[Cite as *In re M.D.D.*, 2010-Ohio-326.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

IN THE MATTER OF:	:	
M.D.D.	:	CASE NO. CA2009-06-170
	:	OPINION 2/1/2010
	:	
	:	
	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS,
JUVENILE DIVISION
Case No. JS2006-0190

Tamla D. Carroll, 311 Garfield Street, Middletown, OH 45044, plaintiff-appellee, pro se

Edmund Davis, 409 Crawford Street, Middletown, OH 45044-4420, defendant-appellant, pro se

YOUNG, J.

{¶1} Appellant, Edmund Davis, appeals pro se from the decision of the Butler County Court of Common Pleas, Juvenile Division, denying his motion to modify custody of M.D.D., his daughter.[1] We affirm.

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this appeal from the accelerated calendar.

{¶2} Yvette Eldridge gave birth to M.D.D. on July 1, 2003. Over two years later, on December 16, 2005, Tamla Carroll, M.D.D.'s maternal aunt, filed a "Complaint for Custody and Shelter Care" alleging that Eldridge was incarcerated and that M.D.D. had been left in her care for over a month. That same day, the Butler County Juvenile Court entered an emergency ex parte order awarding temporary custody of M.D.D. to Carroll.

{¶3} On January 16, 2007, after appellant filed several "Motion[s] for Custody," and following a number of hearings, including a custody trial, a juvenile court magistrate awarded legal custody of M.D.D. to Carroll. On April 25, 2007, after holding a hearing on appellant's objections to the magistrate's decision, the juvenile court adopted the magistrate's decision awarding legal custody to Carroll in its entirety.

{¶4} On May 25, 2007, appellant filed a "Motion to Modify," which, after a number of delays, was denied by a juvenile court magistrate on March 11, 2008. In denying his motion, the magistrate found appellant "did not allege any change of circumstance for the child or the child's custodian from the date of the prior award of custody," and that "no testimony regarding change of circumstances [was] presented at the hearing." The magistrate's decision was adopted by the juvenile court the following day.

{¶5} Several months later, on June 6, 2008, appellant filed a "Motion to Change/Return Custody." A juvenile court magistrate denied appellant's motion to modify custody on February 27, 2009 after finding he "did not show facts upon which the court could make a finding of a change of circumstance occurring since the entry of the last court order addressing custody." On May 13, 2009, following a hearing on

his "Motion to Set Aside Magistrate Order," the juvenile court denied appellant's motion and upheld the magistrate's decision in full.

{¶6} Appellant now appeals, raising five assignments of error.

{¶7} At the outset, and although we certainly understand the difficulty one may encounter while wading through the intricate details of the law, we find it appropriate to remind appellant, just as was done prior to his oral argument, that although he is appearing pro se in this appeal, he is nevertheless bound by the same rules and procedures as licensed attorneys, and therefore, he must "accept the results of [his] own mistakes and errors, including those related to correct legal procedures." See *Cravens v. Cravens,* Warren App. No. CA2008-02-033, 2009-Ohio-1733, fn. 1, quoting *Cat-The Rental Store v. Sparto,* Clinton App. No. CA2001-08-024, 2002-Ohio-614, at 5. In addition, because the burden of affirmatively demonstrating error on appeal falls squarely upon him, we stress to appellant that it is not this court's duty to "root out" arguments that can support his assignments of error. App.R. 16(A)(7); *Hausser & Taylor, LLP v. Accelerated Systems Integration, Inc.,* Cuyahoga App. No. 84748, 2005-Ohio-1017, ¶10; *State v. Hairston,* Lorain App. No. 05CA008768, 2006-Ohio-4925, ¶11. Accordingly, in reviewing his arguments, appellant must understand that we will not "conjure up questions never squarely asked or construct full-blown claims from convoluted reasoning." *Aegis v. Sedlacko,* Mahoning App. No. 07 MA 128, 2008-Ohio-3190, ¶16, quoting *Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 206.

{¶8} Assignment of Error No. 1:

{¶9} "IT IS A CONSTITUTIONAL VIOLATION FOR THE COURT TO TAKE MY CHILD WITHOUT FIRST GOING THROUGH DUE PROCESS OF LAW."

{¶10} Assignment of Error No. 2:

{¶11} "IT IS NOT IN THE BEST INTEREST OF CHILDREN FOR THE COURT TO GRANT CUSTODY TO ANY PERSON DURING THE COMMISSION OF A CRIME BY THAT PERSON."

{¶12} Assignment of Error No. 3:

{¶13} "IT IS ILLEGAL FOR AN ELECTED OFFICIAL TO USE HIS OFFICE OR POSITION TO KEEP PROPERTY AWAY FROM ANY PERSON."

{¶14} Assignment of Error No. 4:

{¶15} "THE COURT MADE PLAIN ERRORS."

{¶16} In his first four assignments of error, appellant has presented this court with a variety of confusing and convoluted arguments that largely fail to present any coherent issues for review. Yet, notwithstanding appellant's inability to communicate his arguments effectively, it is obvious that he disagrees with the juvenile court's April 25, 2007 decision to award legal custody of M.D.D., his daughter, to Carroll, the child's maternal aunt. However, after a thorough review of the record, and despite his unwavering assertions regarding its alleged errors, we find appellant did not timely appeal from the juvenile court's April 25, 2007 decision.[2] Therefore, because appellant's first four assignments of error all challenge the juvenile court's original decision to award legal custody of his daughter to Carroll, a decision from which he did not timely appeal, we are without jurisdiction to consider such claims. See, e.g., *In re C.G.*, Preble App. Nos. CA2007-03-005, CA2007-03-006, 2007-Ohio-4361, ¶12, 52; *In re C.P.*, Cuyahoga App. No. 91393, 2008-Ohio-4700, ¶16. Accordingly,

2. Appellant filed his notice of appeal on June 11, 2009, well after the time to file such notice expired. See App.R. 4.

appellant's first, second, third, and fourth assignments of error are overruled.

{¶17} Assignment of Error No. 5:

{¶18} "A CHANGE OF CIRCUMSTANCES IN THE LIVING CONDITIONS OF [M.D.D.], AND MY VISITATIONS WERE DENIED ON SEVERAL OCCASIONS WAS IGNORED BY THE COURT."

{¶19} In his fifth assignment of error, appellant argues that the juvenile court erred by denying his most recent motion to modify custody. We disagree.

{¶20} Initially, appellant claims that the juvenile court erred by denying his motion to modify custody because it did not first find him to be an unfit parent. However, contrary to appellant's claim, and as this court recently stated, "once custody has been awarded to a nonparent, a parental unsuitability determination will not be applied to later custody modification requests." *Anderson v. Anderson*, Warren App. No. CA2009-03-033, 2009-Ohio-5636, ¶17; *Purvis v. Hazelbaker*, 181 Ohio App.3d 167, 2009-Ohio-765, ¶10. In turn, because his motion to modify custody did not constitute an original custody determination, the juvenile court properly reviewed appellant's request for a custody modification under the change of circumstances standard contained in R.C. 3109.04. *Anderson* at ¶17, 19. Therefore, appellant's first argument is without merit.

{¶21} Next, appellant insists the trial court erred by failing to find that a change of circumstances in his daughter's living conditions had occurred, and therefore, improperly denied his motion to modify custody. Specifically, appellant claims there has been a change of circumstances because he has been denied "medical records, school records, court ordered visitation," and because there is "no heat" in his daughter's bedroom, "cat urine" in her bed, and "dangerous animals" in

the home. This argument lacks merit.

{¶22} To warrant a change in legal custodianship, the juvenile court must first find that a change of circumstances occurred. R.C. 3109.04(E)(1)(a); *Preece v. Stern*, Madison App. Nos. CA2008-09-024, CA2008-12-029, 2009-Ohio-2519, ¶12, citing *Fisher v. Hasenjager,* 116 Ohio St.3d 53, 2007-Ohio-5589, ¶33. While R.C. 3109.04 does not define what constitutes a change of circumstances, courts have generally held the phrase to mean "an event, occurrence, or situation which has a material and adverse effect upon a child." *Preece* at ¶12, quoting *Lindman v. Geissler,* 171 Ohio App.3d 650, 2007-Ohio-2003, ¶33.

{¶23} In determining whether a change of circumstances occurred, "a trial judge, as the trier of fact, must be given wide latitude to consider all issues which support such a change." *Nagel v. Hogue*, Brown App. No. CA2007-06-011, 2008-Ohio-3073, ¶17, quoting *Davis v. Flickinger,* 77 Ohio St.3d 415, 1997-Ohio-260, paragraph two of the syllabus. In turn, the juvenile court's determination as to whether a change of circumstances has occurred should not be disturbed absent an abuse of discretion. *Nagel* at ¶18. An abuse of discretion is more than an error of law; it implies the trial court acted unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶24} Following the February 27, 2009 "Motion for Custody Hearing," a juvenile court magistrate, in denying appellant's custody motion, found "the evidence presented, taken in a light most favorable to [appellant], did not show facts upon which the court could make a finding of a change of circumstance occurring since the entry of the last court order addressing custody." A transcript of that hearing is not included in the record on appeal, and therefore, we must presume the regularity and

validity of the juvenile court's proceedings. *Anderson*, 2009-Ohio-5636 at fn. 1, citing *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶25} However, appellant did include a transcript of the juvenile court's May 13, 2009 hearing on his objections to the magistrate's decision. That transcript includes the following discussion:

{¶26} "[THE COURT]: Now, since the last time that the court had issued a custody order, is there anything else that you want to tell me other than… I've already read the transcript and looked at the last date in which custody was granted. * * * Is there anything else that you want to present at this time in regard to that issue?

{¶27} "[APPELLANT]: Okay, since the last time… Okay, December 19, 2005 I had… Again, and Ms. Carroll…

{¶28} "[THE COURT]: I'm talking about from the time that custody was initially granted by the court. I believe that there was a prior order in January of '07, correct?

{¶29} "[APPELLANT]: Yes.

{¶30} "[THE COURT]: Alright. Is there anything since that day… Anything else you want me to know that's not in the record that I have not had a chance to see?

{¶31} "[APPELLANT]: Well, I think I put in there about the urination of the child… My child living in a… Sleeping in another room with that… Has no heat. Those are change of circumstances. The facts that must be… Facts, or conditions, that has to be disputed. My child… I tried to tell [the magistrate], my child wants her… Wants to be with me."

{¶32} "[THE COURT]: Alright, is there anything else?

{¶33} "[APPELLANT]: No, ma'am, I think that will be all."

{¶34} Following this discussion, and after hearing from Carroll's counsel, the juvenile court stated the following:

{¶35} "[THE COURT]: I've heard from the father, and I've heard his objection to his most recent denial of custody, based on the present filings. And, in my review of what [the magistrate] did, I cannot find that he has committed any errors contrary to law. * * * I've reviewed everything in this case. So, I will, at this time, overrule your objections. They will be dismissed, and the [m]agistrate's [d]ecision will be upheld."

{¶36} After a thorough review of the record, we find no error in the juvenile court's decision upholding the magistrate's finding that no change of circumstances had occurred. While appellant may claim that he was denied access to his daughter's records, as well as court-ordered visitation, and that she has "no heat" in her bedroom, "cat urine" in her bed, and "dangerous animals" in the house, the juvenile court is better equipped to examine and weigh the evidence and determine the credibility of the witnesses when making custody determinations. *Leeth v. Leeth*, Preble App. No. CA2009-02-024, 2009-Ohio-4260, ¶6, 25. Therefore, because we find no abuse in the juvenile court's decision upholding the magistrate's decision finding no change of circumstances occurred, appellant's fifth assignment of error is overruled.

{¶37} Judgment affirmed.

BRESSLER, P.J., and RINGLAND, J., concur.