

[Cite as *Daniels v. Wolfe*, 2010-Ohio-4190.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kevin D. Daniels,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 10AP-95
v.	:	(C.P.C. No. 09JU-10-13959)
	:	
Amanda Wolfe,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on September 7, 2010

Kevin D. Daniels, pro se.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch.

FRENCH, J.

{¶1} Appellant, Kevin D. Daniels, appeals the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, which adopted a magistrate's decision that, among other things, granted to appellee, Amanda Wolfe, the right to claim the parties' minor child for purposes of a tax dependency credit for 2009. For the following reasons, we affirm that judgment.

{¶2} Appellant raises the following assignment of error:

TRIAL COURT ERRED IN ACCEPTING MAGISTRATE'S DETERMINATION IN ALLOWING APPELLEE TO USE CHILD'S TAX CREDIT FOR YEAR 2009 WHEN APPELLEE HAD ALREADY USED SAID TAX CREDIT FOR YEAR 2008.

{¶3} The magistrate's decision included the following notice, in bold type:

A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53 (D) (3) (b) or Juv. R. 40 (D) (3) (b).

{¶4} Juv.R. 40(D)(3)(b), to which the notice refers, also states that "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by Juv. R. 40(D)(4)(e)(i)." Juv.R. 40(D)(3)(b)(i). Juv.R. 40(D)(3)(b)(iv) also states that, "[e]xcept for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion * * * unless the party has objected to that finding or conclusion as required by Juv. R. 40(D)(3)(b)."

{¶5} In the proceedings below, appellant did not object to the magistrate's findings concerning the tax dependency issue, the magistrate's conclusion that appellee was entitled to the dependency credit for the tax year 2009 or to any other issue. Consistent with applicable rules and this court's precedent, that failure to object to a magistrate's factual finding or legal conclusion bars an appellant from assigning as error on appeal the trial court's adoption of that finding or conclusion, as the notice suggests. *Freedom Mtge. Corp. v. Groom*, 10th Dist. No. 08AP-761, 2009-Ohio-4482, ¶26. Therefore, we review the magistrate's decision only for plain error. In doing so, we must

proceed with caution and find plain error only in " ' extremely rare circumstances' where the error seriously affects the basic fairness, integrity, or public reputation of the judicial process itself." *Unifund CCR Partners v. Hall*, 10th Dist. No. 09AP-37, 2009-Ohio-4215, ¶22, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121, 1997-Ohio-401.

{¶6} R.C. 3119.82 requires a court issuing or modifying a child support order to designate which parent may claim the child who is the subject of the support order as a dependent for federal income tax purposes. If the parties do not agree on which parent may claim the child, "the court, in its order, may permit the parent who is not the residential parent and legal custodian" to claim the child as a dependent "only if the court determines that this furthers the best interest" of the child and that any child support payments are current. *Id.* In making its determination, "the court shall consider" any net tax savings, the relative financial circumstances and needs of the parents and the child, the amount of time the child spends with each parent, the eligibility of either or both parents for any state or federal tax credits, "and any other relevant factor concerning the best interest" of the child. *Id.* In short, the statute presumes that the credit will be awarded to the residential parent and legal custodian, unless the trial court finds that it would be in the best interest of the child not to do so.

{¶7} Here, appellant does not object to the trial court splitting the dependency credit between him and appellee, who is the residential parent and legal custodian, in alternating years. Rather, he objects to the trial court allowing appellee to claim the credit for 2009. And, in his brief, he contends that the court did so without considering the required statutory factors.

{¶8} Appellant offers *Saunders v. Saunders* (Mar. 8, 1995), 9th Dist. No. 94CA005855, as support for his position. In *Saunders*, the trial court awarded the dependency tax exemption to the non-residential parent. The residential parent appealed, and the appellate court reversed, noting that the trial court had made the award with only the parties' gross incomes in evidence and without any consideration of the statutory factors.

{¶9} Here, in contrast, the magistrate referred to the factors set forth in R.C. 3119.82 and stated that the only evidence submitted concerning the factors was the amount of time the child spent with each parent. Neither parent submitted tax-related information. Even so, the magistrate considered the relative financial circumstances of the parties and heard testimony from both parties. Under these circumstances, we cannot conclude that the magistrate committed plain error by allowing appellant the tax dependency exemption in alternating years beginning in 2010. Therefore, we overrule appellant's assignment of error.

{¶10} In conclusion, we overrule appellant's sole assignment of error. We affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

Judgment affirmed.

TYACK, P.J., and CONNOR, J., concur.
