

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

LAURIE LANCASTER, et al.,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2019-T-0075
KATHY METTLER,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2019 CV 01013.

Judgment: Appeal dismissed.

Michael R. Babyak, 51 East Park Avenue, Niles, OH 44446 (For Plaintiff-Appellee).

Phillip S. Arbie, Suite D, Lower Level, 409 Harmon Avenue, N.W., Warren, OH 44483 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} On October 21, 2019, appellant, Kathy Mettler, through counsel, filed the instant appeal. Appellee, Laurie Lancaster, filed an action for breach of contract and fraud against Ms. Mettler. A status conference was held, and on October 1, 2019, the Trumbull County Court of Common Pleas issued a “Pre-Trial Discovery & Motions Schedule.”

{¶2} On November 1, 2019, Ms. Lancaster moved this court to dismiss the appeal for lack of a final order. On November 18, 2019, Ms. Mettler opposed the motion.

{¶3} 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). 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).

{¶4} R.C. 2505.02(B) defines a final order as one of the following:

{¶5} “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:

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

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

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

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

{¶10} “(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.

{¶11} “(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.

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

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

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

{¶15} For R.C. 2505.02(B)(2) to apply to the instant matter, the orders under review must be made in a special proceeding, which is defined as “an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.” R.C. 2505.02(A)(2). This case does not involve a special proceeding in the context of final appealable orders. Thus, R.C. 2505.02(B)(2) does not apply.

{¶16} It is clear there is no entry vacating a judgment, granting a provisional remedy, dealing with a class action, determining the constitutionality of Am. Sub. S.B. 281 or Sub. S.B. 80, or dealing with an appropriation proceeding. Therefore, R.C. 2505.02(B)(3)-(7) do not apply.

{¶17} For R.C. 2505.02(B)(1) to apply to the appealed entry, it must affect a substantial right, determine the action, and prevent further judgment. In the instant matter, the order involved in this appeal does not fit into this category. Ms. Mettler is appealing a pre-trial discovery and motions’ schedule that was issued by the trial court.

{¶18} Initially, we note that, generally, discovery issues are interlocutory in nature and a trial court’s judgment regarding these issues does not constitute a final appealable order. *Walters v. Enrichment Ctr. Of Wishing Well, Inc.*, 78 Ohio St.3d 118, 121 (1997); *Enervest Operating, L.L.C. v. Aloi*, 11th Dist. Portage No. 2014-P-0021, 2014-Ohio-3447, ¶ 17. However, provisional remedies ordering discovery of alleged privileged material

are final and appealable. See *Cobb v. Shipman*, 11th Dist. Trumbull No. 2011-T-0049, 2012-Ohio-1676 (an order compelling the production of privileged documents to an opposing party constitutes a final appealable order).

{¶19} Here, the trial court's October 1, 2019 entry simply set a pre-trial discovery and motions schedule. There was no order or entry dismissing or terminating the case or an entry of judgment. An interlocutory order is simply not a final appealable order. This appeal has been prematurely filed. Ms. Mettler will have a meaningful and effective remedy by means of an appeal once a final judgment is reached. See *Children's Hosp. Med. Ctr. v. Tomaiko*, 11th Dist. Portage No. 2011-P-0103, 2011-Ohio-6838, at ¶ 5.

{¶20} Based upon the foregoing, appellee's motion to dismiss is granted, and this appeal is hereby dismissed for lack of final appealable order.

{¶21} Appeal dismissed.

THOMAS R. WRIGHT, P.J.,

MATT LYNCH, J.,

concur.