

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

RICHARD G. JACKSON,	:	APPEAL NOS. C-150408
		C-150410
Plaintiff-Appellant,	:	TRIAL NOS. 15CV-02043
		14CV-25593
vs.	:	
		<i>JUDGMENT ENTRY.</i>
REBECCA J. ANDERSON,	:	
and	:	
EDWIN F. ANDERSON, JR.,	:	
Defendants-Appellees.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellant Richard Jackson sued defendants-appellees Edwin and Rebecca Anderson, in small claims court for failure to pay on two promissory notes and for failure to pay for professional tax representation. The two cases were consolidated and set for a hearing before a magistrate, but the Andersons filed requests for continuances. Upon their third request for a continuance, the magistrate denied their motion for a continuance and entered a default judgment in favor of Jackson in each case. The Andersons filed objections to the magistrate's decision, which the trial court sustained. The trial court then set a new date for a trial. Jackson now appeals these decisions. However, because we determine that we do not have jurisdiction to hear these appeals, we dismiss them.

Before this court can exercise jurisdiction over an appeal, an order of a lower court must be a final, appealable order and meet the requirements of R.C. 2505.02. *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 547 N.E.2d 64 (1989). If

OHIO FIRST DISTRICT COURT OF APPEALS

the order being challenged is not final, then the court must dismiss the appeal. *See General Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989). A final order disposes “of the whole case or some separate and distinct branch thereof.” *Noble v. Colwell*, 44 Ohio St.3d 92, 94, 540 N.E.2d 1381 (1989). “A judgment that leaves issues unresolved and contemplates that further action must be taken is not a final appealable order.” *In re: L.S.*, 1st Hamilton Dist. Nos. C-140318, C140319, C-140320 and C-140321, 2015-Ohio-1321, ¶ 6, quoting *State ex rel. Keith v. McMonagle*, 103 Ohio St.3d 430, 2004-Ohio-5580, 816 N.E.2d 597, ¶ 4; *see Napier v. Sparks*, 1st Dist. Hamilton No. C-130084, 2013-Ohio-4500 (juvenile court’s order not final and appealable, where it did not adopt or modify the magistrate’s decision, but instead remanded the cause for findings of fact and conclusions of law).

Here, the trial court did not adopt or modify the magistrate’s decision. Instead, the trial court determined that the magistrate had erred by denying the Andersons’ motion for a continuance, and set aside the decision and issued a new date for a trial to hear the actions on their merits. Because the judgments expressly contemplate further action, they did not determine the action and prevent a judgment. *See R.C. 2505.02(B)*. Therefore, the judgments do not constitute final and appealable orders. Thus, we hereby dismiss the appeals.

Further, 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.

FISCHER, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on March 9, 2016

per order of the court _____.

Presiding Judge