[Cite as *Hope Academy Broadway Campus v. White Hat Mgt., L.L.C.*, 2013-Ohio-911.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Hope Academy Broadway Campus et al.,	:	
Plaintiffs-Appellees,	:	
		No. 12AP-116
v.	:	(C.P.C. No. 10CVC-05-7423)
White Hat Management, LLC et al.,	:	(REGULAR CALENDAR)
Defendants-Appellants,	:	
Ohio Department of Education,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 12, 2013

Shumaker, Loop & Kendrick, LLP, James D. Colner and *Adam M. Galat*; *Dinsmore & Shohl LLP,* and *Karen S. Hockstad*, for plaintiffs-appellees.

Taft, Stettinius & Hollister LLP, Charles R. Saxbe, Donald C. Brey and *James D. Abrams*, for defendants-appellants.

Michael DeWine, Attorney General, *Todd R. Marti* and *Jeannine R. Lesperance*, for defendant-appellee.

Jones Day, Chad A. Readler and *Kenneth M. Grose*, for amicus curiae Ohio Coalition for Quality Education.

Ulmer & Berne, LLP, and *Donald J. Mooney, Jr.*, for amicus curiae Ohio School Boards Association.

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendants-appellants White Hat Management, LLC ("White Hat Management"); WHLS of Ohio, LLC ("WHLS"); HA Broadway, LLC; HA Lincoln Park, LLC; HA Chapelside, LLC; HA University, LLC; HA Cathedral, LLC; HA Brown Street, LLC; LS Cleveland, LLC; LS Akron, LLC; LS Lake Erie, LLC; and HA West, LLC (collectively "appellants"), appeal from a decision of the Franklin County Court of Common Pleas addressing the scope of the court's jurisdiction and ordering the production of certain materials in discovery. Because we conclude that the trial court did not abuse its discretion by ordering the materials to be produced in discovery and that we lack jurisdiction over the remaining assignments of error raised in the appeal, we dismiss several of appellants' assignments of error and affirm in part the trial court's decision.

Relationship of the Parties

{¶ 2} Plaintiffs-appellees Hope Academy Broadway Campus, Hope Academy Chapelside Campus, Hope Academy Lincoln Park Campus, Hope Academy Cathedral Campus, Hope Academy University Campus, Hope Academy Brown Street Campus, Life Skills Center of Cleveland, Life Skills Center of Akron, Hope Academy West Campus, and Life Skills Center of Lake Erie (collectively "appellees"), are the governing boards for ten community schools organized under R.C. Chapter 3314. HA Broadway, LLC; HA Lincoln Park, LLC; HA Chapelside, LLC; HA University, LLC; HA Cathedral, LLC; HA Brown Street, LLC; LS Cleveland, LLC; LS Akron, LLC; LS Lake Erie, LLC; and HA West, LLC are "education management organizations" ("EMOs") organized as for-profit limited liability companies. WHLS is a for-profit limited liability company and is the sole member of each of these ten EMOs. The EMOs have management agreements with White Hat Management, a for-profit limited liability company. Each of the appellees is a party to a management agreement with one of the EMOs, providing that the EMO will manage the operations of the school in exchange for payment of 95 to 96 percent of the state funding the governing board received.[1]

[1] Generally, the name of each EMO corresponds to the name of the governing board for the school. However, for purposes of clarity, we will specify the contractual relationship between each appellee and the respective EMO. Hope Academy Broadway Campus entered into a management agreement with HA Broadway, LLC. Hope Academy Lincoln Park Campus entered into a management agreement with HA Lincoln Park, LLC. Hope Academy Chapelside Campus entered into a management agreement with HA Chapelside, LLC. Hope Academy University Campus entered into a management agreement with HA High

Procedural History

{¶ 3} In May 2010, appellees filed a complaint against appellants and defendant-appellee, Ohio Department of Education ("ODE"), asserting claims for declaratory judgment, breach of contract, an accounting, injunctive relief, and breach of fiduciary duties. ODE filed counterclaims against appellees and cross-claims against appellants. The EMOs also filed counterclaims seeking a declaratory judgment that R.C. 3314.026 is constitutional and establishing certain property rights under the management agreements between appellees and the EMOs.

{¶ 4} Appellants moved to dismiss ODE's cross-claims, arguing that ODE lacked standing to invoke the trial court's jurisdiction, failed to join a necessary party, and failed to state a claim upon which relief could be granted. Appellees moved for partial summary judgment on their claims, and ODE moved for partial summary judgment on its counterclaims and cross-claims. On October 7, 2011, the trial court issued a decision denying appellants' motion to dismiss ODE's cross-claims and granting in part and denying in part the motions for summary judgment filed by appellees and ODE (the "October decision"). In the October decision, the trial court concluded that, because a community school is a public office, any officer, employee, or duly authorized representative or agent of the school is a "public official." The court also stated that the funds a management company receives from a community school are "public funds" because they are received or collected under color of office. In the context of the present appeal, appellants acknowledge that the October decision was an interlocutory order.

Trial Court's Jurisdiction and Discovery Rulings

{¶ 5} As part of the pre-trial discovery process, appellees requested information related to the assets and liabilities of appellants. Appellants have taken the position that they are not required to produce any financial information beyond what is required under the management agreements or R.C. 3314.024. On October 24, 2011, the trial court

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Street, LLC. Hope Academy Cathedral Campus entered into a management agreement with HA Cathedral, LLC. Hope Academy Brown Street Campus entered into a management agreement with HA Brown Street, LLC. Life Skills Center of Cleveland entered into a management agreement with LS Cleveland, LLC. Life Skills Center of Akron entered into a management agreement with LS Akron, LLC. Hope Academy West Campus entered into a management agreement with HA West, LLC. Life Skills Center of Lake Erie entered into a management agreement with LS Lake Erie, LLC. (Complaint, Ex. A-J.)

issued an entry noting that its jurisdiction over the case was implicated by the suggestion that appellants had satisfied their duties under R.C. 3314.024 and that a special audit might be the proper remedy for appellees' claims. The court suspended discovery until it resolved the question of subject-matter jurisdiction.

{¶ 6} After receiving briefs from the parties, the trial court entered a decision on December 23, 2011, concluding that it had jurisdiction in this context over the case (the "December decision"). In the December decision, the trial court once again concluded that appellees were public offices and, therefore, appellants were "public officials" because they acted as agents on behalf of public offices. The court also reiterated its conclusion from the October decision that appellants were entrusted with "public funds" in order to operate the community schools. Additionally, the court concluded that R.C. 3314.024 requires a management company that receives more than 20 percent of a community school's annual gross revenues to provide a detailed accounting including the nature and costs of the services it provides, and that this detailed accounting must be provided to the community school. The court ordered appellees to submit a modified discovery request and provided a deadline for appellants to submit objections to the discovery request.

{¶ 7} Appellants submitted a motion for reconsideration of the December decision, arguing that it contained factual errors. The trial court denied appellants' motion for reconsideration. Appellees then submitted their modified discovery requests, and appellants submitted their response and objections to those discovery requests, pursuant to the schedule contained in the December decision. The trial court conducted a hearing on appellants' objections to the discovery requests; at the hearing, the court also addressed appellants' motion for reconsideration. Following the hearing, on February 6, 2012, the trial court issued an amended decision on jurisdiction and discovery (the "amended decision"). The court acknowledged that the December decision contained errors; therefore, the court vacated its prior decision denying the motion for reconsideration.

{¶ 8} In the amended decision, the trial court once again reiterated its conclusions that appellants were "public officials" because they operated community schools as duly authorized representatives or agents of appellees and that appellants received "public money" for which they were accountable because they were public

officials who received money under color of office. The court also reiterated its holding that R.C. 3314.024 required appellants to provide to appellees a detailed accounting of the funds it received and rejected appellants' argument that they were only required to provide summary information to be included in the schools' financial statements for the purposes of its regular financial audit. The court then rejected appellants' general and specific objections to appellees' discovery requests and ordered appellants to produce the requested materials. The trial court granted a protective order for the production of appellants' tax returns but otherwise declined to issue any protective orders limiting production of requested materials.

{¶ 9} Appellants appeal from the amended decision, assigning nine errors for this court's review:

> Assignment of Error No. 1: The trial court erred in its construction of R.C. 3314.024.
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> Assignment of Error No. 2: The trial court erred in holding that the White Hat Defendants are "public officials."
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> Assignment of Error No. 3: The trial court erred in holding that public monies retain their character as public monies after they are used to pay fees for legitimate services to a non-governmental third-party.
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> Assignment of Error No. 4: The trial court erred in holding that a "for profit" business entity does not have confidential and proprietary records.
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> Assignment of Error No. 5: The trial court erred in holding that the White Hat Defendants must produce confidential and proprietary business records related to transactions with third parties.
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> Assignment of Error No. 6: The trial court erred in holding that the White Hat Defendants are required to produce confidential and proprietary business records without a protective order.
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> Assignment of Error No. 7: The trial court erred in holding that the White Hat Defendants must produce federal and state income tax returns when their financial condition is not at issue in this case.

> Assignment of Error No. 8: The trial court erred in, in effect, granting summary judgment on Plaintiffs' accounting claim contrary to the standards of Civil Rule 56.
>
> Assignment of Error No. 9: The trial court erred in failing to apply the relevancy standards of Civil Rule 26(B)(1) to the requested discovery.

Appellate Jurisdiction over Discovery Orders

{¶ 10} We begin by considering whether this court has jurisdiction over this appeal. Under the Ohio Constitution, courts of appeals have jurisdiction to review final orders of lower courts. Ohio Constitution, Article IV, Section 3(B)(2). A trial court order is final and appealable if it meets the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B). *Eng. Excellence, Inc. v. Northland Assoc., L.L.C.*, 10th Dist. No. 10AP-402, 2010-Ohio-6535, ¶ 10. Therefore, appellate courts use a two-step analysis to determine whether an order is final and appealable. *Id.* at ¶ 11. First, the court determines if the order is final within the requirements of R.C. 2505.02. Second, the court determines whether Civ.R. 54(B) applies and, if so, whether the order being appealed contains a certification that there is no just reason for delay. *Id.*

{¶ 11} The trial court issued the amended decision in the context of discussing jurisdiction as well as pre-trial discovery between the parties. We also note that the trial court first reached some of its conclusions in the context of ruling on dispositive motions in the October decision. However, as noted, appellants concede that the October decision was an interlocutory order. Generally, discovery orders are not final and appealable. *See Concheck v. Concheck*, 10th Dist. No. 07AP-896, 2008-Ohio-2569, ¶ 8. However, discovery orders requiring a party to produce privileged or confidential information are final and appealable orders. *See Mason v. Booker*, 185 Ohio App.3d 19, 2009-Ohio-6198, ¶ 11 (10th Dist.). In this appeal, appellants raise multiple assignments of error pertaining to different portions of the amended decision. In analyzing the appeal, we will consider whether each relevant portion of the amended decision constitutes a final and appealable order in order to determine whether we have jurisdiction over that portion of the appeal.

Objections to Statutory Interpretation and Construction

{¶ 12} Appellants' first, second, and third assignments of error assert that the trial court erred in its construction of the statutory framework governing community schools.

In their first assignment of error, appellants claim that the trial court erred in its construction of R.C. 3314.024. In their second assignment of error, appellants argue that the trial court erred in holding that they are "public officials." Similarly, in their third assignment of error, appellants claim that the trial court erred in holding that the funds paid to appellants retain their character as "public money." Because these three assignments of error relate to issues of statutory interpretation and application, we address them together.

{¶ 13} As explained above, we begin by considering whether the portions of the amended decision that are challenged in appellants' first, second, and third assignments of error constitute final and appealable orders. In relevant part, R.C. 2505.02(B) provides that an order is a final order when it is "[a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment" or "[a]n order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment." R.C. 2505.02(B)(1) and (2). A "substantial right" is one "that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). An order that affects a substantial right is an order that, if not immediately appealable, would foreclose appropriate relief in the future. *Hillman v. Kosnik*, 10th Dist. No. 05AP-122, 2005-Ohio-4679, ¶ 20, citing *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63 (1993).

{¶ 14} Appellants appear to argue that the court has jurisdiction over these portions of the amended decision because they are interrelated with the court's decision to order the production of materials that appellants argue are confidential and proprietary. However, upon review of the December decision and the amended decision, we disagree. Regarding its holding on R.C. 3314.024, although the trial court stated that appellees had an "absolute right" to the materials they sought in discovery, the court still permitted appellants to submit objections to appellees' discovery requests. Additionally, the portions of the amended decision stating that appellants were public officials that received public funds and had a responsibility to account for those funds simply reiterated conclusions the court previously reached in the October decision and repeated in the December decision. Thus, the trial court treated the proceedings as normal pre-trial discovery. Unlike an order requiring the disclosure of privileged materials, the portions of

the amended decision construing and applying the community-school statutes do not foreclose appropriate relief in the future if not immediately appealed. This is not a scenario where "the proverbial bell cannot be unrung." *Concheck* at ¶ 10.

{¶ 15} In this case, the trial court has not ruled on the merits of all of appellees' claims for relief. If the portion of the amended decision construing R.C. 3314.024 is not immediately appealable, appellants will still have an opportunity to obtain appropriate relief through an appeal after final judgment on the merits of appellees' claims. *See Hillman* at ¶ 21. We reach the same conclusion with respect to the portions of the amended decision concluding that appellants are public officials and that the funds paid to appellants retain their character as public money. Therefore, with respect to these determinations, the amended decision is not a final and appealable order.

{¶ 16} Accordingly, we dismiss appellants' first, second, and third assignments of error for lack of a final, appealable order that would confer jurisdiction upon this court with respect to the portions of the amended decision objected to in those assignments of error.

Objections to Order to Produce Documents and Denial of Protective Order

{¶ 17} Appellants' fourth, fifth, sixth, and eighth assignments of error relate to the portions of the amended decision ordering appellants to produce materials that they assert contain confidential and proprietary information and denying appellants' request for a protective order. Because these assignments of error all relate to similar claims regarding confidential and proprietary information, we address them together.

{¶ 18} Once again, we begin by considering whether the portions of the trial court's amended decision ordering the production of allegedly confidential and proprietary information and declining to issue a protective order related to that information constitute final, appealable orders. R.C. 2505.02(B)(4) provides that an order is a final order when it grants or denies a provisional remedy and 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, and when the appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all claims in the action. A "provisional remedy" is defined as a proceeding ancillary to an action, including "discovery of privileged matter." R.C. 2505.02(A)(3).

Thus, although discovery orders generally are not appealable, this court has recognized an exception to that general rule and held that discovery orders requiring the release of privileged or confidential information are appealable. *Mason* at ¶ 11; *Legg v. Hallet*, 10th Dist. No. 07AP-170, 2007-Ohio-6595, ¶ 16. Likewise, an order denying a protective order is a final and appealable order because it relates to the discovery of privileged matters. *Covington v. The MetroHealth Sys.*, 150 Ohio App.3d 558, 2002-Ohio-6629, ¶ 20 (10th Dist.). These exceptions to the general rule disallowing immediate review of discovery orders are appropriate because, when a party is ordered to produce privileged or confidential information, "the proverbial bell cannot be unrung" through a later appeal. *Compare Concheck* at ¶ 10 ("[T]his case does not involve an order to disclose allegedly privileged material or trade secrets, such that the proverbial bell cannot be unrung.").

{¶ 19} After determining that these portions of the amended decision constitute final orders under R.C. 2505.02, we next consider whether Civ.R. 54(B) applies. It does not. "A provisional remedy is a remedy other than a claim for relief. Therefore, an order granting or denying a provisional remedy is not subject to the requirements of Civ.R. 54(B)." *State ex rel. Butler Cty. Children Servs. Bd. v. Sage*, 95 Ohio St.3d 23, 25 (2002). Therefore, we conclude that, to the extent that the amended decision orders appellants to produce information that they claim is confidential and proprietary and denies a protective order for that information, it is a final, appealable order.

{¶ 20} In appellants' fourth and fifth assignments of error, they argue that the trial court erred by ordering them to produce records that they assert contain confidential and proprietary information. In appellants' sixth assignment of error, they argue that the trial court erred by declining to issue a protective order providing limited disclosure of the materials alleged to contain confidential and proprietary information. Appellants objected to appellees' modified discovery requests, arguing in part that the information requested was proprietary and confidential. Although appellants did not file a written motion requesting a protective order, they objected to the lack of a protective order in their objections to the discovery requests and referred to the need for a protective order at the hearing.

{¶ 21} The rules governing discovery afford protections for privileged and confidential materials. Civ.R. 26(B)(1) provides that "[p]arties may obtain discovery

regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action." (Emphasis added.) Further, Civ.R. 26(C) states that a trial court may limit discovery through the issuance of protective orders, including an order "that a trade secret or other confidential research, development, or commercial information not be disclosed." Thus, the civil rules acknowledge that certain information should not be disclosed in discovery or should be disclosed only in a limited manner. These provisions balance the liberal discovery permitted under the civil rules to prevent abuses of the discovery process. *Doe v. Univ. of Cincinnati*, 42 Ohio App.3d 227, 231 (10th Dist.1988). For purposes of this appeal, we consider appellants' claims that the materials sought in discovery contain "confidential and proprietary" information as analogous to a claim that the information constitutes "confidential research, development, or commercial information" under Civ.R. 26(C).

{¶ 22} The appropriate standard of review for a privilege claim depends on whether it presents a question of law or a question of fact. *MA Equip. Leasing I, L.L.C. v. Tilton*, 10th Dist. No. 12AP-564, 2012-Ohio-4668, ¶ 18. When it is necessary to interpret and apply statutory language to determine whether certain information is confidential and privileged, a de novo standard applies. *Id*. When a claim of privilege requires review of factual questions, an abuse-of-discretion standard applies. *Id*.

{¶ 23} "In Ohio, the burden of showing that testimony or documents are confidential or privileged rests upon the party seeking to exclude it." *Covington* at ¶ 24. A claim of privilege "must rest upon some specific constitutional or statutory provision." *State ex rel. Grandview Hosp. & Med. Ctr. v. Gorman*, 51 Ohio St.3d 94, 95 (1990). In their objections to the discovery requests and at the hearing on those objections, appellants did not assert a statutory or constitutional privilege but, rather, argued that the materials sought were proprietary and confidential. Because this appeal does not require us to interpret a constitutional or statutory provision, we apply an abuse-of-discretion standard to appellants' claim that the trial court erred by ordering them to produce confidential and proprietary materials. *See Tilton* at ¶ 18. Similarly, we review the trial court's denial of a protective order under an abuse-of-discretion standard. *See Med. Mut. of Ohio v. Schlotterer*, 122 Ohio St.3d 181, 2009-Ohio-2496, ¶ 23 ("Whether a protective order is necessary remains a determination within the sound discretion of the trial

court."). This is consistent with the general proposition that trial courts possess broad discretion over discovery matters, and appellate courts review decisions on discovery matters for abuse of discretion. *Tilton* at ¶ 13. An abuse of discretion occurs where a trial court's decision is "unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 24} With respect to the fourth and fifth assignments of error, we conclude that the trial court did not abuse its discretion in finding that the materials sought in discovery were not proprietary and confidential. On appeal, appellants point to R.C. 1333.65, which provides that, in actions under the Uniform Trade Secrets Act, a court may preserve the secrecy of an alleged trade secret by reasonable means, including granting protective orders. Although this action does not arise under the Uniform Trade Secrets Act, appellants argue that, under Civ.R. 26(C), a trial court may take similar steps to protect parties' trade secrets or other confidential research, development or commercial information in the discovery process. We note that a party seeking trade secret protection bears the burden to identify and demonstrate that the material falls within the categories of information protected under the statute. *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 526 (1997). The Supreme Court of Ohio has adopted factors that must be considered in determining a trade secret claim, including the precautions taken to guard the secrecy of the information, the amount of effort or money expended in obtaining and developing the information, and the amount of time and expense it would take for others to duplicate the information. *Id.* at 525-26. Although the factors outlined in the *Plain Dealer* decision do not directly apply here, they demonstrate that a party seeking to avoid discovery based on a claim of confidential or proprietary information bears a heavy burden. This is consistent with the broad scope of discovery. *See Legg* at ¶ 15 ("The scope of pretrial discovery is broad and parties may obtain discovery regarding any matter that is not privileged and is relevant to the subject matter.").

{¶ 25} In this case, the only evidence appellants offered in support of their claims that the materials were confidential and proprietary was the testimony of Joseph Weber, vice president and treasurer for some of the appellants. A review of Weber's testimony indicates that he provided the trial court with few specific details and generally made

conclusory statements that offered little support to explain why the materials sought were confidential and proprietary:

> Q: Okay. I want to go back to the Judge's question about why it needs to be protected. If I can, let me just ask. Is the White Hat model a propriety [sic] model?
>
> A: We believe it's propriety [sic].
>
> THE COURT: Why?
>
> THE WITNESS: We have developed it, Your Honor. We have, since nineteen-ninety-seven we have developed our systems and our process. We have developed our curriculum, we have developed our way of doing business. It's our recipe on how we do things. It's what we do in business.
>
> Sometimes when you sell a business, part of the business is the know-how, how to do things, okay. This is our know-how. This is our propriety [sic] thing. We know how to contact people to, you know, solve the question on funding, we know how to write a grant. We know how to procure an occupancy permit. We know the standards that are required to operate a facility, have a facility meet the standards.
>
> It's, it's our know-how, it's our knowledge based on how we run the schools. Other people may run them differently, okay, but this is our model, how we run our schools, and how we deliver our educational content, where we buy our computers at, and, you know, what software programs are used to educate the children. It's our good will and our business. It's what makes us a business, and it's our propriety [sic] information. We have developed this from scratch, okay, and we have spent a lot of money developing, our money on this. It's why we exist, we're in this business.
>
> THE COURT: Proceed.
>
> * * *
>
> Q: You have indicated that you're worried that the disclosure of the information we're seeking will undermine the propriety [sic] model for the schools, correct?
>
> A: Yes.

> Q: How would financial transparency reveal anything about the model, the curriculum, the methods, the teaching system that you use?
>
> A: It's a recipe or forumula [sic]. Any one item doesn't mean anything but when you put everything together it's a formula, the method of delivery, and it's our process. It's our process that we've developed through a lot of sweat equity, a lot of effort, and a lot of years of hard work.

(Tr. 94-95; 130-31.)

{¶ 26} In his testimony, Weber broadly referred to the sort of elements that might establish that the materials were confidential and proprietary, such as the cost to appellants to develop the information and the value to potential competitors. However, Weber offered few specifics to meet appellants' burden of demonstrating the confidential and proprietary nature of the materials in question. Further, appellants did not request or offer to provide an in camera inspection of the documents, which would have given the trial court an opportunity to review and evaluate appellants' claims that the information was confidential and proprietary.

{¶ 27} After reviewing appellants' objections to the discovery requests and the record of the hearing on those objections, we find that the trial court did not act in an unreasonable, arbitrary or unconscionable manner by concluding that appellants failed to meet their burden of showing that the materials appellees sought in discovery were confidential or proprietary.

{¶ 28} In appellants' sixth assignment of error, appellants argue that the trial court erred in holding that they were required to produce certain records without a protective order. Under Civ.R. 26(C), a trial court may limit discovery through issuance of protective orders. Such a decision is reviewed for abuse of discretion. In *Doe*, this court held that a trial court abused its discretion by issuing a discovery order compelling disclosure of the name of an individual who donated blood that was allegedly infected with human immunodeficiency virus ("HIV"). *Doe* at 233. This court stated that, in applying Civ.R. 26(C), "the trial court must balance the competing interests to be served by allowing discovery to proceed against the harm which may result." *Id.* at 231. In considering the interest served by allowing discovery, the court held that the plaintiffs may have had a substantial interest in obtaining information from the donor, but they failed to show that

they could obtain the information they sought only by learning the donor's identity. *Id.* at 233. The court also found the information requested was not "legitimately needed to proceed with plaintiffs' case." *Id.* at 232. Under those circumstances, the donor's privacy interests and the harm that would result from disclosure, including harm to the "vital public interest" in a strong and healthy blood supply, outweighed the plaintiffs' need for the donor's identity. *Id.* at 233.

{¶ 29} Courts in other appellate districts have cited *Doe* and applied a balancing test when considering whether a protective order should be issued. *See Northeast Professional Home Care, Inc. v. Advantage Home Health Servs., Inc.*, 188 Ohio App.3d 704, 2010-Ohio-1640 (5th Dist.); *Blackburn v. Coon Restoration & Sealants, Inc.*, 5th Dist. No. 2006-CA-0037, 2007-Ohio-558; *Alpha Benefits Agency, Inc. v. King Ins. Agency, Inc.*, 134 Ohio App.3d 673 (8th Dist.1999). In *Alpha Benefits*, the appellate court reversed a trial court's order granting a complete protective order. *Id.* at 680. The court concluded that the information sought in discovery was indispensable to proof of the plaintiff's claims for relief and that the information was within the defendant's exclusive knowledge and control. *Id.* at 682-83. Under these circumstances, the potential harm resulting from disclosure was outweighed by the plaintiff's need for the information. *Id.* at 683. We also note the decision in *Koval v. Gen. Motors Corp.*, 62 Ohio Misc.2d 694 (Cuyahoga C.P.1990). Although this decision of the Cuyahoga County Court of Common Pleas is not binding on us, we find it helpful regarding how trial courts apply the balancing test for a protective order. The *Koval* court noted the basic principle of open courts and concluded that, to modify this standard, a party requesting a protective order "must demonstrate that disclosure of allegedly confidential information will work a clearly defined injury to the requesting party's business." *Id.* at 697. In *Koval*, the court denied a protective order, concluding that the materials sought in discovery were not competitively valuable and that the request for a protective order had more to do with avoiding other litigation and bad publicity than protecting sensitive documents. *Id.* at 699.

{¶ 30} Consistent with these principles, we begin by considering the interests served by allowing discovery to proceed. As noted in *Koval* and *Doe*, the civil rules generally encourage open courts, liberal discovery, and free exchange of information before trial. In addition to that general interest, this case involves the management of

community schools, which is of greater public interest than a standard commercial contract dispute. Appellees have asserted multiple claims, including breach of contract, accounting, and breach of fiduciary duty. In the modified discovery requests, appellees sought records showing transfers of money from the EMOs to White Hat Management, WHLS, or their affiliates, subsidiaries or related entities. Similar to *Alpha Benefits*, this is a request for information within the exclusive knowledge and control of appellants.

{¶ 31} Next, we consider the harm that may result from allowing discovery to proceed. Civ.R. 26(C) provides that a protective order may be granted "for good cause shown." There are few Ohio decisions discussing the definition of "good cause" in this context, but courts interpreting a similar provision of the federal rules of civil procedure have held that a party may establish good cause by demonstrating a "clearly defined and serious injury" to the party seeking the protective order. *See Nix v. Sword*, 11 Fed.Appx. 498, 500 (6th Cir.2001); *Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3d Cir.1995). Looking to the analogous federal decisions, the court in *Koval* utilized a "clearly defined and very serious injury" standard in determining whether a protective order was warranted. *Koval* at 697. The court held that "vague and conclusory allegations" of sensitive documents were insufficient to support a motion for a protective order. *Id.* at 699.

{¶ 32} We note that the Board of Tax Appeals ("BTA") has frequently applied the *Koval* decision in evaluating requests for protective orders. Although those decisions are not binding on us in this case, we find them to be instructive. The BTA applies both Civ.R. 26(C) and Ohio Adm.Code 5717-1-11(D) in determining whether to issue a protective order. In *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2006-A-566 (Oct. 6, 2006), a property owner, Ice Land USA, LLC, sought a protective order asserting that the discovery requests required production of sensitive, confidential, and proprietary financial and commercial information. *Id.* The BTA denied the requested protective order, concluding that Ice Land failed to offer any evidence to support its claim that the release of information would result in specific harm. Further, Ice Land had not attempted to demonstrate which particular discovery requests were problematic but had arbitrarily sought a protective order covering all discovery requests. The BTA rejected Ice Land's claim that release of the information could fuel a political campaign against it. *Id.*

In a similar case, the BTA held that general allegations that the release of gross sales information would result in harm were insufficient to establish good cause for a protective order. *Meijer Realty Co. v. Franklin Cty. Bd. of Revision*, BTA No. 93-K-1046 (May 3, 1996). The BTA found that the party seeking the protective order provided no specific examples of how competitors could use this information. When weighed against the interest of the public in maintaining open forums, these general assertions of harm were insufficient to justify a protective order. *Id.*

{¶ 33} Appellants assert that they will be harmed through the release of confidential and proprietary information. However, as discussed above, we conclude that the trial court did not err in finding that the materials were not confidential and proprietary. Moreover, Weber's testimony and statements by appellants' counsel at the hearing indicated that appellants' assertions of confidentiality may have been motivated as much by a desire to avoid public criticism as to prevent the loss of information to competitors:

> THE WITNESS: [I]t comes down to, you know, how the information is going to be used. We're under a constant community school attack. The community school entities as an industry are under attack.
>
> * * *
>
> THE COURT: You don't want to disclose what one of your entities pays to another entity?
>
> THE WITNESS: That's correct.
>
> THE COURT: Because you're afraid the public is going to be concerned about that?
>
> THE WITNESS: It is very private information, Your Honor.
>
> THE COURT: Why is it private?
>
> THE WITNESS: It's private. We have a fixed fee contract that we entered into with the boards that were negotiated.
>
> THE COURT: Thank you.
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> * * *

> THE COURT: I'm asking you why does it need to be protected?
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> * * *
>
> [APPELLANTS' COUNSEL]: Okay, Your Honor, because it will disclose information that these Plaintiffs have exhibited an ability to disclose out of context of this Court's pleadings improperly.
>
> THE COURT: You don't make any sense.
>
> [APPELLANTS' COUNSEL]: And for the wrong purpose.
>
> THE COURT: What's the wrong purpose here?
>
> [APPELLANTS' COUNSEL]: To convince someone, Your Honor, you read the press, to convince someone that the White Hat Management Companies are doing something improper.

(Tr. 90-92.)

{¶ 34} The trial court granted a protective order with respect to the production of appellants' tax returns, ordering that they be produced under seal for attorneys' eyes only and strictly prohibiting disclosure in any form without written leave of court. The trial court denied appellants' request for a protective order with respect to the other materials sought in appellees' discovery requests. The court concluded that appellants' "business model," based on affiliated corporate entities was in no way proprietary and was unrelated to providing a quality education to children enrolled in schools that appellees operated. The court stated that "[t]he idea that somehow this information is going to make [appellants] look bad to the public is not the basis for a protective order." (Tr. 184.) As explained above, Weber's testimony referred to some potential harm due to the loss of information to competitors, but that testimony provided few specific details to demonstrate a clearly defined and serious injury that would result from production of the requested materials. *See, e.g., CP Cleveland Holdings, LLC v. Cuyahoga Cty. Bd. of Revision*, BTA No. 2005-A-402 (July 15, 2005) ("But CP Cleveland has failed to demonstrate 'good cause' as required by Ohio Adm.Code 5717-1-11(D) and Civ.R. 26(C) as it has done no more than allege, in general terms, that the requested information is

confidential commercial information."). Therefore, we conclude that appellants failed to establish good cause for a protective order by failing to demonstrate a clearly defined or serious injury that would result from denial of the protective order, and the trial court did not abuse its discretion by denying the request for a protective order.

{¶ 35} Accordingly, appellants' fourth, fifth, and sixth assignments of error are without merit and are overruled.

{¶ 36} In appellants' eighth assignment of error, they argue that, by ordering production of certain documents, the trial court effectively granted summary judgment on appellees' claim for an accounting. Appellants claim that the trial court erred by not applying the appropriate standard for a summary judgment motion under Civ.R. 56.

{¶ 37} " 'An action for an accounting seeks a determination by a court of what may be due the respective parties as a result of the relationship between them.' " *Fontbank, Inc. v. Compuserve, Inc.*, 138 Ohio App.3d 801, 814 (10th Dist.2000), quoting *Moore v. Sweda,* 27 Ohio App.3d 38, 39 (9th Dist.1985). Appellants argue that, if they are ordered to produce certain documents, appellees will be able to ascertain some of the same information that they would obtain under their claim for an accounting. However, a claim for an accounting involves a determination *by the court* of the financial relationship between the parties. The fact that appellees may be able to uncover some of the information they would obtain under the accounting claim is not equivalent to having the court grant summary judgment on that claim.

{¶ 38} Moreover, we conclude that, even if the amended decision effectively granted partial summary judgment on the accounting claim, that aspect of the decision would not constitute a final, appealable order. Under R.C. 2505.02(B), an order granting partial summary judgment on the accounting claim must affect a substantial right and either determine the action and prevent a judgment, or be made in a special proceeding. *Hillman* at ¶ 19. As noted earlier in this decision, a "substantial right" is one "that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). An order that affects a substantial right is an order that, if not immediately appealable, would foreclose appropriate relief in the future. *Hillman* at ¶ 18.

{¶ 39} Appellees asserted multiple claims in their complaint, in addition to the claim for an accounting. Assuming for purposes of analysis that the amended decision constitutes a grant of summary judgment on appellees' accounting claim, other claims in the complaint remain pending. If we decline to review appellants' claim that the amended decision effectively granted summary judgment on the accounting claim, appellants still have appropriate relief available in the form of another appeal after all claims in the case are resolved. *See Hillman* at ¶ 21. Therefore, if the amended decision constituted a grant of partial summary judgment in favor of appellees on the accounting claim, it would not be a final, appealable order.

{¶ 40} Accordingly, we dismiss appellants' eighth assignment of error for lack of jurisdiction.

Objections to Relevance of Items Requested in Discovery

{¶ 41} Appellants' seventh and ninth assignments of error assert that the trial court erred by ordering them to produce documents that are not relevant. In the seventh assignment of error, appellants assert that the trial court erred by ordering them to produce tax returns when their financial condition is not at issue in the case. Similarly, in the ninth assignment of error, appellants assert that the trial court erred by failing to apply the relevance standard under Civ.R. 26(B)(1) to appellees' discovery request. In support of this assignment of error, appellants argue that the discovery sought by appellees is not relevant to the claims asserted in the complaint.

{¶ 42} Civ.R. 26(B)(1) provides that "[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." This standard is much broader than the test for relevancy used at trial. *Covington* at ¶ 23. "Matters are only irrelevant at the discovery stage when the information sought will not reasonably lead to the discovery of admissible evidence." *Id.* The trial court expressly referred to the relevance standard in the amended decision, indicating that it contemplated this factor in evaluating the discovery requests.

{¶ 43} With respect to discovery orders, this court has previously stated that "[t]o the extent an order pertains to matters other than those concerning discovery of privileged matters, the order is deemed interlocutory and therefore not final and appealable." *Legg* at ¶ 16. Consistent with this reasoning, appellate courts have declined

to consider arguments that materials to be produced under a discovery order were not relevant. *See Ramun v. Ramun*, 7th Dist. No. 08 MA 185, 2009-Ohio-6405, ¶ 48 ("[Appellant's brief] argues that the requests were overly broad and not reasonably calculated to lead to discovery of admissible evidence. Such an argument would not render the issue a final and appealable order. If it is not privileged material there is no issue with being denied an effective remedy following the end of the entire cause."); *Garcia v. O'Rourke*, 4th Dist. No. 02CA16, 2003-Ohio-2780, ¶ 11 ("[T]he privilege issue is the only part of the trial court's order that comports with the definition of 'final order' under R.C. 2505.02(B), and therefore we could not, in any event, consider the relevance issue."); *Ingram v. Adena Health Sys.*, 149 Ohio App.3d 447, 2002-Ohio-4878, ¶ 18 (4th Dist.) ("Prior claims that Ingram did not demonstrate the likelihood that relevant evidence would be obtained. We do not address this argument because the privilege issue is the only part of the trial court's order that comports with the definition of a 'final order' pursuant to R.C. 2505.02(B)."). Therefore, to the extent that the discovery order constitutes a ruling by the trial court that the materials ordered to be produced are relevant, it is not a final, appealable order. Accordingly, we lack jurisdiction to consider appellants' seventh and ninth assignments of error, and we dismiss those assignments of error.

{¶ 44} For the foregoing reasons, appellants' first, second, third, seventh, eighth, and ninth assignments of error are dismissed for lack of subject-matter jurisdiction. Appellants' fourth, fifth, and sixth assignments of error are overruled. We affirm the portions of the decision of the Franklin County Court of Common Pleas ordering the production of the documents in response to appellees' discovery requests.

Judgment affirmed in part.

BRYANT and BROWN, JJ., concur.
