

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO

WACHOVIA BANK NATIONAL ASSOCIATION,	:	MEMORANDUM OPINION
	:	
Plaintiff-Appellee,	:	CASE NO. 2010-P-0062
	:	
- vs -	:	
	:	
RICHARD O. CERMAK, et al.,	:	
	:	
Defendant-Appellant,	:	
	:	
EQUITY BANK SSB,	:	
	:	
Intervening Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2002 CV 0256.

Judgment: Appeal dismissed.

Kirk W. Roessler and Shelly R. LaSalvia, Ziegler, Metzger & Miller, L.L.P., 2020 Huntington Building, 925 Euclid Avenue, Cleveland, OH 44115-1441 (For Plaintiff-Appellee).

Robert Otto Carson, 670 Broadway Avenue, Bedford, OH 44146 (For Defendant-Appellant).

Jeffrey A. Brauer and Anthony Jon Paul, Hahn, Loeser & Parks, L.L.P., 200 Public Square, #2800, Cleveland, OH 44114-2316 (For Intervening Defendant-Appellee).

DIANE V. GRENDELL, J.

{¶1} On August 12, 2010, appellant, Richard O. Cermak, filed a notice of appeal from a July 23, 2010 entry of the Portage County Court of Common Pleas. In

that entry, the trial court granted the motion of appellee, Wachovia Bank National Association, to reinstate this case to the docket to proceed with the foreclosure. In that entry, the trial court also granted the motion of appellee, Equity Bank SSB, to intervene.

{¶2} On October 22, 2010, this court issued a judgment entry indicating that it may not have jurisdiction to consider this appeal. In our entry, we indicated that the July 23, 2010 entry appears to be interlocutory and does not appear final pursuant to R.C. 2505.02 because the trial court did not indicate that it had approved or adopted the foreclosure decree and made a final determination in the case.

{¶3} On December 9, 2010, appellant filed a response to our show cause order. Appellant alleges that the trial court order appealed from is a final order because it affects a substantial right.

{¶4} On January 7, 2011, appellees, Wachovia Bank and Equity Bank SSB, filed briefs in opposition to appellant's response to the show cause order. Appellees argue that no substantial right of appellant has been affected and because an order granting a motion to intervene is not final and appealable.

{¶5} According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a "final order" in the action. *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶3. 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. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20.

{¶6} Pursuant to R.C. 2505.02(B), there are seven categories of a "final order," and if a trial court's judgment satisfies any of them, it will be considered a "final order" which can be immediately appealed and reviewed by a court of appeals.

{¶7} R.C. 2505.02(B) states that:

{¶8} “An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

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

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

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

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

{¶13} “(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.

{¶14} “(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.

{¶15} “(5) An order that determines that an action may or may not be maintained as a class action;

{¶16} (6) An order determining the constitutionality of any changes to the Revised Code ***;

{¶17} (7) An order in an appropriation proceeding ***.”

{¶18} In the instant matter, appellant is appealing the granting of a motion to reinstate a case to the docket. This is not a final appealable order. The reinstatement of an action to the active docket does not affect a substantial right because it neither

“determines the action” nor “prevents a judgment.” *Univ. Commons Assoc. Ltd. v. Commercial One Asset Mgt.*, 8th Dist. No. 85202, 2005-Ohio-4568, at ¶21. Therefore, a judgment entry reinstating a case to the active docket is not a final and appealable order.

{¶19} Furthermore, appellant is appealing the trial court’s order granting the motion to intervene filed by appellee Equity Bank. Although the denial of a motion to intervene may be a final appealable order, the granting of a motion to intervene is not a final and appealable order. See *Wilson v. Wilson*, 5th Dist. No. 2007-CA-00138, 2008-Ohio-2551, at ¶11.

{¶20} Here, since appellant is appealing the granting of the reinstatement of the case to the docket and the granting of a motion to intervene, this court does not have jurisdiction to consider the issues raised in this appeal. Accordingly, this appeal is hereby sua sponte dismissed for lack of a final appealable order.

{¶21} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

MARY JANE TRAPP, J.,

concur.