

NOT DESIGNATED FOR PUBLICATION

No. 110,205

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

In the Matter of the Marriage of

NENE E. CARPENTER, n/k/a ROSS,
Appellant,

and

TEVIS CARPENTER,
Appellee.

MEMORANDUM OPINION

Appeal from Sedgwick District Court; DAVID L. DAHL, judge. Opinion filed May 23, 2014.
Dismissed.

Nene E. Ross, appellant pro se.

Shannon A. Kelly, of Wichita, for appellee.

Before MALONE, C.J., HILL and ARNOLD-BURGER, JJ.

Per Curiam: Appellate jurisdiction of this court may only be invoked in a civil proceeding, as a matter of right, from a final decision. K.S.A. 2012 Supp. 60-2102(a)(4). A decision is considered final when all the issues in the case are determined, not just part of the issues. Because the order from which Nene E. Carpenter (Mother) seeks to appeal is not a final order—the issues of custody and contempt are still unresolved—we are required to dismiss the appeal.

FACTUAL AND PROCEDURAL HISTORY

This case involves a long suffering parenting battle that spans 14 years, countless hearings, and a parade of different district court judges. We will only briefly summarize the facts that bring us to this point.

In February 2000, Mother and Tevis Carpenter (Father) were granted a divorce. Mother received residential custody of their child, who was at that time 1 year old. Six years later, the case manager recommended that residential custody be changed from Mother to Father. Father complained that Mother moved without providing him notice; that she failed to comply with court-ordered parenting time; that Mother hindered Father's contact with their son; and that she was uncooperative in case management.

The district court agreed and ordered a change of custody from Mother to Father. In addition, Mother was found in contempt of court for failing to allow Father his parenting time with their son. She was sentenced to 14 days in jail, but the district court granted her 12 months of probation after serving the equivalent of 1 day in jail. If Mother failed in following the court's orders, she would be required to serve the remaining 13 days of her sentence. Mother appealed the district court's order, but the appeal was dismissed by this court as interlocutory.

In April 2008, Mother was again found in contempt of court for failing to pay child support as ordered. In May 2008, Mother filed a change of custody motion, alleging that their son was abused and his school grades dropped. Mother also asked that Father be held in contempt of court. At the hearing, Mother requested a continuance and it was granted. Mother was ordered to appear before the court on October 27, 2008, but failed to appear. A bench warrant was issued for her arrest.

Five years later, in March 2013, Mother filed another motion to modify residential custody because Father failed to abide by the court's order regarding Mother's parenting time. Mother also asked that Father be held in contempt of court for this failure.

The matter was set for hearing in May 2013. Mother was present with her attorney. The district court made temporary orders in accordance with the best interests of the child. The court ordered that Earnest Ross (Mother's husband) have no contact with the child and that the child would meet with the judge in the judge's office. Mother was given certain dates in order to exercise her parenting time, but she was responsible for the transportation costs and she was required to travel on a direct route to and from Louisiana. Mother was required to return the child on time, and her failure to do so would result in the termination of her parenting time. The district court withdrew the pending bench warrant for Mother's arrest and vacated the remainder of her 13-day sentence. Furthermore, limited case management was ordered, and if the parties were unable to agree on any modifications relative to their son, then either party could file for a review hearing or an evidentiary hearing. The district court did not rule on either the change of custody motion or the contempt motion filed by Mother.

Mother filed a timely notice of appeal from the court's order.

ANALYSIS

We realize this issue is important to the parties. However, while neither party raises this issue, an appellate court has a duty to question jurisdiction on its own initiative. When the record discloses a lack of jurisdiction, it is the duty of the appellate court to dismiss the appeal. *Ryser v. State*, 295 Kan. 452, 456, 284 P.3d 337 (2012). Unfortunately, such is the case here.

The right to appeal is entirely statutory and is not contained in the United States or Kansas Constitutions. Subject to certain exceptions, Kansas appellate courts have jurisdiction to entertain an appeal only if the appeal is taken in the manner prescribed by statutes. *Harsch v. Miller*, 288 Kan. 280, 287, 200 P.3d 467 (2009). Appellate jurisdiction of this court may only be invoked in a civil proceeding, as a matter of right, from a final decision. K.S.A. 2012 Supp. 60-2102(a)(4). "A judgment is the final determination of the parties' rights in an action." K.S.A. 2012 Supp. 60-254(a). The reason for this rule is clear, to prevent piecemeal appeals. Parties may not appeal from an order in the middle of litigation in hopes this court will decide the order is appealable. *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 610, 244 P.3d 642 (2010).

A final decision generally disposes of the entire merits of a case and leaves no further questions or the possibility of future directions or actions by the court. *In re T.S.W.*, 294 Kan. 423, 433, 276 P.3d 133 (2012). A final decision is an order that definitely terminates a right involved in the action. 294 Kan. at 433. In other words, a judgment or order is considered final "if all the issues in the case are determined, not just part of the issues." *AMCO Ins. Co. v. Beck*, 258 Kan. 726, Syl. ¶ 1, 907 P.2d 137 (1995).

The order from which Mother appeals is clearly not a final order. The district court did not rule on Mother's motions for a custody change, nor did it rule on her motion to hold Father in contempt, which were the only two issues before the court. In fact, the court references the temporary nature of the order in the order itself. Because the court made no final determination of appellant's motions, we have no final order before us for review.

Instead, the court ordered the case into limited case management (LCM) to determine if there was some way to work the case out short of an evidentiary hearing. The court found:

"An LCM is ordered. Both parties will cooperate with the limited case manager to complete the LCM in a timely fashion. . . . After the LCM is completed, the parties will decide whether they can agree on any modifications relative to [the child]. If they cannot, either party may file for a review hearing or an evidentiary hearing."

Accordingly, the parties' rights in this action have not been finally determined because Mother and Father were ordered into LCM and were allowed to come to an agreement on any possible modifications. If they were not able to agree to any modifications, then either Mother or Father could file for a review hearing or an evidentiary hearing. Because of this, Mother's appeal is dismissed for lack of jurisdiction. Both parties still retain the right to appeal any final order issued by the district court on the matters before it.

Dismissed.