

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

MARTHA MAY	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff - Appellant	:	Hon. John W. Wise, J.
	:	Hon. Craig R. Baldwin, J.
-vs-	:	
	:	
TONI SHANNON, ET AL.	:	Case No. 17CA7
	:	
Defendants - Appellees	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Mount Vernon
Municipal Court, Case No. 16 CVH
00419

JUDGMENT: Dismissed

DATE OF JUDGMENT: December 26, 2017

APPEARANCES:

For Plaintiff-Appellant

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For Defendants-Appellees

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Baldwin, J.

{¶1} Plaintiff-Appellant, Martha May, appeals the decisions of the Mount Vernon Municipal Court memorialized in entries dated November 21, 2016, December 13, 2016 and February 24, 2017 in which the trial court dismissed her complaint against Appellee, denied a motion to vacate that judgment and denied a motion to reconsider its decision on the motion to vacate. Appellee Toni Shannon did not file a brief or otherwise appear in this Appeal.

STATEMENT OF FACTS AND THE CASE

{¶2} Appellant filed a complaint on June 28, 2016 describing damages to a mobile home and seeking compensation from Appellee, Samantha Marchio and Chad Pruyn. Appellee filed an answer on July 14, 2016. Defendant Samantha Marchio was served with the summons and complaint on October 13, 2016, but did not file an answer or otherwise appear in this matter. Defendant Chad Pruyn was not served with the summons or complaint.

{¶3} The trial court conducted a bench trial on November 18, 2016 with Appellant acting pro se and Appellee Shannon appearing with counsel. Appellant testified on her own behalf and submitted several exhibits. She claimed to have subpoenaed witnesses or asked them to testify, but none appeared at the hearing. She requested continuances at two points during the trial and the Court denied her requests.

{¶4} At the conclusion of Appellant's case, Appellee Shannon moved for a directed verdict¹ and that motion was granted. Appellant requested default judgment

¹ The Defendant Appellant and Trial Court refer to the motion as a request for a directed verdict. Because this was a bench trial, the motion was a motion to dismiss pursuant to Civ.R. 41(B)(2)

against Defendant Marchio and that motion was granted. The court scheduled a hearing on damages in the claim against Marchio for February 17, 2017. The claim against Defendant Chad Pruyn was not addressed by the Court.²

{¶15} On December 8, 2016, Appellant filed a motion to vacate the judgment dismissing her complaint against Appellee Shannon. That motion was denied December 13, 2016. On February 22, 2017 Appellant filed a motion to reconsider the December 13th decision and that request was denied on February 24, 2017. On March 29, 2017, Appellant filed a notice of dismissal stating “Pursuant to Ohio Civil Rule 41(A) Plaintiff dismisses this action, without prejudice, in order to appeal this court’s previously issued orders.” On April 28, 2017 Appellant filed a notice of appeal of the trial court’s entries of February 24, 2017, December 13, 2016 and November 21, 2016 and submitted four assignments of error:

{¶16} “I. THE TRIAL COURT VIOLATED THE PRO-SE PLAINTIFF’S FUNDAMENTAL FOURTEENTH AMENDMENT CONSTITUTIONAL RIGHTS OF DUE PROCESS BY INSTRUCTING HER THAT SHE WAS NOT PERMITTED TO EITHER ADVOCATE FOR HER POSITION OR CROSS EXAMINE WITNESSES BECAUSE SHE WAS NOT A LICENSED ATTORNEY.

{¶17} “II. THIS CONSTITUTIONAL VIOLATION TAINTED THE PROCESS AND THE COURT ERRED BY THEN ISSUING A DIRECTED VERDICT AGAINST THE PLAINTIFF.”

² The facts described in this opinion are derived from the pleadings and a document filed by Appellant designated as a transcript, but the document provided by the Appellant does not comply with the requirements of App.R. 9. Our reference to this document should not be interpreted as our approval of it as a formal transcript.

{¶18} “III. THE TRIAL COURT ERRED BY FAILING TO TAKE JUDICIAL NOTICE OF THE DECISION OF THE KNOX COUNTY JUVENILE COURT WHICH WAS RELATED TO THIS ACTION.”

{¶19} “IV. THE TRIAL COURT ERRED BY FAILING TO VACATE ITS DIRECTED VERDICT WHEN THE CONSTITUTIONAL VIOLATION WAS BROUGHT TO ITS ATTENTION.”

{¶10} We must first address the threshold issue of whether the judgments appealed are final, appealable orders. Even if a party does not raise the issue, this court must address, *sua sponte*, whether there is a final appealable order ripe for review. *State ex rel. White v. Cuyahoga Metro. Hous. Aut.*, 79 Ohio St.3d 543, 544, 684 N.E.2d 72 (1997).

{¶11} Appellate courts have jurisdiction to review the final orders or judgments of lower courts within their appellate districts. Section 3(B)(2), Article IV, Ohio Constitution. 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. *General Acc. Ins. Co. v. Insurance of North America*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989); *Harris v. Conrad*, 12th Dist. Warren No. CA–2001–12–108, 2002-Ohio-3885, 2002 WL 1310633. For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B). *Denham v. New Carlisle*, 86 Ohio St.3d 594, 596, 716 N.E.2d 184 (1999); *Ferraro v. B.F. Goodrich Co.*, 149 Ohio App.3d 301, 2002-Ohio-4398, 777 N.E.2d 282 (9th Dist.). If an order is not final and appealable, an appellate court has no jurisdiction to review the matter and it must be dismissed.

{¶12} Appellant appeals the trial court's decisions granting Appellee's motion for "directed verdict", denying Appellant's motion to vacate that judgment and denying Appellant's motion for reconsideration of the decision of the motion to vacate. Recognizing that those orders were not final and appealable, Appellant "dismissed her action, without prejudice, in order to make those issues appealable and brought this appeal." (Appellant's Brief, p. 6). The Appellant stated in her dismissal that "Pursuant to Ohio Civil Rule 41(A) Plaintiff dismisses this action, without prejudice, in order to appeal this court's previously issued orders." The language of the notice of dismissal can only be interpreted as dismissing all claims against all parties and that dismissal, contrary to Appellant's assertion, does not result in a final appealable order.

{¶13} This Court has addressed analogous circumstances in *Bradley v. Dollar Gen.*, 5th Dist. No. 11-CA-45, 2012-Ohio-3700 and *Thompson v. Cooper*, 5th Dist. Knox No. 16CA20, 2017-Ohio-5549 in which we held that the dismissal of all claims against all parties renders interlocutory orders a nullity and does not create a final appealable order. In *Bradley*, we held that "voluntary dismissal of all defendants and all claims prevents the interlocutory summary judgment decision from becoming a final adjudication of the claims with which it was concerned. As such, this Court lacks jurisdiction to consider the appeal." *Bradley, supra*, at ¶ 42. In *Thompson* we reviewed the holding in *Bradley* and decisions from other Ohio Appellate Districts and noted that:

[o]ur decision was based on the rationale of *Denham v. New Carlisle*, 86 Ohio St. 3d 594, 597, 716 N.E.2d 184 (1999), in which the Ohio Supreme Court held that a Civ. R. 41 dismissal renders the parties as if no suit had ever been filed as to the dismissed parties only. We agreed with Second

District's interpretation of *Denham*, and further noted that other appellate districts had similarly held that the voluntary dismissal of all defendants renders a prior interlocutory summary judgment ruling a nullity.

Thompson, supra, at ¶ 17

{¶14} The trial court's dismissal of claims against Appellee Shannon was not a final appealable order because it did not resolve all pending claims in the case sub judice and the trial court did not append language to the order expressly finding there was no just cause for delay. *Brahm v. DHSC, LLC*, 5th Dist. No. 2015CA00165, 2016-Ohio-1204, ¶ 18, appeal not allowed sub nom. *Brahm v. DHSC, L.L.C.*, 146 Ohio St.3d 1490, 2016-Ohio-5585, 57 N.E.3d 1170, (2016); *Kildow v. Home Town Improvements*, 5th Dist. Muskingum No. CT2001-0057, 2002-Ohio-3824, ¶ 11. Appellant's dismissal of the action did not create a final appealable order, but instead nullified the trial court's interlocutory orders. No final, appealable order remains for this Court to review, so we are obligated to dismiss the appeal.

{¶15} For the reasons set forth above, we dismiss this appeal. Costs assessed to Appellant.

By: Baldwin, J.

Gwin, P.J. and

John Wise, J. concur.