

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

SAM MONTELLO,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2009-L-111
THOMAS ACKERMAN,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 08 CV 001678.

Judgment: Appeal dismissed.

David M. Lynch, 29311 Euclid Avenue, #200, Wickliffe, OH 44092 (For Plaintiff-Appellant).

Charles V. Longo, Charles V. Longo, Co., L.P.A., 25550 Chagrin Boulevard, #320, Beachwood, OH 44122 (For Defendant-Appellee).

COLLEEN MARY O'TOOLE, J.

{¶1} On September 8, 2009, appellant, Sam Montello, filed a notice of appeal from an August 6, 2009 entry of the Lake County Court of Common Pleas. In that entry, the trial court granted the motion for summary judgment of appellee, Thomas Ackerman.

{¶2} Appellee filed a motion to dismiss the appeal on October 13, 2009. In his motion, appellee alleges that this court lacks jurisdiction to hear this appeal since the August 6, 2009 entry was not a final appealable order pursuant to Civ.R. 54(B).

Specifically, appellee indicates that the trial court did not resolve his counterclaim for attorney fees. Appellant filed no response to the motion to dismiss.

{¶3} A review of the trial court docket reveals that appellant filed his complaint on May 20, 2008. Appellee filed his answer to the complaint and his counterclaim on September 15, 2008. Appellee filed an amended counterclaim with the trial court on November 19, 2008. Appellee then filed a motion for summary judgment on April 17, 2009, which the trial court granted on August 6, 2009.

{¶4} Civ.R. 54(B) provides that:

{¶5} “When more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, 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.”

{¶6} It is well-established that in a situation where there are multiple claims and/or parties involved, an entry that enters final judgment as to one or more but fewer than all of the claims is not a final appealable order in the absence of Civ.R. 54(B) language stating that “there is no just reason for delay[.]” *Girard v. Leatherworks*

Partnership, 11th Dist. No. 2001-T-0138, 2002-Ohio-7276, at ¶17, citing *State ex rel. A & D Ltd. Partnership v. Keefe* (1996), 77 Ohio St.3d 50, 56. See, also, *Kessler v. Totus Tuus, L.L.C.*, 11th Dist. No. 2007-A-0028, 2007-Ohio-3019, at ¶ 7.

{¶7} Here, while the trial court granted appellee's motion for summary judgment, it is clear that appellee's counterclaim for attorney fees is still pending in the trial court. Furthermore, the August 6 judgment entry that was appealed from does not contain any Civ.R. 54(B) language. Thus, without the inclusion of Civ.R. 54(B) language, there is no final appealable order at this time.

{¶8} Based upon the foregoing analysis, appellee's motion to dismiss is granted and this appeal is dismissed due to lack of a final appealable order.

{¶9} Appeal dismissed.

MARY JANE TRAPP, P.J.,

DIANE V. GRENDALL, J.,

concur.