

[Cite as *N. Fairfield Baptist Church v. G129, L.L.C.*, 2010-Ohio-2543.]

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

NORTH FAIRFIELD BAPTIST CHURCH, :  
 :  
Plaintiff-Appellee, : CASE NO. CA2009-11-281  
 :  
- vs - : OPINION  
 : 6/7/2010  
 :  
G129, LLC, et al. :  
 :  
Defendants-Appellants. :

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS  
Case Nos. CV 2008 12 5379 & CV 2009 03 1049

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**YOUNG, J.**

{¶1} Defendant-appellant, G129, LLC, appeals a decision of the Butler County Court of Common Pleas denying its motion for a preliminary injunction against plaintiff-appellee, North Fairfield Baptist Church.

{¶2} This case involves a dispute regarding the installation of two sanitary sewer lines. G129 and North Fairfield own real property on Gilmore Road in Fairfield

Township. The record indicates that in January 2007, after negotiations between the parties for a private sewer line easement were unsuccessful, North Fairfield began constructing a sewer line within the public road improvement easement granted to Butler County on G129's property (the "county easement").

### **First Sewer Line**

{¶3} According to G129, it was unaware that North Fairfield was installing a sewer line. Once construction was complete in 2008, questions arose as to whether the line had been installed outside of the county easement, thereby encroaching on G129's property. North Fairfield claimed that G129 had installed sewer plugs in the line, resulting in the loss of sewer service to the church. On December 16, 2008, North Fairfield filed a complaint for injunctive relief against G129, requesting permission to enter G129's property to determine whether an encroachment existed. North Fairfield also sought damages as a result of G129's alleged attempts to block North Fairfield's use of the line.

{¶4} A hearing on North Fairfield's injunction request was held on January 22, 2009. North Fairfield presented evidence that approximately four inches of the eight-inch line were encroaching on G129's property. North Fairfield indicated that it was amenable to removing the line at its cost in order to remedy the issue. The record indicates that the trial court did not rule on North Fairfield's injunction request at the hearing. The matter was continued in progress to March 19, 2009.

{¶5} In the interim, G129 filed an answer and counterclaim, as well as its own request for a preliminary injunction. In its January 20, 2009 counterclaim, G129 alleged four counts of trespass, wrongful appropriation/taking of private property, unjust enrichment, and conversion. G129 also sought injunctive relief, requesting the

court to prohibit North Fairfield from continuing to trespass on its property, and require the church to remove the sewer line at its cost. G129 alleged that the encroachment had diminished the value of its property, and sought damages in the amount of \$250,000.

{¶6} G129 filed a motion for a preliminary injunction on March 3, 2009, raising similar arguments to those alleged in its counterclaim for injunctive relief. On March 11, 2009, based upon the agreement of the parties, the trial court entered an order granting G129's request for a preliminary injunction. The order enjoined North Fairfield from "entering, either above or below ground, inside or outside of the road improvement easement, upon the land of G129 or in any other manner disturbing, disrupting, and/or tampering with or using the sewer line located on G129's property." The matter was continued for a further hearing on March 19, 2009.

{¶7} At the subsequent hearing, G129 withdrew its request that North Fairfield remove the sewer line. However, the trial court continued the March 11 preliminary injunction order after finding that North Fairfield had trespassed on G129's property. The court indicated at the hearing that the order did not prohibit North Fairfield from constructing a second sewer line entirely within the county easement. The court stated: "There is nothing about this [c]ourt's order that would forbid the church, for example, of proceeding with a lateral construction if that's what they chose to do."

### **Second Sewer Line**

{¶8} Based upon the court's March 19, 2009 ruling, North Fairfield began construction on a second sewer line within the county easement. After construction commenced, North Fairfield claimed that G129 was interfering with the installation of

the new sewer, and on June 24, 2009, filed a motion for a preliminary injunction requesting that the court enjoin G129 from interfering with North Fairfield's efforts to install the line.

{¶9} On September 30, 2009, G129 filed a motion seeking a preliminary injunction against North Fairfield. G129 argued that the Butler County Board of Commissioners failed to journalize an entry pursuant to R.C. 5547.05 demonstrating that the county's easement rights had been subordinated to North Fairfield. G129 also argued that the county failed to place the sewer line installation out for competitive bidding pursuant to the requirements of R.C. 307.10.

{¶10} North Fairfield filed a memorandum in opposition to G129's request for a preliminary injunction, claiming that it was entitled to install a sewer line within the county easement pursuant to the court's decision at the March 19 hearing. North Fairfield also argued that the county was the real party in interest with regard to G129's claim that a violation of R.C. 5547.05 occurred, and that the statute was inapplicable because it pertained only to conveyances of county-owned land.

{¶11} The trial court held a hearing on G129's preliminary injunction request on October 27, 2009. At the hearing, North Fairfield stated that it had been granted a permit to install the sewer from the county department of environmental services. Based on North Fairfield's representation that a permit had been granted, the trial court denied G129's motion for a preliminary injunction, and rejected G129's argument that North Fairfield lacked authority to install the line. The court noted that if G129 wanted to challenge the procedure used by the county to issue the permit, or otherwise claim that it was improperly granted, G129 would need to file an action against the county.

{¶12} At the conclusion of the hearing, the court amended the March 11, 2009 order to permit North Fairfield to enter onto the county easement for the purpose of installing a sewer line, provided that the installation "is approved by Butler County and other appropriate governmental entities, which determination shall be made by the appropriate governmental agency."

{¶13} G129 appeals the trial court's October 27, 2009 amended order, advancing one assignment of error for our review:

{¶14} "THE TRIAL COURT ERRED TO THE PREJUDICE OF [G129] IN DENYING ITS MOTION FOR INJUNCTION AND AFFIRMATIVELY RULING THAT [NORTH FAIRFIELD] MAY TAKE [G129'S] PRIVATE PROPERTY."

{¶15} In its sole assignment of error, G129 contends that the trial court erred in denying its motion for a preliminary injunction to prohibit North Fairfield from installing the second sewer line. Before we can address the merits of G129's assignment of error, we must first determine whether the preliminary injunction order constitutes a final, appealable order pursuant to R.C. 2505.02.

{¶16} A preliminary injunction is a provisional remedy, which is defined as a "remedy other than a claim for relief." R.C. 2505.02(A)(3); *State ex rel. Butler County Children Services Bd. v. Sage*, 95 Ohio St.3d 23, 24, 2002-Ohio-1494. Preliminary injunctions are considered interlocutory, tentative, and impermanent in nature. *Quinlivan v. H.E.A.T. Total Facility Solutions, Inc.*, Lucas App. No. L-10-1058, 2010-Ohio-1603, ¶3, citing *Burns v. Daily* (1996), 114 Ohio App.3d 693, 708. As such, an order denying a provisional remedy such as preliminary injunction does not automatically qualify as a final appealable order. See *Empower Aviation, L.L.C. v. Butler County Bd. of Commrs.*, Hamilton App. No. C-090616, 2009-Ohio-6331, ¶9.

{¶17} R.C. 2505.02(B)(4) provides that an order that grants or denies a provisional remedy is appealable if both of the following apply:

{¶18} "(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;" and

{¶19} "(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."

{¶20} In order to satisfy the second requirement of R.C. 2505.02(B)(4), an appellant must show that it will be deprived of a meaningful and effective remedy if it cannot appeal now. *Quinlivan*, 2010-Ohio-1603 at ¶4; *E. Cleveland Firefighters, IAFF Local 500 v. E. Cleveland*, Cuyahoga App. No. 88273, 2007-Ohio-1447, ¶4. Specifically, the appealing party must demonstrate that it "would have no adequate remedy from the effects of that [interlocutory] order on appeal from final judgment." *Empower Aviation*, 2009-Ohio-6331, ¶18, quoting *State v. Muncie* (2001), 91 Ohio St.3d 440, 451. The absence of an adequate remedy after final judgment has been held to be present in cases involving orders compelling the production of documents containing trade secrets or privileged communications, and in cases involving the denial of requests to enforce covenants not to compete. *Id.* See, also, *Premier Health Care Services, Inc. v. Schneiderman*, Montgomery App. No. 18795, 2001 WL 1479241.

{¶21} North Fairfield argues that the order is not final because the issue of damages remains outstanding and the order did not state that there was "no just reason for delay" pursuant to Civ.R. 54(B). In response, G129 claims that its request

for injunctive relief sought only to protect its land from North Fairfield's illegal taking, and did not seek compensation. G129 argues that its land is unique, and that the trial court eliminated G129's only meaningful and effective remedy by finding that North Fairfield may install the sewer line on its property. G129 further contends that the court's order is not subject to the requirements of Civ.R. 54(B), and is therefore appealable.

{¶22} As G129 correctly points out, the trial court's order is not subject to the requirements of Civ.R. 54(B) because the order concerns a preliminary injunction, which is a provisional remedy. It is well-established that Civ.R. 54(B) applies only to claims for relief. See *State ex rel. Butler County Children Services*, 95 Ohio St.3d at 24. However, contrary to G129's argument, the fact that Civ.R. 54(B) language is not required does not render the order immediately appealable, as both requirements of R.C. 2505.02(B)(4) must be met in order for the preliminary injunction order to be considered a final order subject to this court's review. *Empower Aviation*, 2009-Ohio-6331 at ¶15.

{¶23} In applying R.C. 2505.02(B)(4), we find that the first requirement has been satisfied, as the trial court's order denied G129's request for a preliminary injunction. The order fully determined the action with respect to the provisional remedy, and prevented a judgment in favor of G129 with regard to its request for preliminary injunctive relief.

{¶24} However, we conclude that G129 has failed to establish the second requirement that it would be deprived of a meaningful and effective remedy if not permitted to appeal now. According to the parties' briefs, the construction of the second sewer line has been completed. If at trial it is determined that the line

installation was not properly authorized or permitted, G129's remedy would be to have the sewer line removed, or be awarded damages associated with its improper installation. Although it contends that its property is unique, G129 has not demonstrated that monetary damages would not sufficiently compensate it for any determined loss. See *Simmons v. Trumbull Cty. Engineer*, Trumbull App. No. 2004-T-0016, 2004-Ohio-1663, ¶6, 11 (denial of landowners' request for a temporary restraining order to prohibit county from digging a ditch on their property was not a final appealable order, as there was "no indication that monetary damages would not be able to adequately compensate [the landowners] for their loss"). Consequently, an appeal after a judgment on the merits would not prevent a meaningful or effective remedy in G129's favor. See *Empower Aviation* at ¶25.

{¶25} Based on the record, we conclude that G129 has not established its right to immediately appeal the preliminary injunction order. The appeal is therefore dismissed for lack of a final appealable order.

{¶26} Appeal dismissed.

POWELL and HENDRICKSON, J., concur.