

[Cite as *Williams v. Matthews*, 2016-Ohio-3461.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 103501

DONALD C. WILLIAMS

PLAINTIFF-APPELLEE

vs.

IVAN MATTHEWS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cleveland Municipal Court
Case No. 2008CV1024776

BEFORE: S. Gallagher, J., Boyle, P.J., and Blackmon, J.

RELEASED AND JOURNALIZED: June 16, 2016

FOR APPELLANT

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SEAN C. GALLAGHER, J.:

{¶1} Ivan Matthews appeals the denial of his motion for relief from judgment, filed after a panel from this court affirmed a judgment against him. For the following reasons, we affirm.

{¶2} This case dates back to 2008 when Attorney Donald Williams filed a small claims action against Matthews for breach of contract. Matthews engaged the legal services of Williams for a criminal matter and agreed to a retainer that was never paid, after which Williams provided extensive legal services for Matthews between December 2007 and March 2008. After several years, judgment was entered against Matthews in the amount of \$2,207.50. Matthews unsuccessfully appealed that judgment in *Williams v. Matthews*, 8th Dist. Cuyahoga No. 98136, 2013-Ohio-483.

{¶3} Of pertinence to the current appeal, during the course of the small claims proceedings, Williams missed a scheduled court date. The trial court dismissed the action without prejudice as a consequence. *Id.* at ¶ 12-15. Williams successfully sought relief from that decision, claiming he never received notice of the court date. *Id.* at ¶ 15.

The matter ultimately proceeded to the judgment in his favor. According to our review of the record, Matthews failed to object to the magistrate's decision granting Williams's motion for relief from the dismissal under Civ.R. 53(D)(3)(b)(iv). Matthews then waived all but plain error. *Id.*

{¶4} In the direct appeal following the trial court proceedings, the panel affirmed the judgment against Matthews and specifically held that the trial court did not abuse its discretion: (1) in granting Williams’s motion for relief from judgment, (2) by overruling several of Matthews’s objections to the magistrate’s decision, or (3) by overruling objections to procedural aspects of the small claims proceeding. *Id.* After affirming the judgment in all respects, the matter was remanded to the municipal court for the sole purpose of issuing a nunc pro tunc entry to correct clerical mistakes within certain judgment entries. *Id.* at ¶ 38. The trial court complied with that mandate, and the Ohio Supreme Court did not allow a discretionary appeal. *Williams v. Matthews*, 136 Ohio St.3d 1509, 2013-Ohio-4657, 995 N.E.2d 1212. This should have ended the matter.

{¶5} Instead, Matthews filed a motion for relief from judgment under Civ.R. 60(B), evidently considering the limited remand an invitation to relitigate matters that were addressed in his direct appeal. In that motion, Matthews again argued that the trial court erroneously granted Williams’s motion for relief from judgment. On August 19, 2015, the trial court adopted a magistrate’s decision dated November 17, 2014, and denied Matthews’s motion, primarily holding that the motion was untimely because it had not been filed within a year of the final judgment as required by Civ.R. 60(B). In other words, the trial court resolved the merits of Matthews’s motion.

{¶6} This appeal followed, in which Matthews advances 17 assignments of error, each either challenging the trial court’s decision on the merits of the Civ.R. 60(B) motion

or collaterally attacking procedural issues that predated his direct appeal.¹ In the first 11 assignments of error, Matthews challenges the trial court's decision denying his motion for relief from judgment on various aspects of the rule. We need not address each individual assignment of error. The trial court, following our remand, was precluded from addressing the merits of Matthews's motion based on the law of the case doctrine.

{¶7} The law of the case doctrine provides that upon remand, a trial court must apply the law as decided by the appellate court on the legal issues involved that have been decided with finality. *State ex rel. Sharif v. McDonnell*, 91 Ohio St.3d 46, 47-48, 2001-Ohio-240, 741 N.E.2d 127; *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 462 N.E.2d 410 (1984). This is “necessary to ensure consistency of results in a case, to avoid endless litigation by settling the issues, and to preserve the structure of superior and inferior courts as designed by the Ohio Constitution.” *Nolan* at 3.

{¶8} In his direct appeal, Matthews unsuccessfully claimed that Williams was wrongfully granted relief from a dismissal without prejudice. *See generally Matthews*, 8th Dist. Cuyahoga No. 98136, 2013-Ohio-483. In his current appeal, Matthews argues the same thing in the first 11 assignments of error, specifically that Williams actually received notice of the proceedings, and therefore, the trial court erred in granting Williams relief in the small claims proceedings.² To be clear, the *Matthews* panel held as follows:

¹ See appendix, which quotes the assignments of error verbatim.

² Matthews attempts to morph the arguments he made in his direct appeal into a fraud claim

Williams satisfied all three prongs of the [Civ.R. 60(B)] test. Williams had a meritorious claim that he was owed money for his legal services from Matthews. He filed his motion mere days after the dismissal judgment was entered. *He stated that although he had used his new address in filing the complaint, the municipal court computer used his old address as the address to which to send notices and orders.* This would fall under the grounds of mistake or inadvertence pursuant to Civ.R. 60(B)(1). We find no basis to conclude the trial court abused its discretion in vacating its dismissal.

(Emphasis added.) *Matthews* at ¶ 15. This became the law of the case on remand. The trial court was bound by that decision and, therefore, correctly denied Matthews’s motion for relief from judgment, albeit for different reasons.

{¶9} If Matthews disagreed with the outcome of his direct appeal, his remedy lay with the Ohio Supreme Court, not back with the trial court. In light of the fact that the high court declined to review his case, in *Williams v. Matthews*, 136 Ohio St.3d 1509, 2013-Ohio-4657, 995 N.E.2d 1212, the panel’s decision in the direct appeal was final. The denial of his motion for relief from judgment was appropriate based on the law of the case doctrine.

pursuant to Civ.R. 60(B)(3), claiming that Williams committed a “newly discovered” fraud by telling the court he had not received notice of the court dates when “in fact” he had. As courts have consistently maintained, “the fraud, misrepresentation, or other misconduct contemplated by Civ.R. 60(B)(3) refers to deceit or other unconscionable conduct committed by a party to obtain a judgment and does not refer to conduct that would have been a defense to or claim in the case itself.” *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 13, citing *PNC Bank, Natl. Assn. v. Botts*, 10th Dist. Franklin No. 12AP-256, 2012-Ohio-5383, ¶ 15. Whether Williams actually received notice or not was a defense Matthews could have advanced in response to Williams’s motion for relief from judgment. Matthews failed to object to the magistrate’s decision granting Williams’s motion and, therefore, waived all but plain error.

{¶10} In his remaining six assignments of error, Matthews claims that (1) the magistrate failed to issue separate findings of facts and conclusions of law each time Matthews sought such (addressed in *Matthews* at ¶ 19); (2) the trial court erred by failing to record the small claims proceedings (addressed in *Matthews* at ¶ 32-33); (3) the trial court erred in not adopting the magistrate’s decisions because the trial court instead said “approved” and “confirmed” (addressed in *Matthews* at ¶ 30-31); and (4) in three duplicative assigned errors, the trial court erred by approving and confirming a “non-existent” magistrate’s decision dated November 17, 2014.

{¶11} The first three of the remaining six arguments are overruled as being beyond the scope of the remand. None of those assigned errors, the ones in which Matthews challenges procedural aspects of the small claims proceedings before the direct appeal, even reference the judgment entry denying Matthews’s motion for relief from judgment. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 16 (Civ.R. 60(B) cannot be a substitute for a direct appeal). More importantly, those arguments were already unsuccessfully advanced in his direct appeal. *See generally Matthews*, 8th Dist. Cuyahoga No. 98136, 2013-Ohio-483.

{¶12} The remaining contentions Matthews included in his final three assignments of error are simply incomprehensible. Matthews claims the trial court erred by adopting a “non-existent” magistrate’s decision dated November 17, 2014, and then builds other arguments off that presumption. The August 19, 2015 judgment entry, the subject matter of the current appeal, approved a magistrate’s decision filed on November 17, 2014.

According to the record, the magistrate's decision denying Matthews's motion for relief from judgment was filed on that date and indeed exists. Beyond recognizing the existence of that particular magistrate's decision, it is not entirely clear what other relief Matthews is seeking. As a result, any other contentions contained in the remaining three assigned errors are disregarded for the lack of clarity. App.R. 16(A)(7).

{¶13} Matthews's assigned errors are without merit. Having overruled every assigned error, we affirm.

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.

SEAN C. GALLAGHER, JUDGE

MARY J. BOYLE, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR

Appendix

Assignment of Error Number One:

The trial court abused its discretion and erred as a matter of law in its decision of August 19, 2015, judgment entry of affirmance when it failed to apply and/or enforce Civ.R.52 applicable to Local Rule 13.08(A) of the Cleveland Municipal Court.

Assignment of Error Number Two:

The trial court abused its discretion and erred as a matter of law in its decision of Augusts 19, 2015, judgment entry of affirmance, has failed to satisfy the requirement of the Cleveland Municipal Court Local Rules and/or Ohio Rules of Civil Procedure, that each assignment of error be addressed when it categorically deny the appellant's objections without looking to the merit and validity of these objections individually.

Assignment of Error Number Three:

The trial court abused its discretion and erred as a matter of law when it omitted information or erroneous interpretation of law in its decision of Augusts 19, 2015, judgment entry of affirmance and the decision is of such exceptional nature as to have substantial precedential implications.

Assignment of Error Number Four:

The trial court abused its discretion and erred in its decision of Augusts 19, 2015, judgment entry of affirmance, has failed to apply and/or enforce Civ.R.53 applicable to Local Rule 13.09(D) & (E).

Assignment of Error Number Five:

The trial court erred as a matter fact in its Augusts 19, 2015, judgment entry of affirmance that was improper and contrary to law finding DEFENDANT'S motion to vacate judgment on grounds of "fraud upon the court" pursuant to Ohio R. Civ. P. 60(B)(3) and/or Ohio R. Civ. P. 60(B)(5)) barred by the doctrine of *res judicata*.

Assignment of Error Number Six:

The trial court erred as a matter of law and/or fact when it misinterpreted the Eight District Court of Appeals vital finding(s) in *Continental Fed. Savings & Loan Assn. v. Bernardi, Rowland & Co.* 8th Dist. Cuyahoga No. 43840, 1982 WL 5279, (1982) in its Augusts 19, 2015, judgment entry of affirmance, in its decision.

Assignment of Error Number Seven:

The trial court erred as a matter of fact when it omitted information and the operative facts, stated in defendant's motion to vacate judgment on grounds

of “fraud upon the court” pursuant to Ohio R. Civ. P. 60(B)(3) and/or Ohio R. Civ. P. 60(B)(5) in its August 19, 2015, judgment entry of affirmance, in its decision.

Assignment of Error Number Eight:

The trial court abused its discretion and erred as matter of law by not vacating or reversing a judgment that was procured through an act of fraud.

Assignment of Error Number Nine:

The trial court abused its discretion and erred as a matter of law when it failed to apply and/or enforce Civ.R.52, Civ.R. 60(B)(3) and/or Civ.R. 60(B)(5) applicable to Local Rule 13.07(A) of the Cleveland Municipal Court.

Assignment of Error Number Ten:

The trial court’s abused its discretion and erred as a matter of law when it stating “findings of fact and conclusions of law are not required for Defendant’s motion to vacate.”

Assignment of Error Number Eleven:

The trial court abused its discretion and erred as a matter of law by failing to enter a default judgment against Appellee.

Assignment of Error Number Twelve:

The trial court abused its discretion and erred as a matter of law when it abused its power to fulfill appellant’s request for findings of fact and conclusion of law.

Assignment of Error Number Thirteen:

The trial court abused its discretion and erred as a matter of law when it denied appellant due process and/or removed appellant from Court Room 12D, which has recording devices, (i.e. camera and audio recording) on August 01, 2013.

Assignment of Error Number Fourteen:

The trial court abused its discretion and erred as a matter of law when it did not adopt the magistrate's decision.

Assignment of Error Number Fifteen:

The trial court abused its discretion and erred as a matter of law when it failed to properly adopt a magistrate's decision instead reference a non-existent magistrate's decision dated November 17, 2014 as being judgment entry on August 19, 2015.

Assignment of Error Number Sixteen:

The trial court abused its discretion and erred as a matter of law when it did not adopt any of the magistrate's decision and/or findings of fact and conclusions of law.

Assignment of Error Number Seventeen:

The trial court abused its discretion and erred as a matter of law by not issuing the August 19, 2015, as being final appealable notice.