

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

Reminger Co., L.P.A., and Vince P. Antaki, for Respondents-Appellants.

MILLER, Judge.

{¶1} This is an appeal from the partial denial of a motion to dismiss, and a partial granting of a petition for discovery under Civ.R. 27 allowing appellee Calina Anglin to depose several individuals, duces tecum, for the purposes of perpetuating their testimony and determining if Anglin had a cause of action against them.

{¶2} Appellants Rose Donohoo, Jeffrey Beard, Travis Garrett and Sandy Latham, parties that Anglin sought to depose, assert a single assignment of error that the trial court erred in denying their Civ.R. 12(B)(6) motion to dismiss Anglin's Civ.R. 27 petition for discovery. The essence of the argument is that the petition should have been dismissed because Anglin failed to establish that she was attempting to perpetuate testimony, the petition did not "meet the requirements of R.C. 2317.48 and Civ.R. 34(D)," and the petition "rests entirely upon a falsehood." We do not reach the merits of this appeal.

{¶3} We recently held that the denial of a motion to dismiss a petition for discovery under Civ.R. 34(D) is not a final appealable order. *Bright Future Partners, Inc. v. Proctor & Gamble Distrib., L.L.C.*, 1st Dist. Hamilton No. C-160589, 2017-Ohio-4145, ¶ 9. This holding applies equally to a petition for discovery under Civ.R. 27. The partial denial of the motion to dismiss did not determine the action and prevent a judgment in appellants' favor. *See id.* The partial denial of the motion to dismiss, and partial granting of the petition, merely provided that the requested "depositions may then be taken in accordance with these rules." Civ.R. 27(A)(3). Appellants retained full rights to defend the depositions as permitted by Civ.R. 26, 27 and 30, and appeal any issues that may arise to the same extent as permitted in discovery in any other civil action. To allow premature appeals would thwart the

entire purpose of petitions for discovery—to allow for a potential plaintiff to determine if she has a claim prior to asserting the claim.

{¶4} Accordingly, this appeal is dismissed.

Appeal dismissed.

MOCK, P.J., and CUNNINGHAM, J., concur.

Please note:

The court has recorded its own entry on the date of the release of this opinion.

