In the Missouri Court of Appeals
Eastern District

DIVISION TWO

HEATHER LYNN RUEL, Respondent, v. ADAM ROLAND RUEL, Appellant.	)))))))))	ED113943 Filed: September 22, 2026

Appeal from the Circuit Court of St. Charles County
The Honorable Peter A. Lassiter, Judge

INTRODUCTION

Adam Ruel (Father) appeals from the trial court's judgment of modification granting Heather Ruel (Mother) sole legal and physical custody of their two minor children (children) and ordering no contact with Father. We dismiss the appeal.

BACKGROUND

The parties' marriage was dissolved in January 2020. The judgment of dissolution awarded joint legal and physical custody of children to Mother and Father. In February 2022, Father filed a motion to modify. Mother responded with a counter-motion to modify, seeking sole legal and physical custody of the children. A guardian *ad litem*

(GAL) was appointed. Pending an investigation into allegations concerning Father's behavior with the children, the court issued a temporary restraining order suspending his custody but later ordered supervised visitation which was terminated on November 5, 2023, after further allegations of abuse. Shortly before the July 15, 2025 trial setting, Father requested his third attorney to withdraw. On June 13, 2025, the court held a hearing to ensure Father was aware of the pending trial date and he was specifically apprised the trial would not be continued because the case had been pending for years. Father assured the court he understood.

On July 14, 2025, Father, acting *pro se*, filed a "notice of total waiver of participation and motion for ex parte proceeding." Father stated he knowingly and voluntarily waived his right to appear and participate in the July 15 trial, but expressly preserved any objections and appellate issues. The court proceeded with trial on July 15, 2025. In the judgment of modification, Mother was granted sole legal and physical custody. The court ordered no contact between Father and children.[1] This appeal follows.

DISCUSSION

Father asserts five points on appeal. He argues the court failed to include several statutorily required findings in its judgment, burdened his privilege against self-incrimination by denying his motion for continuance, erroneously based its decision on

[1] The court included other provisions regarding support and reimbursement to Mother, but Father challenges only the modification of custody on appeal.

the GAL's recommendation when it was not reduced to a written report, and contends the cumulative effect of these errors resulted in a manifest injustice.

Preservation

In response to several of Father's points on appeal, Mother argues the issues have not been properly preserved. Father himself acknowledges in certain arguments his preservation may be "imperfect," and alternatively seeks plain error review. Here, on the day before trial Father filed a "notice of total waiver of participation." In the pleading, he "knowingly and voluntarily" waived his rights to appear at the trial, cross-examine witnesses, offer or introduce exhibits, call witnesses, make opening or closing statements, and pursue any claim or argument in the proceedings. Yet, he attempted to "expressly preserv[e] all appellate rights and issues for later review." Father did not appear or participate in the July 2025 trial, and he did not file any post-trial motions following the court's judgment of modification. We dismiss the appeal because Father elected not to pursue his day in court and make a record suitable for our review.

Points Three and Five

For ease of analysis we consider Father's points on appeal out of order. In point three Father argues the trial court infringed on his right against self-incrimination under the Fifth Amendment by denying his request for a continuance after he fired his attorney shortly before trial. The Fifth Amendment, in part, provides a person shall not be compelled to be a witness against himself. *See* U.S. Const. amend V. The privilege applies to allow the individual to refuse to answer questions in another proceeding that might incriminate him in pending criminal proceedings. *In re D.L.W.*, 413 S.W.3d 2, 7

(Mo. App. E.D. 2012) (internal quotations omitted). Father claims the court's refusal to continue the trial forced him to choose between asserting his privilege against self-incrimination and defending himself in the custody modification proceeding. Father's argument misconstrues his Fifth Amendment privilege. In a civil matter, it is properly asserted in discovery and at trial. *J.C.M. v. J.K.M.*, 573 S.W.3d 672, 686 (Mo, App. S.D. 2019) (citing *Johnson v. Mo. Bd. of Nursing Adm'rs.*, 130 S.W.3d 619, 628 (Mo. App. W.D. 2004). Unlike criminal matters, the trial court may assign negative consequences to a party's failure to testify. *See id.* (internal citations omitted) ("civil claimants have been denied certain benefits and exposed to negative consequences as a result of having invoked the privilege"). It is only because Father voluntarily and knowingly absented himself from trial, was he unable to assert his privilege, and we cannot now speculate as to what, if any, consequence his decision not to testify at the modification trial may have had upon the court's judgment.

Father's fifth point on appeal argues cumulative plain error. We may review unpreserved claims of error affecting substantial rights if we find a manifest injustice or miscarriage of justice has occurred. Rule 84.13(c) (2025).[2] However, plain error review is rarely granted in civil cases and only when there is an "evident, obvious and clear" error. *Lange v. GMT Auto Sales, Inc.*, 708 S.W.3d 147, 154 (Mo. banc 2025) (internal citation omitted). The trial court heard testimony from witnesses, received multiple

[2] All references to Rules are to Missouri Supreme Court Rules (2025).

exhibits, and issued a well-considered, detailed judgment consistent with the statutory requirements and supported by substantial evidence.

Points One, Two, and Four

Points one, two, and four on appeal each contain allegations concerning the court's failure to make requisite statutory findings. Specifically, in point one Father argues Section 452.375.2 RSMo (Cum. Supp. 2024)[3] contains a rebuttable presumption of equal parenting time, and the trial court failed to recite this presumption or make the required finding it was rebutted by the evidence. In point two, Father contends Section 452.375.6 requires a court to make written findings detailing the specific relevant factors considered in rejecting his proposed custodial arrangement, and the court erred because the judgment did not contain such findings. Finally, in point four, Father claims error because Section 452.400.2 bars restrictions upon a parent's existing visitation absent an express finding contact would endanger the children's physical health or impair their emotional development and the trial court failed to make the requisite statutory finding.[4]

Rule 78.09 requires a party, at the time of the court's ruling, to make "known to the court the action that the party desires the court to take or objections to the action of the court and grounds therefore." *See also Brown v. Brown*, 423 S.W.3d 784, 787 (Mo.

[3] All further statutory references are to RSMo (Cum. Supp. 2024).

[4] Father improperly raises multiple claims in point four. *See* Rule 84.04(d); *Barbieri v. Barbieri*, 633 S.W.3d 419, 432 (Mo. App. E.D. 2021). He also argues the court erroneously relied on the GAL's recommendation without a written report. However, nothing in Section 452.423, which sets forth the authority to appoint a GAL and his or her duties, requires a written report be submitted to the court.

banc 2014). The failure to do so "precludes a party from obtaining appellate review of error in the trial court's ruling or order." *Id*. (internal citation omitted). This requirement eliminates error at the time of trial by granting the court the opportunity to rule "intelligently" and avoid "the delay, expense, and hardship of an appeal and retrial." *Id*. at 787-88 (quoting *Pollard v. Whitener*, 965 S.W.2d 281, 288 (Mo. App. W.D. 1998)).

Similar to Rule 78.09, after a bench trial, Rule 78.07 requires any error at trial "relating to the form or language of the judgment, including the failure to make statutorily required findings, must be raised in a motion to amend the judgment in order to be preserved for appellate review." Rule 78.07(c); *see also Crow v. Crow*, 300 S.W.3d 561, 565 (Mo. App. E.D. 2009). "An issue that was never presented to or decided by the trial court is not preserved for appellate review." *Brown*, 423 S.W.3d at 788 (internal quotation omitted). The purpose of the rule is to ensure arguments concerning the form and language of a judgment are brought to the trial court's attention to be corrected, alleviating needless appeals. *McLeod v. McLeod*, 681 S.W.3d 215, 234 n.13 (Mo. App. W.D. 2023) (internal quotations omitted).

We recognize the difficulties a *pro se* litigant encounters with the rules of procedure, but we must hold them to the same standard as attorneys by requiring their compliance with the relevant provisions. *Acton v. Rahn*, 611 S.W.3d 897, 900-01 (Mo. App. W.D. 2020) (internal citations omitted); *see also Lexow v. Boeing Co.*, 643 S.W.3d 501, 509-10 (Mo. banc 2022) (attorney's failure to comply with rules resulted in dismissal of the appeal). This is necessary to effectuate judicial impartiality, economy, and fairness to all parties. *Acton*, 611 S.W.3d at 901 (internal quotation omitted). We

prefer to reach the merits of any case regardless of whether the party is represented by an attorney or acting *pro se*. *See e.g. Murphy v. Steiner*, 658 S.W.3d 588, 592 (Mo. App. W.D. 2022) (internal citation omitted). However, where the deficiencies are so significant as to deprive the opposing party or the appellate court of notice as to the issues presented, doing so would require us to improperly advocate on appellant's behalf, which we cannot do. *Id*. at 593.

Father did not participate in the July 2025 trial, nor did he file any post-judgment motion alleging the failure to make any of the findings he now claims were erroneously omitted from the judgment. Although in his "notice of total waiver of participation" Father attempted to "[p]reserve all appellate rights and issues arising from this proceeding," such language accomplishes nothing toward his goal of appellate review. Instead, his voluntary decision to forfeit his opportunity to attend trial and properly raise alleged errors as required by Rule 78.09 failed to give the court any opportunity to address these claims at trial, for example his arguments concerning the lack of evidence to support the court's findings and his concerns regarding the court's reliance on the GAL's "untested" recommendation not contained in a written report. Moreover, his failure to file the requisite post-judgment motion effectively precluded the trial court from addressing the deficiencies he now argues are error in the judgment of modification.

It is well-settled the trial court should be afforded the chance to rule on an issue before it can be preserved for appeal, and we will not convict the trial court of error it did not have the opportunity to correct. *See e.g.*; *McLeod*, 681 S.W.3d at 234 n.13; *Brown*, 423 S.W.3d at 787; *J.C.M.*, 573 S.W.3d at 682 (internal quotations omitted); *Crow*, 300

S.W.3d at 566. As a result, Father preserved nothing for our review and his appeal is dismissed.

CONCLUSION

The appeal is dismissed.



Lisa P. Page, Presiding Judge

Rebeca Navarro-McKelvey, Judge and
Kathleen S. Hamilton, Judge concur.