

[Cite as *Allen v. Allen*, 2012-Ohio-4392.]

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

LISA LEIGH ALLEN

Plaintiff-Appellee

-vs-

JOHN DALE ALLEN

Defendant-Appellant

JUDGES:

Hon. Patricia A. Delaney, P.J.

Hon. William B. Hoffman, J.

Hon. Sheila G. Farmer, J.

Case No. CT2012-0008

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County  
Common Pleas Court, Domestic Relations  
Division, Case No. DB2011-0015

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

September 21, 2012

APPEARANCES:

For Appellee

For Appellant

SCOTT T. HILLS  
Hillis & Small, LLC  
825 Adair Avenue  
Zanesville, OH 43701

JOHN DALE ALLEN  
#A614204  
C/o HCF – P.O. Box 59  
Nelsonville, OH 45764

*Hoffman, J.*

{¶1} Defendant-appellant John D. Allen (“Husband”) appeals the February 7, 2012 Divorce Decree entered by the Muskingum County Court of Common Pleas, Domestic Relations Division. Plaintiff-appellee is Lisa L. Allen (“Wife”).

STATEMENT OF THE CASE AND FACTS

{¶2} On September 12, 2011, Wife filed a Complaint for Divorce in the Muskingum County Court of Common Pleas, Domestic Relations Division. Wife asserted gross neglect of duty and extreme cruelty as well as incompatibility as grounds.

{¶3} Husband filed an Answer and Counterclaim on September 27, 2011. Accompanying the pleadings was Husband’s hand-written Poverty Affidavit requesting the trial court waive the pre-payment of the fees and costs associated with the filing of his Answer and Counterclaim. Via Judgment Entry filed September 28, 2011, the trial court ordered Husband to file a properly completed Financial Disclosure Affidavit or pay the required deposit within fourteen days. Husband filed the appropriate documentation on October 6, 2011.

{¶4} On November 18, 2011, Wife filed a Motion for Leave to File Amended Complaint Instanter, which the trial court granted. The Amended Complaint included Husband’s incarceration as grounds for the divorce. Husband filed an Answer and Counterclaim on December 7, 2011.

{¶5} The trial court conducted a final hearing on January 9, 2012. The trial court issued a Divorce Decree on February 7, 2012.

{¶6} It is from this judgment entry Husband appeals, assigning as error:

{¶7} “I. DEFENDANT WAS DENIED DUE PROCESS.

{¶8} “II. DEFENDANT WAS DENIED EQUAL PROTECTION UNDER THE LAW.”

{¶9} As a preliminary matter, we must first determine whether the order under review is a final appealable order. If an order is not final and appealable, then we have no jurisdiction to review the matter and must dismiss it. See *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20, 540 N.E.2d 266. In the event the parties to the appeal do not raise this jurisdictional issue, we must raise it sua sponte. See *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 541 N .E.2d 64, syllabus; *Whitaker-Merrell v. Carl M. Geupel Const. Co.* (1972), 29 Ohio St.2d 184, 186, 58 O.O.2d 399, 280 N.E.2d 922.

{¶10} Upon review of the record in this matter, we decline to address the merits of Husband’s arguments at this time as we find the order being appealed is not a final appealable order. The trial court’s February 7, 2012 Divorce Decree does not dispose of Husband’s Counterclaim, nor did it include a Civ.R. 54(B) language.

{¶11} Because a final appealable order does not exist in this case, we dismiss this appeal for lack of jurisdiction.

By: Hoffman, J.

Delaney, P.J. and

Gwin, J. concur

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ Patricia A. Delaney  
HON. PATRICIA A. DELANEY

s/ Sheila G. Farmer  
HON. SHEILA G. FARMER

