

[Cite as *Dickson & Campbell, L.L.C. v. Marshall*, 2010-Ohio-2878.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90963

DICKSON & CAMPBELL, L.L.C.

PLAINTIFF-APPELLEE

vs.

JOY L. MARSHALL

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-627533

BEFORE: McMonagle, J., Kilbane, P.J., and Boyle, J.

RELEASED: June 24, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief, per Loc.App.R. 25.1(B)(2), is filed within ten 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(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Joy L. Marshall, appeals from the trial court's judgment granting summary judgment to plaintiff-appellee, Dickson & Campbell, L.L.C. Because the trial court's judgment entry did not resolve all of Dickson & Campbell's claims for relief, we dismiss for lack of a final appealable order.

I

{¶ 2} This case arises from Marshall's flouting of the trial court's orders relating to the handling and distribution of settlement proceeds in *Tyrus v. Grand Pointe Health Community*, Cuyahoga County Common Pleas Court Case No. CV-571328. In that case, the trial court tendered the \$150,000 settlement check to Marshall, who had begun representing Tyrus after Tyrus terminated Dickson & Campbell. The court ordered Marshall to disburse no more than \$85,000 of the settlement proceeds to Tyrus, and to maintain the remaining funds in an appropriate account pending the court's ruling on Dickson & Campbell's charging lien for attorney's fees. (Dickson & Campbell had done nearly 95% of the work on the case prior to settlement.)

{¶ 3} After Marshall withdrew from the case, the trial court granted Dickson & Campbell's motion for enforcement of its charging lien (which Tyrus did not contest), and ordered Marshall to transmit \$60,443 to Tyrus

and her new counsel, \$10,000 of which Tyrus would keep as additional settlement proceeds and \$50,443 of which would be forwarded to Dickson & Campbell. The court awarded Marshall \$4,557 for her fees, and ordered that she could retain that amount from the total of the \$65,000 being held in her escrow/IOLTA account.

{¶ 4} Marshall did not comply with the trial court's order. After a hearing, the trial court found that Marshall had "disbursed and misappropriated funds" in violation of the court's orders, held her in contempt, and sentenced her to three days in county jail. This court subsequently affirmed the contempt finding. *In re Contempt of Joy Marshall, Esq.*, 8th Dist. No. 88780, 2007-Ohio-6639. But Marshall still did not comply with the trial court's order.

{¶ 5} Thereafter, Dickson & Campbell filed a five-count civil complaint in this case against Marshall. It asserted claims for fraud, conversion/theft, embezzlement, tortious interference with business, and punitive damages of \$500,000, all related to Marshall's refusal to transmit the funds to Dickson & Campbell as ordered by the trial court. The record does not reflect that Marshall ever filed an answer and counterclaim, although Dickson & Campbell apparently was served with a copy and filed an answer to the counterclaim, which was for fraud, interference with contractual relations,

libel per se, abuse of process, and intentional/negligent infliction of emotional distress.

{¶ 6} Both parties subsequently moved for summary judgment.¹ In its motion, Dickson & Campbell moved for summary judgment regarding its fraud, conversion, and embezzlement claims. The trial court granted Dickson & Campbell's motion, and ordered judgment in favor of Dickson & Campbell in the amount of \$50,443 plus statutory interest and costs. The court denied Marshall's motion for summary judgment. Marshall now appeals from the trial court's judgment.

II

{¶ 7} R.C. 2505.03(A) limits the appellate jurisdiction of courts of appeals to the review of final orders, judgments, or decrees. An order is a final appealable order if it "affects a substantial right in an action that in effect determines the action and prevents a judgment." R.C. 2505.02(B)(1).

{¶ 8} "For an order to determine the action and prevent a judgment for the party appealing, it must dispose of the whole merits of the cause * * * and leave nothing for the determination of the court." *State ex rel. Downs v. Panioto*, 107 Ohio St.3d 347, 2006-Ohio-8, 839 N.E.2d 911, ¶20. A judgment that leaves issues unresolved is not a final appealable order. *State ex rel. Bd.*

¹Dickson & Campbell's motion for summary judgment included a request for sanctions against Marshall. The trial court did not rule on this motion; hence, it is deemed denied. *Whitman v. Saffold*, 8th Dist. No. 94539, 2010-Ohio-2232, ¶3.

of State Teachers Retirement Sys. of Ohio, 113 Ohio St.3d 410, 2007-Ohio-2205, 865 N.E.2d 1289, ¶45.

{¶ 9} Here, Dickson & Campbell moved for summary judgment on counts one (fraud), two (conversion), and three (embezzlement) of its complaint; inexplicably, it did not move for summary judgment on the tortious interference claim contained in count four of its complaint. Hence, the trial court's judgment granting Dickson & Campbell's motion for summary judgment left that claim unresolved.

{¶ 10} Additionally, the trial court's judgment did not resolve Dickson & Campbell's punitive damages claim. Although Dickson & Campbell set forth its punitive damages claim separately in count five of its complaint, a "punitive damages [claim] is not a separate claim in itself, but rather an issue in the overall claim for damages." *Id.* at ¶46; see, also, *Hitchings v. Weese*, 77 Ohio St.3d 390, 1997-Ohio-290, 674 N.E.2d 688 ("Punitive damages are awarded as a mere incident of the cause of action in which they are sought.") The complaint indicates that in addition to the claim for punitive damages set forth in count five, Dickson & Campbell specifically sought \$50,443, interest from August 15, 2006, punitive damages, and costs relating to each of its other causes of action. The trial court's judgment made no mention of punitive damages, however.

{¶ 11} Furthermore, the trial court's judgment did not dispose of Marshall's counterclaims. The trial court denied her motion for summary judgment, but did not dismiss her counterclaims.

{¶ 12} When there are multiple claims and/or multiple parties to an action, an order of a court is a final appealable order only if the requirements of both R.C. 2505.02 and Civ.R. 54(B) are met. *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus. Under Civ.R. 54(B), when more than one claim for relief is presented in an action, a court may enter final judgment as to fewer than all of the claims "only upon an express determination that there is no just reason for delay." In the absence of such a determination, "any order * * * which adjudicates fewer than all the claims * * * shall not terminate the action as to any of the claims or parties." The trial court's order did not contain the requisite "no just cause for delay" language.

{¶ 13} Without a final appealable order, we lack jurisdiction to review the matter and must dismiss the case. *N. Shore Auto Financing, Inc. v. Block*, 176 Ohio App.3d 205, 2008-Ohio-1708, 891 N.E.2d 79, ¶12.

Dismissed.

It is ordered that the parties share equally in the 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.

CHRISTINE T. McMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR