

63 Ohio St.3d 497, 589 N.E.2d 23

Supreme Court of Ohio.
WARREN PLAZA COMPANY, Appellant,
v.
GIANT EAGLE, INC. et al., Appellees.
No. 90-1526.
Submitted Sept. 11, 1991.
Decided April 15, 1992.

**23 APPEAL from the Court of Appeals for Trumbull County,
No. 88-T-4122.

Ulmer & Berne and Marvin L. Karp, Cleveland, Richards,
Ambrosy & Frederick and Charles L. Richards, Warren,
for appellant.

Marcus & Shapira and Bernard D. Marcus, Pittsburgh, Pa.,
Henderson, Covington, Stein, Donchess & Messenger and
James L. Messenger, Youngstown, Kohrman, Jackson & Krantz
and Gregory M. Lichko, Cleveland, for appellees.

The appeal is dismissed as moot.

MOYER, C.J., and SWEENEY, HOLMES, DOUGLAS, WRIGHT and
RESNICK, JJ., concur.

HERBERT R. BROWN, J., concurs separately.

*498 HERBERT R. BROWN, Justice, concurring.
herbert R. Brown, J., concurring. I concur in the court's
dismissal entry. However, I disagree as to the reasons for
dismissal. This case may be factually moot, but I believe the
issues it presents are capable of repetition, yet evading review.

Nonetheless I must concur in the dismissal entry because we
lack jurisdiction to decide the case. Civ.R. 65(B)(2) allows a trial
court to consolidate a preliminary injunction hearing with a trial
on the merits. Here, the court of appeals held that the trial court
consolidated without sufficient notice to all parties.

The entire case was remanded for a hearing on the merits.
Appellant did not timely appeal this ruling, and therefore the
case is not properly before us.

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Ohio,1992.

Warren Plaza Co. v. Giant Eagle, Inc.
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- 1991 WL 11240209 (Appellate Brief)
Reply Brief of Appellant (Mar. 26, 1991)
- 1991 WL 11240208 (Appellate Brief)
Brief of Appellees on Merits (Feb. 07, 1991)
- 1991 WL 11240207 (Appellate Brief)
Brief of Appellant on Merits (Jan. 08, 1991)

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