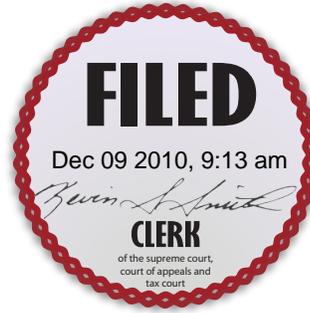


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

KIMBERLY COVEY,)
)
Appellant-Petitioner,)
)
vs.)
)
STEVEN COVEY,)
)
Appellee-Respondent.)

No. 55A05-1004-DR-298

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable G. Thomas Gray, Judge
Cause No. 55D01-0901-DR-00023

December 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Kimberly Covey (Mother) appeals the order dissolving her marriage to Steven Covey (Father). As the order Mother appeals was not a “final judgment” as defined by Ind. Appellate Rule 2(H), we lack jurisdiction unless Covey brought an appeal of an interlocutory order pursuant to Appellate Rule 14. *See* Ind. App. R. 5(B). She did not, so we dismiss.

FACTS AND PROCEDURAL HISTORY

Mother and Father married on March 19, 1994, and Mother filed for dissolution on March 16, 2007. The parties had two children. On March 12, 2010, the trial court entered an order that resolved all issues except child support. It determined “[t]he issues of support shall be revisited by the attorneys for the parties in light of this custody order and an [sic] new worksheet shall be granted.” (Appellant’s App. at 17.)

DISCUSSION AND DECISION

Mother’s Notice of Appeal indicates she is appealing a final judgment of a case involving issues of dissolution, child custody, and child support. However, the appealed order is not a final judgment as defined by our Appellate Rules.

A judgment is final if it “disposes of all claims as to all parties,” App. R. 2(H)(1), thereby ending the case and leaving nothing for future determination. *Georgos v. Jackson*, 790 N.E.2d 448, 451 (Ind. 2003). If an order does not dispose of all claims by all parties, it nevertheless can be a “final judgment” for purposes of appeal if the trial court

in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties.

App. R. 2(H)(2).¹

“In an action for dissolution of marriage under IC 31-15-2, . . . the court *may* order either parent or both parents to pay any amount reasonable for support of a child.” Ind. Code § 31-16-6-1(a) (emphasis added). Mother’s petition for dissolution indicated the issues to be resolved by the dissolution court included “temporary maintenance, custody and support of minor children, [and] for an equitable division of the property of the parties,” (Appellee’s App. at 83,) and child support was a contested issue at the hearing. The appealed order was explicit that the issue of support was not decided; it therefore is not a final order. *See, e.g., Bush v. Bush*, 37 Ind. 164, 166 (Ind. 1871) (it is “the imperative duty of the court, in decreeing a divorce, to make provision for the guardianship, custody, support, and education of the minor children.”).

Neither does the appealed order include language regarding T.R. 54(B) or T.R. 56(C), whereby the court could have expressly entered judgment on fewer than all the claims. *See, e.g., R.W.M v. A.W.M*, 926 N.E.2d 538, 541 (Ind. Ct. App. 2010) (judgment was not final in paternity proceedings when all pending matters were not resolved and judgment neither contained any express statement that “there is no just reason for delay” nor directed entry of judgment “as to fewer than all the claims or parties” pursuant to Trial Rule 54(B)).

As the trial court’s order was not final, Mother cannot appeal unless the order is an appealable interlocutory order under Appellate Rule 14. App. R. 5(B). Certain interlocutory

¹ Appellate Rule 2(H) lists three other instances in which an order is considered a “final judgment:” when it is final under Trial Rule 60(C), when it is deemed final by law, or when it is a ruling on a timely motion to correct error. None of those circumstances is relevant herein.

orders may be appealed as a matter of right. App. R. 14(A). Appeals as a matter of right are allowed only for interlocutory orders:

- (1) For the payment of money;
- (2) To compel the execution of any document;
- (3) To compel the delivery or assignment of any securities, evidence of debt, documents or things in action;
- (4) For the sale or delivery of the possession of real property;
- (5) Granting or refusing to grant, dissolving, or refusing to dissolve a preliminary injunction;
- (6) Appointing or refusing to appoint a receiver, or revoking or refusing to revoke the appointment of a receiver;
- (7) For a writ of habeas corpus not otherwise authorized to be taken directly to the Supreme Court;
- (8) Transferring or refusing to transfer a case under Trial Rule 75; and
- (9) Issued by an Administrative Agency that by statute is expressly required to be appealed as a mandatory interlocutory appeal.

Id. Such an interlocutory appeal is available when child support is ordered outside of a final judgment, *see Crowley v. Crowley*, 708 N.E.2d 42, 50 (Ind. Ct. App. 1999). But child support was not ordered in the instant case, so neither App. R. 14(A)(1) nor any of the other subsections apply.

Because the order Mother appeals is neither a final judgment nor an interlocutory order appealable as of right, the only ground for Mother's appeal is a discretionary interlocutory appeal pursuant to App. R. 14(B). That Rule permits jurisdiction over an interlocutory appeal if the trial court certifies its order and we accept jurisdiction. App. R. 14(B). No such certification or acceptance occurred here.

Because the trial court's order is not a final judgment on all issues surrounding the dissolution of the marriage of Mother and Father, is not an interlocutory order appealable as

of right, and was not properly certified and accepted by this court as a discretionary interlocutory appeal, we do not have jurisdiction over Mother's appeal. Therefore, we dismiss Mother's appeal.

Dismissed.

FRIEDLANDER, J., and MATHIAS, J., concur.