

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

JENNIFER COPELAND,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-10-108
- vs -	:	<u>OPINION</u>
	:	7/30/2012
ROBERT A . YARBER,	:	
Defendant-Appellant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
JUVENILE DIVISION
Case No. 10-P01256

Robert L. Mues, 1105 Wilmington Avenue, Dayton, Ohio 45420, for plaintiff-appellee

Steven M. Runge, 401 South Main Street, P.O. Box 292, Franklin, Ohio 45005, for defendant-appellant

HENDRICKSON, P.J.

{¶ 1} Defendant-appellant, Robert A. Yarber (Father), appeals a decision of the Warren County Court of Common Pleas, Juvenile Division, which adopted a magistrate's decision finding him in contempt and denying his motion to modify child support.¹ For the reasons outlined below, we affirm the trial court's decision.

1. Pursuant to Loc.R. 6(A), we sua sponte remove this appeal from the accelerated calendar.

{¶ 2} Father and plaintiff-appellee, Jennifer Copeland (Mother), have a minor daughter together. The parties were never married. Mother filed a complaint on March 15, 2010, to establish paternity and other parental responsibilities, including support. Paternity was established by Father's signed affidavit. On July 6, 2010, the court ordered Father to pay a portion of the medical expenses incurred during the birth of the parties' daughter and to pay child support, including an amount for child support arrearage. Mother filed a motion for contempt and a request for attorney fees on April 5, 2011, alleging Father had failed to pay child support and medical expenses as required by the court's July 6 order. Father subsequently filed a motion to modify child support. After a hearing on the motions, the magistrate issued a decision on August 17, 2011, denying Father's motion to modify child support and finding Father in contempt for "failing to comply with the order for payment of medical expenses and child support set forth in the magistrate's decision on July 6, 201[0]."

{¶ 3} On August 30, 2011, Father timely filed objections to the magistrate's decision and filed a motion for transcript requesting a full transcript of the hearing. In his objections, Father specifically objected to the magistrate's findings that he was "voluntarily underemployed" and the amount of income imputed to him. In response, the court issued a scheduling order on September 1, 2011, which stated in part:

The objecting party shall cause the transcript to be filed with the Court within [t]wenty eight (28) days after the filing of this order unless the Court extends the time in writing for preparation of the transcript or other good cause.

* * *

The objecting party shall make arrangement for transcript by contacting [the court transcriptionist]. The Court Transcriptionist will not commence preparation of the transcript prior to receipt of a deposit of the cost of the transcript. * * * Deposits must be paid to the Court Transcriptionist not later than fourteen (14) days from the date of the filing of this order. Failure to pay the deposit as provided herein will result in immediate submission of the matter for decision without a transcript. The Court

Transcriptionist will notify the objecting party of the total cost of the transcript upon its preparation and if any balance is due. The transcript will not be filed prior to full payment of transcript preparation cost to the Court Transcriptionist.

{¶ 4} On September 19, 2011, the court transcriptionist filed a notice that Father had failed to pay the cost estimate of the transcript. The next day, the court ruled on Father's objections. The court found that the September 1, 2011 scheduling order granted Father's motion for a full transcript and "notified Father of the necessity of providing the Court with a transcript." Further, the court noted that Father, as the objecting party, was required to contact the court transcriptionist and pay the deposit for transcript within fourteen days of the order, which would have been September 15, 2011, or the matter would be submitted for decision without a transcript. As Father failed to comply with the scheduling order, the trial court considered the matter without the benefit of the transcript. The court found that Father's objections were factually dependent upon the evidence produced before the magistrate, and without a transcript, it could not "say that Father's objections [were] supported by the record." Accordingly, the trial court overruled Father's objections and adopted the magistrate's decision issued on August 17, 2011.

{¶ 5} Father now appeals the trial court's decision, raising one assignment of error:

{¶ 6} THE TRIAL COURT ERRED IN FAILING TO RULE ON THE MOTION FOR TRANSCRIPT AND PROCEEDING TO DECIDE THE OBJECTIONS WITHOUT THE BENEFIT OF THE TRANSCRIPT.

{¶ 7} Father's appeal only relates to the procedural aspects of his motion for transcript and not the underlying merits of the trial court's decision to overrule his objections and adopt the magistrate's decision. Therefore, the issue in the present case is whether the trial court properly adopted the magistrate's decision without the use of the transcript. Father argues that under the plain language of the trial court's local rule, W.C. Juv. R. 13(B),

transcripts of proceedings are to be requested by motion. Accordingly, Father contends the trial court's failure "to rule on that motion excuses a person who objects to a Magistrate's Decision from making arrangements to have the transcript prepared until the court has affirmatively ruled that the transcript can be used pursuant to [Ohio] Juv.R. 37(B)." Essentially, Father argues that he is excused from filing a transcript until the trial court issues a specific order regarding his motion for transcript. Father also argues that his motion for transcript should be deemed to have been overruled because the trial court failed to explicitly rule on the motion.

{¶ 8} Local Rule 15 of the Warren County Juvenile Court provides the procedure for filing objections to a magistrate's decision, particularly the requirements related to filing the transcript of the hearing before the magistrate. See W.C. Juv. R. 15. Specifically, W.C. Juv. R. 15(C) states: "It shall be the responsibility of the party taking objection/appeal to file a typed transcript of the hearing * * * or demonstrate good cause why the transcript could not be provided to the Court. Transcripts of hearings before magistrates *may* be requested in accordance with W.C. Juv. R. 13(B)." (Emphasis added.) W.C. Juv. R. 13(B) in turn provides that transcripts of proceedings must be requested by motion so that the court may determine that the preparation and release of the transcript is allowed under Ohio Juv.R. 37(B). Ohio Juv.R. 37(B) only restricts the use of transcripts from juvenile court hearing such that a party may only use a transcript as authorized by court order or by statute.² Ohio Juv.R. 37(B) does not govern the preparation of such transcripts.

{¶ 9} Contrary to Father's argument, W.C. Juv. R. 15(C) makes it clear that the use of W.C. Juv. R. 13(B) for requesting transcripts is discretionary. W.C. Juv. R. 15 specifically

2. "No public use shall be made by any person, including a party, of any juvenile court record, including the recording or a transcript of any juvenile court hearing, except in the course of an appeal or as authorized by order of the court or by statute." Ohio Juv.R. 37(B).

uses the word "may" when referencing W.C. Juv. R. 13(B). "In statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage." *Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St.2d 102 (1971), paragraph one of the syllabus. Accordingly, it is not mandatory under W.C. Juv. R. 15(C) for a party to request a transcript pursuant to W.C. Juv. R. 13(B), and the trial court is similarly not required to issue a separate order regarding such a request. Furthermore, the record in this case indicates that the trial court did rule on Father's motion for transcript.

{¶ 10} The trial court issued the scheduling order after Father filed his motion for transcript. Although there was not a separate entry specifically granting Father's motion for transcript, the trial court's September 1, 2011 scheduling order inherently granted Father's motion for transcript. The scheduling order makes it clear that the court deemed the transcript's use appropriate in order to rule on Father's objections. This order specifically detailed the process Father was required to follow in order to obtain the transcript, including providing the contact information of the court transcriptionist and the necessity of paying a deposit.

{¶ 11} Additionally, Father was provided notice as to the consequence for failing to file a transcript. W.C. Juv. R. 15(D) states:

Upon the filing of objections the Court will issue a scheduling order setting forth the time for the filing of the transcript and the briefing of the objections. The scheduling order may also advise the objecting party of contact information for the court transcriptionist who is assigned to prepare the transcript to facilitate transcript preparation and filing. The objecting party *shall* be responsible for payment of the cost of the preparation of the transcript unless such party is entitled to a transcript at state expense. Generally, the objecting party must pay the court transcriptionist a deposit based upon the estimated cost of transcript preparation within fourteen days following the issuance

of the scheduling order. *Failure to pay the deposit in accordance with this rule and/or the scheduling order may result in the immediate submission of the objection to the Court for decision.* (Emphasis added.)

{¶ 12} The court's September 1, 2011 scheduling order specifically put Father on notice of both the requirement to pay the deposit to the court transcriptionist and that the failure to do so would result in immediate submission of the matter for a decision without a transcript. Pursuant to W.C. Juv. R. 15(D) and the scheduling order, Father had 14 days from the order, or until September 15, 2011, to pay the deposit for the preparation of the transcript. On September 19, 2011, the court transcriptionist notified the court that Father had failed to pay the cost estimate for preparation of transcript. It was Father's responsibility to file the transcript with the court. W.C. Juv. R. 15(C). Alternatively, it was Father's responsibility to demonstrate "good cause" as to why the transcript could not be provided to the court. *Id.* Father failed to take either of these actions. Accordingly, due to Father's failure to pay the requisite deposit, the court was entitled, under W.C. Juv. R. 15(D), to consider Father's objections immediately and without the transcript.

{¶ 13} Furthermore, the trial court properly adopted the magistrate's decision. It is well-established that when an objecting party fails to file a transcript with the objections, the court is free to adopt the magistrate's findings without further consideration of the objections. *Herbert v. Herbert*, 12th Dist. No. CA2011-07-132, 2012-Ohio-2147, ¶ 14. Father's objections related to the magistrate's factual findings regarding his income and status as "voluntarily underemployed." As the trial court properly indicated, it was entitled to accept the magistrate's factual findings. See *Herbert* at ¶ 14. We therefore find that the trial court did not err by ruling on the Father's objections without the use of a transcript.

{¶ 14} Accordingly, Father's sole assignment of error is overruled.

{¶ 15} Judgment affirmed.

PIPER, J., concurs.

RINGLAND, J., concurs separately.

RINGLAND, J., concurring separately.

{¶ 16} I concur with the majority opinion, however, I write separately to highlight the inconsistencies currently in the local rules of Warren County Juvenile Court. Admittedly, there is a conflict between W.C. Juv. R. 13(B) and W.C. Juv. R. 15(C) and their interaction with Ohio Juv.R. 37(B). As discussed by the majority, W.C. Juv. R. 13(B) makes it mandatory for a party to request transcripts of proceedings by motion such that the trial court may determine whether its preparation and release is authorized by Ohio Juv.R. 37(B), while W.C. Juv. R. 15(C) makes such a request discretionary. Both of these local rules relate to the use of a transcript from a juvenile court proceeding and Ohio Juv.R. 37(B) restricts the use of such transcripts. As the purpose of Ohio Juv.R. 37(B) is to keep confidential juvenile court records involving children, the better practice would be for the court to explicitly determine whether the release of the transcript is proper under Ohio Juv.R. 37(B). See *State ex rel. Plain Dealer Publishing Co.*, 111 Ohio St.3d 56, 2006-Ohio-4437, ¶ 51. Accordingly, I urge the local bar and the court to amend the local rules in order resolve this conflict and avoid any future confusion.