

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

Rebecca Maleckar, et al.

Court of Appeals No. E-08-044

Appellees

Trial Court No. 2006-CV-369

v.

Ronald Greco, et al.

DECISION AND JUDGMENT

Appellants

Decided: March 20, 2009

* * * * *

Kevin J. Zeiher, for appellees.

John L. Keyse-Walker, for appellants.

* * * * *

SKOW, P.J.

{¶ 1} Appellant, Sweda, Sweda & Associates, appeals from an entry of judgment denying its motion for relief from default judgment. For the reasons that follow, we dismiss this appeal for lack of a final appealable order.

{¶ 2} The complaint in this case was filed by appellees, Rebecca Maleckar and Christopher Giannini, on April 25, 2006. According to the docket sheet from the Clerk of the Erie County Court of Common Pleas, certified mail service was obtained upon appellant on September 5, 2006, with a signed receipt from Richard Sweda. Appellant never filed an answer to the complaint.

{¶ 3} On November 8, 2006, appellees filed a motion for default judgment against appellant. On November 14, 2006, the trial court entered a default judgment against appellant, on the issue of liability only. Approximately 13 months later, on December 24, 2007, appellant filed a motion for relief from judgment pursuant to Civ.R. 60(B).

{¶ 4} On April 15, 2008, the trial court conducted a hearing on the motion for relief from judgment. On May 2, 2008, the trial court entered judgment denying the motion on the grounds that the motion was filed more than one year after the default judgment had been entered. On May 29, 2008, appellant filed its notice of appeal.

{¶ 5} Article IV, Section 3(B)(2) of the Ohio Constitution limits this court's jurisdiction to addressing "judgments or final orders." A final order is one that "determines the action and prevents a judgment." See R.C. 2505.02.

{¶ 6} In the instant case, the trial court's ruling on the default judgment motion was interlocutory, and not final, because it addressed only the issue of liability; the issue of damages has never been decided with respect to appellant. See *Pinson v. Triplett*

(1983), 9 Ohio App.3d 46 (holding that entry of default judgment on issue of liability alone is not a final appealable order).

{¶ 7} Because the ruling on the motion for default judgment is not a final appealable order, the order declining relief from that judgment cannot be a final appealable order. See *id.* Accordingly, this appeal must be dismissed.

{¶ 8} This appeal is dismissed for lack of a final appealable order. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Erie County.

APPEAL DISMISSED.

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

Mark L. Pietrykowski, J.

JUDGE

William J. Skow, P.J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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