

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JOSEPH P. CALLAHAN,	:	APPEAL NO. C-070538
Plaintiff-Appellee,	:	TRIAL NO. A-0608301
vs.	:	
ED KEYSER,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Ed Keyser appeals pro se from the trial court’s June 27, 2007, entry denying his Civ.R. 60(B) motion to set aside a judgment of liability against him. He raises a sole assignment of error for our review in which he claims that “[t]he trial court erred in granting summary judgment to Plaintiff-appellee Joseph P. Callahan as to the personal liability of Ed Keyser and further assigning him joint and several liability with [Defendant] Executive Choice Delivery, the Executive Choice Mortgage, Inc., a State of Ohio “C” Corporation.” But before we can address the merits of his assignment of error, we must determine if we have jurisdiction to entertain his appeal.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

This court's jurisdiction is limited to the review of final orders.² "Ordinarily, the grant or denial of a genuine Civ.R. 60(B) motion is a final appealable order. [Citations omitted.] However, this rule presumes that the underlying order being challenged by a movant's Civ.R.60(B) motion is, itself, a final appealable order."³ "If the judgment from which the moving party seeks relief is not final, then the motion is properly construed as a motion to reconsider an interlocutory order. [Citations omitted.] Interlocutory orders are not reviewable until the trial court renders a final judgment."⁴

Thus, to determine in this case if we have jurisdiction over the trial court's June 27, 2007, entry denying Keyser's Civ.R. 60(B) motion, we must first determine whether the court's June 4, 2007, order, which was being challenged by Keyser in his Civ.R. 60(B) motion, was itself a final appealable order. In *State ex. rel. White v. Cuyahoga Metro. Hous. Auth.*, the Ohio Supreme Court held that "orders determining liability in the plaintiffs' favor and deferring the issue of damages are not final appealable orders under R.C. 2505.02 because they do not determine the action or prevent a judgment."⁵ Various courts of appeals have also held that summary-judgment orders entered on the issue of liability alone, leaving an award of

² R.C. 2505.02

³ *Safe Auto Ins. Co. v. Perry* (Jan. 25, 2001), 10th Dist. No. 00AP-722.

⁴ *Nationwide Assurance Inc. v. Thompson*, 4th Dist. No. 04CA2960, 2005-Ohio-2339, at ¶10; see, also, *Jarrett v. Dayton Osteopathic Hospital, Inc.* (1985), 20 Ohio St.3d 77, 77-78, 486 N.E.2d 99.

⁵ 79 Ohio St.3d 543, 1997-Ohio-366, 684 N.E.2d 72.

damages for future determination, do not constitute final appealable orders as contemplated by R.C. 2505.02.⁶

In this case, the trial court's June 4, 2007, entry "granted judgment [to the Plaintiff Joseph P. Callahan] against Defendants Ed Keyser and Executive Choice Mortgage, jointly and severally, on the issue of liability only." The order explicitly stated that the "case shall proceed to trial to the court on the issue of damages." Because the trial court's June 4, 2007, entry only addressed Keyser's liability and left the damages issue for later determination, it was interlocutory in nature and not a final appealable order. Consequently, the trial court's June 27, 2007, entry denying relief from that interlocutory order was also not a final appealable order. Absent a final appealable order, we are without jurisdiction to entertain this appeal, and for that reason the appeal is dismissed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on April 30, 2008

per order of the Court _____.
Presiding Judge

⁶ See *Walter v. Allstate Ins. Co.*, 9th Dist. No. 21032, 2002-Ohio-5775, at ¶10-11; *Bautista v. Kolis*, 142 Ohio App.3d 169, 174, 2001-Ohio-3159, 754 N.E.2d 820; *Summit Petroleum, Inc. v. K.S.T. Oil & Gas Co.* (1990), 69 Ohio App.3d 468, 470, 590 N.E.2d 1337; *Mayfred Co. v. Bedford* (1980), 70 Ohio App.2d 1, 3, 433 N.E.2d 620; *Cammack v. V.N. Holderman & Sons, Inc.* (1973), 37 Ohio App.2d 79, 307 N.E.2d 38; *American Mall, Inc. v. Lima* (1966), 8 Ohio App.2d 181, 220 N.E.2d 839.