

[Cite as *Alternatives Unlimited-Special, Inc. v. Ohio Dept. of Edn.*, 2008-Ohio-2441.]

# Court of Claims of Ohio

The Ohio Judicial Center  
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ALTERNATIVES UNLIMITED-  
SPECIAL, INC., et al.

Plaintiffs

v.

OHIO DEPARTMENT OF EDUCATION

Defendant

[Cite as *Alternatives Unlimited-Special, Inc. v. Ohio Dept. of Edn.*, 2008-Ohio-2441.]

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Case No. 2002-04682

Judge Joseph T. Clark

JUDGMENT ENTRY

{¶1} On April 10, 2008, the court granted partial summary judgment in favor of defendant. On April 23, 2008, plaintiffs filed a motion to amend their complaint pursuant to Civ.R. 15(A) to dismiss all remaining claims against defendant without prejudice. Plaintiffs intend to file a notice of appeal of the court's April 10, 2008 judgment to the Tenth District Court of Appeals. On April 28, 2008, defendant filed a waiver of objection to plaintiffs' motion to amend complaint.

{¶2} Although there is some disagreement among Ohio appellate courts whether Civ.R. 15(A) is the appropriate procedural vehicle for a party to create a final appealable order under such circumstances, the majority of courts in Ohio favor that approach.<sup>1</sup> See *Pattison v. W.W. Grainger, Inc.*, Cuyahoga App. No. 88556, 2007-Ohio-3081; *Borchers v. Winzeler Excavating Co.* (Apr. 10, 1992), Montgomery App. No. 13297; *Lewis v. J.E. Wiggins & Co.*, Franklin App. Nos. 04AP-469, 04AP-544, 04AP-668, 2004-Ohio-6724. Accordingly, plaintiffs' motion to amend the complaint is GRANTED.

{¶3} Inasmuch as the court has previously granted summary judgment for defendant, the portion of the court's June 14, 2007 entry scheduling trial for May 5-8, 2008, is hereby VACATED. Court costs are assessed against plaintiffs. The clerk shall serve upon all parties notice of this judgment and its date upon the journal.

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JOSEPH T. CLARK  
Judge

cc:

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<sup>1</sup>The following question has been certified to the Supreme Court of Ohio. "In a case where a plaintiff has asserted multiple claims against a single defendant and some of those claims have been ruled upon but not converted into a final order with Civ.R. 54(B), can the plaintiff create a final order by voluntarily dismissing pursuant to Civ.R. 41(A) the remaining claims asserted against that defendant." *Pattison v. W.W. Grainger, Inc.*, 115 Ohio St.3d 1406, 2007-Ohio-4884.

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SJM/cmd

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