

FILED
COURT OF CLAIMS
OF OHIO

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

TransAmerica Building Company, Inc.,	:	
Plaintiff-Appellee,	:	
v.	:	No. 15AP-489
Ohio School Facilities Commission	:	(REGULAR CALENDAR)
etc.,	:	
Defendant-Appellant.	:	2013-00349
	:	

JOURNAL ENTRY OF DISMISSAL

This matter is before the court upon the motion of plaintiff-appellee, TransAmerica Building Company, Inc. ("TransAmerica"), for an expedited order dismissing this appeal for lack of jurisdiction. The basis for TransAmerica's motion is that the order from which defendant-appellant, Ohio School Facilities Commission ("OSFC"), has appealed is not a final, appealable order.

OSFC seeks to appeal an order from the Court of Claims of Ohio that denied OSFC's motion to set aside a referee's order that granted TransAmerica's motion to separate the trial of the third-party complaint pursuant to Civ.R. 14(A) which provides in relevant part:

Any party may move to strike the third-party claim, or for its severance or separate trial. If the third-party defendant is an employee, agent, or servant of the third-party plaintiff, the court shall order a separate trial upon the motion of any plaintiff.

In its motion to dismiss, TransAmerica argues the trial court's order upholding the referee's order does not constitute a final appealable order under R.C. 2505.02, and even if construed as a final order, said order does not dispose of all claims and lacks requisite Civ.R. 54(B) language. We agree.

Franklin County Ohio Court of Appeals Clerk of Courts- 2015 May 15 11:20 AM-15AP000489

As is relevant here, R.C. 2505.02 provides:

(A) As used in this section:

* * *

(2) "Special proceeding" means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity.

* * *

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

* * *

(2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment[.]

OSFC argues the order at issue was made in a special proceeding conducted pursuant to R.C. 2743.03(C)(3),¹ and is, therefore, a final order under R.C. 2505.02(B)(1). While OSFC is correct that the appointment of the referee, pursuant to R.C. 2743.03(C)(3), is an action or proceeding that is specially created by statute, the order from which OSFC appeals was not issued in a proceeding governed by that provision. By the express terms of R.C. 2743.03(C)(3), proceeding conducted by a referee appointed thereunder "shall be in accordance with Civil Rule 53." Accordingly, the order at issue, a procedural order issued pursuant to Civ.R. 14 and made in a proceeding governed by Civ.R. 53, was not made in a "special proceeding." Moreover, to accept OSFC's theory would require a finding that, *every* order issued by a referee

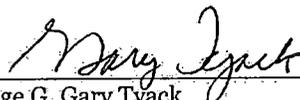
¹ R.C. 2743.03(C)(3) states: When any dispute under division (B) of section 153.12 of the Revised Code is brought to the court of claims, upon request of either party to the dispute, the chief justice of the supreme court shall appoint a single referee or a panel of three referees. The referees need not be attorneys, but shall be persons knowledgeable about construction contract law, a member of the construction industry panel of the American arbitration association, or an individual or individuals deemed qualified by the chief justice to serve. No person shall serve as a referee if that person has been employed by an affected state agency or a contractor or subcontractor involved in the dispute at any time in the preceding five years. Proceedings governing referees shall be in accordance with Civil Rule 53, except as modified by this division. The referee or panel of referees shall submit its report, which shall include a recommendation and finding of fact, to the judge assigned to the case by the chief justice, within thirty days of the conclusion of the hearings.

No. 15AP-489

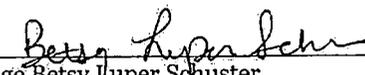
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appointed pursuant to R.C. 2743.03(C)(3), is final and subject to immediate appeal. Such simply cannot be the result intended by R.C. 2743.03(C)(3).

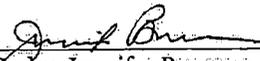
Finding that the order from which OSFC has appealed does not constitute a final appealable order under R.C. 2505.02, we grant TransAmerica's motion to dismiss. All other pending motions are hereby rendered moot.



Judge G. Gary Tyack



Judge Betsy Luper Schuster



Judge Jennifer Brunner

cc: Clerk, Court of Appeals

Court Disposition

Case Number: 15AP000489

Case Style: TRANSAMERICA BUILDING COMPANY INC -VS- OHIO
SCHOOL FACILITIES COMMISSION

Motion Tie Off Information:

1. Motion CMS Document Id: 15AP0004892015-05-1299780000
Document Title: 05-12-2015-MOTION TO DISMISS
Disposition: 3201
2. Motion CMS Document Id: 15AP0004892015-05-1399830000
Document Title: 05-13-2015-MOTION
Disposition: 3204
3. Motion CMS Document Id: 15AP0004892015-05-1399840000
Document Title: 05-13-2015-MOTION TO STAY
Disposition: 3204