

[Cite as *G. Scottco Invest. Co. v. Korleski*, 2011-Ohio-6656.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

G. Scottco Investment Company dba
Pleasant Acres Mobile Home Park
et al.,

Plaintiffs-Appellees,

v.

Director, Chris Korleski Ohio
Environmental Protection Agency,

Defendant-Appellee,

[Oak Hills MHC, LLC,

Plaintiff-Appellant],

[George DaGraca &
KDM Development Corporation,

Third-Party
Defendants-Appellants].

No. 10AP-582
(C.P.C. No. 05CVH-09-10023)

(REGULAR CALENDAR)

D E C I S I O N

Rendered on December 22, 2011

McNees Wallace & Nurick LLC, Samuel N. Lillard, Brett E. Younkin and Anthony D. Dick, for appellant Oak Hills MHC, LLC and third-party appellants George DaGraca and KDM Development Corporation.

Michael DeWine, Attorney General, *L. Scott Helkowski* and *Erica M. Spitzig*, for appellee Director, Chris Korleski, Ohio Environmental Protection Agency.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} This matter arises out of civil penalties imposed upon a manufactured housing park for violation of Ohio's water pollution laws caused by a defective private sewage treatment plant. The matter began with a complaint filed by plaintiff-appellant, Oak Hills Mobile Home Park, LLC, seeking to prevent Franklin County from compelling connection of the facility's private sewage system to the county sewer system. Another named plaintiff in that action, G. Scottco Investment Company, owner of a similarly-situated manufactured housing park, has not participated in the present appeal. Oak Hills eventually impleaded the State of Ohio and Water Specialists, Inc., a business that acted as a contract consultant for Oak Hills for the management of its private sewage treatment facility. The State then counterclaimed against Oak Hills for water pollution violations. The State later amended its counterclaim to add as defendants KDM Development Corporation, which was involved in the management of Oak Hills, and George DaGraca, an employee, part-owner, and officer of KDM who is also a part-owner of Oak Hills and participated personally in park management.

{¶2} In the course of litigation, the State obtained partial summary judgment against Oak Hills, establishing non-compliance with sewage treatment permits and resulting environmental violations. The matter then went to trial before a magistrate on the remaining issues, including personal liability of DaGraca and KDM, and Oak Hills' complaint against third-party defendant, Water Specialists, for contribution, indemnification, and breach of contract.

{¶3} After trial, the magistrate rendered a report and recommendation to the trial court recommending a civil penalty against Oak Hills in the amount \$538,441, and

ordering specific injunctive relief. The magistrate dismissed the state's claims against DaGraca personally and KDM, and found that Water Specialists, while in breach of contract on various points, had not caused any identifiable damages and would not be liable to Oak Hills.

{¶4} Oak Hills filed objections to the magistrate's decision, principally contesting the findings concerning the scope of violations and the amount of the penalty imposed. Water Specialists filed objections contesting the magistrate's finding of a breach of contract. The state filed objections to the magistrate's findings that KDM and DaGraca would not be jointly liable for the penalty imposed upon Oak Hills.

{¶5} The trial court entered its decision, self-designated as a "final appealable order," addressing the objections by Water Specialists and Oak Hills and modifying the magistrate's decision by reducing the total penalty imposed on Oak Hills to \$473,141. The trial court's decision does not resolve, nor even mention, the state's objections concerning the liability of KDM and DaGraca.

{¶6} Oak Hills filed the present appeal from the trial court's decision, and the State has cross-appealed. Unfortunately for all concerned, because the trial court has yet to address the objections filed by the State, the matter is not yet ripe for consideration by this court on appeal.

{¶7} This court has jurisdiction to review final orders or judgments of lower courts within our district. Section (B)(2), Article IV, Ohio Constitution; R.C. 2501.02. If the order is not a final appealable order, we lack jurisdiction and must dismiss the appeal. *Prod. Credit Assn. v. Hedges* (1993), 87 Ohio App.3d 207. As such, this court has the duty to sua sponte examine any deficiencies in jurisdiction. *Price v. Jillisky*, 10th Dist. No. 03AP-

801, 2004-Ohio-1221. Although no party in the present case has raised the finality of the trial court's order, we must accordingly determine that issue of our own initiative.

{¶8} Pursuant to Civ.R. 53(E)(4)(b), the trial court "*shall rule on any objections*" (emphasis added) to a magistrate's report. "This rule imposes a mandatory duty on the court to dispose of a party's objections to a magistrate's report." *Drummond v. Drummond*, 10th Dist. No. 02AP-700, 2003-Ohio-587, ¶13. "It is clear that an appellate court may not address an appeal of a trial court's judgment when the trial court has failed to rule on properly filed objections." *Id.*, citing *McCown v. McCown* (2001), 145 Ohio App.3d 170, 172. See also *In re J.V.*, 10th Dist. No. 04AP-621, 2005-Ohio-4925; *Peric v. Buccilli*, 8th Dist. No. 80805, 2002-Ohio-6234; *Kolman v. Bldg. Works & Co., Inc.*, 8th Dist. No. 80552, 2002-Ohio-3790; *Beal v. Allen*, 8th Dist. No. 79567, 2002-Ohio-4054; and *Ferretti v. Graham* (Feb. 13, 2001), 10th Dist. No. 00AP-765.

{¶9} In the present case, the trial court did not consider or in any way reference the State's timely-filed objections to the magistrate's report. Those issues were not considered, therefore, in the first instance, and are not ripe for review. The trial court's own designation of the order as final and appealable is not determinative of whether we may hear the appeal. *Evans v. Rock Hill Local School Dist. Bd. of Edn.*, 4th Dist. No. 04CA39, 2005-Ohio-5318, ¶17. Because the appeal is taken from an order that is not a final appealable order, the appeal must be dismissed in its entirety.

{¶10} We accordingly do not reach the merits of any aspect of the case, and this appeal is sua sponte dismissed.

Appeal dismissed.

TYACK and DORRIAN, JJ., concur.
