

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

KAREN GALLAGHER,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2009-G-2924
JAMES F. GALLAGHER,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 06 DC 26.

Judgment: Appeal dismissed.

Joyce E. Barrett and James P. Reddy, Jr., 800 Standard Building, 1370 Ontario Street, Cleveland, OH 44113-1752 (For Plaintiff-Appellant).

Jeffrey T. Orndorff, Jeffrey T. Orndorff Co., L.P.A., 117 South Street, #110, P.O. Box 1137, Chardon, OH 44024-5137 (For Defendant-Appellee).

TIMOTHY P. CANNON, J.

{¶1} On October 6, 2009, appellant, Karen Gallagher, filed a notice of appeal from a September 25, 2009 judgment entry of the Geauga County Court of Common Pleas, in which the trial court ordered that appellee, James F. Gallagher, is granted temporary custody of the parties' child.

{¶2} On October 23, 2009, this court issued a judgment entry ordering appellant to show cause why her appeal should not be dismissed for lack of a final appealable order. On November 5, 2009, appellant filed a brief in support of

jurisdiction. In her brief, appellant posits that the September 25, 2009 entry was made in a special proceeding and affects a substantial right pursuant to R.C. 2505.02(B). To prevail under this contention, appellant must demonstrate that in the absence of immediate review of the order, she will be denied effective relief in the future. *Bell v. Mt. Sinai Med. Ctr.* (1993), 67 Ohio St.3d 60, 63.

{¶3} According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a “final order” in the action. *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶3. Pursuant to R.C. 2505.02(B), there are five categories of a “final order,” and if a trial court’s judgment satisfies any of them, it will be considered a “final order” which can be immediately appealed and reviewed by a court of appeals.

{¶4} R.C. 2505.02(B) states that:

{¶5} “An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶6} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶7} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶8} “(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶9} “(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶10} “(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶11} “(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶12} “(5) An order that determines that an action may or may not be maintained as a class action;

{¶13} “(6) An order determining the constitutionality of any changes to the Revised Code ***.”

{¶14} In the instant matter, the trial court’s order does not fit within any of the categories of R.C. 2505.02. Furthermore, “[t]emporary *** child custody orders have been held not final and appealable because of their interlocutory nature.” *Williams v. Williams*, 11th Dist. No. 2002-T-0101, 2004-Ohio-3992, at ¶16. See, also, *Fritz v. Burch*, 5th Dist. No. 2008CA00286, 2009-Ohio-4004.

{¶15} Here, the custody of the minor child has not been permanently resolved. The order designating appellee as custodian is temporary. Since a temporary order is interlocutory in nature and not immediately appealable, the order from which appellant has appealed is not a final order. Appellant will have a meaningful and effective remedy by way of an appeal once a final judgment is reached as to all claims and parties when the case is decided and/or dismissed. See *Johnson v. Warren Police Dept.*, 11th Dist. No. 2005-T-0117, 2005 Ohio App. LEXIS 6182, 2005-Ohio-6904, at ¶14.

{¶16} Based upon the foregoing analysis, the judgment of the trial court in this matter is not a final appealable order. Thus, this court is without jurisdiction to consider this appeal. Accordingly, this appeal is hereby dismissed for lack of a final appealable order.

{¶17} Appeal dismissed.

DIANE V. GREDELL, J.,
CYNTHIA WESTCOTT RICE, J.,
concur.