[Cite as *Huffman v. Huffman* , 2009-Ohio-5511.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ELISABETH S. HUFFMAN

Plaintiff-Appellant

-vs-

NATHAN A. HUFFMAN

Defendant-Appellee

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 08-CA-93

O P I N I O N

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of Common Pleas, Domestic Relations Division, Case No. 01-D-647

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: October 13, 2009

APPEARANCES:

For Plaintiff-Appellant

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For Defendant-Appellee

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Guardian-ad-Litem for the Minor Children

ANNETTE R. NAUMOFF
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Hoffman, P.J.

{¶1} Plaintiff-appellant Elisabeth S. Huffman appeals the September 8, 2008 Judgment Entry of the Richland County Court of Common Pleas, Domestic Relations Division, granting legal custody and residential parent status of the parties' minor children to Defendant-appellee Nathan A. Huffman.

STATEMENT OF THE FACTS AND CASE

{¶2} The parties were married on April 26, 1996, and two children were born as issue of the marriage, to wit: Cal Huffman, DOB 12/08/95, and Valerie Huffman, DOB 4/26/2000.

{¶3} Elisabeth Huffman (hereinafter "Wife") filed for divorce on December 19, 2001, and Nathan Huffman (hereinafter "Husband") filed a counterclaim for divorce on January 8, 2002. The trial court magistrate designated Wife temporary residential parent and legal custodian of the children. The court further appointed a guardian ad litem for the children.

{¶4} On July 10, 2003, Husband moved the trial court to hold Wife in contempt for failure to pay her share of a psychologist's retainer, and for a change in temporary legal custody and residential parent status. The appointed guardian ad litem recommended Husband be made temporary legal custodian and residential parent. Following a hearing before a magistrate on July 17, 2003, the magistrate designated Husband temporary legal custodian and residential parent "until further hearing." Wife maintains she was not served with the order.

{¶5} Following the change in temporary custody, the children were enrolled in Triway Local School District in Wooster, Ohio. Previously, the children were to attend school in the Ontario Local School District.

{¶6} The matter proceeded to trial on November 14, 2005 before a magistrate. The court conducted an in camera interview with the children on November 23, 2005, during which only the magistrate and GAL were present with the children.

{¶7} On December 1, 2006, the magistrate issued a decision granting the divorce, designating Husband as the primary residential parent and legal custodian of the children, overruling Wife's motion for shared parenting, and adopting a schedule whereby the children would reside with each parent on a week-by-week basis.

{¶8} Wife timely objected to the magistrate's decision, but provided the trial court with only a partial transcript of the proceedings before the magistrate. On January 30, 2008, the trial court overruled Wife's objections, without findings of fact and conclusions of law.

{¶9} Via Judgment Entry of September 8, 2008, the trial court issued a final judgment of divorce.

{¶10} Wife now appeals, assigning as error:

{¶11} "I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY APPLYING THE WRONG STANDARD IN EVALUATING AND DISPOSING OF APPELLANT'S OBJECTIONS TO THE MAGISTRATE'S DECISION.

{¶12} "II. THE TRIAL COURT ERRED BY FAILING TO PROVIDE SUFFICIENT FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR REJECTING APPELLANT'S

PLAN FOR SHARED PARENTING AND BY NOT CONSIDERING ALL OF THE STATUTORY FACTORS IT WAS REQUIRED TO ADDRESS.

{¶13} "III. THE TRIAL COURT ERRED IN AWARDING LEGAL CUSTODY TO THE APPELLEE.

{¶14} "IV. THE TRIAL COURT ERRED IN RELYING UPON THE CHANGE OF TEMPORARY CUSTODY *PENDENT ELITE* IN AWARDING LEGAL CUSTODY TO THE APPELLEE."

I.

{¶15} In the first assignment of error, Wife asserts the trial court applied the wrong standard in addressing her objections to the magistrate's decision.

{¶16} Ohio Civil Rule 53 states, in pertinent part,

{¶17} "(D)(3)(b) *Objections to magistrate's decision.*

{¶18} "***

{¶19} *"(iii) Objection to magistrate's factual finding; transcript or affidavit*. An 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. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections."

{¶20} "(D)(4) *Action of court on magistrate's decision and on any objections to magistrate's decision; entry of judgment or interim order by court.*

{¶21} "***

{¶22} "(d) *Action on objections*. If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate."

{¶23} As set forth in the statement of the facts and case, supra, Wife failed to provide the trial court with a complete transcript of the proceedings before the magistrate. The trial court's January 30, 2008 Judgment Entry clearly recites the trial court's responsibility to conduct a de novo review of the evidence, noting Wife's failure to provide a complete transcript of the proceedings before the magistrate.

{¶24} On review, we find the rationale often relied upon in *Knapp v. Edwards Laboratories* (1980), 61 Ohio St2d 197, 199, applies in the within case. The duty to provide the transcript of the proceedings before the magistrate fell upon Wife as she had the burden of showing error by reference to matters in the record. See *State v. Skaggs* (1978), 53 Ohio St.2d 162. "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *State v. Neal,*

December 19, 2005, Delaware App. No.2005CAA02006. We believe this same rational applies when a trial court reviews a magistrate's decision where the objector fails to produce the entire transcript for the trial court.

{¶25} Accordingly, the trial court did not error or apply the wrong standard in presuming the validity of the magistrate's findings of fact when it overruled wife's objections to the magistrate's decision and then conducting its own de novo review.

{¶26} Wife's first assignment of error is overruled.

II.

{¶27} In her second assignment of error, Appellant maintains the trial court failed to provide sufficient findings of fact and conclusions of law in rejecting Wife's proposed plan for shared parenting, and did not consider all of the statutory factors required.

{¶28} Wife's plan proposed the children live with her 50% of the time in Ontario, Ohio and 50% of the time with Husband. Wife further proposed the children attend Ontario schools.

{¶29} Wife cites R.C. 3109.04(D)(1)(a)(iii) regarding shared parenting plans:

{¶30} "(iii) If each parent makes a request in the parent's pleadings or files a motion but only one parent files a plan, or if only one parent makes a request in the parent's pleadings or files a motion and also files a plan, the court in the best interest of the children may order the other parent to file a plan for shared parenting in accordance with division (G) of this section. The court shall review each plan filed to determine if any plan is in the best interest of the children. If the court determines that one of the filed plans is in the best interest of the children, the court may approve the plan. If the court determines that no filed plan is in the best interest of the children, the court may

order each parent to submit appropriate changes to the parent's plan or both of the filed plans to meet the court's objections or may select one filed plan and order each parent to submit appropriate changes to the selected plan to meet the court's objections. If changes to the plan or plans are submitted to meet the court's objections, and if any of the filed plans with the changes is in the best interest of the children, the court may approve the plan with the changes. If changes to the plan or plans are not submitted to meet the court's objections, or if the parents submit changes to the plan or plans to meet the court's objections but the court determines that none of the filed plans with the submitted changes is in the best interest of the children, the court may reject the portion of the parents' pleadings or deny the parents' motion or reject the portion of the parents' pleadings or deny their motions requesting shared parenting of the children and proceed as if the request or requests or the motion or motions had not been made. If the court approves a plan under this division, either as originally filed or with submitted changes, or *if the court rejects the portion of the pleadings or denies the motion or motions requesting shared parenting under this division and proceeds as if the request or requests or the motion or motions had not been made, the court shall enter in the record of the case findings of fact and conclusions of law as to the reasons for the approval or the rejection or denial.* Division (D)(1)(b) of this section applies in relation to the approval or disapproval of a plan under this division."

{¶31} R.C. § 3109.04 (emphasis added.)

{¶32} Wife maintains the trial court was required to enter into the record findings of fact and conclusions of law as to the reasons for the denial of her shared parenting plan.

{¶33} Upon review of the record, the magistrate issued findings of fact and conclusions of law, the trial court adopted the magistrate's decision and set forth its own additional findings and rationale for denying Wife's proposed shared parenting plan. The trial court's January 30, 2008 Judgment Entry overruling Wife's objections to the magistrate's decision states the parties have a history of trouble communicating and setting aside their differences and disagreements. The court recognized Wife's "burdensome" drive to Wooster, but finds the best interest of the child best served by designating Husband legal custodian and residential parent while basically splitting time with each parent. The trial court further found the children were well adjusted to attending school in Wooster in addition to their participation in church and sporting activities there. Further, the trial court recognized the GAL did not recommend shared parenting.

{¶34} Based upon the above, the trial court issued sufficient findings to support its decision to deny Wife's proposed plan for shared parenting.

{¶35} Appellant's second assignment of error is overruled.

III.

{¶36} In the third assignment of error, Wife maintains the trial court committed reversible error in designating Husband legal custodian of the parties' children.

{¶37} For the reasons set forth in our analysis and disposition of Wife's first and second assignments of error, we find the trial court did not abuse its discretion in designating Husband legal custodian.

{¶38} Appellant's third assignment of error is overruled.

IV.

{¶39} In the final assignment of error, Wife maintains the trial court erred in relying upon the change in temporary custody *pendente* lite. Specifically, Wife argues the July 17, 2003 modification of temporary custody denied her due process and ultimately prejudiced the trial in this matter.

{¶40} Upon review of the record, Wife has not demonstrated prejudice resulting from the alleged error. Rather, the magistrate specifically acknowledges in the December 1, 2006 Decision,

{¶41} "The children were doing well when Plaintiff [Wife] was their temporary legal custodian prior to July of 2003. This Decision later explains the reasons for the change in temporary custody of the children. There was insufficient, credible, competent evidence to find that, more likely than not, the Ontario School District is better for these children that the Wooster Tri-Way School District. The school the children attend is less important than both the amount of time the children have with each parent and which parent exercises better judgment for the children."

{¶42} Further, the magistrate held: "Plaintiff is correct in arguing that the temporary order of custody to Defendant cannot be a factor weighing in Defendant's favor. In like manner, the fact that the temporary custody change was procedurally defective cannot be a factor weighing in Plaintiff's favor."

{¶43} Accordingly, Wife has not demonstrated prejudice as a result of the alleged error, and the fourth assignment of error is overruled.

{¶44} The September 8, 2008 Judgment Entry of the Richland County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Hoffman, P.J.

Wise, J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

IN THE COURT OF APPEALS FOR RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ELISABETH S. HUFFMAN	:	
Plaintiff-Appellant	:	
-vs-	:	JUDGMENT ENTRY
NATHAN A. HUFFMAN	:	
Defendant-Appellee	:	Case No. 08-CA-93

For the reasons stated in our accompanying Opinion, the September 8, 2008 Judgment Entry of the Richland County Court of Common Pleas, Domestic Relations Division, is affirmed. Costs to Appellant

s/ William B. Hoffman ___________________
HON. WILLIAM B. HOFFMAN

s/ John W. Wise________________________
HON. JOHN W. WISE

s/ Patricia A. Delaney __________________
HON. PATRICIA A. DELANEY