[Cite as *Jenkins v. State Farm Mut. Auto. Ins. Co.*, 2011-Ohio-5061.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Frederick J. Jenkins,	:	
Plaintiff-Appellant,	:	
		No. 11AP-115
v.	:	(C.P.C. No. 06CVH11-15048)
State Farm Mutual Automobile Insurance Company et al.,	:	(REGULAR CALENDAR)
	:	
Defendants-Appellees.	:	

D E C I S I O N

Rendered on September 30, 2011

Doucher & Doucher, LPA, *Paul Michael Doucher* and *Kimberley A. Doucher*, for appellant.

Gallagher, Gams, Pryor, Tallan & Littrell, L.L.P., and *James R. Gallagher*, for appellee State Farm Mutual Automobile Insurance Company .

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Plaintiff-appellant, Frederick J. Jenkins, appeals a judgment of the Franklin County Court of Common Pleas that granted summary judgment on Jenkins' bad-faith claim to defendant-appellee, State Farm Mutual Automobile Insurance Company ("State Farm"). For the following reasons, we dismiss this appeal for lack of a final appealable order.

{¶2} On November 15, 2006, Jenkins filed suit against State Farm and Joseph E. Messer. Jenkins' suit arose out of a January 2006 vehicular accident that occurred when Messer's automobile struck Jenkins' motorcycle as Jenkins was sitting in traffic. Jenkins claimed that the collision injured him and totally destroyed his motorcycle, which State Farm insured. Jenkins further alleged that he had sought payment from State Farm for the damage to his motorcycle in accordance with the terms of his insurance policy, but State Farm had refused to pay him the fair market value of the motorcycle. Jenkins asserted a negligence claim against Messer, as well as breach of contract and bad-faith claims against State Farm.

{¶3} In its answer, State Farm admitted that Jenkins had timely filed a claim for property damage. State Farm, however, had not paid the claim because it and Jenkins disagreed on the value of the motorcycle. In addition to answering the complaint, State Farm filed a cross-claim against Messer, asserting that it was subrogated to Jenkins' right to recover from Messer and, thus, it was entitled to any damages awarded as recompense for Messer's negligence. Messer answered neither Jenkins' complaint nor State Farm's cross-claim.

{¶4} At State Farm's request, the trial court bifurcated Jenkins' breach of contract and bad-faith claims for the purpose of trial. Thereafter, State Farm moved for summary judgment on the bad-faith claim. The trial court denied that motion.

{¶5} In May 2010, Jenkins and State Farm tried the negligence and breach of contract claims to a jury. The jury rendered its verdict "in favor of plaintiff and against State Farm and Joseph Messer" and awarded to Jenkins $28,000 as "the fair market

value of the motorcycle as of January 12, 2006." (R. 153.) The trial court never entered judgment on the jury's verdict.

{¶6} Apparently, at the close of the trial, State Farm orally renewed its earlier motion for summary judgment. On January 7, 2011, the trial court issued a decision and judgment entry granting State Farm summary judgment on the bad-faith claim. The trial court did not state in the January 7, 2011 judgment entry that there was no just reason to delay an appeal. Nevertheless, the clerk of courts stamped the January 7, 2011 judgment entry "FINAL APPEALABLE ORDER," and it terminated the case. Jenkins now appeals the January 7, 2011 judgment entry to this court.

{¶7} Before addressing the merits of Jenkins' arguments, we must determine whether the January 7, 2011 judgment entry is a final appealable order. Originally, State Farm moved to dismiss this appeal, arguing that this court did not have jurisdiction because the January 7, 2011 judgment entry was only an interlocutory order. State Farm has since withdrawn that motion. However, the lack of a motion does not preclude this court from determining whether it has jurisdiction to proceed with an appeal. An appellate court may raise the question of its subject-matter jurisdiction sua sponte. *State ex rel. White v. Cuyahoga Metro. Housing Auth.*, 79 Ohio St.3d 543, 544, 1997-Ohio-366; *Noble v. Coldwell* (1989), 44 Ohio St.3d 92, 94, fn. 1. Therefore, on our own initiative, we now consider whether our jurisdiction extends to this appeal.

{¶8} Section 3(B)(2), Article IV of the Ohio Constitution and R.C. 2505.03(A) limit the jurisdiction of the courts of appeals to the review of final orders. When determining whether a judgment is final and appealable, an appellate court engages in a two-step analysis. First, the court must determine whether the order at issue fits within any of the

categories of final orders delineated in R.C. 2505.02(B). *Walburn v. Dunlap*, 121 Ohio St.3d 373, 2009-Ohio-1221, ¶13; *Riverside v. State*, 190 Ohio App.3d 765, 2010-Ohio-5868, ¶10. If the order constitutes a final order under R.C. 2505.02(B), then the court must determine whether Civ.R. 54(B) applies and, if so, whether the order contains a certification that there is no just reason for delay. Id.

{¶9} Under R.C. 2505.02(B)(1), an order is final if it "affects a substantial right in an action that in effect determines the action and prevents a judgment." Because the trial court's grant of summary judgment precluded Jenkins from pursuing and recovering on his bad-faith claim, the January 7, 2011 judgment entry constitutes the type of final order described by R.C. 2505.02(B)(1). See *Jacobs v. Jones*, 10th Dist. No. 10AP-930, 2011-Ohio-3313, ¶42-43 (concluding that an order granting summary judgment on some claims, but leaving other claims unresolved, constituted a final order under R.C. 2505.02(B)(1)); *Price v. Jillisky*, 10th Dist. No. 03AP-801, 2004-Ohio-1221, ¶12 (holding that the trial court's grant of summary judgment on one claim "would necessarily 'prevent a judgment' on that claim, and the order would be final as to that claim, pursuant to R.C. 2505.02").

{¶10} Thus, we turn to Civ.R. 54(B). Under that rule, if more than one claim is presented in an action, a court may enter final judgment as to fewer than all the claims if it expressly states that there is no just reason for delay of an appeal. Civ.R. 54(B); *Gen. Accident Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20. Without such an express determination, the judgment does not terminate the action as to any of the claims, and an appellate court may not review the judgment. *Internatl. Brotherhood of*

Electrical Workers, Local Union 8 v. Vaughn Industries, L.L.C., 116 Ohio St.3d 335, 2007-Ohio-6439, ¶8; *Noble* at 96.

{¶11} Here, the action included multiple claims: Jenkins' breach of contract and bad-faith claims against State Farm, Jenkins' negligence claim against Messer, and State Farm's subrogation claim against Messer. The January 7, 2011 judgment entry resolved only one of the pending claims. Although a jury found in Jenkins' favor on his breach of contract and negligence claims, the trial court never entered judgment on those claims as required by Civ.R. 58(A) and Sup.R. 7(A). Moreover, no judgment on State Farm's subrogation claim exists. Because three of the four claims remain unresolved, the January 7, 2011 judgment entry needed Civ.R. 54(B) language to render it final and appealable. That language, however, is missing from the judgment entry. Consequently, we conclude that the January 7, 2011 judgment entry fails to qualify as a final appealable order, and we dismiss this appeal for lack of jurisdiction.

Appeal dismissed.

FRENCH and DORRIAN, JJ., concur.