

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

ROY K. ALLEN, et al.

C. A. Nos. 24629 and 24649

Appellees/Cross-Appellants

v.

T. B. BENNETT, et al.

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE Nos. CV 2005-01-0036
 CV 2005-04-2565

Appellants/Cross-Appellees

DECISION AND JOURNAL ENTRY

Dated: November 18, 2009

CARR, Judge.

{¶1} In case number 24629, appellants/cross-appellees, Buckeye Corrugated, Inc., and its directors T.B. Bennett, Paul Carleton, C. Michael Reardon, James Snider, Carl Smeller (collectively “BCI”), appeal the January 15, 2009 judgment of the Summit County Court of Common Pleas. In case number 24649, BCI appeals the trial court’s February 23, 2009 judgment. Cross-appellants/appellees, Roy Allen and G&A Investments, LLC (“Allen”) have cross-appealed. This Court dismisses the appeal in case number 24629 for lack of a final, appealable order. This Court vacates the trial court’s February 23, 2009 judgment.

I.

{¶2} This is the third round of appeals/cross-appeals in a case that was settled over three years ago. This Court reversed and remanded the matter to the trial court in the previous two appeals. See *Allen v. Bennett*, 9th Dist. Nos. 23570, 23573, 23576, 2007-Ohio-5411 (*Allen I*), and *Allen v. Bennett*, 9th Dist. No. 24124, 2008-Ohio-4554 (*Allen II*). In both cases, we

remanded for the trial court's determination of "whether the subordination agreement proposed by BCI and its bank lenders is 'commercially reasonable' as that term is used in the parties' settlement agreement." *Allen I* at ¶19; *Allen II* at ¶10. As the factual and procedural history is thoroughly laid out in our prior decisions, we do not reiterate it here.

{¶3} On November 14, 2008, the trial court ordered the parties to submit a joint memorandum identifying the items the court should review in compliance with this Court's mandate on remand. The parties complied. On December 15, 2008, BCI filed a "renewed motion to enforce the settlement agreement in accordance with the Court of Appeals' mandate." Allen opposed the motion to enforce.

{¶4} On January 15, 2009, the trial court issued a judgment in which it determined that the subordination agreement proposed by BCI on October 5, 2006, was commercially reasonable. The trial court further granted BCI's motion to enforce settlement, denied Allen's motion to enforce settlement "as to the settlement documentation," but granted Allen's motion "as to payment, as set forth above." The trial court ordered the parties to calculate the amount of payment by applying their settlement agreement, and ordered BCI to make its payment to Allen within thirty days of the date of judgment. On February 3, 2009, Allen filed a motion for a supplemental ruling, requesting that the trial court specify the amount of payment. Allen further requested an expedited hearing on the matter.

{¶5} Before the trial court had an opportunity to specify the amount payable by BCI to Allen, on February 13, 2009, BCI filed a notice of appeal in case number 24629, appealing from the January 15, 2009 judgment. Allen filed a notice of cross-appeal on February 19, 2009.

{¶6} On February 23, 2009, the trial court issued a judgment, granting Allen's motion for a supplemental ruling, and ordering BCI to pay Allen \$5,902,395.11. On March 2, 2009,

BCI filed a notice of appeal in case number 24649, appealing from the February 23, 2009 judgment. Allen filed a notice of cross-appeal on March 11, 2009.

II.

{¶7} The parties raise numerous assignments and cross-assignments of error which we decline to quote here.

Appeal No. 24629

{¶8} As a preliminary matter, this Court is obligated to raise sua sponte questions related to our jurisdiction. *Whitaker-Merrell Co. v. Geupel Constr. Co., Inc.* (1972), 29 Ohio St.2d 184, 186. This Court has jurisdiction to hear appeals only from final judgments. Article IV, Section 3(B)(2), Ohio Constitution; R.C. 2501.02. In the absence of a final, appealable order, this Court must dismiss the appeal for lack of subject matter jurisdiction. *Lava Landscaping, Inc. v. Rayco Mfg., Inc.* (Jan. 26, 2000), 9th Dist. No. 2930-M. “An order is a final appealable order if it affects a substantial right and in effect determines the action and prevents a judgment.” *Yonkings v. Wilkinson* (1999), 86 Ohio St.3d 225, 229.

{¶9} “[T]o terminate the matter, the order must contain a statement of the relief that is being afforded the parties.” *Hawkins v. Innovative Property Mgt.*, 9th Dist. No. 22802, 2006-Ohio-394, at ¶5, quoting *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 215. This Court has further held that “[a]n order is not final until the trial court rules on all of the issues surrounding the award, ‘leaving nothing outstanding for future determination.’” *Carnegie Cos., Inc. v. Summit Properties, Inc.*, 9th Dist. No. 24553, 2009-Ohio-4655, at ¶18, quoting *State v. Muncie* (2001), 91 Ohio St.3d 440, 446.

{¶10} The January 15, 2009 judgment does not specify the amount of damages that BCI must pay to Allen. The trial court merely entered judgment in favor of Allen in an amount to be

determined by the parties. The judgment reads, in relevant part: “While the Court previously calculated the amount of principle (sic) and interest due, that is no longer possible with the passage of time. If the parties cannot agree on the amount due, the Court will take evidence and issue a supplemental ruling.” By not specifying the amount BCI must pay to Allen within thirty days, the trial court’s judgment fails to contain a statement of the relief being afforded to the parties, leaving the matter subject to further action by the trial court. Accordingly, the January 15, 2009 judgment does not constitute a final, appealable order, and this Court is without jurisdiction to consider the merits of the appeal. See *Ohio Bur. of Workers’ Comp. v. Testa*, 9th Dist. No. 05CA008708, 2006-Ohio-2179, at ¶13. Appeal number 24629 is dismissed for lack of jurisdiction.

Appeal dismissed.

Appeal No. 24649

{¶11} BCI filed its first notice of appeal on February 13, 2009, challenging the trial court’s ruling on the competing motions to enforce settlement. Nevertheless, while the appeal was pending, the trial court entertained Allen’s motion for a supplemental ruling, noted that BCI had failed to challenge the amount of Allen’s proposed judgment, and issued a judgment on February 23, 2009, awarding Allen \$5,902,395.11.

{¶12} The trial court lacked the authority to consider the issue of the amount of money due to Allen during the pendency of the appeal from the judgment awarding judgment in his favor.

{¶13} As we stated in *In re J.B.*, 9th Dist. No. 23307, 2007-Ohio-246, at ¶11:

“The Ohio Supreme Court has succinctly addressed the issue: ‘An appeal is perfected upon the filing of a written notice of appeal. R.C. 2505.04. Once a case has been appealed, the trial court loses jurisdiction except to take action in aid of the appeal. *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*

(1978), 55 Ohio St.2d 94, 97. The trial court retains jurisdiction over issues not inconsistent with the appellate court's jurisdiction to reverse, modify, or affirm the judgment appealed from. *Id.*; *Yee v. Erie Cty. Sheriff's Dept.* (1990), 51 Ohio St.3d 43, 44. *** Furthermore, the determination as to the appropriateness of an appeal lies solely with the appellate court.' *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215, at ¶9-10."

{¶14} In this case, determination of the specific amount BCI must pay Allen "interferes and is inconsistent with the jurisdiction of the appellate court." *In re S.J.* at ¶9. The trial court, therefore, lacked the jurisdiction to consider Allen's motion for a supplemental ruling. Because the trial court acted without jurisdiction by proceeding with the determination of the specific amount of the award during the pendency of the initial appeal from the granting of judgment in favor of Allen, the trial court's order awarding Allen \$5,902,395.11 is void. See *id.* at ¶15. Accordingly, this Court vacates the February 23, 2009 judgment.

Judgment vacated.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants/Cross-Appellees.

DONNA J. CARR
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

WILLIAM JACOBS, and BRIAN J. LAMB, Attorneys at Law, for Appellants/Cross-Appellees.

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