

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
LAWRENCE COUNTY

James Stamper,	:	
	:	
Plaintiff-Appellee,	:	
	:	Case No. 04CA14
v.	:	
	:	<u>DECISION AND</u>
Gregory Keatley,	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	FILE-STAMPED DATE: 10-01-04

---

APPEARANCES:

Anna E. Davis, Portsmouth, Ohio, for appellant.<sup>1</sup>

---

Kline, P.J.:

{¶ 1} Gregory Keatley appeals the judgment of the Ironton Municipal Court, Small Claims Division, dismissing his objections to the magistrate's decision. Because we find that Keatley failed to timely file his objections, the trial court had already entered its final order adopting the magistrate's decision, and Keatley failed to file a motion for relief from judgment pursuant to Civ.R. 60(B), we are without jurisdiction to address Keatley's assignments of error.

---

<sup>1</sup> Appellee James Stamper appeared, pro se, below. However, he has not entered an appearance on appeal.

## II.

{¶ 2} On May 16, 2003, Stamper and Keatley's vehicles collided on Main Street at Rock Hill High School in Ironton, Ohio. Stamper filed an action in the Ironton Municipal Court, Small Claims Division, seeking recovery for damages arising out of the collision. Thereafter, Keatley moved the trial court to transfer the action to the regular civil division of the court. However, the trial court never ruled upon Keatley's motion.

{¶ 3} The magistrate conducted a hearing on February 10, 2004, and on February 17, 2004, issued a report recommending that the trial court grant Stamper a judgment in the amount of \$3,000 plus interest and costs. On March 4, 2004, the trial court issued a judgment entry adopting the magistrate's report, and granting Stamper a judgment for \$3,000, interest at the rate of 10% from the date of the judgment, and court costs of \$50.

{¶ 4} On March 11, 2004, Keatley filed a motion for an extension of time to file his objections to the magistrate's report, pursuant to Civ.R. 6(B). Keatley alleged that the extension was necessary because his counsel did not receive copies of the magistrate's report or the judgment entry in a timely manner. Keatley filed his objections to the magistrate's report on March 16, 2004. On March 25, 2004, the trial court issued a "FINAL APPEALABLE ORDER" dismissing Keatley's

objections to the magistrate's decision, wherein the trial court noted that Keating's objections were not timely, and the trial court had already issued a final order prior to receipt of said objections.

{¶ 5} Keatley appeals raising the following assignments of error: "I. The trial court erred in approving the Magistrate's Report in favor of Plaintiff-Appellee when Plaintiff-Appellee failed to show proof of ownership of his vehicle in accordance with Ohio Revised Code 4505.04(B)(1) when Defendant raised the issue at trial and the Magistrate had allowed no time for meaningful discovery to take place prior to trial. II. The trial court erred in approving the Magistrate's Report in favor of Plaintiff-Appellee when the decision against the Defendant-Appellant was against the weight of the evidence. III. The trial court erred in dismissing Defendant-Appellant's Objections to the Magistrate's Report as untimely when, Pursuant to Civil Rule 6(B), Defendant-Appellant requested a copy of the transcript of the small claims proceeding in a timely fashion, and when the court did not forward the Magistrate's Report and final entry to defense counsel in a timely manner, resulting in Defendant-Appellant's excusable neglect in filing the objections."

## II.

{¶ 6} Initially, we must determine whether this court has jurisdiction to review Keatley's assignments of error. Civ.R. 53(E)(3) provides, in relevant part: "A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, regardless of whether the court has adopted the decision pursuant to Civ.R. 53(E)(4)(c)." Civ.R. 53(E)(3)(d) further provides that: "A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule." Additionally, App.R. 4(A) provides that a court of appeals has jurisdiction to hear an appeal in a civil case upon the filing of a notice of appeal within thirty days of the date of entry of the judgment or order appealed from.

{¶ 7} Keatley filed his objections to the magistrate's report on March 16, 2004, twenty-eight days after the report was filed. While Keatley did file a motion for an extension of time to file his objections, pursuant to Civ.R. 6(B), he did so one week *after* the trial court entered a final judgment adopting the magistrates report. While Civ.R. 6(B)(2) permits a court to extend the time prescribed by the civil rules for performing an act upon a showing of excusable neglect, that rule "contemplates a request for an extension of time to do an act which is made *before* the court rules on the matter the act concerns." *Miller v. Smith*, Montgomery App. No. 19958, 2004-Ohio-1310, at ¶13 (Emphasis added).

{¶ 8} Here, the trial court had already entered a final judgment entry, adopting the magistrate's report and effectively terminating the case before Keatley filed his tardy objections. Therefore, it would have been inappropriate for the trial court to grant an extension of time pursuant to Civ.R. 6(B) because the trial court no longer had jurisdiction to do so. See *Murray v. Goldfinger, Inc.*, Montgomery App. No. 19433, 2003-Ohio-459. Instead of seeking an extension of time for filing his objections, Keatley should have filed a motion for relief from judgment pursuant to Civ.R. 60(B) seeking to vacate the judgment based upon his allegation of excusable neglect.

{¶ 9} Despite the fact that the trial court had effectively terminated the case in its March 4, 2004 judgment entry, the trial court entered a document on March 25, 2004 entitled "FINAL APPEALABLE ORDER[.]" wherein the trial court purported to dismiss Keatley's untimely objections. In his notice of appeal, Keatley claims to appeal the trial court's "final judgment entered in this action on the 25<sup>th</sup> day of March, 2004." However, we find that the appealed order is void because the trial court's jurisdiction terminated when it entered the March 4, 2004 judgment. See *Murray*, supra. The true final order in this case is the March 4, 2004 judgment entry adopting the magistrate's report. Keatley did not timely file objections to the magistrate's report pursuant to Civ.R. 53(E), nor did he timely

appeal that order. Accordingly, we conclude that we do not have the requisite jurisdiction to address Keatley's assignments of error.

**APPEAL DISMISSED.**

**JUDGMENT ENTRY**

It is ordered that the APPEAL BE DISMISSED and that Appellee shall recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ironton Municipal Court, Small Claims Division, to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Exceptions.

Abele, J. and Harsha, J.: Concur in Judgment Only.

For the Court

BY: \_\_\_\_\_  
Roger L. Kline, Presiding Judge

### **NOTICE TO COUNSEL**

**Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.**