

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

CARLOS FRANCISCO LOPEZ,

Plaintiff-Appellant,

v.

TRINITY FOOD SERVICES GROUP ET AL.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY Case No. 22 MA 0018

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2020 CV 1645

BEFORE:

Mark A. Hanni, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:

Affirmed.

Carlos Francisco Lopez, *Pro se*, #75834-112, Federal Correctional Complex, P.O. Box 1000, Petersburg, Virginia 23804, Plaintiff-Appellant and

Atty. Tracey L. Turnbull and Atty. McDaniel M. Kelly, Porter Wright Morris & Arthur, LLP, 950 Main Avenue, Suite 500, Cleveland, Ohio 44113, for Defendants-Appellees Trinity Food Services Group, Inc., Nilsa Diaz, and Steven Knoedler and

Atty. Timothy J. Bojanowski, Struck Love Bojanowski & Acedo, PLC, 3100 West Ray Road, Suite 300, Chandler, Arizona 85226, for Defendants-Appellees CoreCivic, Inc. and Correctional Officer Tucker.

Dated: August 22, 2023

HANNI, J.

{¶1} Plaintiff-Appellant, Carlos Francisco Lopez, appeals from a Mahoning County Common Pleas Court judgment dismissing his complaint against Defendants-Appellees, Trinity Food Services Group, Inc. (Trinity), Nilsa Diaz, and Steven Knoedler (the Trinity Appellees) and Defendant-Appellees, CoreCivic, Inc. and Correctional Officer Tucker (the CoreCivic Appellees), for lack of prosecution.

{¶2} Appellant was a U.S. Marshall Service pretrial detainee incarcerated at the Northeast Ohio Correctional Center (NEOCC) at the relevant time in this case. Trinity provides dining services at NEOCC. While at NEOCC, Appellant was employed under Trinity's supervision as a kitchen line worker. Diaz and Knoedler, along with Defendant Theresa Cuti, were Appellant's work supervisors.

{¶3} CoreCivic is a corporation that manages the detention of federal detainees at NEOCC pursuant to a contract with the U.S. Marshall Service. Officer Tucker was the correctional officer assigned to oversee food services at NEOCC.

{¶4} On October 9, 2020, Appellant filed a pro se complaint against Appellees and Defendant Cuti asserting that while working, he suffered first-degree and second-degree burns to his arms and legs and a fractured foot after a defective and damaged pan containing hot food failed to properly fit into a hot food container and spilled hot food on his arms and legs and the pan fell on his foot. Appellant alleged that after he was injured, he was denied medical treatment for several days. Appellant further claimed that Officer Tucker seized and destroyed his legal materials. The complaint brought claims for negligence, intentional infliction of emotional distress, spoliation of evidence, and respondeat superior.

{¶5} On April 8, 2021, Appellant filed a change of address noting that he had been transferred to the Niagara County Correctional Facility in Lockport, New York.

{¶6} On April 28, 2021, all parties participated in a telephone status hearing with the magistrate. The magistrate set all deadlines for the case going forward.

{¶7} On June 30, 2021, Appellant filed a change of address noting that he had been transferred back to NEOCC in Youngstown, Ohio.

{¶8} On October 26, 2021, Appellant filed a change of address noting that he had been transferred to the Federal Correctional Complex in Petersburg, Virginia.

{¶9} On December 6, 2021, the CoreCivic Appellees filed a motion for summary judgment.

{¶10} On December 9, 2021, the Trinity Appellees filed a motion to dismiss for lack of prosecution. They asserted that Appellant moved facilities on three different occasions and while he eventually updated his contact information after each move, he failed to do so in a timely manner. They further claimed that the delays associated with Appellant’s repeated address changes greatly impacted their ability to defend the claims and delayed their ability to timely communicate with Appellant, conduct discovery, and move the case forward.

{¶11} On January 5, 2022, Appellant served his first set of interrogatories on the Trinity Appellees. That same day he filed an objection to the motion to dismiss for lack of prosecution.

{¶12} The magistrate addressed the motion to dismiss for lack of prosecution in a February 2, 2022 decision. He noted that the motion was filed on December 9, 2021, and that Appellant had 14 days to respond (until December 23, 2021). Appellant did not respond until January 5, 2022, well past the 14-day deadline. Therefore, the magistrate concluded that Appellant’s response was untimely and not before the court. The magistrate went on to find that Appellant’s attempts to notify the court and opposing counsel of his three moves had been untimely and resulted in “a complete frustration of the process.” He pointed out that Appellees have had little success in contacting Appellant or serving him with motions and memoranda. The magistrate also noted that the court had been frustrated in its efforts to notify Appellant of various hearing dates and deadlines. And he found that Appellant had failed to comply with the discovery deadline and was now seeking to conduct discovery. The magistrate acknowledged the difficulty Appellant encountered and noted that the court had attempted to accommodate Appellant by permitting him to file documents manually as opposed to electronically as required by the court. But given Appellant’s failure to comply with the discovery order and failure to timely keep the court and opposing counsel updated with his current address, the

magistrate granted the motion to dismiss and dismissed Appellant's complaint with prejudice.

{¶13} The trial court entered judgment in accordance with the magistrate's decision on February 22, 2022. The court included the Civ.R. 54(B) language that there was no just cause for delay. In doing so, the court noted that Appellant had not filed any objections within the 14-day time period for doing so.

{¶14} On February 28, 2022, six days after the trial court entered judgment and 26 days after the magistrate entered its decision, Appellant electronically filed untimely objections.

{¶15} That same day, Appellant manually filed a notice of appeal with this court stating he was appealing from the February 2, 2022 magistrate's decision. This court determined that Appellant's notice of appeal was premature. We nonetheless treated Appellant's notice of appeal as being filed immediately after the trial court's February 22, 2022 judgment entry. Appellant now raises a single assignment of error for our review.

{¶16} Appellant's assignment of error states:

THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DISMISSED
THE ACTION WITH PREJUDICE FOR FAILURE TO PROSECUTE.

{¶17} Appellant argues the trial court abused its discretion in dismissing his complaint. He argues that while the trial court identified several delays caused by Appellant's transfers between correctional facilities, the court did not find that Appellant acted willfully or with bad faith. He notes that his sole means of communicating with the court or the other parties was by mail and asserts he filed his change of address notifications at the earliest opportunities that his circumstances allowed. And he notes he repeatedly requested that the court schedule a telephone status conference and issue an amended scheduling order. Appellant next argues that Appellees were not prejudiced by the delay his transfers caused. Appellant also asserts the trial court did not warn him that his actions could result in a dismissal of his complaint nor did it consider a lesser sanction.

{¶18} An appellate court generally reviews a trial court's decision to dismiss a complaint for failure to prosecute for abuse of discretion. *Jones v. Hartranft*, 78 Ohio St.3d 368, 371, 678 N.E.2d 530 (1997).

{¶19} But Civ.R. 53 governs proceedings before a magistrate and the trial court's duties in accepting or rejecting a magistrate's decision. Parties have 14 days from the issuance of a magistrate's decision to file specific objections with the trial court. Civ.R. 53(E)(3)(b). When a party fails to file timely objections to a magistrate's decision, that party waives all but plain error on appeal. *Matter of E.K.*, 7th Dist. Jefferson No. 17 JE 0005, 2017-Ohio-7709, ¶ 20; Civ.R. 53(D)(3)(b)(iv).

{¶20} In this case the magistrate's decision was filed on February 2, 2022. Thus, Appellant had until February 16, 2022, to file timely objections. The trial court waited until February 22, 2022, to issue its judgment adopting the magistrate's decision. Appellant did not file objections to the magistrate's decision until February 28, 2022, well after the deadline for filing objections had passed.

{¶21} Because Appellant's objections to the magistrate's decision were untimely, the trial court did not consider them. And pursuant to Civ.R. 53(D)(3)(b)(iv), Appellant has waived all but plain error on appeal. "In appeals of civil cases, the plain error doctrine is not favored and may be applied only in the *extremely rare* case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." (Emphasis added); *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099 (1997).

{¶22} Civ.R. 41(B)(1) provides that "[w]here 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." A dismissal under Civ.R. 41(B)(1) operates as an adjudication on the merits, unless the court otherwise specifies. Civ.R. 41(B)(3).

{¶23} Appellant cannot point to any plain error committed by the trial court in adopting the magistrate's decision.

{¶24} When considering a Civ.R. 41(B)(1) dismissal with prejudice, the court should look at the drawn-out history of the litigation, including a plaintiff's failure to

respond to interrogatories until threatened with dismissal, and other evidence that a plaintiff is deliberately proceeding in dilatory fashion or has done so in a previously filed, and voluntarily dismissed, action. *Hartranft*, 78 Ohio St.3d at 372.

{¶25} In their motion to dismiss, the Trinity Appellees detailed the following facts, which caused them to file the motion.

{¶26} Appellant filed his complaint on October 9, 2020. At that time, he was housed at NEOCC. On March 10, 2021, the magistrate granted Appellant's request to be relieved from the electronic filing requirement given the fact he was incarcerated and did not have access to provide electronic copies. The magistrate noted, however, that Appellant was to fully comply with all requirements imposed by the Civil Rules with respect to timely filing responses, pleadings, and discovery requests.

{¶27} On March 17, 2021, the Trinity Appellees served their first set of consolidated discovery requests on Appellant. On April 8, 2021, Appellant filed a notice of address change that he had been transferred to the Niagara County Correctional Facility in Lockport, New York. On April 28, 2021, the trial court conducted a status conference by telephone where it set a case schedule. The schedule set September 28, 2021, as the fact discovery deadline for Appellant and October 28, 2021, as the fact discovery deadline for Appellees.

{¶28} On May 21, 2021, Appellant responded to the Trinity Appellees' written discovery requests. On June 30, 2021, Appellant filed a notice of address change that he had been transferred from the Niagara County Correctional Facility back to NEOCC on June 13, 2022. Appellant then took no action in the case for several months. The Trinity Appellees sent a letter to Appellant on September 20, 2021, addressing various deficiencies with the discovery, which was returned to sender with a note that Appellant had been paroled or released. But on October 26, 2021, Appellant filed a notice of address change that he was transferred from NEOCC to the Federal Correctional Complex in Petersburg, Virginia. On December 2, 2021, Appellant filed a notice of serving his first set of consolidated discovery requests to Appellee Officer Tucker, despite the fact that the discovery deadline for Appellant had passed in September 2021.

{¶29} On December 9, 2021, the Trinity Appellees filed their motion to dismiss for lack of prosecution. On January 5, 2022, Appellant served his first set of interrogatories

on the Trinity Appellees, again despite the fact the discovery deadline had passed more than three months prior. That same day he filed a response in opposition to the motion to dismiss for lack of prosecution, also past the deadline to respond.

{¶30} The magistrate found that Appellant’s attempts to notify the court and the parties of his multiple address changes had been untimely and resulted in a “complete frustration of the process.” The magistrate also noted that the court had been frustrated in its efforts to notify Appellant of various hearing dates and deadlines. He pointed out that Appellant had failed to comply with many deadlines and was now seeking to conduct discovery beyond the expiration of his discovery deadline.

{¶31} The trial court, after waiting for the 14-day objection period to pass, found no error with the magistrate’s decision, adopted the decision, and entered judgment accordingly. The court did not commit plain error in doing so. The court examined the magistrate’s decision for errors of law or other defects. When it found none, the court adopted the magistrate’s decision. Moreover, the magistrate thoroughly examined the history of the case and the timeline of Appellant’s late filings. He noted how Appellant’s actions had frustrated both the parties’ and the court’s efforts in moving the case along. Thus, the trial court properly adopted the magistrate’s decision and dismissed the complaint.

{¶32} Accordingly, Appellant’s sole assignment of error is without merit and is overruled.

{¶33} For the reasons stated above, the trial court’s judgment is hereby affirmed.

Robb, J., concurs.

D’Apolito, P.J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.