

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

RUSHAWN W. TOLLIVER,	:	APPEAL NO. C-080489
	:	TRIAL NO. DR-0700511
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
ANISSA W. TOLLIVER,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Anissa W. Tolliver appeals the judgment of the trial court granting the petition of divorce filed by plaintiff-appellee Rushawn W. Tolliver. In particular, she argues that the trial court improperly handled Rushawn's retirement benefits.

This case was tried to a magistrate, who issued a decision. That decision included findings of fact and conclusions of law. Anissa objected to the decision 30 days after it was journalized. Civ.R. 53 requires a party to file objections within 14 days of the decision of the magistrate. Absent plain error, the failure to file timely objections bars appeal of a trial court's judgment to adopt the decision of a magistrate.²

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² See Civ.R. 53(D)(3)(b); *State ex rel. Findlay Indus. v. Indus. Commn. of Ohio*, ___ Ohio St.3d ___, 2009-Ohio-1674, ___ N.E.2d ___.

Courts have consistently cautioned that plain error should be found in civil cases only under exceptional circumstances, to prevent a manifest miscarriage of justice.³ Such error must be “clearly apparent on the face of the record * * *.”⁴

In this case, the magistrate and the trial court addressed Rushawn’s retirement benefits, and both awarded them to him. In the context of the complete divorce decree, this determination—even if incorrect—did not rise to the level of plain error.

We overrule Anissa’s two assignments of error and affirm the trial court’s judgment.

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.

HENDON, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 20, 2009

per order of the Court _____
Presiding Judge

³ *Reichert v. Ingersoll* (1985), 18 Ohio St.3d 220, 223, 480 N.E.2d 802, citing *Schade v. Carnegie Body Co.* (1982), 70 Ohio St.2d 207, 209, 436 N.E.2d 1001.

⁴ *Id.*