

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ambulatory Care Affiliates, Ltd.,	:	
Plaintiff-Appellant,	:	
v.	:	No. 10AP-30
OhioHealth Corporation et al.,	:	(C.P.C. No. 08CVH-06-09340)
Defendants-Appellees.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on June 30, 2010

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*Benesch, Friedlander, Coplan & Aronoff, LLP, William M. Todd and John F. Stock, for appellant.*

*Roetzel & Andress, LPA, Stephen D. Jones, Robert B. Graziano and Michael R. Traven; The Winkler Law Firm, and John F. Winkler, for appellee OhioHealth Corporation.*

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APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶1} Ambulatory Care Affiliate, Ltd. ("ACA"), is appealing from the granting of partial summary judgment granted in its lawsuit against OhioHealth Corporation ("OhioHealth"). ACA assigns two errors for our consideration:

[I.] THE COMMON PLEAS COURT ERRED IN CONCLUDING THAT ACA'S CONDUCT TRIGGERED THE PARTIES' SEPARATION AGREEMENT.

[II.] THE COMMON PLEAS COURT ERRONEOUSLY INTERPRETED THE NON-COMPETE PROVISIONS OF THE PARTIES['] OPERATING AGREEMENT.

{¶2} Before we address the merits of the assignments of error, we must determine if we have jurisdiction over the case. We have jurisdiction only if we are presented with a final, appealable order as defined by R.C. 2505.02(B). R.C. 2505.02(B) reads:

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:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

(3) An order that vacates or sets aside a judgment or grants a new trial;

(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.

{¶3} OhioHealth has filed a motion to dismiss this appeal asserting that no final, appealable order has yet been journalized. ACA, in resisting dismissal, has argued that this case involves a special proceeding as defined by R.C. 2505.02(A)(2), which reads:

"Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

{¶4} Specifically, ACA asserts that the case involves issues seeking declaratory judgment and/or judicial dissolution of the joint venture following a statutory procedure. ACA acknowledges, as indeed it must, because a damage hearing has yet to be conducted in this case, that if the appeal does not involve a special proceeding, no final appealable order exists.

{¶5} The factual underpinnings of ACA's complaint filed in the trial court involve a joint venture entered into between ACA and OhioHealth to form OhioHealth Ambulatory Care Services, Ltd. ("OHAC"), which owns and operates urgent care centers in Franklin and Delaware counties. OHAC is governed by an operating agreement ("the operating agreement"). In addition to the operating agreement, the parties subsequently entered into another agreement titled "Separation Agreement," which, as its name suggests, sets forth the procedure in the event of a separation.

{¶6} The gravamen of ACA's complaint is that appellees breached the non-compete provision contained in the operating agreement. In its first claim for relief (declaratory judgment), ACA sought judicial determinations relating to the separation agreement. In its second claim for relief (specific performance), ACA sought a decree requiring appellees to sell their 50 percent membership interest in OHAC to ACA pursuant to sections four and five of the separation agreement. ACA's third and fourth claims for relief sought preliminary and permanent injunctions, as well as compensatory damages, respectively. In its fifth claim for relief (dissolution of OHAC pursuant to R.C.

1705.47), ACA prayed, in the alternative, that if the court does not grant the relief prayed for in the first, second, and third claims, then it is entitled to a judicial dissolution of OHAC and to have the affairs wound up pursuant to R.C. 1705.44 through 1705.46 and Article 7 of the operating agreement. OhioHealth answered the complaint and asserted over 20 counterclaims, including a claim for declaratory judgment that sought judicial determinations relating to the separation agreement; determinations that were the exact converse of what ACA sought in its complaint.

{¶7} OhioHealth subsequently filed a motion for judgment on the pleadings, and, alternatively, motion for summary judgment. Reduced to its essence, OhioHealth's position was that it did not breach the non-compete provision contained in the operating agreement and that ACA's letter dated January 6, 2008 triggered a separation event that justified judgment on all claims. The court agreed with OhioHealth, granting its motion for summary judgment.

{¶8} The trial court's ruling indicated that Ohio's statutory framework for judicial dissolution of a joint venture would not come into play because the proceedings were governed by the series of documents or contracts which governed the relationship between the parties. As a result, the trial court did not treat the case as a special proceeding. Therefore, the trial court did not make an order in a special proceeding. Because the trial court did not address the case as being a special proceeding, we are not presented with a ruling in a special proceeding for purposes of R.C. 2505.02(B)(2). ACA's argument against dismissal based upon the statutes governing judicial dissolutions fails.

{¶9} As indicated above, ACA's second theory is that because the case involves some elements of declaratory judgment, an appeal can now be pursued.

{¶10} Actions for declaratory judgment are special proceedings. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20. "However, we look to the underlying action to determine if it is a common law action or a special proceeding." *West v. Stump*, 4th Dist. No. 07 CA 5, 2007-Ohio-6495, ¶9, citing *Regional Imaging Consultants Corp. v. Computer Billing Servs.* (Nov. 30, 2001), 7th Dist. No. 00 CA 79, 2001-Ohio-3457 ("The declaratory judgment claim was asserted within the context of an ordinary civil action for breach of contract, and it is the underlying action which governs our analysis."); *Thompson v. Sydnor* (May 11, 1999), 4th Dist. No. 98 CA 2578. See also, *Stevens v. Ackman* (2001), 91 Ohio St.3d 182, 188; *Layman v. Welch*, 7th Dist No. 05-JE-3, 2006-Ohio-1157; *Young v. Cincinnati Ins. Co.*, 8th Dist. No. 82395, 2003-Ohio-4196, ¶7, citations omitted (" 'piecemeal' adjudication does not become appealable merely because [it is] cast in the form of a declaratory judgment.").

{¶11} ACA's claim sought to have declared that OhioHealth breached the agreement at issue and, thus, is an ordinary civil action for breach of contract. Therefore, the underlying action in this case is not a special proceeding.

{¶12} Stated somewhat more simply, the declaratory judgment aspects of this case are ancillary to the main issues, given the trial court's finding that this case is governed by the contractual issues, part of which are yet to be addressed. The case centers upon the existence of the contracts and the effect of applying those contracts to

the action of the parties. The contractual issues can be addressed on appeal once the trial court has addressed the financial issues, but not before.

{¶13} We, therefore, are not presented with a final appealable order as defined by R.C. 2505.02 and must dismiss the appeal. The motion to dismiss filed on behalf of OhioHealth and the other appellees is sustained. This appeal is dismissed.

*Appeal dismissed.*

BROWN and CONNOR, JJ., concur.

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