

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

KATHLEEN CONDIT,	:	APPEAL NO. C-081262
	:	TRIAL NO. DR-0800107
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
JAMES J. CONDIT, JR.,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant James Condit and plaintiff-appellee Kathleen Condit were married in 1978. On October 28, 2004, in the case numbered DR-0302862, the trial court entered a decree of legal separation. That decree established an amount payable as spousal support. Over three years later, Kathleen filed for divorce in this case, numbered DR-0800107. During the pendency of the divorce proceedings below, James asked the trial court to modify the spousal-support order entered in the legal-separation case. The trial court declined to do so.

On appeal, James raises three assignments of error, none of which we have the jurisdiction to address. The decision of the trial court in the divorce proceedings not to modify the spousal-support order entered in the legal-separation case was not a final, appealable order. The claims of the parties in the divorce case have not been determined, nor has a final outcome been reached. The decision of the magistrate indicates as much when it described the hearing as one “for the determination of all issues *except the merits* in the above case * * *.”² Decisions regarding spousal

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² Emphasis added.

support are not appealable until the final divorce decree has been entered.³ While the spousal-support order was a final order in the legal-separation case, Condit did not file his motion to modify the order in that case.

Civ.R. 75(F), includes as a “final judgment” a determination that the trial court lacks jurisdiction to determine an issue. But the divorce case had yet to be decided. Therefore, a decision that the court lacked jurisdiction would be appealable only if the court included in the judgment the express determination, required by Civ.R. 54(B), that there is no just reason for delay. That did not happen here.

The problem with appealing the case at this point is highlighted by James’s inability to articulate his argument other than hypothetically. The crux of James’s argument is that, when the trial court enters the final decree of divorce, he will likely no longer be covered under Kathleen’s health insurance. This is a factor that should be considered, he continues, and the spousal support should be changed to reflect this possible outcome. But James has not yet lost health coverage-and he might never. And he could not succeed on the merits because the record shows no *present, actual* change in circumstances warranting modification of the order.

Because James’s appeal is not taken from a final order, this court lacks jurisdiction to consider it,⁴ and it is hereby dismissed.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on November 18, 2009
per order of the Court _____.

Presiding Judge

³ See *Venable v. Venable* (1981), 3 Ohio App.3d 421, 445 N.E.2d 1125; *Daughtry v. Daughtry* (1973), 47 Ohio App.2d 195, 353 N.E.2d 641; *Kelm v. Kelm* (1994), 93 Ohio App.3d 686, 639 N.E.2d 842; *Parr v. Parr* (Mar. 6, 1997), 8th Dist. No. 70300.

⁴ See Section 3 (B)(2), Article IV, Ohio Constitution.