

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Renee Mathews

Court of Appeals No. L-11-1239

Appellee

Trial Court No. DR 2004-0530

v.

Mark R. Zaciek

DECISION AND JUDGMENT

Appellant

Decided: June 22, 2012

* * * * *

Mary E. Smith, for appellee.

Mark R. Zaciek, pro se.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the September 1, 2011 judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, which overruled the objections of appellant, Mark Zaciek, to the magistrate's decision and adopted the magistrate's

decision. Upon consideration of the assignments of error, we affirm the decision of the lower court. Appellant asserts the following assignments of error on appeal:

Assignment of error No. 1

The Magistrate erred in his Conclusion of Law Item 3 Paragraph 2 Page 6 of his decision: “As this amount appears to have been properly divided by the Qualified Domestic Relations Order issued June 13, 2008, Plaintiff is entitled to relief other than contribution by Defendant for costs of preparation and attorney fees.”

Assignment of error No. 2

The Magistrate erred in his Conclusion that the Appellee (Plaintiff) is entitled to any portion of the marital assets. Item 1 of the magistrate’s Conclusion of Law states: “The Final Decree of Divorce, prepared by Plaintiff, is lacking in specificity.”

{¶ 2} This appeal arises out of appellant’s refusal to sign the Qualified Domestic Relations Orders submitted by appellee on June 13, 2008, and appellee’s subsequent motion to show cause filed on June 17, 2008.

{¶ 3} The magistrate’s decision contains two key findings and conclusions of law to which appellant later objected. The magistrate found that the divorce decree contained an order that the parties would equally share retirement benefits and generally set forth five retirement accounts. The magistrate considered the evidence regarding the balance in these retirement accounts and concluded that appellee was deprived of her share of

appellant's retirement accounts and therefore offset the amount due her from appellant by the amount she owed appellant from her obligation to share her retirement accounts with appellant. The excess amount owed to appellant was then applied to satisfy the attorney fees owed to appellee. The magistrate also found appellant in contempt for failing to obey the court's order and fined him \$250, which could be purged by paying \$969.40 for the attorney fees, court costs, and costs incurred for preparation of the Qualified Domestic Relations Orders. The magistrate dismissed appellant's request for a jury trial and legal representation.

{¶ 4} Appellant objected to the valuation of certain retirement accounts on the ground that appellee failed to meet her burden of proof regarding the value of the retirement funds and the transfer of funds out of appellant's funds. Appellant objected to the contempt finding on the grounds that appellee's motion to show cause did not allege a violation of a court order and appellant was entitled to a jury trial and legal representation. However, appellant failed to include a complete trial transcript in support of his objections.

{¶ 5} The trial court found that appellee's motion to show cause alleged that appellant committed an indirect civil contempt because she sought to compel appellant to abide by the court's final divorce decree and equally divide the retirement benefits. Because the matter did not involve criminal contempt and there is no right to a jury trial in domestic relations cases pursuant to Civ.R. 75(C) or in contempt proceedings pursuant to R.C. 2705.05, the court concluded that appellant's motion for a jury trial and legal

counsel was properly dismissed. As to appellant's objection that he did not commit contempt, the trial court concluded that it was unable to review the factual findings of the magistrate because appellant failed to file a transcript of the hearing. Based upon the magistrate's factual findings, the court affirmed and adopted the magistrate's legal conclusions. Appellant appealed from this judgment.

{¶ 6} Appellant's first assignment of error relates to the magistrate's decision to offset retirement funds owing to appellant against the amount he owed for the costs of preparation and attorney fees he was ordered to pay. Because this objection was not made before the trial court, it was waived and, therefore, we will not consider it on appeal.

{¶ 7} Furthermore, appellant argues in his brief that the magistrate's factual findings were not supported by sufficient evidence. If the objecting party does not support his objections with the transcript of proceedings, as required by Civ.R. 53(D)(4)(c), the trial court cannot reverse the magistrate's findings of fact and may only consider the resolution of the legal issues based on those facts. *Beaverson v. Beaverson*, 6th Dist. No. WD-06-080, 2007-Ohio- 560, ¶ 3. On appeal, the appellate court's review is limited to a determination of whether the trial court abused its discretion in adopting the magistrate's legal conclusions. *State ex rel. Duncan v. Chippewa Twp. Trustees*, 73 Ohio St.3d 728, 730, 654 N.E.2d 1254 (1995). Therefore, we cannot address the factual issues raised by appellant. Appellant's first assignment of error is not well-taken.

{¶ 8} In this second assignment of error, appellant argues that the trial court erred in finding that the final divorce decree lacked specificity regarding the retirement accounts involved. Again, the factual findings of the magistrate cannot be challenged on appeal in this case. Appellant further argues that he was not bound to obey the divorce decree settlement agreement. This issue was not raised in appellant's objections to the magistrate's decision and is, therefore, waived. Appellant's other arguments relate to issues which are not the subject of this appeal. Appellant's second assignment of error is not well-taken.

{¶ 9} Having found that the trial court did not commit error prejudicial to appellant, the judgment of the Lucas County Court of Common Pleas, Domestic Relations Division, is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
