

[Cite as *In re D.H.*, 2016-Ohio-5265.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

IN RE: D.H.

Appellate Case No. 27074

Trial Court Case No. 2014-2296

DECISION AND FINAL JUDGMENT ENTRY

July 1, 2016

PER CURIAM:

{¶ 1} This matter is before the court on the State of Ohio's motion to dismiss for lack of a final appealable order. The State asserts that the order on appeal, the transfer order from the Juvenile Division to the General Division of the Montgomery County Court of Common Pleas, is not a final order. The State cites clear, long-standing Supreme Court precedent to that effect: "[a]n order by a Juvenile Court, pursuant R.C. 2151.26 [now R.C. 2152.12], transferring a child to the Court of Common Pleas for criminal prosecution, is not a final appealable order." *In re Becker*, 39 Ohio St.2d 84, 314 N.E.2d 158 (1974), syllabus; see also *State ex rel. Torres v. Simmons*, 68 Ohio St.2d 118, 119, 428 N.E.2d 862 (1981).

{¶ 2} D.H. responds that *Becker* analyzed R.C. 2501.02, a repealed statute that no longer governs analysis of final appealable orders. D.H. instead invokes R.C. 2505.02, the final appealable order statute that was substantially amended in 1998. D.H. argues that a transfer order (also called a bindover) is a provisional remedy as defined in R.C. 2505.02(A)(3), and that this discretionary bindover satisfies the requirements of R.C. 2505.02(B)(4)(a)-(b).

{¶ 3} In reply, the State agrees that a discretionary bindover is a provisional remedy under the final appealable order statute, but asserts that neither prong of R.C. 2505.02(B)(4) is met, preventing an immediate appeal. The State points to a case decided after R.C. 2505.02's 1998 amendment, in which this court continued to adhere to *Becker*. See *State v. Washington*, 2d Dist. Montgomery No. 20226, 2005-Ohio-6546, ¶ 8 (agreeing that “any error in a bind over order is reviewable only on direct appeal following a conviction of the offense or offenses after the minor is bound over”). The State also directs us to a case in which a majority of the Eleventh District Court of Appeals summarily rejected D.H.’s argument here, and which is currently pending before the Supreme Court of Ohio on a requested jurisdictional appeal. *In re J.L.*, 11th Dist. Trumbull No. 2015-T-0137, 2016-Ohio-644, ¶ 7; *In re J.L.*, Sup. Ct. Case No. 2016-0498 (notice of appeal filed April 5, 2016).

{¶ 4} For the following reasons, we conclude that the transfer order is not a final appealable order and sustain the motion to dismiss.

Governing Statutes: R.C. 2501.02 and R.C. 2505.02

{¶ 5} Pursuant to Section 3(B)(2), Article IV, of the Ohio Constitution, courts of appeals “have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *.” Such jurisdiction is “provided by law” in R.C. 2501.02 (among other places), which grant this court jurisdiction “to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower

court.” R.C. 2501.02. See also *In re Adams*, 115 Ohio St.3d 86, 2007-Ohio-4840, 873 N.E.2d 886, ¶ 24-26 (discussing the jurisdictional bases for appeals).

{¶ 6} “For an order to be final and appealable, it must meet the requirements of R.C. 2505.02(B).” *In re C.B.*, 129 Ohio St.3d 231, 2011-Ohio-2899, 951 N.E.2d 398, ¶ 5. Thus, the question is generally whether an order “constitutes a ‘final order’ within the meaning of R.C. 2505.02 [that] is appealable to the court of appeals pursuant to R.C. 2501.02.” *In re Murray*, 52 Ohio St.3d 155, 556 N.E.2d 1169 (1990), syllabus.

{¶ 7} Both statutes existed in 1974, and the relevant parts of both have since been amended:

1974	Current
<p><u>R.C. 2501.02</u></p> <p>* * * the court [of appeals] shall have jurisdiction: (A) Upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order or judgment of a juvenile court that a child is delinquent, neglected, or dependent, for prejudicial error committed by such lower court * * *.</p>	<p><u>R.C. 2501.02</u></p> <p>* * * the court [of appeals] shall have jurisdiction upon an appeal upon questions of law to review, affirm, modify, set aside, or reverse judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent, for prejudicial error committed by such lower court.</p>
<p><u>R.C. 2505.02</u></p> <p>An order affecting a substantial right in an action which in effect determines the action and prevents a judgment, an order affecting a substantial right made in a special proceeding or upon a summary application in an action after judgment, or an order vacating or setting aside a judgment and ordering a new trial is a final order which may be reviewed, affirmed, modified, or reversed, with or without retrial. * * *</p>	<p><u>R.C. 2505.02(B)</u></p> <p>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</p>

	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.
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{¶ 8} According to the Supreme Court of Ohio, “the prior language of R.C. 2505.02 ‘was more restrictive concerning what constitutes a final, appealable order than the one currently in effect.’ ” *State v. Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23, ¶ 40, quoting *State v. Upshaw*, 110 Ohio St.3d 189, 2006-Ohio-4253, 852 N.E.2d 711, ¶ 7. “Put another way, the revised language now in place is more extensive than the language” previously construed. *Anderson* at ¶ 40. One notable change is the addition of provisional remedies as appealable orders in R.C. 2505.02(B)(4). *Community First Bank & Trust v. Dafoe*, 108 Ohio St.3d 472, 2006-Ohio-1503, 844 N.E.2d 825, ¶ 23.

{¶ 9} Currently, “in order to qualify as a final, appealable order under R.C. 2505.02(B)(4), three requirements must be satisfied: (1) the order must grant or deny a provisional remedy as that term is defined in the statute, (2) the order must in effect determine the action with respect to the provisional remedy, and (3) the appealing party would not be afforded a meaningful review of the decision if that party had to wait for final judgment as to all proceedings in the action.” *Anderson* at ¶ 42 (internal citations omitted).

Relevant Caselaw

In re Becker

{¶ 10} In 1974, the Supreme Court of Ohio issued *In re Becker*, 39 Ohio St.2d 84, 314 N.E.2d 158 (1974). There, having evaluated the allegation of first degree murder against Becker, the juvenile court relinquished jurisdiction and transferred Becker to the common pleas court for prosecution. Becker appealed and the State of Ohio moved to dismiss. The appellate court denied the motion to dismiss and enjoined the State from proceeding on the adult murder prosecution. The State then appealed to the Supreme Court.

{¶ 11} The Supreme Court concluded that “a transfer order, pursuant to R.C. 2151.26, absent a finding of delinquency, is not a final, appealable order, and that any error complained of must be raised in an appeal from the judgment of the Court of Common Pleas.” *Becker* at 87. The court based its decision largely on the text of R.C. 2501.02, which at that time provided for appellate jurisdiction over “judgments or final orders of courts of record inferior to the court of appeals within the district, including the finding, order or judgment of a juvenile court that a child is delinquent, neglected, or dependent.” *Id.* at 85. The four-justice majority reasoned that a transfer order does not determine that a child is delinquent, and is therefore not immediately appealable.

{¶ 12} The court also expressed concern about lengthy delays caused by appealed transfer orders. The court indicated it was taking “affirmative action to put an end to unnecessary delay.” *Becker* at 87. It was, according to the court, “time for an end to endless appeals that perpetuate procrastination, and a time for this court to give direction and a definite order of instruction determining the path of appellate procedure in these

matters.” *Id.*

{¶ 13} Ohio courts have consistently followed *Becker* without much further analysis. See, e.g., *In re J.L.*, 11th Dist. Trumbull No. 2015-T-0137, 2016-Ohio-644, ¶ 6-7; *State v. Washington*, 2d Dist. Montgomery No. 20226, 2005-Ohio-6546, ¶ 8; *State v. McKinney*, 2015-Ohio-4398, 46 N.E.3d 179, ¶ 8 (1st Dist.); *State ex rel. Torres v. Simmons*, 68 Ohio St.2d 118, 119, 428 N.E.2d 862 (1981). However, a few courts have broached the subject – without repudiating *Becker* – of whether a different analysis should apply under the revised final appealable order statute. See, e.g., *In re Thompson*, 10th Dist. Franklin No. 05AP-1082, 2006-Ohio-2437, ¶ 11-12 (not deciding whether a juvenile bindover order is a special proceeding under R.C. 2505.02(B)); *In re Williams*, 111 Ohio App.3d 120, 125, 675 N.E.2d 1254 (10th Dist.1996) (“This court and other appellate courts in this state have previously declined invitations to overrule *Becker* in juvenile transfer cases and we likewise decline to do so in the instant case”).

In re A.J.S.

{¶ 14} Some three decades after *Becker*, the Supreme Court decided *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629. Whereas *Becker* concerned a defendant’s appeal of the grant of a discretionary bindover, *A.J.S.* presented the opposite situation: the *state’s* appeal of the *denial* of a *mandatory* bindover. The Supreme Court began its analysis with the final appealable order statute, applying the traditional three-prong test for provisional remedies. *A.J.S.* at ¶ 15-18; R.C. 2505.02(B)(4).

{¶ 15} The court concluded that a mandatory bindover fits within the definition of a provisional remedy. *A.J.S.* at ¶ 23; R.C. 2505.02(A)(3) (“a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment,

discovery of privileged matter, [or] suppression of evidence * * *"). It examined the mandatory bindover statute and procedure, and held that "[b]ecause it aids the juvenile court in determining whether it has a duty to transfer jurisdiction to the general division for criminal proceedings, a mandatory-bindover hearing in the juvenile court is ancillary to grand jury proceedings and to adult criminal prosecution." *Id.* at ¶ 23.

{¶ 16} The court analyzed the second and third prongs together, i.e., "whether the order determines the action and prevents a judgment in favor of the appealing party with respect to the provisional remedy and whether the appealing party would have a meaningful or effective remedy following a final judgment in the case." *A.J.S.* at ¶ 24. Rooting its analysis in the Double Jeopardy Clause of the Fifth Amendment, the court said:

Because double jeopardy attaches once the adjudicatory phase of the delinquency proceedings commences, a juvenile court order finding no probable cause that the child committed the charged offense, and thus denying a motion for mandatory transfer, determines the action with respect to the provisional remedy and prevents a judgment in the state's favor. Moreover, it prevents the state from obtaining a meaningful or effective remedy by way of appeal at the conclusion of those proceedings. Thus, a juvenile court's decision denying a motion for mandatory bindover satisfies the test for determining whether the denial of a provisional remedy constitutes a final appealable order as set forth in R.C. 2505.02(B)(4).

A.J.S. at ¶ 28. In other words, the denial of a mandatory bindover "bars the state from prosecuting a juvenile offender as an adult for a criminal offense" because there is

necessarily no probable cause to believe that the child/defendant committed the offense. *A.J.S.* at the syllabus. It “is therefore the functional equivalent of a dismissal of a criminal indictment.” *Id.* The court further held that a denied mandatory bindover was a final order from which the state could appeal as a matter of right.

{¶ 17} In deciding *A.J.S.*, the court did not mention or address its decision in *Becker*.

In re M.P.

{¶ 18} Two years later, the Supreme Court held that the State could not appeal the denial of a motion for a discretionary bindover as of right. *In re M.P.*, 124 Ohio St.3d 445, 2010-Ohio-599, 923 N.E.2d 584. Unlike *A.J.S.*, the court did not analyze the discretionary bindover in terms of provisional remedies or R.C. 2505.02. The court again did not mention *Becker*. Instead, the court focused on differences between the procedures governing mandatory and discretionary bindovers. *M.P.* at ¶ 10, 15.

{¶ 19} Although discretionary bindovers also require probable cause determinations, many such decisions turn on whether a minor was amenable to care or rehabilitation within the juvenile system. “In contrast to a probable-cause determination, a denial of a discretionary-bindover request on the basis of amenability does not necessitate dismissal of any of the charges in the complaint. Rather, the juvenile court retains jurisdiction of the case, the complaint continues as it was filed, and if appropriate, the child is prosecuted as a serious youthful offender under R.C. 2152.11.” *M.P.* at ¶ 15.

{¶ 20} Notably, the court did not conclude that such an order is not final, but that such an order does not give the state an appeal as of right. It reasoned that “in these circumstances, there is no ‘functional equivalent of a dismissal of a criminal indictment’

and there is no authority under R.C. 2945.67(A) for the state to appeal as a matter of right. R.C. 2945.67(A). Therefore, any appeal must be by leave of the court. App.R. 5(C).” *M.P.* at ¶ 16, quoting *A.J.S.*, *supra*.

ANALYSIS

{¶ 21} We conclude that the Ohio Supreme Court’s unequivocal statement that discretionary transfer orders are not final and appealable controls the outcome of this case. *Becker*, syllabus. D.H. has not pointed us to, and our research has not revealed, any binding or persuasive authority holding that a minor may immediately appeal such an order, a decision that would reverse decades of settled jurisprudence and undermine the Supreme Court’s emphasis in *Becker* on avoiding delay. *Id.* at 87. We decline to do so here. *Accord Matter of Granderson*, 10th Dist. Franklin No. 92AP-363, 1992 WL 104080, *1 (May 14, 1992) (“Even if we agreed with appellant, it is beyond our appropriate power to overrule a decision of the Ohio Supreme Court. We are bound by *Becker* and must follow it”).

{¶ 22} In so holding, we acknowledge that *Becker* was decided before provisional remedies could be considered final appealable orders, and that the 1998 revision to R.C. 2505.02 arguably opened the question to new analysis. *State v. Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23, ¶ 40-41. However, the *Becker* court applied only R.C. 2501.02, which remains in effect today. That statute as amended requires, using *Becker*’s analysis, a “finding, order, or judgment of a juvenile court that a child is delinquent, neglected, abused, or dependent” in order to be final. R.C. 2501.02; *Becker* at 87. Here, there is no finding of delinquency, and the transfer order is not final and appealable according to *Becker*. *Id.*

{¶ 23} While the Supreme Court has since shifted its analysis to R.C. 2505.02 with respect to final appealable orders (see *Anderson, A.J.S., supra*), it has not disavowed *Becker's* categorical determination that a discretionary transfer order is not final and appealable. See, e.g., *In re Murray*, 52 Ohio St.3d 155, 159, 556 N.E.2d 1169 (1990) (calling *Becker* a “relevant consideration” in determining whether an order was final). As recently as 2015, the Supreme Court has indicated, albeit without citation to *Becker*, that a juvenile may appeal a bindover order after his conviction. See *State ex rel. McCuller v. Cuyahoga Cty. Court of Common Pleas*, 143 Ohio St.3d 130, 2015-Ohio-1563, 34 N.E.3d 905, ¶ 14 (finding that the defendant “could have challenged these bindovers in his appeal of the criminal convictions”). *Becker*, or at least the principle set forth in *Becker* and applied continuously through *McCuller*, thus controls our decision that the order on appeal here is not final and appealable.

{¶ 24} To the extent that R.C. 2505.02 should be applied here, we would also determine that the transfer order is not a final appealable order. To be considered an appealable provisional remedy: “(1) the order must grant or deny a provisional remedy as that term is defined in the statute, (2) the order must in effect determine the action with respect to the provisional remedy, and (3) the appealing party would not be afforded a meaningful review of the decision if that party had to wait for final judgment as to all proceedings in the action.” *Anderson* at ¶ 29, 42 (internal citations omitted). If applied, we would conclude that D.H. has not shown he lacks meaningful review of the transfer order.

Provisional Remedy

{¶ 25} A provisional remedy is defined as “a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment,

discovery of privileged matter, [or] suppression of evidence * * *.” R.C. 2505.02(A)(3). An ancillary proceeding is “one that is attendant upon or aids another proceeding.” *State v. Muncie*, 91 Ohio St.3d 440, 449, 746 N.E.2d 1092 (2001).

{¶ 26} As discussed above, the Supreme Court of Ohio has held that a mandatory bindover satisfies the definition of a provisional remedy, as it “aids the juvenile court in determining whether it has a duty to transfer jurisdiction to the general division for criminal proceedings.” *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, 897 N.E.2d 629, ¶ 23. It “is ancillary to grand jury proceedings and to adult criminal prosecution.” *Id.*

{¶ 27} The parties agree that the bindover at issue here fits within the definition of a provisional remedy. D.H. specifically argues that the order is ancillary to the principal proceeding that determines guilt and sentence. *See also In re J.L.*, 11th Dist. Trumbull No. 2015-T-0137, 2016-Ohio-644, ¶ 19 (O’Toole, J., dissenting) (“A bind over determination is secondary to the determination of guilt. However, the order determines which court will have jurisdiction over the case and whether or not the minor will be treated as such”). We conclude that a discretionary bindover is a provisional remedy.

Determines the Action

{¶ 28} The second prong of the test considers whether the order “in effect determines the action with respect to the provisional remedy.” R.C. 2505.02(B)(4)(a). If the provisional remedy is the bindover proceeding, then the juvenile court’s order finding D.H. not amenable to care or rehabilitation in the juvenile system, transferring him to the General Division of the Common Pleas Court, and certifying him to the adult court has indeed determined the provisional remedy. The bindover proceedings are complete.

{¶ 29} As D.H. notes, the transfer matter is resolved from both the juvenile court

and adult court's perspective. The adult court cannot make any determination on bindover. *State v. Washington*, 2d Dist. Montgomery No. 20226, 2005-Ohio-6546, ¶ 8 (“the general division of the court of common pleas lacks jurisdiction to review a bind over order for error”). And, the “transfer abates the jurisdiction of the juvenile court with respect to the delinquent acts alleged in the complaint, and, upon the transfer, all further proceedings pertaining to the act charged shall be discontinued in the juvenile court * * *.” R.C. 2152.12(I).

{¶ 30} The State argues that the test for this prong is whether an order “permits or bars the subsequent prosecution.” See *State v. Anderson*, 138 Ohio St.3d 264, 2014-Ohio-542, 6 N.E.3d 23, ¶ 52 (determining that the denial of a motion to dismiss on double jeopardy grounds was an appealable provisional remedy). We disagree that the test is so narrow; provisional remedies exist in civil actions, too. See R.C. 2505.02(A)(3). While the quoted language appears in *Anderson*, the court used it to articulate why the test was met, rather than to define the test:

We thus turn to the second prong: whether the motion in effect determines the action. Orders denying a motion to dismiss an indictment on double-jeopardy grounds “constitute a complete, formal, and, in the trial court, final rejection of a criminal defendant's double jeopardy claim.” *Abney v. United States*, 431 U.S. at 659, 97 S.Ct. 2034, 52 L.Ed.2d 651. And orders granting a motion to dismiss generally end the prosecution. We thus have no trouble concluding that a decision on a motion to dismiss on double-jeopardy grounds determines the action because it permits or bars the subsequent prosecution.

Anderson at ¶ 52. The court's concern was whether the provisional remedy was fully resolved. Similarly here, the juvenile court's transfer order constituted a complete, formal, and, in that court, final resolution of the question of transfer. We conclude that the transfer order determined the action with respect to the provisional remedy.

No Meaningful Remedy

{¶ 31} The third prong considers “whether the appealing party would not be afforded a meaningful review of the decision if that party had to wait for final judgment as to all proceedings in the action.” *Anderson* at ¶ 53; R.C. 2505.02(B)(4)(b). D.H. argues that requiring him to wait until after a potential conviction and sentence in the Common Pleas Court to challenge whether he should be subject to that court's jurisdiction deprives him of a meaningful or effective remedy. Specifically, D.H. notes that the underlying issue – whether he is amenable to rehabilitation in the juvenile system – turns in part on the length of time remaining to rehabilitate him in that system before the court loses jurisdiction because of his age. See R.C. 2152.12(D)(9); R.C. 2152.10. D.H. asserts that “[w]aiting until after a conviction to contest errors made during the amenability hearing in juvenile court dramatically shortens the child's time to be rehabilitated in the juvenile system.” See also *In re J.L.*, 11th Dist. Trumbull No. 2015-T-0137, 2016-Ohio-644, ¶ 21 (O'Toole, J., dissenting) (“Clearly, waiting until after a conviction and sentence greatly reduces J.L.'s opportunity to be rehabilitated in the juvenile system, thereby possibly leading to irreparable harm to the child”).

{¶ 32} The State responds that the time remaining is but one of eighteen factors the juvenile court considers, suggesting it carries less weight than D.H. asserts. R.C. 2152.12(D)-(E). The State also argues that an appeal after conviction is effective and

meaningful, as shown by D.H.'s previous conviction and appeal, wherein this court reversed the previous bindover and remanded the matter to the juvenile court. *State v. D.H.*, 2d Dist. Montgomery No. 26383, 2015-Ohio-3259, appeal not allowed, 144 Ohio St.3d 1477, 2016-Ohio-467, 45 N.E.3d 244.

{¶ 33} We conclude that D.H. has a meaningful remedy without immediate appeal. Appeal after conviction is presumed to provide a meaningful remedy, and D.H. has not convinced us that his case is outside the rule. See *Smith v. Chen*, 142 Ohio St.3d 411, 2015-Ohio-1480, 31 N.E.3d 633, ¶ 8 (burden is on appellant to show lack of meaningful remedy). D.H. has already once availed himself of that remedy, although that fact does not settle the issue here. In a different context, the Ohio Supreme Court recently called the defendant's opportunity to challenge a bindover after conviction an "adequate remedy," which supports the State's position that such an appeal is meaningful and effective. *State ex rel. McCuller v. Cuyahoga Cty. Court of Common Pleas*, 143 Ohio St.3d 130, 2015-Ohio-1563, 34 N.E.3d 905, ¶ 14 (holding, in rejecting mandamus and procedendo relief, that the defendant "could have challenged these bindovers in his appeal of the criminal convictions, and therefore he had an adequate remedy").

{¶ 34} D.H.'s argument here is essentially that, assuming this court finds reversible error and remands the matter for a new determination, the juvenile court will be less likely to find D.H. amenable to rehabilitation in the juvenile system because of the passage of time. Even if we accept this premise for the sake of argument, we do not believe it deprives D.H. of meaningful review of the current transfer order for several reasons.

{¶ 35} First, the potential for reduced likelihood of later success is not the type of harm typically found relevant in provisional remedy analysis. For example, in *Anderson*,

the Supreme Court held that a post-conviction appeal of the denial of a motion to dismiss on double-jeopardy grounds would not provide a meaningful remedy, because the harm to be prevented (a second trial) would necessarily have occurred if a defendant had to wait until after the second trial to appeal. *Anderson* at ¶ 57-59. In *State v. Muncie*, the court held that an “incompetent criminal defendant forced to ingest potentially harmful psychotropic medications against his or her will” lacks a meaningful or effective remedy if forced to wait until after trial, given the “ ‘particularly severe’ interference with an individual’s liberty interest caused by the involuntary administration of antipsychotic drugs, as well as the potential for serious and even fatal side effects that can result from the administration of such medication.” 91 Ohio St.3d 440, 452, 746 N.E.2d 1092 (2001). Similarly, courts have found parties subject to orders compelling “discovery of privileged matter” to lack a meaningful remedy because the damage occurs upon release and “the proverbial bell cannot be unrung” through a later appeal. See, e.g., *Hope Academy Broadway Campus v. White Hat Mgt., L.L.C.*, 10th Dist. Franklin No. 12AP-116, 2013-Ohio-911, ¶ 18. These cases turned on an identifiable harm that occurs at the time, not an arguable effect on the merits of future proceedings that may never occur.

{¶ 36} Second, although there may be some logic to D.H.’s argument that “[w]aiting until after a conviction to contest errors made during the amenability hearing in juvenile court dramatically shortens the child’s time to be rehabilitated in the juvenile system,” this concern is not factually present here. The amenability hearing in this case occurred on June 9, 2014, and was the subject of D.H.’s first appeal. In fact, as discussed above, this concern may never be present. D.H.’s argument rests on the assumption that this court will again reverse, and that D.H. will again be before the juvenile court for a new

determination of amenability. Only in that narrow situation would his concern about delay arise. At this point in the case, when our only concern is whether we have jurisdiction, it would be inappropriate to presume error in the proceedings below to justify finding jurisdiction.

{¶ 37} Finally, we do not agree that waiting until after conviction to appeal would “dramatically shorten” D.H.’s time for rehabilitation. We observe that his trial is scheduled for July 14, 2016. In the event of a conviction, a timely appeal would be filed only a few months after the appeal currently before us, which was filed on April 8, 2016 and has not yet been briefed. Under the circumstances, we would conclude that D.H. has a meaningful remedy by way of appeal after conviction.

CONCLUSION

{¶ 38} Pursuant to *Becker*, which interpreted R.C. 2501.02, or the alternative analysis under R.C. 2505.02(B)(4), we conclude that the transfer order is not a final appealable order. We lack jurisdiction to review an order that is not final and appealable. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989). The State of Ohio’s motion to dismiss is therefore well-taken and is SUSTAINED. This appeal is DISMISSED for lack of jurisdiction.

{¶ 39} Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Montgomery County Court of Appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

SO ORDERED.

MARY E. DONOVAN, Presiding Judge

JEFFREY E. FROELICH, Judge

JEFFREY M. WELBAUM, Judge

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