

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

MISTY ROBIRDS,	:	
	:	
Plaintiff-Appellee,	:	Case No. 13CA3576
	:	
vs.	:	
	:	
GWEN STIDHAM, et al.,	:	<u>DECISION AND JUDGMENT</u>
	:	<u>ENTRY</u>
	:	
Defendants-Appellants.	:	Released: 09/18/14

APPEARANCES:

Robert R. Dever, Portsmouth, for Appellant, Gwen Stidham.

James H. Banks, Dublin, Ohio, for Appellee.

McFarland, J.

{¶1} Appellant, Gwen Stidham, appeals a judgment entered by the Scioto County Court of Common Pleas finding her liable for unlawful eviction and conversion of property. Upon review, we find that we lack jurisdiction because there remains a pending cross-claim. Accordingly, the appeal is dismissed.

FACTS

{¶2} As noted in our prior consideration of this matter, Appellee, Misty Robirds, and Harry Stidham began a relationship in 2008. At the time of the incident giving rise to the lawsuit, Mr. Stidham and Appellant Gwen

Stidham were married but separated. Mr. Stidham co-owned Buba's Inc. with a business partner, John Craigmiles, and Buba's Inc. owned rental property at 2634 Ritchie Street. Appellee and her two children moved into the rental property.

{¶3} In August 2010, Appellee and Mr. Stidham traveled to Georgia for a vacation. While there, Mr. Stidham suffered a heart attack and died. Upon her return to Portsmouth, Appellee discovered that the locks at 2634 Ritchie Street had been changed. When Appellee contacted Mr. Craigmiles, he informed her that he did not have a key and that he would have to contact Mrs. Stidham. Appellee was never allowed to return to live at the Ritchie Street property and Mrs. Stidham admitted that she cleaned out the house and removed items.

{¶4} Appellee filed a lawsuit against Appellant, Gwen Stidham, as well as Andrew Stidham, the son of Harry and Gwen Stidham; Cathy Wright, a friend of Gwen Stidham; and Buba's Inc. She asserted claims for unlawful eviction, conversion and unjust enrichment and asserted the actions of Gwen Stidham, Andrew Stidham and Ms. Wright constituted a conspiracy to deprive her of her property, home and assets. Appellee also sought an award of attorney fees. All named defendants filed answers denying the allegations contained in the complaint, and Buba's, Inc. also filed a cross-

claim seeking indemnification from all other defendants in the event it was determined liable for damages. The cross claim was re-asserted in Buba's, Inc.'s pre-trial and post-trial briefs as well.

{¶5} On May 15, 2013, the trial court issued a decision and judgment entry. The court found Appellant, Gwen Stidham, individually and as part owner of Buba's, Inc. (as a result of her husband's death), liable for wrongful eviction and conversion. The court also found Buba's Inc. liable for wrongful eviction and for not taking the necessary steps to allow Appellee to return to the Ritchie Street property. However, the court found that Andrew Stidham and Ms. Wright were not liable and dismissed the claims against them. The court also dismissed the unjust enrichment and conspiracy claims.

{¶6} The court ordered Gwen Stidham to return a couch, coffee table, and two end tables to Appellee within 14 days or, if the items were not returned or returned in poor condition, to pay \$3,500.00. The court also found that Gwen Stidham was liable to Appellee for conversion of personal property in the amount of \$6,500.00 and granted judgment in that amount. The court also found that Gwen Stidham and Buba's, Inc. were liable for wrongful eviction and awarded \$900.00 in compensatory damages and \$900.00 in punitive damages. The court further awarded Appellee attorney

fees against Buba's Inc. and Gwen Stidham, and ordered Appellee to submit an affidavit for attorney fees within 30 days. The court found "there is no just cause for delay and this is a final appealable order."

{¶7} On June 18, 2013, Gwen Stidham filed an initial appeal of the trial court's decision; however, on September 5, 2013, this Court issued a decision and judgment entry dismissing the appeal for lack of a final, appealable order because the trial court had not determined the amount of the attorney fees. The trial court subsequently held additional proceedings and issued a judgment entry on September 24, 2013, awarding Appellee attorney fees in the amount of \$12,415.00, and assessed costs of the proceedings against Gwen Stidham and Buba's Inc. Appellant has appealed to this Court again, assigning the following errors for our review.

ASSIGNMENTS OF ERROR

- I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY AWARDING DAMAGES TO PLAINTIFF-APPELLEE WITHOUT EVIDENCE OF FAIR MARKET VALUE.
- II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FINDING THAT THERE WAS A WRONGFUL EVICTION OF APPELLEE BY APPELLANT STIDHAM."

LEGAL ANALYSIS

{¶8} Before we address the merits of this appeal, we must decide whether we have jurisdiction to do so. Appellate courts "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[.]” Ohio Constitution, Article IV, Section 3(B)(2); see R.C. 2505.03(A). If a court's order is not final and appealable, we have no jurisdiction to review the matter and must dismiss the appeal. *Eddie v. Saunders*, 4th Dist. Gallia No. 07CA7, 2008-Ohio-4755, ¶11. In the event that the parties do not raise the jurisdictional issue, we must raise it sua sponte. *Sexton v. Conley*, 4th Dist. Scioto No. 99CA2655, 2000 WL 1137463, *2 (Aug. 7, 2000).

{¶9} An order must meet the requirements of R.C. 2505.02 to constitute a final, appealable order. *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 88, 541 N.E.2d 64 (1989). Under R.C. 2505.02(B)(1), an order is a final order if it “affects a substantial right in an action that in effect determines the action and prevents a judgment[.]” To determine the action and prevent a judgment for the party appealing, the order “must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court.” *Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild of Ohio*, 46 Ohio St.3d 147, 153, 545 N.E.2d 1260 (1989).

{¶10} Additionally, if the case involves multiple parties or multiple claims, the court's order must meet the requirements of Civ.R. 54(B) to qualify as a final, appealable order. See *Chef Italiano Corp.* at 88. Under Civ.R. 54(B), “[w]hen 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.” Absent the mandatory language that “there is no just reason for delay,” an order that does not dispose of all claims is subject to modification and is not final and appealable. *Noble v. Colwell*, 44 Ohio St.3d 92, 96, 540 N.E.2d 1381 (1989); see Civ.R. 54(B). The purpose of Civ.R. 54(B) is “ ‘to make a reasonable accommodation of the policy against piecemeal appeals with the possible injustice sometimes created by the delay of appeals[,]’ * * * as well as to insure that parties to such actions may know when an order or decree has become final for purposes of appeal * * *.” *Pokorny v. Tilby Dev. Co.*, 52 Ohio St.2d 183, 186, 370 N.E.2d 738 (1977); quoting *Alexander v. Buckeye Pipeline*, 49 Ohio St.2d 158, 160, 359 N.E.2d 702 (1977).

{¶11} The case presently before us obviously involves multiple parties and claims and also contains the Civ.R. 54(B) language. For the purposes of Civ.R. 54(B) certification, the trial court makes a factual determination of whether or not an interlocutory appeal is consistent with the interests of sound judicial administration. *Wisintainer v. Elcen Power Strut Co.*, 67 Ohio St.3d 352, 617 N.E.2d 1136, paragraph one of the syllabus (1993). On appeal, we review these findings under a competent, credible evidence standard. *Bell Drilling & Producing Co. v. Kilbarger Const., Inc.*, 4th Dist. Hocking No. 96CA23 (June 26, 1997); citing *Hausman v. Dayton*, 2nd Dist. Montgomery No. 13647 (Dec. 22, 1993), reversed on other grounds (1995), 73 Ohio St.3d 671, 653 N.E.2d 1190. We will not substitute our judgment for that of the trial court where some competent and credible evidence supports the trial court's factual findings. *Wisintainer* at 355.

{¶12} Here, while most all of the claims have been resolved, in our review of the record we found no information about the status of Buba's, Inc.'s cross claim against Gwen Stidham. In its initial order, the trial court reserved for further determination the claim for attorney fees; however, there is no mention of the cross-claim. Here, there was no determination by the trial court that an interlocutory appeal while the cross-claim remained

pending would serve the interests of judicial economy, and we see no interest served by delaying determination of the cross-claim. As there is no specific mention of reserving the cross-claim for future determination, it appears that this was an oversight. Thus, we must conclude that the claim remains pending and that this is one of the rare occasions where the trial court's Civ.R. 54(B) certification was not justified. *Oakley v. Citizens Bank of Logan*, 4th Dist. Athens No. 04CA25, 2004-Ohio-6824, ¶12.

{¶13} In light of our determination that a cross-claim remains pending, we lack jurisdiction to consider this appeal. Accordingly, we dismiss the appeal for lack of a final, appealable order.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED. Costs herein are assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

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

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Abele, P.J. & Harsha, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland, 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.