

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO**

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| TIMOTHY E. BLEICH, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2009-G-2893 |
| TAMMY BLEICH, | : | |
| Defendant-Appellant. | : | |

Civil Appeal from the Court of Common Pleas, Case No. 01 DC 000391.

Judgment: Appeal dismissed.

James D. Falvey, Barthol & Staley, 7327 Center Street, Mentor, OH 44060 (For Plaintiff-Appellee).

Alice Rickel and Denise Cook, Alice Rickel & Associates, 3690 Orange Place, #440, Beachwood, OH 44122 (For Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} On April 2, 2009, appellant, Tammy Bleich, filed a notice of appeal from the March 6, 2009 judgment entry of the Geauga County Court of Common Pleas. In that entry, the trial court adopted the January 26, 2009 magistrate's decision, which denied appellant's motion to dismiss and stated that the court had jurisdiction to modify the amount or terms of the spousal support obligation of appellee, Timothy E. Bleich, upon a showing that the circumstances of either party had changed. The trial court did not rule on the motion to modify spousal support which appellee filed on May 14, 2008.

{¶2} On May 4, 2009, appellee filed a motion to dismiss the appeal for lack of a final appealable order.

{¶3} On May 8, 2009, this court issued a judgment entry indicating that we may not have jurisdiction to consider the appeal since the March 6, 2009 judgment on appeal may be interlocutory. In our entry, we stated that the trial court determined that jurisdiction over spousal support was not limited by the separation agreement and that the amount or terms of spousal support could be modified by the court. Our entry also indicated that appellee's May 14, 2008 motion to modify and/or terminate spousal support had not been ruled on thus far. We, therefore, ordered appellant to show cause as to why the appeal should not be dismissed for lack of a final appealable order.

{¶4} On May 26, 2009, appellant filed a brief in support of jurisdiction. In her brief, appellant argues that the trial court's finding affects a substantial right, the right to receive spousal support.

{¶5} On June 16, 2009, appellee filed a reply to the brief in support of jurisdiction. In his brief, appellee posits that the trial court's March 6, 2009 judgment entry is not final because the trial court has made no determination regarding whether there should be a change to the current spousal support order. According to appellee, until the trial court makes such a determination, this court has no jurisdiction to hear the appeal.

{¶6} According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a "final order" in the action. *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, at ¶3.

{¶7} In the instant matter, the trial court's order does not fit within any of the categories of R.C. 2505.02. The trial court has yet to make a ruling on the motion to modify spousal support. The only ruling that has been made so far is the trial court's denial of appellant's motion to dismiss. Therefore, at this point, the order appellant appeals from is simply an interlocutory order. It is not a final order, and appellant will have a meaningful and effective remedy by way of an appeal once a final judgment is reached as to all claims and parties when the case is decided and/or dismissed. See *Johnson v. Warren Police Dept.*, 11th Dist. No. 2005-T-0117, 2005-Ohio-6904, at ¶14.

{¶8} Further, a review of the trial court docket shows that the issues before the trial court have been stayed pending the appeal.

{¶9} Accordingly, appellee's motion to dismiss is granted, and this appeal is hereby dismissed for lack of a final appealable order.

{¶10} Appeal dismissed.

MARY JANE TRAPP, P.J.,

DIANE V. GRENDALL, J.,

concur.