

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

In Re: Adoption of J.B.K.

Case No. 15CA10

DECISION AND JUDGMENT ENTRY

**RELEASED: 04/13/2015**

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APPEARANCES:

Joseph H. Nemec and Claire M. Ball, Jr., Ball Law Office, Athens, Ohio for Appellant.

Michael D. Buell, Buell & Sipe Co., L.P.A, Marietta, Ohio for Appellee.

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HOOVER, P.J.,

{¶1} Appellant Raymone Dawson filed a notice of appeal from a trial court order that denied his motion to dismiss the adoption proceeding for lack of jurisdiction. Dawson argued that ongoing visitation proceedings in the juvenile court deprived the probate court of jurisdiction. The probate court ruled that because no parentage issues were in dispute in the juvenile court proceeding, the probate court had jurisdiction to proceed on the issue of whether the parents' consents to the adoption are required. We sua sponte raised the issue of whether the trial court's order denying the motion to dismiss is a final, appealable order. In response, Appellee filed a motion to dismiss the appeal on the grounds that the entry denying the motion to dismiss is not a final appealable order. Appellant filed a reply to the motion to dismiss arguing that the order is final and appealable under R.C. 2505.02(B) as one that affects a substantial right

made in a special proceeding. We find that the trial court's entry is not a final appealable order and hereby **GRANT** appellee's motion and **DISMISS** the appeal.

{¶2} Ohio law provides that appellate courts have jurisdiction to review only final orders or judgments. See, generally, Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. If an order is not final and appealable, an appellate court has no jurisdiction to review the matter and it must be dismissed. "An order of a court is a final appealable order only if the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B), are met." *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, 776 N.E.2d 101; see also, *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus. The threshold requirement, therefore, is that the order satisfies the criteria of R.C. 2505.02.

{¶3} For purposes of this appeal, the relevant portions of R.C. 2505.02 define a final appealable order as follows:

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right in an action made in a special proceeding or upon a summary application in an action after judgment;

Analysis under R.C. 2505.02(B)(1) & 2505.02(B)(2)

{¶4} A judgment entry qualifies as a final, appealable order under R.C. 2505.02 if it "affects" a "substantial right" as defined by R.C. 2505.02(A)(1) and either, "in effect determines the action and prevents a judgment" as set forth in R.C. 2505.02(B)(1); or

was “made in a special proceeding or upon a summary application in an action after judgment” as set forth in R.C. 2505.02(B)(2). Adoption proceedings are special proceedings. See *In re Adoption of Greer*, 70 Ohio St.3d 293, 638 N.E.2d 999 (1994). If an order does not affect a substantial right, it is not a final appealable order under R.C. 2505.02(B)(1) or (2).

{¶5} A “substantial right” is defined as “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1). Generally, the denial of a motion to dismiss is not a final appealable order. *Ferrell v. Standard Oil Co. of Ohio*, 11 Ohio St.3d 169, 464 N.E.2d 550 (1984); *Copenhaver v. Copenhaver*, 4<sup>th</sup> Dist. Athens App. No. 05CA16, 2005-Ohio-4322. An order affects a substantial right when, if not immediately appealable, it would foreclose appropriate relief in the future. *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63, 616 N.E.2d 181 (1993). An order overruling a motion to dismiss in an adoption proceeding does not affect a substantial right because a party claiming that a trial court lacked jurisdiction can raise that same argument in an appeal from an adverse final judgment. Accordingly, the absence of an immediate appeal does not foreclose appropriate relief. See *Lonigro v. Lonigro*, 55 Ohio App.3d 30, 561 N.E.2d 573 (1989) (holding that the denial of a motion to dismiss based on a lack of jurisdiction is not a final appealable order). See, also, *Hoskins v. Hoskins*, 104 Ohio App.3d 58, 660 N.E.2d 1260 (1995); *Holm v. Smilowitz*, 83 Ohio App.3d 757, 615 N.E.2d 1047 (1982); *Curie v. Curie*, 11<sup>th</sup> Dist. Ashtabula App. No.2004-A-0047, 2004-Ohio-382; *Temple v. Temple*, 4<sup>th</sup> Dist. Highland App. No. 98 CA 30, 1999 WL 132877.

{¶6} Because the probate court's order does not affect a substantial right, it is not a final appealable order under R.C. 2505.02(B)(1) or (2), and we lack jurisdiction over this appeal. Appellee's motion to dismiss is **GRANTED** and Appellant's appeal is hereby **DISMISSED**.

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

**MOTION GRANTED. 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