

[Cite as *Stringer v. Dept. of Health-Ohio*, 2015-Ohio-2277.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102166

KIMBERLY A. STRINGER

PLAINTIFF-APPELLANT

vs.

DEPARTMENT OF HEALTH-OHIO, ET AL.

DEFENDANTS-APPELLEES

**JUDGMENT:
AFFIRMED**

Administrative Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-13-819004

BEFORE: S. Gallagher, J., McCormack, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: June 11, 2015

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SEAN C. GALLAGHER, J.:

{¶1} Plaintiff-appellant Kimberly A. Stringer appeals the decision of the trial court that vacated a dismissal with prejudice and granted the motion to enforce settlement filed by defendant-appellee Department of Health-Ohio (“the DOH”). Upon review, we affirm the judgment of the trial court.

{¶2} Stringer refiled a complaint on December 18, 2013, appealing from an administrative decision that denied an additional allowance for certain conditions requested under her workers’ compensation claim. Stringer had previously voluntarily dismissed the action pursuant to Civ.R. 41(A) on February 4, 2013.

{¶3} The trial court referred the case to workers’ compensation mediation. On April 25, 2014, the trial court issued an order indicating that the case settled in mediation and that the parties were to submit a more definitive dismissal entry addressing court costs. On May 13, 2014, Stringer filed a notice of voluntary dismissal with prejudice. That same day, the DOH filed a motion to enforce settlement with a request for attorney fees, indicating that defense counsel had been informed by plaintiff’s counsel that Stringer had a change of heart, no longer wished to settle her claim, and refused to sign a settlement agreement. The next day, the trial court entered an order of dismissal with prejudice.

{¶4} Thereafter, the trial court set a hearing on the motion to enforce settlement. The DOH filed a motion for relief from judgment on May 30, 2014, indicating that the parties had reached a settlement during mediation, the DOH was advised Stringer had a

change of heart and did not want to settle her claim, the DOH filed a motion to enforce the settlement agreement the same day Stringer filed a notice of voluntary dismissal with prejudice, and the trial court had issued an order dismissing the action with prejudice.

{¶5} At the hearing held on June 2, 2014, the mediator testified that he prepared a report following the mediation conference that indicated the case was “considered settled” for \$50,000. The report further indicated that both the plaintiff and the defendant and their respective counsel were present. Following the hearing, the trial court vacated the dismissal with prejudice and granted the motion to enforce settlement.

The trial court’s ruling stated:

Pretrial had. Parties represented by counsel. Evidentiary hearing had. Defendant’s motion for relief from judgment is granted. In the alternative, the court vacates the prior dismissal for good cause. The court finds, as will be set forth below, that the court has inherent power to do so. By way of background, the instant matter was set for jury trial to commence on 7/31/2014. In the meantime, the case was sent to workers compensation mediation by agreement of the parties. The court was subsequently advised by the mediator that the matter had settled in mediation for the sum of \$50,000.00. The court in due course signed an entry submitted by plaintiff’s counsel dismissing the matter with prejudice. The court did so on the belief that the dismissal was in furtherance of the settlement reached in mediation. In reality, plaintiff had second thoughts about the agreement to settle the case and refused to accept the amount of the settlement. Plaintiff did not advise the court that there was a dispute as to the settlement. Instead, plaintiff’s counsel filed a dismissal entry with prejudice. Surprisingly, plaintiff took the position at hearing that the court could no longer exercise jurisdiction over the matter because a dismissal with prejudice had been submitted by plaintiff’s counsel and signed by the court. The court rejects plaintiff’s arguments and finds that relief from judgment is appropriate. In the alternative, the court finds that it has inherent power to vacate the dismissal prompted by plaintiff’s submitted entry under the circumstances of this case. The court further finds that the only aspect of the case that changed after a settlement was reached was plaintiff’s change of heart. Accordingly, the court finds that the matter is

hereby settled and dismissed with prejudice for the sum of \$50,000.00 at defendant's costs. Final. Court cost assessed to the defendant(s). Notice issued.

{¶6} An initial appeal filed by appellant was dismissed for a lack of a final appealable order because the trial court had not addressed the DOH's request for attorney fees. On October 29, 2014, the trial court issued an order denying the request for attorney fees. This appeal timely followed.

{¶7} Stringer raises three assignments of error for our review. Her first assignment of error claims the trial court lacked jurisdiction to rule on appellee's motion to enforce the settlement agreement because the court had unconditionally dismissed the action. We find no merit to this argument.

{¶8} Initially, we recognize that the Ohio Supreme Court recently held "that a trial court may, when it dismisses a civil action upon notification that the parties have settled, expressly retain jurisdiction for the specific purpose of enforcing the settlement agreement." *Infinite Sec. Solutions, L.L.C. v. Karam Props. I, Ltd.*, Slip Opinion No. 2015-Ohio-1101, ¶ 2. In order to expressly retain jurisdiction, the court's entry must reflect the trial court's action in clear and succinct terms. *Id.* at ¶ 29. "Absent a clear indication that the trial court intends to retain jurisdiction to enforce the parties' settlement agreement, parties must be entitled to rely on the finality of the court's action[.]" *Id.* at ¶ 30.

{¶9} In this case, the trial court did not expressly retain jurisdiction to enforce the settlement agreement in its entry dismissing the action with prejudice. However, our

review does not end here because the DOH filed a Civ.R. 60(B) motion for relief from judgment. In *Infinite Sec. Solutions, L.L.C.*, despite the fact that the trial court did not retain jurisdiction to enforce the parties' settlement agreement, the court remanded the matter to the common pleas court for a determination of a Civ.R. 60(B) motion. *Id.* at ¶ 32-33.

{¶10} Next, we must determine whether the dismissal in this action was a final judicial determination from which Civ.R. 60(B) could afford relief. We recognize that the dismissal was the result of a notice of voluntary dismissal with prejudice. Because this was a refiled action, the voluntary dismissal operated as an adjudication upon the merits. Civ.R. 41(A)(1) provides that “a notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court.” The staff note to Civ.R. 41(A) indicates that “[a] second [notice of voluntary dismissal] at the sole initiative of the plaintiff and without an order of court will be construed as an adjudication upon the merits barring a third suit on the same claim.” As the Ohio Supreme Court has recognized, “if the notice of dismissal operates as an adjudication on the merits, the dismissal is a final judgment, order, or proceeding.” *Tower City Properties v. Cuyahoga Cty. Bd. of Revision*, 49 Ohio St.3d 67, 69, 551 N.E.2d 122 (1990). As such, there was a final judgment that properly was subject to a Civ.R. 60(B) motion for relief from judgment. *See State ex rel. Jackson v. Ohio Adult Parole Auth.*, 140 Ohio St.3d 23, 2014-Ohio-2353, 14 N.E.3d 1003, ¶ 17-18 (applying Civ.R. 60(B))

after finding a second voluntary dismissal with prejudice was an adjudication on the merits under the “double dismissal” rule set forth in Civ.R. 41(A)(1)).

{¶11} We review a decision on a Civ.R. 60(B) motion for an abuse of discretion. *See Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20, 520 N.E.2d 564 (1988). To constitute an abuse of discretion, the trial court’s ruling must be “unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶12} Civ.R. 60(B) states in pertinent part:

On motion and upon such terms as are just, the court may relieve a party * *
* from a final judgment, order or proceedings for the following reasons: (1)
mistake, inadvertence, surprise or excusable neglect; * * * (3) fraud
(whether heretofore denominated intrinsic or extrinsic), misrepresentation
or other misconduct of an adverse party; * * * or (5) any other reason
justifying relief from the judgment.

In order to prevail on a motion for relief from judgment pursuant to Civ.R. 60(B), the movant must demonstrate (1) a meritorious defense or claim to present if relief is granted; (2) entitlement to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the timeliness of the motion. *GTE Automatic Elec., Inc. v. ARC Industries*, 47 Ohio St.2d 146, 150-151, 351 N.E.2d 113 (1976).

{¶13} In this case, the trial court had the authority to vacate the dismissal and did not abuse its discretion in so doing. The record reflects that the motion for relief from

judgment was timely filed, that the DOH asserted a meritorious defense by asserting a settlement had been reached, and that grounds for relief were shown under the circumstances presented. Having properly vacated the dismissal entry, the court possessed jurisdiction to address the DOH's motion to enforce settlement. The first assignment of error is overruled.

{¶14} Although counsel for Stringer indicated at oral argument that the second and third assignments of error were no longer being pursued, we nonetheless shall address them as they were raised in the appellant's brief and presented for review. Under her second assignment of error, Stringer claims the parties never reached an enforceable settlement. She asserts that she never received or signed a written agreement with specific terms and conditions, that she was under the impression the settlement was tentative, and that new and changed circumstances relative to her future medical needs had arisen.

{¶15} A settlement agreement is an enforceable contract designed to terminate a claim by preventing or ending litigation. *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St.3d 501, 502, 1996-Ohio-158, 660 N.E.2d 431. “[S]ettlement agreements are highly favored in the law.” *Id.* Where parties dispute the existence of a settlement agreement or there is uncertainty as to the terms of a settlement agreement, a trial court should conduct an evidentiary hearing to determine whether an enforceable agreement exists. *See Infinite Sec. Solutions, L.L.C.*, Slip Opinion No. 2015-Ohio-1101, at ¶ 31; *Kostelnik v. Helper*, 96 Ohio St.3d 1,

2002-Ohio-2985, 770 N.E.2d 58, ¶ 17; *Rulli v. Fan Co.*, 79 Ohio St.3d 374, 376-377, 1997-Ohio-380, 683 N.E.2d 337.

{¶16} Our review of the record reflects that the trial court held a hearing to determine if an enforceable settlement had been reached. The mediator testified that Stringer participated in the mediation and that a settlement was reached for \$50,000. The mediator's report reflected the same. Stringer did not offer any evidence to support her contention that the agreement was tentative or show that any terms or conditions remained to be decided. The trial court's order indicating that the case had settled in mediation instructed the parties to submit a more definitive dismissal entry addressing court costs. Insofar as Stringer was not provided with a written settlement agreement, defense counsel indicated that he was informed by her counsel that she would not sign a settlement agreement. As found by the trial court, "the only aspect of the case that changed after a settlement was reached was plaintiff's change of heart." We find there was sufficient evidence that a valid settlement agreement was entered and that the trial court did not err in enforcing the settlement. The second assignment of error is overruled.

{¶17} Under her third assignment of error, Stringer claims the enforcement of the settlement agreement is against public policy because self-insured employees are provided a 30-day period in which they can withdraw from a settlement offer pursuant to R.C. 4123.65(C), and the settlement must be in writing and approved by the administrator of workers' compensation. However, R.C. 4123.65(C) is not applicable to state-funded

workers' compensation claims on appeal to a common pleas court under R.C. 4123.512.

Jones v. Action Coupling & Equip., 98 Ohio St.3d 330, 332, 2003-Ohio-1099, 784 N.E.2d

1172. As explained by one court:

*“When an appeal involves a state-funded employer, the Administrator of the Bureau of Workers’ Compensation is a direct party. However, when an appeal involves a self-insured employer, the Administrator is not a direct party. If appellant’s position is adopted, the Administrator could potentially enter into a settlement agreement and then be required to submit such an agreement to itself for approval. * * * Therefore, R.C. 4123.65 does not apply to judicial settlements arising from an appeal under R.C. 4123.512.”*

(Emphasis sic.) *Myers v. Admr., Bur. of Workers’ Comp.*, 7th Dist. Mahoning No. 01

CA 131, 2002-Ohio-7439, *9, quoting *Macek v. Admr. Bur. of Workers’ Comp.*, 7th Dist.

Columbiana No. 99-CO-6, 1999 Ohio App. LEXIS 6162, *7-8 (Dec. 21, 1999).

{¶18} Because the parties entered into a settlement during court litigation initiated under R.C. 4123.512, the trial court could enforce the settlement that was agreed to by the parties regardless of whether it had been reduced to writing. Additionally, because Stringer did not raise an equal-protection challenge in the trial court, that argument is waived and we need not address the issue on appeal. *Jones* at ¶ 12, fn. 2. The third assignment of error is overruled.

{¶19} Judgment affirmed.

It is ordered that appellees recover from appellant 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 common pleas 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.

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, P.J., CONCURS;
MELODY J. STEWART, J., DISSENTS (WITH SEPARATE OPINION)

MELODY J. STEWART, J., DISSENTING:

{¶20} By considering and subsequently granting the DOH’s Civ.R. 60(B) motion for relief from Stringer’s notice of voluntary dismissal, the court allowed a defendant to circumvent a plaintiff’s right to dismiss her case. The court’s ruling was contrary to long-standing law that a plaintiff has an absolute right to dismiss an action, regardless of reason or motive. I therefore would reverse the decision of the trial court.

{¶21} Civ.R. 41(A)(1)(a) permits a plaintiff to dismiss all claims asserted by the plaintiff against a defendant by “filing a notice of dismissal at any time before the commencement of trial unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by that defendant[.]” The majority acknowledges that Stringer voluntarily dismissed her case. She filed a “notice to voluntarily dismiss with prejudice” on May 13, 2014. And even though the notice requests that the trial court enter an order of dismissal, the dismissal was effective upon filing. *Payton v. Rehberg*, 119 Ohio App.3d 183, 191, 694 N.E.2d 1379 (8th Dist.1997) (“Filing of the notice of dismissal automatically terminates the case without intervention

by the court. No court approval is necessary.”). A notice of voluntary dismissal not only terminates the plaintiff’s claims, it renders all that happened in the case a nullity, as if the case had never been commenced. *Zimmie v. Zimmie*, 11 Ohio St.3d 94, 95, 464 N.E.2d 142 (1984). The court therefore had no authority to grant relief to the DOH by way of vacating Stringer’s voluntary dismissal of her action.

{¶22} As the majority notes, there are, however, circumstances where the court has the authority to consider a motion for relief from an erroneously entered notice of dismissal. *See, e.g., Logsdon v. Nichols*, 72 Ohio St.3d 124, 647 N.E.2d 1361 (1995) (noting that “the trial court had jurisdiction to consider a Civ.R. 60(B) motion filed by a plaintiff who mistakenly filed a voluntary dismissal without prejudice pursuant to Civ.R. 41(A)(1)(a), despite an earlier dismissal under that rule”). But, that circumstance applies when the *plaintiff* seeks relief from a notice of dismissal that was *erroneously filed by the plaintiff*. Even the case *Jackson v. Ohio Adult Parole Auth.*, 140 Ohio St.3d 23, 2014-Ohio-2353, 14 N.E.3d 1003, on which the majority relies evidences this scenario. It stands to reason that only a plaintiff would have the right to move the court for relief from an action that only the plaintiff had a right to execute.¹

¹ The majority also relies on the Ohio Supreme Court’s recent decision in *Infinite Sec. Solutions, L.L.C. v. Karam Props. I, Ltd.*, Slip Opinion No. 2015-Ohio-1101, to support its conclusion that a trial court has the authority to consider a Civ.R. 60(B) motion for relief from the dismissal of a case. As previously noted, a trial court does, but not under the facts presented in the case before us. Furthermore, the part of the *Infinite* decision involving the Civ.R. 60(B) motion is neither procedurally nor substantively analogous to the facts in this case. The Supreme Court remanded the matter to the trial court for consideration of the Civ.R. 60(B) motion because the trial court had summarily denied the motion as moot “based on its erroneous determination that it retained jurisdiction to conduct further proceedings [regarding the settlement] despite the dismissal.” *Id.* at ¶

{¶23} In this case, the court vacated the notice of dismissal on motion by the defendant. There is no authority for the proposition that a court has the ability to grant relief to a defendant by vacating a plaintiff’s notice of voluntary dismissal when the plaintiff has not moved the court to do so and, furthermore, does not want the dismissal vacated.

{¶24} The court believed that the parties had reached a settlement, and the court clearly believed that it had entered the dismissal of the case — and had done so in error. It did not. Regardless of whether the parties had reached an agreement, Stringer filed a notice of voluntary dismissal before the commencement of trial in the case. She was within her right to do so. We have held that “[t]he voluntary dismissal of claims by a plaintiff, prior to the actual commencement of trial is ‘an absolute right, regardless of motives and can be accomplished without order of the court and without giving notice to opposing counsel.’” *In re Carothers*, 8th Dist. Cuyahoga No. 96369, 2011-Ohio-6754, at ¶ 12, quoting *Witt v. Lamson*, 8th Dist. Cuyahoga No. 87349, 2006-Ohio-3963, ¶ 8. So even if Stringer was seeking to avoid finalizing a settlement, she nonetheless had the absolute right to dismiss her case against the DOH.

33. The Supreme Court determined that “[b]ecause neither the trial court nor the court of appeals has considered Travelers’ entitlement to relief under Civ.R. 60(B), we do not determine that issue here. Instead, we remand the cause to the trial court for it to determine whether Travelers is entitled to relief under Civ.R. 60(B).” *Id.* Important to note also is the fact that the trial court in *Infinite* sua sponte dismissed the case without prejudice (a fact that the dissent opined warranted an outright reversal as the trial court was without authority to do so) and that Travelers, the party moving for relief, was the plaintiff.

{¶25} It is clear that Stringer filed a notice of voluntary dismissal of her case with prejudice. That dismissal was effective upon filing. The court lacked the authority to vacate that dismissal except on motion by Stringer. Neither the DOH nor the trial court can do via a Civ.R. 60(B) motion to vacate (prevent Stringer from voluntarily dismissing her case) that which they could not do before the court journalized its order of dismissal. Furthermore, the court's order of dismissal has no effect since a notice of voluntary dismissal is effective upon filing. So even if the court purported to vacate its May 13, 2014 order, Stringer's case is still voluntarily dismissed with prejudice, thus terminating the action. I therefore dissent from the decision reached by the majority.