[Cite as *Ogle v. Ohio Power Co.*, 2015-Ohio-1724.]

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

CHARLES R. OGLE, et al.,	:	
	:	Case No. 14CA15
Plaintiffs-Appellants,	:	
	:	
vs.	:	DECISION AND JUDGMENT
	:	ENTRY
OHIO POWER CO., et al.,	:	
	:	**Released:04/28/15**
Defendants-Appellees.	:	

APPEARANCES:

Charles R. Ogle and Melanie A. Ogle, Rockbridge, Ohio, Pro Se Appellants.

Charles A. Gerken, Logan, Ohio, for Appellee Ohio Power Company.

D. Patrick Kasson and Melvin J. Davis, Reminger Co., L.P.A., Columbus, Ohio, for Appellee Asplundh Tree Expert Company.

McFarland, A.J.

{¶1} Appellants Charles R. Ogle and Melanie A. Ogle appeal the July 21, 2014 entry of the Hocking County Court of Common Pleas denying their motion for summary judgment and granting the motions for summary judgment of Appellees Ohio Power Company and Asplundh Tree Expert Company. Appellants' sole assignment of error is that the trial court erred by its findings that there are no genuine issues of material fact, and Appellants' current claims that Appellees "wrongfully carried away Ogles'

personal property" are barred by the doctrine of res judicata. Upon a de novo review of the record, we find the trial court did not err. As such, we overrule Appellants' assignment of error and affirm the judgment of the trial court.

FACTS

{¶2} We generally recount the facts as previously set forth in this court's decision in *Ohio Power Co., v. Ogle,* 4th Dist. Hocking No. 12CA14, 2013-Ohio-1745. Appellee Ohio Power Company (Ohio Power) commenced an action in June 2007 to obtain an easement across Appellants' real property located in Good Hope Township, Hocking County. Ohio Power sought an easement in order to install a power line which would serve a communications tower being constructed on property adjacent to and to the south of Appellants' property. Pursuant to R.C. 163.09, the trial court bifurcated the matter, first holding a hearing to determine if the proposed easement was a public necessity and reserving for later the issue of compensation. After a full hearing on the matter, the trial court determined the taking was necessary. At a subsequent jury trial to determine the amount of compensation Appellants would receive for the easement and for the damage to the residue, the jury awarded Appellants $4,000.00 for the market value of the granted easement and $50,000.00 for damages to the residue of

the property. The trial court entered its final judgment entry in the case on December 11, 2008. Both parties appealed the trial court's decision to this Court. This Court affirmed both the granting of the easement and the award of compensation in a decision issued on November 3, 2009, styled *Ohio Power Co. v. Ogle*, 4th Dist. Hocking No. 09CA1, 09AP1, 2009-Ohio-5953, (*Ogle I*). Appellants then appealed this Court's decision to the Supreme Court of Ohio, but the Court denied the appeal.

{¶3} During the time the initial appeal was pending, Ohio Power moved to compel Appellants to show cause for contempt of court. Ohio Power claimed Appellants had totally blocked access to the granted easement, thus preventing preparations for the installment of the power line. On August 12, 2009, the trial court conducted a full hearing on Ohio Power's motion for contempt and found Appellants in contempt.[1] Appellants subsequently appealed the finding of contempt and an award of sanctions. On July 27, 2011, this Court reversed the trial court's contempt finding and remanded the matter to the trial court. *Ohio Power Company v. Ogle*, 4th Dist. Hocking No. 10CA13, 10AP13, 2011-Ohio-3903, (*Ogle II*).

[1] We do not set forth in detail the procedural posture and facts of the contempt proceedings herein as they are not relevant to this appeal.

{¶4} On August 5, 2011, Appellants began filing a series of post-remand motions.[2] On July 20, 2012, the trial court issued a final judgment entry expressly denying all pending motions. Appellants brought a timely appeal from the trial court's July 20, 2012 entry which was resolved by our decision in *Ohio Power Co., v. Ogle*, 4th Dist. Hocking No. 12CA14, 2013-Ohio-1745, (*Ogle III*). In *Ogle III*, this Court considered six assignments of error, including Appellants' challenges that (1) the trial court erred by denying their "motion for compensation of personal property of defendants stolen by plaintiff" and (2) the trial court erred by denying their motion for additional compensation. The underlying facts regarding property allegedly "stolen by plaintiff" will be set forth more fully below. In our April 19, 2013 decision resolving these two challenges, however, this Court pointed out: (1) the doctrine of res judicata was applicable to the underlying facts, and (2) Appellants had never filed a separate action seeking compensation and damages with regard to trees allegedly cut and removed in the summer of 2009.

{¶5} Thereafter, on August 26, 2013, Appellants filed a complaint in the trial court alleging Appellee Asplundh Tree Expert Company (Asplundh), on behalf of Ohio Power, trimmed and/or cut trees growing

[2] These motions included a motion for distribution and interest on August 5, 2011; a motion for attorney's fees and sanctions on June 5, 2012; and a motion for compensation and additional sanctions on July 3, 2012.

upon Ohio Power's easement during the summer of 2009.[3] All parties eventually filed motions for summary judgment. The trial court held Appellants' claims for additional compensation were barred by res judicata and granted summary judgment in favor of Ohio Power and Asplundh. This timely appeal followed.

ASSIGNMENT OF ERROR

"I. THE TRIAL COURT ERRED IN DETERMINING THAT PLAINTIFFS' CLAIMS WERE BARRED BY RES JUDICATA IN GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS."

STANDARD OF REVIEW

{¶6} Appellate courts conduct a de novo review of trial court summary judgment decisions. See, e.g., *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Accordingly, an appellate court must independently review the record to determine if summary judgment is appropriate and an appellate court need not defer to the trial court's decision. See *Brown v. Scioto Bd. of Commrs.*, 87 Ohio App.3d 704, 711, 622 N.E.2d 1153 (1993); *Morehead v. Conley*, 75 Ohio App.3d 409, 411-412, 599 N.E.2d 786 (1991). Thus, to determine whether a trial court properly granted a summary judgment motion, an appellate court must

[3] Appellants' complaint did not contain allegations pertaining to the removal of trees from outside the easement, although they made this argument during summary judgment practice.

review the Civ.R. 56 summary judgment standard, as well as the applicable law.

{¶7} Civ.R. 56(C) provides, in relevant part, as follows:

> " * * * Summary judgment shall be rendered forthwith if the pleadings, deposition, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor."

{¶8} Pursuant to Civ.R. 56, a trial court may not award summary judgment unless the evidence demonstrates that: (1) no genuine issue as to any material face remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, and after viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made. See, e.g., *Vahila v. Hall*, 77 Ohio St.3d 421, 429-430, 674 N.E.2d 1164 (1997).

LEGAL ANALYSIS

{¶9} We have adopted a policy of affording considerable leniency to pro se litigants. *Cooke v. Bowen,* 4th Dist. Scioto No. 12CA3497, 2013-Ohio-4771, ¶ 7; E.g., *In re Estate of Pallay,* 4th Dist. Washington No. 05CA45, 2006-Ohio-3528, ¶ 10; (Internal citations omitted.) "Limits do exist, however. Leniency does not mean that we are required 'to find substance where none exists, to advance an argument for a pro se litigant or to address issues not properly raised.' " *Cooke, supra,* quoting *State v. Healee,* 4th Dist. Washington No. 08CA6, 2009-Ohio-873, ¶ 6, quoting *State v. Nayar,* 4th Dist. Lawrence No. 07CA6, 2007-Ohio-6092, ¶ 28. "It is well established that pro se litigants are held to the same rules, procedures, and standards as litigants who are represented by counsel, and must accept the results of their own mistakes and errors." *Cooke, supra,* at ¶ 40, quoting *Selvage v. Emnett,* 181 Ohio App.3d 371, 2009-Ohio-940, 909 NE.2d 143 ¶ 13 (4th Dist.) (Internal citations omitted.)

{¶10} We begin by carefully explaining exactly what the doctrine of res judicata means, and what objective applying the doctrine serves, as previously set forth at *Ogle III,* ¶ 44:

> "The doctrine of res judicata bars claims that the defendant raised or could have raised on direct appeal. ¶ 45; *In re B.C. S.*, 4th Dist. No. 07CA60, 2008-Ohio-5771, ¶ 14. '[T]he doctrine serves to preclude a defendant who has had his day in court from seeking a second on that same issue. In so doing, res judicata promotes the principles of finality and judicial

> economy by preventing endless relitigation of an issue on which a defendant has already received a full and fair opportunity to be heard.' *State v. Saxon,* 109 Ohio St.3d 176, 2006-Ohio-1245, 846 N.E.2d 824, ¶ 18."

{¶11} Appellants argue that during the summer of 2009, Ohio Power and Asplundh carried away "wood products" owned by Appellants. Appellants point out the language of Ohio Power's easement states it "shall pay reasonable damage to crops." Appellants contend the wood products were not the subject of prior litigation and, as such, the doctrine of res judicata does not apply.

{¶12} In its brief, Ohio Power observes that during the various proceedings, Appellants had referred to the same trees at issue during the summer of 2009 as "personal property," "crops," and now "wood products." Ohio Power suggests Appellants are trying to create new subject matter to support a new claim. Asplundh argues: (1) Appellants have already been compensated for trees inside the easement, and (2) they did not pursue a claim for trees alleged to be outside the easement. Ohio Power and Asplundh both argue since res judicata applies, the trial court did not err.

{¶13} The record reveals Appellants were deposed on February 24, 2014. Both testified the trees inside or upon the easement were cut and carried away between July and September 2009. Appellant Charles R. Ogle

could not recall the exact dates.[4] Appellant Melanie A. Ogle testified the complaint filed on August 26, 2013 was a fair and accurate summary of their claims.[5] In sum, Appellants' complaint alleged wrongful taking of personal property (hard and soft wood trees) growing upon Ohio Power's easement between July 1, 2009 and September 10, 2009; and trespass upon Appellants' property located in Good Hope Township, Hocking County, between July 1, 2009 and September 10, 2009. However, Appellants' brief does not even specify any dates of alleged taking or locations of property.

{¶14} Appellants' claim for wrongful taking or conversion of trees inside the easement area is not a new claim and is a claim for which Appellants have already been compensated. We explicitly stated in *Ogle III*, at ¶ 42:

> "A review of the record further indicates that the value of the trees was taken into consideration in arriving at the initial damage award of $54,000.00, which amount was upheld on appeal. *Id.* See, *Ohio Power Company v. Charles R. Ogle, et al.*, 4th Dist. Hocking No. 09CA1, 09AP1, 2009-Ohio-5953,

[4] Charles R. Ogle also testified a "handful" of trees were cut outside of the easement area. In Appellants' motion for summary judgment, they argue trees were cut inside and outside the easement area, and that Appellees trespassed on their property in the course of carrying away the wood products.

[5] On appeal, Appellants have not raised the issue of the trees cut outside of Ohio Power's easement nor have they raised the issue of trespass. The "Conclusion" section of their brief states: "Applying the legal conclusions in *Davis v. Wal-Mart Stores, Inc.*, 93 Ohio St.3d 488, 491, 2001-Ohio-1593, 756 N.E.2d 657, *regarding before and after occurrences*, this is not a case for which barring Plaintiffs-Appellants' claims for res judicata is applicable." (Emphasis added.) We simply find the meaning of the phrase "regarding before and after occurrences" to be unintelligible. However, in its brief, Asplundh contends (1) Appellants have no claim for conversion as Asplundh had authority to remove trees on the easement and (2) Appellants have no claim for trespass as Asplundh was permitted to be on the easement performing the removal.

¶ 24 and 27."

{¶15} And, although Appellants alleged a claim for trespass in their complaint and in their motion for summary judgment, they have apparently abandoned the claim on appeal. For the sake of clarity, we would reiterate that any claim for trespass, similar to their claims for trees or wood products allegedly taken outside of Ohio Power's easement area, should have been raised at the time Appellants became aware of any alleged trespass and as part of one of their numerous prior appeals. Again, as explicitly stated in *Ogle III* at ¶ 44:

> " * * * [W]ith respect to Appellants' claim for additional compensation, Appellants were aware that Appellee had possibly cut trees outside of the easement area, and had removed the trees cut within the easement in the summer of 2009. Thus, although a cause of action for alleged damages accrued at that time, Appellants never filed a separate action seeking compensation and damages. Further, to the extent Appellants' sought additional damages related to Appellee's removal of trees within the easement as part of the contempt proceedings, certainly that issue could have been raised as part of the appeal from the contempt decision. However, it was not."
>
> * * *

{¶16} We are not sure what more can be said to make abundantly clear that Appellants are not entitled to relitigate claims that have previously been decided or that could have been brought in an initial or direct appeal. Appellants have been compensated for trees that were located within the

easement area and were cut or removed during the summer of 2009. That is what the $4,000.00 award for the market value of the easement included. It is in all possibility quite likely that the $50,000.00 award for damage to the residue included damages for the trees allegedly cut outside the easement area. And it is difficult to see how Appellants could prove a trespass claim when the trial court granted the easement to Ohio Power for the purpose of installing a power line. If Appellants ever had any viable claim for trees allegedly taken from outside the easement area and for trespass, they failed to pursue such claims in a timely fashion.

{¶17} Based on the authority of our previous opinion in *Ogle III*, we find no merit to Appellants' sole assignment of error, and it is hereby overruled. The trial court did not err by denying Appellants' motion for summary judgment on the basis of res judicata. We affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and that the Appellees recover of Appellants any costs herein.

The Court finds there were reasonable grounds for this appeal.

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

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Hoover, P.J. & Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland,
Administrative Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.