

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

ROBERT B. MOREL	:	APPEAL NO. C-060894
	:	TRIAL NO. A-0603223
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
PAUL STROTMAN,	:	
Defendant-Appellant,	:	
and	:	
BONNIE THEIBAUD,	:	
Defendant.	:	

We consider this appeal on the accelerated calendar. This judgment entry is not an opinion of the court.¹

Plaintiff-appellee Robert B. Morel brought this declaratory-judgment action in the general division of the common pleas court for an accounting of assets from his mother's appointed fiduciaries, including his brother-in-law, defendant-appellant Paul Strotman. Morel asserted that Strotman had converted his mother's assets. Claiming that the probate court had exclusive jurisdiction over the matter, Strotman filed a motion to dismiss the complaint for lack of subject-matter jurisdiction.² The trial court overruled the motion, and Strotman has appealed from that order.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² See Civ.R. 12(B)(1).

We have examined the record and determined that Strotman has attempted to appeal from an interlocutory order. While avoiding trial in a court that lacks subject-matter jurisdiction is a substantial right,³ the denial of Strotman's Civ.R. 12(B)(1) motion did not determine the action and prevent a judgment and was, therefore, not a final order under R.C. 2505.02(B)(1). Strotman remains free to challenge the subject-matter jurisdiction of the trial court, even on appeal,⁴ and the denial of his motion will be reviewable on appeal following the entry of a final judgment in this case.

Moreover, the trial court's decision is not immediately appealable as an order "made in a special proceeding."⁵ While an order affecting a substantial right entered in an action for a declaratory judgment is generally a final appealable order,⁶ if the declaratory-judgment claim is "asserted within the context of an ordinary civil action" for accounting or conversion, a trial court's decision does not become a final and appealable order "simply because it [is] cast in the form of a declaratory judgment action."⁷ The "underlying nature of the[se] action[s]" controls the analysis.⁸ Since actions for conversion and accounting existed at common law or equity prior to 1853,⁹ the trial court's order in this case was not one entered in a special proceeding.

As no other subsection of R.C. 2505.02(B) identifies the trial court's decision as a final order available for immediate appeal, the denial of Strotman's motion to

³ See R.C. 2505.02(A)(1).

⁴ See Civ.R. 12(H)(3).

⁵ R.C. 2505.02(B)(2).

⁶ See R.C. 2505.02(A)(2) (a special proceeding is defined as 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); see, also, *Layman v. Nationwide Mut. Fire Ins. Co.*, 7th Dist. No. 05-JE-3, 2006-Ohio-1157, at ¶9.

⁷ *Meeker R&D, Inc. v. Evenflo Co.*, 11th Dist. No. 2006-P-0019, 2006-Ohio-3885, at ¶9 and 10.

⁸ See *Stevens v. Ackman* (2001), 91 Ohio St.3d 182, 188, 2001-Ohio-249, 743 N.E.2d 901.

⁹ See Dobbs, *Remedies* (1973), 252, Section 4.3 (accounting), and 403, Section 5.14 (conversion).

dismiss was an interlocutory order not subject to immediate appeal.¹⁰ In the absence of a final appealable order, we are without jurisdiction to entertain this appeal on the merits.¹¹ Therefore, we dismiss the appeal.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., CUNNINGHAM and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 17, 2007

per order of the Court _____.

Presiding Judge

¹⁰ See *Ferrell v. Standard Oil Co.* (1984), 11 Ohio St.3d 169, 464 N.E.2d 550; see, also, *McDowell v. DeCarlo*, 9th Dist. No. 23376, 2007-Ohio-1262, at ¶8.

¹¹ See R.C. 2505.03(A).