

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY, OHIO**

ATLAS AMERICA, INC.,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2008-P-0093
MICHAEL J. FANO, et al.,	:	December 12, 2008
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2005 CV 01251.

Judgment: Appeal dismissed.

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MARY JANE TRAPP, J.

{¶1} On October 10, 2008, appellants, Michael J. Fano and Christine A. Fano, filed a notice of appeal from a September 10, 2008 entry of the Portage County Court of Common Pleas. In that entry, the trial court ordered that Michael and Christine's "motion to extend time for filing objections to the Magistrate's Decision is out of rule and denied."

{¶2} We must determine whether the trial court’s decision is a final, appealable order which vests this court with jurisdiction. According to Section 3(B)(2), Article IV of the Ohio Constitution, an appellate court can immediately review a judgment of a trial court only if it constitutes a “final order” in the action. *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶3. If a lower court’s order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20. For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and if applicable, Civ.R. 54(B).

{¶3} Pursuant to R.C. 2505.02(B), there are five categories of a “final order,” and if a trial court’s judgment satisfies any of them, it will be considered a “final order” which can be immediately appealed and reviewed by a court of appeals. R.C. 2505.02(B)(1) provides an order: “[t]hat affects a substantial right in an action that in effect determines the action and prevents a judgment” is final and appealable. Civ.R. 54(B) provides, in relevant part: “When more than one claim for relief is presented in an action *** whether arising out of the same or separate transactions, *** the court may enter final judgment as to one or more but fewer than all the claims*** only upon expressed determination that there is no just cause for delay.”

{¶4} ““Under Civ.R. 53(E)(4)¹, one of three scenarios occurs after a magistrate’s decision: (1) absent objections, the court may adopt the decision if no errors of law or other defects appear on the face of the decision; (2) if objections are filed, the court considers the objections and may adopt, reject, or modify the decision,

1. Now Civ.R. 53(D)(4), effective July 1, 2006.

hear additional evidence, recommit the matter to the magistrate, or hear the matter; or (3) the court may immediately adopt the 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. ***' Furthermore, a magistrate's decision remains interlocutory, even if adopted by the court, 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. See Civ.R. 54(B). ***

{¶5} ****

{¶6} "[A] final judgment does not exist where the trial court fails to both adopt the magistrate's decision and enter judgment stating the relief to be afforded. *** The reason for this is that orders are not court orders unless certain formalities are met. *** In addition, only judges, not magistrates, may terminate claims or actions by entering judgment. ***'" (Citations omitted). *Ingledue v. Premier Siding & Roofing, Inc.*, 5th Dist. No. 2005CAE120088, 2006 Ohio App. LEXIS 2543, 2006-Ohio-2698, at ¶11-13.

{¶7} In the instant matter, the trial court has yet to both adopt the magistrate's decision and enter judgment stating the relief to be afforded. Therefore, at this point, there is no order issued by the trial court that fits within any of the categories of R.C. 2505.02.

{¶8} Accordingly, the September 10, 2008 judgment entry denying Michael and Christine's motion to extend the time for filing objections is not a final appealable order. Therefore, this court does not have jurisdiction to hear this appeal. Since the magistrate's decision has not yet been adopted by the trial court, it remains an

interlocutory order and may be reconsidered upon the court's own motion or that of a party. This case must be returned to the trial court, at which time the trial court "**** may adopt or reject the magistrate's decision in whole or in part, with or without modification. *** [The] court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate." Civ.R. 53(D)(4)(b).

{¶9} Accordingly, the instant appeal is dismissed for lack of jurisdiction.

{¶10} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

TIMOTHY P. CANNON, J.,

concur.