MAUREEN J. KHAN *v.* JONATHAN K. HILLYER
(SC 18450)

Rogers, C. J., and Norcott, Palmer, Zarella, Eveleigh and Harper, Js.

Argued April 20—officially released September 4, 2012

John F. Geida, for the appellant (plaintiff).

Ellen C. Brown, for the appellee (defendant).

Opinion

EVELEIGH, J. The sole issue in this certified appeal in this child custody action is whether the Appellate Court properly dismissed the appeal of the plaintiff, Maureen J. Khan, from the trial court's order of contempt, due to the absence of a final judgment. The plaintiff appeals, following our grant of her petition for certification, from the judgment of the Appellate Court dismissing her appeal from an order of the trial court finding her in contempt for refusing to allow the defendant, Jonathan K. Hillyer, to visit their son in accordance with a previously established visitation schedule. The trial court's contempt order required the plaintiff to place the child in a supervised visitation program with the defendant and to pay for all expenses associated therewith. The plaintiff contends on appeal that the trial court's contempt order was a final judgment and, thus, immediately appealable. We agree with the plaintiff and, accordingly, reverse the judgment of the Appellate Court.

The following facts, found by the trial court, and procedural history, are relevant to our resolution of this appeal. The parties, who were never married, are the parents of a son born on March 10, 1999. The plaintiff filed an application for custody of the child in December, 2000. In 2002, the trial court, *Devine*, *J.*, rendered a judgment that awarded the parties joint legal custody of the child. That court's judgment further provided that the plaintiff would maintain physical custody of the child and that the defendant would have the right to visitation at certain prescribed times.

The plaintiff began refusing to allow the defendant to visit the child in July, 2008, in contravention of the trial court's visitation schedule. The plaintiff claimed that she took this course of action because the defendant had sexually abused the child. The plaintiff's allegations of abuse led to numerous investigations by the Waterford police department and the department of children and families. These investigations did not substantiate the plaintiff's claims.

The defendant filed a motion for contempt on August 11, 2008, claiming that the plaintiff had repeatedly refused to let him visit the child in accordance with the visitation schedule established by the court. On August 13, 2008, the defendant filed a motion to open and modify the judgment with respect to custody and visitation. The motion to open was subsequently referred by the trial court to the family relations office for a complete evaluation of the child's custodial situation.

On January 9, 2009, the trial court issued a memorandum of decision finding the plaintiff in contempt of the visitation schedule. In making this finding, the trial court noted that the plaintiff had previously been found in contempt of the visitation schedule on three separate

occasions and that, on each occasion, the plaintiff had refused to comply with a court order allowing the defendant "make up time" with the child. In light of this observation, the trial court determined that a similar sanction would be inadequate to deter the plaintiff from future violations of court orders. Accordingly, the trial court ordered that the family relations office enroll the defendant and the child in a supervised visitation program "as soon as possible," and that the plaintiff pay for the expense of the program. The trial court stated that the supervised visitation program would allow trained professionals to observe the child's interaction with the defendant and would begin to repair the relationship between the defendant and the child. The trial court then continued the defendant's motion for contempt until February 2, 2009, the projected completion date of the evaluation by the family relations office, and reserved further decision until that time.

The plaintiff then appealed from the judgment of the trial court to the Appellate Court. After a hearing, the Appellate Court concluded that the absence of a final judgment deprived it of subject matter jurisdiction and, accordingly, dismissed the plaintiff's appeal. The plaintiff then filed a petition for certification, which we granted.[1] *Khan* v. *Hillyer*, 293 Conn. 921, 979 A.2d 489 (2009).

On appeal to this court, the plaintiff claims that the Appellate Court improperly dismissed her appeal because the trial court's contempt order was a final judgment. Specifically, the plaintiff claims that this case is consistent with prior decisions of this court in which we have concluded that various family court orders are final judgments. The defendant responds that, because the trial court continued the matter, further proceedings could have affected the rights of the parties and, therefore, the contempt order was not a final judgment. We agree with the plaintiff.

As a preliminary matter, we set forth the standard of review. "The lack of a final judgment implicates the subject matter jurisdiction of an appellate court to hear an appeal. A determination regarding . . . subject matter jurisdiction is a question of law . . . [and, therefore] our review is plenary." (Internal quotation marks omitted.) *Sweeney* v. *Sweeney*, 271 Conn. 193, 207, 856 A.2d 997 (2004).

"The jurisdiction of the appellate courts is restricted to appeals from judgments that are final. General Statutes §§ 51-197a and 52-263; Practice Book § [61-1] . . . . The policy concerns underlying the final judgment rule are to discourage piecemeal appeals and to facilitate the speedy and orderly disposition of cases at the trial court level. . . . The appellate courts have a duty to dismiss, even on [their] own initiative, any appeal that [they lack] jurisdiction to hear. . . . In some instances, however, it is unclear whether an order

is an appealable final judgment. In the gray area between judgments which are undoubtedly final and others that are clearly interlocutory . . . this court has adopted the following test, applicable to both criminal and civil proceedings: An otherwise interlocutory order is appealable in two circumstances: (1) where the order or action terminates a separate and distinct proceeding, or (2) where the order or action so concludes the rights of the parties that further proceedings cannot affect them. *State* v. *Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983)." (Citations omitted; internal quotation marks omitted.) *Solomon* v. *Keiser*, 212 Conn. 741, 745–46, 562 A.2d 524 (1989).

In order to resolve this appeal, we must determine whether the trial court's contempt order satisfies either prong of *Curcio*. In resolving this question, we look to previous cases in which this court has applied the test applied in *Curcio* to facts similar to those in the present case. In *Bryant* v. *Bryant*, 228 Conn. 630, 632–33, 637 A.2d 1111 (1994), the defendant filed a motion for contempt, claiming that the plaintiff failed to make certain payments required under a marital dissolution decree. At a hearing on the defendant's motion, the plaintiff conceded that he had failed to pay $86,806.57 required by the dissolution decree and the trial court found an arrearage in that amount. Id., 633. The trial court granted the defendant's motion and held the plaintiff in contempt. Id. That court continued the matter until two weeks later, at which time the plaintiff was to pay $5000 to the defendant and file a proposed payment plan to satisfy the remaining arrearage. Id. The plaintiff then appealed to the Appellate Court, challenging the trial court's contempt finding. Id., 634. The Appellate Court affirmed the judgment of the trial court, and the plaintiff subsequently appealed to this court. Id.

On appeal, this court held that a civil contempt finding based upon an arrearage determined by the trial court resulting from the contemnor's failure to make payments under a dissolution decree was a final judgment. Id., 636. This court concluded that, because the contempt finding was based upon the plaintiff's financial obligations under a dissolution decree, the contempt finding "so substantially resolve[d] the rights and duties of the parties that further proceedings relating to the judgment of contempt [could not] affect them." Id. This court in *Bryant*, therefore, made clear that a contemnor may appeal a contempt finding in advance of an incarceration order where the contempt finding is based upon an arrearage. Id., 634 n.5.

We conclude that the policies and principles that informed our decision in *Bryant* apply equally to the facts of this case. As in *Bryant*, the contempt finding in the present case was accompanied by coercive action—an order to pay for the supervised visitation program. Furthermore, just as the contemnor in *Bryant*

was required to make a payment on the arrearage at the next hearing, the plaintiff in the present case was required to pay for the supervised visitation program, which was to begin "as soon as possible . . . ." Therefore, both contemnors suffered a specific financial loss as a result of complying with the contempt order.

The defendant contends, however, that *Bryant* is inapplicable because the plaintiff in that case was required to make payments on past due alimony, whereas the plaintiff in the present case has not been required to make payments to the defendant as part of the contempt order. The defendant claims, therefore, that the plaintiff in the present case is appealing from a bare finding of contempt without sanctions. We disagree. Although the plaintiff may not have been found in contempt specifically based upon the determination of an arrearage, the trial court explicitly required the plaintiff to be responsible for the costs of enrolling the defendant and child in the supervised visitation program.[2] We see no crucial difference between a contempt finding in which the contemnor is forced to pay a determinate amount of money to satisfy a debt, and one in which the contemnor must pay the expense of a visitation program. In both instances, the contempt orders were coupled with coercive action. Therefore, our decision in *Bryant* is instructive.[3]

Moreover, we are not persuaded that the fact that the trial court did not state with precision what the cost of the supervised visitation program would be somehow makes the contempt order not a final judgment under *Curcio*. This court addressed a similar issue in *Tomasso Bros., Inc.* v. *October Twenty-Four, Inc.*, 230 Conn. 641, 646 A.2d 133 (1994). *Tomasso Bros., Inc.* involved a contempt order against two defendants for violating an injunction prohibiting the defendants from continuing to operate a quarry in violation of zoning regulations. Id., 643. In *Tomasso Bros., Inc.*, the trial court ordered that the defendants pay a set fine for each day that they had violated the contempt order in the past and fixed a fine for each day that the defendants might violate the contempt order in the future. Id., 651. During the defendants' subsequent appeal, the plaintiff argued that the contempt order did not constitute a final judgment. Id., 643–44. Specifically, the plaintiff argued that the judgment was not final because the trial court only fixed the fine schedule, and not the fine itself. Id., 650 n.9. On the basis of this premise, the plaintiff asserted that the total fine could not be calculated with precision because the defendants could have violated the contempt order again in the future. This court disagreed with the plaintiff and concluded that, although the trial court had not calculated the exact fine, the order was a final judgment from which the defendants could appeal. Id. In reaching this conclusion, this court noted that "the trial court has already determined the fine" and that "[a]ll that remains is the purely ministerial act

of calculating the fine after the defendants begin to abide by the judgment." Id. In the present case, although the trial court may not have determined the exact amount that the plaintiff was required to pay under the contempt order, it did determine precisely *what* the plaintiff was required to pay for—namely, the supervised visitation program. All that remained, therefore, was the "purely ministerial act of calculating the [payment]"; id.; after enrollment in the supervised visitation program occurred.

Our conclusion that the contempt order in the present case is a final judgment is further supported by the unique place that family courts hold in this state's jurisprudence. This court has a long history of concluding that, within the context of family matters, orders that would otherwise be considered interlocutory constitute appealable final judgments. See *Sweeney* v. *Sweeney*, supra, 271 Conn. 207–13 (pendente lite order during dissolution proceedings directing that parties' child attend parochial school was final judgment); *Taff* v. *Bettcher*, 243 Conn. 380, 386–87, 703 A.2d 759 (1997) (judicially imposed one year ban of custody and visitation motions to prevent parents involved in custody dispute from further filings was final judgment); *Bryant* v. *Bryant*, supra, 228 Conn. 636 (contempt finding premised upon determination of contemnor's financial obligations under dissolution decree was final judgment); *Madigan* v. *Madigan*, 224 Conn. 749, 756–58, 620 A.2d 1276 (1993) (temporary custody order issued in course of dissolution proceedings was final judgment); *Litvaitis* v. *Litvaitis*, 162 Conn. 540, 548–49, 295 A.2d 519 (1972) (pendente lite order for payment of support in dissolution action was final judgment); *Hiss* v. *Hiss*, 135 Conn. 333, 336–38, 64 A.2d 173 (1949) (pendente lite order for temporary support was final judgment). Taken as a whole, these cases demonstrate that, "[o]n balance, we [have been] more persuaded by the rationale for allowing an immediate appeal of . . . temporary . . . order[s] [in family matters] than by the traditional reasons of judicial economy that might otherwise have precluded [their] review." (Internal quotation marks omitted.) *Sweeney* v. *Sweeney*, supra, 209. Although some of these cases allowed an appeal in order to ensure that the important rights surrounding the parent-child relationship are adequately protected; see *Madigan* v. *Madigan*, supra, 757; others allowed an immediate appeal because the contempt order required the aggrieved party to engage in some coercive action, such as paying money that could not be recovered on a subsequent appeal. See *Litvaitis* v. *Litvaitis*, supra, 548–49; *Hiss* v. *Hiss*, supra, 336–37.

For example, in *Hiss* v. *Hiss*, supra, 135 Conn. 334, the trial court ordered that the defendant make support payments for the plaintiff's benefit during the pendency of the dissolution action. The defendant appealed from the order, and the plaintiff moved to dismiss the appeal

for lack of a final judgment. Id. On appeal, this court held that the order was final for appellate purposes. Id., 336–37. This court's decision was grounded on the fact that, "[e]ven should judgment ultimately be rendered against [the plaintiff in the dissolution action], the [defendant] would have no right to be reimbursed." Id., 336. Furthermore, we held that "[t]he power of the court to modify an order for the payment of temporary alimony would not destroy the right of appeal . . . unless such action is in fact taken." Id., 336–37.

Although the precise issue presented in the present case is one of first impression, the considerations that guided our decisions in the cases cited previously may be applied to the facts of this case. As in *Hiss*, if the plaintiff herein could not immediately appeal the contempt order, she would have no right to be reimbursed in the future for the cost of the supervised visitation program, even if she was ultimately awarded full custody. See also *Litvaitis* v. *Litvaitis*, supra, 162 Conn. 548 (judgment awarding plaintiff temporary support immediately appealable because defendant would have no subsequent right to be reimbursed).

The defendant, however, contends that because the trial court continued the matter, the contempt order was not final. He asserts that *Bucy* v. *Bucy*, 19 Conn. App. 5, 560 A.2d 483 (1989), stands for the proposition that, if a matter is continued, the trial court has the power to modify the order and, thus, further proceedings can affect the rights of the parties. The defendant also claims that, due to subsequent proceedings since the contempt order, he now has custody of the child, which is proof that further proceedings could and did affect the rights of the parties. We disagree with these claims.

First, *Bucy* is distinguishable because in that case the trial court did not issue a contempt order. The plaintiff in *Bucy* filed a motion for contempt, claiming that the defendant failed to pay for their child's medical expenses as required under the marital dissolution decree. Id., 6. The trial court ordered the defendant to pay for the medical expenses, but refused to find the defendant in contempt because it concluded that the defendant's failure to pay was not wilful. Id., 7. The defendant appealed from the trial court's order, and the Appellate Court dismissed the appeal for lack of a final judgment. Id. *Bucy* is inapplicable, however, because our ruling today is strictly related to a contempt finding accompanied by coercive action.

Second, our past decisions clearly hold that the power of a court to modify an order for the payment of alimony or support does not destroy the right of the aggrieved party to appeal, unless the court actually does modify the order. See *Hiss* v. *Hiss*, supra, 135 Conn. 336–37. In the present case, the court never modified its order requiring the plaintiff to pay for the supervised

visitation program. Moreover, the reason that the court continued the matter was not to reevaluate the contempt order requiring supervised visitation, but to allow time for the family relations office to complete its evaluation of the child, so that the court could consider the evaluation before ordering any additional sanctions or ruling on the defendant's motion to open. Enrollment in the supervised visitation program was to occur "as soon as possible,"[4] and thus was not contingent on a determination in any future hearing.

Third, the fact that the defendant now may[5] have custody of the child is not relevant to our determination.[6] Our jurisprudence makes clear that the *Curcio* test does not require that a contempt order completely resolve the proceedings as a whole in order to be final. Rather, a contempt order is considered final for appellate purposes when the order "so substantially resolves the rights and duties of the parties that further proceedings relating *to the judgment of contempt* cannot affect them." (Emphasis added.) *Bryant* v. *Bryant*, supra, 228 Conn. 636. Thus, although further proceedings may have impacted the rights of the parties concerning custody of the child, they could not have affected the contempt finding itself, or the sanctions that accompanied it.

Lastly, the defendant claims that allowing the plaintiff to appeal from the contempt order will run counter to the policy justifications against allowing interlocutory appeals. Namely, the defendant contends that allowing the plaintiff to appeal will result in the courts being overwhelmed by a sudden influx of appeals from contempt findings. We are not persuaded. This same argument was made by the appellees in *Sweeney* and *Madigan*. See *Sweeney* v. *Sweeney*, supra, 271 Conn. 212–13; *Madigan* v. *Madigan*, supra, 224 Conn. 758. In both instances, we stated that we did not anticipate a flood of appeals as a result of concluding that the orders at issue were appealable. The court in *Sweeney* noted that the courts were not inundated with appeals stemming from the *Madigan* decision; *Sweeney* v. *Sweeney*, supra, 212–13; and we note that the courts have not been overwhelmed with appeals since *Sweeney*. We do not anticipate a different outcome as a result of our decision today.

We conclude, therefore, that a civil contempt order requiring the contemnor to incur a cost or take specific action—such as paying for supervised visitation—satisfies the second prong of *Curcio* and, therefore, constitutes an appealable final judgment.[7] Accordingly, we hold that the Appellate Court improperly dismissed the plaintiff's appeal for lack of a final judgment.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to consider the plaintiff's claim on appeal.

In this opinion the other justices concurred.

[1] We granted the plaintiff's petition for certification to appeal limited to the following issue: "Did the Appellate Court properly dismiss the appeal from the trial court's order of contempt?" *Khan* v. *Hillyer*, 293 Conn. 921, 979 A.2d 489 (2009).

[2] The trial court's memorandum of decision states: "[The] plaintiff shall be responsible for the expense of the [visitation] program, and shall transport the child to all scheduled visits."

[3] An order is appealable if it satisfies either prong of the test set forth in *Curcio*. Thus, because we hold that the contempt order satisfies the second prong of *Curcio*, we need not address the defendant's argument that the order did not terminate a separate or distinct proceeding. See *State* v. *Curcio*, supra, 191 Conn. 31.

[4] The trial court's memorandum of decision states: "[The family relations office] shall as soon as possible enroll [the] defendant and the child in the [supervised visitation program]."

[5] We note that although the defendant referred to a change in custody at oral argument, and in his brief, the record is silent as to whether a change in custodial status has actually occurred.

[6] Under the defendant's logic, a contempt order would never be appealable upon its issuance, because the sanctions of a contempt order always have the ability to affect the parties at a later date. The contempt order in the present case was designed to force the plaintiff to allow the defendant to visit the child. The fact that the contempt order of supervised visitation may have changed the status quo by repairing the relationship between the defendant and the child, and leading to the defendant being granted custody, has no bearing on whether the contempt order was final for appellate purposes.

[7] We do not purport to decide whether a bare finding of contempt, unaccompanied by sanctions, is an appealable final judgment under *Curcio*. We leave that issue for another day.