

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

AMY L. RYMERS,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2009-L-180
JEFFREY G. RYMERS,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 09 DR 000158.

Judgment: Appeal dismissed.

Linda D. Cooper, Cooper & Forbes, 166 Main Street, Painesville, OH 44077-3403 (For Plaintiff-Appellee).

Joseph G. Stafford, and *Gregory J. Moore*, Stafford & Stafford Co., L.P.A., The Stafford Building, 2105 Ontario Avenue, Cleveland, OH 44115 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Jeffrey G. Rymers has filed an appeal from the judgment of the Lake County Court of Common Pleas staying the execution of its October 28, 2009 judgment entry, which involuntarily dismissed Amy L. Rymers' complaint for divorce without prejudice. As we find there is no final order upon which Mr. Rymers could premise his notice of appeal, the matter is dismissed.

{¶2} The limited record before this court indicates that Mr. and Ms. Rymers and their respective attorneys appeared for trial on October 7, 2009. Ms. Rymers' counsel orally requested a continuance on the morning of trial, which the trial court denied. After Ms. Rymers presented her evidence and rested, Mr. Rymers' counsel moved to dismiss the case pursuant to Civ.R. 41(B)(2), which the court granted without prejudice.

{¶3} On November 24, 2009, Ms. Rymers filed a notice of appeal of the trial court's judgment. On November 30, 2009, the trial court ordered that the execution of the judgment dismissing Ms. Rymers' divorce action be stayed.

{¶4} On December 7, 2009, Mr. Rymers filed a motion to dismiss the appeal for lack of a final appealable order, which Ms. Rymers duly opposed on December 15, 2009. While Mr. Rymers' motion was pending, he filed an appeal of the trial court's November 30, 2009 stay order.

{¶5} On February 10, 2010, this court overruled Mr. Rymers motion to dismiss, concluding the trial court's dismissal was a final appealable order. The appealability of the trial court's November 30 stay is now before this court.

{¶6} 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, at ¶3. Pursuant to R.C. 2505.02(B), there are seven 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.

{¶7} R.C. 2505.02(B) provides:

{¶8} “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:

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

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

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

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

{¶13} “(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.

{¶14} “(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.

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

{¶16} “(6) An order determining the constitutionality of any changes to the Revised Code ***;

{¶17} “(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.”

{¶18} Pursuant to R.C. 2505.02(A)(1), a “substantial right” is “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.”

{¶19} In the matter at hand, the trial court’s order does not meet any of the definitions of a final appealable order. The order granting the stay does not affect a substantial right in the matter. We are aware of no law or procedural rule that would entitle a prevailing party to the immediate execution of a judgment prior to his or her adversary having the opportunity to test the adequacy of that judgment on direct appeal. Further, the stay neither prevents judgment in the action nor prevents Mr. Rymers from being afforded a meaningful or effective remedy. See *Brunst v. Alltel Corp.*, 9th Dist. No. 04CA008591, 2005-Ohio-3350, at ¶9. When the trial court granted the stay, it simply put the execution of the judgment “on hold.” *Griswold Institute v. Walters* (Dec. 9, 1982), 10th Dist. No. 82AP-78, 1982 Ohio App. LEXIS 13221, *7.

{¶20} The principal function of a final, appealable order is the termination of a case or controversy. *Brunst*, supra, at ¶10; see, also, *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211. A stay of the execution of a judgment, an order which simply places the effect of a judgment on hold, does not serve to terminate a case or controversy. *Brunst*, supra; see, also, *Griswold Institute*, supra. Because it neither meets the statutory criteria nor the purpose behind the statute, the stay order at issue is not a final appealable order. See *Alexander v. Chandley* (1996), 113 Ohio App.3d 435, 437 (“a stay order is not a final and appealable order[.]”)

{¶21} It is worth pointing out that, even if this court possessed jurisdiction to review the stay order, this court’s February 10, 2010 judgment overruling Mr. Rymers’

motion to dismiss would have rendered the issue moot. In that judgment, this court concluded the trial court's involuntary dismissal of Ms. Rymers' divorce complaint was a final appealable order. As a result, the February 10, 2010 judgment had the effect of rendering the stay of execution of the underlying dismissal essentially irrelevant: To the extent this court has jurisdiction to review the dismissal entry, the judgment of dismissal was automatically stayed pending the resolution of the merits of Ms. Rymers' appeal of that judgment. Accordingly, any discussion regarding whether the trial court erred in granting the stay would be purely academic.

{¶22} Based upon the foregoing analysis, this appeal is hereby dismissed, sua sponte, for lack of a final appealable order.

{¶23} Appeal dismissed.

MARY JANE TRAPP, P.J.,

PATRICIA A. DELANEY, J.,
Fifth Appellate District,
Sitting by assignment,

concur.