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

COURO NDIATHE,	:	APPEAL NO. C-260056 TRIAL NO. DR-2400570
Plaintiff-Appellee,	:	
vs.	:	
RACINE NDIATH,	:	*JUDGMENT ENTRY*
Defendant-Appellant.	:	

ZAYAS, Presiding Judge.

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

In this pro se appeal, defendant-appellant Racine Ndiath ("husband") appeals from the trial court's decree of divorce and raises eight assignments of error for this court's review.

In the first assignment of error, husband claims that his right to due process was violated when the trial court proceeded with the final merits hearing on January 15, 2026 ("the final merits hearing"), despite his failure to appear, and penalized him as a result of his failure to appear. He claims that his failure to appear was based on what the magistrate told him at the November 5, 2025 trial on property and spousal support ("the property trial").

First, husband's due process arguments are premised on statements that were allegedly made by the magistrate at the property trial. No transcript of this trial

appears in the record. Thus, this court must presume the regularity of the proceeding. *See Treasurer v. Scott*, 2022-Ohio-1467, ¶ 16 (1st Dist.), quoting *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980) ("'When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the court has no choice but to presume the validity of the lower court's proceedings and affirm.'").

Additionally, there is no indication that any penalty was imposed upon husband based on his failure to appear at the final merits hearing. Rather, the magistrate ordered husband to pay $20,000 to wife for attorney fees after *the property trial,* which he was present for. The trial court merely adopted this finding in the final decree of divorce after neither party filed objections to the magistrate's decision on this issue. *See* Civ.R. 75(F)(2).

Beyond that, husband was informed in the magistrate's scheduling order that he would be required to appear in person at the final merits hearing if he was unable to appear via video conference and there is no indication in the record that husband requested a continuance of the final merits hearing. Husband does not point to any authority to indicate that the magistrate was required to, sua sponte, grant a continuance of the final merits hearing once husband failed to appear. Consequently, we overrule the first assignment of error.

In the second assignment of error, husband argues that the trial court erred in permitting the testimony of a wife's coworker at the final merits hearing. He asserts that this witness lacked personal knowledge of the matters discussed in his testimony, so his testimony was improper under Evid.R. 602.

This witness's short testimony pertained to the grounds for divorce. The trial court found that wife was entitled to a divorce because the parties were incompatible

and husband was guilty of gross neglect of duty and adultery. Husband only takes issue with the findings of gross neglect of duty and adultery and claims that this witness was the "sole witness" to these findings. Notably, there is no indication in the decree of divorce that the trial court relied on this witness's testimony for its findings in this case.

Nevertheless, husband does not challenge the finding of incompatibility. "If granting a divorce is proper on one ground, granting a divorce on additional grounds constitutes harmless error." *Gebi v. Worku*, 2017-Ohio-8462, ¶ 27 (10th Dist.), citing *Clark v. Clark*, 2004-Ohio-1577, ¶ 15 (7th Dist.). Because husband does not challenge the finding of incompatibility, any error pertaining to the additional grounds for divorce, if any, was harmless error. Therefore, we overrule the second assignment of error.

In the third assignment of error, husband challenges the trial court's alleged refusal to admit his exhibits, while accepting wife's exhibits, at the property trial. However, no transcript of this trial appears in the record. Thus, this court must presume the regularity of the proceeding. *See Scott*, 2022-Ohio-1467, at ¶ 16 (1st Dist.), quoting *Knapp*, 61 Ohio St.2d at 199.

Beyond that, these exhibits were relevant to the trial on property and spousal support and husband failed to object to the magistrate's decision on these issues. Thus, he has waived all but plain error. *See* Civ.R. 53(D)(3)(b)(iv); *Burd v. Artis*, 2025-Ohio-625, ¶ 9 (1st Dist.), citing *Marrs v. Mickel*, 2023-Ohio-4528, ¶ 12 (8th Dist.). Husband has failed to establish plain error here. *See generally Burd* at ¶ 10, citing *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122-123 (1997) ("'The [plain-error] doctrine is limited to those "extremely rare cases" in which "exceptional circumstances require its application to prevent a manifest miscarriage of justice, and where the error

complained of, if left uncorrected, would have a materially adverse effect on the character of, and public confidence in, judicial proceedings."""").

Husband further argues the trial court's failure to rule on his post-trial motion to file the exhibits late was "itself an abuse of discretion." However, this argument is based on a misrepresentation of the record as the magistrate did rule on the motion in its December 10, 2025 order, and husband failed to file a motion to set aside the magistrate's order below. Consequently, he is barred from challenging the denial of this motion on appeal. *E.g.*, *Smith v. Smith*, 2019-Ohio-114, ¶ 10 (10th Dist.) (collecting cases) ("Ohio courts have held that if a party does not move to set aside a magistrate's order, that party has waived a challenge to that order on appeal."); *Ganaway v. Ganaway*, 2017-Ohio-1009, ¶ 17 (12th Dist.) (collecting cases) ("Ohio courts, including this court, have held that if a party does not move to set aside a magistrate's order, that party has waived a challenge to that order on appeal."). For these reasons, we overrule the third assignment of error.

In the fourth assignment of error, husband challenges the trial court's decision not to award him spousal support and argues that it was not supported by competent, credible evidence.

In the fifth assignment of error, husband challenges the court's asset distribution and argues that it was inequitable and against the manifest weight of the evidence.

In the sixth assignment of error, husband argues that the trial court inequitably ordered him to pay one-half of the debt for solar power for the marital home where the marital home was awarded to wife.

All these assignments of error challenge the magistrate's decision on property and spousal support. Husband failed to object to this decision. Thus, he has waived

all but plain error. *See* Civ.R. 53(D)(3)(b)(iv); *Burd*, 2025-Ohio-625, at ¶ 9 (1st Dist.), citing *Marrs*, 2023-Ohio-4528, at ¶ 12 (8th Dist.). Husband has failed to establish plain error here. *See generally Burd* at ¶ 10, citing *Goldfuss*, 79 Ohio St.3d at 122-123.

Therefore, we overrule the fourth, fifth, and sixth assignments of error.

In the seventh assignment of error, husband argues that the trial court erred by disregarding the custody evaluator's report in violation of R.C. 3109.04(F).

The opinion of a custody evaluator is a factor when considering the best interest of the children, but it is not binding on the court. *See Garrett-Long v. Garrett*, 2016-Ohio-7041, ¶ 71 (7th Dist.); *Brandt v. Brandt*, 2012-Ohio-5932, ¶ 39 (11th Dist.).

When determining the best interest of the children, "'[t]he trial court "has discretion in determining which factors are relevant," and "each factor may not necessarily carry the same weight or have the same relevance, depending upon the facts before the trial court."'" *Starr v. Statler-Houchin*, 2024-Ohio-4628, ¶ 33 (3d Dist.), citing *Krill v. Krill*, 2014-Ohio-2577, ¶ 29 (3d Dist.); *accord, e.g., Hughey v. Hughey*, 2022-Ohio-3791, ¶ 13 (4th Dist.), citing *Krill* at ¶ 29. A trial court is not required to set forth an analysis for each factor in its judgment entry so long as the judgment entry is supported by some competent, credible evidence. *Starr* at ¶ 33, citing *Krill* at ¶ 29.

To the extent that husband is challenging the weight of the evidence supporting the trial court's custody decision, he failed to file a transcript of the custody trial that occurred on February 19, 2025. Thus, this court must presume the regularity of the proceeding. *See Scott*, 2022-Ohio-1467, at ¶ 16 (1st Dist.), quoting *Knapp*, 61 Ohio St.2d at 199.

To the extent that husband argues that the trial court's "silence" as to its assessment of the custody evaluator's report "is reversible error," he fails to cite to any

authority in support of this position. For these reasons, we overrule the seventh assignment of error.

In the eighth assignment of error, husband challenges the trial court's "$20,000 sanction" for frivolous conduct. As an initial matter, he claims that this sanction was imposed at the final merits hearing. However, as explained in the first assignment of error, this is not true as only the grounds for divorce were at issue at this hearing. Rather, the sanction was imposed after the property trial, which husband was present for.

Beyond that, husband argues that the "substantive basis" for the sanction was equally deficient. However, husband failed to object to the magistrate's decision on this issue. Thus, he has waived all but plain error. *See* Civ.R. 53(D)(3)(b)(iv); *Burd*, 2025-Ohio-625, at ¶ 9 (1st Dist.), citing *Marrs*, 2023-Ohio-4528, at ¶ 12 (8th Dist.). Husband has failed to establish plain error here. *See generally Burd* at ¶ 10, citing *Goldfuss*, 79 Ohio St.3d at 122-123.

Beyond that, he failed to file a transcript of the property trial. Thus, this court must presume the regularity of the proceedings. *See Scott*, 2022-Ohio-1467, at ¶ 16 (1st Dist.), quoting *Knapp*, 61 Ohio St.2d at 199. For these reasons, we overrule the eighth assignment of error.

Based on the foregoing, we overrule the assignments of error and affirm the judgment of the trial court.

The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed under App.R. 24.

BOCK and **MOORE, JJ.,** concur.

To the clerk:

Enter upon the journal of the court on 9/11/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Hunsley
Administrative Judge