

[Cite as *J.M.R. v. J.W.R.*, 2009-Ohio-6310.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92737

J.M.R.

PLAINTIFF-APPELLEE

vs.

J.W.R.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case Nos. CP DR-307881 and CP DR-307861

BEFORE: McMonagle, P.J., Blackmon, J., and Boyle, J.

RELEASED: December 3, 2009

JOURNALIZED:

FOR APPELLANT

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ATTORNEY FOR APPELLEE

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

CHRISTINE T. McMONAGLE, P.J.:

{¶ 1} Plaintiff-appellee J.M.R. filed a complaint for divorce from defendant-appellant J.W.R. in 2005. J.M.R.'s mother, J.R., later intervened in the case. Subsequently, in 2007, the trial court issued a civil protection order against J.W.R. relating to the three children and J.R.. On October 3, 2007, the trial court issued a final divorce decree and, after finding neither parent suitable, certified all issues relating to the allocation of parental rights and responsibilities to Juvenile Court pursuant to R.C. 3109.06.

{¶ 2} J.W.R. appealed from the trial court's judgment. *J.M.R. v. J.W.R.*, 8th Dist. No. 90614, 2009-Ohio-1236 ("*J.M.R. I*"). On appeal, she asserted, among other things, that the trial court had erred in issuing the civil protection order and in certifying all issues regarding parental rights and responsibilities to Juvenile Court.

{¶ 3} While her appeal was pending, J.W.R. filed a motion in the trial court to terminate the civil protection order. In response, J.M.R. filed a motion to stay any proceedings relating to both the civil protection order and the Juvenile Court's allocation of parental rights and responsibilities pending disposition of the appeal. On December 23, 2008, the trial court granted J.M.R.'s motion and ruled that all proceedings relating to the civil protection order and the certification to Juvenile Court would be stayed during the pendency of the appeal. J.W.R. then filed a motion to vacate the court's judgment, which the court subsequently denied.

{¶ 4} On March 19, 2009, this court issued its opinion in *J.M.R. I*. This court held, among other things, that the trial court did not err in issuing the civil protection order and

in certifying issues relating to the allocation of parental rights and responsibilities to Juvenile Court.

{¶ 5} J.W.R. now appeals pro se from the trial court's December 2008 judgment staying proceedings pending disposition of her appeal in *J.M.R. I*. Although she raises two assignments of error which we address below, the true gravamen of her appeal, as argued by J.W.R. at oral argument, is her inability to see her children. That issue is appropriately addressed in Juvenile Court through a motion to set, modify, or enforce visitation, and not in an appeal of a judgment staying proceedings.

{¶ 6} In her first assignment of error, she argues that the trial court abused its discretion in staying the Juvenile Court proceedings relating to the allocation of parental rights and responsibilities pending her appeal. She contends that the common pleas court's jurisdiction ceased upon the certification to Juvenile Court and, therefore, the court did not have jurisdiction to stay the Juvenile Court proceedings.

{¶ 7} When an appeal is pending before a court of appeals, the trial court is divested of jurisdiction except to take action in aid of the appeal. In other words, "the trial court retains all jurisdiction not inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment." *Howard v. Catholic Social Serv. of Cuyahoga Cty., Inc.* (1994), 70 Ohio St.3d 141, 146.

{¶ 8} In her appeal in *J.M.R. I*, J.W.R. argued that the trial court had erred in certifying the issue of allocation of parental rights and responsibilities to Juvenile Court instead of declaring her the primary residential parent of the children. Thus, her appeal specifically challenged the validity of the trial court's certification to Juvenile Court.

Accordingly, while the matter was on appeal, the trial court had no jurisdiction to proceed on any issue relating to the certification to Juvenile Court. As it had no jurisdiction to proceed, the trial court properly stayed further proceedings pending resolution of the appeal. Appellant's first assignment of error is therefore overruled.

{¶ 9} In her second assignment of error, J.W.R. contends that the trial court violated various judicial canons during the course of the divorce proceedings. J.W.R.'s argument is barred by the doctrine of res judicata, which provides that a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 381. Res judicata may be applied to bar further litigation of issues that were raised previously or could have been raised previously in an appeal. *State v. Houston* (1995), 73 Ohio St.3d 346. As J.W.R. could have raised her claim regarding alleged violations of judicial canons in her first appeal, it is now barred by res judicata, and her second assignment of error is overruled.

Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

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.

CHRISTINE T. McMONAGLE, PRESIDING JUDGE

PATRICIA A. BLACKMON, J., and
MARY J. BOYLE, J., CONCUR