

**THE COURT OF APPEALS  
ELEVENTH APPELLATE DISTRICT  
TRUMBULL COUNTY, OHIO**

STEPHAN J. SAGENICH, et al.,	:	<b>MEMORANDUM OPINION</b>
Plaintiffs-Appellees,	:	
- vs -	:	<b>CASE NO. 2003-T-0144</b>
ERIE INSURANCE GROUP, et al.,	:	
Defendant-Appellee,	:	
AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY,	:	
Defendant-Appellant.	:	

Civil appeal from the Court of Common Pleas, Case No. 01 CV 1473.

Judgment: Appeal dismissed.

*J. W. Fodor*, 269 Seneca Avenue, N.E., P.O. Box 1706, Warren, OH, 44481 (For Plaintiffs-Appellees).

*David J. Hanna, Frank G. Mazgaj, and Robert L. Tucker*, Hanna, Campbell & Powell, LLP, 3737 Embassy Parkway, P.O. Box 5521, Akron, OH 44334 (For Defendant-Appellee, Erie Insurance Group).

*William B. Benson and Mark C. Melko*, Wiles, Boyle, Burkholder & Bringardner Co., L.P.A., 300 Spruce Street, Floor One, Columbus, OH 43215 (For Defendant-Appellant).

WILLIAM M. O'NEILL, J.

{¶1} On October 3, 2003, appellant, American Guarantee and Liberty Insurance, filed a notice of appeal from a September 8, 2003 judgment of the Trumbull County Court of Common Pleas. In that judgment, the trial court denied appellant's motion for summary judgment and indicated "[t]his is a final and appealable order, and there is not just cause for delay."

{¶2} On October 10, 2003, appellee, Erie Insurance Group, filed a motion to dismiss this appeal due to lack of a final appealable order. On October 22, 2003, appellant filed a memorandum in opposition to the motion to dismiss.

{¶3} It is well established that the denial of a motion for summary judgment is generally not a final appealable order. *State ex rel. Overmeyer v. Walinski* (1966), 8 Ohio St.2d 23. This is due to the fact that the denial does not determine the action and prevent a judgment and is, therefore, not a final order under R.C. 2505.02. *Celebrezze v. Netzley* (1990), 51 Ohio St.3d 89, 90. See, also, *Klein v. Portage Cty.* (2000), 139 Ohio App.3d 749, 751. The denial of a motion for summary judgment is always reviewable on appeal following a subsequent final judgment.

{¶4} Additionally, the mere addition of Civ.R. 54(B) language, that there is no just reason for delay, does not transform what is an otherwise interlocutory order into a final appealable order. As stated by the Supreme Court of Ohio in *Wisintainer v. Elcen Power Strut Co.* (1993), 67 Ohio St.3d 352, at 354, "the phrase 'no just reason for delay' is not a mystical incantation which transforms a nonfinal order into a final order." See, also, *Graines v. Y.D.C. Corp.* (May 11, 2001), 11th Dist. No. 2000-L-053, 2001 WL 501994.

{¶5} Based upon the foregoing analysis, appellee's motion to dismiss this appeal is hereby granted since the trial court has not yet issued a final order. Hence, this court is without jurisdiction to consider this matter.

{¶6} The appeal is dismissed.

Appeal dismissed.

DONALD R. FORD, P.J., and CYNTHIA WESTCOTT RICE, J., concur.