[Cite as *Baldesari v. Baldesari*, 2011-Ohio-2957.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Steven F. Baldesari	Court of Appeals No. L-10-1199
Appellee	Trial Court No. DR 1996-0066
v.	
Tomasa Baldesari	**DECISION AND JUDGMENT**
Appellant	Decided: June 17, 2011

* * * * *

George R. Royer, for appellee.

Ron L. Rimelspach, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, which vacated a magistrate's sua sponte decision and a judge's permanent order which modified an agreed court child support order. After considering the assignments of error, we affirm the trial court.

{¶ 2} The tortured procedural history of this case commenced on January 16, 1996, when appellee ("the father") filed a complaint for divorce. A final divorce decree was eventually issued on October 31, 1997. A shared parenting agreement was reached by consent of the parties regarding their two minor children. The initial agreed court child support order required the father to pay $66.13 per child per month, for a total monthly obligation of $132.26. The child support order contained a deviation due to the shared parenting arrangement.

{¶ 3} On January 26, 1999, due to employment reasons, the father filed a motion to move with the children to eastern Ohio. The father dismissed this motion on March 24, 1999, and then re-filed a notice of intent to move with the minor children on March 30, 1999. Resultantly, appellant ("the mother") filed a motion for change of custody on May 11, 1999.

{¶ 4} After a hearing on August 5, 1999, a magistrate enjoined both parties from removing either child from the jurisdiction of the trial court, except for visitation and companionship purposes. After a hearing on the father's objections, the trial court affirmed the magistrate's order in an entry journalized on September 1, 1999. The father unsuccessfully appealed this pre-trial injunction in *Baldesari v. Baldesari* (Sept. 29, 2000), 6th Dist. No. L-99-1301.

{¶ 5} On January 29, 2001, the mother dismissed her May 11, 1999 motion, but filed a subsequent, and nearly identical, motion for change of custody on the same day. According to the parties, a hearing was held on June 20, 2001, on the mother's motion for

change of custody. However, a transcript of proceedings for June 20, 2001, was not made part of the record on appeal.

{¶ 6} On September 27, 2001, pursuant to former R.C. 3119.60[1], the Lucas County Child Support Enforcement Agency ("CSEA") filed an administrative adjustment recommendation to the parties' original court child support order. The CSEA, based on the father's income of $82,439, recommended that the father's child support payments increase to $1,067.92 per month—clearly in excess of his previous monthly payments of $132.26.

{¶ 7} On October 2, 2001, the father, pro se, requested a mistake of fact court hearing. The father was entitled to a direct court hearing, pursuant to R.C. 3119.63(C), because of the deviation in the original court child support order. In his request, the father asserted that:

{¶ 8} "1. THE ADJUSTMENT IS CONTRARY TO THE EVIDENCE

{¶ 9} "2. THE ADJUSTMENT IS CONTRARY TO THE TIME SHARING AS SET FORTH IN THE FINAL JUDGMENT ENTRY OF DIVORCE

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[1]This case involves several sections of the Revised Code. Some referenced sections were amended after the relevant dates in the instant matter. None of those amendments are relevant to our analysis. We will, however, refer to those amended sections as "former" sections of the Revised Code. Former R.C. 3119.60 specified the required procedures to be followed when "a [CSEA], periodically or on request of an obligor or obligee, plans to review a child support order in accordance with the rules adopted pursuant to [R.C. 3119.76] or otherwise plans to review a child support order * * *."

{¶ 10} "3. OTHER BASES"

{¶ 11} On October 5, 2001, the father, now through counsel, filed an amended request for a mistake of fact court hearing regarding CSEA's recommendation.

{¶ 12} On October 16, 2001, pursuant to R.C. 3119.66[2], the mistake of fact court hearing was held before the domestic relations magistrate. Both parties were present with counsel and agreed that the computations of their respective incomes by CSEA were correct: the mother's income was $36,227, and the father's income was $82,439. Once the parties agreed that the income figures were accurate, the magistrate stated, "And having accepted those figures, my understanding is, we are all foreclosed at any future hearing from asserting an objection to those figures, at any future hearing based upon this mistake of fact. * * * Really, all the parties need to do is, and folks you can do this outside of the courtroom without paying your lawyers to come back here is reach an agreement that you think will be, that the lawyers think would be acceptable to me as a lesser amount of child support based upon your shared parenting plan." The magistrate concluded, "I'll take those numbers as a stipulation as to the wages of the parties as of this time and then the lawyers can just work out a deviation."

[2]R.C. 3119.66 provides that "[i]f the obligor or the obligee requests a court hearing on the revised amount of child support calculated by the child support enforcement agency, the court shall schedule and conduct a hearing to determine whether the revised amount of child support is the appropriate amount and whether the amount of child support being paid under the court child support order should be revised."

{¶ 13} The mother's attorney then suggested, and the court agreed, that a consent judgment entry could be filed regarding the parties' agreed deviation from CSEA's child support recommendation.

{¶ 14} On October 16, 2001, the magistrate issued a decision confirming that the "[father] and [mother] stipulate that the adjusted gross income figures (line 14) utilized by the Lucas County Child Support Enforcement Agency are accurate and form the basis for the revised child support amount." A review of the record confirms that line 14 of CSEA's computations lists the father's income as $82,439, and the mother's income as $36,227. In his decision, the magistrate simply reduced to writing the parties' stipulated income figures. The transcript clearly reflects that the parties were to file a deviation from CSEA's recommendation, taking into account the shared parenting agreement.

{¶ 15} R.C. 3119.70(B) specifically requires that "[i]f the court determines that the revised child support amount calculated by the agency is not the appropriate amount, [the trial court shall] determine the appropriate child support amount and, if necessary, issue a revised court child support order requiring the obligor to pay the child support amount determined by the court."

{¶ 16} On November 14, 2001, the guardian ad litem filed a consent judgment entry addressing both the mother's motion for change of custody and the child support deviation. The judgment entry stated, in part:

{¶ 17} "ON THIS 20th day of June, 2001, this cause came before the Court upon the Motion for Change of Custody, filed by the Defendant on May 11, 1999.[3] Present in the courtroom were all parties with their respective counsel. The parties having reached a resolution, and in accordance with the recommendation of the Guardian ad Litem, Mary Beth Moran, the Guardian ad Litem read the amended shared parenting plan into the record and after inquiry, both parties acknowledged the modification of the parenting plan to be their agreement.

{¶ 18} "IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the amended shared parenting plan attached hereto is hereby made an Order of the Court.

{¶ 19} "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that child support in this matter has not changed and is reaffirmed."

{¶ 20} The parties, their respective attorneys, the guardian ad litem, and the magistrate, signed, but did not date this judgment entry. The judge's signature was also on the document, directly below the magistrate's signature, with the date of "11-14-01" beside his name.

{¶ 21} The child support computation worksheets, including a deviation as set forth in the original divorce decree, were attached to this November 14, 2001 judgment entry. Also attached and incorporated by reference to the November 14, 2001 judgment entry, was the amended shared parenting plan. The final paragraph of the amended shared

[3]The guardian ad litem's statement regarding the mother's May 11, 1999 motion is incorrect. The record reflects that the mother's May 11, 1999 motion for change of custody was voluntarily dismissed then subsequently re-filed on January 29, 2001.

parenting plan stated, "Child support has been addressed by a separate provision in the Judgment Entry of Divorce." The original child support computations, including a deviation, were once again attached to the amended shared parenting plan. The amended shared parenting plan was signed by both the mother and the father, and dated October 16, 2001.

{¶ 22} The next filing in the record was journalized on November 10, 2009, some eight years later. The magistrate, in a sua sponte decision, wrote, "This matter was heard sua sponte, upon MOTION FOR MISTAKE OF FACT HEARING filed October 2, 2001, and appearances were made by no one." The magistrate, in his findings of facts, found that the "parties failed to submit a Judgment Entry as to pending motion [for a mistake of fact hearing] filed October 2, 2001."

{¶ 23} The magistrate, pursuant to Civ.R. 41(B), then dismissed the father's mistake of fact motion without prejudice and affirmed the administrative adjustment recommendation of CSEA, file-stamped September 27, 2001. The trial court then adopted the magistrate's decision in a separate permanent order, also journalized on November 10, 2009. The November 10, 2009 permanent order retroactively adjusted the father's total child support obligation from $132.26 to $1067.92 per month, not including poundage, from October 1, 2001.[4]

[4]Pursuant to former R.C. 3119.71, "If the obligor or oblige requests a court hearing on the revised child support amount and the court, after conducting a hearing, modifies the court child support amount under the order, the modification shall relate back to the first day of the month following the date on which the review of the court child support

{¶ 24} On November 23, 2009, the father filed an objection and request for hearing regarding the magistrate's November 10, 2009 decision. On December 23, 2009, the father filed a motion to set aside the trial court's November 10, 2009 permanent order pursuant to Civ.R. 60(B). Several motions for hearings and to supplement the record were thereafter filed by the father, through counsel. All motions filed by the father went unopposed.

{¶ 25} On June 23, 2010, the trial court issued a judgment entry vacating the November 10, 2009 magistrate's decision and its subsequent permanent order journalized the same day. The trial court found that the November 10, 2009 entries were void because no motion was left pending before the court as of November 2001. The trial court concluded that "* * * all issues regarding the pending motion for change of custody and child support issues related to the Mistake of Fact Hearing request had been resolved." In other words, the trial court determined that the November 14, 2001 consent judgment entry was the trial court's final order because it terminated both pending claims. The court also dismissed the father's pending motions, including the Civ.R. 60(B) motion, as moot. This appeal followed.

{¶ 26} The mother now asserts the following three assignments of error:

{¶ 27} "I. The trial court's Judgment Entry filed on June 23, 2010 is not supported by sufficient evidence and should be reversed.

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order began pursuant to division (A) of section 3119.60 of the Revised Code." In this case, it appears that the administrative review began September 13, 2001, as indicated in the CSEA's filing, date stamped September 27, 2001.

{¶ 28} "II. The trial court's Judgment Entry filed on June 23, 2010 is against the manifest weight of the evidence and should be reversed.

{¶ 29} "III. The trial court's Judgment Entry filed on June 23, 2010 was not supported by the evidence and was an abuse of discretion."

{¶ 30} A thorough review of the record also reveals an error the parties failed to raise. We initially raise that error sua sponte.

{¶ 31} In *Sabrina J. v. Robbin C.* (Jan 26, 2001), 6th Dist. No. L-00-1374, this court held:

{¶ 32} "An order of a trial court which merely adopts a magistrate's decision and enters it as the judgment of the court is not a final appealable order. * * * [T]o be final, an entry of judgment by the trial court pursuant to Civ.R. 53(E)(4)[5] must:

{¶ 33} "1. Pursuant to subsection (b), 'adopt reject or modify' the magistrate's decision and should state, for identification purposes, *the date the magistrate's decision was signed by the magistrate*,

{¶ 34} "2. State the outcome (for example, 'defendant's motion for change of custody is denied') and contain an order which states the relief granted so that the parties are able to determine their rights and obligations by referring solely to the judgment entry, and,

{¶ 35} "3. *Be a document separate from the magistrate's decision*." (Emphasis added.)

[5]Renumbered to Civ.R. 53(D)(4), effective July 1, 2006.

{¶ 36} In the case sub judice, the November 14, 2001 judgment entry does not comply with Civ.R. 53. The trial court failed to file a separate document adopting, rejecting, or modifying the undated magistrate's decision, filed November 14, 2001. Rather, the trial court judge signed his name directly below the magistrate's signature, without specifying whether he "adopts, rejects, or modifies" the magistrate's decision.

{¶ 37} In *State ex rel. Lesher v. Kainrad* (1981), 65 Ohio St.2d 68, the Supreme Court held that the failure of a trial court to comply with Civ.R. 53 renders the resulting judgment voidable, and not void. While we acknowledge that the November 14, 2001 judgment entry does not comply with Civ.R. 53, we conclude for the following reasons that the November 14, 2001 judgment entry is voidable, but not subject to collateral attack almost eight years after its entry.

{¶ 38} "If the judgment was voidable and not appealed, it is not a mere nullity, it cannot be disregarded, it cannot be attacked collaterally, and it remains in full force and effect." *Eisenberg v. Peyton* (1978), 56 Ohio App.2d 144, 151. Further, a party's failure to pursue appropriate remedies on a voidable judgment in a timely fashion acts as an estoppel. *Kainrad* at 71. See, also, *Beal v. Beal* (Apr. 3, 1984), 5th Dist. No. CA 2182. (Holding that a party is estopped, after nine years, from raising the issue that a final divorce decree does not comply with Civ.R. 53.) We note that the mother did not timely file a request for relief pursuant to Civ.R. 60(B), or an appeal from the November 14, 2001 judgment entry raising this error. Therefore, we find that the November 14, 2001 judgment entry, while voidable, is a valid judgment.

{¶ 39} We now address the mother's assigned errors. Because the mother's assignments of error are interrelated, they will be addressed together.

{¶ 40} Both parties stipulate that the November 14, 2001 judgment entry resolved the mother's motion for change of custody. The mother, however, argues that the November 14, 2001judgment entry failed to resolve the father's mistake of fact hearing request, and consequently the child support issue. The trial court, in its June 23, 2010 entry, determined that the November 14, 2001 judgment entry disposed of both claims. We must therefore, determine whether the November 14, 2001 judgment entry did, in fact, terminate both claims.

{¶ 41} On November 14, 2001, the guardian ad litem filed the parties' consent judgment entry. The primary function of a final order or judgment is the termination of a case or controversy that the parties have submitted to the trial court for resolution. *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 215. A final judgment must also be final in all matters within the pleadings. *In re Estate of Castrovince* (Aug. 16, 1996), 11th Dist. No. 96-P-0175. "A final judgment is one which determines the merits of the case and makes an end to it." *State ex rel. Curran v. Brookes* (1943), 142 Ohio St. 107, 110. The nature of the case and the type of relief granted dictates what language must be used to terminate a claim. *Harkai* at 215.

{¶ 42} The November 14, 2001 judgment entry states that the amended shared parenting agreement was read into the record at a hearing on June 20, 2001, but the parties did not sign this agreement until October 16, 2001. In fact, on page 12 of the

amended shared parenting agreement, under the "Miscellaneous" section, the parties agreed that, "[t]he * * * shared parenting plan shall be the order of the Court upon approval by the Court and shall be attached to the final judgment of the Court and incorporated by reference in said judgment." No other motions, appeals, or entries were filed thereafter until the magistrate's sua sponte entry was journalized on November 10, 2009.

{¶ 43} The November 14, 2001 judgment entry referenced and incorporated the amended shared parenting plan and made it an order of the trial court. It also determined that the amended shared parenting plan was in the best interest of the children, "reaffirmed" the initial agreed child support, allocated health insurance coverage for the minor children, and determined attorney fees and fees for the guardian ad litem.

{¶ 44} Both parties, their respective attorneys, the magistrate, the guardian ad litem, and the judge signed this November 14, 2001 consent judgment entry. After thoroughly reviewing the entire record including the October 16, 2001 mistake of fact hearing transcript, we find that this entry terminated the mother's pending motion regarding a change of custody as well as the issue of a child support deviation stemming from CSEA's administrative recommendation to increase the father's child support obligation. We conclude that the amended shared parenting agreement, attached and incorporated into the November 14, 2001 judgment entry, was the parties' final agreement regarding *both* the pending custody issue and the child support deviation.

{¶ 45} The mother makes several arguments unsupported by the record. For example, in support of her claim that the November 14, 2001 judgment entry did not resolve the issue of the child support deviation, the mother contends that the parties entered into the amended shared parenting agreement on June 20, 2001. The mother argues that this was only the final judgment regarding her pending motion for change of custody, and not for the child support issue. The mother then argues that the guardian ad litem simply failed to file this judgment entry until November 14, 2001. She goes on to argue that the father requested an administrative adjustment of child support on October 2, 2001, and therefore, the November 14, 2001 judgment entry could not have resolved the child support issue since CSEA did not file its administrative adjustment recommendation until September 27, 2001. This argument ignores the fact that the parties did not *sign* the amended shared parenting agreement until October 16, 2001, after CSEA filed its administrative adjustment recommendation.

{¶ 46} The record provided on appeal does not support the mother's argument regarding the June 20, 2001 hearing. A transcript of proceedings for June 20, 2001, was not made part of the record. "The duty to provide a transcript for appellate review falls upon the appellant. This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record." *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, citing *State v. Skaggs* (1978), 53 Ohio St.2d 162. If no transcript was available, and the appellant failed to invoke the procedures of App.R. 9(C) to reconstruct what occurred, appellant has waived any error. *Steiner v. Steiner* (1993),

85 Ohio App.3d 513, 524. Where portions of the transcript are necessary for the resolution of assigned errors, yet 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." *Knapp* at 199. We, therefore, presume the validity of the trial court proceedings, based upon the filings in the record.

{¶ 47} The record indicates that the parties entered into the amended shared parenting agreement on October 16, 2001. The agreement clearly states that the parties intended to continue the original child support order as of October 16, 2001. A trial court speaks only through its journal entries. *Miller v. Miller*, 6th Dist. No. L-10-1097, 2010-Ohio-6521, ¶ 13, citing *In re Guardianship of Hollins*, 114 Ohio St.3d 434, 2007-Ohio-4555, ¶ 30. If the November 14, 2001 judgment entry did not accurately reflect the intent of the parties, the mother could have filed a timely Civ.R. 60(B) motion for relief from judgment. "The proper procedure to clarify an entry is to file for relief from the prior agreed judgment entries." *Wells v. Spirit Fabricating, Ltd.* (Sept. 7, 1995), 8th Dist. No. 67940. See Civ.R. 60(B). She failed to do so.

{¶ 48} The mother also argues that the father was required to obtain a second mistake of fact hearing date. She relies on the October 16, 2001 transcript of proceedings for this argument. The following conversation occurred between the magistrate and the parties' attorneys at the October 16, 2001 mistake of fact hearing:

{¶ 49} "[MAGISTRATE]: So, I'll, you know, actually I will take with the approval of the lawyers, I'll take those numbers as a stipulation as to the wages of the parties as of this time and then the lawyers can just work out a deviation, * * * does that make sense?

{¶ 50} "[MOTHER'S ATTORNEY]: And, and if we were able to agree to that, Your Honor, could we submit a consent entry --

{¶ 51} "[MAGISTRATE]: Definitely --

{¶ 52} "[MOTHER'S ATTORNEY]: -- in that respect.

{¶ 53} "[MAGISTRATE]: -- definitely.

{¶ 54} "[FATHER'S ATTORNEY]: Should we get a new date, though, today?

{¶ 55} "[MAGISTRATE]: Get a new date so we have that out there. I'll continue it, but yeah, I would [sic] forward to a consent judgment entry.

{¶ 56} "[MOTHER'S ATTORNEY]: Thank you."

{¶ 57} The mother then contends that the magistrate's November 10, 2009 decision simply resolved the mistake of fact matter left open due to the father's failure to obtain a new date. In fact, after reviewing the entire record, including the transcript of the October 16, 2001 mistake of fact hearing, it is clear that the parties were to submit a judgment entry regarding an agreed deviation to the CSEA's recommended child support *and* obtain a further hearing date in the event that an agreed judgment entry was not submitted. The mother argues throughout her brief that the father was to obtain a hearing date yet fails to mention that a judgment entry regarding the parties' agreed deviation

could be filed, in the alternative. We are unable to determine, from the record, whether the father in fact failed to obtain a further hearing date. Regardless, a consent judgment entry was eventually filed on November 14, 2001, making a further hearing date unnecessary.

{¶ 58} The mother also argues that the November 10, 2009 magistrate's decision and the court's permanent order journalized the same day, were issued to correct an oversight caused by the parties' attorneys regarding the November 14, 2001 judgment entry. We find this argument without merit.

{¶ 59} The exclusive means by which the trial court could have modified its November 14, 2001 judgment entry sua sponte was by means of Civ.R. 60(A), which provides, in part, that "[c]lerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders."

{¶ 60} "Civ.R. 60(A) permits a trial court, in its discretion, to correct clerical mistakes that are apparent on the record, but does not authorize a trial court to make substantive changes in judgments. The term 'clerical mistake' refers to a mistake or omission, mechanical in nature and apparent on the record that does not involve a legal decision or judgment." *Brewer v. Brewer*, 10th Dist. No. 09AP-146, 2010-Ohio-1319, ¶ 13, quoting *Atwater v. Delaine*, 155 Ohio App.3d 93, 2003-Ohio-5501.

{¶ 61} In the case sub judice, the trial court's permanent order of November 10, 2009, substantively changed the November 14, 2001 judgment entry by retroactively increasing the father's child support obligation. Therefore, the trial court was not authorized, pursuant to Civ.R. 60(A), to sua sponte modify its November 14, 2001 judgment entry.

{¶ 62} The mother, through this appeal, attempts to attack the November 14, 2001 judgment entry. However, it is well-established that a party may not appeal a judgment to which it has agreed. See *Nunnari v. Paul*, 6th Dist. No. L-06-1281, 2007-Ohio-5591, ¶ 18, citing *Jackson v. Jackson* (1865), 16 Ohio St. 163, paragraph one of the syllabus. Holding that the November 14, 2001 judgment entry is not a final order would permit the mother remedies that the rules do not provide.

{¶ 63} The parties relied on the November 14, 2001 judgment entry in the matters of child custody and child support from November 2001 through July 2010, when the mother filed this appeal. We find that the November 14, 2001 judgment entry is the trial court's final order regarding the child custody and child support issues.

{¶ 64} Having found the November 14, 2001 judgment entry is the final order regarding the child custody and child support matters, we conclude that the trial court's continuing jurisdiction would only be invoked, pursuant to Civ.R. 75(J)[6], if notice was

[6]Civ.R. 75(J) states: "Continuing jurisdiction. The continuing jurisdiction of the court shall be invoked by motion filed in the original action, notice of which shall be served in the manner provided for the service of process under Civ. R. 4 to 4.6. When the

served in the manner consistent with Civ.R 4 through Civ.R. 4.6. See *Rondy v. Rondy* (1983), 13 Ohio App.3d 19, 21. It is apparent from the record that the magistrate's November 10, 2009 sua sponte decision and the trial court's permanent order, journalized the same day, were issued without notice to the parties. Without proper notice to the parties, the continuing jurisdiction of the trial court was not properly invoked. The trial court, therefore, lacked jurisdiction over the parties to modify its November 14, 2001 judgment entry. The trial court determined, and we agree, that the November 10, 2009 entries were void.

{¶ 65} "A judgment is considered void 'where the court lacks jurisdiction of the subject matter or of the parties or where the court acts in a manner contrary to due process.'" *The Carter-Jones Lumber Co. v. Willard*, 6th Dist. No. L-06-1096, 2006-Ohio-6629, ¶ 8, quoting *Deutsche Bank Trust Co. Americas v. Perlman*, 9th Dist. No. 22413, 2005-Ohio-3545, ¶ 14, quoting *Thomas v. Fick* (June 7, 2000), 9th Dist. No. 19595, quoting *Rondy at* 22. The inherent power of a court to vacate its own judgment is limited to orders that are void. *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 70. Because the trial court's November 10, 2009 magistrate's decision and permanent order were void, the trial court had the inherent authority to vacate those orders, as it did in its June 23, 2010 judgment entry.

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continuing jurisdiction of the court is invoked pursuant to this division, the discovery procedures set forth in Civ. R. 26 to 37 shall apply."

{¶ 66} Accordingly, we find the mother's first, second, and third assignments of error not well-taken.

{¶ 67} For the above stated reasons, the decision of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. Pursuant to App.R. 24, costs are taxed to appellant.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.
JUDGE