

[Cite as *Thompson v. Bayer* , 2009-Ohio-4954.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LEE A. THOMPSON
Plaintiff-Appellee

-vs-

SCOTT BAYER DBA BAYER
PLUMBING & HEATING
Defendant-Appellant

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. William B. Hoffman, J.
Hon. Julie A. Edwards, J.

Case No. 08-CA-83

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Fairfield County Court of
Common Pleas, Case No. 96CV128

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

September 16, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JAMES A. FIELDS
Fields & Innoceni
117 W. Main Street, Suite 206
Lancaster, Ohio 43130

RONALD B. NOGA
1010 Old Henderson Road, Suite 1
Columbus, Ohio 43220

Hoffman, J.

{¶1} Defendant-appellant Scott Bayer dba Bayer Plumbing and Heating appeals the October 31, 2008 Judgment Entry of the Fairfield County Court of Common Pleas ordering revivor of a judgment in favor of Plaintiff-appellee Lee A. Thompson.

STATEMENT OF THE CASE

{¶2} On March 20, 1996, Appellee Lee Thompson filed a complaint in the Fairfield County Court of Common Pleas against Appellant Scott Bayer dba Bayer Plumbing and Heating (hereinafter “Bayer”) relating to plumbing services performed by Bayer.

{¶3} On September 19, 1996, the trial court granted default judgment in favor of Appellee Thompson. A certificate of judgment was filed on September 26, 1996.

{¶4} A second certificate of judgment was filed on October 3, 2002

{¶5} On September 9, 2008, Thompson filed an action for revivor of the judgment with the trial court. On October 31, 2008, the trial court granted Thompson’s motion for revivor of the judgment against Bayer. The trial court directed Thompson to submit an entry to the trial court within seven days of its October 31, 2008 decision. Appellee did not submit said entry.

{¶6} Bayer filed a motion for reconsideration of the trial court’s October 31, 2008 decision prior to filing a notice of appeal on November 26, 2008. On December 2, 2008, the trial court issued a decision sustaining Bayer’s motion for reconsideration finding its October 31, 2008 entry was not a final appealable order, and nullifying its previous decision reviving the judgment against Bayer.

{¶7} Bayer assigns as error on appeal:

{¶18} “I. THE NOTICE OF APPEAL FILED BY APPELLANT ON DECEMBER 2, 2008 FROM THE DECISION OF OCTOBER 31, 2008 ALLOWING REVIVOR WAS PREMATURE AND THEREFORE DID NOT DIVEST THE TRIAL COURT OF JURISDICTION TO RULE ON APPELLANT’S MOTION FOR RECONSIDERATION.

{¶19} “II. THE TRIAL COURT’S DECISION OF OCTOBER 31, 2008 WHICH GRANTED REVIVOR OF THE DEFAULT JUDGMENT WAS CONTRARY TO LAW AS REVIVOR WAS BARRED BY THE (10) TEN YEAR LIMITATION IN SECTION 2325.18(A), OHIO REVISED CODE.”

I.

{¶10} In the first assignment of error, Bayer argues the November 26, 2008 notice of appeal from the decision of October 31, 2008 was premature; therefore, did not divest the trial court of jurisdiction to rule on Bayer’s motion for reconsideration.

{¶11} As stated above in the statement of the case, on October 31, 2008, the trial court granted Thompson’s motion for revivor of the judgment against Bayer. The trial court further directed Thompson to “submit an Entry for the Court’s signature within seven (7) days of the filing of this Entry.” Thompson failed to do so.

{¶12} Bayer then moved the trial court for reconsideration of its October 31, 2008 decision, which motion was granted on December 2, 2008.

{¶13} Upon review, we find the October 31, 2008 decision of the trial court was not a final appealable order as the trial court’s entry directed Thompson to submit an entry to the trial court for signature. Accordingly, Bayer’s premature notice of appeal did not divest the trial court of jurisdiction to rule upon Bayer’s motion for reconsideration. *Ohio App. R. 4; State ex rel. Everhart v. McIntosh, Judge (2007), 115 Ohio St.3d 195.*

{¶14} Bayer's first assignment of error is sustained.

II.

{¶15} Our analysis and disposition of Bayer's first assignment of error arguably renders discussion of the second assignment of error moot. However, we note, this Court has addressed the issue raised herein in our Memorandum-Opinion issued in *Lee A. Thompson v. Scott Bayer dba Bayer Plumbing & Heating*, Licking App. No. 08-CA-89.

{¶16} The within appeal is dismissed as the entry from which the appeal arises is not a final appealable order.

By: Hoffman, J.

Gwin, P.J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

