

STATE OF OHIO                     )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

JASON A. AKIN

C. A. Nos.     24794 & 24972

Appellant

v.

CHRISTINA N. AKIN

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     2007-06-2013

Appellee

DECISION AND JOURNAL ENTRY

Dated: July 28, 2010

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DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Jason and Christina Akin divorced in Texas in 2000. They have two daughters. In 2007, Mr. Akin moved the Domestic Relations Division of the Summit County Common Pleas Court to register the Texas decree and assume jurisdiction over the allocation of parental rights and responsibilities. He also moved to modify the parties' shared parenting plan and for the court to hold Ms. Akin in contempt for not allowing him visitation on Father's Day. In response, Ms. Akin moved to increase Mr. Akin's child support, for health insurance, and to change the shared parenting schedule. After a hearing before a magistrate began, Mr. Akin moved to dismiss Ms. Akin's motion to increase child support because she had not attached a financial disclosure affidavit to it. After the magistrate entered a decision, both parties filed objections. The trial court overruled Mr. Akin's objections and entered a judgment adopting the Texas decree, approving a new shared parenting plan, and increasing his child support

obligation. The trial court did not rule on Ms. Akin's objections. Ms. Akin moved for relief from judgment, arguing that Mr. Akin had underestimated his income for 2008. The trial court denied that motion. Mr. Akin has attempted to appeal, arguing that the trial court incorrectly denied his motion for contempt, incorrectly denied his motion to dismiss, incorrectly ordered him to produce the entire transcript of the hearing before the magistrate, and incorrectly applied Rule 1(B) of the Ohio Rules of Civil Procedure. Ms. Akin has attempted to cross-appeal, assigning as error that the trial court incorrectly denied her motion for relief from judgment. This Court dismisses the attempted appeals because the trial court did not rule on Ms. Akin's objections to the magistrate's decision.

#### FINAL APPEALABLE ORDER

{¶2} This Court must first determine whether it has jurisdiction to consider the appeals. Section 3(B)(2), Article IV of the Ohio Constitution provides that courts of appeals "shall have such jurisdiction as may be provided by law to review . . . judgments or final orders . . . ." "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).

{¶3} "In cases referred to a magistrate, the determination of appellate court jurisdiction is complicated . . . ." *Harkai v. Scherba Indus. Inc.*, 136 Ohio App. 3d 211, 219 (2000). "[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.

{¶4} 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 the trial court's judgment is not appealable until the court disposes of any timely objections. See *In re K.K.*, 9th Dist. No. 22352, 2005-Ohio-3112, at ¶11 (construing similar language under Juv. R. 40).

{¶5} The magistrate entered her decision on March 10, 2009. The trial court reviewed the magistrate's decision and entered a judgment adopting it that same day. On March 23, 2009, Mr. Akin timely objected to the magistrate's decision. See Civ. R. 53(D)(3)(b)(i). On March 30, 2009, Ms. Akin timely filed her own objections to the magistrate's decision. See *id.*

{¶6} On May 8, 2009, the trial court issued a journal entry on "the Objections of Plaintiff (Husband) filed March 2[3], 2009 . . . ." It noted that Mr. Akin had made "three objections to the Magistrate's Decision." It overruled two of them and sustained the other. It did not, however, rule on Ms. Akin's objections. Accordingly, this Court concludes that its journal

entry is not a final, appealable order under *In re K.K.*, 9th Dist. No. 22352, 2005-Ohio-3112, at ¶11.

### CONCLUSION

{¶7} Because the trial court did not rule on Ms. Akin's objections to the magistrate's decision, its journal entry is not a final, appealable order. The Akins' attempted appeals are dismissed.

Appeals dismissed.

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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.

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CLAIR E. DICKINSON  
FOR THE COURT

MOORE, J.  
BELFANCE, J.  
CONCUR

### APPEARANCES:

JASON A. AKIN, pro se, appellant.

LESLIE S. GRASKE, attorney at law, for appellee.