

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

Opal Mays, et al.,	:	
	:	
Plaintiffs-Appellants,	:	Case No. 17CA20
	:	
v.	:	
	:	
The Village of Cheshire, Ohio, et al.,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
Defendants-Appellees.	:	
	:	RELEASED: 2/5/2018

Hoover, A.J.

{¶1} Plaintiffs-Appellants appeal a judgment granting summary judgment to Defendants Optotraffic, LLC, Roy Taylor, and Mark Coleman on all claims asserted against them and granting summary judgment to Defendant Village of Cheshire on all but Count II and Count VIII of the claims asserted against it. Because claims remained pending against the Village of Cheshire and the decision does not include Civ.R. 54(B) language, we ordered appellants to file a memorandum within ten days addressing whether we have jurisdiction. See Magistrate’s Order, Nov. 20, 2017. Appellants did not respond.

{¶2} Because the order appealed from is not a final, appealable order we lack jurisdiction and **DISMISS** this appeal.

LEGAL ANALYSIS

{¶3} Appellate courts “have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district[.]” Ohio Constitution, Article IV, Section 3(B)(2); see R.C. 2505.03(A). If a court's order is not final and appealable, we have no

jurisdiction to review the matter and must dismiss the appeal. *Eddie v. Saunders*, 4th Dist. Gallia No. 07CA7, 2008–Ohio–4755, ¶ 11.

{¶4} An order must meet the requirements of R.C. 2505.02 to constitute a final, appealable order. *Chef Italiano Corp. v. Kent State Univ.*, 44 Ohio St.3d 86, 88, 541 N.E.2d 64 (1989). Under R.C. 2505.02(B)(1), an order is a final order if it “affects a substantial right in an action that in effect determines the action and prevents a judgment[.]” To determine the action and prevent a judgment for the party appealing, the order “must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court.” *Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild of Ohio*, 46 Ohio St.3d 147, 153, 545 N.E.2d 1260 (1989).

{¶5} Additionally, if the case involves multiple parties or multiple claims, the court's order must meet the requirements of Civ.R. 54(B) to qualify as a final, appealable order. See *Chef Italiano Corp.* at 88. Under Civ.R. 54(B), “[w]hen more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay.” Absent the mandatory language that “there is no just reason for delay,” an order that does not dispose of all claims is subject to modification and is not final and appealable. *Noble v. Colwell*, 44 Ohio St.3d 92, 96, 540 N.E.2d 1381 (1989); see Civ.R. 54(B). The purpose of Civ.R. 54(B) is “ ‘to make a reasonable accommodation of the policy against piecemeal appeals with the possible injustice

sometimes created by the delay of appeals[,]’ * * * as well as to insure that parties to such actions may know when an order or decree has become final for purposes of appeal * * *.” *Pokorny v. Tilby Dev. Co.*, 52 Ohio St.2d 183, 186, 370 N.E.2d 738 (1977); quoting *Alexander v. Buckeye Pipeline*, 49 Ohio St.2d 158, 160, 359 N.E.2d 702 (1977).

{¶16} The case presently before us involves multiple parties and claims. However, the judgment appealed does not dispose of all claims against all parties. The trial court did not grant summary judgment as to Count II or Count VIII against the Village of Cheshire, nor did the trial court include Civ.R. 54(B) language:

To be clear, the Court finds that Cheshire is the only remaining defendant and that the only issues remaining are the validity of the speed limit, the Notice of Liability issued for violating the speed limit to plaintiffs whose cases were not dismissed and money collect by Cheshire pursuant to the Notice of Liability. * * *

That Cheshire’s motion as to Count II is granted and this count is dismissed except for the allegations in paragraphs 70(a) of the second amended complaint as to the validity of the speed limit. * * *

That Cheshire, Taylor and Coleman’s motion as to Count VIII is granted and this count is dismissed except as it applies to the money collected by Cheshire pursuant to the Notice of [L]iability.

{¶17} In light of our determination that certain of the plaintiffs’ claims against the Village of Cheshire remain undetermined, we lack jurisdiction to consider this appeal. Accordingly, we **DISMISS** the appeal for lack of a final, appealable order. **APPEAL DISMISSED. COSTS TO APPELLANTS.**

{¶18} The clerk shall serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail and record service on the docket. **IT IS SO ORDERED.**

Harsha, J. & Abele, J.: Concur.

FOR THE COURT

Marie Hoover
Administrative Judge