

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

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| WESTERN RESERVE PORT AUTHORITY, | : | MEMORANDUM OPINION |
| Plaintiff-Appellee, | : | |
| - vs - | : | CASE NO. 2015-T-0036 |
| B & K ENERGY, et al., | : | |
| Defendants, | : | |
| RANGE RESOURCES - APPALACHIA, LLC, | : | |
| New Party Defendant- Appellant. | : | |

Civil Appeal from the Court of Common Pleas, Case No. 2013 CV 157.

Judgment: Appeal dismissed.

Vito J. Abruzzino, Matthew G. Vansuch, and Alan D. Wenger, Harrington, Hoppe & Mitchell, Ltd., 26 Market Street, Suite 1200, P.O. Box 6077, Youngstown, OH 44501-6077 (For Plaintiff-Appellee).

Jerome W. Cook, Michael L. Snyder and Erin K. Walsh Cicarella, McDonald Hopkins L.L.C., 2100 Bank One Center, 600 Superior Avenue, East, Cleveland, OH 44114-2653 (For New Party Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} On April 13, 2015, appellant, Range Resources – Appalachia, LLC, by and through counsel of record, filed a notice of appeal from a March 18, 2015 judgment entry of the Trumbull County Court of Common Pleas.

{¶2} A review of the record in this matter reveals that on January 23, 2013, appellee, Western Reserve Port Authority, filed a five-count complaint against appellant and multiple other defendants seeking declaratory relief and to quiet title to property referred to as the Youngstown-Warren Regional Airport. On June 30, 2014, appellant filed a motion for summary judgment. On that same date, appellee filed a motion for a partial summary judgment as to counts two and four of its complaint.

{¶3} On March 13, 2015, the trial court granted partial summary judgment to appellee as to counts two and four and denied appellant's motion for summary judgment in its entirety. On March 18, 2015, the trial court issued a nunc pro tunc judgment entry and attached plat maps that were inadvertently unattached to the March 13, 2015 entry. Neither entry contained Civ.R. 54(B) language. It is from those entries that the instant appeal ensued.

{¶4} On April 23, 2015, appellee filed a motion to dismiss the appeal claiming that this court does not have jurisdiction to consider the appeal since the entry appealed from was not a final appealable order. Appellee asserts that the trial court did not enter judgment on all of the pending claims and did not include the requisite Civ.R. 54(B) language.

{¶5} Appellant filed a brief in opposition to the motion to dismiss on May 4, 2015, requesting that this court deny appellee's motion to dismiss the appeal for lack of jurisdiction. On May 8, 2015, appellee filed a reply to appellant's brief in opposition.

{¶6} Initially, we must determine whether there is a final, appealable order, as this court may entertain only those appeals from final judgments or orders. *Noble v. Colwell*, 44 Ohio St.3d 92, 96 (1989). 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. Lake 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. Co. of N. Am.*, 44 Ohio St.3d 17, 20 (1989). 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). See *Children’s Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. Portage No. 2011-P-0103, 2011-Ohio-6838, ¶3.

{¶7} Civ.R. 54(B) provides the following:

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.

{¶8} This court has repeatedly held that where there are multiple claims and/or parties involved, an entry entering final judgment as to one or more but fewer than all of the claims or parties is not a final, appealable order in the absence of Civ.R. 54(B) language stating that “there is no just reason for delay[.]” *Meffe v. Griffin*, 11th Dist. Trumbull No. 2012-T-0032, 2012-Ohio-3642, ¶11. See also *Elia v. Fisherman’s Cove*, 11th Dist. Trumbull No. 2010-T-0036, 2010-Ohio-2522, ¶6.

{¶9} In the instant matter, the trial court granted partial summary judgment to appellee as to counts two and four and denied appellant's motion for summary judgment in its entirety. However, it appears as though counts one, three and five of the complaint have not been disposed of by the trial court. Thus, there are still claims pending. Appellant contends the remaining claims have been rendered moot by the trial court's ruling; however, this court is not in a position to decide the mootness of the remaining claims. The fact is, the claims remain.

{¶10} Appellant also claims the order is final because the declaratory judgment action is a "special proceeding" as defined in R.C. 2505.02(B). However, it is not final if issues in the declaratory judgment case between the same parties remain pending. *Clark v. Butler*, 4th Dist. Ross No. 10CA3191, 2011-Ohio-4943. Without the inclusion of the Civ.R. 54(B) language, that there is no just reason for delay, no final order exists at this time.

{¶11} Based upon the foregoing analysis, the motion to dismiss filed by appellee is hereby granted. This appeal is dismissed due to lack of a final, appealable order.

{¶12} Appeal dismissed.

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