[Cite as *Collins v. Moran*, 2002-Ohio-1536.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

CHRISTOPHER L. COLLINS, ET AL.	)	CASE NO. 01-C.A.-127
PLAINTIFFS-APPELLEES	)	
VS.	)	O P I N I O N
WILLIAM E. MORAN, ET AL.	)	
DEFENDANTS-APPELLANTS	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 96 CV 3315

JUDGMENT: Dismissed and Remanded.

APPEARANCES:

For Plaintiffs-Appellees:
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For Defendants-Appellants:
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JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio

Hon. Joseph J. Vukovich

Dated: March 22, 2002

WAITE, J.

{¶1} This appeal arises out of a judgment entry attempting to resolve a dispute over an easement for a driveway. The original complaint included claims for injunctive relief and monetary damages. The trial court's judgment entry incorporates by reference a transcript of a hearing held on June 4, 2001, and purports to refer to an agreement reached by the parties. It is not clear from the entry or the transcript what the court actually intended to order and it does not appear that the damage issue was resolved. We must dismiss this appeal because there is no final appealable order apparent in the judgment entry.

{¶2} On December 30, 1996, Christopher and Susan Collins ("Appellees") filed a complaint in the Mahoning County Court of Common Pleas alleging that William and Jeanie Moran ("Appellants") refused to allow Appellees access to a driveway easement. The five-count complaint requested that Appellants be permanently enjoined from interfering with the easement. The complaint also requested monetary damages to restore the easement to its former state and to compensate Appellees for defending themselves in a related criminal matter. The complaint further sought additional unspecified compensatory and punitive damages.

{¶3} The matter was assigned to a magistrate. On May 28, 1997, the magistrate filed a decision resolving Appellees' claim

for injunctive relief and specifically defining the parties' various rights with respect to the easement. Appellants subsequently filed objections to the magistrate's decision.

{¶4} On February 9, 1998, the trial court overruled Appellants' objections and adopted the magistrate's decision as its own. Appellants' filed an appeal of the trial court's judgment on March 6, 1998, which was designated as Appeal No. 98 C.A. 46. We dismissed the appeal for lack of a final appealable order. *Collins v. Moran* (Feb. 8, 2000), Mahoning App. No. 98 C.A. 46, unreported (cited as *Collins I*). In *Collins I*, we determined that there were unresolved issues in the case; Appellants' claims for monetary damages, as well as a counterclaim for damages. This Court also noted that the trial court's entry did not meet the requirements of Civ.R. 54(B) to be considered final and appealable because the court did not state that there was no just reason for delay. *Id.*

{¶5} On June 16, 2000, Appellees filed a motion for summary judgment pertaining to Appellants' counterclaim for damages. This motion was granted on October 5, 2000, and the counterclaim was dismissed.

{¶6} Appellees' claims for damages came to trial on June 4, 2001. The trial court's judgment entry was filed on June 5, 2001. The judgment entry contains the following language:

{¶7} "Prior to testimony, Plaintiffs and Defendants, through

counsel, arrived at a conclusion which the Court, through Transcription of Court Proceedings attached as Exhibit A, adopts as its final order."

{¶8} A ten-page certified transcript of the June 4, 2001 hearing attached to the entry. The judgment entry also stated that, "[t]here just reason for delay."

{¶9} On July 3, 2001, Appellants filed this appeal.

{¶10} Although the parties have not raised any jurisdictional iss this Court is itself required to raise, *sua sponte*, jurisdictional is involving final appealable orders. *State ex rel. Wright v. Ohio A Parole Auth.* (1996), 75 Ohio St.3d 82, 84; *Whitaker-Merrell v. Geupel* (1972), 29 Ohio St.2d 184, 186.

{¶11} Section 3(B)(2), Article IV of the Ohio Constitution governs limited subject matter jurisdiction of Ohio appellate courts, specifi providing:

{¶12} "Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse *judgments or final orders* of the courts of record inferior to the court of appeals within the district * * *." (Emphasis added.)

{¶13} Our jurisdictional analysis in this case begins with an examination of the definition of "judgments or final orders." R.C. §2505.02 states that, "[a]n order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is * * * [a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment." R.C. §2505.02(B)(1).

{¶14} Civ.R. 54(B) allows a trial court to certify a judgment as final in some circumstances when fewer than all claims and issues have been resolved:

> **{¶15}** "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. * * *"

{¶16} Civ.R. 54(A) defines a "judgment" as, "any order from which an appeal lies as provided in section 2505.02 of the Revised Code." For the purposes of determining this Court's jurisdiction, "judgment" and "final order" are the same.

{¶17} The Ohio Supreme Court has elaborated upon the statutory definition:

> **{¶18}** "For an order to determine the action and prevent a judgment for the party appealing, it must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court."

{¶19} *Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio* (1989), 46 Ohio St.3d 147, 153.

{¶20} A "judgment" has also been defined as, "the final determination of a court of competent jurisdiction upon matters submitted to it." *State ex rel. Curran v. Brookes* (1943), 142 Ohio St. 107, paragraph two of the syllabus. "A final judgment is

one which determines the merits of the case and makes an end to it." *Id.* at 110.

{¶21} Ohio's Rules of Civil Procedure do not generally require a judgment entry to be written in any specific form. Nevertheless, a judgment entry or court order, "should employ diction which should include sufficient operative, action-like and conclusionary verbiage to satisfy the foregoing fundamental elements. Obviously, it is not necessary for such directive to be encyclopedic in character, but it should contain clear language to provide basic notice of rights, duties, and obligations." *In re Michael* (1991), 71 Ohio App.3d 727, 730.

{¶22} It is not unheard-of that most of the details pertaining to a court's judgment would be contained in a document separate from the entry itself but incorporated by reference into that entry. See, e.g., *Pawlowski v. Pawlowski* (1992), 83 Ohio App.3d 794, 796; *State ex rel. Tucker v. Aurelius* (May 13, 1999), Cuyahoga App. No. 75976, unreported. The situation may occur when a trial court adopts the decision of a magistrate as its own order, although there is considerable debate among Ohio's appellate courts about this practice. See a full discussion in *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 221. Assuming *arguendo* that it is possible for a trial court to use an attached transcript as the substance of its order, at minimum a reviewing court must be able to conclude from the

combined documents that the trial court has unequivocally made an order.

{¶23} The transcript of the June 4, 2001, hearing contains what purports to be an agreement between the parties, an agreement which modifies the court's prior decision regarding injunctive relief. (6/4/01 Tr. 3-4). Immediately following this "agreement" as transcribed, the following dialogue takes place:

> **{¶24}** "THE COURT: Folks, is there any - - do you understand all the terms and conditions that we've arrived at, at least at this time?
>
> **{¶25}** "MRS. MORAN: No, I don't. * * *" (Tr. 5).

{¶26} Mrs. Moran questioned why she would have to keep the driveway easement clear during holidays. (Tr. 5-6). The court responded by saying:

> **{¶27}** "THE COURT: Well, the only other remedy that I have available to me is to allow it to remain clear at all times, * * * And I don't want to get into that remedy if I don't have to until later on. So I think an agreement being reached compromising that, at least on an interim basis, until we have further directions to the court, is a happy medium.
>
> **{¶28}** "So I suppose my answer is this: It may be changed later on. It may not be changed later on, you know. * * *" (Tr. 6).

{¶29} It is apparent from this testimony that the parties were not, in fact, in agreement and that the court itself was not convinced that the "compromise" was a permanent solution. There is nothing else in the transcript or the entry indicating that the court actually ordered the parties to take or refrain from taking

any particular action.

{¶30} Furthermore, although the June 4, 2001, hearing was intended to resolve the pending claims for damages, there is no discussion in either the court's judgment entry or the attached transcript as to how the damage issue was disposed of. In *State ex rel. White v. Cuyahoga Metro. Hous. Auth.* (1997), 79 Ohio St.3d 543, the Ohio Supreme Court set forth the general rule that, "orders determining liability in the plaintiffs' * * * favor and deferring the issue of damages are not final appealable orders under R.C. 2505.02 because they do not determine the action or prevent a judgment." *Collins I* pointed out that the failure to resolve the damage claims was a factor in dismissing the previous appeal for lack of a final appealable order. *Id.*

{¶31} The trial court's judgment entry does contain a recitation of the language required by Civ.R. 54(B). However, a finding of "no just reason for delay" does not turn an otherwise interlocutory entry into an appealable order. *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 88-89; *Noble v. Colwell* (1989), 44 Ohio St.3d 92, 96. "An order of a court is final and appealable only if it meets the requirements of *both* Civ.R. 54(B) and R.C. 2505.02." *Denham v. New Carlisle* (1999), 86 Ohio St.3d 594, 596 (emphasis added).

{¶32} The Supreme Court has held that, "even where the issue of liability has been determined, but a factual adjudication of

relief is unresolved, the finding of liability is not a final appealable order even if Rule 54(B) language was employed." Although the June 4, 2001, hearing was intended to adjudicate Appellees' remaining claims for damages, there is no indication that damages were even discussed. The unresolved issue of damages is a further indication that the June 5, 2000, Judgment Entry is not a final appealable order.

{¶33} For the foregoing reasons, the record does not contain an final appealable order, and this appeal is hereby dismissed and the case remanded for further proceedings.

Donofrio, J., concurs.

Vukovich, P.J., concurs.