

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 12/16/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

GINA FOROUGH,) 1 CA-CV 10-0295
)
Plaintiff/Appellant,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 28, Arizona Rules
) of Civil Appellate Procedure)
MARIA IZABEL ZAVALA; OSARO)
IGHODARO; GLENDALE COMMUNITY)
COLLEGE (GCC); MARICOPA COUNTY)
COMMUNITY COLLEGE DISTRICT)
(MCCCD),)
)
Defendants/Appellees.)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CV 2009-054345

The Honorable Brian R. Hauser, Judge

APPEAL DISMISSED

Gina Foroughi Phoenix
Plaintiff/Appellant, *In Propria Persona*

Burch & Cracchiolo, P.A. Phoenix
By Daniel R. Malinski
Attorneys for Defendants/Appellees

N O R R I S, Judge

¶1 Gina Foroughi appeals from the superior court's order dismissing her complaint without prejudice. As we explain below, we lack jurisdiction and therefore dismiss this appeal.

FACTS AND PROCEDURAL BACKGROUND

¶2 Foroughi filed a complaint on November 12, 2009, alleging Maria Zavala and Osaro Ighodaro (collectively, "Defendants"), employees of Glendale Community College, engaged in "fraudulent, malicious, slanderous and libelous actions" in connection with a misconduct hearing held on September 10, 2009, to apparently address grievances brought against Foroughi, who was a student at the school. Defendants moved for a more definite statement pursuant to Arizona Rule of Civil Procedure 12(e), and the superior court granted the motion, ordering Foroughi to file a complaint in accordance with Rule 8(a). Two weeks later, Foroughi filed an amended complaint.

¶3 On February 17, 2010, Defendants moved to dismiss, arguing Foroughi's amended complaint failed to comply with the court's order. In a signed minute entry filed March 15, 2010, the court granted the motion to dismiss without prejudice. The court noted in the signed minute entry:

The court previously ordered plaintiff to file a more definite statement in accordance with Rule 8(a), A.R.C.P. The essence of the Rule requires a short and plain statement of the claims, the causes of action arising from the claims and a demand for judgment for the relief sought. The amended complaint, like the complaint, is neither

short nor plain. It contains some allegations of fact and identifies some causes of action all enveloped in a screed against defendants and other persons not named as parties. *A dismissal without prejudice permits plaintiff to file a complaint in accordance with the Rules of Civil Procedure.* Plaintiff is advised that model civil pleading forms are available to the general public at law libraries and on the internet.

(Emphasis added.)

¶4 Among a host of other documents Foroughi filed subsequently, she filed a notice of appeal.

DISCUSSION

¶5 Although not squarely addressed by the parties, we have an independent duty to determine whether this court has jurisdiction. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). Because we conclude we lack jurisdiction over this appeal, we do not reach the merits of Foroughi's arguments on appeal.

¶6 This court's jurisdiction is limited by statute. *Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995). "If no statute makes an order appealable, there is no jurisdiction to consider the merits of an appeal from that order." *Id.* (citation omitted). Arizona Revised Statutes ("A.R.S.") section 12-2101 (2003) lists the instances when "[a]n appeal may be taken to the court of appeals from the superior court." Generally, "an appeal lies only from

a final judgment." *Canyon Ambulatory Surgery Ctr. v. SCF Ariz.*, 225 Ariz. 414, ___, ¶ 14, 239 P.3d 733, 737 (App. 2010) (quoting *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, 74, ¶ 4, 202 P.3d 536, 539 (App. 2009)); see also A.R.S. § 12-2101(B).

¶7 An order dismissing a case without prejudice is usually not appealable because it is not a final judgment. *SCF Ariz.*, 225 Ariz. at ____, ¶ 14, 239 P.3d at 737-38. However, a dismissal order without prejudice is appealable if it "in effect determines the action and prevents judgment from which an appeal might be taken." A.R.S. § 12-2101(D); see also *Garza v. Swift Transp. Co.*, 222 Ariz. 281, 284, ¶ 15, 213 P.3d 1008, 1011 (2009). Thus, for example, a case dismissed without prejudice after the applicable statute-of-limitations period has run is appealable under A.R.S. § 12-2101(D). *Garza*, 222 Ariz. at 284, ¶ 15, 213 P.3d at 1011.

¶8 Here, Foroughi does not meaningfully argue that the applicable statute-of-limitations period barred the refiling of her claims, and thus we do not have sufficient proof the claim is time-barred to find jurisdiction.

¶9 Additionally, some cases suggest that a dismissal order may be appealable if the complaint could have been readily amended to avoid dismissal and the order was entered without leave to amend or was expressly entered with prejudice. See, e.g., *SCF Ariz.*, 225 Ariz. at ____, ¶ 14, 239 P.3d at 738;

Flynn v. Johnson, 3 Ariz. App. 369, 373, 414 P.2d 757, 761 (1966).

¶10 Here, the court found Foroughi's amended complaint failed to rectify the original complaint's defects, and, in the signed minute entry, the court expressly ordered the case dismissed without prejudice.¹ Thus, based on Foroughi's demonstrated inability to properly amend her complaint, the court was justified in implicitly concluding further revisions to the complaint would be unsuccessful.

¶11 Accordingly, the signed minute entry was not a final appealable judgment, and we therefore lack jurisdiction over this appeal.² See *McMurray*, 220 Ariz. at 74, ¶ 4, 202 P.3d at 539 (finding lack of jurisdiction over cross-appeal from dismissal order with prejudice).

¹Indeed, the court specifically stated that Foroughi was permitted to refile a complaint.

²Foroughi also appears to challenge on appeal the superior court's order denying her application for a default judgment. Because such an order is not a "final judgment" or otherwise appealable pursuant to Arizona Revised Statutes section 12-2101 (2003), we similarly lack jurisdiction to consider this issue. Foroughi points to no authority to the contrary.

CONCLUSION

¶12 This appeal is dismissed for lack of jurisdiction.³

/s/

PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

PATRICK IRVINE, Judge

³By motion to this court, Foroughi requests that we transfer this case, regardless of its "outcome," to "US District Court case CV 10-838-PHX-SRB." She provides no authority that permits such a "transfer." Absent authority, and in light of our conclusion that we lack jurisdiction over this appeal, we deny Foroughi's request.