[Cite as *In re J.A.M.*, 2011-Ohio-668.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

IN THE MATTER OF:	:	
J.A.M.	:	CASE NO. CA2010-07-174
	:	O P I N I O N 2/14/2011
	:	
	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. JV-96-02-0577

Fred S. Miller, Baden & Jones Bldg., 246 High Street, Hamilton, Ohio 45011, for appellee custodian, C.E.

J.M., 6800 Millers Lane, Goshen, Ohio 45122, appellant father, pro se

BRESSLER, J.

{¶1} Appellant, J.M., appeals the decision of the Butler County Court of Common Pleas, Juvenile Division, overruling his objections to a magistrate's decision regarding paternity and child support issues.

{¶2} On July 29, 1992, F.E. (mother) gave birth to a son, J.A.M. At that time, appellant signed J.A.M.'s birth certificate as the father. Years later, in 2008, appellant moved to determine paternity of J.A.M. through genetic testing. On August 13, 2009, the trial court granted appellant's motion, ordering appellant, mother, and J.A.M. to undergo genetic testing. The tests revealed appellant was not the biological father of

J.A.M.

{¶3} Thereafter, appellant moved to disestablish paternity, terminate child support orders related to J.A.M., and for repayment of past paid child support. Appellant also moved for relief from his child support obligation pursuant to Civ.R. 60(B). Following a hearing on May 19, 2010, the trial court, through a magistrate, denied appellant's motions on May 24, 2010. In so holding, the magistrate found appellant knew he was not the natural father of J.A.M. as early as 1998, but continued to represent himself as the father, despite having ample opportunity to address paternity issues. That same day, the trial court approved and adopted the magistrate's decision as its own.

{¶4} On June 11, 2010, appellant, acting pro se, filed objections to the magistrate's decision, arguing he was entitled to: (1) a determination that he was not J.A.M.'s father pursuant to R.C. 3111.09(D), and (2) relief from his child support obligation. On June 28, 2010, the trial court filed an entry overruling appellant's objections and re-adopting the magistrate's May 24, 2010 decision.

{¶5} Acting pro se once again, appellant filed a notice of appeal on July 14, 2010. Appellant now raises three assignments of error, as follows:

{¶6} Assignment of Error No. 1:

{¶7} "THE TRIAL COURT DENIED ANY RELIEF FROM JUDGMENT AFTER NEW EVIDENCE WAS OBTAINED, BY ORDER OF THE COURT, WHICH PROVED RELIEF WAS WARRANTED IN THE CASE."

{¶8} Assignment of Error No. 2:

{¶9} "THE TRIAL COURT ERRED TO THE PREJUDICE OF THE APPELLEE [sic] IN ADMITTING INTO EVIDENCE, OVER AN OBJECTION, A PATERNITY TEST AND STATEMENT TO G.A.L. THAT HAD NOT BEEN PRESENTED TO CLERK OF

COURTS PRIOR TO COMMENCEMENT OF TRIAL, OR TO APPELLANT UNTIL AFTER TRIAL HAD COMMENCED."

{¶10} Assignment of Error No. 3:

{¶11} "THE TRIAL COURT DENIED RELIEF FROM A JUDGMENT, COURT ORDER, OR ADMINISTRATIVE ORDER BECAUSE THE FATHER OTHERWISE ACKNOWLEDGED HIMSELF TO BE THE CHILD'S NATURAL FATHER BEFORE HE KNEW HE WAS NOT THE FATHER OF THE CHILD."

{¶12} A review of appellant's arguments indicates that they each relate to the magistrate's hearing on May 19, 2010 and the magistrate's decision on May 24, 2010. As such, this court must first address the timeliness of appellant's objections to the magistrate's decision prior to considering the merits of his appeal.

{¶13} The juvenile rules require written objections to a magistrate's decision to be filed within 14 days of the magistrate's decision. Juv.R. 40(D)(3)(b)(i). The rules further explain, "[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)." Juv.R. 40(D)(3)(b)(iv). Thus, if a party fails to file objections to the magistrate's decision in accordance with Juv.R. 40, he may not then raise the objections with the appellate court on review. See, e.g., *In re N.E.*, Butler App. No. CA2009-12-300, 2010-Ohio-1815, ¶8.

{¶14} In the case at bar, the magistrate's decision was filed May 24, 2010, and the trial court adopted the order the same day. Pursuant to Juv.R. 40(D)(3)(b)(i), the 14-day period for appellant to object to the magistrate's decision expired June 7, 2010. However, appellant did not file his objections until June 11, 2010, nor did he provide a reason justifying his failure to comply with Juv.R. 40. As a result, appellant's objections

were untimely.

{¶15} Pursuant to Juv.R. 40(D)(4)(e)(i), while the "*timely* filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment," appellant's *untimely* objections operated as no such "stay." (Emphasis added.) Accordingly, the trial court's May 24, 2010 final judgment entry against appellant remained in full effect. Despite this fact, the trial court subsequently entered a *second* "final appealable order" on June 28, 2010, wherein it purported to "overrule" appellant's untimely objections and re-adopt the magistrate's decision.[1] In light of these particular facts, we can only conclude that the trial court's June 28, 2010 entry was void, where, as a result of appellant's procedural failures, the trial court's jurisdiction terminated when it entered the May 24, 2010 judgment. Cf. *Murray v. Goldfinger*, Montgomery App. No. 19433, 2003-Ohio-459 (noting that once a court renders a final judgment in a case, a second attempt to impose a final judgment would be a nullity); *Stamper v. Keatley*, Lawrence App. No. 04CA14, 2004-Ohio-5430.

{¶16} To restate our conclusion, pursuant to appellant's untimely objections,[2] the only viable final judgment entry in this case was filed on May 24, 2010. As a result, appellant had 30 days from the time the trial court adopted the magistrate's decision on May 24, 2010 to appeal the decision on its merits. App.R. 4(A); (B)(2). See *O.H.W.*,

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1. **{¶a}** In its June 28, 2010 entry, the trial court stated the following, in pertinent part:

{¶b} "After review of the complete record, the Court finds that the Objection filed on June 11, 2010 to the Magistrate's Decision and Order of May 24, 2010 is not well taken. *Said objection shall, therefore, be overruled*." (Emphasis added.)

{¶c} We find it peculiar that by its own statement of facts, the trial court acknowledged the untimely nature of appellant's objections, yet proceeded to overrule them, rather than simply dismiss them. However, had the trial court dismissed appellant's objections, it would not have changed the untimeliness of appellant's objections, nor would it have tolled or extended the time for filing a notice of appeal. See *In re O.H.W.*, Brown App. No. CA2007-02-006, 2008-Ohio-627, ¶15. See, also, *Scottsdale Ins. Co. v. Brock* (Feb. 14, 2000), Butler App. Nos. CA99-01-009, CA99-02-023, at 11.

2. We additionally note appellant did not seek relief from the decision pursuant to Civ.R. 60(B).

2008-Ohio-627 at ¶15 ("[b]ecause appellant's objections were not timely, appellant had 30 days from the time the trial court adopted the [magistrate's] decision * * * to appeal the decision of the trial court on the merits[.]"). As such, appellant's notice of appeal was due no later than June 23, 2010, thereby rendering his July 14, 2010 notice of appeal untimely. Accordingly, we conclude we lack the requisite jurisdiction to address appellant's assignments of error.

{¶17} We recognize that appellant acted pro se when he filed his objections to the magistrate's decision. However, appellant was still required to comply with the juvenile rules. "Pro se litigants are expected, as attorneys are, to abide by the relevant rules of procedure and substantive laws, regardless of their familiarity with them." *Bamba v. Derkson*, Warren CA2006-10-125, 2007-Ohio-5192, ¶14 (addressing party's failure to object to a conclusion of law or finding of fact issued by a magistrate pursuant to Civ.R. 53). A pro se litigant must accept the results of his own mistakes and errors. Id.

{¶18} Accordingly, this appeal is dismissed.

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