

[Cite as *FlagStar Bank FSB v. Moore*, 2008-Ohio-6163.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91145

FLAGSTAR BANK, FSB

PLAINTIFF-APPELLEE

vs.

~~**ROOSEVELT MOORE, ET AL.**~~

DEFENDANTS-APPELLANTS

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas

Case No. CV-611006

BEFORE: Blackmon, J., Cooney, P.J., Boyle, J.

RELEASED: November 26, 2008

JOURNALIZED:

ATTORNEY FOR APPELLANTS

Lester S. Potash
1717 Illuminating Building
55 Public Square
Cleveland, Ohio 44113-1901

ATTORNEYS FOR APPELLEES

For Flagstar Bank, FSB
James L. Sassano
Carlisle, McNellie, Rini, Kramer & Ulrich
24755 Chagrin Blvd, Suite 200
Cleveland, Ohio 44122

For Dept. Of Revitalization
Shaker Heights
3450 Lee Road
Shaker Heights, Ohio 44120

Manorcare, Inc., DBA, HCR Manorcare,
Euclid Beach
16101 Lakeshore Blvd.
Cleveland, Ohio 44110

Irma J. Wilber, Pro Se
6712 Stafford Drive, Suite 310
Mayfield Heights, 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).

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. 89599, 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 appellants 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

COLLEEN CONWAY COONEY, P.J., and
MARY J. BOYLE, J., CONCUR