

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

ALEXANDER M. KNAPPENBERGER,

Plaintiff-Appellant,

v.

PROGRESSIVE DIRECT
INSURANCE COMPANY, ET AL.,

Defendants-Appellee.

OPINION AND JUDGMENT ENTRY **Case No. 26 MA 0044**

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 25 CV 1739

BEFORE:

Mark A. Hanni, Cheryl L. Waite, Katelyn Dickey, Judges.

JUDGMENT:

Reversed and Remanded.

Alexander M. Knappenberger, *Pro se*, Plaintiff-Appellant and

Atty. Paul R. Morway, Ankuda, Stadler & Moeller, Ltd., for Defendant-Appellee, Gregory
A. Wickline.

Dated: October 21, 2026

HANNI, J.

{¶1} Pro se Appellant, Alexander M. Knappenberger (Appellant), appeals from a Mahoning County Common Pleas Court judgment denying his motion for leave to serve discovery responses out of time and to withdraw or amend deemed admissions. Appellant also appeals the trial court's granting of a motion for summary judgment filed by Appellee, Gregory A. Wickline (Appellee). He alternatively appeals the trial court's denial of his Civ.R. 60(B) motion for relief from judgment.

{¶2} Appellant asserts the trial court erred by deeming requests for admission admitted where Appellee failed to properly serve him as required under Civ.R. 36(A), Civ.R. 5(B)(4) and Civ.R. 36(C). He further contends the trial court abused its discretion by improperly denying his motion to withdraw or amend deemed admissions as required by Civ.R. 36(B). Finally, Appellant maintains the court erred by granting summary judgment to Appellee because Appellee could not satisfy Civ.R. 56 absent the use of improperly admitted admissions.

{¶3} For the following reasons, we reverse the trial court's decision denying Appellant's motion to withdraw or amend deemed admissions. We further reverse the trial court's granting of Appellee's motion for summary judgment. While Appellee violated Civ.R. 36(A) by failing to serve notice by mail on an unrepresented Appellant, Appellant failed to raise this issue in the trial court and this was otherwise not prejudicial because Appellant conceded he received notice by electronic means.

{¶4} However, Appellee also failed to include in the caption of his combined discovery requests that requests for admission were included therein, which violated Civ.R. 36(C) and allowed Appellant to refuse to respond to the requests for admission. This violation prejudiced Appellant. Since Appellee's motion for summary judgment was based on the erroneously deemed admissions, the trial court also erred by granting summary judgment to Appellee. To the extent the trial court also relied on the underlying judgment in the traffic offense in addition to the admissions, the court erred as collateral estoppel does not apply.

I. FACTUAL AND PROCEDURAL HISTORY

{¶5} On July 14, 2024, an automobile accident occurred between Appellant and

Appellee. Appellant's vehicle had a dashboard camera that recorded the accident. The police issued a citation to Appellant and Struthers Municipal Court found him guilty of minor misdemeanor completing a left turn in violation of R.C. 4511.36(A)(2). The court imposed a \$150 fine and court costs. Pro se Appellant appealed this determination and we found sufficient evidence supported the conviction and the conviction was not against the manifest weight of the evidence. *State v. Knappenberger*, 2025-Ohio-1574 (7th Dist.).

{¶6} On July 8, 2025, pro se Appellant filed a complaint against Progressive Direct Insurance Company (Progressive), Appellee's insurance company. On August 22, 2025, Progressive filed a motion to dismiss the complaint under Civ.R. 12(B)(6), asserting that Appellant could not sue Progressive without first obtaining a judgment against Appellee.

{¶7} On September 3, 2025, Appellant filed an amended complaint adding Appellee to the lawsuit and a motion to bifurcate the negligence claim against Appellee from claims against Progressive. Progressive filed a renewed motion to dismiss, requesting the court strike Appellant's first amended complaint and motion to bifurcate. Progressive again argued Appellant had not obtained a judgment against Appellee and Appellant was not a party to Progressive's insurance policy.

{¶8} On October 3, 2025, the trial court granted Progressive's renewed motion to dismiss and dismissed it from the lawsuit. Meanwhile, Appellee answered Appellant's first amended complaint and denied liability.

{¶9} On November 6, 2025, Appellee filed a notice that responses and objections to Appellant's discovery requests were served on Appellant. Appellee filed another notice on December 18, 2025, indicating he had served amended objections and responses to Appellant's discovery requests.

{¶10} On January 6, 2026, Appellee filed a notice of service of discovery requests on Appellant. The notice indicated that Appellee's "Combined First Set of Interrogatories and Request for Production of Documents" were served upon Appellant. The Certificate of Service attached to the notice indicated Appellant was served "via electronic mail." Neither the notice nor the Certificate of Service indicated Appellee had also served requests for admission on Appellant.

{¶11} In a separate filing on the same date, Appellee filed initial disclosures on Appellant. The Certificate of Service attached to the initial disclosures indicated they were forwarded “via electronic Court service, email or U.S. Mail to Appellant.”

{¶12} On February 11, 2026, Appellee filed a motion for summary judgment. Appellee relied on Appellant’s failure to respond to his requests for admission, one of which requested Appellant admit he caused the motor vehicle accident. Appellee asserted he was entitled to summary judgment because Appellant’s negligence claim required Appellant to prove Appellee caused the accident and Appellant could not because he admitted he caused the accident.

{¶13} On February 12, 2026, pro se Appellant filed a “Motion for Leave to Serve Discovery Responses Out of Time and to Withdraw or Amend Deemed Admissions.” Appellant indicated Appellee’s counsel emailed discovery requests to him at his email address, but he “did not see or appreciate that the message contained Requests for Admissions with a self-executing default mechanism under Civ.R. 36(A).”

{¶14} Appellant cited Civ.R. 6(B) and Civ.R. 36(B) to request that the court grant him leave to serve his discovery responses and to withdraw or amend any matters deemed admitted by default. Appellant explained the requests for admission were included in Appellee’s initial disclosures and “related communications.” He stated he “reasonably (but mistakenly) believed the email related primarily to disclosure and did not understand that an immediate response deadline had been triggered for Requests for Admissions.” Appellant noted the case was in its early stages, a trial was not imminent, and Appellee’s motion for summary judgment relied on the purported admissions. Appellant contended his failure to respond was due to excusable neglect and the case should be decided on the merits. He also asserted Appellee would not be prejudiced by the withdrawal or amendment since discovery was ongoing and trial was not scheduled until November 17, 2026.

{¶15} Appellant attached a copy of his proposed responses to Appellee’s requests for admission. He denied causing the accident, admitted he was cited by police for the accident, but noted he contested the citation. He further admitted Struthers Municipal Court found him guilty of a minor misdemeanor traffic offense and this Court affirmed the conviction. He also attached an email from his insurance company stating it determined

Appellant was not at fault in the accident. The email also reminded Appellant he did not have collision coverage under his policy.

{¶16} Appellant additionally filed a response to Appellee’s motion for summary judgment. He requested the court decide his motion for leave to serve late responses first. He provided an alternative response to Appellee’s motion as well. Appellee filed responses to the motions.

{¶17} On March 31, 2026, the trial court denied Appellant’s motion for leave to serve his discovery responses out of time and to withdraw or amend the deemed admissions. The court explained pro se litigants are held to the same standards as licensed attorneys. The court further granted Appellee’s motion for summary judgment “based on the evidence” before the court.

{¶18} On April 3, 2026, Appellant filed a motion for relief from both judgments under Civ.R. 60(B)(1), (3), and (5). He asserted Civ.R. 36(A) requires paper service of requests for admission on an unrepresented party. He also asserted Appellee violated Civ.R. 5(B)(4) by not stating the date and manner of service. He further contended the email and notice of discovery requests failed to indicate requests for admission were included. Appellant also filed a motion to expedite a ruling on his Civ.R. 60(B) motion.

{¶19} On April 15, 2026, the trial court denied Appellant’s motion for relief from judgment. The court stated that “[u]pon review, the facts of this case fail to meet the burden required under Civ.R. 60.”

{¶20} On April 21, 2026, pro se Appellant filed a notice of appeal. He presents three assignments of error. We address Appellant’s assignments of error together since all relate to the requests for admission. Appellant’s assignments of error state:

- I. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING WITHDRAWAL OR AMENDMENT UNDER CIV.R. 36(B).**
- II. THE REQUESTS FOR ADMISSION SHOULD NOT HAVE BEEN DEEMED ADMITTED BECAUSE SERVICE DID NOT COMPLY WITH CIV.R. 36(A) AND CIV.R. 5(B)(4).**

III. WITHOUT THE IMPROPERLY DEEMED ADMISSIONS, WICKLINE DID NOT SATISFY THE INITIAL CIV.R. 56 BURDEN.

{¶21} Appellant contends the trial court erred by deeming his unanswered admissions admitted when Appellee failed to comply with Civ.R. 36(A) and (C). Appellant submits these Rules required Appellee to serve an unrepresented party with a paper copy of the requests for admission and required Appellee to indicate on the caption of his combined discovery requests that requests for admission were included.

{¶22} Appellant asserts the trial court also erred by denying his motion to withdraw or amend his admissions because he met Civ.R. 36(B)'s requirements. He submits withdrawal of the admissions promotes presentation of the merits of the case because the admissions went to the core of the negligence dispute.

{¶23} Appellant further contends Appellee failed to show concrete prejudice by allowing him to maintain his defense on the merits or withdrawal of the admissions. He cites caselaw confirming that prejudice does not arise simply because Appellee loses the use of the admissions and must prove the matter. Rather, he notes relevant prejudice concerns the ability to present evidence, such as witnesses, evidence, and the ability to prepare. Appellant notes he moved to withdraw the admissions one day after Appellee filed his motion for summary judgment, well before trial, and before any hearing occurred on the merits. He avers no surprise to Appellee occurred because he had all along disputed liability.

{¶24} Appellee responds that Appellant failed to raise these issues to the trial court and they are therefore waived on appeal. He also notes Appellant did not allege he never received requests for admission, only that he did not read them. Appellee submits that trial courts still have discretion to deem admissions admitted, even if service problems occur. Appellee further contends the trial court properly denied Appellant's motion to withdraw or amend the admissions because it had discretion to do so when Appellant failed to respond to the discovery requests.

II. STANDARDS OF APPELLATE REVIEW

{¶25} A number of appellate review standards apply in this case. Abuse of

discretion is the proper standard of review for the trial court's decision to allow the withdrawal of admissions or to accept late filings of responses to requests for admission. *6750 BMS, L.L.C. v. Drentlau*, 2016-Ohio-1385, ¶ 15 (8th Dist.) (citations omitted). "Abuse of discretion" connotes the trial court's judgment was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶26} A trial court's application of a rule of civil procedure, such as Civ.R. 36, is a question of law which warrants de novo review. *Sericola v. Johnson*, 2016-Ohio-1164, ¶ 25, quoting *Foreclosure of Liens v. Parcels of Land*, 2015-Ohio-1258 ¶ 15 (11th Dist.) (citing *Haskett v. Haskett*, 2013-Ohio-145, ¶ 17 (11th Dist.)). Thus, no deference is given to the trial court's application of Civ.R. 36 in this case.

{¶27} And finally, as we have recognized, while "a court may, in practice, grant a certain amount of latitude toward pro se litigants, the court cannot simply disregard the Rules of Civil Procedure in order to accommodate a party who fails to obtain counsel." *Collins Asset Grp, LLC v. Davis*, 2024-Ohio-4857, ¶ 11 (7th Dist.), quoting *Pinnacle Credit Servs., LLC v. Kuzniak*, 2009-Ohio-1021, ¶ 30 (7th Dist.) (citing *Robb v. Smallwood*, 2005-Ohio-5863 ¶ 5 (4th Dist.)). We must treat all litigants equally, whether represented by counsel or unrepresented. *Id.* While we must treat all pro se litigants similarly, the Civil Rules have carved out special rules applicable to unrepresented litigants.

III. FIRST ASSIGNMENT OF ERROR: CIV.R. 36(A)

{¶28} We find that Appellant waived his right to appeal his first assignment of error as he failed to raise it before the trial court. We alternatively find that even though Appellee violated Civ.R. 36(A) by failing to serve an unrepresented party with a paper copy of requests for admission, it is not reversible error because Appellant conceded he received an emailed copy.

{¶29} Civil Rule 36(A) addresses requests for admissions and provides in relevant part that a party serving requests for admissions shall serve the requests "pursuant to Civ.R. 5(B)(2)(f) or (B)(3) on a shareable medium and in an editable format. **If the party being served is unrepresented by counsel, the serving party also shall provide a paper copy of the request to the unrepresented party.**" (Emphasis added). Civ.R. 5(B)(2)(f) addresses service by electronic means and Civ.R. 5(B)(3) describes using court transmission facilities to accomplish service.

{¶30} Here, Appellee served Appellant, an unrepresented party, only electronically. Thus, Appellee failed to comply with Civ.R. 36(A). However, Appellee is correct that Appellant failed to raise the lack of paper service in the trial court and it is therefore waived. Accordingly, we find Appellant waived this issue on appeal. *Bankers Healthcare Grp., LLC v. Pozycki*, 2025-Ohio-5421, ¶ 15 (10th Dist.), citing *Bell v. Teasley*, 2011-Ohio-2744, ¶ 15 (10th Dist.) (citing *Gangale v. Bur. of Motor Vehicles*, 2002-Ohio-2936, ¶ 13 (10th Dist.)) (“Parties cannot raise any new issues for the first time on appeal, and the failure to raise an issue at the trial level waives it on appeal.”).

{¶31} Even if we address the issue, Appellee’s failure to serve a paper copy of requests for admission on Appellant does not result in improper service. In *Columbus State Community College v. Chanthunya*, 2025-Ohio-4967, ¶ 13-14 (2d Dist.), the Second District Court of Appeals held that failure to serve an unrepresented party with a paper copy of requests for admission does not result in invalid service when the defendant provided a proper email on his answer to the complaint and he was served requests for admissions through that email. The appellate court explained that providing a paper copy was “a convenience or courtesy . . . not a core due-process requirement affecting service.” *Id.* at ¶ 14.

{¶32} It is undisputed here that Appellant received the electronic copy because he admitted as much in his filings. Consequently, Appellee’s failure to provide a paper copy of requests for admission to Appellant did not affect actual service of the requests for admission.

{¶33} Accordingly, we find that Appellant’s first assignment of error lacks merit and is overruled.

IV. SECOND ASSIGNMENT OF ERROR: CIV.R. 36(B), (C)

{¶34} Matters are deemed admitted and become “conclusively established” when a party fails to timely respond to them, unless the court allows withdrawal or amendment. Civ.R. 36(B); *C.S.J. v. S.E.J.*, 2020-Ohio-492, ¶ 11 (8th Dist.) (citations omitted). A court may allow the withdrawal of admissions “if it will aid in presenting the merits of the case and the party who obtained the admission fails to satisfy the court that withdrawal will prejudice him in maintaining his action.” *Cleveland Trust Co. v. Willis*, 20 Ohio St.3d 66, 67 (1985).

{¶35} We find that Appellee violated Civ.R. 36(C). Civ.R. 36(C) provides:

If a party includes a request for admission in a document containing any other form of discovery, the party shall include a caption on the document that indicates the document contains a request for admission. **A party is not required to respond to requests for admission that are not made in compliance with this division.** (Emphasis added).

{¶36} Staff Notes accompanying the 2005 Amendment to Civ.R. 36(C) state:

Rule 36(C) Document containing request for admission.

Civ.R. 36 is amended to require that a party include a specific caption on any document that includes one or more requests for admission. The amended rule recognizes that, unlike Civ.R. 33 (written interrogatories) and Civ.R. 34 (requests for production), Civ.R. 36 imposes a virtually self-executing sanction, i.e., admission by default, on a party that fails timely to respond. See *generally Cleveland Trust Co. v. Willis*, 20 Ohio St.3d 66 (1985).

...

The Committee believes that although there often are good reasons for combining requests for admission with other discovery requests, the nature of some discovery documents can cause requests for admission to be overlooked and result in inadvertent admissions by default. The amendment is intended to minimize this risk by requiring the propounding party to include, in the caption of the document, a clear notice that the document contains requests for admission. A party is not required to respond to requests for admission that are not made in compliance with division (C).

(Emphasis added).

{¶37} Here, Appellee failed to include requests for admission in the caption of his combined discovery requests to Appellant. It is true that Appellant acknowledged receipt of the electronic combined discovery request. However, this does not negate Appellee's

violation of Civ.R. 36(C) because Civ.R. 36(C) does not involve the issue of whether a party received requests for admission. The Rule concerns whether the caption of the combined discovery requests includes requests for admission.

{¶38} In *Everstaff, L.L.C. v. Sansai Env't Techs, L.L.C.*, 2011-Ohio-4824, ¶ 4 (8th Dist.), the Eighth District affirmed the trial court's disregard of unanswered requests for admission that were used as evidence in support of summary judgment. EverStaff appealed the trial court's disregard of the admissions and its denial of a motion for summary judgment. *Id.* The Eighth District reviewed Civ.R. 36 and noted the one exception to the Rule was when a party failed to indicate in a caption of a combined discovery request that requests for admission were included. *Id.* at ¶ 8. The Eighth District held that a plain reading of Civ.R. 36(C) stated a party was not required to respond to requests for admission without the proper captioning and the trial court therefore did not err when it disregarded unanswered requests for admission. *Id.*

{¶39} Similarly here, Appellee indicated he served combined discovery requests on Appellant. However, the caption of the combined discovery requests did not include notice that requests for admission were included. Hence, under Civ.R. 36(C), Appellant was not required to respond to the requests for admission.

{¶40} Consequently, the trial court erred by denying Appellant's motion for leave to serve discovery and to withdraw or amend deemed admissions. Appellant presented sufficient grounds under Civ.R. 36(B) to show that allowing him to withdraw or amend the unanswered requests for admission would preserve the purpose of presenting the case on its merits rather than eliminating it based on unanswered requests. Further, only one day after Appellee filed his motion for summary judgment relying on the deemed admissions, Appellant filed his motion for leave to serve discovery and to withdraw or amend deemed admissions.

{¶41} Appellant stated in this motion that he "did not see or appreciate that the message (he received from Appellee's counsel via email) contained Requests for Admissions with a self-executing default mechanism under Civ.R. 36(A)." He stated he believed the email contained initial disclosures and he "did not understand that an immediate response deadline had been triggered for Requests for Admission." He noted that mediation was not scheduled until September 2026 and trial was not until November

17, 2026. The record further shows that discovery completion for Appellant was April 1, 2026 and for Appellee was May 15, 2026.

{¶42} Thus, Appellant met his burden of showing that withdrawal or amendment of the unanswered requests for admissions would help reach “a just resolution of the action on its merits” and Appellee would not be prejudiced. See *Lakeview Loan Servicing, L.L.C. v. Amborski*, 2016-Ohio-2978, ¶ 17 (6th Dist.). It was early in the case, Appellant denied liability from the beginning, Appellee knew Appellant denied liability, and Appellant indicated he was unaware that requests for admission were included in the email of combined discovery requests until he received Appellee’s motion for summary judgment relying on the deemed admitted admissions. Appellant further explained that deeming the admissions admitted would eliminate his ability to present any evidence on the merits since he admitted liability by not answering the requests for admissions. He noted he disputed the truth of the admissions throughout the case, so Appellee would not be surprised by his denial.

{¶43} For these reasons, we find Appellee violated Civ.R. 36(C), and the trial court abused its discretion in denying Appellant’s motion to withdraw deemed admissions.

V. THIRD ASSIGNMENT OF ERROR: SUMMARY JUDGMENT

{¶44} In granting summary judgment in favor of Appellee, the trial court stated that it relied “in part” upon the admissions deemed admitted.

{¶45} Since we find the trial court abused its discretion in finding no violation of Civ.R. 36(C), we remove consideration of the deemed admissions in reviewing the granting of summary judgment under a de novo review. See *Spy v. Arbor Park Phase One Assoc.*, 2020-Ohio-2944 (8th Dist.).

{¶46} Thus, we must review the other evidence of record to determine if the trial court erred in granting summary judgment on other grounds. The trial court does not cite to other evidence it relied upon in granting summary judgment to Appellee.

{¶47} In his appellate brief, Appellee relies on the judgment in Appellant’s traffic case and the trial court’s explanation that dash camera video showed Appellant caused the accident. Appellee notes that we affirmed the trial court’s decision on appeal.

{¶48} However, collateral estoppel does not apply in this case based on the traffic conviction. In *Brunner v. RJ Lipps, Inc.*, 2016-Ohio-3231, ¶ 11-12 (1st Dist.), the First

District explained:

A defendant does not have the same incentive to defend a traffic citation for making an improper left turn as he or she would have to defend a civil action for negligence. The damages at stake in the civil action are simply not present in an action involving a traffic citation. Similarly, defenses that would be available to a defendant in a civil action for negligence have no relevance to and are unavailable in a traffic case. Further, whereas a negligence action is governed by the Ohio Rules of Civil Procedure, the legislature has promulgated separate rules to govern actions involving traffic citations. See Traf.R. 1-23.

{¶49} Accordingly, the use of the traffic case and judgment for a preclusive effect in the instant case is error. The First District remained consistent with this holding in *Coleman v. Warren*, 2022-Ohio-1020, ¶ 2-3 (1st Dist.), another traffic citation case which resulted from an automobile accident. Warren sought to use findings leading to his not guilty judgment in a traffic case in a civil negligence suit filed against him by a passenger in a car with which Warren collided. He asserted on summary judgment in the civil suit that issue preclusion barred the court from deciding the issues of who had the right of way and the color of the traffic light at the time of the accident. *Id.* The trial court agreed and granted Warren summary judgment. *Id.* at ¶ 4. The First District reversed, noting its prior determination in *Brunner* and its prior holdings that the same incentive is not present in both cases, damages are not at issue, differing defenses are available in a civil action, and traffic rules and the Ohio Rules of Civil Procedure in a civil suit are different. *Id.* at ¶ 14.

{¶50} We apply the same rationale in this case. Any findings made by the trial court concerning the facts and liability in the traffic case should not be used against Appellant in the instant case. Differing standards, differing procedural rules, and differing defenses apply, and damages are not at issue in the traffic case. Moreover, Appellee was not a party in the traffic case and there is no mutuality. *Id.*

{¶51} Accordingly, we find merit to Appellant’s third assignment of error.

{¶52} Appellant presents an “alternative issue,” which is an appeal of the trial court’s denial of his Civ.R. 60(B) motion. However, he asserts that the primary appeal is

from the March 31, 2026 judgment. He alternatively contends if we conclude that any part of the deemed admissions must be analyzed through the April 15, 2026 order, the trial court abused its discretion because the same issues were raised.

{¶53} We need not address this assertion since the Court finds merit to Appellant's second and third assignments of error and reverse the trial court's March 31, 2026 order.

VI. CONCLUSION

{¶54} In sum, we find that Appellant has waived the issue presented in his first assignment of error because he failed to raise it in the trial court. However, even if addressed, we find that while Appellee may not have served unrepresented Appellant with a paper copy as required by Civ.R. 36(A), Appellant suffered no prejudice as he received an electronic copy.

{¶55} We further find merit to Appellant's second and third assignments of error. Appellee violated Civ.R. 36(C) by failing to include in the caption of his combined discovery requests to Appellant that requests for admission were included. Appellant was not required to respond to the requests and the trial court should not have deemed the unanswered requests admitted. Further, the trial court erred by using the deemed admissions to grant summary judgment in favor of Appellee. The trial court also erred if it used the judgment and findings in the traffic case against Appellant in the civil case.

{¶56} For the reasons stated above, we reverse the trial court's decision denying Appellant's motion to withdraw or amend deemed admissions. We further reverse the trial court's granting of Appellee's motion for summary judgment. We hereby remand this matter to the trial court for further proceedings.

Waite, P.J., concurs.

Dickey, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellant's first assignment of error is overruled. Appellant's second and third assignments of error are sustained 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 reversed. We hereby remand this matter to the trial court for further proceedings according to law and consistent with this Court's Opinion. Costs to be taxed against the Appellee.

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.