

**THE STATE EX REL. DEDONNO, APPELLANT, v. MASON, JUDGE, APPELLEE.**

[Cite as *State ex rel. DeDonno v. Mason*,  
128 Ohio St.3d 412, 2011-Ohio-1445.]

*A dismissal other than on the merits ordinarily does not prevent a party from refileing the action and thus is ordinarily not a final, appealable order — Court of appeals’ judgment denying writ of mandamus to compel judge to issue a final, appealable order affirmed.*

(No. 2010-1903 — Submitted March 23, 2011 — Decided March 31, 2011.)

APPEAL from the Court of Appeals for Cuyahoga County,

Nos. 95431 and 95498, 2010-Ohio-4903.

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**Per Curiam.**

{¶ 1} We affirm the judgment of the court of appeals denying appellant Gregory Smith DeDonno’s request for a writ of mandamus to compel appellee, Cuyahoga County Court of Common Pleas Judge Lance T. Mason, to issue a final, appealable order in a civil case instituted by DeDonno.

{¶ 2} Judge Mason acted within his discretion to dismiss the case because of DeDonno’s failure to comply with a court order. See Civ.R. 41(B)(1). The action was dismissed without prejudice, which, by rule, is not a final, appealable order. See Civ.R. 41(B)(3). “Ordinarily, a dismissal ‘other than on the merits’ does not prevent a party from refileing and, therefore, ordinarily, such a dismissal is not a final, appealable order.” *Natl. City Commercial Capital Corp. v. AAAA At Your Service, Inc.*, 114 Ohio St.3d 82, 2007-Ohio-2942, 868 N.E.2d 663, ¶ 8. Extraordinary relief in mandamus is thus not available.

Judgment affirmed.

SUPREME COURT OF OHIO

O'CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O'DONNELL,  
LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

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Gregory Smith DeDonno, pro se.

William D. Mason, Cuyahoga County Prosecuting Attorney, and Charles  
E. Hannan, Assistant Prosecuting Attorney, for appellee.

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