

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

JACK PETTIT, et al.,	:	MEMORANDUM OPINION
Plaintiffs-Appellees,	:	
- vs -	:	CASE NO. 2005-L-087
CONTINENTAL CASUALTY COMPANY, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from Court of Common Pleas, Case No. 04 CV 000355.

Judgment: Appeal Dismissed.

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DIANE V. GRENDELL, J.

{¶1} On June 10, 2005, appellant, Continental Casualty Company, filed a notice of appeal from a May 18, 2005 judgment of the Lake County Court of Common Pleas. In that judgment, the trial court denied appellant’s motion for summary judgment and found that there was “no just cause for delay.”

{¶2} It is well established that the denial of a motion for summary judgment is not a final appealable order. *State ex rel. Overmeyer v. Walinski* (1966), 8 Ohio St.2d 23. This is due to the fact that the denial does not determine the action and prevent a judgment and, therefore, is not a final appealable order under R.C. 2505.02. *Celebrezze v. Netzley* (1990), 51 Ohio St.3d 89, 90. See, also, *Klein v. Portage Cty.* (2000), 139 Ohio App.3d 749, 751. The denial of a motion for summary judgment is always reviewable on appeal after a final judgment has been issued.

{¶3} Additionally, the fact that the trial court used Civ.R. 54(B) language did not magically transform what was not a final order into one that could be immediately appealed. As stated by the Supreme Court of Ohio in *Wisintainer v. Elcen Power Strut Co.*, 67 Ohio St.3d 352, 354, 1993-Ohio-120, “the phrase ‘no just reason for delay’ is not a mystical incantation which transforms a nonfinal order into a final appealable order.” See, also, *Graines v. Y.D.C. Corp.* (May 11, 2001), 11th Dist. No. 2000-L-053, 2001 Ohio App. LEXIS 2141, at *3.

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

{¶5} Appeal dismissed.

DONALD R. FORD, P.J.,

WILLIAM M. O’NEILL, J.,

concur.