

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000781-ME

MARK BAIZE

APPELLANT

v. APPEAL FROM CRITTENDEN CIRCUIT COURT
HONORABLE BRANDI D. ROGERS, JUDGE
ACTION NO. 13-D-00037-002

SHANNON BAIZE

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: COMBS, D. LAMBERT, AND SMALLWOOD, JUDGES.

COMBS, JUDGE: Mark Baize, proceeding *pro se*, appeals from an order entered by the Crittenden Circuit Court denying his motion for recusal pursuant to the Kentucky Code of Judicial Conduct, which is set out in SCR¹ 4.300. Our review of the record, along with the applicable law, reveals that we lack jurisdiction to address the issue presented. Accordingly, we dismiss this appeal.

¹ Kentucky Rules of the Supreme Court.

After conducting hearings, the family court entered a domestic violence order (DVO) against Mark on two separate occasions: on December 3, 2013, and on August 23, 2016. The second DVO was amended to 500 feet on November 22, 2016. Mark then filed a motion to dismiss the DVO, and the court denied such motion. Subsequently, Mark moved for the family court judge to recuse from this case in accordance with SCR 4.300. On May 4, 2018, the court denied Mark's motion, rejecting his contention that a conflict of interest was involved and stating unequivocally that she had no personal bias towards him. This appeal followed.

Unfortunately, Mark has appealed from the court's order denying his motion to recuse and not a final judgment. The order was also not designated as final and appealable. "[T]his court is required to raise a jurisdictional issue on its own motion if the underlying order lacks finality." *Tax Ease Lien Investments, LLC v. Brown*, 340 S.W.3d 99, 101 (Ky. App. 2011) (citation omitted). An order denying recusal is an interlocutory order that only becomes appealable upon the entry of a final judgment "adjudicating all the rights of all the parties in an action[.]" CR² 54.01. Although a final judgment was entered in this case, in the

² Kentucky Rules of Civil Procedure.

form of a DVO, and the issue of recusal has merged with that judgment, Mark did not appeal from the final judgment.

Our procedural rules require the filed notice of appeal to identify the final order or judgment that is being appealed. CR 73.03(1). As stated by the Supreme Court of Kentucky, “[n]aming an order denying recusal, rather than the final judgment disposing of the case, is simply no compliance at all [with the procedural rules.]” *Cassetty v. Commonwealth*, 495 S.W.3d 129, 134 (Ky. 2016). The notice of appeal in this case named only the order denying a motion to recuse, rather than the final judgment granting Shannon Baize’s petition for a DVO.

Based on the foregoing, this appeal is dismissed as being taken from an interlocutory order.

ALL CONCUR.

ENTERED: November 16, 2018

/s/ Sara Combs

JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Mark Baize, *pro se*
Fredonia, Kentucky