

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Rick Kosier, et al.

Court of Appeals No. L-12-1019

Appellants

Trial Court No. CVG-11-19151

v.

Jovita A. Lucas

DECISION AND JUDGMENT

Appellee

Decided: December 31, 2012

* * * * *

Christopher J. Hallett, for appellants.

James E. Carlisle, for appellee.

* * * * *

HANDWORK, J.

{¶ 1} This appeal is from the December 30, 2011 judgment of the Toledo Municipal Court, which dismissed the complaint of appellants, Rick and Julie Kosier, on res judicata grounds. Upon consideration of the assignments of error, we reverse the decision of the lower court. Appellants assert the following single assignment of error on appeal:

THE TRIAL COURT WRONGLY DISMISSED APPELLANTS'
CIVIL COMPLAINT AFTER APPELLANTS HAD PROPERLY
DISMISSED AND REFILED SAID COMPLAINT PURSUANT TO
CIV.R. 41(A).

{¶ 2} On November 1, 2011, appellants filed a complaint for monetary damages against appellee, Jovita Lucas. Appellants alleged that they were the fee simple owners of 631 Cloverdale Road, Toledo, Ohio, and their predecessors in interest entered into a land installment contract with appellee for the sale of this property. Appellee failed to make the payments pursuant to the terms of the contract.

{¶ 3} A land contract forfeiture action involving the same property and parties had previously been filed in the Toledo Municipal Court (CVG-10-17452) and was dismissed with prejudice on June 6, 2011. Therefore, appellee moved to dismiss the complaint on the ground that these claims are barred under the doctrine of res judicata from being relitigated. Appellants opposed the motion arguing that the prior case was voluntarily dismissed without prejudice by the filing of a Civ.R. 41(A) notice on June 1, 2011, which was prior to the journalization of the municipal court's involuntary dismissal of the action with prejudice on June 6, 2011. The municipal court granted the motion to dismiss the current action on December 30, 2011, finding that the prior case was dismissed with prejudice. Appellants appeal from the judgment.

{¶ 4} When a Civ.R. 41(A)(1)(a) voluntary notice of dismissal is filed, the case is automatically terminated without any action by the court and, therefore, the date the

notice is filed is the date the case terminates. *State ex rel. Fifth Third Mtge. Co. v. Russo*, 129 Ohio St.3d 250, 2011-Ohio-3177, 951 N.E.2d 414, ¶ 17, citing *Selker & Furber v. Brightman* (2000), 138 Ohio App.3d 710, 714, 742 N.E.2d 203. Therefore, the trial court is divested of jurisdiction at the moment the notice is filed. *See Russo*. Any judgment journalized after this date is a nullity.

{¶ 5} Because the voluntary notice of dismissal in the prior case was filed prior to the journalization of the municipal court's judgment of involuntary dismissal, the court's entry was a nullity. Therefore, there is no basis for finding that the current action is barred under the doctrine of res judicata. Appellants' sole assignment of error is well-taken.

{¶ 6} Having found that the trial court did commit error prejudicial to appellants, the judgment of the Toledo Municipal Court is reversed. Appellee is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, P.J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.