

[Cite as *Raheem v. McManus*, 2010-Ohio-4899.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94713

MIKAEL A. RAHEEM

PLAINTIFF-APPELLANT

VS.

OFFICER JAMES MCMANUS

DEFENDANT-APPELLEE

**JUDGMENT:
DISMISSED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-706075

BEFORE: Rocco, P.J., Boyle, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: October 7, 2010

FOR APPELLANT

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KENNETH A. ROCCO, P.J.:

{¶ 1} In this appeal assigned to the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1, plaintiff-appellant Mikael A. Raheem, proceeding pro se, challenges the trial court's order that denied his motion to amend his complaint, denied his motion to continue the case, and dismissed his action against defendant-appellee Cleveland police officer James McManus.

{¶ 2} The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assoc.* (1983), 11 Ohio App.3d 158, 463 N.E.2d 655; App.R. 11.1(E).

{¶ 3} It can be gleaned from Raheem’s appellate brief that he asserts the trial court abused its discretion in this matter. However, this court lacks jurisdiction to consider his assertion, because the record reflects the trial court dismissed his case “without prejudice.”

{¶ 4} “This court has previously held that a dismissal without prejudice is not a final determination of the rights of the parties and does not constitute a judgment or final order when refiling or amending of the complaint is possible. *Sexton v. Kidder, Peabody & Co., Inc.* (Aug. 24, 1999), Cuyahoga App. No. 74833, citing *Benaco Tooling, Inc. v. Bancorp Holdings, Inc.* (Mar. 21, 1996), Cuyahoga App. No. 69015; *In re Mary Beth v. Howard* (Dec. 22, 1994), Cuyahoga App. No. 6674 [sic]. A dismissal of an action without prejudice leaves the parties in the same position as if the plaintiff had not commenced the action. *Sexton*, supra, citing *Westerhaus v. Weintraut* (Aug. 31, 1995), Cuyahoga App. No. 68605. Where an action may be refiled, the litigation has not been brought to an end on the merits. *Id.*

{¶ 5} “Here, appellant may refile her complaint. Accordingly, no substantial right has been affected and the litigation has not been brought to an end on its merits. Therefore, the order appealed from is not a final order which this court has jurisdiction to review.” *Newton v. Traveler’s Indemnity Co.*, Cuyahoga App. No. 81284, 2002-Ohio-5856, ¶11-12. See, also, *Coleman v. Showroom Transport*, Cuyahoga App. No. 93675, 2010-Ohio-1439, ¶13-15.

{¶ 6} Raheem's appeal is dismissed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said 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.

KENNETH A. ROCCO, PRESIDING JUDGE

MARY J. BOYLE, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR