

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Stella Kunkle

Court of Appeals No. F-07-019

Appellee

Trial Court No. 05-DV-000112

v.

Alan Kunkle

DECISION AND JUDGMENT ENTRY

Appellant

Decided: March 31, 2008

* * * * *

Mark D. Wagoner, for appellee.

Alan Kunkle, pro se.

* * * * *

SINGER, J.

{¶ 1} This case is before the court on the appeal of defendant, Alan Kunkle, who challenges two trial court orders, one denying his motion to dismiss the divorce complaint filed by his wife and the second denying his motion to vacate the order that denied his motion to dismiss the divorce action filed by his wife. We cannot reach the merits of Kunkle's appeal because we find neither order is final and appealable.

{¶ 2} Generally, an order that denies a motion to vacate a judgment is final and appealable. *Colley v. Bazell* (1980), 64 Ohio St. 2d 243. However, when the underlying order, in this case the order denying the motion to dismiss the divorce action, is itself not a final appealable order, neither is the subsequent judgment denying a motion to vacate it. *Matrka v. Stephens* (1991), 77 Ohio App. 3d 518. In this case, the underlying order denying the motion to dismiss is not a final order. *Ferrell v. Standard Oil Co. of Ohio* (1984), 11 Ohio St.3d 169 (An order denying a motion to dismiss a complaint is not a final appealable order.)

{¶ 3} Accordingly, the order from which this appeal is taken is not appealable at this time. The court orders this appeal dismissed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Fulton County.

APPEAL DISMISSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Kunkle v. Kunkle
C.A. No. F-07-019

Arlene Singer, J.

JUDGE

William J. Skow, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.