[Cite as *Richardson v. Richardson*, 2009-Ohio-6492.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

Shane Richardson, Plaintiff-Appellee, v. Lisa Richardson, Defendant-Appellee, and Teresa Craycraft and Harold Craycraft, Intervening-Appellants.	:	Case No. 09CA3293 DECISION AND JUDGMENT ENTRY **Released 12/9/09**

APPEARANCES:

Marie Moraleja Hoover and R. Tracy Hoover, THE HOOVER LAW GROUP, Portsmouth, Ohio, for appellants Teresa and Harold Craycraft.[1]

Harsha, J.

{¶1} Teresa and Harold Craycraft appeal the judgment of the Scioto County Court of Common Pleas, Domestic Relations Division overruling their motion to intervene in the divorce action of their daughter, Lisa Richardson, and Shane Richardson.[2] The Craycrafts contend that by denying this motion, the trial court effectively denied their motion for grandparent visitation under R.C. 3109.051(B).

[1] Shane and Lisa Richardson did not file appellate briefs and have not otherwise entered an appearance in this appeal.

[2] The Craycrafts filed a "motion to add" themselves as parties to the divorce action. They cited no legal authority in support of this motion, so we presume that they filed it pursuant to Civ.R. 24, which provides the procedure for permissive intervention and intervention of right.

However, the trial court never ruled on the visitation motion. And because the denial of the motion to intervene did not dispose of the merits of the underlying visitation motion, the entry denying the motion to intervene does not constitute a final, appealable order. Thus, we lack jurisdiction to consider this appeal and must dismiss it.

I. Facts

{¶2} Lisa and Shane Richardson married in May 1998, and two of the couple's three children were born as a result of the marriage. In April 2007, Mr. Richardson filed a complaint for divorce. In September 2007, Teresa Craycraft filed a motion to intervene so she could obtain standing to pursue her separate motion challenging the court's jurisdiction over the custody proceedings. The court denied her requests. On January 6, 2009, the Craycrafts filed a R.C. 3109.051 motion for grandparent visitation. The next day, the trial court held the final hearing in the divorce action. The trial court permitted Mrs. Craycraft to testify but informed her that the hearing was "not a hearing on the motion that you have filed." Mrs. Craycraft testified that she and her husband last had contact with the children sixteen months before the hearing, that she was aware of a provision in the proposed Agreed Judgment of Entry of Divorce that would prohibit contact between the Craycrafts and the children, and that she did not know why the Richardsons wanted to keep them from their grandchildren. The Richardsons testified that they did not feel contact with the Craycrafts would be in their childrens' best interest.

{¶3} After the hearing, the trial court journalized an Agreed Judgment Entry of Divorce, which provided that there "shall be no contact" between the children born as issue of the marriage and the Craycrafts until further order of the court or agreement of

the parties. Subsequently, the Craycrafts filed a UCCJEA affidavit and a "motion to add" themselves as parties to the divorce action, i.e. their second motion to intervene. According to the Craycrafts, they filed the affidavit and second motion to intervene in response to a letter they received from the trial court informing them that it could not consider their visitation motion because they had not filed the affidavit and had not been added as parties to the divorce case. After the court denied their second motion to intervene, the Craycrafts filed this appeal.

II. Assignment of Error

{¶4} The Craycrafts assign the following error for our review:

> THE TRIAL COURT ERRED WHEN IT OVERRULED APPELLANT'S [sic] MOTION TO BE ADDED AS PARTIES TO SHANE RICHARDSON VS. LISA RICHARDSON.

III. No Final, Appealable Order

{¶5} Before we address the merits of the appeal, we must decide whether we have jurisdiction to do so. Appellate courts "have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *." Section 3(B)(2), Article IV, Ohio Constitution; see, also, R.C. 2505.03(A). If a court's order is not final and appealable, we have no jurisdiction to review the matter and must dismiss the appeal. *Eddie v. Saunders*, Gallia App. No. 07CA7, 2008-Ohio-4755, at ¶11. In the event that the parties do not raise the jurisdictional issue, we must raise it sua sponte. *Sexton v. Conley* (Aug. 7, 2000), Scioto App. No. 99CA2655, 2000 WL 1137463, at *2.

{¶6} An order must meet the requirements of R.C. 2505.02 to constitute a final, appealable order. *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 88,

541 N.E.2d 64. Under R.C. 2505.02(B)(1), an order is a final order if it "affects a substantial right in an action that in effect determines the action and prevents a judgment[.]" To determine the action and prevent a judgment for the party appealing, the order "must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court." *Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio* (1989), 46 Ohio St.3d 147, 153, 545 N.E.2d 1260.

{¶7} "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. "Although intervention constitutes a substantial right under R.C. 2505.02(A)(1), '[t]he denial of a motion to intervene, when the purpose for which intervention was sought may be litigated in another action, does not affect a substantial right under R.C. 2505.02(B)(1) that determines the action and prevents the judgment.'" Id., quoting *Gehm* at paragraph three of the syllabus.

{¶8} Here, the Craycrafts sought to intervene in the divorce action because the trial court presumably told them that it could not consider the R.C. 3109.051(B) motion for grandparent visitation unless the Craycrafts were parties to the divorce action. R.C. 3109.051(B) creates a special statutory procedure for grandparents, relatives, and other persons to seek reasonable companionship and visitation rights when there is a "divorce, dissolution of marriage, legal separation, annulment, or child support proceeding that involves a child * * * ." A grandparent does not need to intervene in

these proceedings under Civ.R. 24 to file a R.C. 3109.051(B) motion for visitation. In fact, Civ.R. 75(B) provides that Civ.R. 24 "shall not apply in divorce, annulment, or legal separation actions" except in limited circumstances. Instead, "R.C. 3109.051(B) confers standing to make the motion by reason of the movant's relationship with the child, which is also a basis to grant the relief sought." *Liming v. Damos*, Athens App. No. 05CA28, 2006-Ohio-2518, at ¶8, quoting *Elliott v. Elliott* (June 28, 1996), Montgomery App. No. 15635, 1996 WL 407946, at *2. Moreover, the movant may file the motion "during the pendency of the divorce, dissolution of marriage, legal separation, annulment, or child support proceeding or, if a motion was not filed at that time or was filed at that time and the circumstances in the case have changed, at any time after a decree or final order is issued in the case." R.C. 3109.051(B)(2).

{¶9} In determining whether to grant companionship or visitation rights to a grandparent, relative, or other person under R.C. 3109.051(B), the court "shall consider any mediation report that is filed pursuant to section 3109.052 of the Revised Code and *shall consider* all other relevant factors, including, but not limited to, *all of the factors* listed in [R.C. 3109.051(D)]." R.C. 3109.051(C) (Emphasis added).

{¶10} Here, the trial court has not considered any of the mandatory factors listed in R.C. 3109.051(D) nor has it entered a judgment on the Craycrafts' motion for grandparent visitation. And the denial of the Craycrafts' second motion to intervene did not dispose of the merits of the visitation motion, i.e. the purpose for which intervention was sought. Thus, the court's entry denying intervention is not a final, appealable order because it does not affect a substantial right under R.C. 2505.02(B)(1). Likewise, the court has not addressed the merits of the motion for grandparent visitation, i.e., it still

remains pending. Accordingly, we dismiss this appeal and instruct the trial court to consider the Craycrafts' motion for grandparent visitation in accordance with R.C. 3109.051.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED and that Appellants shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.