[Cite as *Pack v. Pack*, 2021-Ohio-2233.]

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

Cynthia A. Pack,	:	Case No. 20CA4
Plaintiff-Appellee,	:	
v.	:	DECISION AND JUDGMENT ENTRY
Benjamin C. Pack,	:	
Defendant-Appellant.	:	**RELEASED 5/26/2021**

APPEARANCES:

Mark K. McCown, McCown & Fisher, L.P.A., Ironton, Ohio, for appellant.

Brigham M. Anderson, Anderson & Anderson Co., L.P.A., Ironton, Ohio, for appellee.

Hess, J.

{¶1} Benjamin C. Pack appeals from a judgment of the Lawrence County Common Pleas Court resolving a post-divorce decree motion filed by his ex-wife. Mr. Pack contends that the trial court erred by not making the magistrate enter findings of fact and conclusions of law pursuant to Civ.R. 53(D)(3)(a)(ii), by awarding a division of property not specifically set forth in the divorce decree, and by ordering him to give his ex-wife quarterly statements for 529 Plan accounts he maintains for their children's future education expenses. For the reasons that follow, we affirm the trial court's judgment.

I. FACTS AND PROCEDURAL HISTORY

{¶2} Benjamin and Cynthia Pack married in 1994 and had three children during the marriage. In September 2015, Ms. Pack filed a complaint for divorce. The parties disputed whether there was a ground for divorce and issues related to child custody,

child and spousal support, and the division of property. After a five-day trial, a magistrate issued a decision that awarded Ms. Pack a divorce on the ground of gross neglect of duty. Relevant here, the decision addresses the division of the marital residence, specified financial assets, and vehicles, and it states: "Other items of personal property, i.e. furniture, shall be divided on an alternating basis. A 'set', i.e. kitchen table and chairs, shall be considered as one item. The parties shall alternate picks until the last item has been selected. The plaintiff shall be entitled to the first pick." Later, in addressing the issue of spousal support, the decision states that "[t]he parties assets have been set forth above." The magistrate designated Ms. Pack as the residential parent of one of the children and adopted with modifications the shared parenting plan Mr. Pack had proposed with respect to the other children.

{¶3} Mr. Pack filed an objection to the magistrate's decision which the trial court dismissed for lack of specificity on the motion of Ms. Pack. Subsequently, the trial court issued an entry titled "FINAL APPEALABLE ORDER", i.e., a divorce decree, that essentially adopted the magistrate's decision and included the above-quoted language from the magistrate's decision. Mr. Pack appealed and challenged the dismissal of his objection; we affirmed. *Pack v. Pack*, 4th Dist. Lawrence No. 18CA5, 2018-Ohio-5414, ¶ 1, 16.

{¶4} In February 2019, Ms. Pack moved for orders: (1) "setting a time for the parties to meet at the marital residence to exchange and divide personal property as set forth in the Divorce Decree," (2) requiring Mr. Pack to give her a thumb drive with copies of electronic photographs of Ms. Pack and the children stored on electronic devices in the marital home; (3) giving Ms. Pack access to the "children's college funds" including

"the username and password for each fund and full access to monitoring each fund"; and (4) requiring Mr. Pack to "show proof of refinance of the mortgage as set forth in the Divorce Decree."

{¶5} After a hearing, the magistrate granted in part and denied in part Ms. Pack's motion. The magistrate ordered the parties to meet at the martial residence at a specified time "for purpose[s] of dividing the personal property," denied the request for copies of electronic photographs because "it was not addressed in the Final Appealable Order," ordered Mr. Pack to provide Ms. Pack with "quarterly statements of the children's college savings and investment accounts * * * via electronic mail on a quarterly basis," and ordered Mr. Pack "to show written proof of his attempt to refinance the mortgage as set forth in the Divorce Decree." Mr. Pack requested findings of facts and conclusions of law pursuant to Civ.R. 53(D)(3)(a)(ii).

{¶6} In response, the magistrate issued an entry titled "MAGISTRATE'S FINDINGS OF FACTS AND CONCLUSIONS OF LAW." Pertinent here, with respect to the divorce decree's provision dividing "[o]ther items of personal property, i.e. furniture," the magistrate found that " 'i.e.' means an abbreviation for [the] Latin phrase 'id est,' which is to say, that is, or in other words." Although the provision does not include the phrase "household goods," the magistrate stated:

> The Defendant's position appears to be that the term "household goods" only encompasses furniture and not other items of personal property. It was the clear intention of the Court that all personal property be divided. The Defendant's position leads to the ludicrous conclusion that Defendant would be entitled to retain all items excepting furniture, including any of Plaintiff's clothing and makeup that was left at the residence. Obviously when then [sic] Court used the term, household goods, it meant household goods.

The magistrate also found that "[t]he children have a 529 Plan established for their educational benefit" which was not addressed in the divorce decree because Ms. Pack "did not request access to the 529 Plan during the course of the divorce proceedings." The magistrate stated:

> The Defendant and Plaintiff have a Shared Parenting Plan where Plaintiff is residential parent for school purposes. The Plan requires cooperation between the parents, which includes certain financial responsibilities. It is imperative that both parents have an understanding of the available resources when it comes to determine [sic] possible college choices and options for the children.
>
> Although the Decree does not specifically address the 529 Plan, the Defendant's refusal to provide rudimentary information regarding the Plan to the Plaintiff flies in the face of the spirit of cooperation of the Plan of which the Defendant so strongly advocated for.

{¶7} Mr. Pack filed objections to the magistrate's decision asserting that the magistrate failed to set forth "specific Conclusions of Law, as required by Civ.R. 53(D)(3)(a)(ii)," and made various other errors in resolving Ms. Pack's motion. After a hearing, the trial court overruled the objections. The court found that the magistrate complied with Civ.R. 53(D)(3)(a)(ii). The court also found that "[t]he magistrate properly concluded that the Final Appealable Order ('FAO') in this action required the parties to divide 'Other items of personal property' on an alternating basis. Any ambiguity that resulted from the use of the Latin abbreviation *i.e.* was construed by the magistrate to mean 'that is, or in other words,' and it was the 'clear intention of the Court that all personal property be divided[.]' " The court ordered the parties to meet at the marital residence at a specified time for "purposes of dividing the personal property." The court denied the request for copies of electronic photographs stored on electronic devices in the marital home but noted that "photographs of the children fall into the definition of

'personal property' under the FAO and are subject to division under alternating selections[.]" The court found that "[t]he magistrate properly concluded that under the FAO the plaintiff is not entitled to access, or physical control over, their children's school savings plans established by the defendant, but the parties' shared parenting plan requires cooperation between the parties and refusing to provide 'rudimentary information regarding the [savings plans] to the plaintiff flies in the face of the spirit of cooperation[.]' " The court ordered that "[t]he parties shall exchange quarterly statements, via electronic mail, showing the balance of any and all college savings accounts, or any other investment account maintained by the parties for the sole purpose of paying for their children's future education expenses." The court also ordered that the marital home be listed for sale unless the mortgage was refinanced or satisfied in total by a specific date.

II. ASSIGNMENTS OF ERROR

{¶8} Mr. Pack presents three assignments of error:

I. The court erred in awarding a division of property not specifically set forth in its original divorce decree.

II. The court erred in granting a continuing order for the appellant to provide information to the appellee concerning an account wholly owned by him when provision for the same was not provided in [the] original divorce decree.

III. The court erred in failing to require the magistrate to enter findings of fact and conclusions of law pursuant to Civ.R. 53(D)(3)(a)(ii).

For ease of discussion, we address the assignments of error out of order.

III. LAW AND ANALYSIS

A. Findings of Fact and Conclusions of Law

{¶9} In the third assignment of error, Mr. Pack contends that the trial court erred by not making the magistrate enter findings of facts and conclusions of law pursuant to Civ.R. 53(D)(3)(a)(ii). Mr. Pack asserts that the entry the magistrate issued in response to his request for findings of fact and conclusions of law failed to "separately delineate the findings of fact and conclusions of law." He asserts that the entry contains a single heading followed by "several numbered paragraphs that are clearly findings of fact" before it "morphs into unnumbered paragraphs that appear to indistinguishably combine findings of fact, conclusions of law, dicta, and decisions of the magistrate."

{¶10} Civ.R. 53(D)(3)(a)(ii) states:

> *Findings of fact and conclusions of law*. Subject to the terms of the relevant reference, a magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. A request for findings of fact and conclusions of law shall be made before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision. If a request for findings of fact and conclusions of law is timely made, the magistrate may require any or all of the parties to submit proposed findings of fact and conclusions of law.

(Emphasis sic.) Findings of fact and conclusions of law "allow parties to draft appropriate objections" to the magistrate's decision and allow "the trial court to evaluate those objections." *Spring v. Wick*, 11th Dist. Geauga No. 2013-G-3163, 2014-Ohio-2879, ¶ 30. They also "enable a reviewing court to determine the existence of assigned error." *Slosser v. Supance*, 10th Dist. Franklin No. 20AP-15, 2021-Ohio-319, ¶ 14. Substantial compliance with Civ.R. 53(D)(3)(a)(ii) is sufficient and exists when "the contents of the decision, considered together with other parts of the record, form an adequate basis upon which to decide the narrow legal issues presented." *Larson v. Larson*, 3d Dist. Seneca No. 13-11-25, 2011-Ohio-6013, ¶ 16; *see Slosser* at ¶ 13-14.

{¶11} The trial court did not err when it overruled Mr. Pack's objection regarding Civ.R. 53(D)(3)(a)(ii). It is true that all of the magistrate's findings of fact and conclusions of law appear under a single heading—"**FINDINGS OF FACT**." Although it is a better practice to separately identify findings of fact and conclusions of law, the magistrate's entry contained sufficient detail for Mr. Pack to frame his objections to the magistrate's decision, for the trial court to review them, and for this court to review his assignments of error on appeal. *See generally McNeilan v. The Ohio Univ. Med. Ctr.*, 10th Dist. Franklin No. 10AP-472, 2011-Ohio-678, ¶ 42-44 (magistrate's decision contained sufficient detail to allow appellant to frame objections and allow trial court to review them despite lack of separately captioned findings of fact and conclusions of law). Accordingly, we overrule the third assignment of error.

B. Division of Personal Property

{¶12} Mr. Pack contends that the trial court improperly awarded a division of property not specifically set forth in the divorce decree when it ordered the parties to meet for purposes of dividing personal property rather than just furniture. He asserts that pursuant to R.C. 3105.171(I), once the trial court issued the divorce decree it did not have jurisdiction to modify its division of property without the express written consent of both parties. He acknowledges that a court may clarify an ambiguous decree; however, he asserts that the clause "[o]ther items of personal property, i.e. furniture, shall be divided on an alternating basis" is not ambiguous. Mr. Pack maintains that through its use of the term "i.e.," the court limited its division of other items of personal property to furniture. He claims the magistrate improperly expanded the meaning of the clause to

encompass household goods, and the trial court improperly expanded it to encompass all of the parties' personal property, including photographs.

{¶13} "The existence of the trial court's subject-matter jurisdiction is a question of law that we review de novo." *Yazdani-Isfehani v. Yazdani-Isfehani*, 170 Ohio App.3d 1, 2006-Ohio-7105, 865 N.E.2d 924, ¶ 20 (4th Dist.).

{¶14} R.C. 3105.171(B) states:

> In divorce proceedings, the court shall * * * determine what constitutes marital property and what constitutes separate property. * * * [U]pon making such a determination, the court shall divide the marital and separate property equitably between the spouses, in accordance with this section. For purposes of this section, the court has jurisdiction over all property * * * in which one or both spouses have an interest.

"A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court except upon the express written consent or agreement to the modification by both spouses." R.C. 3105.171(I). However, "[t]he trial court retains 'full power' to enforce the divorce decree's provisions. If the parties dispute the meaning of a provision in a decree or if the provision is ambiguous, the trial court has the power to hear the matter, to resolve the dispute, and to enforce the decree." *Freeman v. Freeman*, 4th Dist. Lawrence No. 16CA14, 2016-Ohio-7565, ¶ 9, citing *Evans v. Evans*, 4th Dist. Scioto No. 02CA2869, 2003-Ohio-4674, ¶ 8-10. " '[A] court order purporting to clarify the prior judgment may not vary from, enlarge, or diminish the relief embodied in the final decree.' " *Cisco v. Cisco*, 4th Dist. Gallia No. 08CA8, 2009-Ohio-884, ¶ 11, quoting *Knapp v. Knapp*, 4th Dist. Lawrence No. 05CA2, 2005-Ohio-7105, ¶ 40. " 'In essence, a court may construe an ambiguous decree, but it must enforce an unambiguous one as it is written.' " *Id.*, quoting *Pierron v. Pierron*, 4th Dist. Scioto Nos. 07CA3153 and 07CA3159, 2008-Ohio-1286, ¶ 7.

{¶15} " '[T]he initial determination of whether an ambiguity exists presents an abstract legal question, which we review on a de novo basis.' " (Alteration in *Cisco.*) *Id.* at ¶ 12, quoting *Pierron* at ¶ 8. "When confronted with an allegation of ambiguity, 'a court is to objectively and thoroughly examine the writing to attempt to ascertain its meaning.' " *Id.*, quoting *State v. Porterfield,* 106 Ohio St.3d 5, 2005-Ohio-3095, 829 N.E.2d 690, at ¶ 11. If an ambiguity exists and the decree "contains terms ordered by the trial court," as opposed to terms from a separation agreement incorporated into the decree, "the court's interpretation or clarification of what it intended in the decree is within the court's discretion and an abuse of discretion standard applies. " *Freeman* at ¶ 10. "An abuse of discretion is 'an unreasonable, arbitrary, or unconscionable use of discretion, or * * * a view or action that no conscientious judge could honestly have taken.' " *Koscho v. Hill*, 4th Dist. Ross No. 19CA3699, 2021-Ohio-110, ¶ 8, quoting *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 23.

{¶16} The phrase "[o]ther items of personal property, i.e. furniture, shall be divided on an alternating basis" is not ambiguous. The term "i.e." is an abbreviation for the Latin phrase *id est* and means " 'that is.' " *Lāna'ians for Sensible Growth v. Land Use Comm.*, 146 Haw. 496, 503, 463 P.3d 1153 (2020), quoting *Black's Law Dictionary* 895 (11th Ed.2019). The term "i.e." is used "when a term is meant to be interchangeable with or definitional of an affected term, rather than just a possible example." *Id.* "When used properly," it indicates "an exhaustive list." *Dibble v. Fenimore*, 545 F.3d 208, 219 (2d Cir.2008). Therefore, in using "i.e." before "furniture," the divorce decree indicates that the only "[o]ther items of personal property" the court divided were furniture.

{¶17} However, it is evident from the record that the trial court's use of "i.e." instead of "e.g." in the divorce decree was a clerical mistake subject to correction by the court. *See* Civ.R. 60(A) ("Clerical mistakes in judgments * * * arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders"). "An unfortunate fact of modern American linguistic practice is that many Americans confuse 'i.e.' and 'e.g.' " *Dibble* at 219. The term "e.g." is an abbreviation for the Latin phrase *exempli gratia* and means " 'for example.' " *Lāna'ians for Sensible Growth* at 503, quoting *Black's Law Dictionary* 717 (11th Ed.2019).

{¶18} It is undisputed that the parties have other items of personal property aside from furniture that are not specifically mentioned in the divorce decree. It would have been illogical for the trial court to disregard its statutory duty to divide all of the parties' property and intentionally limit the definition of "[o]ther items of personal property" to just "furniture." The trial court found that its clear intention was to divide all of the parties' personal property, and this finding is consistent with the fact that the divorce decree purported to be a final, appealable order, which in the context of a divorce requires the division of all of the parties' property. *Wilson v. Wilson,* 116 Ohio St.3d 268, 2007-Ohio-6056, 878 N.E.2d 16, ¶ 15 ("in the context of a divorce proceeding, Civ.R. 75(F) prohibits a trial court from entering a final judgment unless (1) the judgment divides the parties' property, determines the appropriateness of an order of spousal support, and allocates parental rights and responsibilities, including the payment of child support, or (2) the judgment states that there is no just reason for delay and that the court lacks jurisdiction to determine any issues that remain"); *Jones v. Jones*, 4th Dist. Highland No. 18CA10,

2019-Ohio-2684, ¶ 9 ("Ohio appellate courts have * * * consistently held that a divorce decree that fails to dispose of all marital and separate property does not constitute a final order"). It is also consistent with the fact that when the decree discussed spousal support, it stated that "[t]he parties assets have been set forth above," suggesting the decree had addressed all of the parties' personal property.

{¶19} We observe that even if the trial court could not correct its mistake through its jurisdiction to correct clerical mistakes, it still would have had jurisdiction to order the division of all other items of personal property. If the only "[o]ther items of personal property" the divorce decree divided were furniture, the decree would not have been a final order as it would not have disposed of all marital and separate property. In that event, the trial court could have completed its property division and ordered the division of all other items of personal property. *Schlueter v. Schlueter*, 3d Dist. Auglaize No. 2-98-19, 1998 WL 901733, *2 (Dec. 28, 1998) ("the trial court may complete its property division where the divorce decree is not a final order").

{¶20} For the foregoing reasons, we overrule the first assignment of error.

C. 529 Plan Accounts

{¶21} In the second assignment of error, Mr. Pack contends that the trial court lacked jurisdiction to issue a continuing order that requires him to give Ms. Pack information about 529 Plan accounts for the children because the accounts are "wholly owned by him" and the divorce decree did not give her a legal interest in or a right to monitor the accounts. He asserts that the children have no legal interest in the accounts either. He emphasizes that parents have no legal duty to pay for their children's college expenses and that he has the statutory right to change the beneficiaries on the accounts.

{¶22} "The existence of the trial court's subject-matter jurisdiction is a question of law that we review de novo." *Yazdani-Isfehani*, 170 Ohio App.3d 1, 2006-Ohio-7105, 865 N.E.2d 924, at ¶ 20.

{¶23} The trial court had subject-matter jurisdiction to order the parties to exchange quarterly statements "showing the balance of any and all college savings accounts, or any other investment account maintained by the parties for the sole purpose of paying for their children's future education expenses[.]" Evidently Mr. Pack started 529 Plan accounts for the children during the marriage, but he is the named owner of the accounts and has the right to change the account beneficiaries. It appears that the parties failed to address the accounts during the divorce proceedings, so the issue whether they should be included in the division of property, and if so, how they should be divided, was not before the trial court when it issued the divorce decree. As a result, Mr. Pack is apparently still the named owner of the accounts. The court's order for the provision of quarterly statements did not modify its division of property in violation of R.C. 3105.171(I). The court did not change the named owner of the accounts or give Ms. Pack control over the accounts. The court essentially exercised its jurisdiction to modify the terms of a shared parenting plan under R.C. 3109.04(E)(2)(b), which states:

> The court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. Modifications under this division may be made at any time. The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children.

We generally review a trial court's decision to modify a shared parenting plan for an abuse of discretion. *Rhoden v. Hurt*, 4th Dist. Adams No. 20CA1114, 2020-Ohio-5065, ¶

14. However, Mr. Pack did not ask us to review the modification under this standard or assert that the court's order for the parents to share information about the balance of accounts maintained for the sole purpose of paying the children's future education expenses is somehow contrary to the best interest of the children.

{¶24} For the foregoing reasons, we overrule the second assignment of error.

IV. CONCLUSION

{¶25} Having overruled the assignments of error, we affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

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 Court of Common Pleas 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.

Abele, J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

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.