[Cite as *Weygandt v. Porterfield*, 2011-Ohio-510.]

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

JEFF J. WEYGANDT	C.A. No. 09CA0009
Appellant	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
TROY W. PORTERFIELD, JR.	COURT OF COMMON PLEAS COUNTY OF WAYNE, OHIO
Appellee	CASE No. 07-CV-0279

DECISION AND JOURNAL ENTRY

Dated: February 7, 2011

WHITMORE, Judge.

{¶1} Troy Porterfield ordered stone and wood from Jeff Weygandt and paid him a $7000 deposit. When Mr. Weygandt delivered the materials, Mr. Porterfield rejected all of the stone, claiming it was rubble. He rejected most of the wood, claiming it was not the correct grade. Mr. Weygandt denied there was anything wrong with the stone or wood and sued Mr. Porterfield for the balance of the contract. Mr. Porterfield counterclaimed, alleging breach of contract and seeking the return of his deposit. A magistrate determined that Mr. Porterfield rightfully rejected the stone and most of the wood. He concluded, however, that Mr. Porterfield owed Mr. Weygandt for the wood he used. Because the cost of that wood was less than the $7000 deposit, he recommended that Mr. Weygandt return the balance of the deposit to Mr. Porterfield. He also determined that Mr. Weygandt should be responsible for removing the unused stone and wood from Mr. Porterfield's property. Mr. Weygandt objected to the magistrate's decision. The trial court determined that Mr. Weygandt's objections "should be

overruled," adopted the magistrate's decision, and attempted to enter judgment for Mr. Porterfield. Mr. Weygandt has appealed, assigning three errors. We dismiss the appeal for lack of jurisdiction because the trial court failed to explicitly rule on Mr. Weygandt's objections to the magistrate's decision.

FINAL APPEALABLE ORDER

{¶2} Rule 53(D)(4)(d) of the Ohio Rules of Civil Procedure provides that "[i]f one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections." This Court has interpreted that provision to require specific language stating whether each objection has been sustained or overruled. *In re Strickler*, 9th Dist. Nos. 08CA009375 and 08CA009393, 2008-Ohio-5813, at ¶10. This Court has also held that, until the trial court specifically resolves objections by explicitly stating the resolution of each, no final, appealable order exists. *Young v. Young*, 9th Dist. No. 08CA0058, 2009-Ohio-5050, at ¶10. In *Young*, this Court concluded that language in a journal entry declaring that objections "should be overruled" was not "explicit" enough to overrule objections because it merely expressed an opinion that the objections "ought" to be overruled instead of actually overruling them. *Id*. at ¶10.

{¶3} As in *Young*, the trial court wrote that Mr. Weygandt's objections "should be overruled," but did not specifically overrule them. The court, therefore, failed to explicitly rule on the objections as required by Civil Rule 53(D)(4)(d). Accordingly, this Court does not have jurisdiction over Mr. Weygandt's attempted appeal because the trial court's Final Judgment Entry is not a final, appealable order. *Young*, 2009-Ohio-5050, ¶11. The appeal is dismissed.

{¶4} Regarding the arguments made by the dissent, generally, orders precede judgments and are not immediately appealable because they leave items unresolved and do not

mark the end of a given case. In certain instances, however, an order may be such that its immediate appeal is warranted because it effectively establishes the same rights of the parties as would a judgment. Such an order must necessarily satisfy one of the seven definitions set forth in R.C. 2505.02(B). And because an order that is a "final order" under R.C. 2505.02 is a judgment, Civ.R. 54(A) (defining "judgment" as including a "final order"), R.C. 2505.02(B) necessarily defines what a "judgment" is in at least seven circumstances. See R.C. 2505.02(B)(1)-(7). The question is whether a different test defines what a "judgment" is when the entry at issue is not "a decree [or] any order from which an appeal lies as provided in [R.C.] 2505.02[.]" Civ.R. 54(A).

{¶5} The dissent's lengthy discussion of the tension between the Ohio Constitution, legislative enactments, and the procedural rules that the Ohio Supreme Court has prescribed, regarding judgments and final orders, is largely academic. Moreover, it is a debate that has already been settled and need not be revisited in the matter before this Court. The Ohio Supreme Court has the authority to interpret the laws of this State. In doing so, the Supreme Court has repeatedly applied R.C. 2505.02(B) to judgments as well as orders. This Court has done the same. Because a true "judgment" will satisfy R.C. 2505.02(B)'s requirements, there is no need for an academic exercise to the contrary.

{¶6} This Court held in *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 219, that:

> "Before this [C]ourt can exercise its appellate jurisdiction to review any case, we must find that the order being appealed is (1) 'final' pursuant to R.C. 2505.02, as further defined by case law; (2) issued by a 'court of record;' that is, signed by the court and journalized; and (3) appealable pursuant to R.C. 2505.03 and the Appellate Rules of Procedure."

Harkai made clear that R.C. 2505.02(B)(1) applies to both final orders and judgments. Id. at 214 ("For the purposes of determining our jurisdiction, therefore, 'judgment' and 'final order' are the same."). And since *Harkai's* issuance in 2000, this Court has continued to apply its holding. See, e.g., *Akin v. Akin*, 9th Dist. Nos. 24794 & 24972, 2010-Ohio-3492, at ¶2-3. Moreover, the Ohio Supreme Court has continued to apply R.C. 2505.02(B)(1) to judgments as well as final orders. See, e.g., *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, at ¶6-9 (applying R.C. 2505.02(B)(1) to a judgment of conviction); *Miller v. First Int'l Fid. & Trust Bldg., Ltd.*, 113 Ohio St.3d 474, 2007-Ohio-2457, at ¶2-6 (applying R.C. 2505.02(B)(1) to a journalized jury verdict in a civil matter when a prejudgment interest motion is pending). There is a wealth of case law, including Ohio Supreme Court precedent, in support of this Court's position that R.C. 2505.02(B)(1) applies to both judgments and final orders.

{¶7} To say that the Supreme Court has been inconsistent because it has separately analyzed whether an entry was a judgment or final order in certain cases is misleading, as the "analysis" in those cases amounts to nothing more than a blanket statement that the particular case at issue did not involve a judgment. See *State ex rel. Eberling v. Nugent* (1988), 40 Ohio St.3d 129, 129 (including a single statement that "[c]learly, the denial of a motion to consolidate is not a judgment"); *State ex rel. Add Venture, Inc. v. Gillie* (1980), 62 Ohio St.2d 164, 165 (including a single statement that "[a]n order of the court of common pleas overruling a motion to vacate a temporary injunction in a suit *** is neither a judgment nor a final order (see R.C. 2505.02) which may be reviewed by the Court of Appeals on a petition in error"); *Klein v. Bendix-Westinghouse Automotive Air Brake Co.* (1968), 13 Ohio St.2d 85, 86 (including a single statement that "[s]ince no judgment is involved, a final order is required for the Court of Appeals to have jurisdiction"). None of the foregoing cases included any actual analysis in the form of a

different test that might apply to a judgment versus a final order. The point is that, while different terminology may apply, the effect of either a judgment or final order is the same for purposes of this Court's jurisdiction. *Harkai*, 136 Ohio App.3d at 214.

{¶8} R.C. 2505.02(B)(1) provides that a final order is "[a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment." The dissent takes issue with the fact that it is nonsensical to apply R.C. 2505.02(B)(1) to judgments because, if there is a judgment, it cannot be said to prevent a judgment. Yet, the Supreme Court has specifically construed the "prevent[ing] a judgment" prong of the final order test as "prevent[ing] a judgment for the appealing party." *Miller* at ¶6, quoting *Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio* (1989), 46 Ohio St.3d 147, 153. Accord *Baker* at ¶9 (concluding that a judgment of conviction prevents a judgment in favor of the defendant). While this Court might question the Supreme Court's interpretation of the law at times, we have an obligation to follow it until the Supreme Court indicates otherwise. As both the Supreme Court and this Court have applied R.C. 2505.02(B)(1) to judgments and final orders for purposes of determining jurisdictional finality, there is no reason to depart from those decisions. Nor is it likely that there would be a scenario where such a departure would make a difference in terms of practical application.

{¶9} The dissent broadly proclaims that the Ohio Rules of Civil Procedure do not affect our jurisdiction. To the contrary, procedural rules define the manner in which one may assert a substantive right and frequently impact jurisdiction. See, e.g., *Cuda v. Lorain Cty. Children Servs.*, 9th Dist. No. 08CA009476, 2009-Ohio-2296, at ¶7 ("Where applicable and necessary, the omission of [Civ.R.] 54(B) language by the trial court in its judgment entry 'is fatal not only to the order's finality, but also this Court's jurisdiction."), quoting *David Moore*

Builders, Inc. v. Hudson Village Joint Venture, 9th Dist. No. 21702, 2004-Ohio-1592, at ¶7; *State ex rel. Cordray v. Burge*, 9th Dist. Nos. 09CA009723 & 09CA009724, 2010-Ohio-3009, at ¶17 ("Because the orders did not comply with Crim.R. 32(C), the orders were not final. This Court has held that a trial court can reconsider its earlier decisions where it had not yet entered a final, appealable order pursuant to Crim.R. 32(C)."). Applying R.C. 2505.02(B)(1), this Court has already determined that a trial court's failure to specifically rule upon Civ.R. 53 objections to a magistrate's decision affects this Court's jurisdiction. See *Davis v. Davis*, 9th Dist. No. 08CA0022, 2009-3164, at ¶13; *Young v. Young*, 9th Dist. No. 08CA0058, 2009-Ohio-5050, at ¶9-10; *Lorain Medina Rural Elec. v. GLW Broadband, Inc.*, 9th Dist. No. 08CA009432, 2009-Ohio-1135, at ¶7-8; *Bauer v. Brunswick*, 9th Dist. No. 08CA0034-M, 2008-Ohio-6348, at ¶6-7; *In re Strickler*, 9th Dist. Nos. 08CA009375 & 08CA009393, 2008-Ohio-5813, at ¶8-10.

{¶10} In particular, this Court has already concluded that the phrase "should be overruled" does not suffice to actually overrule objections filed with respect to a magistrate's decision. *Young* at ¶10. That conclusion is correct. Quite simply, the phrase "should be" is not definitive. The fact that something should be done does not mean that it has actually been done. Civ.R. 53(D)(4)(d) requires a definitive ruling upon an objection. The conclusion that an objection "should be" overruled or sustained does not satisfy that requirement. This point is made by authority relied upon by the dissent. See, e.g., Henry Campbell Black, A Treatise on the Law of Judgments, § 115 (2d ed. 1902) ("In the first place, the entry must purport to be an actual judgment, conveying the sentence of the law, as distinguished from a mere memorandum, note, or recital that a judgment had been or would be rendered.").

{¶11} It may seem harsh to require trial courts to employ such exact language. Yet, to hold otherwise is to invite judicial guesswork. Neither a party, nor a reviewing court should

have to form assumptions about the meaning of a final judgment. If a judgment entry is not clear, it should be the function of the trial court, not this Court, to clarify it. While ambiguous language may not always create a problem in a simple case, the same cannot be said of complex cases, which might contain multiple parties, claims, and objections. Moreover, the acceptance of ambiguous language is a slippery slope. It is not unimaginable that this Court, having accepted the language "should be overruled," might one day be presented with the language "should be affirmed." We, therefore, require straightforward, unambiguous language on the part of a trial court in its judgment entries. Because the trial court here did not explicitly rule upon Weygandt's objections, the court's judgment entry does not comply with Civ.R. 53(D)(4)(d).

> "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. *** [A] judgment should include everything necessary to a complete understanding of its effect. Generally, it should be an independent document, which needs no other reference or support." *Walker v. Walker* (Aug. 5, 1987), 9th Dist. No. 12978, at *2.

The trial court's judgment entry does not dispose of Weygandt's objections. It "is otherwise indefinite" and does not fully "determine[] the action." Id.; R.C. 2505.02(B)(1). Thus, it is not a judgment.

{¶12} In conclusion, this Court must be cautious in deciding to abandon its timely precedent. Absent a compelling reason, we continue to adhere to the precedent of this Court, in which we determined that a trial court's failure to explicitly rule upon objections to a magistrate's decision and to employ precise language when doing so is a jurisdictional defect. Because the trial court here failed to explicitly rule upon the objections, the court did not enter a judgment and we do not have jurisdiction over the appeal. The attempted 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

BELFANCE, J.
CONCURS IN JUDGMENT ONLY, SAYING:

{¶13} A majority of the Court does not agree with the analysis of the dissent. I concur in the judgment only.

DICKINSON, P. J.
DISSENTS, SAYING:

INTRODUCTION

{¶14} Getting this Court to consider assignments of error has become like the labor of Sisyphus. A party files a notice of appeal and both parties file briefs, argue, and wait, only to find themselves back in the trial court with the assignments of error unaddressed because of some imagined defect in the entry from which the appeal was taken. In this case, the majority is sending the parties back so the trial judge can tell us what we all know: When he wrote in his

"Final Judgment Entry" that Mr. Weygandt's "objections should be overruled," he was overruling them. To force the parties to start over in the trial court is a waste of time, money, and judicial resources. Particularly in this case since, if they do come back to this Court, it will only be to learn that a real defect prevents us from addressing the merits of Mr. Weygandt's assignments of error. I would take the opportunity this case presents to disavow the manner in which we have analyzed appealability in some of our cases and to overrule two of our decisions that were wrong when they were decided, remain wrong today, and accomplish nothing beyond delaying the day when this Court must carry out its duty to consider the assignments of error an appellant has assigned.

STARE DECISIS

{¶15} Much of this dissent is simply a recognition that the way we discuss appealability has strayed from the constitutional and statutory bases of this Court's jurisdiction. The outcome would not have been different in the cases I discuss below in which that straying happened if we had, for example, recognized that judgment and final appealable order are not synonymous. The return to those bases I am suggesting, therefore, would not require overruling those cases and does not implicate stare decisis. As mentioned above, I would overrule two of our prior decisions. Those two decisions, however, satisfy the three-part test adopted by the Ohio Supreme Court in *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216, 2003-Ohio-5849, for when a prior decision may be overruled and doing so would not be an affront to stare decisis.

THIS COURT'S JURISDICTION

{¶16} 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 court . . . may be reviewed on appeal . . . ." The Ohio Supreme Court has recognized that "[i]t 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).

TIMING OF APPEALS

{¶17} 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 Ohio Supreme Court has prescribed the Ohio Rules of Civil and Appellate Procedure. See *Alexander v. Buckeye Pipe Line Co.*, 49 Ohio St. 2d 158, 159-60 (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 . . . ."); see also R.C. 2505.03(C) ("An appeal of a final order, judgment, or decree of a court shall be governed by the Rules of Appellate Procedure . . . ."). The rules of procedure adopted by the Ohio Supreme Court do not "abridge, enlarge, or modify any substantive right." Ohio Const. Art. IV § 5(B); *Alexander v. Buckeye Pipe Line Co.*, 49 Ohio St. 2d 158, 159 (1977).

{¶18} Under Rule 3(A) of the Ohio Rules of Appellate Procedure, "[a]n appeal as of right [is] taken by filing a notice of appeal with the clerk of the trial court within the time

allowed by Rule 4." With certain exceptions, under Rule 4(A) of the Ohio Rules of Appellate Procedure, "[a] party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed . . . ." Accordingly, before this Court can exercise its appellate jurisdiction, it must determine whether the trial court entry from which a party has attempted to appeal is a "judgment" or "final order" under Sections 2501.02 and 2505.03 of the Ohio Revised Code and, if it is, whether the judgment or final order is appealable under the Ohio Rules of Appellate Procedure.

DIFFERENCE BETWEEN JUDGMENTS AND FINAL ORDERS

{¶19} Until 1851, there was no intermediate court in Ohio, only common pleas courts and the Ohio Supreme Court. From 1851 to 1913, the Ohio Constitution provided that Ohio's courts of appeals, formerly called district or circuit courts, had "such appellate jurisdiction as may be provided by law." Ohio Const. Art. IV, § 6 (amended 1913). "[T]hat jurisdiction was provided by Section 12247, General Code, formerly Section 6709, Revised Statutes, and was as follows: 'A judgment rendered or final order made by a court of common pleas . . . may be reversed, vacated, or modified, by the circuit court having jurisdiction in the county wherein the common pleas or superior court is located, for errors appearing on the record.'" *Hoffman v. Knollman*, 135 Ohio St. 170, 174-75 (1939). "Section 11582, General Code . . . defined 'judgment' to be 'the final determination of the rights of the parties in action'; and Section 12258, General Code . . . defined a 'final order' as being: 'An order affecting a substantial right in an action, when in effect it determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment.'" *Id.* at 175. The General Code drew an explicit distinction between judgments and orders, providing that "[a] direction of a court or judge, made or entered in

writing and not included in a judgment, is an order." Ohio Gen. Code § 11582 (1910). The Ohio Supreme Court also recognized that there was a difference between judgments and final orders. See *Hobbs v. Beckwith*, 6 Ohio St. 252, 254 (1856) ("[T]o be final," "[a]n order in the progress of a suit, and before judgment, . . . must be such as determines the action and prevents a judgment.").

WHAT IS A JUDGMENT?

{¶20} As noted in the previous paragraph, from 1851 to 1953, the Ohio General Assembly defined a "judgment" as "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). When it revised the Code in 1953, it incorporated the General Code's definition into Section 2323.01 of the Ohio Revised Code. In 1971, the General Assembly repealed Section 2323.01, eliminating the only definition of "judgment" found in the Ohio Revised Code. At the time of the repeal, the General Assembly explained that it had determined that Section 2323.01 and a number of other Code sections conflicted with the Ohio Rules of Civil Procedure, which had taken effect the previous year. 133 Ohio Laws 3017 (1970). Under Article IV Section 5(B) of the Ohio Constitution, "[a]ll laws in conflict with [rules prescribed by the Ohio Supreme Court] shall be of no further force or effect after such rules have taken effect." According to the House Bill that repealed Section 2323.01, "the taking effect of the Rules of Civil Procedure . . . is prima-facie evidence that [Section 2323.01 is] in conflict with such rules . . . ." 133 Ohio Laws 3020 (1970).

{¶21} The only rule that the General Assembly could have thought conflicted with Section 2323.01 is Civil Rule 54, entitled "Judgments; costs." The title of Rule 54(A) is "Definition; form," and it provides that "'[j]udgment' as used in these rules includes a decree and any order from which an appeal lies as provided in section 2505.02 of the Revised Code. A

judgment shall not contain a recital of pleadings, the magistrate's decision in a referred matter, or the record of prior proceedings."

{¶22} There are two ways to interpret the word "includes" as it is used in Civil Rule 54(A). It could mean that only "a decree [or an] order from which an appeal lies as provided in section 2505.02 of the Revised Code" is a "judgment." Or it could mean that judgments, as that word has been commonly understood, plus decrees and final orders are all "judgments" within the meaning of the rule. The 1970 Staff Notes to Civil Rule 54(A) explain that the more expansive definition is the one that was intended by the drafters. According to those notes, "[a] judgment, which is customarily the final entry determining the rights of the parties in a lawsuit, includes within its meaning a 'decree' and any 'final order.' Hence Rule 54(A) simply points out that in a merged law-equity system, a 'decree' in equity is a judgment and should be so denominated and also points out that an appealable or 'final order' is like a judgment in the sense that the rights of the parties have been determined by the final order and that the basis for appeal is present. Inasmuch as Ohio has long been a 'final order' jurisdiction (only rarely does an appeal lie from a temporary or interlocutory order) and inasmuch as Ohio has long classified a 'decree' as a judgment under its merged law-equity system, the rule does not change Ohio practice or terminology."

{¶23} The 1970 Staff Notes to Civil Rule 54(A) recognize that the term judgment has "customarily" referred to "the final entry determining the rights of the parties in a lawsuit." That is almost identical to the way Section 2323.01 defined judgment: "the final determination of the rights of the parties in action." The staff notes also point out that the rule "does not change Ohio practice or terminology." The definition of "judgment" found in Rule 54(A), therefore, does not conflict with the definition of judgment that was found in Section 2323.01. Rather, Civil Rule

54(A) merely means that, when the term "judgment" is used in the Civil Rules, it not only includes judgments, as that term has traditionally been used and as it was defined in Section 2323.01, but also includes "final orders" as defined by Section 2505.02 of the Ohio Revised Code and what would previously have been known as decrees in equity.

{¶24} Even though the definition provided in Civil Rule 54(A) did not conflict with the one found in Section 2323.01, the General Assembly repealed Section 2323.01, eliminating the statutory definition of judgment that had existed for purposes of Section 2501.02 and 2505.03. Section 2502.02 still defines "[f]inal order," but there is no longer a statutory definition of "judgment." See R.C. 2505.02.

{¶25} One can not simply use the definition of judgment found in Civil Rule 54(A) to determine what a judgment is under Sections 2501.02 and 2505.03 of the Ohio Revised Code. First, the definition provided in Rule 54(A), by its plain language, only applies to the civil rules. Civ. R. 54(A) (providing that its definition of judgment is only "as used in these rules."). Second, Civil Rule 82 provides that "[t]hese rules shall not be construed to extend or limit the jurisdiction of the courts of this state." Even more fundamentally, however, Article IV Section 3(B)(2) of the Ohio Constitution delegates authority to determine this Court's jurisdiction to the Ohio General Assembly. Absent an express delegation by the General Assembly, the Ohio Supreme Court has no authority to define the terms "judgment" or "final order" for purposes of Sections 2501.02 and 2505.03 or Article IV Section 3(B)(2) of the Ohio Constitution through the adoption of rules of procedure. Accordingly, to the extent this Court relied on Rule 54(A) in *Harkai v. Scherba Indus. Inc.*, 136 Ohio App. 3d 211, 213-14 (2000), to conclude that, "[f]or purposes of determining our jurisdiction, . . . 'judgment' and 'final order' are the same," that reliance was misplaced.

{¶26} When the Ohio General Assembly repealed Section 2323.01, it created a vacuum regarding the definition of judgment under Sections 2501.02 and 2505.03. Notably, although Section 2323.01 did not survive in a formal sense, the Ohio Supreme Court continued to use its language to describe what a judgment is. See *GTE Automatic Elec. Inc. v. ARC Indus. Inc.*, 47 Ohio St. 2d 146, 149-50 (1976) ("Regardless of whatever else may be said of a default judgment, it is a judgment. It is as good as any other judgment. It is a final determination of the rights of the parties.").

COMMON LAW DEFINITION OF JUDGMENT

{¶27} The definition of judgment provided by former Section 2323.01 was not very descriptive. It would be helpful then to examine how the term "judgment" was used at common law, to appreciate how it should be interpreted under Sections 2501.02 and 2505.03 of the Ohio Revised Code.

{¶28} William Blackstone, in his Commentaries on the Laws of England, described a judgment as "the sentence of the law, pronounced by the court upon the matter contained in the record . . . . in short, [it] is the remedy prescribed by law for the redress of injuries . . . ." 2 William Blackstone, Commentaries, *395-96; see also 1 Henry Campbell Black, A Treatise on the Law of Judgments, § 21 (2d ed. 1902) (describing a final judgment as "such . . . as at once puts an end to the actions by declaring that the plaintiff has or has not entitled himself to recover the remedy for which he sues."). William Tidd, in his Practice of the Courts of King's Bench, described a judgment as "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, 962 (2d Am. ed. 1828). Another contemporary law dictionary used more colorful language: "The opinion of the judges is so called, and [it] is the very voice

and final doom of the law; and therefore [it] is always taken for unquestionable truth; or it is the sentence of the law pronounced by the court, upon the matters contained in the record." Thomas Potts, A Compendius Law Dictionary 428 (1815); see 1 Edward Coke, The First Part of the Institutes of the Laws of England, 39. a. (defining a judgment as "the very voice of law and right.").

{¶29} In his treatise on judgments, Henry Black analyzed the nature of a judgment. 1 Henry Campbell Black, A Treatise on the Law of Judgments, § 1 (2d ed. 1902). He explained: "As in logic, judgment is an affirmation of a relation between a particular predicate and a particular subject, so, in law, it is the affirmation by the law of the legal consequences attending a proved or admitted state of facts. It is not, however, a mere assertion of the rules of law as applied to given conditions, nor of the legal relations of the persons concerned. It is always a declaration that a liability, recognized as within the jural sphere, does or does not exist. An action is instituted for the enforcement of a right or the redress of an injury. Hence a judgment, as the culmination of the action, declares the existence of the right, recognizes the commission of the injury, or negates the allegation of one or the other. But as no right can exist without a correlative duty, nor any invasion of it without corresponding obligation to make amends, the judgment necessarily affirms, or else denies, that such a duty or such a liability rests upon the person against whom the aid of the law is invoked. . . . [A]lthough it is the affirmation of the law, it is necessarily pronounced by the mouth of a court or judge. And the decision of any arbiter, self-constituted or chosen by the litigants, is no judgment. The law speaks only by its appointed organs. It is only when the deliverance comes from a true and competent court that it is entitled to be called a judgment. Finally, it must be responsive to the state of facts laid before the tribunal. It is elementary law that no court can travel outside the controversy presented to it, to

touch other rights or relations not involved. Hence the judgment must be an affirmation in regard to the matters submitted to the court for decision." *Id*. He concluded that a judgment, in its narrow and technical sense, as understood at common law, and distinguished from the modified term used in codes of procedure, should be defined as "the determination or sentence of the law, pronounced by a competent judge or court, as the result of an action or proceeding instituted in such court, affirming that, upon the matters submitted for its decision, a legal duty or liability does or does not exist." *Id*. He also noted that, the most usual definition in jurisdictions with a merged court of law and court of equity is "the final determination of the rights of the parties in an action or proceeding." *Id*. He further noted that "it is only a final judgment or decree upon the merits which will sustain the plea of res judicata." *Id*. at § 20. Black's definition of judgment is consistent with and complimentary to the definition of that term under Ohio law. See also 1 A.C. Freeman, A Treatise on the Law of Judgments, § 1-35 (4th ed. 1898) (discussing common law definition and characteristics of a judgment).

WHAT IS A FINAL ORDER?

{¶30} As previously noted, the Ohio General Assembly long defined a "final order" as "[a]n order affecting a substantial right in an action, when in effect it determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment." *Hoffman v. Knollman*, 135 Ohio St. 170, 175 (1939) (quoting Ohio Gen. Code § 12258); *Lantsberry v. Tilley Lamp Co.*, 27 Ohio St. 2d 303, 306 (1971) ("A final order . . . is one disposing of the whole case or some separate and distinct branch thereof."). Section 2505.02(B) of the Ohio Revised Code provides the General Assembly's current definition of "final order." Under that section, "[a]n order is a final order . . . when it is one of the following: (1) An order that affects a substantial right in an action that in

effect determines the action and prevents a judgment; (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment; (3) An order that vacates or sets aside a judgment or grants a new trial; (4) An order that grants or denies a provisional remedy and to which both of the following apply: (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy . . . (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action . . . (5) An order that determines that an action may or may not be maintained as a class action; (6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly . . . or any changes made by Sub. S.B. 80 of the 125th general assembly . . . [or] (7) An order in an appropriation proceeding that may be appealed pursuant to [Section 163.09 of the Ohio Revised Code]."

CONFUSION BETWEEN JUDGMENTS AND FINAL ORDERS

{¶31} When the Ohio Supreme Court has been called upon to determine whether a particular trial court entry was reviewable under Section 2505.03 of the Ohio Revised Code, it has sometimes treated that determination as involving two separate questions: (1) whether the entry was a judgment and (2) whether the entry was a final order. See *State ex rel. Eberling v. Nugent*, 40 Ohio St. 3d 129, 129 (1988) ("[T]he denial of a motion to consolidate is not a judgment . . . . [n]or, in our view, is it a final order."); *State ex rel. Add Venture Inc. v. Gillie*, 62 Ohio St. 2d 164, 165 (1980) ("An order of the court of common pleas overruling a motion to vacate a temporary injunction in a suit . . . is neither a judgment nor a final order . . . which may be reviewed by the Court of Appeals . . . .") (quoting *Jones v. First Nat'l Bank*, 123 Ohio St. 642

(1931)); *Klein v. Bendix-Westinghouse Auto. Air Brake Co.*, 13 Ohio St. 2d 85, 86 (1968) ("Since no judgment is involved, a final order is required for the Court of Appeals to have jurisdiction."). Other times, however, it has ignored the difference between judgments and final orders.

{¶32} For example, in *Wise v. Gursky*, 66 Ohio St. 2d 241 (1981), the Court applied Section 2505.02, which deals only with final orders, to determine whether a judgment was reviewable. Mr. Wise sued Mr. Gursky for personal injuries he suffered when an automobile Mr. Gursky was driving knocked him off a hay wagon. Mr. Gursky, in turn, filed a third-party complaint against two other men, one of whom was the owner of the hay wagon and the other its operator. The trial court bifurcated the trials. In the first trial, the jury determined that Mr. Gursky was not liable to Mr. Wise, and the trial court entered a judgment for Mr. Gursky. Because the jury's verdict rendered Mr. Gursky's third-party claims moot, the trial court entered an order dismissing those claims. In analyzing whether the "judgment on the jury verdict" was appealable, the Ohio Supreme Court considered whether it met the requirements of Section 2505.02. *Id*. at 243. It concluded that "[a] judgment for the defendant in a civil action, which judgment renders the defendant's third-party complaint for indemnification or contribution moot, is a final appealable order pursuant to R.C. 2505.02 . . . ." *Id*. at syllabus.

{¶33} In *State ex rel. Batten v. Reece*, 70 Ohio St. 2d 246 (1982), the Ohio Supreme Court also suggested that a judgment is only reviewable if it satisfies Section 2505.02. It wrote that an order dismissing a petition for post-conviction relief "constitutes a final order or judgment within the meaning of R.C. 2505.02." *Id*. at 247. See also *Van Fossen v. Babcock & Wilcox Co.*, 36 Ohio St. 3d 100, 103 (1988) ("[T]he trial court did, pursuant to R.C. 2505.02, enter a final judgment . . . ."). In *State v. Davidson*, 17 Ohio St. 3d 132, 134 (1985), it wrote that

"R.C. 2505.03 states that a party may only appeal from the trial court's final order," despite the fact that both judgments and orders are appealable under that section. Conversely, in *Chef Italiano Corp. v. Kent State University*, 44 Ohio St. 3d 86, 88 (1989), it wrote "where the lower court has rendered a final judgment, pursuant to R.C. 2505.02," despite the fact that Section 2505.02 only defines final orders and says nothing about judgments. In *VIL Laser Systems v. Shiloh Industries Inc.*, 119 Ohio St. 3d 354, 2008-Ohio-3920, at ¶8, it wrote that "[a] judgment that leaves issues unresolved and contemplates further action is not a final, appealable order . . . ." See also *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, at ¶20 (substantially similar language).

{¶34} In *General Accident Insurance Co. v. Insurance Co. of North America*, 44 Ohio St. 3d 17, 21 (1989), the Ohio Supreme wrote that "[a]n appellate court, when determining whether a judgment is final, must engage in a two-step analysis." The first step, according to the Supreme Court, is to "determine if the order is final within the requirements of R.C. 2505.02." *Id*. It has repeated that test, treating judgments and orders as synonymous, most recently in *Walburn v. Dunlap*, 121 Ohio St. 3d 373, 2009-Ohio-1221, at ¶13 (quoting *Gen. Acc. Ins. Co.*, 44 Ohio St. 3d at 20).

{¶35} This Court has also failed to recognize the substantive difference between a judgment and a final order in a number of its decisions. E.g., *Baker v. Baker*, 9th Dist. No. 09CA009603, 2009-Ohio-6906, at ¶5; *Scalia v. Aldi Inc.*, 9th Dist. No. 24395, 2009-Ohio-1335, at ¶6; *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-5813, at ¶7; *State v. Goodwin*, 9th Dist. No. 23337, 2007-Ohio-2343, at ¶13; *Konstand v. Barberton*, 9th Dist. No. 21651, 2003-Ohio-7187, at ¶4; *Harkai v. Scherba Indus. Inc.*, 136 Ohio App. 3d 211, 214 (2000). The authority this Court cited in several of those cases was *Chef Italiano Corp. v. Kent*

State Univ., 44 Ohio St. 3d 86 (1989), which stated, correctly, that "[t]o be final, an order must also determine an action and prevent a judgment." *Id.* at 88. This Court, however, substituted the word "judgment" for "order" when it repeated the sentence in its decisions. E.g., *In re Strickler*, 2008-Ohio-5813, at ¶7; *Scalia*, 2009-Ohio-1335, at ¶6; *Konstand*, 2003-Ohio-7187, at ¶4. Of course, the Ohio Supreme Court did write a sentence in its opinion regarding situations in which "the lower court has rendered a final judgment, pursuant to R.C. 2505.02 . . . ." *Chef Italiano Corp.*, 44 Ohio St. 3d at 88. It, obviously, has been easy for courts to blur the difference between a judgment and a final order.

{¶36} One of the definitions of final order provided in Section 2505.02 is that an order is final and appealable if it "affects a substantial right in an action that in effect determines the action and prevents a judgment." R.C. 2505.02(B)(1). In order to shoehorn judgments into this definition of a final order, courts have sometimes concluded that a judgment in favor of one party is a final order under Section 2505.02(B)(1) because it "'prevents a judgment' in favor" of the other party. See, e.g., *State v. Baker*, 119 Ohio St. 3d 197, 2008-Ohio-3330, at ¶9 (quoting R.C. 2505.02(B)(1)). The plain language of the statute, however, is not that a final order prevents a particular type of judgment, it is that it prevents a judgment. A judgment, which decides whether "a legal duty or liability does or does not exist," is almost always going to be in favor of one party and against the other; thereby "prevent[ing] a judgment" in favor of that other party. 1 Henry Campbell Black, A Treatise on the Law of Judgments, § 1 (2d ed. 1902); R.C. 2505.02(B)(1). Construing Section 2505.02(B)(1) to mean "prevent[ ] a judgment in favor of [the other party]," is inconsistent with Section 2505.02(B)(4)(a), which specifically provides that, to be final, an order granting or denying a provisional remedy must "prevent[ ] a judgment in the action in favor of the appealing party." Unlike the language for provisional remedies,

Section 2505.02(B)(1) does not have any qualifying language following the word "judgment." If the legislature had intended Section 2505.02(B)(1) to mean "prevent a judgment in favor of the other party," it could have said so. To say that a judgment is a final order because it prevents a judgment is circular and ridiculous. A judgment doesn't prevent a judgment, it is a judgment.

{¶37} Although the Ohio Supreme Court has, at times, considered whether a judgment was reviewable under Section 2505.03 of the Ohio Revised Code by examining whether it was a final order under Section 2505.02, it has never explicitly overruled its decisions in which it separately considered whether a party was attempting to appeal from a final order as defined in Section 2505.02 or a judgment. *State ex rel. Eberling v. Nugent*, 40 Ohio St. 3d 129 (1988); *State ex rel. Add Venture Inc. v. Gillie*, 62 Ohio St. 2d 164 (1980); *Klein v. Bendix-Westinghouse Auto. Air Brake Co.*, 13 Ohio St. 2d 85 (1968). Those are the decisions this Court should be following, and it should disavow the analysis it employed in those opinions in which it treated judgments and final orders as identical for jurisdictional purposes or applied Section 2505.02 to determine whether a judgment was reviewable under Section 2505.03. E.g., *Baker v. Baker*, 9th Dist. No. 09CA009603, 2009-Ohio-6906, at ¶5; *Scalia v. Aldi Inc.*, 9th Dist. No. 24395, 2009-Ohio-1335, at ¶6; *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-5813, at ¶7; *State v. Goodwin*, 9th Dist. No. 23337, 2007-Ohio-2343, at ¶13; *Konstand v. Barberton*, 9th Dist. No. 21651, 2003-Ohio-7187, at ¶4; *Harkai v. Scherba Indus. Inc.*, 136 Ohio App. 3d 211, 214 (2000).

OBJECTIONS TO MAGISTRATE'S DECISION

{¶38} The evidence in this case was heard by a magistrate, who prepared and filed a "magistrate's decision," as required by Rule 53(D)(3)(a)(i) of the Ohio Rules of Civil Procedure. Once a magistrate's decision has been filed, a party has 14 days within which to object to that

decision. Civ. R. 53(D)(3)(b)(i). The trial court may either act upon the magistrate's decision and enter judgment based on it within the 14 day period during which objections may be filed or after that period has expired. Regardless of whether a party objects to a magistrate's decision, that decision is not effective unless and until it is adopted by the trial court. Civ. R. 53(D)(4)(a). Rule 53(D)(4)(d) of the Ohio Rules of Civil Procedure provides that, "[i]f one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections." Under Rule 53(D)(4)(e), "[a] court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment or interim order." In this case, Mr. Weygandt filed objections to the magistrate's decision before the trial court entered the "Final Judgment Entry" from which he has attempted to appeal. The question is whether the trial court had to rule on his objections in order for this Court to have jurisdiction over his attempted appeal.

{¶39} Rule 4(B)(2) of the Ohio Rules of Appellate Procedure provides that, if post-judgment objections are filed under Rule 53(D)(4)(e)(i) of the Ohio Rules of Civil Procedure, "the time for filing a notice of appeal begins to run . . . when the order disposing of the [objections] is entered." In *In re K.K.*, 9th Dist. 22352, 2005-Ohio-3112, this Court analyzed similar language under Rule 40 of the Rules of Juvenile Procedure. *Id*. at ¶11. It explained that, under Rule 4(B)(2) of the Ohio Rules of Appellate Procedure, if a party files objections after the trial court renders its judgment, the time for filing an appeal from the judgment is stayed until the trial court has disposed of any objections to the magistrate's decision. *Id*. It, therefore, concluded that the trial court's judgment became appealable only when the court disposed of those objections. *Id*. at ¶12.

{¶40} As noted previously, the Ohio Supreme Court has authority to prescribe rules regarding the timing of appeals. Ohio Const. Art. IV Sec. 5(B). In exercising that authority, it

has prescribed a rule providing that the time for an appeal does not begin to run when there are "post-judgment" objections to a magistrate's decision until those objections are disposed of. App. R. 4(B)(2). It has not, however, prescribed a similar rule regarding objections to a magistrate's decision that are filed before the trial court enters judgment. It is logical that Rule 4(B)(2) would only apply to post-judgment objections because it modifies Rule 4(A) of the Ohio Rules of Appellate Procedure, which concerns the general timing of appeals. Appellate Rule 4(A) provides that "[a] party shall file the notice of appeal . . . within thirty days of . . . entry of the judgment or order appealed . . . ." Appellate Rule 4(B) provides "[e]xceptions" to that rule. Since Civil Rule 53(D)(4)(e)(i) allows a trial court to enter its judgment before the parties' deadline for filing objections to the magistrate's decision, it makes sense that the Appellate Rules would adjust the time to appeal from such judgments.

{¶41} Although Appellate Rule 4(B)(2) only applies to post-judgment objections to a magistrate's decision, in *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-5813, at ¶8-10, this Court mistakenly applied its holding in *In re K.K.* to pre-judgment objections that had not been disposed of by the trial court in its judgment or in a separate order. *Id*. at ¶10. The lead opinion in *In re Strickler* did not even attempt to explain why a rule addressed specifically to post-judgment objections also applies to pre-judgment objections. The concurring opinion, however, did address the issue. *Id*. at ¶15-17 (Carr, J., concurring). It noted that many of the districts that have considered the issue have concluded that "the trial court's failure to rule upon 'prejudgment' objections does not affect finality, but instead constitutes trial court error." *Id*. at ¶15. It agreed with the lead opinion, however, that "a trial court's failure to rule on pre-judgment objections is a jurisdictional bar to this court's review." *Id*. at ¶16. It opined that, "[t]his conclusion is compelled by R.C. 2505.02, along with well-settled concepts of finality

under Ohio law. As the Supreme Court of Ohio has consistently explained, an action is 'determined' under R.C. 2505.02, and therefore final, where the trial court's order 'dispose[s] of the whole merits of the cause . . . and leave[s] nothing for the determination of the court.'" *Id.* (quoting *Hamilton County Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio*, 46 Ohio St. 3d 147, 153 (1989)). "Thus, a judgment that leaves issues unresolved and contemplates further trial court action is not a final, appealable order." *Id.* (citing *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, at ¶20). "When applied here, these principles support, and in fact require, our decision today. Because a trial court is obligated to rule on objections, the objections are necessarily part of the 'whole merits of the cause.' Until resolved, they remain pending for the trial court's determination and therefore prevent finality." *Id.* at ¶17 (citing *Arnold v. Bible*, 5th Dist. No. 03CA000034, 2004-Ohio-4998; *Mathers v. Mathers*, 11th Dist. No. 91-G-1647, 1992 WL 86564 (Mar. 31, 1992)).

{¶42} This Court has long followed the rule that, when a trial court fails to explicitly decide a motion before entering judgment, we will assume the motion was denied. *State v. Darulis*, 9th Dist. No. 19331, 1999 WL 420296 at *2 (June 23, 1999) (failure to rule on motion to dismiss); *Ferbstein v. Silver*, 9th Dist. No. 18684, 1998 WL 388976 at *3 (July 8, 1998) (failure to rule on motion for leave to file objections to magistrate's order); *Ogrizek v. Ogrizek*, 9th Dist. No. 18074, 1997 WL 270549 at *1 (May 14, 1997) (failure to rule on motion for attorney fees); *Ryncarz v. Ryncarz*, 9th Dist. No. 17856, 1997 WL 72101 at *4 (Feb. 13, 1997) (failure to rule on motion for contempt). The broad language used in the concurring opinion in *In re Strickler* would overrule all these cases: "Until resolved, they remain pending for the trial court's determination and therefore prevent finality." *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-5813, at ¶17 (Carr, J., concurring) (citing *Arnold v.*

Bible, 5th Dist. No. 03CA000034, 2004-Ohio-4998; *Mathers v. Mathers*, 11th Dist. No. 91-G-1647, 1992 WL 86564 (Mar. 31, 1992)). The rationale would also appear to mean that a judgment would not be appealable if a judge failed to rule on an evidentiary objection at trial.

{¶43} The concurring opinion in *In re Strickler* and the cases cited therein mistakenly equate judgments with final orders. *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-5813, at ¶16-17 (Carr, J., concurring). As has been explained, there is a distinct difference between the two. The trial court's journal entry in this case purports to be a judgment. Under Appellate Rule 4(B), there are no exceptions for the timing of appeals that apply when pre-judgment objections have been filed to a magistrate's decision. Although Rule 53(D)(4)(d) of the Ohio Rules of Civil Procedure requires that, "[i]f one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections," as previously discussed in regard to Civil Rule 54(A), the Ohio Rules of Civil Procedure do not affect this court's jurisdiction. See Ohio Const. Art. IV § 3(B)(2); Civ. R. 82 (providing that "[t]hese rules shall not be construed to extend or limit the jurisdiction of the courts of this state."). Arguably, the existence of Rule 53(D)(4)(d) prevents us from assuming that, by entering judgment without ruling on pre-judgment objections, a trial court overruled those objections. While such a failure to follow the Rules of Civil Procedure may be trial court error, however, it does not deprive this Court of jurisdiction. To determine whether this Court has jurisdiction to review the trial court's "Final Judgment Entry," we need only determine whether the entry is a judgment under Sections 2501.02 and 2505.03 of the Ohio Revised Code.

{¶44} As noted previously, in *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216, 2003-Ohio-5849, the Ohio Supreme Court adopted a three-part test for determining when a court may overrule its own precedent: "A prior decision of [a court] may be overruled where (1) the

decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it." *Id*. at ¶48. Under this test, *In re Strickler* may be overruled. First, as discussed above, it was wrongly decided when it was decided. Second, continued reliance on it serves only to delay consideration of a party's assignments of error, wasting time, money, and judicial resources. In this case, Mr. Weygandt has not even assigned as error that the trial court failed to rule on his objections, probably because he recognized that, by saying his objections "should be overruled," the trial court overruled them. It is simply not workable for this Court to scour the record to make sure, in the words of the concurring opinion in *In re Strickler*, that the trial court "'has disposed of the whole merits of the cause,'" by ruling on every motion or objection raised. Finally, abandoning the incorrect holding of *In re Strickler* would not create hardship. As a procedural ruling, no party will have structured his business or other affairs in reliance upon it. Further, it is unlikely that any potential appellant has failed to appeal a trial court's judgment based on a belief that it was not appealable because of the court's failure to rule on one or more pre-judgment objections to a magistrate's decision. To the extent any such potential appellant may exist, any hardship could be alleviated by allowing an appeal within 90 days of this Court's decision in this case. See *Rothman v. Rothman*, 124 Ohio St. 3d 109, 2009-Ohio-6410, at ¶9. I would overrule *In re Stricker*.

REQUIREMENTS OF A JUDGMENT

{¶45} Although former Section 2323.01 provided a general definition for judgments, it did not provide any criteria or requirements regarding what a trial court entry had to include to be a judgment. Black, in his treatise on judgments, however, noted some of the essentials. 1

Henry Campbell Black, A Treatise on the Law of Judgments, § 3 (2d ed. 1902); see also 1 A.C. Freeman, A Treatise on the Law of Judgments, § 50 (4th ed. 1898). He explained that, "first, it must appear to be the sentence of a court. . . . The decision must purport to emanate from some court of justice known to and organized under the laws of the particular sovereignty." Black, at § 3. 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*. 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*. "[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." *Id*. "[I]n case of ambiguity, a judgment should be construed with reference to the pleadings, and when it admits of two constructions, that one will be adopted which is consonant with the judgment which should have been rendered on the facts and law of the case." *Id*. at § 3. "An uncertainty as to the amount of the recovery will often prevent a judgment . . . [unless] it can be determined or computed without the intervention of the court." *Id*. § 25; see also 1 A.C. Freeman, A Treatise on the Law of Judgments, § 50 (4th ed. 1898) ("[W]hatever appears upon its face to be intended as the entry of a judgment will be regarded as sufficiently formal if it shows,— 1. The relief granted; and 2. That the grant was made by the court in whose records the entry is written. In specifying the relief granted, the parties against and to whom it is given must, of course, be sufficiently identified.").

{¶46} Black further explained that, "[a]s a general rule, a judgment must possess the character of finality in disposing of the rights of all the parties concerned, before it can be considered final with respect to any of them." 1 Henry Campbell Black, A Treatise on the Law of Judgments, § 23 (2d ed. 1902). "It is . . . requisite that a judgment . . . should determine all the issues involved in the cause." *Id*. § 24. "But this rule does not apply where several distinct causes of action are united in the same suit, or where subordinate or ancillary matters arise in the course of the action, each capable of final determination by itself and independently of the main controversy." *Id.*

{¶47} "No particular form of word is usually considered necessary to show the rendition of a judgment." 1 Henry Campbell Black, A Treatise on the Law of Judgments, § 114 (2d ed. 1902). "[T]he sufficiency of the writing claimed to be a judgment should always be tested by its substance rather than its form." *Id*. § 115. "But while this is so, there are certain requisites of a judgment which cannot be dispensed with. In the first place, the entry must purport to be an actual judgment, conveying the sentence of the law, as distinguished from a mere memorandum, note, or recital that a judgment had been or would be rendered." *Id*. In addition, "[if] a judgment has to do with specific property, it is essential that the property be designated in the judgment with such a degree of certainty that it can be identified without reasonable opportunity for mistake." *Id*. § 117. Furthermore, "[t]he amount of a judgment must be stated in it with certainty and precision. All judgments must be specific and certain; they must determine the rights recovered or the penalties imposed, and be such that the defendant may readily understand and be capable of performing." *Id*. § 118. If, however, "the entry of a judgment is so obscure as not to clearly express the exact determination of the court, reference may be had to the pleadings and the other proceedings; and if, with the light thus thrown upon such entry, its obscurity is

dispelled and its intended signification made apparent, the judgment will be upheld and carried into effect in the same manner as though its meaning and intent were made clear and manifest by its own terms." *Id.* § 123 (quoting *Clay v. Hildebrand*, 9 P. 466, 470 (Kan. 1886)).

{¶48} In *Walker v. Walker*, 9th Dist. No. 12978, 1987 WL 15591 (Aug. 5, 1987), this Court recognized similar requirements for a judgment. "A judgment . . . has certain formal requirements. . . . It is signed by the judge, filed with clerk and journalized. The body of a judgment does not have a standard content. The nature of the case and the type of relief granted determines the language appropriate to a particular judgment. 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. Finally, a judgment should include everything necessary to a complete understanding of its effect. Generally, it should be an independent document, which needs no other reference or support. . . . There are certain exceptions to th[at] rule. An example is where there is a statutory provision which permits a separation agreement to be incorporated into the judgment. . . . Additionally, there is support for the proposition that a judgment may be sufficiently certain if it can be made certain by reference to other papers filed in the case." *Id.* at *2. Although this Court noted in *Walker* that a judgment is "usually a separate writing," this does not appear to be a requirement in Ohio. Compare Ohio Civ. R. 58(A) with Fed. Civ. R. 58(a).

{¶49} In sum, although the determination of whether a judgment exists may require consideration of particular variables depending on the nature of the case and the type of relief

granted, the basic proposition is that a judgment constitutes the final determination of the rights of the parties in an action. When a plaintiff files a lawsuit, he asks a court to determine facts, apply the law to those facts, and provide the remedy to which he claims he is entitled. A judgment applies the law to the facts determined in the lawsuit (whether those facts were determined based on the defendant's default, were admitted by the defendant, or were found after a trial) and declares what relief, if any, the plaintiff is provided. It marks the disposition of the last of all the claims included in the complaint and any counterclaims or cross-claims that have been filed in the lawsuit. It is in favor of someone and against someone. It is clear enough that the prevailing party will be able to enforce it.

THE "FINAL JUDGMENT ENTRY"

{¶50} It is now appropriate to consider whether the trial court's "Final Judgment Entry" in this case was a "judgment" under Sections 2501.02 and 2505.03(A) of the Ohio Revised Code. In its "Final Judgment Entry," the trial court wrote, in part, that "plaintiff's objections should be overruled. Plaintiff is entitled to recover on his complaint against defendant the sum of $1575.00 (flooring) and $2436.00 (beams). Defendant is entitled to recover on his counterclaim against the plaintiff the sum of $7000.00. Judgment is therefore rendered for defendant against plaintiff in the amount of $2989.00 plus interest at 5% per annum from the date of judgment. Each party shall pay half the costs. It is so ordered."

{¶51} The trial court's "Final Judgment Entry" purports to be a judgment. Regardless of whether the trial court's statement that Mr. Weygandt's objections "should be overruled" is viewed as overruling those objections, it is clear that the "Final Judgment Entry" is a sentence of the court between adverse parties, who it identifies. It is for one party, against the other, and is definite. It states the amount Mr. Porterfield is entitled to recover from Mr. Weygandt with

certainty and precision. In addition, it is the product of applying the law to the facts as found in this case, resolving both Mr. Weygandt's claims and Mr. Porterfield's counterclaims. Accordingly, it satisfies all the requirements of a judgment. I, therefore, would hold that this Court has jurisdiction over Mr. Weygandt's appeal.

"SHOULD BE OVERRULED"

{¶52} The lead opinion has suggested that this Court does not have jurisdiction over this appeal because the trial court did not rule on Mr. Weygandt's objections to the magistrate's decision. It has pointed to Rule 53(D)(4)(d) of the Ohio Rules of Civil Procedure, which provides that, "[i]f one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections."

{¶53} As I explained earlier, the Ohio Rules of Civil Procedure do not affect the jurisdiction of this court. See Ohio Const. Art. IV § 3(B)(2); Civ. R. 82 (providing that "[t]hese rules shall not be construed to extend or limit the jurisdiction of the courts of this state."). Further, Rule 4(B)(2) of the Ohio Rules of Appellate Procedure is not applicable because Mr. Weygandt's objections were pre-judgment not post-judgment. Whether the trial court complied with Rule 53(D)(4)(d) of the Ohio Rules of Civil Procedure, therefore, does not present a jurisdictional question. It perhaps presents a question of trial court error, but Mr. Weygandt did not assign as error that the trial court failed to rule on his objections.

{¶54} Even if the lead opinion were correct in its conclusion that, if the trial court failed to comply with Rule 53(D)(4)(d) we would not have jurisdiction, it would not matter in this case because the trial court did comply with that rule. In *In re Strickler*, 9th Dist. Nos. 08CA009375, 08CA009393, 2008-Ohio-5813, this Court wrote that the trial court's ruling on objections must be "explicit[ ]." *Id*. at ¶10. In *Young v. Young*, 9th Dist. No. 08CA0058, 2009-Ohio-5050, this

Court, applying *In re Strickler*, concluded that language in a journal entry declaring that objections "should be overruled" was not "explicit" enough to overrule objections because it merely expressed an opinion that the objections "ought" to be overruled instead of actually overruling them. *Id*. at ¶10.

{¶55} As in *Young*, the trial court in this case wrote in its "Final Judgment Entry" that Mr. Weygandt's objections "should be overruled." Although the trial court's language would be insufficient under *Young*, that aspect of *Young* is wrong. While this Court correctly recognized in *Young* that "should" is a synonym of "ought," it failed to recognize that "ought, should, must, and have can all function as verbal auxiliaries meaning to be bound." Webster's Third New Int'l Dict. 1599 (1993).

{¶56} As with this Court's continued reliance on *In re Strickler,* its continued reliance on *Young*, serves only to delay consideration of a party's assignments of error, wasting time, money, and judicial resources. It, therefore, defies practical workability. Further, again as with *In re Strickler*, abandoning it would create no hardship. No party will have structured his business or other affairs in reliance on it. In the unlikely event that a potential appellant has failed to appeal in reliance upon it, any hardship could be alleviated by allowing an appeal within 90 days of this Court's decision in this case. See *Rothman v. Rothman*, 124 Ohio St. 3d 109, 2009-Ohio-6410, at ¶9. I would overrule *Young*.

{¶57} The trial court's judgment entry must be read as a whole. From the context, I would conclude that the court used the word "should" as the functional equivalent of "must" in expressing its conclusion that it was "bound" to overrule Mr. Weygandt's objections. See Webster's Third New Int'l Dict. 1599 (1993). Accordingly, I would conclude that the judgment entry disposed of the objections. See *Young v. Young*, 9th Dist. No. 08CA0058, 2009-Ohio-

5050, at ¶12 (Carr, J., dissenting) ("Even though the trial judge used the word 'should,' his clear intention was to explicitly overrule the objections to the magistrate's decision and that was the understanding of all parties to this action."). The journal entry certainly "provide[s] sufficient information to enable the parties to understand [that the objections were overruled]." *Walker v. Walker*, 9th Dist. No. 12978, 1987 WL 15591 at *2 (Aug. 5, 1987). In light of the fact that the document filed by the trial court was captioned "Final Judgment Entry" and otherwise purported to finally dispose of the parties' claims, it is reasonable to conclude that the trial court, by saying that Mr. Weygandt's objections "should be overruled" intended, in that "Final Judgment Entry," to, in fact, overrule those objections.

CONCLUSION

{¶58} Because the trial court's Final Judgment Entry is a judgment under Sections 2501.02 and 2505.03 of the Ohio Revised Code, I would conclude that this Court has jurisdiction to consider Mr. Weygandt's appeal. I would overrule his assignments of error, however, because he failed to provide the trial court with a transcript of all the evidence that was submitted to the magistrate. Civ. R. 53(D)(3)(b)(iii); *Furlong v. Davis*, 9th Dist. No. 24703, 2009-Ohio-6431, at ¶30; *Weitzel v. Way*, 9th Dist. No. 21539, 2003-Ohio-6822, at ¶17.

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