

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

SHANE WOODGEARD,	:	Case No. 22CA7
Plaintiff-Appellant,	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
KIMBERLY K. HINES,	:	
Defendant-Appellee.	:	RELEASED 7/05/2023

APPEARANCES:

Shane Woodgeard, Sugar Grove, Ohio, pro se.

Mel L. Lute, Jr., Baker Dublikar, North Canton, Ohio, for appellee.

Hess, J.

{¶1} Shane Woodgeard appeals the trial court’s judgment dismissing his action for breach of contract for repayment of monies allegedly loaned by him to Kimberly K. Hines. Woodgeard contends that the trial court ignored the evidence and testimony presented at trial when it determined that he failed to establish that there was a contract, expressed or implied, for the repayment of loaned monies. Woodgeard also contends that the trial court erred when it allowed defense counsel to yell at and badger him during the trial. However, Woodgeard failed to provide a trial transcript, thus we have no choice but to presume the validity of the trial court proceeding and affirm the judgment as to those matters.

{¶2} For his remaining assignments of error Woodgeard contends that the trial court erred when it: (1) failed to compel a subpoena he filed, but which appears on the docket as “a completely false subpoena” not submitted by him; (2) did not respond to his

motion to strike Hines's evidence until minutes before the trial; and (3) did not respond to his objections to the magistrate's decision. We find no merit to any of Woodgeard's remaining assignments of error. We overrule his assignments of error and affirm the trial court's judgment.

I. PROCEDURAL HISTORY

{¶3} In May 2021, Woodgeard filed a complaint for breach of contract in the Hocking County Municipal Court alleging that Hines agreed to repay monies lent by him beginning in September 2017. Hines answered, denied the allegations, and asserted a counterclaim for libel and defamation. She also alleged that she had obtained a civil protection order against Woodgeard for his repeated harassment of her following the breakup of their relationship. The parties engaged in discovery. After receiving discovery responses from Hines, Woodgeard filed a "Motion to Strike Defendant's Evidence" in which he contended, "Much, if not most of the discovery submitted by the Defendant is either completely biased, unsubstantiated, heresay [sic], fabricated and/or purely false. Therefore the Plaintiff requests that the Court strike all the evidence submitted by the Defendant for those reasons * * *."

{¶4} In March 2022, the case proceeded to a bench trial before a magistrate. On the day of the trial, the trial court denied Woodgeard's motion to strike Hines's discovery responses. Following the trial, the magistrate issued recommendations to the trial court that found that Woodgeard and Hines had been in a romantic relationship for approximately two years. The parties gave conflicting testimony concerning whether the monies transferred were loans or gifts and whether certain cash payments were made to Woodgeard by Hines. Other than a cash payment Hines made to Woodgeard for car

repairs, Hines testified that all of the monies spent in their relationship were gifts. Hines testified that she also spent money and paid for things during their relationship. Woodgeard failed to present any evidence, other than his testimony, that the monies he spent on Hines were loans. Woodgeard testified that he had made recordings of conversations he had with Hines concerning the monies, but she never admitted to owing him money during those recorded conversations. The magistrate determined that Woodgeard failed to establish a loan contract existed and found the sums to be gifts, “monies spent and things done for Defendant were spent and done during a romantic relationship. * * * money, goods, or benefits given by one person to the other in a romantic relationship are gifts and not loans unless the individuals specifically agree otherwise at the time.” The magistrate also recommended dismissal of Hines’s counterclaims. The trial court adopted the magistrate’s recommendations and dismissed both parties’ claims.

{¶15} Woodgeard filed timely objections to the magistrate decision. However, the record contains a notice from the clerk of court that informed Woodgeard that he failed to pay the required filing fee. It further stated, “In order for the Objections to be considered, please remit this filing fee within 14 days of this notice.” There is no indication in the record that Woodgeard paid this fee. Rather, the next item on the docket is Woodgeard’s notice of appeal.

II. ASSIGNMENTS OF ERROR

{¶16} Woodgeard assigns the following errors for our review:

1. The trial court erred in dismissing the Appellant[']s claim and in ignoring direct evidence and testimony.
2. The trial court erred when it failed to compel the subpoena that the Appellant had filed and in which the Clerks [sic] docketed a completely false subpoena not submitted by Appellant.

3. The trial court erred in allowing the Defenses [sic] attorney Mel Lute, to yell at, badger and even demand that Appellant drop a separate case in which Lute has a personal interest.

4. The court erred by not responding to a motion filed by Appellant to strike evidence brought by the Appellee until minutes before trial.

5. The court erred by not responding to the Appellant[']s objection to the Magistrate[']s Decision which he filed May 9, 2022.

{¶7} We consider Woodgeard's assignments of error out of order for ease of discussion.

III. LAW AND ANALYSIS

A. Failure to Submit Trial Transcript

{¶8} In his first and third assignments of error, Woodgeard challenges the trial court's analysis of the evidence and testimony at trial and the alleged behavior of defense counsel during trial. However, Woodgeard failed to provide a trial transcript, thus we have no choice but to presume the validity of the trial court's proceedings:

Pursuant to App.R. 9(B), it is the appellant's responsibility to order a complete transcript if he intends to argue that a finding is contrary to the weight of the evidence. This duty falls upon the appellant "because the appellant bears the burden of showing error by reference to matters in the record." *Plum Run, Inc. v. Cantor*, 4th Dist. Jackson No. 02CA14, 2003–Ohio-5545, ¶ 11. Where an appellant fails to provide the portions of the transcript required by an appellate court to resolve the assigned errors, "the appellate court has no choice but to presume the validity of the trial court's judgment and affirm." *Id.*

Am. Family Ins. Co. v. Hoop, 4th Dist. Adams No. 13CA983, 2014-Ohio-3773, ¶ 36; *Malone v. Ford*, 4th Dist. Pike No. 20CA903, 2021-Ohio-330, ¶ 9; 5 Ohio Jur. 3d Appellate Review § 455 ("An appellate court has nothing to pass on if the appellant fails to provide a transcript of the lower court's proceedings, and the appellate court has no choice but to presume the validity of the lower court's proceedings.") "When an appeal is filed in this

court without a transcript, we generally presume the regularity of that proceeding and affirm.” *State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Commrs.*, 127 Ohio St.3d 202, 2010-Ohio-5073, 937 N.E.2d 1274, ¶ 14.

{¶9} Because we have no record upon which we can review Woodgeard’s first and third assignments of error, we must presume the regularity of the trial court proceeding and affirm the judgment. We overrule Woodgeard’s first and third assignments of error.

B. The Subpoena

{¶10} For his second assignment of error, Woodgeard contends that the trial court erred when it failed to compel a subpoena he filed and in which the clerk of court docketed “a completely false subpoena.” Woodgeard submitted a document with his appellate brief captioned “Subpoena For Duces Tecum” issued for Jacob D. Chamberlain. It is this subpoena that Woodgeard contends was falsely issued by the clerk. However, this subpoena is not part of the record, nor does it appear on the court docket. Because there is no indication that this subpoena was part of the record or issued by the clerk, we cannot consider it on appeal. “This court ‘cannot consider exhibits, affidavits, or other matters attached for the first time to an appellate brief which were not properly certified as part of the trial court’s original record and submitted to the court of appeals.’ ” *Deosaran v. Wood*, 2015-Ohio-5020, 53 N.E.3d 834, ¶ 6 (6th Dist.).

{¶11} The only subpoena in the record is the one requested by Woodgeard to “Discover Subpoena Department.” The clerk issued this subpoena as Woodgeard requested, and a company representative responded to it.

{¶12} We find no error in the record concerning the issuance of a subpoena and overrule Woodgeard's second assignment of error.

C. Motion to Strike Discovery

{¶13} For his fourth assignment of error, Woodgeard contends that the trial court erred by not responding to his motion to strike Hines's discovery responses "until minutes before trial" leaving Woodgeard "no time whatsoever to prepare for such." After he received discovery responses from Hines, Woodgeard filed a document captioned "Motion to Strike Defendant[']s Evidence." Woodgeard sought to have the trial court strike all the documents Hines provided to him in discovery because he contended the responses were "completely biased, unsubstantiated, heresay [sic], and/or purely false." In his motion to strike, Woodgeard argued that none of Hines's discovery responses should be allowed into evidence.

{¶14} We construe Woodgeard's motion to strike as a motion in limine and review the trial court's decision for abuse of discretion. *Estate of Johnson v. Randall Smith, Inc.*, 135 Ohio St.3d 440, 2013-Ohio-1507, 989 N.E.2d 35, ¶ 22 ("decisions granting or denying a motion in limine are reviewed under an abuse-of-discretion standard of review.") For an abuse of discretion to have occurred, the trial court must have taken action that is unreasonable, arbitrary, or unconscionable. *Id.*

{¶15} A motion in limine is a motion made before or during the trial to prevent matters which are irrelevant, inadmissible, or prejudicial from being placed into evidence. *State v. Grubb*, 28 Ohio St.3d 199, 200, 503 N.E.2d 142 (1986); *State v. Maurer*, 15 Ohio St.3d 239, 259, 473 N.E.2d 768, fn. 14 (1984); *Pirock v. Crain*, 2020-Ohio-869, 152 N.E.3d 842, ¶ 71-73 (11th Dist.). In *Maurer*, the Court explained that a trial court's ruling

prior to trial on a motion in limine does not preserve the issue on appeal. A party whose motion in limine is denied prior to trial must make an objection during the trial to that evidence to preserve the record for appeal.

Although extremely useful as a trial technique, *the ruling in a motion in limine does not preserve the record on appeal*. The ruling is * * * tentative, preliminary or presumptive ruling about an evidentiary issue that is anticipated but has not yet been presented in its full context. An appellate court need not review the propriety of such an order unless the claimed error is preserved by an objection, proffer, or ruling on the record when the issue is actually reached and the context is developed at trial. (Emphasis sic.)

Maurer at fn. 14.

{¶16} Because Woodgeard failed to provide the trial transcript, we cannot determine whether he objected at trial to preserve this issue, nor can we review the trial context to determine whether the trial court abused its discretion. We presume the validity of the trial court's judgment and overrule Woodgeard's fourth assignment of error. *State ex rel. Bardwell* at ¶ 14.

D. Objections to the Magistrate's Decision

{¶17} For his fifth assignment of error, Woodgeard contends that the trial court erred in failing to respond to his objections to the magistrate's decision. He argues that he received nothing in the mail and did not see a response on the docket.

{¶18} According to the record, Woodgeard failed to pay the required \$10 filing fee that was to accompany his objections. Two days after he filed his objections, the clerk notified Woodgeard that a \$10 filing fee was required. It further advised him, "In order for the Objections to be considered, please remit this filing fee withing 14 days of this notice." The record contains no indication that the fee was paid, nor did the record contain an

affidavit of indigency at the time Woodgeard filed his objections.¹ The next entry on the docket is Woodgeard's notice of appeal.

{¶19} R.C. 2323.311 provides a procedure by which an indigent litigant may request the waiver of certain court fees. It is within a court's discretion to determine whether indigency status is proper in a particular case for waiving fees. *Manville v. Hazen*, 2019-Ohio-1133, 133 N.E.3d 1029, ¶ 12 (8th Dist.). Because Woodgeard did not file an affidavit of indigency prior to filing his objections, the trial court did not abuse its discretion in requiring the payment of the fee prior to considering his objections. The trial court did not err when it did not respond to Woodgeard's objections.

{¶20} We overrule Woodgeard's fifth assignment of error.

IV. CONCLUSION

{¶21} We overrule Woodgeard's assignments of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

¹ Several weeks after he filed his objections to the magistrate's decision, Woodgeard filed an affidavit of indigency with his notice of appeal and asked for a waiver of fees for his appellate filings.

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 Hocking County Municipal Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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.