[Cite as *Volkert v. S. Auto Sales, Inc.*, 2010-Ohio-5820.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Rose Volkert and Joseph Jay Volkert,	:	
Plaintiffs-Appellants,	:	
		No. 10AP-422
v.	:	(M.C. No. 2010 CVI 00955)
Southern Auto Sales, Inc. et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on November 30, 2010

Rose Volkert; *Joseph Jay Volkert*, pro se.

Ester D. Harber, for appellees.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Plaintiffs-appellants, Rose Volkert and Joseph Jay Volkert (together, "appellants"), appeal an entry issued by the Franklin County Municipal Court, which vacated a prior magistrate's decision and set the matter for pre-trial. Because the entry is not a final, appealable order, we dismiss the appeal and remand the matter to the trial court for further proceedings.

{¶2} On January 8, 2010, appellants filed a complaint against defendants-appellees, Southern Auto Sales, Inc. and Hung H. Nguyen (together, "appellees"), in the

small claims division of the municipal court. In the complaint, appellants alleged that Nguyen had accepted three vehicles for care at Southern Auto Sales. All three vehicles had since been removed from the premises and had not been returned. Appellants sought $7,950 in damages, plus court costs, interest, and other appropriate amounts.

{¶3} The matter was set for trial on February 11, 2010, before a magistrate in the small claims division. On February 8, 2010, appellants moved to transfer the matter to the general division or, in the alternative, to dismiss Rose Volkert and amend Joseph Jay Volkert's prayer for relief to request judgment in the amount of $3,000. On February 10, 2010, appellees filed an answer, in which appellees asked that the complaint be dismissed because the requested damages exceeded the small claims jurisdictional limit of $3,000. The answer did not address any of the substantive allegations in the complaint.

{¶4} On February 18, 2010, the magistrate filed a decision, which states that appellees failed to appear for trial on February 11. The magistrate entered judgment in favor of "plaintiff" in the amount of $3,000, plus court costs and interest. That same day, the trial court filed a judgment entry that adopted the magistrate's decision.

{¶5} On February 25, 2010, the trial court issued an entry determining that the February 10 answer would not be considered. The handwritten notes on the entry state that court costs and interest are not included within the $3,000 jurisdictional limit applicable to the small claims division.

{¶6} On March 2, 2010, appellees filed objections to the magistrate's decision. In their objections, appellees noted their answer, which they assumed would postpone the trial set for February 11. Appellees alleged that they have substantial evidence to

contradict appellants' claims and also to support counterclaims. Appellants filed a reply to the objections.

{¶7} On April 15, 2010, the trial court issued an entry that vacated the magistrate's February 18 decision "due to procedural error." The court noted that appellants' February 8 motion had not been acted upon, and the prayer for relief remained at $7,950. The court set the matter for pre-trial.

{¶8} On April 16, 2010, appellees moved for leave to file an answer, affirmative defenses, and a counterclaim. Appellees also moved to transfer the matter to the general division and to continue the pre-trial.

{¶9} On May 4, 2010, appellants filed a notice of appeal, in which they appeal the trial court's April 15 entry. Appellants raise the following assignments of error:

> I. IT IS REVERSIBLE ERROR WHEN THE COURT VACATED THE MAGISTRATE'S ORDER OF FEBRUARY 18, 2010 ON GROUNDS THAT – The Plaintiff's Motion of February 10, 2010 to transfer the cause of action to the General Division of this court, or dismiss Plaintiff Rose Volkert, in the alternative was never acted upon.
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> II. IT IS REVERSIBLE ERROR WHEN THE COURT VACATED THE MAGISTRATE'S ORDER OF FEBRUARY 18, 2010 ON GROUNDS THAT – Defendant's Objection to Magistrate's Decision of February 18, 2010 is sustained and Judgment hereby vacated *due to procedural error.* [Emphasis added.]

{¶10} Before addressing appellants' assignments of error, we consider whether the trial court's April 15 entry is a final, appealable order. We may raise this jurisdictional question sua sponte and must dismiss an appeal that is not taken from a final, appealable order. *Englert v. Nutritional Sciences, LLC*, 10th Dist. No. 07AP-305,

2007-Ohio-5159, ¶5, citing *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 87.

{¶11} Section 3(B)(2), Article IV of the Ohio Constitution limits this court's jurisdiction to the review of final orders. A final order "is one disposing of the whole case or some separate and distinct branch thereof." *Lantsberry v. Tilley Lamp Co.* (1971), 27 Ohio St.2d 303, 306. A trial court's order is final and appealable only if it satisfies the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B). *Denham v. New Carlisle*, 86 Ohio St.3d 594, 596, 1999-Ohio-128, citing *Chef Italiano* at 88. This case implicates R.C. 2505.02(B)(1), which provides that an order "that affects a substantial right in an action that in effect determines the action and prevents a judgment" is final and appealable.

{¶12} Here, the April 15 entry vacated the magistrate's decision and set the matter for pre-trial. The trial court's actions were proper under Civ.R. 53. Civ.R. 53(E)(4)(e)(i) allows a trial court to immediately adopt a magistrate's decision and enter judgment without waiting for objections, but the filing of timely objections automatically stays execution of the judgment until the court disposes of the objections and vacates, modifies or adheres to the judgment already entered. Accordingly, magistrate decisions are interlocutory in nature, and remain so, even after a trial court adopts them, "unless and until the court enters a final order that determines all the claims for relief in the action or determines that there is no just reason for delay." *Mahlerwein v. Mahlerwein*, 160 Ohio App.3d 564, 572, 2005-Ohio-1835, ¶19. Accord *Robinson v. Bur. of Motor Vehicles*, 8th Dist. No. 88172, 2007-Ohio-1162, ¶5, and *Crane v. Teague*, 2d Dist. No. 20684, 2005-Ohio-5782, ¶38. As applied here, the magistrate's February 18 decision,

including any ruling the magistrate may have made concerning appellants' February 8 motion, was subject to change and could be reconsidered upon appellees' timely objections.

{¶13} Most importantly, the April 15 entry does not dispose of the case. It does not determine any of the issues between the parties, nor does it prevent judgment in appellants' favor. Instead, it merely resets the matter for further proceedings before the trial court. Therefore, it does not fall within the parameters of R.C. 2505.02(B)(1).

{¶14} Finally, we have not considered whether Civ.R. 54(B) applies to this matter. If it were to apply, however, it would preclude this appeal. In matters involving more than one claim for relief or multiple parties, Civ.R. 54(B) allows the court to 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." There is no such indication within the April 15 entry.

{¶15} For all these reasons, we conclude that the order from which appellants appealed is not final and appealable, and we lack jurisdiction to consider it. Accordingly, we dismiss appellants' appeal. Appellants' motion to supplement the record with their answer to appellees' counterclaim is denied as moot.

Motion to supplement denied; appeal dismissed.

KLATT and DELANEY, JJ., concur.

DELANEY, J., of the Fifth Appellate District, sitting by assignment in the Tenth Appellate District.