

[Cite as *Lambert v. Hilbish*, 2010-Ohio-2738.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

LISA LAMBERT

Appellant

v.

ERIC HILBISH

Appellee

C. A. No. 25017

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 2001-02-00695

DECISION AND JOURNAL ENTRY

Dated: June 16, 2010

MOORE, Judge.

{¶1} Appellant, Lisa Lambert, appeals from the decision of the Summit County Domestic Relations Court. This Court reverses and remands for proceedings consistent with this opinion.

I.

{¶2} On January 17, 2002, Lisa Lambert and Eric Hilbish were divorced. They had one minor son. According to the shared parenting plan, Lambert was designated the residential parent for school purposes. On September 28, 2008, Hilbish filed a motion for reallocation of parental rights and responsibilities. On October 28, 2008, the trial court issued an order that set the matter for a settlement conference on March 23, 2009, and an evidentiary hearing on April 30, 2009. The order stated that the settlement conference would begin at 11:00 a.m., and the evidentiary hearing would be held from 9:00 a.m. to 11:00 a.m. The order was listed on the Summit County Clerk of Courts online docket. The online docket also contained a link to view a

scanned copy of the order. The online docket entry correctly stated the date and time for the settlement conference, but incorrectly stated the time for the evidentiary hearing.

{¶3} On April 30, 2009, at 9:00 a.m., the magistrate held the evidentiary hearing. Lambert did not attend this hearing. On June 11, 2009, the magistrate issued its decision, granting Hilbish's motion and making him the primary residential parent. The trial court adopted this decision the same day. Lambert filed objections to the decision, which operated to automatically stay the judgment pursuant to Civ.R. 53(4)(e)(i).¹ In her objections, Lambert stated that she appeared for the hearing at the time stated on the online docket and the hearing had concluded. Because of the misinformation, she argues that she was not afforded the opportunity to present evidence and otherwise argue her case. On August 31, 2009, the trial court overruled Lambert's objections, and adhered to its previous decision. Lambert timely appealed from the trial court's judgment, and has timely raised two assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

“[LAMBERT] WAS DENIED HER CONSTITUTIONAL DUE PROCESS RIGHT TO REASONABLE NOTICE AND AN OPPORTUNITY TO BE HEARD.”

{¶4} In her first assignment of error, Lambert contends that she was denied the right to due process, to reasonable notice, and an opportunity to be heard.

¹ Hilbish contends that Lambert did not file a *proof of service* of her objections until July 10, 2009, outside of the 14 day time frame set forth in Civ.R. 53(E)(3)(a) to file objections to a magistrate's decision. Civ.R. 53(E)(3)(a) required Lambert to file the *objections* with the trial court within 14 days. The record reflects that the objections were filed within the 14 day time frame.

{¶5} The Due Process Clause of the Fourteenth Amendment to the United States Constitution and Section 16, Article I of the Ohio Constitution entitle a party to reasonable notice of judicial proceedings and an opportunity to be heard. *Ohio Valley Radiology Assoc., Inc. v. Ohio Valley Hosp. Assn.* (1986), 28 Ohio St.3d 118, 124-125, citing *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, 314; see, also *State, ex rel. Allstate Ins. Co. v. Bowen* (1936), 130 Ohio St. 347, paragraph five of the syllabus. Furthermore, the Ohio Supreme Court has recognized that it is a fundamental principle of the right to due process that notice of a proceeding be given in a manner reasonably calculated to give the party an opportunity to be heard in the matter. *Ohio Valley*, 28 Ohio St.3d at 125. The Ohio Supreme Court has noted that there is more than one way to satisfy the requirement of providing reasonable notice of a hearing. *Id.* As such, the determination of whether a certain form of notice violates due process rights must be made on a case-by-case basis. See *Zashin, Rich, Sutula & Monastra Co., L.P.A. v. Offenberg* (1993), 90 Ohio App.3d 436, 443.

{¶6} “We first point out that [Lambert’s] formal objection did not relate to the substantive determinations of the magistrate. [Lambert’s] objection was limited in its scope to her allegation that the court and/or its clerk failed to provide her with sufficient notice of the [] trial. Therefore, the vehicle which preserved the instant appeal was not a true objection to the magistrate’s decision, but an objection to the court’s alleged violation of her right to due process.” *Schilling v. Ball*, 11th Dist. No. 2006-L-056, 2007-Ohio-889, at ¶12.

{¶7} In the instant case, Lambert argued that she did not receive notice of the hearing. She indicated that she checked the trial court’s online docket, which listed the correct date of the hearing, but the incorrect time. We infer from her argument that she did not receive any other

form of notice. The trial court, however, simply noted that the trial court's online docket was incorrect and that, had she looked at the order setting the hearing, she would have discovered the actual time of the hearing. The trial court did not, however, make any finding that Lambert actually received the order setting the hearing, or had any other form of notice. This Court concludes that, at best, there was conflicting information regarding the actual time of the hearing. Even if we were to consider Lambert's initiative to check the online court docket to determine whether there was a hearing in her case as "notice" we conclude that said "notice" was contradictory, therefore not reasonable. The trial court failed to inquire into whether Lambert otherwise received reasonable notice of the hearing in question, and therefore did not decide the issue. As the trial court did not take evidence or otherwise inquire into whether Lambert received any other form of notice, we remand for the trial court to make the determination.

{¶8} Lambert's first assignment of error is sustained insofar as the trial court failed to fully determine the issue.

ASSIGNMENT OF ERROR II

“THE TRIAL COURT ERRED AS A MATTER OF LAW AND/OR ABUSED ITS DISCRETION IN FAILING TO MAKE FINDINGS REQUIRED BY STATUTE AND BY RULE, AND IN FAILING TO EXERCISE ITS INDEPENDENT JUDGMENT, BEFORE GRANTING THE REALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES.”

{¶9} In her second assignment of error, Lambert contends that the trial court erred and/or abused its discretion in failing to make the requisite findings, and in failing to exercise its independent judgment.

{¶10} Due to our disposition of Lambert's first assignment of error, requiring the trial court to determine if Lambert had reasonable notice of the hearing that led to the trial court's decision at issue, this assignment of error is not yet ripe for review. Upon remand, the trial court

could determine that a new evidentiary hearing is necessary; thereby obviating any need to determine the merits of the current trial court order. See *Johns v. Johns*, 9th Dist. No. 24704, 2009-Ohio-5798, at ¶12. “The Supreme Court of Ohio has repeatedly voiced its desire to avoid piecemeal litigation in our court system.” *Accu-Check Instrument Serv., Inc. v. Sunbelt Business Advisors of Cent. Ohio*, 10th Dist. No. 09AP-505, 09AP-506, 2009-Ohio-6849, at ¶25, citing *Denham v. New Carlisle* (1999), 86 Ohio St.3d 594, 597. Accordingly, we decline to address Lambert’s second assignment of error at this time.

III.

{¶11} Lambert’s first assignment of error is sustained insofar as the trial court failed to fully determine the issue. We decline to address her second assignment of error. The judgment of the Summit County Domestic Relations Court is reversed and the cause remanded for proceedings consistent with this opinion.

Judgment reversed,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

CARLA MOORE
FOR THE COURT

DICKINSON, P. J.
BAIRD, J.
CONCUR

(Baird, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to §6(C), Article IV, Constitution.)

APPEARANCES:

NICHOLAS SWYRYDENKO, Attorney at Law, for Appellant.

HOLLY KERES FARAH, Attorney at Law, for Appellee.