[Cite as *Di Fiore v. Lyndhurst*, 2026-Ohio-4290.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

GOFFREDO J. DI FIORE, :

Requester-Appellant, :

No. 116623

v. :

CITY OF LYNDHURST, :

Respondent-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: DISMISSED
RELEASED AND JOURNALIZED: October 29, 2026

Administrative Appeal from the Court of Claims of Ohio
Case No. 2026-00145PQ

Appearances:

Goffredo J. Di Fiore, *pro se*.

Henderson, Schmidlin & McGarry Co., LPA and Raymond J. Schmidlin, Jr.; and John P. Luskin, *for appellee*.

EILEEN A. GALLAGHER, J.:

{¶ 1} Appellant Goffredo J. Di Fiore ("Di Fiore") appeals the Court of Claims' judgment entry dismissing his public-records request complaint against the City of Lyndhurst ("Lyndhurst" or "the city") without prejudice. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.

Facts and Procedural History

{¶ 2} On November 26, 2025, Di Fiore emailed a public-records request to Lyndhurst's assistant law director regarding records concerning a "notice to stop work" order for the property known as Georgetown of Lyndhurst. On December 4, 2025, the assistant law director responded to the request informing Di Fiore that Lyndhurst had no responsive documents besides the attached stop work order. On December 5, 2025, Di Fiore made another public records request concerning the property requesting additional items not contained in his original request. The assistant law director responded to this request the same day and attached additional documents not originally requested.

{¶ 3} On December 8, 2025, Di Fiore made a third public records request concerning the property requesting more items not originally requested. On December 9, 2025, the assistant law director responded to Di Fiore stating Lyndhurst had no further responsive documents. On December 9, 2025, Di Fiore sent a fourth request asking for clarification and more information regarding the city's last response. The assistant law director clarified that the city did not have any responsive documents other than those already produced to Di Fiore.

{¶ 4} On January 2, 2026, Di Fiore hand delivered a prefiling complaint to Lyndhurst giving the city three days to cure the failure alleged in his complaint pursuant to R.C. 149.43(C)(1).

{¶ 5} On February 19, 2026, Di Fiore filed a public record request complaint in the Court of Claims against Lyndhurst and the assistant law director.

Di Fiore alleged that Lyndhurst violated R.C. 149.43(B) by denying him access to public records.

{¶ 6} On April 17, 2026, Lyndhurst filed a motion to dismiss Di Fiore's complaint pursuant to R.C. 149.43(C)(2) alleging, relevant to this appeal, that Di Fiore failed to comply with the service requirements of R.C. 149.43(C)(1).

{¶ 7} On May 12, 2026, a special master issued a report and recommendation ("R&R") where the special master recommended granting Lyndhurst's motion to dismiss pursuant to R.C. 149.43(C)(2) because Di Fiore failed to comply with the statute's service requirements for the preliminary complaint because hand delivery was not permitted by R.C. 149.43(C)(1). On May 22, 2026, Di Fiore filed six objections to the R&R. On June 1, 2026, the trial court overruled Di Fiore's objections, adopted the special master's R&R and dismissed Di Fiore's complaint without prejudice.

{¶ 8} Di Fiore now appeals, raising the following five assignments of error for our review:

Assignment of Error No. 1

> The trial court erred in importing Civ.R. 4 into R.C. 149.43(C)(1) to mandate strict, clerk driven service for a pre-suit administrative notice, violating R.C. 2743.03(D) and creating an operational impossibility. (June 1, 2026 Decision and Entry, at 6-9.)

Assignment of Error No. 2

> The trial court erred as a matter of law in construing the permissive verb "may" in R.C. 149.43(C)(1) as mandatory. (Decision and Entry at 6.)

Assignment of Error No. 3

> The trial court erred in failing to recognize that hand delivery with acknowledged receipt satisfies R.C. 149.43(C)(2)'s "properly transmitted" functional standard. (Decision and Entry at 6-9.)

Assignment of Error No. 4

> The trial court erred in expanding R.C. 149.43(C)(2)'s dismissal trigger beyond its express terms. (Decision and Entry at 9.)

Assignment of Error No. 5

> The trial court erred in rejecting waiver under Akron-Canton Regional Airport Auth. V. Swinehart and Civ.R. 12(H)(1). (Decision and Entry at 9.)

Law and Analysis

{¶ 9} The city alleges in its brief that this court does not have jurisdiction to hear this appeal because the Court of Claims' journal entry dismissed Di Fiore's complaint without prejudice and, as such, it is not a final appealable order. Before reviewing the merits of Di Fiore's assignments of error "we must first determine whether we have jurisdiction to do so." *G&E HC Reit II Parkway Med. Ctr., L.L.C. v. Drs. Ford & Soud, Inc.*, 2019-Ohio-791, ¶ 13 (8th Dist.).

{¶ 10} "An appellate court has jurisdiction to review, affirm, modify, set aside, or reverse judgments or final orders." *Id.*; Ohio Const., art. IV, § 3(B)(2); R.C. 2505.03. "If an order is not final and appealable, then an appellate court has no jurisdiction to review the matter and it must be dismissed." *Id.*

{¶ 11} "'Ordinarily a dismissal of a complaint "without prejudice" is not a final, appealable order because it is not an adjudication on the merits and does not prevent the party from refiling."' *Grace v. Racino*, 2026-Ohio-941, ¶ 9 (8th Dist.),

quoting *Martin v. Ohio Univ.*, 2023-Ohio-2511, ¶ 20 (4th Dist.), citing *State ex rel. DeDonno v. Mason*, 2011-Ohio-1445, ¶ 2; *see also Glavic v. Weltman*, 2024-Ohio-6029, ¶ 10 (8th Dist.) ("'[A] trial court's dismissal of a matter without prejudice is not a final, appealable order.'"), quoting *Lakeview Holding (OH), L.L.C. v. Farmer*, 2020-Ohio-3891, ¶ 18 (8th Dist.), citing *Natl. City Commercial Capital Corp. v. AAAA at Your Serv., Inc.*, 2007-Ohio-2942.

{¶ 12} Here, the Court of Claims dismissed Di Fiore's complaint "without prejudice" because he failed to comply with the procedural requirement of R.C. 149.43(C)(1) and did not serve the prefiling complaint as mandated by the statute. The Court of Claims' judgment dismissing his complaint "without prejudice" did not adjudicate or rule on any of the allegations raised in Di Fiore's complaint against Lyndhurst. Furthermore, nothing, besides alleged inconvenience, prevents Di Fiore from refiling his complaint after serving the prefiling complaint in compliance with R.C. 149.43(C)(1). Because there was no adjudication of the merits of Di Fiore's claims and he is able to refile his complaint, the dismissal of his complaint "without prejudice" is not a final, appealable order.

{¶ 13} Di Fiore argues that this court has jurisdiction pursuant to R.C. 2743.75(G)(1) because this is an appeal from "a final order of the court of claims[.]" However, as discussed above the order here is not final because it is not an adjudication on the merits and Di Fiore is not prevented from refiling his complaint. Di Fiore also argues that a dismissal without prejudice is supposed to leave a party in the same position they were in prior to the filing and, because the Court of Claims

awarded Lyndhurst costs, he is not left in the same position. This argument, however, is unpersuasive. The award of costs does not change the fact that the Court of Claims' judgment did not adjudicate his claims on their merits and he is still able to refile his complaint. Di Fiore cites no case law to support his argument that the award of costs somehow changes the disposition of the dismissal to a final appealable order.

{¶ 14} Accordingly, the Court of Claims' dismissal was not a final, appealable order and we lack jurisdiction to hear this appeal. *See Shutway v. Ohio Dept. of Rehab. & Corr.*, 2021-Ohio-3900 (10th Dist.) (holding that a complaint dismissed "without prejudice" by Court of Claims is not a final appealable order, the court lacked jurisdiction to hear the appeal and the appeal was properly dismissed).

{¶ 15} Appeal dismissed.

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

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

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EILEEN A. GALLAGHER, JUDGE

EILEEN T. GALLAGHER, P.J., and
KATHLEEN ANN KEOUGH, J., CONCUR