

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

JAMES NAPIER d.b.a. NAPIER
PLUMBING & MECHANICAL,

Plaintiff-Appellee,

- VS -

MATTHEW CIESLAK, et al.,

Defendants-Appellants.

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CASE NO. CA2014-12-242

OPINION
6/29/2015

CIVIL APPEAL FROM BUTLER COUNTY AREA II COURT
Case No. 13 CVF 000262

Timothy R. Evans, 110 North Third Street, Hamilton, Ohio 45011, for plaintiff-appellee

Robinson, Lipnickey & Jones Co., LPA, Tara R. Jones, 14 West Park Place, Suite D, Oxford,
Ohio 45056, for defendants-appellants, Matthew & Bernadette Cieslak

PIPER, P.J.

{¶ 1} Defendant-appellant, Matthew Cieslak, appeals a decision of the Butler County Area II Court entering judgment in favor of plaintiff-appellee, James Napier d.b.a. Napier Plumbing and Mechanical.

{¶ 2} Napier installed a septic system on Cieslak's property, but Cieslak contended that the septic system installed did not conform to the system agreed upon within the

contract. Cieslak made partial payment on the contract price, but would not pay the balance due because of his belief that the system was not installed to specifications.

{¶ 3} Napier filed suit against Cieslak, claiming breach of contract for failure to pay the full contract price. A magistrate for the area court held a bench trial, and issued judgment in favor of Napier. Cieslak filed untimely objections to the magistrate's decision on the same day that the trial court adopted the magistrate's decision and entered judgment in favor of Napier through a final appealable order. Cieslak filed an appeal from the trial court's decision, but did not file the notice of appeal with the trial court. This court dismissed Cieslak's appeal because the failure to file a proper notice of appeal in the area court failed to invoke the jurisdiction of this court. See, *Napier v. Cieslak*, 12th Dist. Butler No. CA2014-07-167 (Sept. 3, 2014) (judgment entry of dismissal).

{¶ 4} After this court dismissed the appeal, the trial court granted Cieslak leave to file untimely objections to the magistrate's decision. Within the entry granting Cieslak leave to file untimely objections, the trial court noted its belief that it regained jurisdiction once this court dismissed Cieslak's appeal, and found that there was good cause shown to permit the late objections. The court reasoned that good cause was shown because Cieslak was out of town when the magistrate's decision was issued, but obtained counsel to file objections as soon as he became aware of the magistrate's decision. Even though the trial court found good cause to allow the objections out of time, the trial court overruled the objections and once again adopted the magistrate's decision and entered judgment in favor of Napier on November 4, 2014. Cieslak then appealed the trial court's decision to enter judgment in favor of Napier for the second time, raising four assignments of error specific to the November 4, 2014 entry. However, and because the issues are not properly before this court, we will not address the merits of Cieslak's assignments of error.

{¶ 5} Pursuant to Civ.R. 53(D)(3)(b)(i), a party may file objections to a magistrate's

decision within 14 days of the filing of the decision, "whether or not the court has adopted the decision during that fourteen-day period." In certain circumstances, the civil rules authorize an extension of time to permit a party to file objections outside the 14-day time period. Specifically, and pursuant to Civ.R. 53(D)(5), "for good cause shown, the court shall allow a reasonable extension of time for a party to * * * file objections to a magistrate's decision."

{¶ 6} Additionally, Civ.R. 6(B) permits a court to extend the time prescribed by the civil rules for performing an act upon a showing of excusable neglect. However, Civ.R. 6(B) "contemplates a request for an extension of time to do an act [be] made *before* the court rules on the matter the act concerns." (Emphasis sic.) *Learning Tree Academy, Ltd. v. Holeyfield*, 12th Dist. Butler No. CA2013-10-194, 2014-Ohio-2006, ¶ 15. Accordingly, a trial court has the discretion to consider objections filed after the 14-day time limit of Civ.R. 53(D) *so long as the trial court has not entered a final judgment. Id.* at ¶ 15, fn. 2.

{¶ 7} As such, a court does not have jurisdiction to permit objections to the magistrate's decision when the magistrate's decision was adopted and already made a final judgment by the trial court. *Losekamp v. Losekamp*, 12th Dist. Butler No. CA2013-11-213, 2014-Ohio-4422; *In re C.B.*, 12th Dist. Clermont No. CA2013-12-094, 2014-Ohio-3784, ¶ 12.¹ Instead, once a trial court enters its final judgment in the matter, that trial court's jurisdiction is "terminated." *In re J.A.M.*, 12th Dist. Butler No. CA2010-04-174, 2011-Ohio-668, ¶ 15. A party may only seek relief from the final judgment through a motion notwithstanding the verdict under Civ.R. 50(B), a motion for a new trial under Civ.R. 59, or a motion for relief from judgment under Civ.R. 60(B). *Learning Tree*, 2014-Ohio-2006 at ¶ 16.

{¶ 8} The record indicates that Cieslak filed objections to the magistrate's decision on

1. Cieslak argues that *Losekamp* is inapplicable because it was released after the trial court had already stated its intention to allow the untimely objections. Even so, this court set forth the same legal principles in *Learning Tree Academy*, 2014-Ohio-2006, which was decided prior to the trial court's decision regarding the untimely objections.

the afternoon of the same day that the trial court had already entered judgment in favor of Napier.² Even though the trial court later found that there was good cause shown for the late submission of objections, the trial court's final judgment divested the court of jurisdiction to consider objections filed after it had already entered a final judgment. The trial court did not regain jurisdiction to consider the objections by virtue of this court's dismissal of Cieslak's appeal because the trial court's judgment from July 2, 2014 was still valid and controlling.

{¶ 9} The trial court treated Cieslak's request to file the objections as a "Motion for Leave to File Objections Out of Time." The trial court, however, did not treat Cieslak's request to file the objections as a motion for relief from judgment according to Civ.R. 60(B). As such, the trial court's consideration and treatment of Cieslak's request as a motion for leave to file objections out of time was improper because the trial court had already entered final judgment on the matter.

{¶ 10} The trial court's consideration of Cieslak's untimely objections was invalid and its entry of November 4, 2014 overruling the objections and entering judgment in favor of Napier a second time was void. As such, the only valid entry Cieslak could have appealed was the July 2, 2014 entry adopting the magistrate's decision and entering judgment in favor of Napier. However, the current appeal was taken from the trial court's November 4, 2014 entry. This court cannot review void entries, and as such, Cieslak's current appeal is dismissed and his assignments of error are rendered moot.

{¶ 11} Judgment dismissed.

RINGLAND and HENDRICKSON, JJ., concur.

2. Cieslak argues that the trial court only adopted the magistrate's decision on July 2, 2014, but did not enter judgment. This argument lacks merit because the trial court's entry states, "it is ordered that the Decision of Magistrate shall stand as the decision of the Court, and judgment is hereby entered thereon and each party is ordered to comply therewith." Accompanying the trial court's judgment entry was a "Notice of Service of Final Appealable Judgment/Order" in which the court acknowledged its service of the entry and final order upon the parties.