[Cite as *Jackson v. Jackson*, 2014-Ohio-5853.]

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

TRINA JACKSON,	:	
Plaintiff-Appellee,	:	Case No. 13CA40
vs.	:	
JAMES JACKSON,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

APPELLANT PRO SE: James Jackson,#A657-996, 15708 McConnelsville Road, Caldwell, Ohio 43724

APPELLEE PRO SE: Trina K. Jackson, 2490 Wedgewood Drive, Zanesville, Ohio 43701

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 12-30-14

ABELE, P.J.

{¶ 1} This is an appeal from a Washington County Common Pleas Court judgment that granted a Civ.R. 60(B) motion for relief from judgment that Trina Jackson, plaintiff below and appellee herein, filed.

{¶ 2} James Jackson, defendant below and appellant herein, assigns the following error for review:

> "THE TRIAL COURT ERRED IN GRANTING THE PLAINTIFF'S MOTION FOR 60 B [SIC] RELIEF. CIVIL RULE 60B [SIC] STATES THAT THIS MOTION SHOULD HAVE BEEN FILED IN A REASONABLE AMOUNT OF TIME NOT MORE THAN ONE YEAR AFTER THE JUDGMENT OF PROCEEDINGS WAS ENTERED OR TAKEN. THE DEFENDANT AND PLAINTIFF HAVE BEEN DIROVED [SIC] SINCE AUGUST 2006. THIS IS 8 YEARS."

{¶ 3} On August 30, 2006, the trial court granted the parties a divorce. On April 4, 2013, appellant filed a pro se motion to modify or to terminate spousal support.

{¶ 4} On June 14, 2013, appellee filed a Civ.R. 60(B) motion for relief from judgment. She requested the trial court to award her a life insurance policy that the parties had not addressed in the divorce decree. She alleged that she had "overlooked the life insurance policy" that she purchased and on which she has paid the premiums.

{¶ 5} On July 12, 2013, appellant filed a memorandum in opposition. In it, he argued that appellee was "deceptive" when she stated that she "overlooked" the policy.

{¶ 6} On July 30, 2013, the trial court held a hearing to consider appellee's Civ.R. 60(B) motion and appellant's motion to modify spousal support. The transcript, however, is not part of the record.

{¶ 7} On August 5, 2013, the trial court entered a "Magistrate['s] Decision and Judgment

Entry." The court granted appellee's motion and awarded her the insurance policy. The court did not rule on appellant's motion to modify spousal support, but instead, ordered appellant to file a brief to address whether the court has jurisdiction to consider the motion.

{¶ 8} On August 20, 2013, appellant filed objections to the August 5 decision. Appellant asserted that appellee filed her motion eight years after the court entered the divorce decree, and thus, that she failed to file her Civ.R. 60(B) motion in a timely manner. Appellant further claimed that appellant was deceptive.

{¶ 9} On September 23, 2013, the trial court filed a "Magistrate's Decision and Judgment Entry." On September 24, 2013, the trial court overruled appellant's August 20, 2013 objections. The court observed that appellant did not request the magistrate to issue findings of fact and conclusions of law, and did not support his objections with a transcript of the proceedings or an affidavit. This appeal followed.

{¶ 10} Before we address appellant's assignment of error, we first must determine whether we have jurisdiction to consider this appeal. Courts of appeals have jurisdiction to "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. "As a result, '[i]t is well-established that an order [or judgment] must be final before it can be reviewed by an appellate court. If an order [or judgment] is not final, then an appellate court has no jurisdiction.'" Gehm v. Timberline Post & Frame, 112 Ohio St.3d 514, 2007-Ohio-607, 861 N.E.2d 519, ¶14, quoting Gen. Acc. Ins. Co. v. Ins. Co. of N. Am., 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989).

{¶ 11} Civ.R. 54(A) defines a "judgment" as "a decree and any order from which an appeal lies as provided in section 2505.02 of the Revised Code." The rule further specifies that "[a] judgment shall not contain a recital of pleadings, the magistrate's decision in a referred matter, or the record of prior proceedings." Thus, a court order that includes a magistrate's decision does not constitute a "judgment" as defined in Civ.R. 54(A), and consequently, is not a decree or order from which an appeal lies. Hall v. Darr, 6th Dist. Ottawa App. No. OT-03-001, 2003-Ohio-1035, ¶4 ("Because the * * * judgment contains the magistrate's decision it is, by definition, not a final order."). Instead, a court must enter a judgment separate and apart from the magistrate's decision. Civ.R. 53(D)(4)(e); Civ.R. 54(A); Everhome Mtge. Co. v. Kilcoyne, 8th Dist. Cuyahoga No. 96982, 2012–Ohio–593, ¶3, citing Deutsche Bank Natl. Co. v. Caldwell, 8th Dist. Cuyahoga No. 96249, 2011–Ohio–4508. "To constitute a final appealable order, the trial court's journal entry must be a separate and distinct instrument from that of the magistrate's order and must grant relief on the issues originally submitted to the court." Flagstar Bank, FSB v. Moore, 8th Dist. Cuyahoga No. 91145, 2008–Ohio–6163, ¶1. The trial court, "separate and apart from the magistrate's decision," must enter its own judgment containing a clear pronouncement of the trial court's judgment and a statement of the relief granted by the court. Flagstar Bank at ¶8. Thus, a combined judgment entry signed by both the magistrate and the judge is not a proper "judgment" from which an appeal lies. Hall at ¶28.

{¶ 12} In the case at bar, it appears that the trial court did not enter its own, separate and distinct judgment. Instead, the court filed the September 23, 2013 "Magistrate['s] Decision and Judgment Entry." Both the magistrate and the trial court judge signed the entry and the signatures appear side-by-side on the same page. However, the Civil Rules do not provide for

combined magistrate decisions and trial court judgment entries. Rather, as we point out supra, the trial court must enter its own independent judgment separate and apart from the magistrate's decision. A court must clearly set forth the relief afforded and cannot simply adopt a magistrate's decision. Yahraus v. Circleville, 4th Dist. Pickaway No. 00CA4 (Dec. 15, 2000). Morever, although the trial court overruled appellant's objections, it did not set forth a separate and distinct judgment that clearly set forth the relief afforded. Consequently, because the trial court did not enter a separate and distinct judgment that clearly sets forth the relief afforded, there is no final order subject to appeal.

{¶ 13} Accordingly, based upon the foregoing reasons, we hereby dismiss this appeal for lack of a final order.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the appeal be dismissed and that appellee recover of appellant 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 Washington County Common Pleas Court to carry this judgment into execution.

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

Harsha, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele
Presiding 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.