

# FINALITY ISSUES

## I. CIVIL CASES:

Judgment: The content of a “judgment” must be “definite enough to be susceptible to further enforcement,” and the parties must be able to understand it. The judgment must speak to all areas that were in dispute. The judgment must set forth the parties’ rights and obligations and cannot use confusing or ambiguous language.

- A. Examples: See *Harkai v. Scherba Industries, Inc.* (2000), 136 Ohio App.3d 211, 218; *Weygandt v. Porterfield*, 9<sup>th</sup> Dist. No. 09CA0009, 2011-Ohio-510; *Edward v. Vito Girona Construction Co.*, 9<sup>th</sup> Dist. No. 24322, 2008-Ohio-5974.
- B. *Coventry Twp. Bd. of Trustees v. Cheton*, 9<sup>th</sup> Dist. No. 23763, 2007-Ohio-7031. Order granting a permanent injunction was not final because the trial court required the appellant to meet all the terms of a particular resolution but did not “give him clear guidance as to how this [was] to be accomplished.”
- C. This concept is often seen in domestic cases. Example: *Wenger v. Wenger*, 9<sup>th</sup> Dist. No. 05CA0057, 2006-Ohio-3330. Trial court ordered Husband to pay additional \$200,000 to equalize property division. 9<sup>th</sup> District held the order was not final because the trial court gave Husband options on how to pay that amount. The entry was considered too indefinite to be a judgment.

### Entering Judgment on a Magistrate’s Decision:

- A. Trial court must “independently enter judgment on the magistrate’s decision.”
  - 1. Trial court cannot merely “adopt” or “affirm” the magistrate’s decision.
  - 2. Trial court must fully enter the judgment and sign the journal entry.
  - 3. Trial court cannot merely sign below the magistrate.

EXAMPLE: (not final)

“The court hereby adopts the decision of the magistrate and makes it an order of the Court.”

EXAMPLE: (final)

“Judgment is granted in favor of the plaintiff in the amount of \$2,500.”

- B. Trial court must rule on all timely objections filed by the parties.
  - 1. Trial court must overrule, modify, or vacate every objection.
  - 2. The trial court cannot order that “*the* objection” is overruled if there are multiple objections.

3. The trial court need not give explanation as to why the objections are overruled, but must make it clear that each has been resolved.
4. The trial court must use precise language. 9<sup>th</sup> District case law holds that the order cannot say that the objections “should be” overruled. See *Weygandt v. Porterfield*, 9<sup>th</sup> Dist. No. 09CA0009, 2011-Ohio-510. But synonyms for “overruled” appear to be ok.

EXAMPLE: (not final)

- a. “The court has reviewed each and every objection in detail and affirms its prior decision.”
- b. “Wife first objects to \_\_\_\_\_ (detailed discussion as to merits of objection). Wife next objects to \_\_\_\_\_ (detailed discussion as to merits of objection). Therefore, the Court adheres to its prior decision.”
- c. “The court has reviewed each and every objection and finds them to be without merit and accordingly determines that each and every objection should be overruled.”

EXAMPLE: (final)

“All objections are overruled.”

Multiple Claims or Parties: All claims must be resolved against all parties.

- A. If they are not, the order must include Civil Rule 54(B) language that “there is no just reason for delay.”
- B. But Civil Rule 54(B) language will be effective only if a claim has been fully resolved. If liability is determined but not damages, 54(B) language will not make that order final.
- C. Note that if Civil Rule 54(B) language has been added to make an order immediately appealable, the parties must appeal and may not wait until all claims against all parties have been resolved. See App. R. 4(B)(5).

Civil Rule 41(A): A plaintiff cannot voluntarily dismiss the *remaining claims* against a particular defendant in order create a final judgment. The Ohio Supreme Court considers that type of dismissal to be a nullity. See *Pattison v. W.W. Grainger, Inc.*, 120 Ohio St. 3d 142, 2008-Ohio-5276, at ¶1. Civ. R. 41(A)(1) only permits a plaintiff to voluntarily dismiss *all claims* against a single defendant.

Attorney Fees: It is not always clear in Ohio when a pending request for attorney fees will prevent finality.

- A. The Ohio Supreme Court has held that when attorney fees are requested in the original pleadings, the trial court must dispose of the “attorney-fee claim.” *Internatl. Bhd. of Electrical Workers, Local Union No. 8 v. Vaughn Indus., L.L.C.*, 116 Ohio St. 3d 335, 2007-Ohio-6439.
- B. Exception: Prayer for relief
  - 1. 9<sup>th</sup> District followed 4<sup>th</sup> District in recognizing an exception to this rule.
  - 2. *Knight v. Colazzo* 9<sup>th</sup> Dist. No. 24111, 2008-Ohio-6613. Held that a general request for attorney fees included in a prayer for relief does not rise to the level of a separate claim for relief. If that type of request is outstanding, finality is not affected unless the trial court discusses or grants attorney fees and defers further adjudication.
  - 3. *Commonwealth Land Title Ins. Co. v. Choice Title Agency*, 9<sup>th</sup> Dist.No. 10CA009848, 2011-Ohio-396. Attorney fees were requested in prayer for relief. But 9<sup>th</sup> District held that the outstanding request for attorney fees prevented finality because the trial court granted fees but did not set forth the amount.
- C. Attorney fees requested in a motion as sanctions –
  - 1. Historically, these have been considered independent ancillary matters that do not affect finality. See, e.g. *Dailey v. State Farm Mutual Automobile Insurance Co.* 2d Dist. No. 14732, (Sept. 27, 1994).
  - 2. Examples –
    - a. Civil Rule 11
    - b. R.C. 2323.51 (But see *Internatl. Bhd. of Electrical Workers, Local Union No. 8 v. Vaughn Indus., L.L.C.*, 116 Ohio St. 3d 335, 2007-Ohio-6439. It is unclear whether the Supreme Court considered it a “claim.”)
  - 3. See *Servpro v. Kinney*, 9<sup>th</sup> Dist. No. 24969, 2010-Ohio-3493. 9<sup>th</sup> District recently used this analysis in addressing a related issue.
  - 4. But see *Sliwinski v. Village at St. Edwards* 9<sup>th</sup> Dist. Nos. 24284, 24442, 2009-Ohio-3006. 9<sup>th</sup> District analyzed a motion for attorney fees under R.C. 2323.42 filed during litigation as part of the merits of the case, rather than as ancillary to the main claim. The Court may also have considered the motion to be a separate “claim,” as it noted that the court failed to

include Civ. R. 54(B) language to allow immediate appeal of the dismissed claims.

Prejudgment Interest: A pending motion for prejudgment interest will prevent finality. *Miller v. First Internatl. Fid. & Trust Bldg., Ltd.*, 113 Ohio St. 3d 474, 2007-Ohio-2457, at ¶11.

Post-judgment Motions: Time to appeal a trial court's order does not begin to run until certain post-judgment motions are resolved. See App. R. 4(B)(2). The motions, however, must be timely.

- A. Civ. R. 50(b) --Motion for judgment notwithstanding the verdict.
- B. Civ. R. 59(B) --Motion for new trial.
- C. Civ. R. 53(D)(4)(e)(i) or (ii) – Objections to a magistrate's decision
- D. Rule 40(D)(4)(e)(i) or (ii) or the Ohio Rules of Juvenile Procedure – Objections to a magistrate's decision.

## II. DOMESTIC CASES:

- A. Decrees:
  - 1. In 9<sup>th</sup> District, decree must comply with Civ. R. 75 to be final.
  - 2. Civ. R. 75 requires a decree to address:
    - a. Property Division:
      - i. Must specify what constitutes marital property and what constitutes separate property.
      - ii. Division of property must include written findings of fact that support the determination that the marital property has been equitably divided.
      - iii. Must specify “values associated with the marital assets and liabilities” in sufficient detail.
      - iv. Cannot leave the parties to discern what debts constitute debts of the marriage.
      - v. Must specify dates it used in determining the meaning of “during the marriage.”
      - vi. If the trial court “retains jurisdiction” over property division issues, that will render the order non-final.

EXAMPLES: (not final)

“debts of the marriage should be divided in proportion to the parties’ income”

“parties shall pay their own debts”

“debts of the marriage shall be divided”.

“parties shall divide the marital property by lottery”

- b. Spousal Support
- c. Parental Rights and Responsibilities, or
- d. Incorporate prior orders fully determining those issues

B. Post-decree

- 1. An order will be considered final if all issues raised have been adjudicated. *Koroshazi v. Koroshazi* (1996), 110 Ohio App. 3d 637, 674 N.E.2d. 1266.
- 2. An order may also be final if it affects a “substantial right,” meaning that the appellant would be precluded from appropriate future relief absent an immediate appeal. *Southside Community Develop. Corp. v. Levin*, 116 Ohio St.3d 1209, 2007-Ohio-6665.

III. CRIMINAL CASES

- A. All counts brought against the defendant must be resolved. *State v. Goodwin*, 9th Dist. No. 23337, 2007-Ohio-2343.
- B. A “judgment” of conviction must contain the manner of conviction and the sentence in a single document in order to be a final, appealable order. *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330.
  - 1. Failure to comply with Criminal Rule 32(C) is a clerical error. *State ex rel. Dewine v. Burge*, 2011-Ohio-235.
  - 2. Criminal Rule 32(C) deficiency is correctable by a nunc pro tunc entry. *State ex rel. Dewine v. Burge*, 2011-Ohio-235.
- C. PRC errors do not affect finality. *State v. Fischer*, Slip Opinion No. 2010-Ohio-6238.
- D. Post-judgment motions: Time for appeal does not begin to run until timely post-judgment motions listed in App.R. 4(B)(3) have been ruled upon.