[Cite as *Goodman v. Goodman*, 2021-Ohio-3169.]

Released 9/3/21

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

SARAH N. GOODMAN,	:	
	:	
Plaintiff-Appellee,	:	Case No. 21CA3740
	:	
v.	:	
	:	DECISION AND
GLEN G. GOODMAN, II,	:	JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	

APPEARANCES:

Glen G. Goodman, II, Mesa, Arizona, Appellant, pro se.

Sierra Cooper and Joshua M. Goodwin, Southeastern Ohio Legal Services, Chillicothe, Ohio, for Appellee.

Smith, P.J.

{¶1} Appellant, Glen G. Goodman, II (hereinafter "father"), appeals the trial court's judgment entry approving and adopting the magistrate's decision finding Appellee, Sarah N. Goodman (hereinafter "mother"), in contempt of multiple court orders, but denying his motion for reallocation of parental rights and responsibilities. On appeal, father raises eight assignments of error, contending 1) that the magistrate allowed hearsay by permitting mother to testify on behalf of one of the children's friends; 2) that the guardian ad litem never testified separation of the children from mother would be traumatic, rather it could result in minor

resentment from the children toward father; 3) that the magistrate erred in determining that a couple overnight visits cures mother's contempt; 4) that the magistrate erred in claiming there was no evidence presented to support claims that mother has failed to encourage love and respect between father and the children; 5) that the magistrate failed to include father's travel expenses for several visits; 6) that the magistrate erred in failing to find that the children should be relocated to father's care and custody in Arizona; 7) that the magistrate erred in failing to find that father should be the primary residential parent and have joint legal decision-making with mother; and 8) that the magistrate erred in failing to find that the children and parents should be required to engage in family counseling, per the recommendation of the guardian ad litem.

{¶2} The record before us reveals that the trial court considered and rejected these same arguments on the merits below, which were raised in the form of objections to the magistrate's decision. However, because we find that father's objections to the magistrate's decision failed to properly include a certificate of service, as required by Civ.R. 5(A), we conclude the trial court erred in considering father's objections under Civ.R. 5(B)(4). However, as explained in further detail below, because the trial court reached the correct result, albeit for the wrong reasons, we nevertheless affirm the judgment of the trial court. Accordingly, we

do not reach the merits of father's eight assignments of error and we affirm the judgment of the trial court.

FACTS

{¶3} The following facts are pertinent to this appeal. The parties were previously married and had three children. The parties were divorced in Arizona and an order entitled "Order Modifying Legal Decision Making, Parenting Time and Child Support" was filed on June 8, 2017, in the Superior Court of Arizona, Maricopa County. It appears from the record that the order provided that mother would be the residential parent and father would have parenting time, with mother sharing the cost of father's travel. Mother now resides in Ross County, Ohio with the children while father remains in Arizona.

{¶4} On December 4, 2019, father filed, through counsel, a motion for contempt against mother alleging mother had failed to abide by the order issued by the Arizona court. On the same day, father also filed a motion, through counsel, for reallocation of parental rights and responsibilities alleging a change in circumstances had occurred necessitating that father be named residential parent of the children. Shortly thereafter, on January 13, 2020, father's counsel withdrew from representation and father proceeded through the litigation pro se. A guardian ad litem was appointed, who submitted a report prior to the hearing that was held

on father's pending motions. Although it appears from the record that a hearing was held, there is no hearing transcript in the record.

{¶5} A magistrate's decision was issued on November 6, 2020, finding mother in contempt of several different provisions of the Arizona order, but also finding that mother had cured several instances of the contempt and that she could purge the remaining instances of contempt. The magistrate's decision also denied father's motion for reallocation of parental rights and responsibilities. In reaching its decision, the magistrate cited the report filed by the guardian ad litem, as well as a supplemental report filed by the guardian ad litem. Neither party requested that the magistrate issue findings of fact and conclusions of law.

{¶6} Father filed objections to the magistrate's decision on November 19, 2020, setting forth eight objections. However, he failed to file a hearing transcript in support of his objections. Mother filed a memorandum in opposition to the objections and requested that the trial court not consider the father's objections because the objections failed to include a certificate of service as required by Civ.R. 5(A). Mother also filed a motion to strike the objections based upon the same grounds. The trial court failed to rule on the motion to strike and instead issued a decision on December 16, 2020. The trial court approved and adopted the magistrate's decision after addressing and rejecting father's objections on their merits. The trial court noted that the review was limited due to the fact that no

transcript had been provided. It is from the trial court's December 16, 2020 order that father now brings his appeal, setting forth eight assignments of error for our consideration.

ASSIGNMENTS OF ERROR

I. THE MAGISTRATE ALLOWED HEARSAY BY PERMITTING APPELLEE TO TESTIFY ON BEHALF OF [THE CHILD'S] FRIENDS.

II. THE GUARDIAN AD LITEM NEVER TESTIFIED SEPARATION OF THE CHILDREN FROM APPELLEE WOULD BE TRAUMATIC, RATHER IT COULD RESULT IN MINOR RESENTMENT FROM THE CHILDREN TOWARD APPELLANT.

III. THE MAGISTRATE ERRED IN DETERMINING THAT A COUPLE OVERNIGHT VISITS CURE APPELLEE'S CONTEMPT. ADDITIONALLY, APPELLEE HAS CONTINUED TO DENY APPELLANT TIME IN ACCORDANCE WITH RECOMMENDATIONS FROM COURT OFFICIALS.

IV. THE MAGISTRATE ERRED IN CLAIMING THERE WAS NO EVIDENCE PRESENTED TO SUPPORT CLAIMS THAT APPELLEE HAS FAILED TO ENCOURAGE LOVE AND RESPECT BETWEEN APPELLANT AND THE CHILDREN.

V. THE MAGISTRATE FAILED TO INCLUDE APPELLANT'S TRAVEL EXPENSES FOR THE JUNE 2018 VISIT ALSO OUTLINED IN THE ORDER MODIFYING LEGAL DECISION MAKING, PARENTING TIME, AND CHILD SUPPORT THAT HAD TO BE MADE UP AT A LATER DATE. APPELLEE SHOULD BE HELD IN CONEMPT FOR FAILURE TO PAY APPELLANT'S TRAVEL EXPENSES FOR THE LATER MAKE-UP TRIP FOR

JUNE 2018, AS WELL AS THE VISITS IN AUGUST 2018, DECEMBER 2018, MARCH 2019, AND AUGUST 2019.

VI. THE MAGISTRATE ERRED IN FAILING TO FIND THAT THE CHILDREN SHOULD BE RELOCATED PRIMARILY TO APPELLANT'S CARE/CUSTODY IN ARIZONA WHERE THE GUARDIAN AD LITEM NOTED IT IS A MUCH HEALTHIER, CLEANER ENVIRONMENT WITH THE PARENT WHO WILL HONOR COURT ORDERS.

VII. THE MAGISTRATE ERRED IN FAILING TO FIND THAT APPELLANT SHOULD BE THE PRIMARY RESIDENTIAL PARENT IN ARIZONA AND HAVE JOINT LEGAL DECISION MAKING WITH APPELLEE. THE MAGISTRATE ERRED BY NOT FINDING THAT THE FOLLOWING PARENTING TIME ORDER IS IN THE BEST INTEREST OF THE CHILDREN: APPELLEE SHOULD COMMENCE PARENTING TIME IN OHIO ONE (1) WEEK AFTER SCHOOL ENDS UNTIL ONE (1) WEEK BEFORE SCHOOL STARTS. APPELLEE SHOULD ALSO BE ENTITLED TO PARENTING TIME IN OHIO DURING TWO (2) OF THE THREE (3) QUARTERLY SCHOOL YEAR BREAKS IN ARIZONA; FALL BREAK, CHRISTMAS BREAK, AND/OR SPRING BREAK, AND IF SHE SO ELECTS, APPELLEE HAVE ONE (1) WEEKEND PER MONTH OF PARENTIING TIME IN ARIZONA. ANY TRAVEL COSTS ASSOCIATED BE PAID BY APPELLEE.

VIII. THE MAGISTRATE ERRED IN FAILING TO FIND THAT THE CHILDREN AND PARENTS SHOULD BE REQUIRED TO ENGAGE IN FAMILY COUNSELING, PER THE RECOMMENDATION OF THE GUARDIAN AD LITEM.

LEGAL ANALYSIS

{¶7} Before we reach the merits of the assignments of error raised by father, we must first address a threshold issue raised by mother. Mother points out that father's objections to the magistrate's decision that were filed in the lower court failed to contain a certificate of service and, as such, should have been stricken from the record and should not have been considered by the trial court. A review of the record reveals that father filed his objections to the magistrate's decision on November 19, 2020, raising eight objections which mirror the eight assignments of error raised on appeal. However, his objections failed to include a certificate of service. In response, mother filed a memorandum in opposition to the magistrate's decision and in it she argued that because the objections lacked a certificate of service they should not be considered by the trial court and should be stricken from the record. Mother also filed a separate motion to strike the objections based upon the same grounds. In support of her motion, mother relied on this Court's prior reasoning in *Erie Ins. Co. v. Bell*, 4th Dist. Lawrence No. 01CA12, 2002-Ohio-6139. Despite mother's motion, there is no indication from the record that a proof of service was ever separately filed by father.

{¶8} Nevertheless, the trial court failed to rule on mother's motion to strike and instead it considered father's objections on their merits—to the extent that it could considering that father failed to provide the trial court with a transcript of the

proceedings. Despite the fact that the trial court ultimately rejected all of father's objections on their merits, for the reasons that follow we find that the trial court erred in considering the objections and in failing to grant mother's motion to strike.

{¶9} Civ.R. 5 governs the service and filing of pleadings and other papers subsequent to the original complaint. Civ.R. 5(A) provides as follows:

> Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties.

Civ.R. 5(B)(4) addresses proof of service and provides, in pertinent part, that "[d]ocuments filed with the court shall not be considered until proof of service is endorsed thereon or separately filed."

{¶10} Further, as noted by mother below and now on appeal, this Court has previously held that a trial court errs when it considers a pleading that does not comply with Civ.R. 5(A). *See Erie Ins. Co., supra*, at ¶ 8, 27 and 29 (holding that the trial court erred in proceeding to trial with the case where the pro se defendant's answer failed to include a certificate of service, despite the fact that the plaintiff had knowledge of the filing, and reversing the judgment in defendant's favor that had found the defendant was not liable for damages caused in a motor-vehicle accident). In *Erie Ins. Co.*, we reasoned as follows:

> Thus, because no certificate of service was ever filed with the trial court, it could not have properly considered Bell's answer, "[i]t [could] not conduct a trial on the merits, nor [could] it rule on motions for summary judgment." *Enyart v. Columbus Metro. Area Community Action Org.* (Sept. 6, 1994), Franklin App. No. 93APE12-1658; *see* Civ.R. 5(D).

Erie Ins. Co., supra, at ¶ 25.

{¶11} We further observed, with respect to the fact that the party was a pro se litigant, as follows:

> We are cognizant of the long-standing preference in Ohio courts to afford reasonable leeway to pro se parties. *See generally, State ex rel. Simpson v. Hamilton County Court of Common Pleas* (May 17, 1995), Hamilton App. No. C-940505[,] [1995 WL 298184].
> Nevertheless, pro se litigants are "presumed to have knowledge of the law and of correct legal procedure and [are to be] held to the same standard as all other litigants." *Kilroy v. B.H. Lakeshore Co.* (1996), 111 Ohio App.3d 357, 363, 676 N.E.2d 171, 174; *see generally, State v. Wayt* (Mar. 20, 1991), Tuscarawas App. No. 90AP070045 ("While insuring that pro se [litigants] are afforded the same protections and rights prescribed in the * * * rules, we likewise hold them to the obligations contained therein.").

Erie Ins. Co., at ¶ 28.

{¶12} Here, father urges this Court "should focus more on the noted parental alienation and isolation by [mother], what the children in this [c]ase want, and what is truly best for them rather than the technicalities of procedure," which father characterizes as a "trivial detail that has no impact on the merits of the [c]ase[.]" However, we must be mindful that " '[p]roper service under the civil rules is

mandatory even if a party represented by counsel might otherwise learn of the action taken by the court.' " *Patel v. Lambrecht*, 4th Dist. Athens No. 13CA3, 2014-Ohio-2953, ¶ 22-23, quoting *Parallel Homes, L.L.C. v. Stephens*, 1st Dist. Hamilton No. C-130292, 2014-Ohio-840, ¶ 13, in turn citing *Peroz v. Nagel*, 9th Dist. Summit No. 21437, 2003-Ohio-6584, ¶ 10 and *Jackson v. Davenport*, 2d Dist. Greene No. 93CA75, 1994 WL 277953, *2 (June 22, 1994). *See also Bozsik v. West*, 9th Dist. Lorain No. 16CA010924, 2017-Ohio-7781, ¶ 11 ("the language of the Civil Rules regarding service is mandatory"). Thus, because father's objections to the magistrate's decision failed to include a certificate of service as required by Civ.R. 5(A), the trial court was not permitted to consider them per Civ.R. 5(B)(4) and it erred in doing so.

{¶13} While this Court reversed the decision and remanded the case for further proceedings in *Erie Ins. Co., supra*, we find that a different result is necessary in the present case. In *Erie Ins. Co.*, the trial court considered the defendant's answer despite the fact that it lacked a certificate of service, denied the plaintiff's motion for default judgment, and allowed the case to proceed to trial, which resulted in a verdict for the defendant. *Erie Ins. Co.* at ¶ 7-10. On appeal, this Court determined the trial court erred in considering the answer and permitting the case to go to trial and, as such, we reversed the judgment and remanded the case to trial court. *Id.* at ¶ 29, 31. Here, even though the trial court mistakenly

considered father's objections, it nevertheless rejected them on their merits and it ultimately approved and adopted the magistrate's decision.

{¶14} Although the trial court agreed with the magistrate regarding mother's contempt of several provisions of the parties' underlying parenting order, it found that each instance of contempt had either already been purged or could be purged. The trial court also agreed with the magistrate's determination that the children should remain in the care of their mother and that father's motion for reallocation of parental rights and responsibilities should be denied. Stated another way, despite the fact that the trial court erred in considering the merits of father's objections, because it found no merit to the objections it nevertheless reached the correct result, albeit for the wrong reasons. Therefore, we find it is not necessary to reverse the judgment of the trial court and remand it for additional proceedings. *See State v. McCreery*, 4th Dist. Lawrence No. 16CA17, 2017-Ohio-988, ¶ 12 ("When a trial court has stated an erroneous basis for its judgment, an appellate court must affirm the judgment if it is legally correct on other grounds, that is, it achieves the right result for the wrong reason, because such an error is not prejudicial"); citing *State v. Sebastian*, 4th Dist. Highland No. 08CA19, 2009-Ohio-3117, ¶ 25. Instead, the correct action is to affirm the judgment of the trial court.

{¶15} Accordingly, based upon the foregoing, we do not reach the merits of father's assignments of error and we affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County 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.

Hess, J. and Wilkin, J. Concur in Judgment and Opinion.

For the Court,

_____
Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.