

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Thomas Clark,	:	
	:	
Plaintiff-Appellee,	:	No. 16AP-34
	:	(C.P.C. No. 12DR-3016)
v.	:	
	:	
Teresa Clark,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

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DECISION

Rendered on June 30, 2016

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**On brief:** *DAVID L. DAY A Legal Professional Assn., and David L. Day, for appellee.*

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

HORTON, J.

{¶ 1} Defendant-appellant, Teresa Clark, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, granting plaintiff-appellee's, Thomas Clark, motion for contempt and amended motion for contempt. Appellee did not file a brief in this action. This court dismisses the appeal because the trial court did not explicitly rule on each of appellant's objections and, therefore, its decision was not a final appealable order.

**I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} The parties were married in 2006, and have a daughter born in October 2005. The parties were divorced by "Agreed Decree of Divorce," filed February 11, 2013, and "Shared Parenting Plan, filed January 23, 2013." (Mag. Decision at 2.) On March 12, 2014, appellee filed a motion for contempt and on

November 21, 2014, appellee filed an amended motion for contempt. *Id.* On November 25, 2014, appellant filed a motion to dismiss. *Id.*

{¶ 3} The matter was referred to a magistrate and was heard on March 5, 2015. Appellant and appellee appeared, represented by counsel. A court reporter made a record of the proceedings. *Id.* On August 6, 2015, the magistrate rendered a decision granting appellee's motions for contempt, and denying appellant's motion to dismiss. On the same date, the trial court filed a judgment entry which incorporated the magistrate's decision and "makes the same the judgment of the court." (Aug. 6, 2015 Jgmt. Entry at 1.)

{¶ 4} On October 7, 2015, with leave of the court, appellant filed amended objections to the magistrate's decision. On December 18, 2015, the trial court entered a decision and entry which concluded that "based on the testimony presented to the Magistrate, the pleadings and exhibits filed in this case, and the case law in this area, the Court finds the Defendant's Objection to the Magistrate's Decision filed on August 6, 2015 is **OVERRULED**." (Emphasis sic.) (Dec. 18, 2015 Decision and Entry at 5.)

## II. ASSIGNMENT OF ERROR

{¶ 5} Appellant appeals, assigning a single error:

The trial court erred by failing to conduct an independent review of the evidence and the law applicable to the Defendant's seven objections to the magistrate's decision of August 6, 2015, and reach its own conclusions as to the facts and the law on each of Defendant's seven objections contained in Defendant's Amended Objections as required by Civ. R. 53(D)(4)(d).

## III. THIS COURT LACKS JURISDICTION

{¶ 6} This court must determine whether it has jurisdiction to consider this appeal. The Ohio Constitution restricts an appellate court's jurisdiction to the review of final orders of lower courts. Ohio Const., Article IV, Section 3(B)(2). In *Davis v. Davis*, 9th Dist. No. 08CA0022, 2009-Ohio-3164, ¶ 9, the court states the applicable law:

Rule 53(D)(4)(d) of the Ohio Rules of Civil Procedure provides that, "[i]f one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections." Civil Rule 53(D)(4)(e)(i) provides that, "[i]f the court enters a judgment during the fourteen days . . . for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of

execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." Because of the automatic stay on execution, this Court has concluded that an order is not final and appealable until the court disposes of any timely objections. See *In re K.K.*, 9th Dist. 22352, 2005 Ohio 3112, at ¶ 11. "For a trial court's ruling on a magistrate's decision to be final and appealable, the trial court must enter judgment independently of the magistrate and must explicitly overrule or sustain any timely filed objections." *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008 Ohio 5813, at ¶ 10.

{¶ 7} We have also addressed this issue. Sentence one of Civ.R. 53(D)(4)(d), like sentence one of former Civ.R. 53(E)(4)(b), requires that the court rule on timely objections. In *G. Scottco Inv. Co. v. Korleski*, 10th Dist. No. 10AP-582, 2011-Ohio-6656, ¶ 8, we held, citing the former rule, that:

Pursuant to Civ.R. 53(E)(4)(b), the trial court "*shall rule on any objections*" (emphasis added) to a magistrate's report. "This rule imposes a mandatory duty on the court to dispose of a party's objections to a magistrate's report." *Drummond v. Drummond*, 10th Dist. No. 02AP-700, 2003 Ohio 587, ¶13. "It is clear that an appellate court may not address an appeal of a trial court's judgment when the trial court has failed to rule on properly filed objections." *Id.*, citing *McCown v. McCown* (2001), 145 Ohio App.3d 170, 172, 762 N.E.2d 398. See also *In re J.V.*, 10th Dist. No. 04AP-621, 2005 Ohio 4925; *Peric v. Buccilli*, 8th Dist. No. 80805, 2002 Ohio 6234; *Kolman v. Bldg. Works & Co., Inc.*, 8th Dist. No. 80552, 2002 Ohio 3790; *Beal v. Allen*, 8th Dist. No. 79567, 2002 Ohio 4054; and *Ferretti v. Graham* (Feb. 13, 2001), 10th Dist. No. 00AP-765, 2001 Ohio App. LEXIS 502.

{¶ 8} In appellant's amended objections to the magistrate's decision, she raises seven objections. While citing to specific pages in the magistrate's decision and the hearing transcript, appellant alleges the magistrate erred in finding that the appellant: (1) failed to have the child ready to be picked up by appellee, (2) refused to take and/or pick up the child from extracurricular activities, and (3) inform appellee of the child's medical appointments and prescription changes. In addition, appellant objected to the: (1) granting of the motions for contempt as being against the manifest weight of the evidence and not supported by clear and convincing evidence, (2) sentencing appellant to

a suspended three-day jail sentence, (3) the imposition of a fine that runs indefinitely, and (4) to an award of attorney fees. (Oct. 7, 2015 Am. Objections at 3-14.)

{¶ 9} On December 18, 2015, the trial court entered a decision and entry regarding appellant's amended objections to the magistrate's decision. The trial court states that "[t]he Court held a full hearing on the Objections." (Dec. 18, 2015 Decision and Entry at 1.) However, the trial court states only that "[t]he defendant objects to the Magistrate's decision to impose a twenty-five dollar fine for each failure to notify Plaintiff in writing of any health-related medical appointments for [the child]." *Id.* at 2. The trial court then proceeds to address only this issue, and then concludes by overruling this singular "Objection" to the magistrate's decision. *Id.* at 3-5.

{¶ 10} Although appellant timely filed seven objections to the magistrate's decision, the trial court only addressed one of the objections, i.e., objection number three regarding the child's medical care. The trial court did not consider or explicitly sustain or overrule any of the other six objections.

{¶ 11} Appellate courts have repeatedly held that the trial court must explicitly rule on every objection that is timely filed in order to comply with Civ.R. 53(D)(4)(d). *See Davis; In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008 Ohio 5813; *Lorain Medina Rural Elec. v. GLW Broadband Inc.*, 9th Dist. No. 08CA009432, 2009-Ohio-1135, ¶ 8; and our analogous cases *G. Scottco Inv. Co.* and *In re J.V.*, 10th Dist. No. 04AP-621, 2005 Ohio 4925. Accordingly, because the trial court failed to rule on each of appellant's objections, its decision and entry is not final and appealable, and this court lacks jurisdiction to consider it. *See Strickler* at ¶ 10-11; *Davis* at ¶ 13; and *G. Scottco Inv. Co.* at ¶ 9.

#### **IV. DISPOSITION**

{¶ 12} Because the appeal is taken from an order that is not a final appealable order, this court does not have jurisdiction to consider the appeal, and it must be dismissed in its entirety.

*Appeal dismissed.*

DORRIAN, P.J. and TYACK, J., concur.

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