[Cite as *Williams v. AutoZone,* 2011-Ohio-4985.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Alan Williams,	:	
Plaintiff-Appellant,	:	
v.	:	No. 11AP-134 (C.P.C. No. 07CVA-08-10835)
AutoZone et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on September 29, 2011

Alan Williams, pro se.

Crabbe, *Brown & James*, *LLP*, and *Steven A. Davis*, for appellees.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Appellant, Alan Williams, appeals from a judgment entered in favor of appellees, AutoZone, Dan Williams, Maria Welch, and Jack Caulley, following a jury trial in the Franklin County Court of Common Pleas. For the following reasons, we affirm.

{¶2} On August 14, 2007, appellant, acting pro se, filed a complaint in the Franklin County Court of Common Pleas, claiming invasion of privacy, defamation, sexual harassment, professional negligence, and vicarious liability against appellees

AutoZone, Dan Williams, Maria Welch, Joseph R. Hyde, III (aka "Pitt" Hyde[1]), William C. Rhodes, III, and William T. Giles.

{¶3} On May 15, 2008, appellees moved to dismiss appellant's claims against Giles, Hyde, and Rhodes, arguing that appellant failed to serve them with a copy of the complaint and summons within six months, as required by Civ.R. 4(E). The trial court initially heard the motion on September 8, 2008, but then referred the matter to a magistrate who scheduled a hearing for December 4, 2008. Appellant did not attend the December 4 hearing, and on December 8, the magistrate filed a decision recommending that the trial court grant the motion to dismiss. Appellant filed objections to the magistrate's decision, which the trial court later overruled.

{¶4} A jury trial began on January 10, 2011. After appellant's opening statement, appellee moved for a directed verdict, pursuant to Civ.R. 50(A), on the grounds that appellant failed to propose relevant evidence supporting the elements of each claim. The trial court, in a decision and entry filed on January 14, 2011, granted the motion in part and dismissed appellant's sexual harassment and professional negligence claims with prejudice. That same day, the jury ruled against appellant on the remaining claims of defamation, vicarious liability, and invasion of privacy.

{¶5} Appellant now appeals, asserting the following sixteen assignments of error:

> [1.] Did the Trial Court Err when it overlooked and disregard the appellants disclosure of witnesses written within his motions prior to the discovery cutoff. The court magistrate caused an abuse of discretion when he erroneously claimed

[1] At a hearing held on September 8, 2009, counsel for appellees informed the trial court that Pitt Hyde and Joseph R. Hyde, III are the same person. (See entry filed January 10, 2011.)

that the appellant was not afforded the latitude in submitting a list of witnesses within other documents.

Defense attorney Steven Davis and judge Beatty said the plaintiff did not serve the court with a disclosure of witness list. The plaintiff was void of a fair trial and due process without having the appropriate witnesses. The appellant did submit several motions complaining about witnesses refusing to cooperate.

[2.] The Trial Court did abuse of discretion when it dismissed the owners of the company from the lawsuit. One employee Jack Caulley avoided the subpoena that had previously made an appearance. The appellant requested that the court would grant default judgment against Jack Caulley because he never showed up again. Attorney Steven Davis claimed that Caulley was fired from the company so Davis acted as if he does not have any obligation to get him to come to court. Again the court would not grant an order in for Jack Caulley. The court left the appellant without any power to enforce subpoenas and would not grant the any power to compel anyone or anything from the defendants. The appellant was left powerless by the trial court.

[3.] The attorney was allowed to make racial stereotype of the lifestyle of the appellants living area to give an excuse for the mistreatment suffered by the appellant. The attorney painted and profiled the plaintiff neighborhood as if the people were just savages that live around the plaintiff. The plaintiff sees white people killing others and themselves, kidnapping, beating, mass school shootings like Virginia Tech, April 16, 2007 Monday's campus shooting at Virginia Tech was the deadliest in U.S. history. Here, a list of other fatal shootings that have occurred at U.S. colleges and universities in the past:

April 16, 2007: A gunman kills more than 30 people in a dorm and a classroom at Virginia Tech in Blacksburg, Va.

Sept. 2, 2006: Douglas W. Pennington, 49, kills himself and his two sons, Logan P. Pennington, 26, and Benjamin M. Pennington, 24, during a visit to the campus of Shepherd University in Shepherdstown, W.Va.

Oct. 28, 2002: Failing University of Arizona Nursing College student and Gulf War veteran Robert Flores, 40, walks into an instructor's office and fatally shoots her. A few minutes later, arms with five guns, he enters one of his nursing classrooms and kills two more of his instructors before fatally shooting himself.

Jan. 16, 2002: Graduate student Peter Odighizuwa, 42, recently dismissed from Virginia's Appalachian School of Law, returns to campus and kills the dean, a professor and a student before being tackled by students. The attack also wounds three female students.

Aug. 28, 2000: James Easton Kelly, 36, a University of Arkansas graduate student recently dropped from a doctoral program after a decade of study, and John Locke, 67, the English professor overseeing his coursework, are shot to death in an apparent murder-suicide.

Because the plaintiff lives in a black economically poor neighborhood with more reported crime it is seen as an excuse to be ruff handled by the store management and employees.

[4.] The court erred in granting the defense the right to suppress the appellant presentation in trying to prove to the jury that the video surveillance C.D was intentionally altered and that he was no where in the surveillance video. The defendants intentionally sabotaged the plaintiffs discovery.

[5.] The court erred in denying the subpoenas of the appellant. The court quashed the appellants subpoena's for all of his witnesses. The court, the defense attorney, and the witnesses knew that the appellant had previously subpoenaed them during the previous scheduled trial date. The appellant did have the sheriff department to deliver the previous subpoena's to all witnesses. The appellant is indigent and could not afford to again subpoena the same witnesses by sheriff delivery. The appellant did have the subpoena re-issued by regular mail. The judge had already informed all parties that we would be returning to court and did give a date. All parties were fully aware of the upcoming trial date. All of the plaintiff witnesses/defendants were aware of the court date. The witness police officers said they would come back once they were notified. The sheriff

served subpoenas should have remained in effect. The hardship of making an indigent prose litigant pay again for service of sheriff served subpoena upon already on notice witnesses is placing them at a total disadvantage and again violates due process.

[6.] The court erred when the judge held the appellant under strict attorney rules, knowledge and ability. The judge consistently spoke in the presence of the jury the appellant was presumed to know the law and procedures and would be held to that strict standard. This was done after helping to get rid of almost all his ability of a fair trial.

[7.] The court could have converted the claim of sexual harassment too general harassment but the court disposed of the appellants claim and held the appellant strictly to the knowledge of an attorney.

[8.] Banded from the store is one of the damages that has been imposed upon me for taking pictures the appellant right to go in and out of a local business is damaging both psychologically and ruins the reputation of the appellant.

[9.] The attorney did make in his closing argument statements instructing the jury to look at the area where the appellate live as violent uncontrolled gun- slinging stereotyping the neighborhood. He said that "if you hear something go pop,pop,pop in my neighborhood you will say who is shooting and start ducking". But if you live in another area of our community and you hear something go pop,pop,pop you will say uh who is setting off firecrackers. The attorney painted the picture that in my predominately black populated neighborhood we are known to kill and shot but in the upper more predominately white neighborhood its more civilized persons and it doesn't happen also that it would justify why the defendants would be justified in their actions against the appellant. The attorney and the court have allowed stereotyping prejudicial racist behavior to be used as a determining factor to the jury to consider in reaching their decision. The attorney pursued the jury to justify another man looking at the appellant against his will. The jury felt that it was no violation committed against the appellant

The attorney also made it appear that it was harmless for the defendants to come into a one person restroom where the appellant had an overwhelming expectation of privacy and stared at by defendant Dan Williams while he used the restroom. This is outrageous judgment after the appellant proved in open court that the lock was broken through the testimony of Dan Williams and that his co-manager sent him to kick the appellant out of the restroom.

[10.] Presumption of prejudice from jury misconduct one of the jurors laughed about the appellant making the testimony of the appellant become a joke. Rule 59 A(2) Misconduct of the jury or prevailing party;

[11.] The trial court totally ignored the prose cry for help against the defendants who refused to cooperate in discovery then the court decided to take away the plaintiffs right to have a fare discovery or upon it own motion an extension for discovery. The trial court knew that the plaintiff had been abused by the defendants but assisted them in their continued abuses. The plaintiff was denied his due process and then made to think it was his own fault. The appellant not being a seasoned, well trained attorney as attorney Steven Davis with the justice systems respect and favor was destined to defeat the prose. The plaintiff could only hope that the court would force and compel the defendants to cooperate during discovery. They trampled over the non empowered prose. The court would give no power to the pro se plaintiff. The case was dammed at that point when the court would not give the plaintiff compelling power.

The court would not even compel the defendants to comply too the plaintiffs interrogatories no matter how many time he filed motions to compel. The defendants Dan Williams, Maria Welch, Jack Caulley, Pitt Hyde, ,Joseph R. Hyde III, William C. Rhodes, III, William T, Giles, nor the fiduciary agent of the company were compelled to cooperate by the trial court for the plaintiffs/appellants interrogatories. The only defendants that complied with depositions was defendants Dan Williams, Maria Welch and Jack Caulley. The other defendants never had to respond too the plaintiff/ appellant for interrogatories or deposition.

The plaintiff file motions to compel the video recording with him in it, a video showing him coming and going and the incident. The court allowed the defense attorney to give the plaintiff a video with nothing showing the incident. The video never showed the plaintiff at all, it was all cut out. The court allowed this type of misconduct on the part of the defense attorney and the defendants. Had the plaintiff been granted the motion to compel the video with the plaintiff in it he would have been able to prove that the defendant lied under oath. With the right video the plaintiff would have shown that none of the defendants spoke to the plaintiff before he went to the restroom that day and that the plaintiff was only approached after he was already in the restroom while relieving his self in a single persons restroom. It was a one person restroom and the plaintiff had expected privacy. The plaintiff could get that privacy because the lock was broken anyway. The plaintiff had completely closed and thought he had locked the door.

Dan Williams had already confess upon the stand in open court that the lock had been broken several months before the plaintiffs horrible day of invasion in the store restroom had occurred. The plaintiffs invasion of privacy was inevitable because the lock was broken anyway yet the defense attorney convinced the court that the invasion of privacy was the plaintiffs own fault.

The appellant had served all of the defendants at their usually place of business under civil rule 4 but it was irrelevant to the trial court. The defense attorney did not even have to support his August 6th 2009 memorandum contra with law, local rules or anything too oppose civil rule 4 yet it was granted by the judge.

The prose was seriously abused by the trial court and denied his due process of law as usual. As there is now an uprising in Libya, Yemen, against tyranny one day there should be the same against our court system for the abuse it does against weak, poor, prose litigants harshly abused against their rights because they are poor and lack procedural knowledge. Even if prose's could grasp all procedures in a court that really only respects lawyers with a bar license over private citizens and a court that has a strong agenda too protect the legal reputation of the lawyers and the lawyer industry the prose will still lose. It is a complete

embarrassment for a law firm and a private attorney to lose to a prose litigant. It' is equivalent too a non pro armature playing basket ball with Michael Jordan off camera and he is defeating Michael. Too save Michael Jordan's reputation Michael is advised by his advisers and coach to use and brake out the brass knuckles that is handed him for such a time as that. The prose is not to win I don't care what we got to do but you can't let him win, we don't care if he really did get injured or wronged. Rule 59 A(1) Irregularity in the proceedings of the court, jury, magistrate, or prevailing party, or any order of the court or magistrate, or abuse of discretion, by which an aggrieved party was prevented from having a fair trial; 59 A(3) Accident or surprise which ordinary prudence could not have guarded against; influence of passion or prejudice; the appellant was indeed prejudiced against and needs a new trial.

[12.] The court would not take any action against defendant Maria Welch who lied under oath that she told the appellant he could not go to the restroom. She also lied that the plaintiff was seen running down the isle before going to the restroom and coming from it.

[13.] The court would not take any action of perjury against defendant Dan Williams who lied upon the stand that he never went to the restroom to get the plaintiff/ appellant out of the restroom when his co manager stated that she sent him to the restroom to get the plaintiff/appellant out of the restroom. The court left the appellant without real prosecuting authority. Abuse of discretion, and Rule 59 A(6) The judgment is not sustained by the weight of the evidence . The appellant should have a new trial with all his power and witnesses under real subpoena power.

[14.] It was an abuse of discretion when the court would not allow the appellant use the plumbing code to speak to the store having to provide a restroom for it's customers according to serving a certain capacity of customers.

[15.] The court knew that the case was sabotaged even more by not ordering in Jack Caulley after he was still under a continued subpoena. All of the defendants had been served by sheriff the summons and subpoena. The judge proceeded without a defendant that was under subpoena and summon to appear in court. The judgment refused to

> assist the appellant with a order in. The judge wrongfully dismissed defendants Pitt Hyde, ,Joseph R. Hyde III, William C. Rhodes, III, William T. Giles
>
> [16.] The entire trial was against the law and was abusive of the appellants civil rights and due process rights.

(Sic passim.)

{¶6} For ease of discussion, we will address appellant's assignments of error out of order.

{¶7} We begin by noting the several procedural deficiencies that hinder our review of appellant's assignments of error. Appellant's brief lacks a table of authorities, see App.R. 16(A)(2), a statement of the issues presented referencing each assignment of error, see App.R. 16(A)(4), a statement of the case, see App.R. 16(A)(5), and a statement of facts referencing the record, see App.R. 16(A)(6). Additionally, none of appellant's 16 assigned errors contains a "reference to the place in the record where each error is reflected," as required by App.R. 16(A)(3). Nevertheless, we will address the legal challenges raised in each assignment of error, to the extent that we can discern them.

{¶8} Appellant has also failed to provide this court with a transcript of any of the proceedings below. "The duty to provide a transcript for appellate review falls upon the appellant." *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. This is so because it is the appellant's burden to demonstrate error by reference to matters in the record. Id., citing *State v. Skaggs* (1978), 53 Ohio St.2d 162. "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned errors, the

court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp* at 199. Because appellant has not provided this court with a transcript or with any alternative form of the record permitted by App.R. 9, we must presume the regularity of the proceedings and the validity of the trial court's rulings. See *Frick, Preston & Assoc. v. Martin*, 10th Dist. No. 10AP-1208, 2011-Ohio-4428, ¶8; *Daughtry v. Daughtry*, 10th Dist. No. 11AP-59, 2011-Ohio-4210, ¶7; *Collier v. Stubbins*, 10th Dist. No. 03AP-553, 2004-Ohio-2819.

{¶9} Based on appellant's failure to provide a transcript, we begin by addressing appellant's first, fourth, fifth, fourteenth, and fifteenth assignments of error, which appear to challenge the trial court's rulings excluding evidence and testimony. Without a record of the trial or any of the proceedings, we cannot determine what evidence or testimony appellant attempted to present or whether he made the substance of that evidence or testimony known in a proffer to the trial court. If the complaining party does not proffer the excluded evidence or the substance of that evidence is not apparent from the questioning of the witness, any error arising from the exclusion of that evidence is waived. *Elkins v. Veolia Transp., Inc.*, 10th Dist. No. 10AP-203, 2010-Ohio-5209, ¶29, citing *Ellinger v. Ho*, 10th Dist. No. 08AP-1079, 2010-Ohio-553. Moreover, nothing in the record indicates whether appellant explained the harm of prejudice suffered as a result of each witness's exclusion. See Civ.R. 61. Because appellant has failed to prove error with reference to the record, we must presume the validity of the trial court's ruling with respect to these matters. Appellant's first, fourth, fifth, fourteenth, and fifteenth assignments of error are overruled.

{¶10} Next, we turn to appellant's third, sixth, seventh, eighth, ninth, tenth, twelfth, thirteenth, and sixteenth assignments of error, in which appellant raises vague complaints about the conduct of Dan Williams, Maria Welch, the trial court, the jury, and "the attorney" (presumably referring to appellees' trial attorney). Aside from the other procedural deficiencies fatal to these assignments of error (i.e., appellant's failure to specify where the claimed errors occurred in the record and the lack of legal support for his claims), appellant has not provided this court with any record to assess whether his complaints are meritorious. Appellant has therefore failed to sustain his burden of proving error by reference to the record. See *Knapp* at 199. Thus, his third, sixth, seventh, eighth, ninth, tenth, twelfth, thirteenth, and sixteenth assignments of error are overruled.

{¶11} We now turn to appellant's second assignment of error, which argues that the trial court abused its discretion by dismissing "the owners of the company" from the action. Presumably, appellant refers to the trial court's January 10, 2011 decision dismissing appellant's claims against appellees Giles, Rhodes, and Hyde for insufficiency of service under Civ.R. 12(B)(5). However, a review of the record reveals that appellant failed to serve these defendants with a copy of the complaint within six months as required by Civ.R. 4(E). When the trial court referred the matter for a magistrate to conduct a hearing on the issue, appellant failed to appear at the December 4, 2008 hearing. Thus, appellant did not present any evidence establishing that he timely served these defendants, nor did he show the "good cause" required to justify untimely service. See Civ.R. 4(E). Under these circumstances, we find no error in the trial court's decision.

{¶12} Appellant's second assignment of error also appears to challenge the trial court's refusal to grant default judgment against Jack Caulley, yet appellant fails to explain the basis for such a challenge. The record indicates that Caulley timely answered the complaint and did nothing that would require the trial court to enter a default judgment against him pursuant to Civ.R. 55. Accordingly, appellant's second assignment of error is overruled.

{¶13} Finally, we address appellant's eleventh assignment of error, in which appellant raises vague claims that appellees were uncooperative during discovery and that the trial court erred by failing to order appellees to comply with appellant's discovery requests. "A trial court enjoys broad discretion in the regulation of discovery, and an appellate court will not reverse a trial court's decision to sustain or overrule a motion to compel discovery absent an abuse of discretion." *Coryell v. Bank One Trust Co., N.A.*, 10th Dist. No. 07AP-766, 2008-Ohio-2698, ¶47. Under this standard of review, we must affirm the trial court's action absent a showing that the court acted unreasonably, unconscionably or arbitrarily. *Berk v. Matthews* (1990), 53 Ohio St.3d 161, 169. Appellant has failed to point to any evidence revealing that the trial court acted in such a manner, and, therefore, we can discern no abuse of discretion in this case. Appellant's eleventh assignment of error is overruled.

{¶14} Having overruled appellant's 16 assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.

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