

[Cite as *Carter v. Meyer*, 2010-Ohio-1868.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93457

BRUCE CARTER

PLAINTIFF-APPELLEE

vs.

ALAN MEYER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-674416

BEFORE: Stewart, P.J., Boyle, J., and Sweeney, J.

RELEASED: April 29, 2010

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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

MELODY J. STEWART, P.J.:

{¶ 1} Pro se appellant, Alan Meyer, appeals the civil judgment for \$331,000 entered against him following an ex parte trial. He raises a single assignment of error arguing that the judgment is against the manifest weight of the evidence. Following review of the record and for the reasons stated below, we affirm.

{¶ 2} Appellee Bruce Carter, a Regional Transit Authority (“RTA”) bus driver, filed a complaint alleging that Meyer, while a passenger on Carter’s bus, attacked him causing severe and permanent damages. Meyer did not timely answer the complaint and a default hearing date was set. Prior to the hearing date, Meyer filed for leave to answer, asserting: (1) that he was in jail when the complaint was filed, and (2) that the complaint was sent to the wrong address. The trial court granted Meyer leave to plead. Additionally, Carter had the court re-serve the summons and complaint to Meyer’s current address.

{¶ 3} On February 23, 2009, Meyer filed his answer and a motion to dismiss. The docket reflects that both parties attended a case management conference on February 25, 2009, during which a trial date of May 14, 2009 was set. On May 11, 2009, both parties filed separate requests for a continuance of the trial date. Carter asked for time to secure expert witness

depositions for trial. Meyer asked for more time to conduct discovery. The trial court did not rule on either request and, on May 14, 2009, called the case for trial. Carter and counsel appeared; Meyer did not.

{¶ 4} When Meyer did not appear for trial on May 14, 2009, Carter waived his jury demand and the case was tried to the bench ex parte. Based upon evidence presented at trial, the court found Meyer had committed the intentional tort of battery. The court found an award of \$251,000 in compensatory damages and \$92,500 in punitive damages was justified.

{¶ 5} On appeal, Meyer challenges the trial court's judgment as being against the weight of the evidence. "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C. E. Morris Co. v. Foley Const. Co.* (1978), 54 Ohio St.2d 279, 280, 376 N.E.2d 578.

{¶ 6} "Battery" is defined as "an intentional, unconsented-to contact with another." *Snyder v. Turk* (1993), 90 Ohio App.3d 18, 23, 627 N.E.2d 1053, motion to certify record overruled (1994), 68 Ohio St.3d 1430, 624 N.E.2d 1067. "A person is subject to liability for battery when he acts intending to cause a harmful or offensive contact, and when a harmful contact results. Restatement of the Law 2d, Torts (1965) 25, Section 13." *Love v. Port Clinton* (1988), 37 Ohio St.3d 98, 99, 524 N.E.2d 166.

{¶ 7} Meyer claims that he did not attack Carter and that Carter was the aggressor in the incident on the bus. Carter asserts that Meyer was convicted of felonious assault for the attack on the bus, thus establishing liability for battery. Carter also asserts that evidence of his injuries and medical expenses was presented at trial, thus proving damages. There is no evidence in the record before us relating to a criminal conviction or damages.

{¶ 8} Meyer proceeded pro se throughout this action and continues to do so on appeal. “It is well established that pro se litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel.” *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, 800 N.E.2d 25, at ¶10, quoting *Sabouri v. Ohio Dept. of Job & Family Servs.* (2001), 145 Ohio App.3d 651, 654, 763 N.E.2d 1238. “Pro se litigants are not entitled to greater rights, and they must accept the results of their own mistakes.” *Fazio v. Gruttadauria*, 8th Dist. No. 90562, 2008-Ohio-4586, at ¶9, quoting *Williams v. Lo*, Franklin App. No. 07AP-949, 2008-Ohio-2804, at ¶18.

{¶ 9} When Meyer failed to appear for trial on May 14, 2009, he took the risk that the trial court would proceed with an ex parte trial. “The proper action for a court to take when a defending party who has pleaded fails to show for trial is to require the party seeking relief to proceed ex parte in the opponent’s absence.” *Ohio Valley Radiology Assoc., Inc. v. Ohio* (1986),

28 Ohio St.3d 118, 122, 502 N.E.2d 599. In an ex parte trial, the plaintiff maintains the burden of proving all of the essential elements of the claims. Id. The judgment entry reflects that the trial court proceeded with trial, heard evidence, and entered judgment for Carter on his claim.

{¶ 10} In addition to failing to appear for trial, Meyer did not provide a complete record for this court's review. "It is well established that under App.R. 9(B), it is unequivocal that the 'duty to provide a transcript for appellate review falls upon the appellant * * * because an appellant bears the burden of showing error by reference to matters in the record.'" *Hardy v. Fell*, 8th Dist. No. 88063, 2007-Ohio-1287, at ¶8, quoting, *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199, 400 N.E.2d 384. Appellate Rule 9(B) provides in pertinent part that "[i]f the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the weight of the evidence, the appellant shall include in the record a transcript of all evidence relevant to the findings or conclusion."

{¶ 11} The judgment entry states that a court reporter was present at the ex parte trial on May 14, 2009. However, Meyer failed to include a copy of a trial transcript in the record on appeal. "When portions of the transcript necessary for resolution of assigned errors are omitted from the record, the reviewing court has nothing to pass upon and thus, as to those assigned

errors, the court has no choice but to presume the validity of the lower court's proceedings, and affirm." *Knapp*, 61 Ohio St.2d at 199, 400 N.E.2d 384.

{¶ 12} A review of the trial transcript is necessary for a determination of Meyer's claim that the judgment is against the manifest weight of the evidence. Because there is no trial transcript in the record, we must presume the validity of the trial court's proceedings and affirm the judgment of the trial court. Meyer's single assignment of error is overruled.

Judgment affirmed.

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

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas 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.

MELODY J. STEWART, PRESIDING JUDGE

MARY J. BOYLE, J., and
JAMES J. SWEENEY, J., CONCUR