

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY**

DAVID KOHUT,

Plaintiff-Appellant,

- v -

TARA CHRISTOPHER, et al.,

Defendants-Appellees.

CASE NO. 2021-P-0053

Civil Appeal from the
Court of Common Pleas

Trial Court No. 2021 CV 00015

M E M O R A N D U M
O P I N I O N

Decided: September 13, 2021
Judgment: Appeal dismissed

Christopher J. Niekamp and Wade T. Doerr, Buckingham, Doolittle & Burroughs, LLC,
23 South Main Street, Suite 302, Akron, OH 44308 (For Plaintiff-Appellant).

P. Nicholas Sebastiano, Sebastiano Law, Ltd., 918 Trailwood Drive, Suite 2, Boardman,
OH 44512 (For Defendants-Appellees, Tara Christopher and Nicholas Christopher).

Jacqueline M. Wirtz, Manley Deas Kochalski, LLC, P.O. Box 165028, Columbus, OH
43216 (For Defendant-Appellee, Wells Fargo Bank, N.A.).

CYNTHIA WESTCOTT RICE, J.

{¶1} On May 28, 2021, appellant, David Kohut, through counsel, appealed from an April 30, 2021 entry of the Portage County Court of Common Pleas.

{¶2} The docket reveals that Tara Christopher was the daughter of Penny Kohut, who was married to Mr. Kohut. After Penny's death, Mr. Kohut filed an initial complaint with the trial court against Tara and Nicholas Christopher, Wells Fargo Bank, N.A., and

the Portage County Treasurer seeking a partition and sale of property, civil conspiracy, conversion of personal property, unjust enrichment, and the appointment of a receiver. The Christophers filed a motion for relief pursuant to Civ.R. 12(B)(7) requesting that the trial court dismiss the complaint because Mr. Kohut failed to join the Estate of Penny Kohut as a necessary and indispensable party, or in the alternative for the trial court to issue an entry requiring Mr. Kohut to add the Estate of Penny Kohut as a party.

{¶3} In its April 30, 2021 entry, the trial court explained that it would be prejudicial error for Mr. Kohut not to join the estate since there are claims made against the deceased. The court further stated that Mr. Kohut failed to name an indispensable party and ordered that the Christopher's Civ.R. 12(B)(7) motion is denied in part and granted in part. The trial court denied the Christopher's request to have the matter dismissed. The trial court also ordered that the Estate of Penny Kohut is an indispensable party, and that Mr. Kohut "shall amend the pleadings within 21 days of this [Journal Entry] to add the indispensable party * * *." It is from that entry that this appeal ensued.

{¶4} On June 28, 2021, this court issued an entry ordering appellant to show cause why the appeal should not be dismissed for lack of a final appealable order. Appellant filed a response and explained that "where the trial court has indicated that there is no just cause for delay," this issue must be appealed now rather than later. The Christophers filed response to appellant's response.

{¶5} Civ.R. 54(B) language is not a "mystical incantation which transforms a nonfinal order into a final appealable order." *Wisintainer v. Elcen Power Strut Co.*, 67 Ohio St.3d 352, 354 (1993). The order "must always fit into at least one of the * * * categories of final order set forth in R.C. 2505.02." *Noble v. Colwell*, 44 Ohio St.3d 92,

96 (1989). In other words, an order that is not final cannot be rendered final merely by the addition of Civ.R. 54(B) language. *Id.*

{¶6} We must determine if there is a final, appealable order, as this court may entertain only those appeals from final judgments or orders. *Id.* Under Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a “final order” in the action. *Germ v. Fuerst*, 11th Dist. Lake No. 2003-L-116, 2003-Ohio-6241, ¶ 3. If a lower court’s order is not final, then an appellate court does not have jurisdiction to review the matter, and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989).

{¶7} R.C. 2505.02(B) defines a “final order” and sets forth seven categories of appealable judgment, and if the judgment of the trial court satisfies any of them, it will be deemed a “final order” and can be immediately appealed and reviewed.

{¶8} Generally, a trial court’s order determining a motion to join a party does not constitute a final, appealable order pursuant to R.C. 2505.02. *See Martin v. Martin*, 11th Dist. Trumbull No. 2011-T-0034, 2012-Ohio-4889, at ¶ 10. “The court’s decision whether to join a party is equally reviewable now or after the case has been finally adjudicated.” *Hrabak, Trustee of Franklin J. Hrabak Living Trust v. Walder*, 11th Dist. Geauga No. 2019-G-0220, 2019-Ohio-4732, citing *BancOhio Natl. Bank v. Rubicon Cadillac, Inc.*, 11 Ohio St.2d 32, 34 (1984).

{¶9} Here, there is nothing in the record that indicates a need for immediate appellate review. No substantial right was affected nor was the order made in a special proceeding. Further, the order did not determine the action or prevent a judgment in appellant’s favor.

{¶10} At this juncture, the trial court's April 30, 2021 entry is not a final appealable order. Appellant will have a meaningful and effective remedy by means of an appeal once a final judgment is reached. See *Children's Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. Portage No. 2011-P-0103, 2011-Ohio-6838, at ¶ 5.

{¶11} Based upon the foregoing analysis, the judgment of the trial court is not a final appealable order. Accordingly, this appeal is hereby dismissed for lack of jurisdiction.

{¶12} Appeal dismissed.

MARY JANE TRAPP, P.J.,

JOHN J. EKLUND, J.,

concur.