[Cite as *Udelson v. Udelson*, 2009-Ohio-6462.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92717

THOMAS UDELSON, ET AL.

PLAINTIFFS-APPELLEES

vs.

BERNARD UDELSON, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
REVERSED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-595503

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

RELEASED: December 10, 2009

JOURNALIZED:
ATTORNEY FOR APPELLANTS

Colin G. Skinner
Oldham Kramer
195 South Main Street, Suite 300
Akron, Ohio 44308-1314

ATTORNEYS FOR APPELLEES

For Thomas Udelson, et al.

Karl D. Kammer
75 Public Square
Suite 650
Cleveland, Ohio 44113-2097

For Lucky Sand and Gravel Company

David A. Schaefer
McCarthy, Lebit, Crystal & Liffman Co.
1800 Midland Building
101 Prospect Avenue
Cleveland, Ohio 44115

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Bernard Udelson, appeals from an order of the trial court granting plaintiffs-appellees Thomas and Jerri Udelson's motion for reconsideration. Because we find that the trial court did not have jurisdiction to address the motion for reconsideration, we reverse the judgment of the trial court.

{¶ 2} Thomas and Jerri Udelson became co-trustees of the Alvin Udelson Trust after their father, Alvin Udelson, passed away in February 2005. Alvin and Bernard Udelson were brothers and each owned a 50 percent share in Lucky Sand and Gravel Company ("Lucky Sand"). After Alvin passed away, Bernard became the sole director and officer of Lucky Sand. In 2006, Thomas and Jerri Udelson brought a shareholder derivative action against their uncle, Bernard Udelson, claiming that he violated his fiduciary duty as sole director and officer of the corporation and misappropriated and misused corporate funds.

{¶ 3} At the final pretrial conference on September 10, 2007, the parties entered into a settlement agreement. Counsel for Bernard Udelson read the agreement into the record. In addition to various other terms, the agreement included:

{¶ 4} "Unless the parties agree otherwise [after] one hundred and twenty days, Bernard Udelson will bring an action in the Portage County Court of

Common Pleas seeking judicial dissolution of Lucky Sand and Gravel Company, which will not include any claims against the Alvin Udelson Trust.

{¶ 5} "This action will also seek the appointment of a receiver. In the event that the receiver chooses to hire Bernard Udelson, he will be paid as an independent contractor at a rate of $75 per hour. Otherwise, his salary and benefits will stop upon the appointment of a receiver. The parties will stipulate to the foregoing in the Portage County action, if it is filed."

{¶ 6} On September 13, 2007, the trial court issued the following order dismissing the action: "Parties and counsel present in court. Parties and counsel set forth on the record the terms and conditions of settlement. Case is settled and dismissed with prejudice. Cost to be split between parties. Final."

{¶ 7} On May 9, 2008, Thomas and Jerri Udelson filed a motion to enforce the settlement agreement, maintaining that Bernard Udelson violated the terms of the agreement because he had not filed a judicial dissolution action in Portage County or requested that a receiver be appointed. The trial court denied the motion as moot on August 27, 2008, since in Bernard Udelson's response to the motion to enforce settlement, he notified the court that he had in fact done so, and he further attached a copy of the dissolution action that he filed in Portage County.

{¶ 8} Thomas and Jerri Udelson then moved the trial court to reconsider its denial of their motion to enforce the settlement and requested an evidentiary

hearing on the matter. The court held an evidentiary hearing on November 3, 2008, and granted their motion to reconsider in part. It is from this judgment that Bernard Udelson appeals, raising three assignments of error for our review:

{¶ 9} "[1.] The trial court erred as a matter of law in its determination that it had subject matter jurisdiction over the motion for reconsideration.

{¶ 10} "[2.] The trial court erred as a matter of law in its application of the facts to the terms of the settlement agreement and its finding that Bernard Udelson was obligated to seek a receiver as of March 5, 2009.

{¶ 11} "[3.] The trial court erred in its formulation of the appropriate remedy, which is against the manifest weight of the evidence, and contrary to the terms of the settlement agreement."

{¶ 12} In his first assignment of error, Bernard Udelson maintains the trial court did not have subject matter jurisdiction to address Thomas and Jerri Udelson's motion to reconsider. Although Bernard Udelson concedes that the trial court had jurisdiction to entertain Thomas and Jerri Udelson's motion to enforce the settlement agreement, he argues the order denying that motion was a final order, and as such, the trial court did not have jurisdiction to reconsider it.

{¶ 13} Subject-matter jurisdiction is the power conferred on a court to decide a particular matter on its merits and render an enforceable judgment over the action. *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, paragraph one of the

syllabus. The question of subject-matter jurisdiction is a question of law we review de novo. *Yusuf v. Omar*, 10th Dist. No. 06AP416, 2006-Ohio-6657, ¶7.

{¶ 14} For a judgment to be final and appealable, the requirements of R.C. 2505.02 must be satisfied. *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 88. A judgment that "does not dispose of all the claims between all the parties, and does not contain an express determination that there is no just reason for delay, see Civ.R. 54(B), is not a final, appealable order." *Davis v. Chrysler Corp.* (Apr. 12, 2000), 9th Dist. No. 19525. Additionally, a judgment is not final if it "fails to speak to an area which was disputed, uses ambiguous or confusing language, or is otherwise indefinite, the parties and subsequent courts will be unable to determine how the parties' rights and obligations were fixed by the trial court." *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 216, quoting *Walker v. Walker* (Aug. 5, 1987), 9th Dist. No. 12978.

{¶ 15} With that standard in mind, we find that the trial court's order denying Thomas and Jerri Udelson's motion to enforce settlement was a final order. It clearly disposed of all of the claims of the parties and left nothing else to be determined. Having concluded that the trial court's denial of the motion to enforce settlement was a final order, we further find that the trial court did not have jurisdiction to reconsider it.

{¶ 16} The Ohio Rules of Civil Procedure limit relief from judgments to motions expressly provided for in the rules. *Pitts v. Ohio Dept. of Transp.*

(1981), 67 Ohio St.2d 378, 380. The rules allow for relief from final judgments by means of Civ.R. 50(B) (motion notwithstanding the verdict), Civ.R. 59 (motion for a new trial), and Civ.R. 60(B) (motion for relief from judgment). Id. The rules do not, however, prescribe motions for reconsideration after a final judgment in the trial court. Id. at paragraph one of the syllabus. Accordingly, motions for reconsideration of a final judgment in the trial court are a nullity and trial courts do not have jurisdiction to address them. Id. at 380.

{¶ 17} It has long been recognized, however, "that trial courts have been allowed some discretion to treat a motion for reconsideration as a motion to vacate under Civ.R. 60(B)." *Pete's Auto Sales v. Conner* (Aug. 24, 2000), 8th Dist. No. 77014, citing *Malloy v. Kraft General Foods* (June 14, 1999), 7th Dist. Nos. 95 C.A. 241 and 96 C.A. 245; *Scherer v. AT&T Global Information Solutions Co.* (Dec. 4, 1997), 10th Dist. No. 97APE06-782; *Bolle v. Bolle* (Feb. 28, 1991), 2d Dist. No. 2731; *Sommerville v. Erie Co. Commrs.* (July 22, 1988), 6th Dist. No. E-87-60, unreported; and *Anthony v. Central Ohio Transit Auth.* (Sept. 29, 1988), 10th Dist. No. 88AP-182.

{¶ 18} In the present case, however, there is no indication that the trial court construed Thomas and Jerri Udelson's motion to reconsider as Civ.R. 60(B) motion. At the November 14, 2008 hearing on the motion to reconsider, the trial court never indicated it was treating the motion as a Civ.R. 60(B) motion, nor did it mention Civ.R. 60(B) in its language or any of its requisites. In fact, the trial

court's comments at that hearing clearly indicate that the court was considering the motion only as one for reconsideration. It stated: "We're here for purposes of a hearing on plaintiff — the Alvin Udelson Trust's motion for reconsideration." Moreover, counsel for Bernard Udelson argued in his opening statements at the hearing that the trial court had no jurisdiction to consider the motion to reconsider, but the trial court disagreed. It is clear from the transcript that the trial court believed it did have jurisdiction and never construed the motion to reconsider as a Civ.R. 60(B) motion.

{¶ 19} We further note that at least one appellate court has reversed a trial court for *not* construing a motion to reconsider as one for relief from judgment pursuant to Civ.R. 60(B). See *Anthony*, 10th Dist. No. 88AP-182. The Tenth District "found the 'motion for reconsideration' was, 'in substance,' a Civ.R. 60(B) motion." Id. It pointed to the following facts: (1) plaintiffs stated in the first full paragraph of the motion for reconsideration that the decision should have been reconsidered under Civ.R. 60(B); (2) counsel attached an affidavit stating that the affidavit was being made in support of the "motion for relief from judgment"; (3) the memorandum in support of the motion set forth that plaintiffs had a meritorious claim if relief is granted, that plaintiffs were entitled to relief under one of the grounds in Civ.R. 60(B)(1) through (5), and that the motion was made within a reasonable time, citing *GTE Automatic Elec. v. ARC Industries* (1976), 47

Ohio St.2d 1460. These are the requirements that movants must meet before they will be granted relief from judgment.

{¶ 20} Contrary to the facts in *Anthony*, however, Thomas and Jerri Udelson's "motion to reconsider" does not contain any indication that they were moving the court to vacate the judgment based upon Civ.R. 60(B), nor did they raise any of the Civ.R. 60(B) requirements necessary to vacate a judgment at the hearing.

{¶ 21} Thus, we find that the trial court did not have jurisdiction to address Thomas and Jerri Udelson's motion to reconsider. Bernard Udelson's first assignment of error is sustained; the remaining assignments are therefore moot.

Judgment reversed.

It is ordered that appellant recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

MARY J. BOYLE, JUDGE

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