

**IN THE SUPREME COURT OF OHIO
CASE NO: 15-1495**

PNC Bank, N.A., Trustee of)
The Leonard G. Steuer Trust,)
) On appeal from the Cuyahoga County
Plaintiff-Appellee,) Court of Appeals, Eighth Appellate
) District
v.)
) Court of Appeals Case Number: CA
Loren N. Couplin, et al.,) 102813
)
Defendant-Appellees.)
)

**DEFENDANT-APPELLEE LOREN N. COUPLIN'S MEMORANDUM
IN RESPONSE TO DEFENDANT-APPELLANT LEILANI HINGADA'S
MEMORANDUM IN SUPPORT OF JURISDICTION**

Jeanette M. Weaver (0039697)
8748 Brecksville Road, Suite 200
Brecksville, Ohio 44141
*Attorney for Plaintiff-Appellee
PNC Bank, N.A., Trustee of the
Leonard Steuer Trust w/a/d June 19,
1973*

Barry Epstein (0017342)
580 South High Street, Suite 130
Columbus, Ohio 43215
*Attorney for Defendant-Appellant
Leilani Hingada*

Angela G. Carlin (0010817)
Karen A. Davey (0010829)
Weston Hurd LLP
1301 E. 9th Street, Suite 1900
Cleveland, Ohio 44114
*Attorneys for Defendant-Appellee
Loren N. Couplin*

Aaron Couplin
14640 Friar Street, Apt. 14
Van Nuys, California 91411
Defendant-Appellee

Now comes the Defendant-Appellee Loren N. Couplin ("Loren"), by and through his undersigned counsel, and respectfully submits his memorandum in response to the memorandum in support of jurisdiction filed by Defendant-Appellant Leilani Hingada ("Hingada").

Respectfully submitted,

/s/Angela G. Carlin

ANGELA G. CARLIN (0010817)

ACarlin@westonhurd.com

KAREN A. DAVEY (0010829)

KDavey@westonhurd.com

Weston Hurd LLP

The Tower at Erievue

1301 East 9th Street, Suite 1900

Cleveland, OH 44114-1862

216.241.6602 / 216.621.8369 fax

Attorneys for Defendant-Appellee

Loren N. Couplin

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
PROCEDURAL HISTORY.....	1
LAW AND ARGUMENT	3
I. STATEMENT OF LOREN'S POSITION AS TO WHETHER A SUBSTANTIAL CONSTITUTIONAL QUESTION IS INVOLVED OR WHETHER THE CASE IS OF PUBLIC OR GREAT GENERAL INTEREST	3
A. A Substantial Constitutional Question Is Not Involved In This Case	3
B. The Case Is Not Of Public Or Great General Interest	3
II. BRIEF AND CONCISE ARGUMENT IN SUPPORT OF LOREN'S POSITION REGARDING EACH PROPOSITION OF LAW RAISED IN THE MEMORANDUM IN SUPPORT OF JURISDICTION.....	6
CONCLUSION.....	10
CERTIFICATE OF SERVICE	11

TABLE OF AUTHORITIES

Cases	Page
<i>Barksdale v. Van's Auto Sales, Inc.</i> , 38 Ohio St.3d 127, 527 N.E.2d 284 (1988)	5
<i>Boyd v. Lincoln Electric Co.</i> , 8 th Dist. Cuyahoga No. 90315, 2008-Ohio-3044	4
<i>Harkai v. Scherba Industries, Inc.</i> , 136 Ohio App.3d 211, 736 N.E.2d 101 (2000)	7
<i>Maritime Manufacturers, Inc. v. Hi-Skipper Marina</i> , 70 Ohio St.2d 257, 436 N.E.2d 1034 (1982)	6
<i>Noble v. Colwell</i> , 44 Ohio St.3d 92, 540 N.E.2d 1381 (1989)	4
<i>Settlers Bank v. Burton</i> , 4 th Dist. Washington Nos. 11CA10, 11CA12, 11CA14, 2012-Ohio-2418	5
<i>State v. Firouzmanki</i> , 5 th Dist. Licking No. 2006-CA-41, 2006-Ohio-5823	7
<i>Stewart v. Midwestern Indemn. Co.</i> , 45 Ohio St.3d 124, 543 N.E.2d 1200, (1989)	3
 Other Authorities	
App. R. 4(C)	7
Ohio Const. Art. IV, Section 3(B)(1)(f)	7
R.C. 2505.02	4
 Rules	
App.R. 4(B)(2)	2
Civ. R. 54(B)	3
Civ.R. 54(B)	4, 5, 6

**MEMORANDUM IN RESPONSE TO
MEMORANDUM IN SUPPORT OF JURISDICTION**

INTRODUCTION

This case was originally filed in the Probate Court of Cuyahoga County by Plaintiff-Appellant PNC Bank, N.A., Trustee of the Leonard G. Steuer Trust U/A/D June 19, 1973 ("PNC Bank, Trustee"). PNC Bank, Trustee brought this declaratory judgment action seeking a determination as to whether Hingada and Aaron Couplin (and any unknown issue of Andrew Couplin) were "lawful blood descendants" of Leonard G. Steuer so as to qualify as beneficiaries of his trust.

PROCEDURAL HISTORY

On March 4, 2015, the trial court filed an entry captioned "Judgment Entry" that ruled on Loren's motion for partial summary judgment. That Judgment Entry granted partial summary judgment and held that Hingada did not qualify as one of the "lawful blood descendants" of Leonard G. Steuer. As such she was not a beneficiary of the Leonard G. Steuer Trust.

After the March 4, 2015 Judgment Entry, there remained the only one other issue, whether Defendant Aaron Couplin, or any issue or heir of Andrew Couplin, were one of the "lawful blood descendants" of Leonard G. Steuer. On April 1, 2015, the Probate Court filed an entry captioned, "Entry of Judgment in Default as to Defendants Aaron Couplin and Unknown Heirs of Andrew Couplin." That

entry was the final order that resulted in the adjudication of all of the claims and all of the rights and liabilities of all of the parties in the action.

However, after March 4, 2015 and before April 1, 2015, Hingada filed an appeal to the Eighth District Court of Appeals. Hingada filed her Notice of Appeal appealing from the March 4, 2015 Judgment Entry on March 31, 2015. Loren filed a Motion to Dismiss the appeal because the appeal was not taken from a final appealable order.

The Eighth District Court of Appeals granted Loren's motion. In its Journal Entry, the appellate court held that Hingada's Notice of Appeal sought review of an order granting partial summary judgment which is not a final order. The appellate court further held that Hingada could not amend her notice of appeal under App.R. 4(B)(2) because that rule only applies when a party wishes to appeal from a trial court ruling that was made on remand from the appellate court concerning a post-judgment motion.

Hingada filed a motion for reconsideration in the appellate court which was subsequently denied.

LAW AND ARGUMENT

I. STATEMENT OF LOREN'S POSITION AS TO WHETHER A SUBSTANTIAL CONSTITUTIONAL QUESTION IS INVOLVED OR WHETHER THE CASE IS OF PUBLIC OR GREAT GENERAL INTEREST

A. A Substantial Constitutional Question Is Not Involved In This Case

As explained below, there is no substantial constitutional question in this case. Hingada's due process rights were protected at all times; she simply failed to exercise them by failing to appeal from the final appealable order.

B. The Case Is Not Of Public Or Great General Interest

Hingada has misstated the issue before this court. The merits of the underlying dispute are not relevant to this proceeding. The sole issue on appeal is whether Hingada filed her Notice of Appeal from the trial court to the Eighth District Court of Appeals from a final appealable order. The Eighth District held that she had not. That issue is not of public or great general interest. Indeed, the issue as to what constitutes a final appealable order is well-settled in Ohio. An appeal from a judgment granting partial summary judgment which does not address the rights of another party is not an appealable order unless it meets the requirements of R.C. 2505.02 and contains Civ. R. 54(B) language. *See, Stewart v. Midwestern Indemn. Co.*, 45 Ohio St.3d 124, 543 N.E.2d 1200, (1989).

Revised Code 2505.02(B) provides in part:

- (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
 - (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

To constitute a final appealable order, the order must affect a substantial right in the action and in effect determine the action and prevent a judgment. In the instant case, the order appealed from did not determine the action. The rights of Aaron Couplin and the issue or heirs of Andrew Couplin had not been adjudicated. Evidence of the fact there were outstanding parties is the April 1, 2015 entry itself which adjudicated the rights of the remaining parties.

Assuming the order appealed from in this case to the Eighth District Court of Appeals met the requirements of R.C. 2505.02, it did not meet the requirements of Civ.R. 54(B). Civil Rule 54(B) states in part:

When more than one claim for relief is presented in an action . . . and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may 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. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

The March 4, 2015 Judgment Entry, which entered judgment as to Hingada, may have been a final and appealable order had it expressly contained the phrase "there is no just reason for delay." This Court has previously found that the use of the phrase, "there is no just reason for delay" is mandatory and that unless those words appear where multiple claims and/or multiple parties exist, the order is subject to modification and it cannot be either final or appealable. *Noble v. Colwell*, 44 Ohio St.3d 92, 540 N.E.2d 1381 (1989). *See, also, Boyd v. Lincoln Electric Co.*, 8th Dist. Cuyahoga No. 90315, 2008-Ohio-3044. The trial court's March 4, 2015 Judgment Entry did not adjudicate the rights of Aaron Couplin, nor did it adjudicate the rights of the issue or heirs of Andrew Couplin. In a case decided by the Fourth District, the court held that where the trial court granted Settlers Bank's motion for default against one defendant but failed to adjudicate the claims against the other four defendants, the order which did not expressly contain the mandatory Civ.R. 54(B) language, did not constitute a final appealable order. *Settlers Bank v. Burton*, 4th Dist. Washington Nos. 11CA10, 11CA12, 11CA14, 2012-Ohio-2418.

There is no public or great general interest as to whether Hingada failed to appeal from a final appealable order and Hingada has failed to demonstrate any.

II. BRIEF AND CONCISE ARGUMENT IN SUPPORT OF LOREN'S POSITION REGARDING EACH PROPOSITION OF LAW RAISED IN THE MEMORANDUM IN SUPPORT OF JURISDICTION

Hingada raises one proposition of law in her memorandum in support of jurisdiction. She states:

Where a litigant files a notice of appeal in a timely manner but which is based on an Entry that is not the final appealable order that notice should be treated as timely so long as there is no undue prejudice to any party.

The explanatory text associated with this proposition of law argues that the appellate court's refusal to allow her appeal is contrary to Ohio Supreme Court precedent, the Ohio Rules of Appellate Procedure and the due process guarantees under the U.S. and Ohio Constitutions. As such, Hingada's argument is that even though she failed to file a notice of appeal from the final appealable order in this case, the Eighth District Court of Appeals should have allowed her appeal. That position is contrary to Ohio law.

First, the Ohio Supreme Court's precedent cited by Hingada is not applicable to this case. Hingada first cites *Barksdale v. Van's Auto Sales, Inc.*, 38 Ohio St.3d 127, 527 N.E.2d 284 (1988) where this court held that where the appeal perfected by the defendant was from the trial court's denial of the motion for judgment n.o.v. and for a new trial (a post-judgment motion) and not from the final judgment on the merits, the appellate court erred in failing to consider the merits of the case.

The difference between *Barksdale* and the case at bar is that in *Barksdale*, the entry from which the defendant appealed (the entry denying the motion for judgment n.o.v and for a new trial) was entered on August 13, 1986 which was *after* the July 3, 1986 entry granting judgment in favor of the plaintiff and in the instant case the entry from which Hingada appealed was entered *prior* to the final order. This distinction is critical because the final order in this case had not even been entered when Hingada filed her Notice of Appeal. As such, she failed to appeal from a final appealable order which is fatal where no Civ.R. 54(B) language appears.

The second case Hingada relies upon is *Maritime Manufacturers, Inc. v. Hi-Skipper Marina*, 70 Ohio St.2d 257, 436 N.E.2d 1034 (1982). In *Maritime*, the appellant appealed from the judgment which overruled a motion for new trial; not from the judgment entered after the trial on the merits. The appellate court dismissed the appeal holding that all of the assignments of error were directed to the alleged errors of the trial court in the conduct of the case on its merits, not to the overruling of the motion for new trial and the appeal was taken from the judgment overruling the motion for a new trial. This court reversed the appellate court. Again, *Maritime* is inapposite to the case at bar because in *Maritime*, the order from which the appeal was taken was entered *after* the entry which disposed of the case on the merits. In the instant case, the order from which the appeal was

taken was entered *prior* to the final order. Again, the distinction is critical because the order from which Hingada appealed simply was not a final appealable order.

Second, Hingada alleges, without explanation, that the appellate court's refusal to allow her appeal is contrary to "the due process guaranteed" under the United States Constitution. Hingada's due process rights have not been denied. She was afforded the right to appeal this case to the Eighth District Court of Appeals and no one took that right away from her. She chose to file her appeal before the case was determined. She appealed from the trial court's granting of Loren's motion for *partial* summary judgment. The entry itself should have made it apparent to her that the case was not over. Appellate courts have jurisdiction to review only final and appealable orders. *Harkai v. Scherba Industries, Inc.*, 136 Ohio App.3d 211, 736 N.E.2d 101 (2000). Hingada was never denied her right to appeal from the final order in this case; she simply failed to take advantage of that right. Hingada's due process rights were protected; she simply failed to exercise them.

Third, Hingada fails to explain how her rights under the Ohio Constitution have been violated. In fact, the Ohio Constitution does not expressly provide for a "right" to appeal although Ohio Const. Art. IV, Section 3(B)(1)(f) does provide for the establishment of an appellate court system. *State v. Firouzmandki*, 5th Dist.

Licking No. 2006-CA-41, 2006-Ohio-5823. In any event, Hingada had every right to appeal the final appealable order in this case and she failed to exercise that right.

Finally, with regard to the Ohio Rules of Appellate Procedure, Hingada misapplies App. R. 4(C). That rule states:

(C) Premature notice of appeal

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.

Contrary to Hingada's argument, the notice of appeal to the Eighth District Court of Appeals was not 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. In fact, there was never an announcement of a decision or order in this case. There were simply (1) an order granting partial summary judgment and (2) a later final order determining the rights of the remaining parties. Hingada appealed from the order granting partial summary judgment. No appeal was taken from the final order in this case. The appellate court was correct in dismissing the appeal.

CONCLUSION

The trial court's March 4, 2015 Judgment Entry was not a final appealable order. Hingada did not appeal from a final appealable order. No appeal was taken from the final appealable order entered in this case on April 1, 2015 and the time for filing such an appeal has long since expired. Hingada's appeal was properly dismissed by the Eighth District Court of Appeals.

Respectfully submitted,

/s/Angela G. Carlin

ANGELA G. CARLIN (0010817)

ACarlin@westonhurd.com

KAREN A. DAVEY (0010829)

KDavey@westonhurd.com

Weston Hurd LLP

The Tower at Erieview

1301 East 9th Street, Suite 1900

Cleveland, OH 44114-1862

216.241.6602 / 216.621.8369 fax

Attorneys for Defendant-Appellee

Loren N. Couplin

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October 2015, a copy of the foregoing **DEFENDANT-APPELLEE LOREN N. COUPLIN'S MEMORANDUM IN RESPONSE TO DEFENDANT-APPELLANT LEILANI HINGADA'S MEMORANDUM IN SUPPORT OF JURISDICTION** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Angela G. Carlin

ANGELA G. CARLIN, ESQ.