

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

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|---------------------------|---|----------------------------|
| THE CITY OF MENTOR, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2003-L-158 |
| CSX TRANSPORTATION, INC., | : | |
| Defendant-Appellant. | : | |

Civil appeal from the Court of Common Pleas, Case No. 00 CV 001662.

Judgment: Appeal dismissed.

Stephen M. O'Bryan, Taft, Stettinius & Hollister, L.L.P., 3500 BP Tower, 200 Public Square, Cleveland, OH, 44114-2302 (For Plaintiff-Appellee).

Walter J. McNamara, III, McNamara, Hanrahan & Loxterman, 8440 Station Street, Mentor, OH, 44060 and *Lawrence A. Slovensky*, McKenna, Long & Aldridge, L.L.P., 303 Peachtree Street, #5300, Atlanta, GA, 30308 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On June 10, 2003, appellant, CSX Transportation, Inc., filed a notice of appeal from a May 28, 2003 judgment of the Lake County Court of Common Pleas. In that judgment, the trial court granted the petition of appellee, City of Mentor, brought pursuant to R.C. 4957.30, to construct a new highway-railroad at-grade crossing at Plaza

Boulevard across the railway tracks owned by appellant and Norfolk Southern Railway Company. That appeal has been designated as 11th Dist. Case No. 2003-L-088.

{¶2} On August 29, 2003, this court issued a judgment ordering Appellant to show cause why that case should not be dismissed because it appeared that the May 28, 2003 judgment was not a final appealable order. Appellant filed a timely response.

{¶3} On October 14, 2003, this court issued a judgment entry in the foregoing case concluding that the May 28, 2003 judgment was a final appealable order, and ordering the appeal to proceed according to rule. In that same judgment, this court also granted appellant's motion to supplement the record with a judgment of the trial court entered on September 22, 2003. In that judgment, the trial court indicated, inter alia, that there were no further issues to be decided and, therefore, the May 28, 2003 judgment "is now a final appealable order."

{¶4} Meanwhile, between the time the trial court issued its September 22, 2003 judgment and this court issued its October 14, 2003 judgment, appellant filed a second notice of appeal on October 2, 2003, which is the instant appeal. In the notice of appeal, appellant indicates that it is again appealing the May 28, 2003 judgment of the trial court - - the same judgment already being appealed in 11th Dist. Case No. 2003-L-088. Appellant asserts that the September 22, 2003 judgment from the trial court made the May 28, 2003 judgment a final appealable order. This assertion is incorrect. As this court concluded on October 14, 2003, the May 28, 2003 judgment was a final appealable order on the date it was filed.

{¶5} Thus, it appears that appellant was merely trying to protect its appellate rights by filing the instant appeal. Since this court determined that the May 28, 2003

judgment was a final appealable order, and since appellant already has an appeal pending from that judgment, the present appeal is an unnecessary duplication of its appeal in 11th Dist. Case No. 2003-L-088.

{¶6} Based upon the foregoing analysis, this appeal is, sua sponte, dismissed.

DONALD R. FORD, P.J., and JUDITH A. CHRISTLEY, J., concur.