

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

BARBARA KRASICKI, INDIVIDUALLY	:	<b>MEMORANDUM OPINION</b>
AND AS ADMINISTRATOR OF THE	:	
ESTATE OF MICHAEL T. KRASICKI,	:	<b>CASE NO. 2012-G-3076</b>
DECEASED, et al.,	:	
	:	
Plaintiffs-Appellees,	:	
	:	
-vs-	:	
	:	
THE CENTER FOR DIALYSIS CARE	:	
AT HEATHER HILL, et al.,	:	
	:	
Defendants-Appellants.	:	

Civil Appeal from the Geauga County Court of Common Pleas, Case No. 10P001522.

Judgment: Appeal dismissed.

*Charles W. Oldfield and Richard A. Abrams*, Green, Haines & Sgambati Co., L.P.A., 16 Wick Avenue, Suite 400, P.O. Box 849, Youngstown, OH 44501 (For Appellees).

*Christina J. Marshall and John V. Jackson, II*, Sutter, O'Connell & Farchione Co., L.P.A., 3600 Erieview Tower, 1301 East Ninth Street, Cleveland, OH 44114 (For Appellants).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellants, The Center for Dialysis Care at Heather Hill, Centers for Dialysis Care, Inc., Jack E. Koppitch, R.N., and Patricia Armstrong, appeal from the

April 23, 2012 judgment of the Geauga County Court of Common Pleas, ordering them to produce discovery because they failed to show peer review privilege.

{¶2} Appellees, Barbara, Matthew, and Joshua Krasicki, filed a motion to dismiss with this court asserting that appellants' appeal is untimely. Appellees contend that the trial court's October 28, 2011 judgment, which ordered appellants to produce requested discovery that appellants claimed was privileged, was a final appealable order under R.C. 2505.02 and 2305.252. Appellants did not appeal that October judgment. Rather, appellants waited to appeal the trial court's later April 23, 2012 judgment. Appellees allege the April 23, 2012 judgment is a nullity and cannot be appealed because it ordered appellants to produce the same information as the October order.

{¶3} Appellants filed a response in opposition. Appellants maintain the October 28, 2011 judgment was a "general order" and the trial court did not make a final appealable determination on the issue of appellants' claimed peer review privilege and order the production of privileged information until April 23, 2012. Thus, appellants assert the May 22, 2012 notice of appeal was timely.

{¶4} Appellees filed a reply in support of their motion to dismiss. Appellees assert that regardless of how one characterizes the October 28, 2011 judgment, because it ordered appellants to produce documents and provide information they claimed was privileged, it was a final appealable order.

{¶5} R.C. 2505.02, "Final Order," states in part:

{¶6} "(B) 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} “\* \* \*

{¶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} R.C. 2305.252, “Confidentiality of proceedings and records,” provides in part: “[a]n order by a court to produce for discovery or for use at trial the proceedings or records [of a peer review committee] *is a final order.*” (Emphasis added.)

{¶12} “A trial court’s order is final and appealable to the extent it compels production of claimed privileged material.” *Peppard v. Summit Cty., Ohio*, 9th Dist. No. 25057, 2010-Ohio-2862, ¶10. *See also Giusti v. Akron Gen. Med. Ctr.*, 178 Ohio App.3d 53, 2008-Ohio-4333, ¶6-7 (9th Dist.).

{¶13} In this case, prior to the October 28, 2011 judgment, appellees filed a motion to compel. In that motion, appellees asserted that appellants improperly objected to various interrogatories and requests for production, claiming they were privileged. Appellants did not respond to that motion. On October 28, 2011, the trial court sustained appellees’ motion to compel and ordered appellants to provide the requested discovery. That October order was final and appealable, under R.C. 2505.02 and 2305.252, since it compelled production of claimed privileged material. *Peppard*,

*supra*, at ¶10; *Giusti, supra*, at ¶6-7. Thus, appellants had 30 days to appeal the October 28, 2011 judgment.

{¶14} App.R. 4(A) provides: “[a] party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.”

{¶15} However, appellants did not timely appeal the October 28, 2011 judgment. As stated, appellants waited until May 22, 2012, to appeal the trial court’s later April 23, 2012 judgment, which ordered, inter alia, appellants to produce the same information as the October order.

{¶16} For the foregoing reasons, appellees’ motion to dismiss the appeal due to untimeliness is granted. This appeal is dismissed for lack of jurisdiction. See *Barnes v. Andover Village Retirement Community, Ltd.*, 11th Dist. No. 2003-A-0122, 2004-Ohio-1705, ¶10.

{¶17} Appeal dismissed.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.