

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT

Howell Tax Accounting, Inc. v. Monto

2026-Ohio-2419 · No. 25AP-1006 · Decided June 25, 2026

SUMMARY

The Ohio Tenth District Court of Appeals dismissed the appeal for lack of a final, appealable order. The trial court’s judgment on the pleadings dismissed the requested constructive-trust remedy but did not resolve any underlying causes of action, and therefore did not satisfy R.C. 2505.02(B)(1); the Civ.R. 54(B) certification was consequently irrelevant.

CASE DETAILS

COURT	Court of Appeals of Ohio, Tenth Appellate District
WRITING FOR THE COURT	Per curiam; Boggs, P.J.; Beatty Blunt, J.; Mentel, J.
JURISDICTION	Ohio Court of Appeals, Tenth Appellate District
DECIDED	June 25, 2026
DOCKET	25AP-1006
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appellants appealed from a trial-court decision granting appellees judgment on the pleadings as to appellants' request for a constructive trust. Appellees moved to dismiss the appeal for lack of subject-matter jurisdiction on the ground that the order was not final and appealable.
STANDARD OF REVIEW	The court applied the jurisdictional requirement that an appellate order be final and appealable under R.C. 2505.02; no separate standard of review was expressly stated.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Howell Tax Accounting, Inc., Estate of Beth Evelyn Howell v. Scott Monto, Dan Szymczak, The Monto Group, LLC, The Legacy Tax Advisory Group, LLC

TOPICS

- final judgment rule
- appellate jurisdiction
- motion for judgment on the pleadings
- constructive trust
- civil procedure

PRACTICE AREAS

appellate procedure

civil procedure

contract law

equity

QUESTIONS PRESENTED

1. Whether the trial court's order granting judgment on the pleadings as to appellants' requested constructive trust was a final, appealable order under R.C. 2505.02(B)(1).
2. Whether Civ.R. 54(B) certification could make the order appealable when the order did not otherwise qualify as final under R.C. 2505.02.

HOLDINGS

1. An order that precludes a party from obtaining a constructive trust, without resolving any underlying cause of action or a separate and distinct branch of the case, is not a final, appealable order under R.C. 2505.02(B)(1).
2. Civ.R. 54(B) language is relevant only after an order independently qualifies as final and appealable under R.C. 2505.02; it cannot make a nonfinal order appealable.

KEY QUOTATIONS

“If an order is not final, then a court of appeals has no jurisdiction over it.” (§ 7)

“The trial court did not resolve any of appellants’ causes of action.” (§ 12)

“The presence of a Civ.R. 54(B) certification only matters if a judgment first qualifies as a final, appealable order under R.C. 2505.02.” (§ 13)

FACTUAL BACKGROUND

Appellants asserted several contract, declaratory, and equitable claims against appellees, including a request for a constructive trust. The trial court granted judgment on the pleadings as to the constructive-trust remedy but did not resolve appellants' underlying causes of action. The remaining claims continued to pend before the trial court.

PROCEDURAL HISTORY

Appellants sued appellees asserting claims for declaratory judgment, further relief, equitable relief, anticipatory repudiation, breach of contract, and unjust enrichment. The trial court denied the parties' other pending motions but granted appellees judgment on the pleadings in part, dismissing the request for a constructive trust while leaving the causes of action pending. Although the original entry included Civ.R. 54(B) language, the trial court later issued a nunc pro tunc entry deleting that language. The Court of Appeals granted appellees' motion and dismissed the appeal for lack of jurisdiction.

DISPOSITION

dismissed

CASES CITED

- Stewart v. Solutions Community Counseling & Recovery Ctrs., Inc., 2022-Ohio-2522, ¶ 4
- Mill Creek Metro. Park Dist. Bd. of Commrs. v. Less, 2023-Ohio-2332, ¶ 8
- IBEW, Local Union No. 8 v. Vaughn Indus., L.L.C., 2007-Ohio-6439, ¶ 7
- National City Commercial Capital Corp. v. AAAA at Your Serv., Inc., 2007-Ohio-2942, ¶ 7
- Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild, 46 Ohio St.3d 147, 153 (1989)
- McConnell v. Sexton, 2022-Ohio-1894, ¶ 10 (12th Dist.)
- Fertec, LLC v. BBC&M Eng., Inc., 2009-Ohio-5246, ¶¶ 11-12 (10th Dist.)
- Newcomer v. Nationwide Ins. Ent., 2003-Ohio-960, ¶ 12 (10th Dist.)
- Estate of Brown v. McCall, 2023-Ohio-780, ¶¶ 16, 18 (10th Dist.)
- Kierland Crossing, LLC v. Ruth's Chris Steak House, Inc., 2011-Ohio-5626, ¶ 18 (10th Dist.)
- Estate of Cowling v. Estate of Cowling, 2006-Ohio-2418, ¶ 19
- McOmber v. Liebrecht, 2023-Ohio-2019, ¶ 9, fn. 1 (3d Dist.)
- Bonner v. Delp, 2021-Ohio-3772, ¶ 93 (6th Dist.)
- Kobal v. Edward Jones Secs., 2021-Ohio-1088, ¶ 14 (8th Dist.)
- Kostyo v. Kaminski, 2013-Ohio-3188, ¶ 17 (9th Dist.)

OPINION

Howell Tax Accounting, Inc. v. Monto

2026 Ohio 2419

PER CURIAM.

[Cite as Howell Tax Accounting, Inc. v. Monto, 2026-Ohio-2419.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Howell Tax Accounting, Inc et al., : Plaintiffs-Appellants, : No. 25AP-1006 v. : (C.P.C. No. 23CV-443) Scott Monto et al., : (REGULAR CALENDAR) Defendants-Appellees. :

DECISION

Rendered on June 25, 2026 The Brunner Firm Co., LPA, and Rick L. Brunner, for appellants. Behal Duval Law Group LLC, and John M. Gonzales, for appellees. APPEAL from the Franklin County Court of Common Pleas BOGGS, P.J. {¶ 1} Defendants-appellees, Scott Monto, Dan Szymczak, the Monto Group, LLC, and the Legacy Tax Advisory Group, LLC, move to dismiss the appeal filed by plaintiffs- appellants, Howell Tax Accounting, Inc. and the Estate of Beth Evelyn Howell. Because we lack jurisdiction over this appeal, we grant appellees' motion. {¶ 2} Appellants sued appellees alleging six "counts": (1) declaratory judgment, (2) "further relief from the Defendants to carry out this Court's declarations pursuant to Count One," (Compl. at ¶ 32), (3) "equitable relief to carry out this Court's declarations pursuant to Court's declarations pursuant to Count One," (Compl. at ¶ 34), (4) anticipatory repudiation, (5)

breach of contract, and (6) unjust enrichment. Appellees answered the complaint and filed a counterclaim for unjust enrichment. No. 25AP-1006 2 {¶ 3} Appellants moved to dismiss the counterclaim under Civ.R. 12(B)(1) and (6). Appellants also moved to have all the factual averments in the complaint deemed admitted under Civ.R. 8(D) because appellees failed to attach a certificate of service to their answer and counterclaim. Appellees countered by moving for judgment on the pleadings as to appellants' Counts 1, 2, 3, and 6. As the case progressed, appellant Howell Tax Accounting, Inc. moved to compel answers to pending discovery. {¶ 4} In a decision and entry dated December 2, 2025, the trial court ruled on all pending motions. The trial court denied all motions, with the exception of appellees' motion for judgment on the pleadings. The trial court granted that motion in part, finding that appellants had not pleaded sufficient facts to obtain the equitable relief they requested—a constructive trust. The trial court thus dismissed Count 3 of the complaint. The decision and entry included the statement, “This is a final order. There is no just cause for delay.” (Emphasis in original.) (Dec. 2, 2025 Decision & Entry at 15.) {¶ 5} Appellants appealed from the December 2, 2025 decision and entry to this court. After appellants appealed, the trial court issued a nunc pro tunc decision and entry correcting the December 2, 2025 decision and entry. The nunc pro tunc decision and entry, issued January 28, 2026, deleted the Civ.R. 54(B) language.¹ {¶ 6} On May 12, 2026, appellees moved to dismiss this appeal for lack of subject-matter jurisdiction. Appellees argue that this court lacks jurisdiction because the December 2, 2025 judgment is not a final, appealable order. {¶ 7} Article IV, Section 3(B)(2) of the Ohio Constitution establishes that courts of appeals “have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district.” Consequently, an order must be final before a court of appeals may review it. *Stewart v. Solutions Community Counseling & Recovery Ctrs., Inc.*, 2022-Ohio- 2522, ¶ 4. If an order is not final, then a court of appeals has no jurisdiction over it. *Id.*; *Mill Creek Metro. Park Dist. Bd. of Commrs. v. Less*, 2023-Ohio-2332, ¶ 8. Upon a determination that a party has taken an appeal from an order that is not final and appealable, a court of appeals must dismiss the appeal. *Less* at ¶ 8. 1 Because the trial court issued the nunc pro tunc decision and entry after appellants appealed, we will continue to refer to the judgment on appeal as the December 2, 2025 judgment. No. 25AP-1006 3 {¶ 8} To qualify as a final, appealable order, the order at issue must satisfy the requirements of R.C. 2505.02. *IBEW, Local Union No. 8 v. Vaughn Indus., L.L.C.*, 2007- Ohio-6439, ¶ 7. If the action involves multiple claims, and the order does not enter a judgment on all the claims, the order must also satisfy Civ.R. 54(B) by including express language that “ ‘there is no just reason for delay.’ ” *Id.*, quoting Civ.R. 54(B). {¶ 9} R.C. 2505.02(B) lists the various types of orders that constitute final, appealable orders. Appellants argue that the December 2, 2025 judgment is a final, appealable order because it satisfies the requirements of R.C. 2505.02(B)(1). {¶ 10} R.C. 2505.02(B)(1) provides that an order is a final, appealable order if it “affects a substantial right in an action that in effect determines the action and prevents a judgment.” For an order to determine an action and prevent a

judgment for the party appealing, the order “ ‘must dispose of the whole merits of the cause or some separate and distinct branch thereof and leave nothing for the determination of the court.’ ” Natl. City Commercial Capital Corp. v. AAAA at Your Serv., Inc., 2007-Ohio-2942, ¶ 7, quoting Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild, 46 Ohio St.3d 147, 153 (1989). Consequently, an order does not qualify as a final, appealable order under R.C. 2505.02(B)(1) “if the order decides liability and defers a decision on damages or decides damages and leaves unresolved a decision on liability.” McConnell v. Sexton, 2022-Ohio-1894, ¶ 10 (12th Dist.); accord Fertec, LLC v. BBC&M Eng., Inc., 2009- Ohio-5246, ¶ 11 (10th Dist.) (stating “[i]t is well-settled that orders determining liability and deferring the issue of damages are not final, appealable orders, because they do not determine the action or prevent a judgment” and “at least one appellate court has held the inverse to be true”); Newcomer v. Nationwide Ins. Ent., 2003-Ohio-960, ¶ 12 (10th Dist.) (holding “orders determining liability in the appellant’s favor but deferring the issue of damages are not final appealable orders because they do not determine the action and prevent a judgment” and “[l]ikewise, orders determining damages but deferring the issue of liability are not final appealable orders”). Liability and damages are each parts of a claim for relief and, separately, neither liability nor damages constitutes a claim for relief in and of itself. Estate of Brown v. McCall, 2023-Ohio-780, ¶ 18 (10th Dist.); Kierland Crossing, LLC v. Ruth’s Chris Steak House, Inc., 2011-Ohio-5626, ¶ 18 (10th Dist.). A resolution of either liability or damages, therefore, does not completely determine a separate and distinct No. 25AP-1006 4 branch of a case. Estate of Brown at ¶ 18; Kierland Crossing, LLC at ¶ 18; Fertec, LLC at ¶ 12. {¶ 11} In the judgment at issue in this case, the trial court granted appellees judgment on the pleadings with regard to appellants’ request for a constructive trust. “A constructive trust is an equitable remedy that protects against unjust enrichment and is usually invoked when property has been obtained by fraud.” Estate of Cowling v. Estate of Cowling, 2006-Ohio-2418, ¶ 19. A constructive trust, therefore, constitutes a remedy, not an independent cause of action. McOmber v. Liebrecht, 2023-Ohio-2019, ¶ 9, fn. 1 (3d Dist.); Bonner v. Delp, 2021-Ohio-3772, ¶ 93 (6th Dist.); Kobal v. Edward Jones Secs., 2021-Ohio-1088, ¶ 14 (8th Dist.); Kostyo v. Kaminski, 2013-Ohio-3188, ¶ 17 (9th Dist.). {¶ 12} Consequently, by granting judgment on the pleadings as to constructive trust, the trial court only precluded appellants from obtaining a specific type of remedy. The trial court did not resolve any of appellants’ causes of action. To the contrary, all the causes of action appellants pleaded in the complaint—declaratory judgment, anticipatory repudiation, breach of contract, and unjust enrichment—remain pending before the trial court. We thus conclude that the December 2, 2025 judgment did not dispose of a separate and distinct branch of the case, leaving nothing further for the determination of the court. Because the December 2, 2025 judgment is not a final, appealable order under R.C. 2505.02(B)(1), we lack jurisdiction over it. {¶ 13} The parties focus much attention on the trial court’s issuance of a nunc pro tunc decision and entry removing the Civ.R. 54(B) language from the original judgment. The removal of that language, however, is irrelevant to us. The presence of a Civ.R. 54(B) certification

only matters if a judgment first qualifies as a final, appealable order under R.C. 2505.02. Estate of Brown at ¶ 16. The judgment at issue in this case is not final under R.C. 2505.02, so we do not consider the Civ.R. 54(B) certification. {¶ 14} For the foregoing reasons, we grant appellees' motion to dismiss this appeal. Motion granted; appeal dismissed. BEATTY BLUNT and MENTEL, JJ., concur.