

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NORMA J. SHIRLEY, Individually and	:	JUDGES:
As Administratrix of the Estate of	:	Hon. W. Scott Gwin, P.J.
Robert Shirley, deceased, et al.	:	Hon. Julie A. Edwards, J.
Plaintiffs-Appellees	:	Hon John F. Boggins, J.
	:	
-vs-	:	
	:	Case No. 2002CA00262
REPUBLIC-FRANKLIN INSURANCE	:	
COMPANY, et al.	:	
	:	
Defendants-Appellants	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Civil appeal from the Stark County Court of
Common Pleas, Case No. 2001CV03092

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: July 28, 2003

APPEARANCES:

For Plaintiff-Appellant

For Defendant-Appellee

JOHN S. COURY
116 Cleveland Avenue N.W.
Suite 717, Courtyard Centre
Canton, Ohio 44702

DAVID L. LESTER
1300 East 9th Street
Suite 900
Cleveland, Ohio 44114-1583

Boggins, J.

{¶1} This is an appeal by Motorists Mutual Insurance Company, one of multiple
appeals arising out of a declaratory judgment action disposed of on summary judgment.

STATEMENT OF THE FACTS AND CASE

{¶2} On February 1, 1998, decedent Robert Shirley was killed in a one-car accident. He was a passenger in the car his wife Patricia was driving. Patricia's insurance, Unity, paid its limits. Decedent's mother Norma is the Administratrix of the estate, and filed claims against nine insurance companies.

{¶3} Procedurally, the trial court entered summary judgment on June 4, 2002, on all claims except one, to which the parties had stipulated. The trial court specifically found the judgment constituted a final appealable order, and that there was no just cause for delay.

{¶4} The following day, on June 5, the plaintiffs filed a motion to reconsider the portions of the action on which they lost. On June 7, the trial court vacated the entire judgment as to all parties.

{¶5} On July 3, 2002, plaintiffs and one insurance company filed notices of appeal from the June 4, 2002 Judgment Entry. On July 9, 2002, the trial court entered a new judgment, reversing itself on certain parts of the June 4, 2002 decision. The insurance companies who had been successful in the June 4, 2002 judgment, but had lost on the July 9, 2002 filed appeals from the July 9, 2002 Judgment Entry. Thereafter, plaintiffs filed a cross-appeal in one of the cases.

{¶6} On July 8, 2002, Grange Insurance Company filed a motion to reconsider, and the trial court reversed itself on July 25, 2002. Plaintiff appealed.

{¶7} By July 25, the trial court had ruled on all of the claims a second time.

{¶8} R.C. 2505.02 (B) defines a final appealable order:

"2505.02 FINAL ORDER

As used in this section:

“(1) "Substantial right" means 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.

“(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

“(3) "Provisional remedy" means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, or suppression of evidence.

“(B) 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.”

{¶9} The Ohio Supreme Court has held a declaratory judgment action is a special proceeding, pursuant to statute. *General Accident Insurance Company v. Insurance Company of America* (1989), 44 Ohio St. 3d 17, 540 N.E. 2d 266.

{¶10} Civ. R. 54 (B) provides for the language “there is no just reason for delay.” This language puts the parties on notice when an order or decree has become final for purposes of appeal. *Noble v. Colwell* (1989), 44 Ohio St. 3d 92, 540 N.E. 2d 1381.

{¶11} We find the June 4, 2002 Judgment Entry was a final appealable order.

{¶12} The Ohio Rules of Civil Procedure do not provide for motions for reconsideration after a final judgment is entered. *Pitts v. Ohio Department of Transportation* (1981), 67 Ohio St. 2d 378, 423 N.E. 2d 1105. For this reason, a motion for reconsideration made after a final judgment in a court of original jurisdiction is considered a nullity, and any judgment or final order entered on the motion is a nullity. Id.

{¶13} We find the trial court did not have jurisdiction to entertain the motion to reconsider, nor did it have the authority to vacate its prior final judgment. Accordingly, we find the judgment entry entered on the motion to reconsider is a nullity, and the appeals from that judgment are not properly before us.

{¶14} The appeal is dismissed.

By Boggins, J.

Gwin, P.J. and

Edwards, J. concur