

[Cite as *Karmasu v. Karmasu*, 2009-Ohio-5252.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

SCHERRY KARMASU

Appellee

-vs-

MAHARATHAH KARMASU

Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2008 CA 00231

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common
Pleas, Domestic Relations, Case No. 2007
DR 01143

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

September 30, 2009

APPEARANCES:

For Appellee

For Appellant

JOHN H. HORN BROOK
1400 North Market Avenue
Canton, Ohio 44714

MAHARATHAH KARMASU, PRO SE
1126 11th Street NW
Canton, Ohio 44703

Wise, J.

{¶1} Appellant Maharatha Karmasu appeals from the Judgment Entry of Divorce entered on September 3, 2008, in the Stark County Court of Common Pleas, Domestic Relations Division.

STATEMENT OF THE FACTS AND CASE

{¶2} On April 11, 2007, Appellee Scherry Godfrey and Appellant Maharatha Karmasu entered into a cryopreservation agreement with Reproductive Gynecology, Inc. with regard to certain frozen embryos.

{¶3} On June 9, 2007, were married. The parties separated in August, 2007. No children were born during the marriage.

{¶4} On September 19, 2007, Appellee filed a Complaint for Divorce against her then husband, Appellant.

{¶5} On April 23, 2008, a final hearing was held. At the conclusion of the hearing, the trial court gave the parties an additional twenty-one days to submit additional evidence for the court's consideration.

{¶6} On May 8, 2008, Appellee filed additional evidence as it related to the ownership of the dog, which was in her possession.

{¶7} On May 9, 2008, Appellant filed a "Formal Statement of Fact and Formal Argument of Law and Fact in Regard to the Issues of the Action."

{¶8} On September 3, 2008, the trial court filed a Judgment Entry (Divorce).

{¶9} On September 12, 2008, the trial court docketed its Judgment Entry dated June 13, 2008, granting divorce upon the stipulated grounds and upon the terms reflected in the Judgment Entry of September 3, 2008.

{¶10} Appellant now raises the following assignments of error for review:

ASSIGNMENTS OF ERROR

{¶11} “I. THE TRIAL FAILED TO APPLY PROPER PRO SE CONSIDERATION AND PROCEDURAL SAFEGUARDS.

{¶12} “II. THE COURT FAILED TO APPLY THE PROPER DIVORCE PROCEDURE WHERE A PARTY CHALLENGES THE SUFFICIENCY OF THE MARRIAGE OR PROPERTY ALLOCATION AND DISPOSITION OF EMBRYOS.

{¶13} “III. THE TRIAL COURT FAILED TO FOLLOW ESTABLISHED PRECEDENT [SIC] IN CONTRACT AND INVITRO-FERTILIZATION [SIC] LAW.

{¶14} “IV. THE COURT FAILED TO PROPERLY DISPENSE PERSONAL PROPERTY AND MARITAL PROPERTY ACCORDING TO LAW.

{¶15} “V. THE COURT FAILED TO ORDER FAIR AND JUST MAINTENANCE ALIMONY, ATTORNEY FEES AND COSTS IN A CLEAR AND PRECISE MANNER.

{¶16} “VI. THE TRIAL COURT ERRED WHEN IT FAILED TO APPOINT COUNSEL TO REPRESENT EMBRYOS THAT HAD A GREATER CHANCE [SIC] LIVE BIRTH THAN CHILDREN CONCEIVED NATURALLY.

{¶17} “VII. EVEN IF THE ERRORS INDIVIDUALLY AND STANDING ALONE DO NOT WARRANT REVERSAL, THE COMBINED WEIGHT OF THE ERRORS, WARRANT A REVERSAL DUE TO CRUEL AND UNUSUAL PUNISHMENT, SEXUAL DISCRIMINATION, AND/OR DENIAL OF EQUAL PROTECTION OF THE LAWS.”

I., IV. and V.

{¶18} In Appellant’s first, fourth and fifth assignments of error, Appellant assigns error to the trial court’s judgment entry of divorce.

{¶19} Our review of the record reveals that this Court does not have a transcript of the final hearing in this matter which took place on April 23, 2008.

{¶20} App.R. 9(B), provides, in part, that ' * * *the appellant shall in writing order from the reporter a complete transcript or a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. * * *.

{¶21} An appellant is required to provide a transcript for appellate review. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. Such is necessary because an appellant shoulders the burden of demonstrating error by reference to matters within the record. See, *State v. Skaggs* (1978), 53 Ohio St.2d 162, 163.

{¶22} "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to the assigned errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp, supra*.

{¶23} Because no transcript of the hearing was filed in this case which would reflect what testimony and/or other evidence was presented to the trial court, we must presume the validity of the lower court's proceedings and affirm.

{¶24} Appellant's first, fourth and fifth assignments of error are overruled.

II., III. and VI

{¶25} In his second, third and sixth assignments of error, Appellant challenges the trial court's ruling as to the frozen embryos stored at Reproductive Gynecology, Inc.

{¶26} In support of these arguments, Appellant argues, inter alia, that a risk of "accidental incest" exists if he is not granted custody of the embryos because he "is a

single male who openly has relationships with any woman at or above the age of eighteen.” (Appellant’s brief, AOE III, ¶4).

{¶27} Upon review, we find that the parties herein entered into a “Cryopreservation Agreement” with Reproductive Gynecology, Inc. on April 11, 2007, wherein both Appellant and Appellee acknowledged and consented, inter alia, to the following:

{¶28} “1). We acknowledge and recognize the biological potential for human life present in the pre-embryos and thereby consent to the following provisions:

{¶29} “ ***

{¶30} “C.) In the event that RECIPIENT AND PARTNER shall terminate their marriage within the contractual storage period, then the RECIPIENT AND PARTNER agree that either party shall respond affirmatively to one of the following alternatives):

{¶31} “1) The PROGRAM shall assume all rights and responsibilities to preserve, dispose of or donate pre-embryos.

{¶32} “Recipient’s Initials: ‘ SG ’ Partner’s ‘ BMK ’

{¶33} “2) The RECIPIENT AND PARTNER hereby agree that upon the effective notice of the date of dissolution or divorce by Court Order, the PROGRAM shall immediately dispose of the pre-embryos.

{¶34} “Recipient’s Initials: (blank) Partner’s (blank)

{¶35} In the Judgment Entry of divorce, the trial court held:

{¶36} “ORDERED, ADJUDGED AND DECREED that the parties entered into an agreement prior to the marriage in regards to the embryos and the parties shall

abide by the agreement which they have entered into on April 11, 2007 between themselves and Reproductive Gynecology, Inc.”

{¶37} When a divorce decree incorporates an agreement, as in the instant case, “the normal rules of contract construction are applicable.” *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, paragraph one of the syllabus.

{¶38} As the trial court had no authority or jurisdiction to interfere in a contract made between the parties herein and a third party, which was not a party to the divorce action sub judice, we find that the trial court did not err in holding that the “custody” of the frozen embryos was controlled by the contract between the parties and Reproductive Gynecology.

{¶39} Appellant’s second, third and sixth assignments of error are overruled.

VII.

{¶40} In Appellant’s seventh and final assignment of error, Appellant contends the “combined weight of the above assigned errors resulted in cruel and unusual punishment, sexual discrimination and/or denial of equal protection of the laws”. We disagree.

{¶41} As stated above, Appellant has failed to file a transcript of the June 16, 2008, contempt hearing.

{¶42} Again, an appellant is required to provide a transcript for appellate review. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶43} Under the circumstances, a transcript of the proceedings is necessary for a complete review of this assignment of error. As Appellant has failed to provide this court with a transcript, we must presume regularity of the proceedings below and affirm.

{¶44} Appellant's seventh assignment of error is overruled.

{¶45} For the foregoing reasons, the judgment of the Court of Common Pleas, Domestic Relations Division, Stark County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Delaney, J., concur.

/S/ JOHN W. WISE_____

/S/ W. SCOTT GWIN_____

/S/ PATRICIA A. DELANEY_____

JUDGES

JWW/d 921

