

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

Paul David Osborne,  
  
Plaintiff-Appellee,

v.

Jill Andrea Osborne,  
  
Defendant-Appellant.

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Case No. 15CA4

DECISION AND JUDGMENT ENTRY

**RELEASED: 04/01/2015**

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**APPEARANCES:**

K. Robert Toy, Athens, Ohio, for Appellant Jill Andrea Osborne.

Carl E. Patrick, Fairlawn, Ohio, for Appellee Paul David Osborne.

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HOOVER, P.J.,

{¶1} After reviewing the notice of appeal filed in this matter, we issued an order directing Appellant Jill Andrea Osborne to file a memorandum addressing whether the entry appealed from is a final appealable order. She has responded and argued that the entry is a final appealable order because it is distinguishable from the entry in *Burns v. Morgan*, 165 Ohio App.3d 694, 2006-Ohio-1213, 847 N.E.2d 1288 (4<sup>th</sup> Dist.). Appellant contends that the trial court not only adopted the magistrate's decision, but it entered a separate decision concerning the parties' attempt to waive objections to the magistrate's decision and gave a reasoned analysis supporting its decision to grant Appellee's motion to strike Appellant's objections to the magistrate's decision. However, even though the trial court discussed the waiver issue and its rationale for striking Appellant's

objections to the magistrate's decision, it did not include its own independent judgment disposing of the crux of the issues between the parties: Appellee's petition to modify the order of dissolution to change primary custodial parent and Appellant's contempt motion.

{¶2} The judgment entry requires this Court and the parties to resort to another document, specifically the magistrate's decision, to ascertain the extent to which their rights and obligations have been determined. Here, although we have a solid understanding of the trial court's rationale for striking Appellant's objections, we cannot readily determine what is necessary to comply with the order concerning the contempt finding, if any, and the change, if any, in the primary custodial parent. Because the trial court entry is not a final appealable order, we **DISMISS** this appeal.

{¶3} This matter came before the trial court on the Appellee's petition to modify the final order of dissolution to change primary custodial parent and Appellant's motion to show cause for contempt, both filed in 2013. The trial court referred the matter to a magistrate. The magistrate held a two-day hearing in December 2013 and issued a final decision in July 2014. The parties purportedly agreed to waive objections to the magistrate's decision at the close of the hearing. But later, after the magistrate's decision was issued, Appellant filed objections. Appellee moved to strike them as untimely. The trial court issued a decision, which is the subject of this appeal, in which it provided a six-page analysis of the law on the procedural issues raised in the motion to strike and ultimately granted Appellee's motion to strike. As to the trial court's

decision concerning the substantive legal issues of custody and contempt, the entry contains two sentences:

The Court hereby finds that the facts as outlined in the Magistrate's Decision and the transcript filed October 17, 2014, if properly before the court, support the findings of the Magistrate. The Court finding no flaws in the Magistrate's findings or reasoning in her decision based on the record before the Court, hereby adopts the Magistrate's Decision making it a final order of the Court.

{¶4} Judgment Entry, December 26, 2014. The trial court did not separately set forth its own judgment so we do not know the outcome of either Appellee's custody petition or Appellant's contempt motion.

{¶5} We have held that after the magistrate issues a recommendation, " '[t]he trial court must . . . enter its own independent judgment disposing of the matters at issue between the parties, such that the parties need not resort to any other document to ascertain the extent to which their rights and obligations have been determined. In other words, the judgment entry must be worded in such a manner that the parties can readily determine what is necessary to comply with the order of the court.' " *Burns v. Morgan*, 165 Ohio App.3d 694, 2006-Ohio-1213, 847 N.E.2d 1288, ¶10 (4<sup>th</sup> Dist.).

{¶6} Here, the trial court's December 26, 2014 entry does not constitute a final, appealable order. While the trial court conducted an independent review of the magistrate's decision to determine any errors, the court did not separately state the judgment and the relief granted to the parties. Overruling or striking objections to a magistrate's decision without separately setting forth the court's own judgment does not constitute a final judgment subject to appeal. Because the trial court's entry is not final, it does not satisfy the requirements of R.C. 2505.02, and we conclude that it is not a

final, appealable order. We are without jurisdiction to review it.

{¶7} The clerk shall serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail.

**APPEAL DISMISSED. COSTS TO APPELLANT. IT IS SO ORDERED.**

Harsha, J. & Abele, J.: Concur.

**FOR THE COURT**

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Marie Hoover  
Presiding Judge