

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

IN RE: N.S. : APPEAL NO. C-110226
 : TRIAL NO. F05-771Z
 :
 : *JUDGMENT ENTRY.*
 :
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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. 3(A); App.R. 11.1(E); Loc.R. 11.1.1.

Appellant Garry Scalf appeals from the judgment of the trial court dismissing his motion for legal custody of his child, N.S. For the reasons stated below, we affirm.

Appellees Rickey Haas and Lisa Ruberry were awarded legal custody of N.S. in 2005. Scalf filed a motion for custody of N.S. in 2008, which was dismissed for want of prosecution. Scalf brought a second motion for custody. While Scalf's motion was pending before the magistrate, Scalf filed with the trial court a writ of procedendo, objections to a magistrate's order holding the case in abeyance, and a motion for a new trial. In these filings, Scalf argued that the magistrate erroneously referred to his motion for custody as a motion to modify custody, and that the legal standard articulated in *In re Perales* (1977), 52 Ohio St.2d 89, 369 N.E.2d 1047, should be applied in his case.

The trial court entered a lengthy written decision on August 5, 2010, which recognized that Scalf's request for a determination of the proper legal standard was not ripe for determination. Nevertheless, the trial court reached the legal-standard issue to prevent further delay. The trial court determined that the best-interest-of-the-child standard applied to Scalf's motion, not the standard articulated in *In re Perales*, and the court ordered Scalf to refile his motion as a motion to modify custody. The trial court also determined that Scalf had failed to properly serve his motion for custody on N.S.'s mother, and the court ordered Scalf to serve his motion to modify custody on the mother in compliance with Civ.R. 4 before proceeding further.

On October 20, 2010, Scalf still had not complied with the trial court's August 5, 2010, order; thus, the magistrate continued the case. On December 1, 2010, the magistrate issued a decision dismissing Scalf's case for failure to prosecute. Scalf filed timely objections to the magistrate's decision, arguing that he was "not willing to waive his rights" with respect to the motion for custody. The trial court adopted the magistrate's decision stating that Scalf had failed to comply with the court's August 5 order, and that Scalf "through his attorney agree[d] that the [m]agistrate properly dismissed the case."

Scalf appeals from the trial court's decision dismissing his case, and he argues in a single assignment of error that the trial court erred by ordering Scalf to file a motion to modify custody. Notably, Scalf does not argue that the trial court erred in dismissing his case for failure to prosecute. When prosecuting an appeal, an appellant must identify a trial court's errors in assignments of error, and those errors

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not argued will be treated as abandoned. App.R. 16(A); App.R. 12(A)(2); *Thomas v. Cohr, Inc.*, 1st Dist No. C-110094, 2011-Ohio-5916, ¶4.

Because Scalf does not raise an assignment of error as to the dismissal of his case for failure to prosecute, and he does not take issue with the trial court's determination that the magistrate properly dismissed his case, his assignment of error relating to the court's August 5 order is moot. *Chalendar v. Depart. of Rehab. and Corr.*, 10th Dist. No. 02AP-567, 2003-Ohio-39, ¶33; cf. *Mention v. Car-X*, 1st Dist. No. C-110335, 2011-Ohio-6383.

Therefore, Scalf's assignment of error is overruled as moot, and the judgment of the trial court is affirmed.

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

HILDEBRANDT, P.J., SUNDERMANN and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on December 23, 2011
per order of the court _____.
Acting Presiding Judge