

[Cite as *Luck v. Klayman*, 2016-Ohio-2945.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 103519

---

**STEPHANIE ANN LUCK**

PLAINTIFF-APPELLEE

VS.

**LARRY ELLIOT KLAYMAN, ET AL.**

DEFENDANTS-APPELLANTS

---

**JUDGMENT:  
DISMISSED**

---

Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-14-828766

**BEFORE:** Celebrezze, J., Jones, A.J., and Boyle, J.

**RELEASED AND JOURNALIZED:** May 12, 2016

## **ATTORNEYS FOR APPELLANTS**

### **For Larry Elliot Klayman**

Larry Elliot Klayman, pro se  
2020 Pennsylvania Avenue, N.W., #800  
Washington, D.C. 20006

### **For Judicial Watch**

Thomas J. Wilson  
100 Federal Plaza East  
Suite 926  
Youngstown, Ohio 44503-1811

## **ATTORNEYS FOR APPELLEE**

David S. Brown  
Robert B. Weltman  
Jack W. Hinneberg  
Weltman, Weinberg & Reis, Co. L.P.A.  
323 W. Lakeside Avenue, Suite 200  
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellant, Larry Elliot Klayman, appeals from an interlocutory order of the trial court denying his motion for summary judgment and partially granting the summary judgment motion of appellee, Stephanie Ann Luck. Klayman insists there is a final order because the trial court is attempting to exercise jurisdiction it does not possess by ordering a federal district court to do some act, and because the court should have found the underlying judgment invalid in this creditor's bill action. After a thorough review of the record and law, this court dismisses the case for lack of a final, appealable order.

### **I. Factual and Procedural History**

{¶2} Klayman and Luck were married and had two children together. Their relationship soured and the two entered into a separation agreement. A case was initiated in the Cuyahoga County Domestic Relations Court that eventually resulted in a judgment in favor of Luck for \$325,000 in 2011. This judgment was upheld by this court on appeal. *Klayman v. Luck*, 8th Dist. Cuyahoga Nos. 97074 and 97075, 2012-Ohio-3354.

{¶3} On June 23, 2014, Luck filed a creditor's bill against Klayman and Judicial Watch, Inc. ("Judicial Watch"). Luck sought to obtain money that Judicial Watch was required to pay to Klayman under a civil judgment Klayman won against it in a defamation suit brought in a federal district court in Florida. Judicial Watch and Klayman both sought summary judgment. Luck responded in opposition and filed her own motion for summary judgment. On July 22, 2015, the trial court denied Klayman's

motion, granted Luck's motion in part, and did not rule on Judicial Watch's motion. The entry denying Klayman's motion was a separate entry. Klayman then filed a notice of appeal. This court dismissed the appeal for lack of a final, appealable order. Klayman then moved the trial court to amend its journal entries to include "no just reason for delay" language, pursuant to Civ.R. 54(B). On September 16, 2015, the trial court amended the entry granting in part Luck's motion for summary judgment:

Plaintiff [Luck] asks this court to issue an order directing the clerk of the United States District Court for the Southern District of Florida to pay and apply upon [her] judgment against Klayman, the \$181,000 deposited with it by Judicial Watch. The court agrees with defendant Klayman that this court is without authority to order a federal district court to pay funds deposited therein to plaintiff [Luck]. Furthermore, the District Court for the Southern District of Florida has ordered the \$181,000 returned to Judicial Watch. The status of the \$181,000 is currently in flux, as defendant Klayman has appealed that court's decision to return the funds to Judicial Watch, and that appeal remains pending.

It is clear to the court, however, that plaintiff [Luck] procured a judgment in Cuyahoga County Domestic Relations Court against defendant Klayman, that judgment was affirmed by the Eighth District Court of Appeals, and at this time plaintiff [Luck] is entitled to collect on that judgment. It is not clear what assets defendant Klayman has to satisfy that judgment.

To that end, the court hereby enjoins defendant Judicial Watch from paying any of the \$181,000 to defendant Klayman. This order is subject to change.

The court declines to rule upon defendant Judicial Watch's motion for summary judgment at this time. There is no just cause for delay.

It is so ordered. Final.<sup>1</sup>

---

<sup>1</sup> The trial court did not amend the separate journal entry denying Klayman's motion for summary judgement to add Civ.R. 54(B) language.

{¶4} Klayman then filed another notice of appeal assigning three errors:

I. The state trial court erred as a matter of law in denying [Klayman's] motion for summary judgment because the Cuyahoga County Court of Common Pleas does not have the authority to order the U.S. District Court for the Southern District of Florida ("Florida Federal District Court") to provide the relief sought.

II. The state trial court erred as a matter of law  
in denying  
[Klayman's] motion  
for summary  
judgment because  
this case was moot.

III. The state trial court erred as a matter of law in refusing to set aside the judgment against [Klayman] as it was obtained through fraud and must have been relieved under Ohio Rules of Civil Procedure 60.

## **II. Law and Analysis**

{¶5} This court may only act pursuant to the jurisdiction granted to it by the laws of Ohio. Foundationally, the Ohio Constitution sets forth the following:

Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district \* \* \*. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

Ohio Constitution, Article IV, Section 3(B)(2).

{¶6} The above outline of this court's jurisdiction limits review of lower court decisions to those that constitute *final* orders. *Supportive Solutions, L.L.C. v. Electronic Classroom of Tomorrow*, 137 Ohio St.3d 23, 2013-Ohio-2410, 997 N.E.2d 490, ¶ 10. R.C. 2505.02 explains what constitutes a final order. R.C. 2505.02(B) defines a final order as an order that satisfies one of the following that may be applicable to this case:

- (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
- (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;
- (3) An order that vacates or sets aside a judgment or grants a new trial;
- (4) An order that grants or denies a provisional remedy and to which both of the following apply:
  - (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.
  - (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶7} Here, Klayman has pointed to nothing that would support this court's jurisdiction in relation to his assigned errors. The court's judgment entry is clearly interlocutory as to the issues raised by Klayman in this appeal. It specifically states the order is subject to change. It recognizes that further actions are needed and defers ruling on Judicial Watch's motion for summary judgment. "A judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order." *State ex rel. Keith v. McMonagle*, 103 Ohio St.3d 430, 2004-Ohio-5580, 816 N.E.2d 597, ¶ 4, citing *Bell v. Horton*, 142 Ohio App.3d 694, 696, 756 N.E.2d 1241 (4th Dist.2001); *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 89, 541 N.E.2d 64 (1989).

{¶8} The court's order does not prevent a judgment or determine an action no matter the context. Therefore, R.C. 2505.02(B)(1) and (2) cannot be satisfied. The court's order does not set aside a judgment or grant a new trial, so R.C. 2505(B)(3) does not apply. Finally, as it relates to Klayman, the court's order does not grant or deny a provisional remedy that prevents a judgment or determines an action, and does not leave Klayman without meaningful remedy following an order that is final.

{¶9} Klayman's assigned errors relate to the denial of his motion for summary judgment — the trial court's authority to act, mootness, and the refusal of the trial court to set aside the underlying judgment under a Civ.R. 60(B) standard.

{¶10} The court's denial of Klayman's motion for summary judgment does not satisfy any of the grounds in R.C. 2505.02(B) to invoke the jurisdiction of this court. With or without the Civ.R. 54(B) no just reason for delay language, there is no final order related to the issues Klayman raises. Nor is there a final order in this case into which the denial of summary judgment merges. *See Davis v. Galla*, 6th Dist. Lucas No. L-08-1149, 2008-Ohio-3501, ¶ 6 (“[W]hen a final judgment has been entered terminating an entire case, all prior interlocutory orders will merge into the final judgment and be appealable at that time.”).

### **III. Conclusion**

{¶11} The denial of Klayman's motion for summary judgment is not a final order, nor is there a final order into which that decision could merge. The entry denying Klayman's motion for summary judgment was not amended by the trial court to add

Civ.R. 54 language. Even if it were so amended, the denial would not constitute a final order. It does not determine the action, prevent a judgment, or satisfy any of the other grounds in R.C. 2505.02(B). Therefore, this court lacks jurisdiction to address Klayman's assigned errors.

{¶12} Accordingly, the appeal is dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

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

---

FRANK D. CELEBREZZE, JR., JUDGE

LARRY A. JONES, SR., A.J., and  
MARY J. BOYLE, J., CONCUR