

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

AMY L. REIK,	:	APPEAL NOS. C-100331
		C-100345
Plaintiff-Appellant/Cross-Appellee,	:	C-100525
		C-100558
vs.	:	TRIAL NO. DR0100992
JAMES G. BOWDEN,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellee/Cross-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Amy L. Reik, plaintiff-appellant/cross-appellee, and James G. Bowden, defendant-appellee/cross-appellant, appeal the judgment of the Hamilton County Court of Common Pleas, Division of Domestic Relations, ordering Bowden to pay Reik \$55,000 in spousal support for an 11-month period in 2004, and denying Reik child-support payments for the same period. For the following reasons, we affirm the judgment of the trial court.

Reik and Bowden's marriage was terminated by a divorce decree in February 2003. The divorce decree provided that Bowden would pay Reik \$5,000 per month for spousal support for ten years and \$10,000 per month for child support. After Bowden became unemployed, Reik and Bowden, with court approval, signed an agreed entry ("the Agreed Entry") in February 2004 that "suspended" all child- and spousal-support payments effective January 1, 2004.

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

Reik later filed a motion to set aside the Agreed Entry, and in March 2006, a magistrate found that spousal support should be reinstated effective January 19, 2005, at \$5,000 per month as provided in the decree. The magistrate also found that child support should be reinstated effective January 19, 2005, at \$531.41 per child, per month. The magistrate also concluded that a child-support arrearage should be set at zero effective May 1, 2006, based upon voluntary payments made by Bowden.

Reik filed objections to the magistrate's decision with the trial court. Among her numerous objections, Reik challenged the magistrate's determination that the child-support arrearage be set at zero. In May 2006, the trial court found that child- and spousal-support payments should have resumed on December 1, 2004. The trial court calculated the amount of child and spousal support Bowden owed for the period from December 1, 2004, to April 15, 2006, taking into account the voluntary payments Bowden had already made to Reik. The trial court then determined that "[c]onsidering the order to pay the amount owed prior to April 15, 2006 directly, as of April 15, 2006 the records of the Division of Child Support shall reflect an arrearage of zero." The trial court adopted the magistrate's decision reducing the amount of monthly child-support payments from April 16, 2006, onward.

Reik appealed to this court in the case numbered C-060531. Reik's first three assignments of error dealt with the substantial reduction in monthly child-support payments, and her fourth assignment of error dealt with attorney fees. In Reik's fifth assignment of error, Reik asserted that the trial court had erred by not addressing whether the suspension of spousal support extended the ten-year duration as provided in the divorce decree. In *Reik v. Bowden* ("*Reik I*"),<sup>2</sup> this court determined that the 11-month suspension of support payments, pursuant to the Agreed Entry, did not change

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<sup>2</sup> 172 Ohio App.3d 12, 2007-Ohio-2533, 872 N.E.2d 1253.

or modify the support order in the divorce decree.<sup>3</sup> Thus, Reik had not waived the amount that would have been payable during the period of suspension.<sup>4</sup> Therefore, this court remanded the case “for further consideration of the issue of the duration of spousal support consistent with this opinion.”<sup>5</sup>

After this court’s decision in *Reik I*, in June 2009, Reik filed a motion for a determination of spousal support resulting from the 11-month period of suspension. In January 2010, Reik filed an amended motion that added a request for child support for the 11-month period. In its July 2010 entry, the trial court agreed with the magistrate that, based upon the remand order in *Reik I*, Bowden was required to pay \$55,000 for spousal support for the 11-month suspension period. The trial court also agreed with the magistrate’s conclusion that Reik’s claim for child support for the 11-month period was barred by res judicata. The trial court based this conclusion on the remand order in *Reik I*, which was limited to the effect that the spousal-support suspension had on the duration of the support obligation, and Reik’s failure to appeal the trial court’s May 2006 decision setting a zero arrearage on child support as of April 2006.

In this appeal, Reik presents a single assignment of error, arguing that the trial court erred in holding that Reik’s request for child support for the 11-month period of suspension was barred by res judicata. Reik argues that this court’s opinion in *Reik I* makes clear that the February 2004 Agreed Entry was not a modification of the underlying order, and thus, Reik argues, this court held that child support for the 11-month period was due and owing. Under the doctrine of res judicata, “[a] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim

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<sup>3</sup> Id. at ¶32.

<sup>4</sup> Id.

<sup>5</sup> Id. at ¶34.

arising out of the transaction or occurrence that was the subject matter of the previous action.”<sup>6</sup>

Reik is correct in arguing that this court determined that the Agreed Entry was not a modification of the support order in the divorce decree. But this court never determined that child support for the 11-month suspension period was due and owing. In March 2006, the magistrate concluded that the child-support arrearage should be set at zero effective May 2006. The trial court entered its judgment in May 2006 and set a zero arrearage for child support as of April 2006. Although Reik had objected to the magistrate’s determination that the child-support arrearage be set at zero, Reik chose not to appeal the trial court’s zero-arrearage order in *Reik I*. “It is a time-honored maxim of appellate procedure that when an otherwise available appeal is not taken from an adverse judgment or order of the trial court, the affected party is held to have acquiesced in that determination and, consequently, waived its right to assert error therein on appeal of a related matter.”<sup>7</sup> Thus, based upon principles of finality, we are compelled to overrule Reik’s assignment of error.

Bowden has also appealed, raising a single assignment of error. Bowden argues that the trial court erred in ordering him to pay \$55,000 in spousal support for the suspension period. This assignment of error is without merit. In *Reik I*, this court determined that Reik had not waived the amount of spousal support that would have been payable during the period of suspension, and we ordered the trial court on remand to address the issue of the effect of the spousal-support suspension on the duration of spousal support consistent with our opinion. Based upon our remand order in *Reik I*, the trial court’s decision that the 11-month suspension did not extend the ten-

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<sup>6</sup> *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 1995-Ohio-331, 653 N.E.2d 226, syllabus.

<sup>7</sup> *State v. Felty* (1991), 2 Ohio App.3d 62, 64, 440 N.E.2d 803.

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year duration for spousal support and that Reik was entitled to spousal support for the 11-month period was not in error. Bowden's assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

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

**DINKELACKER, P.J., HILDEBRANDT and FISCHER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on March 23, 2011  
per order of the Court \_\_\_\_\_.  
Presiding Judge