

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Bexley Gateway Plaza, Ltd.	:	
D/b/a/ Bexley Gateway Centre,	:	
	:	No. 25AP-971
Plaintiff-Appellee,	:	(C.P.C. No. 25CV-8895)
v.	:	
	:	(REGULAR CALENDAR)
KD Franchises-Bexley LLC	:	
D/b/a/ Tropical Smoothie Cafe et al.,	:	
	:	
Defendants-Appellants.	:	

D E C I S I O N

Rendered on August 20, 2026

On brief: *Katz DiCuccio LLP, Steven M. Katz, Robert K. DiCuccio, and Kyle R. Walker; FBT Gibbons LLP, and Yazan S. Ashrawi*, for appellee. **Argued:** *Yazan S. Ashrawi*.

On brief: *Percy Squire Co., LLC, and Percy Squire*, for appellants. **Argued:** *Percy Squire*.

APPEAL from the Franklin County Court of Common Pleas

LELAND, J.

{¶ 1} Defendant-appellant, KD Franchises-Bexley LLC, appeals from an order of the Franklin County Court of Common Pleas denying its motion to stay a forcible entry and detainer hearing.

I. Facts and Procedural History

{¶ 2} On October 15, 2025, plaintiff-appellee, Bexley Gateway Plaza, Ltd., filed a complaint in forcible entry and detainer (“FED”) against appellant. Appellee alleged that, as landlord under a commercial lease agreement with appellant, it was entitled to

immediate possession of the premises at 2156 Main Street, Bexley, due to appellant's failure to pay rent and late fees.

{¶ 3} On December 5, 2025, following several continuances, appellant filed a motion to stay the FED hearing scheduled for December 15, 2025. In support, appellant cited the Servicemembers Civil Relief Act ("SCRA"), "50 U.S.C. App. §§ 501, et seq.," [now codified at 50 U.S.C. § 3901 et seq.], arguing that D'Juan Armstead, the guarantor of the lease and sole member of appellant, is a servicemember. (Dec. 5, 2025 Mot. to Stay at 1.)

{¶ 4} On December 8, 2025, appellee filed a memorandum contra the motion to stay, asserting the tenant was in arrears by approximately \$40,000. Appellee further argued the SCRA was inapplicable because appellee was not seeking monetary damages or access to Armstead's assets, but instead sought restitution of the premises.

{¶ 5} On December 15, 2025, the trial court entered an order denying appellant's motion to stay, finding the provisions of the SCRA inapplicable because "Armstead is neither a plaintiff nor a defendant" in the FED action and because appellee did not seek access to the assets of Armstead. (Dec. 15, 2025 Order at 3.) On that same date, appellant filed a motion for reconsideration of the trial court's December 15, 2025 order, citing case law for the proposition that interlocutory orders are subject to revision under Civ.R. 54(B) prior to final judgment.

{¶ 6} On December 17, 2025, the trial court entered an order denying appellant's motion for reconsideration. On that same date, appellant filed a notice of appeal from the court's December 15, 2025 order denying appellant's motion to stay the FED hearing. Also on December 17, 2025, appellant filed an amended notice of appeal from the trial court's December 15, 2025 order denying the motion to stay, as well as from the trial court's December 17, 2025 order denying the motion for reconsideration.

{¶ 7} On December 18, 2025, the trial court conducted a hearing with the parties regarding "issues that have arisen procedurally." (Tr. at 3.) At the close of the hearing, the trial court announced the FED hearing would proceed "before the Court's magistrate . . . today." (Tr. at 35.) The court further stated that it "will consider . . . holding in abeyance its final ruling pending the outcome of an appeal." (Tr. at 35.)

II. Assignment of Error

{¶ 8} On appeal, appellant assigns the following single assignment of error:

The trial Court violated 50 U.S.C. §516 in conducting a forcible entry and detainer [hearing] after Appellant's controlling member received active military duty orders.

III. Discussion

{¶ 9} Under its single assignment of error, appellant contends the trial court erred by proceeding with the FED hearing. Appellant argues the court erred in conducting the hearing because its guarantor is afforded protection under the SCRA.

{¶ 10} At the outset, we must determine whether the challenged order constitutes a final, appealable order. As indicated, appellant purports to appeal from the trial court's December 15, 2025 order denying its motion to stay the FED hearing. Under Ohio law, "[a]n appellate court can review only final orders." *Supportive Solutions, L.L.C. v. Electronic Classroom of Tomorrow*, 2013-Ohio-2410, ¶ 10. If an order appealed from "is not a final appealable order under R.C. 2505.02, we are without jurisdiction to entertain the appeal and must dismiss it without reaching the merits." *Jackson v. Columbus*, 2004-Ohio-546, ¶ 8 (10th Dist.).

{¶ 11} R.C. 2505.02(B) defines a "final order" to include, as relevant here: an order that "affects a substantial right in an action that in effect determines the action and prevents a judgment" (R.C. 2505.02(B)(1)); an order that "affects a substantial right made in a special proceeding" (R.C. 2505.02(B)(2)); and certain orders that grant or deny "a provisional remedy" (R.C. 2505.02(B)(4)).

{¶ 12} We note appellant did not address final appealability in its initial brief but raises finality arguments in its reply brief, including its contention that the order at issue "was made in a Special Proceeding, a FE&D action." (Appellant's Reply Brief at 4.) Because the issue of final appealability concerns this court's jurisdiction, we independently determine whether the order at issue is final and appealable. To the extent appellant raises new non-jurisdictional arguments in its reply brief, this court has observed that "[n]ew arguments raised in a reply brief that were not raised in an initial brief are not generally considered." *State ex rel. Daily Servs., L.L.C. v. Buehrer*, 2012-Ohio-5490, ¶ 6 (10th Dist.).

{¶ 13} Accepting, as Ohio courts have held, that an FED action is a special proceeding, an order entered in such a proceeding is final under R.C. 2505.02(B)(2) only if it also affects a substantial right. *See, e.g., Crabtree v. Taylor*, 2006-Ohio-1760, ¶ 5-7 (4th Dist.). R.C. 2505.02(A)(1) defines a "[s]ubstantial right" to mean "a right 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.” Under Ohio law, “[a]n order *affects* a substantial right if it is one which, if not appealable, would foreclose appropriate relief in the future.” (Emphasis in original.) *Crabtree* at ¶ 7, citing *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63 (1993). Ohio courts have further emphasized “[i]t is not enough that an order merely restricts or limits that right; rather, there must be virtually no future opportunity to provide relief from the allegedly prejudicial order.” *Id.*, citing *State v. Chalender*, 99 Ohio App.3d 4, 6-7 (2d Dist. 1994).

{¶ 14} Ohio courts have generally held that a stay order “neither affects a substantial right, determines the action, nor prevents a judgment.” *Milo v. Milo*, 9 Ohio St.3d 115 (1984). See also *Fifth Third Bank, Natl. Assn. v. Audia*, 2024-Ohio-2127, ¶ 10 (11th Dist.) (noting a stay order “does not affect a substantial right, but simply places the case on hold”). This court has observed that “denial of a stay does not constitute a denial of a provisional remedy.” *Brigner v. Mt. Carmel Health Sys.*, 2019-Ohio-4755, ¶ 13 (10th Dist.). Rather, “[b]ecause the imposition of a stay is not considered a separate proceeding ‘with its own life,’ it is not a final order subject to immediate appellate review.” *Id.*, quoting *Novak v. Studebaker*, 2009-Ohio-5337, ¶ 12 (9th Dist.), citing *Community First Bank & Trust v. Dafoe*, 2006-Ohio-1503, ¶ 28-31.

{¶ 15} Consistent with the foregoing, Ohio courts have routinely treated orders denying (or granting) a motion to stay as non-final and therefore not immediately appealable. See *H.R. v. P.J.E.*, 2023-Ohio-4185, ¶ 11 (“It is well established that a trial court’s grant or denial of a motion for a stay . . . is not immediately appealable as a final order.”). See also *Cleveland v. Zakaib*, 2000 Ohio App. LEXIS 4756 *8 (8th Dist. Oct. 12, 2000) (holding that an order denying a stay of proceedings “is not a final appealable order” because “a party challenging the *denial* of a stay can be afforded a meaningful and effective remedy in an appeal following a final judgment as to all proceedings”) (emphasis in original); *Holivay v. Holivay*, 2007-Ohio-6492, ¶ 10 (8th Dist.) (dismissing appeal for lack of jurisdiction “because the denial of a stay of proceedings is not a final appealable order”).

{¶ 16} In the context of FED actions specifically, it is the “ ‘judgment entry giving or denying a landlord possession of premises [that] is final (and immediately appealable).’ ” *Oneida Properties, Inc. v. Pickett*, 2009-Ohio-5165, ¶ 7 (9th Dist.), quoting *Crossings Dev.*

Ltd. Partnership v. H.O.T. Inc., 96 Ohio App.3d 475, 482 (9th Dist. 1994). *See also Witkowski v. Arditi*, 123 Ohio App.3d 26, 30 (7th Dist. 1997) (“A judgment entry in a forcible entry and detainer action which contains an order relating to the right of possession of property is a final appealable order.”).

{¶ 17} Here, the trial court’s December 15, 2025 order denying appellant’s motion to stay the FED hearing did not grant or deny possession of the property. Rather, the court’s order merely required the parties to proceed to the scheduled hearing; it did not determine the merits of appellee’s possessory claim, prevent a judgment, affect a substantial right in the manner required by R.C. 2505.02(B)(2), or deny a provisional remedy within the meaning of R.C. 2505.02(B)(4). As such, the trial court’s interlocutory order is not immediately appealable, as appellant retains a “meaningful and effective remedy” by means of an appeal following a judgment on possession (at which time appellant may challenge both the denial of the stay and any alleged error by the trial court in conducting the FED hearing). *Estate of Meldrum v. Meldrum*, 2002-Ohio-3971, ¶ 7 (6th Dist.).

{¶ 18} Finally, because the trial court’s December 15, 2025 order was interlocutory, the court’s December 17, 2025 order denying reconsideration of that interlocutory order “is itself an interlocutory order, not subject to appeal.” *Nami v. Nami*, 2017-Ohio-8330, ¶ 22 (10th Dist.), citing *G.S. v. Khavari*, 2016-Ohio-5187, ¶ 12 (11th Dist.). Accordingly, because the instant appeal is not taken from a final, appealable order, we dismiss the appeal for lack of jurisdiction.

Appeal dismissed.

EDELSTEIN and DINGUS, JJ., concur.
