

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

ELENA A. WILLOUGHBY,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2010-T-0114
JOHN R. WILLOUGHBY,	:	
Defendant,	:	
STEVEN ECHOLS WATTS, DDS,	:	
INC., et al.,	:	
Third Party Defendants-	:	
Appellants.	:	

Civil Appeal from the Court of Common Pleas, Domestic Relations Division, Case No. 08 DR 425.

Judgment: Appeal dismissed.

Michael J. McGee, Harrington, Hoppe & Mitchell, LTD., 108 Main Avenue, S.W., #500, Warren, OH 44481 (For Plaintiff-Appellee).

Donald R. Ford, Sr. and John D. Falgiani, Jr., Ford, Gold & Falgiani Law Group, 8872 East Market Street, Warren, OH 44484 (For Third Party Defendants-Appellants).

MARY JANE TRAPP, J.

{¶1} On October 25, 2010, appellants, Steven Echols Watts, DDS, Inc. and Steven E. Watts, filed a notice of appeal from a September 24, 2010 entry of the Trumbull County Court of Common Pleas, Domestic Relations Division. In that entry, the trial court denied appellants' motion to consolidate this case with case number 10

CV 297. Appellants sought to have the issue of fraudulent conveyance of John R. Willoughby's dental practice disposed of in case number 10 CV 297.

{¶2} On November 8, 2010, appellee, Elena A. Willoughby, filed a motion to dismiss the appeal. In the motion to dismiss, Elena Willoughby asserts that the appealed judgment entry of September 24, 2010, is not a final appealable order pursuant to *Keybank Natl. Assn v. Environment First Services Co., Inc.*, 11th Dist. No. 2001-A-0064, 2002-Ohio-3126. Appellee further alleges that the notice of appeal was not timely filed. Appellants filed no brief in opposition to the motion to dismiss.

{¶3} As to the issue of the timeliness of the filing of the appeal, appellants' appeal was timely filed pursuant to App.R. 4(A). The trial court issued its judgment on September 24, 2010. The appeal was due to be filed on October 24, 2010, which was a weekend. Therefore, the appeal was due Monday, October 25, 2010. Hence, the appeal was timely filed.

{¶4} We must next determine whether the denial of a motion to consolidate is a final appealable order. 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. 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. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20.

{¶5} Pursuant to R.C. 2505.02(B), there are seven categories of a "final order," 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.

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

{¶17} In the case at hand, the denial of appellants’ motion to consolidate does not fall under any of the categories for being a final order pursuant to R.C. 2505.02(B). Furthermore, the Supreme Court of Ohio has held that the denial of a motion to

consolidate is not a final appealable order. *State ex rel. Eberling v. Nugent* (1988), 40 Ohio St.3d 129, 129. See, also, *Keybank Natl. Assn*, *supra*, at ¶16.

{¶18} Here, since appellants are appealing the denial of a motion to consolidate, this court does not have jurisdiction to consider the issues raised in this appeal.

{¶19} Accordingly, appellee's motion to dismiss is granted, and this appeal is hereby dismissed for lack of a final appealable order.

{¶20} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,

concur.