[Cite as *Maurer v. DaimlerChrysler Corp.*, 2009-Ohio-5375.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92493

TROY MAURER, ET AL.

PLAINTIFFS-APPELLEES

vs.

DAIMLERCHRYSLER CORPORATION, ET AL.

DEFENDANTS

[APPEAL BY TRW AUTOMOTIVE U.S., L.L.C., THIRD-PARTY PLAINTIFF/APPELLANT]

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CV-512979 and CV-512980

BEFORE: Celebrezze, J., Kilbane, P.J., and Boyle, J.
RELEASED: October 8, 2009
JOURNALIZED:

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FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellant, TRW Automotive U.S. L.L.C. ("TRW"), appeals the trial court's award of sanctions in favor of appellees, Troy and Shannon Maurer ("appellees"). Because there is no final appealable order from which TRW can appeal, this case must be dismissed.

{¶ 2} We begin with a brief recitation of the facts. This case arises out of an automobile accident between Kathy Profitt ("Profitt") and appellee Shannon Maurer. The accident occurred when Profitt's 1994 Dodge Intrepid crossed the center line of a two-lane highway and collided head-on with Shannon Maurer's vehicle. According to Profitt, the accident was caused when the steering on her Dodge Intrepid failed.

{¶ 3} Profitt and appellees filed individual lawsuits in the Cuyahoga County common pleas court against several defendants, including TRW.[1] The basis of the Profitt and Maurer claims against TRW was that TRW defectively designed the Intrepid's steering gear. TRW contended that it designed the original steering gear, which was later replaced with an aftermarket part that was incorrectly installed. The cases were consolidated into case number CV-512980.

{¶ 4} The parties conducted extensive discovery. After TRW responded to appellees' exhaustive discovery requests, appellees filed a

[1] Case No. CV-512979 was filed by the Maurers, and Case No. CV-512980 was filed by the Profitts.

motion to compel requesting that TRW be ordered to produce all documents in response to appellees' requests and also that TRW be required to resubmit all documents previously provided in a manner that corresponded to the discovery requests. The trial court granted appellees' motion to compel finding that TRW's documents were not produced as they were kept in the ordinary course of business. This order also provided certain sanctions that would be ordered against TRW should they fail to comply.

{¶ 5} TRW vehemently contends that appellees' discovery requests only sought information related to the vehicle's original steering gear. On the other hand, appellees claim the discovery requests were meant to compel information related to the original steering gear as well as any aftermarket replacement parts manufactured by TRW.

{¶ 6} One of appellees' experts, while perusing through an automotive store, happened upon a "TRW Steering and Suspension Systems" repair kit. The package contained the same parts that were disputed in the lawsuit and were indistinguishable from the parts in Kathy Profitt's vehicle at the time of the accident. Appellees' expert was also able to obtain a reprint of TRW's Steering and Suspension Systems Catalog from 1998, which indicated that TRW provided original equipment and replacement parts. Information related to these repair kits and replacement parts was not provided to appellees in TRW's responses to appellees' discovery requests.

{¶ 7} Appellees filed a motion for sanctions arguing that TRW failed to disclose that it manufactured and supplied aftermarket parts such as those found to have caused Profitt's Intrepid to malfunction. After TRW filed its motion in opposition and following additional briefing, the motion for sanctions was tentatively granted and a hearing was scheduled to permit TRW "to show cause why they should not be held in direct contempt of court."

{¶ 8} TRW then filed a writ of prohibition against the trial judge claiming he did not have authority to grant sanctions because he failed to comply with the procedural requirements of Loc.R. 11(F).[2] This writ of prohibition action was dismissed sua sponte in *State ex rel., TRW Automotive U.S., L.L.C. v. Corrigan*, Cuyahoga App. No. 89706, 2007-Ohio-1832.

{¶ 9} The trial judge proceeded with the evidentiary hearing. After hearing testimony from the TRW attorney primarily in charge of discovery responses, the trial judge determined that TRW failed to supply highly probative information and issued sanctions. After finding that TRW's egregious conduct warranted severe sanctions, the trial court held: "TRW is precluded from disclaiming liability or asserting its affirmative defense that it did not manufacture the aftermarket parts installed on Kathy Profitt's vehicle. Even if Federal-Mogul (or another manufacturer) bears some

[2]TRW argued that Loc.R. 11(F) required the parties to meet and confer before sanctions could be ordered as a result of an alleged discovery violation.

responsibility for the repair kit, TRW steps in the shoes of these entities and cannot be heard to complain these parts were not theirs. Instead, this Court finds as fact that the aftermarket parts were TRW parts and they were installed according to TRW instructions."

{¶ 10} The trial judge went on to order TRW to pay appellees' attorney fees for the time spent preparing their motion to compel and motion for sanctions and the time spent attending the evidentiary hearing.

{¶ 11} TRW then filed its first appeal to this court arguing the trial judge acted without jurisdiction when granting appellees' motion for sanctions. That appeal was dismissed for lack of a final appealable order.

{¶ 12} TRW and appellees then reached a settlement agreement. As part of the agreement, appellees voluntarily dismissed their claims against TRW and filed a motion to vacate the sanctions order with the trial court. This motion to vacate was denied by the trial court. Specifically, the lower court held: "As the Profitt plaintiffs jointly litigated the first motion to compel and first motion for sanctions * * * and the court's [order granting sanctions] found in favor of both sets of plaintiffs, the Profitt plaintiffs are entitled to the full effect of the * * * sanctions order."

{¶ 13} This appeal followed. Appellant cites two assignments of error for our review:

{¶ 14} "The trial court erred and abused its discretion when it granted plaintiff's motion for sanctions in contravention of state and local rules of procedure, as well as due process, and entered an order establishing as 'fact' matters outside the scope of the requested discovery and contrary to the undisputed record."

{¶ 15} "The trial court erred and abused its discretion when it purported to reaffirm its erroneous sanctions and failed to give effect to plaintiffs' voluntary dismissal under Civil Rule 41(a)(1)(a)."

Law and Analysis

{¶ 16} Despite appellant's contentions, the issue in this case is actually whether one can appeal a decision in a consolidated case when the consolidated case has not been resolved in its entirety. For the foregoing reasons, we hold that such an appeal is legally and factually impermissible and dismiss this case for lack of a final appealable order.

{¶ 17} Pursuant to Civil Rule 42(A),[3] the cases filed by the Profitts and the Maurers against TRW and numerous other defendants were consolidated into case number CV-512980. It is critical that the Maurers have voluntarily dismissed their case against TRW, while the Profitt's claims are still pending.

[3] Civ.R. 42(A) provides: "When actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

Because the remainder of the consolidated action is still pending at the trial court level, there is no final appealable order, and this appeal must be dismissed. *Klein v. Howard, Wershbale & Co.*, Cuyahoga App. No. 83218, 2004-Ohio-2010, at ¶7.

{¶ 18} In *Klein*, this court specifically held that "the consensus among the courts of appeals in this state supports the view that 'individual cases that have been consolidated may not be appealed until the consolidated case reaches its conclusion absent Civ.R. 54(B) certification in the judgment entry.'" Id., citing *Whitaker v. Kear* (1996), 113 Ohio App.3d 611, 614, 681 N.E.2d 973; *Graphic Enterprises, Inc. v. Keybank N.A.*, Portage App. No. 2001-P-0129, 2002-Ohio-5159, ¶10 and cases cited therein; *Liberty Mut. Ins. Co. v. Paris* (May 20, 1999), Cuyahoga App. Nos. 74064 and 74065.

{¶ 19} Although no Civ.R. 54(B) language appeared in the trial court's order granting sanctions or any of its journal entries thereafter, TRW argues that its appeal is timely because the two cases were consolidated for purposes of discovery only. This argument has no merit. In December 2003, another defendant in the action, DaimlerChrysler Corp. filed a motion to consolidate the Maurer and Profitt cases. In its motion, DaimlerChrysler cited Civ.R. 42(A) and argued that the two cases involved common questions of law and fact and should be consolidated in the interest of judicial economy. In their response to this motion, the Maurers stated, "Plaintiffs Troy and Shannon

Maurer have no objection to consolidation for purposes of discovery, but expressly reserve the right to file a motion to sever the cases for trial in the event circumstances warrant such a motion at a later date."

{¶ 20} TRW argues that this reservation of a right to sever, coupled with its argument that the trial court never treated the two cases as consolidated, means that the cases should be treated as separate entities and thus no Civ.R. 54(B) certification is necessary. At no point in the trial history were the two cases treated as being anything less than fully consolidated. This is evidenced by the fact that almost every journal entry in the trial record contained the original case numbers for both the Maurer and Profitt cases.

{¶ 21} Assuming arguendo that the cases were at some point treated separately, the order granting sanctions, which TRW is currently appealing, was captioned under both case numbers. The trial court further reiterated the fact that the cases were wholly consolidated in its journal entry denying the Maurer's motion to vacate. Specifically, the court said: "This dismissal does not render moot the court's 5/21/07 order granting sanctions in favor of plaintiffs (Profitts and Maurers) and against defendant TRW. As the Profitt plaintiffs jointly litigated the first motion to compel and first motion for sanctions at the 4/18/07 hearing and the court's order of 5/21/07 found in favor of both sets of plaintiffs, the Profitt plaintiffs are entitled to the full effect of the 5/21/07 sanctions order."

{¶ 22} It is axiomatic that TRW has a right to appeal the sanctions order at some point to determine if its claims have merit. Despite TRW's arguments to the contrary, unless and until the consolidated case is resolved in its entirety, there is no final appealable order. *Maggard v. Zervos*, Lake App. No. 2004-L-087, 2004-Ohio-5296, at ¶3 ("It is well-established that the conclusion of one case in a consolidated action does not constitute a final appealable order."), citing *Mezerkor v. Mezerkor*, 70 Ohio St.3d 304, 1994-Ohio-288, 638 N.E.2d 1007; *Klein*, supra, at ¶7; *Graphic Enterprises, Inc.*, supra, at ¶10-11. "Since the judgment entry being appealed only disposed of a part of a consolidated case, and did not contain Civ.R. 54(B) certification, there is no final appealable order before this court." *Maggard v. Zervos*, at ¶4. Accordingly, this case is dismissed.

It is ordered that appellees recover of appellant costs herein taxed.

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

FRANK D. CELEBREZZE, JR., JUDGE

MARY EILEEN KILBANE, P.J., and
MARY JANE BOYLE, J., CONCUR