

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL. DANIEL J. SULLIVAN

Appellee

v.

JUDGE DONALD L. RAMSEY

Appellant

\* Case No. 09-1118  
\*  
\* ON APPEAL FROM THE  
\* LUCAS COUNTY COURT OF  
\* APPEALS, SIXTH APPELLATE  
\* DISTRICT  
\*  
\* APPEAL OF RIGHT  
\*  
\* Court of Appeals  
\* Case No. L-09-1168

APPELLANT'S REPLY BRIEF

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**I. STATEMENT OF THE CASE**

On April 28, 2009, Appellee Daniel J. Sullivan filed in the Sixth District Court of Appeals a Verified Complaint for Alternative and Permanent Writs of Prohibition. (Supp. 0.) The Complaint named as Respondent, Appellant Judge Donald L. Ramsey, a visiting judge serving in the Lucas County Court of Common Pleas, Domestic Relations Division. (Supp. 1.) Appellant has, since July, 2006, presided over a case entitled: *Janet M. Sullivan v. Daniel J. Sullivan*, Case No. DR-1996-0989. (Supp. 1-2, and 4.)

The Appellee's Complaint alleged that the Appellant Judge was without jurisdiction to issue an Amended Qualified Domestic Relations Order(QDRO), since the Appellee had filed a Notice of Appeal from a January 9, 2009 Judgment Entry and Qualified Domestic Relations Order (QDRO) issued by the Appellant. (Supp. 3-4.) The Complaint also alleged that the Amended QDRO interferes and is inconsistent with the Court of Appeals' ability to affirm, modify, or reverse the January 9, 2009 Judgment Entry and QDRO. (Supp. 5.) The Complaint requested that the Court of Appeals issue an alternative writ vacating the Amended QDRO issued by the Appellant on April 7, 2009 and a permanent writ of prohibition. (Supp. 6.)

On May 7, 2009, the Sixth District Court of Appeals, without giving the Appellant an opportunity to respond, issued a peremptory writ of prohibition vacating the April 7, 2009 Amended QDRO and ordering the Appellant from taking any action inconsistent with the

Court of Appeals' ability to affirm, modify or reverse the January 9, 2009 judgment entry. (Appx. v.)

On June 18, 2009, the Appellant filed a timely Notice of Appeal with this Court, pursuant to *S.Ct.Prac.R.* II, Sect. 1(A) (1). (Appx. i.)

On August 7, 2009, the Appellant filed his merit brief. The merit brief established that the Appellant had jurisdiction to issue the Amended QDRO and the Appellee had an adequate remedy at law.

On September 28, 2009, the Appellee filed his merit brief. The merit brief asserted that the Appellant's issuance of an amended QDRO was an unauthorized exercise of judicial power and that appellee did not have an adequate remedy at law.

The Appellee's assertions are incorrect and therefore, this Court must reverse the Court of Appeals' May 7, 2009 Decision and Judgment Entry issuing a peremptory writ of prohibition.

**II. The Domestic Relations Court is a Court of General Jurisdiction and has the Authority to Determine its Jurisdiction**

The Appellee asserts that the Domestic Relations Division of Common Pleas Court is not is not a court of general jurisdiction, but rather, a court of limited jurisdiction. The Appellee is incorrect.

County common pleas courts have four divisions: general, probate, juvenile, and domestic relations. *R.C.* 2101.01,

2151.011(A)(1)(a), 2301.01, 2301.02, 3105.011. Thus, this Court has held that the domestic relations division of the common pleas court is a court of general jurisdiction. *The State ex rel. Zakany v. Avellone, Judge*(1979), 58 Ohio St.2d 25, 26, 387 N.E.2d 1373; *Roberts v. Tehan*(1963), 175 Ohio 123, 124, 191 N.E.2d 16(Syllabus 1).

Therefore, as a court of general jurisdiction, the Lucas County Domestic Relations Court can determine its own jurisdiction, and a party challenging that jurisdiction has an adequate remedy by appeal. *State ex rel. Nalls v. Russo*, 96 Ohio St.3d 410, 2002 Ohio 4907, 775 N.E.2d 522, at ¶ 18; *State ex rel. United States Steel Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003 Ohio 1630, 786 N.E.2d 39, at ¶ 8.

### **III. APPELLEE HAD AN ADEQUATE REMEDY AT LAW**

In order to be entitled to the requested writ of prohibition, a relator must establish that he had no other adequate remedy in the ordinary course of law existed. *State ex rel. Florence v. Zitter*, 106 Ohio St.3d 87, 2005 Ohio 3804, 831 N.E.2d 1003, at ¶14.

The Appellee herein had an adequate remedy at law by amending the notice of appeal filed from the Appellant's January 9, 2009 judgment and QDRO-case number L-09-1022.

It is undisputed that Appellate Rule 3(F) provides that the court of appeals may allow an amendment of a timely filed notice of

appeal, within its discretion and upon such terms as are just. *State of Ohio v. Moncrease*(Apr. 13, 2000), unreported, 2000 Ohio App. LEXIS 1650 \*7. This rule can be utilized to seek leave to file an amended notice of appeal to include an order entered after the original notice of appeal was filed. *Brian Condron v. The City of Willoughby*, Lake App. No. 2007-L-015, 2007 Ohio 5208, at ¶ 28.

In the present case, on January 20, 2009, the Appellee filed a timely Notice of Appeal from the Appellant's January 9, 2009 judgment and QDRO. (Supp. 3 and 34; Appx. x.) This appeal was assigned case number L-09-1022. (Appx. x.) On April 7, 2009, the Appellant entered an Amended Qualified Domestic Relations Order. (Supp. 3 and 51; Appx. x.)

In accordance with Appellate Rule 3(F), the Appellee could have sought leave to file an amended notice of appeal to include an appeal from the Amended QDRO.<sup>1</sup> The Appellee's merit fails to present any valid argument that Appellate 3(F) is not an adequate remedy at law.

In addition, the Lucas County Domestic Relations Court had general subject-matter jurisdiction over the issues presented in Appellee's underlying domestic relations case. Thus, as established above, the Appellant was authorized to determine his own

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<sup>1</sup> Appellee's failure to timely avail himself of this legal remedy does not make the remedy inadequate and confer a right to a writ of prohibition. *State ex rel. Neguse v. Hon. Judge Crawford*, Franklin App. No. 06AP-389, 2007 Ohio 1168, at ¶ 17.

jurisdiction. Therefore, there was an absence of a patent and unambiguous lack of jurisdiction and the Appellee had an adequate remedy by appeal.

Interestingly, the Appellee **actually** filed a notice of appeal from the Amended QDRO. (Appx. x.) This appeal was assigned case number L-09-1123. (Appx. x.) The Sixth District Court of Appeals sua sponte dismissed Appellee's second appeal. (Appx. vi, x.) The dismissal was based solely on the issuance of the peremptory writ that vacated the Amended QDRO. (Appx. vi.) There was no reason, under Ohio law, prohibiting the Court of Appeals from determining the validity of the Amended QDRO in the direct appeal.

Therefore, the Appellee had an adequate remedy at law and this Court must reverse the Court of Appeals' May 7, 2009 Decision and Judgment Entry issuing a peremptory writ of prohibition.

#### **IV. APPELLANT HAD THE AUTHORITY TO ISSUE THE AMENDED QUALIFIED DOMESTIC RELATIONS ORDER**

The Appellee's merit brief asserts that the Appellant was without authority to issue the amended QDRO, since there was an appeal pending and Appellee was divested of jurisdiction. This is incorrect.

Domestic Relations Courts have continuing jurisdiction to modify its orders, including Qualified Domestic Relations Orders when the court expressly reserves jurisdiction. *Lawrence Tuckosh v. Carol Cummings*, Belmont App. No. 07 HA 9, 2008 Ohio 5819, ¶ 24;

*Mary Jane Grubic v. Pete Grubic*, Cuyahoga App. No. 82462, 2003 Ohio 3680, ¶ 2; *Paul F. Bok v. Mancy A. Bauer*; Defiance App. No. 4-01-30, 2002 Ohio 1295; Civ.R. 75(J).<sup>2</sup>

It is true that, as a general rule, a trial court loses jurisdiction after an appeal is filed, except to take action in aid of the appeal. *Yee v. Erie County Sheriff's Department* (1990), 51 Ohio St.3d 43, 553 N.E.2d 1354. There is an exception to this general rule. *Labate v. Chrysler, Jeep, Dodge, Inc., et al.*, Columbiana App. No. 05 CO 57, 2006 Ohio 3480, at ¶ 12. However, the trial court, after an appeal is perfected, does retain all jurisdiction not inconsistent with that of the appellate court to review, affirm, modify, or reverse the order from which the appeal is taken. *State ex rel. State Fire Marshall v. Curl, Judge*, 87 Ohio St.3d 568, 570, 2000 Ohio 248, 722 N.E.2d 73; *Yee, supra*.

Additionally, an appeal does not operate as a stay of execution of a judgment that has been appealed. *Paulette Joyce Howard v. Marshall Howard* (Sept. 19, 1989), Montgomery App. 11479, unreported, 1989 Ohio App. LEXIS 3643 \*5; R.C. 2505.09; Civ.R. 62(B). Therefore, the trial court also retains jurisdiction to enforce its judgment from which the appeal has been taken during the pendency of that appeal, as well as proceedings in aid, until such time as execution of the judgment is stayed and a supersedeas bond is posted. *State ex rel. Klein v. Chorpening*(1983), 6 Ohio

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<sup>2</sup> See footnote No. 2

St.3d 3, 4, 450 N.E.2d 1161; *State of Ohio ex rel. Bruce Andrew Brown v. Lyndhurst Municipal Court, et al.*, Cuyahoga App. No. 90779, 2008 Ohio 607, at ¶ 4; *Naoma K. Matthews v. Benjamin H. Matthews, et al.* (Jan. 25, 1989), Summit App. No. 13528, unreported, 1989 Ohio App. LEXIS 304 \*4; *Paul M. Lane, et al. v. Court of Common Pleas of Ross* (Dec. 20, 1984), Ross App. No. 1130, unreported, 1984 Ohio App. LEXIS 12045 \*4.

The Court of Appeals' May 7, 2009 Decision and Judgment Entry granted a peremptory writ of prohibition relating to an Amended QDRO issued by the Appellant. (Appx. v.)

A QDRO is a current distribution of the rights in retirement account that is payable in the future, when the payee retires. *Kingery, supra*. However, it is the divorce decree that determines the rights of the parties, including establishing the parties' property distribution and providing for an equitable pension division. *Wilson v. Wilson*, 116 Ohio St.3d 68, 2007 Ohio 6056, 878 N.E.2d 16, at ¶ 18.

A QDRO is ordinary issued subsequent to and separate from the divorce decree itself, after the employer has approved its term as conforming to the particular pension plan involved. *Pavkovich, supra*. Therefore, it is the divorce decree that is the final order, regardless of whether it calls for a QDRO, since the QDRO merely implements the terms and provisions of the divorce decree. *Wilson*, at ¶ 15.

A QDRO does not in any way constitute a further adjudication on the merits of the pension division, as its sole purpose is to implement the terms of the divorce decree. *Id.*, at ¶ 16. Thus, because a QDRO is merely a court order that effectuates the allocation of rights determined in the divorce decree, the QDRO itself does not represent an adjudication of any issues of law or fact. *Kingery*, at ¶ 10. Accordingly, a QDRO is not an independent judgment entry of the court, but rather an enforcement mechanism. *Kingery*, *supra.*; *Hines v. Hines*, Tuscarawas App. No. 2004-AP-020009, 2004 Ohio 4666, at ¶ 19.

It is a ministerial tool used by the court in order to aid the relief that the court had previously granted. *Wilson*, at ¶ 15; *Sherri Lee Lamb v. Michael W. Lamb*(Dec. 4, 1998), Paulding App. No. 11-98-09, unreported, 1998 Ohio App. Lexis 6007 \*5. It is, therefore, **merely an order in aid of execution** on the property division ordered in the final decree of divorce. *Ronald L. Bagley v. Ellen Bagley*, Greene App. No.08-CA-57, 2009 Ohio 688, at ¶ 26; *Carolyn Peters v. James Peters*(Feb. 23, 2001), Montgomery App. No. 18445, unreported, 2001 Ohio App. LEXIS 672 \*8. As a proceedings in aid of execution, the Respondent retained jurisdiction to enforce the QDRO from which the appeals had been taken during the pendency of the appeal, until such time as execution of the judgment was stayed and a supersedeas bond was posted.

Appellee argues that the amended QDRO modified the divorce

decree. This is in correct. The QDRO was submitted to the Plan Administrator of P & FRP. The Amended QDRO was necessary to comply with the requirements of P & FRP's Plan Administrator. (Appx. x.) The Amended QDRO made no substantive changes in the terms and conditions of the QDRO. (Supp. 28 and 51.) The changes were only format and wording modifications to comply with the requirements of P & FRP's Plan Administrator. (Supp. 28, 51; Appx. x.)

Thus, the Amended QDRO was necessary to enforce the pension rights created by the divorce decree and the Appellant retained jurisdiction to do so during the appeal, since the Amended QDRO was merely an order in aid of execution and no stay had been issued.

Therefore, this Court must reverse the Court of Appeals' May 7, 2009 Decision and Judgment Entry issuing a peremptory writ of prohibition.

## **VI. CONCLUSION**

Therefore, since the Amended QDRO was merely an order in aid of execution, no stay had been issued, and the Relator had an adequate remedy at law, this Court must reverse the Court of Appeals' May 7, 2009 Decision and Judgment Entry issuing a peremptory writ of prohibition.

Respectfully submitted,

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