

[Cite as *Ingram v. Adena Health Sys.*, 2001-Ohio-2537.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

George Ingram, et al.,

Plaintiffs-Appellees,

v.

Adena Health System, et al.,

Defendants-Appellants.

No. 00CA2577

DECISION AND JUDGMENT
ENTRY

Released 07/12/2001

APPEARANCES:

COUNSEL FOR APPELLANTS: Kevin P. Collins & Brant E. Poling,
Columbus, Ohio

COUNSEL FOR APPELLEES: Daniel R. Volkema & Jennifer K. Thivener,
Columbus, Ohio

ABELE, P.J.

This is an appeal from the trial court's Entry granting plaintiffs' motion to compel production of a personnel file of one of Adena's doctors for an in camera inspection. Plaintiffs were seeking this file to discover whether Adena knew or should have known that this doctor had a substance abuse problem. Appellants argued that the information was not relevant and that the file contained medical records that were privileged from discovery under R.C. 2317.02. We determined that the order appealed might not be a final appealable order and instructed the parties to address this issue.

R.C. 2505.02 provides:

"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 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."

R.C. 2505.02(B)(4) now provides that an order is a "final order" if it satisfies each part of a three-part test: (1) the order must either grant or deny relief sought in a certain type of proceeding – a proceeding that the General Assembly calls a "provisional remedy," (2) the order must both determine the action with respect to the provisional remedy and prevent a judgment in favor of the appealing party with respect to the provisional remedy, and (3) the reviewing court must decide that the party appealing from the order 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.

To satisfy the definition of "final order" contained in R.C. 2505.02(B)(4), the order at issue must either grant or deny a provisional remedy. Thus, we must refer to the definition of "provisional remedy" that the General Assembly provided and decide whether the order at issue arose from "a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, at-tachment, discovery of privileged matter, or suppression of evidence." R.C. 2505.02(A)(3). The trial court's ordering an *in camera* inspection of Adena's personnel file on the doctor is a provisional remedy pursuant to R.C. 2505.02(B)(4) as defined by R.C. 2505.02(A)(3), because it is the discovery of privileged matter.

However, not every order granting or denying relief sought in an ancillary proceeding will necessarily satisfy the additional requirements imposed by R.C. 2505.02(B)(4)(a) and (b). See *Gupta v. Lima News* (Feb. 5, 2001), Allen App. No. 1-99-83, unreported, (noting that even if an order compelling production of records for an *in camera* inspection satisfied the "provisional remedy" prong of R.C. 2505.02[B][4], the order would not satisfy the additional requirements imposed by R.C. 2505.02[B][4][a] and [B][4][b]). Even if a reviewing court determines that a

particular order arises from a "provisional remedy," only those orders meeting the additional requirements will be deemed final

under R.C. 2505.02 (B)(4). *Gupta, supra*.

Here, appellant's substantial rights would only be affected after an *in camera* inspection and subsequent order compelling disclosure. If the trial court determines that all of the information is privileged, the present appellant has no basis to appeal. On the other hand, if some information is determined to be subject to disclosure, the present appellant can pursue an appeal of that order.

Pursuant to R.C. 2505.02, the order from which this appeal is taken is not a final appealable order. Therefore, this court lacks the jurisdiction to consider the merits of this appeal.

APPEAL DISMISSED.

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JUDGMENT ENTRY

It is ordered that the **APPEAL BE DISMISSED** and that appellees recover of appellants costs herein taxed.

It is further ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Harsha, J. and Evans, J. Concur

FOR THE COURT

By: _____
Peter B. Abele, Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.