

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

RIEBE LIVING TRUST, et al.,	:	MEMORANDUM OPINION
Plaintiffs-Appellants,	:	
- vs -	:	CASE NO. 2010-L-050
CONCORD TOWNSHIP, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 07 CV 001143.

Judgment: Appeal dismissed.

Joseph R. Klammer, The Klammer Law Office, Ltd., Lindsay II Professional Center, 6990 Lindsay Drive, #7, Mentor, OH 444060 (For Plaintiffs-Appellants).

Michael C. Lucas, Wiles and Richards, 37265 Euclid Avenue, Willoughby, OH 44904 and *Nick C. Tomino*, Tomino & Latchney, L.L.C., L.P.A., 803 East Washington Street, #200, Medina, OH 44256 (For Defendants-Appellees).

DIANE V. GRENDALL, J.

{¶1} On May 13, 2010, appellants Riebe Living Trust and 20th Century Construction, by and through counsel, filed a notice of appeal from the April 26, 2010 entry of the Lake County Court of Common Pleas. In that entry, the trial court granted the motion for summary judgment on the counterclaim of appellees, Concord Township, the Concord Township Board of Trustees, and the Concord Township Zoning Commission. In that same entry, the trial court denied appellants' motion for summary

judgment and found that “genuine issues of material fact exist” as to the appellants’ claims.

{¶2} On November 4, 2010, this court issued a judgment entry stating that the court may not have jurisdiction to consider this appeal pursuant to Civ. R. 54(B). In that entry, this court ordered appellants to submit a memorandum in support of jurisdiction within 15 days. Appellants have failed to file this memorandum.

{¶3} A review of the trial court docket reveals that appellants filed their initial complaint on April 20, 2007. Appellees subsequently filed a motion for leave to amend their answer and assert a counterclaim on June 27, 2008. Appellees filed a motion for summary judgment on their counterclaim on January 11, 2010. Appellants filed a motion for summary judgment and a response to appellees’ motion for summary judgment on January 25, 2010. In the April 26, 2010 entry, the trial court granted the appellees’ motion for summary judgment on their counterclaim and denied appellants’ motion for summary judgment.

{¶4} Civ.R. 54(B) provides that:

{¶5} “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.”

{¶6} This court has held that where there are multiple claims and/or parties involved, an entry that renders final judgment as to one or more but fewer than all of the claims is not a final appealable order in the absence of Civ.R. 54(B) language stating that “there is no just reason for delay[.]” *Montello v. Ackerman*, 11th Dist. No. 2009-L-111, 2009-Ohio-6383, at ¶6. See, also, *Kessler v. Totus Tuus, L.L.C.*, 11th Dist. No. 2007-A-0028, 2007-Ohio-3019, at ¶7.

{¶7} In the instant matter, while the trial court granted the motion for summary judgment on the counterclaim of Concord, claims are still pending in the trial court by Riebe against Concord. The trial court in its April 26 entry stated: “As to the plaintiffs’ claims, the court finds that genuine issues of material fact exist and the plaintiffs are not entitled to judgment as a matter of law.” Additionally, on April 26, 2010, this case was set for a non-jury trial on October 15, 2010, and has been stayed. The court did not dismiss Riebe’s claim against Concord and therefore, not all claims have been disposed of by the trial court.

{¶8} Furthermore, the April 26 entry that was appealed from does not contain any Civ.R. 54(B) language. Therefore, there is no final appealable order at this time.

{¶9} Based upon the foregoing analysis, this appeal is hereby sua sponte dismissed due to lack of a final appealable order.

{¶10} Appeal dismissed.

MARY JANE TRAPP, P.J,

CYNTHIA WESTCOTT RICE, J.,

concur.