

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

KELLI R. LUNDY,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- VS -	:	CASE NO. 2011-T-0110
MARK E. LUNDY,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Domestic Relations Division, Case No. 2001 DR 321.

Judgment: Appeal dismissed.

Thomas E. Shubert, 138 East Market Street, Warren, OH 44481 (For Plaintiff-Appellant).

Rhonda L. Granitto Santha, 6401 State Route 534, Farmington, OH 44491 (For Defendant-Appellee).

DIANE V. GRENDELL, J.

{¶1} On November 23, 2011, plaintiff-appellant, Kelli R. Lundy, now known as Kelli R. Stiffy, by and through counsel, filed a notice of appeal from the November 3, 2011 Judgment Order of the Trumbull County Court of Common Pleas, Domestic Relations Division. In that Order, the trial court found the following: "Plaintiff is found in contempt and ordered to thirty (30) days in the Trumbull County Jail. Plaintiff can purge her contempt by filing her amended tax returns as previously ordered within sixty (60) days, failure will cause the Plaintiff to service thirty (30) days and owe attorney fees."

{¶2} We must determine whether the order appealed from is a final appealable order. According to the Ohio Constitution, Section 3(B)(2), Article IV, 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. If a lower court’s order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989).

{¶3} “[C]ontempt of court consists of two elements. The first is a finding of contempt, and the second is the imposition of a penalty or sanction. Until both have been made, there is no final order.” (Citation omitted.) *Nelson v. Nelson*, 11th Dist. No. 2006-G-2696, 2006-Ohio-4944, ¶ 6.

{¶4} This court has repeatedly held that, “[u]nder the case law of this state, when a trial court makes a finding of contempt and imposes a penalty or sanction, but allows an opportunity to purge, the order is not final and appealable.” *In re A.K.*, 11th Dist. No. 2011-L-060, 2012-Ohio-221, ¶ 51; *King v. King*, 11th Dist. No. 2011-G-3006, 2011-Ohio-2333, ¶ 2; *Estate of Sheehan*, 11th Dist. No. 2007-G-2774, 2007-Ohio-2571, ¶ 4.

{¶5} In the present case, the trial court found Stiffy to be in contempt of court and gave her a thirty day jail sentence. However, Stiffy was also given the opportunity to purge herself of that contempt by filing her amended tax returns within sixty days. There has not yet been a finding by the trial court that Stiffy failed to purge herself of the contempt. Based on the law of this court, since Stiffy has been given an opportunity to purge, we cannot find the November 3, 2011 Order to be a final order. See *Welch v.*

Welch, 11th Dist. No. 2004-L-178, 2005-Ohio-560, ¶ 5 (where the appellant was found to be in contempt, was given a fifteen day jail sentence, but was given the opportunity to purge himself of the contempt, the second element of contempt, “namely, a finding by the trial court that the contemnor has failed to purge himself and an actual imposition of a penalty or sanction,” had not occurred and the order was not final); *Miller v. Miller*, 11th Dist. No. 2008-T-0076, 2009-Ohio-2092, ¶ 32 (where there has been no finding by the trial court that the contemnor has failed to purge herself, the order appealed from is not final).

{¶6} Until an order is entered by the trial court imposing a sentence without an opportunity to purge, we cannot find the order to be final. *King* at ¶ 3 (“until a second order is entered by the trial court imposing sentence without an opportunity to purge, the issue of contempt is not ripe for review”).

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

{¶8} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.