

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

GILBERT LEO JOHNSON, et al.,	:	MEMORANDUM OPINION
Plaintiffs-Appellants,	:	
- vs -	:	CASE NO. 2003-L-166
CITY OF WICKLIFFE, et al.,	:	
Defendants-Appellees.	:	

Civil appeal from the Court of Common Pleas, Case No. 02 CV 001064.

Judgment: Appeal dismissed.

Louis A. Turi, Jr., 30432 Euclid Avenue, #101, P.O. Box 325, Wickliffe, OH 44092 (For Plaintiffs-Appellants).

Nick C. Tomino, Tomino & Latchney, L.L.C., 803 East Washington Street, #200, Medina, OH 44256 (For Defendant-Appellee, City of Wickliffe).

Patrick F. Roche, Davis & Young, 1700 Midland Building, 101 Prospect Avenue, West, Cleveland, OH 44115-1027 (For Defendant-Appellee, Towne Investment II, Inc.)

CYNTHIA WESTCOTT RICE, J.

{¶1} On October 14, 2003, appellants, Gilbert Leo Johnson and Marigold Johnson, filed a notice of appeal from a September 15, 2003 judgment of the Lake County Court of Common Pleas. In that judgment, the trial court denied appellants'

motion for leave to file a supplemental brief opposing a motion for summary judgment which had been filed by appellee, Towne Investment II, Inc.

{¶2} On November 4, 2003, appellee filed a motion to dismiss this appeal due to lack of a final appealable order. Appellants have not filed a response. Appellee asserts that the denial of a motion for leave to file a supplemental brief is not a final appealable order. We agree.

{¶3} R.C. 2505.02(B) provides as follows:

{¶4} “An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

{¶5} “(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶6} “(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶7} “(3) An order that vacates or sets aside a judgment or grants a new trial;

{¶8} “(4) An order that grants or denies a provisional remedy and to which both of the following apply:

{¶9} “(a) The 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.

{¶10} “(b) The 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.

{¶11} “(5) An order that determines that an action may or may not be maintained as a class action.”

{¶12} It is clear that the denial of a motion for leave to file a supplemental brief does not fall within any of these five categories of final appealable orders. It did not in effect determine the action or prevent a judgment, nor did it affect a substantial right. A final judgment has not yet been rendered in this case. Thus, this court does not have jurisdiction to consider this appeal.

{¶13} Accordingly, appellee’s motion to dismiss this appeal is hereby granted.

{¶14} The appeal is dismissed.

Appeal dismissed.

JUDITH A. CHRISTLEY and WILLIAM M. O’NEILL, JJ., concur.