

IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

IN RE: : **MEMORANDUM OPINION**
CHANGE OF NAME OF :
JOSEPH LEONHARDT : **CASE NO. 2010-G-2970**
TO JOSEPH ALESCI :

Civil Appeal from the Court of Common Pleas, Probate Division, Case No. 10 PB 000173.

Judgment: Appeal dismissed.

James L. Lane, Hermann, Cahn & Schneider, 1301 East Ninth Street, #500, Cleveland, OH 44114 (For Appellant).

Steven Wolkin, 820 West Superior Avenue, Cleveland, OH 44113-1827 (For Appellees, James Alesci and Gina Alesci).

John Lawson, 4403 St. Clair Avenue, Cleveland, OH 44103-1125 (For Appellee, Brigette Alesci).

Daniel B. Wolf, 5227 Dogwood Trail, Lyndhurst, OH 44124 (Guardian ad litem).

TIMOTHY P. CANNON, J.

{¶1} On May 11, 2010, appellant, Christian R. Leonhardt, filed a pro se notice of appeal from a May 5, 2010 entry of the Geauga County Court of Common Pleas, Probate Division. In that entry, the trial court denied the motion to convey filed by appellant.

{¶2} The docket in this case reveals that appellees, James Alesci and Gina Alesci, maternal grandparents, filed an application to change the name of the minor

child, their grandson, on April 23, 2010. Thereafter, on May 4, 2010, appellant filed a motion to convey. That motion was denied on May 5, 2010.

{¶3} We must determine whether the denial of a motion to convey is a final appealable order. 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).

{¶4} 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.

{¶5} R.C. 2505.02(B) states that:

{¶6} “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:

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

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

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

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

{¶11} “(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.

{¶12} “(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.

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

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

{¶15} Here, the denial of appellant’s motion to convey, which requests that he be transported from prison, does not determine the entire action in the case at hand and thus is not a final order pursuant to R.C. 2505.02(B)(1). The order also does not vacate or set aside a judgment under R.C. 2505.02(B)(3). Furthermore, the order does not grant or deny a provisional remedy under R.C. 2505.02(B)(4). The May 5 entry also does not determine the status of a class action suit under R.C. 2505.02(B)(5).

{¶16} In order to be a final appealable order, the trial court’s judgment entry must be one that affects a substantial right made in a special proceeding pursuant to R.C. 2505.02(B)(2). A substantial right is a “*** legal right entitled to enforcement and protection by law[.]” *In re Estate of Wyckoff* (1957), 166 Ohio St. 354, 358. “An order which affects a substantial right has been perceived to be one which, if not immediately appealable, would foreclose appropriate relief in the future.” *Bell V. Mt. Sinai Med. Ctr.* (1993), 67 Ohio St.3d 60, 63. In the case at bar, for the order to affect a substantial right, appellant must “establish that the right may not be vindicated on appeal after final

judgment. “*** A substantial right is not affected merely because an order has the immediate effect of restricting or limiting that right. Rather, a substantial right is affected when there is virtually no opportunity for an appellate court to provide relief on appeal after final judgment from an order that allegedly prejudiced a legally protected right.” *Galloway v. Galloway* (May 20, 1999), 10th Dist. No. 98AP-1007, 1999 Ohio App. LEXIS 2328, at *6.

{¶17} In *Galloway*, supra, the appellant requested that he be transported to court to be present for his divorce hearing. The Tenth District Court of Appeals dismissed the appeal on the ground that denying the appellant’s motion to convey was not a final appealable order. The court reasoned that nothing prevented the appellant from obtaining effective relief from that order once a judgment of divorce had been entered. *Id.* at *6-7. Furthermore, the court stated that the appellant could be represented at his divorce hearing by counsel who could protect the appellant’s interests. *Id.* at *7.

{¶18} Similarly, in the matter before us, appellant filed a motion to convey him to a hearing set for July 6, 2010. However, nothing is preventing appellant from obtaining effective relief through an appeal once the trial court rules on the application for name change. Therefore, the trial court’s order is not a final appealable order.

{¶19} Accordingly, this appeal is hereby sua sponte dismissed for lack of a final appealable order.

{¶20} Appeal dismissed.

MARY JANE TRAPP, P.J.,
DIANE V. GRENDALL, J.,
concur.