

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000819-MR

J.W.M.

APPELLANT

v.

APPEAL FROM TRIGG CIRCUIT COURT
HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 01-CI-00164

E.K.M.

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI, and TACKETT, JUDGES.

BUCKINGHAM, JUDGE: J.W.M., the appellant, and E.K.M., the appellee, are the parents of a child born on March 5, 1999. The parties herein were never married. J.W.M. filed a petition for custody of the child in the circuit court, and the court entered a judgment on November 26, 2001, awarding joint custody of the child to the parties with E.K.M. to have primary physical custody.

J.W.M. filed two post-judgment motions. The first was a motion to alter, amend, or vacate the judgment pursuant to CR¹ 59.05. The second was a motion for a new trial pursuant to CR 59.01. On March 21, 2002, the trial court entered an order granting in part and denying in part the first motion. However, neither that order nor any other order addressed J.W.M.'s motion for a new trial. J.W.M. then appealed from the judgment and from the order denying the CR 59.05 motion.

This court has jurisdiction of appeals from final judgments or orders of circuit courts. See KRS² 22A.020(1). The filing of a motion for a new trial suspends the finality of a judgment until the motion is ruled on by an order. See CR 73.02(1)(e) and White v. Hardin Co. Bd. of Ed., Ky., 307 S.W.2d 754, 755 (1957).³ Therefore, since the circuit court did not rule on the motion for a new trial, the judgment awarding custody was not final when J.W.M. filed the notice of appeal herein. Thus, we lack jurisdiction to consider the appeal. See American Fidelity & Casualty Co. v. Patterson, Ky., 237 S.W.2d 57, 58 (1951).

¹ Kentucky Rules of Civil Procedure.

² Kentucky Revised Statutes.

³ See also Bates v. Connelly, Ky., 892 S.W.2d 586 (1995), wherein the Kentucky Supreme Court held that "a judgment subject to a CR 59 motion cannot be final until the motion has been ruled on." Id. at 588.

It is hereby ORDERED that this appeal be DISMISSED.

ENTERED: July 18, 2003

/s/ David C. Buckingham
JUDGE, COURT OF APPEALS