[Cite as *Wiltz v. Ohio Civ. Rights Comm.*, 2016-Ohio-3046.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CASSANDRA WILTZ	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellant	:	Hon. W. Scott Gwin, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
OHIO CIVIL RIGHTS COMMISSION	:	Case No. 15CA21
	:	
Defendant-Appellee	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 15AP03-0092
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	May 13, 2016

APPEARANCES:

For Plaintiff-Appellant	For Defendant-Appellant
CASSANDRA WILTZ, Pro Se P.O. Box 64 Delaware, OH 43015	PATRICK M. DULL State Office Tower 30 East Broad Street 15th Floor Columbus, OH 43215-3428

Farmer, P.J.

{¶1} On June 30, 2014, appellant, Cassandra Wiltz, filed a charge with appellee, Ohio Civil Rights Commission, alleging her former employer, Moundbuilders Guidance Center dba Behavioral Healthcare Partners of Central Ohio, engaged in unlawful retaliation because she had complained of unlawful racially motivated behavior against her and its financial fraud. The alleged retaliation included verbal and written threats and intimidation to appellant and failing to provide her with a needed reference because of her race, African American. Appellee investigated the claim and by Letter of Determination dated January 8, 2015, found insufficient information to establish unlawful discrimination against appellant based on her race and found no probable cause to believe Behavioral Healthcare engaged in an unlawful discriminatory practice. Appellee dismissed the matter.

{¶2} Upon a reconsideration request by appellant, appellee issued a Letter of Determination Upon Reconsideration dated February 19, 2015, finding no credible information supporting appellant's allegations of unlawful activity and finding no probable cause to issue an administrative complaint accusing Behavioral Healthcare of an unlawful discriminatory practice. Again, appellee dismissed the matter.

{¶3} On March 23, 2015, appellant filed a petition with the trial court for judicial review of appellee's determination, naming appellee and Behavioral Healthcare. On April 10, 2015, appellee filed a motion to dismiss Behavioral Healthcare as it was not a proper party to the action. By order filed April 17, 2015, the trial court granted the motion. Also on April 17, 2015, the trial court set a briefing schedule, with appellant's brief due forty

days after the filing of the record. The record was filed on April 29, 2015, making appellant's brief due on or about June 8, 2015.

{¶4} On June 3, 2015, appellant filed a motion to change venue and motion to compel appellee to file the record. On June 12, 2015, appellee filed a motion to strike all of appellant's attachments to her motions. On June 24, 2015, appellee filed a brief. On August 6, 2015, appellant filed a motion to strike said brief. By judgment entries filed August 27 and 28, 2015, the trial court granted appellee's motion to strike the attachments, and denied appellant's motion for change of venue, motion to compel, and motion to strike appellee's brief. The trial court also set a new briefing schedule, giving appellant an additional forty days to file a brief.

{¶5} On October 5, 2015, appellant filed a motion for an extension to file her brief due to illness. On October 13, 2015, appellant filed a "Brief" wherein she did not address the merits of the issues, but instead asked for more time to file her brief. By judgment entry filed October 26, 2015, the trial court dismissed the action, finding appellant had not filed a brief and denying her requests for more time to do so.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶7} "THE COURT ABUSED ITS DISCRETION AND DEMONSTRATED BIAS AGAINST THE PLAINTIFF, WHEN IT MADE A 10/26/15 JUDGMENT ENTRY THAT DISMISSED THE CASE AND DENIED A MOTION, THAT MERELY STATED THAT 'APPELLANT HAS NOT FILED A BRIEF' AND 'A MOTION TO EXTEND THE DUE DATE OF PLAINTIFF'S BRIEF IS DENIED', THAT FAILED AND REFUSED TO

ACKNOWLEDGE/ADDRESS WHAT THE BASIS OF THE PLAINTIFF'S MOTION WAS, THE FACT THAT AN EXTENSION WAS REQUESTED BECAUSE OF A LONG-TERM ILLNESS, OR ANY OF THE PLAINTIFF'S ARGUMENTS OR EVIDENCE (OF THE MOTION FOR AN EXTENSION OR OF THE BRIEF THAT THE PLAINTIFF ACTUALLY FILED WITH THE COURT), AND THAT PROVIDED NO EXPLANATION FOR DENIAL OF THE EXTENSION REQUEST (THAT WAS TIMELY FILED, MADE FOR GOOD CAUSE, AND WELL-SUPPORTED)."

II

{¶8} "BY DISMISSING THIS CASE AGAINST DEFENDANT BHCP ON 4/17/15 'WITHOUT ALLOWING THE PLAINTIFF TO RESPOND TO THE MOTION TO DISMISS' AND 'ON THE BASIS OF AN UNSUPPORTED, ERRONEOUS, AND UNREASONABLE/AMBIGUOUS CLAIM', THE COURT ERRED, DENIED THE PLAINTIFF DUE PROCESS, AND ABUSED ITS DISCRETION."

III

{¶9} "THE COURT ERRED, DENIED THE PLAINTIFF DUE PROCESS, AND ABUSED ITS DISCRETION, BY GRANTING A MOTION TO SET A BRIEFING SCHEDULE WITHOUT ALLOWING THE PLAINTIFF TO RESPOND TO THE DEFENDANT'S MOTION TO SET A BRIEFING SCHEDULE OR TO AN ALLEGED SUA SPONTE MOTION OF THE COURT, BY SETTING A BRIEFING SCHEDULE THAT DID NOT ALLOW THE PLAINTIFF TO FILE A REPLY BRIEF, AND BY DENYING (AND PROVIDING NO REASONABLE EXPLANATION FOR THE DENIAL) THE PLAINTIFF'S SUBSEQUENT MOTION THAT REQUESTED TO BE ALLOWED TO FILE A REPLY BRIEF."

IV

{¶10} "THE COURT ERRED AND ABUSED ITS DISCRETION, WHEN IT MADE A 8/28/15 JUDGMENT ENTRY THAT DENIED THE PLAINTIFF'S 8/5/15 MOTION TO STRIKE FROM THE RECORD A BRIEF THAT WAS FILED BY THE DEFENDANT (WHICH THE DEFENDANT HAD NO AUTHORITY TO FILE) AND TO SET A BRIEFING SCHEDULE, THAT WAS INCONSISTENT WITH ITS 4/17/15 BRIEFING SCHEDULE/ORDER AND WITH COURT RULES, THAT DID NOT ACKNOWLEDGE/ADDRESS THE PLAINTIFF'S MOTION ARGUMENTS/EVIDENCE, THAT OFFERED NO EXPLANATION FOR THE DENIAL OF THE MOTION (OTHER THAN TO STATE THAT IT "WAS NOT WELL-TAKEN"), AND THAT UNFAIRLY PUT THE DEFENDANT IN THE POSITION OF BEING ABLE TO THE[N] DECIDE WHAT THE ISSUES OF THE CASE WOULD BE."

V

{¶11} "THE COURT ABUSED ITS DISCRETION, WHEN IT MADE AN 8/27/15 JUDGMENT ENTRY THAT DENIED THE PLAINTIFF'S 6/2/15 MOTION FOR CHANGE OF VENUE, THAT OFFERED NO SPECIFIC REASONABLE EXPLANATION FOR THE DENIAL (AND STATED ONLY THAT THE MOTION "WAS NOT WELL-TAKEN"), AND THAT DID NOT ACKNOWLEDGE/ADDRESS ANY ARGUMENTS OR EVIDENCE FROM THE MOTION."

VI

{¶12} "THE COURT ERRED, ABUSED ITS DISCRETION, AND UNFAIRLY TOOK ACTIONS TO PREVENT EVIDENCE FROM BEING CONSIDERED BY THE COURT AND BEING AVAILABLE FOR APPELLATE REVIEW PURPOSES, BY

GRANTING A MOTION REQUEST OF THE DEFENDANT TO STRIKE FROM THE RECORD ALL EVIDENCE THAT SUPPORTED THE PLAINTIFF'S 6/2/15 MOTION FOR CHANGE OF VENUE AND 6/2/15 MOTION TO COMPEL, BY STRIKING THE DOCUMENTS FROM THE RECORD BEFORE IT EVEN HEARD THE MOTIONS THAT THE DOCUMENTS SUPPORTED, BY FAILING AND REFUSING TO ACKNOWLEDGE/ADDRESS OR CONSIDER ANY OF THE ARGUMENTS AND EVIDENCE OF THE PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE, AND BY FAILING AND REFUSING TO PROVIDE A REASONABLE EXPLANATION FOR THE STRIKING THE DOCUMENTS FROM THE RECORD."

VII

{¶13} "THE COURT ERRED AND ACTED IN AN ARBITRARY, CAPRICIOUS, AND UNREASONABLE MANNER, WHEN IT MADE AN 8/27/15 JUDGMENT ENTRY THAT DENIED THE PLAINTIFF'S 6/2/15 MOTION TO COMPEL DEFENDANT OCRC TO FILE ITS RECORD WITH THE COURT (AND THAT DID NOT STATE A POSITION REGARDING WHETHER THE DEFENDANT HAD ALREADY FILED THE RECORD), WHEN IT MADE AN 8/27/15 ORDER (BEFORE MAKING THE JUDGMENT ENTRY THAT DENIED THE MOTION TO COMPEL) THAT STRUCK FROM THE RECORD ALL OF THE EVIDENCE THAT WAS A PART OF THE PLAINTIFF'S MOTION, AND WHEN IT TOOK ACTIONS TO INTERFERE WITH THE ABILITY TO PERFORM A PROPER APPELLATE REVIEW OF THE DECISION TO DENY THE PLAINTIFF'S MOTION (IE: IT MADE A JUDGMENT ENTRY THAT DID NOT ACKNOWLEDGE A SINGLE ARGUMENT OR PIECE OF EVIDENCE FROM THE PLAINTIFF'S MOTION AND THAT DID NOT PROVIDE A REASON FOR THE DENIAL OF THE MOTION 'EXCEPT TO

STATE THAT THE MOTION WAS NOT WELL-TAKEN' AND IT STRUCK THE PLAINTIFF'S EVIDENCE FROM THE RECORD)."

VIII

{¶14} "THE COURT MADE AN 8/27/15 JUDGMENT ENTRY THAT IMPLIED THAT DEFENDANT OCRC FILED ITS RECORD WITH THE COURT ON 4/29/15 (BY MERELY STATING THAT MY 6/2/15 MOTION TO COMPEL THE DEFENDANT TO FILE THE RECORD WAS "NOT WELL-TAKEN") AND AN 8/27/15 ORDER THAT IMPLIED THAT THE RECORD THAT WAS FILED BY THE DEFENDANT APPROPRIATELY CONSISTED OF A 2-PAGE DETERMINATION LETTER (BY MERELY STATING THAT A DETERMINATION LETTER IS THE ONLY THING THAT A COURT IS ALLOWED TO REVIEW DURING A JUDICIAL REVIEW OF AN OCRC "NO PROBABLE CAUSE" DECISION). THESE IMPLIED AND STATED CLAIMS ARE ERRONEOUS AND AGAINST THE WEIGHT OF THE EVIDENCE THAT IS IN THE RECORD."

IX

{¶15} "WHEN THE COURT MADE JUDGMENT ENTRIES THAT ERRONEOUSLY STATED THAT THE PLAINTIFF'S 6/2/15 MOTION FOR CHANGE OF VENUE, 6/2/15 MOTION TO COMPEL DEFENDANT OCRC TO FILE THE RECORD WITH THE COURT, AND 8/5/15 MOTION TO STRIKE THE DEFENDANT'S BRIEF FROM THE RECORD (AND FOR AN ORDER SETTING A BRIEFING SCHEDULE THAT ALLOWS THE PLAINTIFF TO FILE BOTH A BRIEF AND AN APPEAL BRIEF) WERE "NOT WELL-TAKEN", IT MADE ENTRIES/DECISIONS THAT WERE AGAINST THE WEIGHT OF EVIDENCE THAT IS IN THE RECORD."

X

{¶16} "THE COMPLETE RECORD SUPPORTS THAT THE COURT REPEATEDLY DENIED THE PLAINTIFF DUE PROCESS, REPEATEDLY ABUSED ITS DISCRETION, IS BIASED AGAINST THE PLAINTIFF (AND IN FAVOR OF THE DEFENDANTS) "IN APPEARANCE" AND "IN FACT", AND SHOULD NOT BE THE DECISION MAKER FOR THIS CASE."

{¶17} We will address appellant's assignments of error out of order as we find the issues raised should be addressed in chronological order.

II

{¶18} Appellant claims the trial court erred in dismissing her action against Behavioral Healthcare. We disagree.

{¶19} App.R. 4 governs appeal as of right – when taken. Subsection (A)(1) governs time for appeal from an order that is final upon its entry and states: "Subject to the provisions of App.R. 4(A)(3), a party who wishes to appeal from an order that is final upon its entry shall file the notice of appeal required by App.R. 3 within 30 days of that entry."

{¶20} R.C. 2505.02 governs final orders. Subsection (B) provides the following in pertinent part:

> (B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

> (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment[.]

{¶21} The trial court's April 17, 2015 order dismissing Behavioral Healthcare was a final appealable order; therefore, any argument relative to this order is untimely. We find none of the exceptions in App.R. 4(B) to apply.

{¶22} Assignment of Error II is denied.

V, VI, VII, VIII, IX

{¶23} Under these assignments, appellant claims the trial court erred in striking the attachments to her motion for change of venue and motion to compel and in denying said motions. We disagree.

{¶24} Appellant's June 3, 2015 motion for change of venue was predicated on her perception that the trial court judge was biased "in appearance" because Behavioral Healthcare provides services and assistance to the courts, and was biased "in fact" because the trial court dismissed Behavioral Healthcare from the case on April 17, 2015.

{¶25} The matter of prejudice was fully tried and resolved against appellant's position by the July 15, 2015 decision of Chief Justice Maureen O'Connor in denying appellant's June 26, 2015 affidavit to disqualify the trial court and "all other judges in Knox and Licking counties," wherein Justice O'Connor stated the following:

> Judge Eyster has responded in writing to the affidavit, denying any bias or prejudice against Wiltz. The judge acknowledges that Behavioral Healthcare Partners provides mental-health services to parties in his court.

However, the judge also explains that Behavioral Healthcare Partners is not a party to the underlying administrative appeal, and the judge's role in this case is not to determine the "guilt or innocence" of Wiltz's former employer but to decide whether the commission had sufficient evidence to support its decision not to move forward with Wiltz's civil-rights complaint. *See* Judge Eyster Resp. at 1-2. Based on this record, no reasonable or objective observer would harbor serious doubts about Judge Eyster's impartiality. *See In re Disqualification of Lucci,* 117 Ohio St.3d 1242, 2006-Ohio-7230, 884 N.E.2d 1093, ¶ 8 (setting forth the test for determining whether a judge's participation in a case presents an appearance of impropriety).

Second, Wiltz claims that Judge Eyster has demonstrated actual bias against her by (1) granting the commission's motion to dismiss Behavioral Healthcare Partners as a party without affording Wiltz the opportunity to oppose the motion, and (2) setting a briefing schedule that allegedly violates her due process rights and local court rules. *See* Wiltz Aff. at 5-11. In response, Judge Eyster states that Wiltz's administrative appeal challenges only the commission's decision and therefore Behavioral Healthcare Partners is not a necessary party. No response from Wiltz, according to Judge Eyster, would have altered his decision. The judge further states that his briefing schedule will provide him with the necessary information to decide the matter. *See* Judge Eyster Resp. at 2.

Contrary to Wiltz's arguments, it is well-settled that a party's dissatisfaction with a judge's substantive or procedural rulings is not

> evidence of bias or prejudice and therefore is not grounds for disqualification[.] *See In re Disqualification of Floyd,* 110 Ohio St.3d 1217, 2003-Ohio-7351, 803 N.E.2d 818, ¶ 4. The remedy for Wiltz's legal claims if any, lies on appeal, not through an affidavit of disqualification.

{¶26} Appellant's June 3, 2015 motion to compel was predicated on appellant's assertion that the entire record before appellee had not been filed. In *McCrea v. Ohio Civil Rights Commission,* 20 Ohio App.3d 314, 316-317 (9th Dist.1984), out brethren from the Ninth District explained the following:

> Prior to the filing of a complaint, the procedure set out in the statute is informal and in the nature of an *ex parte* proceeding. Although the commission investigates the charge, it does not seek to receive formal evidence. Unlike the procedure set forth for a post-complaint formal hearing, R.C. 4112.05 does not provide for the swearing of witnesses, the taking of testimony, or the keeping of a record during the preliminary investigation. A determination of no probable cause is one which cannot, therefore, be reviewed on the basis of reliable, probative and substantial evidence. This standard can be applied by a reviewing court only to orders which come about subsequent to or as the result of an evidentiary hearing. In the absence of an evidentiary hearing, there is no evidence to review on appeal-reliable, probative, substantial, or otherwise. To apply this standard

> to a probable cause determination would be to create a burden upon the commission where clearly none was contemplated by the legislature.

See also, Smart v. Ohio Civil Rights Commission, 5th Dist. Stark No. 2011CA00246, 2012-Ohio-2899; *Ashton v. Ohio Civil Rights Commission,* 5th Dist. Fairfield No. 21-CA-89, 1990 WL 21448 (Mar. 5, 1990).

{¶27} From our review of appellee's April 29, 2015 "Filing of Record," we find the record was complete and in accordance with R.C. 4112.06 and the decisions of *McCrae, Smart,* and *Ashton.* The attachments to appellant's motions were properly stricken as they were not a part of the record.

{¶28} Upon review, we find the trial court did not err in striking the attachments to appellant's motion for change of venue and motion to compel and in denying said motions.

{¶29} Assignments of Error V, VI, VII, VIII, and IX are denied.

III, IV

{¶30} Appellant claims the trial court erred in setting a new briefing schedule on August 28, 2015, in not striking appellee's brief filed on June 24, 2015, and in not providing appellant the opportunity to file a reply brief. We disagree.

{¶31} Trial courts have the absolute discretion to set forth a briefing schedule and to monitor the progress of a case. Sup.R. 40(A)(1) states: "Each trial judge shall review, or cause to be reviewed, all cases assigned to the judge. Cases that have been on the docket for six months without any proceedings taken in the case, except cases awaiting

trial assignment, shall be dismissed, after notice to counsel of record, for want of prosecution, unless good cause be shown to the contrary."

{¶32} On April 17, 2015, the trial court set the following briefing schedule:

> Appellee's filing of the record is **due on or before May 25, 2015**.
>
> Appellant's brief is **due within 40 days** of the filing of the record.
>
> Appellee's response to Appellant's brief is **due within 21 days** of service of appellant's brief.
>
> This matter will come on for non-oral hearing upon notification to the Court that all briefs have been filed.

{¶33} The record was filed on April 29, 2015, making appellant's brief due on or about June 8, 2015. Instead of filing a brief, appellant filed her motions to change venue and to compel on June 3, 2015, and an affidavit of disqualification with the Supreme Court of Ohio on June 26, 2015. Following the decision on the disqualification issue on July 15, 2015, the trial court filed a new briefing schedule on August 28, 2015, stating the following in pertinent part:

> 2) Appellant's brief was due within 40 days of the filing of the record, and as of the date of this entry Appellant has not filed a brief.
>
> 3) Appellee's response brief was due within 21 days of service of Appellant's brief, and without the benefit of a brief by Appellant, Appellee filed its brief on June 29 (sic), 2015.

4) The Court now has the record and the brief of Appellee which were timely filed, but no brief from appellant.

In the interest of justice, the Court will grant the Appellant 40 days from the date of service to file her brief. The Court will accept no further filings from either party and 40 days after service this matter will be deemed submitted.

{¶34} Appellant did not object to this schedule that required her to file her brief on or about October 7, 2015, and failed to mention a reply brief. On October 5, 2015, appellant filed a motion to extend the date to file her brief due to illness, contrary to the trial court's specific language of "accepting no further filings from either party." On October 13, 2015, appellant filed a "Brief" which in effect again requested an extension to file her brief due to illness. Appellee requested an extension until November 21, 2015. By judgment entry filed October 26, 2015, the trial court denied the extension requests and dismissed the action.

{¶35} Upon review, we find the trial court did not abuse its discretion in dismissing the action. Appellant failed to abide by the trial court's briefing schedule and the trial court's liberal extension giving her until on or about October 7, 2015 to file her brief when in fact it was originally due on or about June 8, 2015. In addition, we find the trial court did not err in accepting appellee's brief which was timely filed.

{¶36} Assignments of Error III and IV are denied.

I, X

{¶37} Under these assignments, appellant challenges the trial court's dismissal of the action for failure to file a brief. We disagree.

{¶38} In its August 28, 2015 scheduling judgment entry, the trial court clearly stated appellant was required to file a brief "40 days from the date of service." All of the attachments to appellant's motions that were stricken and all of the arguments propounded in her various memoranda do not substantively address the issue of the action.

{¶39} Nowhere in appellant's unstricken filings is there a definitive discussion as to why appellee's determination of lack of probable case was in error. As this court stated in *Smart, supra,* at ¶ 6-7:

> ***In *Ashton v. Ohio Civil Rights Commission,* (1990), Fairfield App. No. 21-CA-89, we reviewed a probable cause determination and cited and adopted the holding of our brethren from the Ninth District in *McCrea v. Ohio Civil Rights Commission* (1984), 20 Ohio App.3d 314, syllabus:
>
> "With respect to judicial review, the standard of reliable, probative and substantial *evidence* is applicable only to *post*-complaint decisions and orders of the Ohio Civil Rights Commission. The applicable standard of review for a court of a *pre*-complaint decision by the commission not to issue a complaint, because of a lack of probable cause, is whether the *decision* is unlawful, irrational, and/or arbitrary and capricious." (Emphasis *sic.*)

{¶40} We find the trial court specifically resolved this R.C. 4112.06 appeal on a procedural issue, the failure to file a brief. Given the standard of review, the trial court was left with the only decision possible, a dismissal. The issue of bias was addressed above.

{¶41} Upon review, we find the trial court did not err in dismissing the action.

{¶42} Assignments of Error I and X are denied.

{¶43} The judgment of the Court of Common Pleas of Knox County, Ohio is hereby affirmed.

By Farmer, P.J.

Gwin, J. and

Wise, J. concur.

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