

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

DALE S. HIPPI dba HIPPNOSIS MARINE,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NOS. 2015-L-055 and 2015-L-056
CHUCK SCHMID,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case Nos. 14 CVF 01443 and 14 CVF 01444.

Judgment: Appeals dismissed.

Marilyn J. Singer, McNeal, Schick, Archibald & Biro Co., L.P.A., Van Sweringen Arcade, #250, 123 Prospect Avenue, West, Cleveland, OH 44115 (For Plaintiff-Appellee).

Michael P. Harvey, Michael P. Harvey Co., L.P.A., 311 Northcliff Drive, Rocky River, OH 44116-1344 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Chuck Schmid, by and through counsel of record, filed the instant notices of appeal from an April 9, 2015 entry, in which the Willoughby Municipal Court granted judgment to appellee, Dale S. Hipp dba Hipnosis Marine.

{¶2} A review of the record reveals that Mr. Hipp filed a complaint in two separate cases against Mr. Schmid for services rendered on two boats. Mr. Schmid filed a counterclaim in both matters, and the trial court consolidated the cases. On April 9, 2015, a hearing took place before the magistrate on Mr. Hipp's complaints and Mr.

Schmid's counterclaims. Mr. Hipp's attorney was present to defend the counterclaims and Mr. Schmid and his attorney failed to appear. In a magistrate's decision dated April 9, 2015, judgment was granted to Mr. Hipp in the amount of \$6,069.52, plus costs and interest. The trial court adopted the magistrate's decision on that same date. It is from that entry that appellant filed his notices of appeal on May 5, 2015.

{¶3} However, on April 23, 2015, prior to filing the instant appeals, Mr. Schmid filed several pleadings: (1) objections to the April 9 magistrate's decision; (2) a motion for relief from judgment pursuant to Civ.R. 60(B); (3) a motion to dismiss; and (4) a motion to stay execution pending motion and appeal. In an entry dated April 23, 2015, the trial court withheld "ruling on the objections to permit the filing of a transcript of the proceeding within thirty (30) days from the filing of the objections * * *." The trial court further ordered that the motion to dismiss and the motion for relief from judgment "shall be on for consideration on or after May 14, 2015."

{¶4} On May 8, 2015, three days after Mr. Schmid filed his notices of appeal, he filed a motion with this court to remand the matter to conclude the proceedings at the trial court. The trial court issued an entry on May 27, 2015, in which it stated that as a result of the filing of the notices of appeal, it no longer had jurisdiction to rule on any matter. In an entry dated June 4, 2015, this court remanded the cases to the trial court for the sole purpose of allowing the trial court to rule on the April 23, 2015 objections to the magistrate's decision and the April 23, 2015 motion for relief from judgment.

{¶5} Pursuant to our remand, the trial court issued an order on June 22, 2015, "that the case be set before the Judge of the Court for a hearing de novo." The trial court further stated that it "considers the Defendant's Motion for relief judgment to have

been rendered moot by the herein decision” and that the “[c]ourt having made its ruling and decision, upon the objections, orders that the case be returned to the Court of Appeals for further instructions.”

{¶6} On June 29, 2015, Mr. Schmid filed a further motion to remand with this court for determination and clarification. In that motion, Mr. Schmid requests that this court remand the matter to the trial court for a second time so that the trial court can make a determination as to the outstanding motions that are pending, or in the alternative, so that the trial court can clarify its June 22, 2015 order. Mr. Schmid explains that the remand was “originally requested * * * for fear of missing the [a]ppeal date but still being fully desirous of having the Willoughby Municipal Court address those [m]otions that were pending at [a]ppeal that were not yet decided * * *.” No brief or memorandum in opposition to the motion has been filed.

{¶7} We must now determine whether the order appealed from is a final appealable order. The Ohio Constitution limits an appellate court’s jurisdiction to the review of final judgments of lower courts. Section 3(B)(2), Article IV. Accordingly, this court has jurisdiction to review only final and appealable orders. *Germ v. Fuerst*, 11th Dist. Lake 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.*, 44 Ohio St.3d 17, 20 (1989).

{¶8} In the case at hand, the record shows that as of the date the notices of appeal were filed with this court, it appears that there were several motions pending in the trial court. Furthermore, in its April 23, 2015 order, the trial court withheld ruling on

the objections to the magistrate's decision to permit the filing of a transcript of the proceeding, and also ordered that Mr. Schmid's motion to dismiss and motion for relief from judgment shall be considered on or after May 14, 2015. Subsequently, on May 27, 2015, the trial court issued an entry stating that as a result of the filing of the appeals, it no longer had jurisdiction to rule on any matter. After Mr. Schmid filed his appeals and pursuant to our remand entry, the trial court issued its June 22, 2015 order indicating that the matter be set before the court for a hearing de novo and that it considered the motion for relief from judgment to have been rendered moot.

{¶9} Thus, when the trial court orders of April 23, 2015, May 27, 2015, and June 22, 2015, are read in conjunction with each other, it is clear that there is no final appealable order at this time. Further, Mr. Schmid's June 29, 2015 motion requests that this court remand the matter to the lower court to address the outstanding motions that are pending. Therefore, since there appear to be motions still pending in the trial court, Mr. Schmid will have a meaningful and effective remedy by way of an appeal once a final judgment is reached as to all claims and parties when the case is decided and/or dismissed. See *Johnson v. Warren Police Dept.*, 11th Dist. Trumbull No. 2005-T-0117, 2005-Ohio-6904, at ¶ 14.

{¶10} Based on the foregoing analysis, it is ordered that these appeals are hereby dismissed due to lack of a final appealable order.

DIANE V. GRENDALL, J.,

THOMAS R. WRIGHT, J.,

concur.