

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

VICKIE NICHOLS, et al., :
Plaintiffs-Appellees, : Case No. 01CA9
vs. :
MONA ARNOLD et al., : DECISION AND JUDGMENT ENTRY
Defendants-Appellants. : RELEASED: 12-24-01

APPEARANCES:

COUNSEL FOR APPELLANTS:¹ Mona Arnold and David Spaulding, Rt. 2,
Box 163, Little Hocking, Ohio 45742, Pro
Se

COUNSEL FOR APPELLEES: Jim D. Fox, 2002 Washington Blvd.,
Belpre, Ohio 45714

PER CURIAM.

This is an appeal from various Washington County Common Pleas Court judgments in favor of Vickie Nichols and Homer Wilson, plaintiffs below and appellees herein, on their claims against Mona Arnold and David Spaulding, defendants below and

¹Appellants have apparently opted to appear pro se in the instant appeal. We note that several different attorneys represented appellants at different stages of the trial court proceeding.

[Cite as *Nichols v. Arnold*, 2001-Ohio-2645.]

appellants herein. Appellants do not posit any "assignments of error" as required by App.R. 16. Rather their brief contains the following cryptic "points of argument":

- "1. Attorney Fox made no attempt to bring this action to any resolution prior to filing the suit against the defendants. There was no letter or phone call that expressed that his clients intended to sue if the decision on the property line and other issues could not be resolved.
2. Attorney Fox's refusal to recuse himself from the case due to previous attorney client relationship over the same piece of land.
3. Bifurcation of case causing the denial of trial by jury.
4. Denial of defendants [sic] motion for default judgment for the plaintiff's failure to answer the counter complaint in a timely manner.
5. The court allowed testimony regarding damages in the trial for the property line decision.
6. The court dismissed the recorder for the view of the real estate where direct testimony was given and the judge had said that he would base his decision on what he discovered at the site.
7. The court's decision to determine the property line based on the plaintiff's survey, when the judge directly questioned the surveyor regarding the contrary statements he had made. Decision also state that monummentation [sic] was not found by the defendants [sic] surveyor, this is directly contrary to the surveyor's testimony as well as the plat submitted as evidence.
8. Plaintiff's presentation of a different map to the court than what was presented as evidence to the defendants (Exhibit E).
9. The court's failure to call for an impartial survey to aid in his decision making process for the determination of the proper placement of the property line.
10. The damages awarded to the plaintiffs for the costs of the survey was improper, as the survey was contracted by the plaintiff of his own free will and

for the purpose of bringing forth this action to punish the defendants. ORD 1907.05(B) states that expenses incurred in obtaining evidence ins [sic] surveys should be in equal proportion.

11. Damages for a loss of rental income was unsubstantiated since no testimony by Nichols was given that she had in fact lost rental income, there is no history of rental income on the units and the condition of the units at the time of their purchase made them unrentable.

12. Damages awarded for the replacement of a sewage facility was improper, since the system should have been replaced in 1995 when the Health Department found that it was not functional. It did not meet the requirements of OAC 3701-29-02.

13. The court did not refer to the Ohio Administrative Code that describes the requirement for a sewage facility OAC 3701-29-02(H),(K). Had this occurred, it would have been obvious that this was a 'land grab' effort to gain enough land to place a septic facility on the Nichols land.

14. The defendants feel that there were prejudicial statements made during the trial as to their marital status, mental health, and parentage of their child. None of the line of questioning involving these things had anything to do with the facts of the case and was a blatant violation of the civil rights of privacy of the defendants."

We note that these "points of argument" or assignments of error

are not supported by any argument.²

A brief summary of the facts pertinent to this appeal is as follows. Appellees, Homer Wilson and his daughter Vickie Nichols, are contiguous land owners in Belpre Township,

²App.R. 16(A), entitled "Brief of the Appellants" provides:
The appellant shall include in its brief, under the headings and in the order indicated, all of the following:

* * *

(7)An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

Washington County. Adjacent to their respective properties are several parcels owned by Appellant Mona Arnold. Appellant resides there with her boyfriend, Appellant David Spaulding, and their daughter.

It appears that in order to get to Nichols's property, it is necessary to traverse a driveway from County Road 712 over her father's land. In 1997, shortly after Nichols acquired the land, appellants blocked her driveway and dismantled a septic system which served two mobile homes located on the property.

Appellees commenced this action on January 30, 1998, and alleged, inter alia, trespass, interference with the beneficial use of land, and damage to property. Appellees requested (1) a judicial determination of the boundary line between their properties and the property owned by Mona Arnold; (2) an order to require the removal of the barrier blocking their driveway; and (3) compensatory and punitive damages. Appellants' separate answers denied liability and asserted a variety of defenses. Appellant Mona Arnold filed a counterclaim and alleged that appellees' lawsuit was frivolous and asked for compensatory and punitive damages. Appellees denied liability on the

counterclaim.³

³ With the exception of signing the notice of appeal and the appeal brief filed in this case, Appellant David Spaulding made no appearance in the cause sub judice after his initial answer.

The trial court bifurcated the issues for trial and, on November 3, 1998, heard the matter in order to determine the boundary line(s) location.⁴ Appellees each testified that the driveway runs through Wilson's land and that the septic system is located on Appellee Nichols's property. William Ambrose, a licensed surveyor, corroborated this testimony, and related in painstaking detail how his survey reveals that the driveway is "clearly on Homer Wilson's property" and that the septic system area is Vickie Nichols's property.

By contrast, Appellant Mona Arnold testified that she believes that both the driveway and septic system are located on her property. James Huffman, a licensed surveyor, recounted that appellants hired him to survey the property. Although the gist of Huffman's testimony is not entirely clear from the transcript, it appears that he arrived at a different boundary line than Ambrose. Further, Betty Jane Windland, a daughter of a previous landowner, testified that her mother had used the driveway to access appellants' property.

The trial court found that the Ambrose survey correctly determined the boundary lines. The court then continued the matter for further proceedings on the damage issue.

⁴ Over Appellant Mona Arnold's objection, this issue was tried to the court. Appellant had included a jury demand as part of her answer but, when the issues were bifurcated for trial, the court ordered that the determination of the boundary lines would be "tried first to the court." Appellant filed a supplemental request for jury trial on this issue but was overruled in a September 22, 1998 entry wherein the trial court concluded that she had "no fundamental right to a jury trial on issues of equity."

At the second phase of the proceeding, the court heard evidence concerning appellees' expenses and monetary losses. Frank Caldwell testified as to the cost of replacing the septic system, and Appellee Homer Wilson spoke to his daughter's lost rental income, the surveyor's cost and their attorney fees.

Subsequently, the trial court issued extensive findings of fact and conclusions of law which, inter alia: (1) awarded Nichols \$6,400 for lost rent⁵ and \$2,850 for septic tank replacement; (2) awarded Homer Wilson \$3,389.10 for attorney fees and \$3,088 for surveyor's fees; and (3) held that the evidence did not support a punitive damage award.

On December 19, 2000, appellants filed a notice of appeal. A different panel of this Court dismissed that case for lack of a final, appealable order. See Nichols v. Arnold (Dec. 19, 2000), Washington App. No. 99CA21, unreported (hereinafter "Nichols I").

This court determined that the trial court had not expressly resolved appellants' counterclaim and did not find "no just reason for delay" pursuant to Civ.R. 54(B).⁶ The matter was

⁵ This amount was for rent over a sixteen (16) month period during which she was deprived of the use of her property.

⁶ We question the correctness of that decision. Strict compliance with Civ.R. 54(B) is unnecessary when the claims that remain for adjudication are essentially rendered moot. See e.g. General Acc. Ins. Co. v. Insurance Co. of North America (1989), 44 Ohio St.3d 17, 21, 540 N.E.2d 266, 270-271; Wise v. Gursky (1981), 66 Ohio St.2d 241, 243, 421 N.E.2d 150, 152. Although the trial court did not expressly resolve appellant's counterclaim, our understanding of that pleading is that the only claim therein advanced asserted that the lawsuit was frivolous. On further review, we do not find a claim for "nuisance." That said, the court's decision in appellees favor essentially rendered moot appellant's counterclaim and this Court should have

returned to the trial court and, on March 28, 2001, the trial court granted a judgment against Appellant Mona Arnold on her counterclaim. This appeal followed.

We note at the outset that appellants' have not only failed to comply with the Ohio Rules of Appellate Procedure, but also failed to present anything resembling a cogent, or at least an understandable, argument. As we noted supra, appellants' failed to include any "assignments of error" in their brief as that term is used in App.R. 16. More important, appellants failed to submit any "argument" in support of their "points." Therefore, we may disregard their "points" pursuant to App.R. 12(A)(2). See Portsmouth v. Internatl. Assn. of Fire Fighters, Local 512 (2000), 139 Ohio App.3d 621, 626, 744 N.E.2d 1263, 1266; Park v. Ambrose (1993), 85 Ohio App.3d 179, 186, 619 N.E.2d 469, 474; State v. Caldwell (1992), 79 Ohio App.3d 667, 677, 607 N.E.2d 1096, 1103, at fn. 3. Another problem with appellants' brief is that we have great difficulty gleaning the precise nature of the contested issues that appellants wish to present on appeal.

addressed this case on its merits the first time it arrived in this court.

This Court has a long history of leniency to pro se litigants. See Besser v. Griffey (1993), 88 Ohio App.3d 379, 382, 623 N.E.2d 1326, 1328; State ex rel. Karmasu v. Tate (1992), 83 Ohio App.3d 199, 206, 614 N.E.2d 827, 832. There is a limit, however. We may not conjure up questions never squarely asked, or construct full blown arguments from convoluted reasoning. Whittington v. Kudlapur (Jul. 25, 2001), Hocking App. No. 01CA1, unreported; Conley v. Willis (Jun. 14, 2001), Scioto App. No. 00CA2746, unreported; Burns v. Webb (Oct. 9, 1998), Athens App. No. 97CA45, unreported. Accordingly, in light of appellants' failure to comply with App.R. 16, we choose to disregard appellants' brief and to affirm the trial court's judgment.⁷

⁷In the interests of justice, we have attempted to review both the record and a portion of appellants' "points of argument," at least to the best of our ability to understand them.

Appellants' first "assignment of error" asserts that opposing counsel made no attempt to resolve this matter before filing suit against them. Ohio law imposes no such duty on counsel and, in any event, an appellate court reviews legal errors on the part of the trial court. A court's duty does not include the micro-management of the affairs of attorneys.

Appellants' second "assignment of error" asserts that opposing counsel should have recused himself from this case due to an alleged conflict of interest. Once again, this is not the type of issue that we review on appeal. Furthermore, we note that the trial court considered this issue at a hearing on June 26, 1998. The court determined that no conflict existed. Appellants have not asserted that the court erred in that determination and, even if they had advanced such an argument, we are unpersuaded that the court erred in its conclusion.

Accordingly, we overrule appellants' second assignment of error.

Appellants' third "assignment of error" asserts that the bifurcation of issues in this case deprived them of a jury trial.

The decision to bifurcate is a matter entrusted to the trial court's sound discretion. See Amerifirst Savings Bank of Xenia v. Krug (1999), 136 Ohio App.3d 468, 485, 737 N.E.2d 68, 80; Sheets v. Norfolk S. Corp. (1996), 109 Ohio App.3d 278, 671

N.E.2d 1364. Furthermore, appellants assert in their "conclusion" that they "were denied trial by jury on matters of considerable equity." As the trial court noted, however, litigants are not entitled to jury trial in matters of equity. See, also, concurring opinion, infra.

Appellants' fourth "assignment of error" asserts that the trial court erred by denying their motion for default judgment on their counterclaim. Motions for default judgment under Civ.R. 55 are relegated to the sound discretion of the trial court. See generally Huffer v. Cicero (1995), 77 Ohio App.3d 65, 74, 667 N.E.2d 1031, 1036; Black v. Oakes (Jun. 26, 2001), Franklin App. No. 00AP-1133, unreported. Appellants did not argue that the trial court abused its discretion and we find no abuse of discretion.

Appellant's ten remaining "assignments of error" involve evidentiary issues or other related matters that occurred during either the first phase of the proceeding to determine the boundary line location, or during the second phase to determine damages. Appellants, however, failed to advance a proper argument in support of their "assignments of error," and these

matters will not be individually considered.

Thus, we overrule appellants' fourteen "points of argument" and affirm the trial court's judgment.⁸

⁸Appellants failed to adequately set forth and support their argument concerning the trial court's refusal to permit a jury to determine the facts of this case. If appellants had properly presented this issue, however, we may have reversed the trial court's judgment and remanded this matter for a jury trial. Nevertheless we have no doubt, based upon our review of the evidence, that the trial court reached the correct result. Appellants' weak and unconvincing evidence, when compared to appellees' evidence and expert testimony, leaves no question that the trial court arrived at the correct conclusion in this matter.

While this situation could not be categorized as "harmless error," because the improper denial of a jury trial could never be found to constitute harmless error, we have no question

JUDGMENT AFFIRMED.

concerning the quality of the evidence and the ultimate outcome of this controversy.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellees recover of appellants costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Exceptions.

Abele, P.J., Harsha, J.
& Evans, J.: Concur in
Judgment & Opinion

For the Court

BY: _____
Peter B. Abele
Presiding Judge

BY:
William H. Harsha, Judge

BY:
David T. Evans, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal

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commences from the date of filing with the clerk.