

COURT OF APPEALS
HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

EDWARD J. KULA	:	JUDGES:
	:	
Defendant-Appellant	:	Hon. William B. Hoffman, P.J.
	:	Hon. Julie A. Edwards, J.
-vs-	:	Hon. Patricia A. Delaney, J.
	:	
CHRISTINA M. KULA, nka BOGGS	:	Case No. 08-CA-9
	:	
	:	
Plaintiff-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Holmes County Court of
Common Pleas Case No. 00-DR-004

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY June 18, 2009

APPEARANCES:

For Plaintiff-Appellee:

For Defendant-Appellant:

EDWARD J. KULA, pro se
Inmate Number 534-031
Richland Correctional Institution
1001 Olivesburg Road
P.O. Box 8107
Mansfield, Ohio 44901

Delaney, J.

{¶1} Defendant-Appellant, Richard J. Kula, appeals from the trial court's order modifying child support and increasing his support payment to \$231 per month. His ex-wife, Christina Kula, nka Boggs, is listed as Appellee; however, she has not filed a brief in response to Appellant's brief.

{¶2} Appellant and Christina Boggs were married on August 1, 1987. Two children were born as issue of the parties' marriage. Appellant filed for divorce from Christina Boggs and that divorce was granted on December 4, 2000. In the Decree of Divorce, Appellant was ordered to pay child support to his ex-wife in the amount of \$254.06 per child per month.

{¶3} On March 26, 2002, the Holmes County Child Support Enforcement Agency (CSEA) filed a motion to cite Appellant for contempt and lump sum judgment for failing to pay child support. A pretrial hearing was set for May 1, 2002. Appellant failed to appear for the hearing, though he was personally served with notice of that hearing. Appellant was arrested and his bond was set as a recognizance bond. The hearing was rescheduled for June 5, 2002. Appellant again failed to appear for hearing.

{¶4} On June 27, 2002, CSEA filed a motion to modify child support in which the trial court agreed to decrease the amount of child support that Appellant paid from \$508.12 per month to \$210.39 per month. The previously filed motion for contempt was dismissed on November 11, 2002. At some point prior to September 2005, Appellant's child support obligation was again reduced to \$140.27 per month.

{¶5} On September 8, 2003, CSEA also filed a motion for contempt because Appellant failed to pay child support. On February 12, 2004, the magistrate found

Appellant in contempt and ordered him to serve a 30 day jail sentence. The trial court adopted the magistrate's decision on February 12, 2004.

{¶6} On May 5, 2005, CSEA again filed a motion for contempt based on Appellant's failure to pay child support as previously ordered by the court. That motion was voluntarily dismissed on October 4, 2005.

{¶7} On September 19, 2005, Appellant was indicted in the Holmes County Court of Common Pleas in case number 05-CR-060 on two counts of Non-Support of Dependents, felonies of the fifth degree, in violation of R.C. 2919.21(B). He originally entered a not guilty plea on September 23, 2005.

{¶8} On November 2, 2005, he filed a notice of acceptance of a plea offer made by the State. On November 30, 2005, Appellant entered his guilty plea on the record, pleading guilty to one count of Non-Support of Dependents. The other count was dismissed. Sentencing was continued, and on June 15, 2006, Appellant failed to appear for his sentencing hearing and a warrant was issued for his arrest.

{¶9} On June 18, 2007, Appellant was indicted in the Holmes County Court of Common Pleas in case number 07-CR-033 on four additional counts of Non-Support of Dependents, felonies of the fourth degree, in violation of R.C. 2919.21(B) and one count of Failure to Appear, in violation of R.C. 2937.99(A), a felony of the fourth degree.

{¶10} Appellant was arrested on August 14, 2007.

{¶11} On September 25, 2007, Appellant pled guilty to the indictment in case number 07-CR-033.

{¶12} Sentencing for both cases was held on October 2, 2007, at which time, the court sentenced Appellant to six months in prison for the one count of Non-Support

out of case number 05-CR-060, and eight months in prison on each of the four counts of Non-Support in case number 07-CR-033. He was additionally sentenced to ten months on the charge of Failure to Appear. All sentences were ordered to be served consecutively, for a total of 48 months in prison.

{¶13} During Appellant's incarceration, the Holmes County Child Support Enforcement Agency (CSEA) completed an administrative child support modification, in which it recommended, pursuant to R.C. 3119.01 through R.C. 3119.05, an increase in child support from \$140.27 per month plus processing charge to \$231.15 per month plus processing charge for the minor child of Appellant and Christina Boggs.

{¶14} Appellant requested an Administrative Child Support Order Review hearing, which was held on May 27, 2008. Appellant was not present, as he was incarcerated on five counts of Non-Support of Dependents and one count of Failure to Appear in his criminal cases. However, his mother appeared on his behalf. Christina Boggs was not present for the hearing. Based upon certain findings of fact, the Administrative Hearing Officer recommended that child support be modified from \$140.27 to \$231.15 per month. The parties were advised that they could request a Court hearing within 15 days after the issuance of the Hearing Officer's report. No request for hearing was filed by either party.

{¶15} As such, the magistrate adopted the recommendations of the CSEA and ordered that the child support be modified to \$231.15 per month, effective June 1, 2008. The magistrate's decision was filed on July 11, 2008. The trial court reviewed and adopted the magistrate's decision on July 11, 2008.

{¶16} Appellant raises one Assignment of Error:

{¶17} “I. THE TRIAL COURT FAILED TO ISSUE A FINAL APPEALABLE ORDER INVOKING THE COURT OF APPEALS JURISDICTION.”

I.

{¶18} In his sole assignment of error, Appellant argues that the lower court did not issue a final appealable order, thus imparting jurisdiction on this court. Since Appellant has invoked the jurisdiction of this court by filing this appeal, we are unsure of what Appellant is complaining about, as he does not state any substantive issue which he is precluded from arguing due to the allegedly flawed judgment entry.

{¶19} Nonetheless, the decision of the trial court is a final appealable order.

{¶20} A final appealable order is, pursuant to R.C. 2505.02:

{¶21} “(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶22} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶23} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶24} “(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶25} “(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶26} “(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶27} “(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶28} “(5) An order that determines that an action may or may not be maintained as a class action;

{¶29} “(6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;

{¶30} “(7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.”

{¶31} A magistrate has the authority to determine any motion in any case. Civ. R. 54(C)(1)(a). A party can object to the decision of a magistrate within a proscribed period of time. Civ. R. 54(D)(3)(b)(iii). A party cannot assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b).

{¶32} No objections were made to the magistrate's decision, and as such, Appellant is barred from raising any issues with that decision now.

{¶33} The trial court immediately adopted the magistrate’s decision and incorporated “the same herein as if fully rewritten.” As such, the court’s order was a final appealable order. See, e.g., *Brown v. Cummins* (1997), 120 Ohio App.3d 554, 556, 698 N.E.2d 501.

{¶34} Appellant does not make any additional argument that he was barred from raising a substantive legal issue based on his perceived lack of final appealable order. We find his sole assignment of error to be without merit.

{¶35} For the foregoing reasons, the judgment of the Holmes County Court of Common Pleas is affirmed.

By: Delaney, J.

Hoffman, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR HOLMES COUNTY, OHIO
FIFTH APPELLATE DISTRICT

EDWARD J. KULA	:	
	:	
Defendant-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
CHRISTINA M. KULA, nka BOGGS	:	
	:	
Plaintiff-Appellee	:	Case No. 08-CA-009
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Holmes County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. WILLIAM B. HOFFMAN

HON. JULIE A. EDWARDS