

[Cite as *Ohio Turnpike Comm. v. Zayed*, 2009-Ohio-4203.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92980

OHIO TURNPIKE COMMISSION

PLAINTIFF-APPELLANT

VS.

ABDALLAH ZAYED

DEFENDANT-APPELLEE

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Rocky River Municipal Court
Case No. 09 CVI 0125

BEFORE: Kilbane, J., Cooney, A.J., and Rocco, J.

RELEASED: August 20, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) 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(C) 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(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

MARY EILEEN KILBANE, J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Appellant, Ohio Turnpike Commission (OTC), appeals the decision from the Rocky River Municipal Court that granted appellee, Abdallah Zayed's motion to dismiss. After a review of the record and the pertinent law, we reverse and remand.

{¶ 2} The following facts give rise to this appeal.

{¶ 3} On January 9, 2009, OTC filed a complaint in Rocky River Municipal Court. OTC alleged that on January 4, 2004, a vehicle negligently operated by Zayed caused damage to OTC's property, a guardrail, in the amount of \$703.32. On February 6, 2009, Zayed filed a motion to dismiss the complaint, arguing that the suit had been filed beyond the two-year statute of limitations prescribed by R.C. 2305.10. On February 13, 2009, the trial court issued a journal entry that granted Zayed's motion, holding that the statute of limitations barred the suit.

{¶ 4} On February 19, 2009, OTC filed a motion for relief from judgment, arguing that the trial court had ruled on Zayed's motion before the time period for OTC to file an opposition had elapsed. On March 2, 2009, Zayed filed an opposition to OTC's motion, arguing that OTC was not entitled to relief from judgment because it had not established it was entitled to such relief under Civ.R. 60. On March 6, 2009, OTC filed a reply brief, and the trial court scheduled the matter for a hearing on March 30, 2009.

Subsequently, on March 12, 2009, OTC filed the instant appeal; therefore, the trial court did not hold a hearing or issue a ruling on OTC's motion for relief from judgment.

{¶ 5} OTC appeals, raising two assignments of error for our review.

{¶ 6} Assignment of Error One

“The lower court erred by dismissing Plaintiff-Appellant Ohio Turnpike Commission’s complaint prior to the expiration of the time limit by which it was required to file a responsive pleading to Defendant-Appellee’s motion to dismiss.”

{¶ 7} On February 6, 2009, Zayed filed his motion to dismiss with the trial court. On February 13, 2009, the trial court issued an entry dismissing the case, concluding the statute of limitations had elapsed. OTC argues it was not afforded the required ten days to respond prior to the trial judge issuing a decision.

{¶ 8} Rocky River Municipal Court Rules of Practice and Procedures, R. 29, specifically provides, “Each party opposing a motion other than a Motion for Summary Judgment shall serve and file a brief in opposition within seven (7) days of service of said Motion, unless a longer time period is provided in the Ohio Rules of Civil Procedure.” Ohio Civ.R. 6(E) provides three additional days for service by mail.

{¶ 9} Zayed's motion to dismiss was served upon OTC on February 6, 2009, via regular mail. Three days would be permitted to ensure service, followed by an additional seven days to file a brief in opposition. Consequently, OTC's brief in opposition would have been due ten days following Zayed's motion, on February 16, 2009. Three days earlier on February 13, 2009, the trial judge prematurely dismissed OTC's complaint.

{¶ 10} Zayed concedes that the trial court ruled on his motion to dismiss prior to OTC's response, which time period had not yet elapsed. Consequently, this case must be remanded for the trial court to afford OTC the opportunity to respond to the motion to dismiss.

{¶ 11} Assignment of error one is sustained.

{¶ 12} Assignment of Error Two

“The lower court erred by dismissing Plaintiff-Appellant Ohio Turnpike Commission's complaint because it is not subject to the statute of limitations set forth in O.R.C. Section 2305.10 (Appendix E), as it is an instrumentality of the State of Ohio.”

{¶ 13} OTC's second assignment of error is moot because it argues the substantive issues of the motion to dismiss that must first be addressed by the trial court.

Judgment reversed and remanded.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to Rocky River Municipal 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.

MARY EILEEN KILBANE, JUDGE

COLLEEN CONWAY COONEY, A.J., and
KENNETH A. ROCCO, J., CONCUR