

[Cite as *Pack v. Pack*, 2018-Ohio-5414.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

CYNTHIA PACK, :
 :
 Plaintiff-Appellee, : Case No. 18CA5
 :
 vs. :
 :
 BENJAMIN A. PACK, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

John R. Haas, Portsmouth, Ohio, for appellant.

Robert C. Anderson, Ironton, Ohio, for appellee.

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 12-27-18
ABELE, J.

{¶ 1} This is an appeal from a Lawrence County Common Pleas Court judgment that, *inter alia*, granted a motion to dismiss objections to a magistrate’s domestic relations decision.

{¶ 2} Benjamin Pack, defendant below and appellant herein, assigns one error for review:

“THE COURT ERRED IN DISMISSING DEFENDANT’S OBJECTIONS TO THE MAGISTRATE’S DECISION WITHOUT PERMITTING HIM TO BRIEF AND ARGUE THE SAME.”

{¶ 3} On September 18, 2015, Appellee Cynthia Pack filed a complaint for divorce. The magistrate’s December 11, 2017 decision, after a five day hearing, awarded the appellee a divorce, established a shared parenting plan for two of the parties’ children, designated appellee the

residential parent for their oldest child, issued child and spousal support orders and decided all other matters at issue. On December 13, 2017, appellant requested findings of fact and conclusions of law. On December 15, 2017, the magistrate issued an amended decision that made a few technical corrections to the December 11 decision, then, on December 18, 2017, the magistrate concluded that the decision sufficiently set forth findings of fact and conclusions of law.

{¶ 4} On December 29, 2017, appellant filed “Objections to Magistrate’s Decision” that states in its entirety: “Now comes Defendant, by and through his counsel, and hereby enters his objections to the Amended Magistrate’s Decision filed December 15, 2017, as the same is contrary to the law and facts herein. A full transcript is requested.”

{¶ 5} On January 9, 2018, appellee, citing Civ.R. 53(D)(3)(b)(ii), moved to dismiss appellant’s objection because it lacked specificity. In addition, appellee noted that even though appellant requested a full transcript, he did not deliver to the court reporter a deposit for the transcript’s cost of preparation. Appellee stated: “This case required a five day trial and the transcript will be voluminous and very expensive. In order for it to be completed within thirty days of the filing of Defendant’s objection, the required deposit for its preparation should have already been paid so that the transcript could conceivably be prepared within the thirty days, or some reasonably short time thereafter.”

{¶ 6} On the morning of January 24, 2018, appellant filed supplemental objections that contained more specific grounds for the objections. Later that day, the trial court held a hearing on the motion to dismiss and indicated that it had received the revised objections, that a transcript had been requested, and “a request was made for deposit amount to be posted but there has been no monies paid to get a transcript.” Appellant’s counsel acknowledged that appellant had requested a

full transcript that would cost approximately \$5,800, and that he communicated to his client about the deposit, but the funds had “not yet as of today been deposited.” Appellant’s counsel also claimed that it had been the traditional practice in Lawrence County “that a general objection is enough to suffice * * * for notice purposes. Now clearly before arguments are made and everything else, specific objections have to be made * * * so that the Court can appropriately rule. However the practice and the general practice of the bar has been that those are made after the transcript is prepared.”

{¶ 7} At the hearing, the trial court inquired about the transcript request and asked when court staff first gave counsel the cost estimate. The court reporter responded that the court received a Friday call from appellant’s counsel’s office that sought an estimate for a full transcript and, after she calculated the cost, she informed counsel’s office. The reporter did not, however, receive a deposit or any additional requests from counsel. The court also noted that, although counsel filed more specific objections the same day as the hearing, counsel did not first request leave after the expiration of the Civ.R. 53(D)(3)(b)(I) fourteen day deadline. Counsel did, however, inform the court that during the fourteen day window there were “some communications issues * * * but * * * I don’t know that I can more specifically * * * go into that without violating * * * privilege.”

{¶ 8} At that point, the trial court, citing *Parker v. Bricker*, 4th Dist. Scioto No. 99CA2648, 2000 WL 1175559 (Aug. 9, 2000), and Civ.R. 53(D)(3)(b)(ii), granted the appellee’s motion to dismiss the objection. The court found that the rule’s language is plain and unambiguous, and required the dismissal because the grounds for the objection lacked specificity. Thus, on January 26, 2018, the trial court dismissed the appellant’s objections to the magistrate’s decision. This appeal followed.

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{¶ 9} In the case sub judice, appellant asserts that the trial court improperly dismissed his objections to the magistrate’s decision.¹ As a general principal, appellant argues that it is unreasonable to require specific objections to voluminous evidence, adduced over a long period of time (here, a five day trial over six months), without the benefit or ability to refer to a trial transcript. Appellant further claims that the Civil Rules provide for this type of situation by: (1) initially providing time for transcript preparation, (2) permitting, when necessary, additional time for transcript preparation, and (3) permitting a party to supplement objections after a transcript is prepared.²

{¶ 10} Appellee, however, argues that the trial court properly dismissed the objections

¹ Appellant also asserts that the trial court’s January 26, 2018 entry is not accurate because it does not mention that he had, in fact, requested a transcript. It does appear that appellant is correct on this point. However, the transcript does not directly impact the Civ.R. 53 requirement for specific objections to a magistrate’s decision.

²Civ.R. 53(D)(3)(b) provides:

Objections to Magistrate’s Decision.

(I) Time for Filing. A party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Civ.R. 53(D)(4)(e)(I). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

(ii) Specificity of objection. An objection to a magistrate’s decision shall be specific and state with particularity all grounds for objection.

(iii) Objection to magistrate’s factual finding; transcript or affidavit. An objection to a factual finding, whether or not specifically designated as a finding of fact under Civ.R. 53(D)(3)(a)(ii), shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

because appellant failed to (1) initially file specific objections, and (2) request an extension of time to file specific objections. Appellee cites Civ.R. 53 (D)(3)(b)(iii) and *Parker* in support of her position.

{¶ 11} “A trial court has great discretion in determining whether to sustain or overrule an objection to a magistrate’s decision.” *Knox v. Knox*, 4th Dist. Gallia No. 03CA13, 2004-Ohio-428, ¶ 8. Moreover, “[t]he decision to adopt, reject, or modify a magistrate’s decision will not be overturned on appeal unless the decision was an abuse of discretion.” *Knox, supra*, citing *Wade v. Wade*, 113 Ohio App.3d 414, 419, 680 N.E.2d 1305 (11th Dist.1996). An abuse of discretion is more than an error of judgment, but instead connotes a decision that is unreasonable, arbitrary, or unconscionable. *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985). Generally, a decision is unreasonable if no sound reasoning process supports the decision.

{¶ 12} Civ.R. 53(D)(3)(b)(ii) provides that “an objection to a magistrate’s decision shall be specific and state with particularity all grounds for objection.” Civ.R. 53 also requires that the specific objection be filed within 14 days of the magistrate’s decision.

{¶ 13} Appellant contends that in *Adoption of K.A.R.*, 11th Dist. Ashtabula No. 2015-A-0055, 2016-Ohio-4595 the court faced a similar situation when the appellant filed a timely, but general objection to the magistrate’s decision. A divided court held that if a party files a timely objection, the party may later seek to file supplemental objections after the transcript is completed. The dissent, however, points out that the principal opinion did not squarely address the Civ.R. 53(D)(3)(b)(ii) requirement that the initial objection must be specific and state with particularity grounds for the objection. The dissent also cited case authority from several Ohio appellate districts, including their own (11th) district. We also observe that subsequent cases from the 11th

District do not cite *K.A.R.* for that proposition of law.

{¶ 14} After consideration, we agree with the dissent in *K.A.R.*, and the vast majority of courts that have addressed this issue, that the rule's language is plain and unambiguous and that we may not rewrite the rule. In *Parker*, this court concluded that appellant's objection lacked specificity and did not state with particularity the grounds for the objection within the required fourteen day period. Many other courts have come to the same conclusion - the rule requires a specific objection stated with particularity. See, generally, *Shihab and Assoc. Co. v. Ohio DOT* 168 Ohio App.3d 405, 2006-Ohio-4456; *Sweet v. Sweet* 11th Dist. Ashtabula No. 2007-A-003, 2008-A-003, 2009-Ohio-1924; *Lambert v. Lambert* 11th Dist. Portage 2004-P-0057, 2005-Ohio-2259; *Hansberry v. Mills* 10th Dist. Franklin 17AP-518, 2018-Ohio-561; *Adams v. Adams* 9th Dist. Wayne No. 13CA0022, 2014-Ohio-1327; *Henry v. Henry* 9th Dist. Summit No. 27696, 2015-Ohio-4350; *Ayer v. Ayer* 1st Dist. Hamilton No. C-99071, 2000 Lexis 2901.

{¶ 15} Again, we understand appellant's assertion that it is difficult to craft specific objections within fourteen days of a magistrate's decision without a transcript, especially after a lengthy court proceeding with numerous witnesses and exhibits, because counsel will not have access to all of the facts and details elicited during the hearing. However, although it might be difficult to compose objections with precision without a transcript, a party may nevertheless set forth the particular basis for an objection and later submit a supplemental objection that incorporates the more exact information extracted from the transcript. Once again, courts are not permitted to ignore or rewrite the rule's plain and unambiguous language.

{¶ 16} According, because we conclude that the trial court's decision to overrule appellant's general objection to the magistrate's decision does not constitute an abuse of discretion, we hereby

affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and appellant shall pay the 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 Lawrence County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

Peter B. Abele, Judge BY: _____

NOTICE TO COUNSEL

Pursuant to Local Rule NO. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.