

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

STEALTH INVESTIGATIONS, INC.,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-08-216
- vs -	:	<u>OPINION</u>
	:	2/1/2010
MID-WESTERN AUTO SALES, INC.,	:	
Defendant-Appellee.	:	

CIVIL APPEAL FROM MIDDLETOWN MUNICIPAL COURT  
Case No. CVF01420

Jack Harrison, 130 West Second Street, Suite 604, Dayton, Ohio 45402, for plaintiff-appellant

Thomas G. Eagle, 3386 N. State Route 123, Lebanon, Ohio 45036, for defendant-appellee

**RINGLAND, J.**

{¶1} Plaintiff-appellant, Stealth Investigations, Inc., appeals a decision entering a directed verdict in favor of defendant-appellee, Mid-Western Auto Sales, Inc.

{¶2} In the summer or fall of 2007, Stealth, a licensed private investigator, approached Mid-Western, a used car business, about providing professional investigative services. After allegedly conducting some work for Mid-Western, Stealth submitted invoices to the dealership on January 14, 2008. Mid-Western refused to pay, denying that any contract or agreement existed between the companies and that any

work conducted by Stealth was done on a promotional basis only.

{¶13} Stealth filed a complaint in municipal court, claiming money due for services rendered. Mid-Western filed an answer, denying the allegations, and a counterclaim for the return of money and property. The counterclaim also included a demand for attorney fees.

{¶14} The matter came to trial before a magistrate on November 13, 2008. Mid-Western moved for a directed verdict after Stealth finished presenting its case, arguing that the Ohio Revised and Administrative Codes require licensed professional investigators to have a written contract. The magistrate agreed and dismissed Stealth's case on December 29, 2008. On January 16, 2009, Stealth filed a Civ.R. 60(B) motion and objections to the magistrate's decision. The lower court overruled the motion and objections on June 24, 2009.

{¶15} On June 30, 2009, Mid-Western filed a motion for attorney fees, urging that Stealth's pursuit of the action was frivolous. Stealth filed a notice of appeal to this court on July 23, 2009, raising one assignment of error:

{¶16} "THE TRIAL COURT ERRED IN NOT APPLYING THE DOCTRINES OF QUANTUM MERUIT, QUASI CONTRACT AND UNJUST ENRICHMENT TO REIMBURSE APPELLANT FOR THE SUCCESSFUL EFFORTS IT PROVIDED APPELLEE AND WHICH HE DOES NOT DENY."

{¶17} In its sole assignment of error, Stealth argues that it is entitled to the reasonable value of services provided to Mid-Western in the absence of an express contract based upon the doctrines of quantum meruit, quasi contract and unjust enrichment.

{¶18} Mid-Western urges that this court is without jurisdiction to hear the instant appeal because its demand for attorney fees included in the counterclaim and the

motion for attorney fees remain pending in the lower court and, as a result, no final appealable order exists. We agree.

{¶9} "It is well-established that an order must be final before it can be reviewed by an appellate court. If an order is not final then an appellate court has no jurisdiction." *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20. See, also, *Klein v. Bendix-Westinghouse Automotive Air Brake Co.* (1968), 13 Ohio St.2d 85, 86. "For a court order to be final and appealable, it must satisfy the requirements of R.C. 2505.02, and if the action involves multiple claims and the order does not enter a judgment on all of the claims, the order must satisfy Civ.R. 54(B) by including the language that 'there is no just reason for delay.'" *Internatl. Bhd. of Electric Workers, Local Union No. 8. v. Vaughn Industries, LLC*, 116 Ohio St.3d 335, 2007-Ohio-6439, ¶7.

{¶10} Civ.R. 54(B) provides, "[w]hen 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."

{¶11} "In absence of express Civ.R. 54(B) language, an appellate court may not review an order disposing of fewer than all claims." *Internatl Bhd.* at ¶8. Absent Civ.R. 54(B) language, a judgment entry is not a final appealable order when the issue of

attorney fees remains unresolved. *Harris v. Conrad*, Warren App. No. CA2001-12-108, 2002-Ohio-3885, ¶10-12.

{¶12} Here, while the lower court overruled Stealth's objections and adopted the decision of the magistrate, Mid-Western's claim for attorney fees remains pending in the lower court.<sup>1</sup> Furthermore, the decision contains no Civ.R. 54(B) language. Thus, without any Civ.R. 54(B) certification, no final appealable order exists. *Id.* at paragraph two of the syllabus. See, also, *Montello v. Ackerman*, Lake App. No. 2009-L-111, 2009-Ohio-6383, ¶6-8; *Green v. Germain Ford of Columbus*, Franklin App. No. 08AP-920, 2009-Ohio-5020, ¶11-27. Accordingly, Stealth's appeal is dismissed due to lack of a final appealable order.

{¶13} Appeal dismissed.

BRESSLER, P.J., and HENDRICKSON, J., concur.

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1. During oral argument, Mid-Western's counsel mentioned that the counterclaim for attorney fees had been voluntarily dismissed by the company at the conclusion of trial pursuant to Civ.R. 41(A). In reviewing the record in this case, we find no record of this dismissal. No motion or entry appear on the docket, nor are any statements made on the record seeking a dismissal of the demand for attorney fees. During the hearing, Mid-Western's counsel did withdraw the company's counterclaim for replevin since it was moot. However, Mid-Western did not withdraw its remaining counterclaim or its demand for attorney fees on the record. Even if Mid-Western had withdrawn its demand for attorney fees in an attempt to create a final appealable order before submitting its subsequent motion for attorney fees, such action is precluded by the Ohio Supreme Court's decision in *Pattison v. W.W. Grainger, Inc.*, 120 Ohio St.3d 142, 2008-Ohio-5276. See *Welsh Dev. Co., Inc. v. Warren Cty. Regional Planning Comm.*, Warren App. No. CA2008-02-026, 2009-Ohio-1158, ¶9-10.