

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. DeDonno v. Mason*, Slip Opinion No. 2011-Ohio-1445.]

NOTICE

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SLIP OPINION NO. 2011-OHIO-1445

THE STATE EX REL. DEDONNO, APPELLANT, v. MASON, JUDGE, APPELLEE.

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may be cited as *State ex rel. DeDonno v. Mason*,

Slip Opinion No. 2011-Ohio-1445.]

A dismissal other than on the merits ordinarily does not prevent a party from refiling the action and thus is ordinarily not a final, appealable order — Court of appeals' judgment denying writ of mandamus to compel judge to issue a final, appealable order affirmed.

(No. 2010-1903 — Submitted March 23, 2011 — Decided March 31, 2011.)

APPEAL from the Court of Appeals for Cuyahoga County,

Nos. 95431 and 95498, 2010-Ohio-4903.

Per Curiam.

{¶ 1} We affirm the judgment of the court of appeals denying appellant Gregory Smith DeDonno's request for a writ of mandamus to compel appellee, Cuyahoga County Court of Common Pleas Judge Lance T. Mason, to issue a final, appealable order in a civil case instituted by DeDonno.

SUPREME COURT OF OHIO

{¶ 2} Judge Mason acted within his discretion to dismiss the case because of DeDonno’s failure to comply with a court order. See Civ.R. 41(B)(1). The action was dismissed without prejudice, which, by rule, is not a final, appealable order. See Civ.R. 41(B)(3). “Ordinarily, a dismissal ‘other than on the merits’ does not prevent a party from refile and, therefore, ordinarily, such a dismissal is not a final, appealable order.” *Natl. City Commercial Capital Corp. v. AAAA At Your Service, Inc.*, 114 Ohio St.3d 82, 2007-Ohio-2942, 868 N.E.2d 663, ¶ 8. Extraordinary relief in mandamus is thus not available.

Judgment affirmed.

O’CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O’DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

Gregory Smith DeDonno, pro se.

William D. Mason, Cuyahoga County Prosecuting Attorney, and Charles E. Hannan, Assistant Prosecuting Attorney, for appellee.
