

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

DAVID A. SED, ADMINISTRATOR	:	MEMORANDUM OPINION
WWA OF THE ESTATE OF ROBERT	:	
HEWITT, JR.,	:	CASE NO. 2015-P-0068
Plaintiff-Appellee,	:	
- vs -	:	
ELAINE M. MUNDY, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from Portage County Municipal Court, Ravenna Division, Case No. 15 CVG 01954 R.

Judgment: Appeal dismissed.

Michael A. Noble, Lentz, Noble & Heavner, LLC, 228 West Main Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Michael J. Drain, 147 Bell Street, #202, Chagrin Falls, OH 44022 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} On September 21, 2015, appellant, Elaine M. Mundy, by and through counsel of record, filed a notice of appeal from an August 21, 2015 entry in which the Portage County Municipal Court, Ravenna Division, approved the magistrate’s decision.

{¶2} The trial court record reveals that appellee, David A. Sed, Administrator WWA of the Estate of Robert Hewitt, Jr., filed a forcible entry and detainer action against appellant. In a decision dated August 21, 2015, the magistrate granted

restitution of the premises to appellee. The trial court adopted the magistrate's decision on that same date. It is from that entry that appellant filed the instant appeal.

{¶3} A review of the record also reveals that on September 3, 2015, after the trial court issued its entry, appellant filed objections to the magistrate's decision. On October 6, 2015, the trial court issued an order stating that as a result of the filing of the notice of appeal, it no longer retained jurisdiction to rule on the objections.

{¶4} We must determine whether the order appealed from is a final appealable order. The Ohio Constitution limits an appellate court's jurisdiction to the review of final judgments of lower courts. Section 3(B)(2), Article IV. Accordingly, this court has jurisdiction to review only final and appealable orders. *Germ v. Fuerst*, 11th Dist. Lake No. 2003-L-116, 2003-Ohio-6241, ¶ 3. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989).

{¶5} Pursuant to Civ.R. 53(D)(4), one of three scenarios occurs after a magistrate's decision is issued: (1) absent objections, the court may adopt the magistrate's decision if there are no errors of law or other defects on its face; (2) if objections are filed, the court may consider the objections and either adopt, reject, or modify the decision, hear additional evidence, recommit the matter to the magistrate, or hear the matter; or (3) the court may immediately adopt the decision and enter judgment without waiting for objections, but the filing of timely objections automatically stays execution of the judgment until the court disposes of the objections and vacates, modifies or adheres to the judgment already entered. See *Wheeler v. Tubbs*, 11th Dist. Lake No. 2008-L-159, 2008-Ohio-6411, at ¶ 5. Furthermore, a magistrate's decision remains interlocutory, even if adopted by the court, unless and until the court enters a

final order that determines all the claims for relief in the action or determines that there is no just reason for delay. *Id.*

{¶6} Here, the trial court adopted the magistrate's decision on the same day it was entered, August 21, 2015. Thereafter, appellant filed objections to the magistrate's decision. On October 6, 2015, the trial court issued an entry stating that as a result of the filing of the appeal, it no longer retained jurisdiction to rule on appellant's objections. Since objections were filed, the judgment of the trial court is automatically stayed until the court disposes of the objections and vacates, modifies or adheres to the judgment already entered. The August 21, 2015 entry is interlocutory and thus, this court does not have jurisdiction to hear this appeal. This case must be returned to the trial court.

{¶7} Furthermore, this court has established that an entry which adopts a magistrate's decision but fails to enter judgment through a "separate and distinct" judgment entry, does not constitute a final appealable order. *Condron v. City of Willoughby Hills*, 11th Dist. Lake No. 2007-L-015, 2007-Ohio-5208, at ¶ 29, citing *In re Castrovince*, 11th Dist. Portage No. 96-P-0175, 1996 Ohio App. LEXIS 6226 (Aug. 16, 1996). Therefore, in this case, the trial court has not issued its own "separate and distinct" order setting forth the court's ruling on the matter.

{¶8} For the foregoing reasons, this appeal is, sua sponte, dismissed for lack of a final appealable order.

{¶9} Appeal dismissed.

THOMAS R. WRIGHT, J.,

COLLEEN MARY O'TOOLE, J.,

concur.