

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

ROGER ALLEN WEBSTER,	:	APPEAL NO. C-150188
	:	TRIAL NO. DR-1300447
Plaintiff-Appellant,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
AUDREY P. WEBSTER,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

The parties were divorced on February 28, 2014. The decree incorporated a separation agreement executed by the parties in which they agreed that the retirement benefits provided by the Ohio Police and Fire Pension Fund (“OPFPF”) to plaintiff-appellant Roger Allen Webster (“husband”) were marital property and that husband and defendant-appellee Audrey P. Webster (“wife”) would “jointly divide” its proceeds. The document indicated that the gross monthly payout would be about \$4,270, and that wife would receive about \$2,100 per month as her share. But, because of how the OPFPF form was completed, the pension board did not structure the payouts in that way. Instead, wife began receiving a monthly gross payment of \$1,539.64.

Because wife was receiving several hundred dollars per month less than she had anticipated, she asked husband to sign a modified “Distribution of Property Order” (“DOPO”) to correct the error. Husband refused to sign the entry, and wife filed a motion for contempt. At the hearing, the parties argued whether the current DOPO was correct or failed to effectuate the intent of the parties. Since there was no court order requiring husband to sign the DOPO, the magistrate did not find him in

contempt. But the magistrate considered the evidence presented and the argument of the parties and, pursuant to Civ.R. 15(B) and 60(B)(1), modified the DOPO to include the language to effectuate the agreement the parties memorialized in the separation agreement. The trial court overruled husband's objections, which centered on the fact that OPFPF had properly computed the payment amounts. He did not argue that the procedure the magistrate followed in reaching the decision was improper. The trial court overruled husband's objections.

Husband's first assignment of error claims that the trial court improperly applied Civ.R. 15(B) to allow it to revise the DOPO pursuant to Civ.R. 60(B)(1). But that was not one of the objections to the magistrate's decision, and neither husband's written objections nor his argument to the trial court mention Civ.R. 15 or 60.

Pursuant to Civ.R. 53(B)(3)(b)(ii), objections to a magistrate's decision shall be specific and state with particularity all grounds for objection. Pursuant to Civ.R. 53(B)(3)(b)(iv), failure to object waives the right to assign such error on appeal. The only exception here would be if it was plain error for the magistrate to use the Civ.R. 60(B)(1) procedure. Civ.R. 53(D)(3)(b)(iv). Plain error is recognized in a civil case only in an extremely rare case involving exceptional circumstances where the unobjected to error seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself. *Gable v. Gates Mills*, 103 Ohio St.3d 449, 2004-Ohio-5719, 816 N.E.2d 1049, ¶ 43, quoting *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099, (1997), syllabus. Since the parties basically argued the issues to the magistrate, it was not plain error for the magistrate to accept their arguments and evidence and utilize Civ.R. 15(B) to resolve the question. We overrule husband's first assignment of error.

In his second assignment of error, husband claims that the trial court abused its discretion when it adopted the magistrate's modified DOPO in order to effectuate the parties' intent. The term "abuse of discretion" connotes more than an error of

law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Body Power, Inc. v. Mansour*, 1st Dist. Hamilton No. C-130479, 2014-Ohio-1264, ¶ 28, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 218, 450 N.E.2d 1140 (1983). “An abuse of discretion implies that a decision is both without a reasonable basis and is clearly wrong.” *Aetna Better Health, Inc. v. Colbert*, 10th Dist. Franklin No. 12AP-720, 2012-Ohio-6206, ¶ 21, citing *Hartzog v. Ohio State Univ.*, 27 Ohio App.3d 214, 500 N.E.2d 362 (10th Dist.1985).

In this case, we cannot say that the decision to adopt the modified DOPO was an abuse of discretion. Wife testified that the parties had intended that the entire retirement benefit was a marital asset and that the benefit should be divided equally. During the hearing, husband admitted that the pension account was entirely marital property. He also admitted that the intention of the separation agreement was for wife to receive half of the pension. The record supports the conclusion that the OPFPF board did not calculate the payments to achieve that end, and that the modified DOPO cures the defect. We overrule husband’s second assignment of error.

Having considered and overruled both assignments of error, we affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., DEWINE, and MOCK, JJ.**

To the clerk:

Enter upon the journal of the court on April 22, 2016  
per order of the court \_\_\_\_\_.  
Presiding Judge