

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

Karin D. Bouzaher

Court of Appeals No. E-09-034

Appellee

Trial Court No. 2009 CV 0077

v.

Emad Wahba, et al.

DECISION AND JUDGMENT

Appellant

Decided: April 9, 2010

* * * * *

D. Jeffery Rengel and Thomas R. Lucas, for appellee.

Donald Gallick, for appellant.

* * * * *

COSME, J.

{¶ 1} Appellant appeals from three orders of the Erie County Court of Common Pleas that (1) entered default judgment against appellant, (2) denied appellant's motion to vacate default judgment, and (3) denied appellant's motion to disqualify opposing counsel. We dismiss this appeal for lack of jurisdiction.

I. BACKGROUND

{¶ 2} On January 29, 2009, appellee, Karen Bouzaher, filed a complaint against appellant, Emad Wahba, in the Erie County Court of Common Pleas. On April 7, 2009, appellee procured a default judgment against appellant, which granted judgment in her favor on all claims, but continued the matter for a determination of damages.

{¶ 3} On April 27, 2009, appellant moved to disqualify appellee's counsel from representing appellee. The court denied this motion on May 11, 2009. Appellant also filed a Civ.R. 60(B) motion for relief from the default judgment on May 19, 2009, which the court denied on June 2, 2009. Appellant filed a notice of appeal on June 29, 2009.

II. DEFAULT JUDGMENT AND DENIAL OF MOTION TO VACATE

{¶ 4} We lack jurisdiction over the entry of default judgment and the denial of appellant's motion to vacate said judgment. The Ohio Constitution limits an appellate court's jurisdiction to appeals from final orders. Section 3(B)(2), Article IV. An order is final and appealable only if it meets the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B). See *Sullivan v. Anderson Twp.*, 122 Ohio St.3d 83, 2009-Ohio-1971, ¶ 10; *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, syllabus. R.C. 2505.02(B)(1) applies to this appeal, and defines a final order as one that "affects a substantial right," and "determines the action and prevents a judgment." See *Sullivan*, 2009-Ohio-1971, ¶ 10.

{¶ 5} A default judgment that reserves the issue of damages for future determination is not a final appealable order because it does not determine the action or

prevent a judgment. See *Maleckar v. Greco*, 6th Dist. No. E-08-044, 2009-Ohio-1472, ¶ 6, citing *Pinson v. Triplett* (1983), 9 Ohio App.3d 46. Further, when an order is not final, the decision declining to vacate that order is also not a final appealable order. See *State ex rel. Bd. of State Teachers Retirement Sys. of Ohio v. Davis*, 113 Ohio St.3d 410, 2007-Ohio-2205, ¶ 48, citing *Pinson*, 9 Ohio App.3d at 46.

{¶ 6} In the present matter, the trial court's April 7, 2009 entry of default judgment is not a final appealable order because it reserves the determination of damages for a later date. Therefore, the trial court's June 2, 2009 order denying appellant's motion to vacate judgment is also not a final appealable order.

III. DENIAL OF MOTION TO DISQUALIFY

{¶ 7} We also lack jurisdiction over the denial of appellant's motion to disqualify opposing counsel for the same reasons. The denial of a motion to disqualify counsel is an interlocutory order, not a final appealable order. *Mattison v. Khalil*, 6th Dist. No. L-07-1393, 2008-Ohio-716, ¶ 24. See, also, *Bernbaum v. Silverstein* (1980), 62 Ohio St.2d 445. Such an order becomes appealable when a trial court enters final judgment terminating a case, causing all prior interlocutory orders to merge into the final judgment. See *Davis v. Galla*, 6th Dist. No. L-08-1149, 2008-Ohio-3501, ¶ 6.

{¶ 8} In the present matter, the trial court has yet to enter final judgment disposing of the case. Accordingly, the trial court's May 11, 2009 order denying appellant's motion to disqualify remains interlocutory, and cannot be appealed at this time.

IV. CONCLUSION

{¶ 9} There being no final appealable order to review, we dismiss the appeal.

Appellant is ordered to pay all costs of this appeal pursuant to App.R. 24.

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.

Peter M. Handwork, J.

JUDGE

Thomas J. Osowik, P.J.

Keila D. Cosme, J.

JUDGE

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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