[Cite as *Snouffer v. Snouffer*, 2017-Ohio-2790.]

COURT OF APPEALS
MORGAN COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MICHELLE D. SNOUFFER

Plaintiff-Appellee

-vs-

JOSHUA P. SNOUFFER, et al.

Defendants-Appellants

JUDGES:
Hon. Patricia A. Delaney, P. J.
Hon. John W. Wise, J.
Hon. Earle E. Wise, Jr., J.

Case No. 16 AP 0008

O P I N I O N

CHARACTER OF PROCEEDING:	Civil Appeal from the Court of Common Pleas, Case No. 14 CV 0153
JUDGMENT:	Dismissed
DATE OF JUDGMENT ENTRY:	May 12, 2017

APPEARANCES:

For Plaintiff-Appellee

D. JOE GRIFFITH
DAGGER, JOHNSTON, MILLER
OGILVIE & HAMPSON LLP
144 East Main Street, P. O. Box 667
Lancaster, Ohio 43130

For Defendants-Appellants Sundays

BRIAN W. BENBOW
BENBOW LAW OFFICE
605 Market Street
Zanesville, Ohio 43701

Wise, John, J.

{¶1} Appellants Terry and Brenda Sunday appeal two decisions of the Court of Common Pleas, Morgan County, one granting judgment in favor of Appellee Michelle D. Snouffer in a lease dispute and the other subsequently denying their motion to void or vacate the first judgment. The relevant procedural facts leading to this appeal are as follows:

{¶2} The present dispute centers on certain agreements pertaining to a 181-acre farm located in York Township, Morgan County, owned during the pertinent time frames by Appellee Michelle D. Snouffer and Appellant Joshua P. Snouffer.[1] In January 2013, Michelle and Joshua entered into a "Cash Farm Lease Agreement" with Appellants Terry and Brenda Sunday for the aforesaid farm property.[2] Said lease, by its terms, was to terminate on January 1, 2014. However, in May 2013, just a few months after the signing of the January 2013 agreement, Terry purportedly approached Joshua with a proposed addendum to the lease which in essence sought to extend the agreement three additional "crop years," *i.e*., into early 2017. Joshua signed the addendum, but Michelle did not.

{¶3} On September 12, 2014, Michelle filed a complaint against Joshua, as well as Terry and Brenda Sunday, in the Morgan County Court of Common Pleas, seeking *inter alia* a declaratory judgment that the lease addendum was void and/or voidable.

{¶4} On October 8, 2014, Joshua filed an answer to the complaint and a cross-claim against Terry and Brenda. The gist of the cross-claim was that he had been

---

[1] According to a warranty deed copy provided in the record, Joshua and Michelle took title to the property in 2011 as husband and wife. However, they have since separated.

[2] Based on the number of pleadings and the postures of the various parties in the underlying action, we will generally utilize first names in this opinion for clarity.

damaged by the alleged delay of potential sales of the farm property and by the alleged refusal of Terry and Brenda "to allow access to the subject real estate for inspection for prospective buyers."

{¶5} Michelle filed an amended complaint on November 4, 2014.

{¶6} Terry and Brenda filed an answer to the amended complaint, along with a cross-claim against Joshua and a counterclaim against Michelle, on November 13, 2014. Terry and Brenda also filed an answer to Joshua's cross-claim on November 13, 2014.

{¶7} On November 19, 2014, Michelle filed a reply to the counterclaim of Terry and Brenda.

{¶8} On December 11, 2014, Joshua fax-filed an answer to the cross-claim of Terry and Brenda.

{¶9} On February 19, 2015, Michelle filed a motion for a temporary restraining order ("TRO") and for a preliminary and permanent injunction. Terry and Brenda filed a memorandum in opposition to said motion on March 2, 2015. Michelle filed a motion in reply on March 4, 2015.

{¶10} In the meantime, on February 26, 2015, following leave from the trial court, Michelle filed a second amended complaint. Terry and Brenda filed an answer thereto on March 4, 2015.

{¶11} On March 10, 2015, the trial court issued a temporary restraining order ("TRO"), which prevented Terry and Brenda from growing crops on the farm property. Terry and Brenda apparently ignored the TRO and proceeded to plant their crops.

{¶12} Furthermore, on March 4, 2015, Michelle filed a motion for summary judgment on her amended complaint. Terry and Brenda filed a memorandum in

opposition to summary judgment on March 24, 2015. Michelle filed a reply on April 1, 2015.

{¶13} On April 14, 2015, the trial court granted a preliminary injunction.

{¶14} On June 1, 2015, Attorney Charles Curley and Attorney Jonathan Clark, having represented Terry and Brenda since their original answer, were granted leave to withdraw as counsel.

{¶15} On June 17, 2015, Michelle filed a motion for contempt against Terry and Brenda based on the crop planting issue.[3]

{¶16} On September 2, 2015, the original trial court judge recused himself from the case, and a new judge was duly appointed.

{¶17} On October 15, 2015, the trial court issued a decision concerning Michelle's summary judgment motion relating to her claims concerning the possessory rights to the farm property. The trial court ruled that Michelle was entitled to possession of the farm and ordered ejectment of Terry and Brenda on the basis that as a matter of law, their lease rights were non-existent. The court also dismissed the counterclaims of Terry and Brenda concerning possessory issues. However, the remaining counterclaims, as well as Joshua's cross-claims, were found to remain pending.

{¶18} On October 22, 2015, the trial court issued a writ of restitution, granting possession of the farm to Michelle.

{¶19} On November 10, 2015, the trial court assignment commissioner issued an unsigned notice, scheduling the matter for a bench trial on January 28, 2016. The hearing

[3] Because the pre-trial contempt proceedings are of limited relevance in the present appeal, we find it unnecessary to elaborate on that facet of the case.

notice indicates it was provided to Terry and Brenda *pro se*, counsel for Michelle, counsel for Joshua, and the trial court judge.

{¶20} On January 28, 2016, Terry and Brenda failed to appear for the scheduled trial. The court nonetheless proceeded with a bench trial.

{¶21} On February 11, 2016, the trial court issued its verdict and judgment entry granting Michelle judgment against Terry and Brenda in the amount of $105,000.00 (representing $50,000.00 in damages for trespass and interference with contractual relations, $45,000.00 for a one-half share of the soybean crop grown on the farm without Michelle's permission, and $10,000.00 for attorney fees based on intentional misconduct by Terry and Brenda). The trial court therein also dismissed all of Terry's and Brenda's cross-claims and counterclaims for want of prosecution. Furthermore, the court ordered Terry and Brenda to remove all of their personal property from the farm by January 31, 2016, and to remove the hoop barn from the farm by February 29, 2016.

{¶22} The Sundays filed no immediate appeal of the February 11, 2016 judgment entry.

{¶23} On April 15, 2016, while Michelle's counsel was in the process of collecting judgment, Terry and Brenda each filed a written "request for hearing," asserting *inter alia* that they were unaware of the bench trial of January 28, 2016.

{¶24} On April 19, 2016, the trial court assignment commissioner issued an unsigned notice, scheduling the matter for a hearing on April 27, 2016.

{¶25} On April 27, 2016, Brenda appeared in court with handwritten objections which were served upon appellee's trial counsel. Thereafter, Brenda and Terry, after

being repeatedly advised to vacate and leave the farm, were removed from the property by the Morgan County Sheriff.

{¶26} By motion dated July 11, 2016, Terry and Brenda, with the assistance of new counsel, moved to vacate the February 11, 2016 judgment entry, again asserting that they had not been notified of the bench trial of January 28, 2016. Terry and Brenda also asserted that they were not on notice that the hoop barn was to be removed by a certain date. They also requested injunctive relief in an effort to stop Michelle from selling the farm. The injunction issue was set for evidence on July 14, 2016. On the same day, the trial court heard evidence as to Terry and Brenda's claim that they did not receive notice of the January 28, 2016 hearing. The court heard testimony from Terry, Brenda, Michelle, and Joshua, as well as the court's assignment commissioner.

{¶27} Via a judgment entry issued on July 29, 2016, the trial court concluded that Terry and Brenda did have notice of the January 2016 hearing and, for whatever reason, chose not to appear.

{¶28} Terry and Brenda filed a notice of appeal on August 25, 2016, as to both the February 11, 2016 decision and July 29, 2016 decision. They herein raise the following two Assignments of Error:

{¶29} "I. THE TRIAL COURT COMMITTED PREJUDICAL [SIC] ERROR BY REFUSING TO VACATE THE JUDGMENT TAKEN AGAINST THE SUNDAYS FOR LACK OF SERVICE; SUCH JUDGMENT TAKEN IS FURTHER AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶30} "II. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY DISMISSING THE SUNDAYS' COUNTERCLAIM WITH PREJUDICE."

{¶31} We will address these assigned errors in reverse order.

II.

{¶32} In their Second Assignment of Error, Appellants Terry and Brenda contend the trial court erred in dismissing, via the February 11, 2016 judgment entry, their counterclaim against Michelle.

{¶33} We initially reiterate that Terry and Brenda included the February 11, 2016 judgment entry in their notice of appeal filed August 25, 2016. Terry and Brenda have contended that they were not notified of the hearing leading to said judgment entry. However, assuming *arguendo* that the February 11, 2016 judgment entry was or has become a final appealable order, they have provided no specific explanation in their brief regarding the more than six-month apparent delay in filing their notice of appeal. *See* App.R. 4.[4]

{¶34} Nonetheless, irrespective of the timeliness issue, if an order is not final and appealable, then we have no jurisdiction to review the matter and must dismiss it. *Meier v. Meier*, 5th Dist. Fairfield No. 16-CA-42, 2017-Ohio-1109, ¶ 9, citing *Gen. Acc. Ins. Co. v. Ins. Co. of N. America*, 44 Ohio St.3d 17, 540 N.E.2d 266 (1989). We have recognized that to qualify as final and appealable, a trial court's order must satisfy the requirements of R.C. 2505.02, and if the action involves multiple claims and/or multiple parties and the order does not enter judgment on all the claims and/or as to all parties, the order must also satisfy Civil Rule 54(B) by including express language that "there is no just reason

[4] At the very least, the record would indicate that Terry and Brenda were aware of the February 11, 2016 entry on or before July 11, 2016, when they filed their motion to vacate. In addition, the *pro se* request for hearing filed by Brenda on April 15, 2016 makes reference to the January 28, 2016 hearing.

for delay." *See, e.g., Haynes v. Haynes*, 5th Dist. Licking No. 16-CA-49, 2017-Ohio-49, ¶ 11, citing *Int'l. Brotherhood of Electrical Workers, Local Union No. 8 v. Vaughn Indus., LLC,* 116 Ohio St.3d 335, 879 N.E.2d 187, 2007-Ohio-6439.

{¶35} Our review of the record reveals that the February 11, 2016 judgment entry leaves unresolved *sub silentio* the cross-claim of Joshua against Appellants Terry and Brenda. Said entry is stamped "final appealable order," but it does not include the requisite Civ.R. 54(B) language or a close variant thereof. Furthermore, as suggested in appellants' brief (at page 6), Joshua's cross-claims do not appear to be referenced in any subsequent court orders.

{¶36} Accordingly, we hold the trial court's judgment entry of February 11, 2016 is not a final appealable order, and appellants' Second Assignment of Error is therefore not ripe for appeal.

I.

{¶37} In their First Assignment of Error, Appellants Terry and Brenda contend the trial court erred in denying their motion to vacate the February 11, 2016 judgment entry, on the basis of alleged lack of notice to them of the bench trial of January 28, 2016. This claimed error is reflected in the trial court's July 29, 2016 judgment entry.

{¶38} A motion to reconsider is the proper device to seek relief from a non-final judgment. *See Cireddu v. Clough*, 11th Dist. Lake No. 2011-L-121, 2012-Ohio-2242, ¶ 23. While in this instance we might consider, in the interest of judicial economy, re-labeling Terry and Brenda's motion to void or vacate the February 11, 2016 judgment entry, we are impeded by the recognition that "[o]rders ruling on a motion to reconsider do not become appealable until the court renders a final judgment." *See id.* at ¶ 24. *See, also*,

Keever v. Jordan, 5th Dist. Morrow No. 09-CA-5, 2009-Ohio-5850, ¶ 34 (stating "[a] denial of a motion for reconsideration is not a final appealable order.")

{¶39} Accordingly, we hold the trial court's judgment entry of July 29, 2016 also is not a final appealable order, and appellants' First Assignment of Error is therefore not ripe for appeal.

{¶40} For the reasons stated in the foregoing opinion, the appeal of the decisions of the Court of Common Pleas, Morgan County, Ohio, is hereby dismissed.

By: Wise, John, J.

Delaney, P. J., and.

Wise, Earle, J., concur.

JWW/d 0501