

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

RONALD DUDAS,	:	PER CURIAM OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2009-L-164
DENNIS GOLIC, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Court of Common Pleas, Case No. 07 CV 001770.

Judgment: Affirmed.

Ronald Dudas, pro se, PID: 520-261, Ross Correctional Institution, P.O. Box 7010, Chillicothe, OH 45601 (Plaintiff-Appellant).

John P. O'Donnell, John P. O'Donnell, L.L.C., 38109 Euclid Avenue, Willoughby, OH 44094 (For Defendants-Appellees).

MARY JANE TRAPP, P.J.

{¶1} Ronald Dudas appeals the judgment of the Lake County Court of Common Pleas, which denied his motion for default judgment and found that appellees, Dennis and Cheryl Golic, had substantially complied with the court-approved settlement agreement.

{¶2} **Substantive and Procedural History**

{¶3} In June 2007, Mr. Dudas filed a complaint, praying for a money judgment and equitable relief. He raised over 13 various counts of theft and deception, alleging

that the Golics, Mr. Dudas' former landlords, had stolen his personal property, which he valued at over \$48,000.

{¶4} The parties struggled through discovery, but eventually reached a settlement agreement before the start of a bench trial.

{¶5} Mr. Dudas signed a "Full and Final Release" in which he agreed that in sole consideration of the return of his personal property under the Golics' control, he would dismiss the complaint and waive any future claims or actions. The parties jointly filed a stipulated motion for dismissal with prejudice, costs to be paid by Mr. Dudas, which the court granted.

{¶6} Shortly thereafter, Mr. Dudas filed a contempt motion against the Golics and their attorney alleging a failure to abide by the terms of the release and stipulated dismissal. Mr. Dudas claimed the Golics failed to contact his sister, Shirley Weiss, to arrange for the transfer of his items within 30 days.

{¶7} Mr. Dudas next filed a motion to "void the stipulation for dismissal" due to the Golics' alleged breach of the settlement. Mr. Dudas contended the Golics failed to transfer all of his property, specifically, a 62" television and a kitchen table with four chairs. The court set the matter for a hearing, but then cancelled the hearing, ordering both parties to instead file status statements of the settlement within 30 days.

{¶8} Mr. Dudas also filed a motion for default judgment arguing that judgment should be entered against the Golics in the amount of \$25,000 for property that was missing or uncared for. Mr. Dudas also sought punitive damages against the Golics' counsel for his violation of the agreement. In addition, Mr. Dudas filed an "addendum to stipulation," which consisted of questions for Mr. Golic to complete.

{¶9} The Golics timely filed their status statement informing the court that they had satisfied the parties' agreement, delivering to Mrs. Weiss all of Mr. Dudas' property that was the subject of the dispute, with the exception of the 62" television. The television had been in the possession of Larry Marold, who disposed of it shortly after it broke over a year earlier. The status of the television was also the central issue of another case pending before the Lake County Court of Common Pleas, *Dudas v. Life Skills Martial Arts*.

{¶10} Attached to the status statement were affidavits by Mr. Marold and Mr. Golic. Mr. Golic stated that with the exception of the television, Mr. Dudas' property was placed into storage upon Mr. Dudas' conviction and subsequent incarceration, that the items Mrs. Weiss removed included the kitchen table and chairs, and that there was no discussion of certain items being missing at the time of removal.

{¶11} The court denied Mr. Dudas' motion for default judgment, finding that the Golics had substantially complied to the best of their ability with the stipulated dismissal. The only item not returned was the broken and discarded television, the status of which was being contested in another case.

{¶12} After the court denied default judgment, Mr. Dudas untimely filed his status statement, attaching the affidavits from Mr. Marold and Mr. Golic which had been submitted by the Golics, pictures of his "destroyed" property, and an affidavit signed by ten of his family members who were present for the transfer of property. In this joint affidavit, they stated that the items removed did not include either the television or the kitchen table and chairs.

{¶13} Mr. Dudas then filed a motion for reconsideration, arguing that his status statement rebutted that filed by the Golics, followed by the filing of the present appeal.

{¶14} The trial court denied Mr. Dudas' motion for reconsideration, finding that case was settled with prejudice.

{¶15} Mr. Dudas now raises one assignment of error for our review:

{¶16} "The trial court erred when it ruled against plaintiff's motion for summary judgement [sic]."

{¶17} **Motion for Default Judgment**

{¶18} Mr. Dudas raises two issues in his assignment of error, which deal solely with his motion for default judgment. Thus, we construe his assignment of error as challenging the court's denial of his motion for default judgment. Specifically, Mr. Dudas contends the court erred in denying his motion for default judgment because the Golics admitted to stealing his television in their status statement. He further argues that the affidavit from his family contradicted Mr. Golics' in regard to the missing kitchen table and four chairs, and thus, a financial award is in order for the missing and/or uncared for property. We disagree.

{¶19} "The granting of a default judgment, analogous to the granting of a dismissal, is a harsh remedy which should only be imposed when 'the actions of the defaulting party create a presumption of willfulness or bad faith.'" *Domadia v. Briggs*, 11th Dist. No. 2008-G-2847, 2009-Ohio-6510, ¶19, quoting *Hale v. Steri-Tec Services, Inc.*, 11th Dist. No. 2008-G-2876, 2009-Ohio-3935, ¶25, quoting *Johnson Controls, Inc. v. Cadle Co.*, 11th Dist. No. 2006-T-0030, 2007-Ohio-3382, ¶16, quoting *Zimmerman v. Group Maintenance Corp.*, 11th Dist. No. 2003-A-0105, 2005-Ohio-3539, ¶21. "A trial

court's decision to grant or deny a motion for default judgment is reviewed under an abuse of discretion standard." *Id.*, citing *Hale*, citing *Huffer v. Cicero* (1995), 107 Ohio App.3d 65, 74. An abuse of discretion is no mere error of law or judgment, rather it connotes an unreasonable, arbitrary, or unconscionable attitude on the part of the trial court. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶20} "It is axiomatic that a settlement agreement is a contract designed to terminate a claim by preventing or ending litigation and that such agreements are valid and enforceable by either party." *Marshall v. Beach* (2001), 143 Ohio App.3d 432, 436, quoting *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.* (1996), 74 Ohio St.3d 501, 502; *Mentor v. Lagoons Point Land Co.* (Dec. 17, 1999), 11th Dist. No. 98-L-190, 1999 Ohio App. LEXIS 6127, 7.

{¶21} "[W]hen an action is unconditionally *** dismissed, the trial court loses authority to proceed in that matter, absent a provision to the contrary, including efforts to enforce a settlement agreement arising from the dismissed action." *Id.*, quoting *Grange Mut. Cas. Co. v. Paterson* (Nov. 19, 1999), 11th Dist. No. 98-A-0086, 1999 Ohio App. LEXIS 5512, 7-8. If a case is conditionally dismissed upon the parties reaching a settlement, however, the trial court retains the authority to proceed in the matter if the condition upon which the case was originally dismissed does not occur. *Id.*, citing *Mellott v. Brawley* (Sept. 22, 1995), 11th Dist. No. 94-P-0139, 1995 Ohio App. LEXIS 4110, 3; *Hines v. Zofko* (Mar. 22, 1994), 11th Dist. No. 93-T-4928, 1994 Ohio App. LEXIS 1320, 1. See, also, *Powers v. Magitech Corp.* (Mar. 22, 2002), 11th Dist. No. 2001-L-015, 2002 Ohio App. LEXIS 1333, 5.

{¶22} Upon Mr. Dudas' motions to hold the Golics and their counsel in contempt and void the stipulated dismissal, the court issued an order for both parties to submit a status statement within 30 days. The Golics timely filed their statement that all property, save the television, and specifically including the kitchen table and chairs, had been transferred to Mr. Dudas' sister, Mrs. Weiss. Both parties agreed that the status of the television that no longer exists was the central issue in another unrelated case. There being no other unreturned property, the court found that the Golics had substantially complied to the best of their ability with the stipulated dismissal with prejudice, which the court had granted.

{¶23} Thus, the court rightly denied Mr. Dudas' motion as the condition subsequent had been satisfied, and we therefore affirm the judgment of the Lake County Court of Common Pleas.

MARY JANE TRAPP, P.J., CYNTHIA WESTCOTT RICE, J., TIMOTHY P. CANNON, J.,
concur.