

OHIO COURT OF APPEALS, ELEVENTH APPELLATE DISTRICT

Lambert v. Global Internatl. Servs.

2023 Ohio 350 (Ohio Ct. App. 2023) · No. 2022-P-0050 · Decided February 6, 2023

SUMMARY

The Eleventh District Court of Appeals of Ohio dismissed an appeal and cross-appeal arising from a class action concerning alleged unlawful debt-collection practices. The court held that the trial court’s order was not a final appealable order because the order containing the Civ.R. 54(B) determination had been vacated and not all claims and parties had been resolved.

CASE DETAILS

COURT	Ohio Court of Appeals, Eleventh Appellate District
WRITING FOR THE COURT	John J. Eklund, P.J.; Mary Jane Trapp, J.; Matt Lynch, J.
JURISDICTION	Ohio
DECIDED	February 6, 2023
DOCKET	2022-P-0050
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff appealed and Hapnel Financial Group, Inc. cross-appealed from an order certifying an earlier trial-court order as final and finding no just cause for delay. After remand, the trial court vacated the appealed order, and the appellate court dismissed both matters sua sponte for lack of a final appealable order.
STANDARD OF REVIEW	De novo review of appellate jurisdiction and whether a trial-court order is final and appealable.
PRECEDENTIAL VALUE	published
PARTIES	Thomas Lambert v. Hapnel Financial Group, Inc., Global International Services, et al.

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- civil procedure
- consumer protection

PRACTICE AREAS

- Appellate procedure
- Civil procedure
- Consumer protection
- Debt collection

QUESTIONS PRESENTED

1. Whether the appellate court had jurisdiction over the appeal and cross-appeal when the trial court had vacated the order being appealed and had not disposed of all claims and parties.
2. Whether an express Civ.R. 54(B) determination that there was no just reason for delay remained sufficient to create a final appealable order after the certification order was vacated.

HOLDINGS

1. The appeal and cross-appeal had to be dismissed because no final appealable order existed. The trial court had vacated the order being appealed, had not resolved all claims and parties, and no express Civ.R. 54(B) determination remained.

KEY QUOTATIONS

“If a lower court’s order is not final, then an appellate court does not have jurisdiction to review the matter, and the matter must be dismissed.” (¶ 7)

“While we are mindful of judicial economy, this matter must be dismissed for lack of final appealable order.” (¶ 9)

FACTUAL BACKGROUND

Lambert filed a class action against Global International Services, Global Management Acquisition Firm, Inc., Hapnel Financial Group, Inc., and four John Does concerning alleged debt-collection practices. He alleged violations of the Ohio Consumer Sales Practices Act, the Fair Debt Collection Practices Act, and the Telephone Consumer Protection Act. The trial court dismissed Hapnel after finding that Lambert had not established personal jurisdiction over it, while also addressing sanctions and attorney fees. The trial court's later certification order was vacated on remand, leaving claims and parties unresolved.

PROCEDURAL HISTORY

Lambert filed a class action concerning alleged debt-collection violations. The trial court granted Hapnel's motion to dismiss for lack of personal jurisdiction, denied Lambert's Civ.R. 11 sanctions motion, awarded attorney fees, and imposed a sanction on a nonparty. The trial court later certified its order as final under Civ.R. 54(B), prompting Lambert's appeal and Hapnel's cross-appeal. On remand, the trial court vacated the certification order; because no claims or parties had been fully resolved and no Civ.R. 54(B) finding remained, the appellate court dismissed the appeal and cross-appeal.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

None. The court stated that it lacked jurisdiction to remand the matter further and dismissed the appeal and cross-appeal.

CASES CITED

- Arnold v. Arnold, 11th Dist. Geauga No. 2021-G-0026, 2021-Ohio-4186
- Gen. Acc. Ins. Co. v. Ins. Co. of N. Am., 44 Ohio St. 3d 17 (1989)
- Viers v. Kubach, 11th Dist. Lake No. 2021-L-015, 2021-Ohio-1135
- Children's Hosp. Med. Ctr. v. Tomaiko, 11th Dist. Portage No. 2011-P-0103, 2011-Ohio-6838
- Harrell v. Management and Training Corp., 1st Dist. Hamilton No. C-180417, 2019-Ohio-2816

OPINION

PER CURIAM.

[Cite as Lambert v. Global Internatl. Servs., 2023-Ohio-350.] IN THE COURT OF APPEALS OF OHIO ELEVENTH APPELLATE DISTRICT PORTAGE COUNTY THOMAS LAMBERT, CASE NO. 2022-P-0050 Plaintiff-Appellant/ Cross-Appellee, Civil Appeal from the Court of Common Pleas - vs - GLOBAL INTERNATIONAL Trial Court No. 2020 CV 00325 SERVICES, et al., Defendants, HAPNEL FINANCIAL GROUP, INC., Defendant-Appellee/ Cross-Appellant.

MEMORANDUM OPINION Decided: February 6, 2023 Judgment: Appeal and Cross-Appeal dismissed Michael L. Fine, Frederick & Berler LLC, 767 East 185th Street, Cleveland, OH 44119 (For Plaintiff-Appellant/Cross-Appellee). Jeffrey W. Krueger, J. W. Krueger, LLC, 11925 Pearl Road, Suite 201, Strongsville, OH 44136 (For Defendant-Appellee/Cross-Appellant). JOHN J. EKLUND, P.J. {¶1} Appellant, Thomas Lambert, appeals from the August 17, 2022 order of the Portage County Court of Common Pleas, which certified the Court's July 15, 2022 order as final and found no just cause for delay.

Appellee, Hapnel Financial Group, Inc., filed a cross-appeal from that same order. As discussed below, we dismiss the appeal and cross-appeal for lack of a final appealable order. {¶2} The underlying matter pertains to a class action lawsuit filed by Mr. Lambert in 2020, against Global International Services, Global Management Acquisition Firm, Inc., Hapnel Financial Group, Inc., and four John Does related to the defendants' debt- collection practices.

Mr. Lambert alleges violations of Ohio's Consumer Sales Practices Act, the Fair Debt Collection Practices Act, and the Telephone Consumer Protection Act. {¶3} On July 15, 2022, the trial court entered an order and judgment entry granting Hapnel's motion to dismiss and finding that Mr. Lambert did not prove by a preponderance of the evidence that the court had personal jurisdiction over Hapnel.

The court further denied Mr. Lambert's Civ.R. 11 motion for sanctions, ordered Hapnel to pay \$8,335.72 in attorney's fees to Mr. Lambert's counsel, and also sanctioned a non-party, Nelson Adesegha. Mr. Lambert moved for certification of the court's order as final, which the court granted in its August 17, 2022 order. It is from that order that Mr. Lambert appeals, and Hapnel

cross-appeals. {¶4} Upon Hapnel's motion, this court remanded the matter to the lower court for it to rule on two pending motions to vacate, which were both filed by Hapnel on August 22, 2022.

On remand, the court vacated its August 17, 2022 order, but it did not address one of Hapnel's motions. {¶5} Given the disposition on remand, on October 27, 2022, this court issued a judgment entry ordering the parties to show cause as to why the appeal and cross-appeal should not be dismissed for lack of jurisdiction. Specifically, this court found that "[s]ince there is no longer a finding by the trial court that there is no just reason for delay, and 2 Case No. 2022-P-0050 neither the class action nor any claim has * * * been resolved, no final appealable order exists under R.C.

2505.02." {¶6} In response, Hapnel asked that we remand the matter to the trial court for a ruling on its Motion to Vacate Void Judgment, as directed by this court in its October 6, 2022 judgment entry. Similarly, Mr. Lambert asked that we extend the remand to the trial court for it to issue a new ruling on his Civ.R. 54 Motion for Certification of the Trial Court's July 15, 2022 order and judgment entry. {¶7} Appellate courts have jurisdiction over final orders or judgments of lower courts within their appellate districts.

Section 3(B)(2), Article IV, Ohio Constitution. "If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter, and the matter must be dismissed." *Arnold v. Arnold*, 11th Dist. Geauga No. 2021-G-0026, 2021-Ohio-4186, ¶3, citing *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989). "For a judgment to be final and appealable, it must satisfy the requirements of R.C.

2505.02 and if applicable, Civ.R. 54(B)." *Viers v. Kubach*, 11th Dist. Lake No. 2021-L-015, 2021-Ohio-1135, ¶3, citing *Children's Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. Portage No. 2011-P-0103, 2011-Ohio-6838, ¶3. Civ.R. 54(B) states in pertinent part: "When more than one claim for relief is presented in an action * * *, 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." {¶8} The lower court decision on remand vacated the order the parties appealed.

It is undisputed that the lower court has not disposed of all claims by and against all parties. With the August 17, 2022 order vacated, there is no express determination that 3 Case No. 2022-P-0050 there is "no just reason for delay," pursuant to Civ.R. 54(B).

Accordingly, there is no final appealable order before this court. {¶9} Though both parties ask us to remand the matter to the lower court, this court lacks the jurisdiction to do so. While we are mindful of judicial economy, this matter must be dismissed for lack of final appealable order. See *Harrell v. Management and Training Corp.*, 1st Dist. Hamilton No. C-180417, 2019-Ohio-2816, ¶ 13 ("While we are certainly mindful of judicial economy, we cannot tinker with our jurisdictional limits simply because the judicial economy winds blow in a particular direction.

We must adhere to the constitutional and statutory constraints on our jurisdiction.”) ¶10 In light of the foregoing, the instant appeal and cross-appeal are sua sponte dismissed for lack of a final appealable order. MARY JANE TRAPP, J., MATT LYNCH, J., concur. 4 Case No. 2022-P-0050

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