[Cite as *Clark v. Enchanted Hills Community Assn.*, 2017-Ohio-2999.]

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

BETTY CLARK,	:	
Plaintiff-Appellant,	:	Case No. 16CA12
vs.	:	
ENCHANTED HILLS COMMUNITY ASSOCIATION,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellee.	:	

APPEARANCES:

Lee D. Koogler, Hillsboro, Ohio, for appellant

Amy Schott Ferguson, Cincinnati, Ohio, for appellee

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 5-5-17

ABELE, J.

{¶ 1} This is an appeal from a Highland County Common Pleas Court summary judgment in favor of Enchanted Hills Community Association, defendant below and appellee herein. Betty Clark, plaintiff below and appellant herein, assigns the following error for review:

> "THE TRIAL COURT ERRED BY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AS A GENUINE ISSUES OF MATERIAL FACT EXIST REGARDING THE VALIDITY OF THE ENCHANTED HILLS COMMUNITY ASSOCIATION'S SELF-PURPORTED BYLAWS."

{¶ 2} Appellee is a homeowners' association that has been in existence since 1970.

Appellant owns land located within the boundaries of the homeowners' association. Throughout the years, appellant apparently has had some disputes with appellee. Appellant's complaint giving rise to the present appeal sought a declaration regarding the parties' rights and obligations under the documents she attached to her complaint, including deeds, articles of incorporation, amended articles of incorporation, a 2010 settlement agreement, a 2012 trial court judgment from an action between appellee and other association members, and our 2014 decision that affirmed the trial court's 2012 judgment. Appellant alleged that "[a] difference has arisen between [appellant] and [appellee] concerning the construction and/or validity of [appellant]'s ownership rights under her deeds, the rights of [appellee], subject to [appellant], to legally and properly govern and manage the Enchanted Hills Community Association." Appellant requested "a Declaratory Judgment from the Court declaring the rights, status and other legal relations of the parties hereto including, but not limited to the rights of [appellant] under her deeds, the rights of the parties hereto under all of the documents attached to [appellant]'s Complaint and marked as Exhibits A through Q inclusive, the rights of [appellant] as a property owner to vote for each lot owned, whether or not it is being sold to a third party on land contract, as she is the legal owner, and the current legal status and continued operation of the [EHCA]."

{¶ 3} Appellant additionally requested an order under R.C. 5312.02(D) to require appellee to "file and record their Bylaws with the Office of the Recorder in Highland County." She further asserted that if bylaws do not exist, then the court should order appellee "to call and hold a meeting to draft and adopt Bylaws in accordance with [R.C.] 1702.22 and [R.C.] 5312.02, so that the [appellee] will have proper regulations for its governance."

{¶ 4} Appellee answered and filed a counterclaim that alleged that appellant owes $700 in

past due homeowners' association fees.

{¶ 5} On September 11, 2015, appellant filed a summary judgment motion. In her motion, she requested "an order denying the [appellee] the right to continue to operate as the homeowners association * * * until such time as they are able to properly enact Bylaws to govern the operation of the [EHCA] and have filed the same with the Highland County Recorder as required by [R.C.] 5312.02(D)."

{¶ 6} On October 15, 2015, appellee filed a summary judgment motion and filed a separate response to appellant's summary judgment motion. Appellee alleged that no genuine issues of material fact remain regarding appellant's right to vote at annual or special meetings of the homeowners' association. Appellee asserted that it did not dispute whether appellant "has the right to vote at annual and special meetings of the homeowner's association to the same extent as all other lot owners." Appellee further asserted that no genuine issue of material fact remained as to whether appellant "must pay a maintenance charge of $50.00 per lot for the first lot owned and $10.00 for each additional lot owned * * *." Appellee also claimed that appellant "acknowledges" that bylaws exist.

{¶ 7} On April 4, 2016, the trial court granted appellee summary judgment. The court determined that appellant's complaint asserted that appellee does not have bylaws and that without bylaws appellee cannot operate as a lawful entity. The court found, however, that appellant's "position fails to consider the legal distinction between 'restrictive covenants' that run with the land and 'bylaws.'" The court further noted that this court (the Fourth District Court of Appeals) previously "recognized the existence of current and enforceable bylaws for the [EHCA]. These bylaws were implicitly recognized by the trial court in that proceeding as well as in the previous

litigation involving this Plaintiff * * *, and may be amended as provided by the declaration and/or applicable statute." The court thus "enter[ed] summary judgment in favor of [appellee] as to each claim of [appellant] and overrules [appellant]'s motion for summary judgment." The court additionally found "no just cause for delay." This appeal followed.

{¶ 8} Before we can review the merits of appellant's assignment of error, we first must determine whether we have jurisdiction to do so. Courts of appeals have jurisdiction to "affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district." Section 3(B)(2), Article IV, Ohio Constitution. "As a result, '[i]t is well-established that an order [or judgment] must be final before it can be reviewed by an appellate court. If an order [or judgment] is not final, then an appellate court has no jurisdiction.'" *Gehm v. Timberline Post & Frame*, 112 Ohio St.3d 514, 2007–Ohio–607, 861 N.E.2d 519, ¶14, quoting *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989). "An order is a final, appealable order only if it meets the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B)." *Lycan v. Cleveland*, 146 Ohio St.3d 29, 2016-Ohio-422, 51 N.E.3d 593, ¶21, citing Gehm at ¶15. In the event that the parties involved in the appeal do not raise this jurisdictional issue, then the appellate court must sua sponte raise it. *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 541 N.E.2d 64 (1989), syllabus; *Whitaker-Merrell v. Geupel Co.*, 29 Ohio St.2d 184, 186, 280 N.E.2d 922 (1972).

{¶ 9} R.C. 2505.02(B) defines the characteristics of a final order and states in relevant part:

> An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> (1) An order that affects a substantial right in an action that in effect determines the

> action and prevents a judgment;
>
> (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment[.]
>
> * * * *

{¶ 10} R.C. 2505.02(A)(1) defines a "substantial right" as "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 545, 684 N.E.2d 72 (1997), citing *State ex rel. Hughes v. Celeste*, 67 Ohio St.3d 429, 430, 619 N.E.2d 412 (1993), and *Noble v. Colwell*, 44 Ohio St.3d 92, 94, 540 N.E.2d 1381 (1989) ("A 'substantial right' for purposes of R.C. 2505.02 is a legal right enforced and protected by law."). An order "determines the action and prevents a judgment," as contemplated in R.C. 2505.02(B)(1), when it "'dispose[s] of the whole merits of the cause or some separate and distinct branch thereof and leave[s] nothing for the determination of the trial court.'" *Natl. City Commercial Capital Corp. v. AAAA At Your Serv., Inc.*, 114 Ohio St.3d 82, 2007-Ohio-2942, 868 N.E.2d 663, ¶7, quoting *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); *accord CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, 11 N.E.3d 1140, ¶25. Additionally, a declaratory judgment action is considered a special proceeding within the meaning of R.C. 2505.02(B)(2). *Walburn v. Dunlap*, 121 Ohio St.3d 373, 2009-Ohio-1221, 904 N.E.2d 863, ¶21.

{¶ 11} When a court issues a judgment that disposes of some claims but leaves other claims pending, the order is final and appealable only if the judgment complies with Civ.R. 54(B). That rule states:

> 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.

{¶ 12} Civ.R. 54(B) allows a trial court to enter final judgment as to one or more, but fewer than all, claims in a multi-claim action only upon an express determination of "no just reason for delay." Without this language, a reviewing court does not have jurisdiction and the appeal must be dismissed. *E.g., Prod. Credit Assn. v. Hedges*, 87 Ohio App.3d 207, 210, 621 N.E.2d 1360 (4th Dist. 1993), fn. 2; *Kouns v. Pemberton*, 84 Ohio App.3d 499, 501, 617 N.E.2d 701 (4th Dist. 1992).

{¶ 13} In the case at bar, the trial court entered summary judgment in appellee's favor regarding each claim of appellant's complaint. Generally, a decision granting a party summary judgment constitutes a final order under R.C. 2505.02(B)(1). *E.g., Celebrezze v. Netzley*, 51 Ohio St.3d 89, 90, 554 N.E.2d 1292 (1990). Although the trial court did not resolve appellee's counterclaim, the court did expressly determine that there is no just reason for delay. Thus, at first glance the trial court's decision appears to constitute a final, appealable order. However, further consideration indicates that the trial court did not enter a proper final order regarding appellant's claim for declaratory relief.

{¶ 14} When a party requests a declaratory judgment, "courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed. * * * The declaration may be either affirmative or negative in form and effect. The declaration has the effect of a final judgment or decree." R.C. 2721.02(A). "[I]n order to properly enter judgment in a

declaratory judgment action, the trial court must set forth its construction of the disputed document or law, and must 'expressly declare the parties' respective rights and obligations.' If the trial court fails to fulfill these requirements, its judgment is not final and appealable." *Miller Lakes Community Servs. Assn., Inc. v. Schmitt*, 9th Dist. Wayne No. 09CA76, 2011-Ohio-1295, 2011 WL 947035, ¶15 (internal citations and quotations omitted in original), quoting *Revis v. Ohio Chamber Ballet*, 9th Dist. Summit No. 24696, 2010–Ohio–2201, ¶38 (Dickinson, J., concurring in judgment only). Thus, "'a court fails to fulfill its function in a declaratory judgment action when it disposes of the issues by journalizing an entry merely sustaining or overruling a motion for summary judgment without setting forth any construction of the document or law under consideration.'" *Stiggers v. Erie Ins. Group*, 8th Dist. Cuyahoga No. 85418, 2005–Ohio–3434, ¶7, quoting *Nickschinski v. Sentry Ins. Co.*, 88 Ohio App.3d 185, 189, 623 N.E.2d 660 (8th Dist.1993); *accord Caplinger v. Raines*, 4th Dist. Ross No. 02CA2683, 2003-Ohio-2586, 2003 WL 21152490, ¶3. "A judgment entry that does not completely construe the documents is not a final, appealable order even though the entry contains Civ.R. 54(B) language." *William Powell Co. v. OneBeacon Ins. Co.*, 1st Dist. Hamilton No. C-130681, 2014-Ohio-3528, 2014 WL 4057432, ¶10, citing *Midwestern Indem. Co. v. Nierlich*, 8th Dist. Cuyahoga No. 92526, 2009–Ohio–3472, ¶9.

{¶ 15} In the case sub judice, the trial court entered summary judgment in appellee's favor regarding each claim of appellant's complaint and included an express determination that there is no just reason for delay. We thus recognize that the trial court purported to enter a final order in appellee's favor regarding each claim contained in appellant's complaint. However, the court did not set forth any construction of the documents at issue and did not expressly declare the parties' respective rights and obligations. Consequently, the lack of a proper final order with respect to the

declaratory judgment claim means that the trial court's decision granting summary judgment in appellee's favor is not a final, appealable order. Additionally, even though the court included Civ.R. 54(B) language, "cases are legion that 'the mere incantation of [Rule 54(B)] language does not turn an otherwise non-final order into a final appealable order.'" Painter and Pollis, Ohio Appellate Practice, Section 2:9 (2015) (footnotes omitted), quoting Noble v. Colwell, 44 Ohio St.3d 92, 96, 540 1381 (1989).

{¶ 16} Accordingly, based upon the foregoing reasons, we lack jurisdiction to consider appellant's appeal and must dismiss the appeal.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the appeal be dismissed and that appellee 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 Highland County Common Pleas Court to carry this judgment into execution.

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

Hoover, J.: Concurs in Judgment & Opinion
Harsha, J.: Dissents

For the Court

BY:_____
Peter B. Abele, 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.