[Cite as *Irons v. Peace,* 2015-Ohio-3555.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

MELISSA IRONS,	:	**MEMORANDUM OPINION**
Plaintiff-Appellee,	:	**CASE NO. 2015-T-0039**
- vs -	:	
JAMES DONALD PEACE, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2014 CV 00368.

Judgment: Appeal dismissed.

Michael P. Marando, Pfau, Pfau & Marando, 3722 Starr's Centre Drive, Suite A, Canfield, OH 44406 (For Plaintiff-Appellee).

Brendan J. Keating, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On April 20, 2015, appellant, James Donald Peace, by and through counsel of record, filed a notice of appeal from a March 20, 2015 entry of the Trumbull County Court of Common Pleas.

{¶2} The trial court record in this matter reveals that on February 20, 2014, appellee, Melissa Irons, filed a complaint against appellant and several other defendants alleging intentional infliction of emotional distress, negligent infliction of emotional distress, assault and battery (sexual abuse), breach of contract, promissory

estoppel, negligent hiring/ordaining, negligent supervision and retention, fraud, breach of fiduciary duty, liability for criminal acts, and civil conspiracy. Appellant filed a motion to dismiss with the trial court on August 1, 2014, and the other defendants filed a motion for judgment on the pleadings and motion to dismiss.

{¶3} On January 21, 2015, in response to the various motions filed by appellant and the other defendants, the trial court issued an entry dismissing the following claims: intentional infliction of emotional distress, negligent infliction of emotional distress, assault and battery (sexual abuse), breach of contract, promissory estoppel, and negligent supervision and retention. However, in that entry, the trial court ordered the following claims remained pending: fraud, breach of fiduciary duty, liability for criminal acts, and civil conspiracy. On February 17, 2015, appellee filed a motion to order the testing of appellee. On March 20, 2015, the trial court granted appellee's motion and ordered that appellant submit to DNA paternity testing to determine his paternal relationship with appellee. It is from that entry that appellant filed the instant appeal.

{¶4} On June 9, 2015, this court issued an entry ordering the parties to submit briefing on the issue of whether the appealed judgment is a final appealable order for this court's review. In our judgment entry, we explained that "orders to submit to DNA paternity testing have been held not to be final appealable orders for immediate review on appeal."

{¶5} In response to our entry, on June 24, 2015, appellee filed a "Brief Contra Jurisdiction" alleging that the appeal be dismissed for lack of jurisdiction under R.C. 2505.02. On July 6, 2015, appellant filed a "Brief in Support of Jurisdiction" and posits that this court has jurisdiction to hear the matter because the genetic testing is "an

ancillary proceeding rendering the matter a provisional remedy and thus, a final appealable order under R.C. 2505.02(B)(4)."

{¶6} Initially, we must determine whether there is a final appealable order since this court may entertain only those appeals from final judgments or orders. *Noble v. Colwell*, 44 Ohio St.3d 92, 96 (1989). 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. Lake 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 (1989). For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and if applicable, Civ.R. 54(B). *See Children's Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. Portage No. 2011-P-0103, 2011-Ohio-6838, ¶ 3.

{¶7} Pursuant to R.C. 2505.02(B), there are seven categories of a "final order," and if the judgment of the trial court satisfies any of them, it will be deemed a "final order" and can be immediately appealed and reviewed by a court of appeals. R.C. 2505.02(B) states that:

{¶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 * * *."

{¶18} For R.C. 2505.02(B)(1) to apply to the appealed entry, it must affect a substantial right, determine the action, and prevent further judgment. Here, the judgment entry involved in this appeal does not fit into this category.

{¶19} For R.C. 2505.02(B)(2) to apply to the instant matter, the order under review must be made in a special proceeding, which is defined as "an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity." R.C. 2505.02(A)(2). This matter does not involve a special proceeding in the context of final appealable orders. Thus, R.C. 2505.02(B)(2) does not apply.

{¶20} In addition, it is clear that the March 20, 2015 entry did not vacate a judgment. Therefore, R.C. 2505.02(B)(3) does not apply. Furthermore, the March 20, 2015 order did not deal with a class action, determine the constitutionality of Am. Sub. S.B. 281 or Sub. S.B. 80, or deal with an appropriation proceeding. Therefore, R.C. 2505.02(B)(5)-(7) do not apply.

{¶21} The only remaining provision of the statute that could apply is R.C. 2505.02(B)(4); however, nothing indicates appellant would be precluded from obtaining "a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action." R.C. 2505.02(B)(4)(b). That is, there is no danger that a meaningful remedy would be unavailable upon an appeal after the underlying proceedings properly concluded. Accordingly, R.C. 2505.02(B)(4) is also inapplicable to the instant case, and the judgment upon which this appeal premised is not a final, appealable order.

{¶22} It is well-established that orders that require a party to submit to genetic testing do not constitute final and appealable orders. *Davis v. Boone*, 8th Dist. Cuyahoga No. 96812, 2011-Ohio-6442, at ¶ 17. Furthermore, even if they did, such orders do not qualify under R.C. 2505.02(B) as final orders because the appealing party would be afforded a meaningful and effective remedy by way of an appeal following a final judgment in the action. *Id.*

{¶23} Appellant will have a meaningful and effective remedy by means of an appeal once a final judgment is reached. See *Tomaiko*, *supra*, at ¶ 5. Consequently, since the order appealed from is not final, this court will not have jurisdiction until a final appealable order is issued.

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

{¶25} Appeal dismissed.

THOMAS R. WRIGHT, J.,

COLLEEN MARY O'TOOLE, J.,

concur.