

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

RKI, INC.,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2017-L-004
RONALD S. TUCKER,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2016 CV 001901.

Judgment: Appeal dismissed.

Jonathan T. Hyman, Meyers, Roman, Friedberg & Lewis, Eton Tower, 28601 Chagrin Boulevard, Suite 500, Cleveland, OH 44122 (For Plaintiff-Appellee).

Richard N. Selby, II, Dworken & Bernstein Co., L.P.A., 60 South Park Place, Painesville, OH 44077 (Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Appellee, RKI, Inc., commenced this action in the trial court on November 8, 2016, for a temporary restraining order, preliminary injunction, permanent injunction and money damages against appellant, Ronald S. Tucker, a former employee, to stop him from causing any harm to its business. On December 23, 2016, the trial court granted a preliminary injunction and enjoined appellant from communicating with or soliciting any business with any of appellee’s customers and influencing any of the customers to transfer their business. Appellant filed this appeal on January 11, 2017.

{¶1} Under 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). R.C. 2505.02(B) defines a “final order” and sets forth seven categories of appealable judgments:

{¶2} “An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is * * *:

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

{¶4} “(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.

{¶5} “(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. * * *”

{¶6} A “provisional remedy” is defined as “a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction.” R.C. 2505.02(A)(3). For an order to be final in a preliminary injunction case, both prongs of R.C. 2505.02(B)(4) must be met.

{¶7} In the instant matter, the first prong has been met because the trial court issued an order granting a preliminary injunction. That order determined the action with

respect to the provisional remedy and prevented judgment in favor of appellant with regard to that provisional remedy. R.C. 2505.02(B)(4)(a).

{¶8} The problem is with the second prong. Appellant has to be deprived of a “meaningful and effective remedy” if he cannot appeal now.

{¶9} “[I]t is well established that the granting of a temporary or preliminary injunction, in a suit in which the ultimate relief sought is a permanent injunction, is generally not a final appealable order.” *Hootman v. Zock*, 11th Dist. Ashtabula No. 2007-A-0063, 2007-Ohio-5619, at ¶ 15, citing *Woodbridge Condominium Owners’ Assn. v. Friedland*, 11th Dist. Lake No. 2003-L-073, 2004-Ohio-14, ¶ 4.

{¶10} Further, Ohio courts have also held that “a preliminary injunction which acts to maintain the status quo pending a ruling on the merits is not a final appealable order under R.C. 2505.02.” (Citation omitted.) *Hootman* at ¶ 16.

{¶11} As to R.C. 2505.02(B)(4)(b), it is our position that appellant would not be denied a meaningful or effective remedy by an appeal following final judgment as to all proceedings in this case. In general, if a permanent injunction is sought, this will allow for a remedy at the conclusion of the proceedings. Here, appellant will have an opportunity to litigate the merits of his claim with the trial court.

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

CYNTHIA WESTCOTT RICE, P.J.,

COLLEEN MARY O’TOOLE, J.,

concur.