

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JEFFERSON CAPITAL SYSTEMS, L.L.C.	:	
Plaintiff-Appellee,	:	No. 108384
v.	:	
CHARLOTTE GIBSON,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: DISMISSED
RELEASED AND JOURNALIZED: November 21, 2019

Civil Appeal from the Bedford Municipal Court
Case No. 18CVF04422

Appearances:

Jefferson Capital Systems, L.L.C., and Bradley E. Sherman; Reminger Co., L.P.A., and Brian D. Sullivan, *for appellee*.

Luftman, Heck & Associates, L.L.P., and Matthew L. Alden, *for appellant*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Defendant-appellant, Charlotte Gibson, brings the

instant appeal challenging the trial court's judgment dismissing plaintiff-appellee, Jefferson Capital Systems, L.L.C.'s (hereinafter "JCS") civil action without prejudice. Appellant argues that the trial court erred by dismissing the case without ruling on her motion to dismiss for lack of personal jurisdiction and her motion for sanctions. After a thorough review of the record and law, this court dismisses the appeal for lack of a final appealable order.

I. Factual and Procedural History

{¶ 2} JCS initiated a collection action in an attempt to collect the outstanding balance on appellant's credit account. On August 31, 2018, JCS filed a complaint against appellant in the Bedford Municipal Court. JCS requested a judgment against appellant in the amount of \$1,972.91, plus costs and post-judgment interest.

{¶ 3} On February 12, 2019, appellant filed a motion to dismiss the case for lack of personal jurisdiction and a motion for sanctions against JCS. In her motion for sanctions, appellant argued that JCS's conduct of filing the lawsuit in the Bedford Municipal Court was "objectively frivolous[.]" Although she did not explicitly specify a proper venue, she appeared to argue that Cleveland Municipal Court was the proper venue for the lawsuit.

{¶ 4} On February 15, 2019, JCS filed a motion for default judgment. Therein, JCS requested a judgment against appellant in the amount of \$1,972.91.

{¶ 5} JCS filed a brief in opposition to appellant's motion for sanctions on February 21, 2019. Therein, JCS asserted that it was contemporaneously filing a motion to voluntarily dismiss the case based on appellant's assertion that Bedford

Municipal Court was an improper venue. Furthermore, JCS maintained that any error with respect to its determination that Bedford Municipal Court was a proper venue was not objectively frivolous: “Bedford Municipal Court is 23 miles from [appellant’s] residence and Cleveland Municipal Court is 11 miles from [appellant’s] residence. Both courts are in Cuyahoga County and the difference in miles from each court is negligible.” Finally, JCS argued that the trial court need not hold a hearing on appellant’s motion for sanctions because appellant failed to demonstrate a basis for the imposition of sanctions.

{¶ 6} On February 21, 2019, JCS filed a motion to dismiss the case without prejudice. JCS asserted that it moved to dismiss the lawsuit “based on [appellant’s] allegations of improper venue[.]” Appellee’s brief at 1-2.

{¶ 7} On February 28, 2019, the trial court granted JCS’s motion to dismiss the case and dismissed the case without prejudice. The trial court’s February 28, 2019 judgment entry provides, in relevant part, “On motion of the plaintiff, it is hereby ordered that the within cause be and the same is hereby dismissed, without prejudice, at plaintiff’s costs.”

{¶ 8} It is from this judgment that appellant filed the instant appeal on March 22, 2019. Appellant assigns two errors for review:¹

I. The trial court erred in denying [appellant’s] [m]otion to [d]ismiss the case for lack of [personal] jurisdiction.

¹ During oral arguments, appellant’s counsel withdrew the first assignment of error and conceded that the trial court’s dismissal of the case without prejudice, pursuant to Civ.R. 41(A)(1)(a), resolved any issues regarding appellant’s motion to dismiss for lack of personal jurisdiction.

II. The trial court erred in denying [appellant's] [m]otion for [s]anctions without holding a hearing on the [m]otion.

II. Law and Analysis

{¶ 9} As an initial matter, we must determine whether the trial court's February 28, 2019 judgment is a final appealable order capable of invoking this court's jurisdiction.

{¶ 10} On June 25, 2019, this court issued a sua sponte order directing appellant to show cause as to why this appeal — filed from the trial court's Civ.R. 41(A)(1)(a) dismissal of the case without prejudice — should not be dismissed for lack of a final appealable order. This court also ordered appellant to address the issue of whether the trial court had jurisdiction to consider appellant's motion for sanctions after dismissing the case without prejudice.

{¶ 11} Appellant filed a supplemental brief on July 11, 2019. Therein, she argued that the trial court's judgment is a final appealable order because it has an adverse and prejudicial effect on the parties' future rights. Without an appeal, she asserts, she will "be denied the opportunity to seek a remedy for [JCS's] conduct in filing a lawsuit against her in a court that had no jurisdiction to hear the case." Appellant's supplemental brief at 1. Appellant emphasizes that she "was frivolously sued in a court that had no jurisdiction over [her]," and that "nothing can undo that fact." *Id.* at p. 2. Appellant argues that based on the unique circumstances of this case, the trial court's judgment constitutes a final appealable order pursuant to R.C. 2505.02(B)(1). Furthermore, appellant contends that the trial court still had

jurisdiction to rule on the motion for sanctions, notwithstanding the fact that the case had been dismissed without prejudice.

{¶ 12} JCS filed a supplemental brief on July 18, 2018. Therein, JCS argued that absent an appeal, appellant would not lose her opportunity to seek redress from JCS for purportedly filing the lawsuit in an improper venue. JCS asserted that appellant filed a lawsuit against JCS based on JCS's purported misconduct in the Bedford Municipal Court case in Cuyahoga C.P. No. CV-19-910818.² JCS argued that the trial court had jurisdiction to address the motion for sanctions after dismissing the case without prejudice, and properly denied the motion. JCS argues that by dismissing the case without prejudice, the trial court effectively denied the motion for sanctions, which had not been ruled upon and was pending. Finally, JCS argues that the trial court did not err by failing to hold a hearing on the motion for sanctions, and that the trial court was not required to do so because appellant failed to demonstrate a basis for imposing sanctions against JCS.

{¶ 13} As noted above, on February 19, 2019, JCS filed a motion to voluntarily dismiss the lawsuit without prejudice. On February 28, 2019, the trial court granted JCS's motion and dismissed the case without prejudice.

{¶ 14} Appellate courts only have jurisdiction to review final appealable orders. *See generally* Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. If an order is not final and appealable, then an appellate court has no jurisdiction to

² The record reflects that appellant filed her complaint against JCS before she filed her motion to dismiss JCS's action for lack of jurisdiction and her motion for sanctions against JCS.

review the matter and it must be dismissed. An order is final and appealable if it complies with R.C. 2505.02 and, if applicable, Civ.R. 54(B).

{¶ 15} R.C. 2505.02(B) defines final orders as follows:

(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:

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

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

Generally, *an appeal from a dismissal without prejudice is not a final, appealable order*. “Under well-established precedent, a dismissal under Civ.R. 41(A)(1)(a) is not considered a final appealable order because, under most circumstances, it does not have any prejudicial effect upon the parties’ future rights.” *State ex rel. Die Co. v. Court of Common Pleas Lake Cty.*, 11th Dist. Lake No. 2010-L-107, 2011-Ohio-5232, ¶ 26, citing *Thorton v. Montville Plastics & Rubber, Inc.*, 121 Ohio St.3d 124, 2009-Ohio-360, 902 N.E.2d 482, ¶ 24. *See also Dewalt v. Tuscarawas Cty. Health Dept.*, 5th Dist. Tuscarawas No. 2012 AP 05 0031, 2012-Ohio-5294 (appeal from a dismissal without prejudice dismissed for lack of jurisdiction).

(Emphasis added.) *State ex rel. Cleveland v. Shaughnessy*, 8th Dist. Cuyahoga No. 107403, 2018-Ohio-4797, ¶ 25; *see also DeVille Photography, Inc. v. Bowers*, 169

Ohio St. 267, 272, 159 N.E.2d 443 (1959) (a dismissal without prejudice pursuant to Civ.R. 41(B)(1) leaves the parties in the same position as if the plaintiff never commenced the action).

{¶ 16} In the instant matter, appellant appears to argue that the trial court's judgment constitutes a final appealable order under R.C. 2505.02(B)(1) because it affects a substantial right. Furthermore, appellant argues that an exception to the general rule regarding dismissals without prejudice applies in this case because the trial court's dismissal has a prejudicial effect upon her future rights — specifically, her right to seek redress against JCS for its purportedly frivolous conduct of filing the lawsuit in a court that had no jurisdiction to adjudicate the case. Finally, appellant appears to argue that she will be prejudiced by the dismissal because the Bedford Municipal Court will retain records indicating that JCS sued her. After reviewing the record, we disagree.

{¶ 17} First, based on the totality of the circumstances in this case, we decline to extend the general rule from *Solon v. Solon Baptist Temple, Inc.*, 8 Ohio App.3d 347, 457 N.E.2d 858 (8th Dist.1982), to appellant's outstanding motion for sanctions. Generally, when a trial court enters judgment, any motions that are outstanding are presumed to be denied by implication. *Id.* at paragraph two of the syllabus; see *State ex rel. Dept. of Edn. v. Ministerial Day Care*, 8th Dist. Cuyahoga No. 103685, 2016-Ohio-8485, ¶ 20 (applying *Solon Baptist* rationale to a motion to supplement a cross-motion for summary judgment that was never ruled upon); *Scott v. Falcon Transport Co.*, 7th Dist. Mahoning No. 02 CA 145, 2003-Ohio-6725,

¶ 9-10 (applying *Solon Baptist* rationale to a motion to strike affidavits submitted in support of a summary judgment motion that was never ruled upon); *see also Thomas v. Columbia Sussex Corp.*, 10th Dist. Franklin No. 10AP-93, 2011-Ohio-17, ¶ 53 (Bryant, J., dissenting) (the general rule set forth in *Solon Baptist* should not be applied to motions that affect the jurisdiction of the appellate court, such as motions for a directed verdict or judgment notwithstanding the verdict and motions for a new trial).

{¶ 18} As set forth below, a motion for sanctions is an issue that is ancillary to and independent of the underlying civil case commenced by JCS. *See Harris v. Southwest Gen. Hosp.*, 84 Ohio App.3d 77, 85, 616 N.E.2d 507 (8th Dist.1992); *Redmond v. Big Sandy Furniture, Inc.*, 4th Dist. Lawrence No. 09CA13, 2009-Ohio-6824, ¶ 44, citing *Dillon v. Big Trees, Inc.*, 9th Dist. Summit No. 23831, 2008-Ohio-3264, ¶ 10, and *Monda v. Shore*, 11th Dist. Portage No. 2008-P-0078, 2009-Ohio-2088, ¶ 18. Because the trial court did not rule upon or reference the motion for sanctions in its judgment entry dismissing the case, we decline to presume that the trial court implicitly denied the ancillary and independent sanctions motion.

{¶ 19} It is undisputed that the trial court retained jurisdiction over the issue of sanctions after dismissing the case. A Civ.R. 41 dismissal does not divest a trial court of jurisdiction to entertain collateral issues, such as the imposition of sanctions.

While a Civ.R. 41(A)(1) voluntary dismissal generally divests a court of jurisdiction, a court may still consider collateral issues not related to the merits of the action. *State ex rel. Hummel v. Sadler*, 96 Ohio St.3d

84, 2002[-]Ohio[-]3605, 771 N.E.2d 853, ¶ 23, citing *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 396, 110 S.Ct. 2447, 110 L.Ed.2d 359 [(1990)]; *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 556-557, 740 N.E.2d 265 [(2001)]; *Grossman v. Mathless & Mathless, C.P.A.*, 85 Ohio App.3d 525, 620 N.E.2d 160 [(10th Dist.1993)]. A consideration of sanctions pursuant to Civ.R. 11 and R.C. 2323.51 are collateral issues. *Schwartz v. Gen. Acc. Ins. of Am.*, 91 Ohio App.3d 603, 606, 632 N.E.2d 1379 [(1st Dist.1993)]; *Lewis v. Celina Fin. Corp.*, 101 Ohio App.3d 464, 470, 655 N.E.2d 1333 [(3d Dist.1995)].

ABN AMRO Mort. Group, Inc. v. Evans, 8th Dist. Cuyahoga No. 96120, 2011-Ohio-5654, ¶ 6; *see also Gitlin v. Plain Dealer Publishing Co.*, 161 Ohio App.3d 660, 2005-Ohio-3024, 831 N.E.2d 1029, ¶ 14 (8th Dist.) (a Civ.R. 41 voluntary dismissal does not divest the trial court of jurisdiction to consider collateral matters, including a motion for sanctions, regardless of whether the motion for sanctions was filed before or after the voluntary dismissal).

{¶ 20} Second, appellant would not be denied the opportunity, absent an appeal, to seek redress against JCS for its purportedly frivolous or improper conduct. Appellant had the opportunity to seek redress against JCS, and did, in fact, seek redress against JCS by (1) filing her motion for sanctions, and (2) filing a complaint against JCS in Cuyahoga C.P. No. CV-19-910818.

{¶ 21} Third, to the extent that appellant argues that the trial court's judgment is a final appealable order because she is prejudiced by the fact that the Bedford Municipal Court will maintain records indicating that JCS sued her, she could have moved to have the record of the case sealed. *See Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529, 998 N.E.2d 446, ¶ 16 (even in a civil case, courts have the inherent authority to seal a record based on "unusual and

exceptional circumstances” and if the interests of the moving party outweigh any legitimate interest in maintaining the record). Appellant failed to do so.

{¶ 22} Finally, appellant argues that it would be “manifestly unfair” to dismiss her appeal for lack of a final appealable order because an appeal is “the only chance she has to seek redress,” from this court, and against JCS, “for [JCS’s] conduct in filing a case against her when [JCS] knew or should have known that the Bedford Municipal Court had no jurisdiction to determine the case.” Appellant’s supplemental brief at 3. Regarding the specific redress that she is seeking from this court in this appeal, appellant asserts that she seeks “redress under [Civ.R.] 12(B)(2) and [R.C.] 2323.51.” Appellant’s brief at 5. She argues that the trial court’s judgment — dismissing the case without prejudice and without explicitly ruling on her motions to dismiss and for sanctions — will incentivize JCS “to continue to sue consumer debtors in courts having no jurisdiction over them in hopes of obtaining a quick and cheap default judgment.” *Id.* She contends that she “is at risk for [JCS] refileing the case in the Bedford Municipal Court,” and that JCS’s conduct and this type of litigation “should be strongly discouraged as a matter of public policy.” *Id.* To this end, appellant requests that this court order the trial court to dismiss the case for lack of jurisdiction.

{¶ 23} The trial court already dismissed the case without prejudice. As a result, the issue of personal jurisdiction is moot, and there is no justiciable jurisdictional issue for the trial court to rule upon.

{¶ 24} Furthermore, in this appeal, there is no actual controversy or justiciable jurisdictional issue for this court to consider. We decline to issue an advisory opinion regarding the personal jurisdiction issue or the possibility of future litigation.

{¶ 25} The trial court's February 28, 2019 judgment entry explicitly dismissed the case without prejudice. As a result, JCS is able to refile its claims against appellant. Furthermore, the trial court's judgment does not prejudicially effect appellant's future rights or ability to seek redress against JCS for any frivolous or improper conduct related to this case.

{¶ 26} As appellant acknowledges in her appellate brief, "it was the act of [JCS] suing [appellant] in the Bedford Municipal Court that gave rise to [appellant's] Fair Debt Collection Practices Act and Consumer Sales Practices Act claims. [Appellant's] Fair Debt Collection Practices Act and Consumer Sales Practices Act claims are *the subject of a pending lawsuit* * * * CV-19-910818." (Emphasis added.) Appellant's brief at 4-5. In the event that appellant succeeds in her civil action, she will be able to obtain a remedy against JCS for its purportedly frivolous conduct of filing its complaint in Bedford Municipal Court.

{¶ 27} For all of the foregoing reasons, we find that the trial court's February 28, 2019 judgment granting JCS's motion to voluntarily dismiss the case, and dismissing the case without prejudice, is not a final appealable order under R.C. 2505.02(B). Accordingly, this court lacks jurisdiction to entertain the merits of this appeal.

{¶ 28} Appellant's second assignment of error, pertaining to her motion for sanctions, is not properly before this court at this time. The trial court did not rule upon appellant's motion for sanctions. Accordingly, even though the action was voluntarily dismissed without prejudice, appellant's motion for sanctions remains pending. *See Dayton Bar Assn. v. Stenson*, 139 Ohio St.3d 428, 2014-Ohio-2339, 12 N.E.3d 1182, ¶ 8 (recognizing motion for sanctions remained pending after complaint had been voluntarily dismissed).

{¶ 29} Finally, during oral arguments, appellant's counsel requested this court to issue an order remanding the case to the trial court with instructions to rule on the outstanding motion for sanctions and hold a hearing on the sanctions issue. In support of this request, counsel asserted that the motion for sanctions cannot merely be refiled in the trial court because the timeframe to file the motion has expired.

{¶ 30} Appellant filed her motion for sanctions pursuant to R.C. 2323.51, which requires a motion for sanctions to be filed not more than 30 days after the entry of final judgment. Appellant filed her motion for sanctions on February 12, 2019, before final judgment was entered on February 28, 2019. Therefore, the motion for sanctions that remains pending was timely filed. Appellant may request a hearing on the pending motion with the trial court.

{¶ 31} Appeal dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27
of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

SEAN C. GALLAGHER, P.J., and
EILEEN A. GALLAGHER, J., CONCUR