**[Cite as *Rymers v. Rymers*, 2010-Ohio-4289.]**

COURT OF APPEALS
LAKE COUNTY, OHIO
ELEVENTH APPELLATE DISTRICT

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| AMY L. RYMERS | : | JUDGES: |
| | : | |
| Plaintiff-Appellee | : | Hon. W. Scott Gwin, P.J. |
| | : | Hon. William B. Hoffman, J. |
| -vs- | : | Hon. Patricia A. Delaney, J. |
| | : | |
| JEFFREY G. RYMERS | : | Case Nos. 2009-L-109, 2009-L-156 |
| | : | |
| Defendant-Appellee | : | |
| | : | |
| -vs- | : | |
| | : | |
| EUGENE A. LUCCI | : | |
| | : | |
| Intervenor Applicant-Appellant | : | O P I N I O N |

CHARACTER OF PROCEEDING: Appeal from the Lake County Court of Common Pleas Domestic Relations Division, Case No. 09DR00158

JUDGMENT: MOTIONS TO DISMISS APPEAL GRANTED; MOTION FOR ATTORNEYS FEES DENIED

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Appellee, Jeffrey G. Rymers:

JOSEPH G. STAFFORD
2105 Ontario Street
Cleveland, OH 44115

For Appellee, Amy L. Rymers:

LINDA C. COOPER
166 Main Street
Painesville, OH 44077

For Appellant, Eugene A. Lucci:

WALTER J. MCNAMARA, III
8440 Station Street
Mentor, OH 44060

*Delaney, J.*

{¶1} On March 18, 2009, Amy L. Rymers filed a complaint for divorce against Appellee, Jeffrey G. Rymers in the Lake County Court of Common Pleas, Domestic Relations Division. The case was assigned to a visiting judge.

{¶2} On June 3, 2009, Appellant, Eugene A. Lucci filed a motion to intervene in the divorce action. Lucci is in a relationship with Amy Rymers and he states that he resides with Amy Rymers and provides support for Amy Rymers and the Rymers's three children. The bases of Lucci's motion to intervene were twofold. First, the motion to intervene was supported by a motion to disqualify Attorney Joseph G. Stafford as counsel for Jeffrey Rymers in the divorce proceeding. Lucci argued that Attorney Stafford had previously represented Lucci in regard to Lucci's own domestic relations proceedings. Lucci stated that he consulted with Attorney Stafford on March 12, 2008 from 10:00 am to 12:00 p.m. wherein Attorney Stafford gave Lucci legal advice with regard to representing Lucci in his divorce proceeding. Lucci did not to retain Attorney Stafford as his legal counsel.

{¶3} The second part of Lucci's motion to intervene regards financial support Lucci alleges that he has provided to both Amy Rymers and Jeffrey Rymers. Lucci argues that Jeffrey Rymers is indebted to Lucci for that financial support and for other monies provided for the sale of the Rymers's home.

{¶4} Amy Rymers did not file a motion to disqualify Jeffrey Rymers's counsel.

{¶5} On August 6, 2009, the trial court denied Lucci's motions to intervene and to disqualify Jeffrey Rymers's counsel. Lucci filed a Notice of Appeal of the decision with the Eleventh District Court of Appeals (Case No. 2009-L-109). Lucci did not file a

motion to stay the underlying divorce proceedings with the trial court or with the Court of Appeals.

{¶6} The divorce action proceeded to trial in October 2009. The trial court determined that upon the evidence presented, the parties were not prepared to proceed with the case. The trial court dismissed the divorce complaint without prejudice pursuant to Civ.R. 41(B)(2) on October 28, 2009. Lucci filed a Notice of Appeal of the trial court's decision with the Eleventh District Court of Appeals under Case No. 2009-L-156, arguing the trial court was without jurisdiction to proceed on the complaint for divorce because Lucci had filed an appeal of the matter under Case No. 2009-L-109.

{¶7} Lucci is a sitting judge with the Lake County Court of Common Pleas. On March 2, 2010, the Ohio Supreme Court assigned Case Nos. 2009-L-109 and 2009-L-156 to the Fifth District Court of Appeals for disposition due to a conflict of interest with the Eleventh District Court of Appeals.

{¶8} Jeffrey Rymers filed Motions to Dismiss Appeals and a Motion for Sanctions and Attorneys Fees in Case Nos. 2009-L-109 and 2009-L-156. Lucci filed responses to the motions and Jeffrey Rymers filed replies.

**Case No. 2009-L-109 – Motion to Intervene**

{¶9} In Case No. 2009-L-109, Jeffrey Rymers argues that this Court has no jurisdiction to consider Lucci's appeal because the August 6, 2009 judgment entry is not a final, appealable order. We agree.

{¶10} Ohio law provides that appellate courts have jurisdiction to review only final orders or judgments. See, generally, Section 3(B)(2), Article IV, Ohio Constitution;

R.C. 2505.02. If an order is not final and appealable, an appellate court has no jurisdiction to review the matter and it must be dismissed.

{¶11} "An order of a court is a final appealable order only if the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B), are met." *State ex rel. Scruggs v. Sadler,* 97 Ohio St.3d 78, 2002-Ohio-5315, 776 N.E.2d 101, ¶ 5; see, also, *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus. The threshold requirement, therefore, is that the order satisfies the criteria of R.C. 2505.02.

{¶12} A final appealable order is, pursuant to R.C. 2505.02:

{¶13} "(B) 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:

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

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

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

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

{¶18} "(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.

{¶19} "(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.

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

{¶21} "(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711 .21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315 .18, 2315.19, and 2315.21 of the Revised Code;

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

{¶23} Lucci argues that the August 6, 2009 denial of his motion to intervene was a final, appealable order pursuant to all of the provisions of R.C. 2505.02. "There is no authority to support the general proposition that [the denial of a] motion to intervene always constitutes a final, appealable order." *State ex rel. Sawicki v. Court of Common Pleas of Lucas Cty.,* 121 Ohio St.3d 507, 2009-Ohio-1523, 905 N.E.2d 1192, at ¶ 14, quoting *Gehm v. Timberline Post & Frame,* 112 Ohio St.3d 514, 2007-Ohio-607, 861 N.E.2d 519, at ¶ 36.

**R.C. 2505.02(B)(1)**

{¶24} The August 6, 2009 judgment entry qualifies as a final, appealable order under R.C. 2505.02 if it affects a "substantial right" as defined by R.C. 2505.02(A)(1)

and that it "in effect determines the action and prevents a judgment." R.C. 2505.02(B)(1).

{¶25} The first question this Court must answer is whether the August 6, 2009 judgment entry denying Lucci's motion to intervene in the divorce proceeding affected a substantial right. R.C. 2505.02(A)(1) defines a "substantial right" as "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." Lucci argues that his motion to intervene is integral to his motion to disqualify Jeffrey Rymers's counsel. Because Lucci discussed his personal domestic issues with Attorney Stafford, Lucci argues that Attorney Stafford is privy to confidential information from Lucci that could be utilized negatively towards Amy Rymers during the divorce action between Jeffrey and Amy Rymers.

{¶26} Lucci moved to intervene in the divorce proceeding. In a civil proceeding, Civ.R. 24 would apply to the matter. The Ohio Supreme Court has determined that a motion to intervene is a right recognized by Civ.R. 24, intervention constitutes a substantial right under R.C. 2505.02(A)(1). *Gehm* at, ¶29. In a divorce proceeding, however, Civ.R. 75(B) applies.

{¶27} Civ.R. 75(B) precludes intervention in a divorce action unless "[a] person or corporation having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which a party seeks a division of marital property, a distributive award, or an award of spousal support or other support, may be made a party defendant." Civ.R. 75(B)(1). In order to intervene, the intervenor applicant must have claimed an "interest in property." *Moore v. Moore*, 175 Ohio

App.3d 1, 2008-Ohio-255, 884 N.E.2d 1113, ¶17. "Interest" means a "lien or ownership, legal or equitable." Id.

{¶28} The main thrust of Lucci's motion to intervene is to pursue his motion to disqualify Jeffrey Rymers's attorney. A secondary argument is that the parties in the divorce action are indebted to him for financial support he has provided to the parties' children and other matters. Lucci concedes, however, that he is able to pursue his financial claims in any other court with jurisdiction, rather than specifically in the domestic relations division.

{¶29} Upon this record, we find that Lucci cannot utilize Civ.R. 75(B) to intervene in this case. While intervention is a right recognized under Civ.R. 24, we find the same right does not exist for Lucci under the factual scenario of this case as applied to the limited right of intervention as found in Civ.R. 75(B). The application of Civ.R. 75(B) is limited to those with an interest in property to prevent the intervention of a third-party to a divorce action. *Stewart v. Stewart* (Dec. 17, 1993), Lake App. No. 93-L-051. It appears that Lucci is attempting to bootstrap the parties' alleged debt to him in his request to intervene in the divorce proceeding to show an interest in property, but Lucci admits that he can legitimately pursue those claims outside the divorce proceedings.

{¶30} We find no substantial right that Lucci is entitled to enforce or protect exists to allow Lucci to intervene in the divorce proceeding under Civ.R. 75(B) for Lucci's individual purpose of pursuing a motion to disqualify Jeffrey Rymers's attorney.

{¶31} As no substantial right exists, the August 6, 2009 judgment entry is not a final, appealable order under R.C. 2505.02(B)(1).

**R.C. 2505.02(B)(2)**

{¶32} Lucci next argues that his motion to intervene is a final, appealable order under R.C. 2505.02(B)(2) in that the denial of the motion affected a substantial right in a special proceeding.

{¶33} As we found above, no substantial right exists in the present case. Therefore, the August 6, 2009 judgment entry is not a final, appealable order pursuant to R.C. 2505.02(B)(2).

**R.C. 2505.02(B)(4)**

{¶34} Lucci next argues that he should be permitted to intervene and the denial of his motion is a final, appealable order pursuant to R.C. 2505.02(B)(4).

{¶35} "'[F]or an order to qualify as a final appealable order, the following conditions must be met: (a) the order must grant or deny a provisional remedy, as defined in R.C. 2505.02(A)(3), (b) the order must determine the action with respect to the provisional remedy so as to prevent judgment in favor of the party prosecuting the appeal, and (c) a delay in review of the order until after final judgment would deprive the appellant of any meaningful or effective relief.' *State v. Upshaw,* 110 Ohio St.3d 189, 2006-Ohio-4253, 852 N.E.2d 711, ¶ 15." *Gehm*, at ¶ 23.

{¶36} "Provisional remedy" means "a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, or suppression of evidence." R.C. 2505.02(A)(3). The basic purpose of R.C. 2505.02(A)(3) in categorizing certain types of preliminary decisions of a trial court as final, appealable orders is the protection of one party against irreparable harm by another party during the pendency of the litigation. *Gen. Elec.*

*Capital Corp. v. Golf Club of Dublin, LLC*, Delaware App. No. 09 CAE 12 0107, 2010-Ohio-2143, ¶ 40.

{¶37} The determination of whether a denial of a motion to intervene is a denial of a provisional remedy is made on a case-by-case basis. See *Gehm v. Timberline Post & Frame*, supra ("We therefore hold that a motion to intervene for the purpose of establishing the record in a separate action is not an ancillary proceeding to an action and does not qualify as a provisional remedy for the purposes of R.C. 2505.02"); See also *In re C.J. and M.B*., Cuyahoga App. No. 94210, 94233, 2010-Ohio-3202 (A denial of appellant's motion to intervene in a juvenile proceeding determining whether it was in the best interests of the children to remove them from appellant's mother's foster care was a provisional remedy because appellant's motions were based on her desire to adopt the children; therefore the motions were attendant upon the juvenile court's custody determinations.)

{¶38} This case involves a divorce action between Amy Rymers and Jeffrey Rymers. It is determinative as to the issue of a provisional remedy that it was Lucci, not Amy Rymers, who made the motion to intervene for the purpose of disqualifying Jeffrey Rymers's counsel from the divorce action between Jeffrey Rymers and Amy Rymers. "The types of provisional remedies listed under R.C. 2505.02(A)(3) include decisions that, when made preliminarily, could decide all or part of an action or make an ultimate decision on the merits meaningless or cause other irreparable harm." *Gen. Elec. Capital Corp*, supra, at ¶ 41. We find in this case the denial of Lucci's motion to intervene in the divorce action so that he could individually pursue his motion to

disqualify Jeffrey Rymers's counsel does not decide all or part of the divorce action, or make an ultimate decision on the merits meaningless or cause other irreparable harm.

{¶39} We find, therefore, the requirements of R.C. 2505.02(B)(4) have not been met so that the August 6, 2009 judgment entry is a final, appealable order.

{¶40} Accordingly, this Court is without jurisdiction to review to the August 6, 2009 judgment entry denying Lucci's motion to intervene.

{¶41} Based on the foregoing, the Court finds the Motion to Dismiss Appeal in Case No. 2009-L-109 to be well taken and GRANTS the same.

{¶42} The Court further DENIES the Motion for Sanctions and Attorney Fees.

**Case No. 2009-L-156 – Motion to Dismiss Appeal for Lack of Standing**

{¶43} As stated above, after Lucci filed his Notice of Appeal based on the trial court's August 6, 2009 decision, the trial court proceeded with the underlying divorce action. The trial court dismissed the divorce action pursuant to Civ.R. 41(B)(2). Lucci appealed the decision to dismiss the divorce action because he argued the trial court was without jurisdiction to proceed on the divorce action due to Lucci's Notice of Appeal.

{¶44} Jeffrey Rymers has also filed a Motion to Dismiss Appeal in Case No. 2009-L-156. Jeffrey Rymers argues in his Motion to Dismiss Appeal that the trial court had jurisdiction to proceed in the underlying divorce action regardless of Lucci's appeal in 2009-L-109 because the August 6, 2009 judgment entry was not a final, appealable order. Jeffrey Rymers also argues that Lucci has no standing to bring an appeal of the trial court's October 28, 2009 decision in the divorce action since he is not a party to the action.

{¶45} Pursuant to our decision in Case No. 2009-L-109, we find Jeffrey Rymers's arguments to be well taken. We hereby GRANT the Motion to Dismiss Appeal in Case No. 2009-L-156.

{¶46} In summary, the Motions to Dismiss the Appeals in Case Nos. 2009-L-109 and 2009-L-156 are hereby GRANTED.

{¶47} The Motion for Sanctions and Attorneys Fees is hereby DENIED.

{¶48} IT IS SO ORDERED.

By: Delaney, J.

Gwin, P.J. and

Hoffman, J. concur.