

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

IN THE MATTER OF: L.J.G. : **MEMORANDUM OPINION**
 : **CASE NO. 2012-T-0014**

Civil Appeal from the Trumbull County Court of Common Pleas, Juvenile Division,
Case No. 2010 JC 76.

Judgment: Appeal dismissed.

Tamara D. Parkin, 39 East Market Street, Akron, OH 44308 (For Appellant, Nicholas Green).

Rhonda L. Granitto Santha, 6401 State Route 534, Farmington, OH 44491 (For Appellees, Esther Schaab-Wells and Alfred Wells).

Michael Georgiadis, 135 Pine Avenue, S.E., Suite 211, Warren, OH 44481 (Guardian ad litem)

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Nicholas Green, appeals the judgment of the Trumbull County Court of Common Pleas, Juvenile Division, purporting to overrule objections to a magistrate's decision filed after the 14-day requirement set forth in Civ.R. 53(D)(3)(b)(i) and after the court had entered a final judgment adopting the decision. As such and as fully explained below, this court does not have jurisdiction to review Mr. Green's appeal from that entry, and the appeal is dismissed.

{¶2} Mr. Green and Samantha Louise Schaab began a long-distance romantic relationship; Mr. Green resided in Colorado and Ms. Schaab in Ohio. Ms. Schaab moved to Colorado and the two had a son together, L.J.G., born March 15, 2009. The couple subsequently moved to Ohio to be closer to Ms. Schaab's parents—Esther Schaab-Wells and Alfred Wells (“the Wells”). Subsequently, the couple ended their relationship amicably, and Mr. Green returned to Colorado. The two remained in contact and agreed that L.J.G. would be taken to Colorado to live with Mr. Green once employment and residency were secured. However, Ms. Schaab's mother, Esther, did not approve of the plan.

{¶3} Around the time Ms. Schaab was planning to take L.J.G. to Colorado, the Wells filed a dependency complaint and also sought to be named legal custodians of the child. The Wells averred that Ms. Schaab, though residing in the Wells' household, was absent from the home for extended periods and was in the company of “various male subjects.” They further averred Ms. Schaab did nothing to care for the child. They also detailed their suspicions concerning their daughter's drug and alcohol abuse. Soon thereafter, they were awarded temporary custody.

{¶4} Mr. Green soon became involved in the action, filing a cross-motion seeking custody of the child. The guardian ad litem filed a report on April 12, 2011, recommending that custody be maintained with the maternal grandparents. A hearing on the motions was held on April 15, 2011. The guardian ad litem testified at a separate hearing on June 2, 2011.

{¶5} On July 6, 2011, the magistrate issued a decision granting full custody to the Wells. The trial court adopted the decision on the same day. On July 22, 2011, Mr.

Green filed untimely objections to the decision. The trial court then entered a decision purporting to “overrule” Mr. Green’s untimely objections.

{¶6} Mr. Green now appeals from the trial court’s denial and asserts two assignments of error:

{¶7} [1.] The trial court committed prejudicial error in considering the testimony of the GAL with great weight, as he failed to conduct any independent investigation as required by Rule 48 of the Rules of Superintendence for the Courts of Ohio as well as Rule 35 of the Trumbull County Common Pleas Court, Domestic Relations Division’s Local Rules.

{¶8} [2.] The trial court committed prejudicial error in finding that Mr. Green is not a suitable parent and by inappropriately applying the factors in ORC 3109.04 to this case.

{¶9} Appellate courts are required to raise jurisdictional questions sua sponte. In the absence of a timely appeal from a final, appealable order, an appellate court does not have jurisdiction to review the issue. See App.R. 4(A); see also *Barnes v. Andover Village Retirement Community, Ltd.*, 11th Dist. No. 2003-A-0122, 2004-Ohio-1705, ¶10, citing *State ex. rel. Pendell v. Adams Cty. Bd. of Elections*, 40 Ohio St.3d 58, 60 (1988). (“The time requirement is jurisdictional in nature, and may not be enlarged by an appellate court.”) Thus, though not raised by either party, we must first determine whether this court has jurisdiction to hear the appeal.

{¶10} Civ.R. 53(D)(3)(b)(i) provides: “[a] party may file written objections to a magistrate’s decision within fourteen days of the filing of the decision, whether or not the

court has adopted the decision during that fourteen-day period.” Pursuant to Civ.R. 53(D)(4)(e)(i), “the timely filing of objections to the magistrate’s decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.” Conversely, if the objections are not timely filed, and the trial court has already adopted the magistrate’s decision, then “App.R. 4(A) allows a party to file a notice of appeal within 30 days after the trial court enters its judgment adopting the magistrate’s decision.” *Levy v. Ivie*, 195 Ohio App.3d 251, 2011-Ohio-4055, ¶11 (10th Dist.).

{¶11} In this case, the trial court adopted the magistrate’s decision on the same day the decision was issued. Mr. Green did not timely file objections to the magistrate’s decision within the time allotted pursuant to Civ.R. 53(D)(3)(b)(i). Mr. Green also did not initiate an appeal within the time allotted pursuant to App.R. 4(A). Thus, without timely objections to the magistrate’s decision, the trial court’s initial judgment adopting the decision remained the final, appealable order. Mr. Green’s untimely objections were, essentially, a motion for reconsideration of the final order. See *Levy v. Ivie*, *supra*, ¶15, citing *Murray v. Goldfinger, Inc.*, 2d Dist. No. 19433, 2003-Ohio-459 (holding untimely objections filed after a final judgment tantamount to a motion for reconsideration—i.e., a legal nullity).

{¶12} As a result, the trial court lacked jurisdiction to rule on Mr. Green’s untimely objections in its subsequent journal entry. See *Karnofel v. Girard Police Dept.*, 11th Dist. No. 2009-T-0045, 2009-Ohio-4446 (a motion for reconsideration is not recognized under the Ohio Rules of Civil Procedure; therefore any judgment on such a motion is a nullity and cannot be appealed); see also *Pitts v. Ohio Dept. of Transp.*, 67

Ohio St.2d 378, 379 (1981). Thus, the trial court's judgment purporting to rule on Mr. Green's untimely objections is itself a nullity that cannot be reviewed on appeal. The only final order in this case was issued by the trial court on July 6, 2011. As noted above, if timely objections had been filed, this order would have been stayed. Since the objections were not timely filed, the trial court's order became final, and the notice of appeal was due 30 days from July 6, 2011. This court is consequentially without jurisdiction to entertain the merits of this appeal.

{¶13} As an additional note, even if this court had jurisdiction, we would be unable to review the assignments of error because Mr. Green failed to file a transcript from the hearing wherein the guardian ad litem testified. Given the trial court's finding that this testimony was given great weight, and given the assignments of error, this omission is fatal. See App.R. 9(B).

{¶14} The appeal is hereby dismissed for lack of jurisdiction.

DIANE V. GRENDELL, J.,

MARY JANE TRAPP, J.,

concur.