[Cite as *Yoel v. Yoel*, 2012-Ohio-643.]

STATE OF OHIO, LAKE COUNTY

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

ANNE YOEL nka ANNE ROHDE,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	
v.	)	CASE NO. 2009-L-063
	)	
RAYMOND YOEL,	)	OPINION
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Court of Common Pleas, Domestic Relations Division of Lake County, Ohio
Case No. 97DR000428

JUDGMENT: Affirmed

APPEARANCES:

For Plaintiff-Appellee: Attorney Gary D. Zeid
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Mentor, Ohio 44060

For Defendant-Appellant: Attorney Raymond R. Yoel, Pro-se
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JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite

Dated:

[Cite as *Yoel v. Yoel*, 2012-Ohio-643.]
DONOFRIO, J.

{¶1} This appeal concerns six post-divorce judgment entries entered by the Lake County Common Pleas Court, Domestic Relations Division, involving custody and child support issues between defendant-appellant Raymond Yoel and plaintiff-appellee Anne J. Yoel (n.k.a. Rohde).

{¶2} Appellant and appellee were married in 1989 and had two children. Over thirteen years ago on November 12, 1998, the parties were divorced. Following their divorce, the parties have been involved in extensive and protracted litigation concerning custody and child support orders resulting in a complex and sometimes confusing procedural history. The parties' oldest child has since become emancipated. For ease of analysis, only the six post-divorce judgment entries which are the subject of this appeal will be addressed.

April 20, 2009

{¶3} This order designated appellee as the residential parent, established a visitation schedule for appellant, and set child support for the two minor children at $128.95 per month, per child.

{¶4} A thorough review of appellant's brief discloses no discernible assignment of error or legal argument relating to this judgment entry.

April 21, 2009

{¶5} This judgment entry denied appellant's Motion to Vacate the February 7, 2007 Magistrate's Decision, Motion for Pretrial and Final Hearing of All Pending Motions, Motion to Seal, Emergency Ex Parte Motion to Vacate the September 12, 2005 Judgment Entry, and Emergency Ex Parte Motion to Vacate the April 4, 2007 Magistrate's Order.

{¶6} Again, appellant did not separately challenge this judgment entry under an assignment of error.

June 3, 2009

{¶7} This order awarded Guardian Ad Litem, Sarah L. Heffter, fees in the total amount of Five Thousand Four Hundred Eighty-five Dollars and Fifty Cents ($5,485.50). Appellant was ordered to pay Two Thousand Seven Hundred Forty-two

Dollars and Seventy-five Cents ($2,742.75) of that amount.

{¶8} As appellee points out in her answer brief, appellant does not state his reasons for an appeal of the decision. He does not challenge the work performed, nor the rate of pay. His only argument goes to her qualifications to serve in such capacity.

{¶9} Under R.C. 2151.281 (I):

{¶10} "The guardian ad litem for an alleged or adjudicated abused neglected, or dependent child shall perform whatever functions are necessary to protect the best interest of the child…"

{¶11} And under section (J)(I):

{¶12} "When the court appoints a guardian ad litem pursuant to this section, it shall appoint a qualified volunteer or court appointed special advocate whenever one is available and the appointment is appropriate."

{¶13} In this case the trial court found that Sarah Heffter was fully qualified to serve as guardian ad litem. (12/11/2007 J.E.) This court previously noted such finding was made after the trial court received a copy of her Certificate of Completion of the Ohio Guardian ad Litem Training course and upon a review of other training received. *Yoel v. Yoel*, 11th Dist. No. 2008-L-006, 2008-Ohio-4768, ¶1.

{¶14} Appellant has not demonstrated that the guardian ad litem was not qualified to serve. Moreover, he has not framed an assignment of error challenging the amount he was ordered to pay for her fees or the work which she performed.

August 28, 2009

{¶15} The order of August 28, 2009 denied a series of motions to vacate either prior judgment entries or magistrate's decisions or magistrate's orders. Appellant has not raised a specific assignment of error relating to this entry.

September 18, 2009

{¶16} By this order appellant was found to be in direct contempt of court and fined One Hundred Dollars ($100.00). Appellant did not separately state an assignment of error directed to this judgment entry and therefore this court need not

address it for possible error. Moreover, appellant has failed to provide this court with a transcript of proceedings regarding the contempt hearing. Without a transcript of proceedings to demonstrate claimed error, the judgment of the trial court will be affirmed.

September 22, 2009

{¶17} This order denied appellant's motion to modify his summer visitation, restricted appellant's parenting time to one day per week for two hours, ordered appellant to deposit Five Thousand Dollars ($5,000.00) for psychological evaluations of both parties and one minor child (the oldest child would soon be eighteen) and ordered appellant to pay appellee's attorney fees.

{¶18} Again, appellant did not assign specific error to this judgment entry and has failed to provide this court with a hearing transcript relative to this proceeding. The appellant bears the burden of demonstrating error by reference to the record of proceedings and it is appellant's duty to provide the reviewing court with an adequate record to demonstrate error. *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980).

{¶19} Turning to appellant's assigned errors, he raises fourteen. He separately argues only the first five assignments of error.

{¶20} Initially, before going on to address appellant's individual assignments of error, it is important to note that appellant has rendered appellate review difficult by failing to meet his burden as the appellant under Ohio's Rules of Appellate Procedure to substantiate his alleged errors with reference to the trial court record. App.R. 12(A); App.R. 16(A)(7). Appellant has not provided a transcript of the proceedings associated with any of the six orders that are the subject of this appeal or any of his assigned errors, leaving this court with a silent record.

{¶21} On appeal it is the appellant's responsibility to support his argument by evidence in the record that supports the assigned errors. *Columbus v. Hodge*, 37 Ohio App.3d 68, 523 N.E.2d 515 (1987), paragraph two of the syllabus; *Fazenbaker v. Fazenbaker*, 11th Dist. No. 2009-T-0131, 2010-Ohio-5400, ¶19. Furthermore,

without a transcript of proceedings, the appellate court is bound to presume the regularity of the proceedings below and affirm. *Tochtenhagen v. Tochtenhagen*, 11th Dist. No. 2009-T-0011, 2010-Ohio-4557, ¶47, citing *Knapp v. Edwards Lab.*, 61 Ohio St.2d 197, 199, 400 N.E.2d 384 (1980). "Any lack of diligence on the part of an appellant to secure a portion of the record necessary to his appeal should inure to appellant's disadvantage rather than to the disadvantage of appellee." *Wood v. Wood,* 11th Dist. No.2009-T-0082, 2010-Ohio1154, ¶20, citing *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 19, 520 N.E.2d 564 (1998). "Unless the record transmitted on appeal includes an App.R. 9(C) statement that affirmatively demonstrates error, we must presume the trial court committed no error despite the fact the record is not complete." *Id*.

{¶22} With these underlying principles in mind, we turn to appellant's individual assignments of error. Appellant's first four assignments of error specifically concern the trial court's appointment of Sarah L. Heffter as guardian ad litem.

{¶23} A trial court's decision concerning the appointment or removal of guardian ad litem as well as their fees is reviewed only for an abuse of discretion. *Meyers v. Hendrich*, 11th Dist. No. 2009-P-0032, 2010-Ohio-4433, ¶21 (appointment and removal); *Holeski v. Holeski*, 11th Dist. No. 2009-P-0007, 2009-Ohio-6036, ¶28 (fees).

{¶24} Appellant's first assignment of error states:

{¶25} "LACKING JURISDICTION, THE TRIAL COURT ERRED, PREJUDICED DEFENDANT-APPELLANT, BY RESEARCHING, CONSIDERING, AND MAKING A FINDING AND ISSUING A JUDGMENT ENTRY ON AN ISSUE PRESENTLY WITHIN JURISDICTION OF THE APPELLATE COURT."

{¶26} Appellant argues that the trial court was without jurisdiction to enter its December 11, 2007 judgment entry finding that Sarah L. Heffter was qualified to serve as a guardian ad litem because of a pending appellate case.

{¶27} On November 27, 2006, appellant filed a notice of appeal of a judgment entry filed by the trial court on November 22, 2006. The November 22, 2006 entry

dealt with appellant's objections to a September 12, 2005 ex parte order and an April 12, 2006 magistrate's decision. That appeal was assigned case number 2006-L-248. Because that appellate case was still pending, appellant argues the trial court was without jurisdiction to enter its December 11, 2007 judgment entry finding that Sarah L. Heffter was qualified to serve as a guardian ad litem.

{¶28} Appellant's argument fails for two reasons. First, the trial court's December 11, 2007 judgment entry is not one of the six entries which are the subject of the present appeal. Second, the subject matter of appellate case number 2006-L-248 did not involve a guardian ad litem issue. Therefore, the trial court retained continuing jurisdiction over any guardian ad litem issues. Moreover, in divorce actions, it is well accepted that a trial court retains continuing jurisdiction over matters relating to the custody, care, and support of the parties' child or children. *Corbett v. Corbett*, 123 Ohio St. 76, 174 N.E. 10 (1930).

{¶29} Accordingly, appellant's first assignment of error is without merit.

{¶30} Appellant's second assignment of error states:

{¶31} "IF CONSIDERED TO HAVE JURISDICTION WITH REGARD TO ISSUES OF LACK OF QUALIFICATIONS, THEN THE TRIAL COURT MADE DUE PROCESS AND PROCEDURAL ERRORS, TO THE PREJUDICE OF DEFENDANT-APPELLANT, BY RESEARCHING, CONSIDERING, MAKING FINDINGS AND JOURNALIZING A DECISION WITHOUT PROVIDING DEFENDANT-APPELLANT OPPORTUNITY TO RESPOND."

{¶32} Appellant argues the trial court erred by failing to hold a hearing concerning issues he had with the court's appointment of guardian ad litem Sarah L. Heffter. He claims the guardian ad litem was unqualified for that appointment and that her fees were unreasonable.

{¶33} A review of the trial court's docket in this matter reveals that appellant never filed a motion with the court contesting the guardian ad litem's appointment, her qualifications, or the reasonableness of her fees. If appellant made an oral motion with the trial court raising any of his concerns with the guardian ad litem, he

has not met his burden to provide this court with a transcript of the proceedings in which he would have made such a motion. In other words, if the record before this court does not reveal any objection or motion with respect to the errors claimed below, any alleged error is deemed waived. *Goldfuss v. Davidson,* 79 Ohio St. 3d 116, 121, 679 N.E.2d 1099 (1997).

{¶34} Despite appellant's failure to properly preserve or support this alleged error, appellant has offered no statutory or legal precedent requiring the trial court to conduct a hearing relative to the guardian ad litem's fitness to serve. *Weisgarber v. Weisgarber*, 5th Dist. No. 2008CA0067, 2009-Ohio-20, ¶52. See, also, *Edwards v. Livingstone*, 11th Dist. Nos. 2001-A-0082, 2002-A-0060, 2003-Ohio-4099, ¶21. Nor is a hearing necessarily required for the payment of the guardian ad litem's fees. *Fox v. Fox*, 3d Dist. No. 5-03-42, 2004-Ohio-3344, ¶32. Also, appellant had three weeks to lodge any objections to the guardian ad litem's supplemental application for fees before the trial court granted payment and chose not to do so.

{¶35} Accordingly, appellant's second assignment of error is without merit.

{¶36} Appellant's third and fourth assignment of error state:

{¶37} "THE PREVIOUS TRIAL COURT JUDGE, WHO RECUSED HERSELF DUE TO QUESTIONS OF HER ABILITY TO BE IMPARTIAL, ERRED AND ABUSED HER DISCRETION, TO THE PREJUDICE OF DEFENDANT-APPELLANT, BY APPOINTING SARAH L. HEFTER AS GAL, EVEN THOUGH SHE DID NOT MEET MINIMUM QUALIFICATIONS AS REQUIRED BY THE JUDGES OWN DOMESTIC RELATIONS DIVISION RULES, AND IN VIOLATION OF SUPREME COURT GUIDELINES AND COMMON LAW."

{¶38} "THE OHIO SUPREME COURT AND ELEVENTH APPELLATE COURT HAVE ERRED, TO THE PREJUDICE OF DEFENDANT-APPELLANT, BY ALLOWING UNCONSTITUTIONAL HUGE DISPARITIES TO EXIST BETWEEN OHIO COUNTIES' COMMON PLEAS COURTS IN HOW EACH QUALIFY, SELECT, ASSIGN AND REIMBURSE DOMESTIC RELATIONS GUARDIAN AD LITEMS IN VIOLATION OF SUPREME COURT GUIDELINES AND CONSTITUTIONAL

GUARANTEES FOR EQUAL PROTECTIONS."

{¶39} Under these assignments of error, appellant argues that the trial court did not follow its own local rules of court when appointing the guardian ad litem because she did not meet the qualifications set forth in Loc.R. 15. Appellant also argues that the guardian ad litem did not meet the qualifications set forth by the Ohio Supreme Court in its guidelines and that there are disparities in the qualifications required for guardian ad litems among the counties within this appellate district.

{¶40} As with the second assignment of error, appellant has left this court without an adequate record by which to review the trial court's decision concerning the appointment of the guardian ad litem with respect to the qualifications set forth in the court's own local rules and the Ohio Supreme Court's guidelines. Regardless, this court has recognized that violations of a court's own local rules as well as nonconformance with the Ohio Supreme Court's guidelines concerning guardian ad litems is by itself typically insufficient to constitute grounds for reversal. *Allen v. Allen*, 11th Dist. No. 2009-T-0070, 2010-Ohio-475, ¶¶29-33.

{¶41} Accordingly, appellant's third and fourth assignments of error are without merit.

{¶42} Appellant's fifth assignment of error states:

{¶43} "THE CURRENT TRIAL COURT JUDGE ERRED, TO THE PREJUDICE OF DEFENDANT-APPELLANT, BY ALLOWING MAGISTRATES AND GAL, WITH CONFLICT OF INTERESTS EFFECTING THEIR ABILITY TO BE IMPARTIAL, PREVIOUSLY APPOINTED BY A TRIAL COURT JUDGE WHO RECUSED HERSELF DUE TO INABILITY TO BE IMPARTIAL, TO CONTINUE EVEN THOUGH THE MAGISTRATES AND GAL ARE STILL EMPLOYED, SUPERVISED AND EVALUATED BY THE PREVIOUS RECUSED JUDGE."

{¶44} In an entry filed on August 4, 2006, Judge Colleen J. Falkowski, who had been presiding over this case, noted that she felt that she believed that she could fairly and impartially preside over the case. However, due to "much litigation over procedural matters rather than substantive," she recused herself from the case

and transferred the case to Judge William W. Weaver. Magistrates James K. Farrell and Wendy L. Smithers continued to preside over and hear matters pertaining to this case. Appellant argues that there was a reasonable question as to each of these magistrates' ability to be impartial. Appellant argues that there was a reasonable question as to Magistrate Farrell's impartiality because he was supervised and controlled by Judge Falkowski. Appellant questions Magistrate Smithers' impartiality because she, Judge Falkowski, and appellee's current husband were all once supervised by the same person at the county prosecutor's office.

{¶45} The statutory procedures available to seek removal of a judge do not apply to magistrates. R.C. 2101.39, 2501.13, 2701.03, 2701.131; *In re Disqualification of Light*, 36 Ohio St.3d 604, 522 N.E.2d 458 (1988). Civ.R. 53 governs magistrates. Prior to when that rule was amended effective July 1, 2006, it was recognized that "[t]he removal of a magistrate is within the discretion of the judge who referred the matter to the magistrate and should be brought by a motion filed with the trial court." *In re Disqualification of Wilson*, 77 Ohio St.3d 1250, 1251, 674 N.E.2d 260 (1996). One of the amendments to the rule added Civ.R. 53(D)(6) which now provides that "[d]isqualification of a magistrate for bias or other cause is within the discretion of the court and may be sought by motion filed with the court."

{¶46} Appellant's argument here is lacking in two respects. First, none of the six trial court's orders which are the subject of this appeal concern or involve the court's decision with regards to appellant's motion(s) seeking recusal of the aforementioned magistrates. Second, appellant has failed to demonstrate how either magistrate would have been biased. As indicated, Judge Falkowski transferred the case to Judge Weaver. Therefore, any decision made by Magistrate Farrell or Magistrate Smithers concerning appellant's case was subject to review by Judge Weaver, not Judge Falkowski.

{¶47} Accordingly, appellant's fifth assignment of error is without merit.

{¶48} Appellant's remaining nine assignments of error (six through fourteen) will be addressed together. They state, respectively:

{¶49} "THE TRIAL COURT JUDGE ERRED, TO THE PREJUDICE OF THE DEFENDANT-APPELLANT, BY ALLOWING A MAGISTRATE TO CONTINUE TO SCHEDULE AND CONDUCT HEARINGS, MAKE EVIDENTIARY RULINGS AND ISSUE DECISIONS, EVEN THOUGH THAT MAGISTRATE WAS ASSIGNED, WAS STILL EMPLOYED AND STILL EVALUATED BY THE PRIOR TRIAL COURT JUDGE, WHO RECUSED HERSELF DUE TO CONFLICT OF INTEREST."

{¶50} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MAKING SUBSTANTIVE AND PROCEDURAL DUE PROCESS ERRORS, TO THE PREJUDICE OF THE DEFENDANT-APPELLANT AND DETRIMENT OF THE PARTIES MINOR CHILDREN, BY NOT DECLARING PLAINTIFF-APPELLEES SEPTEMBER 8, 2005, EX PARTE MOTION FOR MODIFICATION OF SHARED PARENTING AS AN ABUSE OF EX PARTE PROCEDURE AND THE TRIAL COURT COMPOUNDED THE ABUSE WITH ITS OWN FURTHER ABUSIVE ACTION IN ISSUING THE SEPTEMBER 12, 2005, JUDGEMENT ENTRY."

{¶51} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MAKING SUBSTANTIVE AND PROCEDURAL DUE PROCESS ERRORS, TO THE PREJUDICE OF THE DEFENDANT-APPELLANT AND DETRIMENT OF THE PARTIES MINOR CHILDREN, BY NOT HOLDING A TIMELY REHEARING AFTER ISSUING A SEPTEMBER 12, 2005, JUDGEMENT ENTRY IN RESPONSE TO AN EX-PARTE MOTION BY THE PLAINTIFF-APPELLEE."

{¶52} "THE TRIAL COURT VIOLATED OHIO RULES OF CIVIL PROCEDURE AND THE LOCAL RULES OF COURT, TO THE PREJUDICE OF THE DEFENDANT-APPELLANT AND DETRIMENT OF THE PARTIES MINOR CHILDREN, BY SCHEDULING ON NOVEMBER 17, 2006, A NOVEMBER 21, 2006, HEARING REGARDING PENDING MATTERS WHICH REQUIRED ADVANCE NOTICE OF AT LEAST SEVEN DAYS."

{¶53} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MAKING SUBSTANTIVE AND PROCEDURAL DUE PROCESS ERRORS, TO THE PREJUDICE OF THE DEFENDANT-APPELLANT AND DETRIMENT OF THE

PARTIES MINOR CHILDREN, BY NOT ALLOWING EVIDENCE AND TESTIMONY AT THE NOVEMBER 21, 2006, HEARING TO BE PRESENTED REGARDING OBJECTIONS TO THE APRIL 12, 2006, MAGISTRATES DECISION."

{¶54} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MAKING SUBSTANTIVE ERRORS, TO THE PREJUDICE OF THE DEFENDANT-APPELLANT, BY DISREGARDING TESTIMONY AND UNDISPUTED FACTS REGARDING EVENTS EFFECTING ATTENDANCE AT THE SEPTEMBER 27, 2005, HEARING AND IN NOT ALLOWING CONSIDERATION OF DEFENDANT-APPELLANT'S FEB?? XX, 2005, MOTION, WHICH WERE THE BASIS FOR OBJECTIONS TO THE APRIL 12, 2006, MAGISTRATES DECISION."

{¶55} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MAKING PROCEDURAL DUE PROCESS ERRORS, TO THE PREJUDICE OF THE DEFENDANT-APPELLANT AND DETRIMENT OF THE PARTIES MINOR CHILDREN, BY DISMISSING DEFENDANT-APPELLANT'S NOVEMBER 21, 2006, MOTION FOR RECONSIDERATION OF THE AUGUST 11, 2005, JOURNAL ENTRY."

{¶56} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MAKING SUBSTANTIVE AND PROCEDURAL DUE PROCESS ERRORS, TO THE PREJUDICE OF THE DEFENDANT-APPELLANT AND DETRIMENT OF THE PARTIES MINOR CHILDREN, IN DETERMINING IN ITS AUGUST 11, 2005, JOURNAL ENTRY THAT THE DEFENDANT-APPELLANT'S JUNE 30, 2003, MOTION TO MODIFY SHARED PARENTING DOES NOT CONTAIN WITHIN IT A SEPARATE REQUEST TO MODIFY CHILD SUPPORT."

{¶57} "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN MAKING SUBSTANTIVE AND PROCEDURAL DUE PROCESS ERRORS, TO THE PREJUDICE OF THE DEFENDANT-APPELLANT, BY DESIGNATING SARAH L. HEFFTER AS THE GUARDIAN AD LITEM IN THIS CASE, EVEN THOUGH SHE DID NOT MEET MINIMUM QUALIFICATIONS FOR SERVING AS A GUARDIAN AD LITEM AS REQUIRED BY THE COMMON PLEAS COURT DOMESTIC RELATIONS

DIVISION RULES, AND IN POSSIBLE VIOLATION OF OHIO REVISED CODE AND COMMON LAW."

{¶58} These assignments of error are addressed collectively because they each share a fatal procedural flaw. Ohio's Rules of Appellate Procedure clearly set forth the required form and content of appellate briefs filed in support of appeals before this court. App.R. 16(A)(7) requires that each assignment of error be separately argued with supporting citations:

{¶59} "(A) The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

{¶60} "* * *

{¶61} "(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. * * *"

{¶62} In this instance, none of appellant's sixth through fourteenth assignments of error contains any argumentation or any references to either the record or to citations of authority. App.R. 12(A) allows this court to "disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App.R. 16(A)."

{¶63} In addition to this shared procedural deficiency, these assignments of error also present a jurisdictional defect. Each of these assignments of error reference judgment entries or orders of the trial court which do not include any of the six judgment entries which are the subject of the present appeal.

{¶64} Additionally, to the extent appellant's assigned errors reference magistrate decisions, it should be noted that this court is without jurisdiction to hear an appeal directly from a magistrate's decision. That decision becomes appealable only after it is adopted by the trial court. *Wheeler v. Tubbs*, 11th Dist. No. 2008-L-159, 2008-Ohio-6411.

{¶65} Accordingly, appellant's sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteen assignments of error are without merit.

{¶66} Having failed to raise and/or demonstrate error contained in any of the six judgment entries which are the subject of this appeal, those respective entries are affirmed.

Vukovich, J., concurs.

Waite, P.J., concurs.