[Cite as *In re R.C.*, 2010-Ohio-4690.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94885

IN RE: R.C.

[APPEAL BY MOTHER, R.W.]

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. CU 09115144

BEFORE: Stewart, J., Rocco, P.J., and McMonagle, J.

RELEASED AND JOURNALIZED: September 30, 2010

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MELODY J. STEWART, J.:

{¶ 1} Appellant-mother, R.W., appeals from a juvenile division order that named appellee-father, R.C., Jr., the custodial parent of child, R.C. The mother complains that the court entered judgment on a magistrate's decision without first conducting an independent review of the evidence, that the court erred by not adopting a parenting plan submitted by either parent, and that the court erred by making the father the residential parent and requiring the mother, an out-of-state resident, to have visitation only in Cuyahoga County. Finding that the court failed to make an independent entry of judgment when

overruling objections to the magistrate's decision, we conclude that we lack a final, appealable order and dismiss.

{¶ 2} Civ.R. 53(D)(4)(e) states that "[a] court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment or interim order." We have interpreted this rule to require the court to do more than merely "adopt" a magistrate's decision — the court, separate and apart from the magistrate's decision, "must grant relief on the issues originally submitted to the court." *Flagstar Bank, FSB v. Moore*, Cuyahoga App. No. 91145, 2008-Ohio-6163, at ¶1. An order that does nothing more than affirm a magistrate's decision without separately setting forth a judgment on the issues submitted to the court is not a final, appealable order. See *In re Zinni*, Cuyahoga App. No. 89599, 2008-Ohio-581, at ¶19-20, citing *Harkai v. Scherba Indus.* (2000), 136 Ohio App.3d 211, 736 N.E.2d 101; *SWA, Inc. v. Richey*, 8th Dist. No. 90902, 2008-Ohio-4713, at ¶1.

{¶ 3} The court's February 24, 2010, order affirming the magistrate's decision states:

{¶ 4} "This matter came on for consideration this 23rd day of February, 2010, * * * pursuant to the Objections filed by * * * Defendant/Mother to the Magistrate's Decision.

{¶ 5} "Upon review of the court file, the Magistrate's Decision and the Objections, the Court finds the Objections are not well-taken. The court

affirms, approves and adopts said Decision and overrules said Objections. It is therefore ordered that the within Decision of the Magistrate be and hereby is the Order of the Court."

{¶ 6} This order does not independently state any judgment on the father's motion to determine custody. In fact, the order does not even state what motion is at issue in the ruling. The order is thus in violation of Civ.R. 53(D)(4)(e) and lacks finality.

{¶ 7} Even had the court complied with its obligations under Civ.R. 53(D)(4)(e) and separately entered judgment, we would nonetheless have no final order. The magistrate's decision granting the father's motion for custody plainly stated "[t]his is not the final order of the Court for these proceedings" because the magistrate did not set forth a visitation schedule for the mother. The parties later reached an "interim" agreement on visitation, but that agreement extended only up to June 2010, at which time the court scheduled a new hearing on the issue. An order deferring a ruling on a visitation schedule and setting the matter for later hearing is not a final order. Cf. *In re Burke* (Jan. 24, 2002), 8th Dist. Nos. 78982 and 79414 (juvenile division order granting custody but deferring resolution of child support not final).

Dismissed.[1]

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[1]Apart from finality issues, the court erred by adopting the magistrate's decision

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

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas — Juvenile 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.

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
CHRISTINE T. McMONAGLE, J., CONCUR

on the same day that it ordered the preparation of a transcript of the proceedings before the magistrate. The court has a duty to conduct an "independent review" of magistrate decisions. See Civ.R. 53(D)(4)(d). It could not purport to conduct an independent review of the evidence when it knew that there was a transcript of the trial being prepared. *Savioli v. Savioli* (1994), 99 Ohio App.3d 69, 71, 649 N.E.2d 1295.