

[Cite as *Fernandez v. Fernandez*, 2015-Ohio-5471.]

STATE OF OHIO, COLUMBIANA COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

RICHARD M. FERNANDEZ
PLAINTIFF-APPELLANT

V.

PATRICIA FERNANDEZ
DEFENDANT-APPELLEE

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CASE NO. 14 CO 18

OPINION

CHARACTER OF PROCEEDINGS:

Civil Appeal from Court of Common
Pleas, Domestic Relations Division, of
Columbiana County, Ohio
Case No. 13 DR 282

JUDGMENT:

Affirmed

APPEARANCES:

For Plaintiff-Appellee

Charles C. Amato
Lynsey Lyle-Opalenik
991 Main Street
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For Defendant-Appellant

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JUDGES:

Hon. Mary DeGenaro
Hon. Cheryl L. Waite
Hon. Carol Ann Robb

Dated: December 18, 2015

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DeGENARO, J.

{¶1} Plaintiff-Appellant Richard Fernandez appeals the judgment of the Columbiana County Court of Common Pleas granting a divorce between him and Defendant-Appellee Patricia Fernandez, following a trial before the magistrate. On appeal, Richard argues that the trial court committed plain error in its decision regarding spousal support and in the allocation of marital debt.

{¶2} Upon review, Richard's assignments of error are meritless. Richard largely raises factual challenges to the trial court's decision, which he has waived by failing to file objections to the magistrate's decision and a transcript with the trial court, which limits our review to plain error. As the trial court's decision on these matters does not constitute plain error, the judgment of the trial court is affirmed.

{¶3} Richard and Patricia married in 1976; divorce proceedings were commenced in 2013, by which time all of the parties' children had emancipated. A final divorce hearing was held before the magistrate beginning on February 10, 2014. The parties entered into a number of joint stipulations which resolved all issues except spousal support and allocation of some of the marital debts.

{¶4} On February 25, 2014, the magistrate issued a decision granting the parties a divorce. Germane to this appeal, the magistrate ordered Richard to pay Patricia \$1,700.00 per month in spousal support for an indefinite period, to terminate upon the death of either party, or Patricia's remarriage or cohabitation with an unrelated male, and ordered Richard to pay an outstanding balance of approximately \$10,000.00 owed to One Main Financial. That same day, the trial court issued the final divorce decree, adopting the magistrate's decision in full. The docket reveals that copies of both the magistrate's decision and the judgment entry of divorce were served on the parties on February 26, 2014.

{¶5} No objections to the magistrate's decision were filed by either party. Accordingly, the trial court never had the benefit of reviewing a transcript of the divorce trial. On March 21, 2014, Richard filed a timely notice of appeal of the trial court's February 25, 2014 judgment with this court. Richard filed a motion for stay pending appeal; this was denied by the trial court. He did not pursue a stay with this

court.

{¶16} Patricia filed a motion to dismiss the appeal based on Richard's failure to file objections to the magistrate's decision in the trial court. This court overruled the motion, explaining that while failure to file objections can be a basis for affirming the trial court's decision, there is no legal authority standing for the proposition that dismissal of the appeal is warranted under such circumstances.

{¶17} Richard assigns two errors on appeal, which will be discussed together for clarity of analysis; they assert, respectively:

The trial court committed plain error in ordering Appellant to pay \$1,700.00 in spousal support for an indefinite period of time.

The trial court committed plain error in ordering Appellant to pay the remainder of the debt to One Main Financial despite the debt being a joint marital debt.

{¶18} Richard's assignments of error challenge the trial court's decision regarding spousal support and debt allocation, which are typically reviewed for an abuse of discretion. *Miller v. Miller*, 7th Dist. No. 08 JE 26, 2009-Ohio-3330, ¶139; *Kachmar v. Kachmar*, 7th Dist. No. 08 MA 90, 2010-Ohio-1311, ¶37-38. Here, however, Richard failed to file objections to the magistrate's decision.

{¶19} Civ.R. 53(D)(3)(b)(i) provides that 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)." (Emphasis added.) The fact that the trial court adopted the magistrate's decision before the 14-day period expired (in fact, on the same day the magistrate's decision issued) does not change the analysis, as shown by the emphasized language above and by Civ.R. 53(D)(3)(e)(i), which provides:

[A] court may enter a judgment either during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections to a magistrate's

decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.

{¶10} Here Richard failed to file any objections to the magistrate's decision within the 14-day period, which ended on March 11, 2014. He filed his notice of appeal well after the 14 days had elapsed, on March 21, 2014.

{¶11} "Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Civ.R. 53(D)(3)(b)(iv).

{¶12} Thus, both of Richard's assignments of error are subject to plain error review. *Id.* In civil cases, the doctrine of plain error "is sharply limited to the *extremely rare* case involving *exceptional* circumstances where the error, left unobjected to at the trial court, rises to the level of challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122, 679 N.E.2d 1099 (1997).

{¶13} And as this court has previously stated, "[i]ssues of manifest weight of the evidence [and] abuse of discretion in construction of the facts, * * * had to have been initially raised to the trial court in objections[,]" otherwise the party waives appellate review of those issues. *Mlinarcik v. Mlinarcik*, 7th Dist. No. 04 CO 30, 2006-Ohio-1287, ¶18.

{¶14} With regard to the spousal support issue, Richard merely disagrees with the amount of the trial court's award, which does not mean the award was plainly erroneous. Moreover, Richard cites extensively to the trial transcript, which was

never presented to the trial court. The Civil Rules provide that "[a]n 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." Civ.R. 53(D)(3)(b)(iii).

{¶15} Thus, even though Richard did order a transcript of trial for inclusion in the appellate record, it cannot be considered by this court on appeal. "The Supreme Court of Ohio has stated that where the objecting party fails to provide the trial court with the transcript of the proceedings before the magistrate, an appellate court is precluded from considering the transcript of the magistrate's hearing submitted with the appellate record." *Eiselstein v. Baluck*, 7th Dist. No. 11 MA 74, 2012-Ohio-3002, ¶18, citing *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 654 N.E.2d 1254 (1995).

{¶16} Moreover, in its entry, the trial court thoroughly discussed the statutory spousal support factors and presented its reasoning for its spousal support award. The trial court retained jurisdiction over spousal support. Accordingly, there is no plain error regarding spousal support.

{¶17} With regard to the One Main Financial debt allocation, Richard first takes issue with the trial court's statement in the decree that Richard agreed during trial to assume this debt. He claims this finding was not supported by the record. Again, this court has no way of reviewing that contention since it is not permitted to review the transcript. *See id.*

{¶18} Richard further complains that the trial court failed to take into consideration the total amount of the debt, how it was incurred, and who incurred it. However, in its judgment, the trial court gave adequate reasoning for its allocation of the One Main Financial debt, explaining that it would be "fair and equitable" for Richard to assume the remainder of that debt "because [Richard] incurred this debt without the knowledge of [Patricia] and used the funds withdrawn from his retirement for his own purposes."

{¶19} In sum, the trial court did not commit plain error regarding the spousal support award or the allocation of marital debt. Both of Richard's assignments of error are meritless. Accordingly, the judgment of the trial court is affirmed.

Waite, J., concurs

Robb, J., concurs