[Cite as *Michaels v. Michaels*, 2010-Ohio-6052.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

DEBBIE MICHAELS Appellant v. WILLIAM MICHAELS, et al. Appellees	C.A. No. 09CA009717 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 05CV142991

DECISION AND JOURNAL ENTRY

Dated: December 13, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} William Michaels drove his motorcycle off the road, injuring his wife Debbie Michaels, who was a passenger on the motorcycle. Ms. Michaels sued Mr. Michaels and his insurer, Markel American Insurance Company, to recover for her injuries. The trial court granted summary judgment to Markel, concluding that Ms. Michaels did not have coverage under the liability or uninsured motorists sections of its policy. It granted summary judgment to Ms. Michaels regarding Mr. Michaels's liability. Ms. Michaels attempted to appeal its decision, but this Court determined that it did not have jurisdiction. The trial court subsequently filed a journal entry specifying the amount of Ms. Michaels's damages. Ms. Michaels has attempted to appeal from that entry. Unfortunately, because the trial court has not disposed of Ms. Michaels's claim for benefits under the medical expense coverage section of Mr. Michaels's policy, and did

not make a determination that there is no just reason for delay under Rule 54(B) of the Ohio Rules of Civil Procedure, its journal entry is not appealable.

BACKGROUND

{¶2} After the crash, Ms. Michaels sued Mr. Michaels for negligence. She also sued Markel, seeking a declaration that she has the right to medical payment benefits and uninsured or underinsured motorist benefits under Mr. Michaels's insurance policy. Markel counterclaimed, seeking a declaration that the policy's terms and conditions preclude Ms. Michaels from uninsured/underinsured motorist coverage. Markel also cross-claimed against Mr. Michaels, seeking a declaration that he does not have liability coverage for Ms. Markel's injuries.

{¶3} On June 19, 2006, the trial court granted summary judgment to Markel on its cross-claim, concluding that Mr. Michaels's insurance policy did not provide liability coverage for Ms. Michaels's negligence claims. It granted summary judgment to Markel on Ms. Michaels's claim for uninsured or underinsured motorist coverage. On March 19, 2007, the court granted summary judgment to Ms. Michaels on her negligence claim against Mr. Michaels. Ms. Michaels attempted to appeal the court's decisions, but this court dismissed her appeal. The parties later stipulated that Ms. Michaels had $50,000 in damages. On October 30, 2009, the trial court filed a journal entry awarding Ms. Michaels a $50,000 judgment against Mr. Michaels. Ms. Michaels has attempted to appeal from that journal entry.

JURISDICTION

{¶4} 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).

{¶5} Even if a trial court's journal entry is a judgment or final order, it is not appealable if it does not comply with the rules prescribed by the Ohio Supreme Court regarding the timing of appeals. Under Article IV Section 5(B) of the Ohio Constitution, the Ohio Supreme Court has authority to "prescribe rules governing practice and procedure in all courts of the state . . . ." Exercising that authority, the Supreme Court has prescribed the Ohio Rules of Civil and Appellate Procedure, which contain requirements regarding the timing of appeals. See *Alexander v. Buckeye Pipe Line Co.*, 49 Ohio St. 2d 158, 160-61 (1977) ("Questions involving the joinder and separation of claims and the timing of appeals are matters of practice and procedure within the rule-making authority of this court . . . ."). In particular, under Rule 54(B) of the Ohio Rules of Civil Procedure, "[if] more than one claim for relief is presented in an action . . . the court may enter final judgment as to one or more but fewer than all of the claims . . . only upon an express determination that there is no just reason for delay." The Ohio Supreme Court has held that, if Rule 54(B) is applicable, a judgment must comply with it to be appealable. *Whitaker-Merrell Co. v. Geupel Constr. Co.*, 29 Ohio St. 2d 184, 186 (1972). Accordingly, to determine whether a trial court's journal entry is appealable in a multiple party, multiple claim

case, we usually engage in a two-step analysis examining first, whether it is a judgment or final order under Sections 2501.02 and 2505.03 of the Ohio Revised Code, and second, whether it complies with Rule 54(B) of the Ohio Rules of Civil Procedure. See *Sullivan v. Anderson Twp.*, 122 Ohio St. 3d 83, 2009-Ohio-1971, at ¶10 ("The general rules regarding final appealable orders in multiparty and/or multiclaim cases involve the tandem of R.C. 2505.02(B) for substance and Civ.R. 54(B) for procedure.").

{¶6} The Ohio Supreme Court has recognized certain exceptions to that general rule. It has noted that the General Assembly has declared that certain decisions are immediately appealable even without a determination under Civil Rule 54(B) that there is no just cause for delay. *Mynes v. Brooks*, 124 Ohio St. 3d 13, 2009-Ohio-5946, at ¶13 (concluding that order granting or denying a stay of trial pending arbitration under Section 2711.02 is appealable "even when the order makes no determination pursuant to Civ.R. 54(B)."); *Sullivan v. Anderson Twp.*, 122 Ohio St. 3d 83, 2009-Ohio-1971, at ¶13 (concluding that order denying political subdivision immunity under Section 2744.02 is appealable even if it does not contain the certification required by Civil Rule 54(B)). Section 2721.02(A) provides that a trial court's declaration of the parties' "rights, status, and other legal relations . . . has the effect of a final judgment or decree." Declarations under that section, therefore, may be appealed without a determination that there is no just cause for delay under Civil Rule 54(B) because "the General Assembly ha[s] already made the determination that such [judgments] [a]re immediately appealable by indicating, in R.C. [2721.02(A)], that the[y] . . . are 'final.'" *Mynes v. Brooks*, 124 Ohio St. 3d 13, 2009-Ohio-5946, at ¶10 (quoting *Sullivan v. Anderson Twp.*, 122 Ohio St. 3d 83, 2009-Ohio-1971, at ¶12).

{¶7} The question for this Court is whether the trial court's journal entry satisfied the requirements of a declaration under Section 2721.02(A). We have held that, in order for a trial

court to enter a judgment in a declaratory judgment action, it must declare "all of the parties' rights and obligations . . . ." *No-Burn Inc. v. Murati*, 9th Dist. No. 24577, 2009-Ohio-6951, at ¶11 (quoting *Bowman v. Middleburg Hts.*, 8th Dist. No. 92690, 2009-Ohio-5831, at ¶6).

{¶8} The Markel insurance policy is divided into seven sections: Agreement, Definitions, Liability Coverage, Medical Expense Coverage, Damage to Your Motorcycle, Uninsured Motorists Coverage, and General Policy Conditions. In Count III of her complaint, Ms. Michaels alleged that the Markel insurance policy "included Medical Payments Coverage and Uninsured/Underinsured Motorists benefits." She asked the trial court to "declar[e] her right to recover pursuant to the terms of the [Markel] insurance policy, up to the maximum Medical Payments benefits allowed, and up to the Uninsured/Underinsured Motorists per person and/or per accident limits of the maximum allowed . . . ." She further demanded "uninsured/underinsured benefits in the maximum allowed by law, [and] medical payments benefits in the maximum allowed by law . . . ."

{¶9} In its June 19, 2006, journal entry, the trial court declared that Ms. Michaels was not entitled to uninsured or underinsured motorist benefits. It did not determine, however, whether she has the right to recover under the Medical Expense Coverage section of the policy, which was an issue that Ms. Michaels explicitly asked the court to decide. Although the June 19, 2006, journal entry merged with the court's subsequent journal entries for purposes of this appeal, those entries only addressed Mr. Michaels's liability to Ms. Michaels and the amount of Ms. Michaels's damages. See *Haley v. Reisinger*, 9th Dist. No. 24376, 2009-Ohio-447, at ¶11 (quoting *Davis v. Galla*, 6th Dist. No. L-08-1149, 2008-Ohio-3501, at ¶6). They did not determine her rights under the Medical Expense Coverage section of the policy.

{¶10} Although it is possible that Ms. Michaels no longer believes she is entitled to medical expense benefits under the Markel insurance policy, she has not amended her complaint to reflect her abandonment of that claim. See *Miller v. Foster*, 9th Dist. Nos. 24186, 24209, 2009-Ohio-2675, at ¶9 ("If the Estate wished to abandon some of its claims, the proper procedure would have been to seek leave of court or consent of the opposing parties to amend the complaint under Rule 15(A) of the Ohio Rules of Civil Procedure."). We, therefore, conclude that the trial court has not "declare[d] all of the parties rights and obligations . . . ." *No-Burn Inc. v. Murati*, 9th Dist. No. 24577, 2009-Ohio-6951, at ¶11 (quoting *Bowman v. Middleburg Hts.*, 8th Dist. No. 92690, 2009-Ohio-5831, at ¶6). Accordingly, its journal entry does not have the effect of a final judgment under Section 2721.02(A).

{¶11} Because the trial court's journal entries did not declare all of the parties' rights and obligations, we can not circumvent the normal two-step analysis we use to determine whether we have jurisdiction in a multiple-party multiple-claim case. See *Sullivan v. Anderson Twp.*, 122 Ohio St. 3d 83, 2009-Ohio-1971, at ¶10. As noted above, the first step is to determine whether the journal entry is a judgment or final order under Sections 2501.02 and 2505.03 of the Ohio Revised Code. The second step is to determine whether the entry complies with Rule 54(B) of the Ohio Rules of Civil Procedure. See *id*.

{¶12} Regarding whether the journal entry is a "judgment" under Sections 2501.02 and 2505.03 of the Ohio Revised Code, we have held that "[t]o constitute a judgment, a journal entry must meet certain criteria." *Countrywide Home Loans Inc. v. Yankovich*, 9th Dist. No. 24768, 2010-Ohio-4651, at ¶4. "'[F]irst, it must appear to be the sentence of a court.' 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.'

Third, 'the judgment must of course appear to be in favor of one party and against the other.' 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*. (quoting 1 Henry Campbell Black, A Treatise on the Law of Judgments, § 3, at 7-8 (2d ed. 1902)) (citations omitted). In addition, a judgment must resolve all the issues involved in a case. *Walker v. Walker*, 9th Dist. No. 12978, 1987 WL 15591 at *2 (Aug. 5, 1987) ("Although there are no specific language requirements, the content of the judgment must be definite enough to be susceptible to further enforcement and provide sufficient information to enable the parties to understand the outcome of the case. If the judgment fails to speak to an area which was disputed, uses ambiguous or confusing language, or is otherwise indefinite, the parties and subsequent courts will be unable to determine how the parties' rights and obligations were fixed by the trial court."). Because the trial court's journal entry did not resolve whether Ms. Michaels has medical expense coverage under the Markel insurance policy, it is not a "judgment" under Sections 2501.02 and 2505.03.

{¶13} Regarding whether the journal entry is a "final order," Section 2505.02(B)(2) defines "[f]inal order," in part, as an order "that affects a substantial right made in a special proceeding . . . ." The Ohio Supreme Court has held that "[a] declaratory judgment action is a special proceeding pursuant to R.C. 2505.02 . . . ." *Gen. Acc. Ins. Co. v. Ins. Co. of North Am.*, 44 Ohio St. 3d 17, paragraph two of the syllabus (1989). Accordingly, whether the trial court's journal entry is a "final order" depends on whether it "affect[ed] a substantial right." See R.C. 2505.02(B)(2).

{¶14} Section 2505.02(A)(1) defines "substantial right" as "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a

person to enforce or protect." According to the Ohio Supreme Court, "[a]n order which affects a substantial right has been perceived to be one which, if not immediately appealable, would foreclose appropriate relief in the future." *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St. 3d 60, 63 (1993).

{¶15} The trial court's journal entries determined that Ms. Michaels does not have uninsured or underinsured motorist coverage under the Markel insurance policy, that Mr. Michaels does not have liability coverage for Ms. Michaels's injuries, that Mr. Michaels is liable to Ms. Michaels, and that Ms. Michaels has $50,000 in damages. Ms. Michaels has attempted to appeal the trial court's determination that the policy does not provide liability coverage to Mr. Michaels for her injuries. There is nothing about that determination that suggests that Ms. Michaels will be unable to obtain appropriate relief unless she is able to appeal it immediately. The trial court's determination regarding Mr. Michaels's liability coverage, therefore, does not "affect[ ] a substantial right" under Section 2505.02(B)(2). The trial court's journal entry does not constitute a final order under Sections 2501.02 and 2505.03 of the Ohio Revised Code.

CIVIL RULE 54(B)

{¶16} Even if the journal entry were potentially a final order, it would also have to satisfy Rule 54(B) of the Ohio Rules of Civil Procedure to be appealable. See Civ. R. 57 ("The procedure for obtaining a declaratory judgment pursuant to Section 2721.01 to 2721.15, inclusive, of the Revised Code, shall be in accordance with these rules."); *Plumbers & Steamfitters Local Union 83 v. Union Local Sch. Dist. Bd. of Educ.*, 86 Ohio St. 3d 318, 321 (1999) ("Generally, a declaratory judgment action proceeds in accordance with the Ohio Rules of Civil Procedure, as does any civil action."); *Gannon v. Perk*, 46 Ohio St. 2d 301, 314-15 (1976) (concluding that that particular declaratory judgment action did not fall within the parameters of

Civil Rule 54(B) because it presented only one claim for relief). The journal entry from which Ms. Michaels has attempted to appeal does not contain a determination that there is no just cause for delay. Accordingly, the entry would be appealable only if it resolved all of the parties' claims for relief. See Civ. R. 54(B) (requiring trial court to make an express determination that there is no just cause for delay before entering final judgment on less than all the pending claims).

{¶17} According to the Ohio Supreme Court, "[t]he words 'claim for relief,' as used in Civ.R. 54(B), are synonymous with 'cause of action.'" *Noble v. Colwell*, 44 Ohio St. 3d 92, 95 (1989) (quoting *Amato v. Gen. Motors Corp.*, 67 Ohio St. 2d 253, 256 (1981)). In *Henderson v. Ryan*, 13 Ohio St. 2d 31 (1968), the Supreme Court discussed three views regarding what is a "cause of action." *Id*. at 33-35. It noted that one view is that "[a] cause of action is identical with a remedial, or secondary, right. This definition, reminiscent of the common-law forms of action, equates a cause of action with each legal theory a plaintiff may have to redress an injury even though arising from a single wrongful act." *Id*. at 33-34. It noted, however, that "[t]his view has found disfavor with most courts and authorities because it perpetuates the pleading of legal theories instead of 'a statement of facts constituting a cause of action in ordinary and concise language.'" *Id*. at 34 (quoting former R.C. 2309.04). According to the Supreme Court, the second view is that "'[t]he facts from which the plaintiff's primary right and the defendant's corresponding primary duty have arisen, together with the facts which constitute the defendant's delict or act of wrong' give rise to a cause of action. This concept omits the remedial right and duty of the first definition, thereby emphasizing substantive rights as distinct from procedural rights. It is concerned with the wrongful act and not with the theory of recovery." *Id*. at 34 (quoting Pomeroy, Code Remedies § 347 at 527 (5th ed. 1929)). The Supreme Court further

explained that the third view is that "[a] cause of action is a group or aggregate of operative facts, limited 'to a single occurrence or affair, without particular reference to the resulting legal right or rights.' This so-called 'factual unit' theory places the emphasis upon the breadth of the transaction or occurrence rather than the particular right of the plaintiff which has been infringed. The broadest in scope, this definition compels the pleader to include in his petition all elements of the transaction or occurrence at the risk of splitting his cause of action." *Id*. (quoting Clark, Code Pleading §19 at 130 (2d ed. 1947)).

{¶18} Illustrating the operative effect of the three views, the Supreme Court explained: "If the defendant wrongfully takes plaintiff's chattel and in the ensuing struggle strikes him, the [first view] would allow a cause of action in replevin followed by one in trover for the conversion, the second suit being barred only by recovery in the first. Thereafter, plaintiff could proceed on his cause of action in battery." *Henderson v. Ryan*, 13 Ohio St. 2d 31, 34-35 (1968). "Under the second [view], defendant committed two wrongful acts, each constituting a cause of action." *Id*. at 35. "Applying the third, but one cause of action results, since both acts took place during a single occurrence." *Id*. Finally, it noted that it had "previously adhered to the [second view], looking to the defendant's wrongful act." *Id*.

{¶19} Explaining the parameters of the second view, the Ohio Supreme Court noted that "multifold aspects of the same wrongful act, i. e., negligence consisting of several concurrent acts, do not permit multiple suits. . . . Consonant with the same theory, this court has held that 'where a person suffers both personal injuries and property damage as a result of the same wrongful act, only a single cause of action arises, the different injuries occasioned thereby being separate items of damage from such act.' The rationale is that 'as the defendant's wrongful act is

single, the cause of action must be single.'" *Henderson v. Ryan*, 13 Ohio St. 2d 31, 35 (1968) (quoting *Rush v. City of Maple Heights*, 167 Ohio St. 221, 230, 235 (1958)).

{¶20} As noted earlier, in Count III of her complaint, Ms. Michaels alleged that Mr. Michaels's Markel insurance policy "included Medical Payments Coverage and Uninsured/Underinsured Motorists benefits" and asked the trial court to "declar[e] her right to recover pursuant to the terms of the [Markel] insurance policy, up to the maximum Medical Payments benefits allowed, and up to the Uninsured/Underinsured Motorists per person and/or per accident limits of the maximum allowed . . . ." She further demanded "uninsured/underinsured benefits in the maximum allowed by law, [and] medical payments benefits in the maximum allowed by law . . . ."

{¶21} Under Rule 8(A) of the Ohio Rules of Civil Procedure, a "claim for relief" need only consist of "(1) a short and plain statement of the claim showing that the party is entitled to relief, and (2) a demand for judgment for the relief to which the party claims to be entitled." Although Ms. Michaels titled Count III of her Complaint "Uninsured/Underinsured Motorists Benefits," "[a] party may set forth two or more statements of a claim . . . either in one count . . . or in separate counts . . . ." Civ. R. 8(E)(2). We conclude that, because the Markel insurance policy contained separate sections for medical expense coverage and uninsured motorists coverage and because Ms. Michaels asked the court to declare her rights under both sections of the policy, she asserted two "claims for relief" under Rule 54(B) of the Ohio Rules of Civil Procedure. See *Boila v. Nationwide Mut. Ins. Co.*, 7th Dist. No. 06 MA 166, 2007-Ohio-6071, at ¶3 (explaining that, for purposes of Civil Rule 54(B), plaintiff's claim for underinsured motorists coverage was "completely distinct" from his claim "under the medical pay provisions" of the insurance policy).

{¶22} The trial court has not determined whether Ms. Michaels is entitled to benefits under the "Medical Expense Coverage" section of the Markel insurance policy. We, therefore, conclude that the trial court's journal entry does not comply with Rule 54(B) of the Ohio Rules of Civil Procedure because it attempts to decide "one or more but fewer than all of the claims" without "an express determination that there is no just reason for delay." Accordingly, it is not appealable. *Whitaker-Merrell Co. v. Geupel Constr. Co.*, 29 Ohio St. 2d 184, 186 (1972). Ms. Michaels's attempted appeal is dismissed.

CONCLUSION

{¶23} The trial court's journal entry does not satisfy the requirements of Sections 2501.02 and 2505.03 of the Ohio Revised Code or Rule 54(B) of the Ohio Rules of Civil Procedure. Ms. Michaels'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.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶24} I concur in judgment only solely on the basis that the trial court has not "declare[d] all of the parties' rights and obligations ***." *No-Burn, Inc. v. Murati*, 9th Dist. No. 24577, 2009-Ohio-6951, at ¶11.

WHITMORE, J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶25} I agree that the appeal must be dismissed. Because the trial court did not fully dispose of Debbie Michaels' claim or include Civ.R. 54(B) language in its journal entry, the entry is not a final judgment. *Grange Mut. Cas. Co. v. Norton*, 9th Dist. No. 10CA0017-M, 2010-Ohio-3660, at ¶6-8. See, also, *Revis v. Ohio Chamber Ballet*, 9th Dist. No. 24696, 2010-Ohio-2201, at ¶8 (opinion of Whitmore, J.). Thus, we lack jurisdiction to address the merits of the appeal. *Grange Mut. Cas. Co.* at ¶8.

APPEARANCES:

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