

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY**

CHRISTINA KELLY KOLENO,

Plaintiff-Appellant,

- vs -

WILLIAM T. KOLENO, II,

Defendant-Appellee.

CASE NO. 2026-A-0013

Civil Appeal from the
Court of Common Pleas

Trial Court No. 2024 DR 00475

MEMORANDUM OPINION AND JUDGMENT ENTRY

Decided: May 21, 2026
Judgment: Appeal dismissed

Dennis D. Decamillo, Decamillo Law, L.L.C., 1027 Lake Avenue, Ashtabula, OH 44004
(For Plaintiff-Appellant).

Malcolm Stewart Douglas, 113 North Chestnut Street, Jefferson, OH 44047 (For
Defendant-Appellee).

EUGENE A. LUCCI, J.

{¶1} On March 5, 2026, appellant, Christina Kelly Koleno, through counsel, filed a notice of appeal from a February 26, 2026 judgment of the Ashtabula County Court of Common Pleas. In that entry, the trial court denied her motion to set aside the magistrate’s order and denied her motion to stay.

{¶2} An appellate court may only consider appeals from final judgments or orders. *Noble v. Colwell*, 44 Ohio St.3d 92, 96 (1989). Ohio Const., art. IV, § 3(B)(2) provides that a trial court’s judgment can only be immediately reviewed by an appellate court if it constitutes a “final order” in the action. *Tamarac Apts., LLC v. Austin*, 2025-

Ohio-2737, ¶ 4 (11th Dist.). If a lower court's order is not final, an appellate court has no jurisdiction to review the matter, and it must be dismissed. *Id.*

{¶3} A dismissal pursuant to Civ.R. 41(B)(3), "operates as an adjudication upon the merits unless the court, in its order for dismissal, otherwise specifies." Generally, a dismissal without prejudice constitutes "an adjudication otherwise than on the merits" with no res judicata bar to refiling the suit. *Heart v. Ferron*, 2021-Ohio-2184, ¶ 3 (11th Dist.). This court has stated that a dismissal without prejudice leaves a party in the same position the party would have been in prior to the action being filed. *Id.* Furthermore, a dismissal without prejudice is not a final appealable order because a party may refile or amend a complaint. *Id.*

{¶4} In the present matter, because the trial court's dismissal was without prejudice, appellant cannot now appeal. Since she may have the ability to refile her complaint, the trial court's dismissal without prejudice is not a final appealable order. Accordingly, this appeal is hereby, sua sponte, dismissed for lack of jurisdiction.

{¶5} Appeal dismissed.

ROBERT J. PATTON, J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the memorandum opinion of this court, this appeal is hereby sua sponte dismissed for lack of jurisdiction.

Costs to be taxed against appellant.

JUDGE EUGENE A. LUCCI

JUDGE ROBERT J. PATTON,
concur

JUDGE SCOTT LYNCH,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

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