

[Cite as *Collins v. Carpenter*, 2004-Ohio-2269.]

For subsequent nunc pro tunc order, see 2004-Ohio-2579.

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

TIFFANY STROMBLE COLLINS	:	JUDGES:
	:	Hon: W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon: John W. Wise, J.
-vs-	:	Hon: John F. Boggins, J.
	:	
LARRY E. CARPENTER	:	Case No. 03-CA-99
	:	
Defendant-Appellee	:	
And	:	<u>OPINION</u>
	:	
TROY AND JACKIE THOMPSON	:	
	:	
Defendant-Appellant	:	

CHARACTER OF PROCEEDING: Civil appeal from the Richland County Court of Common Pleas, Case No. 97-791

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: April 28, 2004

APPEARANCES:

For Plaintiff-Appellee

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Gwin, P.J.

{¶1} Defendants Troy and Jackie Thompson appeal a summary judgment of the Court of Common Pleas of Richland County, Ohio, entered in favor of plaintiff Tiffany Stromble Collins. Appellants assign eight errors to the trial court:

{¶2} “THE COURT BELOW ERRED AS A MATTER OF LAW BY FAILING TO PROVIDE FINDINGS-OF-FACT AND CONCLUSIONS OF LAW UPON A TIMELY REQUEST BY DEFENDANTS THOMPSON.

{¶3} “THE COURT BELOW ERRED AS A MATTER OF LAW BY FAILING TO RULE UPON THE MOTIONS SUBMITTED BY DEFENDANTS THOMPSON INCLUDING 12 (B) MOTIONS TO DISMISS FOR LACK OF VENUE AND A MOTION TO ADD ESSENTIAL PARTIES.

{¶4} “THE COURT BELOW ERRED AS A MATTER OF LAW BY RULING DEFENDANTS THOMPSON ‘AS A MATTER OF LAW CANNOT BE BONA FIDE PURCHASERS’ WHEN NO EVIDENCE NOR AN EVIDENTIARY HEARING TO ADMIT EVIDENCE WITH REGARD TO THE STATE OF THE RECORDS OF THE COUNTY RECORDER’S OFFICE OR OTHER RECORDS OF KNOX COUNTY INCLUDING THE INDEXES OF THE RECORDS OF THE COUNTY RECORDER OR EVIDENCE OF BAD FAITH OR LACK OF VALUE, MATERIAL ISSUES WERE IN DISPUTE AND WHEN THE COURT MADE NO SUCH FINDINGS IN THAT REGARD.

{¶5} “THE COURT BELOW ERRED AS A MATTER OF LAW BY DECLARING THE DEED FROM DEFENDANT CARPENTER TO DEFENDANTS THOMPSON VOID

WITHOUT JURISDICTION TO ISSUE AN ORDER IN EXECUTION UPON THE REAL PROPERTY IN QUESTION.

{¶6} “THE COURT BELOW ERRED AS A MATTER OF LAW BY RULING THAT A CONVEYANCE WAS FRAUDULENT WITHOUT ANY BASIS OF FACT AND LAW TO DO SO.

{¶7} “THE COURT BELOW ERRED AS A MATTER OF LAW BY VOIDING A DEED WITHOUT ANY BASIS OF FACT AND LAW TO DO SO.

{¶8} “THE COURT BELOW ERRED AS A MATTER OF LAW BY RULING THAT A DEED IS VOID MERELY BECAUSE GRANTEEES WERE NOT BONA FIDE PURCHASERS.

{¶9} “THE COURT BELOW ERRED AS A MATTER OF LAW BY RULING AGAINST DEFENDANTS THOMPSON WHEN THE THOMPSONS HAD NOT YET FILED AN ANSWER TO THE COMPLAINT AND THE TIME TO ANSWER HAD NOT YET RUN AND WHEN THE PLAINTIFF HAD FAILED TO STATE ANY CLAIM FOR WHICH RELIEF COULD BE GRANTED AGAINST THE THOMPSONS IN HER COMPLAINT AND FAILED TO STATE ANY CLAIM FOR WHICH RELIEF COULD BE GRANTED THE THOMPSONS IN HER MOTION FOR SUMMARY JUDGMENT.”

{¶10} Appellant’s statement pursuant to Loc. R. 9 states the appeal is brought both upon the basis the judgment was inappropriate as a matter of law and also

because a genuine disputes exists as to, as appellant characterizes, any potential material facts that may have underlay the decision below.

{¶11} The record indicates this action was filed more than six years ago. This is the fourth appeal to this court and there also has been one discretionary appeal to the Ohio Supreme Court.

{¶12} On October 14, 1997, plaintiff Jane Doe filed a complaint on behalf of her minor daughter, against defendant Larry Carpenter, who is not a party to this appeal. Jane Doe alleged Carpenter had sexually assaulted her minor daughter, a learning disabled child with significant cognitive deficits. Jane Doe included a motion for prejudgment attachment, and the court ordered Carpenter not sell his real estate in Knox County. A certified copy of the attachment was filed with the Knox County Recorder.

{¶13} On March 23, 1999, Carpenter sold his real estate to appellants Troy and Jackie Thompson. On May 10, 1999, Jane Doe filed an amended complaint alleging a cause of action for fraudulent transfer of property and adding as party defendants Troy and Jackie Thompson. The trial court sustained Troy and Jackie Thompson's motion to dismiss, but this court reversed and remanded, see *Doe v. Carpenter* (June 8, 2000), Richland Appellate No. 99-CV-78.

{¶14} On remand, the trial court bifurcated the case. On December 4, 2000, a jury trial commenced on the underlying complaint against Carpenter. After the jury was seated, Jane Doe and Carpenter agreed to settle the matter, and the court memorialized the terms of the settlement agreement in a judgment entry on April 6, 2001.

{¶15} The fraudulent conveyance action remained pending after the settlement on the other aspect of the case. On January 18, 2001, the trial court granted appellant's motion for summary judgment. This court reversed and remanded in *Collins v. Carpenter* (August 16, 2001), Richland Appellate No. 01-CA-13. On March 15, 2002, the trial court sustained appellant's motion for summary judgment and overruled the cross-motion for summary judgment filed by appellee. Upon review, this court reversed and remanded, and found there was no dispute of material fact, and appellee was entitled to judgment as a matter of law. See *Collins v. Carpenter*, Richland Appellate No. 02-CA-31, 2002-Ohio-5173. The Supreme Court declined to review our opinion, see *Collins v. Carpenter* (2003), 98 Ohio St. 3d 1462.

{¶16} Upon remand, appellee again filed a motion for summary judgment, which the trial court granted on September 8, 2003. On September 15, 2003, appellants filed a request for findings of fact and conclusions of law.

{¶17} In their first assignment of error, appellants argue the trial court erred by not issuing findings of fact and conclusions of law as they requested.

{¶18} Civ. R. 56 states findings of fact and conclusions of law are not appropriate in summary judgment. When a trial court enters summary judgment, it finds there are no issues of fact, and the moving party is entitled to judgment as a matter of law.

{¶19} The first assignment of error is overruled.

II

{¶20} In their second assignment of error, appellants argue the trial court erred as matter of law in failing to rule on the motions including a Civ.R. 12 to dismiss for lack of venue, and a motion to add essential parties.

{¶21} Upon the granting of a final appealable judgment, all pending motions not specifically sustained are implicitly overruled, see, e.g., *Solon v. Solon Baptist Temple, Inc.* (1982), 3 Ohio App. 3d 37.

{¶22} The second assignment of error is overruled.

III, IV, V, VI, VII and VIII

{¶23} Each of these assignments of error raise issues previously ruled on by this court, in our unreversed opinion of *Collins v. Carpenter*, Richland Appellate No. 02-CA-31, 2002-Ohio-5173. Each of these issues is precluded by the principles of *res judicata* and law of the case.

{¶24} The third, fourth, fifth, sixth, seventh, and eighth assignments of error are overruled.

{¶25} For the foregoing reasons, the judgment of the Court of Common Pleas of Richland County, Ohio, is affirmed.

Judgment affirmed.

Wise and Boggins, JJ., concur.

