



# PACE

Parents And Children for Equality

## Bulletin



Number 9

The "Best Parent" is Both Parents

April, 2001

### Objecting to Magistrates' Decisions: Key Provisions of Ohio Civil Rule 53

Ohio Rule of Civil Procedure 53 authorizes a court of record to appoint magistrates to assist in the efficient administration of justice. Magistrates have specific powers under Ohio law, including, as authorized by the court, ruling on pretrial and post-judgment motions and hearing and deciding cases. In general, in carrying out these duties, a magistrate "shall regulate all proceedings in every hearing as if by the court and do all acts and take all measures necessary or proper for the efficient performance of the magistrate's duties" [Civ. R. 53(C)(2)].

Because the trial court exercises review authority over the magistrate's actions, there is a rough analogy in *some respects* to the relation between an appellate court and a trial court. This has led to some confusion over the nature and implications of the objection process as applied to the actions of magistrates.

There are important differences between the role of a trial court in reviewing magistrates' decisions and the role of an appellate court in reviewing trial court decisions.

#### Automatic Stay of Execution

Unlike appeals of a trial court's decision, timely objections to permanent and interim orders issued by a magistrate "operate as an automatic stay of execution" of those orders [Civ. R. 53(E)(4)(c)]. The court of record is not required to wait for the objection period to expire before adopting a magistrate's decision and entering a judgment. However, when objections are filed within the time period (14 days from the time of the filing of the magistrate's decision), these objections institute an "automatic stay of execution of that judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment

previously entered" [Civ. R. 53(E)(4)(c)].

The same provision of the Ohio Rules of Civil Procedure empowers the court to issue an interim order, which is not stayed by objections to the magistrate's decision, in cases where immediate relief is justified.

#### Introduction of New Evidence

Civil Rule 53 provides for the introduction of new evidence during the objections process. While it empowers a trial court to "refuse to consider additional evidence proffered upon objections", this power is limited. **A trial court does not have this power in the instance where "the objecting party demonstrates that with due diligence the party could not have produced that evidence for the magistrate's decision"** [Civ. R. 53(E)(4)(b)].

It is important to note that the trial court is *not prohibited* from hearing new evidence submitted upon objections regardless of whether that evidence could have, with due diligence, been produced before the magistrate. "A trial court has broad discretion in determining whether to admit or exclude evidence" (*Krischbaum v. Dillon* (1991), 58 Ohio St. 3d 58, 65, 567 N.E.2d 1291). Rather, the effect of this clause of the Ohio Rules of Civil Procedure is to grant a trial court the power to refuse to consider new evidence. But, this power does not extend to the situation in which the objecting party demonstrates that the evidence could not have been produced for the magistrate's consideration even with due diligence on the objecting party's part.

#### Standard of Review

The standard of review of a trial court's decision on matters of custody, property division, spousal and child support is an "abuse of discretion" standard. A trial court's determination in such cases will be

upheld absent an abuse of discretion. *Huener v. Huener* (1996), 110 Ohio App. 3d 322, 674 N.E.2d 389; *Martin v. Martin* (1985), 18 Ohio St. 3d 292, 294, 480 N.E.2d 1112. An abuse of discretion is more than an error of law or judgment and indicates that the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 450 N.E.2d 1140. When reviewing such discretion, an appellate court must ascertain whether the disposition, as a whole, was an abuse of discretion. *Briganti v. Briganti* (1984), 9 Ohio St. 3d 220, 222, 459 N.E.2d 896. Absent an abuse of discretion, the trial court's judgment cannot be disturbed on appeal. *Blakemore*, 5 Ohio St. 3d at 218.

It is important to distinguish the role of the appellate court faced with assignments of error in a trial court's decision from that of a trial court considering objections to a magistrate's decision. There is nothing in Ohio law that indicates that a trial court is to adopt an "abuse of discretion" standard in reviewing the decision of a magistrate. And the language of the Ohio Rules of Civil Procedure suggest that **a trial court is not to function as an appellate court with respect to the magistrate's decision**. Unlike an appellate court, the trial court does not "uphold" or "overturn" a magistrate's decision. In contrast, a trial court must *reject, modify* or *adopt* a magistrate's decision. When it adopts the decision, the trial court makes it the decision of the trial court. This indicates far greater responsibility than that implied by an "abuse of discretion" standard.

For previous *PACE Bulletins*, visit our web site at [www.pacegroup.org](http://www.pacegroup.org).

—Don Hubin, *Bulletin* editor

This *PACE Bulletin* is distributed for educational purposes only. It does not constitute legal advice. © 2001 Parents And Children for Equality

A non-profit, tax-exempt educational organization supporting parents and children of divorce and separation

Parents and Children for Equality, Columbus Chapter, P.O. Box 16066, Columbus, OH 43216  
(614)475-4292 PACEgroup.org