

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
FULTON COUNTY

Swan Creek Township Board of
Trustees, et al.

Appellees

v.

Wylie & Sons Landscaping, et al.

Appellant

Court of Appeals No. F-06-026

Trial Court No. 06CV000108

DECISION AND JUDGMENT ENTRY

Decided: June 8, 2007

* * * * *

Roger D. Nagel, Prosecuting Attorney, and Paul H. Kennedy, Assistant
Prosecuting Attorney, for appellee Swan Creek Township Board of Trustees
and Walter J. Hallett, III.

Jeffrey M. Stopar, for appellee Jerry Kmotorka.

Clayton M. Gerbitz, for appellant.

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HANDWORK, J.

{¶ 1} This appeal is from the November 3, 2006 judgment of the Fulton County
Court of Common Pleas, which granted the motion of appellees, Swan Creek Township
Board of Trustees and the Swan Creek Township Zoning Inspector, for a preliminary
injunction against appellant, Wylie & Sons Landscaping, to prevent appellant from using

its property to conduct a substantial commercial trucking business in violation of Swan Creek Township zoning regulations. Upon examination of the judgment, we find that this judgment is not a final, appealable order.

{¶ 2} A preliminary injunction is a provisional remedy. R.C. 2505.02(A)(3). Therefore, an order granting or denying a preliminary injunction is a final, appealable order only if it satisfies the two prong-test in R.C. 2505.02(B)(4). That statute requires that: "(a) [t]he 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" and "(b) [t]he 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."

{¶ 3} We find that the judgment at issue fails to satisfy this test. Because the judgment sought to be appealed is not a final, appealable order, we lack jurisdiction to consider this appeal. R.C. 2505.02. This appeal is hereby ordered dismissed at appellant's costs.

APPEAL DISMISSED.

Swan Creek Township Board of Trustees, et
al. v. Wylie & Sons Landscaping, et al.
F-06-026

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.