

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

Martin Forbush, individually and on
behalf of the wrongful death beneficiaries
of Thomas Forbush, Jr.

Court of Appeals No. WD-14-071

Trial Court No. 2014-CV-0034

Appellee

v.

HCR Manor Care, Inc., et al.

DECISION AND JUDGMENT

Appellants

Decided: April 17, 2015

* * * * *

Michael J. Fuller, Jr., D. Bryant Chaffin, Amy Quezon, A. Lance Reins, and
John R. Cummings, for appellee.

Robert M. Anspach, Mark D. Meeks, and Charles D. Rittenhouse, for appellants.

* * * * *

SINGER, J.

{¶ 1} Appellants, HCR ManorCare, Inc., HCR Manor Care Services, Inc.,
Heartland Employment Services, LLC, Heartland of Perrysburg OH, LLC, and Lisa

Chalk, NHA., appeal from the September 9, 2014 judgment of the Wood County Court of Common Pleas. Upon due consideration, we find that the judgment from which the appeal was taken is not a final, appealable order and hereby dismiss the appeal.

{¶ 2} Martin Forbush, individually and as executor of the estate of Thomas Forbush, Jr., brought a wrongful death action on June 17, 2014, against appellant, HCR ManorCare, Inc., which operates nursing homes, including Heartland of Perrysburg, HCR Manor Care Services, Inc., Heartland Employment Services, LLC, Heartland of Perrysburg OH, LLC, and Lisa Chalk, NHA. Forbush asserted that Forbush Jr. was a resident for a short time at Heartland of Perrysburg. Forbush alleged that appellants held themselves out to be able to adequately care for Forbush Jr., but in fact did not provide him with the necessary care and, as a result, Forbush Jr. died. Appellees alleged claims of negligence of the corporate defendants and unknown individual defendants; violation of nursing home contractual obligations, statutes, or regulations by unknown nursing home employees which resulted in non-lethal and lethal injuries; medical malpractice; fraud; breach of fiduciary duty; and intentionally creating and covering up dangerous conditions that existed at the home. Forbush also filed two sets of interrogatories directed to Chalk individually and to all the other defendants collectively.

{¶ 3} The defendants answered, denying the allegations and asserting that the parties had entered into an arbitration agreement and that the complaint should be stayed pending arbitration pursuant to R.C. 2711.02. R.C. 2711.02(C) provides that “an order

* * * that grants or denies a stay of a trial of any action pending arbitration, including, but not limited to, an order that is based upon a determination of the court that a party has waived arbitration under the arbitration agreement, is a final order.” Therefore, on July 23, 2014, defendants moved to stay the action pending arbitration. Appellee opposed the motion arguing that a wrongful death beneficiary is not a party to the agreement and, therefore, is not required to arbitrate. Furthermore, appellees argued additional discovery was necessary to determine the enforceability of the arbitration agreement.

{¶ 4} On September 9, 2014, the trial court “denied” the motion to stay the case and compel arbitration until after the parties engaged in discovery. The judgment stated as follows:

The court has determined that this matter should not be stayed or referred to arbitration at this point. The parties shall engage in discovery. If, after engaging in discovery, the defendants feel that the facts here render this action referral to arbitration, they may renew their motion. But as for the present time, it is denied.

Defendants’ motion to stay pending arbitration is denied.

{¶ 5} Appellants filed an immediate appeal from this judgment and this matter was placed on the court’s accelerated calendar. Appellee argues on appeal that the judgment appealed was not a final, appealable order. We agree.

{¶ 6} Appellate jurisdiction is limited to the review of final orders. Ohio Constitution, Article IV, Section 3(B)(2). A final, appealable order is defined by statute as an order which affects a substantial right, determines the action and prevents a judgment; affects a substantial right in a special proceeding; vacates or sets aside a judgment or grants a new trial; grants or denies a provisional remedy; determines an action may or may not be maintained as a class action; determines the constitutionality of a change to a statute; or arises in an appropriation proceeding. R.C. 2505.02(B). Because the appellate court's jurisdiction is limited to the review of final, appealable orders, an appeal taken from an order which is not final and appealable must be dismissed. *See, State ex rel. Old Dominion Freight Line, Inc. v. Indus. Comm.*, 137 Ohio St.3d 467, 2013-Ohio-4655, 1 N.E.3d 332, ¶ 3. The appellate court has a duty to address jurisdictional issues when they become apparent. *See, Whitaker-Merrell Co. v. Geupel Constr. Co.*, 29 Ohio St.2d 184, 186, 280 N.E.2d 922 (1972).

{¶ 7} While the trial court stated it “denied” the motion to stay, it actually *only* continued the matter until further discovery was completed. This order did not affect a substantial right, determine the action and prevent a judgment; did not vacate or set aside a judgment or grant a new trial; and was not made in a special proceeding. Such an order is an interlocutory and is not a final, appealable order. *Loeffner v. State*, 10 Ohio St 598 (1857), paragraph five of the syllabus, *rev'd on other grounds, State v. Staten*, 18 Ohio St.2d 13, 247 N.E.2d 293 (1969).

{¶ 8} This case is ordered dismissed. Appellants are ordered to pay the court costs incurred in connection with this appeal.

Appeal dismissed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.