

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

STEVEN M. ANDERSON,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2011-G-3039
KELLY WOJTASIK, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Juvenile Division, Case No. 11PN000293.

Judgment: Appeal dismissed.

Edward A. Heffernan, 28787 Ridge Road, Wickliffe, OH 44092 (For Plaintiff-Appellant).

Lyle Ray Jones, P.O. Box 592, Medina, OH 44258 (For Defendant-Appellee Kelly Wojtasik).

David P. Joyce, Geauga County Prosecutor, and *J.A. Miedema*, Assistant Prosecutor, Courthouse Annex, 231 Main Street, Chardon, OH 44024 (For Defendant-Appellee Geauga County Child Support Enforcement Division).

TIMOTHY P. CANNON, P.J.

{¶1} Plaintiff-appellant, Steven M. Anderson, appeals the judgments entered by the Geauga County Court of Common Pleas, Juvenile Division, denying his motion for genetic testing to establish paternity and staying discovery proceedings. For the reasons that follow, we determine the judgments are not final, appealable orders.

{¶2} On July 11, 2011, Anderson filed a complaint in juvenile court seeking a DNA testing order to establish paternity of K.W., aged one month, in an effort to initiate a father-daughter relationship. The complaint was served upon the mother, Defendant-Appellee Kelly Wojtasik. At the time the complaint was filed, Anderson had criminal charges pending in Geauga County for violent crimes against Wojtasik, including five counts of rape and one count of kidnapping.

{¶3} On July 28, 2011, Wojtasik petitioned the Geauga County Court of Common Pleas for a sexually-oriented offense protection order against Anderson, seeking protection for herself and K.W. The matter was heard ex parte, and the court granted the order for one year after good cause was shown. The order mandated that Anderson stay 500 feet away from Wojtasik and K.W.

{¶4} The juvenile court ordered Geauga County Job and Family Services Child Support Enforcement Division (“CSED”) to be joined as a party in the paternity proceedings. On August 8, 2011, Anderson filed a formal motion for genetic testing to determine paternity. The motion was opposed as unnecessary because Wojtasik conceded that Anderson was K.W.’s biological father. Moreover, Wojtasik argued that companionship should not even be entertained due to Anderson’s pending criminal charges and the civil protection order.

{¶5} On August 24, 2011, the juvenile court denied Anderson’s motion for genetic testing after reviewing the protection order, the pending charges, and correspondence from CSED explaining that good cause was shown for Wojtasik not to cooperate with the department in establishing paternity or child support. Meanwhile in

his criminal case, Anderson pled guilty to amended charges of attempted felonious assault and domestic violence. He was sentenced to serve five years in prison.

{¶6} On September 23, 2011, Anderson filed his notice of appeal with this court. Anderson explained the judgment entry being appealed was the trial court's denial of his motion for genetic testing to determine paternity.

{¶7} Also on September 23, 2011, the state, on behalf of CSED, filed a motion to quash Wojtasik's upcoming deposition. Anderson opposed the motion. On October 5, 2011, the juvenile court issued an entry and noted that Anderson appealed its August 24, 2011 ruling. In light of the appeal, the juvenile court concluded that permissible discovery, if any, would be premature. Thus, the action and any discovery relating to the action were stayed pending disposition of the appeal. Anderson did not appeal this later judgment which stayed all discovery proceedings.

{¶8} Anderson raises two assignments of error for consideration by this court. Anderson's first assignment of error states:

{¶9} "The trial court erred to the prejudice of appellant in denying his motion for genetic testing, as R.C. 3111.09 and the Local Rules of the Geauga County Court of Common Pleas, Juvenile Division, mandate that such testing be ordered in a parentage action upon motion of a party to the action."

{¶10} Upon consideration, we determine that a trial court's denial of a motion for genetic testing to establish paternity is not a final, appealable order when paternity is not contested by either party. While Anderson argues the juvenile court erred in denying his motion for genetic testing, Wojtasik filed an answer on August 16, 2011 admitting he was the father of the child. On August 24, 2011, the trial court denied the

motion on the basis that Wojtasik showed good cause, pursuant to R.C. 3111.09(A)(2), that her failure to submit the child to genetic testing was not willful. A “willful” failure would ordinarily result in an order establishing paternity under the statute (presumably when paternity is contested).

{¶11} Other appellate courts, including this one in *Demore v. Demore*, have previously addressed a court’s denial of genetic testing on its merits. 11th Dist. No. 2007-L-164, 2008-Ohio-1328. In those cases, paternity was contested. As such, a denial could prevent a moving party from being afforded a meaningful or effective remedy and could also affect a moving party’s substantial right. Here, however, Wojtasik has clearly recognized in her answer and throughout the pleading stage of this case that Anderson is the biological father of the child. In Anderson’s complaint, the only listed reason for wanting the DNA test was to establish that he was the father of the child (to initiate a parent-child relationship).

{¶12} Further, *res judicata* will not bar a subsequent genetic testing request should Wojtasik later retract her admission and deny Anderson is the father. Thus, the remedy sought by Anderson was satisfied; paternity is not contested and there appears to be no controversy due to Wojtasik’s direct, unqualified admission. As such, the court’s order does not affect a substantial right, determine the action, or prevent a judgment—the defining attributes of a final, appealable order pursuant to R.C. 2505.02.

{¶13} Anderson’s second assignment of error states:

{¶14} “The trial court erred to the prejudice of appellant by staying the deposition of appellee pending this appeal.”

{¶15} In his second assignment of error, Anderson attacks the juvenile court's October 5, 2011 judgment entry staying all discovery proceedings, including the deposition of Wojtasik, pending disposition of the appeal. As Anderson did not include this judgment in his notice of appeal, this court consequently does not have jurisdiction to consider Anderson's second assignment of error. "An appellate court 'is without jurisdiction to review a judgment or order that is not designated in the appellant's notice of appeal.'" *State v. Dixon*, 9th Dist. No. 21463, 2004-Ohio-1593, ¶7, quoting *Slone v. Bd. of Embalmers & Funeral Directors of Ohio*, 123 Ohio App.3d 545, 548 (8th Dist.1997). Anderson filed his notice of appeal on September 23, 2011, seeking to overturn the trial court's denial of his motion for genetic testing, as outlined in his first assignment of error. The court later issued its October 5, 2011 judgment entry staying all discovery proceedings. The record indicates that Anderson failed to file a new notice of appeal designating the juvenile court's October 5, 2011 judgment as an order from which he appeals, pursuant to App.R. 3(D). The record further indicates that Anderson alternatively failed to amend his prior notice to include the subsequent judgment, pursuant to App.R. 3(F). As no notice of appeal was taken from the October 5, 2011 judgment, this court does not have jurisdiction to review Anderson's second assignment of error.

{¶16} Even if Anderson had filed his notice of appeal properly, this court would still be without jurisdiction because the court's judgment staying discovery proceedings pending disposition of the appeal is not a final, appealable order. See *Rymers v. Rymers*, 11th Dist. No. 2009-L-180, 2010-Ohio-2684, ¶19-20. See also *Brunst v. Alltel Corp.*, 2005-Ohio-3350, ¶10 (citations omitted) ("The primary function of a final,

appealable order is the termination of a case or controversy. An order putting a case on hold, which is the function of a stay order, does not serve to terminate a case.”).

{¶17} Thus, both orders are not final and appealable. Consequently, this court is without jurisdiction to consider appellant’s associated assignments of error. Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.