

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Moustafa M. Aouthmany

Court of Appeals No. L-11-1096

Relator

v.

Judge Francis X. Gorman and
Toledo Municipal Court

DECISION AND JUDGMENT

Respondents

Decided: May 18, 2011

* * * * *

Moustafa M. Aouthmany, pro se.

* * * * *

PER CURIAM.

{¶ 1} On October 13, 2010, relator, Moustafa M. Aouthmany, filed a notice of appeal in this court from the September 15, 2010 judgment of the Toledo Municipal Court, in which the trial court adopted the magistrate's decision rendering judgment in favor of appellee, Kime Design, LLC.

{¶ 2} On November 24, 2010, we sua sponte dismissed the appeal for lack of a final, appealable order. Specifically, we found that "the September 15, 2010 judgment entry does not contain an order by the judge which states the relief granted so that the parties are able to determine their rights and obligations by referring solely to the judgment entry." *Kime Design, Ltd. v. Aouthmany*, 6th Dist. No. L-10-1300, 2010-Ohio-1990, relying on *Sabrina J. v. Robbin C.* (Jan. 26, 2001), 6th Dist. No. L-00-1374. On March 23, 2011, the trial court issued a decision and judgment entry in which it stated that:

{¶ 3} "As to Moustafa M. Aouthmany, M.D., the court adopts the magistrate's decision of 7/1/10. Motion to halt collection deemed moot."

{¶ 4} On April 29, 2011, relator initiated this mandamus action, in which he asserts that the trial court's March 23 decision still does not constitute a final, appealable order because it does not contain an order which specifies the relief granted. In addition, relator asserts the previously unaddressed claim that the trial court's order is not final and appealable because the trial court never ruled on his objections to the magistrate's decision, which were filed on August 20, 2010.

{¶ 5} We note initially that, to establish the right to a writ of mandamus, the party seeking the writ must demonstrate: "(1) that the relator has a clear legal right to the relief sought, (2) that the respondent is under a clear legal duty to perform the requested act, and (3) that the relator has no plain and adequate remedy in the ordinary course of

law." *State ex rel. Cleveland Cold Storage v. Beasley*, 10th Dist. No. 07AP-736, 2008-Ohio-1516, ¶ 9, citing *State ex rel. Ohio Gen. Assembly v. Brunner*, 114 Ohio St.3d 386, 2007-Ohio-3780.

{¶ 6} As to relator's claim that the trial court's judgment entry issued on March 23 does not constitute a final, appealable order, Ohio courts have held that, to be final and appealable, a judgment must "state the relief granted so that the parties are able to determine their rights and obligations by referring solely to [that] judgment entry." *Kime Design, Ltd. v. Aouthmany*, supra. The record shows that on April 25, 2011, after this mandamus action was filed, the trial court journalized a separate order in which it found that: "(1) the Plaintiff obtained a judgment against the Defendant, Moustafa M. Aouthmany, on September 15, 2010 in the amount of \$3,000.00, interest allowed by law, costs, and attorney fees in the amount of \$750.00; (2) that the said judgment is unsatisfied in the amount of \$3,883.45 which includes interest on judgment and court costs." However, in addition to stating the relief granted in the magistrate's decision, the trial court was also required by Civ.R. 53(D)(4)(d) to rule on all objections to a magistrate's decision.

{¶ 7} A review of the record shows that the trial court denied relator's objections to the magistrate's decision on September 15, 2010, which we subsequently found was not a final, appealable order. See *Kime Design, Ltd. v. Aouthmany*, supra. That ruling was not included in the trial court's judgment issued on April 25, 2011. Ohio courts have held that, in both the criminal and civil context, "[o]nly one document can constitute a

final appealable order." *Salisbury v. Smouse*, 179 Ohio App.3d 426, 2008-Ohio-6196, ¶ 21, citing *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330. See, also, Civ.R. 53(D)(4)(d). Accordingly, it appears that the trial court's order issued on April 25, 2011, is not yet a final, appealable order.

{¶ 8} Pursuant to R.C. 2731.06 and 2731.07, this court issues an alternative writ and orders that respondent, within 14 days of the date he is served with this alternative writ, either do the act requested by relator in the petition pursuant to Civ.R. 8(B), or file a motion to dismiss relator's petition pursuant to Civ.R. 12. Thereafter, this case shall proceed pursuant to the Ohio Rules of Civil Procedure.

{¶ 9} To the clerk: Manner of service.

{¶ 10} The sheriff of Lucas County shall immediately serve, **upon the respondent** by personal service, a copy of this alternative writ pursuant to R.C. 2731.08.

{¶ 11} The clerk is further directed to immediately serve **upon all other parties** a copy of this alternative writ in a manner prescribed by Civ.R. 5(B).

{¶ 12} It is so ordered.

ALTERNATIVE WRIT GRANTED.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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