

[Cite as *Story v. Price-Story*, 2010-Ohio-4675.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94085

JIMMY LEE STORY

PLAINTIFF-APPELLANT

vs.

VERONICA PRICE-STORY

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. D-318250

BEFORE: Cooney, J., Kilbane, P.J., and Dyke, J.

RELEASED AND JOURNALIZED: September 30, 2010

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COLLEEN CONWAY COONEY, J.:

{¶ 1} Plaintiff-appellant, Jimmy Lee Story (“Jimmy”), appeals from a judgment entry-decree of divorce from defendant-appellee, Veronica Doritha Price-Story (“Veronica”), filed by the Cuyahoga County Court of Common Pleas, Domestic Relations Division. We find merit to the appeal and reverse.

{¶ 2} Jimmy filed a complaint for divorce from his wife Veronica in October 2007. The domestic relations court magistrate heard testimony from October 21-23, 2008 and issued his decision on January 27, 2009. The magistrate’s decision made numerous recommendations for the division of assets and liabilities, spousal support, and the allocation of parental rights and

responsibilities for the parties' three minor children, including the payment of child support. The magistrate also recommended that all pretrial motions be dismissed and addressed arrearages in temporary support.

{¶ 3} Neither party filed objections to the magistrate's decision. Accordingly, the trial court entered a judgment entry of divorce on February 25, 2009 adopting the magistrate's decision. Jimmy filed a notice of appeal from this judgment entry of divorce in March 2009. While the appeal was pending, the trial court issued a second judgment entry of divorce on April 1, 2009. Veronica filed a motion to dismiss the appeal, which this court granted on June 1, 2009. No further appeal of our dismissal was pursued.

{¶ 4} On September 16, 2009, the trial court, sua sponte, issued another judgment entry vacating those portions of its February 25, 2009 judgment entry that conflicted with the April 1, 2009 judgment entry. Jimmy now appeals from this September 16, 2009 entry, raising three assignments of error.

{¶ 5} In his first and third assignments of error, Jimmy challenges the trial court's authority to issue the second judgment entry of divorce dated April 1, 2009. Jimmy argues that the trial court abused its discretion by sua sponte vacating its February 25, 2009 judgment of entry of divorce and entering the April 1, 2009 judgment entry. We agree.

{¶ 6} The trial court's judgment entry of February 25, 2009 was a final judgment. See R.C. 2505.02; Civ.R. 54; and Civ.R. 75(F). It determined the

issues of custody, child support and visitation, spousal support, and property division, and prevented any further judgment on those issues. Therefore, the trial court had no authority to revisit and change its own final judgment.¹ *Gordon v. Gordon* (2001), 144 Ohio App.3d 21, 24, 759 N.E.2d 431, citing *Wolfe v. Wolfe* (1976), 46 Ohio St.2d 399, 75 O.O.2d 474, 350 N.E.2d 413. See, also, *Widmer v. Widmer* (Apr. 25, 1991), Cuyahoga App. No. 58000.

{¶ 7} The April 1, 2009 judgment entry is practically identical to the February 25, 2009 judgment entry except for differences in style and their respective dates. The April 1, 2009 judgment entry does not mention the February 25, 2009 judgment entry and appears to have been entered in error. Moreover, because the matter was on appeal when the court issued its April 1, 2009 judgment entry, the trial court was divested of jurisdiction over the case at that time. *Majnaric v. Majnaric* (1975), 46 Ohio App.2d 157, 347 N.E.2d 552. Therefore, the April 1, 2009 judgment entry is void. Once a case has been appealed, the trial court loses jurisdiction except to take action in aid of the appeal. *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207, ¶9. An adjudication entered by a court without jurisdiction is a nullity and is void. *Fifth St. Realty Co. v. Clawson* (June 14, 1995), 9th Dist. No. 94CA005996. Consequently, we find that the trial court abused its discretion when it issued the April 1, 2009 judgment entry without authority to do so.

¹This means the trial court's September 16 entry must also be vacated.

{¶ 8} Therefore, the first and third assignments of error are sustained.

{¶ 9} In his second assignment of error, Jimmy argues the trial court abused its discretion by determining child support without complying with *Marker v. Grimm* (1992), 65 Ohio St.3d 139, 601 N.E.2d 496, and by failing to attach child support guidelines to its February 25, 2009 decision. This assignment of error challenges the court's original judgment entry of divorce, which adopted the magistrate's decision. In response to this argument, Veronica argues that this court should dismiss the instant appeal because, having failed to object to the magistrate's decision, Jimmy waived his right to appeal pursuant to Civ.R. 53(E)(3)(b). Civ.R. 53(E)(3)(b) provides, in pertinent part:

“(3) Objections.

* * *

“(b) Form of objections. Objections shall be specific and state with particularity the grounds of objection. * * * Any objection to a finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available. A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule.”

{¶ 10} Veronica cites *Ilg v. Ilg*, Summit App. No. 23987, 2008-Ohio-6792, and *Barnett v. Barnett*, Highland App. No. 04CA13, 2008-Ohio-3415, in support of her argument that this appeal should be dismissed. However, in both cases the appellate courts did not dismiss the appeals on jurisdictional grounds but found no merit to appellants' assignments of error and affirmed the trial court decisions.

In *Hennessy v. Hennessy* (March 24, 2000), Lucas App. No. L-99-1170, the court was faced with a similar motion to dismiss and explained that there is:

“an exception to Civ.R. 53(E)(3)(b) rule that failure to file objections to the magistrate’s decision precludes appellate review. This exception is found in Civ. R. 53(E)(4)(a) which states, ‘[t]he court may adopt the magistrate’s decision if no written objections are filed unless it determines that there is an error of law or other defect on the face of the magistrate’s decision.’”

{¶ 11} Based on this exception, the *Hennessy* court concluded, as we do here, that the appellee’s argument in support of her motion to dismiss goes to the merits of appellant’s appeal, not the jurisdiction of this court to entertain an appeal. Therefore, we now turn to the merits of Jimmy’s second assignment of error.

{¶ 12} Jimmy’s second assignment of error challenges alleged errors in the February 25, 2009 judgment entry of divorce. He claims the trial court erred in failing to attach child support computation worksheets demonstrating the calculation of child support. The February 25, 2009 judgment entry adopted the magistrate’s findings and recommendations in their entirety, including the award of permanent child support and the correction of the award of temporary child support.

{¶ 13} Jimmy has previously appealed the February 25, 2009 judgment to this court, and this court dismissed his appeal on June 1, 2009. If Jimmy believed this court erred in dismissing his earlier appeal, he should have sought an appeal to the Ohio Supreme Court pursuant to S.Ct. Prac. R. 2.2. The

doctrines of res judicata and collateral estoppel preclude relitigation of claims or issues that were litigated or could have been litigated in a prior action. *Scholler v. Scholler* (1984), 10 Ohio St.3d 98, 10 OBR 426, 462 N.E.2d 158. Therefore, we find that Jimmy's second assignment of error is barred by the doctrine of res judicata.

{¶ 14} Accordingly, we overrule the second assignment of error.

{¶ 15} Judgment reversed, and case remanded to the trial court to vacate the April 1 and September 16 entries of divorce and to reinstate the February 25 entry.

It is ordered that appellant recover of said appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court, domestic relations division, 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.

COLLEEN CONWAY COONEY, JUDGE

MARY EILEEN KILBANE, P.J., and
ANN DYKE, J., CONCUR

