

IN THE SUPREME COURT OF OHIO

RAYE ANN FEAZEL, et al.,)
)
 Appellees,)
)
 v.)
)
 BONNIE F. MILLS,)
)
 and)
)
 STATE FARM MUTUAL AUTOMOBILE)
 INSURANCE COMPANY,)
)
 Appellant.)

CASE NO. 09 - 0949

On Appeal From The Butler
 County Court of Appeals,
 Twelfth Appellate District
 Case Nos. CA09-02-0063
 & CA09-03-0091

NOTICE OF APPEAL

FILED
MAY 22 2009
CLERK OF COURT
SUPREME COURT OF OHIO

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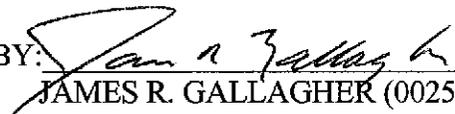
Attorney for Appellees

Attorney for Appellant
 State Farm Mutual Automobile
 Insurance Company

Appellant State Farm Mutual Automobile Insurance Company hereby gives Notice of its Appeal to the Supreme Court of Ohio from the Judgment of the Butler County Court of Appeals, Twelfth Appellate District, entered in Court of Appeals Case Nos. CA09-02-0063 and CA09-03-0091 on April 7, 2009 and May 12, 2009, styled *Raye Ann Feazel, et al., Plaintiffs-Appellees v. Bonnie F. Mills and State Farm Mutual Automobile Insurance Company, Defendant-Appellant*. This appeal combines an appeal of right regarding a constitutional issue of denial of due process and access to the courts with a discretionary appeal that raises an issue of public or great general interest.

Respectfully submitted,

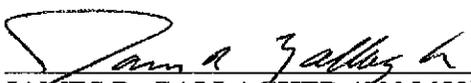
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CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal was served by regular U.S. mail, postage pre-paid, upon Philip A. Logan, Attorney for Appellees, at Katzman, Logan, Halper & Bennett, 9000 Plainfield Road, Cincinnati, Ohio 45236 this 22nd day of May, 2009.



JAMES R. GALLAGHER (0025658)
Attorney for Appellant
State Farm Mutual Automobile
Insurance Company

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

RAYE ANN FEAZEL, et al., : CASE NO. CA2009-02-063, -03-091

Appellees,

vs.

BONNIE F. MILLS, et al.,

Appellants.

FILED BUTLER CO.
COURT OF APPEALS

APR 07 2009

CINDY CARPENTER
CLERK OF COURTS

: ENTRY OF DISMISSAL

The above cause is before the court pursuant to a notice of appeal filed by appellant, State Farm Mutual Automobile Insurance Company, on February 23, 2009 (Case No. Butler CA2009-02-063), and a second notice of appeal filed by State Farm on March 20, 2009 (Case No. CA2009-03-091). The February 23, 2009 notice of appeal states that State Farm intends to appeal a January 22, 2009 decision and entry by the Butler County Court of Common Pleas denying a motion to reconsider, and a September 18, 2008 decision and entry resolving motions for summary judgment filed by State Farm and appellees, Raye Ann Feazel, Administratrix of the Estate of Benjamin Feazel; Raye Ann Feazel, Individually and on behalf of the parents and next of kin of Benjamin Feazel; Terry Feazel, Individually and on behalf of the parents and next of kin of Benjamin Feazel; and a cross-motion for summary judgment filed by State Farm. The March 20, 2009 notice of appeal states that State Farm intends to appeal the above decisions "and the Additional Joint Stipulation of the Parties filed on February 23, 2009."

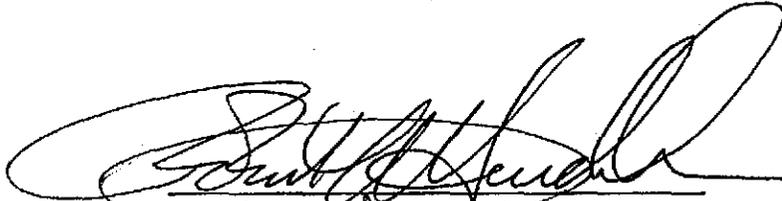
The September 18, 2008 decision and entry resolving the motions and cross-motion for summary judgment appears to resolve all remaining issues with respect to the underlying case. It is therefore a final appealable order, and should have been appealed within 30 days or on or before October 18, 2008. In the January 22, 2009 decision and entry, the court denied a motion for reconsideration. A motion for reconsideration of a final

order filed in a trial court is a nullity. *Pitts v. Ohio Dept. of Transportation* (1981), 67 Ohio St.2d 378. Since a motion for reconsideration is a nullity and not a final appealable order, this court lacks jurisdiction to entertain an appeal from an order denying a motion for reconsideration. *State v. Leach*, Clermont App. No. CA2004-02-011, 2005-Ohio-2370.

The "Additional Joint Stipulation of the Parties" filed on February 23, 2009, as the caption indicates, is not an entry or judgment by the trial court; it sets forth certain stipulations agreed to by the parties in light of the trial court's decision and the filing of this appeal. State Farm's appeal from this "Additional Joint Stipulation of the Parties" finds no support in the Rules of Appellate Procedure or the final order statute, R.C. 2505.02.

Based upon the foregoing, the present appeal is not timely with respect to the decision and entry filed on September 18, 2008; the January 22, 2009 decision and entry denying State Farm's motion to reconsider is not appealable because the motion is a nullity; and the additional stipulation of the parties is not an appealable order. Accordingly, Case Nos. Butler CA2009-02-063 and Butler CA2009-03-091 are hereby DISMISSED, with prejudice, costs to appellant.

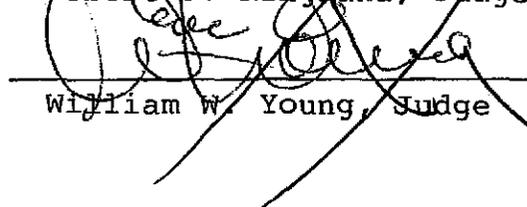
IT IS SO ORDERED.



Robert A. Hendrickson, Judge



Robert P. Ringland, Judge



William W. Young, Judge

IN THE COURT OF APPEALS OF BUTLER COUNTY, OHIO

RAYE ANN FEAZEL, et al., : CASE NO. CA2009-02-063, -03-091

Appellees, : ENTRY DENYING APPLICATION FOR
RECONSIDERATION

vs.

BONNIE F. MILLS, et al.,

Appellants.

FILED BUTLER CO.
COURT OF APPEALS

MAY 12 2009

CINDY CARPENTER
CLERK OF COURTS

The above cause is before the court pursuant to an application for reconsideration filed by appellant, State Farm Mutual Automobile Insurance Company, on April 17, 2009; a memorandum in opposition filed by counsel for appellees, Raye Ann Feazel, et al., on April 23, 2009; and a reply memorandum filed by appellant on April 28, 2009.

On April 7, 2009, this appeal was dismissed for the reason that it was not filed timely with respect to the trial court's decision and entry filed on September 18, 2008. This court found a motion for reconsideration filed by appellant on November 13, 2008 to be a nullity, and found that an "Additional Joint Stipulation of the Parties" filed on February 23, 2009 did not resolve any issues that were necessary to make the September 18, 2008 decision and entry a final order.

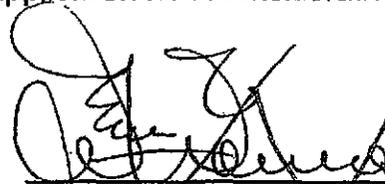
In its application for reconsideration, State Farm argues that paragraphs 22 and 23 of the original complaint request damages in the amount of \$100,000 for breach of contract, and that paragraph 24 of the initial complaint alleges that State Farm committed the tort of bad faith due to its refusal to pay uninsured/underinsured motorist benefits. These claims were not raised by the parties in any motion before the trial court, or in the Additional Joint Stipulation of the Parties. State Farm now apparently asserts that none of the orders appealed from were final due to claims raised in the

initial complaint but never otherwise argued or addressed by the parties or the trial court.

The September 18, 2008 decision and entry resolved all issues before the court. It interpreted the insurance policies that were at issue. No damages were awarded to appellees for breach of contract or bad faith. To the extent, if any, that these claims were not resolved, they were waived by appellees, who have never raised these issues in any form other than allegations in the initial complaint.

Based upon the foregoing, the application for reconsideration is DENIED.

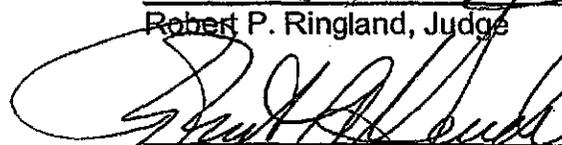
IT IS SO ORDERED.



William W. Young, Judge



Robert P. Ringland, Judge



Robert A. Hendrickson, Judge