[Cite as *Givens v. Klug*, 2022-Ohio-1561.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

GREG P. GIVENS,

Petitioner-Appellant,

v.

JOSEPH KLUG,

Respondent-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 21 BE 0025

Civil Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 21 DR 0149

BEFORE:
David A. D'Apolito, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed.

Greg P. Givens, *Pro Se*, P.O. Box 117, Bellaire, Ohio 43906, Petitioner-Appellant, and

Joseph Klug, *Pro Se*, 3496 Central Avenue, Shadyside, Ohio 43947, Respondent-Appellee (No Brief Filed).

Dated: May 6, 2022

D'Apolito, J.

{¶1} Petitioner-Appellant, Greg P. Givens, acting pro se, appeals the adoption of the Magistrate's Decision and Judgment Entry dismissing his petition for civil stalking protection order ("CSPO") against Respondent-Appellee, Joseph Klug, by the Belmont County Court of Common Pleas. For the following reasons, the judgment of the trial court is affirmed.

{¶2} Appellant filed his petition for CSPO on May 24, 2021. He did not request emergency, ex parte relief. A full hearing was held before the Magistrate on June 8, 2021. The petition for CSPO was dismissed by the Magistrate's Decision and Judgment Entry filed on June 11, 2021 which bears the signatures of both the Magistrate and the trial court judge.

{¶3} Relevant to this appeal, the Magistrate's Order and Judgment Entry reads, in pertinent part:

> On May 24, 2021, Petitioner attempted to file Motions to Unseal Court Records in two cases sealed pursuant to statute in 2019. Said motions are ordered filed in this case rather than that originally intended.[1] Upon review of the same, the Court overrules the Motions, finding insufficient justification presented to unseal said matters.
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> * * *
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> Following completion of Petitioner's direct presentation of testimony and evidence, and prior to the direct presentation by Respondent, the Court examined Petitioners case-in-chief. The Court finds that, based upon the testimony and the evidence presented, Petitioner fails to prove by a preponderance of the evidence that Respondent knowingly engaged in a

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[1] Appellant originally filed the motions under the case numbers that he was moving to unseal, 19-DR-0223 and 19-DR-0224.

> pattern of conduct that caused Petitioner to believe that Respondent would cause physical harm or cause or caused mental distress.

(6/11/21 J.E., p. 1.)

{¶4} On June 21, 2021, Appellant filed objections to the June 11, 2021 judgment entry, in which he asserted challenges to the admissibility and weight of the evidence adduced at the June 8, 2021 hearing. On July 9, 2021, the trial court overruled Appellant's objections and adopted the Magistrate's Decision because Appellant did not provide a transcript of the June 8, 2021 hearing.

{¶5} This timely appeal followed.

ASSIGNMENT OF ERROR NO. 1

TRIAL COURT ERRED IN MAGISTRATE'S STATEMENTS THAT ESTABLISH BIAS AND FOREKNOWLEDGE OF RESPONDENT(S) [SIC] PERSONAL FRIENDSHIPS AND ASSOCIATION, WITHOUT COURT DISCRETION.

ASSIGNMENT OF ERROR NO. 2

TRIAL COURT ERRED PREJUDICIAL [SIC] TO THE RIGHTS OF THE PETITIONER IN PRINCIPAL RESPECTS [SIC] AS TO THE PREPONDERANCE OF THE EVIDENCE.

ASSIGNMENT OF ERROR NO. 3

TRIAL COURT ERRED IN DENYING RELEVANT EVIDENCE FOR PETITIONER-APPELLANT'S PETITION FOR STALKING/PROTECTION ORDER.

ASSIGNMENT OF ERROR NO. 5

TRIAL COURT ERRED IN THE ADMISSIBILITY OF UNFOUNDED / HEARSAY STATEMENTS THAT CLEARLY DEFY COMMON SENSE, TRUTH AND LOGIC.

{¶6} Appellee did not file an appellate brief. App.R. 18(C) reads: “If an appellee fails to file the appellee’s brief within the time provided by this rule * * * the court may accept the appellant’s statement of the facts and issues as correct and reverse the judgment if appellant’s brief reasonably appears to sustain such action.” Nonetheless, dispositive factual statements in a brief must be supported by a transcript or proper substitute if no transcript is available. *J.S. v. D.E.*, 7th Dist. Mahoning No. 17 MA 0032, 2017-Ohio-7507, ¶ 11, citing App.R. 9; Civ.R. 65.1(F)(3)(d)(iv). “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.” *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980).

{¶7} The civil rules impose the same obligation on the party objecting to the Magistrate’s Decision and Judgment Entry in the lower court. “Objections based upon evidence of record shall be supported by a transcript of all the evidence submitted to the magistrate or an affidavit of that evidence if a transcript is not available.” Civ.R. 65.1(F)(3)(d)(iv) (and stating “[t]he objecting party shall file the transcript or affidavit”). We have previously held that a trial court has no obligation to conduct a review of items in the file, such as the petition or the ex parte order, where the objections do not refer the court to these items. This is inherent in the rule’s burden allocation whereby the party filing objections has the burden of showing the objection has merit. *J.S. v. D.S.* at ¶ 16, citing Civ.R. 65.1(F)(3)(d)(iii). It is a party’s obligation, not the court’s, to order a transcript. *Id.*

{¶8} Further, the Second District Court of Appeals has observed that “[c]ivil due process requires only notice and an opportunity to be heard, not provision of transcripts in civil proceedings.” *St. Germaine v. St. Germaine*, 2nd Dist. Greene No. 2009 CA 28, 2010-Ohio-3656, ¶ 15. Ohio courts have limited an indigent’s right to have transcript fees taxed as costs to criminal cases, termination of parenting rights, and defense of paternity cases. *Id.* In *State ex rel. Motley v. Capers,* 23 Ohio St.3d 56, 491 N.E.2d 311 (1986), the Ohio Supreme Court held that a transcript is “unavailable” for purposes of App.R.

9(C), which allows the use of narrative statements when an indigent appellant is unable to bear the cost of a transcript.

{¶9} Appellant's first, second, third, and fifth assignments of error allege bias and challenge the admissibility and weight of the evidence adduced at the June 8, 2021 hearing. In the absence of a transcript of the hearing, or an affidavit summarizing the evidence offered at the hearing, we are unable to consider Appellant's arguments and must presume the validity of the lower court's decision. During oral argument, Appellant provided a lengthy narrative of the circumstances giving rise to the petition for CPSO and referred to portions of the hearing testimony. However, we may not consider Appellant's unsworn statements at oral argument as they are outside of the record. Accordingly, we find that Appellant's first, second, third, and fifth assignments of error have no merit.

ASSIGNMENT OF ERROR NO. 4

TRIAL COURT ERRED IN DISMISSAL OF PETITIONER-APPELLANT'S OBJECTIONS IN THE PETITION FOR A STALKING/RESTRAINING ORDER WHERE LOCAL RULES AND ENTRIES DO NOT INDICATE A CLEAR AND CONCISE DEFINITION, DETERMINATION, AND/OR CODE SECTION, AND AS TO WHAT CONDITIONS AND PROCEDURE(S) ARE REQUIRED FOR THE RELEASE OF PRIOR SEALED RECORD OF STALKING HEARING(S) INVOLVING THE SAME/RELATED RESPONDENT AGAINST PETITIONER, CASE NOS. 19-DR-0223 & 19-DR-0224.

{¶10} On May 24, 2021, Appellant filed motions to unseal the records in Belmont County case numbers 19-DR-0223 and 0224. He contends that no code section exists that governs the release of sealed CSPO cases. However, Appellant advances no argument as to the relevance of the information contained in the sealed cases. Therefore, we find that Appellant's fourth assignment of error has no merit.

CONCLUSION

{¶11} In the absence of a transcript of the hearing on the CSPO, or an affidavit summarizing the evidence offered at the hearing, we have nothing to consider and thus, no choice but to presume the validity of the lower court's proceedings. Further, the records from case numbers 19-DR-0223 and 19-DR-0224 at issue in the fourth assignment of error were not filed in this case. Accordingly, the judgment entry of the trial court is affirmed.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.