

COURT OF APPEALS  
GUERNSEY COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

MARY E. FRAME (WATSON)	:	JUDGES:
	:	William B. Hoffman, P.J.
Plaintiff-Appellant	:	John W. Wise, J.
	:	Julie A. Edwards, J.
-vs-	:	
	:	Case No. 08 CA 16
DOUGLAS G. FRAME	:	
	:	
Defendant-Appellee	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil Appeal From Guernsey County Court  
Of Common Pleas Case No. 03 DS 640

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: June 2, 2009

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

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*Edwards, J.*

{¶1} Plaintiff-appellant, Mary Frame (Watson), appeals from the December 21, 2007, Magistrate's Decision, the March 13, 2008, Entry and the April 24, 2008, Agreed Entry Nunc Pro Tunc of the Guernsey County Court of Common Pleas.

#### STATEMENT OF THE FACTS AND CASE

{¶2} In January of 2004, a Decree of Dissolution was filed in this case. The Separation Agreement incorporated into the decree granted custody of the three minor children to appellant and named her the residential parent. Appellee was granted parenting time rights. The Separation Agreement further ordered appellee to continue maintaining health insurance coverage on the minor children and ordered each parent to be responsible for one-half of the uninsured medical expenses, with the residential parent paying the first \$100.00, and to share equally in special expenditures such as lessons, activities and uniforms.

{¶3} On July 16, 2007, appellee filed a Motion for Change of Residential Parent, for Adjustment of Child Support and for Determination of Medical Support. Appellee, in his motion, requested that he be designated the residential parent of Connor Frame (DOB 6/6/97) because circumstances had changed since the prior court orders. Appellee specifically noted that appellant had remarried. An evidentiary hearing on such motion was scheduled for August 22, 2007, but was later rescheduled to September 26, 2007, and then to October 16, 2007.

{¶4} Appellant, on August 3, 2007, filed a Motion to Establish Medical and Miscellaneous Payments. Appellant, in her motion, asked the trial court to hold a

hearing regarding the “payment of various medical bills and outstanding extracurricular activities costs.”

{¶5} Hearings on the above two motions were held before a Magistrate on October 16, 2007, November 19, 2007, and December 11, 2007. Pursuant to a Magistrate’s Decision filed on December 21, 2007, the Magistrate recommended that appellee’s Motion for Change of Residential Parent be granted and that appellee be named residential parent of Connor. The Magistrate further recommended that appellant be ordered to provide healthcare insurance on the minor children through her employer. The Magistrate, in her decision, stated in relevant part, as follows: “Father [appellee] is no longer subject to an order to provide health care insurance for the children...; however, as long as both parties continue to carry insurance on the minor children, they shall receive credit for the cost of the same.” The Magistrate also recommended that any uninsured medical expenses be divided equally between the parties. Moreover, the Magistrate also recommended that appellant pay a total of \$93.22 per month in child support. A Judgment Entry approving the Magistrate’s Decision and adopting the same was filed on December 21, 2007, the same day the Magistrate’s Decision was filed.

{¶6} Appellant filed objections to the Magistrate’s Decision on January 3, 2008, and January 24, 2008. Appellant, in her objections, challenged the recommendation that appellee be named the residential parent of Connor and also challenged the Magistrate’s finding that appellee’s costs for health insurance equaled \$10,710.00 per year. The Magistrate, on the child support computation summary worksheet that was attached to the Magistrate’s Decision, had included such amount. On January 14,

2008, appellee filed objections and also a motion for clarification. Appellant also filed a supplemental objection on February 6, 2008.

{¶7} On March 4, 2008, appellee filed a Motion to Cite appellant in contempt for failing to supply a medical insurance card and to pay child support. A hearing on such motion was scheduled for April 3, 2008.

{¶8} Thereafter, as memorialized in an Entry filed on March 12, 2008, the trial court denied appellee's objections to the Magistrate's Decision and denied appellant's objections in part. The trial court, in its Entry, stated, in relevant part, as follows:

{¶9} "Pursuant to Civil Rule 53(E), the Court instructs the Magistrate to take additional evidence and file Supplemental Magistrate's Decision as it relates to Objection #7 – Cost of Health Insurance. Said additional evidence shall be presented at the time of contempt hearing scheduled in this case on April 3, 2008 at 9:00 A.M. or at such hearing as may be necessary and convenient for the Magistrate and the parties. The Magistrate shall submit the Supplemental Magistrate's Decision to the Court within forty-five (45) days."

{¶10} Appellant, on March 12, 2008, filed a motion asking that the April 3, 2008 hearing be held before the Trial Judge rather than the Magistrate. Such motion was denied pursuant to an Entry filed on March 13, 2008. The trial court, in such Entry, noted that the objections to the Magistrate's Decision had been ruled on and the matter had been returned to the Magistrate for further hearing.

{¶11} As memorialized in an Agreed Entry filed on April 8, 2008, appellee's Motion to Cite appellant in contempt was withdrawn and the hearing canceled. As agreed by the parties, appellant was ordered to provide health insurance for the three

minor children and appellee was no longer subject to an order to maintain health insurance for the children. The trial court, in such Entry, further referred the issue of child support back to the Child Support Enforcement Agency “to calculate the correct amount of child support effective January 1, 2008.” An Agreed Entry Nunc Pro Tunc was filed on April 24, 2008, which added language ordering that costs were to be assessed equally to both parties.

{¶12} Appellant now appeals from the December 21, 2007, Magistrate’s Decision, the March 13, 2008, Entry and the April 24, 2008, Agreed Entry Nunc Pro Tunc, raising the following assignments of error:

{¶13} “I. THE TRIAL COURT ERRED IN DETERMINING THAT A CHANGE IN CIRCUMSTANCES HAD OCCURRED.

{¶14} “II. THE TRIAL COURT ERRED IN NOT CONSIDERING THE EFFECTS OF THE ‘SPLIT SIBLING CUSTODY’ AWARD ISSUE IN DETERMINING CUSTODY.

{¶15} “III. THE TRIAL COURT ERRED IN IMPROPERLY APPLYING THE BEST INTEREST OF THE CHILD TEST IN THIS CASE.

{¶16} “IV. THE TRIAL COURT HAD NO FACTUAL BASIS FOR FINDING THAT THE MODIFICATION IS NECESSARY TO SERVE THE BEST INTEREST AND THAT THE HARM LIKELY TO BE CAUSED BY A CHANGE IS OUTWEIGHED BY THE ADVANTAGES OF A CHANGE IN CUSTODY.

{¶17} “V. THE TRIAL COURT HAD NO FACTUAL BASIS FOR FINDING THAT APPELLEE HAD COSTS FOR INSURANCE EQUAL TO \$10,710.00 PER YEAR.

{¶18} “VI. THE TRIAL COURT ERRED IN FAILING TO CALCULATE THE AMOUNT THAT APPELLEE OWED APPELLANT.”

{¶19} However, before reaching the merits of appellant's assignments of error, this Court must determine whether it has jurisdiction to hear this appeal. Section 3(B)(2), Article IV of the Ohio Constitution limits this Court's appellate jurisdiction to the review of final judgments of lower courts. 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). *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 88, 541 N.E.2d 64.

{¶20} As is stated above, the Magistrate's Decision was filed on December 21, 2007, and a Judgment Entry approving the Magistrate's Decision and adopting the same was filed the same day. Objections were then filed.

{¶21} Civ.R. 53 (D)(4)(e)(i) states as follows: "(i) *Judgment*. The court may enter a judgment either during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by Civ.R. 53(D)(3)(b)(i) for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered." (Emphasis added).

{¶22} The trial court, in its March 12, 2008, Entry, denied the objections to the Magistrate's Decision with the exception of objection #7 as it related to the cost of health insurance, and that issue was remanded to the magistrate to take additional evidence. The trial court, in such Entry, did not vacate, modify or adhere to the judgment previously entered, which was the December 21, 2007, Judgment Entry, which had approved the Magistrate's Decision and adopted the same. Therefore, the

March 12, 2008, Entry is not a final, appealable order, and, in fact, appellant does not appeal the March 12, 2008, Entry.

{¶23} The appellant appeals the April 24, 2008, Agreed Entry Nunc Pro Tunc which orders appellant to provide health insurance and declares all issues set for hearing to be moot. One of the issues set for hearing was what amount, if any, should appellee be credited with on the child support guidelines worksheet for the cost of health insurance. The magistrate had recommended that appellee get credit if appellee chose to maintain the insurance, even though appellee was not ordered to maintain it. It is not clear to us that this Agreed Entry Nunc Pro Tunc resolves that issue. In addition, this entry does not contain language indicating whether the court modified, vacated or adhered to its previous judgment of December 21, 2007. But, most significantly, this entry refers the issue of child support back to the Child Support Enforcement Agency “to calculate the correct amount of child support effective January 1, 2008.”<sup>1</sup>

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<sup>1</sup> We note that this Court, in *In re Hallman*, Guernsey App. No. 07 CA 45, 2008-Ohio-5454, held that the trial court had a statutory duty to calculate the revised child support amount on its own, rather than delegate that process to the Child Support Enforcement Agency.

{¶24} For the foregoing reasons, we find that there is no final, appealable order in this case.

{¶25} Accordingly, this case is dismissed for lack of a final, appealable order.

By: Edwards, J.

Wise, J. concurs and

Hoffman, P.J. dissents without opinion

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JUDGES

JAE/d0205

[Cite as *Frame v. Frane*, 2009-Ohio-2668.]

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

MARY E. FRAME (WATSON)	:	
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Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
DOUGLAS G. FRAME	:	
	:	
	:	
Defendant-Appellee	:	CASE NO. 08 CA 16

For the reasons stated in our accompanying Memorandum-Opinion on file, the appeal of the Guernsey County Court of Common Pleas, Domestic Relations Division, is dismissed. Costs assessed to appellant.

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JUDGES