[Cite as *Estate of Haueter*, 2016-Ohio-7164.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

ESTATE OF:	**:**	**MEMORANDUM OPINION**
DONALD HENRY HAUETER o.w. DONALD H. HAUETER, DECEASED	**:**	**CASE NO. 2016-G-0071**

Appeal from the Geauga County Court of Common Pleas, Probate Division, Case No. 13 PE 000109.

Judgment: Appeal dismissed.

Katherine E. Wensink, McDonald Hopkins, LLC, 600 Superior Avenue East, Suite 2100, Cleveland, OH 44114 and *Mary K. Whitmer*, Whitmer & Ehrman, LLC, 2344 Canal Road, Suite 401, Cleveland, OH 44113-2535 (For Plaintiff-Appellee).

Paul A. Newman, Paul A. Newman, Esq., LLC, 201 Main Street, Chardon, OH 44024 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Donna Zaverl, appeals the trial court's decision overruling and disallowing her claim against the Estate of Donald Henry Haueter. Zaverl's appeal is dismissed as the appealed entry is not a final appealable order.

{¶2} An application for authority to administer the Estate of Donald Henry Haueter was filed in 2013. Numerous claims were filed against the estate. In March of

2013, Zaverl filed her claim against the estate alleging that the decedent breached a land installment contract resulting in foreclosure and her property being sold at sheriff's sale. Zaverl seeks $250,000 in damages.

{¶3} The numerous claims against the estate were collectively heard by the probate court during a February 23, 2016 hearing at which the estate disputed Zaverl's claim. The court subsequently addressed Zaverl's claim along with the others against the estate in its March 28, 2016 judgment. This decision allowed numerous claims against the estate ordering them to be paid to the extent the funds are available. However, the probate court disallowed Zaverl's claim, stating:

{¶4} "10. The claim by Donna Zaverl is without legal merit and is overruled and disallowed. Nonpayment of the mortgage by Donna Zaverl caused the foreclosure that resulted in the termination of the life estate. The Land Installment Contract was not recorded as required by R.C. 5313.02(C). Additionally, the claimant's remedy was forfeiture of the Land Installment Contract."

{¶5} Zaverl appealed, and we ordered the parties to show cause as to why the appeal should not be dismissed. The parties filed competing submissions regarding jurisdiction.

{¶6} An appellate court may only consider appeals from final judgments or orders. *Noble v. Colwell*, 44 Ohio St.3d 92, 96, 540 N.E.2d 1381 (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. Lake 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 appeal must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (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. Portage No. 2011-P-0103, 2011-Ohio-6838, ¶3.

{¶7} R.C. 2505.02 defines a final order in part, as:

{¶8} "(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶9} "(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶10} "(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment* * *."

{¶11} Thus, we must determine if the judgment entry appealed satisfies either R.C. 2505.02(B)(1) or (B)(2), the potentially applicable subsections.

{¶12} The probate court's disallowance of Zaverl's claim is not final under R.C. 2505.02(B)(1) because the judgment does not determine the action and prevent a judgment. Instead, "there is a specific statutory process for the presentation of claims to an estate. Pursuant to R.C. 2117.06(B), [a claimant is] required to present her claims to the administrator within six months of [the decedent's] death. Thereafter, the administrator [is] required to decide whether to allow or reject [the] claims * * * If the claims [are] rejected, [the claimant has] the opportunity to contest that decision by 'commencing an action on the claim.' R.C. 2117.12." *Ward v. Patrizi*, 11th Dist. Geauga No. 2010-G-2994, 2011-Ohio-5100, ¶18.

{¶13} R.C. 2117.12, *When action on rejected claim is barred*, states in part:

{¶14} "When a claim against an estate has been rejected in whole or in part but not referred to referees, * * * the claimant must commence an action on the claim, or that part of the claim that was rejected, within two months after the rejection if the debt or that part of the debt that was rejected is then due, * * * or be forever barred from maintaining an action on the claim or part of the claim that was rejected."

{¶15} Further, R.C. 2117.17(D) states "[a]n order of the court disapproving the allowance of a claim shall have the same effect as a rejection of the claim on the date on which the claimant is served with notice of the court's order."

{¶16} Here, the probate court disallowed and rejected Zaverl's claim against the estate after a hearing consistent with R.C. 2117.17. Pursuant to R.C. 2117.12, Zaverl had two months thereafter to file suit on the claim in a court of general jurisdiction with the authority to render a money judgment. *Ryan v. Ploharski-Hauser*, 2011 Ohio Misc. LEXIS 16987, Franklin C.P. No. 10CVH-09-14210, *3, citing *Estate of Liggons*, 187 Ohio App.3d 750, 2010-Ohio-1624, discretionary appeal not allowed 126 Ohio St.3d. 1548, 2010-Ohio-3855. R.C. 2117.12 essentially imposes a two-month statute of limitations for the prosecution of a rejected claim. *Gibbons v. Price*, 33 Ohio App.3d 4, 514 N.E.2d 127 (8th Dist. 1996).

{¶17} Thus, even though the probate court disallowed the claim, Zaverl still had an avenue to pursue her claim by filing suit before the expiration of the two-month period thereafter. Accordingly, the probate court's disallowance of her claim did not determine the action and prevent a judgment, and as such, is not a final appealable order under R.C. 2505.02(B)(1).

{¶18} Moreover, R.C. 2117.17(D) clearly states that "[a]n order of the court *confirming the allowance* or classification of a claim *shall constitute a final order* and shall have the same effect as judgment at law or decree in equity * * *." (Emphasis added.) R.C. 2117.17(D) does not state that an order *disallowing* a claim against the estate is a final order. The legislatures' express designation of an order confirming the *allowance* of a claim as a final order reflects its intent to exclude orders that *disallow* claims against an estate from constituting final orders. *See State v. Smith*, 10th Dist. Franklin Nos. 14AP-154, 14AP-155, 2014-Ohio-5303, ¶12, citing *Myers v. Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353, 852 N.E.2d 1176, ¶24.

{¶19} As an aside, the probate court's adjudication of the merits of Zaverl's claim against the estate does not have preclusive effect and "creates no res judicata bar to the action" in the general division of the court of common pleas. *Bank One, N.A. v. Johnson,* 2nd Dist. Greene No. 03CA0039, 2003-Ohio-6906, ¶23-29. Instead, the probate court's rejection of Zaverl's claim triggered her two-month window to file her suit in the general division, and the probate court's "advice" as to the merits of her claim, while not improper, is a nullity since a "probate court lacks subject jurisdiction to adjudicate the merits of a creditor's claim against a decedent's estate." *Id.* at ¶27, citing *In re Estate of Vitelli*, 110 Ohio App.3d 181, 673 N.E.2d 948 (1996).

{¶20} As for R.C. 2505.02(B)(2), we also find that the probate court's decision disallowing Zaverl's claim is not a judgment that "affects" a substantial right made in a special proceeding, and therefore it is likewise not a final order subject to review by this court under subsection (B)(2).

{¶21} A "substantial right" is defined as "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). Here, Zaverl's breach of land installment contract claim is one that she is entitled to enforce and protect, and as such is a substantial right. *Bell Drilling & Product Co. v. Kilbarger Constr. Inc.*, Hocking App. No. 96CA23, 1997 Ohio App. LEXIS 2963 (June 26, 1997) (concluding that judgment in favor of breach of contract claim is an order that affected a substantial right and determined the action).

{¶22} However, the probate court's decision does not "affect" her substantial right. "An order which *affects* a substantial right has been perceived to be one which, if not immediately appealable, would foreclose appropriate relief in the future." (Emphasis added.) (Citations omitted.) *Bell v. Mount Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63, 616 N.E.2d 181 (1993); *Hartley v. Hartley*, 3rd Dist. Marion No. 9-06-26, 2007-Ohio-114, 2007 Ohio App. LEXIS 115, ¶14; *In re Estate of Wyckoff*, 166 Ohio St. 354, 359, 142 N.E.2d 660 (1957) (finding a claim that "could not be collaterally raised and relitigated in a separate action brought in another court" affecting a substantial right).

{¶23} Thus, because Zaverl had the opportunity to pursue her breach of contract claim within the two months following the probate court's decision disallowing her claim against the estate, its decision did not foreclose all available relief into the future. *Fougere v. Estate of Fougere*, 10th Dist. Franklin No. 11AP-791 2012-Ohio-4830 (holding that it lacked jurisdiction to consider appeal from probate order disallowing creditor's claim because the claimant had available relief, i.e., the option to file suit

within two months, and as such, the order was not a final order under either R.C. 2505.02(B)(1) or (B)(2)).

{¶24} Based on the foregoing, the trial court's decision is not a final appealable order under R.C. 2505.02(B)(2) because it did not affect a substantial right.

{¶25} Accordingly, the order appealed from is not a final appealable order because it does not satisfy any of the provisions in R.C. 2505.02. Thus, we lack jurisdiction to determine the merits of this appeal and dismiss the same.

CYNTHIA WESTCOTT RICE, P.J.,

TIMOTHY P. CANNON, J.,

concur.