

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

| | | |
|--------------------------|---|-----------------------------|
| CHASE HOME FINANCE, LLC, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| - VS - | : | CASE NO. 2014-A-0076 |
| RUSSELL L. GAU, et al., | : | |
| Defendants, | : | |
| JENEE S. GRAY, et al., | : | |
| Defendants-Appellants. | : | |

Civil Appeal from the Ashtabula County Court of Common Pleas, Case No. 2008 CV 00884.

Judgment: Appeal dismissed.

Monica E. Russell, McFadden & Freeburg Co., L.P.A., 6690 Beta Drive, Suite 320, Mayfield Village, OH 44143 (For Plaintiff-Appellee).

Michael J. Drain, 147 Bell Street, #202, Chagrin Falls, OH 44022 (For Defendants-Appellants).

CYNTHIA WESTCOTT RICE, J.

{¶1} On December 17, 2014, appellants, Jenee S. Gray and Doresa Gray, filed a notice of appeal from a November 18, 2014 judgment entry of the Ashtabula County Court of Common Pleas.

{¶2} A review of the record in this matter reveals that on June 24, 2008, appellee, Chase Home Finance, LLC, initiated a foreclosure action against defendants,

Russell L. Gau, his ex-wife, Jodi L. Gau, and Second National Bank. The complaint was amended on October 1, 2010, and appellants as well as others were added as defendants. Appellants owned the property adjacent to the Gau property. Appellee asserted a claim for reformation of the deeds in the chain of title and claims for quiet title, adverse possession and declaratory judgment against appellants and other defendants. Appellants filed an answer and cross-claim to the amended complaint, in which they asserted that they are entitled to a portion of the Gau property due to defective legal descriptions in the chain of title. Appellants alleged claims for quiet title, declaratory judgment, adverse possession and ejectment.

{¶3} The trial court bifurcated the foreclosure claims and the boundary line dispute claims. On May 24, 2011, the trial court granted appellee a default judgment against Russell Gau and other parties related to the foreclosure claims. Jodi Gau filed an answer to appellee's complaint and the foreclosure claims against her are still pending. The trial court held a trial on the boundary line dispute claims, and in a November 18, 2014 entry, the trial court found in favor of appellee and against appellants, and reformed the legal descriptions for the Gau property. The trial court further ordered appellee to provide the court with a judgment entry in foreclosure in line with its decision. It is from that entry that appellants filed the instant appeal.

{¶4} On January 13, 2015, appellee filed a motion to dismiss the appeal alleging that this court does not have jurisdiction to consider this appeal since the case involves multiple parties and claims and the trial court's November 18, 2014 entry did not contain the requisite Civ.R. 54(B) language. In its motion, appellee states that it has not provided the trial court with a foreclosure decree because it needs to obtain judgment against Jodi Gau before it can proceed. Further, appellee asserts that it will

be filing a motion for summary judgment in the trial court with respect to its claims against Jodi Gau.

{¶5} No brief or memorandum in opposition to the motion to dismiss has been filed.

{¶6} Initially, we must determine whether there is a final, appealable order, as this court may entertain only those appeals from final judgments or orders. *Noble v. Colwell*, 44 Ohio St.3d 92, 96 (1989). According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate 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.*, 44 Ohio St.3d 17, 20 (1989). 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). See *Children’s Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. No. 2011-P-0103, 2011-Ohio-6838, ¶3.

{¶7} Civ.R. 54(B) provides the following:

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.

{¶8} This court has repeatedly held that where there are multiple claims and/or parties involved, an entry entering final judgment as to one or more but fewer than all of the claims or parties is not a final, appealable order in the absence of Civ.R. 54(B) language stating that “there is no just reason for delay[.]” *Meffe v. Griffin*, 11th Dist. No. 2012-T-0032, 2012-Ohio-3642, ¶11. See also *Elia v. Fisherman’s Cove*, 11th Dist. No. 2010-T-0036, 2010-Ohio-2522, ¶6.

{¶9} Here, it appears that there are claims still pending in the trial court, and without the inclusion of Civ.R. 54(B) language, no final, appealable order exists at this time. Further, appellee was ordered to provide the trial court with a foreclosure decree, which has not yet been done.

{¶10} Based upon the foregoing analysis, the motion to dismiss filed by appellee is hereby granted, and this appeal is dismissed due to lack of a final, appealable order.

{¶11} Appeal dismissed.

TIMOTHY P. CANNON, P.J.

THOMAS R. WRIGHT, J.,

concur.