

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CHRISTOPHER CUDA

C. A. No. 08CA009476

Appellant

v.

LORAIN COUNTY CHILDREN
SERVICES

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 07CV151733

Appellee

DECISION AND JOURNAL ENTRY

Dated: May 18, 2009

BELFANCE, Judge

{¶1} Plaintiff-Appellant Christopher Cuda appeals from the September 5, 2008 journal entry of the Lorain County Court of Common Pleas which granted summary judgment to Defendant-Appellee Lorain County Children Services (“LCCS”) and the October 3, 2008 journal entry which denied Cuda’s Civ.R. 60(B)(5) motion and his motion for leave to file an amended complaint, and again awarded summary judgment to LCCS. We dismiss.

FACTS

{¶2} Cuda was an intake social worker employed by LCCS. As an employee of LCCS, Cuda was also a member of the United Automobile, Aerospace and Agricultural Implement Workers of America, Local 2192 (“UAW”). During Cuda’s employment there was a collective bargaining agreement in place between UAW and LCCS, on behalf of its employees. The collective bargaining agreement contained a grievance procedure which included arbitration as a step in the process.

{¶3} LCCS terminated Cuda's employment on July 13, 2006. Cuda alleges that he timely informed his UAW representative of his intent to have UAW initiate the grievance procedure, both orally and in writing. LCCS maintains that it was Cuda's responsibility to file a grievance, which he never did. On July 12, 2007, Cuda filed a complaint in the Lorain County Court of Common Pleas against LCCS and UAW. Cuda asserted three claims in his complaint: (1) a claim pursuant to R.C. 4112.14, that LCCS unlawfully terminated Cuda because of his age, (2) a wrongful discharge in violation of public policy claim, and (3) a claim that UAW violated its duty to Cuda of fair representation in the grievance procedure. Cuda filed a notice dismissing UAW without prejudice from the suit in November 2007. On July 23, 2008, LCCS filed a motion for summary judgment, only addressing Cuda's age discrimination claim pursuant to R.C. 4112.14. Cuda filed a brief in opposition and LCCS filed a reply brief.

{¶4} On September 5, 2008, the trial court granted summary judgment to LCCS as to Cuda's R.C. 4112.14 age discrimination claim. On September 10, 2008, the trial court *sua sponte* ordered a rehearing in the matter of LCCS' motion for summary judgment in light of the Supreme Court of Ohio's decision in *Dworning v. Euclid*, 119 Ohio St.3d 83, 2008-Ohio-3318. On September 29, 2008, Cuda filed a motion for leave to file a first amended complaint. Cuda, also around this time, made an oral Civ.R. 60(B)(5) motion. On October 3, 2008, the trial court denied Cuda's oral Civ.R. 60(B)(5) motion and his motion for leave to file a first amended complaint and again granted summary judgment to LCCS. Neither of the trial court's entries granting summary judgment to LCCS mentioned Cuda's wrongful discharge in violation of public policy claim and neither entry contained Civ.R. 54(B) language.

{¶5} Cuda has attempted to appeal the trial court's award of summary judgment to LCCS and the trial court's denial of Cuda's Civ.R. 60(B)(5) motion and his motion for leave to file an amended complaint and has asserted three assignments of error.

FINAL APPEALABLE ORDER

{¶6} In Cuda's reply brief in the instant appeal he argues that he still has an outstanding claim pending in the trial court, namely his claim for wrongful discharge in violation of Ohio public policy. We agree.

{¶7} The Ohio Constitution limits this Court's appellate jurisdiction to the review of final judgments or orders of lower courts. Section 3(B)(2), Article IV, Ohio Constitution. "Pursuant to R.C. 2505.02, an order is both final and appealable if it resolves all claims against all parties or it resolves at least one full cause of action in a multiple claim case with an express certification that there is no just reason for delay pursuant to Civ.R. 54(B)." (Internal quotations and citations omitted.) *David Moore Builders, Inc. v. Hudson Village Joint Venture*, 9th Dist. No. 21702, 2004-Ohio-1592, at ¶5. Where applicable and necessary, the omission of 54(B) language by the trial court in its judgment entry "is fatal not only to the order's finality, but also this Court's jurisdiction." *Id.* at ¶7.

{¶8} In the instant appeal, Cuda filed a complaint with three claims: an age discrimination claim pursuant to R.C. 4112.14, a wrongful discharge claim in violation of public policy, and a claim against UAW alleging it breached its duty of fair representation. Cuda dismissed UAW from the suit, and the trial court granted summary judgment to LCCS on Cuda's R.C. 4112.14 age discrimination claim. However, this leaves Cuda's wrongful discharge in violation of public policy claim unresolved, as it was never dismissed or ruled upon. Further, as

the trial court did not use Civ.R. 54(B) language in its entries, we lack jurisdiction to consider Cuda's appeal.

CONCLUSION

{¶9} We dismiss this appeal for lack of subject matter jurisdiction.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

WHITMORE, J.
DICKINSON, P. J.
CONCUR

APPEARANCES:

PAUL V. WOLF, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and M. ROBERT FLANAGAN, Assistant Prosecuting Attorney, for Appellee.