[Cite as *Thornhill v. Thornhill*, 2009-Ohio-5569.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92913

ALICE MARIE THORNHILL

PLAINTIFF-APPELLANT

vs.

LESLIE THORNHILL

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-304280

BEFORE: Kilbane, J., Rocco, P.J., and Sweeney, J.

RELEASED: October 22, 2009

JOURNALIZED:

APPELLANT

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APPELLEE

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY EILEEN KILBANE, J.:

{¶ 1} Appellant, Alice Marie Thornhill ("appellant"), appeals the trial court's granting of guardian ad litem fees. After a review of the record and pertinent law, we affirm.

{¶ 2} On April 14, 2005, appellant, through her attorney at the time, James Joseph ("Joseph"), filed for divorce from her husband, Leslie Thornhill ("Thornhill"). The couple had one child. On December 14, 2006, Attorney John Frenden ("Frenden"), entered a notice of appearance on behalf of appellant. On March 23, 2007, Thornhill filed a motion for shared parenting with the trial court. On April 23, 2007, appellant filed an objection to the proposed shared parenting plan. On April 30, 2007, the trial court, on its own motion, appointed attorney Elizabeth Stein ("Stein") to serve as guardian ad litem in the pending action. Both parties were ordered to post a $250 bond toward payment of Stein's fees. Thornhill posted the bond; however, appellant failed to do so.

{¶ 3} On May 15, 2007, appellant, through Frenden, her attorney at that time, filed a motion to remove Stein and appoint a new guardian ad litem. As the basis for the motion, appellant argued that her former attorney, Joseph, shared office space with attorney Stanley Stein, who may be related to the appointed guardian ad litem because they shared the same last name. On May 22, 2007, Thornhill filed a brief in opposition to Stein's removal. Thornhill argued that appellant had failed to demonstrate what relationship, if any, Stanley Stein

and the guardian ad litem shared, and how that relationship would compromise Stein's duties as a guardian ad litem. On June 4, 2007, the trial court denied appellant's motion.

{¶ 4} On June 5, 2007, Stein filed a motion to be permitted to attend hearings and trial. On June 14, 2007, the trial court granted Stein's motion to participate. On July 19, 2007, Frenden filed a motion to withdraw as counsel for appellant. July 30, 2007, the trial court granted the motion and allowed Frenden to withdraw. Appellant then retained attorney Joyce Barrett to represent her.

{¶ 5} On November 15, 2007, Stein filed a motion for guardian ad litem fees in the amount of $3,999.25. On December 31, 2007, the final divorce decree was filed. On June 3, 2008, Stein filed a motion for relief from judgment, arguing that the case needed to be reopened for the limited purpose of determining payment of her fees and a motion for a hearing on the issue of her fees.

{¶ 6} On September 30, 2008, a hearing on Stein's pending motions was held before a magistrate. On November 3, 2008, the magistrate issued her decision, detailing her findings of fact and conclusions of law and awarding Stein $3,643.75 in fees to be divided equally between the parties. The awarded fees were reduced from the $3,999.25 Stein had initially requested, to deduct a conference that was billed twice and to deduct Stein's parking fees. Appellant was ordered to pay $1,821.87. Thornhill was ordered to pay $1,571.85, after he was credited for the $250 bond he had previously paid. On December 15, 2008,

appellant filed her objections to the magistrate's decision. On February 4, 2009, the trial court overruled appellant's objections and adopted the magistrate's decision.

{¶ 7} The instant appeal followed, with appellant asserting four assignments of error for our review.

ASSIGNMENT OF ERROR NUMBER ONE

> **"[THE MAGISTRATE][1] DECIDED ALONE TO REQUEST AN IN-HOUSE COURT REPORTER. NEITHER PARTY REQUESTED A COURT REPORTER. THE OPTION OF AN INDEPENDENT COURT REPORTER WAS NOT OFFERED. VALUABLE TESTIMONY WAS LOST THAT WOULD HAVE DRAMATICALLY SUBSTANTIATED MORE OF THE FACTS. THE OUTCOME WOULD HAVE BEEN DIFFERENT IF THE TRUE FACTS WERE DOCUMENTED BY AN INDEPENDENT SOURCE. THIS IS AN ASSIGNMENT OF ERROR AND THE DECISION SHOULD BE REVERSED. [THE MAGISTRATE] ALSO SHOULD BE REVIEWED AND HER DECISION SHOULD BE REVERSED BECAUSE SHE COMMITTED MANY ABUSE OF DISCRETION VIOLATIONS."**

{¶ 8} In her first assignment of error, appellant argues that the court was required to inform her that she had a right to an independent court reporter at the evidentiary hearing held before the magistrate. Because appellant has failed to cite any supporting case law or statute, we decline to fully address this issue.

{¶ 9} Appellant admits that the trial court utilized a court reporter, even though she did not request one. However, she maintains that the trial court's

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[1]Although appellant specifically names the magistrate and trial court judge in her assignments of error, the names have been omitted in this opinion as it is this court's policy not to name these individuals when it is not necessary to the analysis.

own court reporter did not properly transcribe the hearing and that an independent court reporter would have properly transcribed the testimony.

{¶ 10} Appellant cites no authority to support her contention that the trial court erred when it did not inform her that she may hire an independent court reporter. App.R. 16(A)(7) requires appellant's brief to provide "citations to the authorities, statutes, and parts of the record on which appellant relies."

{¶ 11} This court has previously declined to address assignments of error pursuant to App.R. 16(A)(7) when the appellant fails to cite any supporting case law or statute. *State v. Djuric*, Cuyahoga App. No. 87745, 2007-Ohio-413, at ¶53. Appellant argues that the actual transcript is inaccurate; however, she fails to explain how she believes the actual testimony would have differed from that transcribed by the court reporter. Because appellant has cited no authority or portions of the record in support of her first assignment of error, it is overruled.

ASSIGNMENT OF ERROR NUMBER TWO

"IN THE ABSENCE OF AN INDEPENDENT COURT REPORTER'S DICTATION [THE JUDGE] RELIED TOTALLY ON THE NOTES OF [THE MAGISTRATE]. HE DID NOT REQUEST THE NOTES OF THE O"THER PARTIES. [THE JUDGE] ONLY HAD THE NOTES OF [THE MAGISTRATE] TO BASE HIS DECISION. [THE JUDGE] DID NOT CONSIDER THE NOTES OF THE OTHER PARTIES. THIS WAS AN ASSIGNMENT OF ERROR AND ABUSE OF DISCRETION ON THE PART OF [THE JUDGE]."

{¶ 12} Appellant argues that because an independent court reporter was not present during the evidentiary hearing before the magistrate the trial court had only the notes of the magistrate to rely on when issuing its decision. This argument lacks merit.

{¶ 13} When a magistrate issues findings of fact and conclusions of law, parties are allotted 14 days to file their objections in accordance with Civ.R. 53(D)(4). The trial court then has the ability, pursuant to Civ.R. 53(D)(4) to adopt, to reject, or modify the decision. The trial court may also refer the matter back to the magistrate to hear additional evidence.

{¶ 14} Here, the magistrate issued her findings of fact and conclusions of law on November 3, 2008. On November 14, 2008, appellant filed a request with the trial court seeking additional time to prepare her objections to the magistrate's decision. She was granted an additional 30 days. On December 15, 2008, appellant filed her objections to the magistrate's decision. On February 4, 2009, the trial court overruled appellant's objections and adopted the magistrate's decision pursuant to Civ.R. 53(D)(4).

{¶ 15} Appellant alleges that the trial court had no record on which to base its decision other than the notes of the magistrate. This is incorrect. Appellant admits a court reporter was present during the proceedings. The trial court had the ability to request and refer to the transcript. Although appellant refers to the magistrate's "notes," based on the context of her brief it appears she is referring to the actual magistrate's decision that was issued to the parties on November 3,

2008. This is more than simply the magistrate's notes, this decision documents the magistrate's findings of fact and conclusions of law. Further, appellant could have ordered a copy of the hearing transcript and documented the alleged inaccuracies.

{¶ 16} Finding no merit to appellant's argument, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER THREE

"THROUGHOUT THIS RECORD I STATED THE ASSIGNMENT OF ERRORS AND ABUSE OF DISCRETION COMMITTED BY [THE MAGISTRATE] AND [THE JUDGE] WITH EACH STATED INFRACTION."

ASSIGNMENT OF ERROR NUMBER FOUR

"THE LOWER COURTS [SIC] DECISION BY [THE MAGISTRATE] AND [THE JUDGE] SHOULD BE REVIEWED BASED UPON THE ASSIGNMENT OF ERROR(S) STANDARD OF LAW AND THE ABUSE OF DISCRETION OF LAW. THERE ARE NUMEROUS GROSS AND BLATANT MISUSES OF THESE STANDARDS BY ATTY. ELIZABETH STEIN. [THE MAGISTRATE] AND [THE JUDGE] CHOSE TO OVERLOOK ATTY[.] STEIN'S MISCONDUCT AND ABUSE OF THE RULES OF LAW. THEY MADE THEIR DECISIONS ON SOMEWHAT ARBITRARY REASONING THAT DEFIES HUMAN LOGIC. THEY CHOSE TO INCORRECTLY APPLY THESE STANDARDS. THIS IS A REQUEST OF A HIGHER COURT TO REVIEW THE FACTS AGAINST THE LEGAL STANDARDS AND REVERSE THE LOWER COURTS [SIC] DECISION."

{¶ 17} As appellant's final two assignments of error have a common basis in law and fact, we will address them together. While the assignments of error state standards of review rather than concise assignments of error, a review of appellant's brief reveals that the crux of her argument is that Stein should have

been removed as guardian ad litem, and that Stein is not entitled to fees in the amount of $3,643.75 as was determined by the trial court. After a review of the record, we disagree.

{¶ 18} A trial court's appointment of a guardian ad litem and award of fees must be upheld absent an abuse of discretion. *Gabriel v. Gabriel*, Lucas App. No. L-08-1303, 2009-Ohio-1814, at ¶15. A trial court is given considerable discretion in these matters. 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.

Appellant's Motion to Remove Stein as Guardian ad Litem

{¶ 19} Appellant's dispute with Stein began immediately after Stein was appointed as guardian ad litem. On April 30, 2007, the trial court appointed Stein as guardian ad litem to the parties' only child. On May 15, 2007, appellant filed a motion to remove Stein as guardian ad litem. Appellant's motion suggested a possible familial relationship between Stein and attorney Stanley Stein, who shared office space with Joseph, appellant's initial divorce attorney. On May 22, 2007, Thornhill filed a brief in opposition, emphasizing that appellant presented no evidence to support her claim. On June 4, 2007, the trial court agreed with Thornhill and denied appellant's motion. Because appellant presented no evidence linking Stanley Stein to the guardian ad litem, we cannot

conclude that the trial court abused its discretion in denying appellant's motion to remove Stein from the case.

Stein's Motion for Relief from Judgment

{¶ 20} Appellant claims she was not aware until April 2008 that Stein was owed compensation for the work she performed on the case. On September 30, 2008, the trial court held a hearing on Stein's motion for relief from judgment and motion for fees, and she was ultimately awarded her fees in the amount of $3,643.75, $1,821.87 of which was to be paid by appellant and $1,571.85 to be paid by Thornhill after the $250 bond he paid is credited to him. Appellant argues that the trial court erred in granting Stein's motion for relief from judgment. We disagree.

{¶ 21} Although Stein filed her initial motion for guardian ad litem fees on November 15, 2007, that motion became moot when the final divorce decree was filed. See *Zigmont v. Toto* (Jan. 16, 1992), Cuyahoga App. No. 62149. Consequently, in order for Stein to obtain her fees the case must be reopened.

{¶ 22} On June 3, 2008, Stein filed the appropriate motion for relief from judgment. On the same date, Stein also filed a new motion for guardian ad litem fees. Appellant never opposed the motions. The trial court granted the motion for relief from judgment and held the appropriate hearing pursuant to Loc.R. 35(E) to determine the reasonableness of the requested fees. As Stein did serve as the guardian ad litem on this case and no provision was made for her

payment, we cannot conclude that the trial court abused its discretion in granting Stein relief from judgment and conducting the appropriate hearing.

Calculation of Fees

{¶ 23} Appellant maintains that Stein should not have attended and billed for her attendance at hearings and trial, as it is not required under Loc.R. 35(H)(7). However Stein filed a motion, which the trial court granted, allowing her to participate. Appellant never filed a brief in opposition to Stein's motion to participate.

{¶ 24} At the evidentiary hearing held before the magistrate, Stein specifically testified that she attended all pretrials and was present for two days of the full evidentiary hearing, until custody had been resolved and she was excused by the trial court. Appellant disputed the hours Stein was actually present. Although Thornhill testified, he could not remember the number of hours Stein had been present. Where the testimony of two witnesses is conflicting, great deference should be afforded to the fact-finder as they were in the best position to see the witnesses and judge their credibility. *Seasons Coal Co., Inc. v. City of Cleveland* (1984), 10 Ohio St.3d 77, 79, 461 N.E.2d 1273. We cannot conclude it was an abuse of discretion for the trial court to accept Stein's calculation of the hours.

{¶ 25} Appellant alleged at the hearing and on appeal that Stein charged the parties excessive fees, including parking costs. The trial court concluded that Stein billed the hours worked at the appropriate rate of $125 an hour

pursuant to Loc.R. 35(E). The trial court also determined that Stein charged twice for the same settlement conference, and the fees were reduced accordingly. Further, Stein's parking charges were deducted from the fee award, making appellant's argument on this issue moot.

{¶ 26} Appellant argued at the evidentiary hearing, and continues to argue on appeal, that Stein failed to submit monthly invoices to the parties as required pursuant to Loc.R. 35(H)(8), and she is therefore not entitled to payment. However, Stein sent itemized invoices to the parties through their attorneys. The first statement was sent in June 2007, shortly after her appointment, which is when the bulk of her work was completed. The next statement was not sent until November 2007, which included charges for the hearings she had recently attended.

{¶ 27} The trial court found that while Stein did not send invoices directly to the parties, she did send invoices to counsel for the parties each time charges were incurred. Therefore, Stein should not be penalized for failing to send invoices directly to the parents. Appellant claims the invoices should have been presented to the trial court as well; however, appellant cites no legal authority that would require her to submit invoices to the trial court as well as the parties. The trial court determined that Stein should not be penalized as a result of appellant's communication problems with her attorney. Because invoices were sent each time charges accrued, we cannot conclude that the trial court abused its discretion in allowing Stein to recover her fees.

{¶ 28} The magistrate's findings of fact and conclusions of law regarding the narrow issue of the guardian ad litem fees was nine pages long. It detailed the work performed by Stein, the testimony of all of the parties, and discussed the specific objections made by appellant. The magistrate's decision was thorough, and we cannot conclude that the trial court abused its discretion in adopting the decision.

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 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, JUDGE

KENNETH A. ROCCO, P.J., and
JAMES J. SWEENEY, J., CONCUR