

[Cite as *Del Zoppo v. Del Zoppo*, 2018-Ohio-4216.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106664

MARILYN DEL ZOPPO

PLAINTIFF-APPELLANT

vs.

LUIGI DEL ZOPPO

DEFENDANT-APPELLEE

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Domestic Relations Division
Case No. DR-12-343196

BEFORE: E.T. Gallagher, J., McCormack, P.J., and Jones, J.

RELEASED AND JOURNALIZED: October 18, 2018

ATTORNEY FOR APPELLANT

L. Bryan Carr
1392 SOM Center Road
Mayfield Heights, Ohio 44124

ATTORNEY FOR APPELLEE

Lou D'Amico
Argie, D'Amico & Vitantonio
6449 Wilson Mills Road
Mayfield Village, Ohio 44143

Also Listed

**Guardian Ad Litem and Counsel for
Minor Children**

Warren R. Perl
34194 Aurora Road, #230
Solon, Ohio 44139

EILEEN T. GALLAGHER, J.:

{¶1} Plaintiff-appellant, Marilyn Del Zoppo (“Marilyn”), appeals a judgment of the Cuyahoga County Common Pleas Court, Domestic Relations Division, finding her in contempt of court for failure to comply with certain provisions of the judgment entry of divorce. Following a careful review of the record, we dismiss this appeal for lack of a final appealable order.

I. Facts and Procedural History

{¶2} Marilyn and defendant-appellee, Luigi Del Zoppo (“Luigi”), were divorced on January 31, 2014, pursuant to a judgment entry of divorce that incorporated the parties’ separation agreement and shared parenting plan. The separation agreement provided that Luigi would retain title to the marital residence free and clear from any claim by Marilyn, and Marilyn would vacate the marital residence by August 1, 2015. The agreement also required Marilyn to reimburse Luigi for water and sewer bills that he was ordered to pay during her time in the marital residence. The agreement further provided that household goods, excepting Marilyn’s personal property, would remain in the house after Marilyn moved out. The parties’ shared parenting plan included a schedule allocating each parties’ parenting time during the school year, vacations, holidays, and birthdays.

{¶3} Luigi filed a motion to show cause and for attorney fees in June 2016, alleging that Marilyn violated the judgment entry of divorce by (1) failing to vacate the marital residence by August 1, 2015, (2) failing to reimburse Luigi for water and sewer bills, (3) removing household goods that were supposed to remain in the marital residence when Marilyn vacated the property, and (4) refusing to honor Luigi’s parenting time for the Christmas holiday in 2014.

{¶4} Following a hearing, the magistrate found Marilyn in contempt of court for not allowing Luigi to exercise his parenting time during the 2014 Christmas holiday, failing to vacate

the marital residence by August 1, 2015, failing to reimburse Luigi for water and sewer bills, and for removing household goods that should have remained in the marital residence.

{¶5} Marilyn asserted the following six timely-filed objections to the magistrate's decision (1) that she was not properly served with the motion to show cause, (2) that Luigi's motion to show cause was barred by the doctrine of unclean hands, (3) that the magistrate erred in finding Marilyn in contempt for denying Luigi parenting time for the 2014 Christmas holiday, (4) the magistrate erred in requiring Marilyn to reimburse Luigi for water and sewer bills, (5) the magistrate erred by requiring Marilyn to pay Luigi for household goods removed from the marital residence, and (6) the magistrate erred in awarding attorney fees to Luigi.

{¶6} Luigi also filed objections to the magistrate's decision, claiming (1) the magistrate erred in ordering Marilyn to pay compensation for household items removed from the marital residence instead of ordering her to return the property, (2) the magistrate erred in failing to sanction Marilyn for failing to vacate the marital residence by the August 1, 2015 deadline, and (3) the magistrate erred in awarding Luigi \$1,937.50 in attorney fees when he requested \$3,875 in attorney fees.¹

{¶7} The trial court overruled Marilyn's objections pertaining to service, the doctrine of unclean hands, the Christmas 2014 parenting time, Marilyn's failure to vacate the marital residence, and the award of attorney fees. The trial court sustained Marilyn's objection to the financial sanction imposed for removing household goods on grounds that the household goods were never properly identified. The trial court, however, failed to rule on Marilyn's objection to the magistrate's order requiring her to reimburse Luigi for water and sewer bills.

¹ The trial court overruled Luigi's objections pertaining to Marilyn's removal of household goods and the amount of attorney fees awarded. However, it sustained his objection regarding the magistrate's failure to sanction Marilyn for her failure to vacate the premises by the August 1, 2015 deadline and imposed a financial sanction.

{¶8} An appellate court has jurisdiction to review final orders or judgments of lower courts within its district. Article IV, Section 3(B)(2), Ohio Constitution; R.C. 2501.02. However, an appellate court has no jurisdiction in the absence of a final appealable order. *Lycan v. Cleveland*, 146 Ohio St.3d 29, 2016-Ohio-422, 51 N.E.3d 593, ¶ 21. We, therefore, have a duty to sua sponte examine any deficiencies in jurisdiction and dismiss cases where jurisdiction is lacking. *Treasurer Cuyahoga Cty. v. Holloway*, 8th Dist. Cuyahoga No. 105309, 2017-Ohio-8065, ¶ 4.

{¶9} Marilyn filed objections to the magistrate's decision pursuant to Civ.R. 53(D)(3)(b)(i). Civ.R. 53(D)(4)(d) provides that "[i]f one or more objections to a magistrate's decision are timely filed, the court *shall rule* on those objections." (Emphasis added.) When a trial court enters judgment on a magistrate's decision without ruling on a party's objections, "that judgment does not constitute a final, appealable order because it does not fully determine the action." *Holloway* at ¶ 5, quoting *In re Strickler*, 9th Dist. Lorain No. 09CA009692, 2010-Ohio-2277, ¶ 5; *In re B. W.*, 8th Dist. Cuyahoga Nos. 96550 and 96551, 2011-Ohio-4513, ¶ 8.

{¶10} Marilyn and Luigi filed timely objections to the magistrate's decision. The trial court ruled on all of Luigi's objections, but only ruled on five out of six objections filed by Marilyn. Therefore, the trial court has not fully determined the action, and we lack jurisdiction to hear this appeal. We, therefore, dismiss this appeal for lack of a final appealable order.

{¶11} Appeal dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

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

EILEEN T. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
LARRY A. JONES, SR., J., CONCUR