MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Red Spot Paint & Varnish Company, Inc.
Appellant-Defendant

v.

Columbia Street Partners, Inc. and Charles D. Storms,
Appellees-Plaintiffs.

May 24, 2022

Court of Appeals Case No. 21A-CC-1806

Appeal from the Vanderburgh Circuit Court

The Honorable Robert R. Aylsworth, Special Judge

Trial Court Cause No. 82C01-2010-CC-4333

Pyle, Judge.

Statement of the Case

[1] In this appeal, Red Spot Paint & Varnish Company ("Red Spot") attempts to challenge the trial court's order, in which the trial court granted summary judgment to Columbia Street Partners, Inc. ("Columbia") and Charles D. Storms ("Storms") (collectively "Columbia Street") on one of two claims in Columbia Street's complaint and specifically reserved jurisdiction to hold a hearing and determine an unresolved matter regarding Columbia's claim for attorney fees and costs. Because the trial court's order was neither a final judgment nor an appealable interlocutory order, we *sua sponte* dismiss the appeal without prejudice to Red Spot's right to file an appeal once a final judgment has been entered or the order has been certified for an interlocutory appeal.

[2] We dismiss.

Issue

Whether the trial court's order was either a final judgment or an appealable interlocutory order.

Facts

[3] This current case commenced in October 2020 when Columbia Street filed a complaint against Red Spot. Columbia Street sought declaratory relief based on the interpretation of Section 7 of a prior settlement agreement entered between Columbia Street and Red Spot in 2010 ("the 2010 settlement agreement"). Specifically, Columbia Street sought declaratory relief that it had

no obligation to indemnify Red Spot for Red Spot's costs and attorney fees incurred when a third party had impleaded Red Spot into an environmental legal action lawsuit that had been filed against the third party by Columbia Street in 2016 ("the 2016 litigation"). Additionally, in its complaint, Columbia Street sought relief, pursuant to a different section of the 2010 settlement agreement, to recover attorney fees and costs incurred in this current litigation.

[4] Thereafter, Red Spot filed a counterclaim against Columbia Street. Red Spot's counterclaim, which was also based on the interpretation of Section 7 of the 2010 settlement agreement, sought indemnity for the costs and fees incurred in the 2016 litigation and asserted that Columbia Street had breached the 2010 settlement agreement by failing to indemnify Red Spot. Red Spot also sought relief, pursuant to the 2010 settlement agreement, to recover attorney fees and costs from this current litigation.

[5] Both parties filed motions for summary judgment on Columbia Street's complaint and Red Spot's counterclaim. The parties' summary judgment motions sought to have the trial court interpret Section 7 of the 2010 settlement agreement and determine whether Columbia Street was required to indemnify Red Spot for Red Spot's costs from the 2016 litigation. Additionally, both parties sought to recover, pursuant to Section 15 of the 2010 settlement agreement, attorney fees and costs to be determined in a later hearing during which evidence of the costs and fees could be presented.

[6] In July 2021, the trial court issued an order on the summary judgment motions that addressed only the indemnity issue. Specifically, the trial court granted Columbia Street's summary judgment motion, concluding that, pursuant to the "clear and unambiguous" language of Section 7 of the 2010 settlement agreement, Columbia Street was "entitled to a declaration and judgment that they ha[d] no obligation under Section 7 to indemnify Red Spot" for Red Spot's costs and attorney fees from the 2016 litigation. (App. Vol. 2 at 11). The trial court also denied Red Spot's summary judgment motion, concluding that Red Spot was not entitled to any relief on its counterclaim. In its order, the trial court also specifically "*reserve[ed] jurisdiction to hear and determine any matters as yet unresolved in this matter*." (App. Vol. 2 at 12) (emphasis added).

[7] Thereafter, Columbia Street filed a motion, seeking to have the trial court set deadlines for the determination of Columbia Street's claim for attorney fees and costs. The trial court granted Columbia Street's motion to set deadlines for a future hearing on Columbia Street's claim for the fees and costs. Subsequently, Red Spot filed its notice of appeal with this Court and indicated that it was appealing a final judgment as defined under Appellate Rule 2(H).

Decision

[8] Red Spot argues that the trial court erred by granting Columbia Street's summary judgment motion and denying Red Spot's summary judgment motion. We, however, decline to review Red Spot's challenge at this juncture because the trial court's order was neither a final judgment nor an appealable interlocutory order.

[9] "Whether an order is a final judgment governs the appellate courts' subject matter jurisdiction." *Front Row Motors, LLC v. Jones*, 5 N.E.3d 753, 757 (Ind. 2014). *See* Ind. Appellate Rule 5(A) (providing that this Court has jurisdiction in appeals from final judgments). As set forth in Indiana Appellate Rule 2(H), a judgment is a "final judgment" if:

> (1) it disposes of all claims as to all parties;
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> (2) the trial court in writing expressly determines under . . . Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment . . . under Trial Rule 56(C) as to fewer than all the claims or parties;
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> (3) it is deemed final under Trial Rule 60(C);
>
> (4) it is a ruling on either a mandatory or permissive Motion to Correct Error. . . ; or
>
> (5) it is otherwise deemed final by law.

App. R. 2(H). "[A] final judgment disposes of all issues as to all parties thereby ending the particular case" and "leaves nothing for future determination." *Georgos v. Jackson*, 790 N.E.2d 448, 451 (Ind. 2003) (cleaned up), *reh'g denied*.

[10] In this case, the trial court granted summary judgment to Columbia Street on the claim in its complaint in which Columbia Street sought to have the trial court interpret and enforce Section 7 of the parties' 2010 settlement agreement and enter a declaratory judgment that it had no obligation to indemnify Red Spot. We recognize that, under Appellate Rule 2(H)(5), a judgment is considered a "final judgment" if "it is otherwise deemed final by law" and that, pursuant to the Indiana Uniform Declaratory Judgment Act, a trial court's

"declaration has the full force and effect of a final judgment or decree." I.C. § 31-14-1-1.

[11] Here, however, the trial court's order ruling on the parties' summary judgment motions decided only one of Columbia Street's two claims before the trial court, and the trial court specifically reserved jurisdiction on the remaining claim to be determined at a later date following a hearing on the matter. Specifically, the trial court interpreted Section 7 of the 2010 settlement agreement to determine that Columbia Street was entitled to summary judgment on its claim that Columbia Street had no obligation to indemnify Red Spot. However, the trial court did not interpret Section 15 of the 2010 settlement agreement to determine whether Columbia Street was entitled to attorney fees and costs or determine the amount of any such fees and costs. Because the trial court's order did not "disposes of all issues as to all parties thereby ending the particular case" and there remained a matter left "for future determination," the summary judgment order in this particular case was not a final judgment. *See Georgos*, 790 N.E.2d at 451. *See also Forman v. Penn*, 938 N.E.2d 287, 288 (Ind. Ct. App. 2010) (concluding that the trial court's order granting an insurer's summary judgment motion seeking a declaratory judgment that it had no duty to provide a defense to its insurer was not a final appealable order where there were remaining unresolved claims), *on reh'g,* 945 N.E.2d 717 (Ind. Ct. App. 2011), *trans. denied*. *Cf. Kornelik v. Mittal Steel USA, Inc.*, 952 N.E.2d 320, 324 (Ind. Ct. App. 2011) (explaining that a trial court's ruling in a declaratory

judgment case was a final appealable order because it disposed of all remaining claims between the remaining parties), *reh'g denied*, *trans. denied*.

[12] "[I]f a trial court's summary judgment order is not final as to all issues, claims, and parties, the order *must* include the 'magic language' set forth in Trial Rule 56(C) to be considered final."[1] *Indy Auto Man, LLC v. Keown & Kratz, LLC*, 84 N.E.3d 718, 721 (Ind. Ct. App. 2017) (emphasis in original). "Otherwise, a summary judgment order disposing of fewer than all claims as to all parties remains interlocutory in nature." *Id.* (citing *Martin v. Amoco Oil Co.*, 696 N.E.2d 383, 385 (Ind. 1998), *cert. denied*). The requirement that a trial court use the "magic language" is to "provide a bright line so there is no mistaking whether an interim order is or is not appealable." *Georgos*, 790 N.E.2d at 452. If an order is not a final judgment, then an appellant may appeal the order only if it is an appealable interlocutory order. *See In re Adoption of S.J.*, 967 N.E.2d 1063, 1066 (Ind. Ct. App. 2012).

[13] Here, the trial court's summary judgment order addressed only the indemnity claim and left the claim for attorney fees and costs for a later date. Indeed, in its order, the trial court explicitly retained jurisdiction to hear and determine the unresolved matter. The trial court's order at issue was not a final judgment

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[1] Indiana Trial Rule 56(C) provides, in relevant part, that:

> A summary judgment upon less than all the issues involved in a claim or with respect to less than all the claims or parties shall be interlocutory unless the court in writing expressly determines that there is no just reason for delay and in writing expressly directs entry of judgment as to less than all the issues, claims or parties.

because it did not dispose of all claims as to all parties and because the trial court did not include the "magic language" required to meet the "bright line" rule under Indiana Trial Rule 56(C). *See Indy Auto Man*, 84 N.E.3d at 721 (explaining that the trial court's summary judgment order was not final where it did not dispose of all issues as to all parties and did not include the "magic language" from Trial Rule 56(C) that would have converted the non-final order into a final order).

[14] Additionally, the trial court's summary judgment order at issue is not an appealable interlocutory order as of right under Appellate Rule 14(A) because it does not fall within one of the categories of Rule 14(A). Nor is the order a discretionary interlocutory appealable order under Appellate Rule 14(B) because Red Spot neither requested the trial court to certify the interlocutory order nor sought permission from our Court to accept the interlocutory appeal. *See Adoption of S.J.*, 967 N.E.2d at 1066. *See also* App. R. 14.

[15] Because the trial court's order is not a final appealable order or an appealable interlocutory order, we dismiss this appeal for lack of appellate jurisdiction. *See Town of Ellettsville v. Despirito*, 87 N.E.3d 9, 12 (Ind. 2017) (explaining that "in the overwhelming majority of cases, the proper course for an appellate court to take where it finds appellate jurisdiction lacking is simply to dismiss the appeal"). Accordingly, we dismiss this appeal without prejudice to Red Spot's right to file an appeal once a final judgment has been entered or the order has been certified for an interlocutory appeal. *See Truelove v. Kinnick*, 163 N.E.3d 344, 347 (Ind. Ct. App. 2021) (dismissing an appeal from a non-final order

without prejudice); *Indy Auto Man*, 84 N.E.3d at 722 (dismissing an appeal from a non-final summary judgment order without prejudice).

[16] Dismissed.

May, J., and Brown, J., concur.