

[Cite as *Schueler v. Schubert*, 2010-Ohio-6495.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

LINDA M. SCHUELER

C.A. No. 25192

Appellant

v.

STEVEN F. SCHUBERT

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. 1993-10-2289

Appellee

DECISION AND JOURNAL ENTRY

Dated: December 30, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Linda Schueler and Steven Schubert were divorced in 1993, after having had two daughters together. Years later, a disagreement arose regarding child support arrearages and expenses Mr. Schubert had been ordered to reimburse to Ms. Schueler. The trial court issued judgment entries in 2004, 2005, and 2006, ordering Mr. Schubert to pay arrearages on various expenses for the children. In 2008, Mr. Schubert moved the court to determine the remaining arrearages. The magistrate issued a decision, to which Ms. Schueler objected. The trial court entered an order overruling Ms. Schueler’s “[o]bjection” and vacated the magistrate’s decision. Ms. Schueler has attempted to appeal from that entry, but this Court lacks jurisdiction to consider the merits because the trial court has not clearly ruled on Ms. Schueler’s objections to the magistrate’s decision.

BACKGROUND

{¶2} On September 20, 2004, the trial court entered an agreed judgment entry, ordering Mr. Schubert to pay Ms. Schueler over \$17,000 for medical, dental, educational, and housing expenses previously incurred on behalf of their daughters. The agreed entry further provided that Mr. Schubert would be required to pay future housing costs, a monthly allowance, and college tuition for their older daughter, plus all unreimbursed medical and dental expenses for both girls. The 2004 agreed entry further obligated Mr. Schubert to pay Ms. Schueler \$5000 for attorney fees unless he satisfied the judgment according to a schedule set forth in the entry.

{¶3} After Ms. Schueler later moved the trial court to find Mr. Schubert in default and in contempt of court, the parties appeared for another hearing. On September 6, 2005, a magistrate issued a decision ordering Mr. Schubert to pay over \$5000 for housing expenses and installments on arrearages, plus \$1000 in attorney fees within ten days in order to avoid defaulting on the previous agreed order. The order included a judgment for Ms. Schueler in the amount of \$817.34 for tuition and a dermatology bill, plus \$1600 for arrearages on the monthly allowance. Although the magistrate found Mr. Schubert in contempt of court for failure to pay the monthly allowance, he was given the opportunity to purge by promptly paying the arrearage. He filed objections to the decision.

{¶4} Four months later, while the objections were still pending, Ms. Schueler again moved the court to find Mr. Schubert in contempt and requested lump sum arrearages. In June 2006, the magistrate issued another decision, finding Mr. Schubert in contempt and sentencing him to 90 days in jail, suspended on the condition that he purge it by paying \$11,514.90 for tuition and eight months of housing costs and allowance, plus \$1000 in attorney fees. In November 2006, the trial court overruled Mr. Schubert's objections to the magistrate's

September 2005 decision and adopted the order of the magistrate. In December 2006, the parties entered an agreed judgment for a wage assignment of \$7,192.34 to cover the amounts owed for arrearages on housing expenses, tuition, and the dermatology bill, plus \$1000 for attorney fees due under the November 2006 judgment entry that adopted the September 2005 magistrate's decision.

{¶5} Two years later, Mr. Schubert moved the trial court to calculate any remaining arrearages. Following a hearing, the magistrate issued a decision, finding that the 2004 and 2005 judgments had been satisfied, but that Mr. Schubert owes \$514.90 plus \$642.75 in interest on the 2006 judgment. Ms. Schueler objected to the magistrate's decision. She complained that the magistrate had misstated the amount of the 2005 judgment, incorrectly determined that the first judgment entry had been paid in full, and erroneously failed to award \$5000 in attorney fees that had been part of the 2004 judgment entry. In December 2009, the trial court vacated the magistrate's decision and overruled Ms. Schueler's "[o]bjection." The trial court determined that Mr. Schubert owes no payments beyond November 2009. Ms. Schueler has attempted to appeal from that judgment.

JURISDICTION

{¶6} "[A] court may adopt or reject a magistrate's decision in whole or in part, with or without modification" and enter judgment either before or after the period for filing objections has expired. Civ. R. 53(D)(4)(b); Civ. R. 53(D)(4)(e)(i). If the court enters judgment on the magistrate's decision before the time for filing objections has passed, "the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." Civ. R. 53(D)(4)(e)(i). Under Rule 4(B)(2) of the Ohio Rules of

Appellate Procedure, if a party timely files objections to a magistrate's decision, moving to vacate or modify a judgment under Rule 53(D) of the Ohio Rules of Civil Procedure, "the time for filing a notice of appeal begins to run as to all parties when the order disposing of the motion is entered." Once a trial court has acted on a magistrate's decision and entered an otherwise final judgment, the trial court may only revisit that judgment if it finds a proper basis for one or more timely filed objections. *O'Bryan v. K & H Co. Lakeshore Apartments*, 181 Ohio App. 3d 741, 2009-Ohio-1417, at ¶29.

{¶7} In this case, the trial court immediately adopted the magistrate's decision of April 21, 2009, and entered judgment on it, but Ms. Schueler timely filed objections, thereby imposing an automatic stay. Civ. R. 53(D)(4)(e)(i). Such a stay is not lifted and the time for filing a notice of appeal does not begin to run until the trial court disposes of the objections. App. R. 4(B)(2). Although Ms. Schueler did not number her objections, she captioned her document "[o]bjections to the [m]agistrate's [d]ecision," and she accused the magistrate of making three separate errors in her magistrate's decision: (1) misstating the amount of the 2005 judgment entry, (2) finding the 2004 judgment entry had been paid in full, and (3) failing to award the \$5000 in attorney fees that had been part of the 2004 judgment entry. The trial court issued a judgment entry on December 17, 2009, indicating that the matter was before the court "upon Plaintiff's [o]bjections to the [m]agistrate's [d]ecision," and found "Plaintiff's [o]bjection not well taken." At the end of the entry, the trial court "overruled" "Plaintiff's [o]bjection."

{¶8} Rule 53 of the Ohio Rules of Civil Procedure provides that if objections are timely filed, "the court shall rule on those objections." Civ. R. 53(D)(4)(d). This Court has "literally interpreted" that language to require a trial court to "explicitly overrule or sustain any timely filed objections." *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-

5813, at ¶10; *Lorain Medina Rural Elec. v. GLW Broadband Inc.*, 9th Dist. No. 08CA009432, 2009-Ohio-1135, at ¶8. Without a ruling disposing of the objections, the stay imposed by Civil Rule 53 remains in place and the time for filing a notice of appeal does not begin to run. App. R. 4(B)(2). Although there is some disagreement on this Court regarding how explicit the ruling must be to lift the stay, *Davis v. Davis*, 9th Dist. No. 08CA0022, 2009-Ohio-3164, at ¶15-23 (Dickinson, P.J., dissenting), in this case, it seems the trial court neither explicitly nor implicitly ruled on each of Ms. Schueler's objections. Therefore, her notice of appeal is premature, and this Court does not have jurisdiction to consider the merits of her attempted appeal.

CONCLUSION

{¶9} This Court lacks jurisdiction because the trial court has not ruled on each of Ms. Schueler's objections to the magistrate's decision of April 2009. The attempted appeal is dismissed.

Appeal dismissed.

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 appellant.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

BARBARA S. MUSHKAT, attorney at law, for appellant.

CHRISTINE FINAN, attorney at law, for appellee.