

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Michael A. Kelley, Jr. :  
Plaintiff-Appellant, :  
v. : No. 18AP-487  
Philip W. Gerth, : (C.P.C. No. 17CV-5235)  
Defendant-Appellee. : (ACCELERATED CALENDAR)

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D E C I S I O N

Rendered on October 9, 2018

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**On brief:** *Michael A. Kelley, Jr., pro se.* **Argued:** *Michael A. Kelley, Jr.*

**On brief:** *Anspach Meeks Ellenberger LLP, and David A. Herd,* for appellee. **Argued:** *David A. Herd.*

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APPEAL from the Franklin County Court of Common Pleas

BRUNNER, J.

{¶ 1} Plaintiff-appellant, Michael A. Kelley, Jr., appeals a decision and entry filed by the Franklin County Court of Common Pleas on June 8, 2018 denying his motion for summary judgment and granting summary judgment to defendant-appellee, Philip W. Gerth. Because, instead of a brief, Kelley has filed a largely illegible and unintelligible document that fails to even substantially comply with any of the rules governing practice and procedure before this Court, we sua sponte dismiss this appeal.

**I. FACTS AND PROCEDURAL HISTORY**

{¶ 2} On June 9, 2017, Kelley filed a generally incomprehensible document titled an "affidavit" accompanied by miscellaneous attachments in an apparent effort to sue Gerth for malpractice. (June 9, 2017 Kelley Aff.) Gerth answered on June 22, 2017. (June 22, 2017 Answer.) Within a matter of months, both parties had moved for summary judgment. (Dec. 11, 2017 Gerth Mot. for Summ. Jgmt.; Jan 3, 2018 Kelley Mot. for Summ. Jgmt.) As

is true of his other filings, Kelley's motion for summary judgment and accompanying materials were largely indecipherable. (Jan 3, 2018 Kelley Mot. for Summ. Jgmt.)

{¶ 3} However, Gerth's motion and accompanying affidavit with exhibits explained that Kelley retained him to determine if there was any viable appeal that could be taken from Kelley's pro se federal Medicaid case and, if so, to file such an appeal. (Dec. 1, 2017 Gerth Aff. at ¶ 3, attached to Dec. 11, 2017 Gerth Mot. for Summ. Jgmt.) After reviewing the case, Gerth determined that no non-frivolous appeal could be taken. *Id.* at ¶ 4-6, 8-10. When Gerth communicated that conclusion and offered other options, Kelley did not evince interest in pursuing other avenues and continued to insist on an appeal in the federal case. *Id.* at ¶ 6-10. Gerth declined to file a frivolous appeal, terminated the representation, and returned the unearned balance of Kelley's retainer. *Id.* at ¶ 9, 11.

{¶ 4} On June 8, 2018, the trial court denied Kelley's motion for summary judgment and granted Gerth's motion. (June 8, 2018 Decision & Entry, in passim.) Kelley now timely appeals.

## **II. DISCUSSION**

{¶ 5} The document that purports to be Kelley's brief does not contain assignments of error. (June 28, 2018 Kelley Filing, in passim.) App.R. 16(A)(3). Nor does it contain any intelligible arguments pointing to how the trial court erred and from which we might infer a possible assignment of error. App.R. 16(A)(7). There are no table of contents, no table of authorities, no issues presented, no statement of the case, no statement of facts, and no conclusion to "briefly stat[e] the precise relief sought." App.R. 16(A)(1) through (8). The filing is not signed and does not provide Kelley's contact information. Civ.R. 11. It contains no certificate of service. Loc.R. 2(E) of the Tenth District Court of Appeals; Civ.R. 5(B)(4). It is not formatted as required and is, in fact, illegible in significant part. App.R. 19(A); Loc.R. 2(D) and 8(A)(1) of the Tenth District. Kelley's filing is not a brief in any traditional sense of the word and fails to comply with substantially any of the rules of this Court or the Ohio Rules of Civil or Appellate Procedure.

**III. CONCLUSION**

{¶ 6} As Kelley has failed to file a brief even substantially in conformity with the Ohio Rules of Appellate Procedure we sua sponte dismiss this appeal. App.R. 18(C).

*Appeal dismissed.*

TYACK and KLATT, JJ., concur.

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