

[Cite as *Scanlon v. Scanlon*, 2012-Ohio-2317.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 97739

JOHN J. SCANLON, ET AL.

PLAINTIFFS-APPELLANTS

vs.

PATTI C. SCANLON, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-659632

BEFORE: Celebrezze, P.J., Sweeney, J., and E. Gallagher, J.

RELEASED AND JOURNALIZED: May 24, 2012

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FRANK D. CELEBREZZE, JR., P.J.:

{¶1} Appellants, several remainder beneficiaries of the Thomas P. Scanlon Family Trust, bring the instant appeal following a grant of summary judgment in favor of Patti Scanlon, executor of the estate of Gertrude Scanlon. The remainder beneficiaries filed suit seeking the return of trust assets they alleged were wrongfully removed. This court, however, is without jurisdiction to decide the matter because there is no final, appealable order in this case.

{¶2} Thomas P. Scanlon established a pour-over trust, which would receive substantial assets at his death. The trust was named the Thomas P. Scanlon Family Trust and was established on October 25, 1990. Thomas P. Scanlon died on February 19, 2005, and his wife, Gertrude Scanlon, became trustee and sole present-interest beneficiary. The trust also named several remainder beneficiaries and specified a percentage of the trust assets they should receive upon Gertrude's death. These beneficiaries included Michael T. Scanlon, John J. Scanlon, Cecile O'Donnell, other relatives of Thomas P. Scanlon, a number of children of these individuals, and Gertrude's son from a previous relationship.

{¶3} Gertrude had withdrawn the entire trust principal by the time of her death on September 25, 2007, and the assets formerly held by the trust were divided as specified by her estate documents.

{¶4} Upon discovering that the trust was empty, John J. Scanlon and Cecile O'Donnell filed suit on May 15, 2008, requesting the return of trust assets from Gertrude's estate and for an accounting. Patti Scanlon, Gertrude's executrix, filed an

answer and motion for summary judgment. Following the submission of dispositive motions, Patrick Scanlon, the son of now-deceased Michael T. Scanlon, sought leave to file a cross-claim against Patti as executrix. The trial court granted leave, and Patrick's cross-claim was accepted.

{¶5} Patti did not respond to Patrick's cross-claim in a timely manner and filed a late answer with a request for leave to file an answer. This request for leave was granted on the same day the court granted her motion for summary judgment. After giving reasons for its decision, the trial court's journal entry states "Defendant Patti C. Scanlon's, as executrix of the estate of Gertrude I. Scanlon, deceased, motion for summary judgment granted."

{¶6} This court's jurisdiction is limited to reviewing final, appealable orders. Section 3(B)(2), Article IV of the Ohio Constitution.

A final order "is one disposing of the whole case or some separate and distinct branch thereof." *Lantsberry v. Tilley Lamp Co.*, 27 Ohio St.2d 303, 306, 272 N.E.2d 127 (1971). A trial court's order is final and appealable only if it satisfies the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B). *Braelinn Green Condominium Unit Owner's Assn. v. Italia Homes, Inc.*, 10th Dist. No. 09AP-1144, 2010-Ohio-2371, ¶ 7, citing *Denham v. New Carlisle*, 86 Ohio St.3d 594, 596, 716 N.E.2d 184 (1999).

Relevant here, Civ.R. 54(B) provides that

[w]hen more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay.

{¶7} The journal entry disposing of this case does not address Patrick's cross-claim. No motion for summary judgment was pending on Patrick's cross-claim

because it was filed after Patti's motion for summary judgment was submitted. Therefore, the trial court's order granting summary judgment cannot be construed to apply to Patrick's cross-claim.

{¶8} The order appealed does not dispose of all claims in the case or otherwise note why there should be no just reason for delay. Therefore, this court lacks a final, appealable order from which jurisdiction flows. *Whitaker-Merrell Co. v. Geupel Const. Co.*, 29 Ohio St.2d 184, 186, 280 N.E.2d 922 (1972).

{¶9} Accordingly, the appeal is dismissed.

It is ordered that appellees recover of appellants 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., PRESIDING JUDGE

JAMES J. SWEENEY, J., and
EILEEN A. GALLAGHER, J., CONCUR