[Cite as *Scioto Bay Properties v. Ezell*, 2002-Ohio-5414.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Scioto Bay Properties,	:	
Plaintiff-Appellee,	:	No. 02AP-645
v.	:	(REGULAR CALENDAR)
Kevin Ezell et al.,	:	
Defendants-Appellants.	:	

O P I N I O N

Rendered on October 8, 2002

Alan P. Friedman, for appellee.

Kevin Ezell, pro se.

APPEAL from the Franklin County Court of Common Pleas.

KLATT, J.

{¶1} Defendants-appellants, Kevin Ezell and Buffie Sammons-Ezell, appeal from two decisions and entries of and pending motions before the Franklin County Court of Common Pleas. For the following reasons, we dismiss and remand.

{¶2} Beginning on February 28, 2001, appellants rented an apartment from plaintiff-appellee, Scioto Bay Properties. On August 17, 2001, appellee filed a complaint in the Franklin County Municipal Court against appellants seeking unpaid rent and an

eviction order. Appellants filed counterclaims for "mental anguish and breaking and entering," and sought $25,000 in damages. Because the amount of damages sought by appellants exceeded the jurisdictional limit of the municipal court, the municipal court transferred the case to the common pleas court.

{¶3} On September 14, 2001, appellee filed a second complaint against appellants, virtually identical to its first, in the municipal court. When appellants filed a counterclaim for "breaking and entering and mental anguish and harassing" seeking $50,000 in damages, appellee countered with a motion to strike the counterclaim. The municipal court granted the motion and retained jurisdiction over this second action. Thus, two duplicative actions are now simultaneously pending in two different courts. Both actions are now before us on separate appeals from each court.

{¶4} On March 4, 2002, appellants filed two motions in the action before the common pleas court: a "Motion to Consolidate Transferred Cases to This Court" and a "Motion for Order of Contempt on the Plaintiff's Attorney." In its April 16, 2002 decision and entry, the common pleas court addressed these two motions. The common pleas court first denied appellants' motion to consolidate because appellants failed to file a contemporaneous motion seeking consolidation in the case before the municipal court. Second, the common pleas court denied appellants' motion for contempt because it concluded that it had no jurisdiction to find the attorney in contempt for filings he made before the municipal court.

{¶5} Before the common pleas court issued its April 19, 2002 decision and entry, appellee filed a motion to dismiss appellants' motion for contempt and asked the court to sanction appellants, pursuant to R.C. 2323.51. Appellants responded to this motion by filing, on March 26, 2002, a "Motion to Strike Plaintiff's Motion to Dismiss and For Judgment on the Pleadings." Appellants followed this motion with a "Motion to Amend with Second Counterclaim," filed March 28, 2002.

{¶6} On April 26, 2002, the common pleas court issued a decision and entry addressing these motions. Although the common pleas court denied appellee's motion for sanctions, it granted appellee leave to file a subsequent motion if appellants' excessive motion practice continued. (The court found appellee's motion to strike

appellant's motion for contempt moot.) The common pleas court also denied appellants' motion to strike appellee's motion to dismiss appellants' motion for contempt. Likewise, the common pleas court dismissed appellants' motion to amend its counterclaim. The court concluded that allowing amendment of the counterclaim would delay the action, and that amendment was not proper because appellants did not inform the court of the nature of the claims they wished to add.

{¶7} After the issuance of the April 26, 2002 decision and entry, appellants filed additional motions, none of which is determinative of the action. On June 10, 2002, appellants filed a notice of appeal, giving notice they were appealing "from the adverse judgments rendered against Defendant on the dates of 04/16/02 and 04/26/02 that are pending on motions to correct and for entry of default judgments as of 05/19/02 and 05/29/02."

{¶8} On appeal, appellants assign the following error:

{¶9} "The trial court erred to the substantial prejudice of appellant by the disacknowledgement of appellant's contention that appellee had actually abandoned the present case by the filing of the second one and by unjustifiably delaying determination of the triple defaults in violation of constitutional injunction of 'redress by due course of law without denial or delay' provided by O.Const. Art.I. §§ 16 & 20, and U.S. Const. Amends. IX, X & XIV."

{¶10} Although neither party has raised the issue, this court must initially determine whether we have subject matter jurisdiction to consider the merits of this appeal. *State ex rel. White v. Cuyahoga Metro. Housing Auth.* (1997), 79 Ohio St.3d 543, 544. R.C. 2505.03 limits the jurisdiction of appellate courts to the review of final orders, judgment and decrees. Id.

{¶11} An order is a final order and can be reviewed by this court when it is one of the following:

{¶12} "(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶13} "(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶14} "(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶15} "(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶16} "(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶17} "(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶18} "(5) An order that determines that an action may or may not be maintained as a class action." R.C. 2505.02(B).

{¶19} Neither of the two decisions and entries appellants appeal from falls within any of these categories. None of the common pleas court's decisions at issue determine the action, vacate or set aside a judgment or grant a new trial. The action itself is, in essence, a breach of contract action, and not a special proceeding. Even assuming the common pleas court has denied a "provisional remedy," the court's decisions can be reviewed effectively upon final judgment. Therefore, the decisions and entries at issue are not final, appealable orders.

{¶20} Further, we conclude that appellants' appeal of motions that were pending before the trial court at the time the notice of appeal was filed are not even "orders," much less final and appealable.

{¶21} For the foregoing reasons, this appeal is dismissed and the case remanded to the Franklin County Court of Common Pleas for further proceedings in accordance with law.

Appeal dismissed and case remanded.

BOWMAN and LAZARUS, JJ., concur.

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