

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

DONALD P. CARUSO, et al.,	:	MEMORANDUM OPINION
Plaintiffs-Appellees,	:	
- vs -	:	CASE NO. 2015-G-0045
JOSEPH T. SNYDERBURN, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 13 M 000962.

Judgment: Appeal dismissed.

Jeffrey W. Krueger and Eric D. Valente, J.W. Krueger, L.L.C., P.O. Box 360135, Cleveland, OH 44136 (For Plaintiffs-Appellees).

Guy E. Tweed, II, 4141 Rockside Road, Suite 230, Seven Hills, OH 44131 (For Defendants-Appellants).

DIANE V. GRENDELL, J.

{¶1} Appellants, Joseph T. Snyderburn and Michelle R. Snyderburn, by and through counsel of record, filed the instant appeal from an October 8, 2015 entry of the Geauga County Court of Common Pleas, in which the court entered judgment in favor of appellees, Donald P. Caruso, Carol A. Caruso, and the Architectural Review Committee of the Greystone Subdivision.

{¶2} A review of the record reveals that on October 22, 2013, appellees filed an action for injunctive relief and money damages. Appellants filed an answer and

counterclaim on November 21, 2013. On April 11, 2014, appellees filed a motion for summary judgment. Appellants filed a brief in opposition to the motion for summary judgment and appellees filed a reply to the brief in opposition.

{¶3} In the October 8, 2015 entry, the trial court entered judgment in favor of appellees and against appellants and ordered that “[a] hearing shall be scheduled by the Court to consider the issue of damages that [appellees] claim they are entitled to recover from [appellants] for any costs, damages, and expenses incurred in the prosecution of [appellees’] Complaint.” A review of the trial court docket reveals that the trial court set a damages hearing for December 10, 2015. On December 7, 2015, the trial court issued a judgment on its own motion cancelling the December 10 hearing. The trial court indicated that it was “divested of jurisdiction to hear [appellees’] Motion for Expenses and Fees” since appellants filed a notice of appeal on October 30, 2015.

{¶4} Initially, we must determine whether there is a final, appealable order, as this court may entertain only those appeals from final judgments or orders. *Noble v. Colwell*, 44 Ohio St.3d 92, 96 (1989). 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. *Germ v. Fuerst*, 11th Dist. Lake No. 2003-L-116, 2003-Ohio-6241, ¶ 3. If a lower court’s order is not final, then an appellate court does not have jurisdiction to review the matter, and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. 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). See *Children’s Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. Portage No. 2011-P-0103, 2011-Ohio-6838, ¶ 3.

{¶5} R.C. 2505.02(B) defines a final order as one of the following:

{¶6} “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:

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

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

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

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

{¶11} “(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.

{¶12} “(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.

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

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

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

{¶16} In the instant matter, the trial court’s October 8, 2015 order granted judgment in favor of appellees and against appellants. Thereafter, the trial court set a

damages hearing for December 10, 2015, which was later cancelled by the trial court due to the filing of the appeal.

{¶17} This court recently stated that a judgment from “[a] civil proceeding that defers damages for a later determination of an uncertain amount is not a final appealable order because it does not determine the action, prevent a judgment, or affect a substantial right in a special proceeding.” *State of Ohio ex rel. DeWine v. RAAW, LLC*, 11th Dist. Trumbull No. 2015-T-0046, 2015-Ohio-4547, ¶ 19. Here, there is no final order because the trial court set a damages hearing for a future date and has not issued a ruling on damages.

{¶18} Based upon the foregoing analysis, this appeal is hereby dismissed, sua sponte, for lack of a final appealable order.

{¶19} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.