

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

THOMAS L. STUARD,	:	
Plaintiff-Appellant,	:	CASE NO. CA2010-07-182
- vs -	:	<u>OPINION</u>
	:	5/9/2011
JULIETTE E. STUARD,	:	
Defendant-Appellee.	:	

APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
Case No. DR03-06-0671

Courtney Caparella-Kraemer, 4841 Rialto Road, Suite A, West Chester, Ohio 45069, for plaintiff-appellant

Joseph R. Matejkovic, 8050 Beckett Center Drive, Suite 214, West Chester, Ohio 45069-5018, for defendant-appellee

HENDRICKSON, P.J.

{¶1} Plaintiff-appellant, Thomas L. Stuard, appeals a decision of the Butler County Court of Common Pleas, Domestic Relations Division, denying his motion to modify a shared parenting plan with defendant-appellee, Juliette E. Stuard.

{¶2} Appellant and appellee were divorced in 2004, whereupon they agreed to a shared parenting plan to resolve the custody of their two children. Last modified in 2008, the plan called for a schedule of alternating weekends and an evenly divided

summer, with the mother serving as the residential parent for school purposes. On October 7, 2009, appellant moved to modify the shared parenting plan. The magistrate found that the modification sought would result in appellant having the right to ultimate legal and physical control of the children. Accordingly, the magistrate determined that before a motion could be ruled upon based on statutory best interest requirements, a change of circumstances must be shown. To accomplish this, a hearing on the change of circumstances was held on February 12, 2010. On March 15, 2010, the magistrate found that a change in circumstances had occurred (March decision), and set a hearing on best interests for March 18, 2010. Following that hearing, the magistrate issued a decision on April 19, 2010 finding it in the children's best interests to make appellant the residential parent for school purposes (April decision).

{¶13} On May 3, 2010, defendant-appellee filed an objection to the magistrate's March and April decisions. The trial court sustained the objections, determined that there was no change in circumstances, and denied appellant's motion to modify the shared parenting plan.

{¶14} Appellant now appeals the decision of the trial court, raising the following assignment of error:

{¶15} "THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF-APPELLANT WHEN IT FOUND THAT DEFENDANT-APPELLEE'S OBJECTION WAS WELL TAKEN AND THAT THERE WAS NO CHANGE IN CIRCUMSTANCE."

{¶16} In his sole assignment of error, appellant states that the trial court erred by finding that there was no change of circumstances. In the body of his argument, however, appellant argues only the issue of timeliness of the objections. Accordingly, we will limit our discussion to the narrow issue of whether the objections were timely filed. *Bennett v. Bennett* (Oct. 21, 1991), Fayette App. No. CA91-02-002.

{¶7} Under Civ. R. 53(D)(3)(b)(i), if a party wishes to object to a magistrate's decision, it must do so within 14 days of the time the decision is filed. Appellant argues that appellee failed to timely object to the magistrate's March decision. In response, appellee argues that pursuant to Civ. R. 53(D)(5), the court may allow a reasonable extension of this time for good cause.

{¶8} In resolving the motion to modify the shared parenting plan, the magistrate chose to divide the ruling into two separate decisions. As a result, the magistrate's March decision on change of circumstances left unresolved the ultimate issue of whether to modify the shared parenting plan until after scheduling a best interest hearing and deciding on that issue. "By leaving issues unresolved, the magistrate in essence rendered a decision that was interlocutory in character."¹ *In re C.C.*, Franklin App. No. 07AP-993, 2008-Ohio-2803, ¶10. "Requiring objections to decisions that are interlocutory in nature does not promote judicial efficiency, and the absence of an objection at this juncture did not divest the trial court of subject matter jurisdiction to consider objections once all the issues had been resolved." *Underhill v. Underhill*, 181 Ohio App.3d 298, 2009-Ohio-907, ¶15. The *Underhill* court went on to say that, "the only action required by the magistrate's decision * * * was the scheduling of an additional hearing * * *. Thus, we conclude that the only appropriate objection that could have been filed in response to that order was an objection directed at the setting of another hearing." *Id.* at ¶19.

{¶9} In the case at bar, the magistrate's March decision required no action beyond scheduling a subsequent best interest hearing. The change of circumstances

1. See *Wohala v. Goss* (May 23, 1985), Cuyahoga App. No. 49164, fn. 1, quoting Black's Law Dictionary (5 Ed.Rev.1979) (stating that "[t]he term 'interlocutory' is defined * * * as follows: 'Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision on the whole controversy'").

determination was necessary in order to make a ruling on the motion to modify based on best interest requirements. Accordingly, appellee's objections to the March and April decisions were timely filed within 14 days of the April decision on best interests. It is also worth noting that the magistrate's March decision specifically indicated that it was not a final appealable order, whereas the April decision stated that it was. While it may be a better practice for the magistrate to wait until both issues are decided before filing a decision, a party is not required to object to a threshold decision that leaves other issues unresolved where this does not occur.

{¶10} Having concluded that appellee's objections were filed timely, we find that the trial court did not err in denying appellant's motion to modify the shared parenting plan. Appellant's sole assignment of error is accordingly overruled.

{¶11} Judgment affirmed.

RINGLAND and PIPER, JJ., concur.