[Cite as *Trogdon v. Beltran*, 2015-Ohio-1256.]

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

MATHEW TROGDON	C.A. No. 13CA010446
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ARCH ABRAHAM NISSAN	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellant	CASE No. 10CIV166513

DECISION AND JOURNAL ENTRY

Dated: March 31, 2015

MOORE, Judge.

{¶1} Arch Abraham Nissan ("Nissan") appeals from the judgment of the Lorain County Court of Common Pleas. For the reasons set forth below, we vacate the judgment.

I.

{¶2} In 2009, Theresa Sadowski purchased a jeep for her son, Matthew Trogdon. Because of a disagreement between the two, Trogdon was not permitted access to the car, and his mother kept it stored in the family garage. Nicholas Beltran convinced Trogdon to sign over the title to the car to him. Beltran later went to Arch Abraham Nissan and traded in the car for a new car for himself.

{¶3} Trogdon filed a complaint against Beltran and Nissan, seeking the return of his jeep. Trogdon subsequently amended his complaint to state a claim for conversion after Nissan sold the jeep to a third-party. On April 3, 2013, following a bench trial, the court found in favor

of Trogdon and awarded him $16,045.00 plus interest, costs, and reasonable attorney fees. However, the trial court did not specify the amount of the attorney fees at that time.

{¶4} On May 2, 2013, Nissan filed a notice of appeal for the April 3, 2013 judgment entry. The trial court issued a journal entry on May 13, 2013, which ordered Nissan to pay $31,412.34 of Trogdon's attorney fees. Trogdon moved to amend, arguing that the trial court had not awarded the full amount of the fees that had been attested to at the hearing. On June 20, 2013, the trial court issued a new judgment entry, which "ordered that the Judgment dated March 3, 2013 [(sic)] be amended to grant Plaintiff attorney fees in the amount of $58,197.84 together with court costs, plus interest at the statutory rate from the date of the judgment."

{¶5} This Court dismissed Nissan's appeal on July 8, 2013, concluding that the April 3, 2013 judgment was not a final, appealable order. Nissan filed a new notice of appeal on July 19, 2013, appealing the June 20, 2013 judgment. Nissan has raised a single assignment of error for our review.

II.

{¶6} This Court is obligated to raise, sua sponte, questions related to our jurisdiction. *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.*, 29 Ohio St.2d 184, 186 (1972). This Court has jurisdiction to hear appeals only from final orders and judgments. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2501.02; R.C. 2505.03. An appeal is perfected upon the filing of a written notice of appeal. R.C. 2505.04. "Once a case has been appealed, the trial court loses jurisdiction except to take action in aid of the appeal." *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, ¶ 9. "If a trial court lacks jurisdiction, any order it enters is a nullity and is void." (Internal quotations and citations omitted.) *Ohio Receivables LLC v. Guice*, 9th Dist. Lorain No. 10CA009813, 2011-Ohio-1293, ¶ 7. "While this Court lacks jurisdiction to consider nullities,

we have inherent authority to recognize and vacate them." *Hairline Clinic, Inc. v. Riggs-Fejes*, 9th Dist. Summit No. 25171, 2011-Ohio-5894, ¶ 7. *See also Van DeRyt v. Van DeRyt*, 6 Ohio St.2d 31, 36-37 (1966).

{¶7} In this case, Nissan perfected its appeal on May 2, 2013, and, thus, the trial court lost jurisdiction over the issues relevant to the appeal. Necessarily, this would include the amount of the attorney fees, which were part of the entry being appealed, making the May 13 and June 20 orders nullities. *See In re S.J.* at ¶ 9. Nevertheless, Trogdon argues that the trial court never lost jurisdiction because Nissan's May 2, 2013 appeal was premature, pointing to this Court's July 8, 2013 dismissal of the attempted appeal as not being from a final, appealable order. In support, Trogdon cites *Estate of Beavers v. Knapp*, 175 Ohio App.3d 758, 2008-Ohio-2023 (10th Dist.), in which the Tenth District concluded that the trial court retained jurisdiction to consider the issue of attorney fees despite a notice of appeal being filed because the notice of appeal was "premature" since it was not from a final, appealable order. *Id*. at ¶ 76.

{¶8} In reaching this conclusion, the *Beavers* court relied on *State ex rel. Everhart v. McIntosh*, 115 Ohio St.3d 195, 2007-Ohio-4798, for the proposition that "'[a] premature notice of appeal * * * does not divest the trial court of jurisdiction to proceed because the appeal has not yet been perfected.'" *Beavers* at ¶ 76, quoting *Everhart* at ¶ 14. However, the *Beavers* decision omits the next sentence of the *Everhart* holding: "*Because no entry was journalized*, Everhart's attempted appeal was not perfected, and the appeal did not prevent the trial court from proceeding in the medical malpractice case." (Emphasis added.) *Everhart* at ¶ 14. In other words, *Everhart* was decided on the narrow issue of whether an attempt to appeal an oral ruling deprived the trial court of jurisdiction. The Supreme Court decided that it did not because, pursuant to App.R. 4(C), "[a] notice of appeal filed after the announcement of a decision, order,

or sentence but before entry of the judgment or order that begins the running of the appeal time period is treated as filed immediately after the entry." *Everhart* at ¶ 14. By contrast, Nissan appealed a journalized decision in this case, making App.R. 4(C), and *Everhart* by extension, inapplicable. Accordingly, we decline to follow the reasoning of the Tenth District in *Beavers*.[1]

{¶9} Because Nissan filed its May 2, 2013 notice of appeal, the trial court did not thereafter have jurisdiction to issue a judgment determining the amount of the attorney fees. Therefore, the May 13, 2013 and June 20, 2013 orders are nullities and must be vacated. *See Hairline Clinic, Inc.*, 2011-Ohio-5894, at ¶ 7.

III.

{¶10} The May 13, 2013 and June 20, 2013 journal entries of the Lorain County Court of Common Pleas are vacated.

Judgment vacated.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

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

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[1] We also note that the practical effect of the *Beavers* decision is that it puts the trial court in the position of determining whether its journal entry constitutes a final, appealable order and, therefore, whether the appellate court has jurisdiction over the appeal. However, "the determination as to the appropriateness of an appeal lies solely with the appellate court." *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, ¶ 10.

period for review shall begin to run. App.R. 22(C). 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:

JOHN S. HAYNES, Attorney at Law, for Appellant.

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