

[Cite as *Mazurek v. Hoover*, 2001-Ohio-2362.]

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

Leetha Mazurek, Administrator
of the Estate of
Uryan E. Hundley, Deceased,

Plaintiff-Appellee,

v.

Beverly Hoover, et al.,

Defendant,
and

Pickaway County Commissioners,

Defendants-Appellants.

No. 00 CA 50

DECISION & JUDGMENT
ENTRY

Released: 2/28/01

APPEARANCES:

COUNSEL FOR APPELLANTS: Mark Landes & Patrick Pickett, **ISAAC, BRANT, LEDMAN & TEETOR**, 250 East Broad Street, Columbus, Ohio 43215

COUNSEL FOR APPELLEE: Jennifer K. Thivener, **PALMER VOLKEMA THOMAS**, 140 East Town Street, Suite 1100, Columbus, Ohio 43215

PER CURIAM:

On January 4, 2001, this court filed an Entry ordering appellants to address the issue of this court's jurisdiction to hear this appeal because it appeared from the notice of appeal that the decision from which this appeal is taken may not be a final appealable order since the appeal is taken from the denial of a motion for summary judgment pursuant to R.C. 2744 et seq. Appellants and appellee both filed memoranda in support of their

Appellants assert that the order from which this appeal is taken in a final appealable order because it is an order that affects a substantial right made in a special proceeding pursuant to R.C. 2505.02(B)(2). Appellee asserts that the denial of the motion for summary judgment does not affect a substantial right.

The proceeding below, a wrongful death action, is a special proceeding because a "special proceeding" as defined by R.C. 2505.02(A)(2) is an action or proceeding that is especially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

The wrongful death action was created by statute in 1851 and not recognized at common law. *In re Estate of Pulford* (1997), 122 Ohio App.3d 92. See, also, *Tignor v. Franklin County Board of Commissioners* (Apr. 27, 2000), Franklin App. No. 99AP-571, unreported.

We now must determine whether the denial of appellants' motion for summary judgment affected a substantial right. Appellants asserts that their immunity is a substantial right which was affected by the trial court's denial of their Motion for Summary Judgment. We disagree. A substantial right is not affected by an order, so as to be appealable, merely because an order has the immediate effect of restricting or limiting that right. *State v. Chandler* (1994), 99 Ohio App.3d 4. A substantial right is affected only where there is virtually no opportunity for an appellate court to provide relief on appeal after final judgment

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from an order that presumably prejudiced a legally protected
right. *Id.* An order that affects a substantial right is one
that, if not immediately appealable, would foreclose appropriate
relief in the future. *Bell v. Mt. Sinai Medical Center* (1993), 67

Ohio St.3d 60. Here, appellants would have an opportunity for
appellate review after final judgment below.

Appellants assert that this appeal is taken pursuant to R.C.
2505.02(B)(2). However, this appeal does not fall within the
parameters of this statute. While the proceeding below is a
special proceeding, the denial of a motion for summary judgment in
which appellants assert immunity does not affect a substantial
right.

Upon consideration, this court finds that R.C. 2505.02(B)(2)
does not permit appellant to immediately appeal the trial court's
denial of their motion for summary judgment. This court further
finds that R.C. 2744.02(C) no longer provides a basis for this
court's jurisdiction over the denial of a motion for summary
judgment. See *Skaggs v. Minford Local School District* (Nov. 15,
2000), Scioto App. No. 00CA2723, unreported. See, also, *Watters*
v. Ross County Children's Services (Feb. 18, 2000), Pickaway App.
No. 99CA9, unreported; *Fannin v. City of Portsmouth* (Feb. 15,
2000), Scioto App. No. 99CA2661, unreported. Accordingly, this
court lacks jurisdiction to consider this appeal.

APPEAL DISMISSED.

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JUDGMENT ENTRY

It is ordered that the **APPEAL BE DISMISSED** and that appellee recover of appellants costs herein taxed.

The Court finds that there were reasonable grounds for this appeal.

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

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

Abele, P.J. and Evans, 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.