[Cite as *Francis v. Francis*, 2010-Ohio-5659.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

BETTY FRANCIS	C. A. No. 09CA009722
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
LEE FRANCIS	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellant	CASE No. 08 DU0069426

DECISION AND JOURNAL ENTRY

Dated: November 22, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Betty and Lee Francis divorced after 17 years of marriage. The trial court denied Mr. Francis's request for shared parenting and gave custody of their six children to Ms. Francis. Mr. Francis has appealed, assigning ten errors. We affirm because Mr. Francis has not provided this Court with a copy of the trial transcript or a statement of the evidence under Rule 9(C) of the Ohio Rules of Appellate Procedure.

LACK OF TRANSCRIPT

{¶2} Mr. Francis's first assignment of error is that the trial court incorrectly designated Ms. Francis as the children's sole residential parent. His second assignment of error is that the court incorrectly refused to let a lawyer who showed up late for the trial represent him and incorrectly denied his motion for a continuance. His third assignment of error is that the court incorrectly found that a civil protection order was in effect at the time of trial. His fourth

assignment of error is that the court incorrectly refused to let him present evidence regarding whether the protection order was still in effect. His fifth assignment of error is that the court incorrectly failed to appoint a lawyer for the children. His sixth assignment of error is that the court incorrectly imputed income to him for purposes of calculating child support. His seventh assignment of error is that the trial judge intimidated, threatened, and harassed him. His eighth assignment of error is that the court incorrectly denied him visitation based on hearsay and other evidence that was not credible. His ninth assignment of error is that the court incorrectly admitted the report of a mediator under seal. His tenth assignment of error is that the court incorrectly found that he violated the magistrate's temporary visitation decree.

{¶3} We are unable to review Mr. Francis's assignments of error because he did not provide this Court with a copy of the trial transcript. This Court's review is limited to the record provided to it under Rule 9 of the Ohio Rules of Appellate Procedure. App. R. 12(A)(1)(b); *In re T.C.*, 9th Dist. Nos. 07CA009248, 07CA009253, 2008-Ohio-2249, at ¶17. It was Mr. Francis's duty to ensure that a transcript of proceedings was transmitted to this Court. App. R. 10(A); Loc. R. 5(A). "[If] portions of the transcript which are necessary to resolve assignments of error are not included in the record on appeal, the reviewing court has 'no choice but to presume the validity of the [trial] court's proceedings, and affirm.'" *Cuyahoga Falls v. James*, 9th Dist. No. 21119, 2003-Ohio-531, at ¶9 (quoting *Knapp v. Edwards Labs.*, 61 Ohio St. 2d 197, 199 (1980)).

{¶4} Mr. Francis has argued that he is indigent and, therefore, could not afford to have a transcript prepared. The United States Supreme Court, however, "has recognized a constitutional right to . . . a transcript at the State's expense [in a civil case] only in appeals from orders permanently terminating parental rights." *Murray v. Murray*, 9th Dist. No. 06CA008982, 2007-Ohio-3301, at ¶6 (citing *M.L.B. v. S.L.J.*, 519 U.S. 102, 127-28 (1996) (recognizing

qualitative difference between "parental status termination decrees" and "matters modifiable at the parties' will or based on changed circumstances"); *Jones v. Jones*, 2d Dist. No. 95-CA-22, 1996 WL 715441 at *5 (Dec. 13, 1996) ("Civil due process requires only notice and an opportunity to be heard, not provision of transcripts in civil proceedings.").

{¶5} Furthermore, Mr. Francis has not demonstrated that he could not avail himself of the alternative to providing a transcript, which was to submit a statement of the evidence under Rule 9(C) of the Ohio Rules of Appellate Procedure. Under Rule 9(C), "[i]f no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection."

{¶6} "The Supreme Court of Ohio has held, in the context of a civil case, that 'a transcript is unavailable for purposes of App.R. 9(C) to an indigent appellant unable to bear the cost of providing a transcript.'" *St. Germaine v. St. Germaine*, 2d Dist. No. 2009 CA 28, 2010-Ohio-3656, at ¶14 n.1 (quoting *State ex rel. Motley v. Capers*, 23 Ohio St. 3d 56, 58 (1986)). "The narrative statement provided for in App.R. 9(C) is an available, reliable alternative to an appellant unable to bear the cost of a transcript." *State ex rel. Motley*, 23 Ohio St. 3d at 58.

{¶7} Because Mr. Francis has not provided this Court with a transcript or statement of the evidence, we are unable to determine whether the trial court incorrectly designated Ms. Francis as the sole residential parent, incorrectly refused to let the lawyer who showed up late for trial represent him, incorrectly denied his motion for a continuance, incorrectly found that a civil protection order was still in effect, incorrectly refused to let him present evidence regarding the civil protection order, incorrectly failed to appoint a lawyer for the children, incorrectly imputed income to him for purposes of calculating child support, incorrectly denied him visitation rights,

incorrectly admitted the report of a mediator under seal, or incorrectly found that he had violated the magistrate's temporary visitation decree. We are also unable to review whether the trial judge improperly intimidated, threatened, or harassed him. Accordingly, we must presume the regularity of the proceedings below. *Knapp v. Edwards Labs.*, 61 Ohio St. 2d 197, 199 (1980). Mr. Francis's assignments of error are overruled.

CONCLUSION

{¶8} Because Mr. Francis did not provide this Court with a transcript or a statement of the evidence under Rule 9(C) of the Ohio Rules of Appellate Procedure, we are unable to review his assignments of error. The judgment of the Lorain County Common Pleas Court, Domestic Relations Division, is affirmed.

Judgment affirmed.

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 Lorain, 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 appellant.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

LEE A. FRANCIS, pro se, appellant.

BRETT F. MURNER, attorney at law, for appellee.