

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

BURTON CAROL MANAGEMENT, LLC,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2015-L-070
IRM B. ZIEGLER,	:	
Defendant,	:	
JOSEPH ZIEGLER,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 15 CV 000043.

Judgment: Appeal dismissed.

Michael D. Linn and Robert G. Friedman, Powers Friedman Linn P.L.L., Four Commerce Park, #180, 23240 Chagrin Boulevard, Cleveland, OH 44122 (For Plaintiff-Appellee).

Joseph Ziegler, pro se, 120 Court Street, Chardon, OH 44024 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} On June 16, 2015, appellant, Joseph Ziegler, pro se, filed a notice of appeal with this court from a June 2, 2015 judgment entry of the Lake County Court of Common Pleas. In that entry, the trial court granted Mr. Ziegler's pro se motion for enlargement of time and denied as moot his pro se motion to compel court-ordered discovery from appellee, Burton Carol Management, LLC. In that entry, the trial court

also denied Mr. Ziegler's pro se motion for objection and to strike appellee's brief in opposition to his motion to compel court-ordered discovery.

{¶2} On July 31, 2015, appellee filed a motion to dismiss the interlocutory appeal. Mr. Ziegler has filed no brief or memorandum in opposition to the motion to dismiss.

{¶3} We must determine whether the entry appealed from is a final appealable order. According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a "final order" in the action. *In re Estate of Biddlestone*, 11th Dist. Trumbull No. 2010-T-0131, 2011-Ohio-1299, ¶ 3. If a lower court's order is not final, a reviewing court has no jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. of N. Am.*, 44 Ohio St.3d 17, 20 (1989). For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B).

{¶4} Pursuant to R.C. 2505.02(B), there are seven categories of a "final order," and if the judgment of the trial court satisfies any of them, it will be deemed a "final order" and can be immediately appealed and reviewed by a court of appeals. R.C. 2505.02(B) states that:

{¶5} "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:

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

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

{¶8} “(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶9} “(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶10} “(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.

{¶11} “(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.

{¶12} “(5) An order that determines that an action may or may not be maintained as a class action;

{¶13} “(6) An order determining the constitutionality of any changes to the Revised Code * * *;

{¶14} “(7) An order in an appropriation proceeding * * *.”

{¶15} For R.C. 2505.02(B)(2) to apply to the instant matter, the orders under review must be made in a special proceeding, which is defined as “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.” R.C. 2505.02(A)(2). This case does not involve a special proceeding in the context of final appealable orders. Thus, R.C. 2505.02(B)(2) does not apply.

{¶16} In addition, it is clear that the June 2, 2015 entry did not vacate a judgment, grant a provisional remedy, deal with a class action, determine the constitutionality of Am. Sub. S.B. 281 or Sub. S.B. 80, or deal with an appropriation proceeding. Therefore, R.C. 2505.02(B)(3)-(7) do not apply.

{¶17} For R.C. 2505.02(B)(1) to apply to the appealed entry, it must affect a substantial right, determine the action, and prevent further judgment. In the instant matter, the order involved in this appeal does not fit into this category. Mr. Ziegler is appealing the denial of his motion to compel court-ordered discovery as well as the denial of his motion for objection and to strike appellee's brief in opposition to his motion to compel court-ordered discovery. A trial court's discovery orders are generally interlocutory and, thus, not immediately appealable. *Walters v. Enrichment Ctr. Of Wishing Well, Inc.*, 78 Ohio St.3d 118, 121 (1997). This judgment entered by the trial court is interlocutory in nature, and the issue is not yet ripe for review.

{¶18} There was no order dismissing or terminating the case or an entry of judgment. An interlocutory order is simply not a final appealable order. This appeal has been prematurely filed. Mr. Ziegler will have a meaningful and effective remedy by means of an appeal once a final judgment is reached. See *Children's Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. Portage No. 2011-P-0103, 2011-Ohio-6838, at ¶ 5. Since the order appealed from is not final, this court will not have jurisdiction until a final appealable order is issued.

{¶19} Based upon the foregoing analysis, appellee's motion to dismiss is granted, and this appeal is hereby dismissed due to lack of jurisdiction.

{¶20} Appeals dismissed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.