

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

JAMES QUIRK,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2017-L-039
JEFFREY QUIRK, et al.,	:	
Defendant-Appellant.	:	

Civil Appeal from the Lake County Court of Common Pleas, Case No. 2014 CV 002291.

Judgment: Appeal dismissed.

Jonathan H. Krol, Reminger Co., L.P.A., 101 West Prospect Avenue, Suite 1400, Cleveland, OH 44115-1093 (For Plaintiff-Appellee).

Ron M. Graham, Prosecutor, Painesville Police Department, 6988 Spinach Drive, Mentor, OH 44060 (For Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} On March 8, 2017, appellant, Jeffrey Quirk, filed an appeal from a Lake County Court of Common Pleas' judgment entry.

{¶2} The record reveals that on December 2, 2014, appellee, James Quirk, filed a five-count complaint against appellant for breach of fiduciary duty, breach of contract, conversion, undue influence, and declaratory judgment. Appellee moved for summary judgment on all of the claims in his complaint. In a July 29, 2016 entry, the

trial court granted appellee's motion for summary judgment as to the breach of contract and declaratory judgment claims, but denied the motion on the other three claims.

{¶3} Appellee then filed a motion for partial summary judgment. Appellant filed a brief in opposition to the motion and a motion to remove appellee's counsel on the grounds that appellee's counsel became a witness to the case when he attached an affidavit authenticating appellee's bankruptcy to the motion for summary judgment. In an entry dated February 15, 2017, the trial court denied appellee's motion for partial summary judgment and also denied appellant's motion to remove counsel. Appellant filed the instant appeal as a result.

{¶4} 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.

{¶5} R.C. 2505.02(B) states that:

{¶6} "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} "(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

{¶8} "(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;

{¶9} “(3) An order that vacates or sets aside a judgment or grants a new trial;

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

{¶11} “(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.

{¶12} “(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.

{¶13} “(5) An order that determines that an action may or may not be maintained as a class action;

{¶14} “(6) An order determining the constitutionality of any changes to the Revised Code * * *;

{¶15} “(7) An order in an appropriation proceeding * * *.”

{¶16} Here, appellant is attempting to appeal the denial of a motion to remove counsel. The Supreme Court of Ohio has stated that a motion to disqualify counsel is not a final appealable order. See *Bernbaum v. Silverstein*, 62 Ohio St.2d 445, 446 (1980); *Wilhelm-Kissinger v. Kissinger*, 129 Ohio St.3d 90 (2011). The Fourth District Court of Appeals held that an order denying a motion to disqualify counsel is not a final appealable order pursuant to R.C. 2505.02(B)(4). *Hooks v. Rankin Ents., LLC*, 4th Dist. Pickaway Nos. 14CV13 and 14CA14, 2014-Ohio-3680, at ¶ 13. That court explained that although an order denying a motion to disqualify counsel denies a provisional remedy, an appellant will have a meaningful and effective remedy by way of an appeal

once a final judgment has been rendered in the case. Furthermore, the trial court's entry does not fit within any of the other categories of R.C. 2505.02(B).

{¶17} Based upon the foregoing analysis, the judgment of the trial court is not a final appealable order. Thus, this court is without jurisdiction, and this appeal is hereby, sua sponte, dismissed for lack of a final appealable order.

{¶18} Appeal dismissed.

CYNTHIA WESTCOTT RICE, P.J.,

DIANE V. GRENDALL, J.,

concur.