

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

ERIC T. WOOD,	:	OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2009-P-0076
APRIL WOOD,	:	
Defendant-Appellee.	:	

Civil Appeal from the Portage County Court of Common Pleas, Domestic Relations Division, Case No. 2008 DR 363.

Judgment: Affirmed.

William Love, II, 739 West Rextur Drive, Akron, OH 44319 (For Plaintiff-Appellant).

Robert J. Paoloni and Amanda J. Lewis, Paoloni & Lewis, 250 South Water Street, P.O. Box 762, Kent, OH 44240 (For Defendant-Appellee).

DIANE V. GRENDELL, J.

{¶1} Plaintiff-appellant, Eric T. Wood, appeals the October 20, 2009 Judgment Entry of the Portage County Court of Common Pleas, Domestic Relations Division, correcting the Decree of Divorce, terminating Eric’s marriage to defendant-appellee, April Wood, with respect to companionship. For the following reasons, we affirm the decision of the court below.

{¶2} Eric and April were married on June 10, 2000. Two children were born of the marriage: Rachel A. Wood dob December 7, 2004, and Rebekah L. Wood, dob June 3, 2006.

{¶3} On July 3, 2008, Eric filed a Complaint for Divorce in the Portage County Court of Common Pleas.

{¶4} On July 24, 2008, the domestic relations court issued a Magistrate's Temporary Order, granting Eric "TEMPORARY COMPANIONSHIP with the parties' minor children every other week beginning Sunday at 9:00 a.m. to Tuesday at 9:00 a.m."

{¶5} On August 22, 2008, Eric filed a Motion to Change Companionship Days. Eric's Motion was based on a change in his work schedule. Beginning August 30, 2008, Eric would be off work "from Monday mornings through Wednesday." Accordingly, he requested "that his companionship with his children begin on Monday morning and continue through Wednesday afternoon/early evening."

{¶6} On September 3, 2008, the domestic relations court issued a Magistrate's Order, memorializing the parties' in-court agreement: "[Eric] shall have companionship with the minor children on alternating Mondays from 12:00 p.m. through Wednesday at 5:30 p.m."

{¶7} On March 27, 2009, the domestic relations court issued a Magistrate's Decision following a hearing on the merits of the divorce action. The magistrate recommended that April be "the residential custodial parent of the parties' minor children," and that Eric "have companionship/visitation with the minor children in accordance with this Court's standard visitation schedule." According to the standard

visitation schedule, visitation was to occur on “alternating weekends from Friday at 6:00 p.m. to Sunday at 6:00 p.m.”

{¶8} On April 8, 2009, Eric filed an Objection to the Magistrate’s Decision, with respect “to the magistrate arbitrarily changing the companionship schedule already operating between these parties to the standard order of companionship.” Eric explained that he was a postal worker who worked the night shift on weekends. The parties “had long agreed and practiced that [Eric] would have his companionship based upon the regular days he was scheduled [off] from work.” No evidence had been presented by the parties or the guardian ad litem the “present system needed altering.” Thus, Eric urged that “[t]he Court must return the companionship to what it was during the temporary orders.”

{¶9} On April 10, 2009, April filed Objections to the Magistrate’s Decision. April objected to the recommendation that the standard visitation schedule be adopted. She requested “that the Standard Order of Visitation be modified such that [Eric’s] weekend companionship time with the children be from Monday at 5:00 p.m. until Wednesday until 5:00 p.m., as [Eric] does not work on Monday and Tuesday evenings and would be available to be with the children on those evenings.” April represented to the court that Eric’s companionship with the children had been on Monday and Tuesday “throughout the pendency of the divorce action.”

{¶10} On July 30, 2009, the domestic relations court issued a Judgment Entry, finding merit in the parties’ objections with respect to Eric’s visitation.

{¶11} On July 31, 2009, the domestic relations court issued a Judgment Entry Decree of Divorce. The court made the following order with respect to visitation:

{¶12} **VISITATION:** It is the Order of this Court that in the event that [Eric's] work schedule permits him to exercise visitation rights with [the] parties' children pursuant to the standard order of this Court ***, then he shall have such rights. If he is unable to exercise such visitation rights, then pursuant to his current work schedule, his visitation rights with the children shall be from Monday at 5:00 p.m. until Wednesday at 5:00 p.m. ***. It is also the further Order of the Court that in the event that the current visitation schedule as set forth above becomes unable to be exercised by [Eric] because of changes in his work schedule and he also is unable to exercise visitation rights pursuant to the standard order of this Court, then in that event [the] parties shall cooperate and [April] shall permit [Eric] to have a visitation schedule equal to no less than the standard order of this Court to be exercised on the days which he is not required to be gainfully employed."

{¶13} On September 15, 2009, April filed a Motion to Correct Judgment Entry Decree of Divorce and/or for Nunc pro Tunc Judgment Entry. April represented to the court that, "pursuant to the companionship arrangement agreed to by the parties in the Magistrate's Order of September 3, 2008," Eric's "companionship time with the children would be alternating weeks from Monday at 5:00 p.m. to Wednesdays at 5:00 p.m." As the Judgment Entry Decree of Divorce grants Eric weekly visitation, April urged that it "should be modified to indicate that [Eric] shall have visitation rights with the children every other week from Monday at 5:00 p.m. until Wednesday at 5:00 p.m."

{¶14} On October 19, 2009, a hearing was held on April's Motion to Correct. Eric conceded that, prior to the July 31, 2009 Judgment Entry, he exercised companionship with the children on alternate weeks.

{¶15} On October 20, 2009, the domestic relations court issued a Judgment Entry, modifying the July 31, 2009 Judgment Entry so that, "in addition all other visitation rights previously granted under the standard order of this Court, the alternating week visitation concept shall be exercised on alternating weeks from Monday at 5:00 p.m. to Wednesday at 5:00 p.m." The court concluded that it had intended "to give [Eric] visitation rights equal to the standard order of the Court, but to be exercised on

alternating weeks from Monday at 5:00 p.m. to Wednesday at 5:00 p.m.[,] his days off work rather than the language of this Court's Divorce Decree of July 31, 2009, which gave [Eric] visitation rights every week from Monday at 5:00 p.m. to Wednesday at 5:00 p.m."

{¶16} On November 19, 2009, Eric filed his Notice of Appeal. On appeal, he raises the following assignment of error:

{¶17} "[1.] The trial court erred in granting appellee's nunc pro tunc motion which materially changed the trial court's order of 7-31-09 reducing appellant's companionship time with his minor children."

{¶18} Eric argues that the domestic relations court impermissibly used a nunc pro tunc order "to materially reduce [Eric's] companionship time with his minor children," by altering the court's July 31, 2009 Judgment to reflect what it "probably" intended. April contends that the court's October 20, 2009 Judgment Entry was not denominated a nunc pro tunc entry and did not operate as such.

{¶19} The issue of whether the October 20, 2009 Judgment Entry is properly characterized as nunc pro tunc entry is not material to the disposition of this appeal. "The common law rule giving courts the power to enter nunc pro tunc orders has been codified by Civ.R. 60(A)." *Norris v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 05AP-762, 2006-Ohio-1750, at ¶12, citing *McGowan v. Giles*, 8th Dist. No. 76332, 2000 Ohio App. LEXIS 1006, at *9.

{¶20} "Clerical mistakes in judgments, orders or other parts of the record and errors therein 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.” Civ.R. 60(A).

{¶21} As construed by the Ohio Supreme Court, “Civ.R. 60(A) permits a trial court, in its discretion, to correct clerical mistakes which are apparent on the record, but does not authorize a trial court to make substantive changes in judgments.” *State ex rel. Litty v. Leskovyansky*, 77 Ohio St.3d 97, 100, 1996-Ohio-340, citing *Londrico v. Delores C. Knowlton, Inc.* (1993), 88 Ohio App.3d 282, 285. “The term ‘clerical mistake’ refers to a mistake or omission, mechanical in nature and apparent on the record which does not involve a legal decision or judgment.” *Id.*

{¶22} “The basic distinction between clerical mistakes that can be corrected under Civ. R. 60(A) and substantive mistakes that cannot be corrected is that the former consists of ‘blunders in execution’ whereas the latter consists of instances where the court changes its mind, either because it made a legal or factual mistake in making its original determination, or because, on second thought, it has decided to exercise its discretion in a different manner.” *Kuehn v. Kuehn* (1988), 55 Ohio App.3d 245, 247 (citation omitted); accord *Faith v. Scuba*, 11th Dist. No. 2007-G-2767, 2007-Ohio-6563, at ¶32 (citation omitted).

{¶23} In the present case, the domestic relations court’s alteration of the Decree of Divorce to grant Eric companionship on alternating weeks constitutes the correction of a clerical mistake as provided for in Civ.R. 60(A). It is apparent from the record before us that it was the court’s intention that Eric enjoy companionship in alternating weeks. Bi-weekly companionship was imposed, with the parties’ consent, during the pendency of the divorce action. The March 27, 2009 Magistrate’s Order ordered bi-

weekly companionship, according to the court's standard order. Both parties objected to the Magistrate's Order as to the days on which companionship would be exercised, but not to its bi-weekly frequency. The Decree of Divorce maintained the bi-weekly companionship of the standard order as the normative companionship schedule, but allowed Eric to exercise companionship from Monday to Wednesday if his work schedule conflicted with the standard order. It has never been suggested in the course of these proceedings that Eric would enjoy companionship on a weekly basis.

{¶24} While the reduction of Eric's companionship time from weekly visitation to bi-weekly visitation substantively altered the amount of companionship time, it did not alter the court's intent. In *Ashburn v. Roth*, 12th Dist. Nos. CA2006-03-054 and CA2006-03-070, 2007-Ohio-2995, the court of appeals approved the alteration of a protective order, through Civ.R. 60(A), that mistakenly failed to include a minor child as a protected person. Although the inclusion of the child in the protective order was a substantive alteration, the court determined the error was clerical based on the parties' filings and the court's temporary orders, all of which contemplated the child as a protected person. *Id.* at ¶25. "Thus, it is evident that the court intended to include [the child] as a protected person under the initial CPO." *Id.* Similarly, in the present case, the parties' filings with regard to companionship, the way in which companionship was exercised during the pendency of the divorce, and the court's prior rulings with respect to companionship demonstrate the court's intent that Eric enjoy companionship in alternating weeks.

{¶25} The sole assignment of error is without merit.

{¶26} For the foregoing reasons, the Judgment of the Portage County Court of Common Pleas, Domestic Relations Division, correcting the Decree of Divorce with respect to Eric's companionship with the children, is affirmed. Costs to be taxed against the appellant.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.