[Cite as *Staley v. Allstate Property Cas. Ins. Co.*, 2011-Ohio-6171.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Kelli N. Staley et al.,	:	
Plaintiffs-Appellees,	:	
v.	:	
Allstate Property Casualty Insurance Company et al.,	:	No. 11AP-279 (C.P.C. No. 09CVC-5-8102)
Defendants-Appellees,	:	(REGULAR CALENDAR)
(Heather Kupser,	:	
Defendant-Appellant).	:	

D E C I S I O N

Rendered on December 1, 2011

Stephen A. Moyer, for appellee Kelli N. Staley.

Todd J. McKenna, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Heather Kupser, appeals from a decision of the Franklin County Court of Common Pleas overruling her objection to the magistrate's decision granting a new trial on the issue of damages and sustaining her objection to the magistrate's

decision granting a directed verdict on the issue of proximate cause. For the following reasons, we dismiss this appeal for lack of a final appealable order.

{¶2} In May 2009, appellee, Kelli N. Staley,[1] filed a complaint against Kupser in the Franklin County Court of Common Pleas, seeking damages for an automobile collision allegedly caused by Kupser on June 4, 2007. Allstate Property and Casualty Insurance Company ("Allstate"), Staley's underinsured/uninsured motorist ("UM/UIM") carrier, was also named as a defendant. Staley's claim against Allstate alleged that their damages exceeded the limits of the UM/UIM policy protecting Kupser.

{¶3} The matter was referred to a magistrate who conducted a jury trial. Allstate agreed to be bound by the verdict and did not participate at the trial. After the presentation of the evidence, Staley moved for a directed verdict on the issue of proximate cause. She argued that if the jury were to find Kupser negligent, then there was no question that Kupser's negligence was the proximate cause of Staley's injuries. The magistrate granted the motion and determined that, if the jury found that Kupser was negligent, the jury would be required to find that the negligence was a direct and proximate cause of Staley's injuries.

{¶4} After deliberation, the jury returned a verdict in favor of Staley and awarded her $2,741.54 for lost wages, $11,091.65 for medical expenses, and $0.00 for pain and suffering. Shortly after the jury was discharged, Staley orally moved for judgment notwithstanding the verdict ("JNOV"), asserting that the jury erred by failing to

[1] Kelli Staley's husband, Patrick, was also named in the lawsuit for the purposes of the loss-of-consortium claim; however, the Staleys dismissed that claim during trial. Thus, for purposes of this decision, we will refer to the action as it pertained to Kelli N. Staley (hereinafter "Staley") alone.

award damages for pain and suffering. Kupser's attorney agreed that "there most likely should have been some sort of an award because of the fact there was a surgery and a recovery period." (Tr. 459.) Consequently, the magistrate reconvened the jury and instructed them to award damages for pain and suffering in an amount "north of zero." (Tr. 461.) After deliberation, the jury awarded pain-and-suffering damages in the amount of $1.00. The trial court entered its judgment concerning the jury's verdict on September 28, 2010.

{¶5} The following week, Staley moved for a new trial as to damages only pursuant to Civ.R. 59. Staley argued, inter alia, that the jury's $1.00 award for pain and suffering was insufficient based on the evidence establishing that the collision was the proximate cause of her injuries. Kupser opposed the motion and argued that the jury's pain-and-suffering award, while small, was within the jury's discretion.

{¶6} The magistrate granted Staley's motion in a decision filed on November 3, 2010. The magistrate, relying on his decision to grant a directed verdict on the issue of proximate cause, found that the jury's $1.00 award for pain and suffering was inadequate because Staley presented uncontroverted evidence that the collision was the proximate cause of Staley's medical bills and lost wages. The magistrate concluded, "the Jury had to find some amount for pain and suffering and an award of zero or $1.00 dollar clearly was/is inadequate damages requiring a new trial on that issue."

{¶7} Kupser objected to the magistrate's decision on several grounds. She challenged the magistrate's decision granting a new trial for damages; however, she also objected to the magistrate's decision granting a directed verdict on the issue of

proximate cause at the conclusion of the jury trial. Staley filed a memorandum in opposition, in which she argued in support of the magistrate's decision.

{¶8} On February 25, 2011, the trial court filed a "Decision Sustaining Defendant's 11-15-10 Objection to Magistrate's Decision." Therein, the trial court found that the magistrate erred by granting Staley's Rule 50(A) motion for a directed verdict because reasonable minds could have arrived at more than one conclusion as to the proximate cause of Staley's injuries. The trial court determined that "[t]he issues of proximate cause and damages shall be re-tried" and concluded, "[t]his decision renders all other pending objections moot."

{¶9} On March 30, 2011, the trial court filed a nunc pro tunc decision, in which it reincorporated the language from its previous decision but clarified that, in addition to sustaining Kupser's objection to the magistrate's Civ.R. 50(A) ruling, it was overruling Kupser's objection to the magistrate's decision granting a new trial on the issue of damages under Civ.R. 59.

{¶10} Kupser initially appealed to this court from the trial court's initial decision of February 25, 2011, but subsequently amended her notice of appeal to reflect the trial court's nunc pro tunc decision. She now presents the following assignment of error for our consideration:

> THE TRIAL COURT ERRED IN GRANTING PLAINTIFF-APPELLEE'S MOTION FOR A NEW TRIAL ON DAMAGES ONLY.

{¶11} Before we can address Kupser's assignment of error, we must determine whether we have jurisdiction over this appeal.

{¶12} Our jurisdiction is limited to the review of final orders. Section 3(B)(2), Article IV of the Ohio Constitution. R.C. 2505.02(B) delineates certain "final orders" that may be "affirmed, modified, or reversed" on appeal. Under R.C. 2505.02(B)(1), an order is final when it "affects a substantial right in an action that in effect determines the action and prevents a judgment." An order is also final when it "vacates or sets aside a judgment or grants a new trial." R.C. 2505.02(B)(3). When neither party raises the question of whether an order is final and appealable, an appellate court may address the issue sua sponte.[2] *Whitaker-Merrell Co. v. Geupel Constr. Co.* (1972), 29 Ohio St.2d 184, 186.

{¶13} In matters assigned to magistrates pursuant to Civ.R. 53, "orders do not constitute court orders unless certain formalities are met, and only judges, not magistrates, can terminate claims or actions by entering judgment." *In re Adoption of S.R.A.*, 189 Ohio App.3d 363, 2010-Ohio-4435, ¶17, citing *Leader Mtge. Co. v. Long*, 8th Dist. No. 88417, 2007-Ohio-2512, ¶10. The magistrate's decision remains interlocutory until the trial court reviews the decision; adopts, modifies or rejects the decision; and enters a judgment that determines all claims for relief or determines that there is no just reason for delay. *Alexander v. LJF Mgt., Inc.*, 1st Dist. No. C-090091, 2010-Ohio-2763, ¶12, citing, inter alia, Civ.R. 53(D) and (E); see also *Mahlerwein v. Mahlerwein*, 160 Ohio App.3d 564, 2005-Ohio-1835, ¶20; *McClain v. McClain*, 2d Dist. No. 02CA04, 2002-Ohio-4971, ¶19.

{¶14} It follows that " '[a] final judgment does not exist where the trial court fails to both adopt the magistrate's decision and enter judgment stating the relief to be

[2] This court raised the issue to the parties during oral argument.

afforded.' " *S.R.A.* at ¶15, quoting *Long* at ¶10. Furthermore, " '[t]he content of the judgment must be definite enough to be susceptible to further enforcement and provide sufficient information to enable the parties to understand the outcome of the case.' " *S.R.A.* at ¶18, quoting *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 216. Courts must distinguish "decisions" from "judgments": a decision announces what the judgment will be, whereas a judgment entry unequivocally orders the relief. *Gates v. Praul*, 10th Dist. No. 09AP-123, 2010-Ohio-2062, ¶17, citing *Harkai* at 216.

{¶15} In this case, although the trial court sustained Kupser's objection to the magistrate's directed-verdict ruling and overruled the objection to the magistrate's new-trial ruling, the trial court failed to adopt, modify or reject the magistrate's decision, in whole or in part. Without any of these actions, the trial court's decision cannot amount to a final appealable order. See *Gates* at ¶18 (no final appealable order where "the trial court did not clearly adopt or reject, with or without modification, the magistrate's decision, in whole or in part, as an order of the court"); *Monro Muffler Brake, Inc. v. Dudek*, 5th Dist. No. 2010CA00300, 2011-Ohio-3210, ¶26 (no final appealable order where "[t]he trial court failed to recite that it was approving and adopting the Magistrate's Decision").

{¶16} We also note that the trial court's "decision" failed to employ operative "judgment" language. Under Civ.R. 53(D)(4)(e), "[a] court that adopts, rejects, or modifies a magistrate's decision *shall also enter a judgment* or interim order." (Emphasis added.) While the decision rules on Kupser's objections and states that the issues of proximate cause and damages shall be re-tried, it did not unequivocally order the requested relief in the form of a judgment.

{¶17} Based upon the foregoing, we lack jurisdiction to consider Kupser's assignment of error because she has not appealed from a final appealable order. Accordingly, this appeal is dismissed.

Appeal dismissed.

BRYANT, P.J., and FRENCH, J., concur.

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