

[Cite as *Crawford v. Crawford*, 2010-Ohio-4239.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STACY L. CRAWFORD

Plaintiff-Appellee

-vs-

BRIAN A. CRAWFORD

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Sheila G. Farmer, J.

Case No. 10CA36

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Richland County Court of
Common Pleas, Domestic Relations
Division, Case No. 2009DIV0609

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 26, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant Brian A. Crawford (“Husband”) appeals the March 2, 2010 Judgment Entry entered by the Richland County Court of Common Pleas, Domestic Relations Division, which overruled his objections to the magistrate’s January 29, 2010 decision and adopted said decision as its own. Plaintiff-appellee is Stacy L. Crawford (“Wife”).¹

STATEMENT OF THE CASE AND FACTS

{¶2} Husband and Wife were married on December 31, 1998, in Mansfield, Ohio. Three children were born as issue of said union and all three are still minors. On May 8, 2009, Wife filed a Complaint for Divorce in the Richland County Court of Common Pleas, Domestic Relations Division. Husband was, and remains, incarcerated at the Southern Ohio Correctional Facility in Lucasville, Ohio, serving a forty year sentence after being convicted of 8 counts of rape, 15 counts of sexual battery, and 20 counts of gross sexual imposition, involving his step-daughters. Husband responded to Wife’s Complaint by filing a Civ.R. 12(B)(6) Motion to Dismiss.

{¶3} The trial court issued temporary orders on June 24, 2009. Pursuant thereto, Husband was not provided with any parenting time due to his incarceration. The matter came on for final hearing before the magistrate on January 22, 2010. Husband was not present and not represented by counsel. Via Magistrate’s Decision filed January 29, 2010, the magistrate recommended Wife be granted a divorce from Husband on the ground Husband was incarcerated in a State correctional institution at the time of the filing of the Complaint for Divorce. The magistrate further recommended

¹ Wife has not filed a brief in this matter.

Wife be designated the sole residential parent and legal custodian of the children, and Husband have no parenting time with the children. The magistrate granted the children permission to initiate written contact with Husband through Wife. Husband was, in turn, allowed to respond in writing to the children's written communications, but Wife was permitted to review such correspondence to determine if the content was appropriate. Husband filed objections to the magistrate's decision. Husband did not request Findings of Fact and Conclusions of Law. Husband failed to provide a transcript of the magistrate's hearing to the trial court. Via Judgment Entry filed March 2, 2010, the trial court overruled Husband's objections and adopted the magistrate's decision as its own.

{¶4} It is from this judgment entry husband appeals, raising the following assignments of error:

{¶5} "I. THE TRIAL COURT COMMITTED REVERSIBLE AND PREJUDICIAL ERROR IN DENYING APPELLANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO OHIO RULE OF CIVIL PROCEDURE 12(B)(6).

{¶6} "II. THE TRIAL COURT COMMITTED REVERSIBLE AND PREJUDICIAL ERROR AS WELL AS ABUSED ITS DISCRETION IN FAILING TO ORDER PARENTING TIME BETWEEN APPELLANT AND HIS CHILDREN AS WELL THE METHOD BY WHICH APPELLANT PURPORTEDLY HAS ACCESS TO COMMUNICATE WITH HIS CHILDREN.

{¶7} "III. THE TRIAL COURT ABUSED ITS DISCRETION AND VIOLATED APPELLANT'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS WHEN

SAID COURT DENIED APPELLANT'S MOTION TO BE PRESENT AT THE TRIAL IN THE COURT BELOW.

{¶8} "IV. THE TRIAL COURT ABUSED ITS DISCRETION IN THE ORDERING OF PROPERTY."

I

{¶9} In his first assignment of error, Husband asserts the trial court erred in denying his motion to dismiss. Specifically, Husband submits Wife's allegation he "has been guilty of conduct which constitutes grounds for divorce as set forth in O.R.C. § 3105.01" was merely a legal conclusion and not supported by the facts set forth in the Complaint.

{¶10} The standard of review on a Civ.R. 12(B)(6) motion to dismiss is de novo. *Greenley v. Miami Valley Maintenance Contrs., Inc.* (1990), 49 Ohio St.3d 228, 551 N.E.2d 981. A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.* (1992), 65 Ohio St.3d 545, 605 N.E.2d 378. Under a de novo analysis, the appellate court must accept all factual allegations of the complaint as true and all reasonable inferences must be drawn in favor of the nonmoving party. *Byrd v. Faber* (1991), 57 Ohio St.3d 56, 565 N.E.2d 584. Unsupported conclusions of a complaint, however, are not considered admitted and are not sufficient to withstand a motion to dismiss. *State ex rel. Seikbert v. Wilkinson* (1994), 69 Ohio St.3d 489, 490.

{¶11} Civ.R. 8(A) states: "A pleading that sets forth a claim for relief. . . shall contain (1) a short and plain statement of the claim showing that the party is entitled to relief. . .". Civ.R. 84 provides: "The forms contained in the Appendix of Forms which the

supreme court from time to time may approve are sufficient under these rules and are intended to indicate the simplicity and brevity of statement which these rules contemplate.” Form 20 sets forth the form of a Complaint for Divorce, Alimony and Custody of Children.

{¶12} When comparing Wife’s pleading to Form 20, we find it suffices to set forth a claim for relief. Although Wife did not specify which one(s) of the statutory grounds for relief applied, we find reference to R.C. 3105.01 was sufficient to give Husband adequate notice of the nature of the action. When reviewing the Complaint as a whole, we find it sets forth sufficient operative ground to give Husband notice of the claim. Under Civ.R. (8) much less emphasis is placed on the form of the language in the complaint, distinctions between “facts, conclusions of law”, and “evidence” being minimized. (See, 1970 Staff Notes in Civ.R. 8(A) citing *Conley v. Gibson*, (1957) 355 U.S. 41 at 47, 48).²

{¶13} Husband’s first assignment of error is overruled.

II, IV

{¶14} Before addressing the merits of Husband’s second and fourth assignments, we must discuss the state of the record before this Court.

{¶15} As set forth in the Statement of the Case and Facts, *supra*, Husband failed to provide the trial court with a transcript of the proceedings before the magistrate. The trial court, in its March 2, 2010 Judgment Entry, noted Husband’s failure to submit the

² Husband could have moved under Civ.R. 12(E) for a more definite statement if he felt Wife’s pleading was so vague that he could not respond.

transcript of the proceedings before the magistrate resulted in any objection relating to a finding of fact was overruled.

{¶16} On review, we find the rationale often relied upon in *Knapp v. Edwards Labs.* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384, applies in the within case. The duty to provide the transcript of the proceedings before the magistrate fell upon Husband as he had the burden of showing error by reference to matters in the record. See *State v. Skaggs* (1978), 53 Ohio St.2d 162, 372 N.E.2d 1355. “When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm.” *State v. Neal*, December 19, 2005, Delaware App. No.2005CAA02006. We believe this same rationale applies when a trial court reviews a magistrate's decision where the objector fails to produce the entire transcript for the trial court.

{¶17} Accordingly, we find no error or abuse of discretion relative to the trial court's decisions regarding parenting and property division.

{¶18} Husband's second and fourth assignments of error are overruled.

III

{¶19} In his third assignment of error, Husband argues the trial court abused its discretion and violated his constitutional right to due process in denying his request to be present at the final hearing before the magistrate.

{¶20} We note a divorce is a civil proceeding. As an incarcerated prisoner, Husband had no absolute due process right to attend a civil trial to which he was a party. *Mancino v. Lakewood* (1987), 36 Ohio App.3d 219, 221, 523 N.E.2d 332.

{¶21} A review of the record does not establish the trial court acted in an improper manner or denied Husband his right to due process.

{¶22} Husband's third assignment of error is overruled.

{¶23} The judgment of the Richland County Court of Common Pleas, Domestic Relations Division, is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Farmer, J. concur

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

s/ W. Scott Gwin
HON. W. SCOTT GWIN

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

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

STACY L. CRAWFORD

Plaintiff-Appellee

-vs-

BRIAN A. CRAWFORD

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 10CA36

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

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

s/ W. Scott Gwin
HON. W. SCOTT GWIN

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