

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90902

SWA, INC. dba CENTURY OAK CARE CENTER
PLAINTIFF-APPELLANT

HELEN LOUISE BRADLEY

PLAINTIFF-APPELLEE/
CROSS APPELLANT

vs.

CLIFTON RICHEY, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-513389 and CV-521556

BEFORE: Blackmon, J., Gallagher, P.J., and Rocco, J.

RELEASED: **9-17-08**

JOURNALIZED:

ATTORNEY FOR APPELLANT

For SWA Inc. dba Century Oak Care Center:

Jonathan F. Sobel
Kabat, Mielziner & Sobel
25550 Chagrin Blvd., Suite #403
Beachwood, Ohio 44122

ATTORNEYS FOR APPELLEE/CROSS APPELLANT

For Helen Louise Bradley:

Michael Westerhaus
14255 Peppercreek Drive
Strongsville, Ohio 44138

ATTORNEY FOR APPELLEES

For Wells Fargo Bank:

Amelia A. Bower
Plunkett & Cooney, P.C.
300 East Broad St., Suite #590
Columbus, Ohio 43215

For Wells Fargo Bank:

Kirk W. Kiederbach
5001 Mayfield Road, Suited #301
Lyndhurst, Ohio 44124

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

[Cite as *SWA, Inc. v. Richey*, 2008-Ohio-4713.]
PATRICIA ANN BLACKMON, J.:

{¶ 1} Sua Sponte, we dismiss the instant appeal for lack of a final appealable order. The trial court adopted the magistrate's decision without separately stating its own judgment as required by Civ.R. 53(D)(4)(e) and Civ.R. 54(A). A trial court order stating that it is adopting a magistrate's decision is not a final appealable order. *In re: Zinni*, Cuyahoga App. No. 59899, 2008-Ohio-581, citing *Harkai v. Scherba Indus.* (2000), 136 Ohio App.3d 211; *Plymouth Park Tax Servs., LLC, et al., v. Margaret A. Frazier, et al.*, Cuyahoga App. Nos. 90343, 90352, 90353, 90354, 90356, 90357, 90464, 90525, and 90526, 2008-Ohio-3348. To constitute a final appealable order, the trial court's journal entry must be a separate and distinct instrument from that of the magistrate's order and must grant relief on the issues originally submitted to the court. *Id.*, citing *In re: Jesmone Dortch* (1999), 135 Ohio App.3d 430.

Appeal dismissed.

It is ordered that appellees recover of appellant their costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, P.J., and
KENNETH A. ROCCO, J., CONCUR