[Cite as *Givens v. Longwell*, 2023-Ohio-4516.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

CAROL GIVENS,

Plaintiff-Appellant,

v.

JOHN LONGWELL,

Defendant-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 23 BE 0008

Civil Appeal from the
Court of Common Pleas of Belmont County, Ohio
Case No. 22 CV 331

BEFORE:
Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Carol Givens, *Pro se*, P.O. Box 117, Bellaire, Ohio 43906, Plaintiff-Appellant

Atty. M. Winiesdorffer-Schirripa and *Atty. G. Thomas Smith*, Smith Law PLLC, 516 West Main Street, Clarksburg, West Virginia 26301, *Bradley A. Powell*, Droder & Miller Co., L.P.A., 250 East Fifth Street, Suite 700, Cincinnati, Ohio 45202, for Defendant-Appellee.

Dated: December 5, 2023

WAITE, J.

{¶1} Appellant Carol Givens appeals from a Belmont County Court of Common Pleas decision dismissing her complaint for lack of standing. The subject matter of the complaint was a parcel of property in Shadyside, Ohio, once owned by her son, Greg Givens. The property was sold in tax foreclosure to Appellee John Longwell. Appellant sued Longwell *pro se* in an attempt to reverse the tax foreclosure sale of the residence. However, Appellant admitted under oath that she did not own, lease, or otherwise possess a legally protected interest in the disputed property. Because she had no interest in the property, the trial court found that she lacked standing to sue Mr. Longwell and dismissed her complaint *sua sponte*. Appellant timely appealed *pro se* and raises eight assignments of error.

{¶2} A review of this record reveals that all of Appellant's assignments of error fail on either procedural or jurisdictional grounds. In most of her assignments of error she has failed to prove any cognizable argument. The primary issue before us is whether Appellant was a real party in interest with standing to sue Appellee. It is clear she is not. The trial court's decision to dismiss for lack of standing was correct and is affirmed.

Facts and Procedural History

{¶3} This case concerns the property at 3735 Highland Avenue, Shadyside, Ohio 43947. Mary and Joseph Givens, Appellant's in-laws, are the record title holders of the Highland Avenue property. Joseph died in 2007, and his wife predeceased him. It has been alleged that Joseph's will devised the property to Greg Givens, Joseph's grandson, but this will was never probated. Greg Givens is Appellant's son. Because the property was severely delinquent on property taxes, it was subject to tax foreclosure proceedings

in June of 2021. Greg Givens failed to appear at the tax foreclosure proceedings and the court entered default judgment against him. John Longwell purchased the Highland Avenue property at the resulting tax foreclosure sale.

{¶4} Greg Givens filed suit against Mr. Longwell *pro se* in July 2022. On August 22, 2022, the court dismissed the complaint without prejudice for failure to pay the security deposit for court costs. Greg Givens had also attempted to reopen his grandfather's estate in a separate bid to regain the property, but that application was also denied on August 22, 2022. Givens refiled his complaint against Mr. Longwell but the court again dismissed the complaint, this time with prejudice. *Givens v. Longwell*, Belmont C.P. No. 22 CV 00242 (Oct. 25, 2022). We recently upheld this judgment. *Givens v. Longwell*, 7th Dist. Belmont No. 22 BE 0056, 2023-Ohio-3379.

{¶5} A month later, on November 23, 2022, Carol Givens filed her complaint against John Longwell, which is the subject of this appeal. The record reflects that this complaint is nearly identical to the complaint initially filed (and refiled) by Greg Givens. (2/15/23 Judgment Entry, paragraph 9.) On December 7, 2022, the trial court set a show cause hearing for Appellant to address five issues:

1. Whether she has a "valid cause of claim" as stated in her affidavit;
2. Why her complaint appears to mirror those filed previously by Greg Givens;
3. Whether she has standing to sue;
4. Her ability to pay security for court costs; and
5. Errors in her complaint in paragraphs 6, 8, 10, 11, 14, 15, 16, 18, 21, and the second paragraph of her Prayer for Relief.

(12/6/22 Docket and Journal Entry.)

{¶6} At the show cause hearing, Appellant testified that she "did not have an ownership interest in the subject property * * *." (2/15/23 J.E., ¶ 7.) The court and Appellant had the following exchange:

> THE COURT: But you have no legal interest in this property. You have no case. You can't sue Mr. Longwell for breaking into your property if you don't have a claim to that property. You understand?
>
> MS. GIVENS: I understand. I thought I did because they owed me money.
>
> THE COURT: Okay. Well, I'm trying to explain – and if somebody owes you money related to the house, it may be Greg Givens.
>
> MS. GIVENS: Yeah.

(12/15/22 Tr., p. 28.)

{¶7} The court granted Appellant a sixty-day continuance to secure counsel and either amend or voluntarily dismiss her complaint. (12/15/22 Tr., pp. 52-53.) Appellant failed to take either action, so the court dismissed her complaint with prejudice on the grounds that "[Ms. Givens] is not the real party in interest." (2/15/23 J.E.) The next day, Appellant filed a motion for extension of time. The court denied the motion as moot, as it had already dismissed her complaint. (2/17/23 J.E.)

{¶8} We note here that both Appellant Carol Givens and her son Greg Givens have been declared vexatious litigators. We have granted Appellant leave to continue

this appeal under R.C. 2323.52(F)(2). Appellant timely appealed the court's dismissal of her complaint, raising eight assignments of error. For ease of analysis, we will address her assignments of error out of order.

ASSIGNMENT OF ERROR NO. 3

> TRIAL COURT ERRED IN DISMISSAL OF COMPLAINT FOR REASONS NOT PRESENTED BY DEFENDANT(S), IN MOTION TO DISMISS, OR BY SUMMARY JUDGMENT.

{¶9} In her third assignment of error, Appellant argues that the trial court erred by dismissing her complaint for lack of standing. She claims that she is a real party in interest with standing to sue because she made payments toward property taxes and improvements to the property. This assignment of error lacks merit because Appellant lacks a legally protected interest in the property.

{¶10} Civ.R. 17(A) requires that "[e]very action shall be prosecuted in the name of the real party in interest." Civ.R.17(A). Indeed, "if a claim is asserted by one who is not the real party in interest, then the party lacks standing to prosecute the action." *Myers v. Evergreen Land Dev. Ltd.*, 7th Dist. Mahoning No. 07 MA 123, 2008-Ohio-1062, ¶ 13, quoting *State ex rel. Jones v. Suster,* 84 Ohio St.3d 70, 77, 701 N.E.2d 1002 (1998).

{¶11} A real party in interest is "one who has a real interest in the subject matter of the litigation, and not merely an interest in the action itself, *i.e*., one who is *directly* benefitted or injured by the outcome of the case." (Emphasis sic.) *Shealy v. Campbell*, 20 Ohio St.3d 23, 24, 485 N.E.3d 701 (1985), quoting *West Clermont Edn. Assn. v. West Clermont Bd. of Edn.* 67 Ohio App.2d 160, 162, 426 N.E.2d 512 (1980).

{¶12} The purpose of the standing requirement is to "enable the defendant to avail himself of evidence and defenses that the defendant has against the real party in interest, and to assure [the defendant] finality of judgment, and that he will be protected against another suit brought by the real party at [sic] interest on the same matter." *Shealy* at 24-25, quoting *In re Highland Holiday Subdivision*, 27 Ohio App.2d 237, 240, 273 N.E.2d 903 (4th Dist.1971).

{¶13} To determine whether a plaintiff is a real party in interest, "courts must look to the substantive law creating the right being sued upon to see if the action has been instituted by the party possessing the substantive right to relief." *Id.* at 25. As we have noted in the past, "the test for determining who is a real party in interest is: 'Who would be entitled to damages?'" *Myers*, supra, at ¶ 14. When the facts are not in dispute, the trial court's determination that an individual is not a real party in interest is reviewed de novo. *Id.* at ¶ 15. If it is determined that the plaintiff does not have standing, the complaint must be dismissed, and appellate courts will uphold such dismissals on appeal. *Fed. Home Loan Mortg. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214, ¶ 42.

{¶14} In this case, Appellant raised several causes of actions in her complaint: grand theft, breach of an implied covenant of good faith and fair dealing, breach of contract, economic duress, and promissory fraud and misrepresentation. All of her claims depend on the fact that the claimant possess a legally protected interest in the property. Because Appellant does not have a legally protected interest in the property in this case, she is not the real party in interest and lacks standing.

{¶15} As the trial court noted, Appellant's complaint is rife with references to her son, Greg Givens: it names him as the plaintiff in some spots; consistently uses masculine pronouns when it should use feminine pronouns; and contains facts that are applicable only to her son, and not Appellant. It appears that, aside from minor editing, Appellant simply signed her name on the complaint that Greg Givens earlier twice unsuccessfully filed.

{¶16} Appellant's claim for grand theft relies on property ownership. The theft statute provides that, "[n]o person, with purpose to deprive *the owner of property* or services, shall knowingly obtain or exert control over either the property or services * * *." (Emphasis added.) R.C. 2913.02(A). Appellant admits she does not own the disputed property. Hence, she is already not entitled to relief under the statute.

{¶17} Appellant's claims for breach of contract and breach of implied covenant of good faith and fair dealing blend together. They are the same cause of action: "there is no separate cause of action for breach of the implied duty of good faith and fair dealing * * *." *Lucarell v. Nationwide Mutual Insurance Company*, 152 Ohio St.3d 453, 464-465, 2018-Ohio-15, 97 N.E.3d 458. Appellant claims that she entered into a contract with a "third party" to pay the overdue taxes on the property. (Complaint at ¶ 10.) That contract, she argues, was breached when Appellee purchased the property. Appellant admitted at the show cause hearing that it was Greg Givens who entered into the contract, not her. (12/15/22 Tr., pp. 14-16.) She allegedly transferred money to Greg Givens so he could make the required tax payments. The trial court noted that there is no evidence that Greg Givens ever made the payments. Although theoretically based on her allegations Appellant might be able to recover damages against her son, she cannot recover on these

claims against Appellee. As such, she is not a real party in interest for her breach of contract claim against Appellee Longwell.

{¶18} Appellant's claims for economic duress and fraud also blend together. Both rely on the notion that Appellee wrongly wrested ownership of the property from Appellant. Appellant can receive no relief on these claims because the property was never hers to begin with. Her father-in-law did not devise the property to her in his will, he devised it to Greg Givens. She never purchased, leased, or by any other means obtained an ownership interest to the property from the deceased Mr. Givens, its previous owner. Nothing in the record demonstrates that Appellant had any legally protected interest in the property. Appellant suffered no deprivation when Appellee lawfully purchased the parcel at a tax foreclosure sale. Because she had no legally protected interest in the property, she is not entitled to relief on her fraud or economic duress claims. Appellant is not a real party in interest for the purposes of those claims.

{¶19} Appellant does not have standing to sue because she is not a real party in interest with a direct, actual stake in the outcome of the litigation. She has no legally protected interest in the disputed property and can receive no relief from contesting the tax foreclosure sale. Because she has no standing, the trial court's decision to dismiss her complaint was not error and Appellant's third assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 1

TRIAL COURT ABUSED ITS DISCRETION IN TREATMENT AND DISMISSAL OF COMPLAINT FOR REASONS AND PREJUDICES STATED IN ARBITRARY AND UNIQUE ORDERS TO DEFENDANT GIVENS ALONE, SO DENYING DUE PROCESS OF LAW AND THE

EQUAL PROTECTION OF LAW REQUIRED TO THE DEFENDANT, CAROL GIVENS, IN VIOLATION OF THE U.S. BILL OF RIGHTS, AND ARTICLE I OF THE CONSTITUTION OF THE STATE OF OHIO, JUDICIAL CANNONS [sic].

{¶20} In this assignment of error, Appellant argues that the trial court abused its discretion by determining that "Greg Givens failed to properly proceed and/or comply with the Probate Court's Orders, and the estate case was dismissed * * *." (2/15/23 Judgment Entry at paragraph 9). This was error, she alleges, because her son is currently appealing the Probate Court's decision and a reversal is possible.

{¶21} This assignment of error lacks merit because this appeal does not involve Greg Givens as a party and clearly does not involve an appeal of a probate judgment. Appellant's lack of standing prevents her from making arguments as to the merits of the instant case, much less a completely different case in probate court. We must also note that this Court has already dismissed Mr. Givens' appeal in his probate case. *In re Estate of Givens*, 7th Dist. Belmont No. 22BE0045 (Oct. 31, 2022). As such, Appellant's arguments are moot and her first assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 4

TRIAL COURT ABUSED ITS DISCRETION IN ARBITRARY RULINGS AND *SUA SPONTE* OPINIONS DIRECTED TO THE CLERKS AGAINST PLAINTIFF, WITHOUT HEARING OR OPPORTUNITY FOR INQUIRY AS TO PLAINTIFF, WHO IS SEVENTY-FIVE (75) YEARS OF AGES [SIC], ON A WALKER, AND REQUIRED BY IMPLICATION, COURT ORDER FOR

> PLAINTIFF TO COURT, MORE THAN TWELVE (12) MILES AWAY FROM THE COURTROOM, SUBJECTING PHYSICAL REQUIREMENTS OF PLAINTIFF, PRIOR TO OBJECTIONS, DISCOVERY, OR TRIAL, NOT SIMILARLY IMPOSED UPON THE DEFENDANT, JOHN LONGWELL, DEPRIVING PLAINTIFF OF FUNDAMENTAL RIGHTS OVER TO THE FAVOR OF THE DEFENDANT, AND CONTRARY AGAINST THE PLAINTIFF'S FIRST AMENDMENT [SIC] TO THE U.S. CONSTITUTION, AND THE DUE PROCESS OF LAW, AND AS RIGHTS GUARANTEED BY ARTICLE I OF THE OHIO STATE CONSTITUTION, U.S. CONSTITUTION, AND THE CANNON OF JUDICIAL CANNON [SIC] AND CONDUCT, AND IN DETERMINATION OF COSTS AGAINST THE PLAINTIFF.

{¶22} In her fourth assignment of error, Appellant argues that the trial judge violated numerous Canons of the Ohio Code of Judicial Conduct. Appellant claims, without evidence, that the trial judge is a critic of Greg Givens and is allied with her son's "political opponents" in Shadyside. (Appellant's Brf. at p. 6.)

{¶23} Because Appellant had no standing to file her complaint, any further arguments regarding this complaint are moot. Regardless, the question of judicial misconduct is beyond this Court's jurisdiction. "Appellate Courts have consistently recognized that any allegation that the trial judge violated the Code of Judicial Conduct, acted in a manner demeaning to the judiciary, and engaged in unethical misconduct are not properly brought before the court of appeals." *In re J.J.M*, 7th Dist. Harrison No. 12 HA 2, 2012-Ohio-5605, ¶ 23. Appellant's fourth assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 5

THE TRIAL COURT ERRED IN ITS FAILURE AND DUTY TO RECUSE, HOLDING EACH AND EVERY CASE OF THE PLAINTIFF, AND LACKING RANDOM STRAW POLL OF JUDGES.

{¶24} Appellant's fifth assignment of error appears to simply restate her fourth assignment. She fails to provide any reasoning or argument, and fails to supply citations to any authorities or references to relevant parts of the record. These omissions clearly violate App.R. 16(A)(7) and are reason enough to overrule the assignment of error. "It is the duty of appellant, not this Court, to demonstrate [her] assigned error through an argument that is supported by citations to legal authority and facts in the record." *Midkiff v. Kuzniak*, 7th Dist. Mahoning No. 06 MA 66, 2006-Ohio-6243, ¶ 11 citing *State v. Taylor*, 9th Dist. No. 2784-M. The fact that Appellant is a pro se litigant does not excuse her from complying with App.R.16(A)(7). "It is well established that pro se litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel." *State ex rel. Neil v. French*, 153 Ohio St.3d 271, 274, 2018-Ohio-2693, 104 N.E.3d 764.

{¶25} Nevertheless, this assignment of error is also moot, given our conclusion that Appellant had no standing to file her complaint. Assignment of error five is overruled.

ASSIGNMENT OF ERROR NO. 8

TRIAL COURT ABUSED ITS DISCRETION BY JOINDER, AND IN DISMISSAL OF BELMONT COUNTY COURT, COMMON PLEAS, CASES

21-TF-0004 WITH 22-CV-0331, AND IN CONCLUSIONS OF LAW NOT BACKED IN FACT, OR IN EVIDENCE.

{¶26} In her eighth assignment of error, Appellant argues that the trial court improperly joined her civil case (22-CV-0331) with her tax foreclosure case (21-TF-0004).

{¶27} Pursuant to App.R. 12(A)(2), we must overrule this assignment of error at the outset because it "fails to identify in the record the error on which the assignment of error is based * * *." Appellant has raised a bare claim devoid of context. She provides no discernable argument. There is no indication in the record that the court joined the two cases Appellant references. Appellant appears to have mistaken the court's transfer of a motion from one case to another for a joinder of cases. Appellant filed a motion to "Set Aside-Vacate Prior Court Order; Unwind" in her civil case, 22-CV-0031. (12/15/22 Pl's Mot.) However, the subject matter of that motion concerned her tax foreclosure case, 21-TF-0004, not the instant case. The court informed Appellant that she should have filed her motion in the tax foreclosure case. In the court's words, "the wrong case number [was] on [the motion]." (12/15/22 Tr., p. 38).

{¶28} The court informed Appellant that it would do the following: "I'm going to order the Clerk to file [the motion], instead of in this case – because again, it says 22 CV 331 – it should be the tax foreclosure case, the 004 case." (*Id*. at p. 51). The court did not join the two cases. Instead, in an act of fairness toward Appellant, it treated Appellant's motion as if she had correctly filed it in the tax foreclosure case. This was not error. Accordingly, Appellant's eighth assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

TRIAL COURT ABUSED ITS DISCRETION, AND IN FAILURE TO ADHERE TO, AND OBEY OHIO STATUTE, HIGHER COURT OPINIONS, DETERMINATION, MANDATES OF THE OHIO SUPREME COURT, AND DISTRICT COURT OPINIONS, ISSUED ACCORDINGLY, AND IN ACCORDANCE WITH LAW

ASSIGNMENT OF ERROR NO. 6

THE TRIAL COURT ERRED IN ITS FAILURE AND DUTY TO CORRECT JUDGMENT IN FAVOR OF PLAINTIFF, AND ADHERE TO LOCAL RULE 23 OF THE BELMONT COUNTY COURT, COMMON PLEAS, IN ITS RULING.

{¶29} In her second and sixth assignments of error Appellant argues that she is due relief from judgment in her tax foreclosure case under Civ.R. 60(B). We lack jurisdiction to hear these assignments of error because her tax foreclosure case is not presently before us.

{¶30} In order to invoke an appellate court's jurisdiction, "a party must file a notice of appeal in compliance with App.R. 3(D)." In the notice of appeal, an appellant must "designate the judgment, order or part thereof appealed from." App.R. 3(D). Failure to do so divests the appellate court of jurisdiction. "[A]n appellate court lacks jurisdiction to review a judgment or order that is not designated in the appellant's notice of appeal." *State v. McGarvey*, 7th Dist. Mahoning No. 14 MA 153, 2016-Ohio-771, ¶ 8.

{¶31} Here, Appellant designated Common Pleas Case No. 22-CV-331 in her notice of appeal. She did not include her tax foreclosure case. Her second and sixth assignments of error deal exclusively with the court's decision on Appellant's motion for relief from judgment in her tax foreclosure case. Because Appellant has only appealed the court's decision in Case No. 22-CV-331, we lack jurisdiction over any judgment rendered in her tax foreclosure case. Accordingly, Appellant's second and sixth assignments of error are overruled.

ASSIGNMENT OF ERROR NO. 7

TRIAL COURT ABUSED ITS DISCRETION BY CONCLUSIONS OF LAW NOT BACKED IN FACT, OR IN EVIDENCE.

{¶32} In her seventh assignment of error, Appellant claims that the trial court abused its discretion by ordering her to pay court costs. As a preliminary matter, we once again note that Appellant failed to comply with the Rules of Appellate Procedure. Appellant does not present "the reasons in support of [her] contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." App.R. 16(A)(7). Appellant cites no standard of review, no authority in case law whatsoever, no statutory provisions, and no evidence in the record to show that the trial court's order was in error. The entirety of this assignment of error reads: "The Trial Court erred in its determination, that Costs are taxed to Carol Givens. Citations *Sic passim*. *Ibid*." (Appellant Br. at 8). Appellant cannot rely on this Court or Appellee to make her argument for her. *Midkiff*, 7th Dist. Mahoning No. 06 MA 66, 2006-Ohio-6243, ¶ 11.

{¶33} The Ohio Rules of Civil Procedure direct trial courts to order parties to pay court costs. "Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed to the prevailing party unless the court otherwise directs." Civ.R. 54(D). The rule "gives the trial court broad discretion to assess costs" and "the court's ruling will not be reversed absent an abuse of discretion." *Keaton v. Pike Community Hosp.*, 124 Ohio App.3d 153, 156, 705 N.E.2d 734 (4th Dist. 1997) citing *Vance v. Roedersheimer*, 64 Ohio St.3d 552, 555, 597 N.E.2d 153 (1992). Abuse of discretion connotes more than an error of judgment; it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. *Johnson v. McClain*, 164 Ohio St.3d 379, 2021-Ohio-1664, 172 N.E.3d 1012, ¶ 20.

{¶34} Although Appellant filed an affidavit of indigency with her complaint, this does not change our analysis. "The mere filing of an affidavit of indigence does not constitute an automatic waiver of court costs." *Yeager v. Moody,* 7th Dist. Carrol No. 11 CA 874, 2012-Ohio-1691, ¶ 8. An indigency filing only waives the requirement of an advance deposit to secure court costs. Costs may still be assessed at the conclusion of the case. *Crenshaw v. Howard*, 2022-Ohio-3914, 200 N.E.3d 335, ¶ 37 (8th Dist.).

{¶35} The trial court possesses broad discretion to recoup court costs from litigants, even pro se indigent litigants. Appellant has presented no argument or citation to the record that the court's decision was unreasonable, arbitrary, or unconscionable. Accordingly, Appellant's seventh assignment is overruled.

Conclusion

{¶36} Appellant filed a complaint contesting the sale of a residence owned by her son to Appellee. The complaint was dismissed for lack of standing. She raised eight assignments of error for review. The trial court was correct that Appellant had no interest in the property and had no standing to sue Appellee. Appellant's arguments regarding a separate tax foreclosure are not before us because that case is not part of this appeal. We have no jurisdiction to entertain allegations of judicial bias of the trial judge. The trial judge did not abuse its discretion in assessing court costs. None of Appellant's assignments of error have merit and they are overruled. Accordingly, the judgment of the trial court is affirmed in full.

Robb, J. concurs.

D'Apolito, P.J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and 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. Costs to be taxed against the Appellant.

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.