

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION

**Nos. 90343, 90352, 90353, 90354, 90356,
90357, 90464, 90525 and 90526**

PLYMOUTH PARK TAX SERVICES, LLC, ET AL.

PLAINTIFFS-APPELLANTS

vs.

MARGARET A. FRAZIER, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-606811, 610562, 585907, 588216,
588223, 581592, 621602, 612512, 616616

BEFORE: Blackmon, P.J., Stewart, J., and Dyke, J.

RELEASED: July 1, 2008

JOURNALIZED:

[Cite as *Plymouth Park Tax Servs. v. Frazier*, 2008-Ohio-3348.]

ATTORNEYS FOR APPELLANT

Suzana K. Krasnicki
Gilbert E. Blomgren
Keith D. Weiner
Keith D. Weiner & Associates Co., LPA
75 Public Square, 4th Floor
Cleveland, Ohio 44113

David M. Douglass
Sean F. Berney
Jason P. Hager
Clinton E. Preslan
Robert C. Roberts
Douglass & Associates Co.
P. O. Box 40480
Cleveland, Ohio 44140-0480

ATTORNEYS FOR APPELLEE

Margaret A. Frazier
John Doe, 1 (unknown spouse of Margaret A. Frazier)
2813 Community College Avenue
Cleveland, Ohio 44115

City of East Cleveland
c/o Regional Income Tax Agency
P. O Box 470537
Broadview Heights, Ohio 44147

Ellainna J. Lewis-Bevel
Deputy Law Director
City of East Cleveland
14340 Euclid Avenue
East Cleveland, Ohio 44112

For Household Bank

Household Bank (S.B.) N.A.
1111 N. Town Center Drive

La Vegas, Nevada 89144

For James Rokakis, County Treasurer

William D. Mason
Cuyahoga County Prosecutor

By: Anthony Giunta
Assistant County Prosecutor
The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

For Velocity Investments, LLC

Velocity Investments, LLC
Assignee of Metris Co., Inc.
C/o Rob Burgess, Stat. Agent
12702 Gay Avenue, #4
Cleveland, Ohio 44105

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

[Cite as *Plymouth Park Tax Servs. v. Frazier*, 2008-Ohio-3348.]
PATRICIA ANN BLACKMON, P.J.:

{¶ 1} Sua sponte, we dismiss the instant consolidated appeal for lack of a final appealable order. In each case, the trial court merely adopted the magistrate's decision without separately stating its own judgment as required by Civ.R. 53(E)(5). A trial court order stating merely that it is adopting a magistrate's decision is not a final appealable order. *In re: Zinni*, Cuyahoga App. No. 59899, 2008-Ohio-581, citing *Harkai v. Scherba Indus.* (2000), 136 Ohio App.3d 211. To constitute a final appealable order, a court's entry reflecting action on a magistrate's decision must be a separate and distinct instrument from the decision and must grant relief on the issues originally submitted to the court. *Id.* citing *In re: Jesmone Dortch* (1999), 135 Ohio App.3d 430.

Appeal dismissed.

The appellant is responsible for all costs; appellee did not file a brief.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA ANN BLACKMON, PRESIDING JUDGE

ANN DYKE, J., CONCUR;
MELODY J. STEWART, J., CONCURS AND DISSENTS
(SEE CONCURRING AND DISSENTING OPINION.)

MELODY J. STEWART, J., CONCURRING IN PART AND DISSENTING IN PART:

{¶ 2} I respectfully dissent from the majority's sua sponte dismissal of this consolidated appeal. All nine consolidated cases are appeals of the reduction of the

award of attorney fees in a tax certificate foreclosure action. All were tried to a magistrate and all resulted in a default judgment granting a decree of foreclosure. In each case plaintiff-appellant filed a timely objection to the magistrate's decision. The majority dismisses all of the appeals, stating that: "In each case, the trial court merely adopted the magistrate's decision without separately stating its own judgment as required by Civ.R. 53(E)(5)." I find that in five of the consolidated cases, app. Nos. 90343, 90352, 90357, 90525, and 90526, the judgment entry constitutes a final appealable order.

{¶ 3} In order to constitute final judgment in a matter tried to a magistrate, the trial court must review the magistrate's decision and: (1) rule on any objections to the magistrate's decision, (2) adopt, modify, or reject the magistrate's decision, and (3) enter a judgment that determines all the claims for relief in the action or determine that there is no just reason for delay. Civ.R. 53(d)(4)(B)(D) and (E); R.C. 2305.02; Civ.R. 54. See *Yantek v. Coach Builders Ltd.*, Hamilton App. No. C-060601, 2007-Ohio-5126; *In re: Zinni*, Cuyahoga App. No. 89599, 2008-Ohio-581.

{¶ 4} In the five cases cited above, the judgment entry appealed from states:

{¶ 5} "The objections to the magistrate's decision are overruled, the court adopts the magistrate's decision attached hereto and incorporated herein. Decree of foreclosure for Plymouth Park Tax Services, LLC. final. Pursuant to Civ.R. 54(B) the court finds there is no just cause for delay."

{¶ 6} While certainly minimal in its wording, I find the court's entry to constitute a final appealable order sufficient to invoke the jurisdiction of this court. I would dismiss the four cases with deficient judgment entries and allow the consolidated appeal of the five remaining cases to go forward for a decision on the merits.