[Cite as *Jenkins v. Northeastern Local Bd. of Edn.*, 2016-Ohio-7099.]

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

REGINA JENKINS

Plaintiff-Appellee

v.

NORTHEASTERN LOCAL BOARD
OF EDUCATION

Defendant-Appellant

Appellate Case No. 16CA0002

Trial Court Case No. 15CV0360

(Civil Appeal from
Common Pleas Court)

DECISION AND FINAL JUDGMENT ENTRY
September 8, 2016

PER CURIAM:

{¶ 1} This matter is before the court for resolution of our March 2, 2016 show cause order. Northeastern Local Board of Education ("Northeastern") appealed two trial court orders to this court: 1) the October 26, 2015 Entry finding in favor of Regina Jenkins in the underlying wrongful termination case; and 2) the January 6, 2016 Entry overruling Northeastern's post-trial motions. We questioned whether the October 26, 2015 Entry

was a final appealable order in that, while it awards "back pay and other benefits" to Jenkins, it does not specify the amount of back pay awarded. *See Schlotterer v. Exempted Village School Dist.*, 3rd Dist. Mercer No. 10-82-2, 1983 WL 7248, *2 (Apr. 26, 1983) (order that "disposed only of plaintiff's entitlement to reinstatement and back pay leaving the amount thereof undetermined * * * did not constitute a final appealable order"). We ordered Northeastern to show cause why the appeal should not be dismissed for lack of jurisdiction. Jenkins was permitted to file a response thereafter.

{¶ 2} Northeastern filed a response on March 16, 2016, arguing that the order is final and appealable. While acknowledging that the order does not set forth the amount of damages, Northeastern asserts that an exception to the rule requiring a damage award applies. Specifically, Northeastern asserts that calculation of back pay damages is a ministerial task, unlikely to produce another appeal. Northeastern also argues that the order satisfies the statutory definitions of a final order, and that judicial economy will be served by allowing an appeal at this time. Jenkins did not file a response to Northeastern's filing.

{¶ 3} It is well-established that an appellate court has jurisdiction to review only final orders or judgments of the lower courts in its district. Section 3(B)(2), Article IV, Ohio Constitution; R.C. 2505.02. It has no jurisdiction to review an order or judgment that is not final, and an appeal therefrom must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989).

{¶ 4} Final orders that may be appealed to this court are defined in R.C. 2505.02. Northeastern cites two divisions of that statute:

> 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;

* * *

* * *

(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.

R.C. 2505.02(B). We examine them in reverse order.

{¶ 5} The matter before the court does not appear to be a provisional remedy, which 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). Here, the order on appeal did not concern a proceeding ancillary to the main action contesting Jenkins' employment termination; it was directed toward resolution of the main action itself. We conclude that the order was not a provisional remedy. *Id.*; R.C. 2505.02(B)(4).

{¶ 6} "For an order to determine the action and prevent a judgment for the party appealing, it must dispose of the whole merits of the cause or some separate and distinct

branch thereof and leave nothing for the determination of the court." *Miller v. First Internatl. Fid. & Trust Bldg., Ltd.*, 113 Ohio St.3d 474, 2007-Ohio-2457, 866 N.E.2d 1059, ¶ 6 (internal citations omitted). "Generally, orders determining liability in the plaintiffs' or relators' favor and deferring the issue of damages are not final appealable orders under R.C. 2505.02 because they do not determine the action or prevent a judgment." *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 546, 684 N.E.2d 72 (1997), citing *State ex rel. A & D Ltd. Partnership v. Keefe*, 77 Ohio St.3d 50, 53, 671 N.E.2d 13 (1996). However, courts "have recognized an exception to the foregoing general rule. Under this exception, a judgment not completely determining damages is a final appealable order where the computation of damages is mechanical and unlikely to produce a second appeal because only a ministerial task similar to assessing costs remains." *Id*. at 546.

{¶ 7} Northeastern argues that this exception applies to the award of "back pay and other benefits" in this case. We disagree. "The purpose of a back-pay award is to make the wrongfully terminated employee whole and to place that employee in the position the employee would have been in absent a violation of the employment contract." *State ex rel. Stacy v. Batavia Local School Dist. Bd. of Edn.*, 105 Ohio St.3d 476, 2005-Ohio-2974, 829 N.E.2d 298, ¶ 26. Back pay awards may involve such varied issues as anticipated pay increases, offsets for benefits received, mitigation, or retirement fund contributions. *Id.; State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 93 Ohio St.3d 558, 565, 757 N.E.2d 339 (2001). Given the potential variables, and without the benefit of any argument concerning the scope of the award in this case, we cannot

conclude that the task of calculating Jenkins' back pay and benefits will be a mechanical task within the *White* exception.

{¶ 8} Northeastern's reliance on *CitiMortgage, Inc. v. Roznowski,* 139 Ohio St.3d 299, 2014-Ohio-1984, 11 N.E.3d 1140, is similarly misplaced. *Roznowski* was a foreclosure case in which the Supreme Court of Ohio did not require the "amounts advanced by the mortgagee for inspections, appraisals, property protection, and maintenance" to be determined before the foreclosure decree was considered final. *Id*. at ¶ 19. The court found that these amounts could be easily determined after the foreclosure decree and could be challenged at a later time, i.e., on appeal from the confirmation of sale. *Id*. at ¶ 35. Foreclosure cases are unique in that they routinely generate two final appealable orders. *Id*. In contrast, this single-claim employment matter is subject to the long-standing policy against piecemeal appeals. *Noble v. Colwell*, 44 Ohio St.3d 92, 96, 540 N.E.2d 1381 (1989). Judicial economy would be better served by allowing the trial court to determine the complete amount of damages before an appeal can be filed. *See Miller v. First Internatl. Fid. & Trust Bldg., Ltd.*, 113 Ohio St.3d 474, 2007-Ohio-2457, 866 N.E.2d 1059, ¶ 8 (concluding same concerning prejudgment interest). "Then, on appeal, all appealable issues will be before the court of appeals." *Id*. We conclude that the order on appeal, which "disposed only of plaintiff's entitlement to reinstatement and back pay leaving the amount thereof undetermined * * * [does] not constitute a final appealable order." *Schlotterer v. Exempted Village School Dist.*, 3rd Dist. Mercer No. 10-82-2, 1983 WL 7248, *2 (Apr. 26, 1983).

{¶ 9} Northeastern distinguishes *Schlotterer* on the grounds that it concerned a grant of summary judgment, and this case did not. We find the distinction immaterial. No

matter how the trial court resolves a claim for liability, it must still resolve the claim for damages for the matter to be complete. Although Northeastern may be correct that the trial court has not indicated an intention to hold a damages hearing, the determination of damages with the requisite specificity is part of determining the action. R.C. 2505.02(B)(1). "Until such time as [a party's] damages, if any, are determined, the court is not in a position to enter an order from which an appeal will lie." *Frey v. Trenor Motor Co.*, 2d Dist. Clark No. 2907, 1992 WL 235726, *1 (Sept. 25, 1992).

{¶ 10} We conclude that the October 26, 2015 Entry is not a final appealable order. The January 6, 2016 Entry overruling post-trial motions is also not final. *See State ex rel. Bd. of State Teachers Retirement Sys. of Ohio v. Davis*, 113 Ohio St.3d 410, 2007-Ohio-2205, 865 N.E.2d 1289, ¶ 48 (decision on post-trial motion is not a final order, where the main matter was incomplete). We therefore lack jurisdiction to hear this appeal. This case, Clark Appellate Case No. 16CA0002, is DISMISSED. If a final appealable order is entered and appealed, the parties may request that the record of this appeal be transferred into the new appeal.

{¶ 11} This court's February 22, 2016 stay of enforcement of the October 26, 2015 Entry is LIFTED.

{¶ 12} Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Clark 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.

MIKE FAIN, Judge

JEFFREY E. FROELICH, Judge

MICHAEL T. HALL, Judge

Copies to:

Lisa Burleson
Burleson Law Offices, LLC
1960 Beverly Road
Columbus, Ohio 43221
Attorney for Appellant, Northeastern Local Board of Education

James Skogstrom
2 W. Columbia Street, Suite 200
P.O. Box 1404
Springfield, Ohio 45502
Attorney for Appellee, Regina Jenkins

Brian Brennaman
1616 Turner Road
Xenia, Ohio 45385
Attorney for Appellee, Regina Jenkins

Hon. Douglas M. Rastatter
Clark County Common Pleas Court
Courthouse, 101 N. Limestone Street
Springfield, Ohio 45502-1120

Courtesy copy to:

Andrew Pickering
50 E. Columbia Street, 4th Floor
Springfield, Ohio 45502

CA3/KY