

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

Marcella Meyers-Decator

Court of Appeals No. WM-08-028

Appellant

Trial Court No. 07 DV 000064

v.

Bill J. Decator, III

DECISION AND JUDGMENT

Appellee

Decided: September 18, 2009

* * * * *

Dennis P. Strong, for appellant.

John S. Shaffer, for appellee.

* * * * *

HANDWORK, P.J.

{¶ 1} This case is before the court on appeal from a judgment of the Williams County Court of Common Pleas.

{¶ 2} Appellant, Marcella Meyers-Decator, and appellee, "Bill" Decator, were divorced on July 16, 2007. At the time the divorce was final, appellant was living in Wisconsin with the parties' son, William M. Decator ("Will"). Appellee was residing in

Fort Wayne, Indiana. The parties entered into a shared parenting plan. They agreed that Will would reside with each parent for alternating two month periods.

{¶ 3} On December 26, 2007, appellant filed a motion to reallocate parental rights and responsibilities, asking the court to name her the residential parent during the school year, to allow appellee to have long distance visitation during that period, and to name appellee the residential parent during the summer. Subsequently, appellee filed his own motion for a modification of the shared parenting plan in which he asked the court to name him residential parent with him during the school year and name appellant the residential parent during the summer. Hearings on both motions were held on August 14, and August 22, 2008. Appellant filed her motion for findings of fact and conclusions of law on September 12, 2008. The common pleas court ordered the parties to file proposed findings of fact and conclusions of law on or before December 15, 2008.

{¶ 4} On November 26, 2008, however, the court filed its final judgment on the motions to modify child custody and included a support order in that judgment. Inexplicably, on December 23, 2008, the court then granted appellee an additional 30 days to file his proposed findings of fact and conclusions of law.

{¶ 5} Appellant filed her timely notice of appeal of the November 26, 2008 judgment on December 24, 2008. She asserts the following assignment of error:

{¶ 6} THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DENYING PLAINTIFF'S MOTION FOR REALLOCATION OF PARENTAL RIGHTS AND GRANTING DEFENDANT'S MOTION TO MODIFY THE SHARED PARENTING PLAN."

{¶ 7} In her sole assignment of error, appellant first¹ argues that the trial court erred in failing to issue findings of fact and conclusions of law with regard to the reallocation of parental rights and responsibilities. Appellee claims that appellant waived her right to assert this alleged error because she failed to file her proposed findings of fact and conclusions of law before the trial court entered its final judgment on November 26, 2008. Civ.R. 52 provides, in relevant part:

{¶ 8} "When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise before the entry of judgment pursuant to Civ. R. 58, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court *shall* state in writing the conclusions of fact found separately from the conclusions of law.

{¶ 9} "When a request for findings of fact and conclusions of law is made, the court, in its discretion, may require any or all of the parties to submit proposed findings of fact and conclusions of law; however, only those findings of fact and conclusions of law made by the court shall form part of the record." (Emphasis added.)

{¶ 10} Civ.R. 52 confers a substantial right, is mandatory, and is not a matter within the trial court's discretion in any situation where questions of fact are tried by the court without intervention of a jury. *In re Adoption of Gibson* (1986), 23 Ohio St.3d 170, 172. See, also, *Werden v. Crawford* (1982), 70 Ohio St.2d 122, 124. This rule is

¹Appellant also argues that the trial court's judgment is not in the best interest of Will as determined by an examination of the factors set forth in R.C. 3109.04(F)(1). We need not address this issue at this point in time.

premiered upon the fact that findings of fact and conclusions of law are necessary for the prosecution of an appeal and for effective appellate review. *State ex rel. Delph*, (1991), 71 Ohio App.3d 251, 258-59, citing *Walker v. Doup* (1988), 36 Ohio St.3d 229, 231. Therefore, in such situations, the failure of a court to provide requested findings of fact and conclusions of law is reversible error. *Salisbury v. Smouse*, 4th Dist. No. 05CA737, 2005-Ohio-5733, ¶ 16. (Citations omitted.) Generally, however, in a case where the court orders the parties to file proposed findings of fact and conclusions of law and the requesting party fails to do so, that party waives his or her right to said findings of fact and conclusions of law. *Moro v. Moro* (1990). 68 Ohio App.3d 630, 633.

{¶ 11} In the case before us, appellant's request for findings of fact and conclusions of law with regard to the reallocation of parental rights was timely because it was filed before the entry of final judgment. The court then ordered her and appellee to file the same on or before December 15, 2008. It did not, however, allow appellant to file her proposed findings of fact and conclusions of law within the allotted time. Instead, the trial judge entered a final general judgment, which included child support, in favor of appellee prior to the deadline for the filing of those findings. We conclude, therefore, that under the particular circumstances of this cause, appellant did not waive her right to findings of fact and conclusions of law. Consequently, pursuant to Civ.R. 52, the trial court was required to file separate findings of fact and conclusions of law. It did not meet this requirement. Therefore, that portion of appellant's assignment of error related to this issue is found well-taken.

{¶ 12} The judgment of the Williams County Court of Common Pleas is reversed and this cause is remanded to that court solely for the purpose of providing separate findings of fact and conclusions of law. In following our order on remand, the trial judge must vacate his previous judgment and re-enter that judgment as of the same date that the findings of fact and conclusions of law are entered. *Luman v. IGO*, 4th Dist. No. 07CA11, 2008-Ohio-3911, ¶ 15, citing *Kennedy v. Cleveland* (1984), 16 Ohio App.3d 399, 401. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24(A).

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, P.J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

James R. Sherck, J.
CONCUR.

JUDGE

Judge James R. Sherck, retired, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.