

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

ADAM BOYLEN	:	JUDGES:
	:	Julie A. Edwards, P.J.
Plaintiff-Appellant	:	Sheila G. Farmer, J.
	:	John W. Wise, J.
-vs-	:	Case No. 10 CA 25
	:	
OHIO DEPT. OF REHABILITATION	:	<u>OPINION</u>
AND CORRECTIONS, et al.,	:	
	:	
Defendants-Appellees	:	

CHARACTER OF PROCEEDING:	Criminal Appeal from Richland County Court of Common Pleas Case No. 2007 CV 1388
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JUDGMENT:	Dismissed
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DATE OF JUDGMENT ENTRY:	December 13, 2010
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APPEARANCES:

For Plaintiff-Appellant

For Defendants-Appellees

ADAM BOYLEN
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Inmate #377358
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Edwards, P.J.

{¶1} Appellant, Adam Boylen, appeals a February 2, 2010, judgment of the Richland County Common Pleas Court granting appellees' motion for judgment on the pleadings on his declaratory judgment action. Appellees are the Ohio Department of Rehabilitation and Corrections, the Mansfield Correctional Institution, Warden Stuart Hudson, Account Clerk Janet Hamilton, Stark County Clerk of Courts Nancy Reinbold, and Chief Fiscal Officer of the Stark County Clerk of Courts Jo-Ann Humphrey.

STATEMENT OF FACTS AND CASE

{¶2} Plaintiff-Appellant is an inmate at Mansfield Correctional Institution serving a thirteen year sentence pursuant to a negotiated plea agreement. Appellant appealed the negotiated sentence in *State v. Boylen*, Stark App. Nos. 2003CA00304 and 2003CA00305. On March 15, 2004, this Court affirmed the trial court.

{¶3} On August 27, 2007, the Department of Rehabilitation and Corrections, by and through the account clerk, Janet Hamilton, notified the appellant that the institution had received a certified copy of the decision of the Fifth District Court of Appeals and provided the appellant with copies of the bills for costs for the action in the amount of one hundred and ninety two dollars and ninety four cents (\$192.94). The certified documents had been provided to the institution by the Stark County Clerk of Courts for the collection of the costs of prosecuting the appeal. Appellant was also notified that the Institution intended to withdraw money from his inmate account to be applied toward the court costs. Finally, appellant was notified that, pursuant to Ohio Administrative Code Section 5120-9-31, he had the right to participate in an administrative appeal and

grievance process in which he could set forth either an exemption or a defense to the collection of the costs.

{¶4} On August 30, 2007, appellant pursued his administrative remedy and submitted a timely “Notice of Objection to the Judgment of Payment” to the Warden’s Collection Designee, Gordon Lane. On September 7, 2007, Mr. Lane determined that the court order and other documents authorized the Institution to withdraw money from the appellant’s inmate account. Thereafter, the institution issued payment in the amount of thirty-nine dollars and eight cents (\$39.08) from appellant’s inmate account towards the court costs.

{¶5} On September 12, 2007, appellant filed a “Notification of Grievance” with the Inspector’s Office.

{¶6} On September 27, 2007, appellant filed a civil complaint in the Richland County Court of Common Pleas for declaratory judgment, injunctive relief and money damages against the Ohio Department of Rehabilitation and Corrections, the Mansfield Correctional Institution, Warden Stuart Hudson, Account Clerk Janet Hamilton, Stark County Clerk of Courts Nancy Reinbold, and Chief Fiscal Officer of the Stark County Clerk of Courts Jo-Ann Humphrey.

{¶7} In the complaint, appellant argued that funds had been improperly withdrawn from his inmate account to satisfy his court costs to the Stark County Court of Common Pleas. Specifically, appellant argued that R.C. 2969.22 does not authorize the Stark County Clerk of Courts to pursue the collection of the court costs for a criminal appeal, that the Department of Rehabilitation and Correction had failed to follow the procedures set forth in OAC 5120-9-31 and that OAC 5120-9-31 violates due process

and is, therefore, unconstitutional. As relief for the alleged wrongful acts of the state employees and agencies, the appellant sought a temporary injunction or restraining order to prevent any further withdrawal of funds from appellant's inmate account while the case was pending before the trial court, a declaration that R.C. 2969.22 only authorizes the common pleas clerk of courts to pursue the collection of costs for civil matters, and a declaration that OAC 5120-9-31 violates a prisoner's due process rights and is, therefore, unconstitutional. In the alternative, appellant claimed that the prison had failed to follow the guidelines set forth in OAC 5120-9-31, and he was entitled to punitive damages in the amount of \$500.00 and compensatory damages in the amount of \$39.08.

{¶8} In an effort to comply with the mandates of R.C. 2969.26(A), appellant attached an affidavit to the complaint indicating an appeal regarding collection of court costs from his account had been filed with the Mansfield Correctional Institution on August 30, 2007. He further stated in his affidavit that on September 7, 2007, the Deputy Warden of Administration of the Mansfield Correctional Institution refused to grant relief holding that the institution "was authorized" to garnish the inmate's account for the payment of court costs. In the affidavit, the appellant further stated, "I continue to exhaust the administrative remedies with appeals, but have filed the instant action due to its immediate need in being addressed; or unless otherwise ordered by the court to finish while the action is stayed."

{¶9} On October 24, 2007, appellees, Nancy Reinbold, Stark County Clerk of Courts, and Jo-Ann Humphrey, Chief Fiscal Officer of the Stark County Clerk of Courts, filed a motion to dismiss the appellant's complaint for lack of subject matter jurisdiction.

In the motion to dismiss, appellees argued they properly sent a notice to the Mansfield Correctional Institution pursuant to R.C. 2969.22 for the collection of inmate funds. They further stated that in order to appeal the collection of funds, an appellant must first follow the appeal process set forth in O.A.C. 5120-9-31. They noted that according to paragraph 20 of the appellant's complaint he has filed such an appeal and the administrative process was still proceeding. As such, appellees argued the complaint should be dismissed for lack of subject matter jurisdiction for appellant's failure to exhaust his administrative remedies.

{¶10} On November 2, 2007, appellees, the Ohio Department of Rehabilitation and Correction, Warden Stuart Hudson and Janet Hamilton filed a Motion to Dismiss the appellant's complaint pursuant to Civ.R. 12(B)(1). In the motion to dismiss, appellees argued the matter should be dismissed for lack of jurisdiction because the court of claims has exclusive jurisdiction over a civil action against state agencies and employees for money damages. Appellees also argued the trial court lacked subject matter jurisdiction because appellant failed to establish he had exhausted his administrative remedies prior to filing his complaint as required by R.C. 2969.26(A).

{¶11} On November 15, 2007, without first seeking leave of court, appellant filed an amended complaint. The amended complaint asserted the same arguments as the initial complaint, deleted a request for punitive damages and amended the compensatory damages to \$42.34.

{¶12} On December 6, 2007, appellees, the Ohio Department of Rehabilitation and Correction, Stuart Hudson and Janet Hamilton filed a joint motion to strike appellant's amended complaint. In support, appellees argued appellant had failed to

comply with Civ.R. 15(A) by not obtaining leave of court prior to filing the amended complaint.

{¶13} On December 14, 2007, appellant filed a motion for summary judgment arguing appellee had not timely responded to his amended complaint.

{¶14} On December 17, 2007, appellant filed a “Notice.” In the notice, appellant stated his administrative remedies in relation to the matter had been exhausted. Appellant’s “notice” stated that a review of his appeal had been taken and the decision had been affirmed by the Office of the Chief Inspector. Appellant attached the “Decision of the Chief Inspector on a Grievance Appeal.” In the decision, the chief inspector stated as follows: “You complain that institution staff has wrongly taken funds from your account from a court judgment that does not state it is a court order to make payment of any cost. In reviewing the grievance appeal and the documentation presented to this office, and of the department’s administrative rule and policy in this matter, I cannot find where the institution has violated department policy or administrative rule in this instance. As such, I find the Inspector has appropriately responded to your complaint.”

{¶15} On January 9, 2008, appellees Nancy Reinbold, Stark County Clerk of Courts, and Jo-Ann Humphrey, Chief Fiscal Officer of Stark County Clerk of Courts, filed a motion to strike appellant’s amended complaint for failure to first seek leave from the trial court to plead.

{¶16} On January 31, 2008, the appellees filed a motion to stay the trial court’s decision on appellant’s summary judgment motion pending the trial court’s determination on the motions to strike.

{¶17} On February 14, 2008, the trial court held a non-oral hearing on appellant's motion for summary judgment and appellees' motions to strike the amended complaint and motions to dismiss. Upon review, the trial court held, based upon the decisions in *Midwest Fireworks Mfg. Co. v. Deerfield Twp. Bd. Of Zoning Appeals* (2001), 91 Ohio St.3d 174, 177, 743 N.E.2d 894 and *Harrison v. Ohio State Med. Bd.* (1995), 103 Ohio App.3d 317, 659 N.E.2d 368 and R.C. 2969.22, appellant's exclusive remedy lay in the administrative process and that the trial court lacked jurisdiction to grant the requested relief. The trial court further denied appellant's motion for summary judgment, granted the motion to strike appellant's amended complaint and granted appellees' motions to dismiss for lack of jurisdiction. A subsequent judgment of dismissal of the action was filed on February 15, 2008. Appellant filed a notice of appeal from this judgment.

{¶18} On December 2, 2008, this Court issued an Opinion and Judgment Entry overruling all assignments of error and affirming the judgment of the trial court. We later granted appellant's Motion for Reconsideration and vacated our prior Opinion and Judgment Entry. On April 22, 2009, this Court reversed the judgment of the trial court dismissing the action and remanded for further proceedings according to law.

{¶19} On remand, appellees ODRC, Hudson and Hamilton moved for judgment on the pleadings on June 1, 2009. Appellees Reinbold and Humphrey moved for judgment on the pleadings on June 5, 2009. The trial court granted the motion, the motion of appellees ODRC, Hudson and Hamilton, finding that appellees properly deducted the amount of court costs from appellant's inmate account. Appellant assigns five errors on appeal:

{¶20} “I. THE TRIAL COURT ERRED TO APPELLANT’S PREJUDICE BY GRANTING DEFENDANTS, SUA SPONTE AND WITHOUT MOTION PURSUANT TO CIV. R. 6(B)(2), AN ADDITIONAL TWENTY-EIGHT DAYS TO FILE AN ANSWER WITHOUT ESTABLISHING EXCUSABLE NEGLIGENCE.

{¶21} “II. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED TO APPELLANT’S PREJUDICE BY GRANTING DEFENDANT’S OHIO DEPARTMENT OF REHABILITATION AND CORRECTION, STUART HUDSON, AND JANET HAMILTON’S MOTION FOR JUDGMENT ON THE PLEADINGS.

{¶22} “III. THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF BY NOT DETERMINING OR DECLARING THE CLAIMS SUBMITTED IN PLAINTIFF’S AMENDED COMPLAINT FOR DECLARATORY JUDGMENT.

{¶23} “IV. THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF BY FAILING TO ADMINISTER JUSTICE WITHOUT DENIAL OR DELAY.

{¶24} “V. THE TRIAL COURT ERRED TO THE PREJUDICE OF PLAINTIFF BY CONTINUING TO ENTER JUDGMENTS IN THE CASE AFTER THE FILING OF NOTICE OF APPEAL.”

{¶25} It is well established under Ohio law that a judgment of a trial court will be considered a “final appealable order” only when it can satisfy the requirements of R.C. 2505.02 and, if applicable, the requirements of Civ.R. 54(B). *Stewart v. Midwestern Indemn. Co.* (1989), 45 Ohio St.3d 124. In the present matter, the appealed judgment clearly settles the underlying action, insofar as it pertains to appellees, Ohio Department of Rehabilitation and Correction, Hudson and Hamilton, in their favor and prevents appellant from ever prevailing on the final merits; therefore, to this extent, the judgment

before us satisfies the requirements for finality under R.C. 2505.02(B)(1). However, because the underlying action involves multiple defendants and claims, Civ.R. 54(B) is also applicable in this instance. This rule states:

{¶26} “When 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, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties 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 or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.”

{¶27} Under the unambiguous language of Civ.R. 54(B), if a trial court’s written decision fully disposes of fewer than all of the pending claims or parties in a civil action, that decision will not be deemed a “final judgment” unless the trial court has also made an express finding of no just reason for delay. Without such a finding, such a decision is interlocutory in nature, is not immediately appealable, and can be revised by the trial court at any time prior to the final determination of the entire action. See, e.g., *Ruiz v. Carabello* (1997), 117 Ohio App.3d 388.

{¶28} In the instant case, appellant filed a notice of appeal on February 22, 2010 of the trial court’s February 2, 2010, judgment. The judgment appealed from disposes

only of the claims of appellees Ohio Department of Rehabilitation and Corrections, Hudson and Hamilton. The judgment did not dispose of the claims against the remaining parties, and did not include Civ. R. 54(B) language. The order appealed from is not a final appealable order. The court disposed of the claims against Reinbold and Humphrey and granted judgment on their counterclaim on March 2, 2010. However, because the notice of appeal was prematurely filed from an interlocutory order, it could not be considered filed or refiled when all the claims and parties were disposed of. *Weber v. Hackett*, (Dec. 30, 1982), Geauga App. No. 1018, unreported. As claims remain pending in the trial court and the judgment appealed from is not a final appealable order, the appeal is dismissed.

By: Edwards, P.J.

Farmer, J. and

Wise, J. concur

s/Julie A. Edwards

s/Sheila G. Farmer

s/John W. Wise

JUDGES

JAE/r0805

