

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

ROBERT AUGUSTA,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2004-A-0043
JAMES M. LEMIEUX,	:	September 24, 2004
Defendant-Appellee.	:	

Civil appeal from the Court of Common Pleas, Case No. 2002 CV 1119.

Judgment: Appeal dismissed.

Michael D. Joseph, 815 Robbins Avenue, Niles, OH 44446 (For Plaintiff-Appellant).

David A. Schaefer and Leslie E. Wargo, McCarthy, Lebit, Crystal & Liffman Co., L.P.A., 1800 Midland Building, 101 Prospect Avenue, West, Cleveland, OH 44115-1088 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} On June 18, 2004, appellant, Robert Augusta, filed a notice of appeal from a June 9, 2004 judgment of the Ashtabula County Court of Common Pleas. On June 25, 2004, appellee, James M. Lemieux, filed a motion to dismiss this appeal due to lack of a final appealable order. Specifically, appellee points to the fact that, while appellant's claim has been dismissed with prejudice by the trial court, his own counterclaim still remains and a jury trial is scheduled on that issue. Additionally, the trial court's judgment did not include Civ.R. 54(B) language. Appellant has not filed a response.

{¶2} Civ.R. 54(B) provides:

{¶3} “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.”

{¶4} In the present case, one claim for relief still remains in the form of appellee’s counterclaim. The trial court did not make an express determination that there is no just reason for delay. Accordingly, there is no final appealable order. *Noble v. Colwell* (1989), 44 Ohio St.3d 92.

{¶5} Based upon the foregoing analysis, appellee’s motion to dismiss this appeal is hereby granted.

{¶6} Appeal dismissed.

WILLIAM M. O’NEILL, J.,
DIANE V. GRENDALL, J.,
concur.