

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-001578-ME

WARREN TOOLEY

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE PAULA SHERLOCK, JUDGE  
ACTION NO. 00-FC-008915

PATRICIA KARSNER

APPELLEE

OPINION AND ORDER  
DISMISSING APPEAL

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BEFORE: DIXON, D. LAMBERT, AND THOMPSON, JUDGES.

DIXON, JUDGE: Warren Tooley (“Father”) appeals from an order of the Jefferson Circuit Court. Because we conclude the circuit court’s order was interlocutory, we dismiss this appeal.

Father and Patricia Karsner (“Mother”) are the parents of two teenage children. The parties executed a temporary agreed order in December 2006, which

provided that they would share joint custody of the children, with Father designated as the primary residential parent.

A review of the record indicates that the parties have been involved in extremely contentious litigation regarding primary residence and time-sharing, among other issues, since 2011. In August 2013, the court granted Mother's emergency *ex parte* motion to name her as the primary residential parent, based on allegations of a domestic dispute between Father and his wife. Approximately six months later, Father filed a motion to be named the primary residential parent. Following a hearing, the court entered an interlocutory order stating that the parties were joint custodians, with Mother as the primary residential parent. Shortly thereafter, in June 2014, the court held a second hearing and interviewed the children (ages thirteen and fourteen). In an order rendered August 26, 2014, the court noted the parties faced numerous parenting issues with the children. The court referenced the "ongoing custody struggle" and "the unrelenting conflict and animosity" between the parties. The court stated that the children would continue residing with Mother and that Mother would make decisions on behalf of the children. The court emphasized that the children must attend therapy, enroll in school, and participate in tutoring. The court concluded its order by stating, "All prior consistent [o]rders remain in effect." Father appeals, characterizing the court's order as a final custody judgment granting Mother sole custody.

Pursuant to CR 54.01, "A final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a

judgment made final under Rule 54.02.” Pursuant to 54.02(1), if multiple claims exist, “the court may grant a final judgment upon one or more but less than all of the claims . . . only upon a determination that there is no just reason for delay.” “In the absence of such finality and a recitation thereof, the order is interlocutory and subject to modification and correction before becoming a final and appealable judgment or order.” *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005).

In this case, the order on appeal neither adjudicated all of the parties’ rights, CR 54.01, nor contained the requisite finality language. CR 54.02. The court’s order did not imply permanence; rather, it addressed pressing issues in an ongoing and bitter custody battle. After careful review, we cannot construe the order as the court’s final determination of custody; consequently, we conclude it was interlocutory and not subject to appeal.

For the foregoing reasons, Appeal No. 2014–CA–001578–ME is DISMISSED.

ALL CONCUR.

ENTERED: September 4, 2015

/s/ Donna L. Dixon  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE:

F. Todd Lewis  
Louisville, Kentucky

No Brief for Appellee