

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

P.M.D. LAND COMPANY,	:	O P I N I O N
Plaintiff-Appellee,	:	
- VS -	:	CASE NO. 2011-T-0058
WARNER REALTY, INC., et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2007 CV 2381.

Judgment: Affirmed.

Thomas C. Nader, Nader & Nader, 5000 East Market Street, Suite 33, Warren, OH 44484 (For Plaintiff-Appellee).

Donald L. Guarnieri, 431 East Market Street, P.O. Box 392, Warren, OH 44482; and *William P. McGuire*, William P. McGuire Co., L.P.A., 106 East Market Street, Suite 705, P.O. Box 1243, Warren, OH 44482-1243 (For Defendants-Appellants).

MARY JANE TRAPP, J.

{¶1} Warner Realty Inc. (“Warner Realty”) appeals from a judgment of the Trumbull County Court of Common Pleas denying its motion to “require the Plaintiff to pay the real estate taxes” on a parcel of property that had been the subject of the underlying lawsuit. The motion was filed *after* the trial court complied with our limited remand and issued a final order disposing of the case. Warner Realty brings four assignments of error, and not all relate to this most recent judgment entry of the trial

court. We affirm the decision below as we agree with the trial court that it lacked jurisdiction to consider the motion, and we find that the appeal is barred by the doctrine of res judicata.

Substantive Facts and Procedural History

{¶2} For a more detailed recitation of the factual history, we refer the reader to our opinion in *P.M.D. Land Co. v. Warner Realty, Inc.*, 11th Dist. No. 2009-T-0021, 2009-Ohio-6704 (“*P.M.D. I*”). In *P.M.D. I* we affirmed the trial court’s summary judgment in favor of P.M.D. Land Co. upon its complaint for money due on a 1998 land contract between the parties. The trial court awarded judgment against Warner Realty in the sum of \$44,310.75, plus interest and costs, and we affirmed that judgment. However, we reversed and remanded the action for a very limited purpose. Upon remand the trial court was to determine the very narrow question of whether the title passed from P.M.D. Land Co. to Warner Realty upon satisfaction of the amount due.

{¶3} Upon remand, the trial court found the judgment to have been satisfied and then ordered P.M.D. Land Co. to issue the deed to Warner Realty. P.M.D. Land Co. failed to comply with the trial court’s order, and Warner Realty filed a motion for contempt. In response, the trial court executed a judgment entry conveying the subject property to Warner Realty; in other words, the judgment entry itself served as a deed by judicial *fiat*. That judgment was not appealed.

{¶4} Seven days later, Warner Realty filed a new motion for an order requiring P.M.D. Land Co. to pay the outstanding real estate taxes on the subject property. The trial court ruled that it lacked jurisdiction to consider the motion, and Warner Realty did not appeal that judgment. Instead, six months later, Warner Realty filed a second,

identical motion for an order requiring P.M.D. Land Co. to pay the outstanding taxes. The trial court again ruled that it lacked jurisdiction to consider the motion because the case was closed, just as it had been before the filing of the first motion seeking payment of the taxes, and it is from this judgment Warner Realty appeals.

{¶5} Warner Realty brings the following four assignments of error:

{¶6} “[1.] The trial [sic] erred [sic] in never holding a hearing on the amount due on the land installment contract[.]”

{¶7} “[2.] The trial court erred [sic] in failing to require the plaintiffs to pay \$10,000.00 as it collected for unpaid taxes based upon an affidavit.”

{¶8} “[3.] The trial court erred [sic] in granting judgment for the plaintiff for an additional \$4,310.75 [sic] without a hearing.”

{¶9} “[4.] The court failed to hold the plaintiff in contempt for failing to execute a deed of general warranty.”

{¶10} P.M.D. Land Co. has not submitted a merit brief. For ease of analysis, and to avoid redundancy, we consider assignments of error one and three together.

Preliminary Issue

{¶11} “[A] party asserting error in the trial court bears the burden to demonstrate error by reference to matters made part of the record in the court of appeals.” *Concord Twp. Trustees v. Hazelwood Builders*, 11th Dist. No. 2000-L-040, 2001 Ohio App. LEXIS 1383, *6 (Mar. 23, 2001), citing *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197 (1960). “An appellate court is empowered to disregard an assignment of error presented for review due to a lack of briefing by the party presenting that assignment. Proper appellate briefing standards are set forth in App.R. 16(A).” *Pearlstein v.*

Pearlstein, 11th Dist. No. 2008-G-2837, 2009-Ohio-2191, ¶81, quoting *Keating v. Keating*, 8th Dist. No. 90611, 2008-Ohio-5345, ¶111, quoting *Cireddu v. Cireddu*, 8th Dist. No. 76784, 2000 Ohio App. LEXIS 4076 (Sept. 7, 2000). If assignments are not properly briefed, “they should be disregarded ‘due to the complete lack of argument containing reasons in support of the contention and citations to authority.’” *Id.*, quoting *Keating* at ¶111, quoting *Cireddu* at *24.

{¶12} Warner Realty has failed to properly brief all four of its assignments of error. The assignments of error are rudimentary at best, lacking references to the trial record and to any supportive case law. As a result, we are empowered to disregard each and every assignment of error. However, because we can substantively rule on the merits of all four assignments of error without assistance from Warner Realty in the form of proper briefing, we will do so.

Failure to Hold a Hearing Before Granting the Money Judgment

{¶13} In its first and third assignments of error, Warner Realty raises arguments that are barred by the doctrine of res judicata. The assignments of error relate to the original judgment, which led to the appeal in *P.M.D. I*. Any claimed errors were already brought or should have been brought to this court’s attention at that time. As a result, the doctrine of res judicata bars a second bite at the appellate apple.

{¶14} “The doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel.” *State ex rel. Ormond v. Solon*, 8th Dist. No. 92272, 2009-Ohio-1097, ¶13, quoting *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381 (1995). “Claim preclusion prevents subsequent actions, by the same parties or

their privies, based upon any claim arising out of a transaction that was the subject matter of a previous action.” *Id.*, citing *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392 (1998). “Where a claim could have been litigated in the previous suit, claim preclusion also bars subsequent actions on that matter.” *Id.*, citing *Grava* at 382.

{¶15} “Issue preclusion, on the other hand, serves to prevent relitigation of any fact or point that was determined by a court of competent jurisdiction in a previous action between the same parties or their privies. *Fort Frye*, 81 Ohio St.3d at 395, 692 N.E.2d 140. Issue preclusion applies even if the causes of action differ. *Id.*’ *O’Nesti v. DeBartolo Realty Corp.*, 113 Ohio St.3d 59, 61, 2007 Ohio 1102, 862 N.E.2d 803. See also *State ex rel. Davis v. Public Employees Ret. Bd.*, 174 Ohio App.3d 135, 2007 Ohio 6594, 881 N.E.2d 294, wherein the court held that issue preclusion precludes relitigation of an issue that has been actually and necessarily litigated and determined in a prior action.” *State ex rel. Ormond* at ¶14.

{¶16} In assignment of error one, Warner Realty again challenges the trial court’s grant of summary judgment to P.M.D. Land Co. This court considered the merits of the summary judgment award to P.M.D. Land Co. in the first appeal, and affirmed the trial court’s judgment. Warner Realty may not now ask us to hear that appeal again. To do so would amount to relitigation of the same issue. Assignment of error one is without merit.

{¶17} In assignment of error three, Warner Realty again challenges the trial court’s determination of damages in its summary judgment award. Warner Realty asserts that the trial court erred when it determined the amount of damages due without

a hearing. Again, this assignment of error relates to the trial court's grant of summary judgment, which this court has already considered and affirmed in *P.M.D. I*. Therefore, the doctrine of res judicata bars this attempt to relitigate the issue. Assignment of error three is without merit.

The Motion for Payment of Taxes Filed After Final Judgment Upon Remand

{¶18} In assignment of error two, Warner Realty argues that the trial court erred when it denied the motion for payment of taxes. The trial court found it lacked jurisdiction to entertain the motion. We find that the trial court not only lacked jurisdiction to consider the motion, but, once again, the doctrine of res judicata bars consideration of the issue of tax payments. The issue of taxes should have been raised during the original proceeding below, as damages were the subject of the first appeal.

{¶19} “Upon remand from an appellate court, the lower court is required to proceed from the point at which the error occurred.” *State ex rel. Stevenson v. Murray*, 69 Ohio St.2d 112, 113 (1982), citing *Commrs. of Montgomery Co. v. Carey*, 1 Ohio St. 463 (1853), paragraph one of the syllabus. A corollary to this is that “under the doctrine of the law of the case, a lower court is free to change its rulings on all issues not complained of upon appeal and not previously decided as finally settled.” *Bodo v. Nationwide Ins. Co.*, 75 Ohio App.3d 499, 505 (11th Dist.1991), citing *McCoy v. Engle*, 42 Ohio App.3d 204, 206 (10th Dist.1987), citing *State ex rel. Stevenson, supra*.

{¶20} Warner Realty appealed the judgment of the trial court entering summary judgment in favor of P.M.D. Land Co. back in 2009. At that time, we affirmed the trial court's determination in every respect, but we remanded the case for determination of a very discrete issue that had not been raised by the parties for trial court determination.

On remand, the trial court's task was specific and narrow: to determine whether the deed transferred upon satisfaction of the judgment. Therefore, on remand the trial court could do nothing other than answer the question presented to it, as all other issues had been adjudicated and subsequently affirmed by this court.

{¶21} Warner Realty's motion for an order requiring P.M.D. Land Co. to pay outstanding taxes on the property sought further relief from summary judgment, which this court affirmed in 2009. The trial court had no jurisdiction to consider matters beyond the question of deed transfer. Furthermore, if Warner Realty believed it was entitled to the payment of the property taxes by P.M.D. Land Co., this issue should have been raised at the trial level initially and then during the first appeal. Because it was not, Warner Realty may not now ask the trial court, and subsequently us, to consider matters that should have been raised earlier. Assignment of error two is without merit.

The Contempt Motion

{¶22} The final assignment of error alleges that the trial court failed to hold the P.M.D. Land Co. in contempt for failing to execute the deed of general warranty. However, Warner Realty's arguments have nothing to do with the law of contempt and appear to merely rehash issues related to the determination of money judgment. The assignment of error – "the court failed to hold the plaintiff in contempt for failing to execute a deed of general warranty," is unsupported by citations to statutes, case law, or the record. We review a trial court's determination regarding contempt for abuse of discretion. See *Ferrito v. Krihwan*, 11th Dis. No. 2009-L-114, 2011-Ohio-4017. Based on the meager briefing by Warner Realty and a review of the record, we find no abuse of discretion by the trial court in declining to hold P.M.D. Land Co. in contempt.

Assignment of error four is without merit, and the judgment of the Trumbull County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

THOMAS R. WRIGHT, J.,

concur.