

[Cite as *Sunshine Ltd. Partnership v. C.A.S.T.L.E. High School, Inc.*, 2017-Ohio-1557.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104912

SUNSHINE LIMITED PARTNERSHIP

PLAINTIFF-APPELLEE

vs.

C.A.S.T.L.E. HIGH SCHOOL, INC.

DEFENDANT-APPELLANT

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-15-849042

BEFORE: S. Gallagher, P.J., Blackmon, J., and Jones, J.

RELEASED AND JOURNALIZED: April 26, 2017

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SEAN C. GALLAGHER, P.J.:

{¶1} C.A.S.T.L.E. High School, Inc. (“CASTLE”) appeals the granting of default judgment entered in favor of Sunshine Limited Partnership (“SLP”). For the following reasons, we must dismiss the appeal for the lack of a final appealable order.

{¶2} On June 28, 2016, the trial court set a settlement conference for the day before. The parties appear to have had notice of the event. On the day of the settlement conference, CASTLE failed to appear. As a sanction for the non-appearance, the trial court granted default judgment in favor of SLP — relieving SLP of its burden to demonstrate a basis for CASTLE’s liability. *Ohio Valley Radiology Assocs., Inc. v. Ohio Valley Hosp. Assoc.*, 28 Ohio St.3d 118, 122, 502 N.E.2d 599 (1986) (“[t]he proper action for a court to take when a defending party who has pleaded fails to show for trial is to require the party seeking relief to proceed ex parte in the opponent’s absence.”); (*Reese v. Proppe*, 3 Ohio App.3d 103, 106, 443 N.E.2d 992 (8th Dist.1981); *Smallwood v. Shiflet*, 8th Dist. Cuyahoga No. 103853, 2016-Ohio-7887, ¶ 14; Loc.R. 21.0 of the Court of Common Pleas of Cuyahoga County, General Division (“[a]fter notice, order the plaintiff to proceed with the case and decide and determine all matters ex parte upon failure of the defendant to appear in person or by counsel at any pretrial conference or trial.”). No damages were awarded at that time. Instead, the trial court set a damages hearing for August 4.

{¶3} The day before the damages hearing, CASTLE filed a notice of appeal challenging the default judgment. The damages hearing went forward without

CASTLE's participation. On August 9, the trial court entered final judgment upon all claims. On August 31, the original appeal was dismissed for the lack of a final appealable order; at the time of the appeal, the trial court had not resolved all claims then pending. *Rojas v. Concrete Designs, Inc.*, 8th Dist. Cuyahoga Nos. 103418 and 103420, 2017-Ohio-379, ¶ 12 (“[i]t is a fundamental principle of appellate jurisdiction that jurisdiction is determined at the time the notice of appeal is filed.”).¹ Two days after the dismissal, CASTLE filed the current appeal, attaching the trial court's August 9 judgment entry.

{¶4} It is well settled that “the filing of the notice of appeal divests the trial court of jurisdiction to proceed with the adjudication during the pendency of the appeal.” *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. Court of Common Pleas*, 129 Ohio St.3d 30, 2011-Ohio-626, 950 N.E.2d 149, ¶ 16. With respect to the trial court's jurisdiction, it is irrelevant that the appellate court later dismisses the action, after making the determination that the appeal was perfected from an order that was not a final appealable one. *Id.* The determination as to “the appropriateness of an appeal lies solely with the appellate court[.]” *Id.*, quoting *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, 829 N.E.2d 1207, ¶ 10-11. Upon the filing of the appeal, the trial court is without jurisdiction to proceed on the merits of the remaining claims until the case is

¹SLP claims the default judgment was predicated on CASTLE's failure to produce discovery. The docket reflects that in February 2016, CASTLE was ordered to produce discovery and that any failure to produce would be sanctioned upon written notice filed with the trial court. On March 3, 2016, SLP filed such a motion for sanctions that the trial court denied on May 3, 2016. As far as the record demonstrates, there was no discovery violation.

remanded by the appellate court. *Story v. Price-Story*, 8th Dist. Cuyahoga No. 94085, 2010-Ohio-4675, ¶ 7.

{¶5} It must be recognized that “[a]n adjudication entered by a court without jurisdiction is a nullity and is void.” *Id.*, citing *Fifth St. Realty Co. v. Clawson*, 9th Dist. Lorain No. 94CA005996, 1995 Ohio App. LEXIS 2565 (June 14, 1995); *Lambda Research v. Jacobs*, 170 Ohio App.3d 750, 2007-Ohio-309, 869 N.E.2d 39, ¶ 22 (1st Dist.).

{¶6} In this case, the trial court was divested of jurisdiction over the claims advanced in the complaint when CASTLE filed what was later deemed to be a premature interlocutory appeal. Without jurisdiction, the trial court lacked authority to conduct a hearing and determine the merits of the remaining issues. The August 9 order purporting to be the final judgment is void as a matter of law; it is a legal nullity with no force or effect and cannot be considered as a basis of this appeal. *State v. Kenney*, 8th Dist. Cuyahoga Nos. 81752 and 81879, 2003-Ohio-2046, ¶ 59; *Wohala v. Goss*, 8th Dist. Cuyahoga No. 49164, 1985 Ohio App. LEXIS 7740, 6 (May 23, 1985); *see also Bank of N.Y. Mellon Trust Co. v. Zakrajsek*, 8th Dist. Cuyahoga No. 104367, 2017-Ohio-17, ¶ 7 (reissuing a judgment entry after the trial court reacquires jurisdiction upon remand from the appellate court constitutes the final appealable order, not the order issued during the time the trial court lacked jurisdiction over the issues).

{¶7} Without the August 9, 2016 order resolving all remaining issues, there is no valid final judgment in this case. Essentially, the case remains at the state of the

proceeding as it existed on August 3, 2016, when the first notice of appeal was filed. Although there is a judgment addressing CASTLE's liability, the damages issue remains outstanding. *State ex rel. Bd. of State Teachers Retirement Sys. v. Davis*, 113 Ohio St.3d 410, 2007-Ohio-2205, 865 N.E.2d 1289, ¶ 48, citing *Pinson v. Triplett*, 9 Ohio App.3d 46, 458 N.E.2d 461 (10th Dist.1983).

{¶8} A remand would not be appropriate to solve this jurisdictional defect. A court cannot create its own jurisdiction; it only has “such jurisdiction as may be provided by law.” Ohio Constitution, Article IV, Section 3(B)(2). Our jurisdiction must exist upon the filing of the appeal. *Rojas*, 8th Dist. Cuyahoga Nos. 103418 and 103420, 2017-Ohio-379, at ¶ 12. If we lack jurisdiction, we also lack jurisdiction to order a remand. *State ex rel. McGinty v. Eighth Dist. Court of Appeals*, 142 Ohio St.3d 100, 2015-Ohio-937, 28 N.E.3d 88, ¶ 13 (issuing orders in furtherance of an appeal is an exercise of jurisdiction that cannot occur when the jurisdiction of the court was not properly invoked).

{¶9} We understand this seems to be elevating a procedural technicality over substance, but we cannot ignore jurisdictional defects for the sake of expediency. When a court acts without jurisdiction, no finality is offered. Judgments or orders issued by a court in want of jurisdiction are void, as a matter of law, and subject to collateral attacks at any time. *Lingo v. State*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188, ¶ 46. In light of the likelihood that the victorious party would like to actually collect on its judgment, the validity of that final judgment should be prioritized.

{¶10} We lack a final appealable order and must dismiss this appeal. Upon remand, this matter reverts to the state of the proceeding as it existed on August 3, 2016. The trial court shall proceed accordingly.

{¶11} The appeal is dismissed.

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

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.

SEAN C. GALLAGHER, PRESIDING JUDGE

PATRICIA ANN BLACKMON, J., and
LARRY A. JONES, SR., J., CONCUR