[Cite as *McLaughlin v. McLaughlin*, 2010-Ohio-694.]

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

Carol McLaughlin,	:	
Plaintiff-Appellee,	:	Case No. 09CA28
v.	:	
Samuel McLaughlin,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	File-stamped date: 2-22-10

APPEARANCES:

T.E. Eslocker, Eslocker & Oremus Co., LPA, Athens, Ohio, for Appellant.

Richard M. Lewis, The Law Firm of Richard M. Lewis, LLC, Jackson, Ohio, for Appellee.

Kline, J.:

{¶1} Samuel McLaughlin (hereinafter "Samuel") appeals the judgment of the Athens County Court of Common Pleas. Samuel entered into a separation agreement with his ex-wife Carol McLaughlin (hereinafter "Carol"). In the proceedings below, Samuel requested an evidentiary hearing to determine the intent of the parties when they entered into the separation agreement. Despite Samuel's request, the trial court made its decision without conducting an evidentiary hearing. On appeal, Samuel argues that the trial court's refusal to conduct an evidentiary hearing violated Samuel's right to due process. However, we do not address Samuel's arguments because he did not file a timely appeal. Accordingly, we dismiss this appeal for lack of jurisdiction.[1]

[1] On December 29, 2009, Carol filed a "MOTION TO DISMISS DEFENDANT/APPELLANT'S APPEAL." In this opinion, we dismiss Samuel's appeal for a lack of jurisdiction. Therefore, this opinion renders Carol's December, 29 2009 motion moot.

I.

{¶2} This is the fourth appeal by the parties in this case, which began in April 1993 when Carol filed a complaint for divorce. See *McLaughlin v. McLaughlin*, Athens App. No. 00CA14, 2001-Ohio-2450 (hereinafter "*McLaughlin I*"); *McLaughlin v. McLaughlin*, Athens App. No. 06CA14, 2007-Ohio-260 (hereinafter "*McLaughlin II*"); *McLaughlin v. McLaughlin*, 178 Ohio App.3d 419, 2008-Ohio-5284 (hereinafter "*McLaughlin III*"). Because *McLaughlin I*, *McLaughlin II*, and *McLaughlin III* recount many of the facts of this case, we will not repeat those facts here. Instead, we will only discuss the facts pertinent to this particular appeal.

{¶3} Following our remand in *McLaughlin III*, Samuel filed a "MOTION TO STAY/ELIMINATE PAST PAYMENTS OF SPOUSAL SUPPORT" and a "MOTION FOR EVIDENTIARY HEARING TO INTERPRET AND DETERMINE THE MEANING OF THE PARTIES' SEPARATION AGREEMENT." In his motion for an evidentiary hearing, Samuel "respectfully request[ed] the Court to conduct an evidentiary hearing to determine the interpretation of the parties' contract language contained in their December 3, 1993 Separation Agreement."

{¶4} The trial court denied both of Samuel's motions in a May 29, 2009 judgment entry. In denying Samuel's motion for an evidentiary hearing, the trial court explained that "[Samuel] seeks an evidentiary hearing so that the Court may determine the intent of the parties in entering the separation agreement and because of the ambiguity in interpretation of the 'forty-six percent' language in the subject paragraph. * * * However, in [*McLaughlin III*], the court cited the law to determine the intention of the parties in interpreting contract language."

{¶5} In *McLaughlin III*, we found the following: "Here, the spousal support agreement essentially provides that Carol is entitled to the lesser of $60,000.02 or 46 percent of Samuel's base salary as spousal support until she remarries, cohabits with another male not her kin, or dies. When Samuel's base income was involuntarily reduced to zero, Carol's spousal support was reduced to zero in accordance with the terms of the agreement. Such a reduction in his spousal support obligation was expressly provided for by the terms of the separation agreement and, thus, is not a 'modification' of the terms. Now that Samuel's base salary is $190,000, Carol is entitled to receive $60,000.02,[2] assuming that she is not remarried, cohabitating with another male not her kin, or dead. Such a conclusion is supported by the terms of the separation agreement." *McLaughlin III* at ¶17.

{¶6} Thus, in its May 29, 2009 order, the trial court further explained that "[t]he court of appeals did not find the spousal support language to be ambiguous. In interpreting the separation agreement language, the court of appeals concluded that [Carol] is entitled to $60,000.02 per year in spousal support because [Samuel's] base salary is $190,000.00 per year. * * * Accordingly, the Court denies [Samuel's] two May 4, 2009, motions. * * * [P]ursuant to [*McLaughlin III*] and the separation agreement, effective January 2, 2006, [Samuel] shall pay [Carol] $60,000.02 per year in spousal support. * * * This is a judgment or final order, which may be appealed."

{¶7} On July 6, 2009, Samuel filed a "MOTION TO TERMINATE SPOUSAL SUPPORT/MOTION FOR EVIDENTIARY HEARING." In this motion, Samuel asked the trial court to "conduct an evidentiary hearing to review the ambiguity issue based on

[2] "Forty-six percent of Samuel's current base salary of $190,000 is $87,400, which is obviously more than the $60,000.02 figure set forth in the separation agreement. But the agreement does not provide for more than that amount in spousal support." *McLaughlin III* at ¶17, fn. 2.

contract terms and the intent of the parties. * * * Such an evidentiary hearing is necessary in this matter in order to fully understand the less than clear terms of the spousal support reduction, or increase."

{¶8} The trial court denied Samuel's July 6, 2009 motion in a July 14, 2009 judgment entry. In that entry, the trial court stated, in part, the following: "For the reasons stated in its May 29 judgment entry and in [*McLaughlin III*], the Court denies [Samuel's] motions."

{¶9} On August 13, 2009, Samuel filed an appeal of "the final judgment entered in this matter on the 14th day of July, 2009." In his brief, Samuel asserts the following assignment of error: "THE TRIAL COURT ERRED AND DENIED APPELLANT DUE PROCESS WHEN THE COURT DISMISSED APPELLANT'S MOTION TO TERMINATE SPOUSAL SUPPORT WITHOUT AN EVIDENTIARY HEARING TO RESOLVE THE AMBIGUITY OF THE SPOUSAL SUPPORT LANGUAGE OF THE PARTIES' DIVORCE DECREE."

II.

{¶10} In his only assignment of error, Samuel essentially contends that the trial court should have conducted an evidentiary hearing before deciding that Samuel had to pay Carol $60,000.02 per year. Samuel claims that the separation agreement is ambiguous. For that reason, Samuel argues that the trial court should have held an evidentiary hearing to determine the intent of the parties. Samuel further argues that the trial court's refusal to conduct an evidentiary hearing violated his right to due process.

{¶11} Before we may consider the merits of Samuel's arguments, we must first address a jurisdictional issue. Specifically, Carol argues that we lack jurisdiction to consider this matter because Samuel did not file a timely appeal.

A. Carol's Arguments About This Court's Jurisdiction

{¶12} "App.R. 4(A) requires a party to file a notice of appeal 'within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.' If a party fails to file a notice of appeal within thirty days as required by App.R. 4(A), we do not have jurisdiction to entertain the appeal. The timely filing of a notice of appeal under this rule is a jurisdictional prerequisite to our review." *Hughes v. A & A Auto Sales, Inc.*, Lawrence App. No. 08CA35, 2009-Ohio-2278, at ¶7, quoting App.R. 4(A). See, also, *Marcinko v. Carson*, Pike App. No. 04CA723, 2004-Ohio-3850, at ¶15; *State v. Thacker*, Lawrence App. No. 02CA35, 2002-Ohio-7443, at ¶2-3.

{¶13} After our decision in *McLaughlin III*, Samuel filed both the "MOTION TO STAY/ELIMINATE PAST PAYMENTS OF SPOUSAL SUPPORT" and the "MOTION FOR EVIDENTIARY HEARING TO INTERPRET AND DETERMINE THE MEANING OF THE PARTIES' SEPARATION AGREEMENT." The trial court denied both of Samuel's motions on May 29, 2009.

{¶14} Carol argues that Samuel should have appealed from the trial court's May 29, 2009 judgment entry. Because Samuel failed to do so, Carol maintains that this court lacks jurisdiction to consider Samuel's appeal.

{¶15} On July 6, 2009, Samuel filed the "MOTION TO TERMINATE SPOUSAL SUPPORT/MOTION FOR EVIDENTIARY HEARING." Carol claims that Samuel's July 6, 2009 motion amounts to a motion for reconsideration and is, therefore, a nullity. In support of her argument, Carol cites *Pitts v. Ohio Dept. of Transp.* (1981), 67 Ohio St.2d 378.

{¶16} In *Pitts*, the Supreme Court of Ohio held that "[w]ithout a specific prescription in the Civil Rules for a motion for reconsideration, it must be considered a nullity. Furthermore, App.R. 4(A) expressly provides that a notice of appeal must be filed within 30 days of the filing of the entry of judgment appealed from. * * * Only a Civ.R. 50(B) motion or a Civ.R. 59 motion will suspend the time for filing a notice of appeal. There is no mention of a motion for reconsideration after a final judgment, and none should be inferred." Id. at 380. See, also, App.R. 4(B)(2) ("The following are exceptions to the appeal time period in division (A) of this rule: In a civil case or juvenile proceeding, if a party files a timely motion for judgment under Civ. R. 50(B) [or] a new trial under Civ. R. 59(B)[.]"). Accordingly, Carol argues that Samuel's July 6, 2009 motion may not extend the time limit for filing an appeal.

B. Our Analysis of the Jurisdictional Issue

{¶17} First, we believe that the trial court's May 29, 2009 order is a final appealable order. By declaring that Samuel must pay Carol $60,000.02 per year, the May 29, 2009 order affected the parties' substantial rights, determined the action, and prevented a judgment in favor of Samuel. See R.C. 2505.02(B)(1). Further, "[w]hen a final judgment is issued, all interlocutory orders are merged into the final judgment." *Handel v. White*, Summit App. No. 21716, 2004-Ohio-1588, at ¶8 (citations omitted). In other

words, "[o]nce a final judgment is entered, interlocutory rulings * * * become appealable at that time." *Wolfram v. Deerfield Village Condominium Owners Assn., Inc.*, Butler App. No. CA2006-04-084, 2006-Ohio-4961, at ¶11. See, also, *Beatley v. Knisley*, Franklin App. No. 08AP-696, 2009-Ohio-2229, at ¶9; *Grover v. Bartsch*, 170 Ohio App.3d 188, 2006-Ohio-6115, at ¶9. Thus, if Samuel wanted to appeal the trial court's decision not to hold an evidentiary hearing, Samuel should have filed an appeal within thirty days of the May 29, 2009 order.

{¶18} Additionally, we agree with Carol that Samuel's July 6, 2009 motion is, essentially, a motion for reconsideration. First, we note that "[i]t is not a motion's designation that is controlling; rather, a motion may be considered for what it is rather than for what it is designated as." *Musa v. Gillett Communications, Inc.*, 119 Ohio App.3d 673, 680.

{¶19} Here, Samuel requested an evidentiary hearing to determine the intent of the parties in both the May 4, 2009 and the July 6, 2009 motions. Both motions made similar arguments and used similar language. Furthermore, in his July 6, 2009 motion, Samuel argued that the trial court should have conducted an evidentiary hearing before making its decision. As the July 6, 2009 motion states, "[w]hile the Court recently ruled that [*McLaughlin III*] should be implemented * * * the facts of this matter have never been fully reviewed concerning the negotiations of the contractual terms for the termination of spousal support." This is an argument for reconsideration based on the lack of an evidentiary hearing. Therefore, we construe Samuel's July 6, 2009 motion as a motion to reconsider the final appealable order of May 29, 2009.

{¶20} "[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, at ¶7, citing *Pitts* at 379; *Kauder v. Kauder* (1974), 38 Ohio St.2d 265, 267. Therefore, we find that the July 14, 2009 judgment is a nullity because the trial court lacked jurisdiction to reconsider its own valid final judgment. Further, a party may not appeal from a judgment that is a nullity. See *State v. Keith*, Lorain App. No. 08CA009362, 2009-Ohio-76, at ¶8; *Moffit v. Auberle*, Lucas App. No. L-08-1078, 2008-Ohio-4282, at ¶13; *Barnhisel v. Barnhisel*, Wood App. No. WD-06-024, 2007-Ohio-446, at ¶17-18. In this case, Samuel may not appeal from the trial court's July 14, 2009 order. See *State ex rel. Dooley v. Porter* (1987), 30 Ohio St.3d 47.

C. Conclusion

{¶21} In conclusion, the trial court's May 29, 2009 order is a final appealable order because it affected the parties' substantial rights, determined the action, and prevented a judgment in favor of Samuel. Therefore, if Samuel wanted to appeal the trial court's decision not to hold an evidentiary hearing, he should have filed an appeal within thirty days of the May 29, 2009 order. Here, Samuel failed to do so.

{¶22} Moreover, we construe Samuel's July 6, 2009 motion as a motion for reconsideration. Such a motion is a nullity that may not extend the time limit for filing an appeal. The trial court's July 14, 2009 judgment is also a nullity because the trial court lacked jurisdiction to reconsider its own valid final judgment. And here, Samuel may not appeal from a judgment that is a nullity.

{¶23} Therefore, we lack jurisdiction to consider Samuel's appeal because (1) Samuel filed his notice of appeal on August 13, 2009, which is more than thirty days past the trial court's May 29, 2009 final appealable order, and (2) Samuel may not appeal from the trial court's July 14, 2009 order.

{¶24} Accordingly, for the foregoing reasons, we lack jurisdiction to consider this appeal and must dismiss it.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED and appellant pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

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

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

Harsha, J.: Concurs in Judgment Only.
McFarland, P.J.: Dissents.

For the Court

BY: _____
Roger L. Kline, 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.