

[Cite as *Trowsdell v. Peterson*, 2017-Ohio-1454.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105004

WILLIE TROWSDELL, JR., ET AL.

PLAINTIFFS-APPELLEES

vs.

WILLIAM A. PETERSON, JR.

DEFENDANT-APPELLANT

JUDGMENT:
DISMISSED

Criminal Appeal from the
Bedford Municipal Court
Case No. 15 CVF 02685

BEFORE: Stewart, J., McCormack, P.J., and Jones, J.

RELEASED AND JOURNALIZED: April 20, 2017

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MELODY J. STEWART, J.:

{¶1} This is an appeal from an order of the Bedford Municipal Court that denied a motion to direct the clerk of the courts to serve notice of a judgment upon the parties as required by Civ.R. 58(B). Although error is conceded, we conclude that we lack a final order and must dismiss this appeal.

{¶2} Plaintiffs-appellees Willie and Wilda Trowsdell, as landlords of a rental house, brought this breach of contract action against their tenant, defendant-appellant William Peterson, Jr., seeking damages relating to his tenancy. The court conducted a trial and issued a judgment entry in which it awarded Wilda Trowsdell¹ damages totaling \$3,042. The judgment entry, however, did not comply with Civ.R. 58(B) because it failed to direct the clerk of the courts to serve the judgment entry on the parties as required by Civ.R. 5(B).

{¶3} Nearly two months after entry of judgment, Peterson filed a motion to modify the original judgment entry to order the clerk of the courts to serve him a copy of the judgment entry. He asserted that the judgment entry failed to comply with Civ.R. 58(B) and that he did not receive service of the judgment entry. The court denied the motion, and Peterson appealed. His three assignments of error complain that the court erred by failing to comply with Civ.R. 58(B).

¹ Willie Trowsdell was dismissed from the action because he had no ownership interest in the property.

{¶4} Trowsdell concedes that the court erred by failing to comply with Civ.R. 58(B). But this concession begs the question of whether we have jurisdiction to consider this appeal. The denial of the motion to modify the judgment did not determine the action; if the order was final for purposes of R.C. 2505.02, it was so because it was a provisional order as defined by R.C. 2505.02(A)(3). Without expressing any opinion on whether the motion to modify was a provisional order, it would not have been final because Peterson was nonetheless afforded a meaningful remedy by way of appeal from the judgment that awarded damages. *See* R.C. 2505.02(B)(4)(b).

{¶5} “Failure to comply with the requirements of Civ.R. 58(B) tolls the time for appealing the final order but does not affect the finality of the order.” *State ex rel. Young v. Gall*, 8th Dist. Cuyahoga No. 102983, 2015-Ohio-3481, ¶ 3, citing *Clermont Cty. Transp. Improvement Dist. v. Gator Milford, L.L.C.*, 141 Ohio St.3d 542, 2015-Ohio-241, 26 N.E.3d 806, ¶ 11. So even though the court denied Peterson’s motion to modify the judgment entry, the court’s failure to order the clerk of the courts to serve the judgment entry consistent with Civ.R. 58(B) meant that the time period for filing an appeal from the judgment entry had not yet started. Peterson apparently thought that the time to appeal the judgment entry had expired — hence his motion to modify the judgment entry. But until the court issues the required Civ.R. 58(B) language ordering the clerk of the courts to serve the judgment entry on the parties, the time restriction placed on filing an appeal has yet to commence. The dismissal of this appeal does not deprive Peterson of a review

of his case. He still has a meaningful remedy by way of an appeal from the original judgment entry.

{¶6} Appeal dismissed.

It is ordered that appellees 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.

MELODY J. STEWART, JUDGE

TIM McCORMACK, P.J., and
LARRY A. JONES, SR., J., CONCUR