

[Cite as *Beck v. Beck*, 2010-Ohio-1694.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SEAN W. BECK

Defendant-Appellant

-vs-

BRITTON M. BECK

Plaintiff-Appellee

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. Sheila G. Farmer, J.

Case No. CT2009-0020

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court
of Common Pleas, Domestic Relations
Division Case No. DA2007-0855

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

April 14, 2010

APPEARANCES:

For Defendant-Appellant

For Plaintiff-Appellee

SEAN W. BECK, PRO SE
Franklin County Jail
370 South Front Street
Columbus, Ohio 43215

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Hoffman, J.

{¶1} Defendant-appellant Sean W. Beck appeals the April 2, 2009 Judgment Entry of the Muskingum County Court of Common Pleas, Domestic Relations Division, in favor of Plaintiff-appellee Britton M. Beck.

STATEMENT OF THE FACTS AND CASE

{¶2} The parties were married on June 14, 2002, and one child was born of the marriage on June 27, 2005.

{¶3} On October 16, 2007, Appellee Briton M. Beck filed a complaint for divorce in the Muskingum County Court of Common Pleas, Domestic Relations Division. At the time of the filing and throughout the proceedings herein, Appellant Sean W. Beck has been incarcerated as a result of a series of police corruption and drug charges. At the time the briefs were filed in this matter, Appellant was awaiting sentencing after having entered a plea of guilty to the charges.

{¶4} During the course of the proceedings before the trial court, Appellant was represented by several different attorneys. The original trial date was continued due to one counsel's withdraw from the case on September 2, 2008. The trial court continued the trial until February 24, 2009, affording Appellant the opportunity to retain new counsel. On the morning of February 24, 2009, Appellant's new counsel appeared and orally requested a continuance. The trial court denied the request. The matter proceeded to trial, and via Judgment Entry of April 2, 2009, the trial court granted judgment in favor of Appellee. The trial court entered a final decree of divorce on May 12, 2009.

{¶5} Appellant now appeals, assigning as error:

{¶16} “I. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION BY NOT PERMITTING APPELLANT, ACTING PRO SE AND IN THE CUSTODY OF THE FRANKLIN COUNTY JAIL, TO FILE PENCIL MOTIONS WITH THE COURT.

{¶17} “II. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION AND ACTED ARBITRARILY AND UNREASONABLY TO THE PREJUDICE OF APPELLANT IN DENYING APPELLANTS MOTION TO CONTINUE.

{¶18} “III. TRIAL COURT ERRED AND ABUSED ITS DISCRETION TO THE PREJUDICE OF APPELLANT BY PERMITTING EX-PARTE COMMUNICATIONS WITH APPELLEES [SIC] COUNSEL WHICH RESULTED OF [SIC] APPELLANTS DENIAL OF APPELLANTS MOTION TO CONTINUE.

{¶19} “IV. APPELLANT RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL.”

I.

{¶10} In the first assignment of error, Appellant maintains the trial court abused its discretion by not allowing Appellant to file pro se pencil motions with the court. Appellant maintains the trial court’s refusal to accept said motions limited his access to the court. We disagree.

{¶11} Throughout the course of the proceedings before the trial court, several different attorneys represented Appellant’s interests before the trial court. Appellant’s various counsel all had the opportunity to file any motion requested by Appellant during the tenure of their respective representation. Assuming arguendo the trial court erred in refusing to accept the motions, Appellant has not proffered the substance of the motions

in his brief to this Court; therefore, Appellant has not demonstrated prejudice as a result of the trial court's refusal to accept the same.

{¶12} The first assignment of error is overruled.

II.

{¶13} In the second assignment of error, Appellant maintains the trial court erred in denying his oral request for a continuance on February 24, 2009.

{¶14} Initially, we note, the decision whether to grant a motion for continuance is within the sound discretion of the trial court. As set forth in the Statement of the Facts and Case above, Appellant orally moved the trial court for a continuance on the date of trial. Appellant had previously been granted a continuance of the trial date. The record indicates Appellant retained and then discharged three qualified attorneys during the course of the proceedings leading up to the trial date. Appellant could have retained new counsel in preparation for trial from September, 2008, until February, 2009. Accordingly, we find the trial court did not abuse its discretion in denying Appellant's oral motion for continuance made the day of trial.

{¶15} The second assignment of error is overruled.

III.

{¶16} In the third assignment of error Appellant maintains the trial court abused its discretion in engaging in ex-parte communications with Appellee's counsel resulting in the denial of Appellant's motion for a continuance.

{¶17} Upon review, Appellant's assigned error begs this Court to infer from the record the trial court engaged in ex-parte communications with Appellee's counsel relative to Appellant's seeking a continuance of the trial date scheduled. This Court is

unable to make such an inference from the record. Further, assuming the trial court did engage in communications with Appellee's counsel relative to the trial date scheduled, we already found the trial court did not abuse its discretion in denying the continuance.

{¶18} Canon 3 of the Ohio Code of Judicial Conduct, states:

{¶19} "A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

{¶20} ****

{¶21} "(B) Adjudicative Responsibilities.

{¶22} * * *

{¶23} "(7) A judge shall not initiate, receive, permit, or consider communications made to the judge outside the presence of the parties or their representatives concerning a pending or impending proceeding except:

{¶24} "(a) Where communications require, *ex parte* communications for scheduling, administrative purposes, or emergencies that do not address substantive matters or issues on the merits are permitted if the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of *ex parte* communication."

{¶25} Even had the record affirmatively demonstrated the complained of *ex parte* communication occurred, we find it went to a scheduling issue and not the substantive matters, and is not prohibited by the canon.

{¶26} Based upon the above, the third assignment of error is overruled.

IV.

{¶27} In the final assignment of error, Appellant asserts he was denied the effective assistance of trial counsel. However, the right to effective assistance of

counsel does not apply to civil proceedings of the nature sub judice. *Phillis v Phillis* (November 14, 2005), Morgan App. No. CA05 003, 2005-Ohio-6200.

{¶28} “The Sixth Amendment to the United States Constitution provides a right to effective assistance of counsel in a criminal proceeding. *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052, 2063, 80 L.Ed.2d 674, 692. The right to be represented by counsel in a criminal proceeding where the state seeks to take the defendant's life, liberty, or property is guaranteed by the Fifth Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment. However, in a civil case between individual litigants, there is no constitutional right to representation. The state does provide a forum, via the judicial system, in which litigants can resolve disputes. Litigants may seek to be represented in this forum by attorneys trained in procedure and the law. But it is the litigant himself who selects that attorney. Therefore, the litigant cannot thereafter complain that his attorney was ineffective and require the other litigant to bear the loss for such negligent selection of an attorney. See *Link v. Wabash RR. Co.* (1962), 370 U.S. 626, 633-634, 82 S.Ct. 1386, 1390, 8 L.Ed.2d 734, 739-740. Although the custody award will not be affected, any complaint of ineffective assistance of counsel may only be resolved in a malpractice action.”

{¶29} *Roth v. Roth* (1989), 65 Ohio App.3d 768, 776.

{¶30} Accordingly, the fourth assignment of error is overruled.

{¶31} For the reasons set forth, the judgment of the Muskingum County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Farmer, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SEAN W. BECK

Defendant-Appellant

-vs-

BRITTON M. BECK

Plaintiff-Appellee

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JUDGMENT ENTRY

Case No. CT2009-0020

For the reasons stated in our accompanying Opinion, the judgment of the Muskingum County Court of Common Pleas, Domestic Relations Division, is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Sheila G. Farmer
HON. SHEILA G. FARMER