[Cite as *Harris v. Akron*, 2009-Ohio-3865.]

STATE OF OHIO COUNTY OF SUMMIT	))ss:)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
JOHN H. HARRIS Appellant v. CITY OF AKRON, OHIO Appellee		C.A. No. 24499 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CV 2008 05 3686

DECISION AND JOURNAL ENTRY

Dated: August 5, 2009

MOORE, Presiding Judge.

{¶1} Appellant, John Harris, appeals from the decision of the Summit County Court of Common Pleas. This Court affirms.

I

{¶2} On March 26, 2008, Appellee, the City of Akron, filed a complaint for appropriation and a declaration of intention in Summit County Probate Court to obtain immediate possession of Appellant, John Harris', property located at 757 Edgewood Avenue in Akron, Ohio. According to the City, immediate possession of the property was required to make or repair roads that were to be open to the public without charge. Harris did not file an answer to the City's complaint. Instead, on May 13, 2008, Harris filed a complaint for injunctive relief against the City in Summit County Common Pleas Court. In the injunction matter, Harris sought a temporary restraining order, a preliminary injunction and a permanent injunction, pending a

determination of the right and necessity of the appropriation. Harris did not file a stay of proceedings in the appropriation case.

{¶3} The preliminary injunction matter proceeded to a hearing before a magistrate. The magistrate determined that the City had the right and the necessity to appropriate Harris' property. Accordingly, the magistrate denied Harris' motion for preliminary injunction and permanent injunction and dismissed the case. Harris filed objections to the magistrate's decision. However, he failed to supplement his objections with the transcript from the injunction hearing. The City urged the trial court to dismiss Harris' action on the basis of this technicality. Despite the City's urging, the court gave Harris additional time within which to file the transcript. While Harris ultimately filed the transcript, he failed to file it by the trial court's extended deadline.

{¶4} On September 30, 2008, the City obtained a default judgment against Harris in the appropriation case. At the same time, the probate court also issued an order vesting title to the property with the City. Upon receiving title to the property, the City sought dismissal of the injunction action. In its motion to dismiss, filed on October 1, 2008, the City argued that its act of obtaining title to the property rendered Harris' injunction action moot. Harris did not oppose the City's motion to dismiss, even after the trial court contacted his counsel to find out whether he would file a response. On October 20, 2008, the trial court granted the City's motion to dismiss the injunction action. Harris timely appealed the trial court's decision. He has raised one assignment of error for our review.

II

ASSIGNMENT OF ERROR

> "WHETHER THE TRIAL COURT ERRED IN DISMISSING [HARRIS'] CASE AS MOOT OWING TO THE ENTRY OF JUDGMENT IN AN

APPROPRIATION ACTION AGAINST [THE CITY OF AKRON] PENDING IN SUMMIT COUNTY PROBATE COURT."

{¶5} In Harris' sole assignment of error, he contends that the trial court erred in dismissing his injunction case as moot on the basis that judgment was rendered against Harris in the appropriation action.

{¶6} "The issue of mootness is a question of law; therefore, we review the trial court's decision finding the instant matter moot under the de novo standard of review." *Poulson v. Wooster City Planning Comm.*, 9th Dist. No. 04CA0077, 2005-Ohio-2976, at ¶5; *University Hosps. of Cleveland, Inc. v. Lynch*, 96 Ohio St.3d 118, 2002-Ohio-3748, at ¶52. Using a de novo standard, this Court conducts an independent review of the trial court's decision, giving no deference to the trial court's determination. *Brown v. Scioto Cty. Bd. of Commrs.* (1993), 87 Ohio App.3d 704, 711.

{¶7} Actions are moot when they involve no actual genuine controversy which can definitely affect the parties' existing legal relationship. *Lingo v. Ohio Cent. RR., Inc.*, 10th Dist. No. 05AP-206, 2006-Ohio-2268, at ¶20. "'A moot case is one which seeks to get a judgment *** upon some matter which, when rendered, for any reason cannot have any practical legal effect upon a then-existing controversy.'" *Culver v. Warren* (1948), 84 Ohio App. 373, 393, quoting *Ex Parte Steele* (N.D.Ala. 1908), 162 F. 694, 701.

{¶8} Harris' main contention on appeal is that the trial court erred when it dismissed his case as moot. However, the record clearly reflects that Harris had an opportunity to respond to the City's motion to dismiss on the basis of mootness and neglected to do so.

{¶9} When reviewing arguments on appeal, this Court cannot consider issues that are raised for the first time on appeal. The Ohio Supreme Court has stated that other than issues of subject matter jurisdiction, "reviewing courts do not consider questions not presented to the court

whose judgment is sought to be reversed." *Goldberg v. Indus. Comm.* (1936), 131 Ohio St. 399, 404. It is well established that "an appellate court need not consider an error which a party complaining of the trial court's judgment could have called, but did not call, to the trial court's attention at a time when such error could have been avoided or corrected by the trial court." *State v. Williams* (1977), 51 Ohio St.2d 112, 117.

{¶10} Here, the trial court took great pains to accommodate Harris – going so far as to contact his counsel to encourage him to file a response to the City's motion to dismiss. Harris and/or his counsel ignored the court's inquiries and now attempts to present arguments for the first time on appeal that should have been presented to the trial court. By failing to raise any arguments in the trial court in opposition to the City's motion to dismiss based on mootness, Harris forfeited his right to raise these arguments for the first time on appeal. *State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, at ¶10.

{¶11} Moreover, the trial court correctly concluded that Harris' injunction action was rendered moot by the probate court's September 30, 2008 order vesting title to the property with the City. When the probate court vested title to the property in the City, it essentially tendered the property to the City free and clear of any claims to the property from Harris or anyone else. As such, the only act that Harris sought to prevent through his injunction – the appropriation – has already occurred. Accordingly, Harris can no longer claim that injunctive relief is proper or even possible. *Culver*, 84 Ohio App. at 393. Furthermore, the project for which the City obtained the property through appropriation has already been completed. Essentially, there is nothing for the court to enjoin and consequently, there is no actual genuine controversy which

can definitely affect the parties' existing legal relationship. *Lingo*, supra, at ¶20. Accordingly, Harris' sole assignment of error is overruled.

III

{¶12} Harris' sole assignment of error is overruled and the judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
DICKINSON, J.
CONCUR

APPEARANCES:

JOHN A. HUETTNER, Attorney at Law, for Appellant.

MAX ROTHAL, Director of Law, SEAN W. VOLLMAN, and STEPHANIE H. YORK, Assistant Directors of Law, for Appellee.