

[Cite as *Karras v. Karras*, 2016-Ohio-8592.]

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. 27314

Trial Court Case No. 2015 CV 00941

(Civil Appeal from  
Common Pleas Court)

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**DECISION AND FINAL JUDGMENT ENTRY**

December 8, 2016

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PER CURIAM:

{¶ 1} This matter is before the court for resolution of our November 2, 2016 Order concerning whether this appeal must be dismissed for lack of jurisdiction. Catherine A. Karras appeals the September 29, 2016 Judgment Entry purporting to resolve the underlying case in favor of Terry J. Karras, Trustee. This is the second notice of appeal filed in the underlying case; we dismissed a previous appeal, taken from a summary judgment decision, for lack of a final appealable order. *Karras v. Karras*, 2d Dist. Montgomery No. 27169, 2016-Ohio-7418 (Oct. 6, 2016) (“*Karras I*”). Therein, we held that

“a trial court decision expressly anticipating the entry of a later final judgment is not itself a final judgment.” *Id.* at ¶ 4.

{¶ 2} The trial court entered such a judgment on September 29, 2016. Unfortunately, the judgment was entered while the previous appeal was pending. Because it appeared that the trial court lacked jurisdiction to enter the judgment, we ordered Catherine<sup>1</sup> to address whether this appeal must be dismissed.

{¶ 3} Catherine filed a response on November 10, 2016. She submits that the trial court lacked jurisdiction to enter the September 29 Judgment Entry. We agree. The Supreme Court of Ohio has held that once an appeal is perfected, “the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court’s jurisdiction to reverse, modify, or affirm the judgment.” *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 129 Ohio St.3d 30, 2011-Ohio-626, 950 N.E.2d 149, ¶ 13 (internal citation and quotation omitted). This is so even where the previous appeal was dismissed for lack of a final appealable order. *In re C.C.*, 2d Dist. Montgomery No. 26606, 2015-Ohio-3048, ¶ 5, citing *Electronic Classroom* at ¶ 15-17; *In re G.S.*, 4th Dist. Pike No. 14CA852, 2015-Ohio-1285, ¶ 9, citing *Electronic Classroom* at ¶ 16 (“Even when an appeal is taken from an order that the court of appeals ultimately determines is not a final appealable order, the filing of the notice of appeal divests the trial court of jurisdiction to proceed on claims that could be affected by the appeal”).

{¶ 4} Here, the Judgment Entry was entered on the same claims that were pending before this court in *Karras I*, making the Judgment Entry inconsistent with this court’s jurisdiction to reverse, modify, or affirm the earlier judgment on those claims. See

*Brown v. Potter*, 2d Dist. Montgomery Nos. 26774, 26775, 2015-Ohio-4289, ¶ 8-9 (trial court lacked jurisdiction to enter judgment resolving the case while appeal from summary judgment decision was pending). We conclude that the trial court lacked jurisdiction to enter the September 29 Judgment Entry while *Karras I* was pending.

{¶ 5} An order entered without jurisdiction under these circumstances is not a final appealable order. See *In re C.C.*, 2d Dist. Montgomery No. 26606, 2015-Ohio-3048, ¶ 5, citing *State v. Smith*, 2d Dist. Greene No. 2010-CA-63, 2011-Ohio-5986, ¶ 9-10 (“Any inconsistent orders issued while this appeal is pending will be a nullity”). Because the September 29 Judgment Entry is not a final order, we must dismiss this appeal. We have jurisdiction to review only final orders or judgments of the lower courts in our 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). Accordingly, this appeal, Montgomery Appellate Case No. 27314, is DISMISSED.

{¶ 6} After this appeal is dismissed, the trial court may re-enter the Judgment Entry and resolve the underlying cases. Should the trial court issue a final appealable order after this appeal is dismissed, the parties may file a new appeal from that order, and may thereafter request that the previous record(s) be transferred to that 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.

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<sup>1</sup> We refer to the parties by their first names.

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JEFFREY E. FROELICH, Judge

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MICHAEL T. HALL, Judge

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JEFFREY M. WELBAUM, Judge

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