

[Cite as *Excel Mtge. Corp. v. Figetakis* , 2011-Ohio-1351.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

EXCEL MORTGAGE CORP.

C.A. No. 25273

Appellee

v.

MARK FIGETAKIS, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2008-10-6953

Appellants

DECISION AND JOURNAL ENTRY

Dated: March 23, 2011

MOORE, Judge.

{¶1} Appellant, Mark Figetakis, appeals from the judgment of the Summit County Court of Common Pleas. This Court dismisses the appeal.

I.

{¶2} This case centers around two parcels of property located in Bath, Ohio. In order to retain possession of the property, Figetakis sought a loan from appellee Excel Mortgage Corporation. To fund the loan, Excel borrowed money from appellee Western Reserve Bank. Figetakis transferred title to Excel and the property secured Excel’s promissory note to Western Reserve Bank. Figetakis continued to reside on the property under a lease from Excel.

{¶3} On June 25, 2008, Excel filed in Akron Municipal Court a complaint against Figetakis for forcible entry and detainer. It also sought monetary damages. On September 16, 2008, Figetakis filed a counterclaim that exceeded the jurisdiction of that court. The case was

transferred to the Summit County Court of Common Pleas. Figetakis later filed a third-party complaint against appellees Western Reserve Bank, Charles J. Pappadakes, State Farm Fire & Casualty Co. and Northern Title Agency, Inc. That complaint was later amended to include claims against The Argie Katsaros Living Trust. On December 1, 2009, the parties appeared for a pretrial and entered into a settlement agreement disposing of all of the claims in the suit. The settlement agreement was presented on the record in open court. All parties, including Figetakis, assented to the agreement set forth on the record. Counsel for Western Reserve Bank was assigned to draft a settlement entry incorporating the terms of the agreement. On December 4, 2009, the trial court entered a short-form dismissal entry while retaining jurisdiction to enforce the settlement.

{¶4} In reliance upon the settlement, Excel transferred title to the land to Figetakis. Western Reserve Bank's counsel drafted the settlement agreement but no party, including the bank, executed it. Upon receipt of the agreement, Figetakis refused to sign and sought to alter the document.

{¶5} Western Reserve Bank moved the court to incorporate the transcript of the December 1, 2009 settlement into its December 4, 2009 dismissal entry. On January 29, 2010, the trial court granted the motion to incorporate the transcript of the settlement agreement into the December 4, 2009 dismissal entry. The trial court simultaneously adopted the Agreed Judgment Entry prepared by Western Reserve Bank and filed it with the January 29, 2010 order.

{¶6} Figetakis timely filed a notice of appeal. He has raised six assignments of error for our review. Due to our disposition of this case, we have consolidated the assignments of error.

II.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT JOURNALIZED THE FINAL APPEALABLE ORDER, ATTACHED EXHIBIT A AGREED JUDGMENT ENTRY THAT DID NOT ACCURATELY REFLECT THE TERMS OF A SETTLEMENT REACHED BY THE PARTIES AT COURT.”

ASSIGNMENT OF ERROR II

“THE TRIAL COURT ABUSED ITS DESCRETION WHEN IT JOURNALIZED A FINAL APPEALABLE ORDER WITH EXHIBIT A, AGREED JUDGMENT ENTRY THAT DID NOT CONTAIN THE SIGNATURES OF ALL OF THE PARTIES AND COUNSEL IN CONTRAVENTION OF LOCAL RULE OF SUMMIT COUNTY COMMON PLEAS COURT AND THE LAW ON CONTRACTS OF PRACTICE AND PROCEDURES OF THE COURT OF COMMON PLEAS GENERAL DIVISION OF SUMMIT COUNTY AND NINTH DISTRICT COURT APPELLATE RULES. THIS ASSIGNMENT OF ERRORS WAS NAPLES VS. NAPLES 2009 OHIO 1427 [SIC].”

ASSIGNMENT OF ERROR III

“JANUARY 29, 2009 FINAL APPEALABLE ORDER AND EXHIBIT A AGREEMENT JUDGMENT IS NOT A FINAL APPEALABLE ORDER.”

ASSIGNMENT OF ERROR IV

“STATUTE OF FRAUDS, R.C. CHAPTER 307.”

ASSIGNMENT OF ERROR V

“STATUTE OF FRAUD ORC 1335.05 [SIC] [.]”

ASSIGNMENT OF ERROR VI

“THE TRIAL COURT’S FINAL APPEALABLE ORDER WITH UNSIGNED EXHIBIT A, AGREEMENT JUDGMENT ENTRY BY ANY PARTIES OR ATTORNEYS IS NOT A FINAL APPEALABLE ORDER AS BOTH CIV. R. 54 AND R.C. 2505.02 HAVE NOT BEEN MET AS REQUIRED IN OHIO SUPREME COURT CHEF ITALIANO VS. KENT STATE UNIVERSITY 86 44 OHIO ST 3RD 86 [SIC] [.]”

{¶7} In his first, second, fourth and fifth assignments of error, Figetakis raises various substantive arguments asserting the invalidity of the settlement agreement. In his third and sixth assignments of error, Figetakis contends that the order from which he appeals is not a final, appealable order. For the reasons discussed below, we dismiss for lack of a final, appealable order.

{¶8} Pursuant to R.C. 2505.02(B)(1), “[a]n order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it * * * affects a substantial right in an action that in effect determines the action and prevents a judgment[.]” “One fundamental principle in the interpretation of judgments is that, to terminate the matter, the order must contain a statement of the relief that is being afforded the parties.” *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 215. “Without a clear statement of the rights and obligations of the parties, the order does not constitute a final judgment[.]” *Hawkins v. Innovative Property Mgt.*, 9th Dist. No. 22802, 2006-Ohio-394, at ¶6.

{¶9} This Court has repeatedly held that a judgment entry that requires the parties to refer to other documents does not constitute a final, appealable order. *Id.* at ¶5, citing *In re Zakov* (1995), 107 Ohio App.3d 716, 717 (stating that the trial court “must sufficiently address [the] issues so that the parties may know of their rights and obligations by referring only to that document known as the judgment entry”); *Landis v. Associated Materials, Inc.*, 9th Dist. No. 06CA0005, 2006-Ohio-5060, at ¶8; *Bergin v. Berezansky*, 9th Dist. No. 21451, 2003-Ohio-4266, at ¶5; *Edwards v. Vito Gironda Constr. Co.*, 9th Dist. No. 24322, 2008-Ohio-5974, at ¶9.

{¶10} Early in the appeal process this Court identified a potential issue related to finality. The trial court order filed on January 29, 2010, incorporates the Agreed Judgment Entry, also filed on January 29, 2010. The Agreed Judgment Entry in turn references two

mortgages, which include relevant terms by which the parties are bound. On April 6, 2010, this Court's magistrate entered an order directing the parties to include in their briefs and be prepared to address at oral argument, arguments regarding this Court's jurisdiction. The order further directed the parties to "include specific references to the parts of the record that are necessary to determine jurisdiction." None of the appellees addressed the issue of finality in their briefs and this matter was submitted for decision without oral argument. Figetakis' brief argued finality only to the extent that he referred to the January 29, 2010 documents as a "final appealable order." In his sixth assignment of error, however, Figetakis also contends that the January 29, 2010 documents do not constitute a final, appealable order and suggests that this Court remand the matter for a jury trial on the merits. Figetakis' only argument with respect to finality notes that Pappadakes filed for bankruptcy and this Court recognized an automatic stay pursuant to the bankruptcy action. On that basis alone, he contends that the trial court judgment does not terminate the action "as to any claims or parties." We note, however, that this Court terminated the stay and returned the matter to the active docket. We decline his invitation to remand this matter to the trial court for a jury trial on the merits. However, an issue with regard to finality remains.

{¶11} The Agreed Judgment Entry and the transcript of the settlement agreement each incorporate by reference mortgages in favor of Western Reserve Bank and The Argie M. Katsaros Living Trust. The Agreed Judgment Entry further specifies that the parties are bound by the terms of the mortgages unless the entry conflicts with the mortgages, in which case the Agreed Judgment Entry contains the controlling terms. The mortgage documents are not attached to the trial court's order or the Agreed Judgment Entry and no party has identified any location in the record where the mortgage documents might be found. Accordingly, the parties

have not established, and this Court cannot determine, all of their obligations merely by reference to the trial court's judgment entry and must instead refer to the mortgages, which may or may not be found in the record. *Hawkins* at ¶6. We must, therefore, dismiss the appeal for lack of a final, appealable order. *Id.* at ¶7.

III.

{¶12} Figetakis' appeal is dismissed for lack of a final, appealable order.

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.

CARLA MOORE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

MARK FIGETAKIS, pro se. Appellant.

JACK MALICKI, Attorney at Law, for Appellant.

JOHN CHRISTIE and DENNIS PILAWA, Attorneys at Law, for Appellee.

MICHAEL L. LARIBEE and CHRIS D. CAREY, Attorneys at Law, for Appellee.