[Cite as *Franklin Mgt. Industries, Inc. v. Motorcars Infiniti, Inc.*, 2010-Ohio-1871.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93630

FRANKLIN MANAGEMENT INDUSTRIES, INC.

PLAINTIFF-APPELLEE

vs.

MOTORCARS INFINITI, INC., ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-666009

BEFORE: Kilbane, P.J., McMonagle, J., and Jones, J.

RELEASED: April 29, 2010

JOURNALIZED:

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MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellants, Motorcars Infiniti and Motorcars Mercedes ("Motorcars"), as judgment debtors, appeal the trial court's order granting Franklin Management Industries' ("FMI's") motion for orders for garnishment other than personal earnings. After reviewing the facts and appropriate law, we dismiss the instant appeal for lack of a final appealable order.

Procedural and Factual History

{¶ 2} In February 1994, FMI and Motorcars entered into an agreement that allowed FMI to operate a bodyshop out of the basement of one of Motorcars' dealerships. Pursuant to the agreement, FMI paid Motorcars rent and commissions in exchange for exclusive referrals to FMI's bodyshop.

{¶ 3} On February 11, 2000, Motorcars entered into an Asset Purchase Agreement with United Auto Group ("UAG"), which elected to terminate the existing agreement between FMI and Motorcars for bodyshop referrals. FMI pursued claims against Motorcars and UAG, and eventually arbitrated its claims separately against both entities. Only the outcome of the arbitration between FMI and Motorcars is relevant to this appeal.

{¶ 4} On July 7, 2008, a panel from the American Arbitration Association awarded approximately $1,100,000, including prejudgment interest, to FMI and against Motorcars and other parties not relevant to this appeal.

{¶ 5} On July 25, 2008, FMI sought to confirm the arbitration award in the trial court.

{¶ 6} On December 12, 2008, the trial court adopted the findings of the arbitration panel.

{¶ 7} On February 12, 2009, the trial court entered judgment against Motorcars. No specific dollar amount was entered on the judgment.

{¶ 8} On March 6, 2009, FMI filed multiple writs of execution upon Motorcars in an attempt to collect upon the judgment debt.

{¶ 9} On April 30, 2009, FMI filed what it termed a motion for orders for garnishment of property other than personal earnings, in which it requested that the trial court garnish the personal assets of two of Motorcars' shareholders. The trial court granted this motion on June 18, 2009.[1] FMI has yet to execute on the trial court's June 18, 2009 garnishment order, and the trial court has yet to enter an amount certain in the judgment against Motorcars.

{¶ 10} On July 17, 2009, Motorcars filed the instant appeal.

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[1]On October 26, 2009, over two months after the initiation of this appeal, the trial court conducted a garnishment hearing. In the entry journalizing the outcome of this hearing, the trial court stated that by agreement of the parties, no bond was required in light of an indemnification letter that was sufficient to cover the judgment in favor of FMI "in the event this court's decision is affirmed by the Eighth District Court." The trial court then granted appellants' motion to stay the enforcement proceedings pending appeal.

Analysis

{¶ 11} In essence, Motorcars is attempting to appeal the propriety of a judgment for an unspecified amount of money that has yet to be executed against them. Until the amount of the judgment is entered and the judgment is executed upon, this court lacks jurisdiction to hear the appeal. The facts of this case are directly analogous to *Door Systems, Inc. v. Copley 84 Lumber* (Apr. 14, 1993), 9th Dist. No. 15845, which dismissed an appeal for lack of a final appealable order when Copley 84 appealed from the prehearing order of garnishment, as opposed to an order issued as a result of the garnishment hearing itself.

{¶ 12} In *Door Systems,* as here, the trial court granted judgment in favor of Door Systems, who then filed a motion for an order for garnishment in order to collect the judgment. As in the present case, the trial court in *Door Systems* granted the motion for an order for garnishment. Rather than appeal from the order issued after the hearing, Copley 84, like Motorcars in the present case, appealed from the prehearing order for garnishment.

{¶ 13} Motorcars' brief explicitly states at page two:

> **"On June 18, 2009, the Trial Court entered an Order granting the Motion for Garnishments, which read in its entirety: PLAINTIFF'S MOTION FOR ORDER FOR GARNISHMENT OF PROPERTY, OTHER THAN PERSONAL EARNINGS (FILED 4/30/09) IS GRANTED. R. 55. It is from that Order that Motorcars Infiniti/Mercedes now appeals."**

{¶ 14} The *Door Systems* court, relying on R.C. 2716.11-2716.21, which is the identical statutory framework governing this case, held that prehearing orders for garnishment are interlocutory appeals, and not final appealable orders. This is in accordance with Ohio law and this court's previous decisions, which have repeatedly held that courts cannot enforce interlocutory orders through aid-in-execution proceedings. See, e.g., *Nwabara v. Willacy* (Apr. 17, 1997), 8th Dist. No. 71122. In Ohio, it is well settled that an interlocutory order is one that is not final, and thus, not capable of execution. See *Nwabara* stating "[i]t is axiomatic that a non-final, interlocutory order is not capable of execution." Id. at 3. (Internal citations omitted.) If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and it must be dismissed. See *Bowman v. Middleburg Hts.*, 8th Dist. No. 92690, 2009-Ohio-5831.

{¶ 15} By contrast, a final order or judgment is one that affects a substantial right and, in effect, determines the action. R.C. 2505.02. Generally, an order affects a substantial right if, in the absence of immediate review of the order, effective relief will be foreclosed in the future. *Union Camp Corp., Harchem Div. v. Whitman* (1978), 54 Ohio St.2d 159, 375 N.E.2d 417; *Legg v. Fuchs* (2000), 140 Ohio App.3d 223, 746 N.E.2d 1195. Such is not the case here, where FMI has yet to execute on the judgment and is

unable to do so by virtue of this appeal. Further, since this is a garnishment proceeding, the amount of money awarded must be included in the judgment. See *Stumph Rd. Properties v. Vargo,* 8th Dist. No. 83215, 2008-Ohio-1830. (Internal citations omitted.)

{¶ 16} Since FMI has yet to execute upon the judgment, we find that no substantial right has been affected by the trial court's June 18, 2009 prehearing garnishment order. Further, nowhere in the record has the trial court awarded an amount specific to FMI such that it may execute on the judgment, so the amount of the arbitration award itself has never been reduced to judgment in the record.

{¶ 17} Only after the trial court enters the amount of the award and FMI executes on the judgment will any substantial rights of the appellants be affected under R.C. 2505.02. After this, the appellants will have an effective remedy by "an appeal following a final judgment as to all proceedings, issues, claims and parties in the action." See *Tabaa v. Kogleman,* 8th Dist. No. 83215, 2004-Ohio-2706.

Appeal dismissed.

It is ordered that appellee recover of appellants costs herein taxed.

It is ordered that a special mandate be sent to said court 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.

MARY EILEEN KILBANE, PRESIDING JUDGE

CHRISTINE T. McMONAGLE, J., and
LARRY A. JONES, J., CONCUR