

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

MARANDA SUE ZUGG, :
 :
 Plaintiff, : CASE NO. CA2010-08-079
 :
 - vs - : OPINION
 : 5/23/2011
 :
 CHRISTOPHER STEVEN WISBY, :
 :
 Defendant-Appellant. :

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 03-S01129

Maranda Sue Zugg, 977 Ridgeway Court, Apt. A, Lebanon, Ohio 45036, plaintiff, pro se
Marlene Guth Gressly, 12 East Warren Street, Lebanon, Ohio 45036, for defendant-appellant
David Fornshell, Warren County Prosecuting Attorney, Alaina Bidlack, 500 Justice Drive,
Lebanon, Ohio 45036, for appellee, Warren County Child Support Enforcement Agency

HENDRICKSON, J.

{¶1} Defendant-Appellant, Christopher Steven Wisby, appeals a decision of the Warren County Court of Common Pleas, Juvenile Division, dismissing his objections to the magistrate's decision that found him in contempt of court for failure to pay child support. For the reasons outlined below, we affirm the juvenile court's decision.

{¶2} Appellant and plaintiff, Maranda Sue Zugg, have one minor child for whom appellant was ordered to pay child support. Under a modified order of support, appellant was ordered to pay child support in the amount of \$220.66 per month, plus an additional \$44.13 per month toward the outstanding arrearages, with a 2% processing charge, for a total monthly payment of \$270.09. Appellant fell behind in his obligations, and on November 19, 2009, the Warren County Child Support Enforcement Agency (WCCSEA) filed a motion for contempt with the juvenile court.

{¶3} A hearing on the motion was held on January 6, 2010, at which time the magistrate ordered the matter continued so that appellant could apply for court-appointed counsel. Although appellant specifically requested a female attorney, he was appointed male counsel. Appellant's counsel sought a second continuance on March 10, 2010, so that both he and WCCSEA could review medical documentation recently provided by appellant. The magistrate granted the continuance, but stated on the record that no further continuances would be granted in this matter.

{¶4} On March 12, 2010, appellant's counsel filed a motion to withdraw his representation, citing irreconcilable differences. The magistrate initially denied the request. However, at the May 19, 2010 contempt hearing, the magistrate permitted appellant and his counsel to explain the reasons behind the motion. Appellant testified that he believed he had angered his attorney and did not believe that his attorney would represent his interests. Appellant requested that a different attorney be appointed to his case. The magistrate found that appellant's court-appointed attorney had done his job and had advocated for appellant. The magistrate gave appellant the option of proceeding with the hearing with the help and advice of his present counsel, or proceeding without counsel. Appellant elected to proceed by himself, and the magistrate dismissed appellant's court-appointed counsel.

{¶5} At the May 19, 2010 hearing, WCCSEA presented evidence that appellant had

failed to pay or otherwise keep current his child support payments. Appellant presented a letter to the court by Peter K. Wong, MD. Wong indicated that appellant, who had previously been Wong's patient from November 13, 1995 to July 6, 2000, had again been under his care since April 6, 2010. Wong stated that over a period of years appellant had been diagnosed with several psychiatric conditions, including bipolar disorder, major depressive episodes, paranoid schizophrenia, ADD and ADHD, and it was his opinion that appellant could not seek full-time employment at the present time. Wong further stated that he did not believe that appellant had been able to work in the "recent past" due to appellant's significant limitations. Although the magistrate read the letter into the record, the magistrate found it to be problematic as Wong was not treating appellant at the time the motion for contempt was filed. Further, the magistrate was unable to determine what Wong meant by the phrase "recent past." The magistrate determined that there was insufficient evidence on the record for the court to conclude that appellant had a medical or mental condition that prohibited him from full-time employment.

{¶6} Before the court could conclude the May 19, 2010 hearing, appellant became ill. The court continued the matter so that appellant could seek medical attention. After an additional continuance was granted to permit appellant to recover from his illness, the court reconvened the matter on June 2, 2010. At this time, the magistrate found appellant to be in contempt of court. Because this was the second time appellant had been held in contempt, the magistrate recommended that appellant serve 60 days in jail for the present contempt, plus the previously suspended ten days in jail for the first contempt. The magistrate informed appellant that he could purge his contempt by paying \$300 in arrearages, obtaining and maintaining full-time employment, and paying his child support in full and on time. The magistrate entered an order finding appellant in contempt on June 2, 2010, and the order was adopted by the juvenile court in accordance with Civ.R.53(D)(4)(e)(i). 30 days later, on

July 2, 2010, appellant submitted his objections to the magistrate's contempt finding and a memorandum purporting to show cause for the untimely filing of his objections. On July 7, 2010, the juvenile court issued an order informing appellant that he had until July 19, 2010, to file a memorandum to show cause why his objections should not be dismissed for having been untimely filed. Appellant did not file any additional memoranda. On July 21, 2010, the court dismissed appellant's objections to the magistrates' contempt order for not having been filed within 14 days of the magistrate's decision.

{¶7} Appellant timely appealed, alleging four assignments of error. We begin by addressing appellant's fourth assignment of error.

{¶8} In his fourth assignment of error, appellant argues that the juvenile court erred in dismissing his objections to the magistrate's decision because the court failed to review appellant's memorandum showing cause and excusable neglect on the record as required by Civ.R. 6(B)(2). Appellant contends that the juvenile court "at best simply failed to review the memorandum as required by Civ.R. 6(B)(2) based on the Court's at hand dismissal of July 21" or "[a]t worst * * * failed to recognize that [appellant] even filed a memorandum."

{¶9} Civ.R.53(D)(3)(b)(i) provides that "[a] party may file written objections to a magistrate's decision within fourteen days of the filing of the decision." A party seeking to file objections outside of this 14-day window, must seek the court's permission. Civ.R. 6(B)(2) provides that "[w]hen by these rules * * * an act is required or allowed to be done at or within a specified time, the court for cause shown *may at any time in its discretion* * * * upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." (Emphasis added.) A trial court's ruling on a Civ.R. 6(B) motion "is addressed to the sound discretion of the trial court and will not be disturbed on appeal absent a showing of an abuse of discretion." *State ex rel. Lindenschmidt v. Butler Cty. Bd. of Commrs.*, 72 Ohio St.3d 464, 465, 1995-Ohio-49. An abuse of discretion

constitutes more than an error of law or judgment; it requires a finding that the trial court acted unreasonably, arbitrarily or unconscionably. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶10} "The determination of whether neglect is excusable or inexcusable must take into consideration all the surrounding facts and circumstances." *Esken v. Zurich American Ins. Co.*, Preble App. No. CA2003-11-022, 2004-Ohio-3668, ¶9. Neglect is inexcusable if a party's conduct falls substantially below what is reasonable under the circumstances, *State ex rel. Weiss v. Indus. Comm.*, 65 Ohio St.3d 470, 473, 1992-Ohio-71; or if the neglect can be regarded as a "complete disregard for the judicial system." *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20, 1996-Ohio-430. Furthermore, excusable neglect does not exist if the party could have controlled or guarded against the event which caused the neglect. *Vanest v. Pillsbury Co.* (1997), 124 Ohio App.3d 525, 536.

{¶11} In the case at hand, we find no abuse of discretion in the juvenile court's refusal to consider appellant's untimely objections to the magistrate's decision finding him in contempt. Appellant's objections were filed 16 days after the 14-day objection window had expired. It was entirely within the juvenile court's discretion to determine that the reasons provided by appellant, which included his unfamiliarity with the rules and procedures of court, his lack of transportation to the court in order to file the objections, and a three-week-long episode of depression caused by the death of his out-of-state great-grandmother, did not constitute excusable neglect.

{¶12} Further, the juvenile court was not required to specifically reference appellant's July 2, 2010 memorandum when issuing its decision. If appellant desired additional information regarding the court's decision, he could have filed a request for findings of fact and conclusions of law. See Civ.R. 52. He neglected to do so. Accordingly, the juvenile court did not err in dismissing appellant's untimely objections, and appellant's fourth

assignment of error is overruled.

{¶13} In his three remaining assignments of error, appellant claims the juvenile court erred by failing to appoint him new counsel, failing to fully consider his medical evidence, and ordering him to obtain and maintain full-time employment as a condition of purging his contempt sentence when there was evidence presented that he is unable to work. Because appellant did not file objections in accordance with Civ.R. 53(D)(3)(b), he has waived his right to appeal these issues. *Mustard v. Mustard*, Warren App. No. CA2009-09-118, 2010-Ohio-2175, ¶28; *Imhoff v. Imhoff*, Clermont App. No. CA2003-09-075, 2004-Ohio-3013, ¶10-11. Civ.R. 53(D)(3)(b)(iv) provides 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, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)."

{¶14} Although appellant failed to assert plain error on appeal, we nonetheless find that the trial court did not commit plain error in the case at bar. "Plain error in civil matters will be recognized only in the extremely rare case involving the exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." (Internal quotation marks omitted.) *Imhoff*, 2004-Ohio-3013 at ¶11. Upon review of the record, we find nothing in the juvenile court's proceedings which rise to the level of plain error. Appellant's assignments of error are consequently overruled.

{¶15} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.

[Cite as *Zugg v. Wisby*, 2011-Ohio-2468.]