[Cite as *Tillimon v. Clifton*, 2005-Ohio-533.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Duane J. Tillimon	Court of Appeals No. L-04-1113
Appellant	Trial Court No. CVG-03-19999
v.	
Don Clifton, et al. and Equity Preservation, Inc. and Steven C. Hales	**DECISION AND JUDGMENT ENTRY**
Appellees	Decided: February 9, 2005

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Duane J. Tillimon, pro se.

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HANDWORK, J.

{¶ 1} This is an appeal from the judgment of the Toledo Municipal Court which, on April 8, 2004,[1] modified the magistrate's order for sanctions imposed against appellees, Don Clifton and Christine L. Lipper, and their counsel, Steven C. Hales, for failure to provide certain documents requested during discovery. Attorney Hales filed a notice of appeal with respect to the trial court's decision; however, he never filed an appellate brief. Duane J. Tillimon cross-appealed and filed an appellate brief. Neither appellees nor Attorney Hales filed a response to Tillimon's appellate brief. As such, appellant Tillimon's appellate brief and assignment of error is the only matter before this

court. For the reasons that follow, we find that the trial court's April 8, 2004 decision reducing the mandatory sanction imposed on Hales, Clifton and Lipper is not a final appealable order.

{¶ 2} Tillimon filed a landlord's complaint for possession and damages on October 27, 2003 against appellees Clifton and Lipper. Appellees filed an answer and counterclaim to Tillimon's complaint, and a third-party complaint against Duane J. Tillimon, S/A Equity Preservation, Inc.[2] During the course of discovery appellees and Attorney Hales represented that appellees and he had certain documents in their possession, regarding liens on Tillimon's property, which supported a portion of appellees' counterclaim. Appellant asserts that he was initially refused the documents on the basis that they were public records which he could obtain himself and, with respect to the documents in Attorney Hale's possession, that such documents were work product and would not be produced.

{¶ 3} On November 26, 2003, a trial was held before Magistrate Catherine Hoolahan regarding Tillimon's complaint. A Writ of Restitution was ordered with respect to Tillimon's first cause of action, but the writ was stayed pending further hearing on December 4, 2003. Magistrate Hoolahan also considered Tillimon's request for sanctions and motion to compel regarding the documents in question. Appellees and Hales were ordered by Magistrate Hoolahan to produce the requested documents by December 2,

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[1]The trial court's judgment entry was journalized on April 12, 2004.

[2]Tillimon represents himself pro se and Equity Preservation, Inc. is represented by John Rust.

2003.

{¶ 4} On December 4, 2003, the matter came before Magistrate Susan Muska regarding Tillimon's request for sanctions. Magistrate Muska held that appellees acknowledged that they did not provide Tillimon with the documents as ordered and that the documents were within appellees' possession. Magistrate Muska noted that appellees' reason for not providing the documents was that they were a matter of public record and accessible to Tillimon on the website of the county auditor. Magistrate Muska, however, found that appellees were required to produce the specific documents upon which they relied for paragraph 14 of their counterclaim, insofar as only they knew to which documents they referred. Furthermore, the court held that Attorney Hales had not taken the required steps to assure that the documents were produced to Tillimon and had "willfully failed to comply with this court's order." Sanctions were ordered against appellees and Attorney Hales in the amount of $250 per day for each day appellees remained in violation of the order compelling discovery.

{¶ 5} On December 8, 2003, appellees filed objections to the magistrate's order. On December 22, 2003, appellees filed a motion for relief from judgment regarding the imposition of sanctions. Attorney Hales asserted in his Civ.R. 60(B) motion that, upon further investigation, he discovered that appellees' assertion in their counterclaim, paragraph 14, regarding the existence of liens on Tillimon's property, was based upon "strictly verbal – discussions which took place between counsel, Donald Clifton and/or Christine Lipper with Todd and/or Tracy White – without any written documents,

memorandum, etc. being submitted to Donald Clifton and/or Christine Lipper by anyone." Hales further asserted that although the Whites may have shown appellees some kind of written material, neither counsel nor appellees were ever given any such documents and, in fact, never possessed written material to support paragraph 14 of their counterclaim.

{¶ 6} On April 8, 2004, Judge C. Allen McConnell held a hearing on all pending motions. Attorney Hales was permitted to withdraw, insofar as appellees had indicated they were seeking new counsel. Additionally, with respect to the imposition of sanctions, Judge McConnell denied appellees' Civ.R. 60(B) motion. Having found, however, that appellees indicated in December 2003, that the documents Tillimon sought to have produced were not in appellees' or counsel's possession, never were, and were not even known to exist, the trial court modified the amount of the sanctions imposed. Appellees and Attorney Hales were ordered to pay a total of $2,500 into the Community Control Fund.

{¶ 7} Tillimon primarily raises in his sole assignment of error that the trial court erred in reducing the amount of sanctions to be imposed against appellees and Attorney Hales. Tillimon's sole assignment of error states:

{¶ 8} "The housing court judge erred when he modified the sanctions awarded by the trial court magistrate without reviewing a transcript of the hearings where discovery was compelled and sanctions were awarded, and without first requiring the sanctioned party to produce exculpatory evidence under subpoena by the plaintiff, and modified the order so that the sanctions were not paid to the injured party, but to the court."

{¶ 9} We have thoroughly reviewed the record in this case and find that the trial court's April 8, 2004 judgment entry is not a final appealable order. First, we note that at the time of the trial court's decision, other issues, claims, and parties remained pending in the action. Second, we find that the order does not fall within R.C. 2505.02, which defines what orders are final and appealable.

{¶ 10} R.C. 2505.02(B) sets forth when "[a]n order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial * * *." R.C. 2505.02(B)(4) is the only arguably applicable section with respect to this appeal. R.C. 2505.02(B)(4) states that the following type of order is final and appealable:

{¶ 11} "(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶ 12} "(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶ 13} "(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action."

{¶ 14} A "provisional remedy" is defined as "a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, suppression of evidence, or a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code." R.C. 2505.02(A)(3).

{¶ 15} Regardless of whether the trial court's decision grants or denies a provisional remedy, we find that Tillimon would nevertheless be afforded a meaningful and effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action. See R.C. 2505.02(B)(4)(b). As such, we find that the trial court's April 8, 2004 order is not final and appealable and we are, therefore, without jurisdiction to review, affirm, modify, or reverse.

{¶ 16} Based on the foregoing, we dismiss appellant's appeal on the basis that the order from which he appeals is not final and appealable. Appellant's assignment of error, therefore, will not be addressed. Costs assessed against appellant Tillimon.

APPEAL DISMISSED.

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A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4, amended 1/1/98.

Peter M. Handwork, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

William J. Skow, J. _____
CONCUR.
JUDGE