

[Cite as *Murphy v. Ippolito*, 2002-Ohio-3548.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 80682

MICHAEL MURPHY, et al.	:	ACCELERATED DOCKET
	:	
Plaintiffs-Appellees	:	JOURNAL ENTRY
	:	
vs.	:	and
	:	
KENNETH IPPOLITO, et al.	:	OPINION
	:	
Defendants-Appellants	:	

DATE OF ANNOUNCEMENT OF DECISION	:	JULY 11, 2002
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CHARACTER OF PROCEEDING	:	Civil appeal from
	:	the Cuyahoga County
	:	Court of Common Pleas
	:	Case No. 425725

JUDGMENT	:	DISMISSED.
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DATE OF JOURNALIZATION	:	
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APPEARANCES:

For Plaintiffs-Appellees, Michael Murphy, et al.:	HAROLD POLLOCK Attorney at Law Harold Pollock Co., L.P.A. 1707 Terminal Tower Cleveland, Ohio 44113
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For Defendants-Appellants, Terrence and Caroline Murphy:	MICHAEL P. MEEHAN Attorney at Law 3416 West 159 th Street Suite 100 Cleveland, Ohio 44111
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JUDGE TERRENCE O'DONNELL:

{¶1} This appeal is dismissed for lack of a final appealable order.

{¶2} A review of the record reveals that Plaintiffs' claims against Defendants Kenneth Ippolito and Julian Vanni remain pending. The trial court purported to dismiss these claims in the journal entry dated September 6, 2001, which states:

{¶3} *Pursuant to telephone notice from counsel* for Michael Murphy et al (Harold Pollock), Plaintiffs' claims have been settled and dismissed with prejudice, subject to a more definitive entry to be filed within two weeks. (Emphasis added.)

{¶4} Here, however, Plaintiffs failed to file a **written** notice of dismissal as is required by Civ.R. 41(A)(1).¹ That rule does

¹ We note that Civ.R. 41(A)(2), dismissal by order of the court, is not applicable here because that rule favors dismissal without prejudice, and further provides for dismissal "upon such terms and conditions as the court deems proper." In this case, the entry purported to dismiss the case with prejudice, and "subject to a more definitive entry to be filed within two weeks." Neither Plaintiffs nor the court filed that more definitive entry as set forth as a term and condition of the court's September 6, 2001 order.

not recognize oral or telephonic notices; rather, the plaintiff must "file" his notice of dismissal. See *Douthitt v. Garrison* (1981), 3 Ohio App.3d 254, 444 N.E.2d 1068.

{¶5} Further, the September 6, 2001 entry by the court is a nullity. It is well established that Civ.R. 41(A)(1) contemplates unilateral action on the part of a plaintiff without intervention by the court, that a voluntary dismissal is self-executing, and that an order by the court purporting to dismiss a claim pursuant to that rule is a nullity. See *Payton v. Rehberg* (1997), 119 Ohio App.3d 183, 192, 694 N.E.2d 1379.

{¶6} The record on appeal does not contain a written dismissal of Defendants Ippolito and Vanni filed by the Plaintiffs, as contemplated by the trial court in its September 6, 2001 order when it referenced "a more definitive entry to be filed within two weeks." As such, Plaintiffs' claims against these Defendants remain pending, and we are constrained to dismiss this appeal for lack of a final appealable order.

Appeal dismissed.

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This appeal is dismissed.

It is ordered that appellees recover of appellants their costs herein taxed.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

TERRENCE O'DONNELL
JUDGE

MICHAEL J. CORRIGAN, P.J., and

COLLEEN CONWAY COONEY, J., CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).