[Cite as *Jones v. Jones*, 2019-Ohio-2684.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

TUMANYA JONES,	:	
Plaintiff-Appellant,	:	Case No. 18CA10
vs.	:	
NICHOLAS JONES,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellee.	:	

APPEARANCES:

Mary C. Ansbro, Columbus, Ohio, for appellant.

Tyler Hoffer, Lebanon, Ohio, for appellee.

CIVIL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 6-24-19
ABELE, J.

{¶ 1} This is an appeal from a Highland County Common Pleas Court judgment that granted a divorce to Tumanya Jones, plaintiff below and appellant herein, and Nicholas Jones, defendant below and appellee herein.

{¶ 2} Appellant assigns eleven errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY ORDERING THE OPTION ONE VISITATION TO DEFENDANT AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT 'REOPENED' AND 'RECONSIDERED' THE VISITATION."

THIRD ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT MODIFIED THE EXISTING AGREED PROPERTY DIVISION WITHOUT THE AGREEMENT OF THE PARTIES."

FOURTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO VALUE MARITAL ASSETS."

FIFTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT ORDERED THE CHIROPRACTIC PRACTICE SOLD WITH THE BUILDING."

SIXTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT REFUSED TO RULE ON THE DIVISION OF LIFE INSURANCE ACCOUNTS."

SEVENTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT HELD CONTEMPT CITATIONS BASED UPON PARTIES' FUTURE ACTIONS."

EIGHTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN CALCULATING SPOUSAL SUPPORT."

NINTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN CALCULATING CHILD SUPPORT."

TENTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN QUALIFYING EXPERTS."

ELEVENTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DETERMINED THE SEPARATE DEBTS AND ASSETS OF THE PARTIES."

{¶ 3} The parties married on August 24, 1996. Two children have been born as issue of the marriage, LJ/LW (born May 12, 1998) and BJ (born June 2, 2001). On December 28, 2016, appellant filed a complaint for divorce. A magistrate presided over the case until May 31, 2017, when appellant requested the disqualification of the magistrate and the recusal of the trial judge. The judge, however, reassigned the case to himself and denied the motion to recuse.

{¶ 4} After a three-day hearing, the trial court issued several orders, all of which stated that they would be incorporated into a final decree of divorce. The final decree of divorce, entered on May 16, 2018, indicated that the matter had came on for final hearing in October and November, 2017. In the final decree the court, inter alia, made the following findings (1) the parties married on August 24, 1996; (2) there is one minor child born as issue of the marriage on June 2, 2001; (3) the parties are incompatible; (4) the parties entered into agreements for the division and disposition of real estate at the October 11, 2017 pretrial hearing, which the court accepted; (5) the parties entered into additional agreements regarding the division of their retirement accounts and a camper during the final hearing; (6) after the final hearing the court made additional rulings on the division of personal property in its November 11, 2017 nunc pro tunc decision; (7) the court filed its decision and orders regarding all remaining disputed issues at the January 12, 2018 final hearing; and (8) the

court found that it is in the best interest of the parties' minor child that appellant be designated the residential parent and that appellee be granted parenting time.

{¶ 5} On July 27, 2018, appellant and her counsel filed affidavits of disqualification against the trial judge. The Supreme Court of Ohio denied those requests on August 16, 2018. Appellant then filed in this court an emergency motion for a stay. This court denied that request on July 2, 2018. In addition, appellant filed a complaint for a writ of prohibition in the Supreme Court of Ohio on August 9, 2018. The Supreme Court dismissed the complaint on November 7, 2018. *See Jones v. Coss,* 154 Ohio St.3d 1420, 2018-Ohio-4495, 111 N.E.3d 18.

{¶ 6} After appellant filed an appeal, we asked the parties to address whether the trial court's May 16, 2018 "final decree of divorce" constitutes a final appealable order. On October 3, 2018, we issued an entry and concluded that we had jurisdiction over this appeal and allowed the matter to proceed.[1] We chronicled the three orders at issue and noted that the first order (November 7, 2017) determined issues of property division and modified temporary orders concerning parenting time, as well as a non-exhaustive list of issues that remained in controversy. The second order (January 12, 2018) acknowledged: (1) that some issues were addressed in the November 2017 order that would be incorporated into the final divorce decree; (2) certain real estate and retirement account issues were addressed by the parties' written stipulations, which would be incorporated into a final divorce decree; and (3) remaining issues were addressed in the second order, which would be incorporated into the final decree, including valuation and disposition of a business, a third-party loan, income, debt allocation, spousal support, and allocation of parental rights. On May 15, 2018,

[1]Our October 3, 2018 entry focused solely on the one document rule concerning judgments due to the trial court's incorporation of prior orders into its decree. See R.C. 2505.02 and Civ.R. 75(F)(2). The entry did not, however, address property division issues or other requirements for a final appealable order.

the trial court held its final hearing on matters related to personal property distribution and issued an entry regarding the parties' personal property.

{¶ 7} On May 16, 2018, the trial court issued its Final Decree of Divorce. This document referenced the three prior orders concerning property division, spousal support, and the allocation of parental rights issued on November 7, January 12, and May 15. The document also attached and incorporated those orders. Our October 3, 2018 entry concluded that the trial court's divorce decree is a final appealable order under R.C. 2404.02 and Civ.R. 75(F)(2) and we allowed the case to proceed.

{¶ 8} Before we may review the merits of appellant's assignments of error, however, we first must determine at this juncture whether we have jurisdiction to review this matter. Courts of appeals have jurisdiction to "affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district." Section 3(B)(2), Article IV, Ohio Constitution. "As a result, '[i]t is well-established that an order [or judgment] must be final before it can be reviewed by an appellate court. If an order [or judgment] is not final, then an appellate court has no jurisdiction.'" *Bibbee v. Bibbee*, 4th Dist. Athens No. 15CA38, 2016-Ohio-5188, ¶ 21, citing *Gehm v. Timberline Post & Frame*, 112 Ohio St.3d 514, 2007-Ohio-607, 861 N.E.2d 519, ¶ 14, quoting *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989). In the event that the parties involved in the appeal do not raise this jurisdictional issue, then the appellate court must *sua sponte* raise it. *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus (1989); *Whitaker-Merrell v. Geupel Constr. Co.*, 29 Ohio St.2d 184, 186, 280 N.E.2d 922 (1972).

{¶ 9} Although the parties in the case sub judice did not directly raise the issue in the

context of a question concerning whether the trial court's decision constitutes a final appealable order, in her sixth proposition of law appellant asserts that the trial court committed reversible error when it refused to rule on the division of life insurance accounts. Although this court initially determined that the final decree of divorce in the case sub judice appeared to constitute a final appealable order, *see Jones v. Jones*, October 3, 2018 Entry, further examination reveals that other issues have surfaced that must lead to the conclusion that the divorce is not a final appealable order. In *Wilson v. Wilson*, 116 Ohio St.3d 268, 2007-Ohio-6056, 878 N.E.2d 16, the Supreme Court of Ohio summarized the requirements of a final order in a divorce proceeding as follows:

> Civ.R. 75(F) prohibits a trial court from entering a final judgment unless (1) the judgment divides the parties' property, determines the appropriateness of an order of spousal support, and allocates parental rights and responsibilities, including the payment of child support, or (2) the judgment states that there is no just reason for delay and that the court lacks jurisdiction to determine any issues that remain.

Ohio appellate courts have also consistently held that a divorce decree that fails to dispose of all marital and separate property does not constitute a final order. *Bibbee v. Bibbee*, *supra*, at ¶ 22, citing *Wallace v. Wallace*, 9th Dist. Lorain No. 15CA010736, 2016-Ohio-630, ¶ 3; *Wohleber v. Wohleber*, 9th Dist. Lorain No. 06CA009018, 2007-Ohio-3964, ¶ 10; *Dach v. Homewood*, 10th Dist. Franklin No. 12AP-920, 2013-Ohio-4340, ¶ 8; *Johnson v. Johnson*, 194 Ohio App.3d 664, 2011-Ohio-3001, ¶ 13 (3d Dist.); *see* R.C. 3105.171(B) ("In divorce proceedings, the court shall * * * determine what constitutes marital property and what constitutes separate property."); Civ.R. 75(F)(1) ("For purposes of Civ.R. 54(B), the court shall not enter final judgment as to a claim for divorce * * * unless * * * [t]he judgment also divides the property of the parties."). *Bibbee* at ¶ 22.

{¶ 10} Our review reveals that, at the October 11, 2017 hearing, counsel appeared to express some partial agreement on some issues. As part of that, counsel for the plaintiff stated that "I

believe we have an agreement that each will take their own life insurance. Okay and both parties have to cooperate to change any necessary beneficiaries or owners of said policies and each party will get the policy insuring their own life." It appears that the only other reference in the record concerning life insurance occurred at the May 15, 2018 contempt hearing. The transcript of that exchange provides:

> Court: So, alright anything else from counsel.
>
> King: * * * The life insurance policies, each of them are to take their own that insure their own lives, deadline for completion of paperwork for that just because we have been trying for a couple of months now.
>
> Court: You know what, you guys have got to do something reasonable. You know, I mean you are supposed to be adults, are you that childish that you can't come up with a time.
>
> King: Your Honor . . .
>
> Court: Is that what we've got to.
>
> King: We keep providing . . .
>
> Court: You want me to start saying what they need to wear to the counseling session, I mean come on folks you've got to make some decisions here. I'm tired of micromanaging your lives. So, you know what if you don't do it within a reasonable time. I guess I will see you back here, so.
> King: Your honor, for the record. . .
>
> Court: So, my suggestion is you get right on it. Now, of course a lot of it depends on what happens if there is an appeal and there is a stay. You know, if you guys get a stay, you get a stay of everything probably and so then you are tied economically together until that appeal is decided and that doesn't take, it takes a long time. It will take a long time in this case.
>
> King: Your Honor, for the record to reflect I did just hand to counsel again, we provided the email copies of the insurance papers for them to sign.
>
> Court: Alright, that's fine.

{¶ 11} In general, in order to terminate an action a judgment must set forth the outcome of the dispute and contain a clear statement of the relief afforded to the parties. *Gemmell v. Anthony*, 4th Dist. Hocking No. 18CA8, 2019-Ohio-469, ¶¶ 37, citing *Burns v. Morgan*, 165 Ohio App.3d 694, 2006-Ohio-1213, 847 N.E.2d 1288, ¶ 8 (4th Dist.), citing *Harkai v. Scherba Indus., Inc.*, 136 Ohio App.3d 211, 215, 736 N.E.2d 101 (9th Dist. 2000). A court's judgment need not "'"be encyclopedic in character, but it should contain clear language to provide basic notice of rights, duties, and obligations."'" *Harkai*, 136 Ohio App.3d at 216, 736 N.E.2d 101, quoting *In re Michael*, 71 Ohio App.3d 727, 730, 595 N.E.2d 397 (11th Dist. 1991), quoting *Lavelle v. Cox*, 11th Dist. Trumbull No. 90–T–4396, 1991 WL 35642 (Mar. 15, 1991), (Ford, J., concurring). "'[T]he content of the judgment must be definite enough to be susceptible to further enforcement and provide sufficient information to enable the parties to understand the outcome of the case.'" *Id*., quoting *Walker v. Walker*, 9th Dist. Summit No. 12978, 1987 WL 15591, *2 (Aug. 5, 1987). "'"In other words, the judgment entry must be worded in such a manner that the parties can readily determine what is necessary to comply with the order of the court."'" *Burns* at ¶ 10, quoting *Yahraus v. Circleville*, 4th Dist. Pickaway No. 00CA04, 2000-Ohio-2019, quoting *Lavelle v. Cox*, Trumbull App. No. 90–T–4396, 1991 WL 35642 (Mar. 15, 1991) (Ford, J., concurring).

{¶ 12} "If the judgment fails to speak to an area which was disputed, uses ambiguous or confusing language, or is otherwise indefinite, the parties and subsequent courts will be unable to determine how the parties' rights and obligations were fixed by the trial court." *Gemmell, supra*, ¶ 38, quoting *Harkai*, 136 Ohio App.3d at 216, 736 N.E.2d 101, quoting *Walker* at *2. Accordingly, a judgment does not properly terminate an action when it is "ambiguous, confusing, and not certain in itself." *Clyburn v. Gregg*, 4th Dist. Ross No. 09CA3115, 2010-Ohio-4508, ¶ 7; *Brown v. Brown*,

183 Ohio App.3d 384, 2009-Ohio-3589, 917 N.E.2d 301, ¶ 21 (4th Dist.).

{¶ 13} Accordingly, based upon the reasons set forth above, we do not believe that the trial court's decision disposes of all the parties' property and, thus, in accordance with Civ.R. 75(F) and *Wilson, supra,* the trial court's decision does not constitute a final appealable order. Consequently, we must dismiss this appeal. We, of course, understand the desire of all concerned to resolve all of the issues in this matter, but we are not permitted to do so because we have no jurisdiction at this juncture.

{¶ 14} Furthermore, we hasten to add that parties should always endeavor to assist a trial court in resolving issues, rather than serving as impediments to a timely resolution. We recognize that certain cases, and especially domestic relations cases, can be hostile, quarrelsome and combative. Obviously, this matter is an example of a very contentious proceeding. However, acrimony serves no useful purpose and actually causes harm to everyone involved in the process, both financially and emotionally. We also sympathize with the trial court's herculean task in this matter. Therefore, we encourage the parties to endeavor to bring this ordeal to a conclusion.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the appeal be dismissed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Hess, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.