

[Cite as *Sipes v. Martini*, 2010-Ohio-4598.]

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JENNIFER ANN SIPES, f/k/a MARTINI,	:	APPEAL NO. C-100025 TRIAL NO. A-9303579
Plaintiff-Appellee,	:	<i>DECISION.</i>
vs.	:	
GREGORY F. MARTINI,	:	
Defendant-Appellant.	:	

Civil Appeal From: Hamilton County Common Pleas Court, Domestic Relations
Division

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 29, 2010

Barbara Howard and W. Scott Russell, for Plaintiff-Appellee,

Michael L. Gay and Cors & Bassett, LLC, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

WILLIAM L. MALLORY, JR., Judge.

{¶1} In this appeal, defendant-appellant Gregory Martini contends that the trial court erred in striking his objections to a magistrate's decision when those objections had been filed out of time. We affirm.

{¶2} Plaintiff-appellee Jennifer Sipes and Martini were divorced in 1993. In 2009, Sipes moved for a finding of contempt against Martini, along with interest and attorney fees. A magistrate heard the motion, and on August 15, 2009, the magistrate issued a decision in Sipes's favor—15 days later, on September 9, 2009, Martini filed objections to the magistrate's decision. Sipes moved to strike Martini's objections because they were filed beyond the time allotted by law.

{¶3} It has come to our attention that the law in this district appears to have allowed for 17 days to object to a magistrate's decision. In *Cheviot v. Siciliano*,¹ we held that when a magistrate's decision is served on the parties by ordinary mail, three days must be added to the time prescribed for the filing of objections to the decision. The *Siciliano* court reasoned that Civ.R. 53 and Civ.R. 6(E) should be read together, and that three days should be added to the 14-day period provided by Civ.R. 53. But the Ohio Supreme Court in *Duganitz v. Ohio Adult Parole Authority* later held that Civ.R. 6(E) does not extend the time for filing objections to a magistrate's decision under Civ.R. 53.² We follow the holding in *Duganitz*, and *Siciliano* is hereby overruled. Under *Duganitz* and Civ.R. 53, a party may, as a general rule, object to a magistrate's decision only within 14 days of the decision's filing. Martini's objections were filed one day late.

¹ (June 5, 1998), 1st Dist. No. C-961039.

² 92 Ohio St.3d 556, 2001-Ohio-1283, 751 N.E.2d 1058, citing *Pulfer v. Pulfer* (1996), 110 Ohio App.3d 90, 92-93, 673 N.E.2d 656.

{¶4} Martini nevertheless argues that a court may sua sponte consider objections filed beyond the 14-day deadline, and that a court’s consideration of late filed objections constitutes the grant of leave to file late objections under Civ.R. 6, which states that “when * * * an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion * * * on motion made after the expiration of the specified period, permit the act to be done where the failure of the act was the result of excusable neglect * * *.” In this instance, the court decided not to grant leave to file objections out of time, and we review the trial court’s Civ.R. 6 determination under an abuse-of-discretion standard.³

{¶5} Martini contends that a scheduling error caused the objections to be late. But we cannot say that the trial court abused its discretion in striking Martini’s objections. And in any event the record fails to demonstrate that Martini would have prevailed on his objections had they been timely filed. The record does, however, show that the trial court was acutely familiar with the history of this case, and that the court had issued several well-reasoned decisions regarding Martini’s income and its basis for awarding child support and other remuneration. The record also reveals multiple instances where Martini purged findings of contempt by satisfying the conditions requiring him to pay amounts owed to Sipes. In this instance, the record supports the trial court’s decision to strike Martini’s objections and to enter judgment in accordance with the magistrate’s decision.

{¶6} Accordingly, the judgment of the trial court is affirmed.

Judgment affirmed.

HILDEBRANDT, P.J., and DINKELACKER, J., concur.

Please Note:

The court has recorded its own entry on the date of the release of this decision.

³ *Evans v. Chapman* (1986), 28 Ohio St.3d 132, 502 N.E.2d 1012.