[Cite as *City of Columbus, Div. of Taxation v. Moses*, 2012-Ohio-6199.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus, Division of Taxation,	:	
Plaintiff-Appellee,	:	No. 12AP-266 (M.C. No. 2006CVI-055689)
v.	:	(REGULAR CALENDAR)
Ambrose Moses, III,	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on December 28, 2012

James E. Chapman, for appellee.

Ambrose Moses, III, pro se.

APPEAL from the Franklin County Municipal Court

BRYANT, J.

{¶1} Defendant-appellant, Ambrose Moses, III, appeals from a judgment of the Franklin County Municipal Court that overruled defendant's objections to a magistrate's decision, adopted the magistrate's decision, denied defendant's motion for sanctions, and granted the motion for sanctions of plaintiff-appellee, City of Columbus. Because defendant's appeal does not present a final appealable order, we dismiss for lack of jurisdiction.

I. Facts and Procedural History

{¶2} On December 29, 2006, plaintiff filed a complaint against defendant alleging defendant owed $365.00 in unpaid taxes, plus tax, penalty, accrued interest, the maximum interest provided by law continuing to accrue until fully paid, and costs. On March 8, 2007, after defendant failed to appear for trial, a magistrate's decision was filed

recommending judgment for plaintiff in the amount of $522.43 plus interest at the rate of 8 percent per annum and court costs. On the same date, the municipal court entered a judgment adopting the magistrate's decision.

{¶3} James E. Chapman filed an appearance as co-counsel for plaintiff on January 5, 2010. Based on an affidavit Chapman filed pursuant to R.C. 2716.11, a court order issued on April 15, 2010 authorizing garnishment of accounts PNC Bank held in the name of "Ambrose I. Moses III," and the notice was properly served on PNC Bank on April 26, 2010. On May 3, 2010, defendant filed a request for a hearing on the garnishment of property; two weeks later he entered his appearance as counsel for Moses Law, LLC and filed a motion to discharge the attachment and garnishment and to return property. On the same date, defendant filed a pro se motion incorporating the arguments Moses Law, LLC made, asserting the garnishment was improper because the judgment creditor failed to comply with R.C. 2716.11, and a false and insufficient affidavit supported the court order.

{¶4} On June 25, 2010, a magistrate conducted a hearing to determine whether the garnished funds were exempt from garnishment. The magistrate hearing the matter filed a decision on June 30, 2010, overruling (1) defendant's motion to assign the case to a municipal court judge, and (2) defendant's motion to dismiss the attachment and garnishment of funds from the PNC account for plaintiff's alleged failure to prove by a preponderance of the evidence that the funds in question belonged to Moses Law, LLC. The municipal court adopted the magistrate's decision on July 8, 2010.

{¶5} On July 14, 2010, defendant filed a suggestion of subornation of perjury accusing Chapman of using a false affidavit and knowingly using false testimony at the garnishment hearing. On the same date, defendant filed 22 objections to the June 30, 2010 magistrate's decision. Plaintiff responded to each of the motions and filed a motion for sanctions against defendant and Moses Law, LLC on July 21, 2010. On August 5, 2010, defendant responded to the motion for sanctions and appealed the July 8, 2010 decision. We dismissed as premature defendant's appeal since the trial court had not entered a final judgment on defendant's objections to the magistrate's decision.

{¶6} The municipal court entered a judgment against defendant on February 28, 2012, overruling defendant's 22 objections to the magistrate's decision. The court also

denied defendant's motion for sanctions and granted plaintiff's motion for sanctions under Civ.R. 11, finding defendant's allegations, objections, and suggestion of subornation of perjury were made in bad faith and with no basis in law. The court's judgment entry set a hearing on damages for a later date.

II. Assignments of Error

{¶7} Defendant appeals, assigning eight errors:

> I. Where the Columbus City Attorney exceeds the powers and duties given to him by Section 67 of the Charter of the City of Columbus, the trial court erred in issuing a garnishment order pursuant to R.C. §2716.11 that was based upon the *ex parte* affidavit of someone other than the judgment creditor or the attorney for the judgment creditor.
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> II. Where the *ex parte* affidavit, purportedly filed pursuant to R.C. §2716.11, incorrectly states the judgment debtor's name, describes property to be garnished only as four digits, and is submitted to a garnishee who holds no property belonging to the judgment debtor, the trial court erred in issuing an order of garnishment.
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> III. Where the trial court issued an Order and Notice of Garnishment based upon an *ex parte* affidavit filed by the judgment creditor or the judgment creditor's attorney, it was error and a denial of due process for the magistrate and trial court to deny the judgment debtor's and the property owner's requests to cross-examine the affiant during the garnishment hearing.
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> IV. Where the bank account was titled in the Ohio limited liability company's name, was assigned to the Ohio limited liability company's tax I.D. number, and all title documents were signed by the member in his representative capacity, the trial court erred in declaring that the Ohio limited liability company did not own the bank account and in denying the Ohio limited liability company standing to challenge the garnishment of said bank account for a debt allegedly owed by a member of the Ohio limited liability company.
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> V. Where the garnishee was an Ohio limited liability company, was not the judgment debtor, was not a party to the action, and was not served with any pleadings, motions, notices, or orders in the case, the trial court erred by taking the limited liability company's property, not following the requirements

> of R.C. §1705.19, in denying the limited liability company's Motion to Discharge Attachment and Garnishment and Motion for Return of Property, and thereby denied the limited liability company substantive and procedural due process guaranteed by the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.
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> VI. Where the attached bank account is solely owned by a limited liability company and a judgment creditor of a member seeks to charge the membership interest of the member with the payment of the unsatisfied amount of the judgment, the municipal court, pursuant to R.C. §1705.19, has no jurisdiction to so charge the membership interest, and erred in ordering attachment and garnishment of the limited liability company's bank account to pay an unsatisfied judgment that is solely against a member in his personal and individual capacity.
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> VII. The trial court erred in applying the Columbus City Ordinance No. 0130-2009 as an *ex post facto* law and permitting the Columbus City Council to violate the separation of powers by legislatively increasing the amount of a judgment that had been entered by the court several years prior to the enactment of the ordinance.
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> VIII. Where the judgment debtor feels that the garnishment order is improper and disputes the purported judgment creditor's right to garnish the property at issue and believes that the purported judgment creditor should not be given the money, property, or credits, other than personal earnings, now in the possession of the garnishee because they are exempt, the trial court erred in granting the purported judgment creditor's motion for sanctions

III. Discussion

{¶8} Because this court's jurisdiction is premised on defendant's appealing from a final appealable order, we first examine the record in that regard.

{¶9} Pursuant to Ohio Constitution, Article IV, Section 3(B)(2) and R.C. 2505.03, appellate courts have jurisdiction to review only final orders, judgments or decrees. " ' "[T]he entire concept of 'final orders' is based upon the rationale that the court making an order which is not final is thereby retaining jurisdiction for further proceedings. A final order, therefore, is one disposing of the whole case or some separate and distinct branch

thereof." ' " *Browder v. Shea*, 10th Dist. No. 04AP-1217, 2005-Ohio-4782, ¶ 10, quoting *Noble v. Colwell*, 44 Ohio St.3d 92, 94 (1989), quoting *Lantsberry v. Tilley Lamp Co.*, 27 Ohio St.2d 303, 306 (1971). An appellate court may not review an order disposing of fewer than all claims unless the order contains express Civ.R. 54(B) language. *Internatl. Bhd. of Elec. Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, ¶ 8, citing *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, ¶ 6.

{¶10} In *Vaughn*, the defendant's answer to the complaint contained a request for statutory attorney fees pursuant to R.C. 4115.16 and sanctions pursuant to Civ.R. 11. *Id.* at ¶ 3. The court held that when attorney fees are requested in the original pleadings, an order that does not dispose of the attorney fee claim and does not include an express determination under Civ.R. 54(B) that there is no just reason for delay is not a final appealable order. *Id.* at ¶ 17. By contrast, in *Harbourtown Properties, Inc. v. Citizens Fed. Bank*, 10th Dist. No. 97APE03-328 (Nov. 10, 1997), the trial court granted the defendant's motion to dismiss that included a request for attorney fees and costs pursuant to Civ.R. 11 and R.C. 2323.51. We affirmed the trial court's dismissal and remanded the case for the trial court to determine whether defendant was entitled to attorney fees. After the trial court determined the defendant was entitled to attorney fees, we nonetheless concluded the judgment entry was not a final appealable order until the trial court determined the amount of fees to be awarded.

{¶11} Neither case is factually on all fours with the present case where the request for attorney fees was not filed with the complaint, as in *Vaughn*; nor was it in the nature of a separate proceeding from the original action, as the R.C. 2323.51 request for fees in *Harbourtown*. Overall, however, this case is more closely aligned with *Vaughn*, as the request for fees is intertwined with the merits, much as with the complaint in *Vaughn*, in that the request was filed with plaintiff's response to defendant's objections to the magistrate's decision. Pursuant to plaintiff's request, the trial court determined plaintiff is entitled to fees, but it did not determine the fees plaintiff should be awarded. Accordingly, the claim for fees is not final. Although Civ.R. 54(B) language arguably would have permitted a review of the underlying action, apart from fees, the trial court's judgment entry does not include Civ.R. 54(B) language.

{¶12} Accordingly, because the trial court disposed of fewer than all of the claims for relief by reserving the issue of damages for a later hearing and did not include Civ.R. 54(B) language, no part of the order appealed is final. *Vaughn* at ¶ 8, citing *Scruggs* at ¶ 6; *see also Green v. Germain Ford of Columbus, LLC*, 10th Dist. No. 08AP-920, 2009-Ohio-5020, ¶ 24-26 (holding the trial court's judgment was not final and appealable since the issue of attorney fees was unresolved and the judgment entry contained no Civ.R. 54(B) language); *Niehaus v. Columbus Maennerchor*, 10th Dist. No. 07AP-1024, 2008-Ohio-4067, ¶ 23 (holding the trial court's judgment constituted a final appealable order although the issue of attorney fees remained unresolved since the judgment entry expressly stated there was no just reason for delay under Civ.R. 54(B)); *Std. Plumbing & Heating Co. v. Hartman*, 5th Dist. No. 2003CA0091, 2004-Ohio-3964, ¶ 115 (dismissing appeal for lack of a final appealable order where the trial court had scheduled but not held an evidentiary hearing on entitlement to attorney fees).

IV. Disposition

{¶13} Because the order defendant appealed from is not a final appealable order, we are compelled to dismiss defendant's appeal.

Appeal dismissed.

TYACK and FRENCH, JJ., concur.