[Cite as *Colombo v. Mismas Law Firm, L.L.C.*, 2015-Ohio-812.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

CELINA COLOMBO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
		CASE NO. 2014-L-069
- vs -	:	
THE MISMAS LAW FIRM, LLC, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 13 CV 001679.

Judgment: Appeal dismissed.

Mark R. Koberna, and *Jennifer L. Speck*, Sonkin & Koberna Co., L.P.A., 3401 Enterprise Parkway, Suite 400, Cleveland, OH 44122 (For Plaintiff-Appellee).

Larry W. Zukerman, *S. Michael Lear*, and *Brian A. Murray*, Zukerman, Daiker & Lear Co., L.P.A., 3912 Prospect Avenue, East, Cleveland, OH 44115 (For Defendants-Appellants).

THOMAS R. WRIGHT, J.

{¶1} This accelerated-calendar appeal is from a discovery order in a civil action before the Lake County Court of Common Pleas. Appellants, John D. Mismas and the Mismas Law Firm, LLC, seek reversal of the trial court's order requiring them to disclose information regarding their income during the second quarter of the 2014 fiscal year. In response, appellee, Celina Columbo, maintains that the appeal is not properly before us because the discovery order is not a final appealable order. For the following reasons,

we conclude that the dismissal of this appeal is warranted.

{¶2} In July 2013, appellee initiated the underlying case by submitting an eight-claim complaint against appellants, seeking both compensatory and punitive damages. As her primary factual allegation, she asserted that, during her employment with the law firm, Attorney Mismas sexually harassed her by texting her inappropriate messages.

{¶3} After the action had been pending for seven months, appellee moved the trial court to compel appellants to produce the following information for inspection: "All of [appellants'] audited and unaudited annual financial statements showing [appellants'] assets, gross income, net income, liabilities and net worth, prepared at any and all times between January 1, 2010 and the present." The motion contended that appellants were refusing to provide the financial documents notwithstanding the fact that the information was relevant to her request for punitive damages.

{¶4} In their response, appellants argued that their financial documents were not discoverable because they were irrelevant to the alleged harm she had suffered. In its March 24, 2014 judgment, the trial court rejected appellants' argument and held that the financial information was pertinent to appellee's request for punitive damages. As a result, the court granted the motion to compel, but limited the scope of the order to any documents prepared "between January 1, *2012* and the present." (Emphasis added.)

{¶5} Approximately seventy days later, appellants moved for a protective order in relation to appellee's second set of discovery requests, which she propounded after taking Attorney Mismas' deposition in April 2014. According to appellants, appellee had amended her requests to include the following: (1) information as to all fee agreements the law firm had with its clients; (2) information as to the total fees or compensation the

law firm had or would receive; and (3) information as to any settlements the law firm had negotiated for its clients. As one of the arguments presented in support of the motion, appellants maintained that some of the requested information was either confidential or covered under attorney-client privilege.

{¶6} In her response, appellee stated that, during the two weeks since the filing of appellants' motion for a protective order, the parties negotiated a settlement of their discovery dispute. According to her, the parties agreed that appellants could satisfy her second set of discovery requests by providing: (1) any new financial statements which were prepared since April 1, 2014, and (2) information as to all "gross amount of fees" the law firm had received since December 1, 2013. Appellee further asserted that the only remaining discovery question the trial court still needed to resolve pertained to whether appellants should be required to produce the foregoing two items prior to a scheduled settlement/mediation conference.

{¶7} Appellants filed a reply brief in support of their motion, expressly denying that a complete settlement of the discovery dispute was reached. They also asserted a new argument in support of their request for a protective order, contending that appellee was not entitled to any new information regarding the law firm's present net worth because, pursuant to R.C. 2315.21(D)(2)(b), any calculation of punitive damages had to be based on its net worth as of December 2011, the month during which all of the alleged sexual harassment took place.

{¶8} In its July 1, 2014 judgment, the trial court overruled appellants' motion for a protective order and expressly ordered them to produce the new discovery sought by appellee. As to the scope of the discovery, the court limited its order to the two specific

items that, according to appellee, appellants agreed to provide as part of the discovery settlement. In addition, the trial court ordered that this discovery had to be produced no later than ten days prior to the scheduled settlement/mediation conference.

{¶9} In appealing the foregoing judgment, appellant raises a single assignment of error for review:

{¶10} "The trial court abused its discretion by ordering [appellants], an individual and small employer, to produce, prior to a settlement conference, financial records reflecting their current net worth, for purposes of assisting [appellee] in determining the statutorily imposed maximum of punitive damages that could be awarded against [appellants] for torts allegedly committed by [appellants] several years earlier."

{¶11} As noted above, in responding to this sole assignment, appellee submits that the substance of appellants' argument on the merits need not be reviewed because the appealed judgment is not a final appealable order. Citing R.C. 2505.02(B)(4) and pertinent case law, she maintains that the trial court's judgment does not fall within the limited number of discovery orders which can be appealed prior to the conclusion of the entire case. Specifically, appellee asserts that the denial of the protective order cannot be addressed at this time because none of the information appellants must produce is confidential or subject to the attorney-client privilege.

{¶12} Under Section 3(B)(2), Article IV of the Ohio Constitution, the appellate jurisdiction of an Ohio court of appeals is limited to reviewing "final orders" of trial courts. *Briggs v. Mt. Carmel Health Sys.*, 10th Dist. Franklin No. 07AP-251, 2007-Ohio-5558, ¶6. Thus, if an appeal is from a judgment that is not final and appealable, it is subject to an immediate dismissal. *Culbertson v. Culbertson*, 5th Dist. Delaware No. 07 CAF 06

0031, 2007-Ohio-4782, ¶10.

{¶13} The term "final order" is statutorily defined in R.C. 2505.02(B), which sets forth seven categories of appealable judgments. In contending that the cited judgment in this appeal is properly before us, appellants reference R.C. 2505.02(B)(4), pursuant to which an order is considered "final" when it is:

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

{¶15} "(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.

{¶16} "(b) The appealing party would not be afforded a meaningful or effective remedy to an appeal following final judgment as to all proceedings, issues, claims, and parties in the action."

{¶17} In order to satisfy the requirements for finality under R.C. 2505.02(B)(4), an appealing party must first establish that the appealed judgment was issued in regard to a "provisional remedy." *Bennett v. Martin*, 186 Ohio App.3d 412, 2009-Ohio-6195, ¶31 (10th Dist.). The term "provisional remedy" is defined in R.C. 2505.02(A)(3):

{¶18} "(3) 'Provisional remedy' means a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, *discovery of privileged matter*, suppression of evidence, a prima-facie showing pursuant to section 2307.85 or 2307.86 of the Revised Code, a prima-facie showing pursuant to section 2307.92 of the Revised Code, or a finding made pursuant to division(A)(3) of section 2307.93 of the Revised Code." (Emphasis added).

{¶19} In construing the foregoing definition, the Ohio Supreme Court has stated that the "General Assembly stopped short of including all discovery orders in the provisional-remedy section." *Myers v. Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353, ¶24. Accordingly, it has been recognized that only a few discovery proceedings can be deemed provisional remedies. *Bennett*, 2009-Ohio-6195, at ¶33. Besides the specific reference to discovery of privileged matter in R.C. 2505.02(A)(3), Ohio appellate courts have held that a discovery order requiring disclosure of confidential information constitutes a provisional remedy: i.e., an order pertaining to the discovery of privileged matter. *Id*., citing *Armstrong v. Marusic*, 11th Dist. Lake No. 2001-L-232, 2004-Ohio-2594, ¶12; *Gibson-Myers & Assoc. v. Pearce*, 9th Dist. No. 19358, 1999 Ohio App. LEXIS 5010 (Oct. 17, 1999).

{¶20} As part of their motion for a protective order at the trial level, appellants expressly argued that they should not be required to respond to appellee's second set of discovery because appellee was seeking both confidential and privileged information. However, this argument was based upon the fact that the second set referred to a client list and fee agreements. In responding to appellants' motion, appellee stated that she would be satisfied with appellants' most recent financial statements and information as to the amount of their gross fees since December 2013. In its discovery order, the trial court did not order appellant to provide a client list or fee agreements; instead, appellants were only ordered to provide discovery of the most recent financial statements, information, and gross fees since December 2013.

{¶21} Before this court, appellants do not contend that this information is confidential or privileged. Instead, they maintain that the trial court's ruling is

immediately appealable because, if they are required to reveal the cited information before the scheduled settlement/mediation conference, they would not have an opportunity to negotiate settlement without appellee knowing the amount of fees they received after April 1, 2014. In other words, appellants assert that they will be denied a meaningful remedy if they are not allowed to appeal until the end of the entire case.

{¶22} Whenever a party is required to provide information under a discovery order, it will be impossible to "unring the proverbial bell." Despite this, the General Assembly defines "provisional remedy" extremely narrowly; i.e., a discovery order relating to the release of information is only appealable when the information is either confidential or privileged. Essentially, appellants are requesting that they be allowed to appeal a discovery order whenever they can satisfy the "lack of meaningful remedy" prong of R.C. 2505.02(B)(4). However, the satisfaction of that prong is only dispositive when the appealing party has first shown that the definition of "provisional remedy" has been met. In this case, appellants have not made such a showing. Therefore, since the information appellants are required to disclose is neither confidential nor privileged, the appealed discovery order is not a final appealable order under R.C. 2505.02(B)(4).

{¶23} As this appeal was not taken from a final order, this court lacks jurisdiction to consider the merits of appellants' sole assignment of error. Accordingly, this appeal is hereby dismissed for lack of a final appealable order.

DIANE V. GRENDELL, J.,

CYNTHIA WESTCOTT RICE, J.,

concur.