[Cite as *Criteser v. Criteser*, 2010-Ohio-2991.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

SANDRA CRITESER	C.A. No. 09CA009688
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ROBERT CRITESER, JR.	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellee	CASE No. 02DR060659

DECISION AND JOURNAL ENTRY

Dated: June 30, 2010

MOORE, Judge.

{¶1} Appellant, Sandra Criteser nka Sandra Cook, appeals from the judgment of the Lorain County Court of Common Pleas, Domestic Relations Division. This Court dismisses the appeal for the reasons that follow.

I.

{¶2} On May 10, 2002, Sandra Criteser ("Wife"), initiated divorce proceedings against Robert Criteser ("Husband"). On July 16, 2002, Husband filed a counterclaim for divorce. The matter was continued due to, among other things, the parties' health problems, Husband's subsequent hospitalization, and a bankruptcy stay. Eventually, the trial of the matter was scheduled for May 27, 2009.

{¶3} On May 27, 2009, the parties indicated that a trial would not be necessary because they had reached a settlement. The attorneys read the settlement into the record and the parties notified the trial court of their assent to the settlement terms. In concluding the May 27, 2009

hearing, the trial court stated that the parties were to submit a final entry. The trial court further stated that if the parties did not provide a final entry then the May 27, 2009 hearing would be transcribed and the transcript would constitute the final divorce decree. The parties were unable to agree on an entry despite multiple extensions of time in which to do so. Each party filed objections to the respective judgment entries proposed by opposing counsel. On September 3, 2009, the trial judge entered a judgment entry of divorce and incorporated the transcript of the May 27, 2009 hearing detailing the parties' agreement as Exhibit A to the judgment entry.

{¶4} Wife timely filed a notice of appeal, raising one assignment of error for our review.

II.

ASSIGNMENT OF ERROR

> "THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT SIGNED AND APPROVED A JUDGMENT ENTRY/DECREE OF DIVORCE NOT APPROVED BY THE BOTH PARTIES WHEN THE RECORD DOES NOT SUPPORT THE COURT'S FINDINGS THAT AN AGREEMENT EXISTS."

{¶5} As a threshold issue, we are required to raise sua sponte issues pertaining to our jurisdiction.

{¶6} The Ohio Constitution limits an appellate court's jurisdiction to the review of final judgments of lower courts. Section 3(B)(2), Article IV. Accordingly, this Court has jurisdiction to review only final and appealable orders. See *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 219. "A divorce decree, which leaves issues unresolved, is not a final order." *Muhlfelder v. Muhlfelder* (March 15, 2002), 11th Dist. Nos. 2000-L-183, 2000-L-184, at * 1. Civ. R. 75(F), in part, provides that a trial court:

> "*** shall not enter final judgment as to a claim for divorce, dissolution of marriage, annulment, or legal separation unless one of the following applies:

> "(1) The judgment also divides the property of the parties, determines the appropriateness of an order of spousal support, and, where applicable, either allocates parental rights and responsibilities, including payment of child support, between the parties or orders shared parenting of minor children;
>
> "(2) Issues of property division, spousal support, and allocation of parental rights and responsibilities or shared parenting have been finally determined in orders, previously entered by the court, that are incorporated into the judgment [.]" (Emphasis added.)

{¶7} Therefore, a trial court order that does not finally determine the appropriateness of an award of spousal support does not comply with Civ.R. 75(F). See *Rose v. Rose* (Nov. 7, 2001), 9th Dist. No. 3194-M, at *2.

{¶8} In the instant case, the trial court's September 3, 2009 judgment entry does not contain any language concerning the trial court's determination of the appropriateness of an award of spousal support. With respect to spousal support, the transcript of the settlement read into the record indicates that the parties agreed that temporary support was to be terminated and that the trial court was to retain jurisdiction of spousal support awards to either party. Although it appears that the parties intended to terminate spousal support, there is ambiguity concerning the award of post-decree spousal support given that the parties did not affirmatively state that neither spouse would receive spousal support. The parties merely stated that the temporary spousal support was terminated and the trial court was to retain jurisdiction "of spousal support awards, spousal support to either party." Therefore, although the parties addressed temporary spousal support directly, there is no specific determination of the appropriateness of an award of post-decree spousal support. This omission can be interpreted at least two ways: 1) there is simply no post-decree spousal support; or 2) the parties agreed on the issue of post-decree spousal support but inadvertently omitted any specific reference thereto while on the record.

{¶9} Accordingly, we conclude that the judgment entry of divorce fails to comply with Civ.R. 75(F) because it does not finally determine the appropriateness of spousal support. The judgment entry does not, therefore, constitute a final, appealable order. At this time, we express no opinion as to whether a determination embodied only in a transcript adopted as the settlement agreement but not contained in the judgment decree of divorce would satisfy the requirements of Civ.R. 75(F).

{¶10} As we find that the trial court's entry is not a final, appealable order, we are without jurisdiction to review the merits of Wife's assignment of error.

III.

{¶11} Based on the foregoing, this Court lacks jurisdiction and we hereby dismiss the instant appeal for lack of a final, appealable order.

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.

CARLA MOORE
FOR THE COURT

BELFANCE, J.
CONCURS

DICKINSON, P. J.
DISSENTS, SAYING:

{¶12} The discussion that occurred on the record in front of the trial court addressed spousal support, but did not award spousal support: "There are no support arrearages. CSEA shall correct its records to indicate there's no support arrearages. The temporary support is terminated. However, the Court shall retain jurisdiction of spousal support awards, spousal support to either party." Although nobody would point to this as an example of how good lawyers recite their agreements, it does show that they addressed spousal support and agreed that there should not be any. I note that neither party is arguing on appeal that they agreed that there should be an award of spousal support. Accordingly, I would not dismiss this appeal on the basis that the issue of spousal support was not resolved by the agreement incorporated into the trial court's judgment. Rather, I would exercise jurisdiction over this matter and overrule Ms. Criteser's assignment of error because her argument is incomprehensible.

APPEARANCES:

JAMES V. BARILLA, Attorney at Law, for Appellant.

JOSEPH G. STAFFORD and GREGORY J. MOORE, Attorneys at Law, for Appellee.