

COURT OF APPEALS OF OHIO, ELEVENTH APPELLATE DISTRICT,
PORTAGE COUNTY

State v. Forro

2022-Ohio-4691 (Ohio Ct. App. 2022) · No. 2022-P-0014 · Decided December 27, 2022

SUMMARY

The Eleventh District Court of Appeals of Ohio dismissed James A. Forro’s appeal for lack of a final appealable order. The appealed entry denied his motion to modify probation, requested additional medical documentation concerning medical marijuana use, and scheduled another hearing, so it did not satisfy the requirements of R.C. 2505.02(B).

CASE DETAILS

COURT	Court of Appeals of Ohio, Eleventh Appellate District, Portage County
WRITING FOR THE COURT	Mary Jane Trapp, J.; John J. Eklund, P.J.; James A. Brogan, J., Ret., sitting by assignment
JURISDICTION	Ohio
DECIDED	December 27, 2022
DOCKET	2022-P-0014
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant appealed from a judgment entry denying his motion to modify probation, requesting additional medical documentation concerning medical-marijuana use, and rescheduling the matter for another hearing. The State moved to dismiss the appeal for lack of jurisdiction because the entry was not a final appealable order.
STANDARD OF REVIEW	The appellate court independently examined its subject-matter jurisdiction and sua sponte determined whether the appealed entry was a final appealable order.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status not otherwise specified in the opinion text.
PARTIES	James A. Forro v. State of Ohio

TOPICS

- final judgment rule
- appellate jurisdiction
- appellate procedure
- criminal procedure
- probation

PRACTICE AREAS

criminal appellate procedure

probation and community control

QUESTIONS PRESENTED

1. Whether the January 31, 2022 judgment entry concerning Forro's motion to modify probation was a final appealable order.
2. Whether the Court of Appeals had jurisdiction over the appeal under the Ohio Constitution, R.C. 2505.02(B), and R.C. 2953.02.

HOLDINGS

1. The judgment entry was not a final appealable order because it did not satisfy any category listed in R.C. 2505.02(B) and contemplated a second hearing on the motion to modify probation.

KEY QUOTATIONS

“In the absence of a final, appealable order, an appellate court does not have jurisdiction to review the matter and must dismiss the appeal.” (¶ 5)

“The appealed judgment entry in the instant case does not conform to any of the criteria in R.C. 2505.02(B) for being a final appealable order.” (¶ 15)

FACTUAL BACKGROUND

Forro pleaded guilty to one count of fourth-degree-felony menacing by stalking and received five years of community control with conditions, including random substance-abuse testing. He sought to modify probation to permit medical-marijuana use. The trial court denied the motion as presented, requested additional supporting medical documentation, and scheduled another hearing.

PROCEDURAL HISTORY

Forro pleaded guilty to menacing by stalking and was sentenced to five years of community control, including random substance-abuse testing. He later moved to modify probation. After a January 31, 2022 hearing, the trial court denied the motion, requested additional medical documentation, and continued the matter for another hearing. The Court of Appeals dismissed the appeal because the entry did not constitute a final appealable order.

DISPOSITION

dismissed

CASES CITED

- State v. Collins, 8th Dist. Cuyahoga No. 110994, 2022-Ohio-2143, ¶ 13

OPINION

PER CURIAM.

[Cite as State v. Forro, 2022-Ohio-4691.] IN THE COURT OF APPEALS OF OHIO ELEVENTH APPELLATE DISTRICT PORTAGE COUNTY STATE OF OHIO, CASE NO. 2022-P-0014 Plaintiff-Appellee, Criminal Appeal from the - vs - Court of Common Pleas JAMES A. FORRO, Trial Court No. 2020 CR 00337 Defendant-Appellant. MEMORANDUM OPINION Decided: December 27, 2022 Judgment: Appeal dismissed Victor V. Vigluicci, Portage County Prosecutor, and Theresa M. Scahill, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

David V. Patton, 34194 Aurora Road, Suite 242, Solon, OH 44139 (For Defendant- Appellant). MARY JANE TRAPP, J. {¶1} Appellant, James A. Forro (“Mr. Forro”), appeals from a judgment entry of the Portage County Court of Common Pleas that was issued following a hearing on Mr. Forro’s motion to modify probation.

The trial court denied his motion to modify, requested additional medical documentation supporting Mr. Forro’s request to use medical marijuana, and rescheduled the matter for another hearing in 30 days. Having no final judgment in the matter, we dismiss for lack of a final appealable order. Substantive and Procedural History {¶2} Mr. Forro pleaded guilty to one count of menacing by stalking, a fourth- degree felony, in violation of R.C.

2903.211(A)(1) and (B)(2)(b). The trial court sentenced him to five years community control with various conditions, one being to submit to random substance abuse testing. {¶3} Mr. Forro filed a motion to modify his probation, and the trial court held a hearing on January 31, 2022.

The trial court issued a judgment entry denying Mr. Forro’s motion. In the same judgment entry, the court requested medical documentation to support his request and rescheduled the matter for thirty days. Mr. Forro filed an appeal from this January 31, 2022 judgment entry, which is the only appealed judgment before us. {¶4} After oral arguments, the state filed a motion to dismiss for lack of jurisdiction.

Analysis {¶5} Our appellate jurisdiction is limited to reviewing judgments and orders that are final, appealable orders. See Ohio Constitution, Article IV, Section 3(B)(2). In the absence of a final, appealable order, an appellate court does not have jurisdiction to review the matter and must dismiss the appeal. State v. Collins, 8th Dist. Cuyahoga No. 110994, 2022-Ohio-2143, ¶ 13.

Therefore, we have a duty to examine, sua sponte, potential deficiencies in jurisdiction. Id. {¶6} R.C. 2505.02(B) defines the types of orders that constitute a final appealable order: {¶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; 2 Case No. 2022-P-0014 {¶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} In criminal cases, pursuant to R.C.

2953.02, a court of appeals only possesses jurisdiction to hear an appeal if it is from a “judgment or final order.” {¶15} The appealed judgment entry in the instant case does not conform to any of the criteria in R.C. 2505.02(B) for being a final appealable order. Furthermore, the judgment entry contemplates a second hearing on the motion to modify probation and orders Mr. Forro to submit additional evidence on the issue. {¶16} Appeal dismissed.

JOHN J. EKLUND, P.J., JAMES A. BROGAN, J., Ret., Second Appellate District, sitting by assignment, concur. 3 Case No. 2022-P-0014