

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEauga COUNTY, OHIO**

LINDA J. COOK,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	CASE NO. 2011-G-3028
- VS -	:	
UH-EXTENDED CARE CAMPUS	:	
HEATHER HILLS EXTENDED CARE,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 10 P 0772.

Judgment: Appeal dismissed.

John W. Hawkins, Center Plaza South, 35353 Curtis Boulevard, Suite 441, Eastlake, OH 44095 (For Plaintiff-Appellant).

Patrick J. Murphy and Michelle J. Bagi, Bonezzi, Switzer, Murphy & Polito Co., L.P.A., 1300 East Ninth St., Suite 1950, Cleveland, OH 44114-1501 (For Defendant-Appellee).

TIMOTHY P. CANNON, P.J.,

{¶1} On August 29, 2011, this court issued an order for appellant to show cause as to why this matter should not be dismissed for lack of a final appealable order since it was an appeal from a dismissal without prejudice. Subsequently, on September 7, 2011, appellee filed a motion to dismiss this appeal for lack of a final appealable order.

{¶2} On September 29, 2011, appellant filed a brief in response to our show cause order, along with a motion for leave to file it instanter. On the same date, appellant filed a response to appellee's motion to dismiss, along with a motion for leave to file it instanter. Both of appellant's motions for leave to file the responses instanter are hereby granted.

{¶3} On October 13, 2011, this court granted until October 14, 2011, for appellee to file its reply to appellant's response to its motion to dismiss. On October 21, 2011, appellee filed its reply to appellant's response to its motion to dismiss, along with a motion for reconsideration of our entry granting an extension to October 14, 2011, and a motion for leave to file the reply instanter. Appellee's motion for reconsideration is granted to the extent that its motion for leave to file the reply instanter is granted.

{¶4} In this court's show cause order, we stated that this appeal is before the court as a result of the trial court's entry of June 20, 2011, dismissing plaintiff-appellant's complaint without prejudice. We indicated that dismissals without prejudice have generally been held not to be final appealable orders.

{¶5} In its motion to dismiss, appellee contends, among other things, that under R.C. 2505.02, the dismissal order appealed from is an adjudication otherwise than on the merits and is not final. Appellant's responses address several issues but essentially claim there is a final appealable order because she is not appealing the dismissal of the case, but rather the denial of her motion for default judgment. Appellee's October 21, 2011 reply claims that the denial of a motion for default judgment does not "determine the action and prevent judgment" as stated in R.C. 2505.02(B).

{¶6} The Notice of Appeal form and this court's Loc.R. 3(D)(3) require identification and attachment of a copy of the entry or order appealed from. In this case, appellant's notice of appeal indicates she is appealing from the June 20, 2011 "Judgment Entry of Dismissal." The judgment of the trial court dated January 25, 2011, overruling appellant's motion for default judgment was neither referenced nor attached. The trial court's June 20, 2011 judgment entry of dismissal without prejudice is not a final appealable order. See *Thorton v. Montville Plastics & Rubber, Inc.*, 121 Ohio St.3d 124, 2009-Ohio-360; *Ackley v. Ryan*, 11th Dist. No. 2009-L-143, 2010-Ohio-477.

{¶7} Thus, this court is without jurisdiction to consider this appeal. Appellee's motion to dismiss is granted.

{¶8} Appeal dismissed.

MARY JANE TRAPP, J.,

THOMAS R. WRIGHT, J.,

concur.