

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2012

FLORIDA ATLANTIC STOCK TRANSFER, INC., a Florida corporation,
Appellant,

v.

ROBIN L. SMITH and **NORTH CAPITAL PARTNERS, INC.**,
Appellees.

No. 4D11-2955

[November 7, 2012]

TAYLOR, J.

Florida Atlantic Stock Transfer (“FAST”), a stock-transfer agent, appeals an order which granted Defendant/Counter-Plaintiff Robin L. Smith’s motion for summary judgment in FAST’s interpleader action. Because the order is neither a final order under Florida Rule of Appellate Procedure 9.030, nor an appealable non-final order under Florida Rule of Appellate Procedure 9.130, we dismiss this appeal for lack of appellate jurisdiction.

This case arises from a dispute regarding the transfer of certain stock certificates in Nortia Capital Partners, Inc. (“Nortia”). Nortia is a Nevada corporation that employed FAST as the transfer agent and registrar of Nortia’s common stock. Under their Transfer Agent Agreement, FAST was authorized to refuse to transfer certificates of Nortia’s stock until it was satisfied that the request to transfer was legally in order.

In January of 2008, a dispute arose between Nortia and Smith concerning Smith’s right to have certain restrictive legends removed from shares of Nortia stock and to have such shares certificated in her individual name. FAST filed an interpleader action against Smith and Nortia, alleging that it was a stock transfer agent and that there was a dispute between Smith and Nortia regarding whether the restrictive legend should be removed from the shares. FAST claimed that it had no interest in the shares, it could not determine whether the legend should be placed on the certificates or who is entitled to the certificates, and it ran the risk of liability to one of the defendants if it followed the demands of the other defendant.

Smith filed counterclaims against FAST and cross-claims against Nortia, later amending her complaint to add Pacific Stock Transfer, Inc. (“PST”) as a counterclaim defendant.¹ The gravamen of Smith’s action against FAST is that FAST wrongfully failed to register a transfer of the shares of stock in Nortia and to certificate those shares in Smith’s individual name. Specifically, Smith brought a claim against FAST for a violation of section 678.4011, Florida Statutes, by wrongfully failing to permit the transfer of the shares free of the restrictive legend (Count I), a claim for a declaratory judgment that the shares were properly transferred to her pursuant to a pledge agreement (Count II), and a claim for specific performance of FAST’s obligation to issue the share certificates without a restrictive legend in Smith’s individual name and transfer ownership in its books to Smith (Count III).

Smith moved for summary judgment against FAST. The trial court granted Smith’s motion for summary judgment, ruling that Smith’s stock transfer request complied with the Securities Act of 1933 at the time it was presented to FAST, that FAST’s failure to transfer the shares violated the UCC, and that Smith “is entitled to have the shares of Nortia Capital Partners, Inc. certificated in her individual name, with all restrictions in said shares lifted and has been so entitled since January 28, 2008, the date the transfer was initiated.”

FAST seeks review of the order under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii). Alternatively, FAST seems to suggest that the order on appeal could be construed as a final order. However, we agree with Smith that the order on appeal is a non-final, non-appealable order.

As a preliminary matter, the order is non-final. The order granted Smith’s motion for summary judgment and then stated: “The Court reserves jurisdiction to award attorney’s fees, tax costs, and to enter such other orders as may be necessary to amend or enforce this Summary Final Judgment.” Notwithstanding the reference to “Summary Final Judgment,” it is the substance of the order that is controlling, not its label. *See Boyd v. Goff*, 828 So. 2d 468, 469 (Fla. 5th DCA 2002) (“This case is a good example of why it is important to understand what a court order does and not focus only on how the order is labeled.”). Here,

¹ PST acquired the account at issue pursuant to an Asset Purchase Agreement with FAST. Smith thus alleges that PST is FAST’s successor-in-interest and is jointly and severally liable to Smith for damages resulting from the failure to transfer the stock into her individual name. Smith’s claims against PST are still pending.

the order merely granted the motion for summary judgment, but did not actually contain language stating that it was entering judgment in favor of Smith. Thus, the order is non-final. See *Fleming v. Fort Walton Beach Med. Ctr.*, 88 So. 3d 1072, 1072 (Fla. 1st DCA 2012) (“Because the order on appeal merely grants a motion for summary judgment without entering judgment, the order is not final.”). Moreover, the traditional test for finality is whether the order “ends the litigation between the parties and disposes of all issues involved such that no further action by the court will be necessary.” See *Caufield v. Cantele*, 837 So. 2d 371, 375 (Fla. 2002). Here, the trial court’s order did not address Smith’s damages claim against FAST, which also weighs in favor of finding that the order is non-final.

The next relevant question is whether this court has jurisdiction under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(ii), which permits appeals of non-final orders that determine “the right to immediate possession of property, including but not limited to orders that grant, modify, dissolve or refuse to grant, modify, or dissolve writs of replevin, garnishment, or attachment.”

“Piecemeal review of non-final orders prior to final disposition of all issues must be strictly limited as much as possible to conserve the sparse judicial resources available at the appellate level.” *BE & K, Inc. v. Seminole Kraft Corp.*, 583 So. 2d 361, 364 (Fla. 1st DCA 1991). Accordingly, rule 9.130 must be narrowly interpreted so as to restrict the number of appealable non-final orders. *Marina Bay Hotel and Club, Inc. v. McCallum*, 733 So. 2d 1133, 1134 (Fla. 4th DCA 1999). In the context of real property cases, we have explained that a trial court’s interlocutory order on a party’s summary judgment motion does not determine the right to “immediate possession” even though it may resolve the underlying legal issues. See *Tarik, Inc. v. NNN Acquisitions, Inc.*, 17 So. 3d 912, 913 (Fla. 4th DCA 2009). “Summary judgment is ‘interlocutory in character’ and does not automatically result in the entry of final judgment.” *Id.* Thus, in *Tarik*, we dismissed the appeal of a summary judgment order which found that the appellant had no legal right to possess the real property at issue. We explained that there was no jurisdiction under rule 9.130(a)(3)(C)(ii) where the trial court simply granted a motion for summary judgment but did not enter a judgment or issue a writ of possession.

Likewise, an interlocutory order determining a party’s ownership interest in corporate stock is not appealable under Rule 9.130(a)(3)(C)(ii) where it does not order disbursement of any funds or otherwise determine any right to *immediate* possession of the property. See *Higgins*

v. Ryan, 81 So. 3d 588 (Fla. 3d DCA 2012). In *Higgins*, the Third District held that an interlocutory order in which a trial court gave its opinion on the percentage of stock ownership held by three persons in a corporation was a non-final, non-appealable order. The court reasoned that the order on appeal “does not order disbursement of any funds or determine any right to immediate possession of property.” *Id.* at 589. The court also noted that the order did not specify any amounts to be paid for the stock, and held that the parties’ respective claims to possession remained subject to determination. *Id.*

By contrast, a non-final order directing the issuance of a prejudgment writ of replevin against a certain stock certificate owned by the defendant is appealable under rule 9.130(a)(3)(C)(ii). See *Medina v. Star Holding Co. No. 1, Inc.*, 588 So. 2d 1032, 1033 (Fla. 3d DCA 1991).

FAST relies on *Medina* in support of its claim that we have jurisdiction, but the present case is more like *Higgins* than *Medina*. Unlike *Medina*, the present order did not direct the issuance of any possessory writs. Instead, similar to *Higgins*, the trial court’s order in this case did not order the disbursement of any funds or determine “the right to *immediate* possession of property.” Here, the trial court entered an interlocutory summary judgment order determining that Smith “is entitled to have the shares of Nortia Capital Partners, Inc. certificated in her individual name, with all restrictions in said shares lifted” In other words, the order settled the interpleader action concerning the ownership of the shares. However, even though the summary judgment order may have resolved underlying legal issues, the summary judgment order was merely an interlocutory order that did not determine the right to “immediate possession” of property. See *Tarik*, 17 So. 3d at 913.

FAST, which was merely an interpleader stakeholder with no interest in the shares themselves, did not gain or lose any right to the immediate possession of property as a result of the trial court’s order. The court’s order did not determine the amount of money to which Smith was entitled as a result of the court’s determination that FAST violated section 678.4011, Florida Statutes. This case is therefore distinguishable from cases holding that an interlocutory order concerning the payment of a sum of money is appealable under Rule 9.130(a)(3)(C)(ii). See, e.g., *Greene v. Borsky*, 961 So. 2d 1057, 1058 (Fla. 4th DCA 2007) (“[I]n the present case, the trial court orders determined the right to immediate possession of property, here trust assets to be used by trustees to pay for attorney’s fees and witness fees expended in defense of the trust.”); *Fla. Discount Props., Inc. v. Windermere Condo., Inc.*, 763 So. 2d 1084, 1084 (Fla. 4th DCA 1999) (order on request to

have disputed rent paid into court registry was an appealable non-final order because it determined “the right to immediate possession of property, i.e., the rent payments”).

More important, while the summary judgment order declared that Smith is entitled to have the shares certificated in her individual name, the order did not actually direct FAST to issue share certificates without a restrictive legend in Smith’s individual name or to transfer ownership in its books to Smith. The court’s order does not order “specific performance” of any obligation on FAST’s part; in fact, the order did not direct FAST to do anything. In other words, the court’s order determines entitlement but does not actually order FAST to transfer the shares. Thus, the summary judgment order does not have the effect of granting Smith the *immediate* possession of property. As we explained in *Marina Bay Hotel*, Rule 9.130(a)(3)(C)(ii) is to be construed narrowly to allow appeals “only of orders which more directly determine the immediate right to possession than the type of order entered in this case.” 733 So. 2d at 1134. This is not the type of non-final order that would warrant piecemeal review prior to final disposition.

Accordingly, we dismiss this appeal for lack of jurisdiction.

Dismissed.

GROSS and CONNER, JJ., concur.

* * *

Appeal of non-final order from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; John J. Murphy, III, Judge; L.T. Case No. 08-6738 21.

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Not final until disposition of timely filed motion for rehearing.