

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

HOMESTEAD INTERIORS, INC.,

Plaintiff-Appellee,

- vs -

PHILLIP HINES,

Defendant-Appellant.

CASE NO. 2023-G-0040

Civil Appeal from the
Chardon Municipal Court

Trial Court No. 2018 CVF 00577

OPINION

Decided: April 22, 2024
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 the appeal filed by defendant-appellant, Phillip Hines, from the September 28, 2023 Order of the Chardon Municipal Court. For the following reasons, we dismiss the appeal for lack of a final order.

{¶2} The underlying proceedings began in 2018 when plaintiff-appellee, Homestead Interiors, Inc., filed a small claims action against Hines in municipal court and Hines filed counterclaims. All claims were tried before a magistrate who found in favor of Homestead Interiors and against Hines. After a further hearing, the magistrate entered an award of attorney fees in favor of Homestead Interiors pursuant to R.C. 1345.09(F).

{¶3} On May 23, 2022, the municipal court issued a couple of Orders. In one Order, the court ruled: “Plaintiff [Homestead Interiors] is awarded a judgment in the amount of \$600.00, plus interest at 1.5% per month from February, 2018 and the costs of this action. Further, a hearing on the issue of Attorney’s Fees was held on February 27, 2020, and the Court adopts the Magistrate’s Decision of April 17, 2020, and Plaintiff is awarded fees in the amount of \$7,850.00.” In the other Order, the court ruled: “Judgment for Plaintiff in the amount of \$7,850.00 as and for attorney fees.”

{¶4} On October 17, 2022, this Court reversed the award of attorney fees because neither the magistrate nor the court had made an express finding of groundlessness and bad faith as required by R.C. 1345.09(F). *Homestead Interiors, Inc. v. Hines*, 11th Dist. Geauga No. 2021-G-0024, 2022-Ohio-3700, ¶ 37.

{¶5} On November 10, 2022, the municipal court issued an Order finding that “Defendant’s Counterclaim was groundless, and the Defendant maintained the action in bad faith.” The court acknowledged that “Plaintiff remains entitled to the Judgment of \$7,850.00, as originally awarded under the CSPA,” but ruled: “In addition, a hearing will be set forthwith before the Magistrate to determine whether additional attorney’s fees should be awarded.”

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

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

{¶8} On February 13, 2023, this Court dismissed the appeal for lack of a final order, i.e., the Request for Findings of Fact and Conclusions of Law remained pending

and the issue of “whether additional attorney’s fees should be awarded” had not been determined: “[T]he 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.” *Homestead Interiors, Inc. v. Hines*, 11th Dist. Geauga No. 2022-G-0053, 2023-Ohio-413, ¶ 8.

{¶9} On February 24, 2023, Homestead Interiors filed a Motion to Re-Docket for Award of Attorney Fees, asking the municipal court “to re-docket this case for the determination of additional attorney fees as granted in the Court’s Order dated November 10, 2022.”

{¶10} On September 28, 2023, the municipal court overruled the Request for Findings of Fact and Conclusions of Law inasmuch as “they have been previously delineated as part of this Court’s record.” The same Order also provided: “In addition, the Plaintiff’s Motion to Re-Docket For Award of Attorney’s Fees filed February 23, 2023 is granted and an Evidentiary Hearing has been previously scheduled and will proceed on October 26, 2023 at 1:00 p.m.”

{¶11} On October 18, 2023, Hines filed the present appeal. The hearing on attorney fees scheduled for October 26 was cancelled.

{¶12} In the prior appeal, this Court held that there was no final order while Hines’ Motion for Findings of Fact and Conclusions of Law remained pending and the issue of attorney fees remained unresolved. Following dismissal, the Motion for Findings of Fact and Conclusions of Law was ruled upon but Hines, prematurely, filed the new appeal while the issue of attorney fees remains unresolved. *Homestead Interiors*, 2023-Ohio-413, at ¶ 8 (“Hines may file a new appeal upon a determination regarding attorney fees”).

{¶13} As previously explained by this Court, a final order does not exist where a possible award of additional attorney fees is contemplated. *Id.* at ¶ 7. “[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”).

{¶14} For the foregoing reasons, the present appeal is dismissed for lack of a final order. Costs to be taxed against the appellant.

MARY JANE TRAPP, J.,

JOHN J. EKLUND, J.,

concur.