

[Cite as *Hamper v. Suburban Umpires Assoc., Inc.*, 2009-Ohio-5376.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92505

GARY A. HAMPER

PLAINTIFF-APPELLANT

VS.

SUBURBAN UMPIRES ASSOCIATION, INC.

DEFENDANT-APPELLEE

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Common Pleas Court
Case No. CV-661719

BEFORE: Boyle, J., Rocco, P.J., and McMonagle, J.

RELEASED: October 8, 2009

JOURNALIZED:
FOR APPELLANT

Gary A. Hamper, pro se
10301 Lake Avenue, #805
Cleveland, Ohio 44102

ATTORNEYS FOR APPELLEE

John J. Lasko, Jr.
614 West Superior Avenue
Rockefeller Building, #1150
Cleveland, Ohio 44113

Ryan M. Fitzgerald
William J. O'Neill
McDonald Hopkins, LLC
2100 Bank One Center
600 Superior Avenue, East
Cleveland, Ohio 44114

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 J. BOYLE, J.:

{¶ 1} Plaintiff-appellant, Gary Hamper, appeals the trial court's denial of his motion to compel discovery and its decision granting summary judgment in favor of defendant-appellee, Suburban Umpires Association, Inc. ("SUA"). Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶ 2} SUA, a not-for-profit organization of softball and baseball umpires, requires all of its members to attend "a minimum of four rules-interpretation or business-rules meetings" each year as provided in its constitution and by-laws. Hamper, a member of SUA, failed to comply with this requirement and was ultimately suspended from umpire duties. He subsequently filed suit, pro se, against SUA, listing three counts and claiming the following: (1) SUA "willfully and negligently breached its duty to provide plaintiff with the required amount of meetings as generally stated in the 'SUA' by-laws"; (2) SUA "willfully and intentionally failed to provide plaintiff with his right to 'due process' by depriving him of work by suspending him"; and (3) SUA "acted with gross disregard and with gross negligence with respect to plaintiff's rights as a member of 'SUA.' Defendant willfully and intentionally discriminated against plaintiff for the purpose of dismissal."

{¶ 3} SUA moved for summary judgment, arguing that Hamper was properly suspended because he failed to comply with the four-meeting

requirement set forth in the by-laws. SUA further argued that Hamper was given notice of the possibility of suspension and had several opportunities to explain his failure to attend the required number of meetings, but he did not respond. In support of its motion, SUA attached an affidavit of Steve Monchak, the secretary-treasurer of SUA, who attested to the following:

{¶ 4} (1) SUA requires its affiliated umpires to attend four rules-interpretation meetings each year, as stated in its constitution and by-laws (a copy is attached to the affidavit);

{¶ 5} (2) Hamper signed a constitution and by-laws receipt form, agreeing to conform to their terms and conditions;

{¶ 6} (3) Monchak notified Hamper in January 2008 and reminded him, along with all the umpires, that attendance at four meetings is required, and provided the meeting dates and topics;

{¶ 7} (4) Monchak emailed Hamper on April 12, 2008, informing him that he had only attended two meetings, and asked Hamper to contact him immediately and explain his failure to comply with the attendance requirement;

{¶ 8} (5) Monchak emailed Hamper on April 14, 2008, informing him that he would be suspended unless he could demonstrate that he attended four meetings;

{¶ 9} (6) Hamper responded on April 16, 2008, stating that he had attended two meetings but did not explain his absence from the two additional required meetings;

{¶ 10} (7) Monchak sent Hamper a suspension letter on April 18, 2008, inviting him to explain within 30 days why he was unable to attend the required number of meetings and warning that “failure to respond to this letter in the allotted time will result in your immediate suspension”; and

{¶ 11} (8) Hamper never responded and was suspended from SUA.

{¶ 12} Prior to filing his brief in opposition, Hamper filed a motion to compel discovery. He argued that SUA had not fully responded to his first and second requests for production of documents and that the information requested was discoverable. SUA opposed the motion to compel, demonstrating that Hamper failed to comply with Loc.R. 11(F)’s obligation to meet and confer with opposing counsel prior to filing a motion to compel. SUA also argued that it had complied with Hamper’s request and offered to make all documents that had not yet been provided, except the financial information, available for inspection.

{¶ 13} Prior to the trial court ruling on Hamper’s motion to compel, Hamper filed his brief in opposition to SUA’s motion for summary judgment. Although not entirely clear from the brief, Hamper seemed to argue that genuine issues of material fact existed regarding the reasonableness of the four-meeting

requirement, whether he was properly suspended, and whether he was afforded “due process.”

{¶ 14} The trial court subsequently granted SUA’s motion for summary judgment without ruling on Hamper’s motion to compel. Hamper appeals, raising the following four assignments of error:

{¶ 15} “[I.] The trial court abused its discretion and committed reversible error by its failure to act and grant a motion to compel discovery by plaintiff-appellant before motion for summary judgment was granted to defendant-appellee.

{¶ 16} “[II.] The trial court erred in not finding that the attendance provision was unconscionable and thus, unenforceable.

{¶ 17} “[III.] The trial court erred in not finding that a genuine issue of material fact exists even if some of the underlying evidence is undisputed.

{¶ 18} “[IV.] The trial court erred in not finding that the immediate suspension of appellant was an abuse of discretion by appellee and it violated his right to a fair hearing that is accorded prior to a deprivation.”

Motion to Compel

{¶ 19} In his first assignment of error, Hamper argues that the trial court abused its discretion in failing to grant his motion to compel prior to ruling on SUA’s motion for summary judgment because the additional discovery was needed to properly rebut the summary judgment motion. Hamper, however,

never raised this argument below and therefore has waived it on appeal. See *Maust v. Meyers Products, Inc.* (1989), 64 Ohio App.3d 310 (failure to raise an issue in the trial court waives a litigant’s right to raise that issue on appeal). Indeed, Hamper never even indicated in his brief in opposition that the discovery at issue in his motion to compel was necessary to respond. Nor did he ever move pursuant to Civ.R. 56(F) to delay the court’s consideration of the summary judgment motion pending further discovery. See *Maschari v. Tone*, 103 Ohio St.3d 411, 2004-Ohio-5342, ¶20; *Taylor v. Franklin Blvd. Nursing Home, Inc.* (1996), 112 Ohio App.3d 27, 30 (“a party who fails to seek relief under Civ.R. 56[F] in the trial court does not preserve its rights thereto for purposes of appeal”).

{¶ 20} But even if Hamper had preserved this issue for appeal, we find that the trial court acted within its discretion by not granting the motion. First, although Hamper now claims that the requested discovery, i.e., the attendance records and SUA’s financial records, were necessary to rebut SUA’s motion for summary judgment, we find no support in the record for this assertion. SUA’s financial records are irrelevant to the issue of whether SUA properly suspended Hamper. As for the attendance records, SUA fully complied with Hamper’s request as required under Civ.R. 26 and 34; it

invited Hamper to inspect the several hundred umpire attendance cards that were kept in SUA's ordinary course of business.

{¶ 21} Likewise, Hamper's failure to comply with Loc.R. 11(F), which requires a movant to meet and confer with opposing counsel and attempt to resolve the dispute prior to filing a motion to compel, is grounds enough to deny a motion to compel.

{¶ 22} Accordingly, we find no merit to Hamper's first assignment of error and overrule it.

Summary Judgment

{¶ 23} In his second, third, and fourth assignments of error, Hamper argues that the trial court erred in granting summary judgment because (1) the attendance requirement contained in the by-laws is unconscionable; (2) genuine issues of fact exist concerning whether his "due process" rights were violated; and (3) SUA's suspension of him "violated his right to a fair hearing that is accorded prior to a deprivation."

{¶ 24} We review a trial court's granting of a motion for summary judgment de novo, using the same standard as the trial judge; summary judgment is proper only if there is no dispute of material fact and the moving party is entitled to judgment as a matter of law. Civ.R. 56(C); *Bonacorsi v. Wheeling & Lake Erie Ry. Co.*, 95 Ohio St.3d 314, 2002-Ohio-2220, ¶24.

{¶ 25} At the outset, we note that Hamper’s claims are not entirely clear. Suffice it to say, the complaint is inartfully drafted. The parties proceeded to the dispositive motion stage, and from the briefing, the gist of Hamper’s case is clear: whether he was wrongfully suspended, i.e., without notice or cause, and whether he is entitled to any damages as a result of the suspension. Based on our de novo review of the record, we find that Hamper was properly suspended and not entitled to any damages under any legal theory; thus, the trial court properly granted summary judgment.

{¶ 26} Hamper’s three assignments of error challenging the award of summary judgment lack merit for several reasons.

{¶ 27} First, Hamper’s claim that the by-laws’ attendance requirement is unconscionable was never raised or argued below. He therefore has waived this argument. *Maust*, 64 Ohio App.3d at 313-314; see, also, *Coble v. Toyota of Bedford*, 8th Dist. No. 83089, 2004-Ohio-238, ¶16 (unconscionability cannot be asserted for the first time on appeal). Indeed, although we review summary judgment decisions de novo, “the parties are not given a second chance to raise arguments that they should have raised below.” *Perlmutter v. People’s Jewelry Co.*, 6th Dist. No. L-04-1271, 2004-Ohio-5031, ¶29. Additionally, Hamper has failed to present any evidence to support his claim of “unconscionability” nor do we find any. Hamper’s second assignment of error is overruled.

{¶ 28} Next, Hamper’s third and fourth assignments of error relating to his purported “due process” rights and the alleged issue of facts surrounding them have no merit. Ohio courts generally recognize that members of nonprofit associations facing expulsion are entitled to due process, “which requires reasonable notice and hearing with the opportunity to defend the charges.” *Bay v. Anderson Hills, Inc.* (1984), 19 Ohio App.3d 136, syllabus. The record reveals, however, that Hamper was afforded such due process. Hamper was not suspended until after he was given notice and an opportunity to explain himself. Notably, Hamper never appealed the suspension letter to the board of trustees. Further, there is no dispute that Hamper was aware of the four-meeting requirement, but he did not comply. Based on this record, the trial court properly concluded that no genuine issues of material fact existed and that Hamper is not entitled to recover as a matter of law.

{¶ 29} Hamper’s third and fourth assignments of error are overruled.

Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

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.

MARY J. BOYLE, JUDGE

KENNETH A. ROCCO, P.J., and
CHRISTINE T. McMONAGLE, J., CONCUR