[Cite as *KMV V, Ltd. v. DeBolt,* 2009-Ohio-4454.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

KMV V, LTD.,	:	**MEMORANDUM OPINION**
Plaintiff-Appellee,	:	**CASE NO. 2009-P-0045**
- vs -	:	
JASON A. DeBOLT,	:	
Defendant-Appellant.	:	

Civil Appeal from Court of Common Pleas, Case No. 2004 CV 0911.

Judgment: Appeal dismissed.

Stephen D. Dodd, Myers, Roman, Friedberg & Lewis, 28601 Chagrin Boulevard, #500, Cleveland, OH 44122 (For Plaintiff-Appellee).

George W. Cochran, Smith, Greenberg & Leightty, P.L.L.C., 2321 Lime Kiln Lane, STE. C., Louisville, KY 40222 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Appellant, Jason A. DeBolt, has brought the instant appeal from the trial court's "order and journal entry" of August 3, 2009. In that entry, the trial court overruled appellant's motion for a continuance of the trial which had been scheduled to be held on August 18, 2009.

{¶2} Pursuant to Section 3(B)(2), Article IV of the Ohio Constitution, the general appellate jurisdiction of the twelve courts of appeal is limited to reviewing final orders or judgments of the trial courts. In construing this constitutional principle, the courts of this

state have consistently held through the years that a ruling upon a motion to continue a civil trial does not constitute a final order that can be immediately appealed. See, e.g., *Venable v. Venable* (1981), 3 Ohio App.3d 421, 426. Although the *Venable* precedent is over twenty years old, it is still viewed as persuasive authority regarding the finality of a "continuance" ruling. See *Lamont v. Lamont*, 11th Dist. No. 2004-G-2591, 2004-Ohio-5515.

{¶3} Consistent with the aforementioned constitutional provision, R.C. 2505.02 sets forth a list of five standards for determining when a trial court's order or judgment will be considered immediately appealable. In *Miller v. Bauer* (2000), 139 Ohio App.3d 922, 928, the Tenth Appellate District noted that, despite the fact that R.C. 2505.02 had recently been amended to broaden the instances in which an interlocutory order will be deemed final for purposes of an appeal, the amendment had not altered the analysis as to a decision on a motion for a continuance; i.e., such a decision is not a final order. The *Miller* court emphasized that "it was not the purpose of the amendment to allow or encourage piecemeal appeal of every order issued by a trial court while litigation is still pending." Id.

{¶4} While the opinions addressing this particular point have not provided any extensive discussion as to why a "continuance" ruling is not immediately appealable, it is evident that the holding is based upon the fact that, even if this type of ruling cannot be appealed until the conclusion of the entire case, the appealing party can still be afforded a complete remedy at that time. That is, if the appellate court subsequently holds that a continuance of the scheduled trial should have been granted, the rights of the appealing party will still be adequately protected through an order which would

require the trial court to conduct a second trial. Although the appealing party may incur some harm as a result of having to prosecute a second trial, that harm would clearly be offset by the need to avoid piecemeal appeals and the resulting indeterminable delay in trial proceedings.

{¶5} Since the appealed entry in the instant matter does not constitute a final order under R.C. 2505.02(B), this court does not have the requisite jurisdiction to review the merits of the ruling on the continuance request. Thus, it is the sua sponte order of this court that this appeal is hereby dismissed for lack of jurisdiction.

MARY JANE TRAPP, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.