

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Zephyria S. Tassone,	:	
Plaintiff-Appellee,	:	
v.	:	No. 18AP-810 (C.P.C. No. 17DR-4399)
Matthew Tassone,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on March 21, 2019

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**On brief:** *Matthew Tassone*, pro se.

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APPEAL from the Franklin County Court of Common Pleas,  
Division of Domestic Relations

PER CURIAM

{¶ 1} Defendant-appellant, Matthew Tassone, appeals the September 19, 2018 judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations. For the following reasons, we dismiss this appeal.

**I. Facts and Procedural History**

{¶ 2} Appellant and plaintiff-appellee, Zephyria S. Tassone, were married on July 6, 2011. On November 30, 2017, appellee filed a complaint for divorce. At the time of filing the complaint, the couple had one child, and appellee requested custody of the child. On the same day, appellee filed numerous motions, including a motion for psychological evaluation in which she asked the court to appoint a "forensic psychological custodial evaluator" to perform a full psychological evaluation of the parties. Appellee indicated in

the motion that she had genuine concerns for the well being of the minor child due to appellant's unstable and unnatural behavioral patterns.<sup>1</sup>

{¶ 3} On January 26, 2018, a magistrate of the trial court filed temporary orders, pursuant to Civ.R. 75(N), implementing the local/long distance model parenting time schedule as adopted by Loc.R. 27 of the Franklin County Court of Common Pleas, Division of Domestic Relations, Option B, with appellee having the first part of the week and appellant having the second part of the week. The orders also addressed the debts and other obligations of the parties. Appellant moved to set aside the orders and also moved to modify the orders. On May 31, 2018, the magistrate granted appellant's motion to modify in part and modified the temporary orders regarding the couple's debts. In the May 31, 2018 order, the magistrate noted that it had "specifically made an equal parenting time order because of those allegations [regarding parenting ability] and the fact that neither party has convinced the court of their allegations concerning the other parent and their ability to parent the child." (Mag. Order at 2.) The court also noted that appellee had a new work schedule.

{¶ 4} On June 14, 2018, appellant moved to set aside the magistrate's May 31, 2018 order. He also filed a motion for recusal of the magistrate on grounds he was not notified of appellee's new work schedule and that since the magistrate was notified, but appellant was not, the magistrate and appellee must have engaged in ex parte communications. Appellant filed numerous other motions. On July 12, 2018, the trial judge, in an eight-page decision, denied the motion for recusal of the magistrate.

{¶ 5} Five days later, on July 17, 2018, the parties appeared for a hearing before the magistrate regarding appellee's motion for a psychological evaluation and other motions and matters.

{¶ 6} On July 24, 2018, appellant filed in the trial court and in the Supreme Court of Ohio an affidavit of disqualification of the trial court judge. On July 30, 2018, the trial court was notified that the Chief Justice had denied the affidavit of disqualification finding

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<sup>1</sup> On December 20, 2017, the parties filed an agreed interim entry detailing parenting time and responsibilities. On April 19, April 25, and May 1, 2018, appellant filed motions for relief from judgment of the agreed interim entry. The trial court denied the same on May 23, 2018. The next day, appellant filed a motion, pursuant to Civ.R. 52, for findings of fact and conclusions of law in regard to the trial court's May 23, 2018 decision and judgment entry. On July 16, 2018, the trial court denied appellant's motion for findings of fact and conclusions of law.

appellant had failed to establish the trial judge had acted hostile toward him. The court also stated that "[i]f Mr. Tassone believes that [the trial judge's] handling of the case has violated his due-process rights, he may raise those arguments on appeal [and that] [i]t is well established, however, that 'a judge's adverse rulings, even erroneous ones, are not evidence of bias or prejudice.'" (Jgmt. Entry at 1-2, quoting *In re Disqualification of Fuerst*, 134 Ohio St.3d 1267, 2012-Ohio-6344, ¶ 14.)

{¶ 7} On August 6, 2018, appellant filed another request to disqualify the magistrate. Appellant alleged therein, among other things, that appellee's lawyer had acted deceptively with regard to appellee's motion for psychological examination and that the magistrate was permitting the same and had deliberately denied appellant equal protection and due process under the law.

{¶ 8} On September 19, 2018, the trial court filed numerous decisions and entries. In one of the decision and judgment entries filed September 19, 2018, the trial court denied appellant's August 6, 2018 request to disqualify the magistrate.

{¶ 9} On September 28, 2018, the magistrate filed an order ruling on numerous motions, including appellee's motion for psychological examination. On October 8, 2018, appellant filed a motion to set aside the magistrate's order.

{¶ 10} On October 19, 2018, appellant filed a notice of appeal "from the final judgment entry of the domestic relations court entered on 19SEPT2018." This is the appeal pending before us now.

{¶ 11} As of the filing of the record on November 2, 2018, appellee's complaint for divorce remains pending.<sup>2</sup>

## **II. Assignments of Error**

{¶ 12} Appellant appeals and assigns the following two assignments of error for our review:

[I.] The trial court abused its discretion in Deny [sic] Appellant's Motion to Disqualify Magistrate Black.

[II.] The trial erred in determining that the record does not support Appellant's contentions.

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<sup>2</sup> On September 11, 2018, appellant filed a motion to dismiss appellee's complaint for divorce. On November 13, 2018, the trial court denied the same. In a separate entry filed November 13, 2018, the trial court denied appellant's October 8, 2018 motion to set aside the magistrate's September 28, 2018 order. The same day the trial court denied numerous other motions filed by appellant.

### III. Analysis

{¶ 13} We begin by noting that the trial court filed numerous decisions on September 19, 2018, and appellant did not specify in his notice of appeal which of the decisions he was appealing. In the section of his brief titled "III. Statement of the Case," appellant makes arguments in support of, but without differentiating, both assignments of error. (Appellant's Brief at 5.) However, appellant only addresses the trial court's September 19, 2018 decision and entry denying his August 6, 2018 request to disqualify the magistrate and the magistrate's subsequent September 28, 2018 order regarding appellee's motion for psychological examination. Therefore, we will only address the September 19, 2018 decision and entry denying appellant's August 6, 2018 request to disqualify the magistrate.

{¶ 14} We also note that, in addition to the appeal pending before us, appellant has filed numerous appeals in this case. On June 12, 2018, appellant appealed from the trial court's May 23, 2018 decision,<sup>3</sup> appeal case No. 18AP-475. On August 13, 2018, appellant appealed the trial court's July 16, 2018 decision,<sup>4</sup> appeal case No. 18AP-614. These appeals were consolidated. By decision and entry, this court dismissed appellant's appeals for lack of jurisdiction as the judgments appealed were not final appealable orders. *See Tassone v. Tassone*, 10th Dist. No. 18AP-475, 2019-Ohio-683.

{¶ 15} On September 1, 2018, appellant filed a notice of appeal from the trial court's August 2, 2018 decision which denied appellant's request to settle and approve his App.R. 9(C)(1) statement, appeal case No. 18AP-669. On September 18, 2018, this court filed a journal entry of dismissal stating this court lacked jurisdiction because the order appealed from was not a final appealable order.

{¶ 16} On September 6, 2018, appellant filed a notice of appeal from the trial court's August 7, 2018 case management order, appeal case No. 18AP-677. On September 18, 2018, this court filed a journal entry of dismissal stating this court lacked jurisdiction because the order appealed from was not a final appealable order.

{¶ 17} Subsequent to the filing of the appeal before us now, on November 28, 2018, appellant filed a notice of appeal from the trial court's November 13, 2018<sup>5</sup> entries and

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<sup>3</sup> See fn. 1.

<sup>4</sup> See fn. 1.

<sup>5</sup> See fn. 2.

judgments denying appellant's motion to dismiss appellee's complaint for divorce and denying appellant's motion to set aside the magistrate's September 28, 2018 order, appeal case No. 18AP-912. This appeal remains pending.

{¶ 18} As we did in case Nos. 18AP-475 and 18AP-614, 18AP-669, and 18AP-677, before this court may reach the merits of appellant's assignments of error in the case pending before us now, we must determine whether the juvenile court's September 19, 2018 decision and judgment entry to deny the request to disqualify the magistrate is a final appealable order. "Ohio appellate courts have jurisdiction to review only final, appealable orders of lower courts within their districts." *K.B. v. Columbus*, 10th Dist. No. 14AP-315, 2014-Ohio-4027, ¶ 8, citing Ohio Constitution, Article IV, Section 3(B)(2); R.C. 2501.02. "If an order is not a final, appealable order, the appellate court lacks jurisdiction and the appeal must be dismissed." *Id.* at ¶ 8, citing *Prod. Credit Assn. v. Hedges*, 87 Ohio App.3d 207 (4th Dist.1993). See also *Whipps v. Ryan*, 10th Dist. No. 12AP-509, 2013-Ohio-4334, ¶ 22, citing *Kopp v. Associated Estates Realty Corp.*, 10th Dist. No. 08AP-819, 2009-Ohio-2595, ¶ 6, citing *Whitaker-Merrell Co. v. Geupel Constr. Co.*, 29 Ohio St.2d 184, 186 (1972). Consequently, appellate courts may raise, sua sponte, the jurisdictional question of whether an order is final and appealable. *Whipps* at ¶ 22, citing *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 87 (1989); *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 544 (1997).

{¶ 19} "The entire concept of final orders is based upon the rationale that the court making an order which is not final is thereby retaining jurisdiction for further proceedings. A final order, therefore, is one disposing of the whole case or some separate and distinct branch thereof." (Internal quotations omitted.) *Browder v. Shea*, 10th Dist. No. 04AP-1217, 2005-Ohio-4782, ¶ 10, quoting *Noble v. Colwell*, 44 Ohio St.3d 92, 94 (1989), quoting *Lantsberry v. Tilley Lamp Co.*, 27 Ohio St.2d 303, 306 (1971). A trial court order is final and appealable only if it satisfies the requirements in R.C. 2505.02 and, if applicable, Civ.R. 54(B). *Eng. Excellence Inc. v. Northland Assocs., L.L.C.*, 10th Dist. No. 10AP-402, 2010-Ohio-6535, ¶ 10.

{¶ 20} This court has previously found that a juvenile court's order denying appellant's motion to disqualify the magistrate is not a final appealable order. *Dunham v. Ervin*, 10th Dist. No. 17AP-79, 2017-Ohio-7616. We observed in *Dunham* that other Ohio

appellate courts have also held that a trial court's denial of a motion to remove a magistrate is not a final appealable order under R.C. 2505.02 where there are still other issues pending in the trial court. *See, e.g., Aloï v. Enervest*, 11th Dist. No. 2011-P-0023, 2011-Ohio-5112, ¶ 3 ("judgment entry overruling the motion to recuse a common pleas judge and disqualify a magistrate is not a final appealable order"); *Abbas v. Abbas*, 6th Dist. No. WD-00-015 (Mar. 10, 2000) (denial of a motion to disqualify a magistrate is not a final appealable order); *Robinson v. Prudential Ins.*, 5th Dist. No. 1998CA00058 (Jan. 19, 1999) (denial of a motion to disqualify a magistrate is not a final appealable order). *See also In re Kimbler*, 44 Ohio App.3d 9 (9th Dist.1988) (a ruling by a common pleas judge, made pursuant to the disqualification statute, R.C. 2937.20, is not a final appealable order).

{¶ 21} The "primary purpose of requiring a final, appealable order before allowing an appellate challenge is to prevent piecemeal appeals from every interlocutory order throughout the case." *In re T.P.*, 9th Dist. No. 27539, 2015-Ohio-3448, ¶ 27, citing *In re T.G.*, 12th Dist. No. CA2008-01-026, 2008-Ohio-4165, ¶ 14. As noted above, appellee's complaint for divorce remains pending in the juvenile court. Accordingly, pursuant to our precedent in *Dunham*, we lack jurisdiction to consider the trial court's denial of appellant's request to disqualify the magistrate.

#### **IV. Conclusion**

{¶ 22} Having determined the September 19, 2018 decision and judgment entry to deny the request to disqualify the magistrate is not a final appealable order, we hereby dismiss appellant's appeal for lack of jurisdiction.

*Appeal dismissed.*

KLATT, P.J., SADLER and DORRIAN, JJ., concur.

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