

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Bert E. Trill, et al.

Court of Appeals No. S-10-036

Appellants

Trial Court No. 04 CV 000567

v.

Alberto Sifuentes, et al.

DECISION AND JUDGMENT

Appellees

Decided: March 25, 2011

* * * * *

Paul E. Hoeffel, for appellants.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of Common Pleas dismissing a complaint filed by appellants, Bert and Peggy Trill. For the reasons that follow, we reverse.

{¶ 2} On July 21, 2002, appellant Bert Trill was driving in Bellevue, Ohio, with his wife, appellant Peggy Trill, when they were rear-ended by a vehicle driven by Alberto

Sifuentes. The vehicle was owned by Cousin's Waste Control Corporation ("Cousins"), Sifuentes' employer.

{¶ 3} As a result of the accident, appellants filed a personal injury suit on June 14, 2004, naming Sifuentes and Cousins as defendants. In response, Cousins filed a notice of bankruptcy stay. The notice advised the court and the parties that Cousins' parent company, Phillips Services Corporation, had filed a voluntary petition under Chapter 11 of the U.S. Bankruptcy Act in the United States Bankruptcy Court for the Southern District of Texas and that pursuant to Section 362(A), all proceedings involving Cousins' parent company are stayed until further order from the bankruptcy court. On July 20, 2004, the trial court in this case issued an order staying the instant action until further notice.

{¶ 4} On July 24, 2006, appellants filed a motion to reactivate their case based on the fact that the bankruptcy case had concluded. On December 26, 2007, the trial court lifted the previous stay but imposed another one based on the fact that appellants were in the process of filing a claim with their uninsured motorist carrier.

{¶ 5} On April 1, 2010, appellants filed a motion to reactivate their case. The trial court granted their motion.

{¶ 6} On April 13, 2010, appellants filed a motion for default judgment against Sifuentes. The motion was granted on April 19, 2010, and a damages hearing was scheduled.

{¶ 7} On May 7, 2010, Cousins filed a motion to dismiss pursuant to Civ.R. 12(B)(6). Cousins argued that all of appellants' claims were discharged in bankruptcy. On May 19, 2010, appellants filed a notice of voluntary dismissal of Cousins. The notice specifically stated that "[T]he cause of action against the remaining defendant, Alberto Sifuentes, remains pending."

{¶ 8} On May 21, 2010, Cousins filed a "motion to deny plaintiffs' requested award of damages." Cousins sought an order from the trial court denying appellants damages in their case against Sifuentes. Cousins claimed that appellants were judicially estopped from asserting such claims as the claims were not included as an asset in a previous bankruptcy filed by appellants. In response, appellants filed a motion to strike Cousins' motion based on the fact that they are no longer a party to the action.

{¶ 9} On July 6, 2010, the court granted Cousins' motion finding that "grounds for application of the doctrine of judicial estoppel have been met." Consequently, the trial court dismissed appellants' claims against Sifuentes. Appellants now appeal setting forth the following assignments of error:

{¶ 10} "I. The Court lacked jurisdiction to consider the Civ.R. 12(B) motion filed by Cousins after it had been dismissed and where Cousins had no standing to bring the motion.

{¶ 11} "II. The Court erred under Civ.R. 12(B) in failing to convert a motion to dismiss based on 'outside materials' to a Civ. R. 56 motion and provide the Plaintiffs with an opportunity to respond."

{¶ 12} Initially, we note that appellants have erroneously framed their arguments in the context of Cousins' Civ.R. 12(B)(6) motion. In fact, the trial court never ruled on the 12(B)(6) motion before appellants filed their notice of voluntary dismissal. The motion at issue in this appeal is Cousins' "motion to deny plaintiffs' requested award of damages" which they filed after appellants filed their notice of voluntary dismissal.

{¶ 13} Civ.R. 41 states in pertinent part:

{¶ 14} "(A) Voluntary dismissal: effect thereof

{¶ 15} "By plaintiff; by stipulation. Subject to the provisions of Civ. R. 23(E), Civ. R. 23.1, and Civ. R. 66, a plaintiff, without order of court, may dismiss all claims asserted by that plaintiff against a defendant by doing either of the following:

{¶ 16} "(a) filing a notice of dismissal at any time before the commencement of trial unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by that defendant; * * *."

{¶ 17} "Dismissals pursuant to Civ.R. 41(A)(1) are fully and completely effectuated upon the filing of a notice of voluntary dismissal by the plaintiff. A voluntary dismissal is self-executing and 'the mere filing of the notice of dismissal by the plaintiff automatically terminates the case without intervention by the court.' *Payton v. Rehberg* (1997), 119 Ohio App.3d 183, 192. Since a Civ.R. 41(A)(1)(a) dismissal is self-executing, 'the trial court's discretion is not involved in deciding whether to recognize the dismissal.' *Selker & Furber v. Brightman* (2000), 138 Ohio App.3d 710, 714." *Parker v. Cleveland Pub. Library*, 8th Dist No. 83666, 2004-Ohio-4492.

{¶ 18} "[W]hen a trial court unconditionally dismisses a case or a case has been voluntarily dismissed under Civ.R. 41(A)(1), the trial court patently and unambiguously lacks jurisdiction to proceed * * *." *State ex rel. Hummel v. Sadler*, 96 Ohio St.3d 84, 2002-Ohio-3605. Therefore, the effect, in this case, of appellants' filing of the notice of voluntary dismissal was to divest the court of jurisdiction over Cousins. Accordingly, the trial court was without authority to rule on Cousins' "motion to deny plaintiffs' requested award of damages." Appellants two assignments of error are found well-taken.

{¶ 19} On consideration whereof, the judgment of the Sandusky County Court of Common Pleas is reversed and the case is remanded for a damages hearing on appellants' claim against Sifuentes. Costs of this appeal are waived.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
