[Cite as *Chuparkoff v. Kapron*, 2009-Ohio-5462.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

TED CHUPARKOFF, et al.	C.A. No. 24234
Appellants	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
ALAN D. KAPRON, et al.	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellees	CASE No. CV 2006-05-3245

DECISION AND JOURNAL ENTRY

Dated: October 14, 2009

BELFANCE, Judge.

{¶1} Appellants, Ted and Margaret Chuparkoff appeal the decision of the Summit County Court of Common Pleas. For the reasons that follow, we dismiss the appeal.

I.

{¶2} The Appellants, Ted and Margaret Chuparkoff are members of St. Nicholas Byzantine Catholic Church. In 2005, the Chuparkoffs made various monetary donations to the church, including a contribution of $5,500 for renovations to the church hall. The hall donation was in the form of a check written by Margaret Chuparkoff, made payable to the church, and deposited by Rev. Alan Kapron into a church account.

{¶3} When the Chuparkoffs received their financial statement for 2005 showing donations made to the church, the $5,500 check was not listed among the other contributions. The Chuparkoffs voiced their concerns to Kapron and a new financial statement was issued. The new statement showed a donation for hall renovations in the amount of $5,000. The Chuparkoffs

again spoke with Kapron and a third financial statement was issued. The Chuparkoffs were told to write in the correct amount representing hall renovations.

{¶4} Ted Chuparkoff filed a complaint against Kapron requesting a proper accounting of all donations made to the church. The complaint was later amended to include Margaret Chuparkoff, who issued the $5,500 check. The church intervened as a new party defendant and argued that the Ohio Attorney General has exclusive authority to investigate and initiate legal action with respect to administration of charitable trusts. The trial court held the progress of the litigation in abeyance to allow the Attorney General to conduct an investigation and issue a report.

{¶5} On May 22, 2008, at 8:00 a.m., the trial court held a status conference during which a representative from the office of the Attorney General presented a report of the findings of their investigation.[1] Although the Attorney General's investigation found that the church should implement better recordkeeping practices, the representative concluded that no legal action would be initiated by the Attorney General. During the status conference, the Chuparkoffs indicated their intent to file a Civil Rule 41(A) dismissal in the near future.

{¶6} At 9:17 a.m. on May 22, 2008, the Chuparkoffs filed a notice of voluntary dismissal pursuant to Civ.R. 41(A), without prejudice, as to all defendants and all claims. At 2:30 p.m. on that same date, the trial court issued an order summarizing what transpired at the status conference. The trial court directed the parties to seek court approval before filing any future pleadings, except for a Civ.R. 41 dismissal. Finally, the court ordered the reports and

[1] The Attorney General's office issued two reports: one report was presented at a prior status conference, and the trial court ordered the final report to be presented at the status conference of May 22, 2008.

supporting documentation submitted by the Attorney General to be sealed, also noting the Chuparkoffs' objection to the sealing. The Chuparkoffs filed a notice of appeal with respect to the trial court's order sealing the report.

II.

{¶7} The Chuparkoffs assign the following errors: (1) the trial court's decision of May 22, 2008 was not supported by the evidence; (2) the trial court erred in ordering the Attorney General's report to be sealed; and (3) the trial court erred by journalizing its order sealing the records after the Chuparkoffs dismissed their claim. Each of the assignments of error focuses on the trial court's order sealing the Attorney General's reports, however, that order was filed subsequent to the Chuparkoffs' voluntary dismissal.

{¶8} Civ.R. 41 permits a plaintiff to voluntarily dismiss his action at any time before trial has commenced so long as the defendant has not filed a counterclaim that cannot remain pending for independent adjudication. Civ.R. 41(A)(1)(a). The plaintiff need not seek leave of court and is not required to serve opposing counsel with notice. *Rini v. Rini*, 8th Dist. No. 80225, 2002-Ohio-6480, at ¶11.

{¶9} An action that is voluntarily dismissed is treated as if it had never been filed. *Gilbert v. WNIR 100 FM* (2001), 142 Ohio App.3d 725, 747, quoting *Sturm v. Sturm* (1991), 61 Ohio St.3d 298, 302. Moreover, "[i]t is axiomatic that such dismissal deprives the trial court of jurisdiction over the matter dismissed." *Gilbert*, 142 Ohio App.3d at 747, quoting *Zimmie v. Zimmie* (1984), 11 Ohio St.3d 94, 95. A dismissal pursuant to Civ.R. 41(A)(1) is not an adjudication on the merits, thus, the plaintiff is permitted to re-file his claim in the future. See *Frysinger v. Leech* (1987), 32 Ohio St.3d 38, 42-43.

{¶10} The notice of dismissal is self-executing, thus, "[t]he mere filing * * * with the clerk of courts completely divests the court of jurisdiction." *Rini* at ¶11, citing *State ex rel. Hunt v. Thompson* (1992), 63 Ohio St.3d 182, 183. A pleading is "filed" when it is presented to the clerk of court and endorsed, i.e. time-stamped. *Am. Express Travel Related Services, Inc. v. MRK Technologies, LTD.*, 8th Dist. No. 83030, 2004-Ohio-140, at ¶2, citing *State v. Gipson* (1998), 80 Ohio St.3d 626, 632. Furthermore, once the matter is dismissed, "[j]urisdiction cannot be reclaimed by the court." *Gilbert*, 142 Ohio App.3d at 747, quoting *Zimmie*, 11 Ohio St.3d at 95.

{¶11} The Chuparkoffs maintain that they are prejudiced by the court's decision to seal the Attorney General's reports because they may not use those reports to file another complaint if they choose. However, in light of the above-stated law, the trial court was without jurisdiction to enter the order. The Chuparkoffs' notice of voluntary dismissal as to all claims and all parties was accepted and processed by the Summit County Clerk of Courts on May 22, 2008, at 9:17 a.m. As of that moment, the matter was no longer pending and no counterclaim remained outstanding, as none had been filed. Therefore, the trial court was completely divested of jurisdiction to take any action on the matter. See *Rini* at ¶11. Thus, the trial court's order, filed at 2:30 p.m. *after* the notice of dismissal was filed, was a nullity. Accordingly, no appeal can be taken from the order sealing the Attorney General's reports. Thus, we do not reach the merits of the Chuparkoffs' assignments of error and dismiss their appeal.

CONCLUSION

{¶12} The trial court did not have jurisdiction to enter an order after the Chuparkoffs dismissed their complaint. The order from which they attempt to appeal is a nullity.

Appeal dismissed.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

EVE V. BELFANCE
FOR THE COURT

CARR, J.
MOORE, P. J.
CONCUR

APPEARANCES:

TED CHUPARKOFF, pro se, Appellants.

JOHN M. SKERIOTIS, Attorney at Law, for Appellee.

EDWARD J. MAHER, Attorney at Law, for Appellee.