[Cite as *Dehlendorf v. Ritchey*, 2012-Ohio-5193.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Michael A. Dehlendorf,	:	
Plaintiff-Appellant,	:	
		No. 12AP-87
v.	:	(C.P.C. No. 09CVH-07-9919)
Dennis Ritchey et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees.	:	

D E C I S I O N

Rendered on November 8, 2012

Michael A. Dehlendorf, pro se.

Loveland & Brosius, LLC, and *William L. Loveland*, for James G. Collins, Michele Marburger, Marshall L. Zimmerman, Karen S. Zimmerman, Michael D. Martin, Debra A. Lleonart, Gregg E. Morris, Kimberly S. Morris, Andrew P. Klaus, Trustee, and Jean A. Klaus Trustee.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶ 1} Plaintiff-appellant, Michael A. Dehlendorf, appeals from a judgment of the Franklin County Court of Common Pleas granting summary judgment in favor of defendants-appellees, Dennis Ritchey, James G. Collins, Michele Marburger, Marshall L. Zimmerman, Karen S. Zimmerman, Rajko Milosevic, Dragica Milosevic, Michael D. Martin, Debra A. Lleonart, Gregg E. Morris, Kimberly S. Morris, Andrew P. Klaus, Andrew P. Claus Trustee, and Jean A. Klaus Trustee, and awarding attorney fees to appellees.

I. BACKGROUND

{¶ 2} At all times relevant to this matter, appellant was the president of Dehlendorf & Company ("DehlCo"). DehlCo was involved in the development of the subdivision known as Clear Creek Crossing Phase I, and, in February 1998, a limited warranty deed was executed to the Clear Creek Crossing Property Owners' Association ("the Association"). Said document provides, in part, that if a member of the Association fails to pay an assessment, the Association has the right to commence legal proceedings against such member. Appellant alleges the Association's right to collect assessments was assigned to DehlCo and then further assigned to him individually.

{¶ 3} The complaint filed on July 2, 2009 against the residents of the subdivision seeks to collect alleged unpaid assessments. Dispositive motions were filed and the central argument raised by appellees was that collateral estoppel precluded the asserted claims. Specifically, it was argued that an earlier case filed in the Franklin County Court of Common Pleas, case No. 05CVH-05-5467 ("05CVH-5467"), considered the validity of the assignment from the Association to DehlCo and held the assignment was invalid.

{¶ 4} Here, the trial court framed the issue before it as whether appellant is a real party in interest because for appellant to be so, both the assignment from the Association to DehlCo and the assignment from DehlCo to appellant had to be valid. After consideration, the trial court concluded that, in 05CVH-5467, the validity of the assignment from the Association to DehlCo was previously litigated and found to be void. Thus, the trial court held appellant was collaterally estopped from asserting said assignment was valid, and appellant lacked legal standing to assert any cause of action based upon said assignment. Consequently, the trial court granted appellees' motion for summary judgment.

{¶ 5} Thereafter, appellees sought both a finding that by asserting claims barred by collateral estoppel, appellant engaged in frivolous conduct, pursuant to R.C. 2323.51 and Civ.R. 11, and an award of costs and reasonable attorney fees. A hearing "conducted following due notice, and pursuant to and in accordance with the requirements of §2323.51," was held on January 5, 2012. (Final Judgment Entry, 1.) In the court's final judgment entry, the trial court concluded "the legal fees incurred by the moving defendants from and after January 1, 2010, have been reasonable in both attorney time

and amount, and that the work since that date was made necessary by conduct contrary to R.C. 2323.51." (Final Judgment Entry, 1.) Accordingly, the trial court rendered judgment in favor of the counseled appellees and against appellant in the amount of $10,736.39, plus interest and costs.

II. ASSIGNMENTS OF ERROR

{¶ 6} This appeal followed, and appellant brings the following five assignments of error for our review:

> I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS.
>
> II. THE TRIAL COURT ERRED BY FINDING COLLATERAL ESTOPPEL APPLIED IN THIS CASE.
>
> III. THE TRIAL COURT ERRED IN GRANTING [SIC] DECLARATORY JUDGMENT AND QUIET TITLE RELIEF.
>
> IV. THE TRIAL COURT ERRED BY ISSUING A PROTECTIVE ORDER PREVENTING PLAINTIFF-APPELLANT FROM TAKING DISCOVERY.
>
> V. THE TRIAL COURT ERRED IN AWARDING ATTORNEY FEES.

III. APPELLEES' MOTION

{¶ 7} Prior to addressing the merits of this appeal, we first address appellees' motion to strike appellant's notice of appeal. Appellees assert that, pursuant to Civ.R. 11, the notice of appeal must be stricken, and this appeal must be dismissed because appellant did not sign the notice of appeal. Civ.R. 11 requires that every pleading, motion or other document be signed by the party or the attorney representing the party. The signature serves as a certification that the "attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served."

{¶ 8} Here, the signed notice of appeal consists of appellant's name followed by a parenthetical containing three initials. In his memorandum contra to appellees' motion

to strike, appellant asserts the initials are that of his daughter who signed the pleading on his behalf under his authority because he was out of town. Appellees do not provide any legal authority to support their argument that the circumstances herein are violative of Civ.R. 11. Nor have we found any authority on this issue. Upon review, we do not find a Civ.R. 11 violation and, consequently, deny appellees' motion to strike.

IV. STANDARD OF REVIEW

{¶ 9} This matter was decided in the trial court by summary judgment, which, under Civ.R. 56(C), may be granted only when there remains no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds can come to but one conclusion, that conclusion being adverse to the party opposing the motion. *Tokles & Son, Inc. v. Midwestern Indemn. Co.*, 65 Ohio St.3d 621, 629 (1992), citing *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64 (1978). Under summary judgment motion practice, the moving party bears an initial burden to inform the trial court of the basis for its motion and to point to portions of the record that indicate that there are no genuine issues of material fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280 (1996). Once the moving party has met its initial burden, the nonmoving party must produce competent evidence establishing the existence of a genuine issue for trial. *Id*. Additionally, a moving party cannot discharge its burden under Civ.R. 56 simply by making conclusory assertions that the nonmoving party has no evidence to prove its case. *Id*. Rather, the moving party must point to some evidence that affirmatively demonstrates that the nonmoving party has no evidence to support his or her claims. *Id*.

{¶ 10} An appellate court's review of summary judgment is de novo. *Koos v. Cent. Ohio Cellular, Inc.*, 94 Ohio App.3d 579 (8th Dist.1994); *Bard v. Soc. Natl. Bank, nka KeyBank*, 10th Dist. No. 97APE11-1497 (Sept. 10, 1998). As such, we must affirm the trial court's judgment if any of the grounds raised by the moving party at the trial court are found to support it, even if the trial court failed to consider those grounds. *See Dresher*; *Coventry Twp. v. Ecker*, 101 Ohio App.3d 38, 41-42 (9th Dist.1995).

V. DISCUSSION

A. First, Second, and Third Assignments of Error

{¶ 11} Because they are interrelated, appellant's first, second, and third assignments of error will be addressed together. The only argument asserted in these assigned errors is that the trial court's judgment is flawed because collateral estoppel is not applicable. According to appellant, collateral estoppel does not apply in this case because a final judgment was not entered in 05CVH-5467.

{¶ 12} The doctrine of res judicata precludes "relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction." *Reasoner v. Columbus*, 10th Dist. No. 04AP-800, 2005-Ohio-468, ¶ 5, citing *State ex rel. Kroger Co. v. Indus. Comm.*, 80 Ohio St.3d 649, 651 (1998). In order to apply the doctrine of res judicata, we must conclude the following: "(1) there was a prior valid judgment on the merits; (2) the second action involved the same parties as the first action; (3) the present action raises claims that were or could have been litigated in the prior action; and (4) both actions arise out of the same transaction or occurrence." *Reasoner* at ¶ 5, citing *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381-82 (1995).

{¶ 13} The doctrine of res judicata has two aspects: claim preclusion and issue preclusion. *Grava* at 380. Claim preclusion holds that a valid, final judgment on the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Id.* at syllabus. Issue preclusion, also known as collateral estoppel, provides that "a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies, whether the cause of action in the two actions be identical or different." *Fort Frye Teachers Assn. v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395 (1998). While claim preclusion precludes relitigation of the same cause of action, issue preclusion precludes relitigation of an issue that has been actually and necessarily litigated and determined in a prior action. *Id.*, citing *Whitehead v. Gen. Tel. Co.*, 20 Ohio St.2d 108, 112 (1969).

{¶ 14} In *Thompson v. Wing*, 70 Ohio St.3d 176 (1994), the Supreme Court of Ohio set forth three requirements for application of collateral estoppel or issue preclusion. "Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action." *Id*. at 183, citing *Whitehead* at paragraph two of the syllabus.

{¶ 15} Here, the record reflects that, in 05CVH-5467, DehlCo brought suit to recover assessments allegedly owed to the Association. DehlCo claimed entitlement to the assessments by virtue of an assignment of rights from the Association to DehlCo, which is the same assignment appellant argues gives rise to the causes of action asserted herein. In 05CVH-5467, a bench trial was held before a magistrate and the magistrate rendered a decision concluding that the purported assignment from the Association to DehlCo was void. The magistrate's decision was subsequently adopted by the trial court. Though an appeal was filed, it was dismissed as premature because a motion for attorney fees was pending before the trial court. Thereafter, the parties filed a jointly approved entry that stated, in relevant part, "Plaintiff [DehlCo] hereby dismisses this case with prejudice. Costs to Plaintiff." (05CVH-5467 Entry rendered Apr. 28, 2009.) Because the matter was dismissed with prejudice and without vacating the final judgment that concluded the assignment from the Association to DehlCo was void, the trial court held collateral estoppel was triggered.

{¶ 16} Appellant asserts the trial court's holding is incorrect because there was no final judgment rendered in 05CVH-5467. However, appellant provides neither argument nor legal authority to support his conclusory statements. As held by the trial court, a final judgment finding the assignment from the Association to DehlCo void was rendered in 05CVH-5467. The subsequent dismissal of the case was with prejudice and the jointly-approved dismissal entry did not vacate the trial court's previously rendered judgment regarding the validity of the assignment. A dismissal entered with prejudice will, by application of the doctrine of res judicata, bar a subsequent attempt to refile the same action. *Tower City Properties v. Cuyahoga Cty. Bd. of Revision*, 49 Ohio St.3d 67, 69

(1990); *Webb v. Webb*, 10th Dist. No. 85AP-343 (Nov. 19, 1985); *Customized Solutions, Inc. v. Yurchyk & Davis, CPA's, Inc.*, 7th Dist. No. 03 MA 38, 2003-Ohio-4881.

{¶ 17} Upon review, we conclude the validity of the assignment of rights from the Association to DehlCo was actually and directly litigated and was passed upon and determined by a court of competent jurisdiction. We also conclude that privity exists between DehlCo and appellant. *Thompson*. Therefore, we find collateral estoppel applies to preclude appellant from now asserting the assignment of rights from the Association to DehlCo was valid. Consequently, appellant's claims based on the invalid assignment must fail.

{¶ 18} Finding no error in the trial court's application of collateral estoppel, appellant's first, second, and third assignments of error are overruled.

B. Fourth Assignment of Error

{¶ 19} In his fourth assignment of error, appellant contends the trial court erred in issuing protective orders to prevent him from taking discovery. According to appellant, the protective orders made it "impossible" for him to prove his claims and "acted almost as a 'gag order.' " (Appellant's Brief, 14.) Other than this blanket assertion, appellant provides no indication of how the trial court's discovery orders hindered his ability to present his claims.

{¶ 20} Civ.R. 26(B)(1) provides that parties "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." A party must demonstrate relevance to the underlying subject matter in order for discovery to be permissible. Although the scope of relevancy in discovery is broad, it is not without limits. *Freeman v. Cleveland Clinic Found.*, 127 Ohio App.3d 378, 388 (8th Dist.1998). In the discovery phase, documents are irrelevant when the information sought will not reasonably lead to the discovery of admissible evidence. *Tschantz v. Ferguson*, 97 Ohio App.3d 693, 715 (8th Dist.1994); *Icenhower v. Icenhower*, 10th Dist. No. 75AP-93 (Aug. 14, 1975).

{¶ 21} Civ.R. 26(C) allows the trial court to grant protective orders regarding discovery in order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense. The decision to grant or deny a protective order is within the trial court's discretion. *Hahn v. Satullo*, 156 Ohio App.3d 412, 2004-Ohio-

1057, ¶ 79 (10th Dist.), citing *Van-Am. Ins. Co. v. Schiappa*, 132 Ohio App.3d 325, 330 (7th Dist.1999). Absent an abuse of discretion, an appellate court may not overturn the trial court's ruling on discovery matters. *Feichtner v. Cleveland*, 95 Ohio App.3d 388, 397 (8th Dist.1994), citing *Vinci v. Ceraolo*, 79 Ohio App.3d 640 (8th Dist.1992).

{¶ 22} From the record, it appears a number of appellees sought protective orders to cancel depositions scheduled by appellant. Appellees also sought a stay of all other depositions until the pending motion for summary judgment was resolved. The trial court concluded the dispositive issue before it, i.e., whether or not collateral estoppel applied, was dependent on consideration of authenticated court documents from a prior action, and thus, deposing the homeowners was unnecessary, burdensome, and not reasonably calculated to lead to the discovery of admissible evidence related to the issue of collateral estoppel. Consequently, the trial court granted the motion for protective order and ordered that depositions would be stayed until the court rendered a decision on the pending summary judgment motion.

{¶ 23} As indicated previously, appellant fails to demonstrate how the requested depositions could lead to admissible evidence related to the issue of collateral estoppel and its application to the matter at hand. Thus, we conclude the trial court did not abuse its discretion in granting appellees' motion for a protective order. Accordingly, appellant's fourth assignment of error is overruled.

C. Fifth Assignment of Error

{¶ 24} In his fifth assignment of error, appellant contends the trial court erred in awarding attorney fees. Appellant does not challenge the amount awarded, but, rather, challenges the trial court's finding that appellant engaged in frivolous conduct.

{¶ 25} Pursuant to R.C. 2323.51, "a trial court may award court costs, reasonable attorney fees, and other reasonable expenses incurred due to the frivolous conduct, however 'the trial court must hold a hearing to determine (1) whether the particular conduct was frivolous, (2) if the conduct was frivolous, whether any party was adversely affected by it, and (3) if an award is made, the amount of the award.' " *Crawford v. Ribbon Technology Corp.*, 143 Ohio App.3d 510, 514 (10th Dist.2001), quoting *Hollon v. Hollon*, 117 Ohio App.3d 344, 348 (4th Dist.1996). "Frivolous conduct," as defined in R.C. 2323.51(A)(2)(a)(ii), includes conduct that is not warranted under existing law and

cannot be supported by a good-faith argument for an extension, modification or reversal of existing law. As we found in *Wiltberger v. Davis*, 110 Ohio App.3d 46 (10th Dist.1996), no single standard of review applies in R.C. 2323.51 cases, and the inquiry necessarily must be one of mixed questions of law and fact. A determination that conduct is not warranted under existing law and cannot be supported by a good-faith argument for an extension, modification or reversal of existing law requires a legal analysis. *Lable & Co. v. Flowers*, 104 Ohio App.3d 227, 233 (9th Dist.1995). With respect to purely legal issues, we follow a de novo standard of review and need not defer to the judgment of the trial court. *Wiltberger* at 51-52. Where a trial court has found the existence of frivolous conduct, the decision to assess or not to assess a penalty lies within the sound discretion of the trial court. *Id.* at 52. Further, R.C. 2323.51 employs an objective standard in determining whether sanctions may be imposed against either counsel or a party for frivolous conduct. *Stone v. House of Day Funeral Serv., Inc.*, 140 Ohio App.3d 713 (6th Dist.2000).

{¶ 26} According to appellant, "[t]he Trial Court awarded attorney fees as a result of succumbing to the argument that [appellant] filed a frivolous lawsuit by virtue of collateral estoppel, and by denying [appellant] the ability to take discovery in order to prove its case." (Appellant's Brief, 14.) Yet, appellant does not provide any argument as to why the trial court erred in finding appellant's actions with respect to this litigation constituted frivolous conduct.

{¶ 27} In our disposition of appellant's first three assignments of error, we have affirmed the trial court's conclusion that appellant's asserted claims are barred by the doctrine of res judicata. In prior cases of this court, sanctions have been awarded where a party ignores or fails to investigate the doctrine of res judicata. *See Stuller v. Price*, 10th Dist. No. 03AP-30, 2003-Ohio-6826; *Sain v. Roo*, 10th Dist. No. 01AP-360, 2001-Ohio-4115 ("filing of appellants' 1998 action was so clearly barred by *res judicata* that appellants had no objective basis to believe it was not so barred"); *Streb v. AMF Bowling Ctrs., Inc.*, 10th Dist. No. 99AP-633 (May 4, 2000) (since appellant's claim was barred by res judicata, refiling the claim met the definition of "frivolous conduct" under R.C. 2323.51(A)(2)(a)(ii)).

{¶ 28} In the case before us, the trial court held a hearing on the motion seeking an award of attorney fees based on appellant's alleged frivolous conduct. According to the trial court's final judgment entry, the court announced its decision from the bench and, thereafter, concluded attorney fees incurred after January 1, 2010 were reasonable in both time and amount.

{¶ 29} Appellant, however, has not provided a transcript of the sanctions hearing, and, therefore, this court is unable to review appellant's fifth assignment of error. *Flatinger v. Flatinger*, 10th Dist. No. 03AP-663, 2004-Ohio-130, ¶ 7, citing *513 E. Rich St. Co. v. McGreevy*, 10th Dist. No. 02AP-1207, 2003-Ohio-2487, ¶12; *Alexander v. Yackee*, 5th Dist. No. 2008CA00200, 2009-Ohio-1387 (without a transcript, appellate court unable to review a challenge to the trial court's finding of frivolous conduct and award of attorney fees). When a party seeks to appeal a judgment, that party bears the burden of demonstrating error by reference to the record of the proceedings below, and it is that party's duty to provide this court with a transcript of the proceedings below. *Flatinger* at ¶ 7, citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980). " '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.' " *Id*., quoting *Knapp*. Because appellant has not provided this court with a transcript of the hearing on appellees' motion for sanctions, we must presume the validity of the trial court's proceedings and affirm. *Flatinger*; *McGreevy*. Accordingly, appellant's fifth assignment of error is overruled.

VI. CONCLUSION

{¶ 30} Having overruled appellant's five assignments of error, the judgment of the Franklin County Court of Common Pleas is hereby affirmed.

Motion to strike denied;
judgment affirmed.

BROWN, P.J., and DORRIAN, J., concur.
