

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-555

JULY TERM, 2006

Kellie Coakley

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APPEALED FROM:

}

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v.

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Addison Family Court

}

Kent Wright

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DOCKET NO. 174-12-05 Anfa

Trial Judge: Matthew I. Katz

In the above-entitled cause, the Clerk will enter:

Mother appeals the family court=s decision denying her request for an emergency relief from abuse order. She filed a request for a temporary and permanent relief from abuse order on December 4, 2005. The Addison Family Court declined to issue an ex parte order but set the matter for hearing on December 6, 2005. The record does not show the reason for the court=s action. See V.R.F.P. Rule 9(e) (if court denies temporary order, record must show the reason for the denial). The docket entry indicates that defendant Kent Wright was notified by phone on December 5, 2005. Following the hearing, at which plaintiff, defendant, defendant=s brother, and defendant=s mother appeared, the court ordered that plaintiff could attend her child=s counseling

session, but denied any further relief Atoday.@

After watching the videotape of the hearing, we conclude that the court was considering whether to grant temporary relief only. See id. at 9(c) (if court denies ex parte relief, plaintiff is entitled to present evidence). No witnesses were sworn and a number of persons gave statements from the spectator=s area. The court never gave plaintiff a written denial of the motion for temporary relief, as required by V.R.F.P. 9(e) for a denial of a temporary order application. The court explicitly stated that its verbal order regarding the counseling session represented what it was willing to do Atoday.@

We conclude, therefore, that the case remains pending in the family court on the request for permanent relief and the court=s order of December 6, 2005, and this appeal, deal only with the request for temporary relief. As such, the denial did not end litigation between the parties and was not a final judgment. See Randolph v. White, 166 Vt. 280, 283 (1997) (holding that judgment is final when it ends litigation between the parties and leaves nothing further for court to do than execute judgment). In the absence of a final judgment, we do not have jurisdiction over the appeal. See Huddleston v. Univ. of Vt., 168 Vt. 249, 251 (1998) (noting that final judgment is prerequisite to appellate jurisdiction); V.R.A.P. 5 (final judgment required for appeal). Accordingly, the appeal must be dismissed, and plaintiff may return to the family court for permanent relief.

Appeal Dismissed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice