

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

State of Ohio, ¹	:	Case No. 15CA3478
Plaintiff-Appellant,	:	<u>DECISION AND</u>
v.	:	<u>JUDGMENT ENTRY</u>
Ohio Attorney General’s Office,	:	
Defendant-Appellee.	:	RELEASED: 04/13/2015

HOOVER, P.J.,

{¶1} After reviewing the notice of appeal filed in this matter, we issued an order directing Appellant Paul Gatewood to file a memorandum addressing whether the entry appealed from is a final appealable order. Gatewood did not respond to our order, but instead filed an appellate brief. After reviewing the relevant portions of the trial court record and the relevant law, we find that the trial court’s entry is not a final appealable order and we hereby **DISMISS** the appeal.

{¶2} Gatewood filed a pro se declaratory judgment action and request for injunctive relief pursuant to Civ.R. 57, Civ.R. 65 and R.C. 2721.02, et seq. in the Court of Common Pleas for Ross County. For his relief, Gatewood sought a declaratory judgment that the Court of Appeals for the Twelfth Appellate District and a Fayette County Common Pleas Court judge made substantive legal errors and violated his constitutional rights when it affirmed his criminal conviction and subsequently ruled against him in his application for reopening his appeal. The defendants filed a motion to dismiss the complaint. The trial

¹ Paul Gatewood filed the notice of appeal in this matter and the lower court case is captioned *Gatwood [sic] v. Ohio Attorney General’s Office* on the Clerk of Courts’ website. However, it is this Court’s practice to follow the caption on the entry being appealed.

court granted the motion and dismissed Gatewood's complaint. Journal Entry, November 21, 2014.

{¶3} Gatewood then filed a motion asking the trial court to "recall" its November 21, 2014 "mandate" as contrary to statutory law and a clear violation of his constitutional rights. The trial court issued a two-sentence entry denying Gatewood's motion to recall stating, "This action is before the Court on Plaintiff's Motion to Recall the Court's November 21, 2014 Mandate. Upon consideration thereof, Plaintiff's Motion is overruled." See Entry, December 16, 2014. Gatewood appealed the December 16, 2014 Entry.

{¶4} Appellate courts in Ohio have jurisdiction to review the final orders or judgments of inferior courts within their district. Section 3(B)(2), Article IV of the Ohio Constitution; R.C. 2501.02. A final appealable order is one that affects a "substantial right" and either determines the action or is entered in a special proceeding. R.C. 2505.02(B)(1) & (2). If a judgment is not final and appealable, then an appellate court has no jurisdiction to review the matter and must dismiss the appeal. *Production Credit Assn. v. Hedges*, 87 Ohio App.3d 207, 210 at fn. 2 (4th Dist. 1993); *Kouns v. Pemberton*, 84 Ohio App. 3d 499, 501 (4th Dist. 1992).

{¶5} The Ohio Rules of Civil Procedure do not provide for motions for recall or motions for reconsideration after a final judgment in a trial court. *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 423 N.E.2d 1105 (1981). Because there is no provision for such motions, any motion for recall as well as any judgment entered in response is considered a nullity. *Id.* at 380-381. An appellate court cannot review a judgment that is a nullity. Therefore, there is nothing for this court to review. *McLaughlin v. McLaughlin*, 4th Dist. Athens App. No. 09CA28, 2010-Ohio-694, ¶¶20-23 (a motion for reconsideration is a

nullity that does not extend the thirty-day time limit for filing an appeal). As a result, we dismiss the appeal for lack of a final appealable order.

{¶6} The trial court's order denying Gatewood's motion for a recall is a nullity and not a final appealable order. Because the trial court's order denying the motion is not a final appealable order, we do not have jurisdiction to consider an appeal from that entry. Therefore, we **DISMISS** this appeal for lack of jurisdiction.

{¶7} The clerk shall serve a copy of this order on all counsel of record at their last known addresses. The clerk shall serve appellant by certified mail, return receipt requested. If returned unserved, the clerk shall serve appellant by ordinary mail.

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

Harsha, J. & Abele, J.: Concur.

FOR THE COURT

Marie Hoover
Presiding Judge