

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

BOB SUMEREL TIRE COMPANY, INC.,	:	APPEAL NO. C-160899 TRIAL NO. A-1604632
Plaintiff-Appellee,	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
INTERSTATE NDT, INC.,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This is an appeal of the trial court’s denial of a motion to dismiss for lack of personal jurisdiction. We do not reach the merits of the appeal, because the denial of such a motion is not a final order. We therefore dismiss the appeal.

Plaintiff-appellee Bob Sumerel Tire Company, Inc., sued defendant-appellant Interstate NDT, Inc. (“Interstate”), for breach of contract. Interstate, a company based in Pennsylvania, moved to dismiss the complaint, arguing that the forum-selection clause in the contract was unenforceable, and thus, the trial court did not have personal jurisdiction over Interstate. After the trial court denied the motion, Interstate appealed.

R.C. 2505.03(A) limits the subject-matter jurisdiction of courts of appeals to the review of “final order[s], judgment[s], or decree[s].” *See* Ohio Constitution, Article IV, Section 3(B)(2). Under R.C. 2505.02, for purposes of this matter, a final order is an order that in effect determines an action and prevents a judgment, *see* R.C. 2505.02(B)(1), or an order that grants or denies a provisional remedy by which “the appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment.” *See* R.C. 2505.02(B)(4).

“As a general rule, denials of motions to dismiss are not final orders [and this] rule extends to denials of motions to dismiss for lack of personal jurisdiction.” *Gardner v. Ford*, 1st Dist. Hamilton No. C-150018, 2015-Ohio-4242, ¶ 4, citing *Polikoff v. Adam*, 67 Ohio St.3d 100, 616 N.E.2d 213 (1993). This is because a denial of a motion to dismiss does not in effect determine an action or prevent a judgment in a case. R.C. 2505.02(B)(1). Instead, following a denial of a motion to dismiss, the case would proceed to trial on the merits and in the event of judgment adverse to the moving party, the trial court’s action overruling the motion to dismiss may become one of the assignments of error on appeal. *State v. Eberhardt*, 56 Ohio App.2d 193, 381 N.E.2d 1357 (8th Dist.1978); *Matus v. Southern Farm Bur. Life Ins. Co.*, 5th Dist. Ashland No. CA 1088, 1994 WL 728618 (Dec. 22, 1994).

Although Interstate may argue that it would not be afforded a meaningful or effective remedy by an appeal following a final judgment due to potential high litigation costs associated with defending itself in a foreign jurisdiction, this court has previously held that “the prospect of high litigation costs does not make a remedy following final judgment unmeaningful or ineffective.” *Gardner* at ¶ 8, citing *Katherine’s Collection, Inc. v. Kleski*, 9th Dist. Summit No. 26477, 2013-Ohio-1530, ¶ 13, and *Lauro Lines S.R.L. v. Chasser*, 490 U.S. 495, 499, 109 S.Ct. 1976, 104

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L.Ed.2d 548 (1989) (the United States Supreme Court “declined to find the costs associated with unnecessary litigation enough to warrant allowing the immediate appeal of a pretrial order”).

Accordingly, under R.C. 2505.02, the trial court’s denial of Interstate’s motion to dismiss for lack of personal jurisdiction is not a final appealable order because it did not prevent a judgment on the merits or deny Interstate a meaningful remedy on appeal despite the potential for high litigation costs.

Because we do not have jurisdiction to entertain Interstate’s appeal, we hereby 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.

MOCK, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the journal of the court on August 18, 2017

per order of the court _____
Presiding Judge