



H.W. v. K.W.

2010 | Cited 0 times | California Court of Appeal | January 22, 2010

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K.W. appeals in propria persona from the trial court's denial of ex parte relief. We dismiss the appeal for lack of jurisdiction.

FACTS

K.W. and H.W. are the parents of a minor child of whom H.W. has sole legal custody. K.W. filed an ex parte application which in part sought to prevent the child's enrollment at a new school. K.W. represented herself at the ex parte hearing on September 2, 2008, arguing that changing schools was not in the child's interest and that although school started the next day, K.W. could still reenroll the child at her former school. The trial court explained: "I can't have a hearing in 24 hours, and figure out what's best for [the child]," and that H.W. had the decision-making authority over the child so that "you've got to really show me that he's doing something terribly harmful" to get relief on an ex parte basis. The court suggested that K.W. file a motion to obtain a date for a hearing. Instead, K.W. filed a notice of appeal the same day.

On appeal, K.W., again proceeding in propria persona, argues that the court should have prohibited the school change, that the child support orders in the case are erroneous, that she should have been awarded attorney's fees, and that an earlier order that she pay some of H.W.'s attorney's fees was in error. She also asks for sole legal custody of the child.

The scope of K.W.'s appeal reaches far beyond the issue of her ex parte request and the record she provides is wholly inadequate for the review of those broader issues. On that basis alone, we would resolve this appeal against her. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) Although she is representing herself, she is entitled to the same consideration as any other litigant represented by an attorney, and is held to the same rules of procedure. (*First American Title Co. v. Mirzaian* (2003) 108 Cal.App.4th 956, 958, fn. 1.)

There is a more fundamental defect, however, which is that the court action that K.W. appeals from is not a final and appealable order. The trial court simply determined that there was no emergency



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and denied ex parte relief, advising K.W. to file a motion and set the matter for a hearing. K.W. apparently did not do so, choosing instead to file this appeal. The "one judgment" rule prohibits appellate review of intermediate rulings until the final resolution of the case, and trial court orders are ordinarily appealable only when expressly made so by statute. (*Griset v. Fair Political Practices Com.* (2001) 25 Cal.4th 688, 696-698.) An order is a final determination when it "contemplate[s] no further action" by the court and "dispose[s] of all issues between all parties." (*Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, 583.) The trial court made no final or adverse determination on K.W.'s claim. Further, the record shows no proper order; the court's September 2, 2008 oral ruling on the request for ex parte relief is not an order, which by definition must be in writing. (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1170.) We have no jurisdiction to reach the merits of an appeal from an order that is not properly appealable. (*Griset v. Fair Political Practices Com.*, supra, 25 Cal.4th at p. 696.) We therefore dismiss the appeal for lack of jurisdiction.

H.W. requests sanctions (in the form of fees and costs) against K.W. for filing a frivolous appeal. "[A]n appeal may be found frivolous and sanctions imposed when (1) the appeal was prosecuted for an improper motive-to harass the respondent or delay the effect of an adverse judgment; or (2) the appeal indisputably has no merit, i.e., when any reasonable attorney would agree that the appeal is totally and completely without merit." (*Bach v. County of Butte* (1989) 215 Cal.App.3d 294, 310; see Code Civ. Proc., § 907.) Although H.W. does urge us to impose sanctions to deter K.W. from "taking similar actions" in the future, H.W. does not argue that K.W. had an improper motive for filing this appeal. As we do not have jurisdiction, we do not reach the substantive issues to determine whether the appeal is totally lacking in merit, and "there is no basis for the imposition of sanctions." (*Winter v. Rice* (1986) 176 Cal.App.3d 679, 683.)

DISPOSITION

The appeal is dismissed. Costs on appeal are awarded to respondent.

We concur: MALLANO, P. J., ROTHSCHILD, J.

