[Cite as *Roberts v. Reyes*, 2010-Ohio-1086.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

CRYSTAL ROBERTS	C.A. No. 09CA009576
Appellants	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
DAVID C. REYES, et al.	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellees	CASE No. 03 CV 134243

DECISION AND JOURNAL ENTRY

Dated: March 22, 2010

MOORE, Judge.

{¶1} Appellants, Crystal Roberts, et al., appeal from the decision of the Lorain County Court of Common Pleas. This Court dismisses the appeal for lack of jurisdiction.

I.

{¶2} On June 18, 2001, Crystal Roberts, a minor, was riding a bicycle on a sidewalk when she was hit by a vehicle operated by David Reyes. Iris Reyes, David's wife, owned the vehicle. On February 21, 2003, Roberts, through her mother, filed a complaint against the Reyeses and Progressive Casualty Insurance, the Roberts' uninsured motorist insurance company, for the injuries resulting from the alleged negligence of the Reyeses ("the personal injury action").

{¶3} On May 29, 2003, State Farm Insurance Company filed a declaratory judgment action against the Reyeses, seeking a declaration that the Reyeses were not entitled to coverage ("the declaratory judgment action"). State Farm based this action on an alleged violation of a

"Driver Exclusion Agreement." State Farm argued that David was specifically excluded from coverage, and by allowing him to operate the vehicle, the Reyeses violated the terms of their insurance agreement.

{¶4} On September 25, Progressive Max Insurance, sued as Progressive Casualty Insurance, was dismissed, with prejudice, from the personal injury action.

{¶5} On September 26, 2003, Roberts' personal injury action was consolidated with State Farm's declaratory judgment action.

{¶6} On January 12, 2004, Progressive filed a subrogation action against the Reyeses for the money it had compensated Roberts on her uninsured motorist claim. ("the subrogation action"). On January 21, 2004, the subrogation action was consolidated with the personal injury and declaratory judgment actions.

{¶7} On February 5, 2004, Iris Reyes filed a motion for summary judgment on the issue of negligent entrustment. On August 25, 2004, State Farm filed its motion for summary judgment, seeking a declaration that it was not obligated to provide a defense to the Reyeses. On October 4, 2004, Progressive filed a motion for summary judgment on its subrogation claim.

{¶8} On November 18, 2004, Progressive sought to intervene in the personal injury action. The trial court granted the motion, allowing Progressive to intervene.

{¶9} On October 28, 2005, the trial court granted Progressive's motion for summary judgment against the Reyeses in the amount of $26,000, the amount that Roberts had been compensated for her uninsured motorist claim. On October 27, 2005, the trial court denied Iris Reyes' motion for summary judgment. On November 8, 2006, after State Farm filed a motion for clarification on the trial court's October 27, 2005 order, the trial court denied State Farm's motion for summary judgment.

{¶10} On January 18, 2007, State Farm filed a motion for reconsideration, which the trial court denied. On September 19, 2008, however, the trial court heard arguments on State Farm's motion for reconsideration, and on March 30, 2009, granted State Farm's motion for summary judgment on the declaratory judgment action. Notably, the trial court determined that "State Farm is not obligated to provide a defense nor indemnity to Iris Reyes and David Reyes for any claims by Crystal Roberts arising out of the automobile accident of June 18, 2001." On April 2, 2009, the trial court issued its judgment entry indicating that summary judgment had been granted and that the case was closed. Roberts timely appealed from this decision, raising three assignments of error for our review. We have combined her assigned errors for ease of review.

II.

ASSIGNMENT OF ERROR I

> "THE INCOMPLETE AND DEFICIENT 'DRIVER EXCLUSION AGREEMENT' DEMONSTRATES THAT A GENUINE DISPUTE EXISTS OVER A MATERIAL FACT AS TO THE VALIDITY OF THE PUTATIVE 'DRIVER EXCLUSION AGREEMENT[.]'"

ASSIGNMENT OF ERROR II

> "THE TRIAL COURT ERRED IN RULING THAT APPELLEE IRIS REYES' NEGLIGENT ENTRUSTMENT OF HER CHEVROLET PICK-UP WAS NOT COVERED UNDER THE LIABILITY PORTION OF THE APPELLEE IRIS REYES' STATE FARM POLICY[.]"

ASSIGNMENT OF ERROR III

> "ABSENT OHIO CIVIL RULE 54(B) LANGUAGE THE TRIAL COURT ERRED IN NOT DISPOSING OF ALL THE CLAIMS CONTAINED IN THE APPELLANTS' COMPLAINT AGAINST APPELLEES IRIS REYES AND DAVID REYES[.]"

{¶11} Initially, we consider a threshold jurisdictional issue. As Roberts points out, absent Civ.R. 54(B) language, the trial court erred in not disposing of all the claims contained in

her complaint against the Reyeses. Accordingly, this Court is without jurisdiction to review the merits of Roberts' assigned errors.

{¶12} The Ohio Constitution limits an appellate court's jurisdiction to the review of final judgments of lower courts. Section 3(B)(2), Article IV. Accordingly, this Court has jurisdiction to review only final and appealable orders. See *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 219.

> "An appellate court, when determining whether a judgment is final, must engage in a two-step analysis. First, it must determine if the order is final within the requirements of R.C. 2505.02. If the court finds that the order complies with R.C. 2505.02 and is in fact final, then the court must take a second step to decide if Civ.R. 54(B) language is required." *General Acc. Ins. Co. v. Ins. Co. of N. America* (1989), 44 Ohio St.3d 17, 21.

{¶13} R.C. 2505.02(B)(2) provides that a decision "that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment" is final and appealable. "[T]he duty to defend involves a substantial right to both the insured and the insurer." *General Acc. Ins. Co.*, 44 Ohio St.3d at 22. Therefore, the judgment at issue affects a substantial right. Id. Finally, "[a] declaratory judgment action is a special proceeding pursuant to R.C. 2505.02 and, therefore, an order entered therein which affects a substantial right is a final appealable order." Id.

{¶14} "Upon finding that this is a final order under R.C. 2505.02, we next must determine if Civ.R. 54(B) applies, and if so, if its requirements were met." Id. "When an action includes multiple claims or parties and an order disposes of fewer than all of the claims or rights and liabilities of fewer than all of the parties without certifying under Civ.R. 54(B) that there is no just cause for delay, the order is not final and appealable." *Oakley v. Citizens Bank of Logan*, 4th Dist. No. 03CA013, 2004-Ohio-1995, at ¶3, citing *Jarrett v. Dayton Osteopathic Hosp., Inc.* (1985), 20 Ohio St.3d 77.

{¶15} Although the trial court's March 30, 2009 entry granting State Farm's motion for summary judgment purports to be a "Final Appealable Order[,]" the "use of these words, however, is without significance and does not render an order final." *Scalia v. Aldi, Inc.*, 9th Dist. No. 24395, 2009-Ohio-1335, at ¶9.

{¶16} On September 26, 2003, State Farm's declaratory judgment action was consolidated with Roberts' personal injury action. Roberts' complaint set forth several tort claims.

{¶17} The trial court's March 30, 2009 entry "declares that State Farm is not obligated to provide a defense nor indemnity to Iris Reyes and David Reyes for any claims by Crystal Roberts[.]" Further, on April 2, 2009, the trial court issued an entry stating that State Farm's summary judgment motion had been granted and that the case was closed. Therefore, the trial court entered judgment on the declaratory judgment action, but did not rule on the pending tort claims that had been consolidated with the declaratory judgment action. As a result, there had been no resolution of the personal injury claims originally filed by Roberts against the Reyeses. See *Scalia*, supra, at ¶8 (concluding that a judgment was not a final, appealable order when it ruled on three tort claims but failed to rule on the declaratory judgment claim).

{¶18} The trial 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." Civ.R. 54(B). Therefore, because the case involved multiple claims and parties, for this order to be a final appealable order the trial court was required to certify that, pursuant to Civ.R. 54(B), there was no just cause for delay. *General Acc. Ins. Co.*, 44 Ohio St.3d at 22-23. As the trial court has failed to make this express determination, we conclude that we are without jurisdiction to review the merits of Roberts' assigned errors.

{¶19} Roberts' appeal is dismissed.

III.

{¶20} This Court lacks jurisdiction to consider the merits of Roberts' assignments of error. The appeal is dismissed.

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 Appellants.

CARLA MOORE
FOR THE COURT

CARR, J.
BELFANCE, P. J.
CONCUR

APPEARANCES:

MICHAEL J. DUFF, Attorney at Law, for Appellants.

WALTER H. KROHNGOLD, Attorney at Law, for Appellee.

CHRIS D. RICE, Attorney at Law, for Appellee.

DAVID C. REYERS, pro se Appellee.