

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

BAR 145 FRANCHISING, LLC,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2017-P-0102
COLLEGE TOWN KENT, LLC,	:	
Defendant-Appellant.	:	

Civil Appeal from the Portage County Court of Common Pleas.
Case No. 2017 CV 00928.

Judgment: Appeal dismissed.

John A. Borell, Jr., Henry J. Geha, and Anthony Lawrence Hunter, Marshall & Melhorn, LLC, Four Seagate, 8th Floor, Toledo, OH 43604 (For Plaintiff-Appellee).

Jon J. Pinney, Justine L. Konicki, and Andrew J. Wilber, Kohrman Jackson & Krantz LLP, One Cleveland Center, 1375 East Ninth Street, 29th Floor, Cleveland, OH 44114-1793 (For Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} On December 29, 2017, appellant, College Town Kent, LLC, filed an appeal from two different entries issued in the Portage County Court of Common Pleas.

{¶2} Appellee, Bar 145 Franchising, LLC, commenced this action on October 23, 2017, alleging breach of a written lease agreement between the parties. Bar 145 sought monetary damages, declaratory judgment, and specific performance. Bar 145 also moved the trial court for a temporary restraining order and a preliminary injunction.

{¶3} The trial court issued a temporary restraining order, and a hearing was held before the magistrate on the motion for preliminary injunction. On November 20, 2017, an order was issued by the magistrate granting the motion for preliminary injunction. That order was also signed by the trial court judge. On December 1, 2017, College Town moved to set aside the order. That motion has yet to be ruled on by the trial court.

{¶4} On December 5, 2017, Bar 145 filed an emergency motion to show cause arguing that College Town should be found in contempt for violating the preliminary injunction order and that sanctions should be imposed. On December 22, 2017, after an evidentiary hearing, the magistrate issued an order granting Bar 145's motion to show cause and found College Town in contempt for violating the preliminary injunction order. That same day, the trial court issued a judgment entry adopting the magistrate's order.

{¶5} College Town filed this appeal from both the November 20, 2017 magistrate's order and the December 22, 2017 judgment entry.

{¶6} Under Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed on appeal only if it constitutes a "final order" in the action. *Germ v. Fuerst*, 11th Dist. Lake No. 2003-L-116, 2003-Ohio-6241, ¶3. If a lower court's order is not final, then an appellate court has no jurisdiction to review it, and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989).

{¶7} In analyzing whether these entries are final and appealable, we initially note the important distinctions between "magistrate's orders" and "magistrate's decisions."

{¶8} “A court of record may, for one or more of the purposes described in Civ.R. 53(C)(1), refer a particular case or matter or a category of cases or matters to a magistrate by a specific or general order of reference or by rule.” Civ.R. 53(D)(1)(a).

{¶9} “Subject to the terms of the relevant reference, a magistrate shall prepare a magistrate’s *decision* respecting any matter referred under Civ.R. 53(D)(1).” Civ.R. 53(D)(3)(a)(i) (emphasis added). “A party may file written objections to a magistrate’s decision,” but the “magistrate’s decision is not effective unless adopted by the court.” Civ.R. 53(D)(3)(b)(i) & (D)(4)(a).

{¶10} On the other hand, “[s]ubject to the terms of the relevant reference, a magistrate may enter *orders* without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.” Civ.R. 53(D)(2)(a)(i) (emphasis added). “Any party may file a motion with the court to set aside a magistrate’s order,” but the “pendency of a motion to set aside does not stay the effectiveness of the magistrate’s order, though the magistrate or the court may by order stay the effectiveness of a magistrate’s order.” Civ.R. 53(D)(2)(b).

{¶11} Both magistrate’s orders and magistrate’s decisions are interlocutory by nature. See *In re Estate of Robison*, 10th Dist. Franklin No. 17AP-232, 2017-Ohio-8980, ¶21, citing *Bond v. Bond*, 10th Dist. Franklin No. 98AP-356 & 98AP-1043, 1998 WL 890258, *2 (Dec. 15, 1998). Although magistrate’s *orders* are effective without judicial approval, they are not directly appealable. *Bond, supra*, at *2; see also *In re Dougherty*, 11th Dist. Ashtabula No. 2013-A-0023, 2013-Ohio-2841.

{¶12} Local Rule 21.06(o) of the Portage County Court of Common Pleas specifically provides that its magistrates have the authority to enter an *order* granting a

preliminary injunction under Civil Rule 65 without judicial approval. On November 20, 2017, the magistrate entered an order granting Bar 145's motion for a preliminary injunction. That order, standing alone, is not immediately appealable. The judge's signature, which appears below the magistrate's signature, is of no effect, as it does not demonstrate that the judge engaged in an independent review of the matter or that it adopted the order. See *Hartt v. Munobe*, 67 Ohio St.3d 3, 6 (1993) ("The findings of fact, conclusions of law, and other rulings of a [magistrate] before and during trial are *all* subject to the independent review of the trial judge. Thus, a [magistrate's] oversight of an issue or issues, even an entire trial, is not a substitute for the judicial functions but only an aid to them."). Additionally, the judge never ruled on the motion to set aside the magistrate's order. The magistrate's preliminary injunction order is, therefore, interlocutory and cannot be directly appealed.

{¶13} However, "[w]here a non-appealable interlocutory order results in a judgment of contempt, including fine or imprisonment, such a judgment is a final and appealable order and presents to the appellate court for review the propriety of the interlocutory order which is the underlying basis for the contempt adjudication." *Smith v. Chester Twp. Bd. of Trustees*, 60 Ohio St.2d 13 (1979), paragraph one of the syllabus; see also *Windham Twp. v. Horner*, 11th Dist. Portage No. 89-P-2086, 1990 WL 94871, *2 (June 29, 1990). Therefore, if we determine the trial court's December 22, 2017 judgment of contempt is a final and appealable order, the propriety of the underlying preliminary injunction order can also be reviewed.

{¶14} An order or judgment finding a party in contempt is final and appealable when it also imposes sanctions or when it conditions the imposition of sanctions on the

contemnor's failure to purge. *Chain Bike Corp. v. Spoke 'N Wheel, Inc.*, 64 Ohio App.2d 62, 64 (8th Dist.1979); *Docks Venture, L.L.C. v. Dashing Pacific Group, Ltd.*, 141 Ohio St.3d 107, 2014-Ohio-4254, ¶23. See also *Robinette v. Bryant*, 4th Dist. Lawrence No. 16CA21, 2016-Ohio-5956, ¶12-13.

{¶15} The December 22, 2017 judgment entry found College Town in contempt, but it did not impose any sanctions or condition the imposition of any sanctions on College Town's failure to purge. Therefore, the entry is not final and appealable and, as a result, we cannot review the propriety of the underlying preliminary injunction order within the parameters of this appeal.

{¶16} Based on the foregoing, we dismiss this appeal, sua sponte, for lack of a final appealable order.

{¶17} Appeal dismissed.

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.