

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
MEIGS COUNTY

BARBARA WILLIAMS,	:	
	:	
Plaintiff-Appellant,	:	Case No. 05CA15
	:	
v.	:	
	:	
NATIONWIDE MUTUAL	:	<u>DECISION AND JUDGMENT ENTRY</u>
INSURANCE COMPANY,	:	
	:	Released 12/15/05
	:	
Defendant-Appellee.	:	

APPEARANCES:

Steven L. Story, Pomeroy, Ohio, for Appellant Barbara Williams.

John E. Triplett, Jr. and Ethan T. Vessels, Theisen Brock, LPA, Marietta, Ohio, for Appellee Nationwide Mutual Insurance Company.

Harsha, J.

{¶1} Barbara Williams appeals the trial court's order denying her motion to compel discovery, granting Nationwide Mutual Insurance Company's ("Nationwide") motion for a protective order, and bifurcating the claims. Because there is no final appealable order, we must dismiss the appeal.

{¶2} Ms. Williams filed a complaint against Nationwide alleging three causes of action - declaratory judgment, breach of contract, and lack of good faith. The complaint arose from Nationwide's failure to pay claims related to a fire at Ms. Williams' house. Ms. Williams later filed a motion to compel

Nationwide to produce certain documents, including the claims file related to her policy, and to respond to interrogatories. Nationwide filed a motion for a protective order asserting that the claims file and related documents are privileged. Nationwide also asked the trial court to bifurcate the declaratory judgment and breach of contract claims from the lack of good faith claim.

{¶3} The trial court issued a decision bifurcating the first two counts of the complaint. The court decided that, if a verdict adverse to Nationwide is returned on the first two counts, then it would schedule a second trial as to the bad faith claim. The court also granted Nationwide's motion for a protective order but held that "in the event * * * that a verdict is returned adverse to [Nationwide] in the first trial the claims file shall be produced[]" and the court will conduct an in camera inspection of the materials within thirty days of the adverse verdict.

{¶4} Ms. Williams appealed the trial court's decision. After reviewing the notice of appeal, we ordered the parties to file memoranda addressing whether this appeal is from a final appealable order pursuant to R.C. 2505.02.

{¶5} Discovery orders are generally interlocutory and, as such, are neither final nor appealable, especially those that deny discovery. See State ex rel. Daggett v. Gessaman (1973),

34 Ohio St.2d 55, 295 N.E.2d 659. However, Ms. Williams contends that the court's entry is a final appealable order under R.C. 2505.02(B) (1) and (4), which state:

* * *

(B) 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:

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

* * *

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

(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.

(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} First, Ms. Williams argues that the court's decision to grant Nationwide's protective order and deny her request for discovery of the claims file and related items is a final appealable order under R.C. 2505.02(B) (4). We disagree.

{¶7} To satisfy R.C. 2505.02(B)(4), an order must grant or deny a provisional remedy and both subsections (a) and (b) must apply. A "provisional remedy" is defined as "a proceeding ancillary to an action, including, but not limited to, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, or suppression of evidence * * *." R.C. 2505.02(A)(3). Although the denial of the discovery of privileged materials is clearly a provisional remedy under R.C. 2505.02(A)(3), Ms. Williams has not demonstrated that either requirement (a) or (b) of R.C. 2505.02(B)(4) has been met.

{¶8} As to subsection (a), the court's order does not in effect determine the action or prevent a judgment in favor of Ms. Williams as to the discovery of the privileged materials. Although the court denied Ms. Williams access to the materials **at this time**, the court did not permanently preclude her from discovering the claims file and related documents. Rather, the court temporarily denied her access to the documents but indicated that she would be entitled to the documents, after an in camera inspection, if she proved her claims are covered by the insurance policy issued by Nationwide. Therefore, the requirement of R.C. 2505.02(B)(4)(a) has not been met.

{¶9} Further, Ms. Williams has not demonstrated that she would not be afforded a meaningful or effective remedy on appeal following final judgment under subsection (b). As Nationwide

correctly notes, the cases Ms. Williams initially cited in support of her claim that she would be denied effective appellate review after final judgment involve instances where trial courts have denied protective orders and allowed access to privileged documents. See Sirca v. Medina Cty. Dept. of Human Services (2001), 145 Ohio App.3d 182, 762 N.E.2d 407 (trial court's denial of motion for protective order as to medical records and testimony of treating mental health professionals was final appealable order); Armstrong v. Marusic, Lake App. No. 2001-L-232, 2004-Ohio-2594 (court's order allowing plaintiff to inspect information containing defendant's trade secrets was final appealable order because once information was disclosed defendant would not have an effective remedy); Schottenstein, Zox & Dunn v. McKibben, Franklin App. No. 01AP-1384, 2002-Ohio-5075 (court's order allowing discovery of attorney's client file was final appealable order because no meaningful review possible once information is disclosed). As these courts and others have noted, once privileged or confidential information is disclosed, the party resisting discovery has no adequate remedy on appeal. However, in this case, the trial court denied access to privileged documents. Any error in this regard can be remedied after final judgment by a reversal and remand to the trial court with an instruction to order Nationwide to produce the requested discovery.

{¶10} In her reply memorandum, Ms. Williams cites Dennis v. State Farm Ins. Co., 143 Ohio App.3d 196, 2001-Ohio-3178, 757 N.E.2d 849, as a case where the trial court granted a protective order and the appeals court found there was a final appealable order and reversed the trial court's holding. However, while the Seventh District implicitly found the entry granting the protective order was final and appealable by addressing the merits of the appeal, the court never explained how the requirements of R.C. 2505.02 were met. Therefore, we find Dennis to be of little persuasive value here. The other two cases Ms. Williams cites as reversing grants of protective orders, Akers v. Ohio State Univ. Med. Ctr., Franklin App. No. 04AP-575, 2005-Ohio-5160, and Dalton-Robinson v. Stark (Dec. 21, 1989), Cuyahoga App. No. 57628, were appeals following final judgments.

{¶11} We find no reason that the court's decision cannot be remedied on appeal following final judgment if we determine that the court should have granted Ms. Williams access to the privileged information. Therefore, Ms. Williams has not satisfied subsection (b) of R.C. 2505.02.

{¶12} Next, Ms. Williams argues that the trial court's decision denying her access to the claims file and other non-privileged discovery is a final appealable order under R.C. 2505.02(B)(1). Under subsection (B)(1), Ms. Williams must

demonstrate that the order affects a substantial right that in effect determines the action and prevents a judgment. A "substantial right" is defined as "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). The trial court's discovery and bifurcation order does not determine the action against Nationwide or prevent a judgment in either party's favor. Therefore, it is not a final appealable order under R.C. 2505.02(B)(1).

{¶13} Because the trial court's order is not a final appealable order, we dismiss Ms. Williams' appeal.

APPEAL DISMISSED.

JUDGMENT ENTRY

It is ordered that the APPEAL BE DISMISSED and that Appellee recover of Appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, P.J. & Kline, J.: Concur

For the Court

BY: _____
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.