

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO

STATE OF OHIO,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2017-L-116
GARY D. MASSEY,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Court of Common Pleas, Case No. 2014 CR 000344.

Judgment: Appeal dismissed.

Charles Coulson, Lake County Prosecutor, Lake County Administration Building, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Gary D. Massey, pro se, PID# A660-766, Lake Erie Correctional Institution, P.O. Box 8000, 501 Thompson Road, Conneaut, OH 44030 (Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} On September 18, 2017, appellant, Gary D. Massey, filed a notice of appeal from an August 23, 2017 entry of the Lake County Court of Common Pleas. In that entry, the trial court ordered that appellant's petition to vacate or set aside judgment is stricken from the docket for appellant's failure to serve appellee, the state of Ohio, and the Lake County Prosecutor, with a copy of the petition.

{¶2} Appellee filed a motion to strike appellant's brief, construed by this court as a motion to dismiss, on November 28, 2017, claiming that the appealed order is not a

final appealable order and should be dismissed. The state contends that appellant's petition for postconviction relief was not ruled upon, but rather, it was stricken, and "there is no reviewable decision over which this court can exercise [jurisdiction.]" Also, pursuant to *State v. Gibbs*, 11th Dist. Geauga No. 2014-G-3234, 2015-Ohio-3216, ¶ 12, a procedural order does not dispose of a pending issue. Further, pursuant to *State v. Holt*, 9 Ohio St.2d 147(1967), an order that prevents a judgment for a party prejudiced by the order, where there is no right to amendment of the order, is a final appealable order.

{¶3} According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a "final order" in the action. *Germ v. Fuerst*, 11th Dist. Lake No. 2003-L-116, 2003-Ohio-6241, ¶ 3. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. of N. Am.*, 44 Ohio St.3d 17, 20 (1989). For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and, if applicable, Civ.R. 54(B).

{¶4} Pursuant to R.C. 2505.02(B), there are seven categories of "final orders," and if a trial court's judgment satisfies any of them, it will be considered a "final order" which can be immediately appealed and reviewed by a court of appeals.

{¶5} R.C. 2505.02(B) states, in part, that:

{¶6} "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:

{¶7} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶8} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶9} “(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶10} “(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶11} “(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.

{¶12} “(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.

{¶13} “(5) An order that determines that an action may or may not be maintained as a class action;

{¶14} “(6) An order determining the constitutionality of any changes to the Revised Code * * *;

{¶15} “(7) An order in an appropriation proceeding * * *”

{¶16} The trial court’s order striking appellant’s petition does not fall under any of the foregoing categories for being a final order. The trial court’s order is a procedural, interlocutory order which does not dispose of appellant’s petition. The court retains the ability to “amend its order” by issuing a final ruling on appellant’s petition. Then an

appeal from that final ruling could follow. Now, there is no final appealable order for this court's review.

{¶17} Thus, appellee's motion to dismiss for lack of a final appealable order is hereby granted.

{¶18} Appeal dismissed.

DIANE V. GRENDELL, J., concurs,

COLLEEN MARY O'TOOLE, J., dissents.