

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ADAMS COUNTY

Kelly A. Edwards,	:	
	:	
Plaintiff-Appellee,	:	Case No. 17CA1037
	:	
v.	:	
	:	
James C. Edwards,	:	<u>DECISION AND JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	RELEASED: 04/14/2017
	:	

HARSHA, A.J.,

{¶1} After reviewing the notice of appeal filed in this matter, we issued an order directing Appellant James C. Edwards to file a memorandum addressing whether the entry appealed from is a final appealable order and informing him that his failure to do so may result in the dismissal of this appeal. Appellant did not respond, which is sufficient cause to dismiss the appeal. However, because the trial court entry is not a final appealable order, we **DISMISS** this appeal because we lack jurisdiction over it.

I. Legal Analysis

{¶2} Appellant James Edwards appeals a trial court entry entitled “Judgment Entry Nunc Pro Tunc” that adopts the Magistrate’s Decision Nunc Pro Tunc. The trial court’s entry states:

It is therefore ORDERED that the Magistrate’s Decision Nunc Pro Tunc be adopted and approved by this Court and said Magistrate’s Decision Nunc Pro Tunc is incorporated by reference into this Order and made a judgment of the Court.

{¶3} The trial court did not separately set forth its own separate or distinct findings, but instead affirmed the magistrate's findings:

“Upon careful and independent examination and analysis of the Magistrate’s Findings and Decision Nunc Pro Tunc as contained in the Magistrate’s Decision Nunc Pro Tunc, the Court finds that the Findings of the Magistrate are sufficient and the Decisions Nunc Pro Tunc of the Magistrate are acceptable to the Court.”

{¶4} A judgment entry which affirms or adopts a magistrate's decision but fails to enter judgment through a “separate and distinct” entry does not constitute a final appealable order. *McCoy v. Sullivan*, 4th Dist. Scioto No. 16CA3739, 2016-Ohio 3054, ¶ 4; *Freeman v. Freeman*, 4th Dist. Lawrence No. 16CA5, 2016-Ohio-2758, ¶ 4; *In re A.R.*, 4th Dist. Ross No. 07CA3000, 2008–Ohio–4822, at ¶ 11 (the court inserted a line at the bottom of the magistrate's decision adopting it as its own order). In order to be a final appealable order, the trial court, in adopting the magistrate's decision, must enter “a separate judgment that sets forth the grounds for relief.” A court must enter a separate judgment that includes the outcome of the dispute and the remedy provided, even if it chooses to adopt the magistrate's decision. *Id.* at ¶ 9. *See also In re Elliott*, 4th Dist. Ross No. 97CA2313, 1998 WL 101351 (March 5, 1998)(court entered a separate one-sentence entry adopting the magistrate's order); Civ.R. 54(A)(“A judgment shall not contain * * * the magistrate's decision in a referred matter * * *.”).

{¶5} The trial court's entry must contain “its own independent judgment disposing of the matters at issue between the parties, such that the parties need not resort to any other document to ascertain the extent to which their rights and obligations have been determined.” *Burns v. Morgan*, 165 Ohio App.3d 694, 2006–Ohio–1213, 847 N.E.2d 1288, ¶ 10 (4th Dist.). The entry must grant relief on the issues originally

submitted to the court. *Jackson v. Jackson*, 4th Dist. Washington No. 13CA40, 2014–Ohio–5853, ¶ 11, citing *Deutsche Bank Natl. Co. v. Caldwell*, 196 Ohio App.3d 636, 2011–Ohio–4508, 964 N.E.2d 1093, ¶ 7.

{¶6} The trial court entry in this case is not a final appealable order because it fails to set forth the trial court's independent judgment of relief on all of the issues originally submitted to it.

II. Conclusion

{¶7} The trial court's entry does not constitute a final, appealable order. The court did not separately state the judgment and the relief granted to the parties. Affirming a magistrate's decision without separately setting forth the court's own judgment does not constitute a final judgment subject to appeal. Because the trial court's entry is not a final, appealable order and we lack jurisdiction to consider the matter. Accordingly, we hereby dismiss this appeal.

{¶8} The clerk shall serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail.

{¶9} APPEAL DISMISSED. COSTS TO APPELLANT. IT IS SO ORDERED.

Abele, J. and McFarland, J.: Concur.

FOR THE COURT

William H. Harsha
Administrative Judge