

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

TERRY J. KARRAS, TRUSTEE

Plaintiff-Appellee

v.

CATHERINE A. KARRAS

Defendant-Appellant

Appellate Case No. 27169

Trial Court Case No. 2015 CV 00941

(Civil Appeal from
Common Pleas Court)

DECISION AND FINAL JUDGMENT ENTRY

October 6, 2016

PER CURIAM:

{¶ 1} This matter is before the court for resolution of our August 11, 2016 order concerning the finality of the judgment on appeal. Catherine A. Karras appealed the June 3, 2016 “Decision, Order, and Entry Granting Motion for Summary Judgment and Granting Motion for Declaratory Judgment” sought by Terry J. Karras, Trustee. The Decision instructed Terry’s¹ counsel to “submit to the court a judgment entry forthwith.” No such final judgment entry appears on the docket.

¹ We refer to the parties by their first names.

{¶ 2} It appeared to this court that the Decision was not final and appealable, in that it contemplated further action in the case, namely, the issuance of a judgment entry. See *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, ¶ 20 (judgment that leaves issues unresolved and contemplates further action is not a final appealable order). While the trial court decided the motions before it, it does not appear to have entered judgment on that decision.

{¶ 3} We ordered Catherine to address the issue. She filed a response on August 25, 2016, in which she argues the Decision is final and appealable. She asserts that the trial court granted all the requested declaratory judgments and suggests that the trial court's instruction to submit a judgment entry is surplusage that does not detract from the Decision's finality.

{¶ 4} We conclude that the Decision is not final. This court has held, under similar circumstances, that a trial court decision expressly anticipating the entry of a later final judgment is not itself a final judgment. See, e.g., *Jones v. Singer*, 2d Dist. Montgomery No. 27106 (June 13, 2016); *Obara v. Obara*, 2d Dist. Montgomery No. 26924 (February 4, 2016). See also *Brown v. Potter*, 2d Dist. Montgomery No. 26774, 26775, 2015-Ohio-4289, ¶ 2-3 (summary judgment decision anticipating action from a party before the entry of final judgment was not a final appealable order). We so conclude here.

{¶ 5} We also note that not all the relief requested in the complaint has been granted. While the court made the declarations that Terry requested, the court did not yet, in this "Quiet Title Action," enter judgment quieting title "against any claim or interests of the Defendant, Catherine A. Karras, her heirs, devisees, successors and assigns." Complaint, caption and paragraph (d) of the request for relief. The Decision granting the

other requested relief suggests that the court intended to quiet title, but without a judgment entry, we cannot presume that such relief is granted. We conclude that the Decision is not a final appealable order.

{¶ 6} An appellate court has jurisdiction to review only final orders or judgments of the lower courts in its district. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. We have no jurisdiction to review an order or judgment that is not final, and an appeal therefrom must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989). This appeal is therefore DISMISSED. Catherine may file a new notice of appeal once the trial court enters a final judgment resolving this case, and may request that the record of this appeal be transferred into the new appeal.

{¶ 7} Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Montgomery County Court of Appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

SO ORDERED.

MIKE FAIN, Judge

JEFFREY E. FROELICH, Judge

MICHAEL T. HALL, Judge

Copies to:

Andrew Engel
Thomas Kendo, Jr.
7925 Paragon Road
Dayton, Ohio 45459
Attorney for Appellant

Charles Alberry III
137 N. Main Street, Suite 500
Dayton, Ohio 45402
Attorney for Appellee

Hon. Mary Katherine Huffman
Montgomery County Common Pleas Court
41 N. Perry Street
P.O. Box 972
Dayton, Ohio 45422

CA3/KY