

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

JOHN PETO

C.A. No. 28196

Appellant/Cross-Appellee

v.

JIM RUSCHAK, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
STOW MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 2013 CVI 2305

Appellees/Cross-Appellants

DECISION AND JOURNAL ENTRY

Dated: December 29, 2017

TEODOSIO, Judge.

{¶1} Jim Ruschak, Progressive Realty Associates of Ohio, Inc. (“Progressive Realty”), and Brett A. Slagle appeal the March 21, 2016, order of the Stow Municipal Court. We dismiss for lack of subject matter jurisdiction.

I.

{¶2} On September 11, 2013, John Peto filed a complaint against Jim Ruschak, Progressive Realty, and Brett A. Slagle, alleging breach of contract, breach of fiduciary duty, and fraud, stemming from the potential sale of a condominium from Mr. Peto to Mr. Slagle. Mr. Ruschak and Progressive Realty were identified as Mr. Slagle’s realtors, and the complaint alleged fraud against all three of the defendants. A hearing was held before the magistrate in October 2013, resulting in a decision in favor of the defendants. In December 2013, the trial court supplemented the magistrate’s decision, overruled Mr. Peto’s objection, and awarded judgment in favor of the defendants.

{¶3} On January 17, 2014, Mr. Ruschak and Progressive Realty filed “defendants’ motion for an award of reasonable attorney’s fees against plaintiff and plaintiff’s counsel.” The motion states:

Although Defendant Slagle did not participate in engaging the Stimler Law Office to pursue this Motion for An Award of Attorney Fees for economic reasons, the Court may nonetheless assess against Attorney [June] Rickey and Plaintiff Peto and make an award to Defendant Slagle as a party to the civil action who was adversely affected by their frivolous conduct under [R.C.] 2323.51 because Defendant Slagle has incurred reasonable attorney’s fees for the trial before the Magistrate and the preparation of the Defendants’ Brief In Support Of Magistrate’s Decision in conjunction with Defendants Ruschak and Progressive.

We note that Attorney Stimler had represented Mr. Slagle throughout the matter. The motion also specifically requested that the trial court “award Defendants Ruschak, Progressive and Slagle money damages against Plaintiff Peto and Attorney Rickey * * *.”

{¶4} The order of the trial court entered on November 10, 2014, which granted the motion, provided: “Based on the above, plaintiff and plaintiff’s counsel engaged in frivolous conduct under [R.C.] 2323.51. Further, the court finds plaintiff and plaintiff’s counsel willfully violated [Civ.R.] 11, in that they did not have good grounds to support the complaint or objections.” The trial court awarded “attorney fees in the amount of \$11,280.00 and reasonable expenses of expert services in the amount of \$2,349.00 against plaintiff and plaintiff’s counsel.” The order does not specify that the award is made in favor of a particular defendant or particular defendants, nor does it identify the defendants by name. Rather, the order repeatedly refers to the “defendants.”

{¶5} An appeal of the November 2014 order was heard by this Court, and by an entry dated December 31, 2015, we reversed the trial court in part, concluding that “just because Mr. Peto lost at trial on his breach of contract and breach of fiduciary claims does not mean that he willfully violated Rule 11 or engaged in frivolous conduct under Section 2323.51.” With regard

to his fraud claim, we remanded the case to the trial court “to consider the amount Mr. Peto should be sanctioned for improperly alleging fraud in his complaint.”

{¶6} Upon remand, the trial court held a hearing on March 18, 2016, a transcript of which is not before this Court. By an order dated March 21, 2016, the trial court awarded “the defendant attorney fees in the amount of \$4,649.91 and reasonable expenses of expert services in the amount of \$783.00 against the plaintiff for the reasons set forth on the court’s official record.” Mr. Ruschak, Mr. Slagle, and Progressive Realty subsequently filed a motion asking the trial court to correct the award to reflect that it was in favor of the “defendants” (plural) and against both “plaintiff and plaintiff’s counsel.” The motion was denied on April 15, 2016. Mr. Ruschak, Mr. Slagle, and Progressive Realty now appeal, raising one assignment of error.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT, WHOSE REMAND MANDATE WAS SOLELY TO DETERMINE THE AMOUNT OF THE SANCTION FOR IMPROPERLY ALLEGING FRAUD IN THE COMPLAINT, ERRED AS A MATTER OF LAW IN ALSO CHANGING THE AWARD OF SANCTIONS TO A SINGULAR, UNNAMED DEFENDANT AND AGAINST THE PLAINTIFF ONLY, INSTEAD OF KEEPING THE AWARD TO THE PLURAL [3] DEFENDANTS AGAINST THE PLAINTIFF AND PLAINTIFF’S COUNSEL.

{¶7} We do not reach the merits of the assignment of error.

{¶8} This Court is obligated to raise sua sponte questions related to our jurisdiction. *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.*, 29 Ohio St.2d 184, 186 (1972). “Pursuant to R.C. 2505.02 and Civ.R. 54(B), an appellate court may review a trial court judgment only if that judgment constitutes a final, appealable order.” *Bilder v. Hayes*, 9th Dist. Summit No. 16704, 1995 Ohio App. LEXIS 254, *2 (Jan. 25, 1995). In the absence of a final, appealable order, this Court must dismiss the appeal for lack of subject matter jurisdiction. *Lava Landscaping, Inc. v.*

Rayco Mfg., Inc., 9th Dist. Medina No. 2930-M, 2000 Ohio App. LEXIS 176, *2 (Jan. 26, 2000). “An order is a final appealable order if it affects a substantial right and in effect determines the actions and prevents a judgment.” *Yonkings v. Wilkinson*, 86 Ohio St.3d 225, 229 (1999). “[A] judgment which awards attorney fees but leaves the amount of those fees unresolved does not constitute a final, appealable order.” *Bilder* at *2. *Accord Commonwealth Land Title Ins. Co. v. Choice Title Agency, Inc.*, 9th Dist. Lorain No. 10CA009848, 2011-Ohio-396, ¶ 10. (“[T]he trial court’s failure to enter the specific award of attorney fees as to all the parties divests this Court of jurisdiction to address the merits of the appeal.”)

{¶9} The trial court’s order of November 10, 2014, awarded attorney fees “against plaintiff and plaintiff’s counsel.” As we have noted, that order does not specify that the award was made in favor of a particular defendant or particular defendants; rather, the order repeatedly references “defendants” without further explanation or identification. We are unable to discern whether the trial court’s use of the term “defendants” referred to all three defendants, or only the two defendants—Jim Ruschak and Progressive Realty—who filed the motion for an award of reasonable attorney’s fees, both on behalf of themselves as well as on behalf of Mr. Slagle. In either scenario, however, multiple defendants were implicated. Furthermore, both Mr. Peto and his counsel were the named recipients of the sanctions.

{¶10} The trial court’s March 21, 2016, entry awarding “defendant attorney fees in the amount of \$4,649.91 and reasonable expenses of expert services in the amount of \$783.00 against the plaintiff” did not resolve the issue of sanctions as to all parties. The trial court’s previous usage of the plural form “defendants” was replaced with the singular “defendant,” and the uncertainty as to their identities persists. Sanctions cannot be awarded where the recipient has not been identified, and although the amount of the award was specified, the award remains

unresolved due to this ambiguity. There also remains the issue of sanctions against Mr. Peto's attorney, which were levied by the November 2014 order, but left undetermined by the trial court's March 2016 entry.

{¶11} We conclude the trial court failed to adjudicate all the rights and liabilities of all parties to the action. *See Commonwealth* at ¶ 12. The trial court's March 21, 2016, entry is not a final, appealable order, and we therefore dismiss this appeal for lack of subject matter jurisdiction.

III.

{¶12} The appeal is dismissed for lack of jurisdiction.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant/Cross-Appellees.

THOMAS A. TEODOSIO
FOR THE COURT

SCHAFER, P. J.
CONCURS.

CARR, J.
DISSENTS.

{¶13} I respectfully dissent. I agree with cross-appellants that the trial court erred by exceeding the scope of our remand instructions. I would assert jurisdiction over the appeal, reverse the trial court's judgment, and remand for further proceedings.

APPEARANCES:

JUNE E. RICKEY, Attorney at Law, for Appellant/Cross-Appellee.

JAMES T. STIMLER, Attorney at Law, for Appellee/Cross-Appellants.