[Cite as *Chinnock v. Rothschild*, 2003-Ohio-6928.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 83099

WILLIAM F. CHINNOCK	:	
	:	
Plaintiff-Appellant	:	
	:	JOURNAL ENTRY
	:	
vs.	:	and
	:	
	:	OPINION
HONEY ROTHSCHILD	:	
	:	
	:	
Defendant-Appellee	:	

DATE OF ANNOUNCEMENT OF DECISION:	December 18, 2003
CHARACTER OF PROCEEDING:	Civil appeal from Common Pleas Court Case No. CV-451346
JUDGMENT:	DISMISSED
DATE OF JOURNALIZATION:	_____

APPEARANCES:

For Plaintiff-Appellant:	WILLIAM F. CHINNOCK, pro se 2861 Center Road Avon, Ohio 44011
For Defendant-Appellee:	HONEY ROTHSCHILD, pro se P.O. Box 754 Elyria, Ohio 44036

COLLEEN CONWAY COONEY, J.

{¶1} Plaintiff-appellant William Chinnock ("Chinnock") appeals the trial court's decision vacating the arbitration award and dismissing the case. For the following reasons, we dismiss this appeal for lack of subject matter jurisdiction.

{¶2} This case stems from a lease agreement between Chinnock and defendant-appellee Honey Rothschild ("Rothschild") for the rental of Chinnock's condominium located in Westlake. Prior to the date set for occupying the condominium, Rothschild notified Chinnock that she was no longer interested in renting the unit. In response, Chinnock informed Rothschild that unless she satisfied the terms of the lease agreement, he would sue her. To avoid litigation, both parties reached a settlement agreement, whereby they released each other from all claims in connection with the lease agreement in exchange for "valuable consideration." The amount of the consideration is disputed between the parties and was not specified in the release. Rothschild contended that she was to pay $1,500 for release of all claims, whereas Chinnock argued that she was to pay $1,500 plus the security deposit of $1,250.

{¶3} After learning that Rothschild had stopped payment on the security deposit, Chinnock filed a complaint on August 21, 2001 in Rocky River Municipal Court alleging breach of contract and fraud. Specifically, he argued that Rothschild breached her promise to lease the condominium and as a result, he suffered damages by having to prepare for the expected occupation of the premises and then the expense of finding a new tenant, i.e., moving his

furniture, purchasing a washer and dryer, painting, and advertising. Additionally, he contended that Rothschild misrepresented the amount she agreed to pay for his release of his claims.

{¶4} Rothschild moved to dismiss the complaint on the basis that a valid release was signed and that no cause of action for fraud could stand because Chinnock failed to return the $1,500. In response, Chinnock voluntarily dismissed the fraud claim. Subsequently, Rothschild filed an answer, asserting numerous counterclaims, including breach of the release agreement, malicious use of process, intentional infliction of emotional distress, harassment, and fraud in the inducement. Because the amount sought in her counterclaims exceeded the municipal court's monetary jurisdiction, the court sua sponte transferred the matter to Cuyahoga County Common Pleas Court.

{¶5} The case was assigned first to Judge Bridget McCafferty. On December 19, 2001, Rothschild moved to dismiss the complaint for the same reasons stated in her previous motion. In an order dated March 8, 2002, journalized in volume 2713, page 999, the trial court granted the motion to dismiss stating:

> **"Defendant's motion to dismiss the complaint filed on December 19, 2001 is deemed a motion for summary judgment. Defendant's motion is granted. Final. Court cost assessed to the plaintiff."**

{¶6} However, the trial court issued a second order on March 15, 2002, stating:

"Defendant's motion to dismiss the complaint filed on December 19, 2001 is deemed a motion for summary judgment. Defendant's motion is granted. Parties signed a valid release dismissing all claims against each other. All claims and counterclaims are dismissed. Final. Court cost assessed to the plaintiff."

{¶7} The second order was journalized in volume 2716, page 641. Although both orders were journalized and mailed to the parties, only the second entry appears on the court's electronic docket with the erroneous date of March 8 and the corresponding volume and page number of the first entry.

{¶8} On April 8, Rothschild filed a notice of appeal and attached the court's first journal entry issued on March 8, 2002. Chinnock also filed a cross-appeal on April 11, 2002 and attached the same March 8 decision referenced by Rothschild in her notice of appeal. On June 4, 2002, this court dismissed the appeal, finding that the decision of the trial court was not a final appealable order because it did not comply with Civ.R. 54(B). *Chinnock v. Rothschild* (June 4, 2002), Cuyahoga App. No. 81134. The second journal entry, dated March 15, 2002, journalized in volume 2716, page 641, was never before this court nor was it ever subsequently appealed by either party.

{¶9} Following our dismissal of the appeal, the parties filed numerous motions in the trial court. On August 2, 2002, Rothschild moved this court for a clarification of its previous order because the trial court issued an order stating that it did not have jurisdiction and refused to rule on motions until the case was

remanded from the court of appeals. On August 26, 2002, this court granted the motion to clarify and reiterated its earlier ruling by stating:

> **"This court does not have jurisdiction of any appeal not conforming with Civ.R. 54(B). Jurisdiction resides in the trial court."**

{¶10} It is apparent that Judge McCafferty was under the impression that the parties had appealed her second order and as a result, she believed the entire case had been dismissed. Nonetheless, after this court issued its clarification order of August 26, the trial court issued an order on November 15, 2002, setting a briefing schedule for "any claims not previously dismissed" and scheduled a final pretrial.

{¶11} Prior to the above order, Rothschild filed a mandamus action with this court because the trial court refused to consider her motions requesting both reinstatement of the case and the scheduling of a trial date for her pending counterclaims. See, *State, ex rel. Rothschild v. McCafferty*, Cuyahoga App. No. 82023, 2003-Ohio-440. On January 29, 2003, this court issued its opinion, finding the mandamus action was moot because it was evident that the case had been reinstated to active status and the trial and/or disposition of Rothschild's counterclaims was imminent.

{¶12} Although the entire case had been disposed of by the trial court's second ruling on March 15, the parties and trial court proceeded with the case. Pursuant to the consent of the

parties, the case was scheduled for binding, non-appealable arbitration on April 25, 2003.

{¶13} Subsequently, Judge McCafferty recused herself and the case was reassigned to Judge Glickman. On April 24, 2003, after Rothschild's motion to cancel the arbitration and to withdraw her consent for arbitration was denied, she filed a voluntary dismissal of her counterclaims pursuant to Civ.R. 41(A). The next day, Chinnock and the three arbitrators appeared for the scheduled arbitration. Despite Rothschild's absence, the arbitration proceeded and the panel found in favor of Chinnock, awarding him $4,408.

{¶14} Upon receipt of the arbitrators' award, Rothschild moved to vacate and strike the award and to sanction Chinnock for the fraud he allegedly committed on the court and the arbitrators. In her motions, she pointed out that because she had voluntarily dismissed her counterclaims and the trial court had previously dismissed Chinnock's complaint on March 8, 2002, there were no active claims at the time of the arbitration. As a result, she argued the arbitration panel exceeded its authority by awarding judgment in favor of Chinnock on nonexistent claims.

{¶15} Finding merit to Rothschild's motion to strike the arbitrators' award, Judge Glickman dismissed the case, holding that no viable claims existed as of April 24, 2003 because Rothschild voluntarily dismissed her counterclaims and Judge McCafferty previously dismissed the complaint on March 8, 2002.

{¶16} From this decision, Chinnock appeals, raising various arguments pertaining to the validity of the trial court's order striking the arbitration award. However, because we find that the trial court's order of March 15, 2002 was a final appealable order, disposing of the entire case, and that no appeal was taken from that decision, we are unable to reach the merits of Chinnock's appeal and dismiss this case for lack of jurisdiction.

Jurisdiction

{¶17} App.R. 4(A) provides:

> **"A party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three-day period in Rule 58(B) of the Ohio Rules of Civil Procedure."**

{¶18} It is well settled that an appellate court lacks jurisdiction over any appeal that is not timely filed. See, e.g., *State, ex rel. Ormond v. Solon* Cuyahoga App. No. 82553, 2003-Ohio-5654; *Winters v. Doe* (Sept. 10, 1998), Cuyahoga App. No. 74384; *DiPrima v. A.W. Tavern, Inc.* (1994), 96 Ohio App.3d 470. The filing requirements regarding the notice of appeal are mandatory and absent strict compliance, an appellate court is deprived of jurisdiction. *Ross v. Harden* (1982), 8 Ohio App.3d 34.

{¶19} Here, the March 15, 2002 order of the trial court disposed of the entire case and, therefore, no justiciable controversy existed after that date. See *State v. Wilson* (1995), 73 Ohio St.3d 40, 42. Unlike the trial court's initial journal

entry of March 8, the second entry of March 15 was a final appealable order because it adjudicated the claims of both parties. See, R.C. 2505.02(B)(1). Because this entry was the only one that appeared on the electronic docket and Chinnock attached an unofficial docket printout to his cross-appeal, the parties were well aware of this entry. However, neither party took steps to obtain an actual copy of the journal entry from the clerk's office to file an appeal, nor did they refer to the March 15 entry in their notices of appeal. Moreover, neither party informed the trial court of the error nor sought to reinstate the first appeal with a copy of the March 15 journal entry. Despite the trial court's error in conducting further proceedings in the case, we find that it was incumbent upon the parties to take affirmative steps to preserve their right to appeal.

{¶20} Admittedly, the procedural facts of this case presented an extraordinary amount of confusion between the parties and the trial court. However, we find the conduct of the parties invited the confusion and could have easily been remedied by the parties through communication with the trial court and/or properly appealing the March 15, 2002 order.

{¶21} Moreover, we note that this court's ruling on the mandamus action was limited to the extraordinary remedy of mandamus and by no means provided any ruling on the substantive merits of the case. In *State ex rel. Rothschild v. McCafferty*, supra, this court was asked to order a writ of mandamus compelling Judge

McCafferty to set the case for trial on the counterclaims. The mandamus action was based solely on this court's earlier dismissal of Rothschild's appeal for lack of a final appealable order. The record before this court dealt only with the March 8, 2002 entry and this court's dismissal of the appeal.

{¶22} The parties' failure to file a timely notice of appeal from the March 15, 2002 final order precludes this court's review of the merits of the instant appeal. However, if we had jurisdiction and could reach the merits of the instant case, Rothschild's voluntary dismissal of her counterclaims meant that the arbitration could not proceed. Therefore, we would affirm Judge Glickman's decision.

{¶23} This cause is dismissed.

KENNETH A. ROCCO, A.J., and MICHAEL J. CORRIGAN, J., concur.

It is, therefore, considered that said appellee recover of said appellant the costs herein.

It is ordered that a special mandate be sent to the Cuyahoga County Court of Common Pleas to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JUDGE
COLLEEN CONWAY COONEY

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).