

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

SUSAN I. DAVIS

C.A. No. 08CA0022

Appellee

v.

RICHARD A. DAVIS

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 06-DR-0467

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 30, 2009

PER CURIAM.

INTRODUCTION

{¶1} Richard and Susan Davis divorced after 25 years of marriage. They both filed multiple objections to the magistrate’s report and proposed decision. Mr. Davis has appealed the overruling of his objections, assigning four errors. This Court dismisses the appeal because the trial court did not explicitly rule on each of his objections and, therefore, its decision was not a final, appealable order.

FACTS

{¶2} The Davises married in 1982 and have four adult children. At the time of their divorce, Mr. Davis lived in Virginia and Mrs. Davis lived in Ohio. They owned several homes and antique cars. Mr. Davis worked as a surgeon at a hospital until he was fired in 2007 for doing procedures for which he did not have hospital privileges. Mrs. Davis worked as a nurse

before the Davises married, but stopped working to raise their children and has not worked since that time.

{¶3} In 2006, Mrs. Davis filed for divorce. The matter was referred to a magistrate, who ordered Mr. Davis to pay Mrs. Davis \$12,000 per month in temporary spousal support. The magistrate later reduced the amount to \$10,000. After Mr. Davis lost his job, he moved to terminate spousal support, but the magistrate denied his request.

{¶4} On September 24, 2007, the magistrate held a final hearing regarding the divorce. On November 5, 2007, the magistrate entered his report and proposed decision, and the trial court entered a decree of divorce. The Davises both filed objections to the magistrate's proposed decision. Mr. Davis argued that neither party presented sufficient evidence for granting a divorce, that the magistrate incorrectly determined the amount and duration of spousal support, and that the magistrate incorrectly determined the division of marital property. Mrs. Davis argued her bank accounts were not marital assets, that she should have received some sort of security in case Mr. Davis failed to pay spousal support, and that she should not have been found in contempt for allowing one of their children to use a joint credit card.

{¶5} On April 3, 2008, the trial court entered a Judgment Entry in which it said it was "ruling on the objections of the parties." It sustained Mrs. Davis's objections regarding the bank accounts and contempt finding, but overruled her objection regarding spousal support. It overruled Mr. Davis's objections regarding whether there were grounds for a divorce and whether spousal support should be terminated, but sustained his objection regarding the amount of support. It reduced Mr. Davis's obligation to \$1500 per month from the date of its decision. The trial court did not, however, address Mr. Davis's objection regarding the division of marital

property. On April 17, 2008, the trial court entered a judgment entry decree of divorce. Mr. Davis has appealed its decision.

FINAL ORDER

{¶6} This Court must first determine whether it has jurisdiction to consider Mr. Davis’s appeal. The Ohio Constitution restricts an appellate court’s jurisdiction to the review of final orders of lower courts. Ohio Const. Art. IV, § 3(B)(2). “An order of a court is a final, appealable order only if the requirements of both Civ.R. 54(B), if applicable, and R.C. 2505.02 are met.” *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St. 3d 86, syllabus (1989). “Before this [C]ourt can exercise its appellate jurisdiction to review any case,” it must determine whether “the order being appealed is (1) ‘final’ pursuant to R.C. 2505.02, as further defined by case law; (2) issued by a ‘court of record;’ that is, signed by the court and journalized; and (3) appealable pursuant to R.C. 2505.03 and the Appellate Rules of Procedure.” *Harkai v. Scherba Indus. Inc.*, 136 Ohio App. 3d 211, 219 (2000).

{¶7} In reviewing whether an order is final, this Court examines “whether the essential functions of a judgment have been fulfilled.” *Id.* The order must terminate a claim between the parties to the action and provide notice of the parties’ rights, duties, and obligations. To terminate a claim between the parties, “the order must contain a statement of the relief to which the parties are entitled.” *Id.* To provide notice of the parties’ rights, duties, and obligations, “the language used in the judgment must be sufficiently complete so that the parties can enforce their rights and obligations through execution on that judgment.” *Id.*

{¶8} This Court has acknowledged that, “[i]n cases referred to a magistrate, the determination of appellate court jurisdiction is complicated” *Id.* “[We] must differentiate between those requirements that affect appellate court jurisdiction, that is, entry of a judgment

setting forth relief, and those that impose procedural requirements on the trial court, such as adoption of a magistrate's decision." *Id.* at 219-20. "In the first instance, the absence of a final order or judgment precludes appellate review. In the second instance, provided there has been a final order or judgment entered, the filing of a notice of appeal in compliance with the appellate rules vests jurisdiction in the appellate court." *Id.* at 220.

{¶9} Rule 53(D)(4)(d) of the Ohio Rules of Civil Procedure provides that, "[i]f one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections." Civil Rule 53(D)(4)(e)(i) provides that, "[i]f the court enters a judgment during the fourteen days . . . for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." Because of the automatic stay on execution, this Court has concluded that an order is not final and appealable until the court disposes of any timely objections. See *In re K.K.*, 9th Dist. 22352, 2005-Ohio-3112, at ¶11. "For a trial court's ruling on a magistrate's decision to be final and appealable, the trial court must enter judgment independently of the magistrate and must explicitly overrule or sustain any timely filed objections." *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-5813, at ¶10.

{¶10} On November 5, 2007, the magistrate entered his "Report and Proposed Decision." That same day, the trial court entered an "Order Decree of Divorce," which incorporated the magistrate's proposed findings. Mr. Davis subsequently filed four objections to the magistrate's report, and Mrs. Davis filed three objections. On April 3, 2008, the trial court entered a "Judgment Entry" purportedly ruling on the objections of the parties. On April 17,

2008, the trial court entered a new “Judgment Entry Decree of Divorce” that revised the language of its prior decree based on its ruling on those objections.

{¶11} Although Mr. Davis made four objections to the magistrate’s proposed decision, the trial court only addressed three of them in its April 3 judgment entry. It did not explicitly sustain or overrule his fourth objection, concerning the distribution of martial property.

{¶12} In his fourth objection, Mr. Davis argued that the magistrate did not accurately distribute certain antique cars. The cars at issue are not assembled and various parts of each car are in various out-of-state locations. Mr. Davis argued that the magistrate incorrectly identified the location of the car that each party was to receive and which parts, in which states, go to which vehicle. Although it appears that in the revised decree of April 17 the court attempted to address some of the errors of that Mr. Davis complained of in his objection, the allocation remains unclear. The ruling on the objection to the magistrate’s decision and the revised decree is silent as to that portion of Mr. Davis’s objection concerning the location of the parts to the vehicle that he was awarded. Specifically, the revised decree does not address the location of the parts that correspond to the car that Mr. Davis will receive and awards Mrs. Davis all the parts located in Pennsylvania, some of which, according to Mr. Davis, may belong to the car that he was awarded. Thus, Mr. Davis was not specifically awarded the parts to complete his car, and the potential exists for Mrs. Davis to take parts pursuant to her award that belong to the car Mr. Davis is to receive.

{¶13} This Court has repeatedly held that the trial court must explicitly rule on every objection that is timely filed in order to comply with Rule 53(D)(4)(d). See *Lorain Medina Rural Elec. v. GLW Broadband Inc.*, 9th Dist. No. 08CA009432, 2009-Ohio-1135, at ¶8; *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-5813, at ¶10. Accordingly,

because the trial court failed to rule on each of Mr. Davis's objections, its Judgment Entry Decree of Divorce is not final and appealable, and this Court lacks jurisdiction to consider it. See *Strickler*, 2008-Ohio-5813, at ¶10.

CONCLUSION

{¶14} This Court does not have jurisdiction to consider Mr. Davis's assignments of error because he has not appealed from a final, appealable order. His appeal is dismissed.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

DONNA J. CARR
FOR THE COURT

DONNA J. CARR
EVE V. BELFANCE
CONCUR

DICKINSON, P. J.
DISSENTS, SAYING:

{¶15} Because the trial court modified its decree based on the issues raised in Mr. Davis's fourth objection, I believe it implicitly sustained the objection in part and overruled it in part. Accordingly, this Court has jurisdiction to consider the appeal.

{¶16} As the majority has noted, the trial court only explicitly addressed three of Mr. Davis's objections in its April 3 judgment entry. Mr. Davis's fourth objection raised three issues: (1) that the magistrate incorrectly identified the location of a 1937 and a 1938 MG, (2) that the magistrate incorrectly identified what parts or engine go with each of those two cars, and (3) that the magistrate incorrectly ordered him to pay to transport personal property items that were awarded to Mrs. Davis to Ohio.

{¶17} At trial before the magistrate, Mr. Davis testified that a disassembled 1937 MG and disassembled 1938 MG were in a storage building at his house in Virginia. He said that the 1937 MG was worth more because all of the parts for that car matched. He also said that there was an engine "for the '37" in Pennsylvania. He further said that he "would like to keep the 1938 MG."

{¶18} The magistrate wrote in his report that Mrs. Davis "would receive . . . the 1937 MG TA at a value of \$4,000. She would also receive the parts to the '37 MG TA whether located in defendant's possession or in the State of Pennsylvania with additional valuation of \$7,000." The magistrate wrote that Mr. Davis "would receive the 1938 MG TA at a value of \$3,000."

{¶19} In the trial court's initial "Order Decree of Divorce," entered on November 5, 2007, the court wrote that Mrs. Davis "shall receive the . . . 1937 MG TA including parts as marital property free and clear." It wrote that Mrs. Davis "shall be responsible for any

transportation costs in getting these items in her possession including the engine and various parts located in the State of Pennsylvania.” It also wrote that Mr. Davis “shall receive the 1938 MG TA . . . as marital property free and clear.”

{¶20} In his fourth objection, Mr. Davis argued that “the Magistrate’s Decision is factually incorrect regarding the vintage cars and parts awarded to the parties. The 1938 MGTA was awarded to [Mr. Davis] and the engine to that automobile is in storage in Pennsylvania. The 1937 MG was awarded to [Mrs. Davis]. The engine for this automobile is in Roswell, New Mexico and the parts for it are in Blacksburg, Virginia. The Magistrate’s Decision . . . erroneously identifies the location of this property and what parts/engine go with what car.” He also argued that he should not be required to transport the personal property items that were awarded to Mrs. Davis to Ohio.

{¶21} While the trial court’s April 3 judgment entry did not explicitly mention Mr. Davis’s fourth objection, following that “ruling on the objections of the parties,” the court modified the language of the antique motor vehicles section of the April 17 “Judgment Entry Decree of Divorce” from what it had written in the November 5 decree. In the April 17 decree, the court wrote that Mrs. Davis “shall receive the . . . 1937 MG TA (value \$4,000) including parts (value \$7,000) in Defendant’s possession or in the State of Pennsylvania and New Mexico as marital property free and clear. . . . [Mrs. Davis] shall be responsible for any transportation costs in getting these items in her possession including the engine and various parts located in the State of Pennsylvania and New Mexico. [Mr. Davis] shall receive the 1938 MG TA (value \$3,000) . . . as marital property free and clear.” The court did not change its assignment of the personal property transportation costs.

{¶22} Although the trial court did not write in its April 3 judgment entry whether Mr. Davis's fourth objection was sustained or overruled, it is apparent from the April 17 decree that the court sustained the objection in part and overruled it in part. In response to Mr. Davis's objection, the court revised the decree in an attempt to clarify which car parts were awarded to each party and where those parts were located. That is evident from the fact that, even though no one had testified that there were parts for the 1937 MG in New Mexico, the court changed the language of the decree to award Mrs. Davis any parts for the 1937 MG that were in that state, as Mr. Davis had argued in his objection. Even if the trial court's April 17 decree incorrectly divided the parts and engines for the 1937 and 1938 MGs, as Mr. Davis has argued, that does not mean that the court did not rule on Mr. Davis's objection regarding those cars.

{¶23} Rule 53(D)(4)(d) of the Ohio Rules of Civil Procedure requires only that the trial court "rule" on the parties' objections to the magistrate's decision. It does not require the court to explicitly mention each objection in its ruling if it is apparent from the decision which way the court has ruled. See *Shaffer v. Shaffer*, 109 Ohio App. 3d 205, 212 (1996) (concluding that, even if a trial court does not expressly address objections, it is presumed to have overruled them if it enters judgment disposing of them). The trial court in this case adequately "rule[d]" on the parties' objections under Rule 53(D)(4)(d). Accordingly, its decree is final and appealable, and this Court has jurisdiction to consider Mr. Davis's appeal.

APPEARANCES:

JOHN M. DOHNER, attorney at law, for appellant.

RENEE J. JACKWOOD, attorney at law, for appellee.