[Cite as *Stohlmann v. Koski-Hall*, 2003-Ohio-7068.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82660

DONNA STOHLMANN, ET AL.

PLAINTIFFS-APPELLANTS

vs.

JENNIFER KOSKI-HALL, ET AL.

DEFENDANTS-APPELLEES

JOURNAL ENTRY

AND

OPINION

DATE OF ANNOUNCEMENT OF DECISION:	DECEMBER 24, 2003
CHARACTER OF PROCEEDING:	Civil appeal from Common Pleas Court, Case No. CV-411163
JUDGMENT:	DISMISSED.
DATE OF JOURNALIZATION:	

APPEARANCES:

For plaintiffs-appellants:

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Appearances continued on next page.

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KARPINSKI, J.:

{¶1} Plaintiff, Donna Stohlmann, appeals from a decision rendered by the Cuyahoga Common Pleas Court granting separate motions for summary judgment in favor of the City of Lyndhurst, Detective Uzell and Jennifer and Lawrence Hall. For the reasons that follow, we dismiss for lack of appellate jurisdiction.

{¶2} On June 30, 2000, plaintiff filed suit against defendants, News Herald, The Plain Dealer, WJW, the City of Lyndhurst, Detective Uzell, Jennifer Koski-Hall, and Lawrence Hall, all of whom filed motions for summary judgment. The trial court denied in part and granted in part motions for summary judgment from defendants News Herald and WJW. The court denied The Plain Dealer's motion and granted motions by the City of Lyndhurst, Detective Uzell, and the Halls. A trial date was set and then reset for February 24, 2003.

{¶3} However, on February 20, 2003 plaintiff voluntarily dismissed her entire complaint without prejudice, pursuant to Civ.R. 41(A). On March 21, 2003, she filed an appeal from the

trial court's decision to grant the motions for summary judgment in favor of the City of Lyndhurst, Detective Uzell, and the Halls.

{¶4} Appellate jurisdiction must first be established before an appellate court can review a lower court's decision. Section 3(B)(2), Article IV of the Ohio Constitution regulates this state's appellate jurisdiction. It provides, "Courts of appeals shall have *** jurisdiction to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals ***." In order for appellate jurisdiction to attach, this court must be presented with a judgment or final order from an inferior court.

{¶5} "An order of a court is a final appealable order only if the requirements of both R.C. 2505.02 and, if applicable, Civ.R. 54(B) are met. *Italiano Corp. v. Kent State Univ.* (1989), 44 Ohio St.3d 86, 541 N.E.2d 64, syllabus." *State ex rel. Scruggs v. Sadler*, 97 Ohio St.3d 78, 2002-Ohio-5315, ¶5. R.C. 2505.02 defines a final order, in part, as an order that affects a substantial right in an action that in effect determines the action and prevents a judgment, an order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment, or an order that vacates or sets aside a judgment or grants a new trial.

{¶6} CIV.R. 54(B) states:

> "**When more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third party claim, and whether arising out of the same or separate transactions or when multiple parties are involved, the court may enter final judgment as to one or more but**

> **fewer than all of the claims or parties only upon an express determination that there is no just reason for delay. In the absence of a determination that there is not just reason for delay, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties, shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.**"

{¶7} Here, plaintiff appeals an order granting summary judgment in

{¶8} favor of appellee. The application of R.C. 2505.02 to the instant facts reveals the lower court's granting of summary judgment would have been a "final appealable order." The granting of summary judgment in favor of the City of Lyndhurst, Detective Uzell, and the Halls satisfies the first prong of R.C. 2505.02, because the decision does affect a substantial right in an action that in effect determines the action and prevents a judgment.

{¶9} However, Civ.R. 54 "establishes that courts may enter final judgment as to one or more, but fewer than all defendants in an action, only upon an express determination that there is no just reason to delay entering such a judgment." *Denham v. New Carlisle* (1999), 86 Ohio St.3d 594, 596. For that reason, at the time the motions were granted the decision did not amount to a "final appealable order," because the grant of summary judgment disposed of fewer than all claims and parties, and the court did not certify the order by expressly finding there is no just reason for delay.

{¶10} If plaintiff had filed a voluntary dismissal of all **other** claims and parties, even without prejudice, she could have

transformed the lower court's decision into a "final appealable order." *Denham*, supra. *Denham* concerned a wrongful death action against, among others, the City of New Carlisle. After a lower court granted the city's motion for summary judgment, the plaintiff voluntarily dismissed all claims against all the defendants other than the city. Notably, the lower court did not certify that there was no just reason for delay. Because there were no other claims to litigate, the Supreme Court of Ohio determined that the voluntary dismissal of all other parties transformed an otherwise non-appealable order into a final appealable order.

{¶11} Plaintiff in the case at bar, however, failed to recreate the circumstances in *Denham*, because she dismissed all claims against **all** defendants, not just the remaining defendants. "A dismissal without prejudice leaves the parties as if no action had been brought at all." *DeVille Photography, Inv. v. Bowers* (1959), 169 Ohio St. 267. See, also, *Blankenship v. Wadsworth-Rittman Area Hosp.*, Medina App. No. 02CA0062-M, 2003-Ohio-1288; *Toledo Heart Surgeons v. The Toledo Hosp.*, Lucas App. No. L-02-1059, 2002-Ohio-3577. The dispositive issue here is a voluntary dismissal of the entire case. Because that dismissal rendered the order being appealed a nullity, the order is not appealable. As a result, this court does not have the requisite jurisdiction to hear this appeal. Plaintiff may be able to recommence her action, if she satisfies the statutory requirements.

Appeal dismissed.

It is ordered that appellees recover of appellants their costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

TIMOTHY E. MCMONAGLE, J., AND

JOHN T. PATTON*, J., CONCUR.

DIANE KARPINSKI
PRESIDING JUDGE

(*SITTING BY ASSIGNMENT: JUDGE JOHN T. PATTON, RETIRED, OF THE EIGHTH DISTRICT COURT OF APPEALS.)

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).