

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

THE CITY OF MENTOR,	:	<b>MEMORANDUM OPINION</b>
Plaintiff-Appellee,	:	
- vs -	:	<b>CASE NO. 2003-L-170</b>
NORFOLK SOUTHERN RAILWAY COMPANY,	:	
Defendant-Appellant.	:	

Civil appeal from the Court of Common Pleas, Case No. 00 CV 001663.

Judgment: Appeal dismissed.

*Peter M. Poulos, Kelley, McCann & Livingstone, 3500 BP Tower, 200 Public Square, Cleveland, OH 44114 (For Plaintiff-Appellee).*

*Thomas E. Dover, Joseph J. Santoro, and Monica A. Sansalone, Gallagher, Sharp, Fulton & Norman, Bulkley Building, Seventh Floor, 1501 Euclid Avenue, Cleveland, OH 44115-2108 (For Defendant-Appellant).*

DIANE V. GRENDELL, J.

{¶1} On June 4, 2003, appellant, Norfolk Southern Railway Company, filed a notice of appeal from a May 28, 2003 judgment of the Lake County Court of Common Pleas. In that judgment, the trial court granted the petition of appellee, city of Mentor, brought pursuant to R.C. 4957.30, to construct a new highway-railroad at-grade crossing at Plaza Boulevard across the railway tracks owned by Norfolk Southern

Railway Company and CSX Transportation, Inc. That appeal has been designated as 11th Dist. Case No. 2003-L-086.

{¶2} On August 29, 2003, this court issued a judgment ordering Appellant to show cause why that case should not be dismissed because it appeared that the May 28, 2003 judgment was not final appealable order. Appellant filed a timely response.

{¶3} On October 14, 2003, this court issued a judgment entry in the foregoing case concluding that the May 28, 2003 judgment was a final appealable order, and ordering the appeal to proceed according to rule. In that same judgment, this court also granted appellant's motion to supplement the record with a judgment of the trial court entered on September 22, 2003. In that judgment, the trial court indicated, inter alia, that there were no further issues to be decided and, therefore, the May 28, 2003 judgment "is now a final appealable order."

{¶4} Subsequently, on October 16, 2003, appellant filed a second notice of appeal, which is the instant appeal. On its docketing statement, appellant indicates that its probable issue for review is whether the trial court erred in granting appellee's petition for an at-grade crossing. While parties are not bound by the "probable issue" set forth in their docketing statement, it does provide this court with some indication of what direction an appellant is going with an appeal. It is apparent that appellant in this case was merely trying to protect its appellate rights if this court had decided that the May 28, 2003 judgment was not a final appealable order. In fact, appellant admitted that such was the case in an October 17, 2003 motion it filed to consolidate this appeal with the earlier appeal.

{¶5} Accordingly, since appellant already has an appeal pending from the trial court's May 28, 2003 judgment, the present appeal is an unnecessary duplication of its appeal in 11th Dist. Case No. 2003-L-086.

{¶6} Based upon the foregoing analysis, appellant's motion to consolidate is hereby overruled, and this appeal is sua sponte, dismissed.

DONALD R. FORD, P.J., and JUDITH A. CHRISTLEY, J., concur.