

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

EDWARD T. SAADI,

Plaintiff-Appellee,

v.

AMERICAN FAMILY INSURANCE CO. et al.,

Defendants-Appellants.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 20 MA 0083**

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Civil Appeal from the  
Court of Common Pleas of Mahoning County, Ohio  
Case No. 2016 CV 2661

**BEFORE:**

Carol Ann Robb, Cheryl L. Waite, Judges and Judge Mary Jane Trapp of the Eleventh  
District Court of Appeals, Sitting by Assignment

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**JUDGMENT:**

Affirmed.

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*Edward Saadi, pro se*, 970 Windham Ct., Ste. 7, Boardman, Ohio 44512. No Brief Filed  
for Plaintiff-Appellee and

*Atty. James Gentile*, DeGenova & Yarwood, Ltd., The Liberty Building, 42 North Phelps Street, Youngstown, Ohio 44503, for Defendant-Appellant Sibohan Fairchild and *Atty. Charles Dunlap*, 7330 Market Street, Youngstown, Ohio 44512 for Defendant-Appellee

Dated: June 22, 2021

**Robb, J.**

{¶1} Defendant-Appellant Siobhan Fairchild appeals the decision of the Mahoning County Common Pleas Court denying her motion to vacate a judgment. She claims the trial court lacked subject matter jurisdiction, which allowed her to collaterally attack the judgment at any time through a motion to vacate a void judgment. She alternatively claims she was denied the right to a fair hearing on the magistrate's decision due to alleged Civ.R. 53 compliance issues, complaining the magistrate denied her motion for findings of fact and conclusions of law, a telephone hearing on her motion to vacate was not recorded, and the trial court did not conduct an independent review of the magistrate's decision. For the following reasons, the trial court's judgment is affirmed.

#### STATEMENT OF THE CASE

{¶2} On October 5, 2016, Edward Saadi filed a creditor's bill action against Anthony DiMuzio stating he recovered a judgment against Anthony DiMuzio for \$5,000 (plus interest and costs) and Anthony DiMuzio did not have sufficient real or personal property subject to levy on execution to satisfy the judgment. As an exhibit, he attached the judgment in *Saadi v. James DiMuzio*, Mah.Cty.C.P.No. 02 CV 104 (7/7/2007 J.E.), showing Anthony DiMuzio's individual liability to Saadi for \$5,000 in punitive damages (and joint and several liability with James DiMuzio for other damages).

{¶3} As to the non-judgment-debtor defendants named in the creditor's bill, Saadi alleged Anthony DiMuzio had "certain equitable and other interests in money, choses in action, accounts receivable, and/or other property" and "interests due to him or to become due to him in contracts, choses in action, and/or other property" which was "in the possession of or under the control of the other Defendants which he refuses to disclose or apply to the satisfaction of said judgment." One of these other defendants was Siobhan Fairchild aka Siobhan DiMuzio (hereinafter Appellant), the spouse of Anthony DiMuzio. It was alleged she held the aforementioned interests, including without limitation personal property, belonging to Anthony DiMuzio.

{¶4} The creditor’s bill also alleged Anthony DiMuzio was owed money by (and had choses in action against) the following defendants arising from his September 16, 2016 motor vehicle accident: Vicki Nellis (the other driver); Thomas Litz as Administrator of the Estate of Barbara Gardner (the owner of the car driven by Nellis); and the insurance company (American Family Insurance Company and/or American Family Mutual Insurance Company). Appellant was also added to this list of defendants who may hold Anthony DiMuzio’s funds related to the accident. The creditor’s bill sought full disclosure of the interests and a prohibition on transfers until Saadi’s judgment was satisfied.

{¶5} Appellant was personally served with the creditor’s bill on October 8, 2016. Saadi filed a motion for default judgment on March 2, 2017, and the trial court granted default judgment against Appellant and Anthony DiMuzio on April 24, 2017.

{¶6} On August 9, 2017, Saadi moved for leave to amend the complaint to add a second cause of action against Appellant for a money judgment, and leave was eventually granted. On October 11, 2017, the “amended creditor’s bill and complaint” was filed, which repeated the original allegations in the creditor’s bill and added a second cause of action for a money judgment against only Appellant. The complaint alleged: a lien arose in the assets described in the creditor’s bill; Appellant was under a duty to refrain from transferring such assets to Anthony DiMuzio; she transferred money to him exceeding the amount he owed to Saadi; and she was therefore liable to Saadi in the amount of his judgment against Anthony DiMuzio, \$5,000 plus interest accruing from June 7, 2007.

{¶7} The amended pleading was served on Appellant on October 13, 2017 by certified mail with a return receipt. An agreed judgment entry was filed wherein the insurance companies agreed to hold any settlement in the accident case until the court was informed and direction on distribution was received. (10/31/17 J.E.).

{¶8} Saadi filed a motion for default judgment against Appellant on the amended pleading, requesting damages in the amount of his judgment against Anthony DiMuzio. On November 22, 2017, the trial court granted judgment against Appellant in the amount of \$5,000 plus statutory interest from June 7, 2007. The court instructed the clerk to serve the parties, and the clerk docketed the service.

{¶9} Thereafter, Saadi filed an assignment of his rights to James DiMuzio for the lien in the creditor’s bill action and the November 22, 2017 judgment against Appellant (while noting he collected \$2,136.11 toward the judgment).

{¶10} In November 2019, the insurance company filed a motion disclosing and requesting the court to disburse the \$3,000 settlement reached with Anthony DiMuzio and Appellant in the accident case, *DiMuzio v. Nellis*, Mah.Cty.C.P.No. 2018 CV 02386. On February 4, 2020, an agreed judgment entry was filed in the case at bar, which distributed those proceeds as follows: \$420.30 to the Center for Medicare & Medicaid Services; \$1,579.70 to James DiMuzio toward the assigned judgment; and \$1,000 to the attorney for Anthony DiMuzio and Appellant in the accident case. Their attorney signed this agreed distribution order.

{¶11} On February 20, 2020, Appellant filed a motion to vacate the November 22, 2017 default judgment, alleging it was void and open to collateral attack at any time. She claimed: she was not the judgment debtor in the creditor's bill; she was wrongfully sued for a money judgment; a default judgment for money was not authorized by the creditor's bill statute; and the court thus lacked "jurisdiction" to "transfer" the \$5,000 owed by Anthony DiMuzio to her. She also said the proceeds from the accident settlement contained a personal loss of consortium claim and believed the proceeds were improperly obtained through the creditor's bill to satisfy Saadi's judgment against Anthony DiMuzio.<sup>1</sup> She vaguely questioned whether she was properly served in the case. She asked the court to refund all sums and issue an interim order terminating all garnishments.

{¶12} Responses in opposition were filed by the insurance company and Saadi's assignee, James DiMuzio. They argued: Appellant was confusing a void judgment with a voidable judgment; her argument did not involve subject matter jurisdiction but merely raised a defense; and the court had personal jurisdiction to render the default judgment against her. If the motion to vacate was construed under Civ.R. 60(B), it was argued the motion: failed to cite or establish grounds for relief under Civ.R. 60(B); lacked extraordinary circumstances justifying the use of (B)(5); did not indicate the failure to defend herself was excusable under (B)(1); and was untimely with no explanation for the delay. They also pointed out Appellant was present and represented by counsel at the hearing during which the agreed entry of February 4, 2020 was drafted.

{¶13} Appellant's reply in support of her motion said Civ.R. 60(B) law was irrelevant as the judgment was void for lack of "jurisdiction," reiterating she was not the

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<sup>1</sup> She also said her husband was driving her vehicle when he was in the accident, but her reply later said there was no property damage claim in the accident lawsuit.

judgment debtor in the creditor’s bill and the governing statute did not contain the remedy of obtaining a money judgment against a non-judgment-debtor defendant during the creditor’s bill proceedings (or disbursing her settlement).<sup>2</sup>

{¶14} On May 19, 2020, the magistrate issued a decision overruling the motion to vacate. The magistrate recited the history of the case, found Appellant was served with the original creditor’s bill and the amended creditor’s bill and complaint, and concluded the court had personal jurisdiction over her. The magistrate said Appellant failed to establish the legal requirements for granting relief from a judgment under Civ.R. 60(B) and the Ohio Supreme Court’s *GTE* case, concluding the motion to vacate: did not explain the failure to respond to the complaints or show the failures were excusable; failed to cite a ground within Civ.R. 60(B); and was untimely filed 2.5 years after the November 22, 2017 judgment which she sought to vacate. Nevertheless, the magistrate recognized Appellant did not bring the motion under Civ.R. 60(B).

{¶15} The magistrate then found her motion to vacate raised an allegation on the merits of the case which should have been raised during the action and was not a matter of jurisdiction, concluding the court had subject matter jurisdiction in the action on the creditor’s bill and in the action on the amended creditor’s bill and complaint for money judgment. The magistrate also pointed out Appellant was represented by counsel in the personal injury lawsuit and counsel participated in the February 2020 agreed judgment entry in this action; this entry authorized the release of the settlement funds to her counsel and to the assignee of the judgment creditor.

{¶16} Appellant filed a motion for findings of fact and conclusions of law under Civ.R. 53. On May 28, 2020, the magistrate denied the motion, pointing out the May 19, 2020 decision was not “general” in nature but contained numerous factual findings and legal conclusions.

{¶17} Appellant then filed timely objections to the May 19, 2020 magistrate’s decision and contested the May 28, 2020 magistrate’s order denying the motion for findings of fact and conclusions of law. In the objections, Appellant claimed the magistrate

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<sup>2</sup> Appellant’s reply also said it was significant Saadi did not respond to her motion to vacate. Saadi then filed a response, noting he was no longer a party as he assigned his interest. He attached a letter from Appellant’s new attorney and his letter in response, explaining (as a party and as an attorney) the procedure used in the case. He noted the amended complaint added a count for a money judgment because Appellant ignored the lien created by the creditor’s bill, which applied not only to Anthony DiMuzio’s funds from the accident but also to other funds of his held by Appellant.

erred in finding the court had jurisdiction over her and the subject matter, pointing to the requirements for a creditor's bill and the law on void judgments and alleging a court cannot render a money judgment in a case originally filed as a creditor's bill. Another objection said the parties agreed to a telephone hearing on her motion to vacate but there was no recording of the hearing in violation of Civ.R. 53(E)(7).

{¶18} James DiMuzio's response to the objections explained he bought the judgment from Saadi in order to extricate himself from collection proceedings against his brother and alleged employee, Anthony DiMuzio. He said the magistrate's decision was not general and Appellant could have submitted an affidavit in lieu of a transcript if a recording was lacking. The insurance company's response to the objections said there was no recording because the parties agreed to waive an evidentiary hearing and opined a party must request a recording of a hearing on mere arguments. The responses also reiterated arguments about jurisdiction and Civ.R. 60.

{¶19} On July 1, 2020, the trial court overruled the objections, adopted the magistrate's decision, said the May 19, 2020 magistrate's decision and the May 28, 2020 magistrate's order were being made the judgment of the court, and recited the decision and the order in the judgment entry. Appellant filed a timely notice of appeal.

#### CREDITOR'S BILL

{¶20} "A creditor's bill action enables a judgment creditor to secure a lien on those assets of the judgment debtor that cannot be reached by mere execution of the judgment." *American Transfer Corp. v. Talent Transport Inc.*, 8th Dist. Cuyahoga No. 94980, 2011-Ohio-112, ¶ 8. See also *Rhodes v. Sinclair*, 7th Dist. Mahoning No. 11 MA 181, 2012-Ohio-5603, ¶ 12. The creditor's bill statute provides:

When a judgment debtor does not have sufficient personal or real property subject to levy on execution to satisfy the judgment, any equitable interest which he has in real estate as mortgagor, mortgagee, or otherwise, or any interest he has in a banking, turnpike, bridge, or other joint-stock company, or in a money contract, claim, or chose in action, due or to become due to him, or in a judgment or order, or money, goods, or effects which he has in the possession of any person or body politic or corporate, shall be subject to the payment of the judgment by action.

R.C. 2333.01. The judgment creditor must demonstrate: (1) a valid judgment against the debtor; (2) an interest of the type enumerated in the statute; and (3) the debtor's lack of sufficient personal or real property to satisfy the judgment. *Rhodes*, 7th Dist. No. 11 MA 181 at ¶ 13.

{¶21} Notably, an equitable lien is created *by the filing* of the creditor's bill complaint and service on the person holding the judgment debtor's interest. *Great Am. Ins. Co. v. Thompson Trust*, 1st Dist. Hamilton No. C-040127, 2006-Ohio-304, ¶ 14. See also *Olive Branch Holdings LLC v. Smith Technology Dev. LLC*, 181 Ohio App.3d 479, 2009-Ohio-1105, 909 N.E.2d 671, ¶ 33 (10th Dist.); *Federal Deposit Ins. Corp. v. Willoughby*, 19 Ohio App.3d 51, 55, 482 N.E.2d 1267 (8th Dist.1984). The creditor's bill has "a lis pendens effect" and establishes a "contingent lien" subject to the creditor's ability to establish the requirements of R.C. 2333.01. *Myocare Nursing Home Inc. v. Hohmann*, 2018-Ohio-1195, 110 N.E.3d 120, ¶ 21, 23 (8th Dist.). "The purpose of establishing a lien is to prevent the occurrence of the debtor of the judgment debtor making payments to the judgment debtor." *Id.* at ¶ 21.

{¶22} Contrary to Appellant's contention, it is not unheard of to amend a pleading to add a claim against a person who paid the judgment debtor in violation of the lien created by the creditor's bill where the person was joined as a defendant in the creditor's bill. In a case applying a similar prior version of the statute, the procedural history shows: a creditor's bill was filed against the judgment debtor; it named W. as a defendant as he owed the judgment debtor money; the original judgment was reversed due to an irregularity in the entry but was soon re-entered with a correction; during the time between the reversal and the re-entry, W. paid the judgment debtor; an amended petition was therefore filed in creditor's bill action; and the Supreme Court upheld the judgment entered against W. finding the payment was made pendente lite. *Gibbon v. Dougherty*, 10 Ohio St. 365 (1859).

{¶23} In another case, the procedural history demonstrates: a judgment creditor filed a creditor's bill against a judgment debtor and the city, who was a potential tortfeasor liable to the judgment debtor; a judgment was eventually rendered against the city in the debtor's tort suit; the city paid the judgment to the debtor without regard to the creditor's bill; and the court in the creditor's bill action rendered judgment against the city for the balance of the judgment due to the judgment creditor by the judgment debtor. See *City of Cincinnati v. Hafer*, 49 Ohio St. 60, 64, 30 N.E. 197 (1892) (affirming as the judgment

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debtor's demand against the city was a claim subject to the creditors' bill and the judgment creditor acquired a lien in the claim).

#### ASSIGNMENT OF ERROR ONE: JURISDICTION

{¶24} Appellant sets forth two assignments of error, the first of which alleges:

“THE COURT LACKED JURISDICTION TO GRANT JUDGMENT AGAINST APPELLANT.”

{¶25} Appellant contends the judgment was void as the court lacked subject matter jurisdiction. She notes the timeliness of such a motion is not a consideration and confirms her motion to vacate was not relying on Civ.R. 60(B).

{¶26} “A void judgment is a nullity and open to collateral attack at any time.” *Lingo v. State*, 138 Ohio St.3d 427, 2014-Ohio-1052, 7 N.E.3d 1188, ¶ 44. Where a court lacks subject matter jurisdiction, the judgment is void ab initio and can be challenged any time. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 17, citing *Pratts v. Hurley*, 102 Ohio St.3d 81, 2004-Ohio-1980, 806 N.E.2d 992, ¶ 11.

{¶27} A motion seeking to vacate for lack of subject matter jurisdiction invokes the “inherent power” of a court to vacate its own void judgment. *Patton v. Diemer*, 35 Ohio St.3d 68, 518 N.E.2d 941 (1988), paragraph four of the syllabus. See also *Kuchta*, 141 Ohio St.3d 75 at ¶ 17 (calling the motion a “Common-Law Motion to Vacate for Lack of Subject-Matter Jurisdiction”). The motion is not subject to a time limitation or the doctrines of waiver or res judicata. *State v. Love*, 7th Dist. Mahoning No. 17 MA 0039, 2018-Ohio-1140, ¶ 19, citing *Kuchta*, 141 Ohio St.3d 75 at ¶ 17, *State v. Wilson*, 73 Ohio St.3d 40, 44-45, 652 N.E.2d 196 (1995), fn. 6, and *State v. Perry*, 10 Ohio St.2d 175, 178-179, 226 N.E.2d 104 (1967).

{¶28} Nevertheless, the general term “jurisdiction” can lead to confusion as it has been used to refer to various distinct concepts, including jurisdiction over the subject matter, jurisdiction over the person, and jurisdiction over a particular case. *Kuchta*, 141 Ohio St.3d 75 at ¶ 18.

Subject-matter jurisdiction is the power of a court to entertain and adjudicate a particular class of cases. A court's subject-matter jurisdiction is determined without regard to the rights of the individual parties involved in a particular case. A court's jurisdiction over a particular case refers to the court's authority to proceed or rule on a case that is within the court's subject-matter jurisdiction. This latter jurisdictional category involves



consideration of the rights of the parties. If a court possesses subject-matter jurisdiction, any error in the invocation or exercise of jurisdiction over a particular case causes a judgment to be voidable rather than void.

(Citations omitted). *Id.* at ¶ 18.

{¶29} “[T]he court of common pleas is a court of general jurisdiction, with subject-matter jurisdiction that extends to ‘all matters at law and in equity that are not denied to it.’” *Id.* at ¶ 20. Notably, “an inquiry into a party’s ability to *invoke* a court’s jurisdiction speaks to jurisdiction over a particular case, not subject-matter jurisdiction.” *Id.* at ¶ 22-23.

{¶30} In making her jurisdictional argument, Appellant alleges the creditor was not entitled to a creditor’s bill against her as the three elements were not met since there was not a valid judgment against her when the creditor’s bill action was filed. She states a creditor’s bill would result in a lien against certain property, not a money judgment against her and claims the court misused the creditor’s bill statute. She also suggests the court could not reach her personal injury settlement where she was not the judgment debtor but was merely his spouse.

{¶31} A common pleas court has subject matter jurisdiction over a creditor’s bill action. *Union Properties v. Patterson*, 143 Ohio St. 192, 194-195, 54 N.E.2d 668 (1944). Under the former version of the creditor’s bill statute, quoted as containing similar language, the Court concluded: “There is no doubt that the trial court had jurisdiction of the subject matter and that the proceedings were not void ab initio for want of power to hear and determine” the creditor’s bill action. *Id.* Furthermore, in filing a creditor’s bill action, it is proper to name as defendants the judgment debtor and any person in possession of the judgment debtor’s interests as listed in the statute. *See id.* at 192-193. Accordingly, it was not improper to name Appellant as a defendant in the creditor’s bill under the allegation that she controlled money, accounts receivable, and other personal property and interests of Anthony DiMuzio or interests in contracts or claims due to him or to become due to him.

{¶32} The judgment creditor obtained a lien over Anthony DiMuzio’s insurance settlement. A judgment debtor’s unliquidated personal injury claim is subject to a creditor’s bill. *Sharon Slag Inc. v. Annichenni*, 7th Dist. Mahoning No. 86 C.A. 170 (Dec. 3, 1987). Contrary to Appellant’s suggestion, there was no indication the entire amount of the settlement represented her loss of consortium claim. As she notes, Anthony

DiMuzio was the only plaintiff present in the vehicle during the accident. Assuming arguendo she could have demonstrated a portion of the \$3,000 settlement represented her loss of consortium claim, she did not argue this during distribution. Although Appellant was not the judgment debtor in the creditor's bill, an agreed entry was filed, which was signed by her attorney and which distributed the \$3,000 settlement proceeds. The issue did not affect the trial court's subject matter jurisdiction to render the November 22, 2017 judgment, which is the judgment her motion sought to vacate.

{¶33} As for the money judgment and the resulting garnishment: after the creditor's bill was filed and a lien was secured by the judgment creditor, an amended complaint was filed in which a separate cause of action was brought against only Appellant due to the allegation that she continued to make payments to Anthony DiMuzio in violation of the judgment creditor's lien rights; as the alleged payments to him exceeded the amount of the judgment secured by the creditor's bill lien, the amount of the judgment was demanded as damages; and Appellant did not respond to the complaint, resulting in the entry of a default judgment against her. The trial court found she was properly served with both complaints. Appellant did not detail a service argument below and does not contest this or challenge personal jurisdiction on appeal.

{¶34} Contrary to Appellant's suggestion, the judgment against Anthony DiMuzio was not "transferred" to her or recovered merely because she was named as a defendant in the creditor's bill or merely because she was the judgment debtor's spouse. It was sought and then entered due to her violation of the lien that arose on the filing of the creditor's bill, as discussed supra. See *Great Am. Ins. Co.*, 1st Dist. No. C-040127 at ¶ 14; *Olive Branch*, 181 Ohio App.3d 479 at ¶ 33; *Willoughby*, 19 Ohio App.3d at 55.

{¶35} The common pleas court had subject matter jurisdiction over a complaint seeking money owed. See R.C. 2305.01. See also *Seventh Urban Inc. v. Univ. Circle Property Dev. Inc.*, 67 Ohio St.2d 19, 23-24, 423 N.E.2d 1070 (1981), fn. 8 ("The express legislative grant of jurisdiction to courts of common pleas is contained in R.C. 2305.01"). Appellant suggests no other proceeding could occur in the same case as the creditor's bill because it was an equitable action at common law. However, "There shall be only one form of action, and it shall be known as a civil action." Civ.R. 2. A complaint for money owed is a civil action. The creditor's bill is also a civil action. See R.C. 2333.01 ("shall be subject to the payment of the judgment by action").

{¶36} At its core, Appellant’s argument does not state the common pleas court lacked subject matter jurisdiction over either type of action. There is no prohibition on a complaint containing a second cause of action if the first cause of action in the complaint is a statutory creditor’s bill. “A party asserting a claim to relief \* \* \* may join, either as independent or as alternate claims, as many claims, legal or equitable, as he has against an opposing party.” Civ.R. 18(A). See also Civ.R. 18(B) (two claims may be joined in a single action even if one is cognizable only after success on the other).<sup>3</sup> A court does not lose subject matter jurisdiction when a plaintiff amends the complaint to add an individual claim for money owed against a defendant who was originally only named as a potential holder of property belonging to the judgment debtor in a creditor’s bill.

{¶37} The particular process of amending the pleading or allowing disbursement pursuant to an agreed entry does not involve subject matter jurisdiction, just as the issue of whether Appellant actually transferred money in violation of the creditor’s bill lien was not a question of subject matter jurisdiction. Arguments such as these would be defenses to be raised by filing an answer in the action and then by filing any applicable motions under the Civil Rules. At most, her arguments would implicate the trial court’s authority to rule in a particular case; this third type of “jurisdiction” is not one that renders a judgment void. See *Kuchta*, 141 Ohio St.3d 75 at ¶ 18.

{¶38} As the trial court had subject matter jurisdiction, the judgment was not void and this assignment of error is overruled.

ASSIGNMENT OF ERROR TWO: CIV.R. 53 PROCEDURE

{¶39} Appellant’s second assignment of error contends:

“THE COURT AND MAGISTRATE FAILED TO FOLLOW CIV.R. 1 AND AS A RESULT CAUSED IRREGULARITIES DENYING APPELLANT A FAIR HEARING.”

{¶40} Appellant quotes Civ.R. 1(A)’s statement that the Civil Rules “prescribe the procedure to be followed in all courts of this state in the exercise of civil jurisdiction in law or in equity \* \* \*.” She utilizes this principle to establish the need for compliance with Civ.R. 53; however, there is no dispute Civ.R. 53 applied to these proceedings involving a magistrate. She sets forth three arguments under this assignment of error.

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<sup>3</sup> See also Civ.R. 21 (“Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.”).

{¶41} First, Appellant complains the magistrate denied her motion for findings of fact and conclusions of law, pointing out it was timely filed under the rule. See Civ.R. 53(D)(3)(a)(ii) (within 7 days). Within her “objections” to the magistrate’s decision denying her motion to vacate, she contested the magistrate’s “order” denying the motion for findings of fact and conclusions of law. We note a magistrate’s order is to be contested by way of a motion to set aside the magistrate’s order. Civ.R. 53(D)(2)(b). In any event, her argument is without merit.

{¶42} “[A] magistrate’s decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law.” Civ.R. 53(D)(3)(a)(ii). If a magistrate’s decision was not “general” but contained findings of fact and conclusions of law sufficient to facilitate the trial court’s ruling on objections, then additional findings of fact and conclusions of law are not required even when a motion is timely filed requesting them. *Bowshier v. Bowshier*, 2d Dist. Clark No. 2013-CA-33, 2013-Ohio-4073, ¶ 51. See also *Sayre v. Furgeson*, 2016-Ohio-3500, 66 N.E.3d 332, ¶ 51 (3d Dist.).

{¶43} Merely because Appellant believed the magistrate missed the point raised in her motion to vacate does not mean the magistrate’s decision was “general” as the term is used in Civ.R. 53(D)(3)(a)(ii).<sup>4</sup> As Appellee points out, the decision was four pages long, contained specific findings of fact, and the reviewing courts can understand the legal basis for the magistrate’s decision. The content of the magistrate’s decision, which was entitled “Findings of Fact and Conclusions of Law,” was outlined in our Statement of the Case *supra*. The decision was not general. Findings of fact were based on the procedural history of the case (just as Appellant’s motion was so based). Conclusions of law were set forth on the topics the magistrate believed were relevant. Contrary to Appellant’s contention, there is no indication she was hindered in drafting her objections to the magistrate’s decision by the nature of the decision or by the magistrate’s refusal to issue additional findings of fact and conclusions of law.

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<sup>4</sup> Contrary to Appellant’s complaints, the magistrate specifically recognized Appellant asserted the judgment was void for lack of jurisdiction and her motion was not filed under Civ.R. 60(B). We also note Appellant’s motion to vacate claimed the judgment was void for lack of “jurisdiction” without specifying “subject matter jurisdiction” (even in her reply after a response observed she did not argue subject matter jurisdiction). In any event, the magistrate expressly concluded the court had subject matter jurisdiction and personal jurisdiction; this essentially found Appellant’s “jurisdictional” argument was actually the third type of jurisdiction unrelated to void judgment law, as discussed in the prior assignment of error.

{¶44} Second, Appellant contends the magistrate violated its duty to ensure the May 7, 2020 telephone hearing on her motion to vacate was recorded.<sup>5</sup> Appellant filed an objection raising the lack of a transcript to the trial court by stating: “A recording is critical because Fairchild alleges the magistrate agreed with her position that she should not have been sued in the creditor’s bill.” As Appellant emphasizes, Civ.R. 53 states: “Except as otherwise provided by law, all proceedings before a magistrate shall be recorded in accordance with procedures established by the court.” Civ.R. 53(D)(7).

{¶45} Still, the rule contemplates there may be times a recording is unavailable: “An objection to a factual finding \* \* \* shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available.” Civ.R. 53(D)(3)(b)(iii). As pointed out in a response to Appellant’s objections, Appellant could have filed an affidavit in lieu of a transcript to support her objections. A response also said the parties agreed no evidence would be presented at the telephone conference, and Appellant’s reply did not dispute this allegation. Even if the magistrate’s telephone “hearing” was mere oral arguments, an affidavit could have been filed in the trial court if Appellant believed an important statement by the magistrate supported her position. This procedure also could have supported the statement in the objections saying “it appears” no recording was made (and could have disclosed the reason for the lack of recording).

{¶46} Notably, a court speaks through its written decision, not via a verbal statement made at oral arguments. And, even if the magistrate orally opined her defense to the amended complaint sounded meritorious, this would not contradict a decision finding her motion to vacate did not raise an issue of *subject matter jurisdiction*. Furthermore, Appellant’s objections did not ask the trial court to hold its own hearing or return the matter to the magistrate. See, e.g., Civ.R. 53(D)(4)(b) (“A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate”), (d) (“Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable

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<sup>5</sup> This May 7, 2020 hearing by telephone was the product of the pandemic. A pandemic order in effect addressed remote appearances: “Appearance \* \* \* by use of technology may be allowed if it sufficiently guarantees the integrity of the proceedings and protects the parties’ interests and rights.” Ohio Supreme Court, 03/27/2020 Administrative Actions, 2020-Ohio-1166. See also 5/15/20 Administrative Actions, 2020-Ohio-2975 (retroactive amendment adding “or oral argument”).

diligence, have produced that evidence for consideration by the magistrate”). Considering the totality of the circumstances, there is no indication Appellant was denied a fair hearing by the magistrate’s alleged failure to record the telephone hearing, and our review of the legal issue of subject matter jurisdiction was not hindered by the lack of a transcript of oral arguments on the motion to vacate.

{¶47} Lastly, Appellant contends the trial court did not conduct an independent review. “If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law.” Civ.R. 53(D)(4)(d).

{¶48} An independent review is presumed absent an affirmative showing otherwise, and the mere fact that a trial court adopted a magistrate’s decision in its entirety does not mean the court failed to conduct an independent review. *Raines v. Hodgson*, 12th Dist. Brown No. CA2019-09-011, 2020-Ohio-3404, ¶ 27; *Davidson v. Davidson*, 7th Dist. Belmont No. 07 BE 19, 2007-Ohio-6919, ¶ 11-12. In *Davidson*, the appellant complained the judgment entry said the court reviewed the objections and the magistrate’s decision and decided to overrule the objections and then recited “the exact same words as the magistrate's decision.” *Davidson*, 7th Dist. No. 07 BE 19 at ¶ 8. We overruled the argument and presumed the trial court undertook an independent review as to the objected matters, finding the recitation of the magistrate’s language did not affirmatively show a lack of independent review. *Id.* at ¶ 11-13.

{¶49} Here, the judgment entry stated the court reviewed: Appellant’s objections to the May 19, 2020 magistrate’s decision and the May 28, 2020 magistrate’s order; the responses to the objections (filed by the insurance company and the judgment creditor’s assignee); and the applicable law. The court announced the objections were overruled. See Civ.R. 53(D)(4)(d) (the court shall rule on the objections). The rule does not require a specific ruling on each objection explaining why the court believed the magistrate did not err as to each allegation. *Raines*, 12th Dist. No. CA2019-09-011 at ¶ 26.

{¶50} In addition, the court said the magistrate’s decision was adopted. Accordingly, the court said it was making the magistrate’s decision the judgment of the court and then directly incorporated the magistrate’s decision into the judgment entry by

stating “Judgment is hereby entered as follows” and then reciting the language in the magistrate’s order and the magistrate’s decision. The rule anticipates the trial court will adopt the magistrate’s decision when the court does not reject or modify the decision. Civ.R. 53(D)(4)(b) (“a court may adopt or reject a magistrate's decision in whole or in part, with or without modification”), (e) (“A court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment”). There is no affirmative showing the court failed to conduct an independent review. This assignment of error is overruled.

**{¶51}** For the foregoing reasons, the trial court’s judgment is affirmed.

Waite, J., concurs.

Trapp, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**