

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

RHONDA MEADOWS	:	JUDGES:
	:	Hon. John W. Wise, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiffs-Appellees/Cross-Appellants	:	Hon. Earle E. Wise, J.
	:	
-vs-	:	
	:	Case No. 2017CA00207
JACKSON RIDGE REHABILITATION	:	
AND CARE, ET AL	:	
	:	<u>OPINION</u>
Defendants-Appellants/Cross	:	
Appellees	:	

CHARACTER OF PROCEEDING: Civil appeal from the Stark County Court of
Common Pleas, Case No. 2015CV02169

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: June 25, 2018

APPEARANCES:

For Plaintiff-Appellee
Cross-Appellant

For Defendant-Appellant
Cross-Appellee

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Gwin, J.

{¶1} Defendant-appellants Jackson Ridge Rehabilitation and Care and Providence Healthcare Management, Inc. [collectively “Appellants”] appeal the October 5, 2017 Judgment Entry of the Stark County Court of Common Pleas overruling their objections and motion to set aside a magistrate’s opinion that was adopted by the trial court. Appellee-cross-appellant is Rhonda Meadows [“Meadows”].

Facts and Procedural History

{¶2} Meadows is a registered nurse. She was hired by Appellants to be the director of nursing at Jackson Ridge Rehabilitation and Care in September 2014. Jackson Ridge is the registered trade name of Gaslite Leasing, LLC and Providence Healthcare Management is an affiliated management company.

{¶3} Meadows terms of employment included health care under the employer sponsored health care plan. Meadows took advantage of that offered benefit and began working for Appellants at Jackson Ridge on or about October 17, 2014.

{¶4} In May 2015, Meadows suffered an acute medical condition and required time off for surgery. Meadows contacted Appellants management regarding her need for surgery. Appellants requested that Meadows wait until the annual survey was completed before surgery was scheduled.

{¶5} In mid-June 2015, Meadows medical condition became emergent and she returned to her physician. The surgery was scheduled for June 26, 2015. Meadows immediately conveyed to Appellants her need for surgery. Meadows claimed that she was informed on June 25, 2015 that if she had the surgery she would be terminated from her employment.

{¶6} Meadows claimed she had the surgery to relive her pain on June 26, 2015. She later learned that not only had Appellants terminated her employment on June 25, 2015, but they had terminated her health care insurance as well, so her surgery and hospital stay were not covered. However, Meadows contended that Appellants continued to deduct health care premiums from her pay, which was shown on her last pay stub on July 3, 2015.

{¶7} Meadows filed suit on October 16, 2015. On October 23, 2015, Jackson Ridge received service of Meadows' Complaint. Jackson Ridge failed to timely answer, and Meadows moved the Trial Court for default judgment against Appellants on Friday, December 4, 2015. The Trial Court granted default judgment on Monday, December 7, 2015. Jackson Ridge moved the Trial Court for leave to file its Answer instantner on December 11, 2015. Appellants filed a Motion for Relief from Judgment on December 15, 2015. The Trial Court denied these Motions on August 25, 2016, following a hearing conducted by the Trial Court's Magistrate.

{¶8} On September 9, 2016, the Court set a Damage hearing for October 27, 2016. Immediately on September 23, 2016, Appellant filed a Notice of Appeal with this Court, which was Case No. 2016 CA 00174. On October 24, 2016, this Court dismissed the appeal as not a final appealable order.

{¶9} The Court again, set a damage hearing for December 16, 2016. On December 15, 2016, Appellants filed a Motion to Dismiss for Lack of Jurisdiction. The parties briefed the Motion and it was denied on April 26, 2017. The Court set a third damages hearing for May 18, 2017. On May 18, 2017, Appellee and her counsel appeared. Appellants and their counsel did not. The magistrate called the Appellant's attorney, and learned that the attorney had left the firm, and had not updated her address with the Stark County Common Pleas Court or with the Ohio Supreme Court. T. May 18, 2017 at 3-4.

{¶10} The magistrate proceeded with the hearing on May 18, 2017 and entered a decision on June 21, 2017. The Court entered judgment for Meadows and against Appellants in the amount of Seventy-Three Thousand Three Hundred Fifty-Seven 05/100 Dollars (\$73,357.05) plus interest. Appellants filed a Motion for Stay and on June 30, 2017, objections to the magistrate's decision. On July 3, 2017, Appellants filed a motion to set aside the judgment of June 21, 2017.

{¶11} On October 5, 2017, Judge Haas overruled those objections and adopted the Magistrates decision as a final entry.

Assignments of Error

{¶12} Appellants have presented three assignments of error for our consideration:

{¶13} "I. THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO DECIDE PLAINTIFF-APPELLEE/CROSS-APPELLANT'S CLAIMS.

{¶14} "II. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF-APPELLEE/CROSS-APPELLANT'S MOTION FOR DEFAULT JUDGMENT AND DENYING DEFENDANTS-APPELLANTS/CROSS-APPELLEE'S MOTION TO SET ASIDE DEFAULT JUDGMENT.

{¶15} "III. THE TRIAL COURT ERRED IN AWARDING DAMAGES BEYOND THOSE AUTHORIZED BY STATUTE."

{¶16} Meadows for her cross-appeal raises one assignment of error:

{¶17} "I. THE TRIAL COURT ERRED BY NOT AWARDING ATTORNEY FEES FOR APPELLEE."

Jurisdiction of the Court of Appeals

{¶18} In the case at bar, we must address the threshold issue of whether the judgment appealed is a final, appealable order. Meadows in her cross-appeal has argued the trial court erred in not awarding her attorney fees.

{¶19} Even if a party does not raise the issue, this court must address, sua sponte, whether there is a final appealable order ripe for review. *State ex rel. White vs. Cuyahoga Metro. Hous. Aut.*, 79 Ohio St.3d 543, 544, 1997-Ohio-366, 684 N.E.2d 72.

{¶20} Appellate courts have jurisdiction to review the final orders or judgments of lower courts within their appellate districts. Section 3(B) (2), Article IV, Ohio Constitution. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *General Acc. Ins. Co. vs. Insurance of North America*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989); *Harris v. Conrad*, 12th Dist. No. CA-2001-12 108, 2002-Ohio-3885. For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and if applicable, Civ. R. 54(B). *Denham v. New Carlisle*, 86 Ohio St.3d 594, 596, 716 N.E.2d 184 (1999); *Ferraro v. B.F. Goodrich Co.*, 149 Ohio App.3d 301, 2002-Ohio-4398, 777 N.E.2d 282. If an order is not final and appealable, an appellate court has no jurisdiction to review the matter and it must be dismissed.

{¶21} In the case at bar, Meadows brought a claim under the Employee Income Retirement Security Act of 1974 [ERISA"]. ERISA authorizes courts in their discretion to award reasonable attorney fees. *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147, 105 S.Ct. 3085, 3093, 87 L.Ed.2d 96(1985). *Richland Hosp., Inc. v. Ralyon*, 33

Ohio St.3d 87, 516 N.E.2d 1236, 1239-1240 (1987); Section 1132(g)(1), Title 29, U.S. Code.

{¶22} Punitive damages may be awarded in tort cases involving fraud, insult or malice. *Columbus Finance, Inc. v Howard*, 42 Ohio St.2d 178, 183, 327 N.E.2d 654(1975). If punitive damages are proper, the aggrieved party may also recover reasonable attorney fees. *Id.* Meadows has premised her claim for punitive damages on the alleged intentional and malicious misconduct in accepting her insurance premiums and terminating her employment in an attempt to avoid liability on insurance claims. In the case at bar, the trial court awarded Meadows \$5,000.00 in punitive damages.

{¶23} The Ohio Supreme Court has held that when attorney fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim and does not include a Civ. R. 54(B) determination that there is no just cause for delay is not a final, appealable order. *Internatl. Bd. 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.

{¶24} In the case at bar, the trial court held a hearing on damages during which Meadows presented evidence on her attorney fees. T. May 18, 2017 at 32-37. The June 21, 2017 Judgment Entry of the trial court does not mention attorney fees and does not contain a Civ. R. 54(B) determination that there is no just cause for delay. We therefore find that based on the reasoning of the Ohio Supreme Court in *Vaughn, supra*, the judgment appealed from is not a final, appealable order.

{¶25} The appeal is dismissed.

By Gwin, J.,

Wise, John, P.J.,

Wise, Earle, J., concur