# IN THE COURT OF APPEALS

# ELEVENTH APPELLATE DISTRICT

# ASHTABULA COUNTY, OHIO

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| JAMES A. VICTOR, et al., | : | **MEMORANDUM OPINION** |
| Plaintiffs-Appellees, | : | |
| - vs - | : | **CASE NO. 2017-A-0015** |
| BIG SKY ENERGY, INC., et al., | : | |
| Defendant-Appellant. | : | |

Civil Appeal from the Court of Common Pleas, Case No. 2014 CV 00365.

Judgment: Appeal dismissed.

*Michael E. Hamper, III,* and *Jerome A. Lemire*, 531 East Beech Street, Jefferson, OH 44047 and *Robert S. Wynn*, 7 Lawyers Row, P.O. Box 121, Jefferson, OH 44047 (For Plaintiffs-Appellees).

*Gino Pulito*, Pulito & Associates, 230 Third Street, Suite 200, Elyria, OH 44035 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} On February 24, 2017, appellant, Big Sky Energy, Inc., filed an appeal from a February 2, 2017 judgment of the Ashtabula County Court of Common Pleas awarding damages to appellees, James A. Victor, Melody L. Victor and Lora, Inc.

{¶2} Appellees filed a complaint declaratory judgment, quiet title and trespass against appellant as well as several other defendants. A few of the defendants were dismissed; however, when the trial court issued the entry from which appellant

appealed, claims against several defendants were still pending. No Civ.R. 54(B) language was affixed to that judgment. Appellants filed the instant appeal as a result.

{¶3} On March 31, 2017, this court ordered appellant to show cause why this appeal should not be dismissed for lack of a final appealable order. Appellant filed no brief in support of jurisdiction.

{¶4} Since this court may only entertain appeals from final judgments, we must determine whether a final appealable order exists. *Noble v. Colwell*, 44 Ohio St.3d 92, 96 (1989). According to Section 3(B)(2), Article IV of the Ohio Constitution, a trial court's entry can only be immediately reviewed on appeal if it constitutes a "final order" in the action. *Wells Fargo Bank v. Lawes*, 11th Dist. Geauga No. 2014-G-3244, 2015-Ohio-1211, ¶ 6. If it is not final, then an appellate court has no jurisdiction to review it, 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*). Lawes*, *supra*, at ¶ 6.

{¶5} 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.

{¶6}   Further, this court has repeatedly held that where there are multiple claims and/or parties involved, an order 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[.]"  *Paolucci v. Morgan*, 11th Dist. Portage No. 2015-P-0086, 2016-Ohio-3009, ¶ 6.

{¶7}   Here, it appears that there are claims still pending in the trial court against several defendants.  Thus, without the inclusion of Civ.R. 54(B) language in the trial court's February 2, 2017 entry, no final appealable order exists at this time.

{¶8}   Based on the foregoing, this appeal is dismissed, sua sponte, due to lack of a final appealable order.

{¶9}   Appeal dismissed.


DIANE V. GRENDELL, J.,

COLLEEN MARY O'TOOLE, J.,

concur.

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