

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.

FILED BY CLERK
JUL 16 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

JOHN P. BAKER,)	2 CA-CV 2009-0070
)	DEPARTMENT A
Plaintiff/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
ALEX DAVENPORT,)	Appellate Procedure
)	
Defendant/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20082328

Honorable Virginia Kelly, Judge

DISMISSED

John P. Baker

Florence
In Propria Persona

H O W A R D, Chief Judge.

¶1 Appellant John Baker appeals from the superior court’s order dismissing his complaint without prejudice. Because we do not have jurisdiction of Baker’s appeal, we dismiss it.

¶2 Baker is required to state the basis for our jurisdiction in his opening brief. *See* Ariz. R. Civ. App. P. 13(a)(3). He contends we have jurisdiction pursuant to article VI, § 9 of the Arizona Constitution and also pursuant to A.R.S. § 12-2101(A). Article VI, § 9 merely states that our jurisdiction “shall be as provided by law.” And § 12-2101(A) states that an appeal may be brought to this court in the instances specified in that section. Baker does not identify under which section he claims we have jurisdiction.

¶3 We have a duty to determine independently whether we have jurisdiction over an appeal and to dismiss the appeal if jurisdiction is lacking. *Harris v. Cochise Health Sys.*, 215 Ariz. 344, ¶ 7, 160 P.3d 223, 226 (App. 2007). The trial court dismissed Baker’s complaint without prejudice. Generally, a dismissal without prejudice is not appealable, *see L.B. Nelson Corp. of Tucson v. W. Am. Fin. Corp.*, 150 Ariz. 211, 217, 722 P.2d 379, 385 (App. 1986), because it is not a final judgment that bars the refiling of the action. *See State ex rel. Hess v. Boehringer*, 16 Ariz. 48, 51, 141 P. 126, 127 (1914).

¶4 In the absence of any more specific citation or argument by Baker, we conclude we lack jurisdiction of the appeal. *See FIA Card Servs., N.A. v. Levy*, 219 Ariz. 523, n.1, 200 P.3d 1020, 1021 n.1 (App. 2008) (failure to develop argument on appeal results in abandonment); *State Farm Mut. Auto. Ins. Co. v. Novak*, 167 Ariz. 363, 370, 807 P.2d 531,

538 (App. 1990) (court will not address issue not argued by appellant in opening brief); *see also* Ariz. R. Civ. App. P. 13(a)(6) (appellant's brief shall contain argument of appellant).

We therefore dismiss Baker's appeal for lack of jurisdiction.

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

PHILIP G. ESPINOSA, Presiding Judge

JOHN PELANDER, Judge