

[Cite as *Ormandy v. Dudzinski*, 2010-Ohio-2017.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JOHN ORMANDY, JR

Appellant

v.

RUSSELL J. DUDZINSKI

Appellee

C. A. No. 09CA009713

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 07CV151538

DECISION AND JOURNAL ENTRY

Dated: May 10, 2010

BELFANCE, Judge.

{¶1} Plaintiffs-Appellants, John and Zelma Ormandy (“the Ormandys”) appeal the decision of the Lorain County Court of Common Pleas that granted summary judgment in favor of the Defendant-Appellees, Russell and Vicki Lynn Dudzinski (“the Dudzinskis”). We dismiss the appeal for lack of a final, appealable order.

I.

{¶2} The underlying matter giving rise to the instant appeal concerns a border dispute between adjoining, residential landowners in Penfield Township, Lorain County. The Ormandys have lived on their property since 1977. In 2003, the Dudzinskis bought the property to the west of the Ormandys. The parties assumed that the boundary between their properties was marked by an old, wire fence. However, the Dudzinskis commissioned a survey in 2005 and discovered that their property extended approximately 12 to 18 feet to the east of the fence.

{¶3} On June 28, 2007, the Ormandys filed a complaint asserting three claims: (1) that they had acquired ownership of the land to the east of the wire fence by adverse possession; (2) that the Dudzinskis were estopped from claiming ownership of the land because their grantors acquiesced in the Ormandys' exercise of ownership of the land, and; (3) that the Dudzinskis committed a trespass onto the Ormandys' property by placing a row of metal stakes to the east of the existing, wire fence. The Dudzinskis filed an answer on July 25, 2007, and the parties initiated discovery.

{¶4} On April 14, 2008, the Dudzinskis filed a motion for summary judgment as to all of the claims in the complaint. The Ormandys filed a motion for summary judgment as to their claim of acquiescence. Responses were timely filed as to each motion for summary judgment.

{¶5} On August 18, 2009, the trial court issued a judgment entry granting the Dudzinskis' motion for summary judgment and denying the Ormandys' motion for summary judgment. The judgment entry solely discussed the claim of adverse possession and concluded: "Judgment is entered in favor of the [Dudzinskis] and the [Ormandys'] complaint for adverse possession is dismissed, with prejudice."

{¶6} The Ormandys filed a motion for reconsideration of summary judgment with the trial court on August 24, 2009. The Ormandys argued that the trial court failed to consider and rule upon their remaining claims for acquiescence and trespass.

{¶7} Before the trial court issued a decision on the motion for reconsideration, the Ormandys filed a notice of appeal with this Court on September 16, 2009. The Ormandys indicated they were appealing the August 18, 2009 decision of the trial court concerning summary judgment. In response, on September 29, 2009 the Dudzinskis moved this Court to

remand the matter to the trial court because the trial court's order of August 18, 2009, was not a final, appealable order.

{¶8} On October 20, 2009, while the matter was pending before this Court, the trial court granted the Ormandys' motion for reconsideration and amended its entry of August 18. The trial court's order specified that summary judgment was granted in favor of the Dudzinskis as to the claims of adverse possession and acquiescence and dismissed the Ormandys' complaint.

{¶9} On November 13, 2009, this Court issued a journal entry dismissing the Ormandys' appeal. We concluded that the August 18 order appealed from was not a final, appealable order. The journal entry also denied the Dudzinskis' motion to remand the case.

{¶10} On November 18, 2009, the Ormandys filed a second notice of appeal. The Ormandys attached the trial court's judgment entries of August 18 and October 20, 2009 to their notice of appeal. On appeal, the Ormandys have asserted four assignments of error, generally contending that the trial court erred in granting the Dudzinskis' motion for summary judgment and denying the Ormandys' motion for summary judgment.

II.

{¶11} At the outset, we must consider whether we have jurisdiction over this appeal. We note that the trial court ruled on the Ormandys' motion for reconsideration and amended its judgment entry while the matter was within the jurisdiction of this Court on appeal. "An appeal is perfected upon the filing of a written notice of appeal. R.C. 2505.04. Once a case has been appealed, the trial court loses jurisdiction except to take action in aid of the appeal." *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, at ¶9. An adjudication entered by a court without jurisdiction is a nullity and is void. *Fifth St. Realty Co. v. Clawson* (June 14, 1995), 9th Dist. No. 94CA005996, at *2. The Ormandys' notice of appeal was filed on September 16, 2009. While

the appeal was pending, the trial court granted the motion for reconsideration and amended its prior decision by an order filed on October 20, 2009. Subsequently, this Court dismissed the Ormandys' appeal by journal entry filed on November 13, 2009. The trial court was without jurisdiction to amend its prior order once the Ormandys filed their appeal, and accordingly, the trial court's judgment entry filed on October 20, 2009, is void. *In re S.J.* at ¶¶9, 15. Further, we exercise our inherent authority to vacate the trial court's void judgment of October 20, 2009. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 368 (courts have inherent power to vacate void judgments).

{¶12} The Ormandys stated in their notice of appeal that they were also appealing from the decision of the trial court filed on August 18, 2009. However, the August 18 order is not a final, appealable order.

{¶13} The Ohio Constitution provides that the courts of appeal have jurisdiction to review *final* orders of the lower courts. (Emphasis added.) Section 3(B)(2), Article IV, Ohio Constitution. "An order is not final until the trial court rules on all of the issues surrounding the award, leaving nothing outstanding for future determination." (Internal citation and quotation omitted.) *Carnegie Cos., Inc. v. Summit Properties, Inc.*, 183 Ohio App.3d 770, 2009-Ohio-4655, at ¶18. The journal entry of August 18 ruled only on the Ormandys' claim for adverse possession, leaving two other claims pending.

{¶14} Pursuant to Civ.R. 54(B), the trial court "may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay." Without such an express determination, the trial court's entry does not terminate the action. Civ.R. 54(B). Moreover, "[i]n the absence of express Civ.R. 54(B) language, an appellate court may not review an order disposing of fewer than all claims."

Internatl. Bhd. of Electrical Workers, Local Union No. 8 v. Vaughn Industries, LLC, 116 Ohio St.3d 335, 2007-Ohio-6439, at ¶8. The trial court's order of August 18, 2009, did not contain Civ.R. 54(B) language. Although the trial court attempted to amend the August 18 order to address all of the Ormandys' claims, we have determined above that that order was a nullity. Consequently, the order of August 18, 2009, is not a final order from which an appeal may be taken.

III.

{¶15} The Ormandys' appeal is dismissed because the trial court's judgment entered on October 20, 2009, is a nullity and the order of August 18, 2009, is not final. We also vacate the judgment entry entered on October 20, 2009.

Judgment vacated,
and appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

EVE V. BELFANCE
FOR THE COURT

MOORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

ROBERT B. CAMPBELL, and MARYANN C. CHANDLER, Attorneys at Law, for Appellants.

JONATHAN E. ROSENBAUM, Attorney at Law, for Appellees.