

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY**

HOMESTEAD INTERIORS, INC.,

Plaintiff-Appellee,

- vs -

PHILLIP HINES,

Defendant-Appellant.

CASE NO. 2022-G-0053

Civil Appeal from the
Chardon Municipal Court

Trial Court No. 2018 CVF 00577

MEMORANDUM
OPINION

Decided: February 13, 2023
Judgment: Appeal dismissed

George L. Badovick, 13033 Ravenna Road, Chardon, OH 44024 (For Plaintiff-Appellee).

Glenn E. Forbes and Monica R. Zibbel, Forbes Law, LLC, 166 Main Street, Painesville, OH 44077 (For Defendant-Appellant).

MATT LYNCH, J.

{¶1} Pending before this court is defendant-appellant, Phillip Hines', Motion for Remand, filed on December 17, 2022, seeking "an Order remanding this matter to the Chardon Municipal Court * * * to enter Findings of Fact and Conclusions of Law." Nothing has been filed by plaintiff-appellee, Homestead Interiors, Inc. Upon consideration of the Motion for Remand as well as the Order from which the appeal has been taken, the present appeal is dismissed for lack of jurisdiction.

{¶2} The appealed Order, dated November 10, 2022, provides that "the Defendant's Counterclaim was groundless, and the Defendant maintained the action in

bad faith.” Thus, “the Plaintiff remains entitled to the Judgment of \$7,850,” and “a hearing will be set forthwith before the Magistrate to determine whether additional attorney’s fees should be awarded.”

{¶3} On November 18, 2022, Hines filed a Request for Findings of Fact and Conclusions of Law.

{¶4} On November 30, 2022, the municipal court issued an Order that Hines’ Request would be “held in abeyance awaiting the Eleventh District Court of Appeals[] decision on a pending Motion for Reconsideration.” This Motion for Reconsideration was filed as part of Appellate Case No. 2021-G-0024 and had been denied by this Court on November 29.

{¶5} On December 9, 2022, Hines filed his Notice of Appeal from the November 10 Order.

{¶6} Ohio Appellate Rule 4(B)(2)(d) provides: “In a civil case * * *, if a party files * * * a request for findings of fact and conclusions of law * * * then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order resolving the * * * post-judgment filing[].” The foregoing provision tolls the time for filing a Notice of Appeal. It was not necessary for the municipal court to refrain from ruling on the Request for Findings of Fact and Conclusions of Law pending this Court’s ruling on the Motion for Reconsideration. “A motion for reconsideration has no effect on the mandate absent a stay, so a trial court may proceed immediately to exercise any jurisdiction returned to it by the mandate, notwithstanding the pendency of a motion for reconsideration.” Painter & Pollis, Ohio Appellate Practice, Section 7:33 (Nov.2022); *State v. Moore*, 7th Dist. Mahoning No. 13

MA 60, 2014-Ohio-2525, ¶ 10. Nor was it necessary for Hines to file his Notice of Appeal while the Request for Findings of Fact and Conclusions of Law remained pending.

{¶7} Moreover, the appealed order expressly provides for the possible award of additional attorney’s fees. “[I]t is well-settled law that a judgment deferring final adjudication of a request for attorney fees is not a final appealable order.” (Citation omitted.) *Echols v. Echols*, 2022-Ohio-1719, 190 N.E.3d 698, ¶ 26 (11th Dist.); *DES Material & Supply Co., LLC v. Pincus, LLC*, 11th Dist. Geauga No. 2020-G-0255, 2020-Ohio-4360, ¶ 7 (“[u]ntil the attorney fees amount is determined * * * this judgment is not a final appealable order”).

{¶8} Accordingly, the present appeal is dismissed for lack of a final order. The municipal court may rule on the Request for Findings of Fact and Conclusions of Law and Hines may file a new appeal upon a determination regarding attorney fees.

{¶9} Appeal dismissed.

JOHN J. EKLUND, P.J.,

MARY JANE TRAPP, J.,

concur.