[Cite as *Shepherd v. TH Property Owner I, L.L.C.*, 2026-Ohio-3268.]

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

ONDREL LYNN SHEPHERD Appellant v. TH PROPERTY OWNER I LLC ET AL. Appellees	C.A. No. 30758 Trial Court Case No. 2026-CV-00177 (Civil Appeal from Common Pleas Court) **FINAL JUDGMENT ENTRY & OPINION**

. . . .

Pursuant to the opinion of this court rendered on August 21, 2026, the judgment of the trial court is affirmed in part and reversed in part, and the matter is remanded for further proceedings consistent with the opinion.

Costs to be paid as follows: 50% by appellant and 50% by appellee TH Property Owner I LLC.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,

MARY K. HUFFMAN, JUDGE

LEWIS, P.J., and EPLEY, J., concur.

OPINION
MONTGOMERY C.A. No. 30758

ONDREL LYNN SHEPHERD, Appellant, Pro Se
D. ANDREW HEYMAN, MATTHEW FABER, and DAVID G. KIDDER, Attorneys for Appellees

HUFFMAN, J.

{¶ 1} Ondrel Lynn Shepherd appeals pro se from the Montgomery Common Pleas Court's order dismissing her complaint for rescission, quiet title, declaratory relief, injunctive relief, accounting, and alternatively, breach of contract, against TH Property Owner I, LLC ("TH Property"), Hazel Valley Homes, and Home River Group, Ohio LLC ("Home River Group"). Shepherd's claims against TH Property were barred by the doctrine of res judicata, and the judgment of the trial court in favor of TH Property is affirmed. However, the trial court abused its discretion in dismissing Shepherd's claims against Hazel Valley Homes and Home River Group, and the matter is remanded for further proceedings consistent with this opinion.

Procedural History

{¶ 2} On January 12, 2026, Shepherd filed her pro se complaint, motion for temporary restraining order and preliminary injunction, affidavit, and multiple exhibits. According to Shepherd's complaint, in 2013, she entered into a land contract for residential property located on Bohn Court. In 2018, the seller's interest was assigned to WM Capital Partners ("WCP"). WCP subsequently conveyed its interest to Shepherd by special warranty deed for $39,667, and the transaction was recorded in September 2021. In 2024, Shepherd was contacted by "TrueHold" regarding what was presented to her as foreclosure assistance or a sale-leaseback option. She was told that the purchase price would be $95,000, but it was later changed to $78,000. Shepherd received $27,834, "with the remainder allegedly applied to mortgage payoff and other deductions that were never disclosed in writing or explained prior to execution." At the time, Shepherd was undergoing mental health treatment. According to Shepherd, defendants "sought possession through eviction proceedings while title, consideration, and capacity" were disputed.

{¶ 3} Shepherd's exhibits included a 2018 assignment of the 2013 land contract to WCP; a 2020 special warranty deed transferring the property from WCP to Shepherd for $39,667; a portion of a September 2024 purchase agreement conveying Shepherd's interest in the property to TH Property, reflecting a price of $95,000; a Zillow printout reflecting that the property sold on November 12, 2024, for $78,000; an October 2024 mortgage payoff statement from National Asset Mortgage for the property, reflecting an amount due of $36,687.73; a mortgage satisfaction (release of mortgage) identifying WM Capital as the mortgagee and Shepherd as the mortgagor recorded on November 4, 2024; an October 2024 general warranty deed conveying the property from Shepherd to TH Property; and an August 13, 2025 "disputed" settlement agreement in relation to the 2024 lease. The agreement stated that on July 31, 2024, Shepherd had requested to terminate the lease and vacate the premises, and that she did so on August 1, 2024. She subsequently requested reentry to retrieve personal property. TH Property agreed to return Shepherd's security deposit, forgive an outstanding balance, and return her abandoned property. The agreement stated that the lease terminated upon Shepherd's abandonment and surrender of the property. It further stated that Shepherd released TH Property and related entities from all liabilities. Finally, Shepherd's exhibits included two Premier Health medical records in support of her claimed lack of mental capacity. One was dated June 18, 2024, and the other was dated March 1, 2025.

{¶ 4} In her motion, Shepherd asserted that she faced "imminent and irreparable harm in the form of eviction from a home she has occupied continuously since 2013, based on a deed transaction that is the subject of this action." She asserted that she was likely to succeed on the merits, because at the time the October 2024 deed was executed, she was undergoing mental health treatment, rendering the deed voidable. Shepherd argued that the purchase price was orally changed to $78,000, yet she only received $27,834. She asserted that she alternatively pleaded breach of contract based on Defendants' failure to pay "the stated consideration and failure to provide required disclosures." Shepherd requested ex parte relief "if necessary due to the immediacy of eviction."

{¶ 5} On January 19, 2026, TH Property opposed Shepherd's motion, arguing that she had sought "to stay an eviction," but there was "currently no pending eviction action before the court and therefore nothing to restrain." On January 22, 2026, Shepherd filed a reply, arguing that TH Property "mischaracterized both the relief sought and this Court's equitable authority." She asserted that she did not seek to adjudicate or stay an eviction on the merits, but rather she sought to preserve the status quo to prevent irreparable harm to real property interests that were the subject of the pending action.

{¶ 6} On January 22, 2026, ten days after the complaint was filed, the court sua sponte dismissed the entire case. It found as follows:

> This matter is before the Court on plaintiff filing complaint on January 12, 2027. After consideration and review of Plaintiff's complaint, the court hereby DISMISSES the case for the following reasons set forth.
>
> There is no eviction pending and therefore there is nothing for this Court to restrain. Moreover, there is no case in controversy, so this case action must be dismissed.

Assignment of Error and Analysis

{¶ 7} Shepherd asserts one assignment of error, arguing that the trial court erred in dismissing her complaint without addressing her substantive claims. She argues that her claims invoked the court's equitable jurisdiction and existed independently of any eviction proceeding. According to Shepherd, the court reduced her complaint to merely a request for injunctive relief.

{¶ 8} Shepherd argues that her complaint presented a justiciable controversy as a matter of law. Shepherd submits that she possessed superior legal and equitable interests in the premises, whereas TH Property claimed ownership through a disputed deed that she challenged based on lack of mental capacity, failure of consideration, and irregular execution. She asserts that a "court may adjudicate property ownership regardless of whether a possessory action is pending," and that her claims were sufficient under Ohio's notice pleading standard. According to Shepherd, her claim for recission based on mental incapacity was independently sufficient and did not require the heightened pleading of fraud. She argues that TH Property's "characterization of the action was incomplete and misleading," and the dismissal of her complaint allowed the underlying dispute to remain unresolved. Shepherd requests that we reverse the judgment of the trial court and remand the matter for proceedings on the merits.

{¶ 9} TH Property initially directs our attention to the de novo standard of review for a judgment granting a Civ.R. 12(B)(6) motion to dismiss. It asserts that the "trial court correctly ruled that there was no eviction to restrain and there was no case in controversy." According to TH Property, "[d]ismissal under Civ.R. 12(B)(6) [was] appropriate where [Shepherd's] Complaint fails to provide enough operative facts to state a claim for relief against [TH Property]." It also claims that the "trial court did not abuse its discretion dismissing [Shepherd's] claims because the same claims . . . were previously brought by [Shepherd] against [TH Property] in [*Shepherd v. TH Property*, Montgomery C.P. No. 2025 CV 5032 (Dec. 19, 2025)]" and dismissed by the trial court, and the dismissal was affirmed on appeal.

{¶ 10} In reply, Shepherd argues that the instant matter was not duplicative of the prior case, because "it expanded the record with new facts and defendants, . . . showing events that occurred *after* the first dismissal – most notably, eviction actions, withheld HUD statements, and underpayment of proceeds," such that she was entitled to a hearing on the merits. She claims that contracts executed without capacity are voidable, and "the settlement agreement cannot bar relief when its validity is contested."

{¶ 11} This court recently affirmed the dismissal of the prior complaint filed by Shepherd against TH Property to rescind the purchase agreement and set aside the deed of the property at issue. *Shepherd v. TH Property Owner I, LLC*, 2026-Ohio-2430 (2d Dist.). Shepherd's prior civil action alleged that she suffered from mental incapacity that had impaired her ability to understand the real estate transactions. TH Property filed a Civ.R. 12(B)(6) motion to dismiss, which the trial court granted, and this Court determined on appeal that the doctrine of merger by deed applied. *Id.* at ¶ 14. *See Fuller v. Drenberg*, 3 Ohio St.2d 109 (1965), paragraph one of the syllabus ("Where a deed is delivered and accepted without qualification pursuant to agreement, no cause of action upon the prior agreement thereafter exists."). This court noted that an exception to the doctrine exists, and "a plaintiff may seek rescission of a contract if a plaintiff proves the contract was procured by fraud or fraudulent representations of a defendant." *Id.* at ¶ 14. This court found, however, that Shepherd had failed to state a claim for fraud, fraudulent inducement, or misrepresentation to justify the remedy of rescission or setting aside the deed. *Id.* at ¶ 15.

Finally, this court determined that "Ohio courts recognize that rescission is a remedy and not itself a claim for relief," and that Shepherd had not sought to amend her complaint. *Id.* at ¶ 16, 17.

1. TH Property

{¶ 12} "The doctrine of res judicata encompasses two separate but related concepts: claim preclusion, also known as 'estoppel by judgment,' and issue preclusion, also known as "collateral estoppel." *Newman v. University of Dayton*, 2021-Ohio-1609, ¶ 23 (2d Dist.), citing *Dorsey v. Dorsey*, 2017-Ohio-5826, ¶ 100 (2d Dist.), quoting *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381 (1995). Relevant here, "[t]hrough the concept of claim preclusion, 'a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.'" *Id.*, quoting *Dibert v. Carpenter*, 2018-Ohio-1054, ¶ 68 (2d Dist.), quoting *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd*., 81 Ohio St.3d 392, 395 (1998). "To determine whether claim preclusion applies, a court should consider four factors: (1) whether there is a prior valid judgment on the merits; (2) whether the latter action involves the same parties, or their privies, as the prior action; (3) whether the latter action raises claims that were or could have been litigated in the prior action; and (4) whether both actions arose out of the same transaction or occurrence." *Id.*, citing *Wright v. Heller*, 2018-Ohio-149, ¶ 22 (1st Dist.).

{¶ 13} All four factors implicating the doctrine of claim preclusion are present in this case. As to TH Property, there is a prior valid judgment on the merits. TH Property was the party in the prior action and is a party in the current action. Shepherd raised claims in this case that were or could have been litigated in the prior action. Both of Shepherd's suits arose from the same transaction. Accordingly, Shepherd's claims against TH Property are barred by the doctrine of res judicata. Shepherd's assignment of error is overruled as to TH Property.

2. Hazel Valley Homes and Home River Group

{¶ 14} Shepherd did not identify Hazel Valley Homes or Home River Group in the complaint filed in her previous case. Neither of these defendants moved the trial court to dismiss Shepherd's complaint. A trial court's dismissal of an action is reviewed to determine if the court abused its discretion. *Tarver v. IRS Dept.*, 2016-Ohio-3199, ¶ 2 (2d Dist.), citing *State ex rel. Fogle v. Steiner*, 74 Ohio St.3d 158 (1995). A court abuses its discretion by acting in a manner that is unreasonable, arbitrary, or unconscionable. *Id*., citing *State ex rel. Askew v. Goldhart*, 75 Ohio St.3d 608, (1996). A trial court's decision is unreasonable if not supported by a sound reasoning process. *Id*., citing *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp*., 50 Ohio St.3d 157 (1990).

{¶ 15} We recognize that a trial court's dismissal for failure to state a claim is generally made following a motion to dismiss under Civ.R. 12(B)(6), which is reviewed de novo. *Perrysburg Twp. v. Rossford*, 2004-Ohio-4362, ¶ 5. Because no motion to dismiss was filed in the trial court, however, and because Shepherd was given no opportunity to respond to a motion, the issue is whether the trial court properly exercised its discretion to sua sponte dismiss the complaint as to Hazel Valley Homes and Ohio River Group without providing Shepherd with prior notice and an opportunity to be heard.

{¶ 16} We have held that "[t]he court may not sua sponte enter an order dismissing a case on its merits involuntarily absent prior notice to the affected parties." *Owens v. Bailar*, 2009-Ohio-2741, ¶ 12 (2d Dist.), citing *Ohio Furniture Co. v. Mindala*, 22 Ohio St.3d 99 (1986). In *Ohio Furniture*, the Supreme Court of Ohio stated: "We hold that the notice requirement of Civ.R. 41(B)(1) applies to *all* dismissals with prejudice . . . . A dismissal on the merits is a harsh remedy that calls for the due process guarantee of prior notice."[1] *Ohio Furniture* at 101. *See also Klaus v. Klosterman*, 2015-Ohio-2545, ¶ 27 (10th Dist.).

{¶ 17} "In general, a court may dismiss a complaint on its own motion pursuant to Civ.R. 12(B)(6) only if the parties are given notice of the court's intention to dismiss and an opportunity to respond." *Tarver*, 2016-Ohio-3199, at ¶ 5 (2d Dist.), citing *State ex rel. Edwards v. Toledo City School Dist. Bd. of Edn*., 72 Ohio St.3d 106, 108 (1995). "A trial court errs when it dismisses a complaint 'sua sponte, without first notifying all parties of its intent.'" *Id*., quoting *Mayrides v. Franklin Cty. Prosecutor's Office*, 71 Ohio App.3d 381, 384 (10th Dist.1991). "'The notice requirement exists in order to insure that, to the extent possible, cases are decided on the merits and that a party facing dismissal is given the opportunity to obey the court order in question by either curing the defect, proceeding with the matter or voluntarily dismissing the case without prejudice.'" *Id*., quoting *Sweeney v. Petro*, 2000 WL 640611, *4 (8th Dist. May 18, 2000), citing *Perotti v. Ferguson*, 7 Ohio St.3d 1 (1983).

{¶ 18} "'A sua sponte dismissal without notice or an opportunity to respond is fundamentally unfair to litigants.'" *Tarver* at ¶ 6, quoting *Mayrides* at 383. "It places the court in the role of a proponent rather than an independent entity." *Id*. "'Sua sponte dismissals also prejudice [plaintiffs] as they deny any opportunity to respond to the alleged insufficiencies.'" *Id*., quoting *Mayrides* at 384.

{¶ 19} Here, the court abused its discretion in sua sponte dismissing Shepherd's claims against Hazel Valley Homes and Home River Group, to whom res judicata did not apply. It was fundamentally unfair and prejudicial that Shepherd was not given any notice of

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1. "Where the plaintiff fails to prosecute, or comply with these rules or any court order, the court upon motion of a defendant or on its own motion may, after notice to the plaintiff's counsel, dismiss an action or claim." Civ.R. 41(B)(1).

the trial court's intention. As to Hazel Valley Homes and Home River Group, Shepherd's assignment of error is sustained.

Conclusion

{¶ 20} Having sustained Shepherd's assignment of error as to Hazel Valley Homes and Home River Group, the trial court's judgment is reversed as to these defendants only, and the matter is remanded to the trial court for further proceedings consistent with this opinion. The judgment of the trial court is affirmed in all other respects.

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LEWIS, P.J., and EPLEY, J., concur.