

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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MELINDA GABRIELLA VALENZUELA,  
*Plaintiff/Appellant,*

*v.*

DR. JAMES CORD,  
*Defendant/Appellee.*

No. 2 CA-CV 2016-0074  
Filed September 7, 2016

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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NOT FOR PUBLICATION  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).*

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Appeal from the Superior Court in Pinal County  
No. S1100CV201501069  
The Honorable Stephen F. McCarville, Judge

**APPEAL DISMISSED**

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Melinda G. Valenzuela, Buckeye  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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VALENZUELA v. CORD  
Decision of the Court

V Á S Q U E Z, Presiding 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 Background**

¶2 Valenzuela, an inmate in the Arizona Department of Corrections, filed a lawsuit against Dr. James Cord based on an incident in which she claims he "sexually assault[ed] her and then ripped out her surgically implanted tube." Upon her failure to file proof of service as required by Rule 4(g), Ariz. R. Civ. P., the trial court dismissed the case 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." This appeal followed.

**Jurisdiction**

¶3 This court has an independent duty to consider whether we have jurisdiction over an appeal and, if lacking, to dismiss the appeal. *Robinson v. Kay*, 225 Ariz. 191, ¶ 4, 236 P.3d 418, 419 (App. 2010). Our jurisdiction is statutory and is generally limited to appeals from final judgments. *Camasura v. Camasura*, 238 Ariz. 179, ¶¶ 5-6, 358 P.3d 600, 602 (App. 2015); *see also* A.R.S. § 12-2101(A)(1). We review de novo the trial court's determination that a judgment is final. *Robinson*, 225 Ariz. 191, ¶ 4, 236 P.3d at 419; *see also 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, appealable judgment. *McMurray v. Dream Catcher USA, Inc.*, 220 Ariz. 71, ¶ 4, 202 P.3d 536, 539 (App. 2009). "[F]or that reason alone [an] appeal of [such an] order should be dismissed." *Id.*, quoting *L.B. Nelson Corp. of Tucson v. W. Am. Fin. Corp.*, 150 Ariz. 211, 217, 722 P.2d 379, 385 (App. 1986) (alterations in *McMurray*). However, a dismissal without prejudice is appealable when the statute of limitations bars the timely refile or the dismissal is entered without leave to amend. *Canyon Ambulatory Surgery Ctr. v. SCF*

VALENZUELA v. CORD  
Decision of the Court

*Ariz.*, 225 Ariz. 414, ¶ 14, 239 P.3d 733, 737-38 (App. 2010); *see also* § 12-2101(A)(3) (appeal may be taken from “order affecting a substantial right made in any action when the order in effect determines the action and prevents judgment from which an appeal might be taken”).

¶5 Valenzuela is appealing the trial court’s dismissal of this case without prejudice. She does not argue circumstances bar the refiling of her claims, such that the dismissal effectively determines the outcome of the action and prevents final judgment. Thus, the trial court’s order dismissing the case without prejudice is not appealable.<sup>1</sup> *See McMurray*, 220 Ariz. 71, ¶ 4, 202 P.3d at 539.

**Disposition**

¶6 For the reasons stated above, we dismiss this appeal for lack of jurisdiction.

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<sup>1</sup>This 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).