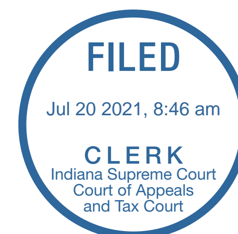
MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Ryan Edmundson and Edmundson Estates, LLC,
Appellants-Defendants,

v.

Prudence Hawkins and Jeremiah Grooms,
Appellees-Plaintiffs.

July 20, 2021

Court of Appeals Case No. 21A-PL-327

Appeal from the Marion Superior Court

The Honorable James A. Joven, Judge

Trial Court Cause No. 49D13-2011-PL-39523

Baker, Senior Judge.

Statement of the Case

[1] Ryan Edmundson and Edmundson Estates (collectively "Landlord") appeal the trial court's denial of their motion to compel arbitration. Concluding sua

sponte that the order from which Landlord appeals is not a final judgment or an appealable interlocutory order, we dismiss.

Facts and Procedural History

[2] Edmundson Estates owns a duplex on North LaSalle Street in Indianapolis that consists of two units, 913 and 915. Prudence Hawkins and Jeremiah Grooms ("Tenants") occupied the units during the time period applicable in this case.

[3] On May 1, 2015, Hawkins signed a one-year lease for unit 913. On March 1, 2016, Hawkins moved into unit 915 and signed a one-year lease for that unit. Although Hawkins lived in unit 915 until October 2020, her lease and all of its terms expired in 2017, and she did not sign another lease. Hawkins alleges that she has experienced unsafe conditions in her unit, including: an unresolved presence of mold in the basement of the building; an ankle-deep sewage back-up in the basement in June 2020; a natural gas leak in her unit; absence of working heat in the upper level of her unit; lack of consistent hot water in her unit; and excessive radon levels that sickened and killed her dog and caused her to experience headaches, breathing problems, irregular bowel function, lack of concentration, lack of memory, and a bacterial infection in her ear causing a tear in her ear drum. In addition, she contends that Landlord complained to Tenants about an elevated water bill, instructed them to discontinue use of the toilets, and delivered a portable toilet for their use. Hawkins asserts that these conditions forced her to move from the unit in October 2020 and that, after she

did so, Landlord prevented her from obtaining her personal property from the unit and failed to return her security deposit.

[4] Grooms entered a one-year lease with Landlord in February 2020 for unit 913. Grooms alleges that within a month of moving into the unit, he began to experience breathing problems, lack of memory, irregular bowel function, headaches, and anxiety and that he was unable to unpack his belongings due to defects such as holes in the floor, unstable countertops and cabinets, and unsecure windows. In June, sewage backed up in the basement of the building, and radon testing performed in his unit showed levels above recommended limits. Due to continuing health issues, Grooms eventually had to resign from his job. Rather than pursuing arbitration, Landlord chose to avail itself of an alternate remedy and filed an eviction action against Grooms in October without providing to Grooms the required ten days' notice.

[5] In November 2020, Tenants filed an action against Landlord. Hawkins' claims include constructive eviction, breach of the warranty of habitability, negligent infliction of emotional distress, recovery of personal property, and return of security deposit. Grooms' claims include breach of contract, breach of warranty of habitability, retaliatory eviction, and negligent infliction of emotional distress. On January 24, 2021, Landlord moved to compel arbitration based on the arbitration clause contained in Tenants' leases. The trial court summarily denied the motion on January 27, and Landlord now appeals.

Discussion and Decision

[6] Except as provided in Appellate Rule 4,[1] this Court has jurisdiction in all appeals from final judgments. Ind. Appellate Rule 5(A). Accordingly, whether an order is a final judgment governs this Court's subject matter jurisdiction. *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 757 (Ind. 2014). A final judgment is one that "disposes of all claims as to all parties." Ind. Appellate Rule 2(H)(1). A final judgment puts an end to the particular case as to all parties and all issues and reserves no further question for future determination. *Bueter v. Brinkman*, 776 N.E.2d 910, 912-13 (Ind. Ct. App. 2002). The lack of appellate subject matter jurisdiction may be raised at any time, and where the parties do not raise the issue, this Court may consider it sua sponte. *In re Estate of Botkins*, 970 N.E.2d 164, 166 (Ind. Ct. App. 2012).

[7] Here, the trial court's January 27, 2021 order denying Landlord's request to compel arbitration is not a final judgment within the meaning of Appellate Rule 2(H)(1). The order did not dispose of all issues as to all parties or put an end to the case because the relief requested in Tenants' lawsuit—return of personal property, compensation for injuries, and punitive damages—was neither granted nor denied. The January 27 order merely denied Landlord's request to

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[1] Appellate Rule 4 provides for appeal directly to our Supreme Court for a narrow class of cases, none of which are relevant here.

compel arbitration and left for future determination the claims presented in Tenants' lawsuit.

[8] Alternatively, pursuant to Appellate Rule 2(H)(2), a judgment is final if it complies with the dictates of Trial Rule 54(B). Trial Rule 54(B) provides that a judgment as to fewer than all the claims or parties is final if the trial court in writing expressly determines "there is no just reason for delay" and in writing expressly directs the entry of judgment. *See also* App. R. 2(H)(2). Unless a trial court uses this magic language, an order disposing of fewer than all claims as to all parties remains interlocutory in nature. *In re Adoption of S.J.*, 967 N.E.2d 1063, 1066 (Ind. Ct. App. 2012). In this case, the trial court's order denying Landlord's motion to compel arbitration contained none of the required language. Consequently, the order cannot be deemed final under Appellate Rule 2(H)(2).

[9] As the court's order was not final, Landlord cannot appeal unless the order is an appealable interlocutory order. An interlocutory order is one made before a final hearing on the merits and which does not determine the entire controversy. *Id.* This Court has jurisdiction over appeals of interlocutory orders under Appellate Rule 14. App. R. 5(B).

[10] Pursuant to Appellate Rule 14(A), certain interlocutory orders may be appealed as a matter of right. Yet, none of the grounds set forth in Rule 14(A) apply to the case before us. In addition, Appellate Rule 14(B) provides that an interlocutory order may be appealed "if the trial court certifies its order and the

Court of Appeals accepts jurisdiction over the appeal." No such certification and acceptance occurred here. Therefore, Landlord is entitled to neither an interlocutory appeal as a matter of right under Rule 14(A) nor a discretionary interlocutory appeal under Rule 14(B). Indeed, Landlord's counsel acknowledged in its notice of appeal that this case does not involve an interlocutory appeal.

Conclusion

[11] For these reasons, we conclude that the order from which Landlord appeals is neither a final judgment nor an appealable interlocutory order. This Court therefore lacks subject matter jurisdiction to entertain Landlord's appeal.

[12] Dismissed.

Robb, J., and Weissmann, J., concur.