WILLIAM J. PICKETT,	)	
	)	
Plaintiff/Appellee,	)	**Giles County Chancery**
	)	**No. 8919**
VS.	)	
	)	**Appeal No.**
	)	**01A01-9607-CH-00287**
LANA NEWTON PICKETT,	)	
	)	
Defendant/Appellant.	)	

FILED

December 11, 1996

Cecil W. Crowson
Appellate Court Clerk

IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM THE CHANCERY COURT OF GILES COUNTY
AT PULASKI, TENNESSEE

HONORABLE WILLIAM B. CAIN, JUDGE

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AFFIRMED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE
BEN H. CANTRELL, JUDGE

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O P I N I O N

In this divorce case, the defendant counter-claimant wife has appealed from the judgment of the Trial Court declaring the parties to be divorced "pursuant to the statute," dividing the marital estate, granting custody of a minor child to the plaintiff-father, and ordering the mother to pay child support.

In this Court, the wife presents the following issues:

> I. Whether the Trial Court erred in utilizing a procedure in lieu of a trial which provided no true hearing to the parties, admitted no evidence or testimony, and potentially precludes the parties from judicial review due to the absence of a record?
>
> II. Whether the Trial Court erred in granting custody to the father/appellee based on the record in this case which contains no evidence?

The wife was represented by different counsel at various stages of the proceedings. The initial counsel of record for the wife signed and filed an "Amended Answer and Counterclaim." (The record does not contain the original answer.)

The judgment of the Trial Court recites that the cause was heard: "upon the testimony of both parties by agreement in chambers, the statement of counsel for both parties, and upon the entire record ---."

The record does not identify counsel for the wife at the trial . The judgment contains a certificate of service upon the wife, herself, rather than her counsel. The record contains no leave to wife's initial counsel to withdraw.

A new and different counsel for the wife filed a "Motion for a New Trial, and to Set Aside Order and, in the Alternative, for Findings of Facts" which stated:

> Comes the plaintiff, LANA NEWTON PICKETT, by and through her attorney, Andrea Huddleston, who would move this Court, pursuant to Rule 59 of the Tennessee Rules of Civil Procedure, to set aside the Order entered in this cause on December 12, 1995, and for a New Trial. For grounds, movant would state and show unto this Honorable Court that there was no sworn testimony taken at the hearing and that there is no record; that the defendant was not allowed to offer the testimony of her witnesses; and that the defendant was not allowed to cross-examine any statements made by the plaintiff.

In response to said motion, the Trial Judge entered the following order:

> This cause came on to be heard on the 19th day of March, 1996, upon the Motion filed by the Defendant for a new trial or in the alternative findings of fact, the argument of counsel for both parties in open Court, and upon the entire record from all of which the Court finds as follows:
>
> 1. That all parties were adequately and competently represented by counsel of record at all material times.
>
> 2. That the attorneys representing the parties suggested and recommended the alternative dispute resolution method used in this case and the Court adopted the same after having been informed by counsel for both parties that their clients were agreeable to the same and the parties having acknowledged that in open Court.
>
> 3. That at the end of the process the Court took the matter under advisement and determined that the best interest of the minor child would be best served by vesting custody in the Plaintiff.
>
> 4. That the alternative dispute resolution procedure was not only consented to and agreed to by both parties, but was utilized by the Court only after having been initiated by counsel for the parties and was completely voluntary and consensual.
>
> 5. That the Court was satisfied that both parties had the

> minor child's best interest at heart, however after a review of all of the relevant factors the Court determined that custody of this minor child should be in the Plaintiff.
>
> That the Motion for new trial and in the alternative for findings of fact filed on behalf of the Defendant be and the same is hereby overruled except to the extent that the above represents those findings.
>
> The costs of this cause, if any, are taxed against the Defendant for which execution is awarded if necessary.

The order bears a certificate of service upon new counsel of record for the wife. The new counsel signed and filed a notice of appeal and an appeal bond as surety. The same new counsel signed and filed a one page "statement of the evidence" which read in entirety as follows:

> There was no testimony nor any evidence admitted at the hearing in this matter.

The "statement of the evidence" is not authenticated by the Trial Judge, and could not be authenticated by lack of objection as provided by TRAP Rule (f) because it is not certified by counsel as required by TRAP Rule 24(c).

On appeal, it is insisted that the Trial Court "utilized a procedure --- which provided no true hearing to the parties." This insistence ignores the plain statement in the quoted order of the Trial Judge that:

> The attorneys representing the parties suggested and recommended the alternative dispute resolution method used in this case and the Court adopted the same after having been informed by counsel for both parties that their clients were agreeable to the same and the parties having acknowledged that in open court.

The foregoing statement of facts within the knowledge of the Trial Judge in his order is a certificate of the truth of the statement. There is nothing in this record to contradict the certificate of the Trial Judge, hence it is adopted by this Court as fact.

There is no insistence or evidence that counsel for either party misrepresented the consent of the parties to the procedure described in the order of the Trial Court, or that any objection or protest was made at the time of the hearing.

There is a well recognized presumption in favor of an attorney's authority as an officer of the court to act for any client whom he professes to represent. 7-A C JS Attorney & Client § 171, p. 254.

All steps or proceedings ordinarily taken in order to defend or enforce the remedy or bring the claim or cause of action to hearing, trial, determination and judgment are within the general power and control of an attorney who has been employed for purposes of litigation. *Ibid* § 195, p. 320.

Clients are held accountable for acts and omissions of their attorneys. *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 113 S.W. 1489, 507 U.S. 380, 123 L Ed. 74, (1993).

Counsel are authorized to control the conduct of a cause and make agreements in relation thereto which ordinarily will be binding upon their clients. *Turley v. Cooley*, 3 Tenn. Cas. 68, 3 Shannon 68, 3 Leg. Rep. 193 - (1879).

Any irregularity in the proceedings of the Trial Court was expressly waived by counsel for the parties.

Moreover, irregularities were waived by failure to preserve objection thereto. Rule 6 of the Rules of this Court provides in pertinent part as follows:

> 1. A statement by the appellant of the alleged erroneous action of the trial court which raises the issue and a statement by the appellee of any action of the trial court which is relied upon to correct the alleged error, with citation to the record

where the erroneous or corrective action is recorded.

2. A statement showing how such alleged error was seasonably called to the attention of the trial judge with citation to that part of the record where appellant's challenge of the alleged error is recorded.

3. A statement reciting wherein appellant was prejudiced by such alleged error, with citations to the record showing where the resultant prejudice is recorded.

Appellant's brief contains no citation to the record indicating that any objection was made during the trial. Neither the Technical Record nor the Statement of the Evidence contains any indication of objection during the Trial.

In Burnette v. Pickel, Tenn. App. 1993, 858 S.W.2d 319, this Court held that alleged irregular procedure was waived by failure to object.

The Motion for new trial, quoted above, did complain of the procedure, but it was not supported by affidavit of what did occur at the trial, what objections were made, the specific evidence that would have been produced under proper procedure, and how the appellant was prejudiced by the procedure followed. Such an affidavit would have enabled this Court to minutely examine what occurred during the Trial and intelligently decide whether relief is due. Without such evidence, this Court is not in position to hold that reversible error occurred.

Appellant cites *Warren v. Warren*, Tenn. App. 1985, 731 S.W.2d 908, wherein the Trial Judge denied the request of the appellant that a court reporter be present during chamber conferences. No such request is indicated by the present record. The cited case was remanded for lack of testimony as to grounds of divorce as required by the statute at that time.

Appellant complains of the failure of the Trial Judge to find the facts as requested in the motion for a new trial. T.R.C.P. Rule 52.01 does require findings where requested before

judgment. *Citizen's National Life Insurance Co., v. Witherspoon,* 127 Tenn. 363, 155 S.W.2d 139 (1912).

A request for written finding is too late on motion for new trial, *Harbin v. Elam*, 1 Tenn. App. 496 (1925). In the present case, appellants request for findings was presented too late to support reversal on appeal

Failure to render findings of fact is not necessarily reversible error. *Bruce v. Bruce,* Tenn. App. 1990, 801 S.W.2d 102.

Finally, appellant argues that the judgment of the Trial Court cannot stand because the record contains no evidence to support it. The record does indicate clearly that the Trial Court heard evidence, however informally. The absence of evidence in the appellate record does not negative the certificate of the Trial Judge that evidence was heard. Where the Trial Court hears evidence that is not preserved by a certified transcript or statement of the evidence, it is presumed that there was evidence to support the ruling of the Trial Court *Scarbrough v. Scarbrough,* Tenn. App. 1988, 752 S.W.2d 94.

This Court regrets its inability to adequately review the actions of the Trial Court. Some consolation is found in the statutory continuing power of the Trial Judge to change custody "as the exigencies of the case require." T.C.A. § 36-6-101(a)(1).

The judgment of the Trial Court is affirmed. Costs of this appeal are taxed against the appellant. The cause is remanded to the Trial Court for necessary further proceedings.

AFFIRMED AND REMANDED.

_____
HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

_____
SAMUEL L. LEWIS, JUDGE

_____
BEN H. CANTRELL, JUDGE