[Cite as *State ex rel. Givens v. Shadyside*, 2020-Ohio-4826.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

STATE ex rel. GIVENS, et al.

Petitioners-Appellants,

v.

VILLAGE OF SHADYSIDE, OHIO, et al.,

Respondents-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 20 BE 0001

Civil Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 19-CV0301

BEFORE:
Cheryl L. Waite, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed in part.
Reversed in part and Remanded.

Greg P. Givens, *Pro se*, P.O. Box 117, Bellaire, Ohio 43906, for Petitioners-Appellants

Atty. Gregory A. Beck, *Atty. Mel L. Lute, Jr.*, and *Atty. Jack Reed*, Baker, Dublikar, Beck, Wiley & Mathews, 400 S. Main Street, North Canton, Ohio 44720, for Respondents-Appellees.

Dated: September 28, 2020

WAITE, P.J.

{¶1} Appellant Greg P. Givens appeals a December 26, 2019 Belmont County Common Pleas Court judgment entry granting a Civ.R. 12(B)(6) motion to dismiss filed by Appellees Village of Shadyside, Mayor Robert A. Newhart, and Code Administrator Joe Klug (collectively referred to as "Appellees"). Appellant presents eighteen assignments of error in which he generally argues that he presented sufficient facts to state a claim within his writ of mandamus and writ of prohibition, and is otherwise without an adequate legal remedy. For the reasons provided, Appellant's argument as to the writ of mandamus has merit and the judgment of the trial court is reversed on that issue. The matter is remanded for further proceedings consistent with this Opinion. However, Appellant's remaining arguments are without merit and the judgment of the trial court is affirmed as to those.

Factual/Procedural History

{¶2} Appellant is a lifelong resident of 3735 Highland Avenue in the Village of Shadyside. On May 8, 2019, a door hanger was placed on the front door of the house requesting the residents to contact the police department regarding a code and ordinance violation. (9/16/19 Opposition to Motion to Dismiss, Exh. B.) It appears that this door hanger was placed there in regard to possible criminal matters involving these parties, but is not relevant to the instant appeal.

{¶3} On July 17, 2019, Appellee Joe Klug, code administrator, sent the residents a letter declaring that the property constituted a nuisance. We note that the letter is not

addressed to a specific person and the record does not divulge the names of the property owners that appear on the deed. Regardless, this letter provided the following basis for the determination: unmowed grass for a significant period of time, overgrown trees and shrubs, four "junk" vehicles on the property, "several dumpster loads of garbage on the premises," back porch filled with garbage, house in "complete despair," roof above the front porch falling down, gutters falling off, and that the property was a "haven for snakes and rats." (8/5/19 Petition, Exh. A.) The letter informed the residents that abatement must begin within fifteen days and must be completed within 45 days.

{¶4} On July 26, 2019, Appellant sent a letter to the village solicitor stating that he was in the process of clearing the lawn and that he was in contact with contractors regarding the necessary repairs. He also stated that an exterminator found no rats or snakes on the premises. (8/5/19 Petition, Exh. E.) Appellant apparently had obtained several written estimates for the repair work but it is unclear whether those estimates were sent to the solicitor.

{¶5} According to Appellant, he and his attorneys sent the Village several letters and attempted phone contact several times without successfully receiving any response. He also claims that he went to the Village office several times but the staircase leading to the permit office was blocked off from access.

{¶6} On August 5, 2019, Appellant filed a Writ of Mandamus, and in the alternative, a Writ of Prohibition against Appellees. Along with himself, he named the other two residents of the property (who appear to be family members) as parties to the writ. The motion was filed *pro se.* The writs generally alleged that the residents had attempted to comply with the Village's requests but were unable to do so because of the

actions of the Village. The complaint alleged that access to the permit office was blocked, the Village refused to respond to written and verbal communication attempts, efforts to secure a building permit were denied, and that efforts to secure a contractor were denied by the Village. The writ also alleged that Appellees did not properly complete service of their notice that the property was declared a nuisance. They allege they were unable to comply with the Village's requests and were without a legal remedy, as they believe the house will be demolished if they were to be unsuccessful in the obtaining of a mandamus or prohibition relief.

{¶7} In lieu of an answer, Appellees filed a Civ.R. 12(B)(6) motion to dismiss the petition. Appellees argued that Appellant was given ten days to appeal the nuisance determination and did not do so, thus, he failed to exhaust his administrative remedies. Appellees argue that this failure is fatal to both a writ of mandamus and a writ of prohibition. In addition, Appellees argued that Appellant failed to obtain a building permit, which is conditioned on approved building plans, and failed to pay the applicable fee.

{¶8} On September 16, 2019, Appellant filed a motion in opposition to dismissal. Attached was a building permit application dated August 5, 2019, the same date his petition was filed. The trial court scheduled a hearing for December 20, 2019. On December 12, 2019, Appellant filed a motion to continue based on illness in his family and that he had planned a vacation to Florida. The trial court denied the motion, apparently due to the fact that the hearing date had been jointly scheduled by the parties. On December 23, 2019, the trial court sustained Appellees' motion to dismiss and requested Appellees prepare a proposed entry. On December 29, 2019, a judgment entry was filed sustaining the motion to dismiss. On December 27, 2019, Appellant filed an

objection to the proposed order. It does not appear that the trial court ruled on the motion. The instant appeal followed.

Non-Conforming Brief

{¶9} Appellant's *pro se* brief fails to comply with App.R. 16(A)(6), which requires the Appellant to provide a statement of facts. Appellant's "statement of facts" is comprised of conclusory argumentative statements. Appellant also failed to comply with App.R. 16(A)(7), which requires arguments in support of each assignment of error. None of Appellant's "assignments of error" contain arguments in support. His "statement of facts," however, does provide some limited arguments which we will presume comprises his argument in support. Although Appellant's failure to comply with the appellate rules is grounds for dismissal, in the interest of fairness and justice we will attempt to address his arguments to the best of our understanding.

{¶10} Appellant presents eighteen assignments of error that will be combined and addressed out of order for ease of understanding.

Pro Se

{¶11} "A pro se appellant is held to the same obligations and standards set forth in the appellate rules that apply to all litigants." *Bryan v. Johnston*, 7th Dist. Carroll No. 11 CA 871, 2012-Ohio-2703, ¶ 8, *Kilroy v. B.H. Lakeshore Co.*, 111 Ohio App.3d 357, 363, 676 N.E.2d 171 (8th Dist.1996). "Although 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." *Pinnacle Credit Servs., LLC v. Kuzniak*, 7th Dist. Mahoning No. 08 MA 111, 2009-Ohio-1021, ¶ 30, *Robb v. Smallwood*, 165 Ohio App.3d 385, 2005-Ohio-5863, 846 N.E.2d 878, at ¶ 5. "The

rationale for this policy is that if the court treats pro se litigants differently, 'the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel.' " *Pinnacle Credit Servs.,* at ¶ 31, citing *Karnofel v. Kmart Corp*., 11th Dist. No.2007-T-0036, 2007-T-0064, 2007-Ohio-6939, at ¶ 27. (Internal citations omitted.)

{¶12} We note that the writ of mandamus and writ of prohibition at issue in this appeal were filed on behalf of, and signed by, Appellant Carol A. Givens and Dennis Givens. However, the instant appeal was filed and signed only by Appellant *pro se*. Neither Carol nor Dennis Givens signed the notice of appeal. As a non-lawyer, Appellant cannot represent the interests of Carol or Dennis Givens. A *pro se* litigant may only represent himself and may not offer any legal argument on behalf of another. *U.S. Bank Natl. Assn. v. Marcino*, 7th Dist. Jefferson No. 09 JE 29, 2010-Ohio-6512, ¶ 5, citing *Grenga v. Bank One N.A.*, 7th Dist. No. 04 MA 94, 2005–Ohio–4474, at ¶ 36. Thus, Appellant is the only party-appellant in this matter and Carol and Dennis are not parties to this appeal. Hence, the trial court's decisions in this matter are final as to these parties.

ASSIGNMENT OF ERROR NO. 3

Trial Court's [sic] erred in denying Plaintiff-Appellant's Petition for Writ of Mandamus, or in the alternative, Prohibition.

ASSIGNMENT OF ERROR NO. 15

Trial Court erred and abused its discretion in the dismissal of Plaintiff-Appellant's Complaint for failure for which relief can be granted under

elements of the Ohio Constitution, Common law, and the Ohio Revised Code.

{¶13} Appellant appears to argue that the trial court improperly dismissed his writ of mandamus and the alternative writ of prohibition. "A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted tests only the legal sufficiency of the complaint." *Youngstown Edn. Assn. v. Kimble*, 2016-Ohio-1481, 63 N.E.3d 649, ¶ 11 (7th Dist.), citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs*., 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). When reviewing a Civ.R. 12(B)(6) motion, "the court must accept the factual allegations contained in the complaint as true and draw all reasonable inferences from these facts in favor of the plaintiff." *Kimble, supra*, at ¶ 11, citing *Mitchell v. Lawson Milk Co*., 40 Ohio St.3d 190, 192, 532 N.E.2d 753 (1988).

{¶14} In order to grant a Civ.R. 12(B)(6) motion, "it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc*., 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. However, "[i]f there is a set of facts consistent with the complaint that would allow for recovery, the court must not grant the motion to dismiss." *Kimble, supra*, at ¶ 11, citing *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144, 573 N.E.2d 1063 (1991).

{¶15} A Civ.R. 12(B)(6) claim is reviewed *de novo*. *Ford v. Baska*, 2017-Ohio-4424, 93 N.E.3d 195, ¶ 6 (7th Dist.), citing *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, 814 N.E.2d 44, ¶ 5.

Writ of Mandamus

{¶16} "[A] writ of mandamus is an extraordinary remedy which should be exercised by this Court with caution and issued only when the right is clear." *Henderson v. Vivo*, 7th Dist. Mahoning No. 19 MA 0053, 2020-Ohio-698, ¶ 5, *State ex rel. Brown v. Ashtabula Cty. Bd. of Elections*, 142 Ohio St.3d 370, 2014-Ohio-4022, 31 N.E.3d 596, ¶ 11. "Entitlement to a writ of mandamus requires the relator to demonstrate: (1) they have a clear legal right to the relief, (2) the respondent has a clear legal duty to provide that relief, and (3) relator has no adequate remedy at law." *Henderson* at ¶ 5, citing *State ex rel. Taxpayers for Westerville Schools v. Franklin Cty. Bd. of Elections*, 133 Ohio St.3d 153, 2012-Ohio-4267, 976 N.E.2d 890, ¶ 12.

{¶17} Appellant seems to argue that he is entitled to relief because he did not receive proper notice of the determination that the property constituted a public nuisance and because he has abated the property to the extent that he is able after the Village prevented him from obtaining the necessary building permits.

{¶18} Appellees argue that Appellant failed to exhaust his administrative remedies, thus, he had an adequate remedy at law. Appellees urge that a writ of mandamus is not intended to be a substitute for an administrative appeal.

{¶19} Appellees' argument begins with their contention that this matter is governed by local ordinances 1329.02, 1329.03, and 1329.05. Ordinance 1329.02 sets out the procedures the Village must undertake in order to declare a property a public nuisance and to order abatement. The ordinance provides, in relevant part:

> Whenever the Code Administrator suspects the existence of a public nuisance as defined within Section 1329.01, he shall promptly cause to be inspected the premises on which he suspects such public nuisance exists.

> Should the Code Administrator find that a public nuisance does exist, he shall have photographs made of such nuisance along with a written report of such nuisance, date of photographs and inspection of property filed within his office.

{¶20} Because this matter was dismissed on the pleadings, the record is necessarily bare-bones. It is apparent that the Code Administrator inspected the property at issue. However, there is nothing to show that the remaining requirements of the ordinance were satisfied, as no written report or dated photographs appear in this record.

{¶21} Ordinance 1329.03 details the requirements for proper service of the requisite notice:

> The notice to abate the nuisance shall be served either personally or by mailing a copy to such owner at his usual place of residence, by certified mail with return receipt requested. If service of the written notice is not perfected by the hereinbefore described methods, then the Code Administrator shall cause such notice to be published in a newspaper of general circulation in the Municipality once a week for two consecutive weeks and shall further cause a copy of the aforesaid notice to be left with the person, if any, in possession of the premises, or if there is no person in possession thereof, shall cause a copy of the notice to be attached to the property.

{¶22} Again, this limited record is devoid of any evidence that Appellees attempted to serve the notice through certified mail or personally, either on Appellant or

any other resident. While the ordinance does allow the notice to be left at the property, it appears that this is only permissible where the resident is not in possession of the premises, which does not appear to be the case, here. Additionally, before such notice may be left at the property, the notice must first be published in a newspaper of general circulation for at least two consecutive weeks. The fact that Appellant in this matter apparently did receive notice is of no consequence and does not relieve the Village of its duty to properly serve Appellant.

{¶23} The third ordinance, 1329.05, describes the resident's right to appeal the nuisance determination. The ordinance provides, in relevant part:

> The owner may, within ten days after completion of service of the notice to abate the nuisance, make a demand in writing to the Code Administrator for a hearing on the question of whether in fact a public nuisance, as defined within Section 1329.01, exists. The hearing shall be held within ten days following receipt of the written demand and at least two days notice in writing shall be given to the owner, Mayor.

{¶24} Again, unless Appellees possess evidence that they did, in fact, fully comply with the notice requirements of 1329.03, service of this notice was not properly completed. According to 1329.05, the time for an appeal does not begin to run until notice is properly effectuated.

{¶25} Construing the Appellant's complaint in his favor, as we must, the limited record before us suggests that Appellees failed to comply with each of the three relevant ordinances. As such, the writ of mandamus may have some merit. Certainly, Appellees

have not shown that there is no set of facts under which Appellant may be entitled to relief, based on the ordinances Appellees admit are relevant. Hence, dismissal of the writ by means of Civ.R. 12(B)(6) was not warranted here, and Appellant's argument has merit. The decision of the trial court on the mandamus action is reversed and remanded to the trial court for further action.

Writ of Prohibition

{¶26} A "writ of prohibition has been defined in general terms as an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal commanding it to cease abusing or usurping judicial functions." *In re J.D.*, 7th Dist. Belmont No. 18 BE 0039, 2019-Ohio-285, ¶ 3, citing *State ex rel. Burtzlaff v. Vickery*, 121 Ohio St. 49, 50, 166 N.E. 894 (1929). "In other words, the purpose of a writ of prohibition is to restrain inferior courts and tribunals from exceeding their jurisdiction." *In re J.D.* at ¶ 3, citing *State ex rel. Jones v. Suster*, 84 Ohio St.3d 70, 73, 701 N.E.2d 1002 (1998). "A writ of prohibition is an 'extraordinary remedy which is customarily granted with caution and restraint, and is issued only in cases of necessity arising from the inadequacy of other remedies.' " *Id.,* citing *State ex rel. Henry v. Britt*, 67 Ohio St.2d 71, 73, 424 N.E.2d 297 (1981); *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 74 Ohio St.3d 536, 540, 660 N.E.2d 458 (1996).

{¶27} To successfully assert a writ of prohibition, the petitioner must demonstrate that "(1) that the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power; (2) that the exercise of that power is unauthorized by law; and (3) that denying the writ will result in injury for which no other adequate remedy exists

in the ordinary course of law." *In re J.D.* at ¶ 4, citing *State ex rel. White v. Junkin*, 80 Ohio St.3d 335, 686 N.E.2d 267 (1997).

{¶28} Appellees argue that the nuisance determination is administrative, not judicial or quasi-judicial. " 'Quasi-judicial authority' is 'the power to hear and determine controversies between the public and individuals that require a hearing resembling a judicial trial.' " *State ex rel. Cornerstone Developers, Ltd. v. Greene Cty. Bd. of Elections*, 145 Ohio St.3d 290, 2016-Ohio-313, 49 N.E.3d 273, ¶ 18, citing *State ex rel. Wright v. Ohio Bur. of Motor Vehicles*, 87 Ohio St.3d 184, 186, 718 N.E.2d 908 (1999).

{¶29} The initial determination that the property constituted a nuisance did not require a prior hearing, thus the determination was not an exercise of quasi-judicial power. *Id.* For the same reasons, this determination was not judicial. Consequently, Appellant cannot satisfy the first requirement of a writ of prohibition. His argument in this regard is without merit and is overruled.

{¶30} As such, Appellant's third and fifteenth assignments of error have merit in part and are sustained in part.

ASSIGNMENT OF ERROR NO. 1

> Trial Court's [sic] erred in the dismissal of Plaintiff-Appellant's Complaint for failure to state a claim for which relief can be granted under elements of Criminal Trespass.

ASSIGNMENT OF ERROR NO. 7

Trial Court erred and abused its discretion in the dismissal of Plaintiff-Appellant's Complaint for failure to state a claim for which relief can be granted under elements of Emotional Distress.

ASSIGNMENT OF ERROR NO. 8

Trial Court erred and abused its discretion in the dismissal of Plaintiff-Appellant's Complaint for failure to state a claim for which relief can be granted under elements of Defamation.

ASSIGNMENT OF ERROR NO. 9

Trial Court erred and abused its discretion in the dismissal of Plaintiff-Appellant’s Complaint for failure to state a claim for which relief can be granted under elements of Civil and Constitutional Rights, Suppression of Rights.

ASSIGNMENT OF ERROR NO. 10

Trial Court erred and abused its discretion in the dismissal of Plaintiff-Appellant's Complaint for failure to state a claim for which relief can be granted under elements of Tortuous Interference.

ASSIGNMENT OF ERROR NO. 11

Trial Court erred and abused its discretion in the dismissal of Plaintiff-Appellant's Complaint for failure to state a claim for which relief can be granted under elements of Malicious Prosecution.

ASSIGNMENT OF ERROR NO. 12

Trial Court erred and abused its discretion in the dismissal of Plaintiff-Appellant's Complaint for failure to state a claim for which relief can be granted under elements of Criminal Enterprise.

ASSIGNMENT OF ERROR NO. 13

Trial Court erred and abused its discretion in the dismissal of Plaintiff-Appellant's Complaint for failure to state a claim for which relief can be granted under elements of Declaratory. Relief.

ASSIGNMENT OF ERROR NO. 14

Trial Court erred and abused its discretion in the dismissal of Plaintiff-Appellant's Complaint for failure to state a claim for which relief can be granted under elements of Conspiracy.

{¶31} Appellant argues that certain of his claims were improperly dismissed pursuant to Civ.R. 12(B)(6). These claims include: criminal trespass, emotional distress, defamation, “Civil and Constitutional rights, Suppression of Rights,” tortious interference, malicious prosecution, criminal enterprise, declaratory relief, and conspiracy.

{¶32} Although Appellant cites to a statute for each claim and lists a series of cases, he does not provide any argument or explain how those cases advance his position. Importantly, none of these claims are raised within the writ and some are actually based in criminal law (criminal enterprise and conspiracy).

{¶33} While Appellant makes passing reference in the writ to warrantless searches, trespass, breaking and entering, and destruction of property, it is unclear that any of these vague references were intended to create additional claims. In fact, these appear alongside Appellant's allegation that Appellees lacked jurisdiction to order the abatement process. The complaint clearly sets forth only one claim, requesting an order directing Appellees to stop the abatement proceedings against Appellant and requests sanctions against Appellees.

{¶34} As none of the claims Appellant now raises were included within his writ to the trial court, Appellant is prohibited from raising them for the first time on appeal. Issues that are not raised before the trial court cannot be raised for the first time on appeal, and are waived. *Vari v. Coppola*, 7th Dist. Mahoning No. 18 MA 0114, 2019-Ohio-3475, ¶ 12, appeal not allowed, 157 Ohio St.3d 1523, 2019-Ohio-5327, 137 N.E.3d 106, ¶ 12 (2019). As such, Appellants' first, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, and fourteenth assignments of error are without merit and are overruled.

ASSIGNMENT OF ERROR NO. 2

Trial Court's [sic] erred in denying Plaintiff-Appellant's Motion to Set Scheduling Order.

ASSIGNMENT OF ERROR NO. 5

Trial court abused its discretion by denying parties reasonable time for discovery, pretrial, and conference, in conclusion of judgment before rejecting Plaintiff-Appellant's complaint, or amended complaint, as not "concise, unambiguous, and specific.", [sic] and where mandatory and strict compliance on constitutional and statutory rights is required.

ASSIGNMENT OF ERROR NO. 16

Trial court abused its discretion by *sua sponte* denying Plaintiff-Appellant Notice of Appearance against Plaintiff-Petitioner Dennis A. Givens, and Judgment(s), and for Motion to Dismiss, Motion to Continue, and Motions for *Nunc pro Tunc*.

ASSIGNMENT OF ERROR NO. 17

Trial court abused its discretion by denying Plaintiff-Appellant [sic] right to admission or erred in the exclusion of relevant evidence in support of claims, or to the cross-examine eye-witnesses, and state of mind, and the privilege to be heard by jury, materially prejudicing a party.

ASSIGNMENT OF ERROR NO. 18

Trial court abused its discretion by allowing ex parte communications by opposing counsel, and access to Court office and record, by denying one party before hearing, and thereby denying absent parties reasonable time to view, review, reprove proceeding and motions, and thereby deny Plaintiff-

> Appellant sufficient and timely opportunity to preparation of a just and reasonable review process before hearing of party motions and pleadings, including Plaintiff-Appellant [sic] Motion Hearing On Rulings of Enforcement of Applicable Meetings of Parties from a bully pulpit from the Defendant counsel to the Bench in its decisions, of which the Trial court was unprepared.

{¶35} Appellant attempts to raise several allegations that he was denied certain pre-trial and trial rights. He claims that the court erroneously denied his motion to set a scheduling order. He argues that the court refused to provide a reasonable time for discovery, pre-trial, and conference. He argues that the court denied a "Notice of Appearance" on behalf of Dennis Givens. He also contends that the court erred in ruling on the motion to dismiss, motion to continue, and motion for a *nunc pro tunc* entry.

{¶36} As to Appellant's pre-trial and trial claims, the court's ruling on the motion to dismiss ended the proceeding during the pretrial stage, rendering those issues moot. In addition, it appears that the motion to continue was filed by Appellant Carol Givens on December 10, 2019. Again, Carol Givens is not a party to this appeal. In her motion she sought to continue the hearing on Appellees' motion to dismiss which was scheduled for December 20, 2019. The motion explained that family members had experienced illness and had a vacation planned on the date of the hearing.

{¶37} To the extent that the ruling applied to Appellant, the decision of whether to grant or deny a request for a continuance "is a matter that is entrusted to the broad, sound discretion of the trial judge." *State v. Unger*, 67 Ohio St.2d 65, 423 N.E.2d 1078 (1981), syllabus. The denial of a continuance will not be reversed absent an abuse of discretion.

Id. An abuse of discretion connotes more than an error of judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Yashphalt Seal Coating, LLC v. Giura*, 7th Dist. Mahoning No. 18 MA 0107, 2019-Ohio-4231, ¶ 14, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶38} A trial court should consider several factors when determining whether to grant a continuance: (1) the length of the delay sought; (2) if any prior continuances were granted; (3) the inconvenience to the parties and the court; (4) if the continuance is for legitimate reasons; (5) if the party requesting the continuance contributed to the circumstances giving rise to the request; and (6) any other relevant factors. *Youngstown Metro. Hous. Auth. v. Barry*, 7th Dist. No. 94-CA-147, 1996 WL 734017, at *1.

{¶39} On December 11, 2019, the court denied Ms. Givens' motion on the basis that on November 13, 2019 the parties had jointly scheduled the hearing date. Because the date was jointly set, the pending vacation triggered several factors, including inconvenience to the court and other parties, whether the reason for continuance is legitimate, and whether the party contributed to the circumstances. It is unclear which family member was ill and for how long, however, it appears that the illness was not serious as the petitioners were apparently able to proceed with a vacation to Florida. Regardless, the hearing date was set on November 13, 2019. Appellants did not seek a continuance until December 10, 2019, ten days before the hearing. Based on these circumstances, the trial court did not abuse its discretion in denying the motion for continuance.

{¶40} In his motion for a *nunc pro tunc* entry Appellant generally disagreed with the trial court's resolution of the matter.

> The purpose of a *nunc pro tunc* order is to have the judgment of the court reflect its true action so that the record speaks the truth. The function of a *nunc pro tunc* order is not to change, modify, or correct erroneous judgments, but merely to have the record speak the truth. A trial court may exercise its *nunc pro tunc* authority in limited situations to correct clerical errors. However, a trial court may not use a *nunc pro tunc* entry to enter of record that which it intended to or might have done but which in fact it did not do. (Emphasis deleted.) (Internal citations omitted).

Tate v. Tate, 5th Dist. Holmes No. 17CA013, 2018-Ohio-1245, ¶ 17.

{¶41} In his motion, Appellant sought to have the trial court change its determination in this matter. A *nunc pro tunc* entry is not appropriate for this purpose. Appellant's recourse was to appeal, which Appellant ultimately did in this matter.

{¶42} Appellants' second, fifth, sixteenth, seventeenth, and eighteenth assignments of error are without merit and are overruled.

ASSIGNMENT OF ERROR NO. 4

> Trial Court's [sic] erred in its dismissal of Plaintiff-Appellant's claims where Local Rules and entries do not indicate a clear and concise definition, and/or code, violation section, of what is "concise, unambiguous, and specific", as to Plaintiff-Appellant's complaint, or amended complaint, and thereby retracting Plaintiff-Appellant [sic] First Amendment Right to Free Speech.

ASSIGNMENT OF ERROR NO. 6

Trial Court erred in finding of dismissal upon Plaintiff-Appellant claims violates the spirit, letter, and intent of the Ohio General Assembly and State Legislature, statutory code, and constitution of Ohio.

{¶43} Appellant argues that the trial court's dismissal of his action violates "the spirit, letter, and intent of the Ohio General Assembly and State Legislature, statutory code, and constitution of Ohio." (Appellants' Brf., p. 1.) Appellant also argues that the court's decision violates his First Amendment rights, as the local rules "do not indicate a clear and concise definition, and/or code, violation section, of what is 'concise, unambiguous, and specific', as to Plaintiff-Appellant's complaint." (Appellants' Brf., p. 1.)

{¶44} Appellant's arguments are unclear, particularly as these issues are not discussed within an appropriate assignment of error. Appellant also does not specify which local rules and statutory provisions on which he predicates his arguments nor does he explain how the dismissal of his action infringes on his First Amendment rights. As such, Appellants' fourth and sixth assignments of error are without merit and are overruled.

Conclusion

{¶45} In reviewing the record in this matter, dismissal of Appellant's mandamus action based on Civ.R. 12(B)(6) was premature, as there may be a set of facts on which Appellant may base relief. However, he cannot establish all requisite elements of a writ of prohibition. Appellant's remaining arguments are without merit for the reasons provided. Accordingly, Appellant's argument as to the writ of mandamus has merit and the judgment of the trial court is reversed and remanded for purposes consistent with this

Opinion. Appellant's remaining arguments are without merit and the judgment of the trial court is affirmed as to those issues.

Donofrio, J., concurs.

D'Apolito, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellant's third and fifteenth assignments of error are sustained and his remaining assignments are overruled. It is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Belmont County, Ohio, is affirmed in part and reversed in part. 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 Appellees.

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.