IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

PHILIP WESSENDORF,	:	APPEAL NO. C-260003 TRIAL NO. A-2303090
Plaintiff-Appellee,	:	
vs.	:	
KAREN and MARK WERNER,	:	*JUDGMENT ENTRY*
Defendants-Appellants,	:	
and	:	
PREFERRED GLOBAL EQUIPMENT, LLC,	:	
Defendant.	:	

KINSLEY, Presiding Judge.

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

Defendants-appellants Karen and Mark Werner ("the Werners") appeal the judgment of the Hamilton County Common Pleas Court denying their motion for summary judgment and granting plaintiff-appellee Phillip Wessendorf's motion for partial summary judgment. This order, however, is not a final appealable order. We accordingly dismiss the Werners' appeal for lack of jurisdiction.

This case arose when Wessendorf sued the Werners, asserting 15 causes of action, including one seeking a declaration that he is a ten percent owner in Preferred

Global Equipment, LLC ("PGE"). The Werners filed a motion for summary judgment on all claims, and Wessendorf filed a motion for partial summary judgment on his declaratory judgment claim. In both their own summary judgment motion and in their response to Wessendorf's summary judgment motion, the Werners argued that Wessendorf's claims were barred by the statute of limitations, which they contend began to run in 2010. Wessendorf did not file his complaint until 2022.

The trial court denied the Werners' motion for summary judgment. In doing so, it ruled that genuine issues of material fact existed as to when the statute of limitations was triggered. Contrary to the Werners' contention that the statute of limitations began to run in 2010, Wessendorf contends that he did not become aware of his declaratory judgment claim until 2021. The trial court reserved this issue for trial. Despite doing so, the trial court also granted Wessendorf's motion for partial summary judgment and awarded him summary judgment on his declaratory judgment claim. It did so even though the Werners' statute of limitations defense to that claim remains to be tried.

Neither the portion of the trial court's order denying the Werners' summary judgment motion nor the portion of the trial court's order granting Wessendorf's motion for partial summary judgment constitutes a final appealable order. As to the Werners' appeal of the denial of their summary judgment motion, the Werners conceded at oral argument that, in general, this court lacks jurisdiction to review a trial court's order denying a summary judgment motion on an interlocutory basis. *See Taylor-Jones v. Kettering Med. Ctr.*, 2021-Ohio-738, ¶ 10 (2d Dist.), citing *State ex rel. Overmeyer v. Walinski*, 8 Ohio st.2d 23 (1996) ("As a general rule, the denial of a motion for summary judgment is not a final appealable order."). We agree, as a trial court's order denying summary judgment is not a final appealable order as that term

is defined by R.C. 2505.02. *See id.* (noting that the denial of summary judgment "does not determine the action and prevent a judgment" as required by R.C. 2505.02). We accordingly lack jurisdiction to review the trial court's denial of the Werners' summary judgment motion.

As to whether the Werners' appeal of the trial court's judgment granting Wessendorf's partial motion for summary judgment constitutes a final appealable order, the parties did not raise this issue in their initial briefs, although we did order the parties to submit supplemental briefs on the question of finality. Despite the fact that the parties did not bring this issue to our attention, we are nonetheless obligated to consider the issue sua sponte, as it affects our jurisdiction. *See In re I.B.*, 2012-Ohio-4547, ¶ 4 (1st Dist.).

This court's appellate jurisdiction is limited to review of judgments or final orders of lower courts. Ohio Const., art. IV, § 3(B)(2). In order to exercise that jurisdiction, "the order appealed from must be final and meet the requirements of R.C. 2505.02." *Summitbridge Natl. Invest., LLC v. Ameritek Custom Homes, Inc.*, 2013-Ohio-760, ¶ 5 (1st Dist.). Merely including a determination under Civ.R. 54(B) that there is no just reason for delay "does not make appealable an otherwise non-appealable order." *Ohio Fabricators, Inc. v. Aster Elements, Inc.*, 2019-Ohio-3979, ¶ 23 (9th Dist.), citing *Rosenbaum v. Chronicle Telegram*, 2002-Ohio-7319, ¶ 12 (9th Dist.).

R.C. 2505.02(B)(2) provides that an order is final when it "affects a substantial right made in a special proceeding." A declaratory judgment action qualifies as a "special proceeding." *William Powell Co. v. Onebeacon Ins. Co.*, 2014-Ohio-3528, ¶ 8 (1st Dist.), citing *General Acc. Ins. Co. v. Ins. Co. of N. Am.*, 44 Ohio St.3d 17 (1989), paragraph two of syllabus. "[A]n order affects a substantial right if, in the absence of

an immediate appeal, it forecloses appropriate relief in the future." *Harrell v. Mgt. & Training Corp.*, 2019-Ohio-2816, ¶ 8 (1st Dist.). If a "trial court's order[], even though entered in a declaratory judgment action, contemplate[s] further action, [it] is not final." *City of Cincinnati v. City of Harrison*, 2014-Ohio-2844, ¶ 48 (1st Dist.), citing *State ex rel. New Concept Housing, Inc. v. Metz*, 2009-Ohio-5862, ¶ 3.

The trial court's order granting Wessendorf's motion for partial summary judgment contemplates further action: a jury must resolve the Werners' statute of limitations defense at trial. *See id*. And the parties may appeal the outcome of that trial, meaning that the partial summary judgment order does not foreclose appropriate relief in the future. *See Harrell* at ¶ 8. Thus, the trial court's order is not final. Rather, the "trial court retains continuing jurisdiction to reconsider" it. *See Jackson v. Jackson*, 2020-Ohio-3517, ¶ 7 (1st Dist.); *Riverside Drive Ents., LLC v. Geotechnology, Inc.*, 2023-Ohio-583, ¶ 27 (1st Dist.).

Because the judgment appealed from is not a final appealable order pursuant to R.C. 2505.02, we dismiss this appeal for lack of jurisdiction.

The court further orders that (1) a copy of this Judgment constitutes the mandate, (2) the mandate be sent to the trial court for execution under App.R. 27, and (3) costs shall be taxed under App.R. 24.

ZAYAS and CROUSE, JJ., concur.

To the clerk:
Enter upon the journal of the court on 8/12/2026.
Pursuant to App.R. 30, the clerk is directed to send upon all parties, or **their counsel if represented, a copy of the court's judgment and note such** action on the docket.

By: Jennifer Kinsley
Administrative Judge