

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

In the Matter of: H.T.-W.

Court of Appeals No. L-10-1027

Trial Court No. JC 07-170120

DECISION AND JUDGMENT

Decided: April 16, 2010

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A.T., pro se.

Mollie B. Hojnicky, for appellee C.S.W.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court on defendant-appellee's, C.S.W., "Motion to Dismiss." Appellee is asking the court to dismiss plaintiff-appellant's, A.T., appeal of the December 31, 2009 judgment of the Lucas County Court of Common Pleas, Juvenile Division, which modified and expanded appellee's visitation rights with his minor

daughter, T.W. The juvenile court also removed a condition of supervised visitation, which was imposed in 2008 when the juvenile court designated appellant as the residential parent of T.W.

{¶ 2} Appellee argues that the court should dismiss this case for lack of a final appealable order. Specifically, appellee argues that the removal of the condition of supervised visitation does not affect a substantial right as required by R.C. 2505.02.

{¶ 3} Recently, in *Christian v. Johnson*, 9th Dist. No. 24327, 2009-Ohio-3863, our colleagues in the Ohio Ninth District Court of Appeals provided a succinct summary on the law relating to final appealable orders in custody proceedings:

{¶ 4} "This Court's jurisdiction over trial court judgments extends only to final orders. Ohio Const. Art. IV, § 3(B)(2). Section 2505.02(B)(2) defines 'a final order that may be reviewed, affirmed, modified, or reversed' as one that 'affects a substantial right made in a special proceeding....' Divorce and ancillary custody proceedings did not exist at common law, but were created by statute, and are special proceedings within the meaning of Section 2505.02 of the Ohio Revised Code. *State ex rel. Papp v. James*, 69 Ohio St.3d 373, 379 (1994); R.C. 2505.02(A)(2). 'An order affects a substantial right if, in the absence of an immediate appeal, one of the parties would be foreclosed from appropriate relief in the future.' *Koroshazi v. Koroshazi*, 110 Ohio App.3d 637, 640 (1996) (citing *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63 (1993)). 'The entire concept of 'final orders' is based upon the rationale that the court making an order *which is not final is thereby retaining jurisdiction for further proceedings*. A final order,

therefore, is one *disposing of the whole case* or some separate and distinct branch thereof.' *Noble v. Colwell*, 44 Ohio St.3d 92, 94 (1989) (quoting *Lantsberry v. Tilley Lamp Co.*, 27 Ohio St.2d 303, 306 (1971))." *Christian*, 2009-Ohio-3863, ¶ 9. (Emphasis added.)

{¶ 5} Temporary or interim orders in child custody and related proceedings that remain subject to modification or final ruling by the trial court do not constitute final appealable orders under R.C. 2505.02(B). See *Overmyer v. Halm*, 6th Dist. No. S-08-021, 2009-Ohio-387, ¶ 13 (finding the trial court's order temporarily modifying father's visitation rights was not a final appealable order of modification of visitation, but instead an interim order); *Shaffer v. Shaffer*, 3d Dist. No. 11-04-22, 2005-Ohio-3884, ¶ 8 (finding a temporary order in proceedings for divorce allocating custody of the child to husband was not a final judgment from which appeal could be taken); and *In re S.M.*, 8th Dist. No. 81566, 2004-Ohio-1243, ¶ 30 (finding an award of temporary custody is an interlocutory order that is subject to modification upon a later dispositional hearing).

{¶ 6} In *Christian*, the court examined whether the trial court's decision modifying the visitation schedule constituted a final appealable order. *Christian* at ¶ 10. The court ruled that under the facts presented, the trial court's decision modifying visitation constituted a final appealable order because the decision was not an "interim" order subject to review by the trial court in future related proceedings. *Id.* The court also observed the trial court's decision was final and did not contemplate any further action by the trial court. *Id.*

{¶ 7} Like *Christian*, the juvenile court's decision in this case is not an interim order. The juvenile court expanded and enlarged the term of appellee's visitation and removed the condition of supervised visitation. This court is certainly cognizant that not all orders modifying custody and visitation are final and appealable. But in this case, the juvenile court's decision is a final, not an interim, order because the decision does not contemplate further action by the juvenile court with respect to this issue. Based upon the record before the court, it appears there are currently no other related issues pending before the juvenile court for disposition. Therefore, the December 31 judgment is a final appealable order.

{¶ 8} Appellee's motion to dismiss is found not-well taken and denied. Appellant is ordered to file her assignments of error and brief within ten days of the date of this decision and judgment. It is so ordered.

MOTION DENIED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

CONCUR.

JUDGE

<p>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.</p>
