

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

COREY O'STRICKER,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2013-P-0042
ROBINSON MEMORIAL HOSPITAL FOUNDATION,	:	
Defendant,	:	
MICHAEL L. PRYCE, M.D., et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 2009 CV 01482.

Judgment: Appeal dismissed.

Robert J. Sawyer, 815 Superior Avenue East, Suite 300, Cleveland, OH 44114-2746
(For Plaintiff-Appellant).

Juliana S. Gall and Rocco D. Potenza, Hanna, Campbell & Powell, L.L.P., 3737
Embassy Parkway, Suite 100, P.O. Box 5521, Akron, OH 44334 (For Defendants-
Appellees).

TIMOTHY P. CANNON, P.J.

{¶1} On May 7, 2013, appellant, Corey O'Stricker, appealed from an April 8, 2013 judgment entry of the Portage County Court of Common Pleas.

{¶2} The record in this case reveals that on September 29, 2009, appellant filed a complaint, which was assigned Case No. 2009 CV 01482, against Robinson

Memorial Hospital Foundation, Ohio Conference of Plasters & Cement Masons Health & Welfare Fund, appellees, Michael L. Pryce, M.D. and Stow-Kent Orthopedics, Inc., and numerous John and Jane Doe Defendants, alleging medical negligence for treatment provided to him. On November 1, 2010, appellant voluntarily dismissed this action pursuant to Civ.R. 41(A). Appellant filed the instant appeal on May 7, 2013, and in his notice of appeal indicates that he is appealing an April 8, 2013 entry.

{¶3} Appellees filed a motion to dismiss the appeal on June 28, 2013. In their motion, appellees allege that after appellant voluntarily dismissed the action in 2009 CV 01482, the matter was re-filed on October 28, 2011, and assigned a different case number, 2011 CV 01405. Appellees state that there is an appeal pending from that action in 11th Dist. No. 2013-P-0043. Furthermore, appellees claim that appellant's notice of appeal in this case indicates that he is appealing the trial court entry of April 8, 2013. However, that judgment entry only identifies Case No. 2011 CV 01405 in the caption.

{¶4} Initially, we must determine whether there is a final, appealable order as this court may entertain only those appeals from final judgments or orders. *Noble v. Colwell*, 44 Ohio St.3d 92, 94 (1989). According to Section 3(B)(2), Article IV of the Ohio Constitution, an appellate court can immediately review a judgment of a trial court "only if it constitutes a 'final order' in the action." *Germ v. Fuerst*, 11th Dist. Lake 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.*, 44 Ohio St.3d 17, 20 (1989). 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). *Id.* at 21.

{¶5} In the instant matter, a review of the record clearly indicates that appellant voluntarily dismissed this action by notice dated November 1, 2010. It is clear that no appeal may be taken from a case that is disposed of by a plaintiff's notice of voluntary dismissal. It is an adjudication other "than on the merits" with no res judicata bar to refiling suit. See *In re Z.S.*, 8th Dist. Cuyahoga No. 99082, 2013-Ohio-1042, ¶9. Therefore, there is no final, appealable order.

{¶6} Based upon the foregoing analysis, appellees' motion to dismiss is granted, and this appeal is hereby dismissed due to lack of a final, appealable order.

{¶7} Appeal dismissed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.