

STATE OF OHIO)
)ss:
COUNTY OF WAYNE)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

OHIO RECEIVABLES, LLC

C.A. No. 09CA0053

Appellant

v.

HEATHER D. LANDAW

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF WAYNE, OHIO
CASE No. 06-CV-0165

Appellee

DECISION AND JOURNAL ENTRY

Dated: April 26, 2010

WHITMORE, Judge.

{¶1} Plaintiff-Appellant, Ohio Receivables, LLC (“Ohio Receivables”), appeals from the judgment of the Wayne County Court of Common Pleas, modifying a prior judgment in its favor and awarding a different rate of interest. This Court vacates.

I

{¶2} On March 13, 2006, Ohio Receivables brought suit against Heather Landaw for \$6,492.85 plus interest as the holder of a promissory note that Landaw failed to pay and Ohio Receivables purchased. Landaw never filed an answer, so Ohio Receivables filed a motion for default judgment on April 27, 2006. On May 26, 2006, the trial court entered default judgment in favor of Ohio Receivables for “\$6,492.85, plus accrued interest in the amount of \$3,772.38 through April 18, 2006, plus interest at the contract rate of 23.990% per annum from the last interest date of April 18, 2006, pursuant to [R.C.] 1343.03(A)[.]” Subsequently, Ohio Receivables instituted garnishment proceedings against Landaw.

{¶3} On August 26, 2009, the court entered an order, upon its own motion, modifying the May 26, 2006 judgment entry. The court modified the judgment to read as follows: “The Court, being fully advised in the premises, hereby renders judgment against [Landaw] in favor of [Ohio Receivables] in the sum of \$6,492.85 plus interest at the rate of 23.99% from April 18, 2006 to the date of judgment and 5% thereafter.” Ohio Receivables appealed from the court’s modified judgment.

{¶4} Ohio Receivables’ appeal is now before this Court and raises three assignments of error for our review.

II

Assignment of Error Number One

“THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING STATUTORY POST JUDGMENT INTEREST IN LIEU OF THE CONTRACT INTEREST RATE IN VIOLATION OF OHIO REVISED CODE § 1343.03.”

Assignment of Error Number Two

“THE TRIAL COURT ABUSED ITS DISCRETION BY, THREE YEARS AFTER A JUDGMENT WAS GRANTED, *SUA SPONTE* MODIFYING THE POST JUDGMENT INTEREST RATE SET FORTH IN THE JUDGMENT ENTRY AS EXCEEDING THE LEGAL LIMIT FOR JUDGMENT.”

Assignment of Error Number Three

“THE TRIAL COURT ABUSED ITS DISCRETION BY, THREE YEARS AFTER A JUDGMENT WAS GRANTED, *SUA SPONTE* MODIFYING THE POST JUDGMENT INTEREST RATE TO THE 2009 STATUTORY RATE RATHER THAN THE STATUTORY RATE THAT APPLIED AT THE TIME THE JUDGMENT WAS ORIGINALLY GRANTED.”

{¶5} In its assignments of error, Ohio Receivables argues that the trial court erred by sua sponte modifying its prior judgment and awarding Ohio Receivables a different interest rate than the rate to which it was entitled under contract. We agree that the lower court lacked jurisdiction to issue another judgment entry.

{¶6} Jurisdiction is a question of law, which this Court reviews de novo. *CommuniCare Health Servs., Inc. v. Murvine*, 9th Dist. No. 23557, 2007-Ohio-4651, at ¶13. “A de novo review requires an independent review of the trial court’s decision without any deference to the trial court’s determination.” *State v. Consilio*, 9th Dist. No. 22761, 2006-Ohio-649, at ¶4.

“A trial court has no authority to vacate its final orders *sua sponte*. Prior to the adoption of the Ohio Rules of Civil Procedure, trial courts possessed the inherent power to vacate their own judgments. Although a trial court can still change its judgment, the civil rules limit the avenues through which a party may petition the trial court to change its own judgment. For example, a party may file a motion pursuant to Civ.R. 50(B), Civ.R. 53(E)(4)(c), Civ.R. 59 or Civ.R. 60(B).” (Internal citations omitted.) *Mathias v. Dutt* (Feb. 20, 2002), 9th Dist. No. 20577, at *1.

When neither party has petitioned a court for modification of a judgment entry, the court may not effectively vacate a prior order by entering a new one *sua sponte*. *Id.* at *2. The court lacks jurisdiction to do so. *Id.* at *1-2. Accord *Napier v. Napier*, 4th Dist. No. 08CA9, 2009-Ohio-3111, at ¶7. “If a trial court lacks jurisdiction, any order it enters is a nullity and is void.” *Fifth St. Realty Co. v. Clawson* (June 14, 1995), 9th Dist. No. 94CA005996, at *2.

{¶7} Neither Ohio Receivables, nor Landaw asked the trial court to modify its judgment entry. Instead, the court *sua sponte* issued a new judgment entry, awarding Ohio Receivables a different rate of interest. The court did not have jurisdiction to do so. *Id.* As such, the court’s August 26, 2009 judgment is a nullity and must be vacated pursuant to this Court’s inherent authority to vacate void judgments. *Van DeRyt v. Van DeRyt* (1996), 6 Ohio St.2d 31, 36 (“A court has inherent power to vacate a void judgment because such an order simply recognizes the fact that the judgment was always a nullity.”). We do not address Ohio Receivables’ assignments of error on the merits, as this Court does not have jurisdiction to consider the merits of an appeal from a void judgment.

III

{¶8} Because Ohio Receivables has appealed from a void judgment, this Court lacks jurisdiction to consider the merits of its assignments of error. The August 26, 2009 judgment entry of the Wayne County Court of Common Pleas is vacated and the May 26, 2006 judgment entry is reinstated.

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 Wayne, 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 Appellant.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
BELFANCE, J.
CONCUR

APPEARANCES:

PARRI J. HOCKENBERRY, Attorney at Law, for Appellant.

HEATHER D. LANDAW, pro se, Appellee.