[Cite as *Dudek v. Lesnick*, 2010-Ohio-3251.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

PETER P. DUDEK,	:	**MEMORANDUM OPINION**
Plaintiff-Appellee,	:	**CASE NO. 2010-T-0058**
- vs -	:	
SANDRA L. LESNICK, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2009 CV 1616.

Judgment: Appeal dismissed.

James M. Brutz, 410 Mahoning Avenue, N.W., Warren, OH 44483 (For Plaintiff-Appellee).

Randil J. Rudloff, Guarnieri & Secrest P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Defendants-Appellants).

CYNTHIA WESTCOTT RICE, J.

{¶1} On May 3, 2010, appellants, Sandra L. Lesnick and John Lesnick, filed a notice of appeal from an April 29, 2010 entry of the Trumbull County Court of Common Pleas. In that entry, the trial court granted the motion to place funds in escrow filed by appellee, Peter P. Dudek, upon finding that unless enjoined during the pendency of the action, appellee will be irreparably harmed. The trial court further ordered that appellants were to deposit with their attorney, within twenty-four hours from the date of the judgment entry, the sum of $215,700, to be held in his trust account. The April 29

entry also stated that verification of the deposit of these funds was to be forwarded to appellee's attorney and the funds can only be removed from a direct order by the trial court. The order also indicated that the trial court's February 11, 2010 order on the permanent injunction was to remain in full force and effect. Lastly, the trial court continued the issue of the award of attorney fees.

{¶2} On May 7, 2010, appellee filed a combined motion to dismiss the appeal and deny appellants' motion for stay. In his motion, appellee asserts that the April 29 entry is not a final appealable order because the second prong of the R.C. 2505.02(B)(4) test has not been met. Since there is no motion for stay presently before this court, we will not address that portion of appellee's motion.

{¶3} On May 12, 2010, appellants filed a memorandum in opposition to appellee's May 7 motion. Appellants allege that the trial court's April 29 entry is a provisional remedy under both prongs of R.C. 2505.02(B)(4) because it takes their $215,700, and deprives them of its use. Therefore, they argue that the April 29 entry is a final appealable order.

{¶4} On May 17, 2010, appellee filed a response to appellants' memorandum in opposition.

{¶5} The docket in this matter reveals that appellee filed his complaint against appellants on June 15, 2009.

{¶6} According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a "final order" in the action. *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶3. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc.*

Ins. Co. v. Ins. of N. Am. (1989), 44 Ohio St.3d 17, 20. For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and if applicable, Civ.R. 54(B).

{¶7} Pursuant to R.C. 2505.02(B), there are five categories of a "final order," and if a trial court's judgment satisfies any of them, it will be considered a "final order" which can be immediately appealed and reviewed by a court of appeals.

{¶8} R.C. 2505.02(B) states that:

{¶9} "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:

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

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

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

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

{¶14} "(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.

{¶15} "(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.

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

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

{¶18} In the instant matter, appellants posit that the trial court's April 29 entry is a provisional remedy as it deprives them of the use of their $215,700. Without concluding whether the trial court's decision is a provisional remedy, it is our position that the entry fails to satisfy the requirement of R.C. 2505.02(B)(4)(b), the second prong of the provisional remedy and is not a final order. The appealed entry merely maintains the status quo pending the trial court proceedings. See *Hootman v. Zock*, 11th Dist. No. 2007-A-0063, 2007-Ohio-5619, at ¶17. Appellants will have a meaningful and effective remedy by way of an appeal once a final judgment is reached as to all claims and parties when the case is decided and/or dismissed. See *Johnson v. Warren Police Dept.*, 11th Dist. No. 2005-T-0117, 2005-Ohio-6904, at ¶14.

{¶19} Accordingly, appellee's motion to dismiss is granted, and this appeal is hereby dismissed for lack of a final appealable order.

{¶20} Appeal dismissed.

MARY JANE TRAPP, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.