

DOHME, APPELLEE, v. EURAND AMERICA, INC., APPELLANT.

[Cite as *Dohme v. Eurand Am., Inc.*, 121 Ohio St.3d 277, 2009-Ohio-506.]

Judgment of the court of appeals vacated on the authority of Pattison v. W.W. Grainger, Inc., and cause remanded to the trial court.

(No. 2007-0640 — Submitted February 6, 2008 — Decided February 11, 2009.)

APPEAL from the Court of Appeals for Montgomery County,
No. 21520, 170 Ohio App.3d 593, 2007-Ohio-865.

{¶1} Appellee, Randall J. Dohme, filed a complaint against appellant, his former employer, Eurand America, Inc., alleging wrongful retaliation and discharge in violation of public policy and violations of R.C. 4111.01.¹ After the trial court granted summary judgment to Eurand America on the discharge-in-violation-of-public-policy claim, Dohme appealed, and the court of appeals reversed. *Dohme v. Eurand Am., Inc.*, 170 Ohio App.3d 593, 2007-Ohio-865, 868 N.E.2d 701.

{¶2} We accepted Dohme’s appeal on Proposition of Law Nos. II and III under our discretionary authority. *Dohme v. Eurand Am., Inc.*, 114 Ohio St.3d 1424, 2007-Ohio-2904, 868 N.E.2d 679. Following oral argument, we also accepted jurisdiction and ordered briefing on Proposition of Law No. I. *Eurand Am., Inc. v. Dohme*, 119 Ohio St.3d 1471, 2008-Ohio-4911, 894 N.E.2d 331.

{¶3} We recently considered in *Pattison v. W.W. Grainger, Inc.*, 120 Ohio St.3d 142, 2008-Ohio-5276, 897 N.E.2d 126, the question of whether a plaintiff that had asserted multiple claims against a single defendant, when some of those claims had been ruled upon but not converted into a final order under

1. Although not pertinent to this appeal, Dohme’s complaint also raised a third count.

Civ.R. 54(B), could create a final, appealable order by voluntarily dismissing pursuant to Civ.R. 41(A) the remaining claims asserted against the defendant. We held that a plaintiff may *not* create a final, appealable order by voluntarily dismissing pursuant to Civ.R. 41(A) the remaining claims against the defendant. *Pattison* at ¶ 1.

{¶4} During the preparation of the opinion in this case, a thorough review of the record revealed that following the trial court's order dated November 21, 2005, which granted Eurand America's motion for summary judgment and dismissed Dohme's discharge-in-violation-of-public-policy claim, Dohme voluntarily dismissed his remaining claim (violations of R.C. 4111.01) without prejudice pursuant to Civ.R. 41(A). The trial court's order entered on March 7, 2006, specifically noted that the November 21, 2005 order was *not* a final, appealable order. The March 7, 2006 order also noted that Dohme "retains all legal rights to re-file such claim as is provided under Civil Rule 41(A) and other Ohio law." Thus, Dohme dismissed his remaining claim without prejudice pursuant to Civ.R. 41(A) in order to create a final, appealable order.

{¶5} Notwithstanding that the parties have not raised the issue of whether the order appealed from in this case was a final, appealable order, our jurisprudence requires that we consider whether our decision in *Pattison* applies in this case. Because this case is indistinguishable from *Pattison*, for the reasons stated in *Pattison*, the order appealed from was not a final, appealable order.

{¶6} Accordingly, the judgment and opinion of the court of appeals are vacated on the authority of *Pattison v. W.W. Grainger, Inc.*, 120 Ohio St.3d 142, 2008-Ohio-5276, 897 N.E.2d 126. The cause is remanded to the trial court for further proceedings.

MOYER, C.J., and PFEIFER, O'CONNOR, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

LUNDBERG STRATTON, J., dissents.

LUNDBERG STRATTON, J., dissenting.

{¶7} I respectfully dissent for the reasons set forth in my dissenting opinion in *Pattison v. W.W. Grainger, Inc.*, 120 Ohio St.3d 142, 2008-Ohio-5276, 897 N.E.2d 126, ¶ 23-32.

Duwel & Associates, David M. Duwel, and Todd T. Duwel; and Gittes & Schulte and Frederick Martin Gittes, for appellee.

Scheuer, Mackin & Breslin, L.L.C., and Todd D. Penney, for appellant.

Tate & Renner and Richard R. Renner, urging affirmance for amicus curiae, Ohio Employment Lawyers Association.
