

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

VICTORIA MORGAN,	:	APPEAL NO. C-190592
Plaintiff-Appellee,	:	TRIAL NO. DR-1801556
vs.	:	<i>JUDGMENT ENTRY.</i>
MARK G. JONES,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This appeal arises after a trial on a complaint for divorce filed by plaintiff-appellee Victoria Morgan against defendant-appellant Mark Jones. The domestic relations court granted a final judgment for divorce without children, incorporating the magistrate's decision and the parties' antenuptial agreement for the disposition of real and personal property. We affirm.

In his first assignment of error, Jones argues that the domestic relations court erred by incorporating the magistrate's decision on the parties' residence. The parties' residence is a Mount Adams home which, pursuant to a valid antenuptial agreement, Jones and Morgan own as separate property as tenants in common (with Jones owning 67 percent and Morgan owning 33 percent). The magistrate required the parties to place their home for sale within 90 days of the final judgment but permitted either party to exercise a right of first refusal to purchase the home pursuant to the terms of

the antenuptial agreement. Jones argues that forcing the sale of the home within 90 days of the final judgment is contrary to the terms of the parties' antenuptial agreement, which Jones contends permits continued co-ownership of the home after the divorce in the event neither party wanted to sell or buy out the other's share. We review the court's interpretation of the antenuptial agreement de novo. *See Carmen v. Carmen*, 8th Dist. Cuyahoga No. 97539, 2012-Ohio-3255, ¶ 7.

In a divorce action, the domestic relations court is required to determine whether property is separate or marital and to divide both marital and separate property equitably. R.C. 3105.171(B). In addition, pursuant to its plenary jurisdiction, “[t]he court may issue any orders * * * that it determines equitable, including, but not limited to, * * * [a]n order requiring the sale or encumbrancing of any real or personal property[.]” R.C. 3105.171(J)(2). This provision applies to *any* property or interest in property owned by either party to the divorce action, separate or marital. (Emphasis added.) *See Drumm v. Drumm*, 2d Dist. Montgomery No. 16631, 1999 WL 198120, *8 (March 26, 1999). However, “if it is found that the parties have freely entered into an antenuptial agreement, fixing the property rights of each, a court should not substitute its judgment and amend the contract [at the time of a divorce].” *Gross v. Gross*, 11 Ohio St.3d 99, 108-109, 464 N.E.2d 500 (1984).

Here, contrary to Jones's argument, we see no conflict between the court's decision and the terms of the parties' antenuptial agreement, nor do we find that the court exceeded its jurisdiction by ordering the sale of the property. The antenuptial agreement does not expressly state the procedures for liquidation of the home upon a divorce. While it anticipates a liquidation, by including a buy-out or right-of-first-refusal provision, it is silent as to a timeframe. The court simply included a 90-day

timeframe for the sale of the home or the exercise of the right of first refusal, pursuant to its statutory authority under R.C. 3105.171(J)(2), but otherwise enforced the antenuptial agreement as written. Accordingly, we overrule Jones's first assignment of error.

In his second assignment of error, Jones argues that the domestic relations court erred by incorporating the magistrate's decision on the parties' liquid assets. The magistrate used an exhibit, entitled "Joint Exhibit 3C, Summary of Cash Reconciliation for Expenditures," to allocate and dispose of the liquid assets of the parties. Jones objected to the magistrate's decision pursuant to Civ.R. 53(D)(3), arguing that the trial testimony conflicted with the magistrate's findings, but his objection was overruled because he did not submit transcripts of the trial. Jones also did not submit transcripts as part of his appeal.

By arguing the trial court erred by adopting the magistrate's decision, Jones is in essence making a manifest-weight argument, which is impossible to properly evaluate in the absence of a complete transcript of proceedings to review. Furthermore, even if Jones had provided transcripts on appeal, an appellate court cannot consider material which was not part of the trial court's proceeding as we would be considering material outside the record. "It is well-established that the duty to provide a transcript for appellate review falls upon the appellant." *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 400 N.E.2d 384 (1980); see App.R. 9. Without a transcript of the proceedings or its alternatives, we must "presume regularity and the validity of judgment of the trial court." (Internal citation omitted.) *Ostrander v. Parker-Fallis Insulation*, 29 Ohio St.2d 72, 74, 278 N.E.2d 363 (1972); see *In re I.W.*, 1st Dist. Hamilton No. C-180095, 2019-Ohio-1515. Allegations raised in an appellate brief are not sufficient to overcome the presumption of regularity in a trial court's proceedings

OHIO FIRST DISTRICT COURT OF APPEALS

and the judgment entered by the court. *Zashin, Rich, Sutula & Monastra Co., L.P.A. v. Offenburg*, 90 Ohio App.3d 436, 629 N.E.2d 1057 (8th Dist.1993). Consequently, we overrule Jones's second assignment of error.

Accordingly, we affirm the judgment of the trial court.

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

MYERS, P.J., CROUSE and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on September 2, 2020
per order of the court _____.
Presiding Judge