[Cite as *133 Garvin Ave. v. Realtywise, Inc.*, 2025-Ohio-4382.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

133 GARVIN AVENUE, ET AL.,	:	
Plaintiffs-Appellants,	:	No. 114746
v.	:	
REALTYWISE INC., ET AL.,	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: DISMISSED
RELEASED AND JOURNALIZED: September 18, 2025

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-24-994823

Appearances:

Shapero & Green LLC, Brian Green, and Ricky Cutlip, *for appellants*.

Gallagher Sharp LLP, Timothy T. Brick, and Maia E. Jerin, *for appellees*.

MICHELLE J. SHEEHAN, P.J.:

{¶ 1} Plaintiffs-appellants, seven companies (the "Companies") that own 47 properties in Cleveland, Lorain, and Elyria, appeal from the trial court's judgment granting defendants-appellees Realtywise, Inc. and Rebecca Bauer's (collectively,

"defendants") motion for sanctions and finding nonparties NEO Rental Agent LLC and Kimberly Strader in contempt of court for not complying with the trial court's order to respond to defendants' subpoenas.[1] The Companies raise one assignment of error for our review:

> The trial court committed prejudicial error in prohibiting appellants from using certain nonparties as witnesses and documents produced by the same after said nonparties failed to comply with the court's prior order compelling their responses to subpoenas.

{¶ 2} After review, we find that because the trial court's interlocutory order did not sanction the contemnors or fall within a category of orders that is immediately appealable under R.C. 2505.02(B), it is not a final appealable order. We therefore dismiss the Companies' appeal.

I. Procedural History and Factual Background

{¶ 3} In March 2024, the Companies filed a complaint against defendants, alleging breach of contract, breach of fiduciary duty, fraudulent misrepresentation, constructive fraud, concealment, and unjust enrichment. According to the complaint, Bauer is the sole member of Realtywise and manages its operations.

{¶ 4} Each of the Companies entered into property-management agreements with Realtywise, which Bauer signed for Realtywise. Under the agreements, Realtywise was solely responsible for renting and managing the properties for the Companies.

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[1] Plaintiffs are 133 Garvin Avenue, LLC; 3120 Cypress Avenue LLC; 2119 East 29th Street LLC; 2021 OH 2 LLC; 2021 OH 3 LLC; 3902 Gary Avenue LLC; and 1301 West 9th Street LLC.

{¶ 5} The Companies alleged that defendants failed to perform their duties under the agreements, including breaching their fiduciary duties owed to the Companies. The Companies also brought several fraud claims against defendants. The Companies asserted that they suffered damages as a result of Realtywise's actions and set forth the amount of damages that each Company incurred, amounting to nearly $1 million in damages.

{¶ 6} Defendants answered the Companies' complaint, counterclaimed for breach of contract, and moved to dismiss Counts 3, 4, and 5, which were the Companies' fraud claims, for lack of sufficient particularity as required by Civ.R. 9(B). The trial court granted defendants' partial motion to dismiss and dismissed the Companies' fraud claims.

{¶ 7} In May 2024, defendants served subpoenas on NEO Rental Agent LLC ("NEO Rental") and Kimberly Strader, the Companies' new property managers, commanding them to appear at counsel's office on May 31, 2024, to produce and permit inspection and/or copying of documents relating to the properties that were in their possession. In lieu appearing at counsel's office, defendants informed NEO Rental and Strader that they could email "certified and verified copies of the identified records" to defendants' counsel before May 31, 2024.

{¶ 8} On September 9, 2024, defendants moved for an order to show cause against NEO Rental and Strader, alleging that they failed to produce documents as commanded in defendants' subpoenas. Defendants further requested attorney fees associated with bringing the motion. Defendants argued in their motion to show

cause that the documents they sought were directly relevant to the rentability of each subject property; the condition of the subject properties, including the state of repairs when plaintiffs terminated the management contracts with defendants; and the terms and conditions of the sales that plaintiffs were claiming they sold "at a loss" because of defendants' actions.

{¶ 9} Defendants argued NEO Rental never responded to their subpoena or communicated with defendants' counsel regarding the subpoena or correspondence sent in late August 2024 via email and FedEx to NEO Rental's broker and statutory agent. With respect to the subpoena to Strader, defendants explained in their motion to show cause that the Companies' former counsel sent a letter to their counsel in June 2024, stating that she would produce some of the documents but not all of them because the Companies would do so.

{¶ 10} Defendants further stated in their motion to show cause against Strader that it sent a letter to her on August 23, 2024, regarding "her ongoing failure to respond to the duly served subpoena." Defendants requested that Strader respond no later than September 6, 2024. Two days before that deadline, the Companies' former counsel responded on behalf of Strader, stating that Strader would produce documents by the end of the week. But as of the date of defendants' motion to show cause against Strader, she had failed to produce any of the documents.

{¶ 11} On September 23, 2024, counsel for NEO Rental and Strader filed a motion to quash or modify the subpoenas. In the motion to quash, counsel argued

that defendants were improperly attempting to seek documents from NEO Rental and Strader when they should have been subpoenaing the Companies. Counsel for NEO Rental and Strader asserted that the information sought was obtainable through ordinary discovery to the Companies, unduly burdensome to NEO Rental and Strader, and included unnecessary confidential information about the tenants that has no bearing on the claims or defenses in the litigation.

{¶ 12} On October 1, 2024, defendants moved for an order to compel the Companies to produce discovery in response to their interrogatories and requests for production of documents and requested attorney fees. The Companies opposed defendants' motion to compel, asserting that they had substantially complied with defendants' discovery requests.[2]

{¶ 13} On October 11, 2024, the trial court denied NEO Rental and Strader's motion to quash or modify the subpoenas served upon them by defendants. The trial court ordered NEO Rental and Strader to respond to the subpoenas and deferred sanctions until after NEO Rental and Strader complied. The trial court also deferred a ruling on defendants' motion to show cause until after NEO Rental and Strader produced responses to the subpoenas.

{¶ 14} On November 13, 2024, defendants moved for sanctions against NEO Rental and Strader for failing to produce relevant documents in response to

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[2] As of the writing of this opinion, defendants' motion to compel the Companies to produce discovery is still pending in the trial court.

defendants' subpoenas. In their motion, defendants asserted that plaintiffs and their current property managers have resisted providing responsive and relevant documents for months and that neither had fully responded to repeated requests for discovery. NEO Rental and Strader did not respond to defendants' motion for sanctions. Although NEO Rental and Strader did not respond, defendants filed a reply in support of their motion for sanctions.

{¶ 15} On December 16, 2024, the trial court granted the unopposed motion for sanctions and found NEO Rental and Strader in contempt of court for failing to comply with the subpoenas and the court's October 11 order. The trial court issued an "initial sanction for contempt," prohibiting the Companies from using NEO Rental or Strader as witnesses at trial "and any document that originates with Strader and/or NEO Rental" as evidentiary exhibits. The trial court deferred additional sanctions until the conclusion of the case, including whether to order Strader and NEO Rental to pay defendants' attorney fees. It is from this interlocutory order that the Companies now appeal.

II. Law and Analysis

A. Final Appealability of Contempt Orders

{¶ 16} Before we review the merits of this case, we must consider whether we have jurisdiction to do so. Defendants argue that the trial court's December 16, 2024 order is not final because the trial court did not impose sanctions on the contemnors. Even if defendants had not raised this issue, we have a duty to examine, sua sponte, potential deficiencies in jurisdiction. *Arch Bay Holdings,*

L.L.C. v. Goler, 2015-Ohio-3036, ¶ 9 (8th Dist.), citing *Saikus v. Ford Motor Credit Co.*, 2001 Ohio App. LEXIS 1696, *6 (8th Dist. Apr. 12, 2001).

{¶ 17} Appellate jurisdiction is limited to the review of final orders. R.C. 2505.03; *Rae-Ann Suburban, Inc. v. Wolfe*, 2019-Ohio-1451, ¶ 9 (8th Dist.), citing Ohio Const., art. IV, § 3(B)(2); R.C. 2505.02 and 2505.03. Therefore, "'[i]f an order is not final and appealable, then an appellate court has no jurisdiction to review the matter, and the appeal must be dismissed.'" *Scheel v. Rock Ohio Caesars Cleveland, L.L.C.*, 2017-Ohio-7174, ¶ 7 (8th Dist.), quoting *Assn. of Cleveland Firefighters, # 93 v. Campbell,* 2005-Ohio-1841, ¶ 6 (8th Dist.).

{¶ 18} "[T]he judgment of contempt is a final, appealable order at the time sentence is imposed and the matter is journalized . . . ." *Docks Venture, L.L.C. v. Dashing Pacific Group, Ltd.*, 2014-Ohio-4254, ¶ 2. In the case of civil contempt, "a court order finding a party in contempt and imposing a sentence conditioned on the failure to purge is a final, appealable order on the issue whether the party is in contempt of court." *Id.* at ¶ 23. Thus, when the sanction amount is not specified in a contempt order, the contempt order does not constitute a final appealable order. *Mills v. Mills*, 2022-Ohio-4639, ¶ 11 (8th Dist.); *see also Zuckerman v. Bryan SNF LLC*, 2024-Ohio-2072, ¶ 8 (8th Dist.) ("At this juncture, without the imposition of a conditional or unconditional sanction, the orders finding appellants in contempt are interlocutory in nature. Because no sanction has been imposed upon the finding of contempt and the contempt proceedings have not been concluded, the trial court's October 6, 2023 orders were not final, appealable orders.").

{¶ 19} In this case, the trial court found NEO Rental and Strader in contempt of court but did not sanction them. Rather, the trial court deferred any sanctions that it might impose against NEO Rental and Strader until the conclusion of litigation, including whether to order NEO Rental and Strader to pay defendants' attorney fees. We note that the trial court did impose an "initial sanction" against the Companies, ordering that they could not call NEO Rental or Strader as witnesses in the case or use any documents that originated with NEO Rental or Strader. Notably, however, the trial court never found the Companies in contempt of court.

{¶ 20} Furthermore, in cases of civil contempt, like the present case, "a trial court 'must provide the contemnor a reasonable opportunity to purge the contempt.'" *Cornell v. Shain*, 2021-Ohio-2094, ¶ 46 (1st Dist.), citing *Burchett v. Miller*, 123 Ohio App.3d 550, 552 (6th Dist. 1997); *EMC Mtge. Corp. v. Pratt*, 2007-Ohio-4669, ¶ 6 (10th Dist.), citing *Tucker v. Tucker*, 10 Ohio App.3d 251, 252 (8th Dist. 1983). When a trial court fails to provide the contemnor an opportunity to purge, the order is not final. *EMC Mtge.* at ¶ 6. Here, the trial court's order failed to sanction NEO Rental or Strader or provide them the opportunity to purge the contempt.

{¶ 21} Thus, we agree with defendants that the trial court's order finding NEO Rental and Strader in contempt of court lacks finality.[3]

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[3] The facts of this case are similar to *Morgan v. Greater Cleveland Regional Transit Auth.*, 2025-Ohio-1655 (8th Dist.), where this court held "that the trial court could not find RTA in contempt of court or sanction it for not producing its employees for the

B. Final Appealability Under R.C. 2505.02(B)

{¶ 22} The Companies counter that the trial court's order was a final appealable order for another reason. They contend that the trial court's order "severely impacts" their substantial right to call witnesses, which likely prevents judgment in their favor, and, therefore, is a final order under R.C. 2505.02(B)(1).

{¶ 23} An interlocutory order is one "'that relates to some intermediate matter in the case.'" *USA Freight, LLC v. CBS Outdoor Group, Inc.*, 2015-Ohio-1474 (2d Dist.), quoting *Black's Law Dictionary* (10th Ed. 2014). An order that "does not determine the action but instead establishes only a preliminary matter" is not a final order. *Ohio Historical Soc. v. State Emp. Relations Bd.*, 48 Ohio St.3d 45, 47 (1990). An interlocutory order remains subject to revision while the case remains pending. *Nami v. Nami*, 2017-Ohio-8330, ¶ 18 (10th Dist.), citing *State v. Colon*, 2016-Ohio-707, ¶ 10 (8th Dist.).

{¶ 24} Absent an assertion of privilege, discovery orders are "interlocutory orders that are neither final nor appealable." *Blue Technologies Smart Solutions, LLC v. Ohio Collaborative Learning Solutions, Inc.*, 2022-Ohio-1935, ¶ 12 (8th Dist.), citing *Jamestown Village Condominium Owners Assn. v. Mkt. Media Research*, 96 Ohio App.3d 678, 693 (8th Dist. 1994). Indeed, orders concerning

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depositions when the RTA employees were not parties to the case." *Id.* at ¶ 73. This court originally dismissed the appeal for lack of a final appealable order because the trial court's order finding RTA in contempt did not contain the amount of sanctions or specify an opportunity for RTA to purge the sanctions. *Id.* at ¶ 26, citing *Morgan v. Greater Cleveland Regional Transit Auth.*, No. 113582 (8th Dist. Feb. 29, 2024) (motion No. 572445).

discovery "have long been considered interlocutory" and not final or appealable. *State ex rel. Steckman v. Jackson*, 70 Ohio St.3d 420, 438 (1994), *overruled in part on other grounds by State ex rel. Caster v. Columbus*, 2016-Ohio-8394; *see also Klein v. Bendix-Westinghouse Automotive Air Brake Co.*, 13 Ohio St.2d 85, 88 (1968).

{¶ 25} A "limited exception" to the general rule that discovery orders are not final appealable orders resides in R.C. 2505.02. *State v. Glenn*, 2021-Ohio-3369, ¶ 10. Whether a discovery order warrants an interlocutory appeal under R.C. 2505.02 is evaluated on a case-by-case basis. *Glenn* at ¶ 28. "The burden of establishing the appellate court's jurisdiction over an interlocutory appeal 'falls on the party who knocks on the courthouse doors asking for interlocutory relief.'" *E.A.K.M. v. M.A.M*, 2025-Ohio-2946, ¶ 14, quoting *Smith v. Chen*, 2015-Ohio-1480, ¶ 8.

{¶ 26} Under R.C. 2505.02(B)(1), the provision at issue in this case, a final order includes one that "affect[s] a substantial right" and "that in effect determines action and prevents a judgment." A "substantial right" for purposes of R.C. 2505.02 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). "An order *affects* a substantial right if, in the absence of an immediate appeal, one of the parties would be foreclosed from appropriate relief in the future." (Emphasis added.) *Cooney v. Radostitz*, 2021-Ohio-2521, ¶ 23 (8th Dist.), citing *Crown Servs. v. Miami Valley Paper Tube Co.*, 2020-Ohio-4409, ¶ 16.

"It is not enough that an order merely restricts or limits that right. Rather, there must be virtually no future opportunity to provide relief from the allegedly prejudicial order." *In re Estate of Tewksbury*, 2005-Ohio-7107, ¶ 10 (4th Dist.).

{¶ 27} In *E.A.K.M.*, the Ohio Supreme Court explained that even if courts determine "that the statutory definition of 'substantial right'" was satisfied, there is "still another hurdle" for the Companies to meet; i.e., "[t]he order in question must *affect* a substantial right." *Id.* at ¶ 18. The Supreme Court has "held that an order 'affects a substantial right for the purposes of [R.C. 2505.02(B)] only if an immediate appeal is necessary to protect the right effectively.'" *Id.*, quoting *Wilhelm-Kissinger*, 2011-Ohio-2317, ¶ 7. Thus, the Companies "must demonstrate that 'in the absence of immediate review of the order [they] will be denied effective relief in the future.'" *Id.*, quoting *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63 (1993). "This understanding is consistent with longstanding principles that generally limit appellate review to final decisions in order to avoid 'the debilitating effect on judicial administration caused by piecemeal appellate disposition of what is, in practical consequence, but a single controversy,' *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 170 (1974)." *Id.*

{¶ 28} The Supreme Court also recently explained in *E.A.K.M.* that "the final-order rule is categorical: whether an order is final depends not on the exigencies of a particular case but on whether the order falls within a category of orders that meets the requirements of finality." *Id.* at ¶ 21. "For this reason, [the

Supreme Court's] caselaw on the subject determines whether certain orders *as a category* are immediately appealable." (Emphasis in original.) *Id.*

{¶ 29} The order that the Companies appealed in this case is an interlocutory contempt order, which sanctioned the Companies for the contempt of their current property managers' refusal to provide discovery in the case. While contempt orders are immediately appealable if certain conditions are met, interlocutory orders involving discovery and evidentiary issues — absent some protected privilege — are not in the category of cases that are final and immediately appealable. Parties frequently raise discovery and evidentiary issues on direct appeal and are afforded effective relief.

{¶ 30} In *Cox v. Greene Mem. Hosp.*, 2000 Ohio App. LEXIS 908 (2d Dist. Mar. 10, 2000), the plaintiffs appealed after the trial court issued an order excluding their experts from testifying in the case because of the plaintiffs' failure to disclose expert witnesses by a certain date. The Second District dismissed the interlocutory appeal for lack of final appealable order. The appellate court recognized that, as a practical matter, the exclusion of plaintiffs' experts may have doomed their cause of action. *Id.* at *3. But the court concluded that "no matter how dire" an order excluding expert testimony is, the order was not a final appealable order under R.C. 2505.02. *Id.* at *4.

{¶ 31} In *Cox*, the Second District explained that the plaintiffs' theory of recovery was that the hospital breached its standard of care and "[a]lthough the plaintiffs' chances of obtaining a favorable answer to that question may have

disappeared as a result of the exclusion of their expert witnesses," the court could not "say that the question of liability has actually been answered by the trial court." *Id.* at *5. The Second District further reasoned:

> We are loathe to open the door to the possibility of piecemeal appeals where litigants are frustrated by orders involving discovery. We conclude that the better reasoning is that an order excluding evidence, no matter how draconian, even though it may, in effect, pre-determine the outcome of an action, does not determine the action.

Id. at *6.

{¶ 32} Likewise, we cannot say that the trial court's order in this case preventing the Companies from using NEO Rental and Strader as witnesses or using evidence that originates from NEO Rental and Strader is an order that "determines the action" or "prevents judgment" for purposes of R.C. 2505.02(B)(1). Moreover, the Companies will be afforded meaningful and effective review of the issue on direct appeal after final disposition of the case. We therefore conclude that the Companies have not met their burden of establishing the trial court's interlocutory order is a final appealable order.

{¶ 33} Appeal dismissed.

It is ordered that appellees recover from appellants the costs herein taxed.

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

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MICHELLE J. SHEEHAN, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., and
DEENA R. CALABRESE, J., CONCUR