

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

KELLY MOSCARELLO

Plaintiff-Appellant

-vs-

MARK MOSCARELLO

Defendant-Appellee

JUDGES:

Hon. John W. Wise, P. J.

Hon. Patricia A. Delaney, J.

Hon. Craig R. Baldwin, J.

Case No. 2014 CA 00181

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal from the Court of Common  
Pleas, Domestic Relations Division, Case  
No. 2007 DR 00961

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

February 23, 2015

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

KENNETH D. MYERS  
6100 Oak Tree Boulevard  
Suite 200  
Cleveland, Ohio 44131

*Wise, P. J.*

{¶1}. This is an appeal from the decision of the Stark County Court of Common Pleas, Domestic Relations Division, which issued orders pertaining to a post-decree modification of child support, stemming from the 2008 divorce between Appellant Kelly Moscarello and Appellee Mark Moscarello. The relevant facts leading to this appeal are as follows.

{¶2}. Appellant and appellee were married in Summit County, Ohio, in February 1992. Three children, K.M., D.M., and I.M., were born to the parties, respectively in 1996, 2000, and 2003. On August 8, 2007, appellant filed a complaint for divorce. Appellee thereafter filed an answer and counterclaim.

{¶3}. On October 3, 2008, the trial court issued a nunc pro tunc judgment entry for uncontested divorce, which, inter alia, addressed child support by ordering appellee to pay \$1,200.00 per month into a special needs trust. Said amount was to be paid until the oldest two children were emancipated. After that time, appellee was ordered to "continue to pay an amount indefinitely to be determined prior to [I.M.'s] 18th birthday \*\*\*." Nunc Pro Tunc Judgment Entry of Uncontested Divorce, at 3.

{¶4}. On July 17, 2013, appellee filed a motion to modify the aforesaid trust payment obligation. On September 19, 2013, the trial court modified the payment to \$950.00 per month.

{¶5}. On July 3, 2014, appellee again filed a motion for modification of the orders to pay into the trust. The case came on for hearing on August 25, 2014. The next day, the following orders were issued via a written judgment entry:

The motion to modify is granted based upon the emancipation of one of three children. One of the unemancipated children is special needs and is receiving SSI benefits. Due to public assistance being received, the prior order of a trust in lieu of an order of child support is inappropriate. Attorneys are to submit proposed child support worksheets and income verification to the court for review within 14 days of this order at which time, the court will make a child support determination.

{¶6}. Judgment Entry, August 26, 2014, at 1.

{¶7}. On September 24, 2014, appellant filed a notice of appeal. She herein raises the following sole Assignment of Error:

{¶8}. “I. THE TRIAL COURT ERRED BY RULING THAT PAYMENT BY THE FATHER INTO A TRUST IN LIEU OF CHILD SUPPORT IS INAPPROPRIATE.”

I.

{¶9}. In her sole Assignment of Error, Appellant Kelly argues the trial court erred in modifying the prior orders allowing Appellee Mark to pay into a special needs trust in lieu of traditional child support.

{¶10}. As an initial matter, we sua sponte consider the present appealability of the trial court's August 26, 2014 judgment entry.

{¶11}. An appellate court's jurisdiction over trial court rulings extends only to “judgments or final orders.” Ohio Constitution, Art. IV, Section 3(B)(2). When a trial court order does not contemplate further action and no other related issues remain pending, it normally constitutes a final order. See *Elliott v. Rhodes*, 4th Dist. Pickaway No. 10CA26, 2011–Ohio–339, ¶ 17, citing *In re H.T.-W.*, 6th Dist. Lucas No. L–10–

1027, 2010–Ohio–1714, ¶ 7. Generally, a judgment entry modifying child support, resulting from a post-decree modification motion, is a final appealable order. See *Gallion v. Gallion*, 5th Dist. Holmes No. 13 CA 012, 2014-Ohio-3604, ¶ 25. However, “[a] judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order.” *Rice v. Lewis*, 4th Dist. Scioto No. 11CA3451, 2012-Ohio-2588, ¶ 14 (additional citations omitted).

{¶12}. In the judgment entry at issue in the case sub judice, the trial court, while making a preliminary decision that the trust payment arrangement was no longer appropriate, essentially took the entire matter of child support modification under advisement pending submission of additional worksheet-related information from the parties. Our review of the trial court docket reveals no subsequent judgment entry establishing a sum certain for child support, presumably due to the invocation of the present appeal on September 24, 2014. In light of *Rice, supra*, we hold the judgment entry under appeal does not constitute a final order under the circumstances presented. We recognize the import of the present issues in regard to the care and welfare of the two unemancipated children in this matter; however, piecemeal litigation and piecemeal appeals are disfavored in Ohio law. See *Kildow v. Home Town Improvements*, 5th Dist. Muskingum No. CT2001–0057, 2002–Ohio–3824, ¶ 10.

{¶13}. Appellant's sole Assignment of Error is therefore found premature.

{¶14}. For the foregoing reasons, the appeal of the judgment of the Court of Common Pleas, Domestic Relations Division, Stark County, Ohio, is hereby dismissed.

By: Wise, P. J.

Delaney, J., and

Baldwin, J., concur.

JWW/d 0203