

**IN THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

KELLI R. LUNDY,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellant,	:	
- vs -	:	<b>CASE NO. 2010-T-0123</b>
MARK E. LUNDY,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 2001 DR 321.

Judgment: Appeal dismissed.

*Thomas E. Schubert*, 138 East Market Street, Warren, OH 44481 (For Plaintiff-Appellant).

*Rhonda L. Granitto Santha*, 6401 State Route 534, Farmington, OH 44491 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On December 3, 2010, appellant, Kelly R. Lundy, filed a notice of appeal from a November 5, 2010 entry of the Trumbull County Court of Common Pleas, Domestic Relations Division. In that entry, the trial court ordered appellant to file amended tax returns for all years since 2007 that she claimed the children for tax dependency purposes. The trial court also held the motion for contempt filed by

appellee, Mark E. Lundy, in abeyance and indicated that the matter be set for a compliance hearing.

{¶2} On February 25, 2011, appellee filed a “Motion to Dismiss Appeal.” In his motion, appellee asserts that the order appealed from is not final and appealable. Appellee argues that a contempt finding is not a final order until the imposition of a sanction or penalty. No brief in opposition to the motion to dismiss has been filed.

{¶3} We must determine whether the order appealed from is a final appealable order. According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a “final order” in the action. *Estate of Biddlestone*, 11th Dist. No. 2010-T-0131, 2011-Ohio-1299, ¶3; *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶3. If a lower court’s order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20. For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B).

{¶4} In this case, the trial court chose to hold the motion for contempt in abeyance and set the matter for a compliance hearing. Under the case law of this state, a ruling on a contempt motion is not a final appealable order unless the trial court has made a specific finding of contempt and has imposed a penalty or sanction. In *Estate of Sheehan*, 11th Dist. No. 2007-G-2774, 2007-Ohio-2571, at ¶4. See, also, *Chain Bike Corp. v. Spoke 'N Wheel, Inc.* (1979), 64 Ohio App.2d 62, 64.

{¶5} Since the trial court has not ruled on appellant's motion for contempt, the action is still pending. Therefore, no final appealable order exists at this time, and we are without jurisdiction to entertain an appeal at this time.

{¶6} Accordingly, appellee's motion to dismiss is granted, and this appeal is hereby dismissed for lack of a final appealable order.

{¶7} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.