

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

IN THE MATTER OF THE CREATION OF : **MEMORANDUM OPINION**
A PARK DISTRICT WITHIN CHESTER :
TOWNSHIP : **CASE NO. 2014-G-3242**

Civil Appeal from the Geauga County Court of Common Pleas, Probate Division.
Case No. 84 PC 000139.

Judgment: Appeal dismissed.

Todd M. Raskin and Frank H. Scialdone, Mazanec, Raskin, Ryder & Keller Co., L.P.A.,
100 Franklin's Row, 34305 Solon Road, Solon, OH 44139 (For Appellant Chester
Township Park District, Board of Trustees).

James M. Gillette, City of Chardon Police Prosecutor, PNC Bank Building, 117 South
Street, Suite 208, Chardon, OH 44024 (For Appellee Chester Township Park District,
Board of Commissioners).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Chester Township Park District, Board of Trustees, appeals
from the judgment of the Geauga County Court of Common Pleas, Probate Division,
holding it responsible for 75% of uncertain sums in the form of fees and costs accrued
by the Master Commissioner presiding over the underlying matter.

{¶2} The underlying case apparently resulted in the creation of the Chester
Township Park District, pursuant to an application from appellant in 1984. The case

was reopened in March 2014, sua sponte, by the probate court, apparently for the purpose of appointing a Master Commissioner to investigate various issues pertaining to the operation of the Chester Township Park District. The Master Commissioner, thereafter, conducted a full review of the issues and prepared a report with recommendations.

{¶3} The probate court subsequently held a public hearing at which the Master Commissioner presented and delivered her report to the court. The court invited comments from appellant as well as from Chester Township residents. Appellant submitted comments, and on November 26, 2014, after reviewing the report and comments, the probate court issued a judgment with findings of fact and conclusions of law. In its entry, the court concluded, inter alia, the cost of the Master Commissioner shall be borne 75% by appellant and appellee, Chester Township Park District, Board of Commissioners, and 25% by the court.

{¶4} Appellant filed a notice of appeal of the probate court's judgment. Appellant moved the lower court to stay the proceedings pending the instant appeal, which was denied. Appellant subsequently moved this court for a temporary stay of the proceedings, which was granted. Appellee filed a motion to dismiss the appeal. This court additionally ordered the parties to file all memoranda on the issue of jurisdiction; namely, whether the November 26, 2014 judgment was a final, appealable order. The parties complied. Pursuant to the following analysis, we dismiss the instant appeal.

{¶5} "Pursuant to Article IV, Section 3(B)(2) of the Ohio Constitution, courts of appeals have jurisdiction only to 'affirm, modify or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district.'" *State v.*

Strickland, 11th Dist. Trumbull No. 2014-T-0049, 2014-Ohio-5622, ¶13. 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.*, 44 Ohio St.3d 17, 20 (1989).

{¶6} Furthermore, standing to appeal a final order lies only on behalf of a party aggrieved by the order from which the appeal is taken. *Ohio Contract Carriers Assn., Inc. v. Pub. Util. Comm.*, 140 Ohio St.160 (1942), syllabus. A party is "aggrieved" if his or her present interest in the litigation's subject matter is "immediate and pecuniary, and not a remote consequence of the judgment." *Id.* at 161, quoting 2 American Jurisprudence, Appeal and Error, Section 50, at 942 (1936); see also *Midwest Fireworks Mfg. Co., Inc. v. Deerfield Twp. Bd. of Zoning Appeals*, 91 Ohio St.3d 174, 177 (2001). "[A] future, contingent or speculative interest is not sufficient" to confer standing to appeal. *Id.*

{¶7} First, because no cost amount has been finally fixed, the order being appealed is, in effect, inchoate. It is clear, at this point, the trial court intends to hold appellant and appellee responsible for 75% of the Master Commissioner's eventual fees and costs. To the extent that figure has not been approved and ordered into execution, however, the underlying order does not fully and finally resolve the issue appellant challenges. The judgment is functionally akin to a finding of liability without a determination of damages. In this respect, it is not a final, appealable order. See, e.g., *CitiMortgage, Inc. v. Roznowski*, 139 Ohio St.3d 299, 2014-Ohio-1984, ¶13 ("generally an order that determines liability but not damages is not a final, appealable order").

{¶8} Furthermore, the probate court has declared appellant responsible for a percentage of the Master Commissioner's costs. As just noted, that amount has not yet been determined. Because the trial court has not yet approved and ordered payment of the Master Commissioner's fees and costs, there is no actual, immediate specified amount for which appellant is responsible. The pecuniary interest at issue is therefore "future, contingent, and speculative." *Midwest Fireworks, supra*, at 177. Accordingly, appellant lacks standing at this time to challenge the issue on appeal.

{¶9} For the foregoing reasons, the instant matter is dismissed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.