[Cite as *Castillo v. Wade*, 2005-Ohio-6729.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 86175

CRUZ CASTILLO,	:	
	:	
Plaintiff-Appellant	:	JOURNAL ENTRY
	:	and
vs.	:	OPINION
	:	
EDWARD WADE,	:	
	:	
Defendant-Appellee	:	
DATE OF ANNOUNCEMENT OF DECISION	:	DECEMBER 20, 2005
CHARACTER OF PROCEEDING:	:	Civil appeal from
	:	Common Pleas Court
	:	Case No. 544775
JUDGMENT	:	REVERSED AND REMANDED.
DATE OF JOURNALIZATION	:	

APPEARANCES:

For plaintiff-appellant:
Cruz Castillo, Pro Se
Inmate No. A92-97-2742
Seneca County Jail
3040 South State, No. 100
Tiffin, Ohio 44883

For defendant-appellee:
James L. Hardiman, Esq.
75 Public Square, Suite 333
Cleveland, Ohio 44113

MICHAEL J. CORRIGAN, J.:

{¶ 1} This is an appeal from an unopposed dismissal of an attorney malpractice complaint. Plaintiff Cruz Castillo filed this complaint pro se against his criminal attorney, defendant Edward

Wade, alleging that Wade negligently represented him in a criminal matter. Although Castillo is currently incarcerated and has been throughout this case, the court provided telephone notice to him concerning his case status. Wade filed a motion for summary judgment arguing that the malpractice claim was nothing more than an attempt to have a guilty plea withdrawn. In the alternative, Wade asked for dismissal on grounds that Castillo had failed to appear at scheduled pretrials and thus merited the dismissal of his action. On February 16, 2005, the court's docket reflects that it struck the motion for summary judgment and informed Castillo that his response to the motion to dismiss was due by *February 5, 2005.* At the same time, the court ordered Wade to serve his motion to dismiss on Castillo. On February 25, 2005, the court dismissed the action on grounds that Castillo failed to file a response to the motion to dismiss "as ordered due by February 25, 2005."

{¶ 2} Because the court speaks through its journal, *State ex rel. Marshall v. Glavas*, 98 Ohio St.3d 297, 2003-Ohio-857, at ¶5, it inexplicably ordered Castillo to file his response to the motion to dismiss 11 days before it issued that order. While this is obviously a clerical error by the court, the fact remains that the docket speaks for itself. The court therefore abused its discretion by not giving Castillo time in which to respond to the motion to dismiss.

{¶ 3} In any event, we question the court's intent to dismiss the matter due to Castillo's failure to attend pretrials. The

court obviously knew that Castillo was incarcerated, so his presence at a pretrial would have been impossible. While we express no opinion on the merits of Castillo's claims for relief, we would have little difficulty finding that the court would have abused its discretion for basing a dismissal on the failure of an incarcerated party to be present at a pretrial.

Reversed and remanded.

This cause is reversed and remanded for proceedings consistent with this opinion.

It is, therefore, ordered that said appellant recover of said appellee his costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

MICHAEL J. CORRIGAN
JUDGE

PATRICIA ANN BLACKMON, A.J., CONCURS.

ANTHONY O. CALABRESE, JR., J., DISSENTS WITH SEPARATE OPINION.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R.22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for

review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).

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COUNTY OF CUYAHOGA

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	:	
Plaintiff-Appellant	:	
	:	D I S S E N T I N G
	:	
vs.	:	O P I N I O N
	:	
	:	
EDWARD WADE	:	
	:	
Defendant-Appellee	:	

DATE: DECEMBER 20, 2005

ANTHONY O. CALABRESE, JR., J. DISSENTING:

{¶ 4} I respectfully dissent from my learned colleagues in the majority. Appellant's primary argument involves service. Appellant is currently incarcerated and chose to represent himself in this civil suit.

{¶ 5} Appellant, not appellee, filed this civil complaint on October 6, 2004, asking for the return of attorney fees in the amount of $4,900. Except for the filing of the complaint, neither appellant, nor any duly authorized attorney or agent, appeared at either the case management conference or the settlement conference. Appellant was duly notified of both the December 10 and 17 case

management dates and the February 8, 2004 settlement conference. It is appellant's responsibility to stay apprised of the case he initiated. If appellant's current situation prevented him from adequately prosecuting his civil case, he should have obtained counsel. Other than the filing of the pro se complaint, appellant failed to prosecute or take any further action in furtherance of the litigation.

{¶ 6} "If a civil litigant chooses not to retain counsel, that party may not then turn around and claim the court denied him or her due process because it did not detail the intricacies of the Revised Code. Ignorance of the law is no excuse, and Ohio courts are under no duty to inform civil pro se litigants of the law." *Jones Concrete, Inc. v. Thomas* (Dec. 22, 1999), Medina App. No. 2957-M. The *Jones Concrete* court also held that pro se litigants must accept the results of their errors, are "presumed to have knowledge of the law and of correct legal procedure, and [are] held to the same standard as all other litigants." Id., citing *Kilroy v. B.H. Lakeshore Co.* (1996), 111 Ohio App.3d 357, 363, and *Meyers v. First Natl. Bank* (1981), 3 Ohio App.3d 209, 210.

{¶ 7} The trial court was fully aware of appellant's incarceration. The trial court was aware that the only way appellant could appear at the settlement conference was if the court granted a writ of habeas corpus ad testificandum, a motion for transportation, or appointed counsel pro bono, none of which was ever requested by appellant. Appellant failed to show that the

trial court did anything unreasonable, arbitrary, unconscionable or acted beyond its discretion.

{¶ 8} Accordingly, I would affirm the lower court.