

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

MELINDA GABRIELLA VALENZUELA,
Plaintiff/Appellant,

v.

ARIZONA DEPARTMENT OF CORRECTIONS,
Defendant/Appellee.

No. 2 CA-CV 2016-0068
Filed August 24, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100CV201500923
The Honorable Stephen F. McCarville, Judge

APPEAL DISMISSED

COUNSEL

Melinda Gabriella Valenzuela, Buckeye
In Propria Persona

Mark Brnovich, Arizona Attorney General
By Michael E. Gottfried, Assistant Attorney General, Phoenix
Counsel for Defendant/Appellee

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Eckerstrom concurred.

M I L L E R, Judge:

¶1 Melinda Valenzuela appeals the trial court's order dismissing this case without prejudice for failure to submit proof of service. Because we lack jurisdiction, we dismiss the appeal.

Factual and Procedural History

¶2 Valenzuela, an inmate in the Arizona Department of Corrections (ADOC), filed a lawsuit against ADOC for defamation. Upon Valenzuela's failure to file an affidavit of service as required by Rule 4(g), Ariz. R. Civ. P., the trial court dismissed the action without prejudice in a signed minute entry. The court ordered that its minute entry would "serve as the final order pursuant to Rule 54(c), of the Arizona Rules of Civil Procedure." Valenzuela appeals the dismissal.

Jurisdictional Analysis

¶3 This court has an independent duty to ascertain whether we have jurisdiction over an appeal. *Camasura v. Camasura*, 238 Ariz. 179, ¶ 5, 358 P.3d 600, 602 (App. 2015). Our jurisdiction is statutory and is generally limited to appeals from final judgments. *Id.* ¶¶ 5-6; *see also* A.R.S. § 12-2101(A)(1). We review de novo the trial court's determination that a judgment is final. *Madrid v. Avalon Care Ctr.-Chandler, L.L.C.*, 236 Ariz. 221, ¶¶ 3, 6, 338 P.3d 328, 330-31 (App. 2014).

¶4 In general, a dismissal without prejudice is not a final judgment, and "for that reason alone [an] appeal of [such an] order should be dismissed." *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4, 202 P.3d 536, 539 (App. 2009), *quoting* *L.B. Nelson Corp. of Tucson v. W. Am. Fin. Corp.*, 150 Ariz. 211, 217, 722 P.2d 379,

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385 (App. 1986) (alterations in *McMurray*); *but see Canyon Ambulatory Surgery Ctr. v. SCF Ariz.*, 225 Ariz. 414, ¶ 14, 239 P.3d 733, 737-38 (App. 2010) (dismissal without prejudice appealable where statute of limitations bars timely refileing or where dismissal order is entered without leave to amend). Here, Valenzuela does not argue the statute of limitations bars refileing the claims such that the dismissal without prejudice effectively determines the outcome of the action and prevents final judgment. Thus, the trial court's order dismissing the case without prejudice was not final and not appealable.¹ *See McMurray*, 220 Ariz. 71, ¶ 4, 202 P.3d at 539. We have no jurisdiction.

Disposition

¶5 We dismiss the appeal.

¹This is so notwithstanding the court's reference to Rule 54(c). *See Madrid*, 236 Ariz. 221, ¶ 6, 338 P.3d at 331 (judgment not made final merely by inclusion of Rule 54(c) language).