

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

JOSEPH McGRATH,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2011-A-0041
VALREANA GREENE, ADMINISTRATRIX FOR ESTATE OF CHARLES GREENE, (DECEASED), et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2011 CV 05.

Judgment: Appeal dismissed.

Joseph McGrath, pro se, 8216 Mayfield Road, Gates Mills, OH 44026 (Plaintiff-Appellant).

Valreana Greene, Administratrix for Estate of Charles Greene, pro se, 9876 Wilshire Boulevard, Beverly Hills, CA 90210 (Defendant-Appellee).

Charles Greene, c/o Valreana Greene, pro se, 9876 Wilshire Boulevard, Beverly Hills, CA 90210 (Defendant-Appellee).

THOMAS R. WRIGHT, J.

{¶1} On July 5, 2011, appellant, Joseph McGrath, filed a notice of appeal from a June 23, 2011 judgment entry of the Ashtabula County Court of Common Pleas. In that entry, the trial court dismissed the matter without prejudice.

{¶2} On September 26, 2011, this court issued an order indicating that it may not

have jurisdiction to consider this appeal since the trial court entry dismissed the case without prejudice. In response to this court's show cause order, appellant filed a "Compliance with Show Cause Order." In his submission, appellant alleges that when the trial court dismissed the action, it determined the matter and prevented a judgment, which created a final appealable order subject to immediate review.

{¶3} We must determine whether the order appealed from is a final appealable order. According to Section 3(B)(2), Article IV of the Ohio Constitution, a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a "final order" in the action. *Estate of Biddlestone*, 11th Dist. No. 2010-T-0131, 2011-Ohio-1299; *Germ v. Fuerst*, 11th Dist. No. 2003-L-116, 2003-Ohio-6241, ¶3. If a lower court's order is not final, then an appellate court does not have jurisdiction to review the matter and the matter must be dismissed. *Gen. Acc. Ins. Co. v. Ins. Co. of N. Am.* (1989), 44 Ohio St.3d 17, 20. For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and if applicable, Civ.R. 54(B).

{¶4} A dismissal without prejudice constitutes "an adjudication otherwise than on the merits." *Thomas v. Freeman* (1997), 79 Ohio St.3d 221, 225, fn. 2; See, also, *Ackley v. Ryan*, 11th Dist. No. 2009-L-143, 2010-Ohio-477, at ¶4. This is because a dismissal without prejudice leaves the parties in the same position they were in prior to the action being filed. *Id.* citing to *Johnson v. H & M Auto Service et al.*, 10th Dist. No. 07AP-123, 2007-Ohio-5794, 2007 Ohio App. LEXIS 5094, at ¶7. In general, a dismissal without prejudice is not a final appealable order because a party may refile or amend a complaint. *Id.*

{¶5} In the instant matter, the trial court clearly stated that the action was dismissed without prejudice in its June 23, 2011 entry. Therefore, since appellant has the ability to refile his claims within the time allowed by the applicable law, the trial court's dismissal without prejudice is not a final appealable order. R.C. 2305.19.

{¶6} Based on the foregoing analysis, this court lacks jurisdiction at this time to consider this appeal.

{¶7} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDALL, J.,

concur.