[Cite as *Miller Lakes Community Servs. Assn. v. Schmitt,* 2011-Ohio-1295.]

STATE OF OHIO))ss: COUNTY OF WAYNE)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
MILLER LAKES COMMUNITY SERVICES ASSOCIATION INC. Appellant/Cross-Appellee v. WOLFGANG R. SCHMITT, et al. Appellees/Cross-Appellants	C.A. No. 09CA0076 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF WAYNE, OHIO CASE No. 08-CV-0521

DECISION AND JOURNAL ENTRY

Dated: March 21, 2011

CARR, Judge.

{¶1} Appellant, Miller Lakes Community Services Association, Inc. ("Miller Lakes"), appeals the judgment of the Wayne County Court of Common Pleas, which granted summary judgment on its complaint in favor of appellees, David and Becky Wigham ("Wighams"); Richard and Norma Cooper, individually and as trustees of the Cooper Family Trust ("Coopers"); and Wolfgang and Toni Schmitt ("Schmitts"). Cross-appellants, the Wighams, appeal the judgment of the Wayne County Court of Common Pleas, which granted summary judgment on their counterclaims in favor of Miller Lakes. This Court dismisses the appeal and cross-appeal for lack of a final, appealable order.

I.

{¶2} Miller Lakes is a homeowners' association which is responsible for maintaining certain real estate, including Miller Lakes Road, which it owns and is used in common by various homeowners in the development. It acquired ownership and its concomitant

responsibilities from the prior owner in 1999. Most homeowners in the area belong to the association. The Wighams, Coopers, and Schmitts own property and homes in the area, although none of them are members of the homeowners' association. The Wighams, Coopers, and Schmitts all have an easement which allows them to travel over Miller Lake Road to a road outside of the development.

{¶3} The Schmitts acquired six contiguous parcels of land in the area beginning in 1990. The 1990 deed grants them an easement to pass over the private roadway now known as Miller Lake Road in consideration of their agreement to pay for one fourth of the cost of maintaining the easement portion of the roadway, including snow removal and mowing. The Wighams acquired three contiguous parcels of land in the area in 1998. Their deed expressly grants them an easement over the roadway now known as Miller Lake Road, extending 25 feet on each side of the centerline. The deed, however, contains no language regarding payment or allocation of costs for maintenance or repair of the easement. The Coopers acquired property in the area in 1977. Their deed expressly grants them an easement over another tract of land for both a driveway and access to and from the nearby road, as well as an easement 60 feet wide over what now constitutes Miller Lake Road. In 2004, the Coopers transferred the property by quitclaim deed to themselves as trustees of the Cooper Family Trust ("Cooper Trust"). The quitclaim deed conveyed the property "[s]ubject however to all easements, covenants and restrictions of record."

{¶4} The Schmitts, Wighams, and Cooper Trust are not members of the homeowners' association and there is no dispute that there is no requirement that they become members. However, because they are not members, they do not pay association fees which Miller Lakes

uses, in part, to pay for road maintenance and repair, which itself gives the homeowners access to utility lines and fire, rescue and law enforcement services.

{¶5} Miller Lakes sent an invoice dated May 28, 2008, to the Schmitts for monies due for snow removal in 2005, 2006 and 2007, as well as a non-itemized charge for "May 16, 2005 Balance Due." The Schmitts' May 28, 2008 invoice total was $624.36 and calculated the three snow removal fees at twenty percent of one-twenty-eighths (1/28) of the annual cost of snow removal within the Miller Lakes area. Miller Lakes sent an invoice dated May 28, 2008, to the Coopers personally for monies due for snow removal in 2006 and 2007, as well as a non-itemized charge for "2006 Invoice Balance Due." The Coopers' May 28, 2008 invoice total was $604.68 and calculated the two snow removal fees at twenty percent of one-twenty-eighths (1/28) of the annual cost of snow removal within the Miller Lakes area. Miller Lakes sent an invoice dated May 28, 2008, to the Wighams for monies due for snow removal in 2006 and 2007, as well as a non-itemized charge for "2006 Invoice Balance Due." The Wighams' May 28, 2008 invoice total was $424.16 and calculated the two snow removal fees at twenty percent of one-twenty-eighths (1/28) of the annual cost of snow removal within the Miller Lakes area. Neither the Schmitts, the Coopers, Cooper Trust, nor the Wighams paid Miller Lakes for any of the invoiced amounts.

{¶6} Miller Lakes filed a complaint against the Schmitts, the Coopers, Cooper Trust, and the Wighams seeking declaratory relief, declaring that the defendants were required to pay a proportionate share of the costs necessarily expended by Miller Lakes to maintain and repair the easement road and provide other concomitant benefits. Miller Lakes further alleged one claim each for unjust enrichment and quantum meruit, as well as specific damages claims arising out of the three unpaid invoices. The Coopers and Cooper Trust filed separate answers. The Schmitts

filed an answer and counterclaims alleging breach of contract, quasi-contract/unjust enrichment/quantum meruit, adverse possession and deed reformation. In addition, the Schmitts sought declaratory relief declaring that Miller Lakes has no right to charge them for maintenance and repair costs, that Miller Lakes has an obligation to reimburse them for their expenses in maintaining and repairing Miller Lake Road, and that Miller Lakes has a duty to maintain Miller Lake Road and related areas. The Wighams filed an answer and counterclaims alleging unjust enrichment and seeking declaratory relief declaring that they are not legally obligated to pay Miller Lakes for any maintenance or related costs arising out of Miller Lakes' obligation to maintain the common areas and related services located on or around Miller Lake Road. Miller Lakes responded to the counterclaims.

{¶7} Miller Lakes filed a motion for partial summary judgment, in which it sought summary judgment on its claims for declaratory judgment, unjust enrichment, and quantum meruit. It did not seek summary judgment on its remaining three claims on the theory that those claims merely specified specific damages sought. In addition, Miller Lakes filed a motion for summary judgment on all of the Schmitts' counterclaims and a motion for partial summary judgment against the Wighams, seeking summary judgment on their counterclaim for declaratory judgment but expressly declining to address their claim for unjust enrichment on the theory that that claim was merely a claim for damages. The Coopers and Cooper Trust filed a response in opposition to the motion for partial summary judgment on the claims in the complaint. In addition, they filed a motion for summary judgment. The Schmitts filed a motion for summary judgment on Miller Lakes' claims for declaratory judgment, unjust enrichment, quantum meruit, and the damages claim specific to the Schmitts. They opposed both Miller Lakes' motion for partial summary judgment on its own claims and its motion for summary judgment on their

counterclaims. The Wighams filed a motion for summary judgment in their favor as against Miller Lakes on all claims against them in the complaint and on their own claim seeking declaratory judgment. They did not seek summary judgment on their claim alleging unjust enrichment. The Wighams filed a brief in opposition to Miller Lakes' motion for partial summary judgment on three of its own claims and one of the Wighams' counterclaims. In addition, the parties filed appropriate responses and replies.

{¶8} On September 10, 2009, the parties appeared before the trial court for a hearing. The trial court noted that it had met with counsel in August 2009, to discuss the pending motions for summary judgment, and that no record was made of that meeting. The trial court further noted that it had informed counsel at that time that it planned to grant the Wighams' motion for summary judgment, that it had granted leave to the Coopers to file a motion for summary judgment on a similar issue, and that it was going to deny Miller Lakes' and the Schmitts' motions for summary judgment, "thinking there was a factual issue that had to be tried." The court never issued an order to that effect, however.

{¶9} On November 19, 2009, the trial court issued a purported "Final Judgment Entry: Ruling on Summary Judgment Motions." The trial court purported to grant the Wighams', the Coopers', Cooper Trust's, and the Schmitts' motions for summary judgment in regard to Miller Lakes' claims. The trial court purported to grant Miller Lakes' motions for summary judgment on the Schmitts' counterclaims and on the Wighams' claim for declaratory judgment. In conclusion, the trial court ordered that the "complaint and all counterclaims are dismissed with prejudice." In addition, the trial court found that there was no just reason for delay.

{¶10} Miller Lakes appealed and the Wighams cross-appealed.

II.

{¶11} Miller Lakes raises seven assignments of error and the Wighams raise one assignment of error, which we decline to restate here.

{¶12} As a preliminary matter, this Court is obligated to raise sua sponte questions related to our jurisdiction. *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.* (1972), 29 Ohio St.2d 184, 186. This Court has jurisdiction to hear appeals only from final judgments. Article IV, Section 3(B)(2), Ohio Constitution; R.C. 2501.02. In the absence of a final, appealable order, this Court must dismiss the appeal for lack of subject matter jurisdiction. *Lava Landscaping, Inc. v. Rayco Mfg., Inc.* (Jan. 26, 2000), 9th Dist. No. 2930-M. "An order is a final appealable order if it affects a substantial right and in effect determines the action and prevents a judgment." *Yonkings v. Wilkinson* (1999), 86 Ohio St.3d 225, 229.

{¶13} This Court has previously held:

> "'[T]o terminate the matter, the order must contain a statement of the relief that is being afforded the parties.' *Hawkins v. Innovative Property Mgt.*, 9th Dist. No. 22802, 2006-Ohio-394, at ¶5, quoting *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 215. This Court has further held that '[a]n order is not final until the trial court rules on all of the issues surrounding the award, "leaving nothing outstanding for future determination."' *Carnegie Cos., Inc. v. Summit Properties, Inc.*, 9th Dist. No. 24553, 2009-Ohio-4655, at ¶18, quoting *State v. Muncie* (2001), 91 Ohio St.3d 440, 446." *No-Burn, Inc. v. Murati*, 9th Dist. No. 24577, 2009-Ohio-6951, at ¶8.

{¶14} R.C. 2721.02 addresses declaratory judgment actions and states, in relevant part:

> "[C]ourts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed. *** The declaration may be either affirmative or negative in form and effect. The declaration has the effect of a final judgment or decree."

{¶15} In a plurality decision, this Court discussed the effect of a trial court's failure to declare the rights and obligations in a declaratory judgment action:

> "In order to properly enter judgment in a declaratory judgment action, the trial court must set forth its construction of the disputed document or law, and must expressly declare the parties' respective rights and obligations. If the trial court fails to fulfill these requirements, its judgment is not final and appealable." (Internal citations and quotations omitted.) *Revis v. Ohio Chamber Ballet*, 9th Dist. No. 24696, 2010-Ohio-2201, at ¶38 (Dickinson, P.J., concurring).

{¶16} In this case, the trial court purportedly granted summary judgment in favor of the Schmitts, the Coopers, Cooper Trust, and the Wighams in regard to Miller Lakes' claim for declaratory relief. It further purportedly granted summary judgment in favor of Miller Lakes on the Wighams' counterclaim for declaratory judgment. The trial court, however, failed to declare any rights and/or obligations of the parties. Instead, it merely dismissed the complaint and counterclaim. The separate claim and counterclaim seeking declaratory relief sought a declaration of the parties' rights and obligations as they would have arisen out of the deeds conveying easements. Notwithstanding the trial court's order granting summary judgment to various parties in regard to the multiple claims for declaratory relief, the mere dismissal of those claims failed to declare any rights and/or obligations, leaving the status of the parties unresolved. Although the trial court did say that it found that Miller Lakes had waived its right to and was moreover estopped from enforcing the easements in the Wighams' and Coopers' deeds, such a finding does not itself declare the parties' rights and obligations. The issue regarding the Wighams was unjust enrichment as there was no provision for payment in their easement and, therefore, nothing to "enforce." Accordingly, because the trial court failed to construe the deeds and expressly declare the parties' rights and obligations, it did not render final judgment in regard to those claims.

{¶17} Furthermore, notwithstanding the trial court's use of Civ.R. 54(B) language, this Court is without jurisdiction to address the appeal in regard to the remaining claims in the complaint and the Wighams' counterclaim for unjust enrichment.

{¶18} First, the counterclaim for unjust enrichment was not the subject of any motion for summary judgment. Miller Lakes only moved for partial summary judgment on the Wighams' counterclaims, specifically solely on the claim for declaratory judgment. The Wighams moved for summary judgment on all of Miller Lakes' claims but only as to their own counterclaim for declaratory judgment. Accordingly, the Wighams' counterclaim alleging unjust enrichment could not have been disposed by the trial court's order, and the Wighams' cross-assignment of error in regard to that claim is premature and not properly before this Court for consideration.

{¶19} Second, the trial court's use of Civ.R. 54(B) does not serve to create a final, appealable order as to any other purportedly disposed claims, specifically Miller Lakes' claims for unjust enrichment and quantum meruit because the disposition of those claims was necessarily dependent on the resolution of the declaratory judgment claims. This Court has held that, where disposed claims are "inextricably intertwined" with outstanding claims, we lack jurisdiction to entertain an appeal regarding the disposed, yet dependent[1] claims even where the trial court has invoked the language of Civ.R. 54(B). *Glenmoore Builders, Inc. v. Smith Family Trust*, 9th Dist. No. 23879, 2008-Ohio-1379, at ¶16-7.

{¶20} In this case, Miller Lakes' claims alleging unjust enrichment and quantum meruit are dependent upon the resolution of its claim for declaratory relief. Miller Lakes sought a declaration that the homeowner-defendants are obligated to pay a proportionate share of the costs

[1] In analyzing the propriety of an award of attorney fees where an insurance policy expressly excluded "punitive or exemplary damages," Justice Lundberg Stratton asserted that "an award of attorney fees is inextricably intertwined with an award of punitive damages" because such an award is "dependent upon an award of punitive damages." *Neal-Pettit v. Lahman*, 125 Ohio St.3d 327, 2010-Ohio-1829, at ¶27 (Lundberg Stratton, J., dissenting).

of all maintenance, repair, and replacement expenses expended by Miller Lakes relating to the performance of its duty in that regard. If the trial court were to declare that the homeowner-defendants have no such obligation, but rather that they have a right to enjoy the benefits of the maintenance and repair that Miller Lakes is admittedly obligated to perform, then the claims for unjust enrichment and quantum meruit would become moot. Any benefit, or enrichment, of the homeowners would necessarily be "just," rather than unjust. Moreover, where the homeowners have no duty to pay a proportionate share of the expenses, no expectation of payment or implied promise to pay can arise. On the other hand, if the trial court were to declare that the homeowner-defendants have an obligation arising out of the language in the deeds, then the unjust enrichment and quantum meruit claims become subsumed within Miller Lakes' three claims for damages arising out of the failure to pay for services performed and invoiced. Therefore, Miller Lakes' claims for unjust enrichment and quantum meruit are dependent upon and, therefore, inextricably intertwined with its claim and the Wighams' counterclaim for declaratory relief. The trial court has not yet disposed of the claims for declaratory relief. Until the rights and obligations of the parties are fully determined, this Court lacks jurisdiction to address the merits of the appeals as they relate to the disposed, yet dependent claims.

III.

{¶21} The trial court has not issued a final, appealable order. Accordingly, this Court lacks subject matter jurisdiction to address the merits of the appeal and cross-appeal.

Appeal and cross-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/Cross Appellee and Cross-Appellant/Appellee.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
MOORE, J.
CONCUR

APPEARANCES:

JAMES M. RICHARD, Attorney at Law, for Appellant/Cross-Appellee.

TIMOTHY B. PETTORINI, Attorney at Law, for Appellees/Cross-Appellants.

ROBERT J. REYNOLDS, Attorney at Law, for Appellees.

ROBERT D. KEHOE, Attorney at Law, for Appellees.