

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-080

SEPTEMBER TERM, 2003

	} APPEALED FROM:
	}
	} Rutland Family Court
Susan Root	}
	}
v.	} DOCKET NO. 463-10-97
	}
A. Kenneth Root, Jr.	} Trial Judge: M. Patricia Zimmerman
	}
	}

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

Defendant-appellee A. Kenneth Root' s motion to dismiss this appeal for lack of a final judgment is granted. A final judgment is a prerequisite to our appellate jurisdiction. Hospitality Inns v. South Burlington R.I., 149 Vt. 653, 656, 547 A.2d 1355, 1358 (1988). To be final, we require a decree or judgment to dispose of all matters that " should or could properly be settled at the time and in the proceeding then before the court." State v. CNA Ins. Co., 172 Vt. 318, 322, 779 A.2d 662, 666 (2001) (quotations and citations omitted); see also V.R.C.P. 54(b) (any decision " which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties. . . ").

Here, the order appealed does not fully resolve all of the disputes between the parties, and, therefore, is not final. The parties were divorced in February, 2000. A year and a half later plaintiff moved to enforce the court' s rehabilitative spousal maintenance order and to hold defendant in contempt for violating that order. Defendant cross-moved to modify spousal maintenance, moved to enforce the 2000 parent child contact order and to hold plaintiff in contempt for violating that order. After a hearing, the court, on Jan. 31, 2003, disposed of all pending issues except for a determination of the amount of arrears in spousal maintenance. On this issue the court revised downward the spousal maintenance award, and asked counsel for both parties to provide an accounting of the total arrears based on the new figures. The order further stated, " [j]udgment will be entered for the amount of rehabilitative maintenance arrears when counsel provides an accounting." **Order 1/31/03 at 21 (emphasis added)**. Defendant submitted his accounting on June 24, 2003. Plaintiff has yet to respond or submit her accounting. Although the Rutland Family Court has docketed the case as " closed," it has yet to issue a final money judgment.

Plaintiff made no request for interlocutory appeal pursuant to V.R.A.P. 5(b), and now asks the Court to grant an exception to the finality rule on grounds that her appeal of the family court' s contempt order and the reduction of monthly spousal maintenance are separate and distinct from the arrears issue, and because " undue hardship and irreparable harm [would] inevitably result from a strict application of the finality requirement." Hospitality Inns, 149 Vt. at 656, 547 A.2d at 1358 (citing Forgay v. Conrad, 47 U.S. 201, 204-05 (1848)). The Forgay rule, however, allows immediate review only when an order directs immediate transfer of real property and would thereby subject losing party to irreparable harm. Kelly v. Lord, 173 Vt. 21, 33, 783 A.2d 974, 984 (2001) (citations omitted). This is not such a case. Moreover, the delay in obtaining a final judgment appears to be due to plaintiff' s own failure to provide an accounting of arrears in spousal maintenance. Thus, appellant's cause is dismissed without prejudice.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice