

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

Laurel Matthews, M.D.

Court of Appeals No. S-11-035

Appellant

Trial Court No. 10CV441

v.

Exigence of Fremont, LLC, et al.

DECISION AND JUDGMENT

Appellees

Decided: September 28, 2012

* * * * *

Laurel Matthews, M.D., pro se.

Brian D. Sullivan and Kenneth P. Abbarno, for appellee Exigence
of Fremont, LLC.

James H. O'Doherty and Rebecca E. Shope, for appellee Memorial
Hospital.

* * * * *

OSOWIK, J.

{¶ 1} This matter is before the court sua sponte. It has come to the court's attention that appellant, Laurel Matthews, M.D., has filed an appeal from an order that is not final and appealable. Appellant filed a notice of appeal from the July 21, 2011 judgment of the Sandusky County Court of Common Pleas, which granted appellee's,

Fremont Memorial Hospital, summary judgment motion and its August 2, 2011 judgment which granted a summary judgment motion filed by appellee, Exigence of Fremont, LLC (“Exigence”). However, Exigence’s counterclaim, which was filed on July 6, 2010, remains pending before the trial court.

{¶ 2} Pursuant to R.C. 2505.02(B)(1), a final, appealable order is one “that affects a substantial right in an action that in effect determines the action and prevents a judgment * * *.” The Supreme Court of Ohio has held that an order which adjudicates one or more but fewer than all of the claims or the rights and liabilities of fewer than all the parties must meet not only the requirements of R.C. 2505.02, but also of Civ.R. 54(B), in order to be final and appealable. *Noble v. Colwell*, 44 Ohio St.3d 92, 540 N.E.2d 1381 (1989), syllabus.

{¶ 3} Civ.R. 54(B) states:

Judgment Upon Multiple Claims or Involving Multiple Parties.

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the

rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

{¶ 4} A review of the record in this case shows that the trial court has not disposed of all of the claims/counterclaims between all of the parties. In addition, neither of the trial court's judgment entries contains Civ.R.54(B) language stating that there is no just reason for delay. Thus, the orders are not final and cannot be appealed at this time. The court hereby dismisses this appeal. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. All pending motions are hereby rendered moot. It is so ordered.

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

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.

CONCUR.

JUDGE

<p>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: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
