

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

RICHARD PABST, JR.,	:	APPEAL NO. C-160771
Plaintiff-Appellee,	:	TRIAL NO. DR-1400620
vs.	:	<i>JUDGMENT ENTRY.</i>
TOMMI LYNN PABST,	:	
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.

Plaintiff-appellee Richard Pabst, Jr., (“husband”) and defendant-appellant Tommi Lynn Pabst (“wife”) were married in 1995. They had three children during the course of the marriage. Husband moved out of the home in 2012. After he moved out, he deposited \$500 every two weeks into wife’s account, in addition to other support, and paid toward the mortgage, utilities, water, internet, and wife’s cell phone bill. Neither party filed a shared-parenting plan. Both parties sought a divorce, and the trial court granted it to the wife. Husband was granted custody of the children, with wife receiving standard visitation. In seven assignments of error, wife appeals, pro se, various aspects of the judgment of the trial court. Husband did not file a brief.

Wife first argues that the custody decision was improper because her counsel was “incompetent” for improperly preparing for the case and failing to call certain witnesses. She cites to *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), for the proposition that “[n]umerous previous decisions have established that incompetent counsel is a reason for granting relief and/or retrial.” But *Strickland* is premised on the principle that when representation is required as a matter of constitutional right, that counsel must be effective to be meaningful. *Id.* at

686. In a civil case between individual litigants, there is no constitutional right to representation. *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 122, 679 N.E.2d 1099 (1997). We overrule wife’s first assignment of error.

In her second assignment of error, wife makes a number of arguments stating that the division of property was irregular, improper, or grossly unfair. She claims that she was forced to proceed without counsel, but did not assign the failure to grant a continuance to procure counsel as an assignment of error. She also alleges that the trial court erred when it failed to set forth a time for husband to pay her for the equity in the home. But the decree states that “within 18 months of the entry and recording of this judgment for divorce, Plaintiff Husband shall have refinanced the real estate * * * and paid Defendant Wife her marital equity.” She claims that a QDRO was never filed, but the trial court’s entry gave a deadline for the filing, and her redress was to file a contempt motion if the deadline had passed without the QDRO being filed. She further raises issues with husband’s railroad retirement funds, but she did not raise those issues below. She then argues that “it is standard in the state of Ohio that there be lifelong support for a housewife if there has been a 21-year marriage,” but R.C. 3105.18(C) lists the factors to consider, none of which creates a presumption of a lifetime award based on the fact that the marriage lasted a certain period of time. She refers to “other monies due to defendant,” for which “no mechanism was put in place to ensure their transfer,” but does not cite any examples. We overrule wife’s second assignment of error.

In her third assignment of error, wife contends that the trial court erred when it awarded the house to husband, and then awarded custody of the children to him because she had nowhere for them to live. She argues that she is now married and has a place for the children to live. But we cannot consider her current situation when determining the propriety of the trial court’s decision in this case. “A reviewing court cannot add matter to the record before it, which was not a part of the trial

court's proceedings, and then decide the appeal on the basis of the new matter.” *State v. Ishmael*, 54 Ohio St.2d 404, 377 N.E.2d 500 (1978), (paragraph one of the syllabus). If her situation has changed, she can file a motion to modify the decree pursuant to R.C. 3109.04(E)(1)(a). We overrule wife’s third assignment of error.

In her fourth assignment of error, wife argues that the social worker was biased against her. But this argument was not supported by either citations to the record or legal argument. And from the context of the examples she cites, the incidents occurred outside of the record. Finally, wife argues that it was improper for the social worker to recommend supervised visitation, but that was not part of the trial court’s final order. We overrule wife’s fourth assignment of error.

In her fifth assignment of error, wife argues that the trial court did not properly weigh the evidence when making its decision regarding custody. But the record reflects that the trial court did consider the appropriate factors in its decision allocating parental rights and responsibilities consistent with R.C. 3109.04. We overrule wife’s fifth assignment of error.

In wife’s sixth assignment of error, she claims that the trial court should have appointed a guardian ad litem for the children. But wife fails to show where she sought to have a guardian ad litem appointed. And the record reflects that the trial court interviewed the children in camera. Wife does not argue how this was insufficient in this case, stating only that if the children had been properly questioned, they would have expressed an interest in living with her. But this argument is not supported by the record. We overrule wife’s sixth assignment of error.

In her final assignment of error, wife claims that “Ohio custody laws and courts most often prefer to grant joint legal custody to co-parents.” All of the examples presented in this assignment of error postdate the decree from which the

OHIO FIRST DISTRICT COURT OF APPEALS

appeal was taken. We overrule wife's final assignment of error, and affirm the judgment of the trial court.

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

MOCK, P.J., MYERS and MILLER, J.J.

To the clerk:

Enter upon the journal of the court on August 15, 2018
per order of the court _____.

Presiding Judge

