

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COUNTRYWIDE HOME LOANS, INC.

C.A. No. 24768

Appellee

v.

AMY MICHELLE YANKOVICH, et al.

Appellants

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2006 11 6984

DECISION AND JOURNAL ENTRY

Dated: September 30, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Countrywide Home Loans Inc. sued Amy and Joseph Yankovich, alleging that they were in default on their loan and seeking to foreclose on their home. The Yankovichs counterclaimed, alleging that the note and mortgage did not conform to the agreement they had made with the lender that originated the loan. The trial court concluded that the loan documents were inaccurate and that the Yankovichs should be allowed to reinstate the note and mortgage. It entered a “Judgment” dismissing Countrywide’s claims and the Yankovichs’ counterclaims, as originally stated. It ordered the note and mortgage reformed. It also ordered Countrywide to tell the Yankovichs how much was necessary to reinstate the note and mortgage and gave the Yankovichs 28 days to pay the reinstatement amount. The Yankovichs have appealed, arguing that the trial court did not have jurisdiction, that it incorrectly dismissed their counterclaims, and

that it violated their due process rights. We dismiss the appeal because the trial court’s “[j]udgment” is indefinite and, therefore, not a valid judgment.

THIS COURT’S JURISDICTION

{¶2} Under the Ohio Constitution, Ohio’s courts of appeals “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” Ohio Const. Art. IV § 3(B)(2). The language of Article IV Section 3(B)(2) “empower[s] the General Assembly to alter the appellate jurisdiction of the Court of Appeals.” *State v. Collins*, 24 Ohio St. 2d 107, 108 (1970). The Ohio General Assembly, in Section 2501.02 of the Ohio Revised Code, has provided that the courts of appeals “shall have jurisdiction . . . to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district” In Section 2505.03(A), it has provided that “[e]very final order, judgment, or decree of a [lower] court . . . may be reviewed on appeal” “It is a basic principle of our system of appellate procedure that only judgments and final orders are subject to review.” *Humphrys v. Putnam*, 172 Ohio St. 456, 457 (1961).

{¶3} A judgment is “the final determination of the rights of the parties in action.” *Hoffman v. Knollman*, 135 Ohio St. 170, 175 (1939) (quoting Ohio Gen. Code § 11582 (1910)); *GTE Automatic Elec. Inc. v. ARC Indus. Inc.*, 47 Ohio St. 2d 146, 150 (1976). It is “the conclusion of law, upon facts found or admitted by the parties, or upon their default, in the course of the suit.” 2 William Tidd, *The Practice of the Courts of King’s Bench and Common Pleas*, Ch. 39, at 962 (2d Am. ed. 1828).

{¶4} To constitute a judgment, a journal entry must meet certain criteria. “[F]irst, it must appear to be the sentence of a court.” 1 Henry Campbell Black, *A Treatise on the Law of*

Judgments, § 3, at 7 (2d ed. 1902). Second, “unless in the case of purely ex parte proceedings, it must appear to have been rendered between adverse parties, or, . . . between a party plaintiff and some res which stands in place of a defendant.” *Id.* Third, “the judgment must of course appear to be in favor of one party and against the other.” *Id.* at 8. Fourth, “the judgment must be definitive. It must purport to be the actual and absolute sentence of the law, as distinguished from a mere finding that one of the parties is entitled to a judgment” *Id.*; see also *Walker v. Walker*, 9th Dist. No. 12978, 1987 WL 15591 at *2 (Aug. 5, 1987). “[I]f a judgment purports to be final, and is given upon a money demand, the amount of the recovery must be stated in it with certainty and precision. If the amount remains to be determined by a future contingency . . . or is otherwise indefinite and uncertain, it is no proper judgment.” 1 A Treatise on the Law of Judgments, § 3, at 8.

{¶5} Trial in this case was held on April 16, 2009. Countrywide’s litigation specialist testified that the Yankovichs could reinstate the note, but did not know the exact amount that they would have to pay. She estimated that it would be around \$12,000. The court asked the Yankovichs if they were ready, willing, and able to pay \$12,000 to reinstate the loan. The Yankovichs said that they were.

{¶6} The trial court entered its “[j]udgment” on April 22, 2009. It determined that the Yankovichs should be allowed to reinstate the note by paying Countrywide the amount that they owed as of April 21, 2009. Because there was no evidence regarding the exact amount owed, the court ordered Countrywide to “promptly file and serve upon [the Yankovichs] . . . a notice of the amount required to reinstate the Note and Mortgage as of April 21, 2009, together with directions as to where payment of that amount and further regular payments are to be made. If payment of the reinstatement amount is not made on or before 28 days from the date of the

notice, [Countrywide] shall have leave to seek relief from this Judgment . . . and the entry of judgment in its favor.” On April 27, 2009, Countrywide sent the Yankovichs a letter, telling them that the reinstatement amount was \$18,477.66.

{¶7} The trial court’s entry is not a valid judgment because it is indefinite. It fails to tell the parties the precise amount the Yankovichs have to pay to reinstate their loan, leaving that determination, instead, to the apparent discretion of Countrywide. Because it is not a judgment, we do not have jurisdiction to review it. See R.C. 2501.02; 2505.03(A).

CONCLUSION

{¶8} We do not have jurisdiction over the Yankovichs’s appeal because the trial court’s “[j]udgment” is indefinite. The appeal is dismissed.

Appeal dismissed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

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.

CLAIR E. DICKINSON
FOR THE COURT

BELFANCE, J.
CONCURS

WHITMORE, J.
CONCURS, BUT WRITES SEPARATELY, SAYING:

{¶9} I concur in the foregoing opinion on the basis that an appealable judgment does not lie from a decision that fails to specify an amount due or recoverable by a party. See, generally, *Allen v. Bennett*, 9th Dist. Nos. 24629 & 24649, 2009-Ohio-6076, at ¶10 (dismissing appeal where journal entry identified the prevailing party, but did not specify the amount of damages due); *Ohio Bur. of Workers' Comp. v. Testa*, 9th Dist. No. 05CA008708, 2006-Ohio-2179, at ¶12-13 (dismissing appeal where journal entry did not specify the amount of certain liens at issue). The lower court's decision is indefinite because it does not set forth the amount the Yankovichs owe. Therefore, I agree that this Court must dismiss this appeal.

APPEARANCES:

AMY MICHELLE YANKOVICH and JOSEPH MARTIN YANKOVICH, pro se appellants.

ADAM R. FOGELMAN, attorney at law, for appellee.