

[Cite as *Davenport v. Montgomery Cty.*, 2005-Ohio-6453.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

RONALD TRENELL DAVENPORT	:	
	:	
<i>Plaintiff-Appellant</i>	:	Appellate Case No. 21196
	:	
v.	:	Trial Court Case No. 04-CV-8411
	:	
MONTGOMERY COUNTY, et al.	:	
	:	
<i>Defendant-Appellees</i>	:	

DECISION AND ENTRY
December 6, 2005.

PER CURIAM:

{¶ 1} This matter came to be considered by this Court upon the filing of Appellant's

{¶ 2} response to our order to show cause why the above-captioned appeal should not be dismissed for lack of a final appealable order pursuant to R.C. 2505.02 and this Court's decision *Unger v. Cheesecake Factor* (Aug. 5, 2005), Montgomery App. No. 20659, 2005-Ohio-4023.

{¶ 3} Upon our *sua sponte* review, this Court has concluded that a trial court's ruling on a motion to dismiss which has the effect of dismissing the entire action, is a final appealable order in accordance with R.C. 2505.02(B)(1). See *State ex rel. Hughes v. Celeste* (1993), 67 Ohio St.3d 429, 430 (An order is final and appealable if: "(1) it affects a substantial right; (2) it *in effect determines the action*; and (3) it prevents a judgment.") (emphasis added).

{¶ 4} To the extent that this ruling conflicts with our decision in *Unger*, we hereby OVERRULE that holding as it pertains to the issue of the appealability of a ruling on a motion to dismiss.

{¶ 5} In the present case, the trial court has not entered an order or judgment of dismissal, however, we conclude that the trial court's decision and entry granting a motion to dismiss has the effect of determining the entire action, and thus the decision is immediately appealable. Accordingly, our show cause order is deemed SATISFIED. The above-captioned appeal shall proceed in accordance with The Ohio Rules of Appellate Procedure.

{¶ 6} IT IS SO ORDERED.

JAMES A. BROGAN,
Presiding and Administrative Judge

MIKE FAIN, Judge

Copies provided by the court to:

Ronald T. Davenport, No. 354-068
Noble Correctional Institution
15708 SR 78 West
Caldwell, OH 43724
Plaintiff-Appellant, *pro se*

Montgomery County Prosecutor
Carley J. Ingram, Esq.
Appellate Division, P.O. Box 972
Dayton, OH 45422
Attorney for Defendants-Appellees

CJ3:df