

[Cite as *Santa v. Smith*, 2010-Ohio-2897.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93996

KATHI SANTA, ET AL.

PLAINTIFFS-APPELLANTS

vs.

LINDA SMITH, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-697267

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

RELEASED: June 24, 2010

**JOURNALIZED:
ATTORNEY FOR APPELLANTS**

William M. Goldstein
Goldstein & Goldstein Co., L.P.A.
55 Public Square, Suite 1575
Cleveland, OH 44113

FOR APPELLEES

Linda Smith, pro se
Dwayne Smith, pro se
3949 W. 157th Street
Cleveland, OH 44111

N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

CHRISTINE T. McMONAGLE, J.:

{¶ 1} Plaintiffs-appellants, Kathi Santa and Santa's Workshop, Inc., dba Santa's Cycle Supply (collectively "Santa"), appeal the trial court judgment granting the motion for summary judgment of defendants-appellees, Linda Smith and Dwayne Smith. We dismiss for lack of a final appealable order.

{¶ 2} Santa filed a complaint for damages and permanent injunction. The Smiths, pro se, filed a motion for summary judgment "as to plaintiffs' entire complaint." They also filed a counterclaim, alleging that they suffered approximately \$4,000 in damages as a result of their dealings with Santa. Santa opposed the summary judgment motion and answered the counterclaim. The trial court summarily granted the Smiths' summary judgment motion. The counterclaim remains pending.

{¶ 3} R.C. 2505.03(A) provides that "[e]very *final* order, judgment, or decree of a court * * * may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction." (Emphasis added.) Civ.R. 54(B) states in relevant part that "[w]hen more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions * * * the court may enter final judgment as to one or more but fewer than all of the claims * * * only upon an express

determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order * * * which adjudicates fewer than all the claims * * * shall not terminate the action as to any of the claims * * *.”

{¶ 4} The trial court did not make an express determination that there was no just cause for delay. Thus, because the Smiths’ counterclaim remains pending, we do not have jurisdiction to hear this appeal.

Appeal dismissed.

It is ordered that appellees and appellants equally share the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

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.

CHRISTINE T. McMONAGLE, JUDGE

MARY EILEEN KILBANE, P.J., and
JAMES J. SWEENEY, J., CONCUR