[Cite as *Klosterman v. Turnkey-Ohio, L.L.C.*, 2010-Ohio-3620.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kevin Klosterman,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-162 (C.P.C. No. 05CVH-11-12889)
Turnkey-Ohio, LLC et al.,	:	(ACCELERATED CALENDAR)
Defendants-Appellees,	:	
Frederick M. Klaus,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 5, 2010

Hrabcak & Company, L.P.A., Michael Hrabcak, and *Heidi A. Smith*, for plaintiff-appellee.

Law Offices of James P. Connors, and *James P. Connors*, for defendant-appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} The issue presented in this appeal is whether an appellate court has jurisdiction to consider an appeal where, prior to the appeal, the plaintiff voluntarily dismisses the entire matter without prejudice. We conclude that we do not have

jurisdiction under these circumstances, except that we may consider whether the trial court properly denied the defendant's motion for fees.

{¶2} In an opinion issued on May 28, 2009, this court held that the trial court lacked subject-matter jurisdiction to render judgment against defendant-appellant, Frederick M. Klaus ("Klaus"), on a note, purported to be a cognovit note, that did not contain a warrant of attorney. *Klosterman v. Turnkey-Ohio, L.L.C.*, 182 Ohio App.3d 515, 2009-Ohio-2508. Accordingly, we held that the trial court's November 16, 2005 judgment against Klaus was void ab initio. Id. at ¶25.

{¶3} On June 23, 2009, Klaus filed in the trial court a Motion for Return of Funds Taken by Plaintiff Pursuant to Void Judgment, Withdrawal of Collection Efforts and Liens, and Payment of Fees and Expenses Incurred. In it and the attached affidavit, Klaus contended that plaintiff-appellee, Kevin Klosterman ("Klosterman"), had used the void judgment to collect from Klaus amounts in excess of what was owed under the cognovit note. Klaus also asked for "payment of his fees and expenses incurred in having to obtain this relief." In response, Klosterman contended that Klaus had voluntarily paid Klosterman the money owed under the note in exchange for Klosterman's release of a mortgage.

{¶4} On January 19, 2010, the trial court issued an order that vacated its November 16, 2005 judgment, pursuant to this court's remand, and reactivated the case. The trial court also ordered Klosterman to notify the court within 30 days if he intended to pursue the remaining claims in his complaint. If Klosterman did not so notify the court, Klosterman's remaining claims would be dismissed for lack of prosecution.

{¶5} On January 21, 2010, the trial court issued a decision and entry that denied Klaus' motion for return of funds, withdrawal of collection efforts, and payment of fees. The court found that the exchange of money between Klaus and Klosterman was the result of a separate transaction not at issue before the court; therefore, this court's opinion that the November 1995 judgment was void did not affect that transaction. The court also denied Klaus' request for fees, noting that Klaus had not provided any support for such an award.

{¶6} On January 27, 2010, Klosterman filed a notice of voluntary dismissal without prejudice.

{¶7} On February 22, 2010, Klaus filed his notice of appeal, in which he appeals the following: (1) the trial court's order vacating its November 16, 2005 judgment and reactivating the case; (2) the trial court's decision and entry denying Klaus' motion for return of funds, withdrawal of collection efforts, and payment of fees; and (3) Klosterman's notice of voluntary dismissal. Before this court, Klaus raises the following assignments of error:

> 1. The trial court erred on remand by denying Mr. Klaus' motion for the return of funds obtained with a void judgment, release and dismissal of any continuing collection activities and liens based on the void judgment, and payment of fees and expenses.
>
> 2. The trial court erred on remand by failing to conduct further proceedings consistent with law in accordance with this court's opinion in ***Klosterman v. Turnkey-Ohio, L.L.C.***, 182 Ohio App.3d 515, 2009-Ohio-2508.

> 3. The trial court erred by terminating the action below through a voluntary dismissal filed by an attorney who had withdrawn of record pursuant to a court order.

{¶8} Before reaching these assignments of error, we first consider Klosterman's motion to dismiss this appeal. In his motion, Klosterman contends that (1) the trial court's orders do not affect a substantial right held by Klaus because Klaus is not entitled to have the money returned to him, and (2) his voluntary dismissal is not a final, appealable order. We begin our analysis with Civ.R. 41(A).

{¶9} Civ.R. 41(A)(1) allows a plaintiff, without order of court, to dismiss all claims asserted against a defendant by filing a notice of dismissal at any time before the commencement of trial, unless that defendant has properly asserted a counterclaim that cannot remain pending for independent adjudication. A notice of voluntary dismissal is self-executing and requires no further action by the trial court. *Williams v. Thamann*, 173 Ohio App.3d 426, 428, 2007-Ohio-4320, ¶5.

{¶10} Klaus contends that Klosterman's notice of dismissal was ineffective because it was filed by an attorney who had previously withdrawn from the matter. He cites no authority for this contention, nor have we found any. There is no rule requiring a licensed attorney to obtain leave to file a motion after seeking leave to withdraw, nor is there a rule prohibiting an attorney from seeking to withdraw and then appearing as counsel at a later time.

{¶11} Here, no trial had commenced and no counterclaims were pending. Therefore, Klosterman's notice of dismissal was proper under Civ.R. 41(A)(1)(a).

{¶12} The Supreme Court of Ohio has stated that a voluntary dismissal without prejudice under Civ.R. 41(A) renders the parties as if no suit had ever been filed. *Denham v. New Carlisle* (1999), 86 Ohio St.3d 594, 596, 1999-Ohio-128. But see id. at 597 (clarifying that the dismissal applies only to those parties voluntarily dismissed from the action and not to any remaining parties). Where the dismissal applies to all defendants, it renders a prior interlocutory ruling a nullity. See *Fox v. Kraws*, 11th Dist. No. 2009-L-157, 2009-Ohio-6860, ¶14, citing decisions from the Second, Sixth, Eighth, Ninth, and Tenth Districts, all holding that a voluntary dismissal of all defendants renders a prior interlocutory summary judgment ruling a nullity.

{¶13} Here, Klaus states that the trial court's denial of his motion to return funds, withdraw collection efforts, and pay fees is reviewable as a final, appealable order, but he provides no support for that statement under R.C. 2505.02(B), Civ.R. 54(B) or case precedent. While Klaus argues that the court's ruling "prevented a judgment" in his favor, he misses the point that he, as the defendant, never asked for judgment in his favor. Because Klaus never filed a counterclaim against Klosterman, the only claims for relief before the court were those contained within Klosterman's complaint, which sought relief against Klaus and which Klosterman properly dismissed.

{¶14} Nevertheless, we recognize that we must analyze Klaus' request for fees differently. Even after a voluntary dismissal, a trial court retains jurisdiction to decide collateral matters, including a motion for fees or sanctions. *State ex rel. Hummel v. Sadler*, 96 Ohio St.3d 84, 88, 2002-Ohio-3605, ¶23; *Grossman v. Mathless & Mathless* (1993), 85 Ohio App.3d 525, 528 (holding that a trial court may entertain a motion to

impose sanctions under R.C. 2323.51 even after a voluntary dismissal). Where, as here, the trial court decided a motion for fees prior to a voluntary dismissal, that denial survives the dismissal, and this court has jurisdiction to review it. *Ohio Dept. of Admin. Servs. v. Madison Internatl., Inc.* (2000), 138 Ohio App.3d 388, 398 (denying in part the appellee's motion to dismiss an appeal and recognizing that the trial court's denial of the appellant's motion for sanctions survived a voluntary dismissal). Therefore, while we have no jurisdiction to review any of the other rulings by the trial court, we consider the portion of Klaus' first assignment of error that asks whether the trial court erred by denying his request for fees and expenses.

{¶15} Klaus' motion states only that he "requests payment of his fees and expenses incurred in having to obtain this relief." He does not cite a rule or statute as the basis for the request. Attached to Klaus' affidavit is a document entitled "Klosterman v. Turn Key and Klaus et al." It is a one-page list of check numbers, dates, and dollar amounts, which total $162,849.98. Nothing in the motion, affidavit or reply explains this document or identifies it as a statement of attorney fees. In fact, if it were a statement of fees, it would be of no value because all of the identified dates pre-date the November 16, 2005 filing of Klosterman's complaint.

{¶16} Before this court, Klaus states only that the trial court erred by denying his motion, including his request for fees and expenses. Klaus does not, however, identify those fees, the evidence submitted to support them or the authority under which he sought fees. Klaus having failed to support that portion of the assignment of error relating to his request for fees, we overrule it. App.R. 16(A)(7).

{¶17} In conclusion, we grant Klosterman's motion to dismiss this appeal, except that we retain jurisdiction to review that portion of Klaus' first assignment of error that relates to the trial court's denial of Klaus' request for fees; having reviewed that portion of the first assignment of error, we overrule it. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas to the extent that it denied Klaus' request for attorney fees. In all other respects, this appeal is dismissed.

Motion to dismiss granted in part;
judgment affirmed in part; appeal dismissed.

KLATT and SADLER, JJ., concur.