

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

FALLS MOTOR CITY, INC.

C. A. No. 25015

Appellee

v.

TRACEY DAROVICH

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2008 09 6529

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 2, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Tracey Darovich, appeals from an order of the Summit County Court of Common Pleas, awarding judgment and unspecified attorney fees in favor of Falls Motor City, Inc., dba Falls Chrysler Jeep Dodge (“Falls Motor City”). This Court dismisses.

I

{¶2} In May 2008, Darovich sought to purchase a Lincoln Aviator from Falls Motor City and agreed to tender a \$3,819 down payment on the vehicle. Darovich took possession of the vehicle and gave Falls Motor City two checks for the down payment. The first check was for \$1,500 and the second check was for \$2,319. When Falls Motor City attempted to negotiate the second check, it was returned for insufficient funds. Falls Motor City repeatedly contacted Darovich, but never received the full down payment and was unsuccessful in getting Darovich to

return the vehicle. Darovich put approximately 5,000 miles on the vehicle before Falls Motor City recovered it through a court order in November 2008.

{¶3} On September 18, 2008, Falls Motor City filed a complaint against Darovich, primarily asserting replevin and breach of contract. The trial court issued an emergency order for possession, ordering Darovich to immediately surrender the vehicle. Darovich initially failed to file an answer, and Falls Motor City sought a default judgment. Shortly thereafter, Darovich appeared in the action, and the court permitted her to file an answer and counterclaim. Falls Motor City responded to Darovich's counterclaim.

{¶4} Discovery commenced and Falls Motor City requested that Darovich produce certain documents and respond to interrogatories and requests for admissions. Darovich failed to respond. On May 15, 2009, Falls Motor City filed a motion to compel and to deem the requests for admissions admitted because Darovich had not responded to its discovery requests. Darovich also failed to respond to Falls Motor City's motion. On July 24, 2009, the trial court ordered Darovich to respond to discovery and granted Falls Motor City's request to have its request for admissions deemed admitted.

{¶5} The matter proceeded to bench trial on August 31, 2009. On September 3, 2009, the trial court issued an order granting judgment in favor of Falls Motor City in the amount of \$13,239.59, plus \$10,070 in attorney fees. The court's order noted that "[t]he [c]ourt reserves to [Falls Motor City] the right to ask for fees to cover the costs of the trial."

{¶6} Darovich now appeals from the trial court's order and raises a single assignment of error for our review.

II

Assignment of Error

“THE TRIAL COURT ERRED IN RULING IN FAVOR OF APPELLEE, AS SUCH FINDING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶7} In her sole assignment of error, Darovich argues that the trial court’s judgment is against the manifest weight of the evidence. This Court cannot consider the merits of Darovich’s argument, however, as she has not appealed from a final, appealable order.

{¶8} This Court has an obligation to raise jurisdictional issues sua sponte. *McGill v. Image Scapes, L.L.C.*, 9th Dist. No. 09CA0038-M, 2010-Ohio-36, at ¶7, citing *Lava Landscaping, Inc. v. Rayco Mfg., Inc.* (Jan. 26, 2000), 9th Dist. No. 2930-M, at *1. This Court’s jurisdiction is limited to the review of final orders of lower courts. Ohio Const. Art. IV, § 3(B)(2). In the absence of a final, appealable order, this Court must dismiss the appeal for lack of jurisdiction. *Id.* See, also, *Lava Landscaping, Inc.*, at *1. An order is not final and appealable if it fails to dispose of a properly asserted request for attorney fees and does not contain Civ.R. 54(B) language. *FirstMerit Bank, N.A. v. Moore*, 9th Dist. Nos. 08CA009479 & 08CA009516, 2009-Ohio-3928, at ¶14, quoting *Internatl. Bhd. of Elec. Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, paragraph two of the syllabus. Further, “where attorney fees are awarded, but the amount is not specified, it is not a final order.” *FirstMerit Bank, N.A.* at ¶14.

{¶9} The trial court’s order awards Falls Motor City \$13,239.59, plus attorney fees in the amount of \$10,070. Yet, the order also provides that “[t]he [c]ourt reserves to [Falls Motor City] the right to ask for fees to cover the costs of the trial.” The trial transcript reveals that when Falls Motor City’s counsel submitted his request for attorney fees, he indicated that his fee

request did not include the “preparation time and the time [for] today.” Counsel asked the court if he could supplement his fee request to include these items. Although the court never specifically granted counsel’s request on the record, the court’s order clearly reserves to counsel the “right to ask for fees” in addition to the fees awarded. Thus, the order does not specify the exact amount of attorney fees due to counsel. Moreover, the order does not contain Civ.R. 54(B) language. Because the court’s order does not specify the exact amount of attorney fees due and does not include Civ.R. 54(B) language, the order is not final and appealable. *Id.* As such, this Court lacks jurisdiction to consider Darovich’s assignment of error.

III

{¶10} This Court lacks jurisdiction to consider Darovich’s assignment of error because she has not appealed from a final, appealable order. Accordingly, Darovich’s appeal is dismissed.

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 Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

GREGORY L. HAIL, Attorney at Law, for Appellant.

ROBERT A. POKLAR, and TINA RHODES, Attorneys at Law, for Appellee.