

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

MIRAZIZ UMAROV,	:	APPEAL NO. C-150201
	:	TRIAL NO. DR-1100223
Plaintiff-Appellant,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
DILOROM MIRTALIPOVA,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

In seven assignments of error, plaintiff-appellant Miraziz Umarov (“Husband”) appeals the trial court’s denial of his motion to recuse a magistrate from all future post-decree matters in this divorce case.

Prior to this court’s exercise of jurisdiction over an appeal, an order of a lower court must be a final, appealable order, and meet the requirements under R.C. 2505.02(B), and if applicable, Civ.R. 54(B). *In re Adams*, 115 Ohio St.3d 86, 2007-Ohio-4840, 873 N.E.2d 886, ¶ 27. Relevant to this appeal, an order that affects a substantial right made in a special proceeding is a final order under R.C. 2505.02(B)(2). A “[s]ubstantial right” is “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1). A “[s]pecial proceeding” is “an action or

proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.” R.C. 2505.02(A)(2).

Civ.R. 53(D)(6) provides a litigant with a method to seek disqualification of a magistrate for bias; thus, a substantial right has been implicated in Husband’s motion to recuse the magistrate. Moreover, divorce qualifies as a special proceeding. *Wilhelm-Kissinger v. Kissinger*, 129 Ohio St.3d 90, 2011-Ohio-2317, 950 N.E.2d 516, ¶ 6. The question becomes then whether the denial of Husband’s motion to recuse the magistrate affected his right to an unbiased magistrate. “An order which affects a substantial right has been perceived to be one which, if not immediately appealable, would foreclose appropriate relief in the future.” *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63, 616 N.E.2d 181 (1993).

The record indicates that Magistrate Judith Levy denied Husband’s contempt motion on December 10, 2014. On December 18, 2014, Husband filed his motion to recuse Magistrate Levy—that same day, a hearing had been scheduled in front of Magistrate Levy on a motion to compel filed by defendant-appellee Dilorom Mirtalipova (“Wife”). The next relevant entry on the docket appears on December 22, 2014, in which Magistrate William Murphy denies Wife’s motion, and Magistrate Murphy states that he heard Wife’s matter at the December 18, 2014 hearing. The trial court then denied Husband’s motion to recuse Magistrate Levy from all future matters on February 12, 2015. Husband timely appealed that ruling.

Because no matter had been assigned to Magistrate Levy at the time the trial court denied Husband’s motion to recuse, his right to an unbiased factfinder had not been affected. Therefore, we are without jurisdiction to entertain Husband’s appeal.

Appeal dismissed.

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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.

CUNNINGHAM, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on November 25, 2015
per order of the court _____.
Presiding Judge