

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

TERESA ESTES,	:	Case No. 10CA1
	:	
Plaintiff-Appellee, ¹	:	
	:	
v.	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
JOSE L. ESTES,	:	
	:	
	:	Released 8/18/10
	:	
Defendant-Appellant.	:	

APPEARANCES:

Steven L. Story, STORY LAW OFFICE, Pomeroy, Ohio, for appellant.

Harsha, J.

{¶1} On August 19, 2009, the trial court entered a “Judgment Entry/Decree of Divorce” in a divorce action between Teresa Estes and Joel Estes and ordered them each to pay half of any court costs unpaid by deposits on hand as of that date, i.e. \$18.00 each. On November 13, 2009, the court sua sponte reconsidered its judgment and assessed all \$36.00 in court costs to Mr. Estes and his attorney and ordered them to pay the costs or appear and show cause as to why the costs had not been paid. When Mr. Estes did not appear at the hearing, the court ordered the Clerk of Courts to issue a bench warrant for his arrest.

{¶2} On appeal, Mr. Estes contends that the trial court erred for various reasons when it issued the November 13, 2009 judgment and ordered the bench warrant when he failed to comply with that judgment. Because the August 19, 2009 judgment was a final, appealable order, the trial court lacked jurisdiction to reconsider it.

¹ Teresa Estes did not file an appellate brief and has not otherwise entered an appearance in this appeal.

Therefore, we do not address Mr. Estes' assignments of error because the November 13, 2009 judgment is a nullity, as is the court's order directing the Clerk of Courts to issue a bench warrant for his arrest. Accordingly, we instruct the trial court to vacate those entries.

I. Facts

{¶3} Teresa Estes filed a complaint for divorce, and on August 19, 2009 the trial court issued its Judgment Entry/Decree of Divorce. The entry stated in part that: "It is **ORDERED** that the parties shall equally pay any court costs unpaid by deposits on hand as of the date of this judgment entry * * *." According to a "Cost Bill" printed on that date, the costs totaled \$256.00 and \$220.00 had been deposited with the court. Therefore, \$36.00 remained unpaid at the time of the court's entry.

{¶4} On November 13, 2009, the court issued a "Journal Entry: Order To Pay or Appear," which stated:

Court costs have been assessed against Steve Story, counsel and Jose Estes in the amount of \$36.00 by the Meigs County Common Pleas Court. Steve Story, counsel and Jose Estes are ordered to appear at the Meigs County Common Pleas Court, Courthouse, 100 East Second Street, Pomeroy, Ohio 45769, on Monday, November 30, 2009 at 10:00 a.m. to show cause why these court costs have not been paid.

Steve Story and Jose Estes may avoid appearing in Court by paying these costs in full by 4:30 p.[m]. on Wednesday, November 25, 2009. If you do not pay or appear, a bench warrant may be issued for your arrest for failing to appear.

{¶5} Attorney Story appeared at the hearing, but Mr. Estes did not because he was presumably in California. On December 22, 2009, the court issued the following entry:

This matter came on for hearing this 30th day of November 2009 wherein the defendant was ordered to appear to show cause why court

costs have not been paid. The case was duly called and the defendant was not present. Therefore, the Clerk of Courts is ordered to issue a Bench Warrant commanding the arrest of the said Jose L. Estes forthwith, and that he be held without bond until he shall appear before the Court for further disposition.

This appeal followed.

II. Assignments of Error

{¶6} Mr. Estes assigns the following errors for our review:

1. The Trial Court erred in exceeding its authority by ordering Defendant's Counsel to pay [c]ourt [c]osts and/or in rendering judgment for [c]ourt [c]osts against Counsel for the defendant.
2. The Trial Court violated Counsel for the Defendant's right to due process under the Ohio and U.S. Constitutions by ordering Counsel for the Defendant to pay costs and/or rendering judgment for [c]ourt [c]osts against Counsel for the Defendant. This action by the Trial Court created a *de facto* "debtor's prison".
3. The Trial Court erred by entering judgment against the Appellant/Defendant after the Trial Court's jurisdiction had terminated upon the filing of the Final Appealable Order Judgment Entry dated the 19th day of August, 2009.
4. The Trial Court violated the Defendant's right to due process under the Ohio and U.S. Constitutions by ordering the Defendant to pay costs and/or rendering judgment for [c]ourt [c]osts against the Defendant after the Court's jurisdiction had terminated. This action by the Trial Court created a *de facto* "debtor's prison".

III. Court Costs

{¶7} The crux of Mr. Estes' argument is that the trial court erred for various reasons when it: 1) changed the August 19, 2009 final judgment by entering a second judgment on November 13, 2009, and 2) ordered the Clerk of Courts to issue a bench warrant for his arrest when he failed to comply with the second judgment. For the following reason, we do not address Mr. Estes' assignments of error.

{¶8} The August 19, 2009 judgment ordered Mr. Estes and Ms. Estes to

“equally pay any court costs unpaid by deposits on hand as of the date of this judgment entry * * *.” On that date, the outstanding court costs totaled \$36.00. Thus Mr. Estes and Ms. Estes were each obligated to pay \$18.00 of these costs. However, in the November 13, 2009 judgment, the court ordered Mr. Estes and his attorney to pay \$36.00 in court costs, i.e. all of the outstanding costs.²

{¶9} “[A]fter a trial court issues a final, appealable order, a motion for reconsideration of that final order is a nullity, and any judgment entered on such a motion is also a nullity.” *Napier v. Napier*, 182 Ohio App.3d 672, 2009-Ohio-3111, 914 N.E.2d 1069, at ¶7, citing *Pitts v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 378, 379, 423 N.E.2d 1105; and *Kauder v. Kauder* (1974), 38 Ohio St.2d 265, 267, 313 N.E.2d 797. Moreover, “[a] trial court’s sua sponte reconsideration of a final judgment is no different from a party moving for reconsideration.” *Id.* The August 19, 2009 Judgment Entry/Decree of Divorce constituted a final, appealable order. Therefore, we find that the November 13, 2009 judgment was a nullity because the trial court lacked jurisdiction to reconsider its own valid final judgment. Likewise, the court’s December 22, 2009 order directing the Clerk of Courts to issue a bench warrant for Mr. Estes’ arrest based on his failure to comply with the second judgment was a nullity.

{¶10} Accordingly, we instruct the trial court to vacate the November 13, 2009 and December 22, 2009 entries. And we dismiss this appeal for lack of final appealable order.

APPEAL DISMISSED.

² We note that it is unclear from the record whether any court costs are in fact outstanding. The record contains no Cost Bill after August 19, 2009. Moreover, a handwritten notation on the August 19, 2009 Cost Bill possibly indicates that Ms. Estes paid the \$36.00 on January 14, 2010.

JUDGMENT ENTRY

It is ordered that the APPEAL IS DISMISSED and that Appellant 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 Meigs 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. & Kline, 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.