

COURT OF APPEALS OF OHIO, SECOND APPELLATE DISTRICT,  
MONTGOMERY COUNTY

Mesenbrink v. Hartley

2026-Ohio-856 · No. 30459 · Decided March 13, 2026

SUMMARY

The Ohio Second District Court of Appeals dismissed Cynthia Mesenbrink’s appeal and Aaron Hartley’s cross-appeal for lack of a final appealable order. The court held that the trial court’s dismissal without prejudice under Civ.R. 41(B)(1) did not constitute a final appealable order and that the parties could refile their claims. The court therefore did not reach challenges concerning amendment of pleadings, statutes of limitations, jurisdiction over replevin, or dismissal for failure to prosecute.

CASE DETAILS

|                       |                                                                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Court of Appeals of Ohio, Second Appellate District, Montgomery County                                                                                                                                                                 |
| WRITING FOR THE COURT | Robert G. Hanseman; Tucker, J.; Huffman, J.                                                                                                                                                                                            |
| JURISDICTION          | Ohio Court of Appeals, Second Appellate District, Montgomery County                                                                                                                                                                    |
| DECIDED               | March 13, 2026                                                                                                                                                                                                                         |
| DOCKET                | 30459                                                                                                                                                                                                                                  |
| DISPOSITION           | dismissed                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Mesenbrink appealed from the Montgomery County Court of Common Pleas' dismissal without prejudice of her tort action under Ohio Civ.R. 41(B)(1). Hartley cross-appealed from the trial court's partial dismissal of his counterclaims. |
| STANDARD OF REVIEW    | De novo review of whether an order is a final appealable order under Ohio law.                                                                                                                                                         |
| PRECEDENTIAL VALUE    | Published and precedential Ohio Court of Appeals opinion.                                                                                                                                                                              |
| PARTIES               | Cynthia Mesenbrink v. Aaron Hartley                                                                                                                                                                                                    |

TOPICS

- final judgment rule
- appellate jurisdiction
- appellate procedure
- civil procedure
- statute of limitations

## PRACTICE AREAS

civil procedure

appellate procedure

torts

remedies

## QUESTIONS PRESENTED

1. Whether the trial court's March 31, 2025 dismissal without prejudice under Civ.R. 41(B)(1) was a final appealable order.
2. Whether the appellate court could review the trial court's interlocutory rulings concerning amendment of the answer, statutes of limitations, subject matter jurisdiction over the replevin claim, and dismissal of counterclaims.
3. Whether the trial court's dismissal for failure to obtain substitute counsel was improper under *Svoboda v. Brunswick* and, if so, whether the error was harmless because the claims could be refiled.

## HOLDINGS

1. The trial court's dismissal without prejudice for failure to prosecute was not a final appealable order because the dismissal did not adjudicate the merits, and the record did not show that either party suffered prejudice beyond the inconvenience of refiling.
2. The appellate court could not review the trial court's prior interlocutory rulings because the dismissal without prejudice was not final and appealable, the trial court had not certified any order under Civ.R. 54(B), and the interlocutory rulings had no continuing effect or preclusive effect if the claims were refiled.
3. The trial court had no legitimate basis to dismiss the action solely because Mesenbrink failed to obtain substitute counsel; however, the appellate court did not grant relief because the dismissal was without prejudice and the parties could refile their claims, rendering any error harmless.

## KEY QUOTATIONS

*“Of relevance here, an order is final and appealable if it ‘affects a substantial right in an action that in effect determines the action and prevents a judgment.’”* (¶ 22)

*“A dismissal without prejudice under Civ.R. 41(B)(1) for failure to comply with a court order generally is not a final appealable order.”* (¶ 24)

*“The Court emphasized that laypersons may represent themselves, and there was no Civil Rule, statute, legal precedent, or inherent authority permitting a trial court to dismiss an action for want of prosecution because a party failed to have legal counsel as the court requested.”* (¶ 27)

*“Nevertheless, the trial court’s dismissal was without prejudice, and the parties’ ability to refile their claims renders any error harmless.”* (¶ 31)

## FACTUAL BACKGROUND

Mesenbrink and Hartley married in 2019 after Hartley had represented Mesenbrink in a divorce proceeding. Mesenbrink alleged that during their marriage Hartley engaged in threatening, abusive, destructive, and

defamatory conduct, much of which occurred in 2020; Hartley asserted counterclaims based on alleged infidelity, property destruction, threats, and assaults. After the trial court partially dismissed claims and both parties' counsel withdrew, the court ordered the parties to obtain new counsel, and dismissed the action without prejudice when Mesenbrink did not obtain counsel within the required period.

## PROCEDURAL HISTORY

Mesenbrink filed claims for intentional infliction of emotional distress, defamation, statutory damages, and replevin; Hartley asserted counterclaims for intentional infliction of emotional distress and assault and battery. Shortly before trial, the trial court permitted Hartley to amend his answer to assert statute-of-limitations defenses, partially dismissed claims, required both parties to obtain new counsel after their attorneys withdrew, and then dismissed the case without prejudice when Mesenbrink failed to obtain counsel within 30 days. The appellate court dismissed both the appeal and cross-appeal because the dismissal without prejudice was not a final appealable order.

## DISPOSITION

dismissed

## CASES CITED

- Cleavenger v. B.O., 2022-Ohio-454, ¶ 16 (9th Dist.)
- State ex rel. DeDonno v. Mason, 2011-Ohio-1445, ¶ 2
- Ebbets Partners, Ltd. v. Day, 2007-Ohio-1667, ¶¶ 11-14 (2d Dist.)
- Allstate Fire & Cas. v. Headley, 2015-Ohio-4606, ¶ 10 (2d Dist.)
- In re K.A.V., 2014-Ohio-5575, ¶ 9 (2d Dist.)
- Poirier v. Process Equip. Co. of Tipp City, 2018-Ohio-1945, ¶¶ 45, 48
- Svoboda v. Brunswick, 6 Ohio St.3d 348, 349-350 (1983)
- Hensley v. Henry, 61 Ohio St.2d 277 (1980)