

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

ESTATE OF  
JERRIAN C. TRUESDELL,  
DECEASED,

Plaintiff-Appellant,

- vs -

CBC CONSTRUCTION, INC., et al.,

Defendants-Appellees.

**CASE NO. 2022-A-0087**

Civil Appeal from the  
Court of Common Pleas

Trial Court No. 2021 CV 00540

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**MEMORANDUM**  
**OPINION**

Decided: February 21, 2023  
Judgment: Appeal dismissed

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*Erik L. Walter*, Dworken & Berstein Co., LPA, 60 South Park Place, Painesville, OH 44077 (For Plaintiff-Appellant).

*Rachael L. Russo*, Roetzel & Andress, 1375 East Ninth Street, One Cleveland Center, 10th Floor, Cleveland, OH 44114 (For Defendant-Appellees, CBC Construction, Inc., Roman Vencill, Jason Stuyvesant, and Michael D. Bisbee)

*Jeffrey L. Austin*, Grange Mutual Casualty Co., 6000 Freedom Square Drive, Suite 380, Independence, OH 44131 (For Defendant-Appellees, Herbert G. Locy, III and Crimson King Masonry and Construction, Inc.).

*William E. Riedel and Katherine S. Riedel*, Law Offices of Katherine S. Riedel, 1484 State Route 46 North, Jefferson, OH 44047 (For Defendant-Appellees, W. 30th Builders Supply, LLC and Randolph David Caruso).

MATT LYNCH, J.

{¶1} Appellant, Estate of Jerrian C. Truesdell, deceased, appeals the October 6, 2022 judgment of the Ashtabula County Court of Common Pleas granting the motions to

dismiss appellant's first amended complaint filed by appellees, W. 30th Builders Supply, LLC, Randolph David Caruso, CBC Construction, Inc, Roman Vencill, Jason Stuyvesant, and Michael D. Bisbee. For the reasons discussed herein, this appeal is dismissed.

{¶2} The underlying matter relates to the construction of a residential dwelling by defendants on property owned by plaintiff, Jerrian C. Truesdell. The original complaint alleged eight counts including, breach of contract, negligence, fraudulent misrepresentation, innocent misrepresentation, breach of warranties of fitness and habitability, violations of the Ohio Consumer Sales Practices Act, and bad faith. Truesdell was granted limited leave to amend the complaint but submitted an amended complaint that exceeded the limitations of the court. Accordingly, the trial court ignored the amended complaint except for the amendments it had previously allowed. Sometime during the pendency of the action, Truesdell died, and the trial court substituted the Estate of Jerrian C. Truesdell, deceased, for Truesdell.

{¶3} Ultimately, upon various motions of defendants-appellees, the trial court in an October 6, 2022 judgment entry granted the motions to dismiss appellees, W. 30th Builders Supply, LLC, Randolph David Caruso, CBC Construction, Inc., Roman Vencill, Jason Stuyvesant, and Michael D. Bisbee. The court also dismissed counts one through six. The court's entry states it is a final appealable order. The case remains active for all remaining defendants and counts. It is from that entry that the instant appeal ensues. However, it does not contain an express determination that there is no just reason for delay, as required by Civ.R. 54(B) when a decision adjudicates fewer than all the claims. Accordingly, this court ordered appellant to show cause as to why this appeal should not be dismissed for lack of final appealable order.

{¶4} In response, appellant alleges that the appealed judgment meets the R.C. 2505.02 requirements for a final appealable order. However, “[f]or a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 **and** if applicable, Civ.R. 54(B).” (Emphasis added.) *Viers v. Kubach*, 11th Dist. Lake No. 2021-L-015, 2021-Ohio-1135, ¶3, citing *Children’s Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. Portage No. 2011-P-0103, 2011-Ohio-6838, ¶3. Civ.R. 54(B) states in pertinent part: “When more than one claim for relief is presented in an action \* \* \*, the court may enter final judgment as to one or more but fewer than all of the claims or parties **only upon an express determination that there is no just reason for delay.**” (Emphasis added.) “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.” *Arnold v. Arnold*, 11th Dist. Geauga No. 2021-G-0026, 2021-Ohio-4186, ¶3, citing *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989).

{¶5} In support of its position that the judgment before us is final and appealable, appellant cites *Kinasz v. S.W. Gen. Health Ctr.*, 8th Dist. Cuyahoga No. 100182, 2014-Ohio-402, which states, “even if all of the claims or parties are not expressly adjudicated by the trial court, ‘if the effect of the judgment as to some of the claims is to render moot the remaining claims or parties, then compliance with Civ.R. 54(B) is not required to make the judgment final and appealable.’” *Id.* at ¶9, quoting *Commercial Natl. Bank v. Deppen*, 65 Ohio St.2d 65 (1981). We find *Kinasz* distinguishable and disagree with appellant that the court’s judgment renders moot the remaining claims or parties.

{¶6} In *Kinasz*, the lower court’s judgment mooted claims against various John Doe defendants. The Eighth District noted that the lower court “ordered a complete dismissal of the matter with prejudice based upon the unauthorized practice of law.”

*Kinasz, supra*, at ¶10. In that case, it appears the lower court’s omission of the John Doe defendants was an oversight, not an intention to keep the claims pending against unknown defendants. Conversely in this case, claims remain pending against named defendants, and the lower court expressly indicated it was going to set the remaining matter for pre-trial. This is not a case in which the “effect of the judgment as to some claims renders moot the remaining claims or parties.” *Kinasz, supra*, quoting *Deppen, supra*.

{¶7} It is undisputed that the trial court did not resolve all the claims against all parties, and that the court did not make an express determination that there is no just reason for delay pursuant to Civ.R. 54(B). Thus, the October 6, 2022 judgment entry is not a final appealable order, and this court is without jurisdiction to hear this appeal.

{¶8} In light of the foregoing, this appeal is hereby dismissed.

JOHN J. EKLUND, P.J.,

EUGENE A. LUCCI, J.,

concur.