[Cite as *Rani v. Rana*, 2018-Ohio-5363.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Geeta Rani,	:	
Plaintiff-Appellee,	:	
		No. 17AP-715
v.	:	(C.P.C. No. 13DR-1023)
Shilendra Rana,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 31, 2018

On brief: *Makowski Law Offices*, and *Pamela Walker Makowski*, for appellee. **Argued:** *Pamela Walker Makowski*.

On brief: *Donald W. Roberts Law Offices*, and *Donald W. Roberts*, for appellant. **Argued:** *Donald W. Roberts*.

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

DORRIAN, J.

{¶ 1} Shilendra Rana, defendant-appellant ("father"), appeals from the September 8, 2017 decision and entry of shared parenting plan in case No. 13DR-1023 of the Franklin County Court of Common Pleas, Division of Domestic Relations. For the following reasons, we affirm.

I. Facts and Procedural History

{¶ 2} The parties have been before this court before. In *Rana v. Rani*, 10th Dist. No. 13AP-546 (Dec. 30, 2013) (memorandum decision) ("Divorce Case I"),[1] we affirmed the trial court's granting of the motion of Geeta Rani, plaintiff-appellee ("mother"), to

[1] On February 10, 2014, we denied father's motions for leave to file a motion for reconsideration, motion for reconsideration, and motion to certify as untimely filed. On May 28, 2014, the Supreme Court of Ohio declined to accept father's appeal of our memorandum decision, case No. 2014-0231.

vacate and dismiss the divorce decree granted by the trial court on May 19, 2009 in case No. 09DR-538 for lack of personal jurisdiction and insufficient service of process. As outlined in Divorce Case I, the May 19, 2009 divorce decree was vacated not once, but twice. We reviewed and affirmed the trial court's June 7, 2013 second vacating of the divorce decree and dismissal of the original complaint. We will not repeat the facts and procedural history of this case leading up to our memorandum decision in Divorce Case I as they are summarized therein. We will only discuss the same as relevant to our present discussion.

{¶ 3} On March 20, 2013, mother filed a complaint for legal separation in case No. 13DR-1023. It is not clear why the complaint was filed prior to the trial court's June 7, 2013 decision in case No. 09DR-538 and our decision in Divorce Case I. Nevertheless, case No. 13DR-1023 continued after 09DR-538, and 13DR-1023 is the case before us now.

{¶ 4} On September 12, 2013, father filed an answer. On February 6, 2014, father filed a motion for leave to file a counterclaim for divorce instanter. On April 13, 2016, mother filed a motion for leave to file an amended complaint from legal separation to a complaint for divorce and attached an amended complaint thereto, which the record reflects was deemed filed on April 14, 2016 when the motion was granted. Yet another amended complaint for divorce was filed July 16, 2017.

{¶ 5} On April 14, 2016, the parties filed: (1) an agreed joint shared parenting plan ("shared parenting plan"), and (2) a divorce settlement memorandum. Both parties signed these documents as did the Guardian ad litem ("GAL") and attorney for their minor child. The trial court judge signed the divorce settlement memorandum.

{¶ 6} On September 26, 2016, the trial court filed an agreed judgment entry-decree of divorce, which was a clean version of the divorce settlement memorandum previously filed which contained handwritten amendments to which the parties agreed. The amendments were incorporated into the September 26, 2016 entry.

{¶ 7} On September 8, 2017, the trial court filed a decision and entry of shared parenting plan ("September 8, 2017 decision"), which expressly approved, adopted, and incorporated the parties shared parenting plan filed April 14, 2016. The court noted the following issues were not resolved by the parties: "allocation and/or reallocation of the following: 1) parenting coordinator; 2) cost of reunification counseling; 3) primary and secondary medical insurance; 4) outstanding reimbursement due and owing to 'Our Family Wizard'; 5) child support; and 6) guardian *ad litem* fees." (Sept. 8, 2017 Decision at 1-2.)

Regarding these issues, the court noted the parties agreed to submit affidavits on these remaining issues. The court addressed the same. The court further noted that any and all motions not spoken to herein are denied and dismissed. On October 6, 2017, father filed a notice of appeal of the September 8, 2017 decision.[2]

II. Assignments of error

{¶ 8} Father asserts the following three assignments of error:

> I. THE TRIAL COURT ERRED MATERIALLY IN ITS PROCEDURAL HANDLING OF THIS CASE BY SETTING ASIDE [FATHER'S] ORIGINALLY GRANTED DIVORCE AND CUSTODY ORDERS.
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> a. The original sitting judge in this case, decided the parties' divorce. Responding to [mother's] 60(B) motion, the previous sitting judge granted [mother's] motion, setting aside the property issues until the trial court could determine if there had been fraud, misconduct or misrepresentation, by setting the hearing for a status conference to deal with those issues. That judge and trial court specifically, and with both parties present, acknowledged their agreed testimony wishing to preserve their divorce status and to only deal with the issues set to be addressed by the trial court.
>
> b. Since the parties were still divorced, the trial court only needed to address the financial issues of property as that was the only issues before the court at that time. The newly elected judge erred in failing to acknowledge that a divorce DID in fact occur, PARENTAL RIGHTS had been established and "re-marrying" parties created substantial prejudice, harm to [father], the parties' minor child and set an entire case history

[2] On September 25, 2017, father filed a request for findings of fact and conclusions of law. On October 5, 2017, the trial court ordered the parties submit proposed findings of fact and conclusions of law by October 31, 2017. As noted above, before the deadline for submitting the proposed findings of fact and conclusions of law expired, on October 6, 2017, father filed a notice of appeal of the September 8, 2017 decision and entry of shared parenting. On March 16, 2018, the trial court filed a decision and entry in which it: (1) denied father's motion to obtain a transcript of the minor child's in camera interview filed October 27, 2017; and (2) determined to be moot father's request for findings of fact and conclusions of law. We consider the motion to obtain a transcript to be an administrative matter over which the trial court had jurisdiction while this appeal was pending. However, the court did not have jurisdiction to rule regarding the request for findings of fact and conclusions of law. Nevertheless, we will proceed on this appeal as a final appealable order as no party, pursuant to App.R. 4(B)(2)(d), suggested this court remand the matter to the trial court to resolve the post-judgment request for findings of fact and conclusions of law. Furthermore, father's request was not timely filed pursuant to Civ.R. 52. Finally, Civ.R. 52 states that "[a]n opinion or memorandum of decision filed in the action prior to judgment entry and containing findings of fact and conclusions of law stated separately shall be sufficient to satisfy the requirements of this rule." The September 8, 2017 decision on appeal before us now contains findings of fact and conclusions of law stated for each issue the trial court separately addressed. Taking all this into consideration, father was not entitled to additional findings of fact and conclusions of law.

longer than the original case. The 60(B) motion did not even request relief regarding parental rights and responsibilities.

c. The trial court established an affidavit date for the parties to submit documentation to prove issues for the court to decide. The due date was July 22, 2016. [Mother] did not submit their affidavits without excuse, without a request for an extension until August 7, 2016. On August 12, 2016, [father] filed his Motion to Strike. No motions contra, no opposition whatsoever was filed in response to [father's] Motion to Strike. The trial court cannot sua sponte deny a motion for relief when no responsive answer or pleading is filed in its defense. The trial court takes liberties in this case to form its own view of history even at the cost of re-writing it.

II. THE TRIAL COURT ERRED IN CONSIDERING AFFIDAVITS OF [MOTHER] SUA SPONTE IN OPPOSITION OF [FATHER'S] MOTION CONTRA (MOTION TO STRIKE), SEVERELY PREJUDICING [FATHER'S] CASE INCLUDING ARBITRARY CHILD SUPPORT RETROACTIVE EFFECTIVE DATES COORDINATING WITH THE DATE OF FILING THE COMPLAINT(S), REALLOCATION OF GUARDIAN AD LITEM FEES AND COUNSELING FEES AND COSTS.

a. The trial court erred in issuing child a child support order retroactively from several possible dates: as of the date of the Complaint for Divorce (either case 09DR538 or The trial court vacated the divorce decree approving the 60(B) under subsection (3) based on allegations of fraud and/or financial misconduct or misrepresentations to the court; brought forth within less than one year of the date of the decree but specifically, noted that the vacated decree was ONLY AS TO PROPERTY.

i. The trial court was aware that the parties had a "meeting of the minds" that the effective date of the child support was not as the date of the agreed shared parenting plan, or was agreed to be the date that the court was choose without affidavit or hearing.

ii. The trial court directed [mother's] counsel to file a second 60(B) motion in order to vacate fully vacate the divorce substantially later into the litigation after the prior sitting judge specifically litigated and decided the same 60(B) issue with no reasoning or suggestion that the trial court should allow the new sitting judge to "re-try" the same issue with a "better result".

> b. The affidavits regarding 6 issues to consider were set to be submitted by July 22, 2016. [Mother], after requesting and reaching agreed extensions, did not submit affidavits until over 15 days after the deadline and after opposing counsel had the opportunity to review the opposing affidavits, submitted affidavits that were not responsive to the instructions regarding the affidavits,
>
> III. THE TRIAL COURT ERRED IN REFUSING FATHER'S REQUEST FOR THE TRANSCRIPT OF THE *IN CAMERA INTERVIEW* AND IN FAILING TO PROPERLY PROTECT THE MINOR CHILD FROM STRESS AND HARM DURING THE IN CAMERA INTERVIEWS
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> a. The trial court had a duty to protect the child from stress, badgering, harassment, threats, trauma and excessive interrogative behavior by the guardian ad litem.
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> b. The guardian ad litem had a duty to protect the child from stress, badgering, harassment, threats, trauma and excessive interrogative behavior by the trial judge.
>
> c. The child's attorney had a duty to protect the child from badgering, harassment, threats, trauma and excessive interrogative behavior by the guardian ad litem and trial judge.
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> d. The trial court had a duty to notify the parents that the minor child may need aid or assistance due to the obvious stress and trauma endured during the in camera interviews, including but not limited to immediate access to the in camera interview transcript.
>
> i. As a mandatory reporter, the Court and the guardian ad litem was required to report harm to a child.

(Emphasis sic.) (Sic passim.)

III. Analysis

A. Res Judicata

{¶ 9} We begin by noting that several parts of the assignments of error asserted by father are barred by res judicata as they were or might have been litigated or raised on appeal in Divorce Case I.

{¶ 10} The doctrines of res judicata and estoppel have been summarized in several cases. In *Natl. Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62 (1990), the Supreme Court of Ohio stated:

> It has long been the law of Ohio that "an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were *or might have been* litigated in a first lawsuit." (Emphasis added.) *Rogers v. Whitehall* (1986), 25 Ohio St.3d 67, 69, 25 OBR 89, 90, 494 N.E.2d 1387, 1388. "[W]here a party is called upon to make good his cause of action * * *, he must do so by all the proper means within his control, and if he fails in that respect * * *, he will not afterward be permitted to deny the correctness of the determination, nor to relitigate the same matters between the same parties." *Covington & Cincinnati Bridge Co. v. Sargent* (1875), 27 Ohio St. 233, paragraph one of the syllabus. The doctrine of *res judicata* "encourages reliance on judicial decisions, bars vexatious litigation, and frees the court to resolve other disputes." *Brown v. Felsen* (1979), 442 U.S. 127, 131. "Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if * * * conclusiveness did not attend the judgments of such tribunals * * *." *Southern Pacific Rd. Co. v. United States* (1897), 168 U.S. 1, 49.

(Emphasis sic.)

{¶ 11} In *Daniel v. Williams*, 10th Dist. No. 13AP-155, 2014-Ohio-273, ¶ 19, this court stated:

> " 'The doctrine of *res judicata* involves both [1] claim preclusion (historically called estoppel by judgment in Ohio) and [2] issue preclusion (traditionally known as collateral estoppel).' " *Saha v. Research Inst. at Nationwide Children's Hosp.*, 10th Dist. No. 12AP-590, 2013-Ohio-4203, ¶ 23, quoting *Grava* [*v. Parkman Twp.*, 73 Ohio St.3d 379, 381 (1995)]. "Claim preclusion holds that a valid, final judgment on the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Dehlendorf* [*v. Ritchey*, 10th Dist. No. 12AP-87, 2012-Ohio-5193] at ¶ 13, citing *Grava* at syllabus. "Issue preclusion * * * provides that 'a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies, whether the cause of action in the two actions be identical or

> different.' " *Id*., quoting *Fort Frye Teachers Assn. OEA/NEA v. State Emp. Relations Bd*., 81 Ohio St.3d 392, 395, 1998-Ohio-435, 692 N.E.2d 140 (1998). "While claim preclusion precludes relitigation of the same cause of action, issue preclusion precludes relitigation of an issue that has been actually and necessarily litigated and determined in a prior action." *Id*.

{¶ 12} In *State ex rel. Davis v. Pub. Emps. Retirement Bd*., 120 Ohio St.3d 386, 2008-Ohio-6254, ¶ 27, the Supreme Court stated:

> In Ohio, "[t]he doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel." *O'Nesti v. DeBartolo Realty Corp*., 113 Ohio St.3d 59, 2007-Ohio-1102, , 862 N.E.2d 803, ¶ 6. * * * "While the merger and bar aspects of *res judicata* have the effect of precluding the relitigation of the same cause of action, the collateral estoppel aspect precludes the relitigation, in a second action, of an issue that had been actually and necessarily litigated and determined in a prior action that was based on a different cause of action." *Id*.

{¶ 13} We find the following assignments of error are barred by res judicata as the issues raised therein were already determined or could have been raised and determined by Divorce Case I: assignments of error I(a), I(b), II(a)(ii) and III as it relates to the in camera interview conducted March 22, 2013 in case No. 09DR-538. Accordingly, we overrule these assignments of error on the basis of res judicata.

B. Affidavits and Child Support

{¶ 14} Assignments of error I(c), II(a)(i), and II(b) assert the trial court erred in considering the affidavits filed by mother which, according to father, were untimely and not responsive.

{¶ 15} Father asserts the trial court erred by denying his motion to strike mother's affidavits which were filed on August 7, 2016 after the court's previously imposed deadline. Father argues that because mother did not file a memorandum contra to his motion to strike, the trial court could not sua sponte deny the motion to strike. In the September 8, 2017 decision, the trial court stated:

> On April 14, 2016, the parties entered into a Settlement Agreement that settled the majority of their issues[, all issues except the financial obligations of the parties for the care of the minor child]. The parties agreed to submit affidavits on these

> remaining issues. The affidavits were due on July 22, 2016. [Mother's] attorney did not file affidavits until August 7, 2016. On August 12, 2016, [father] filed a Motion to Strike [mother's] exhibits. The Court DENIES the Motion to Strike because [mother's] attorney had health challenges that precluded her from filing the affidavits on time. Furthermore, the Court further has an extensive history with the parties and reviewing [mother's] affidavits provided little new information about the case.

(Emphasis sic.) (Sept. 8, 2017 Decision at 1.)

{¶ 16} We find the trial court did not abuse its discretion in denying father's motion to strike.

{¶ 17} Father also argues mother's affidavits were not responsive and were outside the scope of the court's order and consequently it was error to not provide father an opportunity to file additional affidavits in response to mother's affidavits.

{¶ 18} The shared parenting plan filed by the parties on April 14, 2016 was signed by both parties. As noted previously, this plan was expressly approved, adopted, and incorporated by the trial court into the September 8, 2017 decision. The shared parenting plan states:

> R. The parties shall submit affidavits for allocation or reallocation of the following:
> 1. costs of parenting coordinator
> 2. costs of reunification counselor
> 3. who is [responsible for] primary/secondary ins[urance]
> 4. outstanding reimbursements due and owing [to] Our Family Wizard
> 5. child Support
> 6. GAL fee

(Apr. 14, 2016 shared parenting plan at 21.)

{¶ 19} We note first that neither the parties' joint plan nor the trial court's and the parties' subsequent order and stipulations as to the deadline for submitting affidavits specifically address the scope of the affidavits. While mother's affidavit contained information regarding the parties' tense involvement with each other and with matters relating to their minor child, father's affidavit contains the same. Taking all this into consideration, we cannot say mother's affidavit was outside the scope of the court's order. We also note that in his motion to strike mother's affidavit, father did not request an opportunity to file additional affidavits in response to mother's affidavit as an alternative

in the event the court denied the motion to strike. We find the trial court did not abuse its discretion in accepting mother's affidavit.

{¶ 20} Finally, we cannot say that father suffered prejudice as a result of the trial court accepting and considering mother's affidavit. First, the trial court noted in the September 8, 2017 decision that "the Court further has an extensive history with the parties and reviewing [mother's] affidavits provided little new information about the case." (Sept. 8, 2017 Decision at 1.) Father admitted as much in his motion to strike when he stated "[a]dditionally, most of [mother's] statements set forth in her Affidavit were previously made on October 15, 2013 and have been addressed either by this Court or been resolved by prior agreements" and "[b]oth of [mother's] affidavits are identical. Additionally, most of the statements set forth in both affidavits are statements [which] were submitted to this Court by [mother] on October 15, 2013, approximately **33 months** ago. These issues were and have been addressed either by this Court or been resolved by the parties' prior agreements." (Emphasis sic.) (Aug. 12, 2016 Mot. at 1, 3.)

{¶ 21} Second, as noted above, father's affidavits and exhibits also contained information regarding the parties tense involvement with each other and with matters relating to their minor child. " '[I]t is well-established that a trial court, particularly a domestic relations court, is in the best position to resolve disputes of fact, and assess the "credibility of witnesses" and the weight to be given to their testimony.' " *Roush v. Roush*, 10th Dist. No. 15AP-1071, 2017-Ohio-840, ¶ 21, quoting *Bates v. Bates*, 10th Dist. No. 04AP-137, 2005-Ohio-3374, ¶ 38.

{¶ 22} Finally, father argues he was prejudiced by the trial court considering mother's late-filed affidavits, specifically because the trial court: (1) arbitrarily did not impose child support retroactive to the date of the filing of the complaint(s), and (2) allocated GAL fees, parenting coordinator fees, reunification counseling fees, and other costs based on mother's affidavits. We address these matters below.

1. <u>Parenting Coordinator Fees and Medical Insurance</u>

{¶ 23} We begin by noting the parties asked and agreed in the shared parenting plan that the parenting coordinator fees be divided equally. The September 8, 2017 decision ordered exactly what the shared parenting plan stated and divides the fees equally. Further, the shared parenting plan stated mother's health insurance plan be designated as the primary insurance carrier, father's health insurance plan be designated as the secondary

insurance carrier, and all uninsured medical related expenses be paid 50/50 by the parties. The September 8, 2017 decision ordered exactly what the shared parenting plan stated, that mother's insurance is primary and father's is secondary and does not order anything contrary to the shared parenting plan's 50/50 percent uninsured medical related expenses. Therefore, we do not find any prejudice regarding the allocation or reallocation of: (1) parenting coordinator fees, or (2) designation of primary and secondary insurance and allocation of uninsured medical related expenses.

2. Our Family Wizard

{¶ 24} We also note the shared parenting plan stated the parties shall submit affidavits regarding the allocation or reallocation of Our Family Wizard costs. The September 8, 2017 decision ordered mother reimburse father for the cost of his enrollment in Our Family Wizard. Therefore, we do not find any prejudice to father regarding the allocation or reallocation of Our Family Wizard costs.

3. Individual/Reunification Counseling Sessions

{¶ 25} Regarding individual/reunification counseling sessions, the shared parenting plan stated the parties shall equally divide and pay all uninsured expenses of the child's individual counseling sessions. Confusing the matter, however, the shared parenting plan also indicated the parties shall submit affidavits for allocation or reallocation of the following: costs of reunification counselor. The shared parenting plan further provided that mother shall pay the first meeting and be credited that amount against the court ordered allocation of the retainer based on court ruling on affidavits. This provision suggests perhaps that only the allocation of the $1,500 retainer was subject to disagreement as the parties had agreed to pay equally the costs of the child's individual counseling sessions. However, that is not entirely clear taking into consideration the requests made by father and mother in their affidavits. The shared parenting plan also makes no mention of the $676 father already paid for individual counseling sessions.

{¶ 26} In his affidavit, father acknowledged that pursuant to the shared parenting plan, the parties agreed to equally divide the child's counseling sessions after the costs are submitted to insurance. He also requested that mother reimburse him for one-half of the $676 he already paid. Mother requested father pay the full cost of the counseling sessions.

{¶ 27} The September 8, 2017 decision ordered that father should bear the majority of the cost of reunification counseling due to his systematic and ongoing interference with

mother's parenting time and ordered father pay 75 percent and mother pay 25 percent of counseling fees after both parties have submitted the bills to their insurance providers. Consistent with this 75/25 percent allocation, the court ordered mother reimburse father $169 toward the $676 for out-of-pocket counseling/reunification costs father already paid.

{¶ 28} Given the ambiguity in the shared parenting plan regarding whether the parties had agreed to a 50/50 allocation of the reunification/counseling fees or had deferred to the court's consideration of their affidavits and ultimate determination of the proper allocation, we cannot say there was any prejudice in the trial court's determination of the same.

4. GAL Fees

{¶ 29} Regarding GAL fees, the shared parenting plan stated GAL fees shall be paid by the parties pursuant to the court's order on reallocation of fees and provided that the parties shall submit affidavits for the allocation or reallocation of the GAL fees. In his affidavit, father requested the court not award GAL fees to the GAL for any work or costs expended regarding a juvenile court matter involving the parties. Father specifically requested that the amount of $2,625 be deducted. Father requested the remaining GAL fees be divided equally. Mother did not make any specific request regarding GAL fees in her affidavit. In its September 8, 2017 decision, the court agreed with father that $2,625 shall be deducted from the GAL fees for the GAL's time spent on the juvenile court case. The court then ordered father pay 70 percent of the GAL fees, mother pay 30 percent of the GAL fees incurred up until the issuance of the September 8, 2017 decision, and any GAL fees incurred subsequent to that decision be divided equally and subject to reallocation. The 70/30 percent allocation was based on the court's finding that father has had the majority of responsibility for the minor child and mother had a change of income shortly after the initial affidavits were submitted, as well as the fact that father had "belabored this Court with unnecessary motions" and had caused unnecessary GAL fees. (Sept. 8, 2017 Decision at 11.) We cannot say there was any prejudice in the trial court's determination of the allocation or reallocation of the GAL fees.

5. Child Support Effective Date

{¶ 30} Finally, father complains the trial court prejudiced him by arbitrarily not imposing child support retroactive to the date of the filing of the complaint(s).

{¶ 31} Nevertheless, we note the shared parenting plan could be construed to read the parties agreed that the effective date of child support payments would be August 18, 2015, that only the amount of child support was to be determined by the trial court, and the parties agreed to submit affidavits to the trial court regarding the same. As explained below, this is not entirely clear however.[3] The confusion stems from both the parties' affidavits and their arguments on appeal.

{¶ 32} In his affidavit, father acknowledged, "as stated in our Plan," the parties will file a joint motion deviating mother's child support obligation to zero as the parties commence 50/50 percent parenting time. Regarding the effective date, however, father made no reference to any specific date having been stated in the shared parenting plan but, rather, stated he has solely cared for their minor child since August 18, 2015 and requested the court order mother to pay guideline child support from that date. He also requested a child support arrearage of $93.90 as of March 29, 2016. Furthermore, in his brief on appeal, father stated the following:

> The trial court erred in issuing child a child support order retroactively from several possible dates: as of the date of the Complaint for Divorce (either case 09DR538 or The trial court vacated the divorce decree approving the 60(B) * * *.
>
> The trial court was aware that the parties had a "meeting of the minds" that the effective date of the child support was *not* as the date of the agreed shared parenting plan, or was agreed to be the date that the court was chose without affidavit or hearing.
>
> * * *
>
> Specifically, the trial court failed to set child support to the appropriate dates, an issue specifically set aside to be decided by the court based on affidavits identified by the parties agreed shared parenting plan submitted, signed and acknowledged in edited and handwritten format.

(Emphasis added.) (Father's Brief at 11-12, 37-38.)

{¶ 33} In her affidavit, mother did not address the effective date of child support nor did she address an arrearage. She stated that since the goal is to have 50/50 percent parenting time, she believes no support should be ordered. At oral argument, counsel for

[3] Nevertheless, it is clear the parties agreed that once they commenced exercising 50/50 percent parenting time, the parties would file a joint motion to deviate mother's child support obligation to zero.

mother indicated it was the parties' intentions to defer to the court regarding the effective date of child support.

{¶ 34} In the September 8, 2017 decision, the trial court indicated that father has requested child support be retroactive "to the filing of a Motion to Modify Support." (Sept. 8, 2017 Decision at 9.)[4] The trial court then determined that "[b]ased upon the inequities in division of the marital estate and due to the long and tortious procedural trail [sic] this case has taken, the Court will not make the payments retroactive as requested by Father." (Sept. 8, 2017 Decision at 10.) The court ordered the guideline child support amount, which the court calculated to be slightly above the amount calculated by father. The court further ordered mother to pay father the arrearage amount of $93.90.

{¶ 35} Although the court's determination to not make child support retroactive was contrary to that requested in his affidavit submitted to the court, given the confusing affidavits and arguments on appeal regarding this matter, on the facts of this case, we cannot say the trial court abused its discretion in doing so. Furthermore, with regard to the language in the shared parenting plan regarding the effective date, we are mindful of the Supreme Court's statement in *Depalmo v. Depalmo*, 78 Ohio St.3d 535, 540 (1997):

> The law favors settlements. However, the difficult issue of child support may result in agreements that are suspect. In custody battles, choices are made, and compromises as to child support may be reached for the sake of peace or as a result of unequal bargaining power or economic pressures. The compromises may be in the best interests of the parents but not of the child. Thus, the legislature has assigned the court to act as the child's watchdog in the matter of support. [*Martin v. Martin*, 66 Ohio St.3d 110 (1993)] at 115.

{¶ 36} Accordingly, on the facts of this case, we overrule father's assignments of error I(c), II(a)(i), and II(b).

C. In Camera Interviews of the Child

{¶ 37} In his third assignment of error, father argues: (1) the trial court erred in denying his request for a transcript of three in camera interviews the judge held with the minor child, and (2) the trial court, the GAL, and the minor child's attorney who were present during the in camera interviews failed to protect the minor child from each other's behavior which stressed out, harassed, badgered, threatened, traumatized, and excessively

[4] Review of the trial court record does not reveal the filing of a motion to modify support or any other filing on August 18, 2015.

interrogated the child during the interviews; and failed to report such behavior to the parents and the authorities.

{¶ 38} In Divorce Case I, the trial court conducted an in camera interview of the minor child on March 22, 2013. As noted previously, because any issues related to this in camera interview could have been raised in the Divorce Case I appeal, we find to be res judicata the arguments related to the March 22, 2013 in camera interview and dismiss the third assignment of error as it relates to the same.

{¶ 39} In the instant case, two in camera interviews of the minor child were conducted on March 19, 2014 and January 11, 2016. Regarding his argument that the trial court erred in denying his request for transcripts of these two in camera interviews, father points this court to *In re A.M.R.*, 8th Dist. No. 105751, 2017-Ohio-9178. We, however, do not find *A.M.R.*, an Eighth District case, to be controlling or persuasive. R.C. 3109.04(B) authorizes a court, in its discretion, to interview in chambers minor children regarding their wishes and concerns with respect to its allocation of parental rights and responsibilities for the care of the child. R.C. 3109.04(B)(2)(c) states:

> The interview shall be conducted in chambers, and *no person other than* the child, the child's attorney, the judge, any necessary court personnel, and, in the judge's discretion, the attorney of each parent shall be permitted to be present in the chambers during the interview.

(Emphasis added.)

{¶ 40} The statute does not permit the parents of the child to be present in the in camera interview. Furthermore, we find to be helpful the Fifth District's reasoning in *Lawson v. Lawson*, 5th Dist. No. 13-CA-8, 2013-Ohio-4687. The court in *Lawson* held that the appellant parent did not have the right of access to the sealed transcript of the in camera interview between the minor child and the trial court as the interview was to be confidential and not disclosed to the parents. *Id*. at ¶ 57. The court reasoned that the overriding concern of courts in custody cases is the best interests of the child, which may, at times, conflict with the due process rights of parents. The court further reasoned:

> The requirement that the in camera interviews be recorded is designed to protect the due-process rights of the parents. The due-process protection is achieved in this context by sealing the transcript of the in camera interview and making it available only to the courts for review. This process allows appellate courts to review the in camera interview proceedings and

> ascertain their reasonableness, while still allowing the child to "feel safe and comfortable in expressing [her] opinions openly and honestly, without subjecting the child to any additional psychological trauma or loyalty conflicts." See House, Considering the Child's Preference in Determining Custody: Is It Really in the Child's Best Interest?, 19 J.Juv.L. 176 (1998), 186. [*Meyers v. Meyers*, 170 Ohio App.3d 436, 2007-Ohio-66 (5th Dist.)] at ¶ 49-50.

Lawson at ¶ 54, citing *Meyers v. Meyers*, 170 Ohio App.3d 436, 2007-Ohio-66 (5th Dist.).

{¶ 41} Accordingly, we find the trial court did not err in denying father a copy of the transcripts of the in camera interviews of the child.

{¶ 42} Regarding father's allegation that the trial court, the GAL, and the minor child's attorney who were present during the in camera interviews failed to protect the minor child from each other's behavior which stressed out, harassed, badgered, threatened, traumatized, and excessively interrogated the child during the interviews; and failed to report such behavior to the parents and the authorities, we note this court granted father's attorney access to the in camera interview transcripts, stating that "said transcripts shall be limited to counsel of record in this appeal." (Mar. 8, 2018 Journal Entry, 10th District.)[5] Notwithstanding, father's counsel's access to the transcripts, father's brief contained no specific reference to the transcripts in support of his third assignment of error.[6] Nor did the brief support this portion of the third assignment of error with any specific argument or reference to authority.[7]

{¶ 43} "The burden of affirmatively demonstrating error on appeal rests with the party asserting error." *Lundeen v. State Med. Bd. of Ohio*, 10th Dist. No. 12AP-629, 2013-Ohio-112, ¶ 16, citing *State ex rel. Petro v. Gold*, 166 Ohio App.3d 371, 2006-Ohio-943, ¶ 51, (10th Dist.), citing App.R. 9 and 16(A)(7). Pursuant to App.R. 12(A)(2), an appellate court

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[5] After filing his notice of appeal, father, acting pro se, requested of this court a copy of the in camera interview transcripts. Consistent with the trial court's order, and protecting the confidentiality of the in camera interview, this court denied the request. Subsequently, however, this court granted father's attorney access to the transcript.

[6] At page 45 of father's brief, counsel indicated that regarding his allegation that the child was traumatized, he would "reserve for oral argument as [father] has been shielded from details of the transcript." At oral argument, however, counsel made no specific citations to the transcripts, specific arguments or references to authority in support of this portion of the third assignment of error.

[7] General argument made in support of the third assignment of error at pages 40-41 of father's brief address the second assignment of error regarding the affidavits.

may " 'disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A).' " *Morgan v. Ohio State Univ. College of Dentistry*, 10th Dist. No. 13AP-287, 2014-Ohio-1846, ¶ 64, quoting *Lundeen* at ¶ 16. " 'It is the duty of the appellant, not the appellate court, to construct the legal arguments necessary to support the appellant's assignments of error.' " *Cook v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 14AP-852, 2015-Ohio-4966, ¶ 40, quoting *Bond v. Canal Winchester*, 10th Dist. No. 07AP-556, 2008-Ohio-945, ¶ 16. *See also Young v. Locke*, 10th Dist. No. 13AP-608, 2014-Ohio-2500, ¶ 16 ("App.R. 16(A)(7) requires that an appellate brief contain an argument in support of each assignment of error presented for review with citations to the authorities, statutes, and parts of the record on which appellant relies."). "It is not the duty of this court to search the record for evidence to support an appellant's argument as to alleged error." *Petro* at ¶ 94.

{¶ 44} As father failed to identify in the transcripts the error on which this portion of the third assignment of error is based and failed to argue the assignment and cite to authority in support thereof, we disregard this portion of the third assignment of error and overrule the same.[8]

{¶ 45} Accordingly, the third assignment of error is overruled in its entirety.

IV. Conclusion

{¶ 46} Having overruled all three of appellant-father's assignments of error, we hereby affirm the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations.

Judgment affirmed.

BRUNNER and HORTON, JJ., concur.

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[8] Notwithstanding our disregarding the third assignment of error, we did review the transcripts of the three in camera interviews and we cannot find, based on the transcripts, that the court, the GAL, or the child's attorney acted or questioned the child in a manner intended to stress out, harass, badger, threaten, traumatize, or excessively interrogate the child during the interviews.