IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

WARREN COUNTY

ERICA COLLINS,	:	CASE NO. CA2025-12-114
Appellee,	:	
vs.	:	OPINION AND JUDGMENT ENTRY 9/14/2026
AMI VITORI,	:	
Appellant.	:	
	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 24CV97424

Thomas G. Eagle Co., LPA, and Thomas G. Eagle, for appellee.

Robbins Kelly Patterson & Tucker, LPA, and Michael A. Galasso, for appellant.

OPINION

HENDRICKSON, J.

{¶ 1} Appellant, Ami Vitori, appeals the decision of the Warren County Court of Common Pleas striking her answer to the complaint and granting default judgment in favor of appellee, Erica Collins. For the reasons discussed below, we affirm the trial court's decision.[1]

{¶ 2} Prior to September 2017, Vitori owned and operated a business named Haven, L.L.C. Haven was, at that time, a limited liability company with a principal place of business in Ohio and Vitori was the sole owner, member, manager, and principal of the business. In September 2017, Haven hired Collins to work as an employee. At some point, a dispute arose concerning payment for services Collins had rendered to Haven and in November 2019, Collins filed suit against Haven in the Butler County Court of Common Pleas ("Haven Case") to recover the money owed to her by Haven. Thereafter, in August 2023, the Butler County Court of Common Pleas granted summary judgment to Collins on her claims in the Haven Case. As a result, the court ordered judgment against Haven in the amount of $54,730.12, plus interest at the statutory rate from August 16, 2018. Relevant to the instant appeal, Haven later filed for bankruptcy and has failed or refused to pay the judgment from the Haven Case.[2]

{¶ 3} In May 2024, Collins filed a complaint against Vitori in the trial court. In her complaint, Collins alleged claims of successor liability through mere continuation, fraudulent conveyances or transactions, and alter ego. In so doing, Collins alleged that, after Haven was insolvent, Vitori acquired substantially all the assets owned by Haven and that Haven did not receive reasonably equivalent value in exchange for those assets. Collins further alleged that Vitori concealed this transfer of assets from Collins and other creditors of Haven; that Vitori comingled assets, services, facilities, and resources from one or more of her businesses to conduct and continue the same activities formerly conducted by Haven; and that the transfer of assets was done with the intent to hinder,

1. Pursuant to Loc.R. 6(A), we sua sponte remove this appeal from the accelerated calendar for purposes of issuing this Opinion.

2. Vitori purports in her filings that Haven filed bankruptcy in August 2021 and that Collins' counsel entered an appearance in the bankruptcy case in November 2021.

delay, or defraud Collins and to escape liability for the Haven Case judgment. As such, Collins claims Vitori is personally liable for the indebtedness of Haven, including the judgment owed to Collins from the Haven Case.

{¶ 4} Vitori filed an answer to Collins' complaint, wherein she denied Collins' claims. Thereafter, the trial court issued a Civ.R. 26(F) report, which stated the parties agreed that all discovery would be completed by May 8, 2025.

{¶ 5} In December 2024, Vitori moved the trial court to enter a protective order to prevent the production and use of confidential information provided in discovery. Collins agreed to the terms of the proposed protective order, which protected confidential information like the financial information produced by Vitori and nonparties Torchlight Pass L.L.C., Gracie's L.L.C., and other affiliated entities with trade names associated with the same. The trial court entered the order as agreed to by the parties.

{¶ 6} Approximately four months later, in April 2025, Collins moved the trial court to compel discovery. In her motion, Collins asserted that she served Vitori with discovery requests in September 2024 but, despite multiple extensions and partial production and responses, Vitori had not complied with those requests. Collins detailed the specific requests Vitori had failed to comply with and asked the court to order Vitori to comply within a reasonable time. Vitori filed a memorandum opposing Collins' motion to compel, wherein she argued the court should deny Collins' motion because additional discovery would "not resolve fatal shortcomings in [Collins'] claims[,]" including that Collins' "claims are barred by the statute of limitation and by the doctrine of res judicata."

{¶ 7} On May 5, 2025, the magistrate issued an order granting Collins' motion to compel. In so doing, the magistrate found that Vitori's allegation that Collins' claims are barred by the statute of limitations did not negate her obligation to respond to Collins' discovery requests. As such, the magistrate ordered Vitori to provide complete responses to all discovery requests propounded by Collins within 14 days.

{¶ 8} Three days later, on May 8, 2025, Vitori moved the court for summary judgment on all claims. In her motion, Vitori reiterated her argument that Collins' claims are barred by the statute of limitations and the doctrine of res judicata. That same day, Vitori moved the trial court, in an effort to avoid unnecessary time, effort, and expenses, to stay discovery proceedings pending the determination of her motion for summary judgment. Thereafter, on May 15, 2025, Vitori moved the court to set aside the magistrate's order granting Collins' motion to compel and asked the court to stay discovery proceedings pending its decision on the motion to set aside.

{¶ 9} In response, Collins moved the court to permit a reasonable period of time to complete pending and additional discovery of the claims and defenses in the case, including conducting Vitori's deposition. Collins also asked the court for an extension of time to respond to Vitori's motion for summary judgment and opposed the motion to stay discovery.

{¶ 10} Only July 10, 2025, the court issued a decision in which it: (1) denied Vitori's motion to set aside the magistrate's order; (2) denied Vitori's motion to stay discovery; (3) granted, in part, Collins' motion to stay disposition on dispositive motions until Vitori's deposition was taken; (4) stayed the proceedings pertaining to Vitori's pending motion for summary judgment; and (5) ordered that Vitori's deposition be taken within 30 days of the order. Vitori's deposition was later scheduled for August 2025.

{¶ 11} On July 15, 2025, Collins moved the trial court to impose additional discovery sanctions due to Vitori's failure to comply with the court's May 5, 2025 order to compel discovery. In resolving Collins' motion, the court issued an order directing the Assignment Commissioner to set the matter for a hearing during the first week of September 2025. The court further stated that the hearing would not be continued and, if

Vitori did not comply with all discovery requests by the date of the hearing, the court would issue an order either: (1) "preventing [Vitori] from opposing [Collins'] claims on any matter where discovery has not been complied with; or (2) render a default judgment in favor of [Collins] and set the matter for a trial on the issue of damages only."

{¶ 12} On September 4, 2025, a hearing was held before the magistrate. After considering the evidence produced at the hearing, the magistrate issued a decision finding that Vitori had not complied with the court's May 5, 2025 order and that her noncompliance was not substantially justified. In its decision, the magistrate specifically found the following:

> [Vitori] has caused the delay of this case, including her own deposition. In fact, since the inception of this case, it has become abundantly clear to the Court that [Vitori] has done nothing to comply with the requests for discovery, leading the undersigned to believe [Vitori] seeks only to delay this case further. [Vitori's] initial response to discovery indicating it was not relevant and now her claim that the items requested do not exist cause the Court to be concerned of the spoilation of the evidence.

After considering the parties' arguments, the magistrate ultimately struck Vitori's answer, granted default judgment in favor of Collins in the amount of $54,730.12, plus interest, and ordered Vitori to pay attorney fees in the amount of $9,439.05.

{¶ 13} Vitori objected to the magistrate's decision, arguing that the magistrate erred in imposing the sanction of a default judgment and in striking her answer. After conducting an independent review, the trial court overruled Vitori's objections and adopted the magistrate's decision in its entirety. In its decision, the trial court noted that no transcript of the proceedings before the magistrate was filed in this case, and therefore, the court was limited to examining only the magistrate's conclusions of law and recommendations. In so doing, the court found that

> [m]uch of [Vitori's] objection seeks to re-litigate the Magistrate's Order of May 5, 2025 compelling discovery. This Court has previously addressed those arguments when it denied the motion to set aside the Magistrate's Order. . . . Without a transcript to refute the Magistrate's conclusions, this Court must presume the regularity of the proceedings below and find that no error of law or fact occurred in this case. The Court finds the Magistrate acted in accordance with the law when she struck [Vitori's] Answer and rendered default judgment as a sanction.

{¶ 14} Vitori now appeals, raising two assignments of error for this court's review. For ease of review, we will address Vitori's assignments of error together.

{¶ 15} Assignment of Error No. 1:

{¶ 16} THE TRIAL COURT ERRED IN ENTERING DEFAULT JUDGMENT WHERE THE COMPLAINT ASSERTED NO VALID UNDERLYING CAUSE OF ACTION.

{¶ 17} Assignment of Error No. 2:

{¶ 18} THE TRIAL COURT ERRED IN ENTERING DEFAULT JUDGMENT AS THE FIRST SANCTION.

{¶ 19} On appeal, Vitori challenges the trial court's decision to strike her answer and enter default judgment in favor of Collins.

I. Standard of Review

{¶ 20} Preliminarily, pursuant to Civ.R. 37(A), a party to a civil action may move for an order compelling discovery from another party who has failed to respond in full to formal discovery requests. Rule 37(B) further provides as follows:

> If a party . . . fails to obey an order to provide or permit discovery, including an order made under . . . Civ.R. 37(A), the court may issue further just orders. They may include the following:
>
> . . .

> (c) Striking pleadings in whole or in part;
>
> . . .
>
> (f) Rendering a default judgment against the disobedient party[.]

Civ.R. 37(B)(1).

{¶ 21} Thus, "Civ.R. 37 authorizes the court to make 'just' orders in response to violations of the discovery rules or court orders." *Gherman v. Culberson*, 2025-Ohio-4513, ¶ 26 (12th Dist.). As stated above, the "just" orders or sanctions may include striking an answer and rendering a default judgment against the disobedient party. Civ.R. 37(B)(1)(c), (f).

{¶ 22} We review a trial court's imposition of a sanction pursuant to Civ.R. 37 for abuse of discretion. *Vaughn v. Vaughn*, 2022-Ohio-1805, ¶ 32 (12th Dist.). An abuse of discretion implies the court's attitude is unreasonable, arbitrary, or unconscionable. *Lykins v. Hale*, 2023-Ohio-75, ¶ 18 (12th Dist.). "However, the granting of a default judgment, analogous to the granting of a dismissal, is a harsh remedy that should only be imposed when 'the actions of the faulting party create a presumption of willfulness or bad faith.'" *Garrett v. Cuyahoga Cty.*, 2022-Ohio-2770, ¶ 23 (8th Dist.), quoting *Russo v. Goodyear Tire & Rubber Co.*, 36 Ohio App.3d 175, 179 (9th Dist.1987). A trial court is not required to use the terms "willfulness or bad faith" in a dismissal order, so long as such behavior can be established from the record. *Badri v. Averbach*, 2006-Ohio-3602, ¶ 7 (8th Dist.), citing *LJEL, Inc. v. Overland Transp. Sys., Inc.*, 1996 Ohio App. LEXIS 1325 (10th Dist. Mar. 28, 1996).

II. The Complaint States a Colorable Claim for Relief

{¶ 23} Vitori initially argues the trial court abused its discretion in striking her answer and entering default judgment against her because Collins' complaint does not state a colorable claim to hold Vitori liable for the debts of Haven. In support, Vitori cites to caselaw from other Ohio courts in which they recognized that default judgment cannot be issued as a discovery sanction without a valid underlying cause of action. *See Gray v. Newman*, 2008-Ohio-1076, ¶ 17 (8th Dist.); *Buckeye Supply Co. v. Northeast Drilling Co.*, 24 Ohio App. 3d 134, 136 (9th Dist. 1985). While we acknowledge the caselaw cited by Vitori, we disagree that no valid claim exists in this case.

{¶ 24} A "colorable claim" has been defined as one that is seemingly genuine or legally valid, i.e., a "plausible legal claim" that has a reasonable chance of being valid if the legal basis is generally correct and the facts can be proven. *DMS Constr. Ents., L.L.C. v. Homick*, 2020-Ohio-4919, ¶ 44 (8th Dist.). Vitori contends no colorable claim exists in this case because each and every one of Collins' claims are barred by res judicata and the statute of limitations. However, upon careful review of the complaint, we conclude there is sufficient information that, if believed, establishes at least one seemingly genuine, legally valid, or plausible legal claim.

{¶ 25} Regarding res judicata, Vitori argues that the prior litigation concerning Collins' unpaid wages in the Haven Case bars any recovery in this case. Specifically, Vitori contends that any claim "arising out of the transaction or occurrence" that could have been made against Haven or those in privity with it should have been alleged in the prior litigation. According to Vitori, Collins should have named Vitori as a defendant in the Haven Case and attempted to pierce the corporate veil at that time, and because Collins failed to do so, she is precluded from bringing these related claims against Vitori now. After our review, we disagree.

{¶ 26} As other courts have recognized, "litigation that resulted in a judgment and created a judgment-creditor/judgment-debtor relationship is not res judicata as to a subsequent claim that the debtor fraudulently transferred property to avoid paying the judgment." *Blood v. Nofzinger*, 2005-Ohio-3859, ¶ 22 (6th Dist.). As such, Collins was not required to add her claim for fraudulent transfers to litigation which had not yet resulted in a judgment. *Id*. Additionally, and as discussed above, the claims in the Haven Case stemmed from Haven's failure to pay Collins' wages. The claims in the present case involve Haven fraudulently conveying assets to Vitori with the intent to hinder, delay, or defraud creditors such as Collins. Although the two cases are related, they do not share a common nucleus of operative facts such that res judicata precludes the present lawsuit. *Mancz v. McHenry*, 2021-Ohio-82, ¶ 20 (2d Dist.). As such, because it involves issues which were not actually litigated or decided in the prior action against Haven, we conclude Collins' current complaint is not barred by res judicata.

{¶ 27} Vitori next argues that each of Collins' claims are barred by the statute of limitations. In support, Vitori contends that any claim for fraudulent transfer against Vitori accrued in August 2018, the same time her claim for unpaid wages accrued against Haven. As such, Vitori claims Collins' fraudulent transfer claim raised in May 2024 is barred by the four-year statute of limitations for claims brought under R.C. 1336.04. However, after our review, the allegations of the complaint do not foreclose the possibility that the transfers between Haven and Vitori occurred after Collins filed her complaint in the Haven Case and were perfected near the time Haven filed for bankruptcy in August 2021. Thus, it is reasonable to conclude that Collins' claims could be valid if she proves, through the discovery process, that Haven conveyed its assets to Vitori with the intent to hinder, delay, or defraud creditors such as Collins less than four years before Collins filed her complaint in the instant matter. As such, we find no merit to Vitori's argument that, based upon the allegations of the complaint, each and every claim alleged by Collins is barred by the statute of limitations.

III. Default Judgment is an Appropriate Discovery Sanction

{¶ 28} Vitori next argues that trial court erred in awarding default judgment to Collins because the record does not support such an extreme sanction where there is no evidence of willfulness or bad faith. Notwithstanding Vitori's argument to the contrary, we find the circumstances of this case support that Vitori's actions were willful and indicative of bad faith, and that she was on notice that those actions could result in the sanction of default judgment in Collins' favor.

{¶ 29} The record reflects that Vitori agreed in August 2024 that all discovery would be completed by May 2025. The following month, September 2024, Collins served her first set of requests for production of documents and first set of interrogatories upon Vitori. In her responses filed in December, Vitori indicated she would produce documents subject to the terms of a protective order. An agreed-upon protective order was entered in December 2024. Despite this, as well as multiple extensions from Collins, Vitori refused to produce the information requested by Collins. This is true even after the court granted Collins' motion to compel and ordered Vitori to produce the requested information by May 2025. Instead of responding to the discovery requests as ordered by the court, Vitori moved the court for summary judgment, moved to set aside the magistrate's order compelling discovery, and requested a stay of the discovery order. In these motions, Vitori reiterated the same legal principles she raised in her opposition to Collins' motion to compel discovery, i.e., that Collins' claims are barred by res judicata and the statute of limitations. The trial court rejected Vitori's arguments and ordered Vitori to engage in the discovery process, which she did not do.

{¶ 30} As discussed above, Collins later moved the court to impose additional sanctions for Vitori's failure to comply with the court's order to produce discovery. The court ordered Vitori to comply with the discovery requests by the September 2025 hearing, and specifically noted that, if she did not comply, the court could render default judgment in favor of Collins. By the time of the hearing, Vitori had not complied with the court's discovery order and indicated to the magistrate, for the first time, that the information requested nearly one year ago did not exist. In the magistrate's decision, the magistrate noted that Vitori's new justification for her failure to comply was particularly concerning. When she filed objections to the magistrate's decision, Vitori did not timely file a transcript of the hearing for the court to review.

{¶ 31} Based upon the above, our review of the record leads us to conclude Vitori had sufficient notice of the court's intention to impose sanctions, including striking her answer and entering default judgment, and was given the opportunity to explain why she failed to respond to the discovery requests. The court afforded Vitori multiple opportunities to either comply with the discovery order or to explain her lack of compliance. Vitori elected not to do so. Instead, Vitori continued to delay the proceedings and willfully inhibited Collins' ability to proceed on her claims. As such, the trial court did not abuse its discretion in finding Vitori's conduct constituted an unjustified, willful, or flagrant abuse of discovery, and therefore, did not abuse its discretion in striking her answer and entering default judgment on behalf of Collins.

IV. Motion to Dismiss the Appeal

{¶ 32} Lastly, we address Collins' pending motion to dismiss the appeal. In her motion, Collins argues the appeal should be dismissed because this case involves a civil money judgment, Vitori failed to request a stay of the proceedings, and the judgment has now been fully collected. In support, Collins cites caselaw holding that the voluntary satisfaction of a judgment renders an appeal moot, as well as caselaw that a satisfaction is "voluntary" if the debtor fails to seek a stay. Vitori acknowledges the judgment was satisfied, but argues the satisfaction was involuntary, through garnishment, not voluntary satisfaction. However, the Ohio Supreme Court recently held that the failure to seek a stay on appeal does not make the satisfaction of a judgment voluntary. *See Drushal v. Miller*, 2026-Ohio-3269, ¶ 20. Because Vitori argues the satisfaction of the judgment was involuntary and her failure to seek a stay does not render the appeal moot, Collins' motion to dismiss the appeal is denied.

{¶ 33} Judgment affirmed.

BYRNE, P.J., and SIEBERT, J., concur.

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed, and appellee's pending motion to dismiss the appeal as moot is overruled.

It is further ordered that a mandate be sent to the Warren County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed to appellant.

/s/ Matthew R. Byrne, Presiding Judge

/s/ Robert A. Hendrickson, Judge

/s/ Melena S. Siebert, Judge