[Cite as *Poirier v. Process Equip. Co. of Tipp City*, 2017-Ohio-8188.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

RICK POIRIER

Plaintiff-Appellant

v.

PROCESS EQUIPMENT CO OF TIPP CITY

Defendant-Appellee

Appellate Case No. 27529

Trial Court Case No. 2016 CV 02848

[Civil Appeal from Common Pleas Court]

DECISION AND FINAL JUDGMENT ENTRY
August 3, 2017

PER CURIAM:

{¶ 1} This matter is before the court for resolution of our May 8, 2017 show cause order. Rick Poirier appealed the "Decision, Order and Entry Sustaining Defendant's Motion for Summary Judgment and Setting Non-Oral Hearing on Attorneys' Fees and Costs Due," issued by the trial court on March 8, 2017. It appeared to this court that the March 8 Decision was not a final appealable order, in that it contemplated further action on an award of attorney fees and did not certify that there was "no just reason for delay" pursuant to Civ.R. 54(B). *Internatl. Bhd. of Electrical Workers, Local Union No. 8 v.*

Vaughn Industries, L.L.C., 116 Ohio St.3d 335, 2007-Ohio-6439, 879 N.E.2d 187, paragraph 2 of the syllabus.

{¶ 2} We ordered Poirier to show cause why this appeal should not be dismissed for lack of jurisdiction. He filed on response on June 5, 2017. Appellee, Process Equipment Co. of Tipp City, filed a reply on July 6, 2017. Poirier agrees that the March 8, 2017 Decision is not a final appealable order. Both parties ask that this appeal be dismissed.

{¶ 3} It is well settled that an appellate court has jurisdiction to review only final orders or judgments of the lower courts in its district. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. We have no jurisdiction to review an order or judgment that is not final, and an appeal therefrom must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989).

{¶ 4} The Supreme Court of Ohio has held that "[w]hen attorney fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim and does not include, pursuant to Civ.R. 54(B), an express determination that there is no just reason for delay, is not a final, appealable order." *Internatl. Bhd. of Electrical Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, 879 N.E.2d 187, paragraph 2 of the syllabus. "A decision that awards attorney fees but does not specify the amount is likewise not final and appealable without a Civ.R. 54(B) certification." *Evanston Acquisitions, LLC v. STAG II Dayton, LLC*, 2d Dist. Montgomery No. 27480, 2017-Ohio-5755, ¶ 7, citing *Reed Elsevier, Inc. v. Nunn*, 2d Dist. Montgomery No. 26625, 2015-Ohio-3914, ¶ 12.

{¶ 5} In the March 8 Decision, the trial court awarded statutory attorney fees and costs to appellee, finding that "under R.C. 1335.11(D), PECo, as the prevailing party in an action brought under R.C. 1335.11, is entitled to its reasonable attorney's fees and court costs." The court then set a non-oral hearing, "at which time PECo shall submit evidence of the reasonable attorney's fees and costs due." Poirier appealed before the trial court determined the amount of attorney fees due.

{¶ 6} The trial court did not determine that "there is no just reason for delay" pursuant to Civ.R. 54(B). The trial court did, however, indicate that its decision was "a final appealable order." That particular statement is not determinative. *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 129 Ohio St.3d 30, 2011-Ohio-626, 950 N.E.2d 149, ¶ 16; *Goering v. Schille*, 1st Dist. Hamilton Nos. C-110525, C-110604, 2012-Ohio-3330, ¶ 9 ("[s]imply stating that an order is final and appealable does not make it so"). According to the Supreme Court, the specific language, "no just reason for delay," is mandatory for the order to be appealable. *Noble v. Colwell*, 44 Ohio St.3d 92, 96, 540 N.E.2d 1381 (1989). The March 8 Decision does not contain the mandatory language and is therefore not final and appealable pursuant to *Vaughn*.

{¶ 7} Without a final appealable order, we lack jurisdiction to review this appeal. Accordingly, we conclude that our show cause order is NOT SATISFIED. This appeal, Montgomery Appellate Case No. 27529, is DISMISSED.

{¶ 8} Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Montgomery County Court of Appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

SO ORDERED.

MICHAEL T. HALL, Presiding Judge

MARY E. DONOVAN, Judge

JEFFREY M. WELBAUM, Judge

Copies to:

Jennifer Brumby
4244 Indian Ripple Road, Suite 150
Dayton, Ohio 45440
Attorney for Appellant

Richard Talda
Jennifer Grewe
33 W. First Street, Suite 600
Dayton, Ohio 45402
Attorneys for Appellee

Hon. Michael W. Krumholtz
Montgomery County Common Pleas Court
41 N. Perry Street
P.O. Box 972
Dayton, Ohio 45422

CA3/KY