

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

ADAM ALEXANDER,	:	APPEAL NO. C-090091
	:	TRIAL NO. 08CV-21953
Plaintiff-Appellant,	:	
vs.	:	<i>DECISION.</i>
LJF MANAGEMENT, INC.,	:	
and	:	
MHL, LTD.,	:	
Defendants-Appellees.	:	

Civil Appeal From: Hamilton County Municipal Court

Appeal Dismissed

Date of Judgment Entry on Appeal: June 18, 2010

*The Blessing Law Firm and David S. Blessing, for Plaintiff-Appellant,  
McIntosh & McIntosh, PLLC, and Brian McIntosh, for Defendants-Appellees.*

Note: We have removed this case from the accelerated calendar.

Per Curiam.

{¶1} Plaintiff-appellant Adam Alexander appeals from “the Judgment Entry, filed by [the Hamilton County Municipal Court] on the 9th day of January, 2009.” The court, however, journalized three inconsistent entries on that day. Since the trial court failed to enter a judgment that definitively determined the claims for relief, we must dismiss Alexander’s appeal.

{¶2} Alexander had sought to recover a security and pet deposit that his landlords, defendants-appellees MHL, Ltd., and LJF Management, Inc. (“MHL”), had failed to return after Alexander’s lease had expired and after he had vacated the premises. MHL denied the allegations of Alexander’s complaint and filed a counterclaim alleging that Alexander had damaged the apartment.

**I. Proceedings Before the Magistrate**

{¶3} The case was referred to a magistrate for a bench trial. On October 1, 2008, the magistrate issued a decision recommending judgment for Alexander on his claim and on MHL’s counterclaim in the amount of \$1,144, plus a lump-sum award of \$1,000 in attorney fees. MHL filed an objection. Alexander, who had sought \$2,516.75 in attorney fees, also filed an objection, claiming that the magistrate had awarded fees without considering the factors identified by the Ohio Supreme Court in *Bittner v. Tri-County Toyota, Inc.*<sup>1</sup>

{¶4} On November 20, 2008, the trial court granted Alexander’s objection in part. In its judgment entry, the court adopted the magistrate’s \$1,144 damage award but

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<sup>1</sup> (1991), 58 Ohio St.3d 143, 145, 569 N.E.2d 464.

overruled the attorney-fee award. The court referred the matter back to the magistrate for application of the *Bittner* analysis.

{¶5} On December 12, 2008, the magistrate issued a second decision in which he recommended an \$875 attorney-fee award to Alexander. Alexander filed objections to this second magistrate’s decision.

## **II. The Trial Court’s Three January 9 Entries**

{¶6} On January 9, 2009, the trial court overruled Alexander’s objections. The court used a form entry captioned “Judgment Entry.” It checked a box entitled “The objections to the Magistrate’s decision are overruled.” This was the sole indication on the form entry of the trial court’s actions.

{¶7} But that same day the trial court also journalized two other documents. First, the court used a photocopy reproduction of the October 1, 2008, magistrate’s decision and added a rubberstamped text block below the magistrate’s signature. This decision had recommended a \$1,144 damage award and a \$1,000 fee award. The rubberstamped text indicated that the document has been “APPROVED AND FILED FOR JOURNALIZATION.” The text block bore the original signature of the trial court and the date of signing. The entry thus reflects that the trial court had approved the damage award *and* the \$1,000 fee award that it had previously rejected in its November 20, 2008, entry.

{¶8} The other document was an exact photocopy reproduction of the second magistrate’s decision of December 12, 2008. To this copy the trial court again added the approved-and-filed text block. The trial court signed and dated the entry, this time

approving the \$875 fee award. The trial court did not prepare a separate entry of judgment that definitively determined the fee issue.<sup>2</sup>

{¶9} Raising a single assignment of error challenging the award of attorney fees, Alexander has filed this appeal from “the [January 9] Judgment Entry.”

### III. Inconsistent Judgment Entries

{¶10} Because an appellate court has jurisdiction to review only the “judgments or final orders” of lower courts within its appellate district, it must determine its own jurisdiction to proceed before reaching the merits of any appeal.<sup>3</sup> If the order being challenged is not final, then the court must dismiss the appeal.<sup>4</sup> R.C. 2505.02(B) defines a “final order,” in relevant part, as “an order that affects a substantial right in an action that in effect determines the action and prevents a judgment.”

{¶11} In a civil action, Civ.R. 54(A) and 58(A) identify which orders of a court are judgments for purposes of invoking appellate jurisdiction. Indeed, Civ.R. 58 was drafted “to resolve ‘the old, old question of when is a judgment a judgment.’”<sup>5</sup> But as this court has long noted, “[n]either the civil rules nor the cases provide any ‘hard and fast rules’ for determining what is a ‘judgment’ for purposes of Civ.R. 58(A).”<sup>6</sup>

{¶12} In matters referred to a magistrate, however, a magistrate’s decision that has not been adopted or modified by the trial court is not a final order.<sup>7</sup> The decision remains interlocutory until the trial court reviews the magistrate’s decision and (1) rules

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<sup>2</sup> See Civ.R. 53(D)(4)(e) and 58.

<sup>3</sup> Section 3(B)(2), Article IV of the Ohio Constitution; see, also, *State ex rel. White vs. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 544, 1997-Ohio-366, 684 N.E.2d 72.

<sup>4</sup> See *General Acc. Ins. Co. v. Ins. Co. of N. America* (1989), 44 Ohio St.3d 17, 20, 540 N.E.2d 266.

<sup>5</sup> *Millies v. Millies* (1976), 47 Ohio St.2d 43, 44, 350 N.E.2d 675 (internal citations omitted).

<sup>6</sup> *Huber v. Huber* (Aug. 13, 1999), 1st Dist. No. C-980130, quoting *Millies v. Millies*, 47 Ohio St.2d at 44, 350 N.E.2d 675 (“A ‘judgment’ need not be labeled as such \* \* \* or entered separately from a court’s written decision. \* \* \* It must, however, manifest the court’s present intention to terminate the action.”).

<sup>7</sup> See Civ.R. 53(D)(4)(a).

on any objections, (2) adopts, modifies, or rejects the decision, and (3) enters a judgment that determines all the claims for relief in the action or determines that there is no just reason for delay.<sup>8</sup>

{¶13} To satisfy the third of these requirements, Civ.R. 53(D), 54(A), and 58(A) require no more than a clear and concise announcement of the trial court’s judgment.<sup>9</sup> But, at a minimum, the entry should “clearly and finally dispose[] of the dispute between the parties.”<sup>10</sup> “So long as the judgment entry contains ‘a statement of the relief to which the parties are entitled’ and is ‘definite enough to be susceptible to further enforcement and provide sufficient information to enable the parties to understand the outcome of the case’ an appellate court may exercise jurisdiction over the matter.”<sup>11</sup> Equivocal or inconsistent entries lack a definite statement of the parties’ relief and are not capable of further enforcement.<sup>12</sup> They are not final, appealable orders.

#### **IV. No Final and Appealable Order**

{¶14} Here, each of the three January 9 entries fails to provide a definite statement of the relief intended. The form document captioned “Judgment Entry” only overrules an objection to, presumably, the second magistrate’s decision. It does not adopt, modify, or reject the decision, and does not determine all the claims for relief in the action.

{¶15} The two remaining January 9 entries are particularly problematic. One entry approves and orders an award of attorney fees of \$1,000. And the other approves an

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<sup>8</sup> See Civ.R. 53(D) and 53(E); see, also, *Yantek v. Coach Builders Ltd.*, 1st Dist. No. C-060601, 2007-Ohio-5126, ¶14; *Roberts v. Skaggs*, 176 Ohio App.3d 251, 2008-Ohio-1954, 891 N.E.2d 827, ¶4.

<sup>9</sup> *Rogoff v. King* (1993), 91 Ohio App.3d 438, 449, 632 N.E.2d 977.

<sup>10</sup> *Millies v. Millies*, 47 Ohio St.2d at 44, 350 N.E.2d 675, fn. 2.

<sup>11</sup> *Champion Contracting & Constr. Co. Inc. v. Valley Post No. 5563*, 9th Dist. No. 03CA0092-M, 2004-Ohio-3406, ¶18 (internal citations omitted).

<sup>12</sup> See *Millies v. Millies*, 47 Ohio St.2d at 44, 350 N.E.2d 675.

attorney-fee award of \$875. These two entries—signed and journalized on the same day—are clearly equivocal and inconsistent.

{¶16} Since the trial court has not journalized a judgment that determines all the claims for relief in the action or that determines that there is no just reason for delay, there is no judgment or order of the court “that affects a substantial right in an action that in effect determines the action and prevents a judgment” for Alexander.<sup>13</sup> This court lacks subject-matter jurisdiction to proceed, and this appeal must be, and is, dismissed.

Appeal dismissed.

**HILDEBRANDT, P.J., SUNDERMANN and CUNNINGHAM, JJ.**

*Please Note:*

The court has recorded its own entry on the date of the release of this decision.

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<sup>13</sup> R.C. 2505.02(B)(1).