

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

Ronald Smith

Court of Appeals No. OT-09-014

Appellee

Trial Court No. 07DR226B

v.

Twila Smith

**DECISION AND JUDGMENT**

Appellant

Decided: April 30, 2010

\* \* \* \* \*

Gaye Harris-Miles, for appellee.

Beverly J. Cox, for appellant.

\* \* \* \* \*

OSOWIK, P.J.

{¶ 1} This is an appeal from two judgments of the Ottawa County Court of Common Pleas, in a divorce action. The underlying, undisputed facts are as follows.

{¶ 2} Appellee, Ronald Smith, and appellant, Twila Smith, were married on January 1, 1972. No children were born as issue of the marriage. On November 21,

2007, appellee filed a divorce complaint, which appellant answered on July 3, 2008. On January 5, 2009, a hearing was held before then-magistrate Bruce A. Winters, at which testimony was presented by both parties.

{¶ 3} In February 2009, then-magistrate Winters was elected Common Pleas Judge in Ottawa County. On April 27, 2009, Judge Winters issued "Findings of Fact & Conclusions of Law; Decision & Judgment Entry," in which he granted the parties a divorce, valued their respective separate and marital assets, divided those assets, and ordered appellee to pay appellant spousal support in the amount of \$500 per month for ten years. On May 7, 2009, appellee filed "Objections to the Magistrate's Report," in which he sought to challenge the amount and duration of the spousal support award. On May 8, 2009, appellant filed a "Notice of Objection to the Magistrate's Decision and Request for Enlargement of Time [to file objections]." On May 12, 2009, Judge Winters recused himself from further consideration of the matter. The case was subsequently referred to Judge Paul C. Moon.

{¶ 4} On May 28, 2009, Judge Moon issued a judgment entry in which he found, after reviewing all the facts of the case, as well as the judgment issued by Judge Winters on April 27, 2009, that "no magistrate's decision was ever prepared or filed." He further found "[t]he trial court clearly did not contemplate further proceedings with respect to the issues of property division or spousal support arrearages \* \* \* [and] [t]here were no pending motions"; appellant had "other avenues" through which to challenge Judge Winter's judgment entry; and the judgment entry filed on April 27, 2008, "did fully

determine the divorce proceeding as required by R.C. 2505.02 and Civ.R. 75(F)." Based on these determinations, Judge Moon overruled appellee's objections to the "magistrate's decision" and denied appellant's request for additional time to object to the same.

{¶ 5} On June 26, 2009, appellant filed a notice of appeal from both Judge Winters' April 27, 2009 judgment and Judge Moon's May 28, 2009 judgment. On appeal, appellant sets forth the following four assignments of error:

{¶ 6} "I. The trial court erred in failing to issue a magistrate's decision and instead issuing 'Findings of Fact & Conclusions of Law: Decision & Judgment Entry' where the parties' divorce was tried to a magistrate judge who was subsequently elected to the position of common pleas judge.

{¶ 7} "II. The trial court erred in denying defendant's 'Notice of Objection to the Magistrate's Decision and Request for Enlargement of Time' where the court did not perform a de novo review of the evidence.

{¶ 8} "III. The trial court erred in identifying and dividing the parties' marital assets.

{¶ 9} "IV. The trial court abused its discretion in determining the amount and duration of spousal support where the parties were married for 38 years, appellant's annual income was less than half of appellee's, and appellant suffers from mental health issues."

{¶ 10} As a preliminary matter we note that, by valuing and dividing that parties' assets and ordering appellee to pay appellant \$500 per month for 10 years, Judge Winters'

April 27, 2009 judgment affected both parties' substantial rights, determined the action, and prevented a judgment in favor of appellee. See R.C. 2505.02(B)(1).<sup>1</sup> We therefore agree with Judge Moon's conclusion that Judge Winters' judgment issued on April 27, 2009, was final and appealable at the time it was issued. See *McLaughlin v. McLaughlin*, 4th Dist. No. 09CA28, 2010-Ohio-694, ¶ 17, citing *Wolfram v. Deerfield Village Condominium Owners Assn., Inc.*, 12 Dist. No. CA 2006-04-084, 2006-Ohio-4961, ¶ 11.

{¶ 11} Since the judgment was final and appealable on April 27, 2009, appellant was required to perfect her appeal by filing a timely notice of appeal within 30 days of the April 27, 2009 judgment. See App.R. 4(A). However, the record in this case shows appellant did not file a notice of appeal from Judge Winters' judgment entry until June 26, 2009. Accordingly, this court does not have jurisdiction to review Judge Winters' order on appeal. See *McLaughlin*, supra at ¶ 12 (If a party does not file a notice of appeal within the required 30-day period, courts of appeals "do not have jurisdiction to entertain the appeal. The timely filing of a notice of appeal under this rule is a jurisdictional prerequisite to our review." *Id.*, quoting *Hughes v. A. & A. Auto Sales, Inc.*, 4th Dist. No. 08CA35, 2009-Ohio-2278, ¶ 7.)

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<sup>1</sup>R.C. 2505.02(B) states:

"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; \* \* \*."

{¶ 12} On consideration, we find that appellant failed to file a timely notice of appeal from Judge Winters' April 27 judgment, and we do not have jurisdiction to consider the issues raised in her four assignments of error. They are, therefore, not well-taken.

{¶ 13} The judgment issued by the Ottawa County Court of Common Pleas on May 28, 2009, is hereby affirmed. Appellant's appeal from the judgment issued by the Ottawa County Court of Common Pleas on April 27, 2009, is dismissed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

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

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, P.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:  
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