[Cite as *Robinson v. Lorain Cty. Printing & Publishing Co.*, 2023-Ohio-3.]

STATE OF OHIO))ss: COUNTY OF LORAIN)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
MARTIN ROBINSON, et al. Appellants v. LORAIN COUNTY PRINTING & PUBLISHING COMPANY, et al. Appellees	C.A. No. 21CA011711 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE No. 20CV201055

DECISION AND JOURNAL ENTRY

Dated: January 3, 2023

TEODOSIO, Presiding Judge.

{¶1} Martin Robinson and Maiya McCoy (collectively "Robinson/McCoy") appeal the judgment of the Lorain County Court of Common Pleas granting the motion to dismiss of Lorain County Printing & Publishing Company dba The Chronicle Telegram and Bruce Bishop (collectively "the Chronicle"). We affirm.

I.

{¶2} On April 27, 2020, Martin Robinson filed a complaint for defamation and intentional infliction of emotional distress against Lorain County Printing & Publishing Company dba The Chronicle Telegram and Scott Mahoney, followed by an amended complaint on May 11, 2020, adding Maiya McCoy as a plaintiff, adding Bruce Bishop as a defendant, and omitting Mr. Mahoney. The certificate of service of the amended complaint indicated service only upon the Clerk of Courts.

{¶3} On May 15, 2020, Robinson/McCoy filed a voluntary dismissal of Mr. Mahoney and filed another amended complaint with no certificate of service. The Chronicle subsequently filed a motion to dismiss pursuant to Civ.R. 12(B)(6). On June 30, 2020, Robinson/McCoy filed another amended complaint, which again contained no certificate of service. The Chronicle responded by filing a motion to strike, arguing the complaint was not in compliance with Civ.R. 15. In August 2020, Robinson/McCoy filed responses to the motion to dismiss and the motion to strike, neither of which included a certificate of service.

{¶4} On September 24, 2020, the trial court issued an entry granting Robinson/McCoy leave to supplement their responses to the motions to include proper certificates of service. The entry granted the Chronicle's motion to strike the June 30, 2020, amended complaint but provided Robinson/McCoy with leave to refile the complaint and ordered that it be properly served as required by the Ohio Rules of Civil Procedure. The Chronicle was granted leave to supplement their motion to dismiss once the amended complaint was served and filed.

{¶5} On October 21, 2020, Robinson/McCoy filed another amended complaint containing the typed names of both Robinson and McCoy, but lacking signatures for either of them. A Certificate of Service was attached but did not name any party that was served with the document, instead stating:

> I hereby certify that on the 21st of October 2020, copies of the forgoing Complaint 20CV201055 was filed electronically for all defendants. Notice of this filing will be sent to the following parties through the Court's Certificate of System. Parties may also access this filing through the Court's Electronic system.

The Certificate of Service was not signed by Robinson or McCoy but contained McCoy's typed name. The Chronicle alleged that this complaint was not served upon counsel and filed a supplemental memorandum in support of their motion to dismiss, additionally requesting that the action be dismissed due to Robinson/McCoy's failure to comply with Civ.R. 5 and Civ.R. 11. On

December 1, 2020, the trial court entered judgment dismissing the action for Robinson/McCoy's failure to comply with Civ.R. 5 and Civ.R. 11 after having been given the opportunity to correct their pleadings. Robinson/McCoy now appeal raising eight assignments of error.

II.

ASSIGNMENT OF ERROR ONE

THE TRIAL COURT DISMISSED THE CASE BASED ON FAULTY AND FRIVOLOUS GROUNDS IN VIOLATION OF EVIDENCE RULE 901.

{¶6} In their first assignment of error, Robinson/McCoy argue the trial court's dismissal of the complaint was in violation of Evid.R. 901. We do not agree.

{¶7} Evid.R. 901 generally provides: "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Evid.R. 901(A). Although it is unclear how their argument implicates Evid.R. 901, Robinson/McCoy contend that a determination that they were engaged in the unauthorized practice of law was hearsay, and that the trial court dismissed the case prematurely without evidence showing that Robinson/McCoy engaged in the unauthorized practice of law or that the defendants had not been served.

{¶8} The trial court dismissed the Robinson/McCoy's complaint for failure to comply with Civ.R. 5 after giving them the opportunity to correct the pleadings, as well as for a violation of Civ.R. 11. The evidence for the determinations of the trial court may be found within the record of the case, the pleadings therein filed by McCoy/Robinson, and the orders of the trial court. Robinson/McCoy fail to develop any argument to support their contention that the trial court's determination was based upon hearsay or a violation of Evid.R. 901, nor do we find any support for such contention.

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

ASSIGNMENT OF ERROR TWO

THE TRIAL COURT ERRED IN WHEN [SIC] ALLOWING A DISMISSAL BASED ON PAPERS HAVING TYPED SIGNATURES CITING CIV.R. 11.

{¶10} In their second assignment of error, Robinson/McCoy argue the trial court erred in dismissing their case pursuant to Civ.R. 11 case for failure to sign the complaint. We do not agree.

{¶11} Civ.R. 11 provides for the signing of pleadings, motions, and other documents, and in pertinent part states: "A party who is not represented by an attorney shall sign, by electronic signature or by hand, the pleading, motion, or other document * * *." Civ.R. 11 further provides: "If a document is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the document had not been served."

{¶12} Robinson/McCoy contend that typing one's name on a pleading satisfies the signature requirement of Civ.R. 11, and in support of this argument, point us to *Becker v. Montgomery*, 532 U.S. 757 (2001). *Becker* involves the signature requirement for pleadings under Fed.R. Civ.P. 11 and acknowledges that "the signature requirement can be adjusted to keep pace with technological advances[,]" pointing to the example of electronic signatures on papers filed electronically. *Id.* at 763. To the detriment of Robinson/McCoy's argument, *Becker* also explicitly states: "Without any rule change so ordering, however, we are not disposed to extend the meaning of the word 'signed,' as that word appears in Civil Rule 11(a), to permit typed names." *Id.* at 764.

{¶13} Robinson/McCoy have failed to show the trial court erred in its application of Civ.R. 11. The second assignment of error is therefore overruled.

ASSIGNMENT OF ERROR THREE

THE TRIAL COURT ERRED WHEN DISMISSING [SIC] THE CASE REPRESENTED BY PRO SE LITIGANTS.

{¶14} In their third assignment of error, Robinson/McCoy suggest that as pro se litigants, the trial court should not have held them to the same standard as represented parties.

{¶15} With respect to pro se litigants, this Court has determined:

> [P]ro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities. However, a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound. He is not given greater rights than represented parties, and must bear the consequences of his mistakes. This Court, therefore, must hold [pro se appellants] to the same standard as any represented party.

State v. Goldshtein, 9th Dist. Summit No. 25700, 2012-Ohio-246, ¶ 6, quoting *Sherlock v. Myers*, 9th Dist. Summit No. 22071, 2004-Ohio-5178, ¶ 3.

{¶16} Because pro se litigants are subject to the same rules and procedures as represented parties, we find no error in the trial court's dismissal of the appellants' complaint for their failure to meet the requirements of the Ohio Rules of Civil Procedure.

{¶17} The third assignment of error is overruled.

ASSIGNMENT OF ERROR FOUR

> THE TRIAL COURT ERRED WHEN IT DID NOT NOTIFY THE PLAINTIFFS BEFORE DISMISSING AND WHEN IT DISMISSED WITH PREJUDICE, IN DEFENSE OF BRUCE BISHOP ET AL. (DEFENDANTS) WHEN THEY CLAIMED THEY HAD NOT BEEN SERVED.

{¶18} In their fourth assignment of error, Robinson/McCoy argue that the trial court erred because it did not notify them prior to dismissing the complaint and erred in dismissing the complaint with prejudice.

{¶19} Robinson/McCoy direct us to Fed.R.Civ.P. 4, which provides "[i]f a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order

that service be made within a specified time." Fed.R.Civ.P. 4(m). It is well-settled that the Federal Rules of Civil Procedure are not binding on a state court. *See* Fed.R.Civ.P. 1; *In re Anisha N.*, 6th Dist. Lucas No. L-02-1370, 2003 WL 21040311 (May 9, 2003), *2. The corresponding Ohio Civ.R. 4 provides:

> If a service of the summons and complaint is not made upon a defendant within six months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with notice to such party or upon motion.

{¶20} The trial court did not dismiss Robinson/McCoy's amended complaint pursuant to Civ.R. 4, but rather, based its dismissal upon Robinson/McCoy's failure to comply with the Ohio Civil Rules of Procedure and with the order of the court. Pursuant to Civ. R. 41(B)(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." The purpose of the notice requirement is to provide the defaulting party an opportunity to explain or correct the default, or to explain why dismissal is inappropriate. *Quonset Hut, Inc. v. Ford Motor Co.,* 80 Ohio St.3d 46, 48 (1997). Robinson/McCoy were on notice of the potential for dismissal upon the filing of the motion to dismiss, to which they filed a response. Furthermore, in ruling upon the motion to dismiss, the trial court's order of September 24, 2020, provided Robinson/McCoy with an opportunity to supplement their responses with proper certificates of service and granted them leave to file and serve their amended complaint in accordance with the Ohio Civil Rules of Procedure; the defendants were granted leave to supplement their motion to dismiss once the amended complaint was served and filed.

{¶21} Civ.R. 41(B)(3) provides: "A dismissal under division (B) of this rule and any dismissal not provided for in this rule, except as provided in division (B)(4) of this rule, operates

as an adjudication upon the merits unless the court, in its order for dismissal, otherwise specifies." "[A] dismissal on the merits is a dismissal with prejudice * * *." *Bryco Co. v. Hamilton Cty. Regional Planning Comm.*, 1st Dist. Hamilton No. C-890150, 1990 WL 37784, *1 (Apr. 4, 1990); *see also Durse v. Mossie*, 7th Dist. Columbiana No. 98 CO 12, 2000 WL 288521, *2 (Mar. 16, 2000). We find no error in the trial court's dismissal on the merits as provided for by Civ.R. 41(B)(3).

{¶22} The fourth assignment of error is therefore overruled.

ASSIGNMENT OF ERROR FIVE

> THE TRIAL COURT ERRED WHEN DISMISSING [SIC] PURSUANT TO RULE 12(B)(6) AND WHEN IT DIDN'T ALLOW THE 21-DAY REQUIREMENT UNDER FED.R.CIV.P. 11(B)(2) WHICH WOULD HAVE GIVEN McCOY AND ROBINSON TIME TO PROMPTLY CORRECT THE OMISSION OR PROVIDE EVIDENCE TO ARGUE AFTER THE TYPED SIGNATURES WAS [SIC] CALLED TO THEIR ATTENTION.

{¶23} In their fifth assignment of error, Robinson/McCoy contend that the trial court erred by dismissing the complaint pursuant to Civ.R. 12(B)(6) and by not allowing for a 21-day "safe harbor" under Fed.R.Civ.P. 11(B)(2).

{¶24} We first address the contention that the trial court erred by dismissing the complaint pursuant to Civ.R. 12(B)(6). Robinson/McCoy argue that their complaint stated facts, that if true, would have entitled them to a claim to relief, and that dismissal was therefore improper.

{¶25} It is well-settled that "[i]n order for a trial court to dismiss a complaint under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted, it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought." *Ohio Bur. of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011-Ohio-4432, ¶ 12. "The allegations of the complaint must be taken as true, and those allegations and any reasonable inferences drawn from them must be construed in the nonmoving party's favor." *Id.*

{¶26} As we stated above, the trial court did not assess the facts as stated in the complaint, but rather based its dismissal upon Robinson/McCoy's failure to comply with the Ohio Civil Rules of Procedure and with the order of the court as permitted under Civ. R. 41(B)(1).

{¶27} As to Robinson/McCoy's argument regarding Fed.R.Civ.P. 11(B)(2), we again observe that the Federal Rules of Civil Procedure are not binding on a state court. *See* Fed.R.Civ.P. 1; *In re Anisha N.*, 6th Dist. Lucas No. L-02-1370, 2003 WL 21040311 (May 9, 2003), *2. As to the corresponding Ohio Civ.R. 11, we find no reference to any 21-day period. Moreover, the trial court's judgment entry dismissing the complaint was not entered until December 1, 2020, well outside of 21 days from the trial court's entry of September 24, 2020, which granted Robinson/McCoy leave to re-file their complaint and comply with Civ.R. 5.

{¶28} The fifth assignment of error is overruled.

ASSIGNMENT OF ERROR SIX

> THE TRIAL COURT ABUSED ITS DISCRETION AS A MATTER OF LAW WHEN APPLYING [*Martin v. Wayne Cty. Natl. Bank Trust*, 9th Dist. Wayne No. 03CA0079, 2004-Ohio-4194, ¶ 14].

{¶29} In their sixth assignment of error, the appellants contend that the trial court erred as a matter of law in its application of *Martin v. Wayne Cty. Natl. Bank Trust*, 9th Dist. Wayne No. 03CA0079, 2004-Ohio-4194, ¶ 14. We do not agree.

{¶30} The fourteenth paragraph of *Martin v. Wayne Cty. Natl. Bank Trust* provides:

> We are mindful of the fact that pro se litigants are generally afforded reasonable leeway when proceeding sans attorney and that, "whenever possible, pro se complaints and motions should be liberally construed and decided on the merits rather than dismissed on technicalities." *Hankins v. Adecco Servs.* (Nov. 20, 2001), 3rd Dist. No. 17–01–13, 2001 Ohio App. LEXIS 5167, at *10. However, it has long been the position of this Court that, "'[a] party has a right to represent himself, but if he does so, he is subject to the same rules and procedures as litigants with counsel.'" (Citations omitted; alterations original.) *Copeland v. Rosario* (Jan. 28, 1998), 9th Dist. No. 18452, at 6; see, also, *Meyers v. First National Bank* (1981), 3 Ohio App.3d 209, 210, 444 N.E.2d 412. "Pro se litigants are not to be accorded

> greater rights and must accept the results of their own mistakes." *Harris v. Housing Appeals Bd.*, 9th Dist. No. 21197, 2003–Ohio–724, at ¶ 11, citing *Sinsky v. Matthews* (Dec. 12, 2001), 9th Dist. No. 20499. Thus, trial courts should be careful to remember that pro se litigants are to be held to the same standard as all other litigants. *See Erie Ins. Co. v. Bell*, 4th Dist. No. 01CA12, 2002–Ohio–6139.

Id.

{¶31} In its judgment entry, the trial court cited to *Martin* for two propositions of law: (1) "Pro se litigants should be granted reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities"; and (2) "The court, therefore, must hold pro se litigants to the same standard as any represented party." Both of these propositions remain good law and were correctly stated and applied by the trial court. We find no error in their application.

{¶32} The sixth assignment of error is overruled.

ASSIGNMENT OF ERROR SEVEN

> THE TRIAL COURT ABUSED ITS DISCRETION AS A MATTER OF LAW WHEN IT DENIED THE [SIC] ADEQUATE TIME FOR THE CO-PLAINTIFFS TO COMMUNICATE WHILE HAVING ONLY THE NECESSARY RESOURCES FOR COMMUNICATION (UNITED STATES POSTAL SERVICE) IN ORDER TO RESPOND AFTER THE LICENSED ATTORNEY REMOVED HIMSELF.

{¶33} In their seventh assignment or error, Robinson/McCoy argue the trial court erred by denying them adequate time to respond to motions after their attorney withdrew from the case, contending that they were "ineffective" because the trial court gave them only 13 days to respond to motions after their attorney withdrew.

{¶34} On August 13, 2020, the trial court granted Robinson/McCoy's former attorney's motion to withdraw and gave Robinson/McCoy until August 31, 2020, to show good cause as to why their third amended complaint should not be dismissed for failure to comply with Civ.R. 15(A) and to file a response to the defendants' motion to dismiss. Robinson/McCoy did not motion

the trial court for additional time to respond, and in fact filed opposition briefs to the defendants' motion to strike and motion to dismiss prior to the August 31 deadline. Robinson/McCoy fail to provide any legal argument or analysis in support of their conclusory statement that the trial court erred by failing to provide them with adequate time. As this Court has repeatedly held, "[i]f an argument exists that can support [an] assignment of error, it is not this [C]ourt's duty to root it out." *King v. Divoky*, 9th Dist. Summit No. 29769, 2021-Ohio-1712, ¶ 50, quoting *Cardone v. Cardone*, 9th Dist. Summit No. 18349, 1998 WL 224934, * 8, (May 6, 1998).

{¶35} The seventh assignment of error is therefore overruled.

ASSIGNMENT OF ERROR EIGHT

> THE TRIAL COURT FAILED TO REVIEW FAC SO [SIC] THE CASE AND ERRED WHEN DISMISSING THE DEFAMATION CASE WITHOUT ENDURING [SIC] IF THE STATEMENTS WERE REASONABLY SUSCEPTIBLE OF A DEFAMATORY CONNOTATION.

{¶36} In their eighth assignment of error, Robinson/McCoy appear to contend that the trial court erred by dismissing their complaint without determining whether the statements alleged to have been made were reasonably susceptible to a defamatory meaning. Robinson/McCoy again fail to provide any legal argument or analysis in support of their conclusory statement, and we reiterate that "[i]f an argument exists that can support [an] assignment of error, it is not this [C]ourt's duty to root it out." *King* at ¶ 50, quoting *Cardone* at * 8. Moreover, as we have previously noted, the trial court's dismissal of the complaint was based upon Robinson/McCoy's failure to comply with the Ohio Civil Rules of Procedure and with the order of the court and not upon a substantive failure of the complaint itself and the facts as stated therein.

{¶37} The eighth assignment of error is overruled.

III.

{¶38} Robinson/McCoy's assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellants.

THOMAS A. TEODOSIO
FOR THE COURT

CALLAHAN, J
SUTTON, J.
CONCUR.

APPEARANCES:

MAIYA MCCOY, pro se, Appellant.

MARTIN ROBINSON, pro se, Appellant.

HOWARD T. LANE, Attorney at Law, for Appellees.