[Cite as *Murphy v. Murphy*, 2011-Ohio-176.]

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

CHAD MURPHY	C. A. No. 25202
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
BARBARA MURPHY	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellee	CASE No. 2008-06-1940

DECISION AND JOURNAL ENTRY

Dated: January 19, 2011

WHITMORE, Judge.

{¶1} Plaintiff-Appellant, Chad Murphy ("Husband"), appeals from the entry of the Summit County Court of Common Pleas, Domestic Relations Division. This Court dismisses.

I

{¶2} Husband and Defendant-Appellee, Barbara Murphy ("Wife"), were married in September 1997 and had one child, C.M., during the marriage. Husband filed for divorce on June 27, 2008. Wife filed an answer as well as a counterclaim for divorce. A magistrate held a hearing on August 11, 2008. On August 27, 2008, the magistrate issued a temporary order. The temporary order found Husband's annual gross income to be $42,945 and Wife's to be $14,560 based on an imputation of minimum wage. The magistrate ordered Husband to pay $450 per month in spousal support and $414.33 per month in child support. The magistrate's order further provided that "both parties shall be the residential parent and legal custodian of the child."

{¶3} Subsequently, both parties sought to modify the magistrate's temporary order based on a change in circumstances. The magistrate held an additional hearing on June 2, 2009 and issued another order on June 18, 2009. The June 18th temporary order found Husband's annual gross income to be $50,604.80 and Wife's to be $15,080 based on an imputation of minimum wage. The magistrate ordered Husband to pay $466.66 per month in spousal support and $524.17 per month in child support.

{¶4} On November 23, 2009, the trial court held a final hearing on Husband's complaint for divorce and Wife's counterclaim for the same. Both parties appeared at the hearing with their attorneys and testified on their own behalves. The trial court issued a "judgment entry" on December 18, 2009. The trial court ordered Husband to pay $476.83 per month in child support and $800 per month in spousal support. The court's order designated Wife the sole residential parent and legal custodian of C.M., but provided that the designation would not impact the actual time allotted to each parent in the parties' shared parenting plan. The court further ordered Husband to pay $3,500 in attorney fees on Wife's behalf.

{¶5} Husband now appeals from the trial court's entry and raises five assignments of error for our review. We consolidate the assignments of error.

II

Assignment of Error Number One

> "THE TRIAL COURT ERRED AS A MATTER OF LAW IN ORDERING WIFE TO THE BE SOLE RESIDENTIAL PARENT AND LEGAL CUSTODIAN OF THE MINOR CHILD WHEN THERE IS A SHARED PARENTING PLAN IN PLACE." (Sic.)

Assignment of Error Number Two

> "THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING THAT WIFE IS DISABLED BASED SOLELY ON HER OWN TESTIMONY THAT SHE CAN WORK ABSENT EXPERT EVIDENCE."

Assignment of Error Number Three

"THE TRIAL COURT ERRED AS A MATTER OF LAW IN ORDERING HUSBAND TO PAY $800.00 PER MONTH IN SPOUSAL SUPPORT FOR FOUR YEARS."

Assignment of Error Number Four

"THE TRIAL COURT ERRED AS A MATTER OF LAW IN NOT ORDERING A DEVIATION IN CHILD SUPPORT."

Assignment of Error Number Five

"THE TRIAL COURT ERRED AS A MATTER OF LAW IN AWARDING $3500.00 IN ATTORNEY'S FEES."

{¶6} In his assignments of errors, Husband challenges various aspects of the trial court's entry, including Wife's designation as the residential parent, the amount of the spousal and child support awards the court ordered, and the court's award of attorney fees in favor of Wife. Because Husband has not appealed from a final judgment, we cannot address his assignments of error.

{¶7} The Ohio Constitution limits an appellate court's jurisdiction to the review of final judgments of lower courts. Section 3(B)(2), Article IV. As such, "[t]his Court is obligated to raise sua sponte questions related to our jurisdiction." *No- Burn, Inc. v. Murati*, 9th Dist. No. 24577, 2009-Ohio-6951, at ¶7, citing *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.* (1972), 29 Ohio St.2d 184, 186. "A divorce decree, which leaves issues unresolved, is not a final [judgment]." *Keith v. Keith*, 9th Dist. No. 09CA009657, 2010-Ohio-1085, at ¶4. See, also, *Taylor v. Taylor*, 9th Dist. No. 10CA009790, 2010-Ohio-5794, at ¶6-9; *Parravani v. Parravani*, 9th Dist. No. 25224, 2010-Ohio-3853, at ¶4-10.

{¶8} Civ.R. 75(F) provides, in relevant part, as follows:

"For purposes of Civ.R. 54(B), the 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[.]"

If a decree of divorce fails to conform to Civ.R. 75(F) by virtue of the trial court having neglected to allocate parental rights and responsibilities or order shared parenting, this Court lacks jurisdiction to consider an appeal from that decree. *Taylor* at ¶6-10.

{¶9} The trial court's judgment entry reads, in relevant part, as follows:

> "Wife shall be the sole residential parent and legal custodian of [C.M.] although the parties have a Shared Parenting Plan in place which gives each parent fifty percent of the time with the child. The Shared Parenting Plan is working well and the Court finds the Plan to be in the best interest of the child. Nothing in this paragraph shall change the effect of the Shared Parenting Plan."

Unfortunately, the record does not contain a shared parenting plan. Both Husband and Wife clearly agreed to some type of shared parenting arrangement at the hearings before the magistrate and trial court, but neither one actually filed a shared parenting plan. The trial court's purported judgment entry does not set forth the details of any shared parenting arrangement to which the parties may have agreed. Instead, it merely refers to a pre-existing shared parenting plan. Because no shared parenting plan appears in the record, however, the trial court's "judgment entry" does not conform to Civ.R. 75(F). That is, the trial court neglected to allocate the parties' parental rights and responsibilities or order shared parenting. See Civ.R. 75(F). Without such an allocation or order, no final judgment exists and this Court lacks jurisdiction to consider Husband's assignments of error. *Taylor* at ¶6-10.

III

{¶10} This Court lacks jurisdiction to consider Husband's assignments of error because he has not appealed from a final judgment. As such, Husband's 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.

BETH WHITMORE
FOR THE COURT

CARR, P. J.
MOORE, J.
CONCUR

APPEARANCES:

HOLLY L. BEDNARSKI, Attorney at Law, for Appellant.

BETTY GRONER, Attorney at Law, for Appellee.