

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

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| DONALD J. FISSE, JR., | : | APPEAL NO. C-100290 |
| Plaintiff-Appellee, | : | TRIAL NO. DR-0600779 |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| TAMATHA L. FISSE, | : | |
| Defendant-Appellant. | : | |

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

Defendant-appellant, Tamatha L. Fisse, appeals the order of the Hamilton County domestic relations court sustaining an objection by her former husband, plaintiff-appellee, Donald J. Fisse, to the decision of a magistrate modifying his parenting time for their two children.

The magistrate had granted Donald’s motion to modify parenting time and had ordered a modification of the original parenting schedule. The magistrate based the modification on his finding that additional time with Donald would be in the best interests of the children. In his decision, the magistrate relied on the written report and testimony of a social worker who had recommended the increase in parenting time. Despite his determination that Donald should be granted more parenting time, the magistrate’s order actually reduced Donald’s monthly parenting time by about four days.

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

Donald objected to the reduction in parenting time. In addition to the exhibits admitted at trial, Donald provided the trial court with excerpts of testimony by the social worker. Tamatha moved to dismiss Donald's objections because he did not provide a transcript of all the relevant evidence submitted to the magistrate and did not provide her with notice that he had ordered certain testimony to be transcribed, in violation of Civ.R. 53 and Loc.R. 8.1 of the Hamilton County Court of Common Pleas, Domestic Relations Division.

Following a hearing, the court denied Tamatha's motion to dismiss and sustained Donald's objection with respect to parenting time. The court recognized the "inconsistency in the [magistrate's] finding that spending additional time would be in the children's best interests and in the schedule ordered [by the magistrate]."

In three assignments of error, Tamatha now argues that the trial court erred by (1) failing to dismiss Donald's objections where he had failed to follow procedural rules, (2) failing to require that a full transcript of the proceedings be filed, and (3) failing to review the entire transcript of the proceedings. We address these assignments of error together.

Civ.R. 53(D)(3)(b)(iii) requires an objection to a magistrate's factual finding to be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. Under Loc.R. 8.1, if an objecting party intends to have the record transcribed by an agent or employee of the court, the party must file a written notice of the transcript order with the court and serve the notice upon all interested parties or counsel of record. A trial court abuses its discretion in sustaining an objection to a magistrate's

factual determination if the court fails to independently review the evidentiary basis for the magistrate's factual determination.²

Neither Civ.R. 53 nor Loc.R. 8.1 came into play in this case because Donald did not object to the magistrate's "factual finding" that the children's best interests would be served by increasing his parenting time. Donald objected to the magistrate's order because it was inconsistent with the finding that he should be granted more time. Consequently, the trial court properly overruled Tamatha's motion to dismiss. Moreover, where the record shows that the trial court considered the factors set forth in R.C. 3109.05(D) as well as the children's best interests, we find no abuse of discretion in its expansion of Donald's parenting time.³

We overrule the assignments of error and affirm the judgment of the trial court.

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

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

To the Clerk:

Enter upon the Journal of the Court on May 18, 2011

per order of the Court _____.
Presiding Judge

² See *In re: Seldon/Boyd Children*, 1st Dist. Nos. C-070440, C-070441, and C-070481, 2007-Ohio-5123.

³ See *Braatz v. Braatz*, 85 Ohio St.3d 40, 44-45, 1999-Ohio-203, 706 N.E.2d 1218; *Cwik v. Cwik*, 1st Dist. No. C-090843, 2011-Ohio-463, ¶42.