She points out that she filed her motion on July 14, 2021, and the court ruled on the motion on July 30, 2021, at which point it excluded the nude photographs but reserved judgment on the text messages until trial. Alselaim maintains that Ahreshien failed to proffer the evidence at trial, therefore, no record was created of the evidence. And, she argues, because the trial evidence supported the grounds upon which the divorce was granted, any possible error in excluding the evidence was harmless. Alselaim also disagrees that Ahreshien did not have an opportunity to respond to her motion; she claims the record is replete with his response to the motion. She insists that the "fabricated" text messages were not ruled on by the court on May 12, 2022, because Ahreshien did not appear at the last court date or attempt to introduce the evidence.

{¶ 56} A motion in limine is a "tentative, precautionary request" to limit evidence until its admissibility is determined during trial. *Gable v. Gates Mills*, 103 Ohio St.3d 449, 2004-Ohio-5719, 816 N.E.2d 1049, ¶ 35, citing *Riverside Methodist Hosp. Assn. v. Guthrie*, 3 Ohio App.3d 308, 310, 444 N.E.2d 1358 (10th Dist.1982). Because it is tentative, finality does not attach until the issue is actually reached at trial. *Id.* To

preserve an evidentiary ruling for appellate review, an objection to the introduction of the evidence must be made during the trial and the evidence must be proffered. *Id.* at ¶ 34; *State v. Grubb*, 28 Ohio St.3d 199, 503 N.E.2d 142 (1986), paragraph two of the syllabus ("At trial it is incumbent upon a defendant, who has been temporarily restricted from introducing evidence by virtue of a motion in limine, to seek the introduction of the evidence by proffer or otherwise in order to enable the court to make a final determination as to its admissibility and to preserve any objection on the record for purposes of appeal."). A decision on a motion in limine is then reviewed for an abuse of discretion. *Estate of Johnson v. Randall Smith, Inc.*, 135 Ohio St.3d 440, 2013-Ohio-1507, 989 N.E.2d 35, ¶ 22, citing *Illinois Controls, Inc. v. Langham*, 70 Ohio St.3d 512, 526, 639 N.E.2d 771 (1994).

{¶ 57} Here, the issue was not properly preserved for appellate review. Although Ahreshien did attempt to question Christman about the text messages, the court advised that Christman was not a proper person through whom he could admit the text messages. And because Ahreshien did not participate in the second day of trial, he was absent for the testimony of the witness through whom the text messages could possibly have been admitted. While Ahreshien made a written proffer of evidence on May 2, 2022 (i.e., after the first day of trial, but before the second day), he did not proffer the evidence *at trial*, when the court would have been in a position to make a final (as opposed to a provisional) ruling as to its admissibility. *See State v. Young*, 2021-Ohio-2541, 176

N.E.3d 1074, ¶ 64 (12th Dist.), *appeal not allowed,* 165 Ohio St.3d 1505, 2022-Ohio-85, 179 N.E.3d 122 ("[B]y not seeking to introduce evidence that was the subject of the state's motion in limine at trial * * *, the trial court was denied the opportunity to make a final determination as to the admissibility of the evidence."). He, therefore, waived any right to assert error in the exclusion of this evidence. *See Gibson v. Gibson*, 87 Ohio App.3d 426, 430-31, 622 N.E.2d 425 (4th Dist.1993) ("Since appellant failed to proffer evidence at trial concerning the *in limine* ruling, he waived the right to assert error in the trial court's determination on appeal.").

{¶ 58} Additionally, Civ.R. 6(C) provides that "[r]esponses to a written motion, other than motions for summary judgment, may be served within fourteen days after service of the motion." Civ.R. 6(D) allows for an additional three days when service is by mail. Alselaim served her motion on July 14, 2021. Contrary to Ahreshien's suggestion otherwise, the time for filing a response is not calculated from the date the opposing party receives the motion; it is calculated from the date of service. This means that Ahreshien had until July 31, 2021, by which to file a response. He did not file his response until August 12, 2021. Any error in the trial court deciding the motion too soon was rendered harmless by Ahreshien's failure to file a response within the time provided by the civil rules.

{¶ 59} We find Ahreshien's seventh assignment of error not well-taken.

G. Denial of Ahreshien's Civ.R. 60(B) Motion

{¶ 60} In his eighth assignment of error, Ahreshien argues that the trial court erred when it denied his Civ.R. 60(B) motion for relief from the judgment denying his motion for leave to amend his answer and counterclaim. He claims that his original answer and counterclaim inadvertently asserted grounds of incompatibility and extreme cruelty, and his motion for leave to amend his answer and counterclaim would have remedied those errors. Ahreshien maintains that the trial court made a mistake of fact when it denied his motion, finding that his amended answer and counterclaim had not made any proposed amendment. He also argues that these errors should have been corrected as clerical errors under Civ.R. 60(A).

{¶ 61} Alselaim responds that there was no relief requested that would justify granting Ahreshien's Civ.R. 60(B) motion. She emphasizes that his original counterclaim already asserted extreme cruelty and clarifies that Ahreshien did not assert incompatibility as a ground for divorce; rather, in answering Alselaim's complaint, he admitted the paragraph in which *Alselaim* asserted incompatibility. The trial court denied Ahreshien's motion because, it concluded, his answer and counterclaim "sufficiently contains the proposed amendments such that justice does not require the Court to grant him leave to amend."

{¶ 62} Under Civ.R. 60(B)(1), a party may be relieved from a final judgment for the following reasons:

(1) mistake, inadvertence, surprise or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B);

(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party;

(4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or

(5) any other reason justifying relief from the judgment.

{¶ 63} The Supreme Court of Ohio has held that to prevail on a motion for relief from judgment under Civ.R. 60(B), the moving party must demonstrate: "(1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ. R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken. *GTE Automatic Electric, Inc. v. Arc Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. We review a trial court judgment denying a motion for relief from judgment under an abuse of discretion standard. *Kerger & Hartman, LLC v. Ajami*, 6th Dist. Lucas No. L-16-1135, 2017-Ohio-7352, ¶ 13. An

abuse of discretion connotes that the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 64} Ahreshien's motion did not specifically identify which Civ.R. 60(B) ground he relied on in seeking relief from judgment, but he did allege that "the court made a mistake of fact within its ruling when it found that" his amended answer and counterclaim had not made any proposed amendment. It is well-recognized, however, that the "mistake" contemplated by Civ.R. 60(B)(1) is a mistake of the *parties*, "not a mistake of fact or law by the court." *Genhart v. David*, 7th Dist. Mahoning No. 10 MA 144, 2011-Ohio-6732, ¶ 17. *See also Foy v. Trumbull Corr. Inst.*, 10th Dist. Franklin No. 11AP-464, 2011-Ohio-6298, ¶ 11, citing *Antonopoulos v. Eisner*, 30 Ohio App.2d 187, 284 N.E.2d 194 (1972) ("The type of mistake contemplated by Civ.R. 60(B)(1) is a mistake by a party or his legal representative, not a mistake by the trial court in its legal analysis.").

{¶ 65} Moreover, Ahreshien filed his motion for relief from judgment on October 7, 2021, before the case was even tried. "[A] Civ.R. 60(B) motion to vacate lies only from a 'final judgment, order, or proceeding [.]'" *Hack v. Keller*, 9th Dist. Medina No. 14CA0036-M, 2015-Ohio-4128, ¶ 10, quoting Civ.R. 60(B). "Where the underlying order is not itself a final judgment, Civ.R. 60(B) is not a proper procedural mechanism for relief * * *." *Id.*, citing *Kalapodis v. Hall*, 9th Dist. Summit No. 22386, 2005-Ohio-

2567, ¶ 10. Subject to certain exceptions, a judgment denying a motion for leave to amend a pleading is ordinarily not a final order because the matter remains pending in the trial court. *M & T Bank v. McCrae*, 2019-Ohio-938, 132 N.E.3d 1290, ¶ 21 (7th Dist.) It is well-recognized that a Civ.R. 60(B) motion may not be used as a substitute for appeal. *Foy v. Trumbull Corr. Inst.*, 10th Dist. Franklin No. 11AP-464, 2011-Ohio-6298, ¶ 11. As such, it was incumbent upon Ahreshien to directly appeal the trial court's denial of his motion for leave to amend his answer and counterclaim—not to seek relief from judgment while the matter remained pending in the trial court.

{¶ 66} Finally, we reiterate that a divorce was properly granted to Alselaim on the grounds of gross neglect of duty and extreme cruelty. So any error in denying Ahreshien leave to amend his answer and counterclaim to deny incompatibility was harmless.

{¶ 67} We find Ahreshien's eighth assignment of error not well-taken.

III. Conclusion

{¶ 68} The trial court did not abuse its discretion when it designated Alselaim the residential parent and legal custodian of the parties' children and denied parenting time to Ahreshien while he is incarcerated for raping, abducting, and assaulting Alselaim. There is no evidence in the record that visiting their father in prison is in the children's best interest, and Ahreshien is subject to a civil protection order prohibiting him from having contact with the children. We find Ahreshien's first assignment of error not well-taken.

{¶ 69} The trial court did not err in failing to provide Ahreshien with a copy of the court counselor's report. Ahreshien failed to comply with the court's local rule for requesting the report. We find Ahreshien's second assignment of error not well-taken.

{¶ 70} The trial court did not abuse its discretion when it proceeded with the second day of trial in Ahreshien's absence. Ahreshien had no absolute right to be present for his divorce hearing, and the court was not obligated to accommodate Ahreshien's limitations at the prison. Moreover, we find no prejudice because in accordance with both parties' desires, the marriage was terminated, and Ahreshien's presence at the final hearing would not have affected the outcome of the proceedings considering that his incarceration and the CPO prevented him from being awarded custody or parenting time, Alselaim did not seek an award of support or marital property, and Ahreshien can petition the court for parenting time upon his release from prison and expiration of the CPO. We find Ahreshien's third and fourth assignments of error not well-taken.

{¶ 71} The trial court did not abuse its discretion in granting Alselaim a divorce on the grounds of gross neglect of duty and extreme cruelty. The record evidence makes clear that Ahreshien was convicted of raping, abducting, and assaulting Alselaim, was serving a seven-year prison sentence for these crimes, and was subject to a civil protection order in effect until July 9, 2024. And Alselaim testified that Ahreshien "ruled" the house, forbade her from leaving the house or driving, stripped her of her

confidence, told her she was nothing more than a maid, and provided no financial support to the family since 2018. We find Ahreshien's fifth assignment of error not well-taken.

{¶ 72} The trial court did not abuse its discretion in granting a divorce to Alselaim on the ground of incompatibility. Ahreshien admitted in his answer that the parties are incompatible. And even if the trial court committed error in granting a divorce on this ground, the error was harmless given that a divorce was properly granted on the grounds of gross neglect of duty and extreme cruelty. We find Ahreshien's sixth assignment of error not well-taken.

{¶ 73} The trial court did not abuse its discretion in granting Alselaim's motion in limine without allowing him time to respond. Ahreshien did not properly preserve this issue for appellate review because he did not proffer the evidence *at trial*. In any event, when he did finally file a brief in opposition to Alselaim's motion, it was 12 days late. Thus, any error in deciding the motion prematurely was harmless. We find Ahreshien's seventh assignment of error not well-taken.

{¶ 74} Finally, the trial court did not abuse its discretion in denying Ahreshien's Civ.R. 60(B) motion for relief from the judgment denying his motion for leave to amend his answer and counterclaim. He premised his motion on a "mistake" by the trial court, however Civ.R. 60(B)(1) contemplates a mistake of the *parties*, not a mistake of fact or law by the court. Also, Ahreshien sought relief from a judgment that was not final; a Civ.R. 60(B) motion to vacate lies only from a final judgment, order, or proceeding. And

given that the amendment he sought leave to make (i.e., to deny the parties' incompatibility), any error in denying his motion was harmless because a divorce was properly granted on grounds of gross neglect of duty and extreme cruelty. We find Ahreshien's eighth assignment of error not well-taken.

{¶ 75} We affirm the June 21, 2022 judgment of the Lucas County Court of Common Pleas, Domestic Relations Division. Ahreshien is ordered to pay the costs of this appeal under App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Christine E. Mayle, J. _____
JUDGE

Gene A. Zmuda, J. _____
JUDGE

Myron C. Duhart, P.J. _____
CONCUR.
JUDGE