

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

THE CITY OF MENTOR,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2003-L-172
NORFOLK SOUTHERN RAILWAY COMPANY,	:	
Defendant,	:	
OHIO RAIL DEVELOPMENT COMMISSION,	:	
Intervening Defendant-Appellant.	:	

Civil appeal from the Court of Common Pleas, Case No. 00 CV 001663.

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).

Stephen D. Jones and *Eric S. Bravo*, Roetzel & Andress, 155 East Broad Street, 12th Floor, Columbus, Ohio 43215-3428, *Jim Petro*, Attorney General, and *Alan H. Klodell*, Assistant Attorney General, 150 East Gay Street, 17th Floor, Columbus, OH 43215 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} On June 25, 2003, appellant, Ohio Rail Development Commission, 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 Norfolk Southern Railway Company and CSX Transportation, Inc. That appeal has been designated as 11th Dist. Case No. 2003-L-100.

{¶2} In a companion case, 11th Dist. Case No. 2003-L-088, taken from the same trial court judgment, this court issued a judgment entry ordering the parties 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. On October 14, 2003, this court ruled that the May 28, 2003 judgment was, in fact, a final appealable order.

{¶3} On October 17, 2003, appellant filed another notice of appeal from the underlying case. This time, appellant is attempting to appeal a September 22, 2003 judgment of the trial court which, it claims, made final and appealable the May 28, 2003 judgment earlier appealed.

{¶4} In fact, the May 28, 2003 judgment was already a final appealable order and the September 22, 2003 judgment was neither final nor appealable, nor did it have any effect on the appealability of the earlier judgment.

{¶5} Accordingly, since appellant already has an appeal pending from the trial court's May 28, 2003, judgment, the present appeal is an unnecessary duplication of its appeal in 11th Dist. Case No. 2003-L-100.

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

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