

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

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|---------------------------|---|------------------------|
| ANN (VALENTINE) THOMPSON, | : | |
| Plaintiff-Appellee, | : | CASE NO. CA2009-09-231 |
| - vs - | : | <u>OPINION</u> |
| | : | 8/9/2010 |
| CHARLES E. VALENTINE, | : | |
| Defendant-Appellant. | : | |

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR02-02-0220

Ann (Valentine) Thompson, 511 East Street, Franklin, Ohio 45005, plaintiff-appellee, pro se

Charles E. Valentine, 518 Ludlow Street, Hamilton, Ohio 45011, defendant-appellant, pro se

Helen Kendrick, 8050 Beckett Center Drive, Suite 202, West Chester, Ohio 45069, guardian ad litem

HENDRICKSON, J.

{¶1} Defendant-appellant, Charles E. Valentine, appeals from an order of the Butler County Court of Common Pleas, Domestic Relations Division, certifying to the common pleas court's juvenile division all matters concerning the care and custody of the two minor children of appellant and his former wife plaintiff-appellee, Ann Valentine n.k.a. Ann Thompson.

{¶2} The parties were divorced in 2003, and appellant was subsequently named as the residential parent of the parties' minor children. In 2008, appellant, acting pro se, moved to modify the parties' parenting time and filed a notice of his intent to relocate to Wisconsin and to take the children with him. Appellee responded with several motions of her own, including one to modify the children's designated custodian.

{¶3} In 2009, the domestic relations court certified the case, including all of the parties' pending motions, to the Butler County Juvenile Court on the ground that evidence had been presented to it to support allegations that one of the parties' children may have been subjected to sexual abuse, though it was not known by whom or when the abuse occurred, and the juvenile court has exclusive and original jurisdiction concerning any child alleged to be abused under R.C. 2151.23(A)(1).

{¶4} Appellant now appeals from the domestic relation court's decision, assigning the following as error:

{¶5} Assignment of Error No. 1:

{¶6} "TRIAL COURT [sic] ERRED BY NOT DETERMINING THAT A CHANGE OF CIRCUMSTANCES HAD TAKEN PLACE PRIOR TO HEARING THE MOTION OF MODIFYING CUSTODY."

{¶7} Assignment of Error No. 2:

{¶8} "THE TRIAL COURT ERRED BY NOT SURRENDERING JURISDICTION OF THE CASE TO DIVISION OF JUVENILE COURT [sic] BEFORE HEARING IT."

{¶9} Assignment of Error No. 3:

{¶10} "THE TRIAL COURT ERRED BY DENYING DEFENDANT'S MOTION OF INTENT TO RELOCATE OUT OF STATE BASED ON EVIDENCE, OBTAINED INAPPROPRIATELY, AND THE FAILURE OF THE TRIAL COURT TO SPECIFY THE

FACTUAL EVIDENCE THAT CLAIMED TO HAVE OUTWEIGHED THE ADVANTAGES OF THE MOVE."

{¶11} Assignment of Error No. 4:

{¶12} "THE TRIER OF THE OBJECTION [sic] OF THE MAGISTRATE'S DECISION ERRED BY IGNORING THE ISSUES OF THE 3RD ERROR OF THE TRIAL COURT [sic]."

{¶13} We are precluded from reviewing the issues raised in appellant's assignments of error. Appellant had a duty to file a transcript of the proceedings or such parts of it as were necessary to enable this court to review the domestic relations court's decision. See *Spicer v. Spicer*, Butler CA2005-10-443, 2006-Ohio-2402, ¶4. While appellant provided this court with an audio recording of the proceedings, he failed to provide a *written* transcript of the proceedings as required by App.R. 9(A), which provides in pertinent part:

{¶14} "Proceedings recorded by means other than videotape must be transcribed into written form. When the written form is certified by the reporter in accordance with App. R. 9(B), such written form shall then constitute the transcript of proceedings."

{¶15} In this case, appellant failed to provide this court with a transcript of the proceedings or an acceptable alternative, as required by App.R. 9, and therefore this court must presume the regularity of the proceedings in the domestic relations court. *Id.* at ¶5. Nevertheless, our analysis of the record in this case has led us to conclude that the domestic relations court failed to properly certify this case to the juvenile court, and therefore jurisdiction over this case never vested in the juvenile court.

{¶16} R.C. Chapter 3109 provides two methods by which a domestic relations court may certify a case to the juvenile court: R.C. 3109.04(D)(2) and 3109.06. See *In*

re: *Whaley*, 86 Ohio App.3d 304, 311-312. R.C. 3109.04(D)(2) states:

{¶17} "If the court finds, with respect to any child under eighteen years of age, that it is in the best interest of the child for neither parent to be designated the residential parent and legal custodian of the child, it may commit the child to a relative of the child or certify a copy of its findings, together with as much of the record and the further information, in narrative form or otherwise, that it considers necessary or as the juvenile court requests, to the juvenile court for further proceedings, and, upon the certification, the juvenile court has exclusive jurisdiction."

{¶18} The version of R.C. 3109.06 in effect at the time the domestic relations court issued its certification order states, in pertinent part:

{¶19} "Any court, other than a juvenile court, that has jurisdiction in any case respecting the allocation of parental rights and responsibilities for the care of a child under eighteen years of age and the designation of the child's place of residence and legal custodian or in any case respecting the support of a child under eighteen years of age, may, on its own motion or on motion of any interested party, *with the consent of the juvenile court*, certify the record in the case or so much of the record and such further information, in narrative form or otherwise, as the court deems necessary or the juvenile court requests, to the juvenile court for further proceedings; upon the certification, the juvenile court shall have exclusive jurisdiction.

{¶20} "In cases in which the court of common pleas finds the parents unsuitable to have the parental rights and responsibilities for the care of the child or children and unsuitable to provide the place of residence and to be the legal custodian of the child or children, consent of the juvenile court shall not be required to such certification."

(Emphasis added.)¹

{¶21} The domestic relations court did not certify this case to the juvenile court under R.C. 3109.04(D)(2) since the domestic relations court did not find that it was in the best interest of the child for neither parent to be designated the residential parent and legal custodian of the children. The domestic relations court also did not certify this case to the juvenile court under R.C. 3109.06 since there is nothing in the record to show that the domestic relations court certified the case to the juvenile court *with the juvenile court's consent*, as required by the first paragraph of R.C. 3109.06, or *without the juvenile court's consent* after finding that the parties were "unsuitable" parents, as required by the second paragraph of R.C. 3109.06. Instead, the domestic relations court attempted to certify this case to the juvenile court by relying solely on R.C. 2151.23(A)(1), explaining its reasoning as follows:

{¶22} "Section 2151.23 of the Ohio Revised Code (R.C.) is controlling. Division (A) of §2151.23 R.C. reads, in part, 'The juvenile court has exclusive and original jurisdiction under the Revised Code as follows: (1) Concerning any child who *** is alleged *** abused, neglected, or dependent ***.'" "

{¶23} After construing R.C. 2151.23(A)(1) in this manner, the domestic relations court certified the case to the juvenile court on the ground that the juvenile court has "exclusive and original jurisdiction concerning any child alleged to be an abused child." However, the domestic relations court misconstrued R.C. 2151.23(A)(1) by improperly deleting words from that statute that are critical to its meaning. See *Hall v. Banc One*

1. R.C. 3109.06 has been amended as of June 17, 2010, and now begins, "Except as provided in division (K) of section 2301.03 of the Revised Code, any court ***." R.C. 2301.03(K) also has been amended as of that date, and now provides that "in Butler county: (1) *** The judges of the division of domestic relations also have concurrent jurisdiction with judges of the juvenile division of the court of common pleas of Butler county with respect to and may hear cases to determine *** an action that is within the exclusive original jurisdiction of the juvenile division of the court of common pleas of Butler county and that involves an allegation that the child is an abused, neglected, or dependent child, and post-decree proceedings and

Mgt. Corp, 114 Ohio St.3d 484, 487, 2007-Ohio-4640, ¶24 (in interpreting a statute, a court is bound by the language enacted by the General Assembly and must give effect to the words used in a statute, neither disregarding or deleting portions of the statute through interpretation, nor inserting language not present).

{¶24} Construed properly, R.C. 2151.23(A)(1) states, in relevant part, "The juvenile court has exclusive original jurisdiction under the Revised Code *** [c]oncerning any child who on or about the date specified in the *complaint, indictment, or information* is alleged to be *** abused, neglected, or dependent[.]" (Emphasis added.) Thus, contrary to what the domestic relations court found, R.C. 2151.23(A)(1) does not provide the juvenile court with exclusive original jurisdiction concerning a child who is alleged by *any person* to be abused, neglected or dependent, rather, it provides the juvenile court with exclusive original jurisdiction concerning any child whom "*a complaint, indictment, or information*" alleges to be such things as abused, neglected or dependent. *Id.*

{¶25} In this case, there was no complaint, indictment or information that contained allegations of abuse, neglect or dependency. Instead, the trial court based its finding that one of the parties' children may have been sexually abused on testimony presented to its magistrate at a hearing held on the parties' motions. The magistrate, in turn, had found that the testimony of appellee, her new husband, and the child's therapist "are allegations that [the child] may be abused, neglected and/or dependent[.]" and further found that allegations that this child's behavior "may impact or be directed" towards the other child also "amounts to allegations of abuse, neglect and/or dependency." However, these allegations do not amount to allegations in a complaint, indictment or information, for purposes of R.C. 2151.23(A)(1).

{¶26} In light of the foregoing, we conclude that the domestic relations court

lacked authority to certify this case to the juvenile court under R.C. 2151.23(A), and that the juvenile court was never properly vested with jurisdiction over this case since the case was never "duly certified" to it. R.C. 2151.23(D). Moreover, while appellant did not raise this error either on appeal or in the trial court, we still must recognize the error since it concerns a matter related to the subject matter jurisdiction of the domestic relations court and the juvenile court, and therefore the error can and must be raised by this court, sua sponte, even though it was not raised by one of the parties. See *Curry v. Blanchester*, Clinton App. Nos. CA2008-07-024, CA2008-07-023, 2009-Ohio-1649, ¶19.

{¶27} Accordingly, the judgment of the domestic relations court transferring this cause to the juvenile court is reversed and the matter remanded to the domestic relations court for further proceedings in accordance with our decision.

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