

[Cite as *Jones v. Behnken*, 2010-Ohio-1791.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

DWIGHT D. JONES, et al.

:

Plaintiffs-Appellants

: C.A.
CASE NO. 23692

v.

: T.C. NO. 2007
CV 10590

ROBERT E. BEHNKEN, et al.

:

(Civil appeal from
Common Pleas Court)

Defendants-Appellees

:

:

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OPINION

Rendered on the 23rd day of April, 2010.

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Dwight Jones and Diane George (“Jones”), filed October 13, 2009. Jones appeals from the decision of the trial court that adopted a magistrate’s decision granting the motion of Robert E. Behnken and Brent K. Behnken, for relief from a default judgment on the issue of liability, pursuant to Civ.R. 60(B).

{¶ 2} On December 18, 2007, Jones filed a complaint against Robert, Brent, and B & H Stor-N-Lock, alleging two counts of unlawful taking, three counts of trespass, one count of private nuisance, and punitive damages. On January 31, 2008, Robert filed an untimely answer and counterclaim, and Brent filed an untimely answer. On the same day, Jones filed a “Motion for Judgment by Default and Mandatory Injunction.” A default judgment was entered on the issue of liability on August 11, 2008. Thereafter, relief was granted from the default entry on September 22, 2009.

{¶ 3} It is well-settled that appellate courts have jurisdiction to review only final orders or judgments of the lower courts in their district. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. A final order or judgment is one which affects a substantial right, and, in effect, determines the action. R.C. 2505.02. An appellate court has no jurisdiction to review an order or judgment that is not final, and it must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20. Although ordinarily an order granting relief from judgment would be final, such is not the case here.

{¶ 4} In the present matter, despite the trial court’s inclusion of Civ.R. 54(B) language in the order of relief from judgment, the issues of damages and injunctive relief are still pending in the trial court. Thus, there is there no judgment under R.C. 2505.02(B)(3)

from which to grant relief. The proper vehicle for Jones to contest the trial court's interlocutory default entry is a motion for reconsideration, not a Civ.R. 60(B) motion for relief from judgment.

{¶ 5} Accordingly, this court lacks jurisdiction to consider the present appeal. The appeal is dismissed for lack of a final appealable order.

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FAIN, J. and GRADY, J., concur.

Copies mailed to:

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Hon. A. J. Wagner