

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY, OHIO**

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| 134 WEST 46TH STREET HOLDINGS LLC, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2012-A-0009 |
| ROBERT H. MYERS, JR., ESQ., | : | |
| TRUSTEE, et al., | : | |
| Defendants, | : | |
| GEORGE E. AND/OR LOUISE CISCO, | : | |
| et al., | : | |
| Defendants-Appellants. | : | |

Civil Appeal from the Court of Common Pleas, Case No. 2005 CV 769.

Judgment: Appeal dismissed.

Jeffrey L. Coxon, Warren and Young PLL, 134 West 46th Street, P.O. Box 2300, Ashtabula, OH 44004; and *Charles L. Richards*, Law Office of Charles L. Richards, Hunter's Square, 8600 East Market Street, Suite 1, Warren, OH 44484-2375 (For Plaintiff-Appellee).

George L. Badovick, 13033 Ravenna Road, Chardon, OH 44024 (For Defendants-Appellants).

TIMOTHY P. CANNON, P.J.

{¶1} Appellants, George E. Cisco, Louise Cisco, and Cisco-Long Corporation, appeal from the January 30, 2012 judgment of the Ashtabula County Court of Common Pleas. In that judgment, the trial court granted appellee, 134 West 46th Street Holdings LLC's, motion to enforce the May 18, 2006 judgment, in which appellants agreed to pay

60 percent in operation and maintenance costs under a settlement agreement. Also in that judgment, the trial court set the matter for a February 27, 2012 damage hearing in order to determine the amount which appellants owe appellee under the May 18, 2006 judgment. However, the damage hearing never took place on February 27, 2012, or any time thereafter.

{¶2} After reviewing the appealed judgment and the trial court docket, this court issued a judgment on May 10, 2012, stating that it appears we may not have jurisdiction to consider this appeal because the issue of damages remains pending in the trial court. This court ordered appellants, *sua sponte*, to show cause why this appeal should not be dismissed for lack of a final, appealable order.

{¶3} On May 24, 2012, appellants filed a brief in support asserting that this court has jurisdiction even though the issue of damages remains pending in the trial court. We disagree.

{¶4} Preliminarily, this court stated in *Ohio and Vicinity Regional Council of Carpenters v. McMarty*, 11th Dist. No. 2005-T-0063, 2006-Ohio-2019, ¶4-6:

{¶5} It is well-settled that ‘an order must be final before it can be reviewed by an appellate court.’ *Gen. Acc. Ins. Co. v. Ins. Co. of N. America*, 44 Ohio St.3d 17, 19 (1989). ‘If an order is not final, then an appellate court has no jurisdiction.’ *Id.* (citation omitted).

{¶6} When determining whether a judgment is final, an appellate court engages in a two-step analysis: First, the court determines if the order is final, subject to the requirements of R.C. 2505.02. If the court finds the order complies with the statute, the court must next decide if Civ.R. 54(B) language is required. *Id.* at 21.

{¶7} R.C. 2505.02 defines a final order as ‘an order that affects a substantial right in an action that in effect determines the action and prevents a judgment,’ or ‘an order that affects a substantial right made in a special proceeding.’ R.C. 2505.02(B)(1) and (B)(2).

{¶8} This court went on to state in *McMarty, supra*, at ¶12:

{¶9} It is well-settled that a judgment from a civil proceeding ‘which defers damages for a later determination of an uncertain amount is not a final appealable order.’ *Glass v. Glass*, 11th Dist. No. 2004-L-214, 2005-Ohio-1688, ¶2; *State ex rel. White v. Cuyahoga Metro. Hous. Auth.*, 79 Ohio St.3d 543, 546 (1997); *State ex rel. A & D Ltd. Partnership v. Keefe*, 77 Ohio St.3d 50, 53 (1996) (orders determining liability and deferring the determination of damages are not final orders under R.C. 2505.02 ‘because they (do) not determine the action, prevent a judgment, or affect a substantial right in a special proceeding’).

{¶10} In the instant case, the trial court’s January 30, 2012 judgment granted appellee’s motion to enforce the May 18, 2006 judgment and deferred damages for a later determination of an uncertain amount. Thus, the trial court’s judgment is not a final, appealable order as contemplated by R.C. 2505.02. *McMarty, supra*, at ¶12.

{¶11} Therefore, this court finds that we lack jurisdiction over this matter.

{¶12} Appeal dismissed.

DIANE V. GRENDALL, J.,
THOMAS R. WRIGHT, J.,
concur.