

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

SANDRA FOX,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2009-L-157
WILLIAM KRAWS,	:	
Defendant,	:	
FRED POLLUTRO,	:	
Defendant-Appellee.	:	

Civil Appeal from the Court of Common Pleas, Case No. 09 CV 000474.

Judgment: Appeal dismissed.

Brian Herberth, 8905 Lake Avenue, 4th Floor, Cleveland, OH 44102 (For Plaintiff-Appellant).

Todd C. Hicks, Thrasher, Dinsmore & Dolan, 100 Seventh Avenue, #150, Chardon, OH 44024-1079 (For Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} On November 19, 2009, appellant, Sandra Fox, filed a notice of appeal from an October 23, 2009 judgment entry of the Lake County Court of Common Pleas.

{¶2} In the October 23, 2009 entry, the trial court granted the motion for summary judgment filed by appellee, Fred Pollutro, as to counts two and three of the

complaint. Subsequently, on October 26, 2009, appellant filed a “Notice of Voluntary Dismissal” with the trial court. In that dismissal, appellant states:

{¶3} “NOW COMES Plaintiff, by and through undersigned counsel and hereby gives notice that pursuant to Ohio Rules of Civil Procedure 41(A), Plaintiff voluntarily dismisses this action without prejudice with the right to file within one year of the filing of this dismissal.”

{¶4} Appellant then filed her notice of appeal on November 19, 2009.

{¶5} The language contained in appellant’s Civ.R. 41(A) voluntary dismissal makes the appeal moot since it dismissed “this action.” See *Cregar v. Warren*, 11th Dist. No 2007-T-0058, 2007-Ohio-3970.

{¶6} Civ.R. 41(A)(1) states that:

{¶7} “*** [A] plaintiff, without order of court, may dismiss all claims asserted by that plaintiff against a defendant by doing either of the following:

{¶8} “(a) filing a notice of dismissal at any time before the commencement of trial unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by that defendant;

{¶9} “(b) filing a stipulation of dismissal signed by all parties who have appeared in the action.

{¶10} “Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court.”

{¶11} The Supreme Court of Ohio has held that a voluntary dismissal pursuant to Civ.R. 41(A) renders the parties as if no suit had ever been filed against only the dismissed parties. *Denham v. New Carlisle* (1999), 86 Ohio St.3d 594, 596.

{¶12} In *Wilson v. Vaccariello*, 11th Dist. No 2007-L-045, 2007-Ohio-2694, , this court cited to *Gruenspan v. Thompson* (Oct 12, 2000), 8th Dist. No. 77276, 2000 WL 1514357, at 2, which stated that:

{¶13} “A voluntary dismissal by a plaintiff operates to nullify the claims brought against the dismissed party and leaves the parties as if the action was never filed. ***.”

{¶14} In addition to this court and the Eighth Appellate District, the Second, Sixth, Ninth, and Tenth Districts have concluded that a voluntary dismissal of all defendants renders a prior interlocutory summary judgment ruling a nullity. See *Fairchilds v. Miami Valley Hosp., Inc.*, 160 Ohio App.3d 363, 2005-Ohio-1712; *Toledo Heart Surgeons v. The Toledo Hosp.*, 6th Dist. No. L-02-1059, 2002-Ohio-3577; *Ohio Farmers Ins. Co. v. Modine Mfg.* (Sept. 5, 2001), 9th Dist. Nos. 3114-M and 3116-M, 2001 Ohio App. LEXIS 3921; *State ex rel. Mogavero v. Belskis*, 10th Dist. No. 02AP-164, 2002-Ohio-6497.

{¶15} In *Fairchilds* at ¶38, the appellants filed a notice of voluntary dismissal informing the trial court that they were “voluntarily dismissing this case without prejudice, and subject to refiling pursuant to Civ.R. 41(A) against all party Defendants, Angela Landis and Miami Valley Hospital, Inc.” The notice clearly included the voluntary dismissal of all defendants, and thus, the Second District concluded that the appellants’ voluntary dismissal of all defendants prevented the prior interlocutory

summary judgment decision from becoming a final adjudication of the claims with which it was concerned.

{¶16} Here, the October 26, 2009 entry clearly states that appellant “voluntarily dismisses this action without prejudice ***.” Without specifying any particular claim or party, appellant dismissed the entire case pursuant to Civ.R. 41(A)(1)(a). Therefore, this court lacks jurisdiction to consider the appeal.

{¶17} Accordingly, this appeal is hereby sua sponte dismissed for lack of jurisdiction.

{¶18} Appeal dismissed.

MARY JANE TRAPP, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.