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THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST

This Court should grant jurisdiction to hear this case and review the decision of the First District Court of Appeals (the “Appeals Court”) because the Appeals Court decision mistakenly extends a rule of law that delays a party’s right to seek review of a permanent injunction until some future, unknown date. As a result, a party subject to such an injunction is left with no effective right to appeal. Such a rule runs contra to both the letter and the spirit of Ohio’s law regarding final appealable orders. Further still, the situation presented here requires the determination of a *de facto* split of authority in the lower courts. The Appeals Court’s decision, therefore, is of public and great general interest.

The significance of the Appeals Court’s decision is heightened by the fact that it involves a political subdivision’s request to appeal a permanent injunction finding that one of the political subdivision’s ordinances is unconstitutional – an ordinance establishing a traffic camera program that is substantially similar to those recognized as constitutional by numerous courts around the country and in this State.¹ In the underlying action, Plaintiffs-Appellees sought to challenge the Village of Elmwood Place’s (the “Village”) ordinance enacting a traffic camera program and the procedures for handling speeding violations identified by the traffic camera (the “Ordinance”). Judge Ruehlman of the Hamilton County Court of Common Pleas (the “Trial Court”) issued a decision resolving all of the pending claims and finding the Ordinance to be unconstitutional in violation of the Ohio Constitution’s protections for due process. Judge Ruehlman also granted Plaintiffs-Appellees an award of attorneys’ fees, expenses, and costs without reference to any basis for the award but did not set the amount of such award.

¹ See, e.g., *Mendenhall v. City of Akron*, 117 Ohio St.3d 33, 2008-Ohio-270, 881 N.E.2d 225; *Cleveland v. Cord*, 8th Dist. No. 96312, 2011-Ohio-4262; *Snider Intl. Corp. v. Town of Forest Heights*, 906 F.Supp.2d 413 (D. Maryland. 2012); *Shavitz v. City of High Point*, 270 F.Supp.2d 702 (M.D. N.C. 2003).

The Appeals Court would require the Village to wait until some future determination of an amount of attorneys' fees and expenses purportedly owed by the Village to the Plaintiffs-Appellees. This date is unknown and completely outside of Appellants' control.

In the meantime, the Village and its contractor, Optotraffic, LLC, have seen a statistical and definitive increase in drivers speeding and the Village has been forced to deal with a very significant hole in its revenue. (Still further, based on a contempt order not directly relevant here, the Village has been ordered to incur the costs to dismantle the traffic camera equipment, and Optotraffic's property has been impounded by the local sheriff.) The nature of the Trial Court's Decision warrants an immediate right to appeal, prior to any determination of the amount of attorneys' fees or expenses. This is particularly true given that *there is no right to such fees or expenses in the action*. In other words, the Trial Court's putative award of attorneys' fees, the reason for the Appeals Court's dismissal of the appeal, is itself an error. Without this Court's clarification of the law in this respect, a litigant like the Village can have permanent injunctive relief entered against it while the nominal shadow of "other claims" gives the trial court or the adverse party the ability to park the case in a procedural black hole.

The Trial Court's decision resolved all pending claims; the decision is immediately effective; and the decision impacts Appellants' substantial rights and subjects them to significant prejudice. Accordingly, Appellants should be allowed an immediate right of appeal on the substance of the permanent injunction. Appellants urge the Court to take this matter into consideration, clarify the scope of its previous holding in *International Brotherhood of Electrical Workers, Local Union No. 8 v. Vaughn Industries, LLC*, 116 Ohio St.3d 335 (2007) (which was relied on by the Appeals Court and which subsequently has been limited by a number of appellate courts) and prevent any further prejudice to the Village and Optotraffic.

STATEMENT OF THE CASE AND FACTS

On November 29, 2012, the underlying Plaintiffs filed a “Complaint for Declaratory Judgement [sic] and Injunctive Relief (Including Temporary Restraining Order)” asserting four putative claims/counts against the Village and its Chief of Police, seeking declaratory judgments and injunctive relief. Two of the counts requested that the court declare the Village’s traffic camera ordinance invalid and unenforceable because the Village failed to follow certain statutory requirements in enacting the Ordinance (Count One) and in establishing the procedures for appealing a speeding ticket identified by the traffic cameras (Count Two). The third count requested that the court declare that the Village’s ordinance and traffic camera program violated the Ohio Constitution’s due process protections (Count Three). Finally, Plaintiffs asserted a claim for “Injunctive Relief” (Count Four), which was not a stand-alone theory of recovery but rather specified the requested remedy for the three causes of action. In their prayer for relief, Plaintiffs sought:

- On Counts I-III, judgment in favor of the Plaintiffs that the ordinance is invalid and unenforceable.
- On Count IV, a temporary restraining order, and, following a hearing, an injunction prohibiting further enforcement of the ordinance.
- Court costs and other reasonable expenses incurred in maintaining this action, including reasonable attorneys’ fees.

The same day, Plaintiffs also filed a Motion for a Temporary Restraining Order, seeking to have the traffic camera program halted while the court considered their Complaint. No TRO proceedings were held, however.

The Village answered Plaintiffs’ Complaint. On January 22, 2013, Optotraffic sought leave to intervene in the matter, asserting that it was entitled to intervene as of right or, at a

minimum, should be entitled permissive intervention because, as a practical matter, a disposition of Plaintiffs' Complaint would impair or impede Optotraffic's ability to protect its interests (including its property rights in the equipment itself and its contractual right to a share of the revenue from the program). The Trial Court denied Optotraffic's motion to intervene on January 31, 2013, without any analysis whatsoever, but confirmed that Optotraffic was welcome to file papers as an *amicus curiae*.

The Trial Court heard testimony and argument regarding Plaintiffs' request for preliminary injunctive relief on January 9 and 24, 2013. The Village and Optotraffic (as *amicus curiae*) filed a brief in opposition to Plaintiffs' Motion for Preliminary Injunction on February 29, 2013. Eight days later, Judge Ruehlman issued a decision (the "Decision") granting Plaintiffs a *permanent* injunction.

In its Decision, the Trial Court held that the Village's ordinance "fails to provide due process guarantees to any person receiving a Notice of Liability." Judge Ruehlman analogized the traffic camera program, which is identical to numerous traffic camera programs legally operated across the State, as "a scam" and "nothing more than a high-tech game of **3 CARD MONTY.**" (Emphasis in original.) In sum, the Common Pleas Court's Decision provided that:

The Court renders Judgment in favor of the Plaintiffs and finds that the ordinance is invalid and unenforceable. A permanent injunction is granted to the Plaintiffs prohibiting further enforcement of the ordinance, by the Defendants.

Court costs, other reasonable expenses and attorney fees are to be assessed against the Defendant.

The court required a \$1 bond of Plaintiffs and, thus, ordered that the permanent injunction go into immediate effect pursuant to Civil Rule 65.

On March 11, 2013, the Village filed a Notice of Appeal of the court's March 7, 2013 Decision with the First District Court of Appeals. The same day, Optotraffic filed a Notice of Appeal of both the court's denial of its motion to intervene and the Decision. (Optotraffic's earlier attempt to appeal the denial of its motion to intervene was dismissed by the First District Court of Appeals.) Subsequently, the Village filed a motion to stay the injunction, requesting that Judge Ruehlman maintain the status quo and stay the enforcement of the permanent injunction pending the Village's appeal. The court denied the motion to stay the next day, on March 12, 2013, without substantive comment.

Then, on March 20, 2013, Plaintiffs filed motion for leave seeking to amend their Complaint to add class-action allegations seeking monetary relief and asserting nearly identical claims as their initial Complaint. The Village opposed that motion. On June 27, 2013, the Trial Court granted Plaintiffs' motion, deemed the Amended Complaint filed as of that date, and set a scheduling order on the issue of class certification, culminating with a class-certification hearing in October 2013.

Also on March 20, 2013, Plaintiffs filed with the Trial Court a Motion for Contempt seeking to hold the Village in contempt for violating the Court's Decision by (allegedly) continuing to process citations issued before the court's Decision. Subsequently, on June 27, 2013, after a hearing, the Trial Court declared the Village and its Chief of Police, a co-defendant, in contempt of the Decision granting a permanent injunction. Judge Ruehlman ordered the traffic camera equipment to be seized and held by the Hamilton County Sheriff "through the conclusion of this litigation" and ordered the Village, "in order to purge the contempt," to return all monies paid by motorists since March 7, 2013.

Meanwhile, at the First District Court of Appeals, on March 15, 2013, Plaintiffs filed motions to dismiss the Village's and Optotraffic's notices of appeal for lack of a final appealable order. Plaintiffs asserted that there was no final appealable order because the "Court issued a declaratory judgment on Count III of the Complaint, and issued a permanent injunction as requested on Count IV of the Complaint. The Trial Court did not reach the issues raised in Counts I and II of the Complaint." Because the Decision did not contain any "no just reason for delay" language pursuant to Rule 54, Plaintiffs argued, the Decision was not subject to immediate appeal.

The Village and Optotraffic opposed Plaintiffs' Motion to Dismiss their appeal, noting that simply because the Trial Court's decision was based on "fewer than all of the alternate grounds argued ... does not strip the trial court's judgment of finality." *Riverside v. State*, 190 Ohio App.3d 765, 775, 944 N.E.2d 281, 288 (10th Dist. 2010). The Village and Optotraffic also noted this Court's decision in *General Acc. Ins. Co. v. Insurance Co. of North Amer.*, 44 Ohio St.3d 17, 21, 540 N.E.2d 266, 270 (1989), holding that "even though all of the claims or parties are not expressly adjudicated by the trial court, if the effect of the judgment as to some or 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."

The Appeals Court granted Plaintiffs' Motion to Dismiss on April 23, 2013, but on grounds other than those raised by Plaintiffs and essentially unaddressed in the parties' briefs. The Appeals Court ruled that because the Trial Court's Decision did not determine the amount of attorneys' fees that the Trial Court sought to award to Plaintiffs (relying on this Court's authority in *Intl. Brotherhood of Elec. Workers, Local Union No. 8 v. Vaughn Industries, LLC*, 2007-Ohio-6439, 879 N.E.2d 187, syl. ¶ 2), the appeal was premature. The Appeals Court held that

“because the trial court did not determine an amount to be awarded ... and it did not make an express determination pursuant to Civ.R. 54(B) that there is no just reason for delay, the court’s decision does not constitute a final appealable order. Therefore, appellant’s appeal must be dismissed.” The Village and Optotrafic subsequently moved for reconsideration, pointing out that due to the nature of the claims and governmental immunity principles, the putative award of fees to Plaintiffs was a nullity. The Appeals Court denied the motion for reconsideration on May 22, 2013. The Village and Optotrafic are now forced to turn to this Court to secure their right to appeal an order that is final, was immediately effective and prejudices both entities.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: The Failure To Specify Fees Awarded In Connection With A Permanent Injunction That Resolves All Pending Claims Does Not Preclude An Appeal Of The Permanent Injunction Pursuant To R.C. 2505.02(B)(1) or (2).

Section 3(B)(2), Article IV of the Ohio Constitution provides that a judgment of a trial court can be reviewed by an appellate court if it constitutes a “final order” in the action. Ohio law further defines a “final order” as, among other things, an “order that affects a substantial right in an action that in effect determines the action and prevents a judgment” or an “order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment.” R.C. 2505.02(B)(1), (2). If an order does not enter judgment on all of the claims, the order must satisfy Civ.R. 54(B) and include express language that “there is no just reason for delay” in order to constitute a final, appealable order. *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, 776 N.E.2d 101, ¶¶ 5-7. The Trial Court’s Decision granting and declaring a permanent injunction against the Village, effective immediately, constituted a final order under either statutory provision, even without the Trial Court’s agreement to insert the Civ. R. 54(B) language.

The Trial Court's Decision undoubtedly affects the Village's substantial rights, as required under both R.C. 2505.02(B)(1) and (2). 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). The Village has the right under the Ohio Constitution and numerous statutes to enact ordinances and establish programs to protect the health, safety and welfare of its residents. The permanent injunction, thus, affects the Village's substantial right to enforce the ordinance and operate its traffic camera program. The Trial Court's injunction has forced the Village to stop operating the traffic camera program and to incur substantial costs in removing equipment, and has terminated an important, budgeted-for source of revenue for the Village. The Trial Court's Decision also was issued in connection with a "special proceeding" – Plaintiffs-Appellees' request for a declaratory judgment – and is thus subject to appeal. *Niehaus v. Columbus Maennerchor*, 10th Dist. No. 07AP-1024, 2008-Ohio-4067, ¶19 ("A declaratory judgment action is a special proceeding under R.C. 2505.02.").

Further, the Trial Court's Decision resolved all of the pending claims. It granted Plaintiffs-Appellees' request for a declaratory judgment under Count Three, their request for an injunction under Count Four, and even granted attorneys' fees and costs as generically requested in Plaintiffs' prayer for relief. As a result, all other claims were moot. *General Acc. Ins. Co. v. Insur. Co. of N. Amer.*, 44 Ohio St.3d 17, 21, 540 N.E.2d 266, 270 (1989) ("[E]ven though 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."). Where a statute is declared unconstitutional, as was done here, the fact that it could be declared unconstitutional or unenforceable for other unaddressed reasons is of no significance in

determining whether the order is final and appealable. *See Riverside v. State*, 190 Ohio App.3d 765, 775, 944 N.E.2d 281, 288 (10th Dist. 2010). The Trial Court's Decision satisfies all of the requirements of R.C. 2505.02 for a final, appealable order.

The Appeals Court erroneously held that the Decision failed to “determine[] the action” because the Trial Court has not yet determined the specific amount of attorneys’ fees purportedly owed to Plaintiffs-Appellees. This finding fails to recognize the significance and finality of the Trial Court’s judgment while placing Appellants in a position of extreme prejudice with no right to relief until some unknown future date. Thus, Appellants face a “permanent” order that could be fatal to the traffic program and cause permanent injury to the Village’s financial well-being because of a procedural loose end that shows no sign of being tied up anytime soon.

The Appeals Court’s dismissal of Appellants’ appeal was based solely on its determination that the Decision was not a final appealable order because the Trial Court did not specify the amount of the award of attorneys’ fees. It is true that, as the Appeals Court noted, this Court’s decision in *Intl. Brotherhood* held that “when attorney fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim and does not include, pursuant to Civ.R. 54(B), an express determination that there is no just reason for delay, is not a final, appealable order.” The Appeals Court then looked to two lower court decisions that held that the specific amount of the attorneys’ fees must also be determined or, if the fees are to be determined, that the Civ.R. 54(B) language must be included. *See RBS Citizens N.A. v. Ryan*, 6th Dist. No. L-12-1136, 2013-Ohio-1269; *McMasters v. Kilbarger Construction*, 5th Dist. No. 2012-CA-11, 2012-Ohio-4353.

The procedural and substantive posture of this action is materially distinct from the facts giving rise to the *Intl. Brotherhood*, *RBS Citizens*, and *McMasters* decisions relied on by the

Appeals Court. All three proceedings involved actions for damages, including statutory damages and statutorily authorized awards of attorneys' fees under employment laws (*Intl. Brotherhood* and *McMasters*), or damages and attorneys' fees arising under the express, written terms of a cognovit note (*RBS Citizens*). In those cases, the final amounts owed by the defendants to the plaintiffs had not yet been determined, but the litigants had made a showing of entitlement to attorneys' fees in the first instance.

Thus, the cases relied on by the Appeals Court are distinguishable because they involved actions in which the plaintiffs were expressly entitled to attorneys' fees. Here, the exact opposite is true: *The putative award in the Decision of fees and costs against the Village and the Chief of Police is a nullity under well-established Ohio law.* Ohio follows the "American rule" that prevailing parties are not entitled to recover attorneys' fees unless such fees are expressly authorized by statute. *See Sorin v. Bd. Of Educ. Of Warrensville Heights Sch. Dist.*, 46 Ohio St.2d 177, 347 N.E.2d 527 (1976), *citing Shuey v. Preston*, 172 Ohio St. 413, 177 N.E.2d 789 (1961), *State, ex rel. Michaels, v. Morse*, 165 Ohio St. 599, 138 N.E.2d 660 (1956), etc. There is no statute that authorizes an award of attorneys' fees under the claims at issue here.

The relevant statute, in fact, expressly precludes such an award Plaintiffs-Appellees' substantive claims sought only declaratory relief. The Ohio Revised Code specifically precludes an award of attorneys' fees under the facts here:

A court of record shall not award attorneys' fees to any party on a claim or proceeding for declaratory relief under this chapter unless any of the following applies:

(a) A section of the Revised Code explicitly authorizes a court of record to award attorneys' fees on a claim for declaratory relief under this chapter.

(b) An award of attorneys' fees is authorized by section 2323.51 of the Revised Code, by the Civil Rules, or by an

award of punitive or exemplary damages against the party ordered to pay attorneys' fees.

(c) Regardless of whether a claim for declaratory relief is granted under this chapter, a court of record awards attorneys' fees to a fiduciary, beneficiary, or other interested party

R.C. 2721.16(A)(1) (emphasis added). There is no other section of the Revised Code that authorizes attorneys' fees for claims seeking a declaration that an ordinance violates constitutional or statutory requirements. Accordingly, the Trial Court could not award Plaintiffs attorneys' fees to Plaintiffs in this matter.¹ The analysis is the same with regard to the Trial Court's attempt to award "other reasonable expenses" against the Village, which also is not supported under Ohio law and, in fact, is prohibited by the grant of sovereign immunity under R.C. Chapter 2744.

The lower-court decisions cited by the First District in dismissing Appellants' appeal represent bad law, especially when applied to the circumstances here. This issue is ripe for decision by this Court as a matter of great and general interest because the courts interpreting *Intl. Brotherhood* have been inconsistent.²

For example, the court in *Jones v. McAlarney Pools, Spas and Billiards, Inc.*, 4th Dist. No. 07CA34, 2008-Ohio-1365, noted that "broad language in [*Intl. Brotherhood*] is somewhat difficult to comprehend and to apply" and held that the nominal pendency of an open attorneys'

¹ Plaintiffs' request for injunctive relief also does not entitle Plaintiffs to an award of attorneys' fees. This Court has held the limitation on an award of attorneys' fees in the absence of statutory authorization or a finding of punitive damages is applicable to equity cases, as well as cases at law. See *New York, Chicago & St. Louis Rd. Co. v. Grodek*, 127 Ohio St. 22, syl. 2, 186 N.E. 733 (1933) ("[T]he court, though awarding a mandatory injunction, is not authorized to include compensation for plaintiff's attorney in damages assessed against defendant, in the absence of evidence which would warrant the allowance of punitive or exemplary damages.").

² The underlying Decision and the debate over the Village's traffic camera program have generated considerable local, regional and national news coverage, also.

fees question does not render a decision interlocutory. *Id.* at ¶¶ 9-11. The mere fact that it could be argued that an attorneys' fees entitlement remains open for ruling does not render a judgment unappealable. *Id.* at ¶ 11 (acknowledging "that if the broad syllabus language [of *Intl. Brotherhood*] is construed" to prohibit appeal whenever a litigant claims a right to attorneys' fees, "it will result in the dismissal of practically every appellate case on jurisdictional grounds, even when the attorney fee issue is truly irrelevant to the action."). The *Jones* court held that "in the absence of specific statutory or rule authority invoked as a basis for an attorney fee request," the general *Intl. Brotherhood* principle does not apply. *Id.* at ¶ 12. Similarly, the Ninth District Court of Appeals has held that *Intl. Brotherhood* does not apply when the underlying substantive claims do not authorize the award of attorneys' fees. *Knight v. Colazzo*, 9th Dist. No. 24110, 2008-Ohio-6613, ¶ 9. Other cases have been more formulaic in applying *Intl. Brotherhood* whenever there is even a hint of an open fees issue. *See, e.g., Bank of New York Mellon Trust v. Zeigler*, 5th Dist. No. 11-CA-25, 2011-Ohio-4748. This history of case law has created, in effect, a split of authority regarding a court's ability to look through formulaic labeling in applying the crux of *Intl. Brotherhood*.

Appellants are unaware of any cases addressing the precise circumstance here: where a lower court has nominally awarded attorneys' fees but that award itself is substantively untenable. But the principles of fairness and efficiency that underlay the *Jones* and *Knight* decisions apply foursquare here. The Appeals Court's dismissal places the Village and Optotraffic in an unfair position in which they are subject to a final and immediately effective judgment from which they cannot appeal until some future date solely because the trial court, *sua sponte*, awarded (but did not specify the amount of) attorneys' fees to which Plaintiffs never were entitled in the first place.

Like the plaintiffs in *Jones* and *Knight*, the Plaintiffs-Appellees did not seek any award of attorneys' fees as damages by reference to a specific statutory authorization; their claims were limited to declaratory judgments and injunctive relief, with only a generic, boilerplate request for costs, fees and expenses in their prayer. The Trial Court's Decision granting a declaratory judgment and granting a permanent injunction was immediately effective and resolves Plaintiffs-Appellees' request for relief. As the Tenth Appellate District subsequently noted in limiting *Intl. Brotherhood*, "it would be unjust to require the parties to litigate [Plaintiff's] entitlement to attorney fees and the amount of those fees prior to finality on the merits of the competing declaratory judgment claims." *Niehaus*, 2008-Ohio-4067 at ¶ 23 (affirming trial court's inclusion of Civ.R. 54(B) language in its decision granting a declaratory judgment).

To deny Appellants the right to appeal the Trial Court's permanent injunction would undermine the purpose of Civil Rule 54(B) – "to accommodate the strong policy against piecemeal litigation with the possible injustice of delayed appeals in special situations." *Niehaus, supra* at ¶ 22. Appellants' appeal would not result in piecemeal litigation because the pending claims have been resolved and the Trial Court's Decision decided the matter. Allowing Appellants the right to appeal now also would avoid the certain injustice of delaying an appeal. The Trial Court's permanent injunction is far from a status-quo injunction and has been in effect already for several months. And the Village has been and will continue to be forced to incur significant costs as a result of the injunction. The Village's and Optotraffic's right to appeal that final judgment should not be delayed months or years until the Trial Court finally determines to issue an award of fees to which Plaintiffs are not actually entitled. This is the ultimate "trick box." To send the parties back to the Trial Court for a determination on fees and expenses that the Trial Court is not authorized to make, while a permanent injunction continues to be

effective, severely prejudices Appellants' right to seek redress and is contrary to all notions of judicial economy and fairness.

Proposition of Law No. 2: The Trial Court's Decision Granting A Permanent Injunction Should Otherwise Constitute A Final Appealable Order Pursuant to R.C. 2505.02(B)(4).

That the Trial Court's Decision granting a permanent injunction should be immediately appealable is reinforced by the fact that if the Trial Court had granted a *preliminary* injunction, the Village could have had the immediate right to appeal. Ohio law further defines as:

An order that grants or denies a provisional remedy and to which both of the following apply:

(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.

(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. . . .

R.C. 2505.02(B)(4). R.C. 2505.02(A)(3) defines a "provisional remedy" as "proceedings ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction" Thus, a trial court's granting or denying of a preliminary injunction is immediately appealable once the requirements of R.C. 2505.02(B)(4) are satisfied. This is true regardless of whether the trial court included or omitted any reference to Civ.R. 54(B)'s requirement for "no just reason for delay." *State ex rel. Butler Cty. Children Servs. Bd. v. Sage*, 95 Ohio St.3d 23, 25, 2002-Ohio-1494, 764 N.E.2d 1027 (2002); *Hope Academy Broadway Campus v. White Hat Mgt, L.L.C.*, 10th Dist. No. 12AP-116, 2013-Ohio-911 (once the court determines that the requirements of R.C. 2505.02 are satisfied, the inquiry in the final appealable order issue ends because an appeal from an order resolving a provisional remedy need not comply with Civ.R. 54(B)); *Empower Aviation, LLC v. Butler County Bd. of Commrs.*, 185 Ohio App.3d 477, 2009-

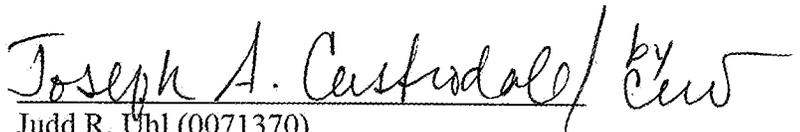
Ohio-6331, 924 N.E.2d 862, ¶ 18. Thus, where a temporary restraining order “requires affirmative acts or restraints on the part of one of the parties” and serves as a preliminary injunction, it may serve as a final appealable order of a provisional remedy. *Farmers Insur. Exchange v. Weemhoff*, 5th Dist. No. 02-CA-26, 2002-Ohio-5570, ¶¶ 11-12.

Here, the Trial Court’s Decision granting a permanent injunction did determine the action (as sought under subsection (a)) and Appellants would not be afforded a meaningful or effective review after some future final judgment on the essentially new action triggered by Plaintiffs’ Amended Complaint (as sought under subsection(b)). The Decision is effective now, is subject to enforcement now and is crippling the Village now. Thus, Appellants should be allowed to seek immediate redress in the form of an appeal.

CONCLUSION

As set forth above, the Appeals Court’s dismissal of the Village’s and Optotraffic’s appeals involves issues of public and great general interest. The Village and Optotraffic therefore request that this Court accept jurisdiction so that these important issues can be reviewed on their merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this *Appellants' Memorandum in Support of Jurisdiction* was served via ordinary U.S. mail on this 8th day of July, 2013, on the following:

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IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ENTERED
APR 23 2013

GARY PRUIETT, et al.,

APPEAL NO. C-130153
TRIAL NO. A-1209235

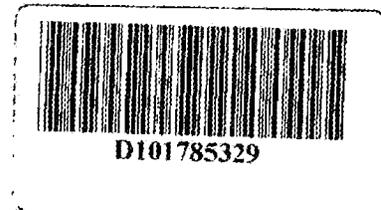
Appellees,

vs.

ENTRY GRANTING MOTION
TO DISMISS APPEAL

VILLAGE OF ELMWOOD PLACE,
et al.,

Appellants.



This cause came on to be considered upon the motion of the appellees to dismiss the appeal and upon the joint memorandum in opposition.

The Court finds that the motion is well taken and is granted, albeit for reasons different from those set forth in appellees' motion.

"When attorney fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim and does not include, pursuant to Civ.R. 54(B), an express determination that there is no just reason for delay, is not a final, appealable order." *Internatl. Bhd. of Elec. Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St.3d 335, 2007-Ohio-6439, 879 N.E.2d 187, paragraph two of the syllabus. See *Icon Constr. Inc. v. Statman, Harris, Siegel & Eyrich, LLC*, 1st Dist. No. C-090458, 2010-Ohio-2457, ¶ 11-13. Where the trial court awards attorney fees but defers the determination of the amount of fees to be awarded, in the absence of a Civ.R. 54(B) certification the judgment is not a final appealable order. *RBS Citizen's, N.A. v. Ryan*, 6th Dist. No. L-12-1136, 2013-Ohio-1269, ¶ 11-12;

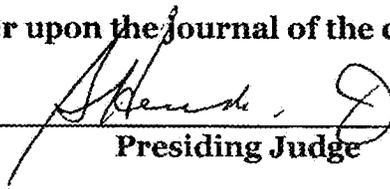
McMasters v. Kilbarger Constr., Inc., 5th Dist. No. 2012-CA-11, 2012-Ohio-4353, ¶ 18-19.

In their complaint, plaintiffs-appellees requested “[c]ourt costs, reasonable expenses incurred in maintaining this action, including reasonable attorney’s fees.” In its March 7, 2013 decision, the court stated that, “Court costs, other reasonable expenses and attorney fees are to be assessed against the Defendants.” Because the trial court did not determine an amount to be awarded for attorney fees, costs and expenses, and it did not make an express determination pursuant to Civ.R. 54(B) that there is no just reason for delay, the court’s decision does not constitute a final, appealable order. Therefore, appellant’s appeal must be dismissed.

To the clerk:

Enter upon the Journal of the court on APR 23 2013 per order of the court.

By: _____


Presiding Judge

(Copies sent to all counsel)

ENTERED

MAY 22 2013

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

GARY PRUIETT, et al.,

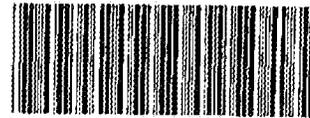
APPEAL NO. C-130153
C-130154
TRIAL NO. A- 1209235

Appellees,

vs.

ENTRY OVERRULING JOINT
MOTION FOR RECONSIDERATION

VILLAGE OF ELMWOOD PLACE,
et al.,



D102139136

Appellants.

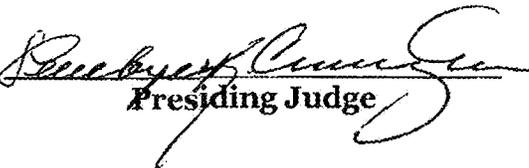
This cause came on to be considered upon the joint motion of the appellants for reconsideration and upon the memorandum in opposition.

The Court finds that the motion is not well taken and is overruled.

To the clerk:

Enter upon the journal of the court on MAY 22 2013 per order of the court.

By:


Presiding Judge

(Copies sent to all counsel)

Appendix B-1