[Cite as *Calhoun v. Calhoun*, 2010-Ohio-2347.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93369

RITA J. CALHOUN

PLAINTIFF-APPELLANT

vs.

TYRONE CALHOUN

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-263552

BEFORE: Kilbane, P.J., Stewart, J., and Dyke, J.

RELEASED: May 27, 2010

JOURNALIZED:

APPELLANT

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MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, Rita Calhoun ("Rita"), appeals the trial court's denial of her motion to modify child support, motion to enforce a prior court order, and motion to compel the Cuyahoga Support Enforcement Agency ("CSEA"), to calculate child support from the starting date of April 1, 1998, instead of September 2, 1999. After a review of the record and pertinent law, we affirm.

{¶ 2} The following facts give rise to this appeal.

{¶ 3} On October 14, 1998, Rita filed for divorce from appellee, Tyrone Calhoun ("Tyrone"). On October 1, 1999, the trial court filed a judgment entry that granted the divorce, dispensed of the parties' assets, awarded Rita primary custody of their child, presently 18 years old, outlined Tyrone's child support obligations, and provided a visitation schedule. Over the next several years, the parties filed numerous motions regarding visitation and child support issues.

{¶ 4} On May 12, 2008, Rita filed a motion for enforcement of a prior court order and a motion to compel against CSEA. These two motions essentially argued that instead of CSEA calculating child support from September 2, 1999, CSEA should have calculated child support beginning with April 1, 1998. On June 9, 2008, Rita filed a motion to modify child support. Rita argued that Tyrone's child support payments should be increased because Tyrone did not exercise his visitation rights. Rita argued that as a result, she

was required to spend additional money to care for her son during the times when he was supposed to be Tyrone's responsibility.

{¶ 5} A hearing was originally scheduled for December 13, 2008, and was rescheduled at Rita's request.

{¶ 6} On January 12, 2009, a hearing was held before a magistrate on Rita's three pending motions. On January 15, 2009, the magistrate issued findings of fact and conclusions of law, denying all of Rita's motions, concluding that Rita had failed to present any evidence.

{¶ 7} On January 27, 2009, Rita filed objections to the magistrate's decision. Rita alleged that the trial court failed to require the parties to exchange financial information prior to the hearing and that CSEA continued to use the wrong starting date in calculating Tyrone's child support obligations. On April 28, 2009, the trial court overruled Rita's objections and adopted the magistrate's decision.

{¶ 8} Rita timely appealed, asserting six assignments of error for our review.

ASSIGNMENT OF ERROR NUMBER ONE

"THE LOWER COURT ERRED WHEN IT CONDUCTED HEARINGS AND A FULL TRIAL ON THE MOTION TO MODIFY CHILD SUPPORT WITHOUT THE MANDATORY INCOME AND EXPENSE STATEMENT WITH AFFIDAVIT (POST DECREE) WHICH IS REQUIRED PRIOR TO THE TIME OF HEARING IN ACCORDANCE WITH THE COURT OF COMMON PLEAS, CUYAHOGA COUNTY, DIVISION

OF DOMESTIC RELATIONS - LOCAL RULE 19 AND THE OHIO REVISED CODE - 3119.05(A).”

{¶ 9} Rita argues that the parties were never directed to complete an income and expense statement pursuant to R.C. 3119.05(A) and Loc.R. 19 prior to the January 12, 2009 hearing, and that the trial court erred in failing to increase Tyrone's child support obligation.[1] We disagree.

{¶ 10} “It is well established that a trial court's decision regarding child support obligations will not be disturbed on appeal absent an abuse of discretion.” *Patino v. Foust*, 8th Dist. No. 90475, 2008-Ohio-6280, at ¶10, citing *Dreher v. Stevens*, 3rd Dist. No. 4-05-20, 2006-Ohio-351. An abuse of discretion “connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 11} Pursuant to Loc.R. 19(A), any individual seeking a modification in child support must specifically set forth the reasons for the requested modification. A motion to modify child support must detail the specific changes in circumstances that warrant the modification. *Abernethy v. Abernethy*, 8th Dist. No. 81675, 2003-Ohio-1528, at ¶9-12. A review of Rita's motion to modify demonstrates that she failed to articulate the reasons for her

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[1]On July 18, 2008, the parties agreed that their son was a special needs child and would continue to receive child support beyond the age of majority, until further order of the court.

requested increase in Tyrone's child support obligations. She merely stated that she had been unemployed since 2003.

{¶ 12} However, Rita had previously raised the issue of her 2003 loss of employment with the trial court. On October 10, 2003, Rita filed a motion to modify child support and attached an affidavit stating that she had been unemployed since January 3, 2003, warranting an upward deviation in child support payments.

{¶ 13} On February 4, 2005, the trial court held a hearing and ultimately denied Rita's motion. The magistrate concluded that Rita's unemployment was voluntary because she was terminated for not completing an assignment. The magistrate imputed income to her in the amount of her last job at Progressive, and concluded that there was no change in financial circumstances warranting a modification in child support. Further, at the hearing, Rita admitted she received income from an inheritance and rental property, but would not disclose the amounts.

{¶ 14} Rita never appealed the decision of the trial court. Therefore, pursuant to the doctrine of res judicata, she may not now raise this issue. *Tokar v. Tokar*, 8th Dist. No. 93506, 2010-Ohio-524, citing *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226. The trial court adopted the magistrate's decision on June 9, 2005. Rita was required to file

an appeal from that entry in order to contest the trial court's decision regarding her unemployment.

{¶ 15} Rita also argues that the trial court erred when it conducted a hearing on modification of child support without the parties completing the income and expense statements. However, the trial court provided both parties with income and expense statements in its June 26, 2006 order. Therefore, Rita also had access to the forms and failed to file one prior to the January 12, 2009 hearing.

{¶ 16} Further, the income and expense statements are meant for discovery purposes. It is well established that trial courts have broad discretion in regulating discovery. *State ex rel. Automated Solutions Corp. v. Friedland*, 8th Dist. No. 92583, 2009-Ohio-3741, at ¶17, citing *State ex rel. Citizens for Open, Responsive, & Accountable Govt. v. Register*, 116 Ohio St.3d 88, 2007-Ohio-5542, 876 N.E.2d 913, at ¶18. A trial court's rulings regarding discovery will not be reversed absent an abuse of discretion. *Automated Solutions Corp.*, at ¶17. "A party seeking discovery must take the appropriate procedural steps to compel discovery." *Midland Funding, L.L.C. v. Paras*, 8th Dist. No. 93442, 2010-Ohio-264, at ¶14, quoting *Delguidice v. Randall Park Mall* (June 4, 1992), 8th Dist. No. 60625.

{¶ 17} We cannot conclude that the trial court abused its discretion in conducting the January 12, 2009 hearing without the benefit of Tyrone's

income and expense statement when Rita never filed a motion to compel Tyrone to complete the document. Rita, as the party seeking discovery, had an affirmative duty to utilize the appropriate mechanisms, such as a motion to compel if necessary, to obtain the information.

{¶ 18} Rita has failed to demonstrate that she was prejudiced by the trial court holding the scheduled hearing without Tyrone's income and expense statement. An appellate court will not reverse a trial court's judgment where an error was merely harmless and did not prejudice the complaining party. *Theobald v. Univ. of Cincinnati*, 160 Ohio App.3d 342, 350, 2005-Ohio-1510, 827 N.E.2d 365, citing *Fada v. Information Sys. & Network Corp.* (1994), 98 Ohio App.3d 785, 792, 649 N.E.2d 904. Rita maintained that it was her lack of income that warranted a modification in child support, not an increase in Tyrone's income; therefore, Rita's finances were primarily at issue. In addition, the trial court had already dealt with this specific issue at the February 4, 2005 hearing; therefore, we cannot conclude that Rita was prejudiced.

{¶ 19} This assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER TWO

"THE LOWER COURT ERRED WHEN IT FAILED TO RECORD THE TRIAL PROCEEDINGS PER RULE 53(D)(2) OF OHIO RULES OF CIVIL PROCEDURE."

{¶ 20} Rita's argument that the trial court was required to record the January 12, 2009 hearing pursuant to Civ.R. 53(D) lacks merit. There is no provision in Civ.R. 53(D) that requires, or even addresses, the recording of a hearing before a magistrate. Civ.R. 53(D) addresses which matters may be referred to a magistrate, and the scope of the magistrate's authority.

{¶ 21} Loc.R. 9 states that a hearing may not proceed without a court reporter, if requested by one of the parties; however, there is no evidence in the record to suggest that Rita requested the proceedings be recorded. A party may not assign as error on appeal issues that were not objected to in the trial court. *Toma v. Toma,* 8th Dist. No. 82118, 2003-Ohio-4344, at ¶33, quoting *Nenadal v. Landerwood* (May 12, 1994), 8th Dist. No. 65428.

{¶ 22} Consequently, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER THREE

"THE LOWER COURT ERRED WHEN IT FAILED TO CONDUCT THE 8/25/08 HEARING WHICH WAS SET FOR THE PURPOSE OF THE COURT TO OVERSEE THE PARTIES EXCHANGE OF FINANCIAL INFORMATION, THE COURT DID SCHEDULED [SIC] A GENERAL HEARING FOR 9/11/08 WHICH WAS NOT CONDUCTED BUT WAS SET FOR FULL HEARING ON 11/13/08, WHICH WAS POSTPONED AND RESCHEDULED FOR ANOTHER FULL HEARING ON 1/12/09. THE COURT OVER THE PLAINTIFF'S OBJECTION AND MOTION TO HOLD DEFENDANT IN CONTEMPT FOR NOT BRINGING HIS FINANCIAL DOCUMENTS TO COURT, PROCEEDED TO FULL TRIAL AND ENTERED AN [SIC] DECISION WITH FINDING OF FACT."

{¶ 23} In essence, Rita argues that the trial court erred in continuing the hearing on her pending motions on several different occasions. On July 17, 2008, the trial court issued an order requiring the parties to appear on August 25, 2008, in order to exchange relevant financial information. The exchange did not take place on that date, and the matter was rescheduled for November 13, 2008. On November 12, 2008, Rita filed a motion for continuance. Her motion was ultimately granted, and the matter was scheduled for a hearing on January 12, 2009.

{¶ 24} Trial courts are afforded considerable discretion when scheduling hearings. *In re Disqualification of Aubry*, 117 Ohio St.3d 1245, 1246, 2006-Ohio-7231, 884 N.E.2d 1095. A trial court also has the discretion to continue hearings. The trial court must balance its own interests of maintaining its docket with the potential prejudice to the parties. *Swanson v. Swanson*, 8th Dist. No. 90472, 2008-Ohio-4865, at ¶11-12. A trial court's decision on scheduling and continuing matters will not be reversed absent an abuse of discretion. Id.; see *Blakemore*, supra. We cannot conclude that the trial court abused its discretion in continuing the matter twice when one of the continuances was at Rita's request.

{¶ 25} The hearing went forward on January 12, 2009; however, Rita again argues that she was prejudiced by not receiving Tyrone's financial information in advance. For the reasons stated in addressing Rita's first

assignment of error, we have already concluded that Rita was not prejudiced by not having Tyrone's income and expense statement.

{¶ 26} Therefore, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER FOUR

"THE LOWER COURT ERRED WHEN IT FAILED TO CONDUCT PRETRIALS REGARDING THE UNAUTHORIZED CHANGES MADE TO THE CHILD SUPPORT ORDER BY THE CHILD SUPPORT ENFORCEMENT AGENCY (CSEA) HOWEVER OPTED TO COVERUP THE CRIME BY CHANGING THE COURT ORDER."

{¶ 27} Rita argues that the trial court failed to conduct pretrials regarding her motion to compel regarding CSEA. Rita cites to no authority requiring the trial court to hold pretrials on such a motion. Pursuant to Loc.R. 11(A), the trial court may accelerate cases at its discretion and is not even required to hold pretrials on the actual divorce complaint.

{¶ 28} Rita's arguments stem from a motion to enforce a prior court order in which she argued that CSEA erroneously calculated child support from September 2, 1999, instead of April 1, 1998, as the trial court previously ordered. However, a review of the record reveals that in the trial court's October 1, 1999 judgment entry, the trial court found that the parties' marriage terminated on September 1, 1999, and CSEA's child support calculations began from the following day.

{¶ 29} It is unclear where Rita adopts a date of April 1, 1998, as such date is not in the October 1, 1999 judgment entry, which she attached to her motion as an exhibit. A review of the trial court's order reveals that Rita was also awarded child support for the time during which the divorce was pending. In the trial court's October 1, 1999 judgment entry, the trial court awarded Rita back child support in the amount of $7,658.

{¶ 30} The trial court did afford Rita a hearing on her motion, however, it determined that she failed to present supporting evidence. Rita's brief fails to state which specific order she alleges the trial court improperly changed, and therefore, we are unable to review her argument. Pursuant to App.R. 16(A)(7), the appellant is required to cite to specific portions of the record in support of her assignments of error.

{¶ 31} This assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER FIVE

"THE LOWER COURT ERRED WHEN IT ILLEGALLY MODIFIED THE CHILD SUPPORT ORDER WHICH WAS ESTABLISHED IN MAY 1999 AND EFFECTIVE APRIL 1, 1998."

{¶ 32} Rita argues that the trial court erred when it improperly modified the October 1, 1999 divorce decree, specifically the portion regarding child support. It is unclear from Rita's brief when or how this improper modification occurred. Further, Rita fails to cite any applicable law or rule as required pursuant to App.R. 16(A)(7).

{¶ 33} This court may disregard assignments of error that are not properly briefed. *Quinn v. Paras*, 8th Dist. No. 82529, 2003-Ohio-4952, at ¶4, citing *State v. Watson* (1998), 126 Ohio App.3d 36, 709 N.E.2d 875. Based upon the deficiency in Rita's brief, we are unable to discern her argument regarding this assignment of error, therefore, it is overruled.

ASSIGNMENT OF ERROR NUMBER SIX

"THE LOWER COURT ERRED WHEN IT FAILED TO ENFORCE ITS OWN PRIOR ORDER REGARDING WEEKEND[S] AND 6 WEEK SUMMER VISITATION AND ORDER FOR DEFENDANT TO MAINTAIN CURRENT INSURANCE."

{¶ 34} Rita argues that the trial court erred when it failed to enforce the October 1, 1999 judgment entry that stated Tyrone would receive visitation two weekends each month and six weeks of summer visitation, and ordered Tyrone to be responsible for their son's health insurance. After a review of the record, we disagree.

{¶ 35} Rita argues that Tyrone should either be required to utilize all of his visitation time, or he should be ordered to pay increased child support because she has to spend additional money to care for their son on these extra days.

{¶ 36} A review of the record reveals that this argument is similarly barred by the doctrine of res judicata. Rita argued this identical issue at the February 4, 2005 hearing, and the magistrate denied an upward deviation in

child support payments. On June 9, 2005, the trial court adopted the magistrate's decision. Rita did not file an appeal, therefore, the issue is barred by the doctrine of res judicata. *Tokar*, supra.

{¶ 37} Rita also argues that the trial court failed to enforce its prior order requiring Tyrone to maintain current insurance for their son. However, Rita has failed to provide any evidence to support this argument.

{¶ 38} On May 3, 1999, the parties filed an agreed judgment entry stating that both parties would obtain insurance coverage for their son. In the trial court's October 1, 1999 judgment entry, the trial court found that affordable insurance coverage was available to both parties through their employers and both parties were to insure their son.

{¶ 39} On January 15, 2009, the magistrate denied all of Rita's motions, finding that Rita had failed to produce any evidence to support her claims. It appears no exhibits were introduced at the hearing to support Rita's contention that Tyrone's insurance carrier was no longer covering their son. As no evidence was produced to support her motion, we conclude that the trial court did not abuse its discretion in denying the motion.

{¶ 40} This assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, domestic relations division, 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

MELODY J. STEWART, J., and
ANN DYKE, J., CONCUR