

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
AUGLAIZE COUNTY**

ANTHONY RESOR, ET AL.,

CASE NO. 2-26-02

PLAINTIFFS-APPELLANTS,

v.

GLORIA A. DICKE, ET AL.,

**OPINION AND
JUDGMENT ENTRY**

DEFENDANTS-APPELLEES.

**Appeal from Auglaize County Common Pleas Court
Trial Court No. 2025 CV 0088**

Judgment Reversed and Cause Remanded

Date of Decision: September 8, 2026

APPEARANCES:

***Brent L. English* for Appellants**

***Lindsay M. Johnson and Brianna M. Prislipky* for Appellees**

WILLAMOWSKI, J.

{¶1} Plaintiffs-appellants Anthony and Kayla Resor (“the Resors”) appeal the judgment of the Auglaize County Court of Common Pleas, arguing that the trial court erred in granting a motion to dismiss filed by defendants-appellees Gloria A. Dicke—now known as Gloria A. Gerschutz—and The Hearn Law Office, LLC (“Hearn Law”) (collectively “the defendants”). For the reasons set forth below, the judgment of the trial court is reversed.

Facts and Procedural History

{¶2} On June 3, 2025, the Resors filed a legal malpractice action that named Gloria A. Dicke (“Dicke”) and Hearn Law as defendants.¹ The claims in the complaint arose from Dicke’s representation of the Resors during a prior proceeding in juvenile court. On November 5, 2025, the defendants filed a motion to compel discovery, alleging that the Resors had not responded to interrogatories and requests for production of documents. The motion concluded with a request for an order compelling discovery.

{¶3} On January 13, 2026, the trial court issued a revised scheduling order after having a conference call with the parties. This entry contained an order that found the Resors in contempt “for failing to comply with Defendant’s requests for

¹ The Resors filed a legal malpractice action against Dicke in 2022 but voluntarily dismissed their complaint on June 6, 2024. The Resors then refiled this action on June 3, 2025.

discovery. . . .” (Doc. 52). This order further stated that the Resors could “purge their non-compliance by fully and completely respond[ing] to Defendants’ requests for discovery before January 23, 2026.” (Doc. 52).

{¶4} On January 28, 2026, the defendants filed a motion to dismiss that alleged the Resors had not responded to their discovery requests by the January 23, 2026 deadline set forth in the revised scheduling order. The defendants argued that this failure provided grounds to dismiss this action with prejudice under Civ.R. 37(B)(1) and Civ.R. 41(B)(1). On February 4, 2026, the trial court granted the defendants’ motion to dismiss in a judgment entry. This judgment entry noted that it was a “final appealable order.” (Doc. 57).

{¶5} On February 10, 2026, the Resors filed a response to the motion to dismiss within the fourteen-day period that Civ.R. 6(C)(1) allots for responses. Doc. 60. On February 12, 2026, the trial court issued an entry “sua sponte,” notifying the parties that it was going to “reconsider” the final order that granted the defendants’ motion to dismiss. (Doc. 61). “[A]s an additional procedural safeguard,” the trial court gave the parties until February 21, 2026 to file “any further responsive pleadings to the motion to dismiss.” (Doc. 61).

{¶6} On February 24, 2026, the trial court issued a judgment entry that described itself as a “Reconsideration of Entry filed February 4, 2026.” (Doc. 65). In this entry, the trial court indicated that, after consideration of the materials filed

by the parties and reconsideration of its prior judgment, the defendants' motion to dismiss was granted. (Doc. 65).

{¶7} The Resors filed their notice of appeal on March 4, 2026 and raise the following four assignments of error:

First Assignment of Error

The trial court erred and abused its discretion by granting Appellees' Motion to Dismiss this case without giving Appellants sufficient time to respond to their Motion to Dismiss.

Second Assignment of Error

The trial court erred and abused its discretion by granting Appellees' Motion to Dismiss this case on the grounds that Appellants had not complied with a discovery order where no such order existed.

Third Assignment of Error

The trial court erred and abused its discretion by finding Appellants in contempt for violating a non-existent order regarding answering written discovery and by failing to give Appellants procedural due process including notice of the contempt proceeding in a hearing and then by bootstrapping such a finding into the purported but nonexistent order regarding discovery on which it relied to wrongfully dismiss Appellants' case.

Fourth Assignment of Error

The trial court erred and abused discretion by finding that Appellants' conduct was so negligent, irresponsible, contumacious and/or dilatory as to outweigh the policy that disposition of litigation should be upon its merits and by granting the harsh remedy of a dismissal on the merits.

We will consider the first and fourth assignments of error together in one analysis before we proceed to the remaining assignments of error.

First and Fourth Assignments of Error

{¶8} The Resors argue that they did not have an opportunity to respond to the defendants’ motion to dismiss because the trial court issued its final judgment before the fourteen-day period allotted for responses by Civ.R. 6(C)(1) had expired.

Legal Standard

{¶9} “Civ.R. 37 authorizes a trial court to impose sanctions where a party ‘fails to obey an order to provide or permit discovery.’” *Young v. Young*, 2026-Ohio-883, ¶ 42 (3d Dist.), quoting Civ.R. 37(B)(1). The list of sanctions in Civ.R. 37(B)(1) includes dismissing the action. Civ.R. 37(B)(2)(e). The dismissal of an action with prejudice is generally considered to be a harsh sanction for a discovery violation. *Farmer v. PNC Bank, N.A.*, 2017-Ohio-4203, ¶ 30 (2d Dist.).

{¶10} Since Ohio law recognizes that the interests of justice are better served by deciding cases on their merits, a decision to sanction a discovery violation with dismissal is subject to heightened scrutiny. *Quonset Hut, Inc. v. Ford Motor Co.*, 80 Ohio St.3d 46, 48 (1997); *Welly v. Welly*, 2015-Ohio-4804, ¶ 43 (3d Dist.). Nonetheless, a dismissal may be warranted where “the conduct of a party is so negligent, irresponsible, contumacious or dilatory. . . .” *Quonset* at 48, quoting *Schreiner v. Karson*, 52 Ohio App. 2d 219, 223 (9th Dist. 1977).

{¶11} Further, Civ.R. 41(B)(1) addresses the involuntary dismissal of cases and states that, “[w]here the plaintiff fails to . . . 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.” Importantly, “[t]he notice requirement of Civ.R. 41(B)(1) applies to all dismissals with prejudice, including those entered pursuant to Civ.R. 37(B)(1)(e) for failure to comply with discovery orders.”² *Collias v. Redburn*, 2012-Ohio-2128, ¶ 24 (3d Dist.), quoting *Ohio Furniture Co. v. Mindala*, 22 Ohio St.3d 99, 101 (1986).

{¶12} This notice requirement exists to “provide the party in default an opportunity to explain the default or to correct it, or to explain why the case should not be dismissed with prejudice.” *Collias* at ¶ 24, quoting *Logsdon v. Nichols*, 72 Ohio St. 3d 124, 128 (1995), quoting McCormac, Ohio Civil Rules Practice, § 13.07, 357 (2d Ed. 1992). For this reason, Civ.R. 41(B)(1) requires the plaintiff to receive (1) “notice of the impending dismissal with prejudice for failure to comply with a discovery order” and (2) “a reasonable opportunity to defend against dismissal.” *Harmon v. Walters*, 2025-Ohio-1037, ¶ 19 (1st Dist.), quoting *Quonset* at 49.

{¶13} In this analysis, “[w]hat constitutes notice and an opportunity to be heard regarding a possible dismissal is examined on a case-by-case basis.” *Whipple*

² When *Mindala* was decided, the sanction permitting dismissal of the action was listed in Civ.R. 37(B)(2)(c) rather than Civ.R. 37 (B)(1)(e). *Mindala* at fn. 5.

v. Estate of Prentiss, 2020-Ohio-2825, ¶ 17 (8th Dist.). The required notice does not need to be actual but “may be implied when reasonable under the circumstances.” *AIM 360, LLC v. Hemleben*, 2021-Ohio-2169, ¶ 32 (3d Dist.), quoting *Quonset* at 49. Notably, a defendant’s request for a dismissal of the action can constitute implied notice. *Haynes v. RGF Staffing USA*, 2021-Ohio-1927, ¶ 13 (3rd Dist.).

{¶14} In general, “[a] ‘reasonable opportunity to defend against dismissal’ . . . contemplates that a trial court allow the party opposing dismissal the opportunity to respond at least within the time frame allowed by the procedural rules of the court.” *Farmer*, 2017-Ohio-4203, at ¶ 35 (2d Dist.), quoting *Hillabrand v. Drypers Corp.*, 87 Ohio St.3d 517, 519-520 (2000). In turn, Civ.R. 6(C)(1) states that “[r]esponses to a written motion, other than motions for summary judgment, may be served within fourteen days after service of the motion.” This provision establishes “uniform statewide deadlines for responding to motions.” *Nippon Sushi & Steak LLC v. Ohio Liquor Control Comm’n*, 2024-Ohio-2341, ¶ 12 (10th Dist.).

{¶15} Civ.R. 6(C)(1) “reflects the fact that ‘[f]undamental due process principles require that each party have the opportunity to be heard prior to a trial court rendering a decision.’” *Henry Cnty. Bank v. Toledo Radio, LLC*, 2022-Ohio-1360, ¶ 5 (3d Dist.), quoting *Equable Ascent Fin. v. Ybarra*, 2013-Ohio-4282, ¶ 6 (9th Dist.). As a general matter, “if a trial court disregards the response time created by the Ohio Rules of Civil Procedure, that court has committed reversible error.”

Custom Utilicom, Inc. v. Cornerstone Installations, LLC, 2016-Ohio-2613, ¶ 6 (9th Dist.), quoting *Gibson-Myers & Assocs., Inc. v. Pearce*, 1999 Ohio App. Lexis 5010, *4 (9th Dist. Oct. 27, 1999).

Standard of Review

{¶16} Trial courts have broad discretion in regulating the discovery process. *Cap. One, N.A. v. Jones*, 2026-Ohio-62, ¶ 26 (3d Dist.). Thus, a trial court's decision to impose a sanction listed in Civ.R. 37(B) is reviewed under an abuse-of-discretion standard on appeal. *Haynes*, 2021-Ohio-1927, at ¶ 10 (3rd Dist.); *Young*, 2026-Ohio-883, at ¶ 42 (3d Dist.).

Legal Analysis

{¶17} On appeal, the Resors argue that the dismissal of this case did not comply with the notice requirements of Civ.R. 41(B)(1). They assert that they did not receive notice prior to the trial court decision to dismiss of this case. But the defendants filed a motion to dismiss, making the Resors aware that the trial court was considering a pending request to dismiss the case. Even if the trial court did not give the Resors actual notice of its intent to dismiss this case, the defendants' motion to dismiss gave them implied notice of the trial court's forthcoming dismissal under the facts of this case. *Haynes*, 2021-Ohio-1927, ¶ 13 (3d Dist.). Thus, the Resors received the prior notice required by Civ.R. 41(B)(1).

{¶18} However, the notice requirements of Civ.R. 41(B)(1) also require a litigant to receive a reasonable opportunity to defend against the dismissal. *Collias*,

2012-Ohio-2128, at ¶ 24 (3d Dist.). On appeal, the Resors assert that they did not have the opportunity to file a written response to the defendants’ motion to dismiss before the trial court dismissed this case. In this case, the defendants filed a motion to dismiss on January 28, 2026. The trial court then granted this motion seven days later in a February 4, 2026 judgment entry that correctly noted that it was a “final appeal order.” (Doc. 57).

{¶19} The Resors then filed a response to the motion to dismiss on February 10, 2026—after the final judgment had been issued but before the fourteen-day period that is allotted for responses by Civ.R. 6(C)(1) had expired. The trial court then issued an entry on February 24, 2026 that reconsidered its prior judgment but ultimately decided to grant the defendants’ motion dismiss.

{¶20} “However, the Ohio Rules of Civil Procedure do not permit a trial court to reconsider its valid final judgments.” *In re Est. of Troutman*, 2026-Ohio-855, ¶ 51 (2d Dist.), citing *Pitts v. Ohio Dep’t of Transp.*, 67 Ohio St.2d 378, 379 (1981). “Indeed, after a trial court enters . . . a final judgment, it loses jurisdiction over the case.” *Asbury Woods Senior Apts. v. Render*, 2026-Ohio-1266, ¶ 19 (1st Dist.). “Because a trial court lacks jurisdiction to reconsider its own valid final judgment,” the February 24, 2026 judgment entry “was a nullity. . . .” *Brown v. Brown*, 2018-Ohio-4741, ¶ 9 (10th Dist.). Thus, any consideration that the trial court gave to the Resors’ February 10, 2026 response is of no effect in determining

whether the Resors had a reasonable opportunity to defend against the dismissal of the case.

{¶21} In summary, Civ.R. 6(C)(1) gave the Resors fourteen days to respond to the defendants' motion to dismiss that was filed on January 28, 2026. The trial court then issued its final judgment seven days later on February 4, 2026 before the fourteen-day period allotted by Civ.R. 6(C)(1) had expired and before the Resors had filed a response. *See Maeteevah Yehudah v. Gallagher*, 2025-Ohio-1600, ¶ 9-10 (11th Dist.). Thus, the Resors were not permitted a reasonable opportunity to defend against the dismissal of this case in writing.

{¶22} Further, the record contains no indication that a hearing was held after the motion to dismiss was filed. Thus, the Resors do not appear to have been granted a forum in which they could voice opposition to the dismissal of this case or otherwise explain their conduct prior to the issuance of the final judgment. *See Ragouzis v. Madison House Condo. Owners Ass'n, Inc.*, 2026-Ohio-290, ¶ 73 (1st Dist.) (While the trial court's decision was issued before the period in Civ.R. 6(C)(1) had expired, the plaintiff was found to have had an opportunity to be heard where he declined to file a written motion and opted instead to present evidence at a hearing that was held within the period prescribed by Civ.R. 6(C)(1)).

{¶23} Under the facts of this case, the trial court failed to give the Resors fourteen days to respond to the defendants' motion to dismiss as required by Civ.R. 6(C)(1) and failed to give the Resors a reasonable opportunity to defend against the

dismissal of this case as required by Civ.R. 41(B)(1). Thus, we reverse the February 4, 2026 decision that granted the defendants’ motion to dismiss so that the Resors can have a reasonable opportunity to defend against dismissal before the trial court issues a final judgment. *See Geauga Cnty. Bd. of Health v. Malliski*, 2022-Ohio-2631, ¶ 23 (11th Dist.); *Ziedler v. D’Agostino*, 2005-Ohio-2738, ¶ 17-18 (8th Dist.). Accordingly, the first and fourth assignments of error are sustained.

Second Assignment of Error

{¶24} The Resors argue that the trial court erred in dismissing this action as a discovery sanction pursuant to Civ.R. 37(B)(2).

Legal Standard

{¶25} Under App.R. 12(A)(1)(c), “[a]ppellate courts are to ‘decide each assignment of error’ raised on appeal ‘unless an assignment of error is made moot by a ruling on another assignment of error. . . .’” *Durfor v. West Mansfield Conservation Club*, 2022-Ohio-416, ¶ 39 (3d Dist.), quoting App.R. 12(A)(1)(c). An issue is moot where it presents “no actual genuine, live controversy, the decision of which can definitely affect existing legal relations.” *Sullinger v. Reed*, 2021-Ohio-2872, ¶ 52, (3d Dist.), quoting Borchard, *Declaratory Judgments*, at 35 (2d Ed. 1941). “Put differently, an assignment of error is moot when an appellant presents issues that are no longer live as a result of some other decision rendered by the appellate court.” *Urdiales v. Latin Am. Club of Defiance Ohio*, 2026-Ohio-1239, ¶ 52 (3d Dist.), quoting *State v. Gideon*, 2020-Ohio-6961, ¶ 26.

Legal Analysis

{¶26} The Resors challenge the basis of the trial court’s decision to dismiss this case under Civ.R. 37(B)(1). However, our resolution of the arguments in the first and fourth assignments of error resulted in the reversal of the trial court’s decision to dismiss this case. As a result, additional arguments that seek a reversal of the trial court’s decision to dismiss this case no longer present issues of consequence to this appeal. Thus, we decline to consider the arguments in the second assignment of error pursuant to App.R. 12(A)(1)(c).

Third Assignment of Error

{¶27} The Resors argue that the trial court violated their due process rights by finding them in indirect contempt in the absence of prior notice and a hearing.

Legal Standard

{¶28} Contempt findings are classified as direct or indirect based upon the location of the contemptuous act. *Roberts v. Farrell*, 2023-Ohio-1109, ¶ 14 (3d Dist.). A finding of direct contempt arises from an act that “occur[red] in the presence of the court in its judicial function.” *Fidler v. Fidler*, 2008-Ohio-4688, ¶ 11 (10th Dist.). In contrast, a finding of indirect contempt arises from an act “that occur[red] outside the presence of the court and [that] demonstrate[d] a lack of respect for the court or its lawful orders.” *Id.*

{¶29} A court may summarily find a party in direct contempt without holding a hearing because the contemnor committed the conduct at issue in the presence of

the court. *In re Purola*, 73 Ohio App.3d 306, 311-312 (3d Dist. 1991). However, a trial court is not a witness to the acts committed outside its presence that could potentially form the basis of an indirect contempt finding. *Gulbrandsen v. Summit Acres, Inc.*, 2016-Ohio-1550, ¶ 43 (4th Dist.). For this reason, due process generally requires a trial court to provide “adequate notice, time to prepare any defense, and an opportunity to be heard” before holding a litigant in indirect contempt. *McKinney v. McKinney*, 2015-Ohio-1114, ¶ 18 (5th Dist.), quoting *State ex rel. Miller v. Waller*, 2004-Ohio-6612, ¶ 7 (10th Dist.). See R.C. 2705.03.

Standard of Review

{¶30} Appellate courts review a contempt order under an abuse-of-discretion standard. *Powers v. Bowman*, 2024-Ohio-5988, ¶ 20 (3d Dist.). More than an error of judgment, an abuse of discretion is present where a trial court’s decision is arbitrary, unreasonable, or unconscionable. *Southern v. Scheu*, 2018-Ohio-1440, ¶ 10 (3d Dist.).

Legal Analysis

{¶31} In this case, the defendants filed a motion to compel on November 5, 2025 that alleged the Resors had failed to respond to interrogatories and requests for the production of documents. On January 13, 2026, the trial court then issued an order that held the Resors in contempt for failing to respond to these discovery requests. The record contains no indication that the trial court ruled on the defendants’ motion to compel prior to issuing the contempt citation.

{¶32} The order at issue held the Resors in indirect contempt because the identified conduct did not occur in the presence of the trial court. *Bank One Trust Co., N.A. v. Scherer*, 2008-Ohio-2952, ¶ 18 (10th Dist.). As a result, the Resors were entitled to notice and an opportunity to explain their conduct at a hearing before the trial court held them in indirect contempt. *See Barton v. Barton*, 2017-Ohio-980, ¶ 146 (2d Dist.), citing R.C. 2705.03.

{¶33} But in this case, the contempt order itself provides the first indication in the record that the trial court was considering this course of action. As acknowledged in the appellees' brief, the defendants did not file a show cause motion that could have given the Resors some awareness that a contempt citation might be forthcoming. *Waller*, 2004-Ohio-6612, at ¶ 8 (10th Dist.) (notice is a prerequisite for a valid finding of indirect contempt). The record also contains no indication that the Resors were granted time to prepare a defense in advance of a hearing on this matter or otherwise had an opportunity to be heard before being found in indirect contempt. *See McKinney*, 2015-Ohio-1114, ¶ 18 (5th Dist.).

{¶34} Having examined the contents of the record, we conclude that the Resors were not given appropriate notice or an opportunity to be heard prior to the issuance of the contempt citation in this case. Thus, the trial court erred by holding them in indirect contempt. For this reason, we reverse the contempt citation that is

contained in the January 13, 2026 revised scheduling order.³ Accordingly, the third assignment of error is sustained.

Conclusion

{¶35} Having found error prejudicial to the appellants in the particulars assigned and argued in first, third, and fourth assignments of error, the judgment of Auglaize County Court of Common Pleas is reversed. This cause of action is remanded to the trial court for further proceedings consistent with this opinion.

***Judgment Reversed
And Cause Remanded***

ZIMMERMAN, P.J. and MILLER, J., concur.

³ The Resors also assert that they could not be held in contempt over a discovery matter since they had not violated a discovery order. The contempt citation in this case does not refer to a prior *court* order but holds the Resors “in contempt for failing to comply with the *Defendant’s* request for discovery.” (Emphasis added.) (Doc. 52). Civ.R. 37(B)(1)(g) generally permits a contempt citation as a sanction for failing to obey discovery orders. But in the absence of a prior discovery order in the record that the Resors violated, the defendants admit in their brief that “it does not appear that this is a case that falls under Civ.R. 37(B)(1)(g). (Appellees’ Brief, 22). At oral arguments, the defendants said that this could potentially be a “preemptive order” of contempt, suggesting that a trial court could apparently issue a judgment entry that simultaneously contains an order as well as a contempt finding that prospectively holds a party in contempt of that same order. We ultimately elect not to address this issue because the absence of prior notice and an opportunity to be heard provides a sufficient basis for resolving this assignment of error.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are sustained and it is the judgment and order of this Court that the judgment of the trial court is reversed with costs assessed to Appellee for which judgment is hereby rendered. The cause is hereby remanded to the trial court for further proceedings and for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

John R. Willamowski, Judge

William R. Zimmerman, Judge

Mark C. Miller, Judge

DATED:
/hls