

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NORMA J. SHIRLEY, Individually
and as Administrator of the Estate of
Robert Shirley, deceased, et al.

Plaintiffs-Appellees

-vs-

REPUBLIC-FRANKLIN INSURANCE
COMPANY

Defendants-Appellees

and

TRAVELERS INDEMNITY COMPANY OF
ILLINOIS

Defendant-Appellant

Judges:

Hon. W. Scott Gwin, P.J.
Hon. Julie A. Edwards
Hon. John F. Boggins

Case No. 2002CA00261

O P I N I O N

CHARACTER OF PROCEEDING:

Civil Appeal From Stark County Court Of
Common Pleas Case 2001CV03092

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

July 28, 2003

APPEARANCES:

For Plaintiffs-Appellees

For Defendant-Appellant

JOHN S. COURY
116 Cleveland Avenue, N.W.
Suite 717

IRENE C. KEYSE-WALKER
FRANK R. OSBORNE
CARTER E. STRANG

Canton, OH 44702

1100 Huntington Building
Cleveland, OH 44115-1475
For Travelers Indemnity Company
Of Illinois

Edwards, J.

{¶1} This is one of multiple appeals arising out of a declaratory judgment action disposed of on summary judgment.

{¶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 company paid its policy 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 for Reconsideration of the portions of the action on which they lost. On June 7, 2002, the trial court issued a Judgment Entry vacating its June 4, 2002, Judgment Entry.

{¶5} On July 3, 2002, plaintiffs and one insurance company filed notices of appeal from the June 4, 2002, Judgment Entry. Thereafter, on July 9, 2002, the trial court entered a new judgment, reversing itself on certain parts of the June 4th decision. The July 9, 2002, Judgment Order was certified, "no just cause for delay." The insurance companies who had been successful in the June 4th entry, but had lost on the July 9th entry, 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, 2002, the trial court had ruled on all of the claims a second time.

{¶8} Revised Code 2505.02(B) defines a final appealable order:

{¶9} “2505.02 FINAL ORDER

{¶10} “(A) As used in this section:

{¶11} “(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.

{¶12} “(2) ‘Special proceeding’ means an action or proceeding that is specially created by statute...

{¶13} “(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without a retrial, when it is one of the following:

{¶14} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶15} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment....”

{¶16} 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.

{¶17} Civil Rule 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.

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

{¶19} 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.

{¶20} Accordingly, 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 of June 4, 2002. Therefore, we find that the Judgment Entry entered on July 9, 2002, on the motion to reconsider is a nullity, and that the appeals from the same are not properly before us.

{¶21} For the foregoing reasons, the appeal is dismissed.

By: Edwards, J.

Gwin, P.J. and

Boggins, J. concur