[Cite as *Bumgarner v. Bumgarner*, 2009-Ohio-3490.]

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

Daryl Bumgarner, et al.,	:	Case No. 08CA21
Plaintiffs-Appellants,	:	**DECISION AND JUDGMENT ENTRY**
v.	:	
Deborah Bumgarner,	:	**Released 6/29/09**
Defendant-Appellee.	:	

APPEARANCES:

Susan L. Davis, Hillsboro, Ohio, for Appellants.

Forrest F. Beery and Fred J. Beery, Hillsboro, Ohio, for Appellee.

Harsha, J.:

{¶1} On March 12, 2009, we ordered the parties to file memoranda addressing whether this court had jurisdiction to consider this appeal. Appellants and appellee have filed responses. We conclude that because there are claims still pending in the trial court, and because the trial court did not certify that there was "no just reason for delay[,]" we do not have jurisdiction over this mater and **DISMISS** the appeal.

{¶2} Section 3(B)(2), Article IV of the Ohio Constitution provides that courts of appeals have "such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district ***." Generally speaking, "[a]n order of a court is a final appealable order only if the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B), are met." *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, at ¶5. If an order is not both final and appealable, a reviewing court has no jurisdiction to consider the matter and

has no choice but to dismiss the appeal. *The Bell Drilling & Producing Co. v. Kilbarger Constr., Inc.* (June 26, 1997), Hocking App. No. 96CA23, 1997 WL 361025, at 2.

{¶3} To determine whether an order is final and appealable, an appellate court must use a two-step process. *Wisintainer v. Elcen Power Strut Co.*, 67 Ohio St.3d 352, 354, 1993-Ohio-120. First, a reviewing court focuses on whether the appealed order is "final" as defined by R.C. 2505.02; that is, whether the order affects a substantial right and in effect determines the action and prevents a judgment. *Wisintainer* at 354. If so, and the order disposes of all claims and/or parties involved in the action, it is final and appealable and subject to appellate review.

{¶4} If, however, the order adjudicates fewer than all of the claims and/or parties, a reviewing court must then decide whether the order satisfied the requirements of Civ.R. 54(B) to be final and appealable. Civ.R. 54(B) provides:

> "When more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties."

{¶5} Civ.R. 54(B) is designed for those situations where there are multiple claims or parties, and the trial court has entered a final adjudication with respect to fewer than all of the claims or rights of every party. *Bell Drilling* at 3. Civ.R. 54(B) is intended "to strike a reasonable balance between the policy against piecemeal appeals and the possible

injustice sometimes created by the delay of appeals." Id. "*** Civ.R. 54(B) certification demonstrates that the trial court has determined that an order, albeit interlocutory, should be immediately appealable, in order to further the efficient administration of justice and to avoid piecemeal litigation or injustice attributable to delayed appeals." *Sullivan v. Anderson Twp.,* Slip Opinion No. 2009-Ohio-1971, at ¶11.

{¶6} After examining the record here, we conclude that the trial court's judgment entry is not a final appealable order. Although the trial court disposed of appellants' claims, there is nothing in the court's decision specifically addressing appellee's counterclaim. Because the judgment appellants are appealing failed to adjudicate every claim and/or dispose of all parties, we must look to see if the trial court certified that there was no just reason for delay. A review of the trial court's entry reveals that it did not.

{¶7} After presenting their evidence, the parties briefed the primary issue before the court, i.e., whether the statute of frauds applied. Their briefs did not address the other issues involved here. As a result it appears the trial court may have inadvertently omitted some routine but important issues from its decision, which thoroughly analyzed the facts and equities bearing upon the statute of frauds.

{¶8} Nonetheless, given that the trial court did not find there was no just reason for delay, the trial court's entry is not a final appealable order. Without a final and appealable order, this court does not have jurisdiction to consider this matter.

APPEAL DISMISSED. COSTS TO APPELLANTS. IT IS SO ORDERED.

Kline, P.J., concurring:

{¶9} I concur in judgment and opinion. I write separately to clarify my reasons for doing so.

{¶10} First, I believe the order in this case is similar to the order in *Saunders v. Grim*, Vinton App. Nos. 08CA668, 08CA669, 2009-Ohio-1900. In *Saunders*, we found that the trial court's judgment entry was not a final appealable order. Initially, we held that the order did not sufficiently declare the parties' rights and obligations. We further found the following:

> In addition, the trial court's " *JUDGMENT ENTRY* " is problematic because it does not comport with Civ.R. 54(A) and Civ.R. 58(A). A better label would have been " *DECISION* ". A court's decision states what the court's forth coming judgment will be. The judgment separately follows the decision and contains the orders of the court. See, e.g., *Zawacki v. Harland,* Wayne App. Nos. 06CA36 & 06CA37, 2007-Ohio-1348, ¶13.
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> A party cannot appeal a decision while it can appeal a judgment. The Supreme Court of Ohio has stated, "Under Civ.R. 54(A), a 'judgment' is an order from which an appeal can be taken, and, under Civ.R. 58(A), 'entry of judgment' occurs after the verdict or decision in a civil action." *State ex rel. Ohio Dept. of Health v. Sowald* (1992), 65 Ohio St.3d 338, 343.
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> Here, the entry each party appealed separately is not a judgment entry. It contains a history of the case, the arguments of the parties, findings of fact, and conclusions of law. Buried within the conclusions of law are two or three orders. A person looking at a judgment entry should be readily able to "determine what is necessary to comply with the order of the court." *Burns v. Morgan,* 165 Ohio App.3d 694, 2006-Ohio-1213, ¶10, quoting *Yahraus v. City of Circleville,* 4th Dist. No. 00CA04, 2000-Ohio-2019, quoting *Lavelle v. Cox* (Mar. 15, 1991), 11th Dist. No. 90-T-4396.

Saunders at ¶9-11.

{¶11} I believe we have a similar order in the present case. Here, as in *Saunders*, the entry "contains a history of the case, the arguments of the parties, findings of fact, and conclusions of law." Id. Moreover, similar to *Saunders*, the entry buries its three orders at the end of the Findings of Fact and Conclusions of Law section. For these reasons, I believe that the entry in this case is not a final appealable order.

{¶12} Accordingly, with this explanation, I concur in judgment and opinion.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED and that Appellants shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Kline, P.J.: Concurs in Judgment and Opinion with Attached Opinion.
Abele, J.: Concurs in Judgment and Opinion.

For the Court

BY: _____
William H. Harsha, 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.