

[Cite as *Melling v. Scott*, 2016-Ohio-112.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
No. 103007

---

**HONORABLE JUDGE BRIAN J. MELLING,  
ET AL.**

PLAINTIFFS-APPELLANTS

vs.

**GERARD SCOTT, ET AL.**

DEFENDANTS-APPELLEES

---

**JUDGMENT:**  
AFFIRMED IN PART, REVERSED IN PART,  
AND REMANDED

---

Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-13-811459

**BEFORE:** Celebrezze, P.J., Jones, A.J., and Laster Mays, J.

**RELEASED AND JOURNALIZED:** January 14, 2016

## **ATTORNEY FOR APPELLANTS**

Charles A. Bakula  
Charles A. Bakula, Attorney at Law  
30285 Bruce Industrial Parkway  
Suite C - 2nd Floor  
Solon, Ohio 44139

## **FOR APPELLEES**

### **For Gerard Scott**

Gerard Scott, pro se  
Inmate No. 59016-060  
USP Hazelton - Camp  
P.O. Box 2000  
Bruceton Mills, WV 26525

### **Attorney For John Lybarger**

Charles T. McConville  
Knox County Prosecutor's Office  
117 East High Street  
Mount Vernon, Ohio 43050

### **Attorney For Equifax Inc.**

Donald P. Screen  
Chandra Law Firm, L.L.C.  
1265 W. 6th Street  
Suite 400  
Cleveland, Ohio 44113

### **For Experian**

Experian  
701 Experian Parkway  
Allen, Texas 75013

### **For TransUnion**

TransUnion  
2 Baldwin Place  
Chester, Pennsylvania 19022

FRANK D. CELEBREZZE, JR., J.:

{¶1} Appellants, Bedford Municipal Court Judge Brian J. Melling; Bedford Mayor Daniel Pocek; Bedford Police Officers Stacy Painter, David Eschweiler, and Ronald Nieman; former Bedford Law Director Kenneth Schuman; Bedford Deputy Clerk of Courts Leanne Collier; and Charles A. Bakula, seek to overturn the dismissal of their declaratory judgment action that sought to nullify numerous documents filed by appellee, Gerard Scott. Appellants argue the court abused its discretion in dismissing the declaratory judgment action because the court fundamentally misunderstood the relief sought. After a thorough review of the record and law, this court affirms in part, reverses in part, and remands.

### **I. Factual and Procedural History**

{¶2} Appellants filed a declaratory judgment action on July 30, 2013. They alleged Scott was involved in a traffic stop where he refused to comply with orders given by Officers Painter, Eschweiler, and Nieman. Scott was arrested and charged with numerous misdemeanor offenses in the Bedford Municipal Court. The case was assigned to Judge Melling, and Schuman was assigned to prosecute the case. After his initial appearance, Scott did not appear for any other hearings in this case and a warrant was issued for his arrest.

{¶3} Scott then filed a complaint in federal court alleging civil rights abuses by members of the Bedford Police Department. Bakula was retained to defend Bedford and

its employees in the litigation. This case was dismissed with prejudice. Scott filed two other actions with substantially the same allegations that were also dismissed.

{¶4} Following these unsuccessful federal proceedings, Scott began to file numerous claims, liens, notices, accountings, demands, true bills, Uniform Commercial Code (“UCC”) 1 statements, admiralty claims, performance bonds, affidavits of presentment, and other claims against or naming appellants. Several documents were filed with the Knox County Recorder’s Office professing to constitute notices of filings, such as UCC fixture filings, against some appellants.

{¶5} Appellants filed the declaratory judgment action in an attempt to have all of these various filings declared invalid. Scott answered, and the matter proceeded through discovery. Appellants filed an amended complaint to which Scott did not respond. In the amended complaint, appellants named the Knox County Recorder’s Office and various credit reporting agencies as defendants, but they were all eventually dismissed. Appellants, on August 19, 2014, filed a motion for partial summary judgment, to which Scott again did not respond. The court denied the motion. On the date of trial, Scott filed a notice of removal to federal court. The case was stayed until December 23, 2014, when the federal court remanded the matter, and the case was reinstated to the active docket. On April 10, 2015, without notice, the court entered an order dismissing the case finding that, in its discretion, it could dismiss the action without ruling on its merits. The court’s judgment entry stated:

R.C. 2721.07 states that “courts of record may refuse to render or enter a declaratory judgment or decree under this chapter if the judgment or decree

would not terminate the uncertainty or controversy giving rise to the action or proceeding in which the declaratory relief is sought.” to obtain relief under, R.C. 2721, a plaintiff must establish the following: (1) a real controversy exists between the parties; (2) the controversy is justiciable; and (3) speedy relief is necessary to preserve the rights of the parties. *In Defense of Deer v. Cleveland Metroparks*, 138 Ohio App.3d 153, 740 N.E.2d 714 (8th Dist.2000). A judge may dismiss an action for declaratory judgment without addressing the merits of the case under two circumstances: (1) there is neither a justiciable issue nor an actual controversy between the parties requiring speedy relief to preserve rights which may otherwise be lost or impaired; or (2) in accordance with R.C. 2721.07, the declaratory judgment will not terminate the uncertainty or controversy. *Id.*

In the present case, plaintiff asked a state court to invalidate filings in federal court and with the Knox County Recorder. The court finds that this relief is neither a justiciable issue, nor an actual controversy between the parties requiring speedy relief to preserve rights which may otherwise be lost or impaired, and further, that any declaratory judgment issued by this court will not terminate the legal status of filings made in these other jurisdictions. Accordingly, all claims related to declaratory relief are hereby dismissed in their entirety.

As to plaintiffs’ request to bar further filings by the defendant Scott, the proper mechanism for such an action is under R.C. 2323.51. The vexatious litigation to which the statute has referenced is aimed at proceedings in the court of claims, or in a court of common pleas, municipal court or county court and does not apply to federal cases, cases between other parties or legislative and administrative proceedings. *Carr v. Riddle*, 136 Ohio App.3d 700, 704, 737 N.E.2d 976 (8th Dist.2000). Here, plaintiff provided a list of federal cases and filings with the Knox County Recorder in support of its request to declare defendant Scott a vexatious litigator. The court does not find that these filings demonstrate that defendant Scott habitually,

persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court as required under R.C. 2323.52(A)(3). Accordingly, these requests for injunctive relief are denied in their entirety. As this court has not granted plaintiffs relief as prayed for in their complaint, plaintiffs requests for attorney's fees are likewise denied.

{¶6} Appellants then filed the instant appeal assigning seven errors for review:

I. The trial court committed reversible error by mischaracterizing and/or misstating the relief sought by the appellants in their complaint and used it as a basis for a sua sponte dismissal.

II. The trial court abused its discretion by dismissing the complaint with prejudice.

III. The trial court abused its discretion by dismissing appellant's complaint without a trial. The appellants have a Constitutional right to a trial and to be heard before a court of law.

IV. The trial court committed reversible error to the prejudice of the appellants and violated their rights as guaranteed under the United States Constitution, and Article I, Section 16 of the Ohio Constitution when the trial court dismissed the appellants' complaint for declaratory judgment and injunctive relief, where the appellants' complaint clearly stated a (1) real controversy, (2) justiciable issues, and (3) situation where speedy relief is necessary.

V. The trial court abused its discretion by refusing to grant appellants' motion for summary judgment wherein the appellants demonstrated their statutory immunity against the claims made by the appellee.

VI. The trial court abused its discretion by refusing to grant the appellants' motion for default judgment when the appellee failed to file any answer.

VII. The trial court abused its discretion by refusing to grant appellants' motion for summary judgment wherein the appellants demonstrated that any claims brought by the appellee are barred by res judicata.

## II. Law and Analysis

### A. Sua Sponte Dismissal Without Notice

{¶7} The trial court sua sponte dismissed the declaratory judgment action without notice to the parties. Such a dismissal is generally not countenanced. Dismissals without notice are fundamentally unfair to the parties and should be reserved for the plainly frivolous case. “The only instances of when a sua sponte dismissal of a complaint without notice is appropriate are when the complaint is frivolous or the plaintiff cannot succeed on the facts stated in the complaint.” *X-S Merch., Inc. v. Wynne Pro, L.L.C.*, 8th Dist. Cuyahoga No. 97641, 2012-Ohio-2315, ¶ 17, fn. 2, citing *Dunn v. Marthers*, 9th Dist. Lorain No. 05CA008838, 2006-Ohio-4923, ¶ 11.

{¶8} “Ohio’s Declaratory Judgment Act is a statutory scheme created in derogation of the common law, and the existence of jurisdiction in a declaratory-judgment action must be evident from the allegations in the complaint.” *Pointe at Gateway Condo. Owner’s Assn. v. Schmelzer*, 8th Dist. Cuyahoga Nos. 98761 and 99130, 2013-Ohio-3615, ¶ 26-27, citing *Van Stone v. Van Stone*, 95 Ohio App. 406, 411, 120 N.E.2d 154 (6th Dist.1952).

{¶9} “A proper claim for declaratory judgment must present: (1) a real controversy between the parties; (2) a controversy which is justiciable in character; and



(3) a situation in which speedy relief is necessary to preserve the rights of the parties.” *Peat Marwick Main & Co. v. Elliott*, 10th Dist. Franklin No. 90AP-921, 1991 Ohio App. LEXIS 101, \*4-5 (Jan. 10, 1991), citing *Burger Brewing Co. v. Liquor Control Comm.*, 34 Ohio St.2d 93, 97, 296 N.E.2d 261 (1973); *Buckeye Quality Care Ctrs., Inc. v. Fletcher*, 48 Ohio App.3d 150, 154, 548 N.E.2d 973 (10th Dist.1988).

In determining whether to grant injunctive relief, courts take into consideration the following four factors: (1) the likelihood or probability of a plaintiff’s success on the merits; (2) whether the issuance of the injunction will prevent irreparable harm to the plaintiff; (3) what injury to others will be caused by the granting of the injunction; and (4) whether the public interest will be served by the granting of the injunction.

*Schmelzer* at ¶ 74, citing *Corbett v. Ohio Bldg. Auth.*, 86 Ohio App.3d 44, 49, 619 N.E.2d 1145 (10th Dist.1993).

{¶10} Here, appellants’ complaint is not frivolous. There is a real controversy between adverse parties that may be, at least in part, justiciable.

{¶11} “A ‘controversy’ exists for purposes of a declaratory judgment when there is a genuine dispute between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Wagner v. Cleveland*, 62 Ohio App.3d 8, 13, 574 N.E.2d 533 (8th Dist.1988), citing *Burger Brewing*.

{¶12} Appellants claim Scott has asserted various claims against them in numerous venues throughout Ohio, all based on events that occurred in Cuyahoga County. While

appellants allege that many documents were recorded in Knox County, the complaint does not allege that this is the only venue where Scott filed things. Further, the underlying dispute or debt may be declared invalid even where the court may not have jurisdiction over the location of a recorded document so long as the court otherwise has jurisdiction to resolve the dispute. This frequently occurs where parties agree to a specific venue in a written instrument even though the instrument may be recorded in a different jurisdiction.

{¶13} Several fixture filings were alleged to have been recorded in this case. The court could determine that Scott never provided goods to any appellant without requiring litigation of the validity of such transactions in every county in the state where Scott decided to record those filings. This is especially true where Scott's alleged basis for the filings flow from events that occurred in Cuyahoga County — the county where all the parties resided at the time the complaint was filed.

{¶14} Appellants did not help the situation by only providing vague descriptions of Scott's filings without including any actual examples in the record. The trial court was left to wonder about the actual nature of the filings.<sup>1</sup> However, that does not lead to the conclusion that the complaint for declaratory judgment is frivolous or patently doomed to fail.

{¶15} The third element, the necessity for speedy relief, is also facially satisfied in this case. Scott's alleged tactic of filing multiple documents — including UCC financing

---

<sup>1</sup>Appellants, in their motion for partial summary judgment, indicate the reason they included a summary rather than the actual filings is because the filings total approximately 995 pages.

statements, admiralty claims, liens, and others — against appellants to harass them is familiar to employees of the Internal Revenue Service (“IRS”). A significant body of federal law exists where district courts, faced with multiple similar filings against IRS employees, have granted declaratory judgment and injunctive relief voiding those filings. However, these court decisions rest their authority to invalidate filings on Internal Revenue Code (“I.R.C.”) Section 7402(a). *United States v. Lerch*, N.D.Ind. No. 1:97-CV-35 AS, 1997 U.S. Dist. LEXIS 4918 (Mar. 29, 1997). Therefore, this body of law is not generally applicable to the present case.

{¶16} One holding from this body of law is significant in that it indicates the existence of irreparable harm in the present case: “Thus, the filing of frivolous liens against government employees constitutes irreparable harm for purposes of injunctive relief.” *Id.* at \*30, citing *United States v. Van Dyke*, 568 F. Supp. 820, 822 (D.Ore.1983); *United States v. Kaun*, 633 F.Supp. 406, 418 (E.D.Wisc.1986).

{¶17} Appellants have alleged Scott engaged in a campaign to harass them through the filings of various false liens, judgments, and claims. Federal courts have found similar filings to constitute irreparable harm justifying declaratory and injunctive relief. The irreparable harm of frivolous liens and claims indicates that speedy relief is necessary to relieve appellants of the detrimental effects these liens have on them and their property.

Therefore, appellants have at least facially demonstrated harm requiring immediate relief.

{¶18} Based on the allegations made in the complaint, appellants claims are not frivolous or certain to fail. The trial court erred in sua sponte dismissing the action in this case. Appellants' first assignment of error is sustained. This holding renders appellants' second, third, and fourth assignments of error moot.

### **B. Summary Judgment**

{¶19} In appellants' fifth and seventh assignments of error, they argue that the court erred in denying their motion for summary judgment based on immunity and res judicata.

{¶20} This court reviews summary judgment rulings applying the same standards as the trial court: de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). We afford the lower court's decision no deference and independently review the record to determine whether summary judgment is appropriate.

{¶21} Under Civ.R. 56, summary judgment is appropriate when (1) no genuine issue as to any material fact exists, (2) the party moving for summary judgment is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion that is adverse to the nonmoving party.

{¶22} On a motion for summary judgment, the moving party carries the burden of setting forth specific facts that demonstrate its entitlement to relief. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996). If the moving party fails to meet this burden, summary judgment is not appropriate. However, if the moving party meets this

burden, summary judgment is appropriate only if the nonmoving party fails to establish the existence of a genuine issue of material fact. *Id.* at 293.

{¶23} Here, appellants failed to request a hearing on their summary judgment motion and also failed to provide the court with the filings they alleged were frivolous.

{¶24} The only documents attached to appellants' motion were a police report documenting Scott's arrest, several affidavits indicating the type of contact each appellant had with Scott, if any at all, and a summary of Scott's various filings with generic descriptions such as "Accounting and True Bill," "Verified Affidavit of Facts," and "Bid Bond."

{¶25} In their motion, appellants explained that they did not attach copies of Scott's various filings because they totaled some 995 pages. The motion informed the trial court that these filings were available for inspection. The failure to submit these to the court and make them a part of the record when they did not request a hearing leaves only vague descriptions of filings with no way of determining the validity or even the true nature of the filings. Similarly, there is really no way to determine as a matter of law whether immunity or res judicata applies to the claims made in the filings.

{¶26} Appellants carry the burden of demonstrating entitlement to relief. Their failure to attach examples of Scott's filings and to rely on vague descriptions make it impossible for this court to determine that as a matter of law they are entitled to the relief sought. Therefore, we cannot say that the trial court erred in denying their motion for summary judgment. Appellants' fifth and seventh assignments of error are overruled.

### C. Default Judgment

{¶27} Appellants claim in their sixth assignment of error that the trial court should have granted their motion for default judgment where Scott failed to file an answer to their amended complaint. The court never ruled on the motion because soon after it was filed, Scott filed a notice of removal to federal court. Generally, a court impliedly denies a motion when it disposes of a case without addressing it.

{¶28} A trial court's decision to grant or deny a motion for default judgment is reviewed on appeal for an abuse of discretion. *Fitworks Holding L.L.C. v. Sciranko*, 8th Dist. Cuyahoga No. 90593, 2008-Ohio-4861, ¶ 4, citing *Discover Bank v. Hicks*, 4th Dist. Washington No. 06CA55, 2007-Ohio-4448. The term "abuse of discretion" implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶29} Civ.R. 55(A) provides in pertinent part:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing \* \* \* to the court \* \* \*. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or

order such references as it deems necessary and proper and shall when applicable accord a right of trial by jury to the parties.

{¶30} The court retains discretion to deny a motion when the situation does not warrant the punitive measure of entering a default judgment. Here, appellants' amended complaint restated the claims alleged against Scott in the initial complaint and added various parties. While Scott's failure to respond technically placed him in default, nothing changed from the initial to the amended complaint relative to him. Therefore, the trial court did not abuse its discretion when it impliedly denied appellants' motion for default judgment.

{¶31} Further, appellants did not renew the motion or seek a hearing after the case was reinstated following remand from federal court. The court could not have granted a default judgment without holding a hearing, which did not occur in this case. There were issues left to be resolved before the court could say that appellants were entitled to judgment. Where a party is not clearly entitled to judgment, a default judgment should not be entered. *See Streeton v. Roehm*, 83 Ohio App. 148, 81 N.E.2d 133 (1st Dist.1948).

### **III. Conclusion**

{¶32} The trial court erred in sua sponte dismissing the case without notice. The complaint raises issues of a genuine dispute between parties that is, at least in part, justiciable and for which swift relief is necessary to remedy irreparable harm. The court's decision that the complaint seeks to invalidate filings in federal court and Knox

County may be partially correct, but the complaint also raises issues that would not require such actions. Therefore, the court erred in dismissing the complaint as appellants could in some way prevail and it was not clearly frivolous. The court did not err in denying appellants' motions for summary and default judgments.

{¶33} This cause is affirmed in part, reversed in part, and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant and appellee share the 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.

---

FRANK D. CELEBREZZE, JR., PRESIDING JUDGE

LARRY A. JONES, SR., A.J., and  
ANITA LASTER MAYS, J., CONCUR