

[Cite as *Hiddens v. Leibold*, 2010-Ohio-4532.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

ANN HIDDENS	:	
	:	Appellate Case No. 23376
Plaintiff-Appellant	:	
	:	Trial Court Case No. 05-CV-3885
v.	:	
	:	
BARBARA LEIBOLD, et al.	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellees	:	
	:	

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OPINION

Rendered on the 24<sup>th</sup> day of September, 2010.

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ANN HIDDENS, Post Office Box 292115, Dayton, Ohio 45429  
Plaintiff-Appellant, *pro se*

EDWARD J. DOWD, Atty. Reg. #0018681, and KEVIN A. LANTZ, Atty. Reg. #0063822, 1 Prestige Place, Suite 700, Miamisburg, Ohio 45423  
Attorney for Defendant-Appellees

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FAIN, J.

{¶ 1} Plaintiff-appellant Ann Hiddens appeals from an order of the Montgomery County Court of Common Pleas, following remand, assessing the sum of \$9,240.42 as a sanction against her. Hiddens also appeals from the trial court’s order prohibiting her from filing “further documents” in this matter.

{¶ 2} Since Hiddens has failed to file a complete record of the proceedings below, we presume the correctness of the trial court's decision regarding the monetary sanctions levied against her. We further find no abuse of discretion regarding the order prohibiting further filings.

{¶ 3} Accordingly, the judgment of the trial court is Affirmed.

I

{¶ 4} In December 2007, this court rendered judgment affirming a summary judgment rendered against Hiddens on her claims for abuse of process, fraud/misrepresentation, professional malpractice/negligence, malicious civil prosecution and defamation filed against defendants-appellees Barbara and Richard Leibold. See, *Hiddens v. Leibold*, Montgomery App. No. 21861, 2007-Ohio-6688. We did, however, reverse the trial court's denial of the Leibolds' motions for sanctions, and remanded this cause for further consideration thereof. *Id.* at ¶ 68 - 73.

{¶ 5} Upon remand, Hiddens filed several pleadings in which she attempted to re-argue the claims previously resolved by both the trial court and by this court following her direct appeal. The trial court held a hearing on the Leibolds' motions for sanctions on January 16, 2009. Following that hearing, the trial court awarded the sum of \$9,240.42 to the Leibolds as sanctions against Hiddens. The trial court's decision and order further stated:

{¶ 6} "After careful consideration of the argument and motions filed, this Court finds that while [Hiddens] suffered a moral injury in this matter, such injury was

not subject to legal redress in the Courts. [Hiddens'] efforts to continue her pursuit of legal redress after her claims have been rejected by this Court, the Second District Court of Appeals and the Ohio Supreme Court are found to be willful, annoying and vexatious. \* \* \* This Court ORDERS [Hiddens] to immediately cease filing documents in this case."

{¶ 7} Hiddens appeals from this decision and order.

{¶ 8} We note that Hiddens specifically requested only pleadings and exhibits in her praecipe to the Montgomery County Clerk of Courts, and that she did not request a transcript of the hearing in the trial court. Thereafter, Hiddens filed her appellate brief, and also an affidavit in which she makes averments setting forth her version of the proceedings in the trial court, as well as a summary of scandalous and immaterial allegations concerning an adverse party that she has continued to raise since the inception of this case. Indeed, both her appellate brief and the affidavit are replete with allegations previously raised, and disposed of, by both the trial court and this court.

{¶ 9} The Leibolds have filed a motion to strike the affidavit, as well as a motion for sanctions pursuant to App.R. 23. For the reasons set forth in Part II below, we sustain the motion to strike the affidavit. However, we cannot say that this appeal is frivolous. Therefore, the motion for sanctions under App.R. 23 is denied.

II

{¶ 10} Hiddens's sole assignment of error is as follows:

{¶ 11} “THE TRIAL COURT’S OPINION AND/OR ITS ORDER IS ABUSE OF DISCRETION AND VIOLATES THE DUE-COURSE-OF-LAW AND ACCESS-TO-COURTS PROVISIONS OF THE OHIO AND UNITED STATES CONSTITUTIONS.”

{¶ 12} Hiddens asserts the following statements as the issues presented for review under this Assignment of Error:

{¶ 13} “When attorney fees in the record have an fraud/misrepresentation element and/or this highly disputing items were not yet been heard by the trial court, and the Court was aware of the attorney had also brought his Expert Witness to the hearing on this issue, Appellant (Hiddens) had a ruling against her on the issue that the trial court has not yet heard and furthermore, it also Order her to cease from submitting motion/document in case, the Order are abusing of Discretion and Violating the Due-Course-of-Law and Access-to-Court provisions of the Ohio and United States.

{¶ 14} “When the trial court appeared to miss which the party’s fact/issue belong to and it opinion would not address any evidence on the record or the issue before it, the trial court is abuse of discretion.”

{¶ 15} After reading Hiddens’s appellate brief, we cannot discern the errors for which she seeks relief. We will proceed as though her argument is one alleging that the trial court abused its discretion by awarding sanctions against her and by ordering her to cease filing documents in the case below.

{¶ 16} Hiddens has failed to cause a transcript of the proceedings in the trial court to be prepared and filed herein. As noted above, Hiddens has filed an

affidavit along with her appellate brief. It appears that she intends this court to review the affidavit in lieu of a transcript. However, this affidavit cannot be considered as the record on appeal as described by App.R. 9(A), since it neither purports to be, nor appears to be, a recitation of the proceedings had in the trial court, being replete with numerous scandalous and immaterial allegations. Furthermore, since there is no indication that the trial court failed to make a record of the evidence presented below, Hiddens cannot present the affidavit as a statement of the evidence or proceedings pursuant to App.R. 9(C). Likewise, App.R. 9(D) is not available to remedy the lack of a transcript as the affidavit does not constitute an agreed statement of the record on appeal. In short, Hiddens has failed to present a complete copy of the record on appeal for review.

{¶ 17} The failure to present a complete record on appeal precludes this court from analyzing the evidence that the trial court had the opportunity to review when it found Hiddens liable for the payment of sanctions. Therefore, as to the issue of sanctions, this Court must presume the validity of the lower court's proceedings, and affirm the decision to award sanctions to the Leibolds and the amount of those sanctions. *Knapp v. Edwards Lab.* (1980), 61 Ohio St.2d 197, 199.

{¶ 18} We next turn to Hiddens's claim that the trial court abused its discretion by entering an order requiring her to cease filing pleadings in the case before it. This court has recognized that trial courts "have inherent authority to restrict the access of pro se litigants who repeatedly file frivolous pleadings." *Rife v. Morgan* (Dec. 18, 1998), Champaign App. No. 98-C-6, \*5, citing *White v. Int. Union, Plant Guard Workers Loc. 16* (June 22, 1994), Montgomery App. No. 14332, unreported.

We review a decision of this sort under the abuse of discretion standard. *White*, at \*3.

{¶ 19} We find no abuse of discretion. The trial court found that Hiddens continues to file pleadings in which she asserts the same scandalous, immaterial allegations previously raised during the pendency of this action, despite the fact that these claims have been rejected by the trial court and by this court. In short, the trial court was merely noting, and correctly so, that there are no claims left to litigate with regard to the allegations of fraud, misrepresentation, abuse of process, professional malpractice or negligence, malicious civil prosecution and defamation.

{¶ 20} Hiddens’s sole assignment of error is overruled.

III

{¶ 21} Hiddens’s sole assignment of error having been overruled, the order of the trial court awarding sanctions against her is Affirmed. The order of the trial court ordering Hiddens not to file any further documents in the trial court is Affirmed. The Leibolds’ motion to strike Hiddens’s affidavit filed herein on August 7, 2009, is Sustained. The Leibolds’ motion for sanctions for a frivolous appeal, under App. R. 23, is Overruled.

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BROGAN and GRADY, JJ., concur.

Copies mailed to:

Ann Hiddens  
Edward J. Dowd

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Hon. Frances E. McGee