

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO

THOMAS DODRILL, A TAXPAYER, ON : **MEMORANDUM OPINION**
BEHALF OF AND FOR THE BENEFIT :
OF THE NILES CITY SCHOOL :
DISTRICT, et al., :
 : **CASE NO. 2006-T-0022**
 :
Plaintiffs-Appellants, :
 :
- vs - :
 :
THE BOARD OF EDUCATION OF THE :
NILES CITY SCHOOL DISTRICT, et al., :
 :
Defendants/Third Party :
Plaintiffs-Appellees, :
 :
- vs - :
 :
OHIO PENAL INDUSTRIES, et al., :
 :
Third Party Defendants.

Civil Appeal from the Court of Common Pleas, Case No. 04 CV 470.

Judgment: Appeal dismissed.

Dennis Haines and Joseph D. Kondela, Green, Haines, Sgambati Co., L.P.A., 16 Wick Avenue, P.O. Box 849, Youngstown, OH 44501-0849 (For Plaintiffs-Appellants).

J. Terrence Dull, Niles City Law Director, 15 East State Street, Niles, OH 44446 (For Defendants/Third Party Plaintiffs-Appellees, The Board of Education of the Niles City School District, Patrick Guilano, and Linda C. Molinaro).

Charles L. Richards and Jason M. Toth, Law Office of Charles L. Richards, The First Place, #300, 159 East Market Street, Warren, OH 44481-1122 (For Defendants/Third Party Plaintiffs-Appellees, Nick A. Bernard, Sr., Wanda L. Burns, John H. Davis, Marlene O. Rhodes, Rocky L. Riviella, Terry A. Swauger, and John J. Tricoli).

WILLIAM M. O'NEILL, J.

{¶1} On February 16, 2006, appellants, Thomas Dodrill and Ricky Rounds, Jr., filed a notice of appeal from a January 18, 2006 judgment entry of the Trumbull County Court of Common Pleas. In the January 18, 2006 judgment entry, the trial court overruled appellants' motion for summary judgment and dismissed the claims of appellants for lack of standing. It is from that entry that appellants filed their notice of appeal.

{¶2} The Ohio Legislature in R.C. 2505.02(B) has set forth five categories of a "final order" for purposes of the constitutional provision, and if a trial court's judgment satisfies any of the five categories, it will be considered a "final order" which can be immediately appealed and reviewed by a court of appeals. R.C. 2505.02(B) states that:

{¶3} "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:

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

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

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

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

{¶8} "(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.

{¶9} “(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.

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

{¶11} (6) An order determining the constitutionality of any changes to the Revised Code ***.”

{¶12} In the instant matter, the trial court’s order disposes of certain claims that may constitute a final appealable order under R.C. 2505.05, but as part of the appealed judgment entry, the trial court held in abeyance any ruling concerning the merits of two other claims. Under these circumstances, the trial court’s January 18, 2006 judgment entry is not a final appealable order at this time because other claims are still pending. Thus, this is a situation where Civ.R. 54(B) would apply.

{¶13} Civ.R. 54(B) provides that:

{¶14} “When more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim, and whether arising out of the same or separate transactions, or when multiple parties are involved, the court may enter final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is no just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any

time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.”

{¶15} Here, all the claims have not been determined and the trial court did not use Civ.R. 54(B) language in its judgment entry. Accordingly, there is no final appealable order at this time.

{¶16} This appeal is, sua sponte, dismissed.

DIANE V. GRENDALL, J.,

CYNTHIA WESTCOTT RICE, J.

concur.