

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
August 4, 2009 Session

**LOUISE Y. LEDBETTER, M.D.. v. CHRISTOPHER DOUGLAS DIRR**

**Direct Appeal from the Chancery Court for Maury County  
No. 96-157 Robert L. Jones, Chancellor**

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**No. M2008-01285-COA-R3-CV - Filed September 15, 2009**

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In this post-divorce action, Father appeals the trial court's order on child support obligations and visitation. On review, we have determined that the trial court did not adjudicate the contempt claims of both Father and Mother. Furthermore, the trial court did not fully adjudicate Father's claim to modify his child support obligations. Consequently, we dismiss this matter because the order appealed is not a final judgment.

**Tenn. R. App. P. 3. Appeal as of Right; Appeal Dismissed and Remanded**

J. STEVEN STAFFORD, J., delivered the opinion of the court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R FARMER, J., joined.

Karla C. Hewitt, Nashville, Tennessee, for the Appellant, Christopher D. Dirr.

Mark A. Free, Columbia, Tennessee, for the Appellee, Louise Y. Ledbetter, M.D.

**MEMORANDUM OPINION<sup>1</sup>**

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<sup>1</sup> Rule 10 of the Rules of the Court of Appeals of Tennessee provides:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

The parties to this appeal, Louise Y. Ledbetter (“Mother”) and Christopher Douglas Durr (“Father”), were divorced by decree of the Maury County Chancery Court in September 1997. The trial court’s order awarded sole custody of the parties’ minor children to Mother, and set Father’s child support obligations. Since that time, the parties have been involved in numerous post-divorce proceedings, one of which led to this Court’s decision in *Durr v. Durr*, No. M2001-03049-COA-R3-CV, 2003 WL 22345479 (Tenn. Ct. App. Oct. 15, 2003).

The present appeal derives from an action initiated by Mother in Maury County Chancery Court. Her “Petition to Modify Visitation and for Contempt” was filed May 18, 2007. Specifically, Mother asked the court to alter the children’s visitation schedule and to find Father in contempt for his failure to pay \$22,000 in attorney’s fees as previously ordered by the court.

On July 6, 2007, Father filed his answer and a counter-petition to modify visitation and his child support obligations. He also asked the court to find Mother in contempt for failing to follow the court’s visitation schedule.

In his answer, Father conceded that he had been ordered to pay \$22,000 for Mother’s attorney’s fees in installments of \$400.00 per month beginning January 1, 2002. He alleged, however, that this debt to Mother had been discharged by order of the U.S. Bankruptcy Court for the Middle District of Tennessee on February 28, 2005. On November 26, 2007, Father also filed a motion for contempt in the bankruptcy court alleging that Mother violated its discharge injunction when she filed the action to collect the \$22,000.

On February 13, 2008, the bankruptcy court entered an order of abstention stating that it would delay ruling on Father’s motion until the trial court clarified whether the \$22,000 was in the nature of support or only attorney’s fees. The trial court, on May 12, 2008, entered an order specifying the portions of the \$22,000 which should be considered support and which should be considered attorney’s fees.

On May 12, 2008, the trial court also entered an order concerning custody. The order awarded Mother a judgment against Father for past child support arrearage totaling \$17,533.00. The order also stated that “Father’s current and future child support obligations shall be adjusted retroactive to October 1, 2007, and calculated by the attorneys using [the child support guidelines] and assuming the Father has the children fifty (50) days per year.” The order, however, did not specify the precise amounts that Father would be required to pay. To date, the parties have not agreed on Father’s exact child support obligations, and the trial court has not entered a ruling on this question. Finally, the trial court’s order altered the visitation schedule for the two minor children.

Father filed a timely appeal of the trial court’s order. He raises three issues, as stated in his brief, for review:

- I. Whether the trial court abused its discretion by de facto terminating Father’s visitation.

II. Whether the trial court erred in classifying the award of attorney's fees from the November 6, 2001 order after the order had become final and had been upheld on appeal.

III. Whether the trial court erred in failing to set child support pursuant to his request which was properly before the court, and in failing to order the modification to be retroactive to the date of filing of Father's petition.

### Law and Analysis

The parties' issues notwithstanding, we must first determine whether this court has jurisdiction to adjudicate this appeal. Tenn. R. App. P. 13(b). Rule 3(a) of the Tennessee Rules of Appellate Procedure defines an appeal as of right from a final judgment as follows:

In civil actions every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right. Except as otherwise permitted in rule 9 and in Rule 54.02 Tennessee Rules of Civil Procedure, if multiple parties or multiple claims for relief are involved in an action, any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before entry of a final judgment adjudicating all the claims, rights, and liabilities of all parties.

Tenn. R. App. P. 3(a). The parties have not filed an application for an interlocutory appeal, and the order appealed from the trial court was not made final pursuant to Rule 54.02 of the Tennessee Rules of Civil Procedure. Consequently, we must determine if the order appealed was a final judgment.

A final judgment is "one that resolves all the issues in the case, 'leaving nothing else for the trial court to do.'" *In re Estate of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003) (quoting *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997)). Any trial court order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not final or appealable as of right. *State ex rel. Garrison v. Scobey*, No. W2007-02367-COA-R3-JV, 2008 WL 4648359, at \*5 (Tenn. Ct. App. Oct. 22, 2008). If the order appealed is not a final judgment, this Court does not have subject matter jurisdiction to adjudicate the appeal. *Henderson*, 121 S.W.3d at 645.

In the present case, several claims made by the parties were not adjudicated by the trial court. Mother, in her initial petition, alleged that Father was in willful contempt of the court's prior orders because he had not yet paid \$22,000 for her attorney's fees. We cannot find an adjudication of this claim in the record, and Mother conceded at oral argument that the contempt claim was "in limbo." Likewise, we cannot find an adjudication of Father's contempt claim against Mother for her alleged failure to follow the court's previous orders. Without a ruling from the trial court on these two claims, we cannot consider the merits of the remaining issues raised on appeal.

Additionally, the trial court's order is not a final judgment because it does not adequately address the modification of Father's child support obligations. The order states that his obligations "shall be adjusted retroactive to October 1, 2007, and calculated by the attorneys using a Tennessee Child Support Guideline worksheet and assuming the Father has the children fifty (50) days per year." The order, however, does not specify the amounts owed, and the parties have not calculated those amounts as instructed. Under Tenn. Code Ann. § 36-5-101(a)(2), the court must fix "some definite amount" to be paid as child support, or the court may approve of terms of an agreement between the parties on the issue. *See* Janet L. Richards. *Richards on Tennessee Family Law* § 1004 (3d ed. 2008). The trial court's order does not comply with the statute and both parties appear to concede that this issue has not been fully addressed by the trial court. Because the child support claims have not been fully adjudicated, a final judgment has not been entered by the trial court. Consequently, we do not have jurisdiction to adjudicate this appeal.

For these reasons, this appeal is dismissed. The matter is remanded to the trial court for further action on the parties' three remaining claims. Costs of this appeal are assessed to the Appellant, Christopher Douglas Dirr.

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J. STEVEN STAFFORD, J.