[Cite as *Leipply v. Diamond Cut Lawn & Landscaping Serv., L.L.C.*, 2016-Ohio-4748.]

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

ROGER LEIPPLY, PLAINTIFF-APPELLEE, VS. DIAMOND CUT LAWN AND LANDSCAPING SERVICE LLC, et al., DEFENDANTS-APPELLANTS.	))))))))))	CASE NO. 16 CO 0004 OPINION AND JUDGMENT ENTRY
CHARACTER OF PROCEEDINGS:		Petition for Motion to Dismiss
JUDGMENT:		Dismissed.

JUDGES:
Hon. Carol Ann Robb
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: June 20, 2016

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APPEARANCES:

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PER CURIAM.

{¶1} Defendant-Appellant Diamond Cut Lawn & Landscaping Service, LLC appeals a decision of the Columbiana County Common Pleas Court overruling its motion for protective order and for reconsideration of the trial court's previous order of December 7, 2015 granting Plaintiff-Appellee Roger Leipply's motion to compel copies of certain photographs. Appellee has filed a motion to dismiss this appeal for lack of subject matter jurisdiction arguing Appellant has failed to establish that the trial court's decision compelling discovery is a final appealable order pursuant to R.C. 2505.02(B)(4)(b). Appellant has filed a brief in opposition. As Appellant has failed to establish that the trial court's order is a final appealable order, we find that we are without jurisdiction and must dismiss this appeal.

{¶2} Appellee was injured while performing maintenance work to metal light poles located at an apartment complex property. According to Appellee, his injuries occurred when he placed a ladder against one of the light poles and it broke causing the ladder and himself to fall to the ground. Appellee alleges the pole had been damaged and weakened by the landscape services provided by Appellant. Appellee alleged that subsequent to his injury, the light pole in question and all of the other light poles on the property had been removed and were no longer available for inspection. Appellee requested that Appellant produce any photographs it had of the broken pole in question and any other light poles located on the property at the time. Appellant refused, claiming attorney-client privilege and/or attorney work product. The trial court disagreed, ordered their production, and this appeal followed.

{¶3} Appellee has filed a motion to dismiss, claiming the trial court's discovery order is not a final appealable order under R.C. 2505.02(B)(4)(b). In response, Appellant claims that the order compelling discovery of privileged materials is a final appealable order because once privileged information is released, "the proverbial bell cannot be unrung."

{¶4} In the past, this Court has held that an order compelling discovery of alleged privileged materials is a final appealable order. *Ramun v. Ramun*, 7th Dist. No. 08 MA 185, 2009-Ohio-6405, ¶ 26 (finding as persuasive the argument that because once the material is disclosed and is public, there is no way "that the proverbial bell cannot be unrung."); *Delost v. Ohio Edison Co.,* 7th Dist. No. 07-MA-171, 2007-Ohio-5680, ¶ 4 (orders compelling discovery of privileged material are final appealable orders under R.C. 2505.02(B)(4) because "no meaningful appeal would be present at the conclusion of the proceedings"). However, the Ohio Supreme Court's relatively recent decision in *Smith v. Chen*, 142 Ohio St.3d 411, 2015-Ohio-1480, 31 N.E.3d 633, necessitates that we revisit our precedent on this particular issue.

{¶5} An appellate court has "such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district * * *." Article IV, Section 3(B)(2), Ohio Constitution. An order compelling discovery of allegedly privileged material is a "provisional remedy." R.C. 2505.02(A)(3). An order granting or denying a provisional remedy is final if it "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." R.C. 2505.02(B)(4)(a). Further, the order must foreclose "a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action." R.C. 2505.02(B)(4)(b).

{¶6} Here, the trial court's order compelling Appellant to provide the photographs prevents a judgment in its favor on this issue. Therefore, the requirement of R.C. 2505.02(B)(4)(a) has been met. However, the difficulty that arises for Appellant is demonstrating why an immediate appeal is necessary in this case.

{¶7} In *Chen*, the Ohio Supreme Court held that a party attempting to appeal an order compelling discovery of privileged materials must establish, pursuant to R.C. 2505.02(B)(4)(b), that an immediate appeal is necessary to afford the appellant a meaningful and effective remedy. *Chen,* 142 Ohio St.3d 411, 2015-Ohio-1480, 31

N.E.3d 633, at ¶ 8. The appellants in *Chen* appealed a discovery order compelling them to disclose a video that the appellants claimed was attorney work-product. In dismissing the case for lack of jurisdiction, the *Chen* court stated the appellants had "never argued, much less established, that they would not be afforded a meaningful or effective remedy through an appeal after a final judgment is entered by the trial court resolving the entire case." *Id.* The court therefore presumed that an appeal "in the ordinary course would be meaningful and effective." *Id.*

{¶8} Under the facts and circumstances of this case, Appellant has failed to establish why an immediate appeal of the trial court's order is necessary. Appellant puts forth the traditional "the proverbial bell cannot be unrung" argument. However, as indicated, *Chen* makes clear that the disclosure of privileged documents during discovery, in and of itself, is insufficient to establish why an immediate appeal is necessary under R.C. 2505.02(B)(4)(b). *Chen* at ¶ 8. Therefore, the argument advanced by Appellant, without more, does not demonstrate why Appellant cannot wait until the underlying lawsuit has been resolved to appeal the trial court's discovery order. *Walker v. Taco Bell*, 1st Dist. No. C-150182, 2016-Ohio-124; *see also Burnham v. Cleveland Clinic,* 8th Dist. No. 102038, 2015-Ohio-2044, ¶ 13.

{¶9} Appeal dismissed for lack of a final appealable order.

{¶10} Costs taxed against Appellant.

{¶11} Copy to counsel of record, and Judge C. Ashley Pike (Columbiana County Common Pleas Court Case No. 2015 CV 00097).

Robb, J., concurs.

Donofrio, P.J., concurs.

Waite, J., concurs.