[Cite as *Trotter v. Trotter*, 2021-Ohio-4634.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

PAUL A. TROTTER et al.,

Plaintiffs-Appellants,

v.

ROBERT F. TROTTER et al.,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 21 CO 0001

Civil Appeal from the
Court of Common Pleas of Columbiana County, Ohio
Case No. 2020 CV 170

BEFORE:
Carol Ann Robb, Cheryl L. Waite, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. Michael J. McGee, Harrington, Hoppe & Mitchell, LTD., 108 Main Avenue, S.W., Suite 500, Warren, Ohio 44481 for Plaintiffs-Appellants and

Atty. Richard V. Hoppel, Richard V. Hoppel Co., L.P.A., 16688 St. Clair Avenue, East Liverpool, Ohio 43920 for Defendant-Appellee.

Dated: December 6, 2021

Robb, J.

{¶1} Appellants Paul and Mark Trotter appeal from the order of partition entered by the Columbiana County Common Pleas Court. First, Appellants argue the trial court should have ordered a new survey after being advised a driveway crossed adjacent land. Second, Appellants allege the election to purchase the property filed jointly by Robert Trotter and Appellee David Trotter should have been invalidated after Robert transferred his interest to Appellee; they claim this would have allowed them to exercise their election to purchase the property as Appellee did not amend his competing joint election. Lastly, Appellants contest the trial court's failure to enforce their post-judgment discovery motion. For the following reasons, the trial court's judgment is affirmed.

STATEMENT OF THE CASE

{¶2} Four brothers owned property in Columbiana County as tenants-in-common. On May 1, 2020, Paul and Mark Trotter filed a partition action against Robert and David Trotter seeking to divide two parcels of property under R.C. 5307.04. The court appointed a commissioner (the auctioneer) to evaluate the property under R.C. 5307.06. The auctioneer was ordered to advise whether the property could be divided without manifest injury to its value and to return an appraisal under R.C. 5307.09. (8/25/20 J.E.).

{¶3} After a motion to dismiss was overruled, Robert and David filed a counterclaim in partition on August 27, 2020, adding four other parcels. They also filed claims for contribution and unjust enrichment. In total, the estate to be partitioned consisted of four parcels on Trotter Lane and two parcels on Longs Church Road. Robert owned 2/5 of the estate, and the other three parties each owned 1/5.

{¶4} The court approved the auctioneer's return and declared the property would be sold at auction under R.C. 5307.11 if no party filed an election to purchase it at the appraised value under R.C. 5307.09. (10/6/20 J.E.). On October 13, 2020, Robert and David Trotter jointly filed an election to purchase the property. They attached a certified bank check sufficient to pay Appellants for their entire interest.

{¶5} The same day, an election was filed by Paul Trotter, seeking to purchase only some parcels. An objection to this election was filed which argued a partial election was invalid and Paul failed to demonstrate his ability to pay.

{¶6} The court sustained the objection on the grounds that Paul's election was partial, noting the time for filing a complete election would not expire until November 5, 2020. The court also opined it need not judge who had the superior ability to pay as competing elections require the court to order a public sale. The court invited further briefing on the topic if competing elections were filed. The court also issued a scheduling order applicable to the other counts in the counterclaim. (10/21/20 J.E.).

{¶7} Paul and Mark Trotter then jointly filed a timely election to purchase the estate. On November 2, 2020, Robert and David Trotter filed a motion for an order of immediate sale. They alternatively briefed the ability to pay issue, noting they demonstrated "cash in hand" while Appellants' election contained no evidence they had cash available for the first 1/3 payment or security for the other two payments. *See* R.C. 5307.10 (division of payments).

{¶8} A telephone hearing was held on the record on December 8, 2020. In addition to a discussion on two unrelated parcels, Appellants' attorney mentioned Robert transferred his interest to David, and the court asked counsel for Robert and David to file a notice of the transfer. (12/8/20 Tr. 10-11, 22). It was noted the tax map department asked for a new survey[1] as the legal requirements relating to property descriptions had changed. Appellants questioned whether this would delay the public auction, but the court and the title company's attorney opined a judicial sale was exempt and the buyer would be responsible for any necessary survey. (12/8/20 Tr. 11-12). Appellants also said the sale should be delayed until after the counterclaims against them were tried. (12/8/20 Tr. 15). They further asked to file an untimely response to the motion for an order of sale, and the court said they could "to protect the record." (12/8/20 Tr. 16-17).

{¶9} On December 15, 2020, the notice of transfer was filed showing the transfer of Robert's 2/5 interest to David on November 10, 2020 (recorded 11/12/20). On

[1] The eventual need for a new survey was already disclosed in the April 2020 preliminary judicial report which specifically stated, "Above legal descriptions will require a new survey."

December 17, 2020, Appellants responded to the November 2 motion for an order of sale by summarily stating they objected to it (presenting no arguments).

{¶10} A telephone hearing was held on December 16, 2020. Continuing a discussion from the prior hearing, Robert and David agreed to transfer their interest in two small, unconnected parcels to Appellants in order to avoid the question of whether the action should be amended to include these parcels. Additionally, Robert and David moved to dismiss from their counterclaim the contribution and unjust enrichment counts. The court granted the motion and allowed them to dismiss these counts under Civ.R. 41(A)(2). (12/29/20 J.E.1).

{¶11} The court also filed an entry memorializing this hearing and the one held on December 8, 2020. The court noted Robert's transfer of his interest to David. The court explained the initial preliminary judicial report only involved the two parcels listed in the complaint, but a further appraisal was not necessary as the approved auctioneer's appraisal covered all six parcels. The attorneys were asked to file an updated preliminary judicial report when completed by the title company.[2] (12/29/20 J.E.2).

{¶12} In a separate entry, the court rejected the argument that Appellants were required to attach evidence of the ability to pay in order to file a valid election and found competing elections to take the property at the appraised value required the court to sell the property. The court ordered the property's partition by sale as a single unit at a public auction (with 25% down). (12/29/20 J.E.3). The court later adopted an agreement to decrease the deposit to 10% and to allow separate sales of Tract 1 (consisting of four parcels totaling 14.679 acres with the house) and Tract 2 (consisting of two parcels totaling 52.28 acres) as set forth in the appraisal. (1/14/21).

{¶13} On January 25, 2021, Appellants filed a motion for appointment of a process server and a motion to show cause regarding a non-party individual and a non-party limited liability company, alleging a refusal to comply with a subpoena duces tecum said to be delivered on November 2, 2020. The court deferred ruling on this motion until compliance with Civ.R. 45(A)(3) and (B) was demonstrated.

[2] The court also noted David and Robert were quit-claiming their interest to Appellant in two parcels, which were owned by the parties plus a non-party relative and were not the subject of the partition action.

{¶14} On January 26, 2021, Appellants filed a motion for reconsideration of the order of sale. First, they argued the court should confirm their election as the October 13, 2020 election filed by Robert and David Trotter was invalidated when Robert subsequently transferred his interest to David. Second, they argued the non-party subjects of the motion to show cause may have a legal or equitable interest in the property as they may have entered into a contract with David regarding his interest. The motion also claimed David failed to comply with discovery requests on this subject.

{¶15} On January 28, 2021, Appellants filed a timely notice of appeal from the partition order of sale, which was a final order. *See Gruger v. Koehler*, 7th Dist. Mahoning No. 01 CA 16 (Aug. 28, 2001) (the order of sale in partition is a final order).

{¶16} A status hearing was held on February 3, 2021. The next day, the trial court issued an entry (after the prior day) stating the motion for reconsideration could not be addressed and pointing to the pending notice of appeal. The trial court asked the parties to brief the issue of whether the sale could proceed pending appeal where no stay was issued. The court also noted it was advised by Appellee's attorney that the residence at Tract 1 used a driveway that traversed adjacent land owned by a non-party and the title company's attorney participated in the hearing. (2/4/21 J.E.).

{¶17} Appellee filed a request for execution of judgment, pointing out a court has jurisdiction to execute on its judgment pending appeal in the absence of a stay and Appellants did not move for a stay; they also asked the court to order a supersedeas bond if Appellants sought a stay. Appellants responded by arguing the court's February 4, 2021 entry essentially stayed the sale as the court said it had no jurisdiction until the appeal was completed. They also argued the court had discretion to order a stay without bond.

{¶18} On March 25, 2021, the trial court again explained that it could not address the motion for reconsideration, stating a motion to reconsider a final order is a legal nullity and an appeal was pending, in any event, which deprived the court of jurisdiction. The court concluded it retained jurisdiction to enforce its order and ruled the sale would proceed unless Appellants filed a motion to stay with a supersedeas bond of $180,000

by April 26, 2021, noting the appraisal value of the estate was $329,560 with Appellants owning 2/5 of it. When no motion for stay with bond was filed, the trial court memorialized the passing of the deadline, granted the motion to execute the judgment, and ordered the auctioneer to proceed with the previously ordered sale. (5/5/21).

{¶19} Appellants filed their appellate brief in April 2021. Appellee filed the response brief on July 28, 2021 after receiving multiple extensions, the last of which was prompted by a computer virus and recovery efforts. This brief says it was filed on behalf of Appellees (plural); however, since Robert transferred his interest to David prior to the judgment on appeal, we refer to David as Appellee. The docket shows the return of sale was filed on June 29, 2021 and the sale was confirmed by the trial court (after the expiration of the time for filing responses to the return). (7/1/21 J.E.; 8/2/21 J.E.).

ASSIGNMENT OF ERROR 1: DRIVEWAY

{¶20} Appellants set forth three assignments of error, the first of which provides:

"The Trial Court erred when it refused to consider new information presented to the court prior to the sale of the property regarding the original survey, which should require a new survey to be completed."

{¶21} This assignment of error is based on the fact that the driveway (to the house on Tract 1) crossed adjacent land. Appellants say a sale relying on the property description as contained in the existing survey would constitute a serious irregularity impacting a third-party purchaser at the auction who would purchase the property without awareness that the driveway crossed the property of an adjacent landowner. They note the rights of a third-party purchaser are equal to those of the original parties and a confirmed judicial sale can be set aside for fraud or serious irregularity. *See Portofe v. Portofe*, 153 Ohio App.3d 207, 2003-Ohio-3469, 792 N.E.2d 742, ¶ 26 (7th Dist.). They do not contend the lack of a new survey issue would *negatively* affect the value they would receive from the sale but express fear over a future attempt by a buyer to vacate the sale after the auction.

{¶22} Appellants concede the trial court learned of the driveway location at the February 3, 2021 status hearing, where there was a discussion about the potential need to reach an agreement with the adjacent property owner (such as via easement) or to relocate the driveway. The parties both point to the transcript of that hearing where the

trial court observed the auctioneer should disclose the status of the driveway prior to the sale to place the buyers on notice. (2/3/21 Tr. 5). Appellants do not explain why this would not be adequate notice at a judicial auction in conjunction with the auctioneer's maps showing the driveway location and do not explain what about the survey would lead one to believe the driveway is wholly within the subject property. They just say the survey fails to specifically state part of the driveway is on adjacent land.

{¶23} Appellee points out: the attorney for the title company was at the hearing; an updated preliminary judicial report was prepared by the title company; maps accompanying the auctioneer's appraisal show the driveway runs through adjacent property; and the court advised the parties to ensure the auctioneer provides a disclosure on the driveway at the auction. Moreover, the parties were previously ordered to assist the auctioneer and the title company in preparing the property for sale, advertising, and other matters. We also note when the subject was raised, Appellants spoke of the potential need for a new appraisal due to the driveway issue, not a new survey. (2/3/21 Tr. 7).

{¶24} In any event, as Appellee emphasizes, the final order on appeal did not address this issue as it was not raised to the trial court before the relevant final order was issued. The matter was first discussed at a hearing after this appeal was filed. Appellants did not file a written motion seeking relief from the final judgment on this ground under Civ.R. 60(B), and there was no judgment denying a request by Appellants on the topic. (Even the motion for reconsideration did not address this matter.) As the driveway issue was not raised before the final judgment which is on appeal in this case, this assignment of error lacks merit.

{¶25} Finally and alternatively, although we cannot view items occurring after the judgment on appeal for purposes of the merits of an argument, "an event that causes a case to become moot may be proved by extrinsic evidence outside the record." *State ex rel. Nelson v. Russo*, 89 Ohio St.3d 227, 228, 729 N.E.2d 1181 (2000), quoting *Pewitt v. Lorain Correctional Inst.*, 64 Ohio St.3d 470, 472, 597 N.E.2d 92 (1992). *See also Freedom Mtge Corp. v. Boston*, 7th Dist. Columbiana No. 14 CO 0036, 2016-Ohio-7016, ¶ 1 (appeal of foreclosure judgment moot due to failure to seek a timely stay of execution of the trial court judgment); *American Energy Corp. v. Datkuliak*, 174 Ohio App.3d 398,

2007-Ohio-7199, ¶ 19-39 (7th Dist.) (viewing items outside the record for the limited purpose of determining whether an appeal is moot and finding issue on appeal moot as appellant failed to seek a stay).

{¶26} Appellants did not post a bond to obtain a stay pending appeal as ordered by the trial court under Civ.R. 62(B). And, Appellants did not seek a stay of the sale in this court. *See* Civ.R. 62(D); App.R. 7(A). The sale proceeded, and the property was sold notwithstanding the driveway crossing adjacent land. The auctioneer filed a return of sale on June 29, 2021, showing both tracts sold at auction. No party objected to the return. On August 2, 2021, the court approved the return and confirmed the sale.

{¶27} Furthermore, the return showed Appellant Paul Trotter purchased Tract 1, which was four parcels including the house with the driveway issue. As one of the Appellants was the buyer of the tract with the driveway issue, their argument that the buyer may seek to later vacate the sale (due to lack of knowledge of the driveway issue) would be moot even if it had been raised prior to the judgment ordering the partition sale. Tract 2 sold to a non-party; however, the driveway issue has no relation to said tract. For all of the foregoing reasons, this assignment of error is overruled.

ASSIGNMENT OF ERROR 2: ELECTION TO PURCHASE

{¶28} Appellants' second assignment of error alleges:

"The Trial Court erred when it failed to void Defendants-Appell[ee]s' election when Robert F. Trotter, Jr. sold his interest in the property to David W. Trotter."

{¶29} Appellants agree the trial court properly orders a sale when there are competing election claims in a partition action. *See Rankin v. Coffer*, 85 Ohio Law Abs. 391, 174 N.E.2d 631, 633 (4th Dist.1960). Appellants jointly filed an election. They argue the competing election filed jointly by Robert and David on October 13, 2020 became invalid after Robert transferred his interest in the property to David on November 10, 2020. They contend the trial court should have required David to amend this election and should have accepted their election if he failed to do so. They concede they only raised this argument to the trial court in a motion for reconsideration of the judgment on appeal herein.

{¶30} As Appellee points out, Appellants failed to file a motion to strike or invalidate the election before the trial court's final judgment of partition ordering the sale.

Appellants specifically mentioned the transfer to the trial court at the December 8, 2020 hearing. They merely questioned whether an amended complaint or counterclaim would be required since Robert was no longer a party to the partition action, without voicing an objection to the prior election. (12/8/20 Tr. 10). Nor did Appellants raise this issue with the prior election after the notice of transfer was filed for the record (pursuant to the court's instruction) or at the December 16, 2020 hearing.

{¶31} "[T]he fundamental rule is that an appellate court will not consider any error which could have been brought to the trial court's attention, and hence avoided or otherwise corrected." *Schade v. Carnegie Body Co.*, 70 Ohio St.2d 207, 210, 436 N.E.2d 1001 (1982). The failure to file a motion on the topic (or even make a verbal argument raising a legal argument when the factual matter was discussed during a hearing) waived the argument for purposes of appeal.

{¶32} In addition, the fact that one co-tenant sold his interest to the co-tenant who jointly filed an election with him would not require the sua sponte invalidation of the election filed by the purchasing co-tenant prior to the sale. David's shares in the estate were increased from 1/5 to 3/5. He was a co-tenant with the right to file an election before the transfer from Robert and remained a co-tenant with this right after the transfer. The transfer did not affect David's status as a co-tenant who filed an election. In other words, David did not invalidate or withdraw his election merely by obtaining the interest of Robert, who was the co-tenant with whom he jointly filed the election.

{¶33} Moreover, Appellant acknowledges the trial court could have specifically allowed amendment of the election after Robert transferred his interest to David. In fact, at the December 8, 2020 hearing where the court was informed about Robert's transfer of his interest to David, the court was essentially informed that David wished to proceed with the order of sale based on his election and Appellants' competing election. As Appellee observed, it would not serve judicial economy to sua sponte require an amended election to be filed under the circumstances existing in this case.

{¶34} As for Appellant's post-judgment motion for reconsideration raising this issue, such filing did not place the issue before this court on appeal on the final judgment. "It is established law that in a partition action, it is the order of partition and the order confirming sale which are final appealable orders." *Gruger v. Koehler*, 7th Dist. Mahoning

No. 01 CA 16 (Aug. 28, 2001) (holding the order of sale in partition action akin to foreclosure order of sale). The denial of reconsideration after the order of sale is not a final order. *Id.* A motion to reconsider a final order is a nullity. *Pitts v. Ohio Dept. of Transp.*, 67 Ohio St.2d 378, 379, 423 N.E.2d 1105 (1981). And, this is not an attempted appeal from a decision on the motion for reconsideration. Due to the nullity premise and the fact that an appeal was pending, the trial court did not rule on the motion for reconsideration after the order of partition and sale.

{¶35} Lastly and alternatively, there is a mootness issue. The auction already occurred. One of the Appellants purchased Tract 1. Yet, a non-party purchased Tract 2 at the auction. Appellants' contention (that the public auction should not have been held due to an invalid election) would harm that purchaser. Appellants essentially allowed the sale to proceed by failing to post bond and obtain a stay under the trial court's decision (which found a stay of sale was not automatic) and by failing to seek a stay in this court due to the amount of the bond set by the trial court.

{¶36} Regardless, the issue was waived, the trial court did not err in failing to sua sponte order amendment of the election, and the motion for reconsideration is not a proper topic of this appeal for the aforementioned reasons. This assignment of error is without merit.

ASSIGNMENT OF ERROR 3: DISCOVERY

{¶37} Appellant's final assignment of error alleges:

"The Trial Court erred when it failed to enforce Plaintiff-Appellees' discovery requests."

{¶38} After the trial court issued the final judgment on appeal herein, Appellants filed a motion to show cause as to why a non-party individual and a non-party limited liability company should not be held in contempt for failure to comply with a subpoena duces tecum which sought information on real estate contracts. Appellants claimed they wished to determine if additional parties had a legal or equitable interest in the property. (1/25/21 Mot.). The attached subpoena asked for communications and contracts with Robert or David Trotter to be produced at a deposition on November 9, 2020. A return of service from a process server said she delivered the subpoena to the named individual at the limited liability company on November 2, 2020. Appellants also attached a postal

service tracking receipt which said an item was delivered to an unidentified individual at an unidentified address in East Liverpool on November 2, 2020.

{¶39} On January 27, 2021, the trial court deferred its decision on the motion to show cause until Appellants demonstrated compliance with Civ.R. 45. The court cited the notice requirement in division (A)(3) and the requirement of a signed receipt evidencing service under division (B). The appeal of the final order of partition and sale was then filed by Appellants on January 28, 2021.

{¶40} Appellants' motion for reconsideration, filed on January 26, 2021, also mentioned the non-parties' lack of compliance with the subpoena and the possibility there could be an additional interested party if David entered an agreement to transfer his legal or equitable interest in the parcels to the non-parties. The trial court refused to rule on the motion for reconsideration, initially finding it had no jurisdiction while the appeal was pending. (2/4/21 J.E.). In addressing its jurisdiction to execute on the judgment pending appeal, the court later reiterated it could not reconsider its decision while the appeal was pending and also observed a motion for reconsideration of a final order is a nullity. (3/25/21).

{¶41} In this appeal of the order of partition and sale, Appellants contend the trial court erred by refusing to rule on their discovery requests, referring to two motions.

{¶42} First, Appellants say they filed a motion to compel discovery due to requests served on David Trotter. For the first time, they claim they were prevented from discovering if David had the ability to obtain funds now that Robert transferred his interest to David (and was no longer involved in the election). They reasoned: they would have argued his election was invalid if they could discover David could not fund the purchase without Robert; there would cease to exist competing elections; and if the only election was the one jointly filed by Appellants, then the court would not have ordered the sale at auction.

{¶43} However, Appellants never raised to the trial court a concern about David Trotter's inability to pay in support of his election. The issue was therefore waived. Notably, the trial court previously ruled in *Appellants'* favor when ruling it need not consider ability to pay before ordering sale on competing elections (after Appellee

objected to Appellant's election on the grounds Appellants failed to show an ability to pay for the purchase).

{¶44} Appellant's motion for reconsideration mentioned a motion to compel discovery against David Trotter (when speaking of the motion to show cause against the non-parties). As previously set forth, the post-judgment motion for reconsideration was a nullity, was not addressed by the trial court, and is not part of this appeal. We also note there is no indication a separate or specific motion to compel discovery against David Trotter was filed. Even if a motion had been filed before the final partition judgment ordering the sale, the ability to secure funds to proceed with an election would have been moot for our purposes after the public auction occurred and the sale was confirmed. A stay would have been required in order to preserve the issue. Moreover, the discovery deadline set by the court regarding the non-partition counterclaim issues was essentially irrelevant after the contribution and unjust enrichment counts of the counterclaims were dismissed.

{¶45} Second, Appellants contest the trial court's ruling on their motion to show cause wherein they asked to hold non-parties in contempt. They complain the trial court deferred ruling on their motion until they complied with Civ.R. 45. They claim they complied with division (B) by attaching proof of service of the certified mail sent to the non-party individual and the notice required by division (A)(3) would be satisfied by the January 25, 2021 motion and attachments.

{¶46} Pursuant to Civ.R. 45(A)(3), the party issuing a subpoena to a non-party "shall serve prompt written notice, including a copy of the subpoena, on all other parties as provided in Civ.R. 5." Although the subpoena was allegedly served on November 2, 2020, there was no indication Appellant served prompt written notice on the other parties (before filing a motion to show cause nearly three months later).

{¶47} Pursuant to rule: "Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, by leaving it at the person's usual place of residence, or by placing a sealed envelope containing the subpoena in the United States mail as certified or express mail return receipt requested * * *." Civ.R. 45(B). Regarding the latter option, the party shall provide "instructions to the delivering postal authority to show to whom delivered, date of

delivery and address where delivered * * *." *Id.* Additionally, "The person responsible for serving the subpoena shall file a return of the subpoena with the clerk. When the subpoena is served by mail delivery, the person filing the return shall attach the signed receipt to the return." *Id.*

{¶48} As to the claimed certified mail service of the non-party subpoena, an exhibit to Appellants' motion to show cause was a postal service tracking receipt which said an item was delivered to an unidentified individual at an unidentified address in East Liverpool on November 2, 2020. There was no return receipt showing "to whom delivered, date of delivery and address where delivered" as required under Civ.R. 45(B), which further states the service by mail delivery requires the person filing the return to "attach the signed receipt to the return."[3]

{¶49} Clearly, the court wanted Appellants to re-initiate the subpoena procedure (with the new process server appointed) with prompt notice to the other side and with proper returns. This was not done, and the property was sold. In any event, the motion to show cause as to a non-party is yet another issue raised by Appellants after the issuance of the final order of partition and sale. Post-judgment motions are not part of the judgment on appeal. This assignment of error is overruled.

{¶50} For the foregoing reasons, the trial court's judgment is affirmed.

Waite, J., concurs.

D'Apolito, J., concurs.

[3] Civ.R. 45(B) also states: "A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, or a deputy of any, by an attorney at law, or by any other person designated by order of the court who is not a party and is not less than eighteen years of age." Another exhibit to the show cause motion was the return of a "process server" (without further title) saying she delivered the subpoena to the non-party individual at the non-party limited liability company on November 2, 2020. A request for appointment of a process server was not filed until the day of the motion to show cause, months after this alleged service. Appellants do not rely on this as a service alternative to certified mail.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Columbiana County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.