

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

EUGENE WHELAN, EXECUTOR OF THE ESTATE OF EDWARD WHELAN, DECEASED,	:	MEMORANDUM OPINION
	:	
Plaintiff-Appellant,	:	CASE NO. 2006-G-2732
	:	
- VS -	:	
	:	
VANDERWIST OF CINCINNATI, INC., et al.,	:	
	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 05 PO 786.

Judgment: Appeal dismissed.

James M. Johnson, 2200 Key Tower, 127 Public Square, Cleveland, OH 44114 (For Plaintiff-Appellant).

Thomas S. Mazanec, John T. McLandrich and Frank H. Scialdone, Mazanec, Raskin & Ryder Co., L.P.A., 100 Franklin's Row, 34305 Solon Road, Solon, OH 44139 (For Defendant-Appellee).

Craig G. Pelini, Pelini & Associates, L.L.C., Bretton Commons, #400, 8040 Cleveland Avenue, N.W., North Canton, OH 44720 (For Defendant, Todd J. Kinsey).

CYNTHIA WESTCOTT RICE, J.

{¶1} On September 27, 2006, appellant, Eugene Whelan, filed a notice of appeal from a Geauga County Court of Common Pleas judgment entry dated August 28, 2006.

{¶2} In the August 28, 2006 entry, the trial court granted the motion for summary judgment of appellee, Vanderwist of Cincinnati, Inc. It is from that entry that appellant filed his notice of appeal.

{¶3} On November 3, 2006, appellee filed a motion to dismiss the appeal indicating that this court lacks jurisdiction as there are claims still pending against co-defendant, Todd Kinsey (“Kinsey”).

{¶4} Appellant filed a brief in opposition to appellee’s motion to dismiss on November 27, 2006. In its brief in opposition, appellant claims that the August 28, 2006 entry effects a substantial right under R.C. 2505.02(B).

{¶5} The Ohio Legislature in R.C. 2505.02(B) has set forth six categories of a “final order” for purposes of the constitutional provision, and if a trial court’s judgment satisfies any of the categories, it will be considered a “final order” which can be immediately appealed and reviewed by a court of appeals.

{¶6} R.C. 2505.02(B) states that:

{¶7} “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:

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

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

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

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

{¶12} “(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.

{¶13} “(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.

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

{¶15} (6) An order determining the constitutionality of any changes to the Revised Code ***.”

{¶16} Here, the trial court granted summary judgment in favor of appellee, but there are claims still pending against Kinsey. Therefore, the trial court’s August 28, 2006 judgment entry is not a final appealable order at this time because other claims are still pending. Furthermore, the August 28, 2006 order did not contain Civ.R. 54(B) language, which provides:

{¶17} “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.”

{¶18} In the instant matter, since all the claims have not been determined and the trial court did not use Civ.R. 54(B) language in its judgment entry, there is no final appealable order at this time.

{¶19} Accordingly, appellee’s motion to dismiss is granted.

{¶20} Appeal dismissed.

DONALD R. FORD, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.