[Cite as *Holzer Clinic, L.L.C. v. Kiger*, 2026-Ohio-4467.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

HOLZER CLINIC, LLC,	:	
	:	Case No. 25CA16
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT
	:	ENTRY
KATHERINE KIGER,	:	
	:	**RELEASED: 10/30/2026**
Defendant-Appellant.	:	

APPEARANCES:

Ryan Q. Ashworth, Ashworth Nord LLC, Marietta, Ohio, for appellant.

Rand L. McClellan and Christopher K. Riedel, Baker & Hostetler LLP, Columbus, Ohio, for appellee.

Wilkin, J.

{¶1} This appeal arises from a Gallia County Court of Common Pleas judgment entry granting Holzer Clinic, LLC's, motion for summary judgment. One of the claims that the trial court granted was the clinic's request for a permanent injunction preventing Dr. Katherine Kiger from violating the non-compete provisions in her former employment contract with Holzer Clinic. Dr. Kiger appeals the trial court's decision arguing that the permanent injunction should have been denied. While the appeal was pending, the duration of the non-compete provisions which are the basis for the permanent injunction expired. Accordingly, we find that the appeal is moot since the non-compete provisions expired and there is no relief that we can grant to Dr. Kiger. Therefore, the appeal is dismissed as moot.

FACTS AND PROCEDURAL BACKGROUND

{¶2} Dr. Katherine Kiger was a physician at one of Holzer Clinic's facilities beginning in September 2011. In April 2024, she submitted her resignation effective July 19, 2024. In September 2024, Holzer Clinic filed a complaint against Dr. Kiger bringing two claims: breach of contract and breach of fiduciary duty. Holzer also separately requested an injunction to prevent Dr. Kiger from violating the non-compete provisions of her former employment contract. In October 2024, the trial court granted Holzer Clinic's motion for a temporary restraining order preventing Dr. Kiger from working within 30 miles of Holzer's primary care facility in Gallipolis, Ohio, or within 15 miles of any of Holzer Clinic's facilities. Additionally, the trial court ordered that Dr. Kiger be restrained from soliciting patients, businesses, performing services, and/or assisting any business that competes with Holzer Clinic.

{¶3} Dr. Kiger responded to the complaint and asserted two counterclaims: violation of the Valentine Act and constructive discharge. Subsequently, Holzer Clinic filed a motion for summary judgment asking for judgment in its favor regarding the breach of contract claim, Dr. Kiger's Valentine Act violation counterclaim, and Holzer Clinic requested a permanent injunction. Dr. Kiger opposed the motion for summary judgment. In September 2025, the trial court granted Holzer Clinic's motion for summary judgment on both claims and also with regard to its request for a permanent injunction. It is from this judgment entry that Dr. Kiger appeals.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED BY ISSUING A PERMANENT INJUNCTION AGAINST DR. KIGER BY WAY OF SUMMARY JUDGMENT.

{¶4} In her sole assignment of error, Dr. Kiger argues that the trial court abused its discretion when it granted Holzer Clinic's request for permanent injunction. According to Dr. Kiger, the non-compete provisions of her former employment agreement are unenforceable as they impose undue hardship on her, cause public injury to an area that lacks adequate medical care, cause irreparable harm to her patients, and is not narrowly tailored.

{¶5} Holzer Clinic disagrees and maintains that Dr. Kiger is relying on facts that the trial court could not consider pursuant Civ.R. 56(C). Moreover, Holzer Clinic asserts that the trial court did not abuse its discretion when it granted the request for a permanent injunction.

{¶6} Prior to oral argument, Holzer Clinic filed a motion to dismiss the appeal as moot because the time-frame for the permanent injunction expired, thus, the injunction no longer affects the rights of the parties.

{¶7} Dr. Kiger opposed the motion to dismiss arguing that the appeal before us is not based on a "freestanding, now-expired restraint. It is an appeal from a final summary judgment that adjudicated the merits of Holzer's breach-of-contract claim[,]" in which the trial court declared that the non-compete provisions were enforceable and reserved the question of damages for a future proceeding. Second, Dr. Kiger maintains that the expiration of the non-compete provisions does not extinguish the controversy. Third, Dr. Kiger asserts that the issue is capable of repetition yet evading review which is an exception to the mootness

doctrine. Finally, Dr. Kiger maintains that if we conclude that the issue on appeal is moot, the proper remedy is not dismissal, but rather, remand the matter to the trial court to vacate the judgment.

{¶8} At oral argument, we questioned whether the trial court's summary judgment entry is a final appealable order. This is because the trial court's entry granting Holzer Clinic's request for summary judgment on some but not all claims did not include the required language pursuant to Civ.R. 54(B). In response to our inquiry, Holzer Clinic and Dr. Kiger filed supplemental briefing in which both assert that the trial court's entry is a final appealable order.

{¶9} Therefore, before addressing the merits of whether the trial court abused its discretion in granting Holzer Clinic's request for a permanent injunction, we must determine whether the trial court's decision is a final appealable order.

Law and analysis

A. Final Appealable Order

{¶10} As an appellate court, we are a court of limited jurisdiction imposed by the state constitution and statutes. Article IV, Section 3(B)(2) of the Ohio Constitution grants appellate courts jurisdiction to "review and affirm, modify, or reverse * * * final orders of the courts of record inferior to the court of appeals within the district." The key is that the order must be final, and if the order " 'is not final, then an appellate court does not have jurisdiction to review the matter, and the matter must be dismissed.' " *Preterm-Cleveland v. Yost*, 2022-Ohio-

4540, ¶ 9 (1st Dist.), quoting *Taxiputinbay, L.L.C. v. Put-In-Bay*, 2021-Ohio-191, ¶ 7 (6th Dist.).

{¶11} In *Estate of Brown v. McCall*, the Tenth District Court of Appeals held that

> [a]n order of a trial court "is final and appealable if it meets the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B)." *Nationwide Mut. Fire Ins. Co. v. M.B. Roofing Sys.,Inc.*, 10th Dist. No. 12AP-44, 2012-Ohio-6195, ¶ 7, citing *Eng. Excellence,Inc. v. Northland Assocs., L.L.C.*, 10th Dist. No. 10AP-402, 2010-Ohio-6535, ¶ 10. Appellate courts therefore "use a two-step analysis to determine whether an order is final and appealable." *Id*. The first step requires the court to determine "if the order is final within the requirements of R.C. 2505.02." Second, the reviewing 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. Civ.R. 54(B) "is relevant only if the trial court's order first qualifies as a final order under R.C. 2505.02." *Eng. Excellence* at ¶ 11.

2023-Ohio-780, ¶ 16 (10th Dist.).

{¶12} This also applies to permanent injunction in which the Eleventh District Court of Appeals held that "[w]hile permanent injunction matters may be final orders, '[a]n order of a court is a final appealable order only if the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B) are met.' " *State ex rel. v. Big Sky Energy*, 2013-Ohio-437, ¶ 14 (11th Dist.), quoting *Ankrom v. Hageman,* 2007-Ohio-5092, ¶ 13 (10th Dist.).

{¶13} In the matter at bar, the only issue appealed from the trial court's summary judgment entry is the trial court's decision granting Holzer Clinic's request for permanent injunction.

> "The grant of a permanent injunction is an 'extraordinary remedy in equity where there is no adequate remedy available at law.' " *Gimex Properties Corp., Inc. v. Reed*, 2022-Ohio-4771, 205 N.E.3d 1, ¶ 60 (6th Dist.), quoting *City of Toledo v. State*, 154 Ohio St.3d 41, 2018-Ohio-2358, 110 N.E.3d 1257, ¶ 15. "Injunctive relief

> 'is not available as a right but may be granted by a court if it is necessary to prevent a future wrong that the law cannot.' " *Id.*, quoting *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988).

Swiech v. Sylvania City School Dist. Bd. Of Edn., 2025-Ohio-405, ¶ 55 (6th Dist.), *appeal not allowed*, 2025-Ohio-2118.

{¶14} Pursuant to R.C. 2505.02(B)(1) and (2),

> An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
>
> (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment[.]

{¶15} A "substantial right" is 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." R.C. 2505.02(A)(1). And R.C. 2727 and Civ.R. 65 are statutes and rule of procedure that address injunction. Therefore, the trial court's decision to enforce the non-compete provisions by granting Holzer Clinic's request for permanent injunction affected the substantial rights of Holzer Clinic. Accordingly, we find that the first requirement is met in that the permanent injunction is a final appealable order pursuant to R.C.2505.02(B).

{¶16} The next question is whether Civ.R. 54(B) applies, and if it does, whether the requirements were met.

{¶17} At first glance, the answer is that it applies and that the requirements were not met. This is because Dr. Kiger is appealing the trial court summary judgment entry which failed to include the "no just reason for delay"

language when the trial court did not resolve all the claims and left the issue of damages for future proceedings.[1] Civ.R. 54(B) states that

> (B) When more than one *claim for relief* is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, 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*. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. (Emphasis added).

{¶18} As we closely analyze Civ.R. 54(B), we conclude that the rule does not apply here. The only issue before us is whether the trial court abused its discretion in granting Holzer Clinic's request for a permanent injunction—a remedy to enforce the non-compete provisions within the former employment agreement. The Fifth District Court of Appeals in *Rudy v. Apple Valley Property Owners Ass.*, held that

> A permanent injunction is not a claim for relief "but a remedy available to the court for use in the aid of relief it has ordered." *MWL Ents., LLC v. Mid-Miami Invest. Co.*, 2021-Ohio-1742, ¶ 36 (2nd Dist.). The grant of a permanent injunction is an "extraordinary remedy in equity where there is no adequate remedy available at law." *City of Toledo v. State*, 2018-Ohio-2358, ¶ 15, quoting *Garono v. State*, 37 Ohio St.3d 171, 173 (1988).

2026-Ohio-3153, ¶ 49 (5th Dist.).

{¶19} Wherefore, we agree with Dr. Kiger and Holzer Clinic that the entry before us is a final appealable order since the only issue before us is the

[1] We note that the issue of damages relates to Holzer Clinic's breach of contract claim.

permanent injunction—a remedy. We now determine whether the appeal should be dismissed as moot.

B. The issue is moot

{¶20} This court's judicial power is limited to deciding " 'actual controversies where the judgment can be carried into effect, and not . . . give opinions upon moot questions or abstract propositions, or . . . declare principles or rules of law which cannot affect the matter at issue in the case before [us].' " *Maurent v. Spatny*, 2025-Ohio-5002, ¶ 9, quoting *Travis v. Public Util. Comm.*, 123 Ohio St. 355, 359 (1931). Thus, "[t]he judicial power does not extend to moot cases, because when a case becomes moot, there is no longer any controversy for a court to decide." *Id*. at ¶ 10.

{¶21} "An issue becomes moot when it is or has 'become fictitious, colorable, hypothetical, academic or dead.' " *Jones v. Jones*, 2021-Ohio-1498, ¶ 53 (4th Dist.), quoting *Culver v. Warren*, 84 Ohio App. 373, 393 (7th Dist. 1948). Therefore, "when events occur that make it impossible for a court to grant 'any effectual relief whatever,' a case is moot and the court must dismiss the appeal." *Maurent* at ¶ 11.

{¶22} In the matter at bar, the permanent injunction enforces the non-compete provisions of the former employment agreement between Dr. Kiger and Holzer Clinic. The non-compete provisions expired in July 2026. Thus, Dr. Kiger is free to practice in any area and in any medical field. There is nothing more that can be offered to Dr. Kiger. Further, Holzer Clinic requested the permanent

injunction as a remedy, and that remedy expired in July 2026.[2] Accordingly, we dismiss the appeal.

CONCLUSION

{¶23} Dr. Kiger's sole assignment of error challenges the trial court's decision granting Holzer Clinic's request for permanent injunction enforcing the non-compete provision within the former employment agreement. The non-compete provisions expired July 2026, while the appeal was pending. This case is, therefore, moot.

APPEAL IS DISMISSED.

[2] We reiterate that the trial court's decision to continue the determination of damages to a future date is connected to Holzer Clinic's breach of contract claim, not the request for the permanent injunction remedy.

JUDGMENT ENTRY

It is ordered that the CAUSE IS DISMISSED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. and Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.