

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

Ronald D. Pitts

Court of Appeals No. L-12-1343

Appellant

Trial Court No. CI0201106169

v.

Larry V. DiLabbio

DECISION AND JUDGMENT

Appellee

Decided: September 6, 2013

* * * * *

Ronald D. Pitts, pro se.

* * * * *

SINGER, P.J.

{¶ 1} Appellant, Ronald D. Pitts, appeals from a decision of the Lucas County Court of Common Pleas granting summary judgment to appellee, Larry V. DiLabbio.

For the reasons that follow, we affirm.

{¶ 2} In 2009, appellant was indicted on one count of abduction in violation of R.C. 2905.02(A)(2) and (B) and, a third degree felony. Later that year, he entered a no

contest plea to the lesser included charge of attempted abduction, a fourth degree felony. He was found guilty and sentenced to five years of community control with the first six months to be served at the Corrections Center of Northwest Ohio. He was also ordered to submit to a DNA test and random urinalysis, obtain his GED and maintain employment, and commit no additional offenses.

{¶ 3} Consequently, appellant filed a legal malpractice complaint against appellee. Specifically, appellant alleged that appellee, his counsel for the above offense, negligently advised him to enter a no contest plea to the reduced charge. Both parties filed motions for summary judgment and on November 27, 2012, the court granted appellee's motion for summary judgment and dismissed appellant's complaint. Appellant now appeals setting forth one assignment of error:

The trial court abused its discretion and erroneously dismissed the plaintiff's civil complaint to the prejudice of the plaintiff and contra to the civil rules applicable to the case sub judice.

{¶ 4} Appellant's assignment of error centers around appellee's filing of an untimely answer to appellant's legal malpractice complaint. Appellant contends that the court had no authority to dismiss his complaint because appellee violated the Ohio Rules of Civil Procedure when he filed an untimely answer. Thus, he should have been granted a default judgment.

{¶ 5} Appellant filed his complaint on October 24, 2011. On December 20, 2011, appellee filed a request for extension of time to file his answer and the trial court granted his motion.

{¶ 6} Appellee thereafter filed his answer on December 30, 2011. On January 6, 2012, appellant filed a motion for a default judgment based on appellee's untimely answer. The court denied the motion.

{¶ 7} Appellant correctly cites Civ.R. 12(A) which provides that, generally, a defendant must serve the answer within twenty-eight days after service of the complaint. However,

{¶ 8} Ohio courts have held that “[w]here a party pleads before a default is entered, though out of time and without leave, if the answer is good in form and substance, a default should not be entered as long as the answer stands as part of the record.” *Suki v. Blume*, 9 Ohio App.3d 289, 290, 459 N.E.2d 1311 (8th Dist.1983). Since granting a default judgment is analogous to granting a dismissal, it is a harsh remedy that is generally disfavored. *Id.* When possible, cases should be decided on their merits rather than on procedural grounds. *Fowler v. Coleman*, 10th Dist. Franklin No. 99AP-319, 1999 WL 1262052 (Dec. 28, 1999); *see also* Civ.R. 61.

{¶ 9} Accordingly, we find that the trial court did not err in failing to grant appellant a default judgment. Appellant's sole assignment of error is found not well-taken.

{¶ 10} On consideration whereof, the court finds that substantial justice has been done the party complaining and the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the court costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

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

Arlene Singer, P.J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, 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:
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