



*Gwin, P.J.*

{¶1} Plaintiff Richard Whittington appeals a judgment of the Court of Common Pleas of Muskingum County, Ohio, which dismissed his complaint against defendants Charles Muchnok, M.D., and Radiology Associates without prejudice.

{¶2} Appellant's pro se brief assigns five errors to the trial court:

{¶3} "I. JUDY [SIC] DID NOT REVIEW THE ISSUES OF THE MRI REPORT.

{¶4} "II. JUDGE HAVE MADE ERROR IN THIS COMPLAINT.

{¶5} "III. JUDGE DID NOT REVIEW THE CHARLES MUCHNOK M.D. REPORT HE DID NOT PUT ALL THE FINDING ONTO HIS REPORT AND KEEP ME FROM GETTING THE RIGH [SIC] HEALTH CARE I WAS IN NEED OF AND HE CAUSED HARM TO PLAINTIFF RICHARD WHITTINGTON.

{¶6} "IV. THE COURT JUDGE DID NOT ISSUES [SIC] AND REVIEW THE EVIDENCE AND FACTS FROM RICHARD WHITTINGTON, THE MRI REPORT FROM CHARLES MUCHNOK, M.D. IS FALSE AND IT IS NOT TRUTH AND IT CAUSED ME HARM AND DAMAGES AND INJURY TO PLAINTIFF RICHARD WHITTINGTON.

{¶7} "V. THE JUDGE DID NOT GIVE PLAINTIFF RICHARD WHITTINGTON AN [SIC] JUSTICE IN THIS CASE AND IT IS BAD FAITH THIS IS LIABLE AND LIABILITY FOR NEGLIGENCE AND NEGLIGENT DOING HIS DUTY TO THE PATIENT, HIS BREACH OF DUTY AND HE DID CAUSED INJURY AND RELATIONSHIP BETWEEN AND INJURY TO CAUSED HARM TO PLAINTIFF RICHARD WHITTINGTON AND MY CLAIM IS FOR \$200,000."

{¶8} Appellant's answer brief sets forth ten assignments of error:

{¶9} “I. JUDGE DID NOT REVIEW THE ISSUES OF THE FALSE AND TRUTH MRI REPORT.

{¶10} “II. JUDGE ERROR IN NOT RULE ON THE FALSE AND TRUTH MRI REPORT.

{¶11} “III. JUDGE NOT REVIEW THE COMPLAINT OF CHARIES [SIC] MUCHNOK M.D.

{¶12} “IV. JUDGE ERROR IN THE TRUTH FACT AND TRUTH FINDING OF MRI REPORT TRUTH DO NOT LIED.

{¶13} “V. JUDGE MADE ERROR IN THE ISSUES OF DISABILITY/LOST OF NORNAL [SIC] LIFE AND PAIN AND SUFFERING AND THE PAST AND FUTURE.

{¶14} ““VI. THE JUDGE DID NOT REVIEW THE EVIDENCE AND FACT FROM RICHARD WHITTINGTON TWO MRI REPORT THE TRUTH FROM FALSE.

{¶15} “VII. JUDGE ERROR IN THE BAD FAITH LAW CHARIES [SIC] MUCHNOK M.D. DUTY TO THE PATIENT BREACH OF DUTY.

{¶16} “VIII. JUDGE MADE ERROR IN HIS DUTY OF THE LIABLE AND LIABILITY FOR NEGLIGENCE AND NEGLIGENT DOING NOT HIS DUTY CAUSED DISABILITY/LOST OF NORNAL [SIC] LIFE AND PAIN AND SUFFERING AND THE PAST AND FUTURE TO RICHARD WHITTINGTON.

{¶17} “VIX. JUDGE MADE ERROR THE TRUTH AND FALSE MRI REPORT.

{¶18} “X. JUDGE MADE ERROR IN MEDICAL NEGLIGENCE CHARIES [SIC] MUCHNOK M.D. NOT DOING HIS DUTY OF CARE.”

{¶19} All of appellant’s assignments of error go to the merits of the complaint. The judgment entry appealed from, however, dismissed appellant’s complaint on

procedural grounds. The trial court's January 27, 2004 judgment entry found appellant's complaint failed to conform with Ohio Civ. R. 8 (A) and 10 (B). The judgment entry sets forth what those rules require in order to state a claim for relief.

{¶20} We have reviewed the complaint, and we find the trial court did not err in finding the complaint does not comply with the Civil Rules. Because the trial court dismissed the complaint without prejudice, we find it is not a final order over which this court has jurisdiction.

{¶21} Section III (B)(2), Article IV of the Ohio Constitution provides we have jurisdiction to review final orders. A dismissal without prejudice leaves the parties in the same position as if the plaintiff had never commenced the action, and, because it may be re-filed the litigation has not been brought to an end.

{¶22} The appeal is dismissed.

By Gwin, P.J., and

Farmer, J., concur;

Hoffman, J.,dissents

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JUDGES

*Hoffman, J., dissenting*

{¶23} While I agree the trial court did not err in finding the appellant's complaint does not comply with the Civil Rules and therefore would affirm the trial court's

dismissal of the complaint, I disagree with the majority's conclusion a trial court's dismissal of a complaint without prejudice is not a final appealable order.

{¶24} I would affirm the trial court's judgment rather than dismiss the appeal for want of jurisdiction.

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

RICHARD WHITTINGTON	:	
	:	
Plaintiff-Appellant	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
CHARLES MUCHNOK, M.D., ET AL	:	
	:	
Defendant-Appellee	:	CASE NO. CT04-0006

For the reasons stated in our accompanying Memorandum-Opinion, the appeal is dismissed for lack of a final appealable order. Costs to appellant.

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JUDGES