IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

State of Ohio, ex rel. Mike DeWine, Ohio Attorney General,	:	
Plaintiff-Appellee,	:	Case No. 18CA3668
v.	:	
Purdue Pharma L.P., et al.,	:	
	:	DECISION AND JUDGMENT ENTRY
Defendants-Appellants.	:	
	:	**RELEASED: 11/28/2018**

APPEARANCES:

Albert J. Lucas and Jason J. Blake, Calfee, Halter & Griswold LLP, Columbus, Ohio for Appellant Teva Pharmaceutical Industries Ltd.

Mark H. Troutman, Shawn Judge, and Gregory Travalio, Isaac Wiles Burkholder & Teetor, LLC, Columbus, Ohio for Appellee.

HOOVER, A.J.

{¶1} Appellant Teva Pharmaceutical Industries Ltd. appeals a trial court order denying its motion to dismiss for lack of personal jurisdiction. We ordered Teva to file a memorandum addressing whether this court has jurisdiction to consider the appeal because the order appealed from may not be a final appealable order. Teva argues that the order is final and appealable under R.C. 2505.02(B)(4) because it denied a provisional remedy, determined the action with respect to the provisional remedy, and Teva would not be afforded meaningful review of the order if it had to wait until final judgment to appeal because of the litigation costs. Alternatively, Teva asks that we convert its appeal into a petition for a writ of prohibition.

{¶2} We find that the trial court's entry is not a final appealable order because the prospects of costly litigation does not make a remedy following final judgment unmeaningful or ineffective. Teva cites no authority that would authorize this court to convert an appeal over which we lack jurisdiction into an original action for an extraordinary writ and we decline to do so. We hereby **DISMISS** the appeal.

Legal Analysis

{¶3} Ohio law provides that appellate courts have jurisdiction to review only final orders or judgments. *See, generally*, Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. If an order is not final and appealable, an appellate court has no jurisdiction to review the matter and it must be dismissed. "An order of a court is a final appealable order only if the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B), are met." *State ex rel. Scruggs v. Sadler,* 97 Ohio St.3d 78, 2002-Ohio-5315, 776 N.E.2d 101; *see also*, *Chef Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus. The threshold requirement, therefore, is that the order satisfies the criteria of R.C. 2505.02.

{¶4} For purposes of this appeal, the relevant portions of R.C. 2505.02 defining a final appealable order are:

> (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> * * *
>
> (4) An order that grants or denies a provisional remedy and to which both of the following apply:
>
> (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing

> party with respect to the provisional remedy.
>
> (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.

{¶5} "[I]n order to qualify as a final, appealable order under R.C. 2505.02(B)(4), three requirements must be satisfied: (1) the order must grant or deny a provisional remedy as that term is defined in the statute, (2) the order must in effect determine the action with respect to the provisional remedy, and (3) the appealing party would not be afforded a meaningful review of the decision if that party had to wait for final judgment as to all proceedings in the action." *State v. Anderson,* 138 Ohio St.3d 264, 271, 2014-Ohio-542, 6 N.E.3d 23, 29-30, ¶ 42 (2014).

{¶6} Teva argues that the order denying its motion to dismiss for lack of personal jurisdiction is final and appealable under R.C. 2505.02(B)(4)(b) because "litigation costs" are sufficient to establish the absence of a meaningful and effective remedy for purposes of R.C. 2505.02(B)(4)(b). Teva cites for support *Huegemann v. VanBakel*, 12th Dist. Fayette No. CA2013-08-022, 2014-Ohio-1888, ¶ 24 (acknowledging that litigation costs are generally insufficient to show the absence of a meaningful and effective remedy but finding an exception where litigants were German residents). Teva, which contends is an Israeli corporation, urges us to adopt the analysis in *Huegemann* and make an exception for foreign corporations. We decline to do so.

{¶7} "[T]he prospect of high litigation costs does not make a remedy following final judgment unmeaningful or ineffective." *Gardner v. Ford,* 1st Dist. Hamilton No. C-

150018, 2015-Ohio-4242, ¶ 8 (declining to follow *Huegemann* and holding that an order denying a motion to dismiss for lack of personal jurisdiction was not a final appealable order under R.C. 2505.02(B)(4)(b)); *Nejman v. Charney,* 8th Dist. Cuyahoga No. 102584, 2015-Ohio-4087, ¶ 17 (declining to follow *Huegemann* and holding that an order denying motion to dismiss for lack of personal jurisdiction was not a final appealable order under R.C. 2505.02(B)(4)(b)); *Katherine's Collection, Inc. v. Kleski,* 9th Dist. Summit No. 26477, 2013-Ohio-1530, ¶ 14 (inconvenience and financial hardship does not render the ultimate remedy ineffective or unmeaningful under R.C. 2505.02(B)(4)(b)). "Instead, under R.C. 2505.02(B)(4), an appellant must demonstrate that effective relief will not be available after final judgment because the order determining the provisional remedy will result in something akin to a bell that cannot be unrung or a legal issue that will become moot by the time of final judgment." *Id.*

{¶8} The *Huegemann* court acknowledged that its holding deviated from the majority rule that litigation costs are not sufficient to show the absence of a meaningful and effective remedy. *Huegemann* at ¶ 24; see *Gardner* at ¶ 11 ("We are not persuaded by *Huegemann's* logic and decline to disturb decades of case law to the contrary.") Like the *Gardner* and *Nejman* courts, we see no reason to depart from the majority rule and adopt a special rule for foreign corporations. "[I]n applying substantially similar federal law, the United States Supreme Court 'has declined to find the costs associated with unnecessary litigation to be enough to warrant allowing the immediate appeal of a pretrial order.' "*See Gardner* at ¶ 8 quoting *Lauro Lines S.R.L. V. Chasser,* 490 U.S. 495, 499, 109 S.Ct. 1976, 104 L.Ed.2d 548 (1989) (foreign cruise line could not

immediately appeal an order requiring it to litigate in United States despite forum-selection clause identifying Italy as venue); *State ex rel. Atty. Gen. v. Grand Tobacco*, 2007-Ohio-418, 871 N.E.2d 1255, ¶ 4, fn. 1 (10th Dist.) (order denying motion to dismiss for lack of personal jurisdiction was not a final, appealable order even though appellant was headquartered in the Republic of Armenia). "It is always true, however, that 'there is value ... in triumphing before trial, rather than after it,' and this Court has declined to find the costs associated with unnecessary litigation to be enough to warrant allowing the immediate appeal of a pretrial order." (Citation omitted.) *Lauro Lines S.R.L.* at 499.

{¶9} We need not determine if the order in this case (1) grants or denies a provisional remedy or (2) determines the action with respect to the provisional remedy, because it fails to satisfy R.C. 2505.02(B)(4)(b)'s third requirement that the appealing party lacks a meaningful remedy on appeal following judgment. An order denying a motion to dismiss for lack of personal jurisdiction is not a final, appealable order.

{¶10} As alternative relief, Teva asks that we convert its appeal into a petition for a writ of prohibition. However, Teva cites no authority that would authorize an appellate court lacking jurisdiction over an appeal to convert the appeal to an original action. We deny Teva's request to do so.

{¶11} Accordingly, we find the judgment entry appealed is not a final appealable order and the appeal is hereby **DISMISSED**.

{¶12} The clerk shall serve a copy of this order on all counsel of record at their last known addresses by ordinary mail.

APPEAL DISMISSED. COSTS TO APPELLANT. IT IS SO ORDERED.

Abele, J. and McFarland, J.: Concur.

FOR THE COURT

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Marie Hoover
Administrative Judge