[Cite as *Owens v. Bailar*, 2009-Ohio-2741.]

IN THE COURT OF APPEALS OF CHAMPAIGN COUNTY, OHIO

LOGAN OWENS, et al. :

Plaintiffs-Appellants : C.A. CASE NO. 2008CA29

vs. : T.C. CASE NO. 98CV137

DONALD BAILAR, et al. : (Civil Appeal From Common Pleas Court)

Defendants-Appellees :

. . . . . .

O P I N I O N

Rendered on the 5th day of June, 2009.

. . . . . .

Laura J. Martin, Atty. Reg. No.0076590, 131 N. Ludlow Street, Suite 840, Dayton, OH 45402
Attorney for Plaintiffs-Appellants

John P. Petro and Josh L. Schoenberger, 338 S. High Street, Second Floor, Columbus, OH 43215
Attorneys for Defendants-Appellees

. . . . . .

GRADY, J.:

{¶ 1} This appeal concerns an action on a complaint for declaratory judgment and to quiet title that was filed in 1998. The matter in controversy is the title to real property in an area where land owned by the parties abuts.

{¶ 2} The matter was referred for mediation in 2000.

Mediation was again ordered in 2007. Following that, and a report prepared by the mediator, Defendant Donald Bailar moved to enforce a settlement agreement arrived at in the mediation.

{¶ 3} The motion was heard by the court on July 14, 2008. After hearing unsworn representations, the court announced that, absent further submissions, it would enter a decision based on the contents of the court's file.

{¶ 4} On September 26, 2008, the court filed a decision and entry finding that the settlement agreement between the parties is embodied in the mediator's report. The court granted Defendant's motion and ordered the parties to abide by their agreement. Plaintiff Logan Owens appeals.

FIRST ASSIGNMENT OF ERROR

{¶ 5} "THE TRIAL COURT LACKED JURISDICTION TO ENFORCE ANY ALLEGED VERBAL SETTLEMENT AGREEMENT BETWEEN THE PARTIES FOLLOWING THE UNCONDITIONAL DISMISSAL OF THE UNDERLYING ACTION."

{¶ 6} On January 26, 2005, during the long hiatus in which this case was pending a decision by the court, the court sua sponte filed a "Journal Entry of Dismissal" which states: "The case was settled as a result of mediation efforts. For administrative purposes the case is restored to the active docket and closed. Costs from deposit." (Dkt 32).

{¶ 7} Plaintiff-Appellant Owens argues that, having dismissed the action on January 26, 2005, the court lacked jurisdiction to enforce the settlement agreement in the final order of September 26, 2008, from which this appeal was taken.

{¶ 8} Defendant-Appellee argues that Owens has waived his jurisdictional objection for two reasons. First, Owens had "requested that this Court assert jurisdiction over this matter by filing their Motion to Reinstate Case To Active Docket." (Brief, p.7). Second, Owens participated, without objection, in the proceedings to enforce the settlement agreement that were ordered on the motion of Bailar.

{¶ 9} On February 29, 2008, Owens moved the court to reinstate the case to the court's active docket (Dkt. 39), for reasons set out in his attached affidavit. (Dkt. 40). The affidavit alleged that the mediation report "is at variance with the originally-mediated agreement," and "as a result, I refused to sign the mediation agreement and that is why there is no signed mediation agreement." Subsequently, Owens appeared at the hearing of July 14, 2008, on Bailar's motion to enforce a settlement agreement.

{¶ 10} Parties in litigation may submit to the court's jurisdiction over their persons through their voluntary appearance in the action. *Maryhew v. Yova* (1984), 11 Ohio

St.3d 154. However, parties by their appearance cannot invest the court with subject-matter jurisdiction it does not have. *State ex rel. White v. Cuyahoga Metro Housing Authority*, 79 Ohio St.3d 543, 1997-Ohio-366.

{¶ 11} The subject-matter jurisdiction of a court in a civil action is invoked by commencing the action pursuant to Civ.R. 3(A). The court's jurisdiction continues until the action is terminated by a final order.

{¶ 12} An order of dismissal is not a final order unless it is entered on the merits, or "with prejudice." The court may not sua sponte enter an order dismissing a case on its merits involuntarily absent prior notice to the affected parties. *Ohio Furniture Co. v. Mindala* (1986), 22 Ohio St.3d 99.

{¶ 13} The trial court did not notify the parties that it intended to enter its "Journal Entry of Dismissal" prior to the court's journalization of that order on January 26, 2005. Therefore, it was ineffective to terminate the court's jurisdiction, and the court did not lack jurisdiction to enter the subsequent order of September 26, 2008, enforcing the settlement agreement.

{¶ 14} The first assignment of error is overruled.

THIRD ASSIGNMENT OF ERROR

{¶ 15} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN HOLDING

THAT AN ENFORCEABLE CONTRACT OR SETTLEMENT AGREEMENT EXISTED BETWEEN THE PARTIES WHERE THE RECORD DEMONSTRATES THAT THE PARTIES INTENDED TO BE BOUND ONLY BY A WRITTEN AGREEMENT SIGNED BY THE PARTIES."

{¶ 16} In ***Hamlin v. Hamlin***, Darke App. No. 1629, 2004-Ohio-2742, at ¶21, we wrote:

{¶ 17} ". . . When a settlement agreement is extrajudicial, it may be enforced only if a binding contract exists. ***Bolen v. Young*** (1982), 8 Ohio App.3d 36, 38, 455 N.E.2d 1316. 'The law is clear that to constitute a valid contract, there must be a meeting of the minds of the parties, and there must be an offer on the one side and an acceptance on the other.' ***Noroski v. Fallet*** (1982), 2 Ohio St.3d 77, 79, 442 N.E.2d 1302. To be enforceable as a binding contract, a settlement agreement requires no more formality than any other type of contract. It need not necessarily be signed, as even oral settlement agreements may be enforceable. ***Kostelnik v. Helper,*** 96 Ohio St.3d 1, 3, 2002-Ohio-2985. However, 'it is well established that courts will give effect to the manifest intent of the parties where there is clear evidence demonstrating that the parties did not intend to be bound by the terms of an agreement until formalized in a written document and signed by both[.]' ***Berjian v. Ohio Bell Telephone Co.*** (1978), 54 Ohio

St.2d 147, 151, 375 N.E.2d 410; see, also, *Curry v. Nestle USA, Inc.* (July 27, 2000), Sixth Cir. App. No. 99-3877 at *7 ('In Ohio, when parties intend that their agreement shall be reduced to writing and signed, no contract exists until the written agreement is executed.')."

{¶ 18} A copy of Notice of Scheduled Mediation sent to the parties by the Champaign County Court Mediation Services, a branch of the court, which scheduled the first mediation for July 27, 2008, was attached to a pleading filed by Bailar on May 15, 2000, asking the court to enforce the settlement agreement. (Dkt. 41, Exhibit B.). The notice bears the following statement: "If an agreement is reached in mediation, it will be reduced to writing by the mediator, reviewed, approved and signed by all participants and their attorneys, and a copy submitted to the Court by the mediator."

{¶ 19} The mediator's report that the court found to embody the agreement of the parties does not contain the signature of Plaintiff-Appellant Logan Owens, who testified at the July 14, 2008 hearing on Bailar's motion to enforce the agreement that he refused to sign the report because it did not embody the parties' agreement.

{¶ 20} Owens could reasonably take the terms of the notice he received to mean that he would not be bound by any

agreement he made in mediation unless it was reduced to writing and signed by him. Owens did not sign the mediator's report. We believe it is unreasonable to order a party to mediation on those terms, and to then find that an agreement was made contrary to them. Because there was no meeting of the minds necessary to form a contract, the trial court erred when it found that the mediator's report embodied a settlement agreement binding on the parties.

{¶ 21} The third assignment of error is sustained.

SECOND ASSIGNMENT OF ERROR

{¶ 22} "THE TRIAL COURT ERRED AS A MATTER OF LAW IN HOLDING THAT AN ENFORCEABLE CONTRACT OR SETTLEMENT AGREEMENT EXISTED BETWEEN THE PARTIES WHERE THERE IS INSUFFICIENT EVIDENCE OF MUTUAL ASSENT TO THE ESSENTIAL TERMS AND THE RECORD CONTAINS FURTHER EVIDENCE THAT THE PARTIES DID NOT CONSIDER THE MATTER SETTLED FOLLOWING MEDIATION."

{¶ 23} The error assigned is rendered moot by our decision sustaining the third assignment of error. Therefore, per App.R. 12(A)(1)(c), we exercise our discretion to not decide this assignment of error.

Conclusion

{¶ 24} Having sustained the third assignment of error, we will reverse the final order from which this appeal was taken

and remand the case to the trial court for further proceedings. Also, with due respect to the common pleas court's competence and right to manage its own docket, we strongly recommend against further efforts to mediate the dispute. And, because the action was commenced over ten years ago, we urge the court to schedule the matter for a hearing and decision at the earliest possible time.

DONOVAN, P.J. And FAIN, J., concur.

Copies mailed to:

Laura J. Martin, Esq.
John P. Petro, Esq.
Josh L. Schoenberger, Esq.
Hon. Roger B. Wilson