[Cite as *Fischer v. Rings*, 2009-Ohio-5538.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

CATHRYN M. FISCHER	C.A. No. 24545
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
KEITH A. RINGS	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellee	CASE No. 2007 07 2134

DECISION AND JOURNAL ENTRY

Dated: October 21, 2009

BELFANCE, Judge.

{¶1} Cathryn Fischer appeals the judgment of the Summit County Court of Common Pleas, Domestic Relations Division wherein the court determined that Fischer would have Thanksgiving with the parties' children during odd-numbered years and which ordered her to have the second half of the 2008 Christmas break. For the reasons set forth below, we reverse.

FACTS

{¶2} Cathryn Fischer and Keith Rings were divorced in June 1998 in the State of Maryland. Both parties were granted legal custody of the two minor children and Fischer was awarded primary physical custody subject to Rings' visitation rights. When Rings moved to Ohio, the parties consented to a modification of the Maryland judgment entry relative to Rings' visitation. Fischer thereafter filed a petition to register the Maryland judgment of divorce in Summit County.

{¶3} In August 2007, Fischer filed a motion to modify parental rights and

responsibilities in which she sought to be designated as the sole residential parent and legal custodian of the children. In October 2007, Rings filed a motion to show cause in which he alleged that Fischer had refused to allow visitation as set forth in the parties' Maryland judgment of divorce. Rings also filed a motion for modification wherein he requested the court to order a shared parenting plan and to which he attached a proposed shared parenting plan.

{¶4} On October 22, 2007, the court issued a temporary order ("Temporary Order") which provided for temporary companionship with the children on specified dates and times during the pendency of these motions. Pursuant to the Temporary Order, the parties were able to agree that "Mother would have the children on Thanksgiving Day 2007, and Father would have the children over Christmas from December 21, 2007, until December 26, 2007." Because Rings lives in Cincinnati, the parties also agreed to exchange the children in Columbus per their prior practice. The magistrate further ordered that Rings would have temporary companionship with the children on specified dates and times, which included 3:00 p.m. on Friday November 23, 2007 (the day after Thanksgiving) through 4:00 p.m., Sunday, November 25, 2007.

{¶5} On December 13, 2007, the magistrate issued an order indicating that the parties had reached an agreement regarding all parenting issues, but not all financial issues. Accordingly, Fischer's August 2007 motion was dismissed except for outstanding financial issues. The magistrate ordered the parties to submit an agreed journal entry regarding the parenting issues on or before December 31, 2007. The parties did not submit an agreed journal entry by that deadline. However, Fischer's attorney submitted a proposed journal entry on February 21, 2008. Because the parties failed to submit an agreed journal entry, the magistrate issued an order requiring the parties to appear to review the proposed journal entry. The magistrate also ordered Rings to provide financial information to Fischer.

{¶6} Subsequent to this court appearance, on May 6, 2008, a Magistrate's Decision was issued that provided that the parties had come to a full agreement for a shared parenting plan. In addition, pursuant to paragraph 2 of the Magistrate's Decision "[f]or this year the parents agreed to follow the temporary order set by the Court for Thanksgiving holiday 2007. For the Winter Break/Christmas holiday this year, Father will have the first half of the break and the exchange will take place on December 26th." Paragraph 4 of the Magistrate's Decision, which contained the parties' yearly schedule, also provided that "for the 2008 holiday and break, Father will have the children from December 26 to January 2, 2009." Although the actual dates of the Christmas break are not set forth in the order, it appears that Rings was given both the first and second half of the children's Christmas break. Rings thereafter filed a motion to modify parental rights and responsibilities and a motion to show cause. Neither motion was granted.

{¶7} On November 20, 2008, Rings filed a motion entitled "Motion Evaluate and Enforce And Clarify the Thanksgiving Holiday 2008 And Clarify and Enforce the Agreed Judgment Entry on this matter [sic]." In that motion, Rings claimed that he was entitled to have the children on the 2008 Thanksgiving holiday given that Fischer had the children on the 2007 holiday. Rings' motion did not contain a certificate of service although the motion was forwarded to Fischer's counsel. On November 21, 2008, the day after Rings filed his motion, the trial court issued a judgment entry in which it determined that Rings was entitled to have the children for Thanksgiving in 2008 given that Fischer had the children on Thanksgiving in 2007. The court further ordered that "[h]enceforth, the Mother shall have the children for Thanksgiving in odd[-numbered] years and Father shall have the children for Thanksgiving in even[-numbered] years." The trial court also stated that "pursuant to the Order of May 6, 2008, Father shall have the first half of the Winter Break/Christmas Holiday this year, and the Mother shall have the

second half of the break, with the exchange of the children occurring on December 26th." Fischer thereafter appealed the trial court's judgment.

MOOTNESS

{¶8} Prior to addressing Fischer's arguments, we must initially consider whether the matters before the court are moot. Generally, a court does not consider matters that are moot. See *Miner v. Witt* (1910), 82 Ohio St. 237, syllabus. An appellant's appeal is moot if "an event occurs which renders it impossible for this [C]ourt, if it should decide the case in favor of the [appellant], to grant [her] any effectual relief whatever[.]" Id. at 238, quoting *Mills v. Green* (1895), 159 U.S. 651, 653. An appeal that is moot shall be dismissed. Id.

{¶9} In the instant appeal, the judgment entry from which Fischer appeals provides for visitation for Thanksgiving 2008, as well as for Thanksgiving in the years following by stating: "Henceforth, the Mother shall have the children for Thanksgiving in odd[-numbered] years and Father shall have the children for Thanksgiving in even[-numbered] years." Thus, with our decision, it is possible to grant Fischer relief from the trial court's judgment as our decision may impact upcoming visitation. See id.

FAILURE TO SERVE THE MOTION ON APPELLANT

{¶10} In her first assignment of error, Fischer argues that the trial court erred in ruling on Rings' motion because the trial court lacked jurisdiction to rule on the motion. Fischer contends that although the motion was mailed to and received by her counsel, proper service was not effectuated because pursuant to Civ.R. 75(J), Rings' motion was a post-decree motion that required that personal service be perfected upon Fischer personally as opposed to her counsel. Upon review of the contents of Rings' motion, we are not convinced that the trial court lacked

jurisdiction pursuant to Civ.R. 75(J) to consider the motion. However, we do agree that the trial court's consideration of the Motion constituted reversible error.

{¶11} Civ.R. 5(D) provides:

> "All papers, after the complaint, required to be served upon a party shall be filed with the court within three days after service, but depositions upon oral examination, interrogatories, requests for documents, requests for admission, and answers and responses thereto shall not be filed unless on order of the court or for use as evidence or for consideration of a motion in the proceeding. *Papers filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. The proof of service shall state the date and manner of service and shall be signed in accordance with Civ.R. 11*." (Emphasis added.)

{¶12} In the instant matter, it is undisputed that Rings' motion was filed without a certificate of service. Thus, pursuant to Civ.R. 5(D), Rings' motion was not properly before the trial court and the court should not have considered Rings' motion in light of his failure to attach a certificate of service. See, also, *First Resolution Invest. Corp. v. Salem*, 9th Dist No. 24049, 2008-Ohio-2527, at ¶8. We are mindful that in special proceedings involving domestic relations matters, the trial court must often quickly respond to issues that arise. However, in this particular case, Rings did not style his motion as an ex parte motion that might have initially allowed the trial court to grant ex parte relief although it would not have relieved the trial court of the obligation to ultimately provide the opposing party an opportunity to be heard. See Civ.R. 5(A). Instead, he filed a motion without the necessary certificate of service required under Civ.R. 5(D).

{¶13} In light of our ruling, we find it unnecessary to address Fischer's second assignment of error.

CONCLUSION

{¶14} In light of the foregoing, we reverse the judgment of the Summit County Court of

Common Pleas, Domestic Relations Division.

Judgment reversed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

EVE V. BELFANCE
FOR THE COURT

DICKINSON, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

JOHN E. SCHOONOVER, and JEANNE T. DEMONTE, Attorneys at Law, for Appellant.

KEITH A. RINGS, pro se, Appellee.