

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

JOSEPH ALOI,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2011-P-0023
ENERVEST, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2009 CV 00751.

Judgment: Appeal dismissed.

Joseph Aloi, pro se, 7807 State Route 303, Windham, OH 44288 (Plaintiff-Appellant).

John W. Solomon, Vorys, Sater, Seymour and Pease, L.L.P., 106 South Main Street, #1100, Akron, OH 44308, and *John K. Keller* and *Grant M. Watson*, Vorys, Sater, Seymour and Pease, L.L.P., 52 East Gay Street, Columbus, OH 43215 (For Defendants-Appellees).

DIANE V. GRENDELL, J.

{¶1} On March 25, 2011, appellant, Joseph Aloi, pro se, filed a notice of appeal from a March 4, 2011 entry of the Portage County Court of Common Pleas. In the March 4 entry, the trial court overruled Mr. Aloi's motion to recuse Judge John A. Enlow and disqualify Magistrate Kent M. Graham.

{¶2} On August 1, 2011, appellees, Enervest and Clinton Gas, filed a motion to dismiss the appeal for lack of a final appealable order. In their motion, appellees assert that the March 4, 2011 entry is not a final appealable order and is not proper for

appellate review. On August 5, 2011, Mr. Aloï filed a memorandum in opposition to the motion to dismiss.

{¶3} Pursuant to R.C. 2701.03, the determination of a claim that a common pleas judge is biased is within the exclusive jurisdiction of the Chief Justice of the Supreme Court of Ohio. An appellate court does not have the authority to determine whether a judge from the common pleas court is, or should be, disqualified from presiding over a matter. *State v. Holdcroft*, 3rd Dist. No. 16-10-04, 2010-Ohio-6262, at ¶27. Furthermore, “[t]he denial of a motion to disqualify (a magistrate) is not a final, appealable order.” *Abbas v. Abbas* (Mar. 10, 2000), 6th Dist. No. WD-00-015, 2000 Ohio App. LEXIS 1004, at *1, citing *In re: Kimbler* (1988), 44 Ohio App.3d 9. Therefore, the judgment entry overruling the motion to recuse a common pleas judge and disqualify a magistrate is not a final appealable order.

{¶4} Based on the foregoing, the denial of a motion to recuse Judge Enlow and disqualify Magistrate Graham is not a final order. Thus, appellees’ motion to dismiss this appeal is hereby granted, and the appeal is dismissed for lack of a final appealable order.

{¶5} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.