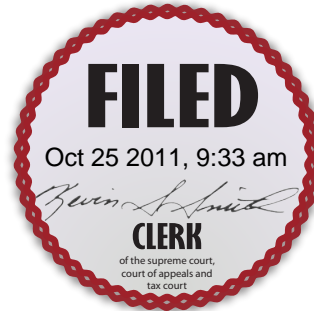


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANTS:

BRANDI A. HAGGARD
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

LARRY GROSS, JR. and CHARLES JOHNSON,)

Appellants-Defendants,)

vs.)

No. 49A02-1101-PL-127

ERICA STEPHENSON,)

Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Timothy W. Oakes, Judge
Cause No. 49D13-0903-PL-12524

October 25, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Larry Gross, Jr. and Charles Johnson are named defendants in Erica Stephenson's complaint alleging, in relevant part, breach of contract and conversion. The trial court granted summary judgment in favor of two other defendants, but denied Gross and Johnson's summary judgment motion.¹ Gross and Johnson appeal the denial of their summary judgment motion. But, because we lack jurisdiction, we do not reach the merits of their appeal.

We dismiss.

FACTS AND PROCEDURAL HISTORY

In 2006, Johnson helped Stephenson buy a Mercedes CL500 ("the car"). Stephenson had the car added to an insurance policy she had with Allstate Insurance Company ("Allstate"), through her agent, Donald Oldham, Jr. In March 2008, Stephenson asked Johnson to put the car into storage for her because she was not driving it. Johnson asked Gross to store the car, which he did. Then, in August 2008, Stephenson asked Johnson to return the car, but he did not do so. Stephenson then made a police report with the Marion County Sheriff's Department stating that the car had been stolen. Stephenson filed an insurance claim with Allstate, but that claim was denied after Allstate and/or Oldham discovered that Gross had the car and was claiming a lien on it for unpaid storage fees.

In 2009, Stephenson filed a complaint against Allstate, Oldham, Gross, and Johnson. Stephenson alleged that Allstate and Oldham had breached their contract to

¹ Gross and Johnson did not file a separate summary judgment motion, but merely joined the motion filed by Allstate and Oldham. We note that the claims against Gross and Johnson are entirely distinct from those brought against Allstate and Oldham.

insure her automobile against theft and had acted in bad faith. Stephenson also alleged that Johnson had breached their oral contract for storage of the car and return of the car upon her request. Finally, Stephenson accused Johnson and Gross of conversion for their refusal to return the car to her.

Allstate and Oldham moved for summary judgment alleging that their contract with Stephenson excluded coverage for conversion. Stephenson did not oppose that motion, and Gross and Johnson joined that motion. The trial court granted summary judgment in favor of Allstate and Oldham. Because the trial court's order granting partial summary judgment did not mention Gross or Johnson, they moved the court to clarify its order and requested that the trial court make findings and conclusions. Accordingly, on December 20, 2010, the trial court issued an order denying Gross and Johnson's summary judgment motion and their request for findings and conclusions. This appeal ensued.

DISCUSSION AND DECISION

An order denying a motion for summary judgment is not a final appealable judgment, as no rights have been thereby foreclosed. Anonymous Doctor A v. Sherrard, 783 N.E.2d 296, 299 (Ind. Ct. App. 2003). The denial merely places the parties' rights in abeyance pending ultimate determination by the trier of fact. Id. Thus, a party seeking review of a denial of a motion for summary judgment must do so by way of an interlocutory appeal in accordance with Indiana Appellate Rule 14. Id. Appellate Rule

14(B) states: “An appeal may be taken from other interlocutory orders² if the trial court certifies its order and the Court of Appeals accepts jurisdiction over the appeal.”

Here, the trial court’s order denied Gross and Johnson’s summary judgment motion and their request that the trial court issue findings and conclusions. The order was not a final, appealable order. Gross and Johnson did not seek certification of this interlocutory appeal from the trial court. See id. Nor did they ask that this court accept jurisdiction over their interlocutory appeal. See id. Accordingly, we do not have jurisdiction to consider this appeal and must dismiss.

Dismissed.

RILEY, J., and MAY, J., concur.

² This rule applies to discretionary interlocutory appeals, like the one here, as opposed to interlocutory appeals as a matter of right.