[Cite as *Parkview Fed. Sav. Bank v. Grimm*, 2010-Ohio-5005.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93899

PARKVIEW FEDERAL SAVINGS BANK

PLAINTIFF-APPELLEE

vs.

ROBERT L. GRIMM, ET AL.

DEFENDANTS-APPELLANTS

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-609684

BEFORE: Kilbane, P.J., Celebrezze, J., and Sweeney, J.

RELEASED AND JOURNALIZED: October 14, 2010

APPELLANT

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MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, Robert Grimm ("Grimm"), appeals the trial court's September 3, 2009 journal entry that rendered judgment against him in the amount of $159,996.70, reformed the terms of his mortgage deed, and granted appellee, Parkview Federal Savings Bank ("Parkview"), the right to foreclose on Grimm's property. After a review of the record and applicable law, we affirm.

{¶ 2} The following facts give rise to the instant appeal.

{¶ 3} On December 12, 2006, Parkview filed its complaint against Grimm and his ex-wife, Beverly Lampp ("Lampp"), seeking judgment in the amount of $159,996.70 and the right to foreclose on the property located at 510 Locklie Drive, Highland Heights, Ohio.[1]

{¶ 4} On February 13, 2007, Lampp filed an answer denying the allegations and asserting a cross-claim against Grimm for a $200,000 judgment lien she had filed with the trial court on January 10, 2007. The judgment lien

[1] Parkview also named Marymount Hospital as a defendant because Marymount had an interest in the property based on its judgment lien filed on June 3, 2005, in JL-240408. On November 20, 2007, Plymouth Tax Services filed a motion to intervene, which was subsequently granted. Plymouth asserted that it owned two tax certificates for delinquent taxes with respect to Grimm's property. The issues raised in this appeal do not involve either Marymount or Plymouth, therefore, we do not discuss them in detail.

stemmed from Lampp and Grimm's 2003 Connecticut divorce judgment in which Grimm was ordered to pay Lampp both alimony and attorneys fees.[2]

{¶ 5} Parkview attempted to serve Grimm by certified mail several times, which were all returned because Grimm did not have a mail receptacle. After an additional attempt to serve Grimm personally, Parkview ultimately served Grimm by publication.

{¶ 6} On June 27, 2007, Parkview filed a motion for default judgment against Grimm, which the trial court scheduled for a hearing on August 1, 2007. On August 7, 2007, the trial court issued a journal entry denying Parkview's motion for default judgment and concluded that Parkview had failed to demonstrate that it held a valid mortgage deed for the entire parcel of land that it sought to foreclose. The legal description of the two parcels attached to the mortgage deed had not been amended to reflect a reallotment. The trial court granted Parkview leave to file an amended complaint.

{¶ 7} On August 9, 2007, Parkview filed an amended complaint, seeking a money judgment in the amount of $159,996.70 and for reformation of both the granting clause and the legal description associated with the mortgage deed. Specifically, Parkview wanted to add Lampp's name to the granting

[2]The parties have previously litigated issues pertaining to this judgment lien in App. Nos. 91437 and 90269.

clause and to amend the legal description to encompass Grimm's entire property.

{¶ 8} On August 21, 2007, Lampp filed an answer and again asserted her cross-claim against Grimm regarding the judgment lien. Grimm was served by publication and filed his answer on October 10, 2007, arguing that the legal description did not describe any parcel of land situated in Cuyahoga County. On October 26, 2007, Grimm filed a notice of jury demand.

{¶ 9} On December 5, 2007, Parkview filed its motion for summary judgment with respect to both the money judgment and reformation of the mortgage deed.

{¶ 10} On January 2, 2008, the trial court denied Grimm's demand for a jury trial.

{¶ 11} On January 7, 2008, Grimm filed an affidavit opposing summary judgment. On January 17, 2008, the trial court granted summary judgment with respect to Count 1, rendering judgment against Grimm in the amount of $159,996.70, and denied summary judgment with respect to Count 2, reformation of the mortgage deed.

{¶ 12} On November 13, 2008, Parkview filed a motion to dismiss any claims raised by Grimm for his failure to attend his own deposition. The trial court construed the motion to dismiss as a motion for sanctions and scheduled a hearing for January 16, 2009. Grimm did not attend the hearing. On

January 22, 2009, the trial court issued a journal entry granting Parkview's motion for sanctions and prohibiting Grimm from presenting evidence at trial for his failure to cooperate in discovery.

{¶ 13} On April 22, 2009, the trial court issued a journal entry scheduling trial for June 2, 2009. The trial court ordered that all parties submit a trial brief, witness list, and stipulations by May 26, 2009. On May 22, 2009, Grimm filed his trial brief and witness list. On May 28, 2009, Parkview filed a motion for leave to file its trial brief, witness list, and exhibit list instanter. On June 1, 2009, the trial court granted Parkview's motion for leave and deemed its trial brief, witness list, and exhibit list to be timely filed.

{¶ 14} On June 2, 2009, the magistrate held a bench trial on Parkview's claim for reformation of the mortgage deed.

{¶ 15} On July 24, 2009, the magistrate issued a journal entry finding in favor of Parkview and reforming the mortgage deed both with respect to the granting clause and the legal description. On August 7, 2009, Grimm filed his objections to the magistrate's decision.

{¶ 16} On September 3, 2009, the trial court overruled Grimm's objections and adopted the magistrate's decision.

{¶ 17} Grimm appealed, raising ten assignments of error for our review.

ASSIGNMENT OF ERROR NUMBER ONE

"THE TRIAL COURT ERRED IN DENYING THIS DEFENDANT'S DEMAND FOR JURY TRIAL WHEN QUESTIONS OF GENUINE MATERIAL FACT EXISTED."

{¶ 18} Grimm argues that the trial court erred in denying his demand for a jury trial. Parkview contends that the only claim that proceeded to trial was its claim for reformation of the mortgage deed, which is an equitable remedy and does not provide a right to a jury trial. After a review of the record, we agree.

{¶ 19} Parties are afforded the right to a trial by jury pursuant to Article I, Section 5 of the Ohio Constitution; however, this right is not absolute. *Stetter v. R.J. Corman Derailment Serv., L.C.*, 125 Ohio St.3d 280, 2010-Ohio-1029, 927 N.E.2d 1092. The Ohio Constitution only preserves the right to a trial by jury for those claims that existed prior to its adoption. *Hoops v. United Tel. Co. of Ohio* (1990), 50 Ohio St.3d 97, 533 N.E.2d 252.

{¶ 20} Parkview's complaint consisted of two counts. Count 1 sought a money judgment in the amount of $159,996.70. Count 2 sought reformation of the mortgage deed to allow it to foreclose on the entire property. Count 1 was disposed of through summary judgment; therefore, at the time of trial, the only pending issue was Parkview's claim for reformation of the mortgage deed.

{¶ 21} This court has previously determined that the reformation of a contract is an equitable remedy. *City Life Dev., Inc. v. Praxus Group, Inc.*,

Cuyahoga App. No. 88221, 2007-Ohio-2114, at ¶33, citing *Mason v. Swartz* (1991), 76 Ohio App.3d 43, 600 N.E.2d 1121. There is no right to a trial by jury on a claim based solely in equity. *Lombardo v. Lombardo* (Nov. 25, 1998), Cuyahoga App. No. 72913, citing *Ohio Bd. of Dietetics v. Brown* (1993), 83 Ohio App.3d 242, 614 N.E.2d 855. As the only pending claim at trial was Parkview's claim in equity for reformation of the mortgage deed, Grimm was not entitled to a jury trial.

{¶ 22} Therefore, Grimm's first assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER TWO

"THE TRIAL COURT ERRED IN PREVENTING THIS DEFENDANT FROM PRESENTING EVIDENCE AT TRIAL."

{¶ 23} Grimm argues that the trial court erred in construing Parkview's motion to dismiss as a motion for sanctions and in sanctioning him by preventing him from presenting evidence at trial. Parkview argues that the sanctions were necessary to prevent unfair surprise at trial in light of Grimm's failure to appear for deposition.

{¶ 24} On November 13, 2008, Parkview filed its motion to dismiss. Parkview first argued that Grimm should be prevented from presenting evidence at trial because he failed to appear for his deposition. Parkview also argued that pursuant to Civ.R. 41(B), any claims raised by Grimm should be dismissed.

{¶ 25} Grimm contends that the trial court erred in construing this motion as one for sanctions because Parkview referred to Civ.R. 41(B), which pertains to dismissals and not sanctions. However, a review of the text of the motion clearly shows that Parkview's intent was to obtain sanctions for Grimm's failure to appear at his deposition since Parkview also refers to Civ.R. 37, which governs discovery sanctions. Grimm cites no authority prohibiting the trial court from construing the motion as one for sanctions.

{¶ 26} Grimm also argues that the trial court erred when it sanctioned him by ordering that he could not present evidence at trial. This court reviews a trial court's decision regarding sanctions for an abuse of discretion. *Clareshire Court Condo. Unit Owners v. Montilla*, Cuyahoga App. No. 90461, 2008-Ohio-4242, citing *United Holy Church of Am., Inc. v. Kingdom Life Ministries*, 165 Ohio App.3d 782, 2006-Ohio-708, 848 N.E.2d 866. An abuse of discretion connotes "more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140.

{¶ 27} Pursuant to Civ.R. 37, trial courts possess significant discretion to regulate discovery disputes. Civ.R. 37(B) specifically provides that when a party fails to obey a discovery order, the trial court may prevent that party from introducing certain evidence at trial. This court has previously noted that preventing a party from introducing relevant evidence is a severe sanction

that should only be utilized to address a willful noncompliance with a discovery order or to prevent unfair surprise at trial. *Brzezinski v. Feuerwerker*, Cuyahoga App. No. 74288, 2000-Ohio-2686, citing *Nickey v. Brown* (1982), 7 Ohio App.3d 32, 454 N.E.2d 177.

{¶ 28} The record supports the trial court's conclusion that Grimm's failure to attend his deposition was willful. Parkview served Grimm with a notice of deposition at the address Grimm listed on his answer. Grimm failed to appear at the deposition and failed to contact Parkview's counsel to explain his failure to attend or to reschedule. The magistrate held a hearing on Parkview's motion for sanctions, which Grimm failed to attend. The magistrate concluded that the violation was willful in light of the fact that Grimm never explained why he failed to attend the deposition, never attempted to reschedule the deposition, and failed to attend five hearings that were held throughout the litigation.

{¶ 29} Further, the magistrate determined that the sanction was warranted in order to prevent unfair surprise at trial. Parkview claimed that the mortgage was intended to encompass Grimm's entire property. However, because of a mutual mistake by both parties, the mortgage did not encompass the entire property, and therefore, the mortgage should be reformed. The magistrate concluded that to allow Grimm to present evidence at trial may

result in an unfair surprise to Parkview because it would have no knowledge as to what evidence Grimm may present.

{¶ 30} We cannot conclude that the trial court abused its discretion because Grimm failed to appear throughout the litigation, failed to provide a reason for his failure to attend his own deposition, and the potential prejudice to Parkview. Consequently, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER THREE

"THE TRIAL COURT ERRED IN GRANTING LEAVE FOR PLAINTIFF TO FILE TRIAL BRIEF, EXHIBIT LIST, AND WITNESS LIST, INSTANTER, LATE; AND THEN DEEMING FILING AS TIMELY."

{¶ 31} Grimm argues that the trial court erred in granting Parkview leave to file his trial brief, witness list, and exhibit list after the deadline previously established by the court. Parkview argues that the documents were only filed two days late and that Grimm fails to demonstrate that he was prejudiced.

{¶ 32} On April 22, 2009, the trial court issued a journal entry scheduling a bench trial for June 2, 2009, and ordering the parties to submit trial briefs, witness lists, and stipulations by May 26, 2009. On May 28, 2009, Parkview filed a motion for leave to file its trial brief, exhibit list, and witness list instanter. On June 1, 2009, the trial court granted Parkview's motion for leave to file these documents and deemed them as timely filed.

{¶ 33} This court reviews motions for leave to file pleadings for an abuse of discretion. *Ayad v. Gereby*, Cuyahoga App. No. 92541, 2010-Ohio-1415, at ¶12, citing *Sultaana v. Giant Eagle*, Cuyahoga App. No. 90294, 2008-Ohio-3658; *R.C.H. Co. v. Classic Car Auto Body & Frame, Inc.*, Cuyahoga App. No. 83697, 2004-Ohio-6852, at ¶14.

{¶ 34} We cannot conclude that the trial court abused its discretion in granting Parkview's motion for leave to file these documents only two days after the deadline. Although Grimm argues that the filings should not have been deemed to have been timely filed, once a trial court grants a party leave to file a late motion it is considered timely filed. See *Chapman v. S. Pointe Hosp.*, Cuyahoga App. No. 92610, 2010-Ohio-152, 928 N.E.2d 777, at ¶17. Further, Grimm has failed to demonstrate that he was prejudiced in any way. Therefore, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER FOUR

"THE MAGISTRATE AND THE TRIAL COURT ERRED IN GRANTING TWO DISTINCT REFORMATIONS OF A MORTGAGE."

{¶ 35} Grimm argues that the trial court erred when it reformed the mortgage deed, reforming both the granting clause and the legal description. Parkview maintains that it presented sufficient evidence at trial to support its claim for reformation.

{¶ 36} When the terms of a contact are clear and unambiguous, its interpretation is a matter of law. *Saunders v. Mortensen*, 101 Ohio St.3d 86, 2004-Ohio-24, 801 N.E.2d 452, citing *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farms* (1995), 73 Ohio St.3d 107, 652 N.E.2d 684. However, where part of a contract is ambiguous, the trial court's interpretation is an issue of fact, and will not be reversed absent an abuse of discretion. *J.D.S. Properties v. Walsh*, Cuyahoga App. No. 91733, 2009-Ohio-367, at ¶19, citing *Maines Paper & Food Serv., Inc. v. Eanes* (Sept. 28, 2000), Cuyahoga App. No. 77301.

{¶ 37} "Reformation of a contract is an equitable remedy through which an instrument is modified because a mutual mistake of the parties does not reflect their true intent." *Pepper Pike Properties, Ltd. Partnership v. Wilson*, Cuyahoga App. No. 79711, 2002-Ohio-331, citing *Mason* at 50. The parties are permitted to bring in parol evidence to demonstrate that the contract should be reformed. Id. The trial court's judgment is to be given considerable deference. *Pepper Pike*, citing *Castle v. Daniels* (1984), 16 Ohio App.3d 209, 212, 475 N.E.2d 149. Mutual mistake must be demonstrated by clear and convincing evidence. Id.

{¶ 38} Grimm argues that the trial court erred in its judgment entry when it reformed the mortgage deed in two key respects. First, the trial court reformed the granting clause of the mortgage deed to include Lampp as a mortgagor, subjecting her one-half interest in the property to Parkview's

mortgage. Second, the trial court reformed the legal description of the property.

{¶ 39} Grimm argues that there was no evidence presented to suggest that Lampp intended to mortgage her one-half interest of the property. However, in her answer, Lampp admitted that it was her intention to do so. The testimony of Steve Ruch, Parkview's representative, also supported Parkview's contention that the parties intended to subject the entire property to the mortgage, including Lampp's interest.

{¶ 40} Grimm also argues that the trial court erred in reforming the mortgage deed to alter the legal description. The trial court explained its rationale, stating:

> **"[I]t appears that the difference in the legal descriptions is due to a re-allotment of the subject property. Moreover, contrary to the assertions of Grimm that the legal description attached to the mortgage fails to describe any parcel in Cuyahoga County, the legal description attached to the mortgage describes the two parcels of land which comprise the subject property without reference to the re-allotment of the second parcel. The dimensions of the legal description attached to the mortgage are nearly identical to those listed in the Index Map of Cuyahoga**

County, after re-allotment." (See Journal Entry Sept. 3, 2009.)

{¶ 41} The trial court concluded that this, in addition to the testimony of Steve Ruch's[3] regarding the intent of the parties when the property was mortgaged, evidenced the parties' intention that the entire property was subject to Parkview's mortgage deed.

{¶ 42} As Parkview presented considerable evidence demonstrating the intention of the parties, we cannot conclude that the trial court abused its discretion in reforming the mortgage deed. This assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER FIVE

"THE MAGISTRATE AND TRIAL COURT ERRED IN CONSIDERING AND ACCEPTING AS FACT DOCUMENTS NOT ADMITTED AS EVIDENCE DURING TRIAL."

{¶ 43} Grimm argues that the trial court erred when in its September 3, 2009 journal entry it referred to Lampp's answer in which she admitted that the intended property be subject to the mortgage. Grimm further argues that the trial court erred when in its September 3, 2009 journal entry it referred to the March 21, 2008 affidavit of Michele Wickman ("Wickman"), a loan service

[3]See testimony of Steve Ruch, an employee of Parkview in the loan servicing department. (Tr. 12.)

officer at Parkview, in which she stated that Lampp was supposed to be included in the granting clause, but was inadvertently omitted.

{¶ 44} Grimm cites to no authority to support his contention that the trial court erred when it referred to documents that were part of the record in rendering its decision. Therefore, because Grimm has failed to comply with App.R. 16(A)(7), which requires appellants to support their arguments with specific citations to the record and the applicable authority, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER SIX

"**THE MAGISTRATE AND THE TRIAL COURT ERRED IN FINDING THE APPELLANT/DEFENDANT OWES PLAINTIFF $159,996.70 PLUS INTEREST.**"

{¶ 45} Grimm argues that the trial court erred when it granted Parkview's motion for summary judgment with respect to Count 1, granting judgment for Parkview in the amount of $159,996.70 when the credit agreement was not dated.

{¶ 46} This court reviews a trial court's decision on a motion for summary judgment de novo. *Comer v. Risko*, 106 Ohio St.3d 185, 186, 2005-Ohio-4559, 833 N.E.2d 712. "Accordingly, we afford no deference to the trial court's decision and independently review the record to determine whether summary judgment is appropriate." *Mosby v. Sanders*, Cuyahoga App. No. 92605,

2009-Ohio-6459, at ¶11, citing *Hollins v. Schaffer*, 182 Ohio App.3d 282, 286, 2009-Ohio-2136, 912 N.E.2d 637.

{¶ 47} "Pursuant to Civ.R. 56, summary judgment is appropriate when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party, said party being entitled to have the evidence construed most strongly in his favor." *State ex rel Duncan v. Mentor City Council*, 105 Ohio St.3d 372, 374, 2005-Ohio-2163, 826 N.E.2d 832, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317, 327, 364 N.E.2d 267.

{¶ 48} The party moving for summary judgment bears the burden of showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-293, 1996-Ohio-107, 662 N.E.2d 264. Once the moving party satisfies its burden, the nonmoving party "may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Civ.R. 56(E); see *Mootispaw v. Eckstein*, 76 Ohio St.3d 383, 385, 1996-Ohio-389, 667 N.E.2d 1197. Doubts must be resolved in favor of the nonmoving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359, 1992-Ohio-95, 604 N.E.2d 138.

{¶ 49} Parkview attached an open-ended mortgage deed signed by both Grimm and Lampp and a credit agreement signed by Grimm to its complaint. In addition, Parkview attached an affidavit from its records custodian, Anne Johnson ("Johnson"), to its motion for summary judgment. Johnson stated that she was familiar with Grimm's mortgage deed and credit agreement, that he had defaulted in making payments, and that Parkview was owed $159,996.70 plus interest.

{¶ 50} Grimm filed an affidavit in response to Parkview's motion for summary judgment. In his affidavit, Grimm argued that there were genuine issues of material fact because Parkview admitted that both the granting clause and the legal description required reformation. Grimm never disputed that he executed the credit agreement or that he failed to make the required payments.

{¶ 51} Grimm argues for the first time on appeal that the credit agreement was not dated and that he has signed several credit agreements with Parkview beginning in 1983; therefore, Parkview failed to demonstrate that this is the correct credit agreement. However, Grimm never denies that Parkview produced the correct credit agreement, even in his own affidavit. Further, he did not provide copies of any previous credit agreements to demonstrate that the one Parkview submitted was an old agreement.

{¶ 52} Parkview supported its motion for summary judgment with Johnson's affidavit, which stated that she was familiar with Grimm's mortgage and that he had defaulted on his current credit agreement. The burden then shifted to Grimm to present evidence that demonstrated there was still a genuine issue of material fact. Grimm failed to do so. Consequently, we find that summary judgment was appropriate with respect to Count 1 because Grimm raised no genuine issues of material fact. This assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER SEVEN

"THE TRIAL COURT ERRED IN TRIFURCATING THIS CASE."

{¶ 53} Essentially, Grimm argues that on October 3, 2008, the trial court issued a journal entry directing Parkview to file a notice of its intent to proceed on its reformation claim. The trial court also stated, "[c]ase to be set for trial on plaintiff's claim for reformation of legal description only." Grimm argued that the trial court erred in later issuing a decision that reformed both the granting clause and the legal description.

{¶ 54} The granting clause was only reformed with respect to Lampp, who admitted in her answer that she was intended to be listed in the granting clause. By the time of the trial, the court had already granted summary judgment with respect to the money judgment sought in Count 1; therefore, the only issue left for trial was the reformation of the legal description.

Consequently, the matter was not trifurcated as Grimm suggests. This assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER EIGHT

"**THE MAGISTRATE AND TRIAL COURT ERRED IN ORDERING ALL SUMS AND COSTS BE FULLY PAID WITHIN 3 DAYS.**"

{¶ 55} Grimm argues that the trial court erred in granting him only three days to pay the full amount due before he lost his equitable remedy of redemption. We disagree.

{¶ 56} The trial court judgment entry specifically stated that, unless the amount due was paid within three days of the entry, "there shall be no further equity of redemption." In *Hausman v. Dayton*, 73 Ohio St.3d 671, 676, 1995-Ohio-277, 653 N.E.2d 1190, the Ohio Supreme Court explained the equitable right of redemption, stating:

"The mortgagor's equity of redemption is typically cut off once a mortgagee seeks and is granted a decree of foreclosure. Generally, a common pleas court grants the mortgagor a three-day grace period * * *."

{¶ 57} Therefore, the three days provided by the trial court was simply a grace period, as Grimm's actual equitable right of redemption had already ended when the foreclosure action was granted. Further, we fail to see how

Grimm was prejudiced as he still had the statutory right of redemption pursuant to R.C. 2329.33, which allows mortgagors the right of redemption if they pay the amount due prior to the confirmation of sale. There is no evidence Grimm attempted to exercise his statutory right of redemption.

{¶ 58} Finding no merit to this assignment of error, it is overruled.

ASSIGNMENT OF ERROR NUMBER NINE

"THE MAGISTRATE AND TRIAL COURT ERRED IN NOT STATING THE AMOUNT DUE."

{¶ 59} Grimm argues that the trial court's September 3, 2009 journal entry was vague as to the amount of the judgment. We disagree.

{¶ 60} Although Grimm argues that the journal entry was vague in its judgment, the journal entry found that Grimm owed $159,996.70, plus interest at varying rates that were specifically enumerated by the trial court, along with the exact dates the interest began to accrue. In *Huntington Natl. Bank v. Shanker* (May 21, 1998), Cuyahoga App. No. 72707, this court concluded that a judgment entry was clearly ascertainable and not vague when it stated the principal amount due, the applicable interest rate, and the exact date from which the interest was to be calculated. All of these were present in the trial court's journal entry. Trial courts are not required to state the exact amount due because that amount is constantly changing as interest accrues. Id.

{¶ 61} Therefore, this assignment of error is overruled.

ASSIGNMENT OF ERROR NUMBER TEN

"THE CLERK OF COURT ERRED IN CHANGING THE MAILING ADDRESS OF THE APPELLANT/DEFENDANT SEVERAL TIMES DURING THE COURSE OF THE CASE."

{¶ 62} In his final assignment of error, Grimm contends that the clerk of court erred in inexplicably changing his address multiple times during the course of the litigation. According to Grimm, his correct address was the address listed on the original complaint, 510 Locklie, in Highland Heights, Ohio. Grimm argues that the clerk incorrectly changed his address to that of his ex-wife, Lampp, who lived in Connecticut. However, a review of the record reveals that Parkview attempted to serve Grimm at the Highland Heights address from December 2006 through March of 2007. All attempts were returned. In March 2007, Parkview instructed the clerk to attempt to serve Grimm at the Connecticut address.

{¶ 63} However, the attempts to serve Grimm at the Connecticut address failed, and in April 2007, Parkview again instructed the clerk to serve Grimm at his Highland Heights address. In May 2007, the trial court appointed a special process server to personally serve Grimm with Lampp's cross-claim. Ultimately, in June 2007, Grimm was served by publication in the Daily Legal News. Grimm obviously received notice of the claims against him because he filed an answer on October 10, 2007.

{¶ 64} Grimm claims that the clerk once again incorrectly changed his address in October 2008 to 252 Hickok Road, New Canaan, Connecticut, an address Grimm lived at several years before. However, a review of the docket indicates that a cross-claim was sent to this address addressed to the "unknown spouse if any of Robert L. Grimm." The cross-claim was mailed to Grimm's Highland Heights address specifically addressed to him. Therefore, the clerk did not change Grimm's address.

{¶ 65} Finally, Grimm alleges that in January 2009, the clerk once again changed his address. A review of the docket indicates that the clerk sent pleadings to Grimm's Highland Heights address, but simply misspelled the street name.

{¶ 66} Grimm never alleges that he did not receive any of the pleadings or notices from the trial court, and he fails to demonstrate any prejudice. Litigants, even pro se, have a duty to periodically check the docket to ensure that they are aware of the status of the action. *State v. Aleman*, Cuyahoga App. No. 91726, 2009-Ohio-217, at ¶9. Finding no merit to this assignment of error, it is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and
JAMES J. SWEENEY, J., CONCUR