

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

Y.H., :
 :
 Plaintiff-Appellee, :
 : No. 108175
 v. :
 :
 C.C., :
 :
 Defendant-Appellant. :
 :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 3, 2019

Civil Appeal from the Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-18-371811

Appearances:

C.C., *pro se.*

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant C.C. appeals from the lower court’s denial of a postdecree motion in the divorce action initiated by plaintiff-appellee Y.H. For the reasons that follow, we affirm.

Procedural and Substantive History

{¶ 2} C.C. and Y.H. were married on September 21, 2007. They have three minor children.

{¶ 3} On May 7, 2018, Y.H. filed a complaint for divorce based on incompatibility. C.C. did not file an answer to the complaint, but he submitted various communications to the court in response to the complaint. On September 28, 2018, C.C. filed a motion to dismiss the complaint as falsely filed because of a typographical error in Y.H.'s name on the complaint.

{¶ 4} The court held a pretrial hearing on October 17, 2018. C.C., Y.H., and Y.H.'s attorney were present. The court discussed the couple's property and issued a pretrial order instructing the parties to provide the court with outstanding financial information.

{¶ 5} On November 29, 2018, the court held a final hearing. Y.H. and her attorney were present. The record contains a statement from the court that C.C. had been at the courthouse earlier but left before the hearing started, as well as a statement from Y.H.'s attorney that she called C.C. immediately before the hearing started but he did not answer. During the hearing, Y.H. stated that she was not seeking spousal support or child support. The court stated that the civil protection order against C.C. for Y.H. and the three children would remain in place.¹ The court

¹ On May 22, 2018, a complaint was filed against C.C. in the Lyndhurst Municipal Court for violating this protection order. He was convicted of violating the order, and this court upheld his conviction in *Highland Hts. v. C.C.*, 8th Dist. Cuyahoga No. 107703, 2019-Ohio-2333.

also discussed the division of marital property. Finally, Y.H.'s attorney stated on the record that she had been working with Y.H. for over a year and a half, and based on her own knowledge and observations, the couple was incompatible. The court found that because Y.H. established the grounds of incompatibility, and C.C. failed to deny this, Y.H. was entitled to a divorce.

{¶ 6} The divorce decree was entered on November 30, 2018. Pursuant to the decree, Y.H. was awarded the residential property located in Highland Heights, Ohio, and a 2016 Mercedes-Benz van. C.C. was awarded a Honda Civic, and the decree provided that he shall retain his retirement assets earned during the marriage. Finally, the court found that it was in the best interests of the minor children that Y.H. be designated their residential parent and legal custodian.

{¶ 7} On December 26, 2018, C.C. filed objections to the divorce decree, arguing that he had submitted an answer to the complaint denying incompatibility. He also asserted that he arrived at court for the November 29, 2018 hearing and waited several hours before leaving.

{¶ 8} On January 17, 2019, the court issued a judgment entry indicating that it interpreted the December 26, 2018 objections as a motion for reconsideration. The judgment entry also stated as follows:

Despite having filed several pieces of correspondence with the Clerk of Courts, Defendant never filed a formal answer and none of his correspondence includes anything suggesting that he denied the grounds of incompatibility as set forth in Plaintiff's Complaint.

The court denied C.C.'s request.

{¶ 9} C.C. appeals, presenting four assignments of error for our review.

Law and Analysis

{¶ 10} In his first assignment of error, C.C. argues that the trial court erred by initiating the final divorce hearing after court hours.

{¶ 11} A “court has broad discretion to conduct trial procedures fairly and expeditiously, so long as it does not thereby prejudice either party’s rights.” *State v. MacIver*, 8th Dist. Cuyahoga No. 49412, 1985 Ohio App. LEXIS 7372, 5-6 (Sept. 19, 1985). “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*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). When applying the abuse of discretion standard, a reviewing court may not substitute its judgment for that of the trial court. *Berk v. Matthews*, 53 Ohio St.3d 161, 169, 559 N.E. 2d 1301 (1990).

{¶ 12} The hearing in this case was scheduled to begin at 2:00 p.m. on November 29, 2018. There is no dispute that C.C. was present at the courthouse prior to the hearing on that date, nor is there a dispute that C.C. left the courthouse of his own volition prior to the hearing, and did not respond to a call regarding his whereabouts immediately prior to the hearing. To the extent that C.C.’s argument relies on the implied assertion that he had an absolute right to be present at this hearing, he has provided no authority for this assertion. Furthermore, even if he had done so, it would be inapplicable to the facts of this case where no one — not the court, the opposing party, or an attorney — did anything to interfere with such a

right. We find the court's decision to proceed with the final divorce hearing as scheduled does not constitute an abuse of discretion. Therefore, C.C.'s first assignment of error is overruled.

{¶ 13} In his second assignment of error, C.C. argues that the court erred by denying his motion to dismiss the case based on an invalid complaint. Specifically, C.C. challenges the court's characterization of the complaint as "uncontested." He also argues that a typographical error in Y.H.'s name on the complaint renders the complaint invalid.

{¶ 14} We agree with C.C. that a review of the record shows that he disputed certain things in this case, including whether it was his wife who filed the initial complaint. The record, however, reveals nothing that could be interpreted as C.C. contesting Y.H.'s allegations of incompatibility. Even on appeal, C.C. has not directly contested the allegations of incompatibility.

{¶ 15} With respect to the typographical error on the complaint, to the extent that this error created any confusion or uncertainty as to the identity of the plaintiff filing the complaint, this was resolved when Y.H. appeared at court. Therefore, we find no merit to this argument and overrule C.C.'s second assignment of error.

{¶ 16} In C.C.'s third assignment of error, he argues that Y.H. was not properly sworn in before testifying at the November 29, 2018 hearing. Our review of the record shows that both Y.H. and her attorney were in fact sworn in. C.C. also argues that he was deprived of the ability to cross-examine the witnesses at the final hearing. In light of our foregoing conclusion that C.C. elected not to attend the final

hearing, we cannot conclude that he was somehow deprived of his right to cross-examine witnesses. Therefore, this assignment of error is overruled.

{¶ 17} In C.C.'s fourth and final assignment of error, he argues that the court failed to collect accurate information in support of Y.H.'s complaint. In support of this argument, C.C. relies on unfounded allegations that appear to have no relevance to the issuance or contents of the divorce decree. The Ohio Supreme Court "has long recognized that a trial court must have discretion to do what is equitable upon the facts and circumstances of each divorce case." *Feldman v. Feldman*, 8th Dist. Cuyahoga No. 92015, 2009-Ohio-4202, ¶ 11, citing *Booth v. Booth*, 44 Ohio St.3d 142, 144, 541 N.E.2d 1028 (1989). In light of this discretion, our review of the trial court's determination in this case is abuse of discretion. *Holcomb v. Holcomb*, 44 Ohio St.3d 128, 130, 541 N.E.2d 597 (1989). After a thorough review of the record, we find that the trial court's determination that the parties were incompatible, together with the more specific determinations in the divorce decree, were supported by evidence and were not unreasonable, arbitrary, or capricious. Therefore, C.C.'s fourth assignment of error is overruled.

{¶ 18} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

RAYMOND C. HEADEN, JUDGE

ANITA LASTER MAYS, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR