[Cite as *Sober v. Montgomery*, 2010-Ohio-3971.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STACY SOBER

Plaintiff-Appellant/Cross-Appellee

-vs-

KURTIS MONTGOMERY

Def.-Appellee/Cross-Appellant

JUDGES:
Hon. Sheila G. Farmer, P. J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 2009 CA 00064

O P I N I O N

CHARACTER OF PROCEEDING: Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 1995 PA 0029

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: August 23, 2010

APPEARANCES:

For Plaintiff-Appellant/Cross-Appellee

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Pickerington, Ohio 43147

For Defendant-Appellee/Cross-Appellant

GARY S. WELLBAUM
Post Office Box 163486
Columbus, Ohio 43216-3486

Wise, J.

{¶1} Cross-Appellant Kurtis Montgomery appeals the decision of the Court of Common Pleas, Fairfield County, Domestic Relations Division, which modified his child support obligation for his son, A.M., born in 1993. Cross-Appellee Stacy Sober is the mother of A.M. The relevant facts leading to this appeal are as follows.

{¶2} On January 11, 1996, the trial court, via an agreed judgment entry, established Cross-Appellant Kurtis as the father of A.M. In the most recent redress of child support issues, prior to the events leading to the within appeal, the trial court issued an order in August 2002 requiring Cross-Appellant Kurtis to pay $1,056.53 per month to Cross-Appellee Stacy for the support of their child, A.M., effective 9-1-99.

{¶3} In approximately December 2008, Kurtis requested an administrative review of the child support order through the Fairfield County CSEA. On March 19, 2009, following its review, FCCSEA issued its Administrative Adjustment Recommendation, modifying the support order to $1,941.98 per month, plus processing charges, effective April 1, 2009.

{¶4} Kurtis thereupon filed with the trial court an objection to the administrative modification, requesting a court hearing on the issue. The trial Court ultimately set the matter for a hearing on September 22, 2009.

{¶5} On October 14, 2009, the trial court issued a judgment entry, setting the modified child support obligation at $618.10 per month.

{¶6} On November 3, 2009, Kurtis filed a request for findings of fact and conclusions of law pursuant to Civ.R. 52.

{¶7} Also on November 3, 2009, the trial court issued a judgment entry nunc pro tunc, clarifying that the support order would be $605.98 per month, plus processing fee, for a total of $618.10 per month.

{¶8} On November 6, 2009, Stacy filed a pro se notice of appeal. Kurtis responded with a notice of cross-appeal on November 12, 2009.

{¶9} On November 24, 2009, the trial court issued an order requiring Kurtis to submit proposed findings of fact and conclusions of law on or before December 9, 2009. Kurtis complied with said order on December 8, 2009. The trial court, however, did not thereafter issue any findings of fact and conclusions of law.

{¶10} On March 12, 2010, this Court conducted a sua sponte review of the procedural record and found that Stacy had failed to file a brief in her direct appeal. Accordingly, this Court ordered that Stacy's appeal would be dismissed, but that Kurtis's cross-appeal would remain pending.

{¶11} Kurtis herein raises the following three Assignments of Error on cross-appeal:

{¶12} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW AND ABUSED ITS DISCRETION IN FAILING TO ADOPT THE EFFECTIVE DATE USED BY THE LICKING COUNTY CHILD SUPPORT ENFORCEMENT AGENCY IN RULING ON DEFENDANT/APPELLEE/CROSS-APPELLANT'S OBJECTIONS.

{¶13} "II. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN DETERMINING DEFENDANT/APPELLEE/CROSS-APPELLANT'S GROSS INCOME FOR CHILD SUPPORT CALCULATION PURPOSES.

{¶14} "III. THE TRIAL COURT ERRED AS A MATTER OF LAW IN FAILING TO ISSUE FINDINGS OF FACT AND CONCLUSIONS OF LAW."

III.

{¶15} We will address appellant's claims out of sequence. In his Third Assignment of Error, Cross-Appellant Kurtis maintains the trial court erred in failing to issue findings of fact and conclusions of law.

{¶16} Civ.R. 52 reads in pertinent part as follows:"When questions of fact are tried by the court without a jury, judgment may be general for the prevailing party unless one of the parties in writing requests otherwise before the entry of judgment pursuant to Civ.R. 58, or not later than seven days after the party filing the request has been given notice of the court's announcement of its decision, whichever is later, in which case, the court shall state in writing the conclusions of fact found separately from the conclusions of law. ***."

{¶17} In accordance with said rule, the Ohio Supreme Court has held that a timely motion for separate findings of fact and conclusions of law prevents an otherwise final judgment from becoming final until the findings and conclusions are filed by the trial court. See *Walker v. Doup* (1988), 36 Ohio St.3d 229, 522 N.E.2d 1072.

{¶18} In the case sub judice, Cross-Appellant Kurtis concedes that his request under Civ.R. 52 was not made within seven days of the trial court's decision; however, Kurtis's counsel stated in writing to the trial court that the judgment entry of October 14, 2009 was mailed to an incorrect counsel address, and that he was not made aware of said judgment entry until he checked the online docket on October 23, 2009. See Request for Findings of Fact and Conclusions of Law, November 3, 2009, at 1-2.

Kurtis's counsel electronically transmitted his Civ.R. 52 request to the trial court on October 30, 2009, even though it was not file-stamped until Nov. 3, 2009. See Cross-Appellant's Brief at footnote 2. On that same date, the trial court issued a nunc pro tunc entry (clarifying the dollar amount of support and processing fees). Under these circumstances, because his counsel transmitted the motion seven days after obtaining notification of the October 14, 2009 judgment entry, we find Kurtis timely "requested" findings of fact and conclusions of law under Civ.R. 52, to which the trial court never responded, other than ordering the provision of proposed findings and conclusions.

{¶19} We therefore hold the judgment entry appealed from is not a final appealable order, and the appeal is dismissed for want of jurisdiction.

I., II.

{¶20} Based on our foregoing determination as to appellate jurisdiction, we find the arguments raised in Cross-Appellant Kurtis's First and Second Assignments of Error are premature.

{¶21} For the reasons stated in the foregoing opinion, the appeal of the judgment of the Court of Common Pleas, Domestic Relations Division, Fairfield County, Ohio, is dismissed.

By: Wise, J.

Farmer, P. J., and

Delaney, J., concur.

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JUDGES

JWW/d 0802

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STACY SOBER	:	
	:	
Plaintiff-Appellant/Cross-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
KURTIS MONTGOMERY	:	
	:	
Defendant-Appellee/Cross-Appellant	:	Case No. 2009 CA 00064

For the reasons stated in our accompanying Memorandum-Opinion, the appeal of the judgment of the Court of Common Pleas, Domestic Relations Division, Fairfield County, Ohio, is dismissed.

Costs to be split evenly between Appellant/Cross-Appellee and Appellee/Cross-Appellant.

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JUDGES