

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

COBY MURRELL,	:	APPEAL NO. C-160331
Plaintiff-Appellant,	:	TRIAL NO. DR1001245
vs.	:	
HEATHER SMITH-MURRELL,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Coby Murrell (“husband”) appeals from the trial court’s entry adopting the magistrate’s decision denying his motion to modify a division of property order.

Husband and Heather Smith-Murrell (“wife”) were divorced by decree entered February 10, 2011. The divorce decree provided that “[h]usband has an interest in a defined benefit pension plan * * * which shall be divided by [Division of Property Order, (“DOPO”)] * * *. The Court shall retain jurisdiction with respect to the DOPO * * *.” The trial court entered the DOPO on March 27, 2012.

Husband became ill and began receiving disability payments. Pursuant to the DOPO, wife began receiving a portion of these payments. Husband believed that wife was not entitled to the payments, and on February 4, 2015, he filed a motion to modify the divorce decree. The magistrate heard the motion on April 15, 2015, and

issued a decision with findings of fact and conclusions of law on April 22, 2015. The magistrate found that he lacked continuing jurisdiction over postdecree property issues and denied husband's motion. On May 6, 2015, husband filed objections to the magistrate's decision. Husband contested the magistrate's finding that the trial court lacked jurisdiction, and cited case law to support the proposition that his disability benefits were not marital property.

On May 28, 2015, the trial court issued an entry on the objections, holding that husband's jurisdiction-related objections were well founded and that the trial court "ha[d] continuing jurisdiction over the issue of the DOPO." However, because husband failed to file a transcript of the hearing as required by Civ.R. 53(D)(3)(b)(iii), the trial court dismissed his remaining objections "for want of a transcript." The magistrate and the trial court took no further action.

Husband did not appeal the trial court's May 28, 2015 ruling. Instead, on August 19, 2015, he filed a motion to modify the decree regarding pension benefits, seeking essentially the same relief as his February 4, 2015 motion. Wife's counsel moved to dismiss the motion on res judicata grounds, and on December 15, 2015, the magistrate granted wife's motion. Husband filed objections to the magistrate's decision, and the trial court issued an entry overruling the objections on February 24, 2016. Husband timely filed a notice of appeal from the February 24, 2016 entry on March 22, 2016.

App.R. 3(D) provides that "[t]he notice of appeal * * * shall designate the judgment, order or part thereof appealed [sic] from." Husband's notice of appeal designated the February 24, 2016 entry as the order appealed from. The basis of that entry was the trial court's adoption of the magistrate's decision that res judicata barred husband's August 19, 2015 motion. Yet husband did not assign as error the

trial court's res judicata holding. Rather, his assignments of error challenged aspects of the trial court's May 28, 2015 ruling. "An assignment of error must relate to the order or judgment which is the subject of the notice of appeal." *State v. Rhoda*, 3d Dist. Henry No. 7-07-10, 2008-Ohio-1346, ¶ 13; *State v. Thompkins*, 10th Dist. Franklin No. 07AP-74, 2007-Ohio-4315, ¶ 7. *See also Johnson v. Brown*, 60 Ohio Law Abs. 195, 101 N.E.2d 11, 12 (2d Dist.1949).

Husband did not file a notice of appeal within 30 days of the trial court's May 28, 2015 entry. Furthermore, the trial court's ruling that res judicata barred husband's second motion was not assigned as an error in this appeal. Accordingly, because husband did not assign any errors pertaining to the judgment designated in his notice of appeal, his assignments of error are overruled and the trial court's judgment is affirmed.

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

MOCK, P.J., ZAYAS and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on August 2, 2017

per order of the court _____.

Presiding Judge