

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

COMMONWEALTH LAND TITLE INS. CO.	C.A. No.	10CA009848
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Appellant

v.

CHOICE TITLE AGENCY, INC., et al.

Appellees

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 08CV159215

DECISION AND JOURNAL ENTRY

Dated: January 31, 2011

CARR, Judge.

{¶1} Appellant, Commonwealth Land Title Insurance Company (“Commonwealth”), appeals the purported judgment of the Lorain County Court of Common Pleas. This Court dismisses for lack of a final, appealable order.

I.

{¶2} Commonwealth filed a complaint against appellees, Choice Title Agency, Inc. (“Choice Title”), Sandra Maruna, and Carl Maruna, as well as against Moclanail Rodgers and Affordable Real Estate Solutions, Inc., alleging theft, civil conspiracy, piercing the corporate veil, and two claims for foreclosure. Choice Title and Ms. Maruna answered, denying the allegations. Mr. Maruna filed a motion to dismiss pursuant to Civ.R. 12(B)(6). Commonwealth subsequently filed an amended complaint, replacing the two foreclosure claims with one claim alleging Mr. Maruna’s unjust enrichment and one claim alleging fraudulent conveyance of real

property. Choice Title and Ms. Maruna answered, denying the allegations in the amended complaint. Mr. Maruna also filed an answer to the amended complaint.

{¶3} Commonwealth filed a motion for default judgment against Mr. Rodgers and Affordable Real Estate Solutions, Inc. The trial court granted the motion for default judgment in favor of Commonwealth against Mr. Rodgers and Affordable Real Estate Solutions, Inc., and ordered Commonwealth to submit evidence of damages. The trial court asserted that it would subsequently issue a damages award. Commonwealth filed an affidavit in regard to damages, including the averment that it expended \$24,318.32 in attorney fees in regard to its case against Mr. Rodgers and Affordable Real Estate Solutions.

{¶4} Commonwealth filed a motion for summary judgment against Choice Title and Ms. Maruna, who did not respond. Four days later, Commonwealth filed a motion for summary judgment against Mr. Maruna. Mr. Maruna filed a brief in opposition to Commonwealth's motion for summary judgment, as well as his own motion for summary judgment against Commonwealth. Commonwealth responded to Mr. Maruna's motion and filed a reply in support of its own motion.

{¶5} On May 27, 2010, the trial court issued three journal entries. In the first, it granted summary judgment in favor of Commonwealth against Ms. Maruna and Choice Title and awarded \$112,060.26 in compensatory damages, as well as attorney fees in an amount to be determined. The trial court ordered counsel for Commonwealth to file an affidavit for attorney fees within thirty days. In the second journal entry, the trial court granted default judgment in favor of Commonwealth against Mr. Rodgers and Affordable Real Estate Solutions and awarded compensatory damages in the amount of \$112,060.26, as well as attorney fees in an amount to be determined. In the third journal entry, the trial court denied Commonwealth's motion for

summary judgment against Mr. Maruna and granted summary judgment in favor of Mr. Maruna against Commonwealth.

{¶6} On June 7, 2010, Commonwealth filed the affidavit of its counsel, averring that it expended \$32,125.82 for attorney fees. On June 23, 2010, the trial court issued a journal entry in which it entered judgment in favor of Commonwealth “against Sandra J. Maruna for \$32,125.82, representing the attorney fees of the plaintiff.” Adding the attorney fee award to its previous award of compensatory damages, the trial court entered judgment in favor of Commonwealth against Ms. Maruna in the total amount of \$144,186.08. The trial court never issued an order awarding attorney fees against Choice Title, Mr. Rodgers, and Affordable Real Estate Solutions, as it stated it would. Moreover, the June 23, 2010 order does not contain any statement by the trial court that there is no just reason for delay pursuant to Civ.R. 54(B).

{¶7} Commonwealth filed an appeal.

II.

{¶8} Commonwealth raises numerous assignments of error which we decline to quote here.

{¶9} 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 actions and prevents a judgment.” *Yonkings v. Wilkinson* (1999), 86 Ohio St.3d 225, 229.

{¶10} In its ninth assignment of error, Commonwealth argues that the trial court erred when it failed to specify the amount of attorney fees it awarded as against Choice Title, Mr. Rodgers, and Affordable Real Estate Solutions. This Court does not address this assignment of error on the merits because the trial court's failure to specify the amount of the award of attorney fees it entered against three of the defendants cannot be reviewed for error. Rather, the trial court's failure to enter the specific award of attorney fees as to all the parties divests this Court of jurisdiction to address the merits of the appeal.

{¶11} Civ.R. 54(B) allows a trial court to enter a final judgment as to fewer than all the claims or parties only upon the "express determination that there is no just reason for delay."

The rule continues:

"In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims *or the rights and liabilities* of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." (Emphasis added.) Civ.R. 54(B).

{¶12} In this case, the trial court determined that Choice Title, Mr. Rodgers, and Affordable Real Estate Solutions were liable to Commonwealth for attorney fees in an amount it would later determine. The trial court, however, never determined the amount of attorney fees for which those three parties were liable. Accordingly, the trial court failed to adjudicate all the rights and liabilities of all parties to the action. In the absence of the trial court's express determination that there was no just reason for delay, the June 23, 2010 order specifying an award of attorney fees due only from Ms. Maruna did not constitute a final, appealable order. Accordingly, this Court is without jurisdiction to consider the merits of Commonwealth's appeal. The appeal is dismissed for lack of a final, appealable order.

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.

DONNA J. CARR
FOR THE COURT

BELFANCE, P. J.
CONCURS IN JUDGMENT ONLY

DICKINSON, J.
CONCURS, SAYING:

{¶13} This matter must be dismissed because the trial court failed to enter a “final order,” “judgment,” or “decree” as those terms are used in Section 2505.03 of the Ohio Revised Code.

APPEARANCES:

DONALD P. MCFADDEN and MONICA E. RUSSELL, Attorneys at Law, for Appellant.

KENNETH P. FRANKEL, Attorney at Law, for Appellee.

JAMES BARILLA, Attorney at Law, for Appellee.