

[Cite as *Holivay v. Holivay*, 2007-Ohio-6492.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 89439**

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**ATHENA HOLIVAY**

PLAINTIFF-APPELLEE

VS.

**PATRICK HOLIVAY**

DEFENDANT-APPELLANT

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**JUDGMENT:  
DISMISSED**

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Civil Appeal from the  
Cleveland Municipal Court  
Case No. 2006CVH0017063

**BEFORE:** Kilbane, J., Cooney, P.J., and Blackmon, J.

**RELEASED:** December 6, 2007

**JOURNALIZED:**

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**ATTORNEYS FOR APPELLANT**

Lynda Harvey Williams  
Law Offices of Lynda Harvey  
Williams & Associates  
2300 First National Tower Building  
106 South Main Street  
Akron, Ohio 44308

Sulaiman Roy Graham  
Lynda Harvey Williams & Assoc.  
520 S. Main Street  
Suite 2511-M  
Akron, Ohio 44311

**ATTORNEY FOR APPELLEE**

Marvin H. Hersch  
24100 Chagrin Boulevard  
Suite 330  
Beachwood, Ohio 44122  
MARY EILEEN KILBANE, J.:

{¶ 1} Patrick Holivay (“Patrick”) appeals from the trial court’s denial of his motion for a stay in a judgment transfer collection matter. Patrick argues the trial court erred in not staying the matter to allow him to file a Civ.R. 60(B) motion with the Cuyahoga County Court of Common Pleas. For the following reasons, we dismiss the appeal for want of jurisdiction.

{¶ 2} In 1995, Athena Holivay (“Athena”) and Patrick were divorced under a decree of the Superior Court of San Bernadino County, California. In dividing the benefits between the parties, the California court determined that Athena was entitled to a percentage of Patrick’s military retirement benefits. Athena never

received any of Patrick's retirement benefits and, in 2006, she brought an order to show cause. The California court determined that Patrick failed to make any payments to Athena from December 5, 1995 through July 30, 2004. Therefore, the California court determined that Patrick owed Athena \$59,797.92 in past due military retirement as well as \$11,100, which the court previously ordered as an equalization payment.

{¶ 3} Athena registered this foreign judgment in the Cuyahoga County Court of Common Pleas, which was journalized on June 15, 2006. The case was then transferred to the Cleveland Municipal Court for execution. The trial court in this case garnished Patrick's bank accounts and attached his wages. Patrick objected to the attachment of his wages and bank accounts and, during the entire proceeding, argued that he was not responsible for paying Athena his retirement benefits. Patrick claimed the military, or specifically, the Defense Finance and Accounting Service, was responsible for paying the benefits. Accordingly, Patrick filed a motion to stay the case to allow him to file a Civ.R. 60(B) motion for relief from judgment in the Cuyahoga County Court of Common Pleas. The trial court denied the stay and determined that the court's August 8, 2006 garnishment order remained.

{¶ 4} Patrick appeals from this order, raising the following four assignments of error:

{¶ 5} **"I. Whether trial court erred in refusing to grant a stay to allow appellant to file a 60(B) motion in Common Pleas Court because appellee has led Ohio court to rely on a California ruling that was not a**

**final, appealable order, that was being litigated in California, and the trial court's decision to deny the stay has caused appellant irreparable harm.**

**{¶ 6} “II. Whether trial court erred in refusing to grant a stay to allow appellant to file a 60(B) motion in Common Pleas Court because until litigation in California concluded over ruling on submitted matter was only the 1995 California divorce judgment was entitled to full faith and credit in Ohio (sic).**

**{¶ 7} “III. Whether trial court erred in refusing to grant a stay to allow appellant to file a 60(B) motion in Common Pleas Court based on the fact that the ruling on submitted matter was misinterpreted.**

**{¶ 8} “IV. Whether trial court erred in refusing to grant a stay to allow appellant to file a 60(B) motion in Common Pleas Court and as a result, appellant is in double jeopardy with garnishment orders from two counts in California and Ohio, and both courts appear to be punitively taking out their frustration with the Federal Government on appellant.”**

**{¶ 9}** A court of appeals only has jurisdiction over orders that are both final under Civ.R. 54(B) and appealable under R.C. 2505.02. *Grogan v. Grogan Co. Inc.* (2001), 143 Ohio App.3d 548. This court, as well as other Ohio courts, have previously determined that an order denying a stay of proceedings is not a final appealable order under R.C. 2505.02(B)(4). See *Cleveland v. Zakaib* (Oct.12, 2000), Cuyahoga App. Nos. 76928, 76929, 76930 (the appeal was dismissed for lack of jurisdiction because the order denying a stay of proceedings was not a final appealable order); *Grogan*, supra (a motion to stay the matter was not a provisional remedy and was therefore not an appealable order); *Watson v. Driver Management, Inc.* (1994), 97 Ohio App.3d 509 (it is settled law, requiring no citations, that a stay order is not a final appealable order); *Community First Bank & Trust v. Dafoe*, 108

Ohio St.3d 472, 2006-Ohio-1503 (a court's order staying an action, including the claims against nonbankrupt parties, pending determination of the bankruptcy of another party, is not a final order subject to appeal under former R.C. 2505.02).

{¶ 10} Accordingly, because the denial of a stay of proceedings is not a final appealable order, we must therefore dismiss this appeal for lack of jurisdiction. *Zakaib*, supra. The same reasoning applies to Athena's motion for award of expenses, attorney's fees and punitive damages filed with this court. We do not have jurisdiction to rule on this motion.

{¶ 11} This appeal is dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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MARY EILEEN KILBANE, JUDGE

COLLEEN CONWAY COONEY, P.J., and  
PATRICIA A. BLACKMON, J., CONCUR