

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

RAB PERFORMANCE RECOVERIES,	:	APPEAL NO. C-160692
Plaintiff-Appellee,	:	TRIAL NO. 10CV-19621
vs.	:	
MEITAL ZUR,	:	<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. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Meital Zur appeals from the Entry Granting Plaintiff's Motion for Relief from Order. Because we conclude that the entry is not a final appealable order, this court lacks jurisdiction to consider Zur's appeal, and therefore, we must dismiss it.

On July 16, 2010, RAB Performance Recoveries ("RAB") filed a complaint alleging Zur owed a balance of \$3,203.18 on its Chase Card account. RAB filed a motion for summary judgment, which was granted by the magistrate. Zur timely filed objections to the magistrate's decision.

On February 22, 2011, the court journalized two entries. The first entry adopted the magistrate's decision and entered final judgment for the plaintiff. The second entry was a form titled "Objections to Magistrate Judgment Entry." The court had checked the box sustaining the objections. Zur did not appeal these entries.

On July 11, 2016, RAB moved the court to strike the second entry that sustained the objections to the magistrate's decision. Zur filed a memorandum in opposition asking the court to uphold the entry sustaining the objections and to strike the entry adopting the magistrate's decision and entering judgment for RAB. On August 1, 2016, the trial court granted RAB's motion and ordered that the second entry be stricken. Zur timely appealed.

Before reaching the merits, this court must determine whether the entry granting RAB's motion for relief constitutes a final appealable order. The Ohio Constitution limits an appellate court's jurisdiction to review of final appealable orders. Ohio Constitution, Article IV, Section 3(B)(2); R.C. 2505.02. A final order is defined, in relevant part, as an order that vacates a judgment. R.C. 2505.02(B)(3). If an order is not a final appealable order, the appellate court lacks jurisdiction and the appeal must be dismissed. *State v. Daniels*, 1st Dist. Hamilton No. C-140242, 2014-Ohio-5160, ¶ 5, citing *Whitacre-Merrell Co. v. Geupel Constr. Co.*, 29 Ohio St.2d 184, 186, 280 N.E.2d 922 (1971).

The February 22, 2011 entry adopting the magistrate's decision and entering final judgment in favor of the plaintiff was a final appealable order. Zur did not appeal this order.

Zur now appeals from the February 22, 2011 entry that struck the entry sustaining objections. However, the trial court's entry sustaining the objections was not a final appealable order. *See Javidan-Nejad v. Navadeh*, 8th Dist. Cuyahoga No. 95406, 2011-Ohio-2283, ¶ 60 (holding that the trial court's entry was not a final order because the trial court "simply sustained in part appellant's objections to the magistrate's report. There was no independent judgment, no express adoption of any of the magistrate's findings, and no clear pronouncement of the judgment as

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required by Civ.R. 53(D)(4)(e)”). Because the entry sustaining the objections was not a final appealable order, the entry striking it from the record was not a final appealable order. *See Hadassah v. Schwartz*, 1st Dist. Hamilton No. C-110699, 2012-Ohio-3910, ¶ 7 (holding that the denial of a motion to vacate an entry that was not a final order is not a final, appealable order). Accordingly, we dismiss this appeal for lack of jurisdiction.

Further, a certified copy of this judgement entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

ZAYAS, P.J., MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on June 23, 2017

per order of the court _____.

Presiding Judge